

Commission Proposal for an Act of Adaptation of the terms of accession of the United Cyprus Republic to the EU (7 April 2004)

Caption: On 7 April 2004, with a view to the referendum due to be held in Cyprus on the unification of the island, the European Commission proposes an Act of Adaptation of the terms of accession of a reunified Cyprus to the European Union.

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Proposal for an Act of Adaptation of the terms of Accession of the United Cyprus Republic to the European Union (7 April 2004)

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 31 March 2004, UN Secretary-General Kofi Annan submitted to the parties concerned the finalized "Comprehensive Settlement of the Cyprus Problem". His proposal shall be submitted for approval at separate simultaneous referenda in both Cypriot communities on 24 April 2004 as already agreed by all parties in New York on 13 February 2004. After successful outcome of the referenda a reunited island will join the European Union.

It should be recalled that the European Council has repeatedly confirmed its strong preference for accession by a united Cyprus. It has also repeatedly stated the Union's readiness to accommodate the terms of a settlement in line with the principles on which the EU is founded. The European Council welcomed in its conclusions of 26 March 2004 "the Commission's continued willingness to offer assistance for a speedy solution within the framework of the *acquis*".

The Accession Treaty foresees in the event of a settlement a special procedure for the adaptations to the terms concerning the accession of Cyprus to the European Union with regard to the Turkish Cypriot community. The legal basis for the attached proposal for the Act of Adaptation accommodating the terms of the settlement is Article 4 Protocol No. 10 of the Act of Accession. This provision delegates treaty-making power in respect of the adaptation of the terms of accession of Cyprus and therewith primary law from the Member States to the Council and provides that the Commission will make a proposal for the exercise of this delegated power.⁽¹⁾ The resulting legal act inevitably is of a *sui generis* nature.⁽²⁾

Since the proposal for the act had to be part of the comprehensive settlement submitted by the Secretary-General, its procedural genesis was equally of a *sui generis* nature. The text of this act was finalized at the final stage of the negotiations with support provided by a Commission delegation, led by Commissioner Verheugen under coverage of President Prodi. In this way the Community interest and the Commission's power of initiative under Article 4 of Protocol No. 10 could best be safeguarded under the circumstances and in line with the Council conclusions of 26 March 2004.

This proposal for the act accommodates the terms of the settlement and recognizes the particular national identity of Cyprus and the need to protect the overall balance between Greek Cypriots and Turkish Cypriots. It takes account of large economic disparities between the (future) Cypriot constituent states and the economic situation in the (future) Turkish Cypriot constituent state in general. The act takes also account of the special relations of Greek Cypriots and Turkish Cypriots with Greece and Turkey respectively. It should be stressed that the proposal for the act does not include permanent derogations from the *acquis*, but only transitional periods.

The proposal for the act contains the following main elements:

- The Turkish Cypriot state may require, on a non-discriminatory basis, permissions for the acquisition of immovable property until it has reached a level of 85 % of the GDP of the Greek Cypriot state, not exceeding however a period of 15 years. During this transitional period of maximal 15 years there is no prohibition to acquire property, but an authorisation procedure may be applied on published, objective, stable and transparent criteria and in a non-discriminatory manner. The Commission shall report every five years and may recommend the abolishment of the restrictions.
- The right of Cypriot citizens to reside in the other constituent state may be restricted ("internal restriction").
- The right of residence in Cyprus of Greek and Turkish nationals may be restricted.

- In the event of serious deterioration of the economic situation in the Turkish Cypriot state, appropriate safeguard measures may be taken for a period of three months (only Commission may prolong the measures).
- Rules of implementation of special entry and residence rights for Turkish nationals, compatible with the principle of equal treatment of Greek and Turkish nationals and participation of Cyprus in the Schengen area, shall be negotiated between the Community and Turkey within six months.
- Turkish shall be an official language upon fulfilment of the necessary personnel and technical requirements.

It should be noted that the finalized comprehensive settlement ensures that the United Cyprus Republic is able to speak with one voice in international fora and has structures which are strong enough to implement the *acquis*.

Therefore, this act should be submitted to the Council without delay for its immediate adoption by the Council after a successful outcome of the referenda. Moreover, following the reunification of the island, the application of the *acquis* will need to be extended step by step to the Turkish Cypriot constituent state according to Article 1 paragraph 2 of Protocol No. 10. In a first step, the institutional *acquis* as well as general provisions need to be extended to the Turkish Cypriot constituent state.

As the UN Secretary-General stated in his letters the comprehensive settlement represents the best chance ever for Cyprus to be reunited so that all Cypriots could fully benefit from EU membership.

Proposal for an Act of Adaptation of the terms of accession of the United Cyprus Republic to the European Union

THE COUNCIL OF THE EUROPEAN UNION

Having regard to Protocol No. 10 of the Act of Accession 2003, and in particular Article 4 thereof,

Having regard to the proposal from the Commission,

- (1) Taking into account the approval of the Foundation Agreement by the Greek Cypriots and the Turkish Cypriots on 24 April 2004,
- (2) Taking into account the Treaties of Guarantee and Alliance, the Additional Protocol thereto, and the Treaty of Establishment,
- (3) Bearing in mind and respecting the demilitarisation of Cyprus,
- (4) Considering that the Act of Accession shall not prevent the implementation of the Foundation Agreement, and shall accommodate its terms in line with the principles on which the European Union is founded,
- (5) Recalling that the European Union's mission is peaceful cooperation of states and citizens, founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States and which have found their expression in the Foundation Agreement which introduces a new state of affairs in Cyprus and allows its peaceful integration into the Union,
- (6) Underlining that the political equality of Greek Cypriots and Turkish Cypriots, the equal status of the two constituent states, and the prohibition on any unilateral change to the state of affairs established by the Foundation Agreement, fall within the terms of Article 6(1) of the Treaty of the European Union,

- (7) Recognizing the particular national identity of Cyprus, and the need to protect the balance between Greek Cypriots and Turkish Cypriots in Cyprus, the bi-zonal character of the United Cyprus Republic and the distinct identity and integrity of the constituent states, which require certain safeguards and temporary restrictions on the right of residence of Cypriot citizens as well as citizens of Greece and Turkey,
- (8) Considering that the main articles of the Foundation Agreement form part of the national identity of the United Cyprus Republic, which the European Union shall respect,
- (9) Bearing in mind that the United Cyprus Republic shall take all appropriate measures, whether in general or in particular, to ensure the fulfilment of the obligations arising out of European Union membership, in line with the specifications of the Act of Accession and this Act
- (10) Underlining that accession to the European Union shall benefit Greek Cypriots and Turkish Cypriots alike and promote development to help reduce economic disparities,
- (11) Recalling that, in accordance with the Presidency Conclusions of the Brussels European Council of 12 December 2003, the Union is ready to provide financial assistance for the development of the northern part of Cyprus following a settlement,
- (12) Being convinced that the economic disparities between the Turkish Cypriot constituent state and European Union Member States as well as between the two constituent states necessitate authorisation procedures for the acquisition of property in the Turkish Cypriot constituent state in order to avoid unacceptable sudden price increases and large scale buy-out of land,
- (13) Being further convinced that the economic situation in the Turkish Cypriot constituent state may also necessitate the adoption of special safeguard measures for a limited period of time in order to protect certain sectors of its economy,
- (14) Taking into account the special relations and strong ties of Greek Cypriots and Turkish Cypriots with Greece and Turkey respectively,
- (15) Bearing in mind that, as a European Union Member State, Cyprus shall fulfil its obligations arising from the Association Agreement between Turkey and the European Communities of 1963, its additional Protocol and the decisions taken by the Association organs including the decision establishing a Customs Union between Turkey and the European Union, thereby according European Union treatment to Turkey in the fields where this is provided for,
- (16) Wishing to accord, to the extent possible with the European Union membership of Cyprus, similar rights to Greek and Turkish nationals vis-à-vis Cyprus,
- (17) Considering that the Foundation Agreement foresees equivalent entry and resident rights for Greek and Turkish nationals vis-à-vis Cyprus. The implementation of this principle requires derogations from Community law in the case of Cyprus. Unlimited immigration can, however, not be accorded to either Greek or Turkish nationals in the interest of the internal balance of population in Cyprus,
- (18) Underlining that all necessary preparations should start immediately so that Turkish shall become and operate as an official and working language of the European Union as soon as possible

HAS ADOPTED THIS ACT OF ADAPTATION OF THE TERMS OF ACCESSION:

Article 1
Property

1. Notwithstanding existing provisions of Community law, the application of restrictions, on a non-

discriminatory basis, on the right of natural persons who have not been permanent residents for at least three years in the Turkish Cypriot constituent state, and of legal persons, to purchase immovable property in the Turkish Cypriot constituent state without permission of the competent authority of that constituent state, for fifteen years or for as long as the gross domestic product per capita in that constituent state does not reach the level of 85% of the gross domestic product per capita in the Greek Cypriot state, whichever is the earlier, shall not be precluded.

2. The authorisation procedure for the acquisition of immovable property applied by the competent authorities of the Turkish Cypriot constituent state shall be based on published, objective, stable and transparent criteria and shall be applied in a non-discriminatory manner.

3. The Commission shall report every five years to the European Parliament and the Council on the application of the provisions of paragraphs 1-2. The Commission may at that time recommend to the Turkish Cypriot constituent state to abolish in total or in part the restrictions, if it considers that the political, economic and social conditions in Cyprus so allow.

Article 2

Residence of Cypriot citizens

1. Notwithstanding existing provisions of Community law, the application of restrictions, on a non-discriminatory basis, on the right of a Cypriot citizen to reside in a constituent state of which he does not hold the internal constituent state citizenship status shall not be precluded,

a) in the form of a moratorium, during the first five years following the date of the entry into force of this Act;

b) if the percentage of such residents of the total population of a municipality or village has reached 6% between the 6th and 9th years and 12% between the 10th and 14th years following the date of entry into force of this Act; and

c) if the percentage of such residents of the total population of a constituent state has reached 18 % for a period of up to nineteen years following the entry into force of this Act or until Turkey joins the European Union, whichever is the earlier.

2. Thereafter, either constituent state may, with a view to protecting its identity, take safeguard measures to ensure that no less than two-thirds of its Cypriot permanent residents speak its official language as their mother tongue.

Article 3

Residence of Greek and Turkish nationals

1. Notwithstanding existing provisions of Community law, the application of restrictions, on a non-discriminatory basis, on:

a) the right of Greek nationals to reside in Cyprus, if the number of resident Greek nationals has reached 5% of the number of resident Cypriot citizens who hold the internal constituent state citizenship status of the Greek Cypriot constituent State and who are not dual nationals;

b) the right of Turkish nationals to reside in Cyprus, if the number of resident Turkish nationals has reached 5% of the number of resident Cypriot citizens who hold the internal constituent citizenship status of the Turkish Cypriot constituent State and who are not dual nationals;

c) shall not be precluded for a transitional period of up to 19 years after the entry into force of this Act or until Turkey joins the European Union, whichever is the earlier.

2. Thereafter, the United Cyprus Republic, in consultation with the Commission, may take safeguard measures to ensure that the demographic ratio between Cyprus's permanent residents speaking either Greek or Turkish as mother tongue is not substantially altered.

Article 4 **Safeguard measures**

1. Without prejudice to Articles 37 and 38 of the Act of Accession, if until the end of a period of up to six years after the entry into force of this Act, the operation of the European Union's internal market causes, or threatens to cause, difficulties which are serious and likely to persist in any sector of the economy, or which could bring a serious deterioration in the economic situation in the Turkish Cypriot constituent state, the competent Cypriot authorities may take appropriate safeguard measures which shall be applicable for a period of three months. These measures shall be proportional and shall not constitute disguised restrictions on trade and shall take account of the interests of all parties concerned.

2. On request, the Commission may prolong these measures, in total or in part, or adopt different measures of which it shall determine the time of application within the six years period set out in paragraph 1.

Article 5 **Equivalent rights of Greek and Turkish nationals**

Without prejudice to the restrictions applied under Articles 1-3 and rules applying to entry and residency rights of Turkish nationals in other Member States, Cyprus is authorised to accord to Turkish nationals equivalent treatment with Greek nationals regarding entry and residency rights. Rules of implementation for such entry and residency rights for Turkish citizens, compatible with the above principles and the participation of Cyprus in the Schengen area, shall be negotiated between the European Community and Turkey within six months.

Article 6 **The European Security and Defence Policy**

The participation of Cyprus in the European Security and Defence Policy shall fully respect the provisions of the Foundation Agreement and the provisions of the Treaties of Guarantee and Alliance and the Additional Protocols thereto, and in no sense undermine those provisions.

Article 7 **Representation in the European Parliament**

Cyprus will be represented in the European Parliament according to proportional representation, provided that each constituent state is attributed no less than one third of the Cypriot seats in the European Parliament.

Article 8 **Turkish as official language of the European Union**

1. Turkish shall be an official and working language of the institutions of the European Union.

2. The Council shall decide on the effective application of paragraph 1 upon fulfilment of the necessary personnel and technical requirements. In the period preceding this decision, the Turkish language may be used in European Council and Council meetings.

3. The texts of the acts of the institutions and the European Central Bank, adopted before paragraph 1 takes effect, and drawn by the Council, the Commission or the European Central Bank, in Turkish shall, from that date be authentic under the same conditions as the texts drawn in the other official languages. They shall be published in the Official Journal of the European Union if the texts in the other official languages were so published.

Article 9

Application

This Act shall be published in the Official Journal of the European Union and become applicable the same day.

Done at Brussels, [...]

For the Council
The President [...]

(1) Article 4 reads: "In the event of a settlement, the Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the European Union with regard to the Turkish Cypriot community."

(2) The UN Secretary-General has informed the parties in letters dated 31 March 2004 that the Commission is committed to submitting the proposal for the Act of Adaptation for consideration by the Council and to bringing about a final outcome, "which will result in the adaptation of primary law and ensure legal certainty and security within the European Union legal system for all concerned".