

**CONFLICTS AND BORDERS IN CYPRUS:
IMPLEMENTING THE UK'S WITHDRAWAL AGREEMENT PROTOCOL**

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1 Introduction

The United Kingdom's departure from the EU reignited the issue of conflicts and borders in Cyprus due to its relationship with the UK and its strategic position in the EU. The situation triggered the adoption of the Protocol relating to the Sovereign Base Areas (SBAs) of the United Kingdom in Cyprus (Cyprus Protocol)¹ - attached to the UK's Withdrawal Agreement (WA).² The Cyprus Protocol contains arrangements regarding the UK's Sovereign Base Areas of Akrotiri and Dhekelia. The issues covered are extensive, such as border control in the SBAs, social security, trade, taxation, agriculture, fisheries, veterinary and phytosanitary rules, cooperation and the new governance structure set up by the Withdrawal Agreement. The paper deals with the following research question: *'To what extent has the implementation of the Cyprus Protocol attached to the Withdrawal Agreement been effective? Has the British legacy influenced it?'* The analysis focuses on the implementation of the Cyprus Protocol, in three areas: *persons, trade, and governance*. It encompasses Art. 5 on Social Security, Art. 7 on SBAs border control, Art. 2. on the EU Custom Territory, Art. 9 on the Specialized Committee, Art. 10 on the Joint Committee. The aim is to explore the effectiveness of the Protocol's implementation and how the British legacy has influenced it. The article is structured in three sections. The first part reconstructs the historical and normative framework, considering two key moments: the independence and birth of the Republic of Cyprus and its accession to the EU. The second part analyses the regulatory provisions of the Withdrawal Agreement Protocol concerning persons, trade, and governance. The third part concerns the effectiveness of the Protocol, considering the governance efficiency and the British legacy. At the time being, there is no legal literature on the Cyprus Protocol. Moreover, this article is part of a comprehensive work providing a comparative perspective of the three Protocols attached to the Withdrawal Agreement on Northern Ireland, Gibraltar, and Cyprus. The paper positions itself in the legal doctrine considering the application of EU law outside its borders and in the legal doctrine considering law enforcement in conflicted territories. This study is also institutionally relevant for the EU, national institutions, and policymakers due to the uncertainties surrounding Brexit. The research methods adopted are doctrinal and interdisciplinary. It is doctrinal in analyzing the legal provisions of the Cyprus Protocol regarding persons, trade, and governance. It embraces an interdisciplinary approach to analyzing the impact of conflict on law enforcement, adopting a law-in-context approach.

¹ The Protocol attached to the UK's Withdrawal Agreement relating the Sovereign Base Areas in Cyprus will be indicated as 'Cyprus Protocol' or 'WA Protocol' or simply 'the Protocol'. The Protocol attached to Cyprus' Treaty of Accession to the EU will be indicated as 'Protocol No 3' or 'Accession Protocol'.

² The United Kingdom's Withdrawal Agreement will be defined as 'Withdrawal Agreement'. The Cyprus Protocol is attached to it, having the same legal status.

2 Historical and Legal Framework

This section provides a brief historical introduction to contextualize the legislation mentioned in the Cyprus Withdrawal Agreement Protocol. It evolves around two pivotal moments in Cyprus' history: its independence, which led to the birth of the Republic of Cyprus (RoC), and its accession to the European Union. It presents the approval of Cyprus Constitution, the Treaty of Guarantee, Alliance and Establishment. Moreover, it introduces to Protocol No 3 and Protocol No 10, which were attached to the Cyprus' Accession Treaty to the EU.

2.1 The Birth of the Republic of Cyprus

In ancient times, Cyprus was a Roman province from 58 BC to 395 AD. Then, it became part of the Byzantine Empire (395–1184). After the Lusignan (1192–1489) and Venetian (1489–1571) reign, the Ottoman Empire took over (1571–1878). The Ottoman Empire allowed the British administration on the island under the 1878 Convention of Defensive Alliance. In return, the United Kingdom guaranteed protection to the Ottoman Empire against Russian attacks. Great Britain administered Cyprus on lease from the Sultan from 1878–1914, and after as a colony until 1960. At that date, the population on the island consisted of 80% Greek Cypriots and 18% Turkish Cypriots. They lived inter-mingled, sometimes in mixed villages or towns, and scattered all over the island.³

The Republic of Cyprus's roots stem from its strong desire for decolonization, which also explains its relationship with the United Kingdom. In the early 1920s the need of freedom was not linked to independence itself but to the aspiration to reunite with the mother country Greece.⁴ In October 1931 the first riots started in Nicosia.⁵ The 1950s were characterized by armed struggle and the lack of a shared solution. On the one hand, Greek Cypriots were intent on reuniting with the motherland while Turkish Cypriots wanted self-government; on the other hand, the United Kingdom wanted to retain sovereignty over the island. In 1950, the Greek Cypriot Orthodox Church started a petition for reunification with Greece, guided by Archbishop Makarios. A significant number of Greek Cypriots signed in favor - 215,000 out of 224,00 – and a small number of Turkish Cypriots. The result was transmitted to the UN Secretary-General. There was no reaction from the UN, the United Kingdom, or Greece. In 1954, the Greek Minister of Foreign Affairs Papagos sent a letter to the UN General Assembly, asking to activate the principle of self-determination.⁶ This request was unanimously dismissed on 17 December 1954 by the UN General Assembly, as the matter seemed a sovereignty

³ Frank Hoffmeister, *Legal Aspects of the Cyprus Problem*, (Martinus Nijhffs Publishers, 2006).

⁴ Nikos Skoutaris, *The Cyprus Issue* (Oxford: Oxford University Press, 2011). The author adopts the Greek terminology *Enosis* which means 'Union' to define the desire of Greek Cypriots unity with Greece, as opposed to *Takism* which means 'Partition' to define the intention of Turkish Cypriots for self-governance.

⁵ *Ibidem*.

⁶ *Ibidem*.

issue between Greece and the United Kingdom, not a self-determination attempt.⁷ In the meantime, the military organization 'EOKA' started the resistance against the British colonialism. This consequent tension between Greece and the UK, led the UN General Assembly to ask for a peaceful and democratic solution.⁸ In 1958, UK Prime Minister MacMillan presented a Cyprus plan to the House of Common.⁹ The MacMillan Plan consisted of a shared administration between the UK, Greece, and Turkey and a double citizenship for Cypriots, who would acquire either the Greek or Turkish nationality together with the British one. The Greek Prime Minister Karamanlis rejected the plan. The British administration proceeded unilaterally to implement a modified plan on 1 October 1958. The Cypriot Archbishop Makarios reacted with a letter to UK PM MacMillan declaring that a UN guarantee should lead Cyprus independence. At the same time, Greece openly showed resistance to the British plan. The Greek President informed General Secretary Spaak that Greece's NATO membership was at stake if Britain did not refrain from implementing the MacMillan Plan. Due to the tense circumstances, a trilateral meeting failed, and Greek and Turkish Foreign ministers started bilateral negotiations at the end of 1958. In February 1959 in Zurich, they came up with the basic structure of the Republic of Cyprus, and a draft of the Treaty of Guarantee and the Treaty of Alliance. The Zurich Plan was followed by a Conference in London, where the 'Memorandum setting out the Agreement foundation of the final settlement of the problem in Cyprus' was signed, accompanied by four declarations.¹⁰ On 16 August 1960, Cyprus gained its sovereignty and became an independent Republic. The UK kept two military bases in Akrotiri and Dhekalia. The Cyprus Constitution came into force on the same day. It consists of 27 Basic Articles, for a total of 199 Articles. Art. 182 (1) of the Cyprus Constitution establishes that the Basic Articles cannot be amended in any way, resulting in one of the most rigid constitutions in the world. The implementation of the London Agreement was accompanied by the Treaty of Guarantee¹¹, concluded between the Republic of Cyprus, Britain, Greece and Turkey. It established that Britain, Greece and Turkey were going to respect Cyprus's '*independence, territorial integrity and security*'¹² while Cyprus, from his side, renounced to participate in any union with any state or to proceed to partition.¹³ At the same time, Cyprus, Greece

⁷ UNGA Res 814 (IX) of 17 December 1954 (50 votes in favor with 8 abstentions).

⁸ UNGA Resolution 1013 (XI) of 26 February 1957, and UNGA Resolution 1287 (XIII) of 5 December 1958.

⁹ UK Prime Minister Mc Millan, Speech at the House of Commons, 19 June 1958, available at: <https://api.parliament.uk/historic-hansard/commons/1958/jun/19/cyprus>

¹⁰ Art. 182 (1) Cyprus Constitution: '*The Articles or parts of Articles of this Constitution set out in Annex III hereto which have been incorporated from the Zurich Agreement dated 11th February 1959, are the basic Articles of this Constitution and cannot, in any way, be amended, whether by way of variation, addition or repeal*'.

¹¹ Treaty of Guarantee, signed at Nicosia 16 August 1960, https://www.mfa.gr/images/docs/kypriako/treaty_of_guarantee.pdf

¹² Art. 2 Treaty of Guarantee.

¹³ Art. 1 Treaty of Guarantee.

and Turkey committed to respect the UK's Sovereign Base Areas.¹⁴ Greece, the United Kingdom and Turkey are the Guarantor States of the Treaty, and they can intervene to ensure the respect of the conditions established. The Guarantor States should consult before acting,¹⁵ unless common measures are not possible and each of the three guaranteeing powers reserves the right to intervene to re-establish the conditions of the Treaty. This legal basis was used by Turkey for the 1974 military intervention. Cyprus' independence is based on two other international treaties. The Treaty of Alliance¹⁶ established a common defense system between Cyprus, Greece and Turkey, against any attack or aggression threatening the independence, territorial integrity and security of the Republic of Cyprus. It provided the stationing of 950 Greek and 650 Turkish troops on the island. Their mandate was to assist in the training of the Cypriot army, although there is no doubt they were also intended as a deterrent to renew the conflict.¹⁷ The Treaty of Establishment¹⁸ was signed between Republic of Cyprus, Britain, Greece and Turkey. Art. 1 establishes that the territory of Cyprus included the island except for the Sovereign Base Areas of Akrotiri and Dhekelia. The UK continues to enjoy the international rights and benefits it had before 1960 on the SBAs,¹⁹ while Cyprus guarantees cooperation to ensure security and effective operation for the military bases.²⁰ The Republic of Cyprus has the exclusive rights to transfer the SBAs if and when the UK abandons them.²¹ The status of the military bases under international law is not the object of this research, so it is sufficient recalling that they are not a colony,²² they cannot be deemed to be a State as they do not have legislative power.²³ The United Kingdom exercises territorial control on the SBAs and it represents them internationally.²⁴ The following section introduces Cyprus' Accession to the EU, considering two major pieces of legislation: Protocol No. 10 on the territorial suspension of the EU *acquis* and Protocol No. 3 on the Sovereign Base Areas.

2.2 The Republic of Cyprus Accession to the EU

In 1972 Cyprus concluded an Association Agreement with the EU (European Economic Community at the time), with the scope of regulating trade and establishing a custom union. Cyprus and the EU

¹⁴ Art. 3 Treaty of Guarantee.

¹⁵ Art. 4 Treaty of Guarantee.

¹⁶ Treaty of Alliance, Cyprus Greece and Turkey, <https://peacemaker.un.org/cyprus-greece-turkey-alliance60>

¹⁷ Frank Hoffmeister, *Legal Aspects of the Cyprus Problem*, (Martinus Nijhffs Publishers, 2006).

¹⁸ Treaty of Establishment, United Kingdom of Great Britain and Northern Ireland, Greece, Turkey and Cyprus, https://www.mfa.gr/images/docs/kypriako/treaty_of_establishment.pdf

¹⁹ Art. 8 (2) Treaty of Establishment.

²⁰ Art. 2 Treaty of Establishment.

²¹ Nikos Skoutaris 2011, *Ibidem*.

²² In this case the SBAs should meet the criteria established under Art. 73 of the UN Charter. However, the Supreme Court in Cyprus defined them as '*quasi-colonies*' in the case *Pearce v Estia*.

²³ Nikos Skoutaris 2011, *Ibidem*.

²⁴ *Ibidem*.

signed an additional protocol in 1987, establishing further reductions in tariffs and the application of the EU competition rules.²⁵ During the 1980s, Cyprus and the EU strengthened financial cooperation.²⁶ In 1990, Cyprus started his application to access the EU, with a letter from the Cypriot Foreign Minister Iacovou addressed to the President of the Council, at the time the Italian Foreign Minister De Michelis. The Turkish Cypriot leadership stated that the application violated the Treaty of Guarantee. The intentions of the Cyprus Greek part to access the EU were not considered, as a settlement with the Turkey part was a prerequisite. The Commission delayed its opinion till after the approval of the Maastricht Treaty. On its 30 June 1993 opinion,²⁷ the Commission noticed economic disparities between the South and North of the island and provided suggestions of how the two parts could move toward accessing the EU. No objection was formulated on the fact that the Cyprus government formulated an accession application for the entire island. However, the Commission implied that a peaceful settlement to the Cyprus issue was needed to access the EU. Cyprus acquired its candidate status in 1995.

In the late 1990s, the United Nations intervened to facilitate reconciliation between the Greek and Cypriot sides of the island. Negotiations began in 1999, and the first draft of the so-called Annan Plan, named after UN Secretary-General Kofi Annan, emerged in 2002. The Annan Plan was amended five times. The final version envisioned the establishment of a federation, the United Republic of Cyprus, consisting of two constituent states. In April 2004 the Cypriots voted for the approval of the Annan Plan V, 65% of the Turkish Cypriots supported it, while only 24% of the Greek Cypriots voted in favor.²⁸ The failure of the Annan Plan was probably the last chance for peace and reconciliation.

Cyprus joined the EU on 1 May 2004. Legally, the entire territory of the island is part of the EU. However, the country is *de facto* divided and partially occupied, so the application of the *acquis* is suspended in Northern Cyprus, except for citizens' rights that are linked to persons and not to a territory. As previously mentioned, the Accession Treaty contains two important Protocols, dealing with specific legal issues of the Cyprus' EU membership: Protocol No 10 and Protocol No 3. Protocol No 10²⁹ acknowledges the suspension of the *acquis* in those area outside the Cyprus Republic control. Although Cyprus joined the EU with its entire territory, the Government cannot guarantee effective

²⁵ Frank Hoffmeister, *Legal Aspects of the Cyprus Problem*, (Martinus Nijhffs Publishers, 2006).

²⁶ Financial Protocol of 15 September 1977, OJ 1978, L 332; Financial Protocol of 7 July 1983, OJ 1983, L 85; Financial Protocol of 30 November 1989, OJ 1990, L 82.

²⁷ Commission Opinion, COM (93) 313, Brussels 30 June 1993.

²⁸ The Annan Plan and the Sovereignty of Cyprus, American Hellenic Council, <https://americanhellenic.org/the-annan-plan/>

²⁹ Protocol No 10 on Cyprus, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12003T/PRO/10&from=ES>

implementation of EU law in the North: hence, the main scope of Protocol No 10 is to limit responsibilities and liabilities of Cyprus as Member State under EU law.³⁰ The suspension of the *acquis* is territorial, and like AG Kokott pointed out '*it is suspended in that area, and not in relation of that area*'.³¹ This interpretation allows the Cypriot citizens resident in the North to enjoy EU citizenship rights that are not connected to the territory. The Grand Chamber of the CJEU had defined Protocol No. 10 as a '*transitional derogation based on the exceptional situation in Cyprus*.'³² However, the transitional derogation turned out to be permanent. Almost twenty years after Cyprus joined the EU, an equally exceptional situation interests the island: the United Kingdom has left the EU, but its military bases did not. In 2004, the legal regime of the United Kingdom's Sovereign Base Areas of Akrotiri and Dhekelia, was regulated in Protocol No 3. Art. 2 of Protocol No 3 establishes that the SBAs are within the customs territory of the EU: as explained later, this provision survived in the Cyprus Protocol attached to the Withdrawal Agreement.³³ The UK was already responsible for implementing EU law in the SBAs under Protocol No 3, and it did not change under the current Cyprus Protocol. Art. 6 Protocol No 3 also provided the legal basis for Council Regulation 866/2004³⁴, that establishes the conditions for the suspensions of the *acquis* for the movement of goods. An interesting connection between Protocol No 3 and the Protocol attached to the Withdrawal Agreement is offered by Kentas.³⁵ He argues that the Cyprus Protocol to the Withdrawal Agreement was adopted with the silent consent of the Cypriot government.³⁶ It preserves the UK's interests on the island.³⁷, and like Protocol No 3 and any other decision taken during critical historical junctures, have reinforced the UK's *metacolonial realm* in Cyprus. The next section examines the UK's Withdrawal Agreement Protocol relating to the Sovereign Base Areas in Cyprus, focusing on three specific areas: persons, trade and governance.

3 The Protocol attached to the United Kingdom's Withdrawal Agreement relating to the Sovereign Base Areas in Cyprus

As mentioned, this section analyses the Cyprus Protocol attached to the United Kingdom's Withdrawal Agreement, which follows three benchmarks: persons, trade, and governance. The provisions of the Cyprus Protocol regarding persons are Art. 5 on Social Security and Art. 7 On the

³⁰ Nikos Skoutaris 2011, *Ibidem*.

³¹ AG Kokott Opinion in *Apostolides v Orams*, paragraph 34.

³² Case C-420/07 *Apostolides v Orams* ECR I-3571, paragraphs 33 and 35.

³³ See section below on EU Customs Territory.

³⁴ *Ibidem*.

³⁵ Kentas, Giorgios. 'A Critical Assessment of the Cyprus Protocol Annexed to the UK's Withdrawal Agreement: The Consensual Continuation of a Metacolonial Realm' *The Cyprus Review* 317/2018, vol. 30.

³⁶ *Ibidem*.

³⁷ *Ibidem*.

SBA border control. The provision regarding trade is Art. 2 on the EU Custom Territory, while Art. 9 and Art. 10 concern the governance structure, particularly the Specialized and Joint Committees. This section presents their content, while the next section will illustrate the enforcement.

3.1 Art. 5 on Social Security

Article 5 of the Protocol establishes that the Republic of Cyprus and the United Kingdom should ensure the proper application of Art. 4 Protocol No 3 after the end of the transition period. The parties shall make further arrangements, where necessary, to ensure correct implementation, to continue the protection of rights of people resident or employed in the SBAs. As anticipated, the WA Cyprus Protocol refers to previous legislations, such as the Protocols attached to the Cyprus Treaty of Accession to the EU, or the Treaty of Establishment, Guarantee and Independence. In this case, Art. 4 Protocol No 3 establishes that people resident or employed in the territory of the SBAs, subject to the social security legislation of the Republic of Cyprus should be treated as if they were residents or employed in the RoC. After Brexit, the territory of the SBAs is administrated according to the latest Protocol. However, the WA Protocol establishes to maintain the same standard previously affirmed. Furthermore, Art. 4 Protocol No 3 refers to EU legislation to Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed or self-employed persons and their family members moving within the Community. In other words, the WA Cyprus Protocol, maintains an EU law standard of protection. In most cases people residing or employed in the SBAs are British, hence they are enjoying an EU law standard of protection, even if they are no longer EU citizens (unless they have a double citizenship). This case shows how EU law survives in the shadow of Brexit. Nevertheless, it is not an extraterritorial application of EU law as these rights relate to people as workers.

3.2 Art. 7 on SBAs Border Control

Article 7 of the Cyprus Protocol concerns check on persons crossing the external borders of the Sovereign Base Areas. First, it defines ‘external borders of the SBAs’ as the ‘*sea boundaries and the airports and seaports of the SBAs, but not the land and the sea boundaries with the Republic of Cyprus*’.³⁸ It also defines ‘crossing points’ as any points for crossing the SBAs’ borders authorized by the UK.³⁹ The United Kingdom is responsible for check on persons crossing the external borders of the SBAs, including the verification of travel documents.⁴⁰ As a result, there will be no checks on persons at the land and sea boundaries between the SBAs and the Republic of Cyprus,⁴¹ as not defined

³⁸ Art. 7 (1) CY Protocol.

³⁹ *Ibidem*.

⁴⁰ Art. 7 (2) CY Protocol.

⁴¹ Art. 7 (5) CY Protocol.

by paragraph 1 as ‘external borders’. Paragraph 3 establishes the conditions under which nationals of third countries and UK nationals shall be permitted to cross the external borders of the SBAs. They shall possess a valid travel document or a valid visa for the Republic of Cyprus if required; they shall engage in defense-related activities or be a family member of those involved; they cannot be a threat to national security. However, the same paragraphs specifies that the UK may derogate on humanitarian grounds, or grounds of national interest, or to comply with international obligations. Visa exceptions to access the Republic of Cyprus are allowed for members of a force, civilian components and dependents, as defined in Annex C to the Treaty of Establishment.⁴² It is necessary to specify that the boundary between the Eastern Sovereign Base Area and those area outside the control of the Republic of Cyprus shall be treated as external borders of the SBAs’.⁴³ This clarification regards not only the purpose of Art. 7 Cyprus Protocol itself, but also Art. 1 of Protocol No 10 regarding the territorial suspension of the *acquis*. The boundary between the Eastern Sovereign Base Area and the territory occupied by Turkey may be crossed only at the authorized crossing points of Strovilia and Pergamos. This boundary and its crossing points should be surveilled by the UK authorities using mobile units,⁴⁴ and in cooperation with the Republic of Cyprus authorities.⁴⁵ Finally, regarding asylum seekers who first entered the island from outside the EU and through of the SBAs shall be taken back to the SBAs at the request of the Member State in whose territory the applicant is present.⁴⁶ Cooperation between the Republic of Cyprus and the UK is required to guarantee the rights of asylum seekers⁴⁷ but also to combat illegal migration, especially through the boundary with the occupied territory.⁴⁸

3.3 Art. 2 on EU Customs Territory

As mentioned, this is the main provision in the WA Cyprus Protocol referring to trade. Article 2 of the Cyprus Protocol presents a peculiar case of applying EU law outside its borders.

Paragraph 1 of Art. 2 CY Protocol includes the Sovereign Base Areas (SBAs) in the customs territory of the European Union. Par consequence, the provisions of Union law on customs and the common commercial policy , including customs controls of specific goods or for specific purposes, shall apply into the SBAs.⁴⁹ Goods produced in the SBAs and placed on the market in the customs territory of

⁴² Art. 7 (3) (4) CY Protocol.

⁴³ Art. 7 (6) CY Protocol.

⁴⁴ Art. 7 (7) CY Protocol.

⁴⁵ Art. 7 (8) CY Protocol.

⁴⁶ Art. 7 (4) CY Protocol.

⁴⁷ *Ibidem*.

⁴⁸ Art. 7 (6) CY Protocol.

⁴⁹ Art. 2 (1) CY Protocol.

the EU are to be considered goods in free circulation.⁵⁰ All the goods intended for the use in the Sovereign Base Areas shall enter the island through civilian ports and airports under the Cyprus Republic control, which should carry out the customs controls.⁵¹ The same goes for the goods intended for exports.⁵² However, Art. 2 (6) provides exceptions to paragraphs 3 and 4. Indeed, certain goods may go enter or exit the island through the SBAs' ports and airports under the UK's control, *with the sole purpose of supporting the SBAs' operation*.⁵³ The goods involved are (a) imported or exported for military purposes;⁵⁴ (b) or goods imported or exported in personal baggage, exclusively for their personal use, by or on behalf of the UK personnel, as well as travelers for official business.⁵⁵ Parcels sent or received by the United Kingdom personnel or their employees and transported by the British Forces Post Office may enter or leave the island of Cyprus through the SBAs under the following conditions: (i) incoming parcels addressed to the UK personnel shall be transported in sealed container and redirected to a customs posts of the Republic of Cyprus, so its authorities can complete the customs formalities;⁵⁶ (ii) outgoing parcels sent by the UK personnel are subject to the customs control of the SBAs' authorities.⁵⁷ The British and Cypriot authorities have a duty to cooperate and exchange information to avoid the evasion of duties and taxes, including smuggling.⁵⁸ Art. 2 (7) CY Protocol remarks that Articles 34, 35 and 36 TFEU – on quantitative restrictive measures - and Article 114 TFEU - on harmonization of the internal market - shall apply into the Sovereign Base Areas. The UK is responsible for the implementation. The following paragraph of the same article refers to the disapplication of the *acquis*. Art. 2 (8) establishes that goods arriving from those areas outside the Republic of Cyprus effective control shall cross the line between the Eastern Sovereign Base Area in accordance with Regulation (EC) No 866/2004.⁵⁹ Regulation (EC) No 866/2004⁶⁰ regards Protocol No 10 of the EU Accession Act of Cyprus, and it contains conditions for the suspensions of the *acquis*, definitions (e.g. definition of *line*) and technicalities for the movement of goods where the *acquis* is suspended. The Protocol specifies that the UK is responsible for enforcing Council Regulation 866/2004 in the SBAs.⁶¹ The peculiarity of Art 2 par. 7 and 8 is that the United Kingdom oversees the implementation of EU law as a third country. Moreover, the SBAs

⁵⁰ Art. 2 (2) CY Protocol.

⁵¹ Art. 2 (3) CY Protocol.

⁵² Art. 2 (4) CY Protocol.

⁵³ Art. 2 (6) CY Protocol.

⁵⁴ Art. 2 (6) (a) (i) CY Protocol.

⁵⁵ Art. 2 (6) (a) (ii) CY Protocol.

⁵⁶ Art. 2 (b) (i) CY Protocol.

⁵⁷ Art. 2 (b) (ii) CY Protocol.

⁵⁸ *Ibidem*.

⁵⁹ Art. 2 (8) CY Protocol.

⁶⁰ Council Regulation No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of the Accession, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0866>

⁶¹ Art. 2 (9) CY Protocol.

territory technically is not part of the UE but remains in its customs union. It is a peculiar case of EU law enforcement, but it looks like a lot of effort for a country that wanted to cast aside EU law.

3.4 Art. 9 on the Specialised Committee and Art. 10 on the Joint Committee

Moving to the governance dimension of the WA Cyprus Protocol, it develops on the provisions established by the Withdrawal Agreement. Part VI of the Withdrawal Agreement regards ‘Institutional and Final Provisions’, and Title II concerns the Joint and Specialised Committees.⁶² Article 164 Withdrawal Agreement establishes the WA Joint Committee, which is the only decision-making body overseeing the Withdrawal Agreement, drawing on recommendations from the Specialised Committees.⁶³ The Joint Committee is responsible for implementation, application and interpretation of the Withdrawal Agreement.⁶⁴ Its decisions are taken by mutual consent, and they are binding as the Withdrawal Agreement. In practice, the Joint Committee cannot act if either the EU or the UK disagrees.⁶⁵ Article 165 WA established the Specialised Committees on: citizens’ rights, financial provisions, other separation provisions, and on the implementation of the Northern Ireland, Gibraltar and Cyprus Protocols – separately.⁶⁶ The Specialised Committees are composed by UK and EU experts,⁶⁷ and they are co-chaired by the parties. They shall meet at least once a year, unless the UK, the EU or the Joint Committee request otherwise.⁶⁸ The Specialised Committees may draw up draft decisions and recommendations and refer them for adoption by the Joint Committee.⁶⁹

The Cyprus Protocol contains additional provisions regarding the governance structure. Art. 9 of the Cyprus Protocol regulates the remit of its Specialized Committee. It shall: (a) facilitate the implementation of the Cyprus Protocol;⁷⁰ (b) discuss any matter raised by the UK or the EU;⁷¹ (c) make recommendations to the Joint Committee regarding the functioning of the Cyprus Protocol, in particular amendments to the EU law in the same Protocol.⁷² Like the other Specialised Committees, the Cyprus Specialized Committee is composed by EU and UK representatives and its main power is to make recommendations to the Joint Committee. The Cyprus Specialized Committee has a peculiarity in its remit that is not present in the Northern Ireland and Gibraltar Protocols as it is related

⁶² Withdrawal Agreement, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29#d1e8008-1-1>

⁶³ Katy Hayward, ‘The Committees of the Protocol’, in *The Law and Practice of the Ireland-Northern Ireland Protocol*, ed. by Christopher Mc Crudden (Cambridge University Press 2022), 44-54.

⁶⁴ Art. 164 (3) WA.

⁶⁵ *Ibidem*.

⁶⁶ Art. 165 (1) WA.

⁶⁷ The parties shall ensure appropriate expertise of their representative according to Art. 165 (3) WA.

⁶⁸ Art. 165 (2) WA.

⁶⁹ *Ibidem*.

⁷⁰ Art. 9 (1) (a) CY Protocol.

⁷¹ Art. 9 (1) (b) CY Protocol.

⁷² Art. 9 (1) (c) CY Protocol.

to the territory's features. Art. 9 of the Cyprus Protocol establishes that the Specialized Committee should be informed and involved if the definition of the SBAs' *'line'* changes. In legal terms, the European Commission shall inform it of any report submitted under Article 11 of Regulation (EC) No 866/2004 and shall consult the United Kingdom to any Commission proposal to adopt an act amending or replacing the Regulation if the SBAs are affected.⁷³ Regulation (EC) No 866/2004⁷⁴ regards Article 2 of Protocol No 10 of the Cyprus Act of Accession to the EU. It states that the *acquis* territorial suspension calls the need to define the terms under which the relevant provisions of EU law shall apply to the *line* between the area controlled and not controlled by the Republic of Cyprus. To ensure the effectiveness of these rules, their application must be extended to the boundary between the areas in which the Government of the Republic of Cyprus does not exercise effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland. The definition of *'line'* is indeed provided by the same Regulation.⁷⁵ Article 9 of the Cyprus Protocol makes a reference to Article 11 Reg. (EC) No 866/2004 as it establishes the conditions to review the Regulation. For this reason, the Specialised Committee needs to be involved as the *line* of the SBAs might be affected.

Article 10 of the Cyprus Protocol reminds the competences of the Joint Committee established by Art. 164 Withdrawal Agreement. It shall amend any references to EU law in the Protocol on a recommendation from the Specialised Committee.⁷⁶ It may also amend Art. 7 (6) of the same Protocol in relation to the definition of *'crossing point'*.⁷⁷ Finally, the Joint Committee may, on recommendation from the Specialised Committee, take any decision to replace the provisions referred in Art. 1 (4) of the same Protocol.⁷⁸ Art. 1 (4) CY Protocol is a derogation from Art. 6 (1) of the WA on references to EU law. Contrary to the Withdrawal Agreement, when the Cyprus Protocol makes a reference to EU law it is to be understood as acts amended or replaced. However, Art. 1 (4) is not applicable in relation to Art. 4 (3) and (10) of Reg. (EC) No 866/2004. In this case, Art. 10 (2) CY Protocol applies. It must be clarified that Art. 4 (3) of Reg. (EC) No 866/2004 establishes that *'the goods shall cross the line only at the crossing points listed in Annex I and the crossing points of Pergamos and Strovilia under the authority of the Eastern Sovereign Base Area'*, while par. (10) that *'the authorities of the Eastern Sovereign Base Area may maintain the traditional supply of the Turkish Cypriot population of the village of Pyla with goods coming from the areas which are not under the*

⁷³ Art. 9 (2) CY Protocol.

⁷⁴ Council Regulation No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of the Accession, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0866>

⁷⁵ *Ibidem*, Art. 1 (1).

⁷⁶ Art. 10 (1) CY Protocol.

⁷⁷ Art. 10 (3) CY Protocol.

⁷⁸ Art. 10 (3) CY Protocol.

effective control of the Government of the Republic of Cyprus. They shall strictly supervise the quantities and nature of the goods in view of their destination'. In simpler words, there are exceptions and guarantees regarding the SBAs, surrounding the activity of the Committees.

After explaining the composition and terms of reference of the Protocol committees, the following section looks at the practice of the governance structure.

3.5 The Cyprus Specialised Committee Practice

This section analyses the meeting of the Specialized Committee regarding the Sovereign Base Areas in Cyprus. The only documents about these meetings are the reports and minutes circulated by the European Commission on its official channels. The Specialised Committee on the Cyprus Sovereign Base Areas has met five times since 2020.⁷⁹ The first meeting happened on 9 June 2020, co-chaired by officials from the European Commission and the UK Government. The report is quite short, and it says that the Cyprus SBAs Specialised Committee has been established by the Withdrawal Agreement to facilitate the Protocol implementation. During the first meeting, the parties reaffirmed their commitment to continued progress in enforcing the measures outlined in the Cyprus Protocol. The parties established to meet up when necessary. The report does not mention the presence of the Republic of Cyprus officials. The second meeting was held on 3 December 2020. Once again, it was co-chaired by the EU and UK officials, and no representative from the Republic of Cyprus was present. The Specialised Committee examined the progress made in the implementation of the Cyprus Protocol and it reaffirmed full commitment in cooperation between the parties. Right before the end of the transition period, the Specialised Committee met again on 30 December 2020. The Cyprus Protocol became effective after the end of the transition period, so the parties established to meet up again during the first quarter of 2021. However, they did not hold another session until 18 July 2022. The report is brief and repetitive compared to the previous ones. The only news is that the parties committed to fix the issue regarding fishery (Art. 6 Cyprus Protocol). They agreed on including legal experts from both sides in technical discussions. They also agreed on fixing the fishery issue by the end of the autumn 2022. Nevertheless, the following meeting was on 12 December 2023. Unfortunately, the report does not say a lot on the actual state of the art of the Cyprus Protocol implementation, being very similar to the previous one. Technical discussions regarding the fishery area are still ongoing. The parties established to start technical consultations on taxation area (Art. 3 Cyprus Protocol). It must be recalled that in the case of Gibraltar, even if Spain representatives are

⁷⁹ Meeting of the Withdrawal Agreement Specialised Committee, European Commission, available at: https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement_en#meetingsofthespecialisedcommittees

not officially part of the Specialised Committee, they have been invited as part of the EU delegation. In this case, the Republic of Cyprus representative's absence might be a sign of the pacific relations between with the UK.

The last section of this paper will analyze the effectiveness of the Cyprus Protocol implementation considering two factors: the efficiency of its governance structure and the British legacy.

4 Effectiveness of the Cyprus Protocol

After analysing the governance structure established by the Withdrawal Agreement and the Cyprus Protocol, this section concerns the effectiveness of the Protocol implementation. The first sub-section regards the efficiency of the governance. It will be analysed in comparison with the Northern Ireland and Gibraltar cases, to disentangle successful and unsuccessful experiences. The second sub-section considers the British legacy, meaning the post-colonial relationship and how it has affected the Protocol's implementation.

4.1 Governance Efficiency

This section analyses the governance efficiency, adopting the benchmarks from a report of the British Parliament. In 2019 the House of Lords, within the European Union Committee, issued a report on 'Beyond Brexit: how to win friends influence people', focusing on the Withdrawal Agreement governance structure and other inter-institutional relations between the EU and the UK.⁸⁰ The report concluded that the effectiveness of the EU-UK Committees established under the Withdrawal Agreement 'will depend on the frequency of their meetings, flexibility of their remit, senior political representation on both sides and mutual commitment to effective communication, appropriate powers and full accountability.'⁸¹ This section adopts *frequency of meetings* (1), *flexibility of remit* (2), and *variable representation* (3) as benchmarks. The frequency of the meetings (1) might indicate a political tension between the parties or particularly difficult issues regarding the implementation of the Protocol. The Cyprus Specialized Committees did not respect the expressed commitment to meet at least once a year. The sporadic convening of the committee might be justified by the the peaceful relationship between the United Kingdom and the Republic of Cyprus. When the Cyprus Specialised Committee was established, the UK Parliament welcomed it positively and stated that its success depended on the 'continued maintenance of effective UK-Cypriot bilateral relations and communication.'⁸² As mentioned, the Withdrawal Agreement Cyprus Protocol partly reproduces

⁸⁰ House of Lord, European Union Committee (2019) 'Beyond Brexit: How to Win Friends and Influence People', 35th Report of Session 2017- 2019.

⁸¹ *Ibidem*.

⁸² *Ibidem*, par. 34, 15.

Protocol No. 3, accompanying the Treaty of Accession of Cyprus to the European Union. Therefore, applying the same only presents issues if the territory controlled by the Republic of Cyprus changes. The Gibraltar Specialised Committee has not respected the commitment to meet once year due to political tension between Spain and the Gibraltar government. The Northern Ireland Specialised Committee has been the only one meeting often. However, it does not necessarily denote a consistent outcome or relaxed interinstitutional relations. On the contrary, the Northern Ireland Specialised Committee failed to achieve concrete results till the adoption of the Windsor Framework. The flexibility of the remit (2) could be extended by interpretation or by increasing the power of the other implementing bodies. For the case of Cyprus, Art. 8 of the Cyprus Protocol establishes a duty of cooperation in countering fraud and other illegal activities. This task is not assigned explicitly to the Specialised Committee, but the UK Parliament suggested that the United Kingdom and Cyprus should cooperate ‘with a view to countering fraud and other illegal activities.’⁸³ In the case of Gibraltar, the UK Parliament showed particular interest in the activity of the coordinating committees. These bodies concern specific issues – employment and labor conditions; environment protection and fishing, waste management, air quality and scientific research; police cooperation and custom matters. The UK Parliament underlined that the coordinating committees were expected to ‘report on a regular basis to the Gibraltar Specialised Committee’ and that those reports would have supported the Specialised Committee in ‘facilitating the application and implementation of the Protocol.’⁸⁴ Finally on Northern Ireland, Hayward observed that the Joint Consultative Working Group was unprecedented in the EU’s relationships with third countries. She suggested that it could have a decision-shaping role.⁸⁵ Moreover, the Specialised Committees’ remit could be more flexible through variable representation (3). For variable representation, this analysis refers to either a *change* in the composition of the Specialised Committees and other implementation bodies, or an *addition* to the EU-UK political figures by representatives of the local institutions, stakeholders, civil society, experts of specific policy areas. In the case of Cyprus, representatives of the Republic of Cyprus have been invited to the meeting but never joined the meeting of the Specialised Committee.⁸⁶ The Gibraltar Protocol suggests that the coordinating committees might be open to EU representatives.⁸⁷ Moreover, the coordination committees might benefit from representatives of local institutions for the territory

⁸³ *Ibidem*, par. 32, 14.

⁸⁴ House of Lord, European Union Committee (2019) ‘Beyond Brexit: How to Win Friends and Influence People’, 35th Report of Session 2017- 2019, par. 35-36, 15.

⁸⁵ Hayward 2019, *Ibidem*.

⁸⁶ *Supra*, section 6.2.

⁸⁷ Art. 4 and Art. 5 Gibraltar Protocol establish the possibility to invite EU representatives to the coordinating committees on environment protection and fishing, and on police cooperation and customs matters. There is no similar suggestion in Art. 1 par. 3 concerning the coordinating committee on employment and labour.

proximity or from stakeholders, representatives of civil society, and experts of a specific policy. The practice has shown that this is already happening, and that the new governance structure went beyond the black letter of the law. The Northern Ireland Specialised Committee has been already open to stakeholders, and it is committed to keep civil society and businesses involved in the Protocol implementation.⁸⁸ Overall, the analysis demonstrated that the governance structure had not reached its full potential in implementing the Withdrawal Agreement Protocols, but there is room for improvement. The following section returns to the Cyprus Protocol and the British legacy.

4.2 British Legacy

The final section of this paper explores the British legacy in Cyprus, in relation to the Withdrawal Agreement Protocol implementation. From the UK's perspective, the exit from the EU strengthened the interest in retaining the military bases on the island, due to its particularly favorable position. The consolidation of the British power in Cyprus has been possible thanks to the Withdrawal Agreement Protocol, that simply reproduced Protocol No 3. In other words, the UK retained the benefits of applying EU in military bases, without having any obligations. The UK managed to realize in the SBAs that form of membership that PM Cameron had attempted to negotiate in 2015. Kentas argues that the United Kingdom has instrumentalized Cyprus' EU membership to maintain its power on the island.⁸⁹ He notices that the United Kingdom strengthened his '*metacolonial realm*' by preserving the provisions of the Protocol No 3 in the Withdrawal Agreement Protocol.⁹⁰

From the Cyprus' perspective, in November 2018 the Foreign Affairs Minister affirmed how important it was for the Cyprus government that the Withdrawal Agreement Protocol safeguards the application of the *acquis* in the Sovereign Base Areas.⁹¹ The official position of the Cyprus government was the full support to the preservation of Protocol No 3. Kentas underlined the reluctance of the Republic of Cyprus to question or challenge the British power on the island.⁹² During the Brexit negotiations, the Cyprus government was silent on continuation of the postcolonial anomaly in Cyprus. For Kentas this showed the political intention to present the *metacolonial realm* in Cyprus as a functional and convenient situation, as well as an attempt to do away with the problems it entails.⁹³ The Cyprus government trusts the UK with the application of EU law in the Sovereign

⁸⁸ *Supra*, section 3.1.

⁸⁹ Kentas, Giorgios. 'A Critical Assessment of the Cyprus Protocol Annexed to the UK's Withdrawal Agreement: The Consensual Continuation of a Metacolonial Realm' *The Cyprus Review* 317/2018, vol. 30.

⁹⁰ *Ibidem*.

⁹¹ Phileleftheros (2018, November 17) 'Efcharisties YPEX gia to Ptotocollo Vaseon', *Phileleftheros*. Available at <http://www.philenews.com/eidiseis/politiki/article/612492/efcharisties-ypex-ga-protokollo-baseon>, accessed November 2018.

⁹² Kentas 2018, *Ibidem*.

⁹³ Kentas 2018, *Ibidem*.

Base Areas. Legally speaking, the Withdrawal Agreement Protocol is designed to reproduce and preserve Protocol No 3. The political consequence is the perpetuate of a *metacolonial* realm in Cyprus. This attitude from both sides is perfectly shown in the governance structure inefficiency.

5 Conclusions

This paper reconstructed the legal framework preceding the adoption of the Protocol on Cyprus annexed to the Withdrawal Agreement. The regulatory layering consolidated the UK's presence on the island. Consequently, the adoption of the Protocol attached to the UK's Withdrawal Agreement happened in the full support of the Cypriot institutions, even though it was a mere reproduction of Protocol No. 3 - annexed to the Cyprus Treaty of Accession to the EU. From a political point of view, it shows how the presence of the UK is not perceived as a problem by the Cypriot government. Sixty-five years after Cyprus' independence, the relationship with the colonizer is relatively peaceful. However, the Cypriot government's silence has consequences for the Protocol implementation. As mentioned, the total acceptance of the UK presence on the island has made the governance structure completely inefficient. From a legal point of view, EU law survives beyond its borders and is applied by a third state. The extraterritorial application of EU law is not new. However, Brexit remains the first case of European differentiated disintegration. Differentiated disintegration differs from differentiated integration in a dynamic perspective. It refers to a Member State lowering its level and scope of integration, such as diminishing the adherence to EU law and policies. In other word, as dynamic concepts, integration represents an increase in the level and scope of EU membership, while disintegration represents a reduction of it. Differentiated differentiation can be internal or external. The United Kingdom became a unique and first example of differentiated disintegration in the history of the European Union. During the Brexit negotiations and transitional period, it was a case of internal differentiated disintegration, which turned into external differentiated disintegration after January 2020. In conclusion, the Cyprus Protocol attached to the UK's Withdrawal Agreement is a unique case of European differentiated disintegration. During the Brexit negotiations, the United Kingdom intended to maintain only the benefits deriving from EU law. It succeeded in Cyprus. *'Reflections still look the same to me. Never let me go, never let me go,'* sings Florence and the Machine. Even if reflections of Protocol No. 3 look the same in the Withdrawal Agreement Protocol, the parties seem to wish never to let it go.

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