Protocol 10 provides in Article 4 a legal basis for the adaptation by the Council of the terms of accession of the Turkish Cypriot community to the EU in the event of a settlement following accession. This provision provides a simplified procedure for the adaptation of the terms of accession of Cyprus at the supranational level, which could resemble *prima facie* ordinary procedures for the adoption of secondary law, with a requirement of unanimity from the Council on the basis of a proposal by the Commission. It is in fact an ‘enabling clause’ which actually entitles the Council to amend the 2003 Treaty of Accession without resorting to intergovernmental treaty-making mechanisms and, as such, appears *prima facie* to transfer to the Council the power of making primary law in this limited instance of differentiation. The situation in Cyprus, and in particular the accommodation of a political settlement into the European legal order, seems to justify that “usual ‘law-making’ by the Council” be transcended.\(^\text{1110}\)

The enabling clause apparently only provides for the *adaptation* of the terms of accession, as opposed to providing for *derogations* from the terms of accession for the Turkish Cypriot community. This could be seen as a limit to the powers of the Council, who is entitled on the other hand to *define* the terms of application of EU law to the Green Line under Article 2 Protocol 10. Nevertheless, the terms of adaptation under Article 4 Protocol 10 seem to encompass the constitutional and institutional level of the EU legal order, whereas Article 2 appears *a priori* mainly concerned with the policies of the Community, mainly with respect to the Internal Market.

I. Principles of adaptation beyond a settlement

Like in the German case, there was no talk of accession procedures by virtue of Article 49 EU (Article 237 EEC in the case of Germany), but

\(^{1110}\) Hoffmeister, 185.
of adjustments to be determined at the supranational level. This part is concerned with the nature and the scope of the adjustments envisaged under the enabling clause.

A. Nature of the enabling clause

1. Selected aspects of supranational adaptation

(a) Scope of gradual integration

It should be noted that Article 4 Protocol 10 was drafted at a time where the accession of the unified island was still hopeful. The terms of accession of Cyprus were therefore prepared on this basis, in particular in the Draft Act of Adaptation,\footnote{Proposal for an Act of Adaptation of the terms of accession of the United Cyprus Republic to the EU COM(2004) 189 final, 7.4.2004 (‘Draft Act of Adaptation’ or ‘Draft A/A’).} which had to be adopted immediately following the reunification of the island, as follows:

[T]his 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 \textit{acquis} will need to be extended step by step to the Turkish Cypriot constituent State according to Article 1(2) Protocol 10. In a first step, the institutional \textit{acquis} as well as general provisions need to be extended to the Turkish Cypriot constituent State.\footnote{Explanatory Memorandum Draft A/A, 2.}

The formal integration of the Turkish Cypriot community to the EU was therefore meant to happen immediately upon reunification since Cyprus was about to become a Member State and the RoC had negotiated on behalf of the whole island. The modalities of this integration could however resemble the ones of accession with a gradual application of the \textit{acquis}, commencing with what could be qualified as the Union \textit{acquis}. But it is argued that this is only the result of the ‘undoing’ of the first limb of Article 1 Protocol 10 by the second limb of this Article, to the extent that the non-application of the \textit{acquis} is brought to an end and is replaced by a gradual extension of the \textit{acquis} encompassing first constitutional and institutional principles, followed by Community policies.

This would seem to confirm the hypothesis formulated in Chapter 5 that the withdrawal of the suspension of the \textit{acquis} under Article 1(2) Protocol 10 can be staged, at least when applied to Article 4, i.e. in the