CHAPTER SEVEN

MARKET REGULATION WITHOUT REUNIFICATION: AN INSTANCE OF (DIS)INTEGRATION?

The basic common understanding by all the Member States as to what the terms of accession of the Turkish Cypriot community should be pending a settlement is contained in the political declaration of the Council dated 26 April 2004, whereby the Member States agreed that:

[t]he Turkish Cypriot community have expressed their clear desire for a future within the [EU]. The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. The Council invited the Commission to bring forward comprehensive proposals to this end, with particular emphasis on the economic integration of the island\textsuperscript{1212} and on improving contact between the two communities and with the EU.\textsuperscript{1213}

Given the absence of a comprehensive settlement but in view of the growing socialisation of the Turkish Cypriot community in the EU, the route privileged by the Council appears to reflect a process of market integration through the economic governance of Cyprus. This method reminds \textit{a priori} of the regulatory reform which created the Internal Market in the 1980’s. Back then, the main ‘problem’ was national “rules and regulations that created barriers to trade and distortions to competition”; the ‘solution’ brought forward was ‘Community harmonisation’.\textsuperscript{1214} ‘Good governance’, in this context, was “identified with the benefits to flow from economic integration” and was “produced through the instrument of Community legislation”.\textsuperscript{1215} This process has already been said in the Introduction to be not only ‘deregulatory’ in nature through the removal of trade barriers and distortions to competition, but also ‘re-regulatory’ through the building of the Internal Market.

\textsuperscript{1212} Emphasis added.
\textsuperscript{1213} Outcome of the GAERC proceedings on Cyprus, 26.4.2004, Doc 8907/04.
\textsuperscript{1215} Ibid, 1–2.
As such, the Community appears to be relying on the traditional ‘export of the economic logic’ of the Internal Market or spillover effect, to justify a prima facie case for Community action even for the satisfaction of non-economic objectives.\footnote{See the Tobacco Advertising case, Case C-376/98 [2000] ECR I-8419.}

As an expression of the political will of the Council, the Commission was requested to utilise the legal basis provided for in Article 2 Protocol 10 to address the terms of accession of a divided Cyprus. Such terms had to be in place before Cyprus’ accession to the EU, thereby reinforcing the supranational character of the regime as opposed to the intergovernmental characteristics of the terms of accession of a unified Cyprus studied in the previous Chapter. It would appear prima facie that the terms of accession of the Turkish Cypriot community pending a settlement are based primarily on the centralised decision-making mechanisms used for the creation of secondary legislation and primarily in the hands of the Commission. The exact nature and the appropriate legal basis for these supranational instruments of centralised decision-making must however be determined.

This exercise is very much dependent on the interpretation of the scope of Article 1 Protocol 10 as lex specialis for Cyprus. This in turn has implications for the triggering of the other Articles of the Protocol, which apparently have not been considered by the Commission as lex specialis for all the terms of accession of a divided Cyprus. As a result, recourse to certain general legal bases of the Treaties was deemed necessary, which would appear justified provided the special legal bases contained in Protocol 10 have been exhausted. The relevant instruments of secondary legislation deriving from Protocol 10 and/or from general provisions of the Treaties would in any case need to comply with Community law rules and principles, especially to the extent that they might be derogatory.

Instruments of secondary legislation cannot in principle deviate from Community rules and principles contained in the Treaties and in other sources of primary law. As a result, the re-regulatory regime for Cyprus pending a settlement should normally remain within the boundaries of Community law and, as such, be ‘less derogatory’ than the re-regulatory regime for a unified Cyprus previously analysed. The specific instance of Cyprus’ integration as a divided island could illustrate the hypothesis of a ‘self-contained regime’, whereby “a set of