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THE STATUS OF THE SOVEREIGN BASE AREAS IN CYPRUS FOLLOWING BREXIT

NASIA HADJIGEORGIOU AND NIKOS SKOUTARIS

Peace Research Institute Oslo (PRIO)

Hausmanns gate 7
PO Box 9229 Oslo
NO-0134 OSLO, Norway
Tel. +47 22 54 77 00
Fax. +47 22 54 77 01
Web: www.prio.no



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1. The legal framework regulating the SBAs

The Sovereign Base Areas in Cyprus (SBAs or Areas) are an international law oddity. They are British Overseas Territories, but unlike other Overseas Territories such as Gibraltar or the British Virgin Islands, they fall under the responsibility of the UK Ministry of Defence, rather than the Foreign Office.¹ They were created by the 1960 Treaty of Establishment, an international agreement between the UK, Greece, Turkey and the then newly formed Republic of Cyprus (RoC).² Article 1 of the Treaty provides that:

The territory of the Republic of Cyprus shall comprise the Island of Cyprus, together with the Islands lying off its coast, with the exception of the two areas defined in Annex A to this Treaty, which areas shall remain under the sovereignty of the United Kingdom. These areas are in this Treaty and its Annexes referred to as the Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area.

The purpose of the SBAs is exclusively a military one. In a 'Declaration by Her Majesty's Government Regarding the Administration of the Sovereign Base Areas' attached to the Treaty of Establishment, commonly referred to as 'Appendix O', the UK notes its intention '[n]ot to develop the Sovereign Base Areas for other than military purposes'³ and '[n]ot to set up or permit the establishment of civilian commercial or industrial enterprises except in so far as these are connected with military requirements, and not otherwise to impair the economic, commercial or industrial unity and life of the Island'.⁴ The military nature of the SBAs notwithstanding, Akrotiri and Dhekelia span 156 square kilometres, making up approximately 3% of the island of Cyprus, and within them are located several villages inhabited by citizens of the RoC.⁵ Indicatively, the population of the Areas consists of approximately 3,800 soldiers and British civilian employees, 5,000 British family members and 10,000 locals.⁶

The RoC and the SBAs are two distinct legal entities, each with their laws and institutions, but they are not separated by hard borders on the ground. Individuals can travel from one to the other without going through passport checks and, in fact, without necessarily realising at all that they have changed jurisdiction. Similarly, goods pass from the RoC to the SBAs without going through any customs checks. This is due to the effect of the Treaty of Establishment, which gives residents of the Republic freedom of access to and from the SBAs⁷ and prevents and prohibits the establishment of custom posts or other frontier barriers between the Areas and the Republic.⁸

¹ <https://www.sbaadministration.org/index.php/background>.

² Appendix A of the Cyprus Agreements.

³ Appendix O, Section 2(i).

⁴ Appendix O, Section 2(iv).

⁵ <https://www.sbaadministration.org/index.php/background>.

⁶ Ibid.

⁷ Appendix O, Section 3(1).

⁸ Appendix O, Section 2(iii) and 3(7).

Since the Areas are outside the jurisdiction of the Republic of Cyprus, but are nevertheless inhabited by civilians, the Administration – what is effectively the civil government of the SBAs – has to deal with a wide range of matters relating to their everyday lives.⁹ Due to this, and although the Areas are military bases, they are regulated by laws, referred to as Ordinances, which are concerned with an array of non-military issues, such as education, healthcare, taxation, welfare, public safety and environmental protection.¹⁰ Legislative and executive authority within the SBAs lies with the Administrator, who is the Commander of the British Forces in Cyprus.¹¹ Despite British sovereignty of the Areas, however, the Administrator does not have unlimited discretion with regard to the content and provisions of Ordinance issues. Rather, he is restricted by Section 3(2) of Appendix O, which provides that '[t]he laws applicable to the Cypriot population of the Sovereign Base Areas will be as far as possible the same as the laws of the Republic.' This obligation on the SBAs to mirror, to the extent possible, existing RoC legislation has meant that in practice, in the majority of cases, an Ordinance relating to a given subject matter in the SBAs is substantively the same as the Law regulating the same issue in the Republic.

Similarly, the Administration's powers are restricted in the judicial sphere as well. The SBAs have their own court system, which deals with non-military offences committed by any person within the Areas, including offences committed by British service and civilian personnel and others residing and/or working there.¹² An exception is made for Cypriot citizens, who, according to Sections 3(12) and 3(13) of Appendix O, are given access to the Courts of the Republic instead. Both the Laws of the RoC¹³ and the SBA Ordinances¹⁴ include more specific provisions that give effect to the obligations of Appendix O, and although the two sets of laws are not identical, thus potentially resulting in disagreements about individuals' access to justice,¹⁵ as a rule, the SBA Courts do not adjudicate disputes that involve Cypriots.

The small size of the SBAs and the Administration that runs them make it impossible for the British to enforce all the Ordinances that relate to the civil life of the local population. As a result, the rights and powers of the Administration in relation to those residing and/or working in the

⁹ <https://www.sbaadministration.org/index.php/organisation> .

¹⁰ For an up to date list of all SBA Ordinances, see

https://www.sbaadministration.org/home/legislation/01_02_09_08_INDICES/20100101_SBA_LEG_INDEX_U_JC.htm.

¹¹ These legal arrangements suggest that the civilian population of the SBAs is governed by unelected officials in contravention to Article 3 of Protocol No. 1 of the European Convention on Human Rights, which protects the holding of 'free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.' It is for this reason that the Human Rights Ordinance 2004 does not protect the right to hold elections.

¹² <https://www.sbaadministration.org/index.php/administration>.

¹³ (RoC) Criminal Code, Article 5(1); Περί Δικαστηρίων Νόμος (N. 14/1960), Articles 20(1) and 23(1).

¹⁴ An Ordinance to Provide for the Exercise of Jurisdiction by the Courts of the Republic of Cyprus and the Courts of the Sovereign Base Areas of Akrotiri and Dhekelia Respectively in Civil and Criminal Cases Affecting Cypriots (6 of 1960), Articles 4(1), 9(3) and 11.

¹⁵ See, for example, *George Kasapis v Attorney General and Legal Adviser* (Judicial Review 2 of 2006), in which a Cypriot citizen working in the SBAs was put on trial in the SBA Court.

Areas are regularly delegated to officers of the RoC. Provision of this is made in Section 3(4) of Appendix O, which states that:

The Republic will be invited to provide a wide range of public services to be performed for Cypriots in the Sovereign Base Areas. These will include Education, Agriculture, Co-operative Development, Labour and Social Insurance, Social Welfare, Health and Medical Services, Postal Services, Forestry Services and Statistics. In addition Cypriot public utility services will be free to operate in the Sovereign Base Areas.

Further to these, the Appendix makes specific references to the cooperation between the SBAs and the RoC on matters that have to do with the administration and maintenance of antiquities,¹⁶ water control,¹⁷ taxes,¹⁸ mining,¹⁹ land registration,²⁰ prisons,²¹ police,²² the administrative duties of District Officers,²³ the registration of companies and any other administrative functions that may be agreed in the sphere of commerce, industry, transportation and employment.²⁴ In practice, the provision of public services in relation to these matters is treated in the same way as those listed in Article 3(4) of the Appendix.

The general obligation in Section 3(4) has been given effect in the SBAs through the Delegation of Functions to the Republic Ordinance 2007, which allows officers of the Republic to carry out their functions in the Areas as well.²⁵ The Ordinance distinguishes between two types of delegated functions. On the one hand, functions relating to ‘general delegated legislation’ are carried out by RoC officers in broadly the same way as they would be carried out in the Republic. These functions are subject to certain general limitations listed in the 2007 Ordinance, such as that the delegation does not prevent the SBA Authorities from deciding to perform a delegated function in the place of the RoC officer;²⁶ and that RoC officers need written authorisation from the Administrator to enter land or premises occupied by the Crown, or to which access is controlled or restricted by the Crown.²⁷ In practice, the close cooperation that exists between

¹⁶ Appendix O, Section 3(5).

¹⁷ Appendix O, Section 3(6).

¹⁸ Appendix O, Section 3(8).

¹⁹ Appendix O, Section 3(10).

²⁰ Appendix O, Section 3(11).

²¹ Appendix O, Section 3(14).

²² Appendix O, Section 3(17).

²³ Appendix O, Section 3(17).

²⁴ Appendix O, Section 3(19).

²⁵ Delegation of Functions to the Republic Ordinance (17 of 2007), Article 6(1): ‘A delegated function may be lawfully carried out in the Areas, or elsewhere in relation to the Areas, by an officer of the Republic on whom the corresponding function is placed by or under the law or custom of the Republic.’

²⁶ Delegation of Functions to the Republic Ordinance (17 of 2007), Article 13(1): ‘The delegation of a function does not have the effect of abridging or in any other way affecting any entitlement of an officer of the Areas to carry out the delegated function, and accordingly the function may be carried out notwithstanding that an officer of the Republic may be entitled under the delegation to carry out the same function.’

²⁷ Delegation of Functions to the Republic Ordinance (17 of 2007), Article 14: ‘The delegation of a function does not confer any power or impose any duty on any officer of the Republic in relation to any [...] exempted property’. ‘Exempted property’ is defined in the Ordinance itself.

the Republic and the SBAs ensures that in the vast majority of cases, the exercise of general delegated functions in the Areas is smooth: the RoC officers apply identical substantive legal provisions to those that are enforced in the Republic, follow the same procedures and use the same documentation.²⁸

On the other hand, functions relating to ‘qualified delegated legislation’ are more restricted, as RoC officers cannot carry these out unless they first consult with, and obtain permission from, the SBA Administration.²⁹ Permission may be denied if the exercise of the qualified function would be detrimental to UK military requirements and security needs, or if it is in any way contrary to the declared policy of the UK Government in the Areas.³⁰ While it is rare for the Administration to deny permission, such incidents have been recorded, for example, when the SBA authorities refused to consent to the granting of a building permit.³¹ Lists of which Ordinances give rise to general delegated functions and which to qualified ones, with the latter being significantly shorter than the former, are found in the Schedules of the Delegation of Functions to the Republic Ordinance 2007.

In practice therefore, and in the majority of cases, the experiences and day-to-day lives of those residing and/or working within the SBAs are substantively the same as those doing so in the Republic. Simply put, locals within the Areas deal with Cypriot authorities when they are paying their taxes, receiving social welfare benefits or picking up their mail, in pretty much the same way as other RoC citizens. What happens underneath the surface however, is rather more complex, since the Cypriot officers are carrying out their duties in the SBAs subject to the invitation and authorisation of the Administration. This is not a technical distinction of little practical significance. Rather, in instances where all does not go according to plan, those residing and/or working in the SBAs have to navigate the complex legal terrain that has been described above and can find themselves receiving different (or no) legal remedies when compared to those in the RoC. Since technically RoC officers in the SBAs are applying the Ordinance, rather than the Law of the Republic, their actions when operating under delegated legislation are, in fact, actions of the SBA authorities.³² Consequently, the decisions of RoC officers (acting in the name of the SBA Administration) can be challenged in the SBA Courts using normal judicial review proceedings. In such cases, RoC officers acting under delegated powers have all the protection against civil or criminal liability which would be available under SBA law to an SBA officer

²⁸ Delegation of Functions to the Republic Ordinance (17 of 2007), Article 8.

²⁹ Delegation of Functions to the Republic Ordinance (17 of 2007), Article 22: ‘(2) An officer of the Republic must not carry out a qualified delegated function unless he has first consulted the officer of the Areas on whom that function is placed.’

³⁰ Delegation of Functions to the Republic Ordinance (17 of 2007), Article 22(3).

³¹ Ιουλιανού Πολυξένη v. Δημοκρατίας (1990) 3 Α.Α.Δ. 332.

³² This is confirmed by Article 7(1) of the 17 of 2007 Ordinance which states that the exercise of a delegated function ‘is of the same force and effect in all respects and for all purposes as if the function had been carried out by the officer of the [SBAs] on whom that function is placed.’

performing the same functions.³³ At the same time, the actions of RoC officers in the SBAs, especially when they stem from qualified delegated legislation, are non-justiciable and cannot be challenged in a Court of the Republic.³⁴

Section 3(2) of Appendix O, which outlines the mirroring obligation, and Section 3(4), dealing with delegated functions, are specific manifestations of the general obligation found in Article 2(2) of the Treaty of Establishment that '[t]he Republic of Cyprus shall co-operate fully with the United Kingdom to ensure the security and effective operation of the military bases'. They are two sides of the same coin and when put together, they suggest that any decisions taken in relation to the SBAs have to consider the implications on the RoC and vice-versa. Rather paradoxically therefore, the apparent simplicity in the relationship, and seeming seamless interaction, between the Republic and the Areas, are only made possible by the convoluted arrangements that lie invisible underneath the surface. It is these legal provisions, which allow for the smooth operation of a British Overseas Territory enclaved in an EU Member state, that had to be considered when the Republic of Cyprus joined the EU, and that have to be re-assessed in light of Brexit.

2. The Status of SBAs under EU law

The special regime of the SBAs is depicted in Protocol No 3 of the Act of Accession 2003 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.³⁵ In the Preamble, the High Contracting Parties refer to the Joint Declaration on the Sovereign Base Areas of the UK in Cyprus annexed to the UK Act of Accession 1972.³⁶ There, it was provided that the arrangements applicable to relations between the then European Economic Community and the SBAs would be defined within the context of any agreement between the Community and the RoC. The Contracting Parties also refer to the Treaty of Establishment and Appendix O, which declare that one of their 'main objects' is the protection of the interests of those resident or working in the SBAs. Thus, the residents of, and those working in, the SBAs should have the same treatment, to the extent this is possible, as those persons resident or working in the Republic.

Protocol No 3 altered former Article 299(6)(b) TEC [now Article 355(5)(b) TFEU] to the effect that the Treaty does not apply to the SBAs, except to the extent necessary to ensure the

³³ Delegation of Functions to the Republic Ordinance (17 of 2007), Article 10: '(1) A protective enactment applies to an officer of the Republic acting under a delegated function, and to any act of that officer while so acting, as if that officer were an officer of the Areas and as if that act were the act of an officer of the Areas.

(2) A protective enactment is any enactment of the Areas which gives protection to an officer of the Areas against civil or criminal liability in respect of an act done in the course of performance of his duties or exercise of his powers.'

³⁴ Κοινοτικό Συμβούλιο Ξυλοφάγου v. Δημοκρατίας (Συνεκδικαζόμενες Υποθέσεις Αρ. 899/2008, 900/2008 και 901/2008); Αναστάσης Αγγλογάλλου κ.α. v. Κοινοτικό Συμβούλιο Ξυλοφάγου κ.α. 1169/2012, 6/6/2014.

³⁵ For an in depth analysis of Protocol No 3 of the Act of Accession 2003, see S Lahlé Shaelou, *The EU and Cyprus: Principles and Strategies of Full Integration* (Leiden, Brill / Martinus Nijhoff, 2010), chapter 4.

³⁶ Final Act of the Treaty concerning the conditions of Accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland and the adjustments of Treaties [1972] OJ L73/1.

implementation of the arrangements set out in the Protocol.³⁷ Consequently, according to Article 2 of the Protocol, the SBAs are included within the Union customs territory and, for this purpose, the customs and common commercial policy acts listed in Part One of the Annex of the Protocol³⁸ apply to them. The Commission has reported that ‘[t]he implementation of this part of the *acquis* ... is assessed as satisfactory’.³⁹ Moreover, pursuant to Article 3 of the same Protocol, former Title II of Part Three of the EC Treaty [now Title III of Part Three of the TFEU] on agriculture and measures adopted under what was Article 152(4)(b) TEC [now Article 168(4)(b) TFEU]⁴⁰ also apply to the SBAs. By and large, those provisions are also implemented smoothly.⁴¹

Generally speaking, it is the UK that is responsible for the implementation of the Protocol.⁴² Specifically, the UK is responsible for the application of the Union measures in the fields of customs, indirect taxation and the common commercial policy in relation to goods entering or leaving the island through a port or airport within the Bases.⁴³ It is also responsible for issuing licences, authorisations or certificates, which may be required under any applicable Union

³⁷ Art 1 of Protocol No 3 of the Act of Accession 2003. For the application of the *acquis* in the Sovereign Base Areas with regard to the free movement of goods, see below section 4.3 of chapter 3.

³⁸ According to Part One of Protocol No 3 of the Act of Accession 2003 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1992] OJ L302/1, Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1987] OJ L256/1, Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system reliefs from customs duty [1983] OJ L105/1, Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1993] OJ L253/1, Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances [1990] OJ L357/1, Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances [1992] OJ L370/76, Council Regulation (EEC) No 3911/92 of 9 December on the export of cultural goods [1992] OJ L395/1, Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights [1994] OJ L341/8, Commission Regulation (EC) No 1367/95 of 16 June 1995 laying down provisions for the implementation of Council Regulation (EC) No 3295/94 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights [1995] OJ L133/2, Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology [2000] OJ L159/1), apply to the UK Sovereign Base Areas.

³⁹ Report from the Commission to the European Parliament and the Council – First Report on the implementation of the provisions of Protocol No 3 to the 2003 Act of Accession on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus (hereafter Commission Report on the implementation of Protocol No 3); Brussels, 19 April 2010 COM(2010)155.

⁴⁰ Art 168(4)(b) TFEU [ex Art 152(4)(b) TEC] provides that: ‘the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievements of the objectives referred to in this Article through adopting in order to meet common safety concerns measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health’.

⁴¹ Commission Report on the implementation of Protocol No 3.

⁴² Art 7 of Protocol No 3 of the Act of Accession 2003.

⁴³ Art 7(1)(a) of Protocol No 3 of the Act of Accession 2003.

measure, in respect of goods imported into or exported from the island of Cyprus by the UK forces.⁴⁴ However, in contrast to the aforementioned rule, Article 7(2) provides that with regard to the payment of any Union funds to which persons in the SBAs may be entitled, pursuant to the application of the Common Agricultural Policy, it is the RoC that is responsible and thus accountable to the Commission for such expenditure. This rule is in agreement with the aforementioned scope set out in Appendix O, which provides that the RoC and the UK should strive to offer, to the extent possible, the same treatment to people residing and working in the Areas as that which is enjoyed by those residing and working in the Republic. Finally, the customs controls on the goods imported into or exported from the island by the UK forces through a port or airport in the Republic may be carried out within the SBAs.⁴⁵

Notably, none of the aforementioned provisions should be read as preventing the UK and RoC Governments from concluding arrangements concerning the delegation of any functions imposed by the Protocol from one Member State to the other.⁴⁶ In fact, a couple of months after the signing of the Act of Accession 2003, the two States signed a Memorandum of Understanding concerning responsibility for the implementation of Protocol No 3.⁴⁷

Most importantly, Article 6 of the Protocol provides the legal basis for the Green Line Regulation.⁴⁸ It provides, *inter alia*, that the Council, acting unanimously on a proposal from the Commission, may, in order to ensure the effective implementation of the objectives of the Protocol, ‘apply other provisions of the EC Treaty and related Union legislation to the Sovereign Base Areas on such terms and subject to such conditions as it may specify’. The Green Line Regulation is the main legislative mechanism that allows persons and goods to cross the Green Line that divides the island between the Government Controlled areas and the Areas north of it in which the Government of the RoC does not exercise effective control. This is significant if one takes into account that the Eastern SBA shares a border with the internationally unrecognised Turkish Republic of Northern Cyprus.

3. Crossing of Persons and Goods

For the purpose of checks on persons, the Green Line means the line between the areas under the effective control of the Government of the Republic and those areas in which the RoC does not exercise effective control. However, it does not include the line between the Government Controlled Areas and the SBAs. This is reaffirmed by Article 5(1) of Protocol No 3 to the Act of Accession 2003, which provides that the Republic is not required ‘to carry out checks on persons crossing their land and sea boundaries with the Sovereign Base Areas and any Community restrictions on the crossing of external borders shall not apply in relation to such persons’.

⁴⁴ Art 7(1)(c) of Protocol No 3 of the Act of Accession 2003.

⁴⁵ Art 7(1)(b) of Protocol No 3 of the Act of Accession 2003.

⁴⁶ Art 7(3) and (4) of Protocol No 3 of the Act of Accession 2003.

⁴⁷ Reprinted in N. Makris (ed), *The 1960 Treaties on Cyprus and Selected Subsequent Acts* (Mannheim, Bibliopolis, 2003).

⁴⁸ Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession 2003 [2004] OJ L206/51.

Conversely, checks on persons at the boundary between the Eastern SBA and the areas not under effective control of the Government of the Republic of Cyprus are carried out in accordance with Article 5(2) of the Protocol No 3.⁴⁹ This Article provides that it is the UK, and not the Republic, that should exercise controls on persons crossing the external borders of the Areas, in accordance with the undertakings set out in Part Four of the Annex of the Protocol. Such controls shall include the verification of travel documents. As is the case in the Green Line Regulation, all persons shall undergo at least one check in order to establish their identity.⁵⁰ Article 2 of the Annex provides that the UK allows the external borders of the Bases to be crossed only at crossing points. The term ‘external borders of the Sovereign Base Areas’ means the sea boundaries, the airports and seaports, but not the land or sea boundaries with the RoC. On the other hand, the term ‘crossing points’ refers to any crossing point authorised by the competent authorities of the UK for the crossing of the external borders.⁵¹

With regard to nationals of third countries, they shall only be permitted to cross the external border of the SBAs if (i) they possess a valid travel document, (ii) they are in a possession of a valid visa for the RoC, if so required, (iii) they are engaged in defence-related activity or are a family member of a person who is engaged in such activity, and (iv) they are not a threat to national security.⁵² The UK can only derogate from these conditions on humanitarian grounds, on grounds of national interest, or in order to comply with the international obligations⁵³ arising from the bilateral and multilateral agreements to which the UK is a contracting party.

Similar to Article 3 of the Green Line Regulation, Article 5 of Part Four of the Annex of Protocol No 3 provides that the competent authorities of the UK should use mobile units to carry out external border surveillance. Such surveillance between border crossing points and at crossing points aims at discouraging people from circumventing the checks at crossing points. Indeed, according to the Commission ‘the SBA Administration carries out regular maritime controls along the sea boundaries’.⁵⁴

The competent authorities of the UK and the RoC are expected to maintain constant close cooperation with a view to the effective implementation of checks and surveillance.⁵⁵ Moreover, bearing in mind humanitarian considerations, they should co-ordinate their actions with a view to devising practical ways and means of respecting the rights and satisfying the needs of asylum

⁴⁹ Art 2(5) of the Green Line Regulation.

⁵⁰ Art 4 of Part Four of the Annex of Protocol No 3.

⁵¹ Art 1 of Part Four of the Annex of Protocol No 3.

⁵² Art 3(a) of Part Four of the Annex of Protocol No 3.

⁵³ Art 3(b) of Part Four of the Annex of Protocol No 3.

⁵⁴ *Ibid.*

⁵⁵ Art 6 of Part Four of the Annex of Protocol No 3 on the Sovereign Base Areas in Cyprus.

seekers⁵⁶ and illegal immigrants in the SBAs.⁵⁷ In fact with regard to asylum, the two Member States have signed a Memorandum of Understanding, according to which, the responsibility of examining the applications of asylum seekers who first entered the island of Cyprus through the SBAs is delegated to the RoC.⁵⁸

On the other hand, all goods, which cross the line only at the crossing points listed in Annex I⁵⁹ and the crossing points of Pergamos and Strovilia under the authority of the Eastern SBA,⁶⁰ are subject to the requirements and undergo the checks as required by EU legislation.⁶¹ According to Annex II, goods crossing the line are subject to veterinary, phytosanitary and food safety requirements and checks, as set out in measures adopted under Article 43 TFEU⁶² and/or Article 168(4)(b) TFEU.⁶³ In particular, relevant plants and plant products should have undergone phytosanitary checks by authorised experts to verify that the provisions of EU phytosanitary legislation⁶⁴ are complied with, before they cross the line to Government Controlled areas.

More importantly, they should be accompanied by a document issued by the Turkish Cypriot Chamber of Commerce, which was duly authorised by the Commission in agreement with the RoC⁶⁵ by Commission Decision 2004/604/EC.⁶⁶ The accompanying document, according to Article 2(1) of Commission Regulation 1480/2004, contains all the particulars necessary for identifying the goods to which it relates. Specifically, it contains a description of the goods, the item number, marks and numbers of goods, if any, the number and kind of packages, the volume and value of the goods, the name and the address of the producer of the goods and the name and the address of the consignor and the consignee. It also ensures compliance with the Union rules of origin and unambiguously certifies that the goods to which it relates originate from the areas not under the control of the Republic. After the goods have crossed the line, the competent authorities of the

⁵⁶ Art 7(a) of Part Four of the Annex of Protocol No 3 on the Sovereign Base Areas in Cyprus provides that: '[a]n applicant for asylum who first entered the island of Cyprus from outside the European Community by one of the Sovereign Base Areas shall be taken or readmitted to the Sovereign Base Areas at the request of the Member State of the European Community in whose territory the applicant is present'.

⁵⁷ Art 7(b) of Part Four of the Annex of Protocol No 3 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.

⁵⁸ Commission Report on the Implementation of Protocol No 3; See also Laulhé Shaelou, *The EU and Cyprus* (n 35) 151–154.

⁵⁹ Agios Dhometios, Astromeritis – Zodhia, Kato Pyrgos – Karavostasi, Kokkina – Kato Pyrgos, Pachyammos – Kokkina, Ledra Palace and Ledra Street.

⁶⁰ Art 4(3) of the Green Line Regulation.

⁶¹ Art 4(4) of the Green Line Regulation.

⁶² Ex Art 37 TEC.

⁶³ Ex Art 152(4)(b) TEC.

⁶⁴ Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, [2000] OJ L169/1.

⁶⁵ Art 4(5) of the Green Line Regulation.

⁶⁶ Commission Decision 2004/604/EC of 7 July 2004 on the authorisation of the Turkish Cypriot Chamber of Commerce according to Article 4(5) of Council Regulation (EC) No 866/2004, [2004] OJ L272/12.

RoC check the authenticity of the accompanying document.⁶⁷ The only exception to this rule is provided by Article 4(10) of the Green Line Regulation. According to this provision, and in derogation from the standard rules, no accompanying document is needed for the supply of goods to the Turkish Cypriot population living in the village of *Pyla* located within the UN Buffer zone, according to Article 4(10).⁶⁸

4. Union Citizenship

Finally, with regard to the Union citizenship status of the inhabitants of the SBAs, the following should be noted. The British Overseas Territories Act 2002,⁶⁹ by which the ‘British Dependent Territories Citizens’ were renamed as ‘British Overseas Territories Citizens’,⁷⁰ provides in section 3(1) that ‘[a]ny person who, immediately before the commencement of this section, is a British overseas territories citizen shall, on the commencement of this section, become a British citizen’ and thus an EU citizen. However, British citizenship was not extended to persons who, on the day of commencement of the relevant section, were British Overseas Territories Citizens by virtue of a connection with the SBAs. The British personnel working in the Areas enjoy British citizenship and the Cypriot population residing in the Bases are recognised as citizens of the Republic⁷¹ and thus, since 1 May 2004 (and until Brexit takes place at least), are all EU citizens.

5. The SBAs after Brexit

It should have become clear from the analysis so far that the status of the SBAs under EU law is rather exceptional. The SBAs have a constitutional relationship with a Member State while they share their boundaries with another. The EU Treaties do not apply to them, but they have been part of the EU customs territory since 1 May 2004, when the Republic of Cyprus joined the EU.

The declared goal of the UK Government is to leave the EU single market and customs union after Brexit takes place.⁷² If that applied to the SBAs, a customs border with the Republic would be created and significant economic, social and political frictions would arise on the island of Cyprus. Moreover, the UK would have violated its obligation under the Treaty of Establishment not to create customs posts on the island. Indeed, the Protocol on SBAs attached to the UK’s Withdrawal Agreement explicitly refers to the ‘commitment of the United Kingdom not to create customs

⁶⁷ Art 4(6) of the Green Line Regulation.

⁶⁸ The Commission has characterised the occasional practice of the ‘authorities of the Eastern Sovereign Base Area of asking for accompanying documents in the case of goods destined for the traditional supply of the Turkish Cypriot population of the village *Pyla*’ as an example of a barrier to the free movement of goods; Communication from the Commission Report on the implementation of Council Regulation (EC) 866/2004 of 29 April 2004 and the situation resulting from its application; Brussels, 20.9.2007, COM(2007)553 8.

⁶⁹ For a more comprehensive analysis see generally G.R. De Groot, *Towards a European Nationality Law – Vers un droit européen de nationalité* (Maastricht, Universiteit Maastricht, 2003).

⁷⁰ Section 1 of the British Overseas Territories Act 2002.

⁷¹ Appendix O of the Cyprus Agreements *Declaration of Her Majesty’s Government Regarding the Administration of the Sovereign Base Areas*.

⁷² Lancaster House Speech, The government’s negotiating objectives for exiting the EU: PM speech, <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

posts or other frontier barriers between the Sovereign Base Areas and the Republic of Cyprus and not to establish commercial or civilian seaports or airport.⁷³ In light of this, from the very beginning of the negotiations between the governments of the UK and the RoC in October 2017, there was an understanding that the two should reach an agreement that would secure the continuity of the exceptional regime that applies to the SBAs under EU law. This is reflected in the Protocol on the SBAs attached to the UK's Withdrawal Agreement, which 'enables the continuity, from the end of the transition period, of existing agreements in and around the SBAs.'⁷⁴

From a continuity point of view, the most important provision is Article 2 of the Protocol, which provides that the SBAs will remain in the EU customs territory even after the end of the transition period. So the SBAs will add their name to the list of regions of third countries that were part of the EU customs territory. For instance, because of their insular geographical position, the Austrian territories of Jungholz and Mittelberg have been part of the EU customs territory⁷⁵ since its establishment,⁷⁶ long before Austria joined the EU on 1 January 1995.

As a result, '[a]ll customs formalities, customs controls and collection of import duties related to' goods, intended either for use for or for export from the SBAs, 'shall be carried out by the authorities of the Republic of Cyprus.'⁷⁷ There are exceptions to this rule, which relate to military goods and the personal goods of UK military personnel, the checking of which is done by the SBA authorities.⁷⁸ In addition, the Union law on agriculture and fisheries and on turnover taxes, excise duties and other forms of indirect taxation will continue applying in the SBAs as initially envisaged in Protocol No 3.⁷⁹ Again, it is the RoC that is responsible for the implementation of those parts of EU law that apply on the SBAs.⁸⁰

The UK will also continue checking persons crossing the 'external borders of the Sovereign Base Areas', i.e., the sea boundaries, the airports and seaports, but not the land or sea boundaries with the Republic of Cyprus.⁸¹ Significantly, the UK authorities will also conduct checks on persons who cross the Green Line at the crossing points of Pergamos and Strovilia in the Eastern SBAs. This is particularly important if one takes into account reports that suggested that the RoC had raised the issue of the control on persons in the external boundaries, including those conducted at the crossing points of the line that divides the island because of the age-old conflict.⁸²

⁷³ Preamble, Protocol on SBAs, UK's EU Withdrawal Agreement.

⁷⁴ House of Commons Library, 'The UK's EU Withdrawal Agreement' Number 08453, 1 December 2018, 131.

⁷⁵ Art 3 of Council Regulation (EEC) no. 2913/92 of 12 October 1992 establishing the Community Customs Code (1992) OJ L302/1.

⁷⁶ Art 1 of Regulation (EEC) of the Council of 27 September 1968 on the definition of the customs territory of the Community (1968) OJ L238/1.

⁷⁷ Art 2(3) and (4), Protocol on SBAs, UK's EU Withdrawal Agreement.

⁷⁸ Art 2(6) Protocol on SBAs, UK's EU Withdrawal Agreement.

⁷⁹ Arts 3 and 6 Protocol on SBAs, UK's EU Withdrawal Agreement.

⁸⁰ *Ibid.*

⁸¹ Art 7 Protocol on SBAs, UK's EU Withdrawal Agreement.

⁸² See for instance <http://www.cytoday.eu/index.php?id=17&nid=10785430>

However, the UK Government rejected the option to share or devolve this task to the Republic. So, after the transition is finished, the proper implementation of the Green Line Regulation – an important EU legislative mechanism – will be entrusted to the authorities of a third country, creating a somewhat paradoxical situation. Having said that, the UK authorities shall be in close cooperation with the Cypriot authorities in order to effectively implement those provisions.⁸³

The institution that will be ensuring the proper implementation of the Protocol is the Specialised Committee established in Article 165 of the Withdrawal Agreement. This forum will be discussing any difficulties in implementation of the Protocol and make recommendations to the Joint Committee. The Joint Committee, described in Article 164 of the Withdrawal Agreement, will have the power to amend any EU law references that are contained in the Protocol. More importantly, the Joint Committee will be able to amend the provisions on the crossing points included in Article 7(6) of the Protocol. Interestingly, the UK will be consulted through the Specialised Committee, if any future proposal for amendment to the Green Line Regulation will affect the SBAs.⁸⁴

Nasia Hadjigeorgiou is an Assistant Professor in Human Rights and Transitional Justice, UCLan Cyprus, and is offering consultancy services to the Law Office of the Republic of Cyprus on matters of Public International Law.

Nikos Skoutaris is an Associate Professor in EU law, UEA Law School. Any opinions expressed here remain their own. The authors would like to thank the participants of the conference on Brexit and its implications on Cyprus for their comments. The usual disclaimer applies.

⁸³ Art 7(8) Protocol on SBAs, UK's EU Withdrawal Agreement.

⁸⁴ Art 9(2) Protocol on SBAs, UK's EU Withdrawal Agreement.