



**TURKISH REPUBLIC OF NORTHERN CYPRUS  
PRIME MINISTER'S OFFICE  
EUROPEAN UNION COORDINATION CENTRE  
(EUCC)**

**EUCC RESPONSE TO THE COMMISSION'S GREEN PAPER**

**The Review of Council Regulation (EC) No 44/2001 on Jurisdiction and the  
Recognition and Enforcement of Judgments in Civil and Commercial Matters**

**Overview**

In the current political circumstances, pending a comprehensive settlement of the Cyprus problem, some form of provision may need to be made in order to prevent this Regulation from being applied to cases concerning the enforcement of “Republic of Cyprus”<sup>1</sup> court judgments involving matters relating to the territory not directly under the effective control of the “Government of the Republic of Cyprus”, ie relating to the Turkish Cypriot administered territory of North Cyprus, on the following grounds:

**1. Lack of Jurisdiction**

Following intercommunal fighting between Greek and Turkish Cypriots which led to the break-up of the shared Republic of Cyprus administration in 1963 and eventually to the division of the Island in 1974, Cyprus has been governed by two separate administrations. South Cyprus is governed by the Greek Cypriot administration known as the “Republic of Cyprus” while North Cyprus is governed by the Turkish Cypriot administration known as the Turkish Republic of Northern Cyprus (TRNC). As a result, the displaced Greek and Turkish Cypriots have long been rehabilitated in their respective communities. While the Greek Cypriot administration in the South is internationally recognised as a state, the Turkish Cypriot administration is recognised as a state only by Turkey, but is widely accepted as the *de facto* administration of North Cyprus.

In 2004, a plan, supported by the EU and the international community, for a comprehensive settlement by way of a bi-zonal, bi-communal federation (the Annan Plan), although accepted by

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<sup>1</sup> Due to the expulsion of Turkish Cypriots from the shared administration of the Republic of Cyprus in 1963, Turkish Cypriots do not recognise the current Greek Cypriot administration as that of a “Republic of Cyprus”, hence it is referred to throughout this text in inverted commas.

the Turkish Cypriots, was rejected by the Greek Cypriot governed “Republic of Cyprus”, which thus alone acceded to the EU. As the Turkish Cypriots were excluded by this rejection, Article 1(1) of Protocol 10 to the Accession Treaty 2003 suspended the application of the EU acquis in North Cyprus pending a comprehensive settlement.

As a piece of secondary legislation, Regulation 44/2001 must be interpreted in the light of relevant primary law including Treaty provisions such as Protocol 10. This suspension of the acquis (including Regulation EC No 44/2001) in North Cyprus would seem to recognise that there are two separate territories in Cyprus and that the area under Turkish Cypriot administration has its own separate, distinct and effective legal system.

In terms of territorial scope, states in which EU law does not apply are treated as third states. Taxes such as VAT (see VAT Directive 2006/112/EC) do not apply to the part of Cyprus which is not under the effective control of the Government of the “Republic of Cyprus”, for such purposes the territory of North Cyprus is under Turkish Cypriot administration and, like Gibraltar, is treated as a third territory. The ‘Green Line’ Regulation 866/2004 notes that North Cyprus is “temporarily outside the customs and fiscal territory of the Community and outside the area of freedom, justice and security.” This is also evidenced by the fact that EU exports to North Cyprus are eligible for an export refund. In addition to this, the EU recognises the status of the Turkish Cypriots and is currently working in collaboration with the Turkish Cypriot administration to align the laws applicable under this administration with EU Law.

In the English case of *Emin v Yeltag* [2002] 1 FLR 956, a case concerning the recognition of marriage documentation issued by the Turkish Cypriot administration, it was found that, despite not recognising the Turkish Republic of Northern Cyprus as a state, because the two territories in Cyprus each have their own legal system, English courts should respect the acts of the Turkish Cypriot authorities in relation to private rights.

As stated by Advocate General Prof. Dr. Juliane Kokott (Case C-420/07, para 2, 18 December 2007), the “Republic of Cyprus” does not exercise sovereign jurisdiction over North Cyprus. It is clear that the “Republic of Cyprus” does not possess sufficient connecting factors and should not be able to assert jurisdiction over North Cyprus. Moreover, its laws do not apply there and as it does not exercise effective control it cannot undertake on-the-spot investigations to ascertain the facts nor is it able to execute any court order in North Cyprus. For the proper administration of justice, jurisdiction, such as under Article 22(1) of the Regulation, for cases concerning the territory under the Turkish Cypriot administration, must be a matter for the Turkish Cypriot authorities.

## **2. Contrary to Public Policy**

It is well established that to recognise a judgment which would not be valid in the country where the events giving rise to that judgment occurred would be contrary to public policy. Despite the lack of recognition of the TRNC, the practical realities of the day-to-day activities and existing private rights of individuals and the general law applicable in the territory of the area under Turkish Cypriot administration should be taken into consideration in determining whether to recognise a judgment relating to this territory, particularly where the facts complained of (resulting in a judgment) would not give rise to a cause of action under the laws applicable in this territory.

Enforcement of “Republic of Cyprus” judgments, under Article 38 of the Regulation, relating to the territory of North Cyprus may render a court order that is incapable of enforcement in the country of origin, due to a lack of effective jurisdiction, as enforceable in the recognising state. In order to avoid a claim from a plaintiff for state responsibility for a failure to fulfil its obligations, any recognising state should not make a declaration of enforceability for a judgment that is impossible to enforce both in the state of origin and in the recognising state. It would be impossible for a defendant in the North to comply with an order made by a “Republic of Cyprus” court if to do so would contravene the laws of the TRNC. It is a fundamental principle governing the making of court orders that the addressee should not thereby be placed in a position of immediate and unavoidable disobedience to the order. Recognition of such judgments may place the defendant in a position of facing a choice between complying with the order in defiance of the laws of the TRNC or non-compliance with the order in defiance of the laws of the recognising state.

Also, in circumstances where the likelihood of a defendant being given a fair hearing (as required by Article 6 ECHR) are highly controversial, the enforcement of judgments made by Greek Cypriot courts sitting in South Cyprus but relating to the territory under Turkish Cypriot administration in North Cyprus would, as stated by both the UN Secretary General in his report to the Security Council (S/2005/353, 27 May 2005) and the European Commission in its recent submissions to the European Court of Justice (JURM 2007 0058, para 108, 21 December 2007), open new fronts for litigation and increase animosity between Greek and Turkish Cypriots, and thus pose a serious threat to the prospects for peace and reconciliation in the Island.

Such recognition and enforcement is of grave concern since it would undermine negotiations for a comprehensive political settlement, currently the subject of diplomatic negotiations on the basis of a bi-zonal, bi-communal federation comprised of two equal constituent states (one Greek Cypriot administered and the other Turkish Cypriot administered), sponsored by the UN and supported by the EU and the international community. The subject matter of these negotiations should not be

pre-judged nor prejudiced by applying Greek Cypriot law in Greek Cypriot courts to the territory under Turkish Cypriot administration.

These important public policy matters relating to the political situation in Cyprus should be considered in relation to the exceptions provided by Article 34 of the Regulation since recognition and enforcement may be manifestly contrary to public policy.

### **3. Property Issues**

Enforcement of judgments relating to property claims would undermine the role of the Immoveable Property Commission (IPC). This is an independent body, established in 2006 under the Law for the Compensation, Exchange and Restitution of Immoveable Properties (Law No 67/2005), enacted in the TRNC in 2005 in accordance with the recommendations of the European Court of Human Rights (ECtHR) in *Xenides-Arestis v Turkey 2005*. The IPC consists of seven members, including Mr Daniel Tarschys and Mr Hans Christian Krüger, the former Secretary General and Deputy Secretary General of the Council of Europe, respectively. This Commission provides remedies of compensation, restitution or exchange of property, as appropriate, and was approved in principle by the ECtHR as the appropriate and effective domestic mechanism to resolve property claims in North Cyprus. The law establishing the IPC reserves the right of appeal to the ECtHR for applicants who are not satisfied by the decisions of the Commission.

The resolution of the highly sensitive property issues that arose as a result of the political situation in Cyprus is not a civil matter, but a public one where the responsibilities vest in the governing administrations, not private individuals. Thus the correct mechanism for the resolution of property claims is that provided by the IPC, which to date has resolved 60 cases out of the 398 claims brought to it by Greek Cypriot applicants.

The Greek Cypriot side has not provided any reciprocal arrangement to resolve violations against Turkish Cypriots' property in the South. Remedies for property claims through the courts of the "Republic of Cyprus" are available to Greek Cypriots only. The many Turkish Cypriots living in the North whose property situated in the South has been violated are prevented by the "Republic of Cyprus" from making a claim until a comprehensive settlement of the Cyprus problem has been reached.

There is a specific chapter of the current political negotiations in Cyprus dealing with property issues, with reference to which the leaders of the two communities have both declared the property issue to be a matter for political resolution rather than for individual legal actions.

## **Summary**

Since it does not have jurisdiction, private rights in North Cyprus should not be determined by the application of the law and courts of the Greek Cypriot administered “Republic of Cyprus”, rather the proper administration of justice should be left to the appropriate authorities of the Turkish Cypriot administration. Where the “Republic of Cyprus” issues such court orders relating to areas beyond its effective control, they should not be recognised or enforced by other states in the absence of the comprehensive settlement referred to in Protocol 10, as to do so would seriously threaten prospects for peace and reconciliation between the two communities and thus be manifestly contrary to international public policy.

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