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COUNCIL REGULATION (EC) No 866/2004

of 29 April 2004

on a regime under Article 2 of Protocol 10 to the Act of Accession

(OJ L 206, 9.6.2004, p. 51)

Amended by:

		Official Journal		
		No	page	date
►M1	Council Regulation (EC) No 293/2005 of 17 February 2005	L 50	1	23.2.2005
►M2	Commission Regulation (EC) No 601/2005 of 18 April 2005	L 99	10	19.4.2005
►M3	Commission Regulation (EC) No 1283/2005 of 3 August 2005	L 203	8	4.8.2005
►M4	Council Regulation (EC) No 587/2008 of 16 June 2008	L 163	1	24.6.2008

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COUNCIL REGULATION (EC) No 866/2004

of 29 April 2004

on a regime under Article 2 of Protocol 10 to the Act of Accession

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Protocol 10 on Cyprus to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded ([1]), and in particular Article 2 thereof,

Having regard to Protocol 3 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus ([2]) to the said Act of Accession, and in particular Article 6 thereof,

Having regard to the proposal from the Commission, ([3])

Whereas:

(1) The European Council has repeatedly underlined its strong preference for accession by a reunited Cyprus. Regrettably, a comprehensive settlement has not yet been reached. In conformity with paragraph 12 of the conclusions of the European Council in Copenhagen, the Council on 26 April 2004 outlined its position on the current situation on the island.

(2) Pending a settlement, the application of the *acquis* upon accession has therefore been suspended pursuant to Article 1(1) of Protocol 10, in the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.

(3) Pursuant to Article 2(1) of Protocol 10, this suspension makes it necessary to provide for the terms under which the relevant provisions of EU law shall apply to the line between the above-mentioned areas and those areas in which the Government of the Republic of Cyprus exercises effective control. In order to ensure the effectiveness of these rules, their application has to 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.

(4) Since the abovementioned line does not constitute an external border of the EU, special rules concerning the crossing of goods, services and persons need to be established, the prime responsibility for which belongs to the Republic of Cyprus. As the abovementioned areas are temporarily outside the customs and fiscal territory of the Community and outside the area of freedom, justice and security, the special rules should secure an equivalent standard of protection of the security of the EU with regard to illegal immigration and threats to public order, and of its economic interests as far as the movement of goods is concerned. Until sufficient information is available with regard to the state of animal health in the abovementioned areas, the movement of animals and animal products will be prohibited.

(5) Article 3 of Protocol 10 explicitly states that measures promoting economic development in the abovementioned areas are not precluded by the suspension of the *acquis*. This regulation is

([1]) OJ L 236, 23.9.2003, p. 955.
([2]) OJ L 236, 23.9.2003, p. 940.
([3]) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the 2003 Act of Accession.

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intended to facilitate trade and other links between the above-mentioned areas and those areas in which the Government of the Republic of Cyprus exercises effective control, whilst ensuring that appropriate standards of protection are maintained as set out above.

(6) Regarding persons, the policy of the Government of the Republic of Cyprus currently allows the crossing of the line by all citizens of the Republic, EU citizens and third-country nationals who are legally residing in the northern part of Cyprus, and by all EU citizens and third country nationals who entered the island through the Government Controlled Areas.

(7) While taking into account the legitimate concerns of the Government of the Republic of Cyprus, it is necessary to enable EU citizens to exercise their rights of free movement within the EU and set the minimum rules for carrying out checks on persons at the line and to ensure the effective surveillance of it, in order to combat the illegal immigration of third country nationals as well as any threat to public security and public policy. It is also necessary to define the conditions under which third-country nationals are allowed to cross the line.

(8) Regarding checks on persons, this Regulation should not affect the provisions laid down in Protocol 3, and in particular Article 8 thereof.

(9) This Regulation does not affect in any way the mandate of the United Nations in the buffer zone.

(10) Since any change in the policy of the Government of the Republic of Cyprus with regard to the line may pose problems of compatibility with the rules established by this Regulation, such changes should be notified to the Commission, prior to their entry into force, in order to allow it to take the appropriate initiatives so as to avoid inconsistencies.

(11) The Commission should also be allowed to amend Annexes I, and II to this Regulation with a view to responding to changes which may occur and require immediate action,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Regulation the following definitions shall apply:

1. the term ‘line’ means:

   (a) for the purpose of checks on persons, as defined in Article 2, the line between the areas under the effective control of the Government of the Republic of Cyprus and those areas in which the Government of the Republic of Cyprus does not exercise effective control;

   (b) for the purpose of checks on goods, as defined in Article 4, the line between the areas in which the Government of the Republic of Cyprus does not exercise effective control and both those areas in which the Government of the Republic of Cyprus exercises effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland;

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2. the term 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the EC Treaty.

References in this Regulation to areas in which the Government of the Republic of Cyprus does not exercise effective control are to areas within the Republic of Cyprus only.

TITLE II

CROSSING OF PERSONS

Article 2

Check on Persons

1. The Republic of Cyprus shall carry out checks on all persons crossing the line with the aim to combat illegal immigration of third-country nationals and to detect and prevent any threat to public security and public policy. Such checks shall also be carried out on vehicles and objects in the possession of persons crossing the line.

2. All persons shall undergo at least one such check in order to establish their identity.

3. Third-country nationals shall only be allowed to cross the line provided they:

(a) possess either a residence permit issued by the Republic of Cyprus or a valid travel document and, if required, a valid visa for the Republic of Cyprus, and

(b) do not represent a threat to public policy or public security.

4. The line shall be crossed only at crossing points authorised by the competent authorities of the Republic of Cyprus. A list of these crossing points is laid down in Annex I.

5. Checks on persons at the boundary between the Eastern Sovereign Base Area and the areas not under effective control of the Government of the Republic of Cyprus shall be carried out in accordance with Article 5(2) of Protocol 3 to the Act of Accession.

Article 3

Surveillance of the line

Effective surveillance shall be carried out by the Republic of Cyprus all along the line, in such a way as to discourage people from circumventing checks at the crossing points referred to in Article 2(4).

TITLE III

CROSSING OF GOODS

Article 4

Treatment of goods arriving from the areas not under the effective control of the Government of the Republic of Cyprus

1. Without prejudice to Article 6, goods may be introduced in the areas under the effective control of the Government of the Republic of Cyprus, on condition that they are wholly obtained in the areas not under effective control of the Government of the Republic of Cyprus or have undergone their last, substantial, economically justified processing or working in an undertaking equipped for that purpose in the areas not under the effective control of the Government of the

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Republic of Cyprus within the meaning of Articles 23 and 24 of Council Regulation (EEC) No 2913/92 ([1]).

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2. The goods referred to in paragraph 1 shall not be subject to a customs declaration. They shall not be subject to customs duties or charges having equivalent effect. In order to ensure effective controls, the quantities crossing the line shall be registered.

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3. 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.

4. The goods shall be subject to the requirements and undergo the checks as required by Community legislation as set out in Annex II.

5. Goods shall be accompanied by a document issued by the Turkish Cypriot Chamber of Commerce, duly authorised for that purpose by the Commission in agreement with the Government of the Republic of Cyprus, or by another body so authorised in agreement with the latter. The Turkish Cypriot Chamber of Commerce or other duly authorised body will maintain records of all such documents issued to enable the Commission to monitor the type and volume of goods crossing the line as well as their compliance with the provisions of this Article.

6. After the goods have crossed the line into the areas under the effective control of the Government of the Republic of Cyprus, the competent authorities of the Republic of Cyprus shall check the authenticity of the document referred to in paragraph 5 and whether it corresponds with the consignment.

7. The Republic of Cyprus shall treat the goods referred to in paragraph 1 as not being imported within the meaning of Article 7(1) of Council Directive 77/388/EEC ([2]) and Article 5 of Council Directive 92/12/EEC ([3]), provided the goods are destined for consumption in the Republic of Cyprus.

8. Paragraph 7 shall not have any effect on the European Communities' own resources accruing from VAT.

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9. The movement across the line of live animals and animal products which are subject to Community veterinary requirements shall be prohibited. Prohibitions in respect of specified live animals or animal products may be lifted by Commission decisions laying down the conditions applicable for trade adopted in accordance with the procedure referred to in Article 58(2) of Regulation (EC) No 178/2002 of the European Parliament and of the Council ([4]).

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10. 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 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.

11. Goods complying with the conditions set out in paragraphs 1 to 10 shall have the status of Community goods, within the meaning of Article 4(7) of Regulation (EEC) No 2913/92.

([1]) OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/15/EC (OJ L 52, 21.2.2004, p. 61).

([2]) OJ L 76, 23.3.1992, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

([3]) OJ L 184, 17.7.1999, p. 23.

([4]) OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Regulation (EC) No 1642/2003 of the European Parliament and of the Council (OJ L 245, 29.9.2003 p. 4).

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12. This Article shall apply immediately as from 1 May 2004 to goods wholly obtained in the areas not under the effective control of the Government of the Republic of Cyprus and complying with Annex II. In respect of other goods, the full implementation of this Article shall be subject to specific rules that take full account of the particular situation in the island of Cyprus on the basis of a Commission decision to be adopted as soon as possible and at the latest within two months of the adoption of this Regulation. For such purpose, the Commission shall be assisted by a Committee and Articles 3 and 7 of Council Decision 1999/468/EC ([1]) shall apply.

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Article 4a

Temporary introduction of goods

1. With the exception of goods which are subject to veterinary and phytosanitary requirements, the following goods may be temporarily introduced from the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control into the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control:

(a) the personal effects of persons crossing the line reasonably required for the journey and goods for sport purposes;

(b) means of transport;

(c) professional equipment;

(d) goods destined to be repaired;

(e) goods to be exhibited or used at a public event.

2. The goods referred to in paragraph 1 may be introduced for a period of up to six months.

3. The goods referred to in paragraph 1 do not need to fulfil the conditions laid down in Article 4(1).

4. If the goods referred to in paragraph 1, are not returned to the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control on the expiry of the period of temporary introduction provided for under paragraph 2, they shall be subject to confiscation by the customs authorities of the Republic of Cyprus.

5. In the event of the temporary introduction of the goods referred to in points (a) and (b) of paragraph 1 of this Article, Articles 229, 232, 579 and 581 of Commission Regulation (EEC) No 2454/93 ([2]) shall apply *mutatis mutandis*.

In the event of the temporary introduction of the goods referred to in points (c), (d) and (e) of paragraph 1 of this Article, the following procedure shall be followed:

(a) the goods shall be accompanied by a declaration by the person introducing them stating the purpose of the temporary introduction and supporting documentation, as appropriate, providing reasonable evidence that the goods fall into one of the three categories listed in points (c), (d) and (e) of paragraph 1 of this Article;

(b) the goods shall be registered by the customs authorities of the Republic of Cyprus or by the authorities of the Eastern Sovereign

([1]) OJ L 133, 4.6.1969, p. 6. Directive as last amended by Directive 2000/47/EC (OJ L 193, 29.7.2000, p. 73).

([2]) 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 (OJ L 253, 11.10.1993, p. 1). Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).

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Base Area when they enter and leave the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control or the Eastern Sovereign Base Area;

(c) the customs authorities of the Republic of Cyprus and the authorities of the Eastern Sovereign Base Area may make the temporary introduction of the goods conditional upon the provision of a guarantee in order to ensure that any customs or fiscal debt which may be incurred in respect of those goods will be paid.

6. The Commission may adopt specific rules in accordance with the procedure referred to in Article 4(12).

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Article 5

Goods sent to the areas not under the effective control of the Government of the Republic of Cyprus

1. Goods which are allowed to cross the line shall not be subject to export formalities. However, the necessary equivalent documentation shall be provided, in full respect of Cypriot internal legislation, by the authorities of the Republic of Cyprus upon request.

2. No export refund shall be paid for agricultural and processed agricultural goods when crossing the line.

3. The supply of goods shall not be exempt under Article 15(1) and (2) of Directive 77/388/EEC.

4. The movement of goods, the removal or export of which from the customs territory of the Community is prohibited or subject to authorisation, restrictions, duties or other charges on export by Community law, shall be prohibited.

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Article 6

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1. Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by Law, Regulation or Administrative Action relating to exemption from turnover tax and excise duty on imports in international travel [1] and Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty [2] shall not apply, but goods contained in the personal luggage of persons crossing the line shall be exempt from turnover tax and excise duty as well as from other duties provided they have no commercial character and their total value does not exceed EUR 260 per person.

2. The quantitative limits for exemptions from turnover tax and excise duty as well as from other duties shall be 40 cigarettes and 1 litre of spirits for personal consumption.

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3. Exemptions for the goods mentioned in paragraph 2 shall not be granted to persons crossing the line under 17 years of age.

4. Within the quantitative limits set out in paragraph 2, the value of the goods listed in paragraph 2 shall not be taken into consideration in determining the exemption referred to in paragraph 1.

5. In order to address serious disturbances in a specific sector of its economy caused by the extensive use of the facilities by persons crossing the line, the Republic of Cyprus may, after approval by the Commission, derogate from Article 6(1) for a period of no longer than three months.

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[1] OJ L 133, 4.6.1969, p. 6. Directive as last amended by Council Directive 2007/74/EC (OJ L 346, 29.12.2007, p. 6).

[2] OJ L 105, 23.4.1983, p. 1. Regulation as last amended by Regulation (EC) No 274/2008 (OJ L 85, 27.3.2008, p. 1).

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TITLE IV

SERVICES

Article 7

Taxation

To the extent that services are supplied across the line to and from persons established or having their permanent address or usual residence in the areas of the Republic of Cyprus which are not under the effective control of the Government of the Republic of Cyprus, these services shall for VAT purposes be deemed to have been supplied or received by persons established or having their permanent address or usual residence in the areas of the Republic of Cyprus under the effective control of the Government of the Republic of Cyprus.

TITLE V

FINAL PROVISIONS

Article 8

Implementation

The authorities of the Republic of Cyprus and the authorities of the Eastern Sovereign Base Area in Cyprus shall take all appropriate measures in order to ensure full compliance with the provisions of this Regulation and to prevent any circumvention of them.

Article 9

Adaptation of Annexes

The Commission may, in agreement with the Government of Cyprus amend the Annexes to this Regulation. Prior to amending the Annexes, the Commission shall consult the Turkish Cypriot Chamber of Commerce or other body duly authorized by the Government of the Republic of Cyprus as referred to in Article 4(5), as well as the United Kingdom if the Sovereign Base Areas are affected. When amending Annex II the Commission shall follow the appropriate procedure referred to in the relevant Community legislation relating to the matter being amended.

Article 10

Change of policy

Any change in the policy of the Government of the Republic of Cyprus on crossings of persons or goods shall only become effective after the proposed changes have been notified to the Commission and the Commission has not objected to these changes within one month. If appropriate, and after consultation with the United Kingdom if the Sovereign Base Areas are affected, the Commission may propose modifications to this Regulation in order to secure compatibility of national and EU rules applicable to the line.

Article 11

Review and monitoring of the Regulation

1. Without prejudice to Article 4(12), the Commission shall report to the Council on an annual basis, starting not later than one year after the date of entry into force of this Regulation, on the implementation of the Regulation and the situation resulting from its application, attaching to this report suitable proposals for amendments if necessary.

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2. The Commission shall examine in particular the application of Article 4 of this Regulation and the patterns of trade between the areas under the effective control of the Government of the Republic of Cyprus and the areas not under its effective control, including the volume and value of trade and products traded.

3. Any Member State may request the Council to invite the Commission to examine and report back to it within a specified time frame on any matter of concern arising from the application of this Regulation.

4. In the event of an emergency creating a threat or risk to public or animal and plant health, the appropriate procedures as set out in EU legislation in Annex II shall apply. ►M4 In the event of other emergencies, in particular those caused by irregularities, trade distortions or fraud, or where other exceptional circumstances arise which require immediate action, the Commission may, in consultation with the Government of the Republic of Cyprus, apply forthwith such measures as are strictly necessary to remedy the situation. ◄ The measures taken shall be referred to the Council within 10 working days. The Council may, acting by qualified majority vote, amend, modify or annul the measures taken by the Commission within 21 working days from the date of receipt of notification from the Commission.

5. Any Member State may invite the Commission to provide details of the volume, value and products crossing the line to the appropriate standing or management committee, provided it gives one month's notice of its request.

Article 12

Entry into force

This Regulation shall enter into force on the day of accession of Cyprus to the European Union.

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ANNEX I

List of crossing points referred to in Article 2(4)

— Agios Dhometios

— Astromeritis — Zodhia

— Kato Pyrgos — Karavostasi

— Kato Pyrgos — Kokkina

— Kokkina — Pachyammos

— Ledra Palace

— Ledra Street

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ANNEX II

Requirements and checks referred to in Article 4(4)

— Veterinary, phytosanitary and food safety requirements and checks as set out in measures adopted pursuant to Article 37 (former Article 43) and/or Article 152(4)(b) of the EC Treaty. In particular, relevant plants, plant products and other objects shall have undergone phytosanitary checks by duly authorised experts to verify that the provisions of EU phytosanitary legislation (Council Directive 2000/29/EC [1]) are complied with before they cross the line to the areas under the effective control of the Republic of Cyprus.

[1] OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2004/31/EC (OJ L 85, 23.3.2004, p. 18).