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“Direct Trade Regulation: An Exit Strategy For All Parties? “

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The EU had hoped that the incentive of EU membership both to Cyprus and Turkey would work as a “catalyst” for a solution in the island and it would take a significant step in realising yet another “peace project”: the most successful aspect of the EU. On the contrary, “Cyprus Problem” has been the “sword of Democles”, negatively affecting the Turkey-EU relationship especially after mid-1990s (*after the candidacy of the Cyprus Republic that coincided with the completion of customs union with Turkey*). The Helsinki Summit decisions of December 1999 - *despite the reassurances given by the letter of LIPPONRN, prime minister of Finland which was holding the EU presidency back in December 1999* - initiating Turkey’s pre-accession process clearly shows the increasing role of the EU in Cyprus and the evolving linkage between the Cyprus problem and the Turkey-EU relationship.

Consequently, the EU could neither contribute to the solution of the Cyprus problem nor prevent the negative impact of it on Turkey’s accession process. Furthermore the mutual negative interaction between the Cyprus problem and the obstruction of Turkey’s negotiation process ended up in a “vicious circle”.

Under these conditions , the EU General Affairs Council meeting, which was held quietly on 7-8 December 2009 and which has been expected to be an unpleasant turning point in Turkey’s relations with the EU and particularly in the negotiation process since 2006, went without any resonance both in the EU and in Turkey. EU Foreign Ministers, despite making a reference to the adverse situation created by the failure of Turkey to implement the additional protocol and hence to open ports and airports to Greek Cyprus, postponed the decision in this regard to 2010 and underlined the importance of the contribution of Turkey to the ongoing peace talks Cyprus. The EU leaders in turn deemed it adequate to endorse this decision at the 10 - 11 December Summit.

In this context, the revival of the Turkey-EU negotiation process depends to a large extent on the successful reconciliation in Cyprus. Notwithstanding the fact that the peace talks in Cyprus has just resumed and there have been some developments ¹that might lead the parties for a solution, no

¹ Hugh POPE and Didem AKYEL enumerate these developments as following in their article titled “*The Lisbon Treaty Shines a Ray of Hope on Cyprus*” dated 15 April 2010 :

- *“The process has produced joint statements of political goals, contributed to a normalised atmosphere on the island and resulted in the opening of one busy new crossing point between the two communal zones and work on opening another soon;*
- *The current governments of Turkey and Greece are both pressing strongly for a settlement in constructive ways rarely seen before;*

one can claim infallibility in predictions over Cyprus. In this sense, the recent judgment of the European Court of Human Rights, taken on 27th of May 2010 is striking : the Court removed the two applicants' (Tasos ASPROFTAS and Marianna PETRAKIDU) rights to demand former properties which were owned by their parents on the Turkish side before 1974. ²

However, despite all these “*developments*”, in general a pessimist view is dominant among the observers. David HANNAY, a British former special envoy to Cyprus, notes in a recent paper for the Centre for European Reform that “*no one has yet lost money betting against...a comprehensive settlement.*”³ Worst of all, the Cypriots' (both Turkish and Greek) conviction in a solution has seriously been shaken.

When things were this difficult and complicated, on 1st of March 2010, the European Commission – *as with the Lisbon Treaty the proposal for the direct trade regulation falls under the co-decision procedure which implies participation of the European Parliament in the process on equal terms with the Council and the ultimate approval of the proposal by the Council will not any more require unanimity but rather qualified majority-* took a significant step to break this impasse : re-submitted the draft direct trade regulation to European Parliament, national parliaments⁴ and the Council of Ministers.

In order to better understand the significance of the direct trade regulation and the reasons behind the recent approach of the Commission, one should have a quick look at the developments in the past. Since 1973, EU had been applying a preferential trade regime to Cyprus in line with an association agreement with the parties to which Turkish Cypriots were also co-signatory. Hence North Cyprus had been benefiting from preferential regime with the EU for the goods exported from Ercan airport and Famagusta port until 1994.

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- *Since February, top Turkish leaders have for the first time met Greek Cypriot civil society groups directly and continue to seek engagement;*
 - *Recent judgments on property compensation, one in the European Court of Justice that favours Greek Cypriot arguments, and one in the European Court of Human Rights that favours Turkish Cypriot arguments, have shown both sides that time is not on their side and a rapid political settlement is by far the best solution to resolve property disputes”.*

² Tasos ASPROFTAS and Marianna PETRAKIDU had applied to the Court on the complaints that their rights to respect for home was violated by Turkey. The court ruled that applicants have not lived long enough to claim rights on the properties and in fact housing units belonged to their families.

³ The Economist, “Cyprus, Turkey and the EU : A Mediterranean maelstrom”, 10 December 2009.

⁴ In order to enforce the subsidiarity principle, the Reform Treaty gives national parliaments the right to have a say on draft European legislation. If a third of the national parliaments express concerns, the Commission needs to explain why the legislation is needed, or submit a redrafted version. If half of them are do not like it a majority of member-states or MEPs can insist that the draft be dropped altogether.

In 1994, following the application of Greek Cypriots via British courts, the European Court of Justice put an end to this preferential trade regime with North Cyprus via “Anastasiou” decision. This decision resulted in a serious isolation of Turkish Cypriots. “The Green Line Regulation” adopted in 2004 to enable the Turkish Cypriots to export agricultural goods to the EU through Greek Cypriot ports could neither bring an end to the aforementioned isolation nor reverse the declining trend of trade between North Cyprus and the EU because of its limited scope and various non-tariff psychological and political barriers. Furthermore, the increasing labour mobility observed in the implementation process of the Regulation, in contrast with the limited goods and capital mobility, has further increased the economic disparities between the North and South in the island.

The “Annan Plan,” which was offering a solution to the Cyprus problem, was submitted to referenda on both sides of the island on 24 April 2004 and rejected by Greek Cyprus. On 26 April 2004 EU Council of Ministers asked the European Commission to draft a regulation to “*end the isolation of Turkish Cypriots...who had “expressed their clear desire for a future within the EU” (to initiate direct trade with Northern Cyprus and provide EU financial assistance)*. The regulation on financial assistance was adopted by the EU Council in February 2006 after being decoupled from the direct trade part which has been blocked by the (Greek) Cypriot government.

Turkey made its position clear in an action plan announced in January 2006, where it demanded “mutual abolition of all limitations on the free movement of commodities, persons, and services, including those related to transportation, in the framework of a schedule to be agreed on”. In short Turkey wanted EU to implement the decision of the Council of Ministers taken on 26 April 2004 to end the isolation of Turkish Cypriots. Turkish politicians say that until and unless the EU implements its commitment the country would not feel bound by its signature of the additional protocol. In 2004 the voting procedure for trade issues was unanimity.

Therefore what made the European Commission to relaunch the adoption procedure of Direct Trade Regulation when there has not been a significant change in the existing conditions ? Following the entry into force of the Lisbon Treaty on 1st of December 2009, the proposal for the direct trade regulation falls under the co-decision procedure. It implies participation of the European Parliament in the process on equal terms with the Council. The ultimate approval of the proposal by the Council will not any more require unanimity but rather qualified majority which is not valid only in the areas of : enlargement, taxation and common foreign and security policy. Consequently, in line with its legal service ‘s view, the Commission accepts the direct trade regulation as falling under Article 207 of the Lisbon Treaty which regulates international trade and hence which should be subject to co-decision procedure and qualified majority in the Council. On the other hand the Greek Cypriots regard the direct trade as a matter of enlargement falling under Protocol 10 of the Accession Treaty, which would require unanimous voting in the Council of Ministers. The European

Council's Legal Service shared this view in 2004⁵.

The decision making procedure on the direct trade regulation has already started in the European Parliament. Parliament's "Conference of Presidents" will discuss the issue on 10th of June 2010. If the European Parliament adopts the regulation, then the Council of Ministers has the right to accept it with qualified majority as the views of the legal services of EU institutions are not binding. Hence the ball would be in the court of the member states.

On 21 April 2010, the Cypriot Foreign Minister Markos KYPRIANU declared that that *"We will use all the institutional and political procedures we have at our disposal, and even if the regulation is promoted in the end, we will appeal to the Court of the European Communities."*⁶

Despite this statement, what is hoped for and expected from Member States is to grasp the fact that under the existing conditions "Direct Trade Regulation" seems to be the only point of exit from the current complicated impasse.

The head of the Socialists group in the European Parliament, Martin SCHULZ, has said that the implementation of the regulation will increase the competitiveness of the North Cyprus economy, narrow the prosperity gap between the two communities in Cyprus and *"make the solution of the Cyprus problem easier"* by integrating the North Cyprus economy into the EU.⁷ The adoption of the Regulation would also enable Turkey to open its ports and airports to Cyprus as has been declared several times by Turkish officials. This would not only put Turkey's accession negotiations back on track to a great extent, but also facilitate the mutual trade and hence the establishment of an environment of mutual trust for all the parties involved. This would also remove the great disillusionment of Turkish Cypriots vis-a-vis the EU.

The regional disparity in the island is generally accepted to be the major impediment against a lasting settlement on the island⁸. Developments have proven that a far-off second-best solution like the Greenline Regulation or any other transitory measures are not adequate to solve such disparities. On the contrary, the current Greenline Regulation with substantial labour mobility but limited capital and goods mobility, has increased the disparity on the island rather than to reduce it.

⁵ Hugh POPE and Didem AKYEL, *"The Lisbon Treaty Shines a Ray of Hope on Cyprus"* 15 April 2010

⁶ Joanna SOPINSKA, "Nicosia ready to challenge TRNC direct trade regulation", 22 April 2010

⁷ SOPINSKA, 22 April 2010

⁸ There is a substantial discourse arguing that the government of the Republic of Cyprus did not positively contribute to the settlement efforts due to the fact that economic dependency of Northern Cyprus to the Republic and the regional disparity between the parts will gradually end up in "osmosis".

Any interim solution that is implemented without realizing the due importance of existing political constraints is destined to disrupt the bi-communal / bi-zonal structure on the island. Therefore, the most likely panacea for the regional disparity between North and South to diminish, and for the North to achieve a more sustainable economy can only be realized through full integration of the North with the world and EU economy.

Hence, it seems that the EU is on the brink of a very critical decision that has the potential to bring an end to the stalemate observed both in the “Cyprus Problem” and Turkish-EU relations. If the EU member states who want a just, sustainable and comprehensive solution in the island, as well as a fair accession negotiation process for Turkey, would adopt the regulation by “taking into consideration all relevant factors”, then they would prevent yet another “strategic mistake”⁹ and would not cast a shadow to the “peace project nature” of the Union.

For those who think that the expected developments are not realistic Tony BARBER has an answer : *“Does all this sound too good to be true ? Perhaps. But that’s what they used to say about the fall of Berlin Wall”*¹⁰.

Furthermore, for those who question whether it is reasonable to expect so much from only a “direct trade regulation”, the appropriate answer would be “then why the founding fathers of the EU initiated the ‘the ever closer union’ from integration of markets ?

⁹ In private talks, quite a number of EU and member state officials argue that enabling the accession of Cyprus to the EU without a solution was a strategic mistake.

¹⁰ Tony BARBER, “EU should seize chance for a breakthrough in Cyprus dispute”, Financial Times April 21, 2010