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on the Commission proposal for a Council regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control

Committee on International Trade

Rapporteur: Niccolò Rinaldi

1. Background

The island of Cyprus is *de facto* divided between the Northern part which is largely composed of Turkish Cypriots and the Southern part which is largely composed of Greek Cypriots. On 24 April 2004, under the aegis of the United Nations, separate referendums were held in both the North and the South of the island on a plan establishing a federal government for all of Cyprus. Following the result of the referendums the plan could not be implemented.

Two days after the referendums, the European Council nonetheless expressed its desire to encourage "the economic development of the Turkish Cypriot Community". Just before the official accession of the Republic of Cyprus to the EU, on April 29 2004, the Council adopted the Green Line Regulation, which aimed to facilitate the movement of persons, goods and services from the North to the South of the Island.

On 1 May 2004, the Republic of Cyprus joined the European Union. Although the entire island acceded to the Union, under Article 3 of Protocol 10 to the 2003 Accession Treaty:

"The application of the acquis shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control."

This means that the *acquis communautaire* does not apply to the Northern part of the Island.

On 7 July 2004 in order to give concrete expression to the European Council conclusions and complement the Green Line Regulation the Commission came up with two other instruments to put this pledge in practice: the Financial Aid Regulation and the proposal (COM (2004) 0466) dealing with trade between Northern Cyprus and the EU customs territory, known as the Direct Trade Regulation. The Commission proposal was based on Article 133 of the Treaty (which has now become Article 207) which governs external trade. The Council disputed the legal basis and argued that the correct one should have been Article 1(2) of Protocol 10 of the Act of Accession which states that:

2. The Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the withdrawal of the suspension referred to in paragraph 1.

The Commission reconfirmed having recourse to the trade article arguing that although "Cyprus in its full territory became a Member State on 1 May 2004", nonetheless *"the acquis is suspended in the areas not under effective control of the Government of the Republic of Cyprus ("the Areas") according to Article 1(1) of Protocol 10 of the Act of Accession. This means inter alia that the Community's customs code which defines the EC customs territory is not applicable in the "Areas". Consequently, trade with the Areas follows the rules applicable to third countries."*

Given the irreconcilable positions of both the Commission and the Council, no progress was made on the Direct Trade Regulation. Following the entry into force of the Treaty of Lisbon, the Commission chose to resubmit the Direct Trade Regulation as part of an Omnibus alignment Communication (COM (2009) 0665) to be dealt with under Article 207 and the ordinary legislative procedure. Under Article 207, the European Parliament and the Council would be co-legislators and the file would be subject to qualified majority voting in the Council. Under Article 1(2) of the Accession Protocol, there would be no role for the European Parliament and the file would be subject to unanimity in the Council.

On 1 March 2010, the Parliament received the official saisine for the proposal and it was referred to the International Trade Committee (the INTA Committee) as the responsible committee. I was appointed the rapporteur within INTA for this file. Given the sensitivity surrounding the file, INTA Coordinators decided to request that the Conference of Presidents consider the political implications of the file. The latter requested a legal opinion on the appropriate legal basis from the Parliament's legal service. The EP legal service took the view that Article 1(2) of Protocol No 10 on Cyprus to the Treaty on Accession of April 2003 was the appropriate legal basis. On 18 October 2010 the Legal Affairs Committee of the European Parliament, which had decided on its own initiative to analyse the legal basis, agreed with the reasoning and conclusion of the EP legal service opinion.

The stalemate between the institutions as to how to treat this file therefore continues. The proposal itself grants a preferential regime to certain agricultural products entering the Customs Territory of the European Union by means of annual tariff quotas. In order to administer such a regime, a system of authorisation would need to be established whereby an authorised body, which could be the Turkish Cypriot Chamber of Commerce or another body duly authorised, would need to carry out a number of tasks such as undertaking controls, issuing the necessary documentation and certificates, including rules of origin, and liaising with the Commission and the Member States' competent authorities.

For its part, the Government of Cyprus is opposed to the Commission proposal on the grounds that it would be tantamount to recognition of the Northern part of Cyprus. The Commission disputes this arguing that the EU trades with other territories which are part of the EU but not within the customs union such as Gibraltar and Ceuta and Melilla.

2. Recent developments

Politically, negotiations for a solution to the Cyprus problem have been underway for too long a time. Renewed hope for a solution emerged following a meeting on 11 February 2014 between Mr Nicos Anastasiades, the leader of the Greek Cypriot community and Mr Derviş Eroğlu, the leader of the Turkish Cypriot community where they agreed to resume negotiations¹. They issued a joint statement in which they declared that:

"The status quo is unacceptable and its prolongation will have negative consequences for the Greek Cypriots and Turkish Cypriots. The leaders affirmed that a settlement would have a positive impact on the entire region, while first and foremost benefiting Turkish Cypriots and Greek Cypriots, respecting democratic principles, human rights and fundamental freedoms, as well as each other's distinct identity and integrity and ensuring their common future in a united Cyprus within the European Union."

Moreover, President Samaras of Greece, which holds the Presidency of the EU until 30 June 2014 stated that the "Cyprus issue is the top national issue of Greece's foreign policy and the constant deliberation with the Republic of Cyprus is its cornerstone".² There is therefore cautious optimism that given the renewed willingness on both sides to find a settlement that progress can be made on the issue. Turkey, whose accession bid to join the European Union is dependent on a satisfactory solution to the problem, also welcomed the resumption of the talks.

¹ <http://cyprus-mail.com/2014/02/11/joint-declaration-final-version-as-agreed-between-the-two-leaders/>

² http://www.greece.com/news/1547/PM_Samaras_Meets_with_Cyprus_President.html

Economically, the Northern part of Cyprus is in a much worse situation than the South due to its inability to trade effectively with the rest of the European Union. According to certain estimates Turkish Cypriots earn half the per capita GDP of Greek Cypriots and their economy is only one tenth the size of the Greek Cypriot economy. The Direct Trade Regulation would therefore offer significant economic advantages to the Northern part of the island and make it more competitive and less dependent on overseas aid (see point D below for statistics on this).

3. Political sensitivities

The Rapporteur is fully aware of the political sensitivities which surround this file which has led to it being blocked for 10 years. Whilst being aware of the history and the past, we also need to be pragmatic and try to move forward on this issue. In concrete terms, the Rapporteur would like to make it clear from the outset that the only legitimate representative body of the Republic of Cyprus is the government of the Republic of Cyprus. Furthermore, the Regulation should in no way undermine the authority of the Cypriot government as regards the reunification of the whole island. On the other hand, the Rapporteur shares the view of the citizens of Northern Cyprus, who are still deprived of an effective instrument to trade with the outside world; they are EU citizens and voters and should therefore be entitled to have their say on EU matters, including on international trade.

4. On the Regulation as such

The Rapporteur welcomes the Commission proposal (COM(2004) 0466 final) as a step in the right direction. However in order for it to be workable in practice, given the very specific political context, it should be adjusted in a number of respects. With that in mind the Rapporteur proposes a number of structural changes to the Regulation, namely:

A. To change the title of the Regulation: it should not be named "Direct Trade Regulation": the title is misleading and creates controversy by giving the impression that the Regulation aims to give power to different authorities which is not the case. A more appropriate title would be: Temporary/ transitional provisions in order to facilitate trade for the Northern part of the Republic of Cyprus as part of the Republic of Cyprus. The specific and non-permanent but temporary/transitional nature of the instrument needs to be underlined.

B. Creation of a supervisory body in charge of dealing with trade with the Northern part of Cyprus and of the implementation of this Regulation,

This supervisory body should be jointly composed of EU representatives and Northern Cypriot Community representatives - not their "government" but rather the Chamber of Commerce. In the Commission proposal, Articles 2 and 5 of the Regulation already allow for the possibility that the Turkish Cypriot Chamber of Commerce or another body duly authorised by the Commission can grant authorisations.

The Rapporteur's idea is to give power to the specific body, jointly composed of EU representatives and the Northern Cypriot Chamber of Commerce.

C. A Sunset Clause

Five years after the entry into force of the Regulation the Commission should come up with an ex post impact assessment on how it is working and a new ordinary legislative procedure would be necessary in order to renew the Regulation. The idea behind this is clear: let's try

and if it does not work it will expire in five years.

D. The objective of the Regulation shall be also to increase trade between Northern and Southern part of Cyprus

The economic impact of the Green Line Regulation remains weak. In 2012, the value of trade across the Line was three times lower than in 2011. This sharp decrease is due to the fact that the sale of electricity from the northern part of Cyprus to the government controlled areas, which was agreed in July 2011, stopped in March 2012. Without taking into account the sale of electricity, the regular Green Line trade decreased significantly and for the fourth time in a row since the coming into force of the Green Line Regulation in 2004 (by 17% down from €4,827,454 in 2011 to €4,040,018 in 2012) due partly to the economic and financial crisis. The most traded products, apart from electricity, were plastic products, building materials and stone articles and fresh fish. The overall scale of trade still remains limited, in part due to the restricted scope of the Regulation itself¹.

While Turkish Cypriot trade with the countries of the EU represented 77,5% of total exports in 1980, in 2006 it was only 14,8%, despite the Green Line Regulation and the substantial enlargement of the EU. At the end of 2008, the Green line still represented only 12% of overall international trade.

5. General Remarks:

It is clear that both communities have lost out on account of the continued uncertainty, which has been further exacerbated by the economic and financial crisis. Neither Greek nor Turkish Cypriots can fulfil their economic potential in a divided, economically curtailed and militarised island with an uncertain future. More than 200,000 Cypriots are still internally displaced.

The continuing conflict in Cyprus, the last remaining wall in the EU, does great damage to the stability of the whole region. The fact that the benefits of EU membership, including trade, do not yet apply to the citizens of the North of Cyprus amounts to a badly kept EU promise. The EU has allocated some €20 million to the Turkish Cypriot community in order to *"adapt to EU legislation over time, and to trade more easily with the rest of the EU."*²

Whilst the rapporteur appreciates the legal and political sensitivities surrounding this file, the Commission has neither pushed for progress on this dossier nor withdrawn it during the various legislative cleaning exercises undertaken in the last few years, thus leaving the proposal in a state of limbo. This year marks the 50th anniversary of the Cyprus question being on the UN agenda. The rapporteur is cautiously positive as a result of the recent discussions between the two communities which led to the joint declaration of 11 February 2014. Should these recent events lead to a settlement, the Commission would need to be able

¹ Ninth report on the implementation of Council Regulation (EC) 866/2004 of 29 April 2004 and the situation resulting from its application covering the period 1 January until 31 December 2012:

http://ec.europa.eu/enlargement/pdf/turkish_cypriot_community/20130524_green_line_report_en.pdf

² http://ec.europa.eu/cyprus/documents/2012/eu_assistance_to_tcc_brochure.pdf

to react swiftly in order to ensure that direct trade can be implemented in the North of Cyprus including in the following respects: consider how best the provisions of EU free trade agreements could be applied there; what sort of technical and financial assistance would be needed in order for the North of Cyprus to be able to take on the trade part of *the acquis communautaire*; and how to involve the Turkish Cypriots in the ongoing trade negotiations. Nonetheless, we cannot prejudge the outcome of the ongoing discussions and work must continue in the meantime. The rapporteur believes that it would be premature of the Commission to withdraw the proposal at this stage and that efforts should focus instead on breaking the deadlock given the very concrete and immediate advantages that direct trade would bring.

The rapporteur is willing to work constructively to further the debate on this issue with a view to ensuring that the benefits of the EU's trade regime can accrue to the Turkish Cypriot community in the same way that the Greek Cypriot community has been able to benefit from them.