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INFORMATION NOTE

From: General Secretariat of the Council
To: Council
Subject: The adverse effects of Turkish restrictive measures on Cyprus, EU maritime transport and free trade
- *Briefing by the Cypriot delegation*

Delegations will find annexed an information note by the Cypriot delegation on the above-mentioned subject, which will be dealt with under "Any Other Business" at the meeting of the Council (Transport, Telecommunications and Energy) on 2 December 2010.

**Briefing by the Cypriot delegation on the Turkish restrictive measures on Cyprus and EU
maritime transport and the free trade**

I. Background information

1. The Turkish restrictive measures were originally introduced in April 1987 and concerned exclusively the prohibition of Cyprus flagged vessels to call at Turkish ports. In May 1997 Turkey issued new instructions to its ports and harbours to clarify uncertainties arising from the imposition of the restrictions, thus extending them against vessels under a foreign flag (of any nationality) sailing to Turkish ports directly from any Cypriot port under the effective control of the Republic of Cyprus (Limassol, Larnaca), or against vessels of any nationality related to the Republic of Cyprus in terms of ownership or ship management. The immediate effect of the May 1997 instructions was to restrict the use of Cypriot ports for transshipment operations of shipping lines in the Mediterranean.
2. It goes without saying that the Republic of Cyprus fully complies with its international and Community obligations vis-à-vis Turkish flagged vessels, as these vessels can freely call at any port under the effective control of the Government of the Republic of Cyprus. It is noted in this respect that, the calls of Turkish flagged vessels at such ports have increased considerably during 2009, compared to the yearly records kept since 2000.

II. The EU dimension of the Turkish Embargo on Cyprus shipping

1. Since Cyprus's accession to the EU, the issue has gained a new dimension, as the Turkish measures also affect the interests of the enlarged Union. The measures imposed by a country which is linked to the EU by an Association Agreement and a Customs Union and which seeks membership to the EU, seriously hinder private and public interests of the European Union, notably those of the EU ship owners and ship managers.

2. The legal acts governing the EC-Turkey Association and Customs Union (*1963 Ankara Agreement, its 1970 Additional Protocol and Decision No 1/95 of the EC-Turkey Association Council implementing the final phase of the Customs Union*) contain substantial provisions which impose on Turkey the legal obligation to lift its embargo against Cyprus shipping, such as:

- *Article 5 of Decision No 1/95*: Quantitative restrictions and measures having equivalent effect are prohibited. According to the case-law of the European Court of Justice, measures placing restrictions on means of transport constitute measures of equivalent effect to quantitative restrictions on imports.¹
- *Article 58 of the 1970 Additional Protocol*: The arrangements applied by Turkey in respect of the Community in the fields covered by the Protocol (freedom to provide services and transport are covered, respectively, by Articles 41 and 42 of the Protocol), shall not give rise to any discrimination between Member States, their nationals and their companies or firms.
- *Article 7 of the 1963 Ankara Agreement*: Contracting Parties must take all appropriate measures to ensure the fulfillment of the obligations arising from the Agreement and must refrain from any measures liable to jeopardize the attainment of the objectives of the Agreement.
- *Article 9 of the 1963 Ankara Agreement*: prohibits any discrimination on grounds of nationality.
- *Article 41 of the 1970 Additional Protocol*: the Contracting Parties must refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.

¹ ECJ, Case C-265/95 *Commission v. France* [1997] I-6959, para. 38; C-112/00 *Schmidberger* [2003] I-5659, para. 64.

3. Furthermore, the Turkish restrictions violate all commercial principles in shipping which are laid down in *Council Regulation EEC No. 4055/86 (Freedom to provide services)*, such as the freedom of navigation, freedom of transit, freedom of access to ports and harbours, as well as equality of treatment. The whole issue relates also to *EEC- Council Regulation (EEC) No. 4058/86 of 22 December 1986 concerning coordinated action to safeguard free access to cargoes in ocean trades*.

Clear references to Turkey's legal obligation to lift its embargo against Cyprus and Community shipping are included in the:

a) *Declaration by the European Community and its Member States adopted on 21 September 2005 ,following the declaration made by Turkey upon signature, on 29 July 2005, of the Ankara Agreement Protocol*²;

b) *Negotiating Framework for Turkey adopted by the EU on 3 October 2005*³.

c) *The General Affairs and External Relations Council's (GAERC) Conclusions of December 11, 2006 (endorsed in the 14-15 December 2006 Conclusions of the European Council)*.

² Paragraph 3 of the Declaration provides: "The European Community and its Member States expect full, non-discriminatory implementation of the Additional Protocol, and the removal of all obstacles to the free movement of goods, including restrictions on means of transport. Turkey must apply the Protocol fully to all EU Member States. The EU will monitor this closely and evaluate full implementation in 2006. The European Community and its Member States stress that the opening of negotiations on the relevant chapters depends on Turkey's implementation of its contractual obligations to all Member States. Failure to implement its obligation in full will affect the overall progress in the negotiations.....".

³ See paragraphs 6, 10 and 21 of the Negotiating Framework, which implicitly refer to the Declaration by the European Community and its Member States of 21 September 2005.

The Council agreed that the Member States within the Intergovernmental Conference will not decide on opening chapters covering policy areas relevant to Turkey's restrictions as regards the Republic of Cyprus until the Commission verifies that Turkey has fulfilled its commitments related to the Additional Protocol. It also stated that it *“recalls the declaration of the European Community and its Member States of 21 September 2005 and notes that Turkey has not fulfilled its obligation of full non-discriminatory implementation of the Additional Protocol to the Association Agreement”*.

In parallel, the Council agreed that the Member States within the Intergovernmental Conference will not decide on provisionally closing the remaining 26 chapters until the Commission verifies the Turkey has fulfilled its commitments related to the Additional Protocol.

4. Since Cyprus's accession to the EU, a number of incidents of application of Turkish restrictive measures against Cyprus shipping have been reported to the Authorities of the Republic of Cyprus. As it can be observed in the brief description of some of these incidents appearing in the table of the attached Annex I, Turkey has applied these measures to several non Cypriot flag vessels which have an indirect or even negligible connection with Cyprus. All of the incidents involve EU actors and most of them have strong Community interests (i.e. EU beneficial owners, ship-managers and charterers of the affected vessels).

These incidents have been extensively reported to the EU institutions by the Republic of Cyprus and the whole issue of Turkey's restrictions to Cyprus and consequently to EU shipping appears every year in the European Commission's Report on Turkey's Progress towards accession.

The 2010 Progress Report on Turkey, presented by the European Commission on 9 November 2010, states that *“As long as restrictions remain in place on the free movement of goods carried by vessels registered in Cyprus or where the last port of call was in Cyprus, Turkey will not be in a position to implement fully the Acquis relating to this chapter”* (Chapter 14 on Transport Policy).

III. Negative effects of the Turkish restrictive measures on Cyprus and the EU

1. Following the imposition of the Turkish restrictive measures, the share of the Cyprus merchant fleet in the world merchant fleet shrank, thus weakening the negotiating position of Cyprus and consequently the negotiating position of the European Union in international maritime organisations and other fora.

Furthermore it affects the importance of Cyprus as a transshipment hub. The aim of Cyprus to become one of the most important transshipment hubs in the Eastern Mediterranean, contributing at the same time significantly to the facilitation of trade as well as to the development of the EU objectives through the concepts of the Motorways of the Sea and Short Sea Shipping, is hindered by the Turkish restrictive measures.

2. Cyprus features the largest ship management industry in the world⁴. The total fleet managed from Cyprus represents the 25% of the world third-party ship management market in terms of gross tonnage. The Cyprus ship management sector suffered as well from the imposition of the Turkish ban. Vessels managed by a ship management company located in Cyprus can either be arrested or delayed when calling Turkish ports, resulting in financial losses for the ship managers and/or ship owners.

The Turkish restrictive measures seriously affect private and public interests of the EU. The measures affect EU ship owners and EU ship managers based in the Republic of Cyprus, as well as the sea-trade between the EU and Turkey. The Turkish embargo distorts the application of the principle of fair and free competition in shipping trade with the EU.

⁴ Official Journal of the European Union, Communication from the Commission providing guidance on State aid to ship management companies – (2009/C 132/06), dated 11.6.2009, page 132/7.

3. The Cyprus Registry (the vast majority, i.e. 76,50%, of Cyprus flagged vessels belong to European Union interests and are managed by companies established and operating in EU Member States) represents almost 12% (11.2%) of Europe's fleet, which currently cannot trade in Turkey.
4. EU ship owners are seriously affected by the Turkish restrictive and discriminatory measures. Foreign flag vessels of European interest, which have some association with Cyprus, would either be detained or not allowed to carry out any operations, including crew changes, inspection of vessels, repairs etc. in Turkish ports. Therefore, an EU ship owner may find his interests seriously prejudiced where there is any connection with Cyprus. As a result, the employment opportunities relating to a Cyprus vessel or to a vessel operated from Cyprus are reduced, as the charter party has to include these trading restrictions to Turkey.
5. Clearly, such provisions are an obstacle to the trade between EU Ports and Turkey, affecting the Owner, the Charterer and all the parties involved in the carriage of goods by sea, as well as all operations incidental to the proper operation of the vessel.

The Turkish restrictive measures do not only affect the private interests of the European ship owners and ship managers, but also adversely affect international trade.

6. In 2007 Turkey's total foreign trade volume with the EU countries carried by seaborne transportation amounted to 51,5 million tons, which represents 23,43% of Turkey's total seaborne transportation⁵. The EU ship owners, who are trading with Turkey refrained from using the core of the Cyprus maritime cluster i.e. a fleet of 1400 vessels (Cyprus flag vessels or community vessels managed by companies established and operating in Cyprus).

⁵ Source: Turkish Chamber of Shipping, Maritime Sector Report 2007, Istanbul 2008, Table 33 page 36.

7. Bearing in mind that Cyprus is considered to be one of the most competitive registries in terms of registration fees, annual tonnage tax and favourable tax regimes for ship owners and ship managers, the imposed restriction on the owner not to use Cyprus either as a flag or as a ship management centre may compel them to turn to other competitive registries, which are, with the exemption of Malta, third country open registries.
8. As already pointed out by the EU Commission, *“many third countries have developed significant shipping registers, sometimes supported by an efficient international services infrastructure, attracting ship owners through a fiscal climate which is considerably milder than within Member States. The low-tax environment has resulted in there being an incentive for companies not only to flag out their vessels but also to consider corporate relocation”*⁶.
9. In view of the above it is obvious that the Turkish restrictive measures imposed on Cyprus aggravates the competition problem faced by the European fleet from vessels registered in third countries.
10. The Turkish restrictive measures have affected the Cyprus port industry because the shipping lines (mainly of EU interests) which were using the ports of the Republic of Cyprus as their transshipment hub for the Eastern Mediterranean region, were obliged to abandon Cyprus and use other non-EU neighbouring ports for such operations. Also, certain shipping lines which have been serving the Cyprus trade for many years, were compelled to change their schedules accordingly. In the late 1990s, major lines quit Limassol port in favour of other neighbouring non-EU ports. These changes were, by and large, a direct consequence of the Turkish measures rather than the result of economic considerations.

⁶ Official Journal of the European Union, Commission communication C(2004) 43 – Community guidelines on State aid to maritime transport (2004/C 13/3), dated 17.1.2004, page 13/6.

The transshipment business in Cyprus which flourished for two decades (1976-1996) has been severely damaged since the imposition of the Turkish restrictive measures in 1997. There is a significant gap between the estimated and actual container movement after 1997. In figures the number of containers handled by the Cyprus ports in 1996 was 564.000 TEUs, whereas in 1998 it decreased dramatically to 214.030 TEUs, recording a remarkable 62.1% decrease. By the end of 2008 the number of containers handled by the Cyprus ports was 58.000 TEUs while the estimated number of containers which could have been handled if the Turkish restrictive measures had not been introduced would have been 1.321.000 TEUs.

The competitiveness of Cyprus ports has been considerably influenced over the past few years by the Turkish restrictive measures. The transit trade through Cyprus ports, presents an enormous reduction caused by the Turkish embargo. As a result of this embargo the reduction of transit trade through the Cyprus ports and its consequences to Cyprus economy accounts to an annual loss of earning of around €100 million.

The Government of the Republic of Cyprus is grateful for the solidarity expressed so far by its partners in the European Union. Yet, more concerted actions need to be taken in order to remove the arbitrary and discriminatory restrictions against Cyprus-related shipping and free trade, which adversely affect EU interests and hinder the Union from expanding its leading role in the world fleet and the international maritime sector.

Annex I :**Indicative list of incidents of restrictive measures since Cyprus' accession to the European Union**

Vessel	Flag	Owners – Managers – Charterers- Cargo Information	Date and Port of Incident
CAPE BIRD	Marshall Islands	<u>Owners:</u> Marshall Islands company (of German interests). <u>Managers:</u> Cyprus company (of German interests). <u>Charterers:</u> Spanish company . <u>Cargo:</u> Unleaded gasoline (30.000MT).	12 July 2004 Mersin Embargo applied due to the <u>management</u> of the vessel by a Cyprus based company.
HAPPY BRIDE	Isle of Man (on the basis of a Bareboat charter registration)	<u>Owners:</u> Panamanian company. – <u>Bareboat Charterers :</u> Isle of Man company . <u>Managers:</u> Cyprus company. <u>Charterers:</u> Dutch company . <u>Cargo:</u> Vinyl Chloride Monomer (4,008.974 tons).	27 August 2004 Aliaga Embargo applied due to the <u>management</u> of the vessel by a Cyprus based company.
ATLANTIC CLIPPER	Antigua & Barbuda	<u>Owners & Managers:</u> German company . <u>Cargo:</u> Containers.	01 September 2004 Istanbul Embargo applied due to the fact that the <u>vessel was previously flying the flag of the Republic of Cyprus</u> (sold to foreign buyers and deleted from the Cyprus Register of Ships on 25 August 2004).
SEYCHELLES PRIDE	Seychelles	<u>Owners:</u> Seychelles company (of German interests). <u>Managers:</u> Cyprus company (of German interests). <u>Charterers:</u> Cyprus company. <u>Cargo:</u> Aviation fuel (5633 mt JET A1) for the account of a multinational oil company.	18 September 2004 Ceyhan Embargo applied due to the <u>management</u> of the vessel by a Cyprus based company.

Vessel	Flag	Owners –Managers – Charterers- Cargo Information	Date and Port of Incident
TRINITY SIERRA	Cyprus	<u>Owners:</u> Greek company of Piraeus. <u>Cargo:</u> Carrying 26 000 tons of wheat from the port of Kerch, Ukraine to Barcelona, Spain.	29 September 2004 Bosporus Straits - Istanbul
HANS SCHOLL	Liberia	<u>Owners:</u> Liberian company (of German interests). <u>Managers:</u> Cyprus company (of German interests). <u>Charterers:</u> Danish company - and Sub charterers: multinational oil company. <u>Cargo:</u> 27.000 metric tons of unleaded gasoline.	08 August 2005 Dortyol Embargo applied due to the <u>management</u> of the vessel by a Cyprus based company.
ABLE F	Cyprus	Vessel loaded at Gioia Tauro, Italy carrying cargo for Mersin, Turkey.	22 February 2006 Mersin
PONTOPOROS	Greek	Carrying iron from the port of Liverpool, UK to the port of Karabiga, Turkey.	03 March 2006 Karabiga <u>Denied access to the port due to the fact that the vessel was previously flying the flag of the Republic of Cyprus.</u>
GANYMEDE (small Sailing Yacht)	Cyprus	<u>Owners:</u> Cyprus company (Shareholders two British nationals).	29 June 2006 Gocek & Marmaris