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EU-Turkey Negotiations

Still in the “Cyprus Impasse”

Heinz Kramer

At a meeting held in Brussels on 14–15 December 2006, the European Council confirmed the decision reached by the General Affairs Council (i.e. EU foreign ministers) on 11 December to provisionally suspend eight chapters from the accession negotiations with Turkey. That decision was prompted by Turkey’s continuing refusal to also apply to Cyprus the additional protocol to the agreement on the EU-Turkey Customs Union, which was adopted in summer 2005 and intended to expand the agreement to cover all the new Member States that acceded to the Union on 1 May 2004. In practice, the issue concerns opening up Turkish ports and airports to ships and aircraft of the Republic of Cyprus. However, Turkey’s government, led by Prime Minister Recep Tayyip Erdoğan, is only prepared to do this if direct trade between the EU and the breakaway ‘Turkish Republic of Northern Cyprus’ is also enabled, as promised by the EU back in April 2004. However, such a step is being blocked within the Union by the new EU Member State Cyprus. The decision reached by the Council in December was unable to resolve this conflict.

The conduct of both sides, i.e. the governments in Ankara and Nicosia, is shaped by their fundamentally different outlooks regarding various status-related issues affecting the political system in Cyprus. Their respective positions hardened decades ago, leaving Turkey—unlike the EU—refusing to recognise the pretension of the Greek-Cypriot government in Nicosia to represent the entire island.

The issue of political status

According to Ankara, the Nicosia government can only represent the Greek part of

the island, not the northern part, which Turkish troops occupied in 1974, a decade after the outbreak of the acute Cyprus conflict in 1963. Ever since, the Turkish part of the Cypriot population lived in their own political entity, though the aforementioned ‘Turkish Republic of Northern Cyprus’ (TRNC), proclaimed in 1983, has not been recognised by any member of the international community except Turkey.

Ankara is only willing to comply with the EU’s demand if Brussels takes steps to end the international isolation of the northern part of the island. Turkey sees this request as fully justified, not the least

because the EU Member States officially declared their intention in April 2004 to enable direct trade with the Turkish part of Cyprus. Furthermore, the northern part of the island was supposed to receive financial aid to underpin its economic development.

The EU's offers were made in response to the situation that had arisen after the failure of the UN-sponsored attempt to unify both parts of the island (the Annan Plan). A clear majority of Greek Cypriots had rejected the Annan Plan in a referendum, whereas Turkish Cypriots had adopted it by an equally clear margin. However, prior to that, in anticipation of a Greek Cypriot's acceptance of the Annan Plan, the EU Member States had approved the island's accession to the Union, effective from 1 May 2004, whereby the northern part of the island was supposed to remain excluded from EU law until a settlement of the Cyprus problem had been reached. Consequently, after the failed referendum, the fatal impression given was that Greek Cypriots were now also going to be rewarded by the EU for rejecting the island's planned unification. The intention was to counter that impression by implementing specific measures to aid the Turkish Cypriots.

But the opposition put up by the Greek Cypriot government ever since has prevented the Union from fulfilling its promises. The government led by President Tassos Papadopoulos is seeking to prevent any measures that could be regarded either as indirect recognition of the Turkish Cypriot government in Lefkoşa, the northern part of the divided capital Nicosia, or as calling into question the Greek Cypriots' claim that it is the sole international representative of the entire island.

In spite of all this, the EU expected Turkey to ratify the protocol governing the expansion of the customs union to 25 Member States before the end of 2006 and at the same time open up its ports and airports. As the EU sees it, the package put together by Ankara making Turkey's willingness to meet the EU's expectations

contingent on the Union's support of the northern part of the island, links two completely separate aspects that ought to be dealt with separately. Nonetheless, at the same time the EU has reiterated its commitment to the political pledges it made in 2004, saying that it will try to provide financial aid to the northern part of the island and also enable direct trade between it and EU Member States.

The unsettled issue of direct trade with northern Cyprus

Having said that, Brussels is finding it hard to deliver on these promises. For although after protracted internal negotiations the EU finally adopted a regulation establishing financial support totalling €259 million for the economic development of the Turkish Cypriot community in February 2006, the Union is having a tough time implementing that regulation, because the Greek Cypriot government objects to substantial parts of the associated package of measures. In fact, the Greek Cypriots maintain that some of these measures infringe upon the rights of ownership of Greek Cypriots in the northern part of the island, which is inadmissible according to the wording of the regulation. Consequently, the European Commission ended up only being able to release a first instalment of aid totalling €38.1 million in December 2006.

At the same time, Nicosia categorically rejects the scenario of a regulation governing direct trade between the EU and the TRNC. The Papadopoulos government regards such a step as equivalent to de facto recognition that "the occupied territories" (for "TRNC" in Greek Cypriot language) constitute an autonomous political entity. Its stance is that trade between the EU Member State Cyprus and the rest of the EU is possible at any time via the island's "sole legitimate" authority, especially since another EU regulation regulates domestic trade between the Turkish and Greek parts of the island. Thus, the "legitimate" ports and airports of Cyprus are supposedly

already also open to Turkish Cypriot traders. Furthermore, the Greek Cypriot government claims that the Turks' and Turkish Cypriots' complaints about their part of the island's international isolation is groundless, and that the currently prevailing situation is instead an inevitable consequence of the situation arising from Turkey's infringement of international law on the island in 1974.

By contrast, the Turkish viewpoint is that traditionally, as confirmed in 1960 by the founding documents of the Republic of Cyprus, two communities of Cypriot people with equal political rights have lived side by side and any political order on the island or created for Cyprus must reflect this parity. In this way, Turkey dismisses any possibility of the Turkish Cypriot minority being outvoted by the Greek Cypriot majority, as already (Greek Cypriot) President Archbishop Makarios sought to do back in 1963 by proposing amendments to the country's 1960 Constitution—the event that triggered the process which finally led to the Turkish military intervention and subsequent division of the island.

From this point of view, for Turkish Cypriots the scenario of a 'bizonal, bi-communal' political order on the island entails above all recognising two politically largely autonomous, ethnically defined entities co-existing under one roof. This is tantamount to recognising the TRNC's right to exist as an autonomous part of the Cypriot State as a whole, which would have to take the form of a 'partnership State'. It was this understanding of the 'correct' political order on Cyprus that prompted Turkey's call for an end to the 'international isolation' of the northern part of the island, the enablement of direct trade being the decisive breakthrough in this connection.

In essence, then, from the Turkish viewpoint the problem is one of political status. In practice the economic isolation of the TRNC has been circumvented for quite some time by having trade with the EU pass via intermediaries in Turkey. Opening up Ercan Airport in northern Cyprus to inter-

national traffic would be of pretty major practical significance, since it would substantially boost the northern part of the island's tourism industry, which is still underdeveloped, compared to its counterpart in the Republic of Cyprus. Such a boost would in turn help to continue stabilising the TRNC's economy and reduce its dependency on financial aid from Turkey. It would, however, most likely also impact negatively on tourism in the Republic of Cyprus and therefore meets with considerable political and economic opposition there.

Seen from the opposite perspective, the only reason why Nicosia is calling for free access to Turkey for Greek Cypriot ships and aircraft is that it hopes this will at least force Turkey's de facto recognition of the Republic of Cyprus, thereby landing the latter with an important tactical political advantage in the battle for a potential solution to the Cyprus problem. In actual fact, given the political situation described above, it is unlikely that any major trade or tourism between Turkey and the Republic of Cyprus would arise even if the ports and airports were opened up. In fact, the main beneficiaries of such a development would be international companies that would be able to use the large and relatively inexpensive Greek Cypriot merchant fleet for shipments of commercial goods to Turkey.

The failed attempt at mediation by Finland's EU Presidency

Bearing in mind how encrusted the present positions in the battle for political status have become, it was predictable that the Turkish government would not meet its obligation to implement the additional protocol on the expansion of the customs union. And although the Finnish EU Presidency made a serious attempt in autumn 2006 to find a solution that was acceptable to all parties, on 29 November Prime Minister Matti Vanhanen was forced to concede that his country's efforts had turned out to be in vain.

With the Commission's blessing, the EU Presidency had even played along with Turkey's idea of interlinking the issues of the customs union and direct trade. According to reports in the press, the plan was as follows: Turkey should open one or more of its ports to Cypriot vessels for an as yet undetermined limited period (say, two years). At the same time, the northern Cypriot port of Famagusta would be opened under international authority (e.g. the UN or EU) for trade with the EU Member States. During the period in question, a solution to the dispute would finally be engineered.

But that plan failed because *both* Cypriot governments wanted more, the Turkish Cypriots insisting that Ercan Airport in the northern part of the island be included in the deal, and the Greek Cypriots demanding that Varosha, a touristic suburb of Famagusta abandoned in 1974 and currently controlled by the Turkish military, be returned to its original Greek owners.

For the reasons to do with political status outlined above, these additional demands were mutually unacceptable, so Helsinki's attempt to resolve the dispute was doomed to failure. For the Greek Cypriots, opening up Ercan Airport would have sent out a further—and highly spectacular—indication of their *de facto* recognition of the autonomy of the Turkish Republic in the northern part of the island. Meanwhile, Turkey views the return of Varosha as a tactical bargaining chip in eventual negotiations about a final settlement of the Cyprus problem and consequently only envisages such a scenario within the framework of an overall solution which, however, is not very likely to occur in the near future. Moreover, the Turkish military leadership views controlling access to the ruins of Varosha as a symbol of its successful “peace operation” in 1974.

EU sanctions

In view of this situation, the EU had no choice but to impose sanctions on Turkey for failing to meet its contractual obliga-

tions. As early as 29 November 2006, the European Commission tabled a proposal essentially suspending from the accession negotiations those eight chapters directly concerning the customs union and transport sector, i.e. free movements of goods; right of establishment and freedom to provide service; financial services; agriculture and rural development; fisheries; transport policy; customs union; and external relations.

The EU Member States' views on how strongly the Union should react differed very markedly. Those who favour Turkey's accession to the EU in principle, led by the United Kingdom, advocated a more symbolic reaction less robust than the level suggested by the Commission, but their counterparts, who fundamentally oppose Turkey's membership of the EU, like Austria and France and also of course the Republic of Cyprus as the directly affected party, called on the EU to take a tougher stance. For them, that response could have gone as far as suspending the entire negotiations, unless Turkey changed its attitude.

The attempt to find a compromise between these divergent positions was further complicated by press reports of a verbal offer made by the Turkish government in Ankara, of which no further details emerged, to open up a Turkish port temporarily in expectation that the EU would reciprocate by making some concession in connection with the issue of direct trade with the TRNC. Yet all the EU Member States quickly agreed that this Turkish initiative should be viewed more as a disruptive tactical move than an offer of any substance designed to push the negotiations forward. As a result, it failed to elicit any positive response from the EU-25.

Instead, on 11 December 2006 the EU foreign ministers somewhat predictably agreed on the Commission's proposal as a ‘middle way’ between their diverging opinions. Furthermore, they decided not to conclude any chapters of negotiations that may be opened in the future until Turkey had met its obligations regarding the cus-

toms union. The European Commission was invited to report on progress made on this issue in its forthcoming annual reports between 2007 and 2009 “as appropriate” for keeping the Council abreast of the situation and enabling it to monitor and verify the progress made. Other chapters of the accession process, for which the technical preparations have been finished, may now be opened in keeping with the Framework for Negotiation as set by the EU in 2005.

Since the Greek Cypriot government rejects any close connection between Turkey’s accession process and the broader Cyprus problem as a matter of principle, contrary to the plans of the EU Presidency the EU’s foreign ministers were unable to add their vocal support to the attempts made by the UN secretary-general to re-start talks aimed at a comprehensive settlement of the Cyprus problem. The EU Presidency duly issued a separate statement on this.

In addition, the EU foreign ministers agreed to adopt a declaration under the German EU Presidency in January 2007 in which they would call for the immediate resumption of efforts designed to result in the adoption of the EU regulation on direct trade with northern Cyprus. The German EU Presidency, at least, saw this as a concession by the Papadopoulos government not to make its opposition to the regulation’s adoption a matter of principle any longer.

A punitive action or face-saving exercise?

The EU achieved various things by adopting this package of decisions on 11 December 2006. The “train crash” that the commissioner responsible for enlargement, Olli Rehn, had been warning us about since the summer was avoided, and the negotiations with Turkey can continue, albeit at a lesser intensity. But in actual fact perhaps it is more accurate to say that only now can they genuinely get off the ground, for up to now only one chapter, science and

research, was opened in June 2006, then provisionally closed again right away because there is not much to be negotiated in that chapter due to a minimal *acquis communautaire* in that respect. No progress has been made in the negotiations since that date, partly because of a veto against the Finnish EU Presidency’s proposal to open further chapters, imposed by the Greek Cypriot government citing Turkey’s intransigence regarding the customs union. Even the official adoption of various screening reports that the Commission had passed on to the Council was blocked by opposition from Nicosia. Then, in early January 2007, the EU displayed its willingness to open negotiations on the chapter “Enterprises and industrial policy.”

It remains to be seen whether more chapters of the accession negotiations can be opened during the first half of 2007 under the German EU Presidency, enabling substantial progress to be made in the process. Since the decision reached by the EU’s foreign ministers on 11 December 2006, not only has the Papadopoulos government stated on several occasions that Turkey’s uncompromising attitude represents a long-term obstacle to negotiations, it has also repeatedly stressed that the unresolved issues include both the additional protocol on the customs union and Ankara’s official recognition of the Republic of Cyprus. Its argument is that you cannot properly negotiate with a government that does not recognise you, and it also insists that Turkey lift its blockade against the Republic’s participation in various international organisations. We may at least conclude on the basis of these statements that the Papadopoulos government intends to retain its option of using its veto against Turkey in the pursuit of Greek Cypriot interests regarding the Cyprus problem, even if such a tactic has not really delivered any tangible gains so far. At the same time, by adopting such a tack, it is giving other opponents to Turkey’s accession a pretext to delay the

continuation of negotiations by invoking technical or political reservations.

Compared with this, the provisional suspension of the eight chapters of the accession negotiations is pretty insignificant, despite the political signal it sent out. Bearing in mind the EU estimate that the accession negotiations will take at least a decade, rendering Turkey's accession to the Union impossible before 2014 or 2015, the suspension itself does not constitute any significant obstacle to accession, assuming that Turkey sooner or later falls into line re the additional protocol. Moreover, it doesn't prevent Turkey from taking unilateral preliminary steps to adapt to Community *acquis* with regard to those chapters where the screening process has already been concluded, which would simplify and speed up any subsequent negotiations. Official reactions from Turkey have shown that this move by the EU is not properly regarded as seriously punitive. For although the prime minister and foreign minister both duly showed themselves to be highly indignant, accusing the EU of a lack of vision, at the same time they made it clear that Turkey is still committed to a continuation of the negotiations.

Another achievement of the decision reached by the EU's foreign ministers was that it once again papered over the deep rift in the EU between the advocates and opponents of Turkey's accession. But it did nothing to change the Union's fundamentally weak position on the negotiations, for the truth is that the EU simply cannot decide what it wants where Turkey is concerned. A number of EU Member States—like Austria, France, Denmark, Luxembourg and the Netherlands, but also Germany's Christian Democrats—still hope that the process will lead to something other than Turkey's accession. As a result, their commitment to the negotiations is rather tenuous. Perhaps in this respect they feel in tune with the majority of EU citizens, whom surveys suggest are also opposed to Turkey joining the Union. Their efforts are being countered by Member States like the

United Kingdom, Spain, Italy, Sweden and Finland, as well as the Social Democratic partners in the German federal government coalition, for whom Turkey's accession is essential, first and foremost for global strategic reasons.

This EU-internal situation should end up bringing the negotiations to a halt, since they are subject in principle to a unanimous decision of Member States. Nevertheless, since the predominant view amongst even the opponents of Turkey's accession is that Turkey should not be alienated from Europe for reasons primarily to do with security policy, nobody is willing to take the risk of being responsible for Turkey's unforeseeable reaction to the EU's discontinuation of the accession negotiations. For as long as tactical considerations take precedence over fundamental positions (and politically there are numerous arguments in favour of them continuing to do so), the accession negotiations with Turkey could drag on for years unless the present stalemate among Member States is broken.

One thing is certain: over the past two years the EU has reeled from one crisis to the next where the negotiations are concerned as it keeps on sending out highly contradictory signals to Turkey. Together with the development of a clearly more nationalistic atmosphere in the light of what the Turkish public feels to be an extremely unjust U.S. Middle East policy, this has prompted a drastic decline in public support for Turkey's EU accession. The ranks of those believing (on the strength of Turkey's extremely positive economic development over the last few years) that the country is not ultimately reliant on the EU and could successfully master its own destiny are growing. This trend is being matched by a concomitant decline in Turkey's willingness to comply with demands made by Brussels or other EU capitals. Particularly problematic in the eyes of European proponents of Turkish EU membership are mounting doubts re the sincerity of the EU's accession policy among

pro-Western circles of the urban population and Turkish businesses, whereas in the past these groups counted as real shapers of Turkish domestic opinion on the EU.

The changing political climate within Turkey is also influencing the government's behaviour, especially since in early May 2007 parliament is due to elect a new Turkish president and just a few months later, at the beginning of November, the country's voters will be called to the ballot box for a general election. In both instances the governing Justice and Development Party (AKP) is intent on holding on as the leading political group, against bitter opposition from secular Kemalist and nationalist forces. For this reason it cannot afford to ignore the rise of ethno-nationalistic and/or religious sentiment among the population, since it has no effective alternative concept to offer. Upshots of this are its stronger emphasis of Turkey's 'national interests', especially with an eye to the neighbouring Middle East, and also the declining importance of Turkey's external relations with the EU and the USA, which hitherto constituted a priority. Both of these developments are creating the impression, at least in Washington, but also increasingly in the EU, that Turkey is drifting away from the West, albeit without providing any clear indication regarding the new direction in which the country is headed in the long term.

But another factor also enters into the reckoning where EU accession is concerned: both the AKP's leadership and government circles are coming to realise that in its domestic political struggle to promote a more liberal interpretation of the Turkish understanding of laicism, the AKP cannot bank on receiving support from the EU above and beyond the demand for genuine religious freedom for non-Muslim communities. Clear evidence for this is provided by the general debate about the political role of Islam and the basic attitude towards the headscarf problem taken in various EU Member States, and also the recognition of Turkey's ban on headscarves at higher

education institutions or the upholding of the ban on the Islamic Welfare Party (RP)—a forerunner of the AKP—by the European Court of Human Rights. These European positions mean that in the EU-induced process of democratic reforms an important element with high priority on the party's own political agenda continues to remain out of reach. And that, in turn, is affecting the attractiveness to AKP politicians of the carrot of EU membership.

Cyprus remains a 'blind alley'

This makes the fact that the decision taken on 11 December 2006 did nothing to change the Cyprus issue's fundamental role in blocking the accession negotiations an even bigger stumbling block in the negotiations. The circumstances that prompted the exclusion of the statement on Cyprus from the decision adopted by the Council of Ministers and also the uncertainty still hanging over any attempts to adopt the regulation on direct trade are ruling out any possibility of fresh momentum being gained in attempts to resolve the Cyprus problem.

Indeed, such a scenario is all the more unlikely in that at the moment none of the actors involved seems to be really interested in such efforts. For the Turkish Cypriots' and Ankara's prime concern is still to exploit the positive effect of the vote on the Annan Plan to boost the international standing of the TRNC. Meanwhile, the Greek Cypriot government has not noticeably shifted from its strategy of using the leverage of its EU membership to 'Europeanise' the Cyprus issue. In so doing Nicosia is pursuing the goal of using the broadest possible implementation of the four basic freedoms of the EU on the whole island to create a situation that guarantees the dominance of the Greek majority in the event that an overall solution is found, notwithstanding Cyprus's eventual formal status as a bi-zonal, bi-communal federation.

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The EU can do little to change this because since Cyprus's accession and the associated recognition of the Republic of Cyprus's sole right to represent the entire island, the Union has abandoned the role of a neutral "third power" and become a party in the quarrel over Cyprus. For this reason, the problem has to be resolved under the aegis of the UN, since the adversaries in Cyprus cannot be expected to come up with a solution by themselves. Yet even within the framework of a UN-based settlement backed by the EU, for domestic policy reasons Turkey would tend to link any such settlement as closely as possible to its own EU accession. This is because even though every rational political actor in Ankara knows full well that Turkey will never gain EU membership unless it recognises the existing EU Member State Cyprus, on the other hand no Turkish government can afford to 'sacrifice' Cyprus without securing Turkey's accession in return.

Consequently, whilst the issue of Turkey's EU membership remains as hotly disputed among the EU Member States as it does today, it would be illusory to expect Ankara to adopt a more flexible stance on the Cyprus issue. Likewise the Greek Cypriot government could hardly be expected to desist from constantly using the accession negotiations as leverage for exacting concessions from Turkey regarding the Cyprus issue. So the likelihood is that the negotiations with Turkey will sooner or later find themselves up a blind alley. It remains to be seen when one or other of the parties (if not both of them) finally reach the same conclusion, prompting them to suspend the negotiations until the Cyprus problem has been settled.

In the absence of such an arrangement, the accession process would be constantly dogged by crises triggered by the situation on Cyprus, in which case no fundamental improvement could be expected in the overall political climate between Turkey and the EU. This, in turn, would merely exacerbate what constitutes the biggest obstacle to Turkey's accession, and one that

has to be overcome independently of the Cyprus issue, namely the marked disinclination on the part of most EU citizens and large groups of the political elites, to accept Turkey as a European nation and thus eligible for EU membership in principle. Were such reservations against Turkey's accession to remain in the long run, ultimately it would raise massive doubts about the likelihood of a successful conclusion of the negotiations.

Such a drastic move in accession negotiations that is made with clear reference to the "Cyprus impasse" could generate the urgently needed political momentum towards a final settlement of the Cyprus problem. Turkey and Turkish Cypriots would then be faced with the choice of either seriously considering which changes to the arrangements in the failed Annan Plan they were ready to accept and offering to launch negotiations with the Greek Cypriots on that basis, or deciding whether they want to leave things as they are and start a process that most likely will end up dealing a death blow to Turkey's accession negotiations. At the same time, the Greek Cypriots would have to decide whether they are ready to accept a lasting division of the island after suspension of the accession negotiations or present their detailed ideas for a new round of bilateral negotiations under UN auspices with a view to finding a lasting settlement of the Cyprus problem. If both sides opt for the status quo, EU Member States should no longer feel hindered to place the issue of the recognition of the Turkish Cypriot's northern part of the island on their foreign policy agenda.