INFORMATION NOTE

From: CY Delegation
To: Council
Subject: The Turkish authorities' illegal ban on Cypriot airlines using Ankara and Istanbul Flight Information Regions (FIR)
   – Briefing by the Cypriot delegation

Delegations will find annexed a note from CY 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 15 October 2010.
The Turkish authorities' illegal ban on Cypriot airlines using Ankara and Istanbul Flight Information Regions (FIR)

Briefing by the Cypriot Delegation

The recent industrial action by the Greek air traffic controllers, last July, has brought to the surface yet another problem in the European Airspace, that is causing a serious disruption in the efforts of the Republic of Cyprus in fostering and developing an efficient Civil Aviation System. In addition to the numerous problems encountered by the European airlines relating to the cancellation of flights and long delays, the Cyprus-registered airlines had to face the problem of over fly denial by the Turkish authorities.

During the period of the strike, all European airlines with the exception of the Cypriot ones, could readjust their flight routes to avoid the affected airspace. Cyprus was the only Member State whose airlines were unable to act in the most efficient and practical way and fly via an alternative airspace, as a result of the over fly ban that Turkey has imposed on Cypriot airlines, since Turkey’s invasion of the northern part of Cyprus in 1974. Flight Plans to fly over Turkish Airspace, which were submitted by both Cyprus registered air carriers, Cyprus Airways and Eurocypria, to EUROCONTROL and to the Turkish Authorities on 26 and 27 July 2010, were flatly and rapidly rejected by the Turkish Authorities.

The Republic of Cyprus shares the EU’s vision for safe, secure and sustainable development of Civil Aviation in the context of the “Single European Sky”. Cyprus abides by and actively supports efforts to promote cooperation with other states within the European legal framework.
Via the European Functional Airspace Block (FAB) initiative and the efforts of the European Commission to optimize the European Aviation System, the Republic of Cyprus, through the BlueMed FAB project, is developing its Air Traffic Management system to achieve interoperability and seamlessness with all its neighbouring countries for all users during all phases of flight. Additionally, the Republic of Cyprus entered into a regional cooperation with other neighbouring member states for conveying the requirements of the SES regulations, with the purpose of bridging the gap between the EU and non EU states.

The Parties to the International Air Services Transit Agreement of 1944, which include both Turkey and Cyprus,\(^1\) have exchanged the so–called First Freedom right that allows carriers designated by one country to fly over the airspace of the other country.

Article I, Section 1 of the International Air Services Transit Agreement provides that, each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

1. The privilege to fly across its territory without landing;
2. The privilege to land for non-traffic purposes (flight safety/emergency).

The above privileges are mandatory and universally applicable for all Parties to the said Agreement. Only two limitations to these privileges are envisaged by the Agreement:

- These privileges are not applicable with respect to airports used solely for military purposes;
- In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges is subject to the approval of the competent military authorities.

\(^1\) Turkey acceded to the International Air Services Transit Agreement on 6\(^{th}\) of June, 1945 and Cyprus on the 12\(^{th}\) of October, 1961.
Quite obviously, neither of these limitations applies, or is invoked, in the case of the ban imposed by Turkey on Cyprus-registered aircraft. Clearly, the territory of the Republic of Turkey is neither an area of active hostilities nor an area under military occupation.

Furthermore, Article I, Section 2 of the same Agreement, provides that the exercise of the foregoing privileges shall be in accordance with the provisions of the Convention on International Civil Aviation, signed in Chicago on the 7th of December 1944. Article 5 of the said Convention, to which Cyprus and Turkey are also parties, provides for the right of aircraft of any contracting State to carry out non-scheduled flights by flying into or in transit non-stop across the territory of another contracting State.

Consequently, the denial by Turkey to allow Cyprus aircraft from entering Turkish airspace even for purposes of over flying Turkey, is in direct violation of the provisions of both the Convention on International Civil Aviation and the International Air Services Transit Agreement.

Furthermore, the Turkish ban on Cypriot aircraft is in direct conflict with some of the European Union’s main objectives in the field of Air Transport such as,

- Level playing field, for competition purposes, for the Cypriot and other European Air Carriers without discrimination;
- Use of shortest route for safety, security, economic and environmental concerns;
- Provision of quality service to European citizens.

By preventing Cypriot aircraft from landing in Turkish airports and from taking the shortest route to airports of the European Union, Turkey is also in breach of the provisions of Decision 1/95 of the EC-Turkey Association Council, which establishes a customs union between the Community and Turkey. Indeed, these restrictive measures constitute obstacles to the free movement of goods within the customs union.
Beyond these serious legal issues, consisting in violations of both international and EU law, Cyprus wishes to stress the very substantive operational problems that threaten the viability of its airlines. The Cypriot airlines are faced with additional longer flight hours to destinations in, *inter alia*, the Russian Federation, Poland, Bulgaria, Romania and the Nordic countries. A typical flight from Larnaca Int’l Airport to Moscow lasts for 3 hours, whereas in the case of Cyprus Airways and Eurocypria, this translates to an extra flight hour, a significant amount of time for the economic viability of small air carriers. Similarly, for a flight from Larnaca Int’l Airport to Helsinki 35 additional minutes flight time is required when travelling with Cypriot airlines, in comparison with non-Cypriot airlines.

The Cypriot airlines are not allowed to use the Turkish FIR for the avoidance and rerouting of the Greek airspace in the case of any unforeseen event, either for a strike or for the congested Nicosia and Athens Air Traffic Control sectors or even for adverse weather avoidance, the latter causing additional safety concerns.

Longer flight times, required to bypass Turkey, mean that the Cypriot airlines suffer a competitive disadvantage against other European and non-European airlines. The offered product is less attractive to passengers, due to the longer flight time and the discomfort associated with it. The playing field in this respect is not level. The effect is more noticeable on small air carriers such as Cyprus Airways and Eurocypria, whose operating expenses are increased by the order of over 5 million Euros per year, just because of the rerouting of the Turkish airspace - an expense which is again of vital importance for the small size of the Cypriot Air Carriers. It should also be noted that the real financial cost is much higher due to lost revenue from business opportunities which are not taken up for the stated reasons. The latter is a very serious competition issue because the Cypriot airlines cannot explore new business opportunities within some Eastern European countries, such as Ukraine and Georgia, because of the financial burden caused by the non-optimal flights to avoid Turkey.
With regards to the environmental aspect, the burden is also significant. It is worth noting that for an Airbus A320 on a route from Larnaca to Moscow this extra flying hour translates into more than 9 tons of CO$_2$. Similarly, for a Boeing 737 on a route from Larnaca to Helsinki the additional 35 minutes flight time translates into around 5 tons of CO$_2$. And this happens at the same time that within the FAB initiatives the Air Navigation service providers are struggling to optimize their routes to minimize the effects of emissions on the environment.

Rail and sea transport, which are widely available in the rest of the EU member states, is also not an option, as Cyprus is an island member state situated on the periphery of EU. This creates additional difficulties for transportation purposes, due to the fact that travel by air is the only available option for Cyprus. The application of Directive 101/2008 by which aviation activities are included in the European Emission Trading Scheme, will result in distortion of competition because of the unilateral and illegal practice of the Republic of Turkey. Cypriot Air Carriers will face increased costs, due to the extra fuel burnt which in turn would mean additional allowances to be purchased and reduced amount of free allowances allocated.

The European Union should use all the political, legal and other means at its disposal to bring Turkey to stop its illegal ban, which discriminates between EU undertakings and places one member state in a disadvantageous position compared to all the others.