



THE
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London, 3rd July 2003

Re: Request for Commission to act over Turkey's involvement in the Baku-Tbilisi - Ceyhan Pipeline Project and breach of Turkey's accession obligations

Dear Sirs,

This letter is written on behalf of a coalition of NGOs and individually and directly affected Turkish citizens concerned with the impact of the Baku-Tbilisi-Ceyhan pipeline project ("the Project").

The coalition comprises:

- *The Corner House, a research and solidarity group, focusing on human rights
- *Friends of the Earth, a leading environmental group
- *The Kurdish Human Rights Project, which works to protect the human rights of all people in the Kurdish regions, and

*The Ilisu Dam Campaign, which works to highlight the impacts of infrastructure investment in the Kurdish regions.

The individuals comprise Kurdish villagers, who have already lost or stand to lose their property and the means to support themselves and their families. Attached as Annex A are five sample witness statements, which have been anonymized for the protection of the individuals concerned. We point out as particular features of these individuals' experience that: (a) they are directly and individually concerned, as the pipeline project is to pass through their land, which is their only sustainable source of income; (b) there has been no (or no effective) consultation with these individuals; (c) they are receiving no (or no sufficient) compensation, and (d) they have no effective recourse to law.

Details of and concerns about the Project can be found in the extensive reports of the Fact Finding Missions completed by representatives of some of the above NGOs in 2002 and 2003. These are enclosed for your detailed reference at Annex B. Suffice it to say here that, as will be well known to the Enlargement DG, this project involves a 1760 km pipeline which is planned to carry Caspian oil from Baku in Azerbaijan via Tbilisi in Georgia to Ceyhan in Turkey, with oil being loaded onto tankers at the marine terminal of Yumurtalik near Ceyhan. It will then be transported through the Mediterranean. The pipeline is proposed by a consortium of oil companies named the BTC Company, which is led by BP. The total cost of this project is in the region of \$2.9 billion and most of the money is expected to come from public funds, including certain World Bank and European Bank for Reconstruction and Development (EBRD) funds.

This letter relates to Turkey's involvement in this Project. As is further well known to the Enlargement DG, Turkey has fostered European Community ambitions since the 1960s. The EEC-Turkey Association Agreement was signed in 1963, yet it took thirty-six years for Turkey to become an accession candidate, agreed upon at the Helsinki European Council in December 1999. Article 4 of Council Regulation (EC) No. 390/2001, which forms the legal basis for the Accession Partnership, states:

“Where an element that is essential for continuing to grant pre-accession assistance is lacking, in particular where the commitments contained in the EC-Turkey Agreements are not respected and/or progress towards fulfilment of the Copenhagen criteria is insufficient, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps with regard to pre-accession assistance granted to Turkey.”

The Turkish Government is keen to proceed to accession talks and it has announced that Turkey will pass a variety of legislation in preparation for membership. However, as you will see from the material herewith, the Project raises many serious political, environmental and human rights issues. Primarily, the Inter-Governmental Agreement (IGA) and the Host Government Agreements (HGAs), which form the legal basis for the Project, are a great cause for concern for a multitude of reasons. Crucially for present purposes, the HGA contains a 'stabilisation clause', where if anything threatens the “Economic Equilibrium” of the Project, then Turkey and other states shall (HGA, Art.7.2(xi)):

“...take all action available to them to restore the Economic Equilibrium established under the Project Agreements if and to the extent the Economic Equilibrium is disrupted or negatively affected, directly or indirectly, as a result of any change in Turkish law (including any Turkish laws regarding taxes, health and safety and the environment). ...this shall include the obligation to take all appropriate measures to resolve promptly by whatever means may be necessary, including by way of exemption, legislation, decree and/or other authoritative acts, any conflict or anomaly between any Project Agreement and ... Turkish law.”

In short, the State is obliged to exempt the Project from any current or future laws that may adversely affect it, or indeed obliged to change or repeal such laws altogether.

This ‘stabilisation clause’ should also be read in conjunction with the assertion in the HGA (Art. 21) that:

“The Parties hereby acknowledge that it is their mutual intention that no Turkish Law now or hereafter existing (including the interpretation and application procedures thereof) that is contrary to the terms of this Agreement or any other Project Agreement shall limit, abridge or affect adversely the rights granted to the MEP Participants or any other Project Participants in this or any other Project Agreement or otherwise amend, repeal or take precedence over the whole or any part of this or any other Project Agreement.”

Together these amount to a clear potential breach of what would be Turkey’s EU law obligations, namely accepting the supremacy of Community law.

The pronouncements of the ECJ on supremacy (or primacy) of Community law are of course well known to yourselves. In Community case law, direct effect and supremacy were established in Case 26/62 *Van Gend en Loos* and Case 6/64 *Costa v ENEL* respectively. In *Van Gend*, the ECJ explained that:

“The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights”

In *Costa v. ENEL*, the ECJ held that:

“By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply.”

The supremacy of EU law means that for so long as a Member State continues to be a member of the European Union, the national courts must give effect to the commitment entered into upon accession, by according precedence to Community legislation over

conflicting national legislation. The terms of the HGA and IGA are thus diametrically opposed to a fundamental principle of EU law.

In addition, there are aspects of human rights law that are plainly engaged in this case. These include Article 6 (the right to a fair trial); Article 8 (right to home and family life) and Article 1 of Protocol 1 (right to enjoyment of one's property) of the ECHR. Individuals along the length of the Project face expropriation, dislocation, and a struggle for their claims to their property and/or compensation to be heard (see in particular the witness statements at Annex A).

It is highly doubtful whether the project's Environmental and Social Impact Assessments (ESIAs) would meet EU standards since they include questionable local consultation and compensation schemes.

Further, the potential environmental threats would not only be created along the terrestrial route of the pipeline. Marine environments (including those of current and soon-to-be EU Member States, e.g. Greece and Cyprus) are also potentially threatened.

We have obtained an Opinion from specialist European law Counsel on these legal issues. This material is of course primarily an analysis for our own purposes, but an edited version is enclosed herewith as Annex C. It will be seen that in our view Turkey is already in breach of its accession obligations, because instead of moving *towards* the *acquis*, as it is obliged to do, it is moving *away* from the *acquis*.

An assessment of Turkey's International Law environmental obligations, prepared by Friends of the Earth, which supplements the points made in Counsel's Opinion, is enclosed as Annex D.

There is also enclosed as Annex E an overview, prepared by The Corner House, of the divergence between the EC's EIA regime (which the project agreements purport to apply) and the actual conduct of the project's impact assessment.

The most recent Fact Finding Mission was carried out after Counsel's Opinion was drafted (see Annex B, pages 18 to 22). Some of the findings of the FFM are startling, and the FFM itself was detained by the Turkish authorities and hindered in its work (see Account of Detention, Annex B, pages 32 to 35). The conduct of the Turkish authorities in carrying out the preparations for the pipeline, as partly documented in these Fact Finding Missions, negates the legitimacy of any process of consultation. It also breaches the Human Rights principles adumbrated above. Thus Turkey is also already in breach of its obligations under the European Convention on Human Rights.

In sum, the Project and its associated Agreements represent a clear move away from the *acquis* of Community law by Turkey. The Accession Partnership with Turkey is severely undermined by the construction of this pipeline. Turkey has agreed a move towards the Community *acquis* and the Copenhagen criteria, yet the pipeline project agreements represent a step in entirely the wrong direction. The implementation of this Project involves actual and/or potential breaches of EU, Human Rights and International Law.

It further appears to us that under the accession rules the Commission is the guardian of the accession process, and that there exists a *duty* on the Commission to act in circumstances such as those presenting themselves in relation to the pipeline (see generally, Counsel's Opinion, Annex C). Furthermore, due to the jurisdictionally convoluted nature of the Project agreements, it appears that the forum for an effective remedy is the Commission.

Accordingly, we write to request that the European Commission propose to the Council that it should take appropriate steps against Turkey under the Accession Partnership legislation, and in particular pursuant to its duty under Article 4 of Council Regulation (EC) No. 390/2001, as follows:

- 1) As a first step, we request that the Commission recommend that all pre-accession assistance be frozen by the Council, unless and until the provisions of the IGA and HGA are brought into line with EC Law and/or until after the end of the pipeline Project.**
- 2) We also request that until the rectification of the potentially unlawful aspects of the HGA/IGA and/or the cessation of the pipeline Project, all further accession negotiations with Turkey be suspended.**

It will be self-evident that these remedies can only be achieved by application to the Commission. Although they may appear only indirectly effective, the applicants see these measures as being in fact the most effective and direct remedy to the threat posed by the Project.

We would add that it must also be the EU's priority that if Turkey were to join, it should do so without elements of its legal system incapable of adapting to the *acquis*.

It is right to say that the applicants regard this matter as of the utmost seriousness and will do all they can to protect the interests concerned.

We also stress the extreme urgency of this matter, given the fact that the Project is currently proceeding.

We look forward to your confirmation that this will be done. May we please hear from you within four weeks confirming safe receipt of this letter and enclosures and advising when a decision will be made.

Yours faithfully,

Dr. Anke Stock
Rechtsanwältin and Registered European Lawyer
Acting for and on behalf of all the members of the coalition and the individuals
concerned

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ANNEXES:
ANNEX A - WITNESS STATEMENTS
ANNEX B - FFM REPORTS
ANNEX C - COUNSEL'S OPINION
ANNEX D - TURKEY INT'L ENV'L AGR'TS
ANNEX E - EIA BREACHES

cc: Romano Prodi, President of the European Commission