

Ad-Hoc Query on national implementation of CJEU case law on the EEC-Turkey Association Agreement

Requested by Austria on 27 November 2014

Compilation produced on 14 January 2015

Responses from [Austria](#), [Belgium](#), [Czech Republic](#), [Finland](#), [France](#), [Germany](#), [Hungary](#), [Latvia](#), [Lithuania](#), [Netherlands](#), [Slovak Republic](#), [Sweden](#), [United Kingdom](#) (13 in Total)

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1. Background Information

The CJEU has addressed the EEC-Turkey Association Agreement in its decision in Dereci (C-256/11) on 15 November 2011, particularly with the 'Standstill' clause in Article 13 of Decision No 1/80 of the Association Council and Article 41 para 1 of the Additional Protocol to the EEC-Turkey Association Agreement respectively.

The 'Standstill' clause in Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol respectively prohibit the introduction of new national measures that aim at or cause that exercising free movement of workers (or free movement of services and freedom of establishment) is subject to more restrictive requirements as compared to the date of entry into force of the Decision of the Association Council in the respective Member State (see CJEU in Sahin, C-242/06). In Austria, the date of the accession to the EU (1 January 1995) is relevant in this regard.

According to settled case law of the CJEU on the 'Standstill' clause, the Member States are also not allowed to introduce more restrictive measures as compared to more favourable provisions that were introduced after the date of the entry into force of the Decision of the Association Council (see CJEU, Toprak und Oguz, C-300/09 and 301/09, as well as Dereci, C-256/11).

In respect of the Austrian Settlement and Residence Act, which particularly regulates the immigration of third-country nationals for time periods exceeding 6 months, the CJEU ruled in its Dereci decision that with the entry into force of the Settlement and Residence Act on 1 January 2006, the

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conditions for family reunification of Turkish nationals to Austrian nationals have become more restrictive as compared to the legislation of the Aliens Act 1997 that was in place before.

As a reaction to the decision of the CJEU in Dereci, the Austrian Federal Ministry of the Interior issued several circulars and decrees to the authority responsible for implementing the Settlement and Residence Act in first instance that are obligatory for them.

The authorities responsible were instructed to not apply those provisions of the Settlement and Residence Act that, for Turkish nationals who are subject to the 'Standstill' clause because of their intention to work, lead to a more restrictive situation as compared to the previous legislation (since 1 January 1995) and thus constitute new restrictions in the meaning of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol.

For example, the provision that requested third-country nationals to prove German language skills was declared not applicable for Turkish nationals subject to the clause.

An explicit legislative implementation of the consequences of the CJEU case law in Dereci within the framework of the Austrian residence law was not made, because, according to the Austrian perspective, the implementation of the Settlement and Residence Act in accordance with EU law has already been sufficiently guaranteed by the issuance of circulars and decrees to the authorities responsible for the implementation of the law.

We would like to ask the following question:

- 1. Have you explicitly implemented/transposed the legal consequences for Turkish nationals that follow from the case law of the CJEU on the 'Standstill' clause of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol (see e.g. CJEU in Sahin, C-242/06, or Dereci C-256/11) in national law?**
- 2. If yes, in what form? Did you introduce a comprehensive clause or specific provisions for Turkish nationals subject to the 'Standstill' clause?**
- 3. If no, what measures did you take to guarantee the implementation of the respective immigration provisions for Turkish nationals in accordance with EU law?**

We would very much appreciate your responses **as soon as possible**, the latest by **25 December 2014**.

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2. Responses¹

		Wider Dissemination? ²	
	Austria	Yes	<p>1. The legal consequences for Turkish nationals that follow from the case law of the CJEU on the 'Standstill' clause of Article 13 of Decision No 1/80 and Article 41 of the Additional Protocol were not explicitly implemented in national law.</p> <p>2. Not applicable.</p> <p>3. The authorities responsible for implementing the Settlement and Residence Act in first instance were instructed by several circulars and decrees to not apply those provisions of the Settlement and Residence Act that, for Turkish nationals who are subject to the 'Standstill' clause because of their intention to work, lead to a more restrictive situation as compared to the previous legislation (since 1 January 1995) and thus constitute new restrictions in the meaning of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol.</p> <p>Source: Federal Ministry of the Interior.</p>
	Belgium	Yes	<p>1. The legal consequences for Turkish nationals that follow from the case law of the CJEU on the 'Standstill' clause of Article 13 of Decision No 1/80 and Article 41 of the Additional Protocol are not explicitly implemented in national law.</p> <p>2. Not applicable</p> <p>3. In case of legislative modifications, the Standstill clause of the Association Agreement is taken into account, in the sense that new regulations who could, in the light of the case law of the CJEU, conflict with the Standstill clause do not apply to the beneficiaries of the Association Agreement, or that the new regulations are necessary for reasons of general societal concern.</p> <p>There is no national case law on this matter.</p>
	Bulgaria	Yes	
	Cyprus	Yes	

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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	Czech Republic	Yes	<p>1. The legal consequences for Turkish nationals that follow from the case law of the CJEU on the ‘Standstill’ clause of Article 13 of Decision No 1/80 and Article 41 of the Additional Protocol were not explicitly implemented in national law.</p> <p>2. Not applicable</p> <p>3. The Ministry of labour and social affairs formulated a methodological guideline for their employees. The same applies to the migration officers. All responsible authorities in the field of migration were instructed by several circulars and instructions.</p>
	Denmark	Yes	
	Estonia	Yes	
	Finland	Yes	<p>1. Have you explicitly implemented/transposed the legal consequences for Turkish nationals that follow from the case law of the CJEU on the ‘Standstill’ clause of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol (see e.g. CJEU in Sahin, C-242/06, or Dereci C-256/11) in national law?</p> <p>No, we have not explicitly implemented/transposed the legal consequences of these in national law.</p> <p>2. If yes, in what form? Did you introduce a comprehensive clause or specific provisions for Turkish nationals subject to the ‘Standstill’ clause?</p> <p>-</p> <p>3. If no, what measures did you take to guarantee the implementation of the respective immigration provisions for Turkish nationals in accordance with EU law?</p> <p>We don’t have provisions in the Aliens Act that would lead to a more restrictive situation as compared to the previous legislation (since 1 January 1994) and thus constitute new restrictions in the meaning of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol.</p>
	France	Yes	<p>1. The case law of the CJEU on the « Standstill » clause (of Article 13 of Decision 1/80) has not been implemented/transposed in France into specific provisions.</p> <p>2. France did not introduce general or specific provisions in its law respective to Turkish nationals’ immigration and subject to the “Standstill” clause.</p> <p>3. We consider that provisions for Turkish nationals for accessing employment have not been substantially modified or increased since the coming into force of the Decision 1/80 by the Association Council. If modifications have been added since the coming into force of the Decision 1/80 to the general conditions of work authorizations for foreign nationals (Turkish nationals included), these have not fundamentally questioned the previous provisions applied to Turkish nationals and these are consequently still consistent with the “Standstill” clause of Article 13 of the Decision 1/80. As regards with the system of taxes, the French law used to subject Turkish nationals to a tax payment for obtaining a residence permit that was also due to European citizens. Although this tax increased (106 euros</p>

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			for renewing a residence permit) since the 1980s (17 euros at that time), we consider that it is not a violation of the “Standstill” clause for Turkish nationals (as any other third-country nationals to the EU) to benefit from it as free benefits and trainings are offered to allow them a better integration in particular on the French market. To date, this position has not been criticized. One recent decision only from the Administrative Court of First Instance judged that these taxes are contrary to the Decision 1/80. Legal consequences from this decision will depend on its confirmation on appeal and its upholding by all the courts.
	Germany	Yes	<p>1. The EEC-Turkey Association Agreement, its Protocols, decision No. 1/80 and the consequences of the rulings by the ECJ on the agreement or the “Standstill” clauses are not explicitly transposed into national law.</p> <p>2. Not applicable.</p> <p>3. The authorities applying the German Residence Act (embassies / consulates and foreigners’ authorities) are instructed on how to apply the Association Agreement and its amendments. In case of the embassies / consulates the instruction is delivered via directives, in cases of a ruling of the ECJ sometimes directly after the decision. All directives are gathered in a legally binding manual for visa decisions. In cases of the foreigners’ authorities, which are institutions of the federal states (Länder), directives cannot be delivered by the federal government (Bund). Therefore, in these cases the Bund published guidelines on how to apply the Association Law and informs the Länder about any new ruling or other changes. (http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Auslaender/Anwendungshinweise_zum_Assoziation_srecht_EWG_Tuerkei.pdf?__blob=publicationFile).</p> <p>Source: Federal Ministry of the Interior</p>
	Greece	Yes	
	Hungary	No	Hungary has provided an answer that is not for wider distribution.
	Ireland	Yes	
	Italy	Yes	
	Latvia	Yes	<p>1. The legal consequences for Turkish nationals that follow from the case law of the CJEU on the “Standstill” clause of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol have not been explicitly implemented/transposed in the national law.</p> <p>2. Not applicable.</p> <p>3. Since Latvia’s accession to the European Union in 2004, Latvia has not introduced any additional restrictions for Turkish nationals in the respective field.</p>
	Lithuania	Yes	<ol style="list-style-type: none"> 1. No. Lithuanian law corresponds to the requirements of the “Standstill” clause. 2. n/a 3. The ECJ case-law concerning the “standstill” clause is collected by the Migration Department which ensures the correct

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			implementation of the EU migration acquis; it has been also analysed in some academic publications.
	Luxembourg	Yes	
	Malta	Yes	
	Netherlands	Yes	<p>Ad 1 The Netherlands act in compliance with the case law of the CJEU on the standstill clause of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol. Whenever a residence requirement must be regarded as an unlawful restriction as referred to in the standstill clauses, the regulation that includes this requirement is adapted. This is mostly done by including an exception in the regulation for Turkish nationals who fall within the scope of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol.</p> <p>Ad 2 Regarding the response to the first question the second question does not need to be answered.</p> <p>Ad 3 Regarding the response to the first question the third question does not need to be answered.</p>
	Poland	Yes	
	Portugal	Yes	
	Romania	Yes	
	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. No. Slovak Republic has not explicitly implemented/transposed the legal consequences for Turkish nationals that follow from the case law of the CJEU on the 'Standstill' clause of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol (see e.g. CJEU in Sahin, C-242/06, or Dereci C-256/11) in national law. 2. N/A. 3. The status of Turkish nationals in the Slovak Republic was positively influenced by the accession of the Slovak Republic to the European Union when the Slovak Republic also signed the Association Agreement with Turkey. It can be concluded that there were no obstacles for the Slovak Republic to comply with the clause "Standstill" of Article 13 of Decision No 1/80 and Article 41 para 1 of the Additional Protocol.
	Slovenia	Yes	
	Spain	Yes	
	Sweden	Yes	<ol style="list-style-type: none"> 1 No, Sweden has not implemented this amendment to Swedish law. Sweden became member of the EU January 1 1995. It's from this point of time Sweden has to make amendments if needed. So far it has not been actualized. 2. See above. 3. The Swedish law for the time being compromise the "standstill clause". In future amendments of the Swedish Aliens Act it's

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			necessary to take into account this clausul.
	United Kingdom	Yes	<p>1. Turkish nationals have rights related to the EU freedom of establishment and the freedom to provide services commensurate with their position in 1973 when the UK acceded to the then EC. The applicable regime is the Immigration Rules in force at the time. These rules are HC509 (on entry) and HC 510 (after entry). In the UK context, implementation of the 'standstill clause's as defined by the relevant Articles and subsequent case law means that Turkish nationals who can rely on the 'standstill clause' have their applications considered under the Immigration Rules in force in 1973 and not the more restrictive current Immigration Rules. The immigration rules in force in 1973 by which ECAA applications are dealt with has not been amended to take into account the 'standstill clause'. Rather this has been implemented via caseworking guidance.</p> <p>2. As above the way the UK brings into force the 'standstill clause' in relation to Turkish ECAA applications is via caseworking guidance and not the creation of new specific legislation. This guidance is available on line to all applicants and not only covers all the requirements that need to be met and the type of evidence needed but also explains how an assessment is made as to whether someone can benefit from the standstill clause (i.e. consideration under the 1973's Immigration Rules) or not. The guidance covering ECAA business applications can be found via the link below: https://www.gov.uk/government/publications/turkish-ecaa-business-guidance The guidance related to ECAA worker applications can be found via the link below: https://www.gov.uk/government/publications/ecaa-turkish-employed-applications</p> <p>3. Not applicable in light of the answer to question 2.</p>
	Croatia	Yes	
	Norway	Yes	
