A FRAMEWORK THAT NO LONGER FITS

Why the Ankara Agreement and the EU–Turkey Customs Union Must Be Modernised

A Country-by-Country Study of Fragmented Implementation, Standstill Erosion, Fiscal Breach, and Asymmetric Trade

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Abstract

This article argues that the legal framework governing the free movement of Turkish nationals and Turkish goods in the European Union — the 1963 Ankara Agreement, the 1970 Additional Protocol, the Association Council Decisions adopted under them, and the 1995 Customs Union Decision (Decision No 1/95) — has become structurally dysfunctional and is overdue for comprehensive renewal. The instrument was conceived as a dynamic, progressive vehicle for integration leading, in the words of Article 28 of the Ankara Agreement, towards the eventual accession of Turkey. In practice it has frozen into a static, internally contradictory, and unevenly applied patchwork that delivers neither the integration it promised nor the legal certainty that a directly effective treaty is supposed to guarantee.

The dysfunction is demonstrated along several axes. First, implementation is fragmented: because the standstill clauses operate by reference to the date on which the Additional Protocol entered into force for each Member State — 1 January 1973 for the original Community and the first-enlargement States, and the date of accession for every later entrant — the rights of a Turkish businessperson differ from one Member State to the next, and many States have neither transposed the governing Court of Justice case law into national law nor lifted the visa and residence requirements that case law condemned. Second, the machinery of progression has seized: the Association Council rarely adopts decisions to carry the Agreement forward, because Member State vetoes and the requirement of unanimity stall both substantive development and the referral of disputes; none of the Agreement's central objectives — full freedom of movement for workers, the abolition of restrictions on establishment and services, accession itself — has been realised. Third, the relationship is asymmetric on the trade side: under the Customs Union, Turkey must align its external tariff with the Union and open its market to third countries with which the Union concludes free trade agreements, yet Turkey enjoys no automatic reciprocal access to those third-country markets and is not a party to the agreements that bind it. Fourth, Turkey itself has breached the bargain, most visibly through a system of internal taxation on motor vehicles — the Special Consumption Tax (Özel Tüketim Vergisi, 'ÖTV') and Value Added Tax (Katma Değer Vergisi, 'KDV') — that did not exist when the relevant standstill obligations took effect and that operates, on the analysis advanced here, as a charge having equivalent effect or as discriminatory internal taxation contrary to the Customs Union as interpreted in *Istanbul Lojistik* (C-65/16). Fifth, on the European side, the Commission's stewardship of the Agreement has been markedly more political and less vigorous than its enforcement of comparable association instruments, a contrast thrown into relief by the recent United Kingdom experience, in which the systematic erosion of Ankara establishment rights provoked almost no enforcement response at all.

The article presents the evidence Member State by Member State, in tabular form, across social security, trade in goods, and the visa and residence position of workers and the self-employed, identifying in each case the relevant standstill date and noting expressly where the available data are insufficient to state the position with confidence. It concludes that the uniformity requirement, the absence of any services or establishment coverage in the Customs Union, and the structural unfairness of requiring Turkey to implement the Union's free trade agreements without sharing in their benefits, together make modernisation not a matter of political preference but of legal coherence. The breaches and shortcomings are real on both sides; so is the case for a new instrument.

Part I — Introduction: An Instrument That Stopped Moving

1. The shape of the argument

The Agreement establishing an Association between the European Economic Community and Turkey was signed at Ankara on 12 September 1963 and concluded on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963.[1] It was, for its time, an instrument of striking ambition. Article 2(1) proclaimed the aim of *"the continuous and balanced strengthening of trade and economic relations between the Parties"*; Article 28 looked forward, however aspirationally, to the moment when the Agreement's operation might make it possible to examine the possibility of Turkey's accession to the Community. The Additional Protocol of 23 November 1970, concluded by Council Regulation (EEC) No 2760/72, set a timetable for the progressive abolition of restrictions and contained, in Article 41(1), the celebrated standstill clause around which much of the modern litigation turns.[2]

More than sixty years later, the gap between the Agreement's promise and its delivery is vast. The customs union envisaged in 1963 was completed only in 1996, and then only for industrial and processed agricultural goods. The freedom of movement for workers that the Additional Protocol scheduled for completion between 1976 and 1986 was never realised. The abolition of restrictions on establishment and services, to which Articles 13 and 14 of the Ankara Agreement committed the parties, never occurred; the operative protection for Turkish businesspersons is not a positive right of establishment at all but the negative guarantee of the standstill — a promise not to make things worse, frozen at whatever date the Protocol took effect for the Member State in question. Accession negotiations, formally opened in 2005, are at a *de facto* standstill, with the majority of chapters blocked. The Association Council, the body charged with carrying the Agreement forward, has adopted almost nothing of substance for decades. And the Customs Union, hailed in 1995 as a qualitative leap, has aged into an instrument that many on both sides now describe as outmoded.

The contention of this article is that these are not isolated grievances but symptoms of a single structural condition: the Agreement was designed as a dynamic, progressive instrument and has been administered as a static, defensive one. A treaty that was meant to be a moving staircase has been treated as a frozen photograph. The standstill that was meant to be a ratchet — permitting improvement, forbidding retreat — has, in practice, neither moved forward (because the Association Council will not act) nor been honestly held in place (because Member States have eroded it and Turkey has breached it). The result is a body of law that is at once unusually generous on paper and unusually fragile in operation, unevenly implemented across the Member States, internally contradictory between its trade and its movement limbs, and unfair in its distribution of burdens between the parties.

2. The plan of the article

Part II sets out the architecture of the regime and explains why it was meant to be dynamic. Part III analyses the mechanism of paralysis — the requirement of unanimity in the Association Council, the

[1] Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C113/1); the Ankara Agreement entered into force on 1 December 1964. Its appearance in the 1973 Official Journal reflects the United Kingdom's accession year.

[2] Additional Protocol to the Ankara Agreement (signed at Brussels, 23 November 1970), concluded by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C113/17); Article 41(1) provides that the Contracting Parties *"shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services"*.

rarity of Council decisions, and the near-total absence of dispute referral — and shows how the uniformity requirement of the Customs Union stymies any evolution. Part IV presents the country-by-country evidence of fragmented implementation, in a series of tables (Figures 1 to 4) covering the standstill reference dates, the visa and residence position of workers and the self-employed, the social-security position, and the transposition of the Court of Justice's case law into national law, marking expressly where the data are insufficient. Part V turns to Turkey's own breaches, with particular attention to the ÖTV and KDV regime on motor vehicles and its incompatibility with the Customs Union's prohibition on charges having equivalent effect and discriminatory internal taxation. Part VI examines the European side — the failure of Member States to transpose the case law and the obligations of the Agreement, and the conspicuously political and under-resourced character of the Commission's enforcement, contrasted with its stewardship of other association instruments and illuminated by the recent United Kingdom episode. Part VII addresses the structural unfairness of the Customs Union's free trade agreement asymmetry. Part VIII makes the case for modernisation and sketches its content. Part IX concludes.

Throughout, the argument is even-handed. The shortcomings are real on both sides. Turkey has not implemented its obligations faithfully, most clearly in the field of internal taxation. The Member States and the Commission have not honoured theirs, most clearly in the erosion of the standstill and the failure of enforcement. The conclusion is not that one party is wronged and the other a wrongdoer, but that a defective instrument generates breach on both sides and that the remedy is renewal, not recrimination.

Part II — The Architecture of a Dynamic Instrument

3. Association agreements in the legal order

The competence to conclude association agreements, originally in Article 238 of the EEC Treaty, is now found in Article 217 TFEU, which empowers the Union to conclude *"agreements establishing an association involving reciprocal rights and obligations, common action and special procedures"*; Article 216(2) TFEU makes explicit that such agreements bind the institutions and the Member States. The Court of Justice established decades earlier, in *Haegeman*, that the provisions of an association agreement form, from its entry into force, an integral part of Union law.[3] This is no technicality. It means that the Ankara Agreement and its Additional Protocol were never merely instruments of public international law: from each Member State's accession they were part of the law binding it internally, conferring rights enforceable by individuals before national courts and taking precedence over inconsistent domestic measures.[4]

4. The objects of the Ankara Agreement

The teleology of the Agreement is written into its text and has been repeatedly emphasised by the Court of Justice. The preamble speaks of the continuous improvement of living conditions in Turkey and the Community through accelerated economic progress, and of reducing the disparity between the Turkish economy and the economies of the Member States. Article 2(1) records the aim of strengthening trade and economic relations and of improving the level of employment and the living conditions of the Turkish people. Article 28 sets the ultimate horizon: as soon as the operation of the Agreement has advanced far enough, the parties shall examine the possibility of accession. The Agreement was structured in three phases — preparatory, transitional, and final — precisely because it was meant to move. It was, in the language of the Court, an instrument of progressive integration, and its provisions fall to be interpreted in that light.

Four further provisions matter. Article 7 imposes a good-faith duty in terms close to what became Article 4(3) TEU: the parties shall take all appropriate measures to ensure fulfilment of the obligations arising from the Agreement and shall refrain from any measures liable to jeopardise the attainment of its objectives. Article 9 prohibits, within the scope of the Agreement, any discrimination on grounds of nationality. Articles 12, 13 and 14 record the parties' engagement to be *"guided by"* the EEC Treaty's provisions on, respectively, workers, establishment, and services, for the purpose of progressively securing those freedoms between them. These were the conceptual roots of the movement rights; but, crucially, none of Articles 12, 13 or 14 is directly effective.[5] The operative, directly effective obligations are found instead in the Additional Protocol's standstill clause (Article 41(1)) and in the Association Council Decisions — above all Decision No 1/80 on the development of the Association (workers) and Decision No 3/80 on social security.

[3]Case 181/73 *R & V Haegeman v Belgian State* [1974] ECR 449 (ECLI:EU:C:1974:41) [5]. See further P Craig and G de Búrca, *EU Law: Text, Cases, and Materials* (7th edn, OUP 2020) ch 12.

[4]The principle of direct effect derives from Case 26/62 *Van Gend & Loos* [1963] ECR 1 (ECLI:EU:C:1963:1) and primacy from Case 6/64 *Costa v ENEL* [1964] ECR 585 (ECLI:EU:C:1964:66); their extension to association-agreement provisions runs through *Haegeman* and, for Article 41(1) specifically, Case C-37/98 *Savas* [2000] ECR I-2927.

[5]Case 12/86 *Demirel v Stadt Schwäbisch Gmünd* [1987] ECR 3719 (ECLI:EU:C:1987:400): the establishment and services provisions of the Agreement are programmatic, not sufficiently precise and unconditional to be relied on directly.

5. The standstill clauses and the date that fixes them

Article 41(1) of the Additional Protocol creates no positive right of establishment; it harmonises nothing; it obliges no party to admit any particular national. What it does is freeze the regulatory clock, prohibiting any new restriction — any measure that makes the position of a Turkish national wishing to establish in business, or to provide services, worse than it was when the Protocol entered into force for the Member State concerned. Article 13 of Decision No 1/80 contains the cognate standstill for workers. The Court has held both to be directly effective and to operate as one-way ratchets, permitting liberalisation but forbidding regression.[6]

The decisive feature — and the source of the fragmentation analysed in Part IV — is that the standstill operates by reference to a different date in each Member State. For the original Community and the States that acceded on 1 January 1973, the relevant date is 1 January 1973. For every later entrant, it is the date of accession: 1981 for Greece, 1986 for Spain and Portugal, 1995 for Austria, Finland and Sweden, 1 May 2004 for the ten States of the fifth enlargement, 2007 for Bulgaria and Romania, and 1 July 2013 for Croatia.[7] The consequence is that the immigration law a Turkish businessperson may demand differs from State to State according to the historical accident of what each State's rules contained on its own reference date. A right frozen at 1973 in Germany may be frozen at 2007 in Romania; the same applicant has, in law, a different entitlement depending on the border he approaches. There can be, as the literature has observed, no common visa policy, no uniform visa, and no common rules towards Turkish nationals under this structure.

6. The Customs Union: Decision No 1/95

The final phase of the customs union was implemented by Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995, in force from 1 January 1996.[8] It abolished customs duties, charges having equivalent effect, and quantitative restrictions on industrial and processed agricultural goods moving between Turkey and the Union, and required Turkey to adopt the Union's Common Customs Tariff and to align its commercial policy, including its preferential arrangements, with the Union's. Article 66 of Decision No 1/95 provides that, in so far as its provisions are identical in substance to the corresponding provisions of the EC Treaty (now the TFEU), they are to be interpreted in conformity with the relevant case law of the Court of Justice — the textual bridge by which the Court, in Istanbul Lojistik, transposed its free-movement-of-goods jurisprudence to the Customs Union.[9]

Two structural facts about the Customs Union are central to the argument of this article. First, it covers goods only: services, establishment, agriculture proper, and public procurement all lie outside its scope. The Agreement thus presents a curious bifurcation — Turkish goods enjoy near-complete free

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[6] Case C-37/98 *Savas* [2000] ECR I-2927 (ECLI:EU:C:2000:224) (Article 41(1) directly effective); Case C-300/09 *Toprak and Oguz* [2010] ECR I-12845 (ECLI:EU:C:2010:756) (Article 13 of Decision No 1/80 operates as a one-way ratchet).

[7] The accession dates are taken from the European Council and Commission records: 1973 (Denmark, Ireland, United Kingdom); 1981 (Greece); 1986 (Spain, Portugal); 1995 (Austria, Finland, Sweden); 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia); 2007 (Bulgaria, Romania); 2013 (Croatia). That the relevant standstill date for each State is its accession date is confirmed in K Groenendijk and E Guild, *Visa Policy of Member States and the EU Towards Turkish Nationals after Soysal* (Economic Development Foundation, No 232, 2010).

[8] Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (OJ 1996 L35/1).

[9] Case C-65/16 *Istanbul Lojistik Ltd v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság* (ECLI:EU:C:2017:770) [38], [44]: by virtue of Article 66, the interpretation of the FEU Treaty provisions on the free movement of goods may be transposed to the corresponding provisions of the Customs Union.

circulation, while the Turkish businessperson who would trade them enjoys only the frozen, fragmented, negative protection of the standstill. Second, it requires Turkey to align with the Union's external trade policy without giving Turkey any vote in the formation of that policy or any automatic reciprocal benefit from it. These two facts — the absence of services and the asymmetry of external trade — are the deepest reasons the instrument is now widely regarded as outmoded, and they are taken up in Parts VII and VIII.

6A. The three sources of EU–Turkey association law

It is worth being precise about the hierarchy of sources, because the dysfunction of the regime is in part a dysfunction of its sources. EU-Turkey association law is built in three tiers. At the apex sit the Ankara Agreement and its Additional Protocol: international agreements concluded by the Community, forming an integral part of Union law, possessing supremacy over secondary EU legislation and, where their terms are sufficiently precise and unconditional, direct effect. Beneath them sit the Association Council Decisions — Decision No 1/80 (workers), Decision No 3/80 (social security), Decision No 1/95 (customs union) — which are themselves capable of direct effect and which the Court has treated as integral to the Association. And beneath those sits the case law of the Court of Justice, which, in the absence of progressive Association Council decisions, has become the principal engine of the regime's development.

The supremacy of the Agreement over secondary EU legislation is not merely theoretical. In Commission v Germany and again in Soysal the Court confirmed that the Agreement and its Protocol take precedence over inconsistent secondary Union law, so that, for example, the general Union visa regulation listing Turkey among the states whose nationals require a visa must yield, for service providers covered by the standstill, to the frozen position of the relevant reference date.[10] This is a powerful doctrine on paper: it means that a directly effective Ankara right defeats not only inconsistent national law but inconsistent Union law. Yet, as Part VI shows, the doctrine's practical force has been hollowed out by the failure of enforcement: a right that prevails in the abstract over secondary legislation is of little use to an applicant if no court will refer the question and no guardian will pursue the breach.

6B. The borrowed-vocabulary problem

A recurring interpretive difficulty pervades the regime: the Agreement borrows the Treaty's vocabulary without adopting the Treaty's full content. Articles 12, 13 and 14 agree to be *"guided by"* the Treaty provisions on workers, establishment and services; the Court has accordingly drawn on its internal-market jurisprudence to interpret the corresponding Association concepts, defining the Turkish *"worker"* by reference to the Treaty concept, for instance. But the borrowing is a guide, not an equivalence, and the Court has been careful to mark the boundary. In Demirkan it held that the standstill on services does not extend to the passive freedom to receive services — even though, for Union nationals, the Treaty's services freedom plainly does — precisely because the objectives of the Association are not identical to those of the internal market.[11] The Turkish national thus has, in the Court's logic, the Treaty's words without the Treaty's depth: the appearance of a fundamental freedom

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[10] Case C-228/06 *Soysal and Savatli v Germany* [2009] ECR I-1031 (ECLI:EU:C:2009:101): the standstill prevailed over the later visa requirement introduced by reference to the Union's visa-list regulation; international agreements concluded by the Union have primacy over secondary legislation, which must be interpreted consistently with them.

[11] Case C-221/11 *Demirkan* (ECLI:EU:C:2013:583) [49]–[62]: the standstill does not confer a right to enter to receive services, because the Association's objectives are narrower than the internal market's; contrast, for Union nationals, Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377.

without the constitutional membership — Union citizenship, the status the Court has called the "fundamental status" of nationals of the Member States — that gives the Treaty freedoms their security and their expansive reach.[12]

This boundary matters for modernisation. The whole architecture of the Turkish national's rights is parasitic on a Treaty vocabulary that was never meant to be applied to a non-member, and the Court has had to police the gap case by case, sometimes extending the Treaty analogy (the definition of worker, the proportionality test) and sometimes withholding it (passive services, citizenship). The result is an unstable, judicially improvised body of law that no legislator designed and that the Association Council has never consolidated. A modernised instrument could replace this borrowed vocabulary with its own, purpose-built provisions — which is one more reason the existing instrument is inadequate to the relationship it governs.

[12]The "fundamental status" formulation is from Case C-184/99 *Grzelczyk* [2001] ECR I-6193 (ECLI:EU:C:2001:458) [31]. The Turkish national derives no status from Articles 20–21 TFEU and can invoke no citizenship-based residence right.

Part III — The Machinery of Paralysis

7. A dynamic instrument with a seized engine

If the Ankara Agreement was designed to move, the mechanism by which it was to move was the Association Council. Established by Article 6 of the Agreement, the Association Council is the joint organ of the parties, empowered to take binding decisions to develop the Association and to implement its provisions. It was, in the original design, the engine of progression: the body that would adopt the measures securing freedom of movement for workers in stages, that would determine the timetable and rules for abolishing restrictions on establishment and services, and that would resolve disputes about the interpretation and application of the Agreement. The tragedy of the regime is that this engine has, for practical purposes, seized.

8. The rarity of progressive decisions

The Association Council has adopted strikingly few decisions of substance, and almost none in recent decades. The most important — Decision No 1/80 on workers and Decision No 3/80 on social security — date from 1980. Decision No 1/95 completed the customs union in 1995. Since then the Council has produced little that advances the integration the Agreement promised. The contrast with the Agreement's own ambition is stark: the Additional Protocol scheduled the completion of free movement for workers between 1976 and 1986, contemplating a steady stream of implementing measures; the stream never flowed. The Association Council never adopted the decisions that Articles 12 to 14 of the Agreement and Articles 36 and 41 of the Protocol envisaged for establishment and services. The freedom of movement for workers was, in the Court's own description of the legal reality, never realised.

The reason is institutional. The Association Council acts by agreement of the parties, and on the Union side the position is determined by the Council of the European Union, frequently by unanimity, with each Member State able to block. Where a measure would extend rights to Turkish nationals, a single opposed Member State — France over the prospect of Turkish membership, Cyprus over the unresolved division of the island, or others over domestic political sensitivities — can prevent the Union from agreeing to it. The accession negotiations themselves illustrate the mechanism: eight chapters were frozen pending Turkey's extension of the Customs Union to Cyprus, further chapters were blocked by France and by Cyprus, and the General Affairs Council declared in June 2018 that no further work on modernising the Customs Union was envisaged because Turkey had been *“moving further away from the European Union”*.[13] The same unanimity that protects each Member State's veto over enlargement protects its veto over every progressive step in the Association — and so nothing progresses.

9. The near-absence of dispute referral

A second mechanism of paralysis concerns the resolution of disputes. The Ankara Agreement contains, in Article 25, a dispute-settlement procedure under which the Association Council may settle a dispute or refer it to the Court of Justice — but referral requires the agreement of the parties, and in practice the consensus required to refer a dispute to the Court is as elusive as the consensus required to adopt a progressive decision. The result is that disputes between Turkey and the Union about the meaning

[13] General Affairs Council conclusions of 26 June 2018; see also European Commission, *Recommendation for a Council Decision authorising the opening of negotiations with Turkey on … the modernisation of the Customs Union* (December 2016), SWD(2016) 475/476 final, which the Council declined to take up.

and application of the Agreement are almost never referred to the Court through the Association machinery itself.

Such judicial development as the regime has enjoyed has therefore come not through the Agreement's own dispute mechanism but through the back door of the preliminary-reference procedure under Article 267 TFEU, in litigation brought by individuals before national courts. Almost the entire modern corpus of EU-Turkey association law — Savas, Tum and Dari, Soysal, Abatay, Sahin, Demir, Dogan, Genc, Demirkan, and the rest — exists because a Turkish national happened to litigate a refusal before a German, Dutch, Austrian or Danish court, and that court happened to refer. The development of the law has thus been a function not of the parties' joint will but of the willingness of particular national courts to refer. Where national courts decline to refer, as the United Kingdom's courts systematically did after 2015, the development simply stops for that jurisdiction. A regime whose evolution depends on the accident of individual litigation and the referral habits of national judges is not a regime that is being steered; it is a regime that is drifting.

10. The uniformity requirement as a brake on evolution

The Customs Union compounds the paralysis with a structural feature of its own: the requirement that Turkey align uniformly and continuously with an acquis it has no part in making. Article 54 of Decision No 1/95 requires Turkey to harmonise its legislation, as far as possible, with Community legislation in areas of direct relevance to the operation of the Customs Union — commercial policy, the Common Customs Tariff and its preferential arrangements, the removal of technical barriers, competition, and intellectual property.[14] The obligation is dynamic in the wrong direction: it requires Turkey to keep pace with a body of law that the Union alone develops, while denying Turkey any role in its development and, as Part VII shows, any reciprocal benefit from the external dimension of that law. The uniformity requirement thus operates as a brake on evolution in two ways. It makes any deepening of the relationship contingent on Turkey's continuous alignment with a moving target, and it makes the relationship politically toxic: every demand that Turkey align further is experienced as a demand for obligation without representation, and every refusal by the Union to deepen the relationship is experienced as a denial of the benefits for which alignment was the price. The instrument cannot evolve because its central mechanism — unilateral alignment policed by unanimity — is incompatible with the give-and-take that evolution requires.

11. None of the objectives realised

The cumulative result can be stated simply. Of the Agreement's central objectives, none has been realised. Freedom of movement for workers between Turkey and the Union, scheduled for completion by 1986, does not exist; Turkish workers enjoy only the conditional, incremental rights of Decision No 1/80, dependent on prior lawful admission and employment. The abolition of restrictions on establishment and services, to which Articles 13 and 14 committed the parties, never occurred; the businessperson has only the negative standstill, and the services provider only the frozen position of his Member State's reference date, with the passive receipt of services excluded by Demirkan. The customs union, though completed for goods, excludes services, agriculture and procurement and operates asymmetrically. Accession, the ultimate object of Article 28, is at a standstill. The social-security coordination promised by Article 39 of the Protocol and Decision No 3/80 was never

[14] Decision No 1/95, Article 54; the obligations of approximation are set out in the chapter on the approximation of laws and have been described by the Turkish authorities themselves as imposing stronger obligations than the customs union definition in the Ankara Agreement.

implemented by the Council. The Agreement has, in short, delivered a customs union for goods and a thin, frozen, fragmented set of movement rights for persons — and nothing else of what it promised. The next Part documents the unevenness of even that limited delivery, Member State by Member State.

8A. Unanimity as the master defect

The requirement of unanimity deserves closer analysis, because it is the master defect from which much of the rest follows. On the Union side, the position to be taken in the Association Council is fixed by the Council of the European Union. For measures touching the sensitive core of the Association — the movement of persons, the deepening of the customs union, accession itself — the practical reality, reinforced by the political salience of the Turkish file, is that no step is taken without broad consensus, and any Member State with a domestic political reason to resist can prevent it. This converts every potential advance into a hostage of the most reluctant Member State.

The effects compound. Because progressive decisions require consensus, none is adopted, and the Agreement cannot develop through its designed channel. Because dispute referral requires consensus, no dispute is referred, and the Agreement cannot be authoritatively interpreted through its designed channel either. Because both channels are blocked, the only avenue left is individual litigation and the preliminary reference — a channel the parties do not control and that operates only where a national court chooses to refer. The Agreement's evolution is thus removed entirely from the hands of its parties and placed in the hands of private litigants and national judges, an outcome no treaty designer would have chosen and that no coherent theory of the Association can justify. Unanimity does not merely slow the regime; it redirects its development away from the institutions meant to steer it and into a channel that is intermittent, fragmentary, and beyond the parties' joint control.

8B. The contrast with the EEA and Swiss governance models

The contrast with the Union's other external instruments is instructive and is taken up more fully in Part VI, but its governance dimension belongs here. The European Economic Area achieves continuous development through the EEA Joint Committee, which incorporates relevant new Union acts into the Agreement on a rolling basis, maintaining the "homogeneity" of EEA and Union law; disputes and infringements are handled by the EFTA Surveillance Authority and the EFTA Court.[15] The EU–Swiss relationship, though static in technique, is held together by the "guillotine" linkage of the Bilateral I package: the agreements apply only together, so that the denunciation of any one terminates all, giving each party a structural incentive to keep the whole relationship in good repair.[16] Both models contain a mechanism that makes the relationship self-maintaining — rolling incorporation in the EEA, mutual hostage-taking in the Swiss case. The Ankara regime has neither. Its Association Council can act only by a consensus it cannot reach, and nothing about the structure of the relationship penalises stagnation. The regime is, by design, prone to seizing up, and it has seized up.

[15] Agreement on the European Economic Area (OJ 1994 L1/3), Articles 6 and 102–107 (homogeneity and the Joint Committee); ESA/EFTA Court Agreement (OJ 1994 L344/3).

[16] The guillotine appears in the final provisions of the Bilateral I package (e.g. Article 25 of the Agreement on the Free Movement of Persons, OJ 2002 L114/6): the agreements are interdependent and terminate together.

Part IV — Fragmented Implementation: A Country-by-Country Survey

12. Why the picture must be drawn State by State

The thesis of this Part is that there is no single "Turkish national's right" in the European Union; there are as many positions as there are reference dates, refracted further by the divergent ways in which Member States have (or, more often, have not) transposed the Court of Justice's rulings into their national law and administrative practice. The tables that follow set out the position State by State across four dimensions: the standstill reference date (Figure 1); the visa and residence position of Turkish workers and self-employed persons and service providers (Figure 2); the social-security position under Decision No 3/80 (Figure 3); and the transposition of the governing case law (Figure 4). The purpose is not to assert a spurious precision. Much of the granular, State-specific administrative practice is undocumented in the public record, and where that is so the tables say so expressly, marking the cell "insufficient data." What the tables do establish, beyond reasonable doubt, is the central claim: that the regime is implemented non-uniformly, that the most favourable position frozen by the standstill has frequently not been preserved, and that the case law has been widely under-transposed.

A word on the legal baseline the tables assume. The standstill in Article 41(1) of the Additional Protocol, and the cognate standstill in Article 13 of Decision No 1/80, required each Member State to preserve, for Turkish nationals, the most favourable position that obtained on its reference date and to refrain from any later regression. Where a State's immigration law was more generous to business migrants or service providers in 1973 (or 1986, or 2004) than it is today, that earlier generosity is, as a matter of EU law, the position a Turkish national may still demand. The Court said as much in Savas, Tum and Dari, Soysal and Sahin, and the structured justification-and-proportionality gloss of Demir, Dogan and Genc confirms that a later restriction is unlawful unless justified by an overriding public interest and shown to be proportionate. The recurring failure documented below is precisely the failure to preserve that frozen high-water mark: States applied their current, harsher rules to Turkish nationals as though the standstill did not exist.

Figure 1 — Standstill reference dates by Member State (Article 41(1) Additional Protocol; Article 13 Decision No 1/80)

Member State	Reference date	Enlargement round
Belgium	1 Jan 1958*	Founding member
France	1 Jan 1958*	Founding member
Germany	1 Jan 1958*	Founding member
Italy	1 Jan 1958*	Founding member
Luxembourg	1 Jan 1958*	Founding member
Netherlands	1 Jan 1958*	Founding member
Denmark	1 Jan 1973	First enlargement
Ireland	1 Jan 1973	First enlargement
United Kingdom	1 Jan 1973†	First enlargement
Greece	1 Jan 1981	Second enlargement
Spain	1 Jan 1986	Third enlargement
Portugal	1 Jan 1986	Third enlargement
Austria	1 Jan 1995	Fourth enlargement

Member State	Reference date	Enlargement round
Finland	1 Jan 1995	Fourth enlargement
Sweden	1 Jan 1995	Fourth enlargement
Cyprus	1 May 2004	Fifth enlargement
Czechia	1 May 2004	Fifth enlargement
Estonia	1 May 2004	Fifth enlargement
Hungary	1 May 2004	Fifth enlargement
Latvia	1 May 2004	Fifth enlargement
Lithuania	1 May 2004	Fifth enlargement
Malta	1 May 2004	Fifth enlargement
Poland	1 May 2004	Fifth enlargement
Slovakia	1 May 2004	Fifth enlargement
Slovenia	1 May 2004	Fifth enlargement
Bulgaria	1 Jan 2007	Sixth enlargement
Romania	1 Jan 2007	Sixth enlargement
Croatia	1 Jul 2013	Seventh enlargement

** For the six founding members the Additional Protocol entered into force on 1 January 1973 (the date it took effect under Regulation (EEC) No 2760/72); the Agreement itself bound them from 1 December 1964, but the operative standstill date for establishment and services is 1 January 1973. † The United Kingdom is included because its obligations bound it until 11 p.m. on 31 December 2020 and the litigation it generated is central to Part VI; it is no longer a Member State. Sources: European Council and European Commission enlargement records; Groenendijk and Guild (2010).*

13. Visa and residence: the Soysal gap

The single most visible instance of non-uniform implementation concerns visas for Turkish service providers. In *Soysal* the Court held that, where a Member State did not require a visa of Turkish nationals entering to provide services on the date the Additional Protocol entered into force for it, the later introduction of such a visa is a new restriction contrary to Article 41(1).[17] Logically, this meant that several Member States — Germany, the Netherlands and Denmark among them, none of which required such visas on their reference dates — were obliged to lift them. The Commission responded not by enforcing the judgment but by issuing guidance, amending the Schengen Borders Code handbook to note that visas should be lifted for certain categories in Germany and for all service providers in Denmark.[18] In practice, implementation has been partial and grudging: Turkish nationals continue, as a rule, to require Schengen visas, the guidance is narrowly drawn, and the broader logic of Soysal — that the frozen position must be honoured — has not been generalised. Figure 2 summarises the position, marking with candour the many cells where the public record does not permit a confident statement of State-specific practice.

Figure 2 — Visa and residence position of Turkish self-employed / service providers and workers, by Member State

Member State	Self-employed / services (standstill: Art 41(1) AP)	Workers (Decision No 1/80)
Belgium	Frozen at 1973; whether 1973 rules preserved is undocumented in the public record — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13

[17]Case C-228/06 *Soysal and Savatli v Germany* [2009] ECR I-1031 (ECLI:EU:C:2009:101).

[18]Commission guidance reproduced in Annex 6 (Annex 38) of the Schengen Handbook, as amended by Commission Recommendation of 14 December 2012; and see Groenendijk and Guild (2010), noting that the Commission's note envisaged visas being lifted in Germany for certain categories and in Denmark for all service providers.

Member State	Self-employed / services (standstill: Art 41(1) AP)	Workers (Decision No 1/80)
		standstill. State-specific practice largely undocumented — insufficient data.
France	Frozen at 1973; whether 1973 rules preserved is undocumented in the public record — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Germany	Frozen at 1973 (no service-provider visa then); Soysal required lifting for certain categories — only partially implemented; general Schengen visa still applied.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Italy	Frozen at 1973; whether 1973 rules preserved is undocumented in the public record — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Luxembourg	Frozen at 1973; whether 1973 rules preserved is undocumented in the public record — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Netherlands	Frozen at 1973; Soysal/Sahin condemned new charges and visas; transposition partial (see Fig. 4).	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Denmark	Frozen at accession; Commission guidance envisaged visa lifted for all service providers, but implementation partial.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Ireland	Frozen at 1973; whether 1973 rules preserved is undocumented in the public record — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
United Kingdom	Frozen at 1973; whether 1973 rules preserved is undocumented in the public record — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Greece	Frozen at 1981 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Spain	Frozen at 1986 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Portugal	Frozen at 1986 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Austria	Frozen at 1995 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Finland	Frozen at 1995 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed

Member State	Self-employed / services (standstill: Art 41(1) AP)	Workers (Decision No 1/80)
		by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Sweden	Frozen at 1995 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Cyprus	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Czechia	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Estonia	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Hungary	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Latvia	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Lithuania	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Malta	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Poland	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Slovakia	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Slovenia	Frozen at 2004 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Bulgaria	Frozen at 2007 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.

Member State	Self-employed / services (standstill: Art 41(1) AP)	Workers (Decision No 1/80)
Romania	Frozen at 2007 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.
Croatia	Frozen at 2013 accession; State-specific preservation of that baseline undocumented — insufficient data.	Decision No 1/80 directly effective EU-wide; entry/first admission still governed by national rules subject to the Art 13 standstill. State-specific practice largely undocumented — insufficient data.

"Insufficient data" denotes that the public record does not permit a confident, State-specific statement; it does not imply compliance. The directly effective rights of Decision No 1/80 (Articles 6, 7, 10, 13) bind all Member States, but first admission and visa practice vary and are poorly documented State by State. Sources: Soysal (C-228/06); Sahin (C-242/06); Commission v Netherlands (C-92/07); Commission Schengen Handbook guidance (2012); Groenendijk and Guild (2010).

14. Social security: a coordination regime never implemented

Article 39 of the Additional Protocol required the Association Council to adopt social-security measures for Turkish workers moving within the Union; it did so in Decision No 3/80.[19] But the implementing measures that Decision No 3/80 itself contemplated were never adopted by the Council. In Taflan-Met the Court held that, absent those implementing measures, the technical coordination provisions of the Decision were not directly effective.[20] In Sürül, however, it held that the non-discrimination guarantee in Article 3(1) of the Decision was directly effective; and in Akdas it held that the prohibition on residence clauses in Article 6(1) was directly effective, with the striking consequence that Turkish workers could export a benefit to Turkey that the Union had withdrawn from its own nationals abroad.[21] The Commission acknowledged in 2012 that the implementing measures were "never adopted" and proposed replacing Decision No 3/80 altogether; the Council did not act.[22]

Figure 3 — Social-security position under Decision No 3/80, by Member State

Member State	Position under Decision No 3/80
Belgium	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
France	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Germany	Significant litigation (Sürül originated here); equal-treatment and export principles applied through CJEU rulings rather than implementing legislation.
Italy	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Luxembourg	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Netherlands	Significant litigation; benefits became residence-based after 2000; Akdas export right then curtailed for dual nationals by Demirci. Most-litigated jurisdiction.

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[19] Decision No 3/80 of the EEC-Turkey Association Council of 19 September 1980 on the application of the social security schemes of the Member States to Turkish workers and members of their families.

[20] Case C-277/94 *Taflan-Met* [1996] ECR I-4085 (ECLI:EU:C:1996:315): Articles 12 and 13 of Decision No 3/80 lack direct effect pending implementing measures.

[21] Case C-262/96 *Sürül* [1999] ECR I-2685 (ECLI:EU:C:1999:228); Case C-485/07 *Akdas* [2011] ECR I-4499. In Case C-171/13 *Demirci* (ECLI:EU:C:2015:8) the Court limited that advantage for dual nationals via the Article 59 ceiling.

[22] European Commission, Communication COM(2012) 153 final and Proposal COM(2012) 152 final: the necessary implementing measures for Decision No 3/80 "were never adopted," and the Commission proposed a new Association Council decision to replace it; the Council did not adopt it.

Member State	Position under Decision No 3/80
Denmark	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Ireland	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
United Kingdom	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Greece	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Spain	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Portugal	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Austria	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Finland	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Sweden	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Cyprus	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Czechia	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Estonia	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Hungary	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Latvia	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Lithuania	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Malta	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Poland	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Slovakia	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Slovenia	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.

Member State	Position under Decision No 3/80
Bulgaria	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Romania	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.
Croatia	Directly effective guarantees (non-discrimination, Art 3(1); export of benefits, Art 6(1)) bind the State, but no Council implementing measures exist; State-specific application undocumented — insufficient data.

No Member State applies a complete, legislated coordination scheme for Turkish workers, because the Council never adopted the implementing measures Decision No 3/80 required. Only the directly effective guarantees identified in Sürül and Akdas are enforceable, and even those have been applied chiefly through litigation concentrated in the Netherlands and Germany. Sources: Taflan-Met (C-277/94); Sürül (C-262/96); Akdas (C-485/07); Demirci (C-171/13); Commission COM(2012) 152/153 final; P Minderhoud (2016) 18 European Journal of Social Security 295.

15. Transposition of the case law into national law

The fourth dimension of fragmentation is the most damning: even where the Court of Justice has authoritatively interpreted the Agreement, Member States have frequently failed to translate those rulings into national legislation or settled administrative practice. The directly effective rulings bind regardless of transposition, but their practical enjoyment depends on caseworkers and tribunals applying them, on guidance reflecting them, and on legislation removing the offending national rules. Where that downstream implementation is absent, the Turkish national must litigate the same point afresh in each jurisdiction, often without the means to do so. Figure 4 records, for the rulings of greatest practical importance, the broad transposition picture, again marking insufficient data where the record will not bear a confident judgment.

Figure 4 — Transposition of leading Court of Justice rulings into national law and practice (thematic, not exhaustive)

Ruling (year)	Holding	Originating State	Transposition picture
Savas (2000)	Art 41(1) directly effective; standstill on establishment	United Kingdom	Recognised in principle; UK later eroded it (Part VI). Elsewhere applied via litigation, not legislation — largely insufficient data.
Soysal (2009)	No new visa on service providers vs frozen date	Germany	Only partial: Commission guidance for DE (some categories) and DK (all service providers); general Schengen visa persists; no broad legislative transposition.
Sahin / Commission v Netherlands (2009–10)	Disproportionate residence-permit charges unlawful	Netherlands	Charges adjusted in NL after infringement; replication elsewhere undocumented — insufficient data.
Tum and Dari (2007)	Standstill reaches first admission of establishment-seekers	United Kingdom	Recognised; later read narrowly by UK courts on settlement. State-by-state practice undocumented — insufficient data.
Demir / Dogan / Genc (2013–16)	New restriction must meet overriding interest + proportionality	Germany / Denmark	Applied by DE and DK courts that referred; not shown to be embedded in other States' practice — insufficient data.
Demirkan (2013)	Standstill does NOT cover passive receipt of services	Germany	A limit, not a right; uniformly relied on by States to refuse tourist/recipient claims.
Decision 3/80 line (Sürül; Akdas)	Non-discrimination and benefit-export directly effective	Germany / Netherlands	Applied through litigation in NL and DE; no Council implementing measure; elsewhere undocumented — insufficient data.
Istanbul Lojistik (2017)	CU prohibits charges of equivalent effect (Art 66 bridge)	Hungary (transit tax)	Hungarian transit motor-vehicle tax condemned; broader fiscal implications (incl. for Turkey) not pursued — see Part V.

The table is thematic and indicative, not a comprehensive transposition audit. "Insufficient data" reflects the absence of any systematic, publicly available State-by-State study of how each ruling was received into national law and practice — itself a symptom of the regime's neglect. Sources: the cited judgments; Groenendijk, "The Court of Justice and the Development of EEC–Turkey Association Law" in Thym and Zoeteweij-Turhan (eds), Rights of Third-Country Nationals under EU Association Agreements (Brill Nijhoff 2015).

16. What the four figures establish

Taken together, Figures 1 to 4 establish the fragmentation thesis. The reference date differs across twenty-eight jurisdictions (Figure 1). The visa and residence position is non-uniform, with even the clear command of Soysal only partially honoured and most State-specific practice undocumented (Figure 2). The social-security regime was never implemented by the Council and survives only as a handful of directly effective guarantees applied through litigation concentrated in two States (Figure 3). And the case law, even when authoritative, has been under-transposed almost everywhere, forcing repeated re-litigation (Figure 4). The honest conclusion is not that every Member State is in flagrant breach — the record does not support so categorical a charge — but that the regime is so unevenly and so poorly implemented that the uniform enjoyment of rights the Agreement was meant to secure does not exist. The recurring pattern, where it can be seen at all, is the failure to preserve the frozen high-water mark the standstill demanded. That failure is examined, in its most fully documented instance, in Part VI; first, Part V turns to the other side of the ledger, and to Turkey's own breaches.

15A. The mechanics of the frozen high-water mark

It is worth dwelling on what the standstill required, because the recurring breach is best understood as a failure to grasp it. The clause does not merely forbid overt discrimination against Turkish nationals; it forbids any regression below the position obtaining on the reference date, even a regression effected by a generally applicable, origin-neutral, perfectly rational rule. In Tum and Dari the Court held that the clause catches new restrictions "including those relating to the substantive and/or procedural conditions governing the first admission" of establishment-seekers.[23] In Demir, Dogan and Genc it built a structured test: is the measure a new restriction; if so, is it justified by an overriding reason in the public interest; and, if so, is it proportionate?[24] The comparator the clause supplies is not a contemporary domestic comparator — not how the host state treats its own nationals today — but a historical one: how the host state treated the would-be establisher on its reference date. That is what makes the Ankara standstill, where it bites, the most generous of all the association techniques, and also what makes it so easy to breach inadvertently: a caseworker who applies today's rules, in good faith, to a Turkish applicant has by that very act introduced a new restriction by effect, whatever the intention behind it.

The failure to preserve the high-water mark is therefore not, in most cases, a deliberate act of discrimination. It is the natural consequence of administering a frozen entitlement through institutions trained on the current law. The caseworker reaches for the checklist she knows; the tribunal applies the rules in the current statute; the guidance reflects the modern regime. Unless something in the system actively flags the Turkish applicant as governed by a different, frozen body of rules — unless there is dedicated training, dedicated guidance, and a clear instruction to disapply the modern accretions — the default behaviour of any competent administration is to apply its current rules, which is precisely the behaviour the standstill forbids. This is why the fragmentation documented in Part IV is so pervasive: it is the predictable output of a standstill regime grafted onto twenty-eight national administrations none of which is structured to honour it.

[23] Case C-16/05 *Tum and Dari* [2007] ECR I-7415 (ECLI:EU:C:2007:530) [69].

[24] Case C-225/12 *Demir* (ECLI:EU:C:2013:725) [40]–[41]; Case C-138/13 *Dogan* (ECLI:EU:C:2014:2066) [37]–[38]; Case C-561/14 *Genc* (ECLI:EU:C:2016:247) [51]–[57]; the structure mirrors Case C-55/94 *Gebhard* [1995] ECR I-4165 [37].

15B. Why "insufficient data" is itself a finding

The tables in this Part mark a great many cells "insufficient data," and that candour should not be mistaken for a gap in the argument. The absence of any systematic, public, State-by-State record of how each Member State has preserved the frozen baseline, lifted the condemned visas, or transposed the case law is itself a finding — and a damning one. For a body of directly effective rights more than half a century old, one would expect a developed compliance literature: official transposition tables, infringement records, comparative studies. For the EEA and for Union free-movement law, such material is abundant. For the Ankara regime it is sparse, scattered, and largely the product of individual academic effort rather than institutional monitoring. The Commission does not appear to maintain, or at least to publish, any comprehensive assessment of Member State compliance with the standstill across the four dimensions surveyed here. The "insufficient data" entries are thus not merely an honest acknowledgement of the limits of the public record; they are evidence of the very neglect the article describes. A regime that were being properly stewarded would generate the data; the data's absence is a symptom of the absence of stewardship.

15C. A consolidated reading of the four dimensions

Drawing the four dimensions together for the principal jurisdictions makes the unevenness vivid. Figure 4A offers a deliberately cautious synthesis: it records, for a representative selection of Member States across the enlargement rounds, a summary judgment on each dimension, using a three-fold scale — "some implementation evidenced," "partial / contested," and "insufficient data" — and refuses to record compliance where the record will not support it. The dominance of the middle and right-hand categories is the whole point. Only in the two most-litigated jurisdictions, Germany and the Netherlands, does the record show sustained engagement across more than one dimension, and even there the engagement is the product of litigation rather than of legislative transposition or administrative reform. Everywhere else, the honest entry is that the position is partial, contested, or simply undocumented.

Figure 4A — Consolidated synthesis of implementation by dimension, representative Member States (cautious; not a compliance certification)

Member State	Standstill (visa/residence)	Decision 1/80 (workers)	Decision 3/80 (social security)	Case-law transposition
Germany	Partial / contested (Soysal only partly honoured)	Some implementation evidenced (much CJEU litigation)	Some implementation evidenced (Sürül line)	Partial / contested
Netherlands	Partial / contested (Sahin charges litigated)	Some implementation evidenced	Some implementation evidenced (Akdas/Demirci)	Partial / contested
Denmark	Partial (service-provider visa guidance)	Some implementation evidenced (Genc/A references)	Insufficient data	Partial / contested
France	Insufficient data	Insufficient data	Insufficient data	Insufficient data
Spain (1986)	Insufficient data	Insufficient data	Insufficient data	Insufficient data
Poland (2004)	Insufficient data	Insufficient data	Insufficient data	Insufficient data
Romania (2007)	Insufficient data	Insufficient data	Insufficient data	Insufficient data
Croatia (2013)	Insufficient data	Insufficient data	Insufficient data	Insufficient data

The scale is deliberately coarse and conservative. "Some implementation evidenced" means only that the public record shows sustained engagement (typically through litigation), not full or correct compliance; "partial / contested" means the position is mixed or disputed; "insufficient data" means the public record does not permit a confident judgment and must not be read as either compliance or breach. The preponderance of the latter two categories is the finding. Sources: as for Figures 1–4.

The consolidated picture vindicates the central claim of this Part without overstating it. It would be wrong to assert that most Member States are in proven, flagrant breach; the record does not establish

that, and intellectual honesty forbids the claim. What the record does establish is that the uniform, well-documented, properly transposed enjoyment of Ankara rights that the Agreement was meant to secure does not exist anywhere, that it is approximated only in the handful of jurisdictions where litigants have forced the issue, and that across most of the Union the position is simply unknown because no institution has troubled to find out. For a body of directly effective rights more than half a century old, that is an indictment in itself.

Part V — Turkey's Own Breaches: The Fiscal Standstill and the Tax on Cars

17. The case against Turkey, stated fairly

It would be a one-sided account that catalogued only the Union's failures. Turkey has not honoured its side of the bargain either, and its most conspicuous and economically consequential breaches lie in the field of internal taxation. The argument of this Part is that Turkey's system of indirect taxation on goods — in particular the Special Consumption Tax (Özel Tüketim Vergisi, "ÖTV") and, in combination with it, Value Added Tax (Katma Değer Vergisi, "KDV") — operates, as applied to motor vehicles and to a wide range of other goods, in a manner difficult to reconcile with Turkey's obligations under the Customs Union and the Ankara Agreement. The point is not that Turkey may levy no taxes; every state may. The point is that the Customs Union, as authoritatively interpreted, prohibits both charges having equivalent effect to customs duties and discriminatory or protective internal taxation, and that Turkey's fiscal regime, in its design and its incidence, sits uncomfortably against both prohibitions.

18. The governing prohibitions under the Customs Union

Decision No 1/95 abolished, between Turkey and the Union, customs duties and charges having equivalent effect on goods in free circulation, and Article 66 directs that its provisions, where identical in substance to the corresponding Treaty provisions, be interpreted in conformity with the Court of Justice's case law. In Istanbul Lojistik the Court applied that bridge for the first time, holding that a Hungarian motor-vehicle tax levied on Turkish-registered heavy goods vehicles crossing Hungary in transit was a charge having equivalent effect to a customs duty, prohibited by Decision No 1/95.[25] The significance of the case, as the academic commentary immediately recognised, is that via Article 66 not only the prohibition on customs duties and charges having equivalent effect, but also the prohibition on discriminatory or protective internal taxation — the Customs Union analogue of Article 110 TFEU — carries the same meaning as its internal-market counterpart.[26]

The Court has also confirmed, in CX, that the standstill clauses of the Agreement and the free-movement-of-goods provisions of Decision No 1/95 operate together to catch national measures that burden Turkish transport and trade.[27] Two principles thus bind Turkey as a matter of Customs Union law: it may impose no charge having equivalent effect to a customs duty on goods crossing the frontier, and it may impose no internal tax that discriminates against or protects against imported goods relative to domestic products.

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[25] Case C-65/16 *Istanbul Lojistik* (ECLI:EU:C:2017:770) [38], [44], [46]: any pecuniary charge imposed unilaterally on goods by reason of their crossing a frontier, whatever its designation or mode of application, is a charge having equivalent effect; and the FEU Treaty case law on the free movement of goods is transposable to the Customs Union via Article 66.

[26] See the case-note in (2018) 45 *Legal Issues of Economic Integration* (on *Istanbul Lojistik*): on the basis of the judgment, via Article 66, the prohibitions on discriminatory or protective internal taxation and on quantitative restrictions under Decision No 1/95 bear the same meaning as their EU internal-market equivalents.

[27] Case C-629/16 *CX* (ECLI:EU:C:2018:566): national legislation restricting Turkish-seated hauliers by a quota-based authorisation regime engaged Article 41(1) of the Additional Protocol and Articles 5 and 7 of Decision No 1/95 (free movement of goods).

19. The ÖTV and KDV regime on motor vehicles

Against that legal background, consider Turkey's taxation of motor vehicles. The ÖTV is a special consumption (excise) tax introduced by the Special Consumption Tax Law No 4760 of 6 June 2002.[28] It is levied on a closed list of goods — petroleum products, motor vehicles, tobacco and alcohol, and luxury items — and, for passenger cars, at rates that depend on engine displacement and price. Those rates are extraordinarily high by any international standard. On conventional internal-combustion vehicles the ÖTV ranges, depending on engine size and value, from around 45 per cent at the lowest band to as much as 220 per cent at the top; an important threshold falls at 1.6 litres, above which the rate sharply increases, and a further step at 2.0 litres.[29] On top of the ÖTV, KDV (VAT) at the standard rate — 20 per cent since 2024 — is applied to a base that includes the vehicle price plus any customs duty plus the ÖTV itself, producing a compounding, tax-on-tax effect. The combined burden can exceed the original price of the vehicle several times over.[30]

The brief that prompted this study put the headline figures starkly: that European-produced cars imported into Turkey — including models otherwise treated as in free circulation under the Customs Union — face an ÖTV of up to 200 per cent and KDV of 20 per cent. The precise top rate is a moving figure set by Presidential decree and has been quoted at up to 220 per cent for the largest-engined and most expensive vehicles; the order of magnitude is not in doubt. The economic effect is that a vehicle manufactured in the Union and shipped to Turkey arrives into a fiscal environment that more than doubles, and can more than triple, its price — notwithstanding that the Customs Union was meant to deliver the free circulation of exactly such goods.

Figure 5 — Illustrative tax-on-tax computation for a vehicle imported into Turkey (rates indicative; ÖTV set by decree)

Component	Basis	Illustrative amount
Vehicle value (CIF)	Declared value	€30,000
Customs duty	Up to ~10% (nil for EU goods in free circulation under A.TR)	€0 (EU/A.TR) – €3,000 (third country)
ÖTV (Special Consumption Tax)	% of value by engine band (here 100%)	€30,000
Subtotal (taxable base for KDV)	Value + duty + ÖTV	€60,000
KDV (VAT) at 20%	On the cumulative base	€12,000
Total delivered tax-inclusive cost		€72,000 (vs €30,000 base)

Figures are illustrative and rounded; actual ÖTV depends on engine displacement and price band and is revised by Presidential decree (bands roughly 45%–220%). The point is structural: KDV is charged on a base that already includes ÖTV, compounding the burden. Sources: ICCT (2021); PwC Worldwide Tax Summaries: Turkey; industry import guides documenting the cumulative computation.

[28] Special Consumption Tax Law (Özel Tüketim Vergisi Kanunu) No 4760 of 6 June 2002 (Official Gazette, 12 June 2002). List II of the annexed schedules covers automobiles and other vehicles. (Some accounts date the modern excise reform to 1999–2002; the consolidating statute is the 2002 Law No 4760.)

[29] On the ÖTV rate structure for vehicles (engine-displacement and price bands; thresholds at 1.6 l and 2.0 l; top rates up to roughly 220% on the largest-engined/most expensive cars), see International Council on Clean Transportation, *The Power of Vehicle Taxation Schemes* (2021); and Turkish tax practitioner summaries (e.g. PwC, *Worldwide Tax Summaries: Turkey*). Rates are periodically revised by Presidential decree.

[30] The standard KDV rate was raised to 20% in 2024; VAT is computed on the cumulative value including customs duty and ÖTV, producing a compounding effect (see PwC, *Worldwide Tax Summaries: Turkey*; and industry import guides documenting the cumulative computation).

20. Why this breaches the bargain: the temporal and the substantive arguments

Two distinct arguments support the contention that this regime is incompatible with Turkey's obligations. The first is temporal and rests on the logic of the standstill. When Turkey entered the customs union arrangements — the Additional Protocol's tariff dismantling timetable, and above all Decision No 1/95 in 1995–96 — the ÖTV did not exist; it was introduced only in 2002. A consumption tax of this magnitude, layered onto imported and free-circulation goods after the customs union was completed, is on its face a new fiscal burden introduced after the relevant baseline. If, as Istanbul Lojistik holds, the Customs Union prohibits charges having equivalent effect and discriminatory internal taxation with the same content as the Treaty, then a post-1996 tax that operates to burden goods crossing into the Turkish market, or to protect domestic production, is exactly the kind of measure the Customs Union was meant to foreclose. The brief's framing — that these taxes “did not exist” when Turkey acceded to the arrangements and therefore offend the standstill — captures a real point: the bargain was struck against a fiscal baseline that Turkey has since moved.

The second argument is substantive and turns on incidence rather than timing. A charge is one having equivalent effect to a customs duty if it is imposed by reason of goods crossing the frontier; it is discriminatory or protective internal taxation if it bears more heavily, in law or in fact, on imported goods than on competing domestic products. The ÖTV, formally, applies to vehicles regardless of origin, which on its face places it in the internal-taxation category rather than the customs-duty category. But the analysis cannot stop at the formal face of the measure. Where the rate structure is calibrated — by engine displacement, by price band, by vehicle type — in ways that systematically track the characteristics of imported vehicles and spare the characteristics of domestically produced ones, the tax may be protective in effect even though origin-neutral in form. That is the classic Article 110 inquiry, and via Article 66 it is now the Customs Union inquiry. Whether Turkey's vehicle ÖTV crosses that line is, properly, a question of detailed economic incidence on which a court would need evidence; but the structure of the tax — steep thresholds at engine sizes that map onto the import mix, punitive top bands, and a compounding VAT base — is at the least strongly suggestive of a protective effect, and at the most a charge that, applied to free-circulation goods, cannot be reconciled with the Customs Union at all.

The point is sharpened by the fact that the Court has already condemned, in Istanbul Lojistik, a Member State's motor-vehicle tax as a charge having equivalent effect under the very same Decision No 1/95 — and that judgment ran against an EU Member State (Hungary) in favour of a Turkish operator. The Customs Union's fiscal disciplines are not a one-way street running only against the Union; they bind Turkey with equal force. A consistent application of *Istanbul Lojistik* would require scrutiny of Turkey's own fiscal measures by the same standard. That such scrutiny has not occurred — that no equivalent case has been pursued against Turkey's vehicle taxation — is itself a feature of the enforcement asymmetry examined in Part VI.

21. The wider catalogue of Turkish shortcomings

Turkey's fiscal measures are the clearest but not the only instance of non-compliance. Several other shortcomings recur in the literature and the Commission's own reporting and should be recorded for balance. Turkey has not, in every respect, maintained the alignment with the Common Customs Tariff and the Union's preferential arrangements that Article 54 of Decision No 1/95 requires; it has on occasion introduced additional duties and surcharges on third-country imports, and in 2024 raised fixed import taxes (including on goods from EU Member States) and added surcharges on goods within

the scope of the ÖTV Law, measures hard to square with full alignment. It has maintained import-licensing and surveillance requirements and technical barriers that the Customs Union was meant to remove. It has not completed the approximation of its legislation in several fields of direct relevance to the Customs Union. And it has, at the political level, declined to extend the Customs Union to Cyprus, the very stance that froze eight accession chapters. None of this excuses the Union's failures; but a candid account must record that the breach runs both ways, and that the fiscal breaches in particular impose real and quantifiable costs on European exporters and on Turkish consumers alike.

19A. The distinction between a charge of equivalent effect and internal taxation

To assess the ÖTV/KDV regime against the Customs Union it is necessary to keep two distinct prohibitions apart, as the Court has always insisted they be kept apart in the internal-market context. The first, the prohibition on customs duties and charges having equivalent effect, catches any pecuniary charge imposed by reason of goods crossing a frontier; such a charge is unlawful absolutely, regardless of its purpose or its level, and cannot be justified.[31] The second, the prohibition on discriminatory or protective internal taxation (the Article 110 TFEU analogue), catches taxes applied to domestic and imported goods alike but bearing more heavily, in law or in fact, on the imported product or on a product with which the imported product competes; such a tax is unlawful only to the extent of its discriminatory or protective effect, and the inquiry is into incidence, not form.[32]

The classification of the ÖTV matters because the consequences differ. If, as applied to goods entering Turkey, the ÖTV operates as a charge triggered by the crossing of the frontier — for instance, levied on importation in a way not matched by an equivalent burden on a genuinely comparable domestic transaction — it falls into the first category and is unlawful outright. If, as its formal design suggests, it is an internal consumption tax applied to all vehicles regardless of origin, it falls into the second category and is unlawful only if its structure protects domestic production. The honest position is that the answer depends on facts a court would need to find: the precise point of taxation, the treatment of domestically assembled versus imported vehicles, and the correlation between the rate bands and the import mix. But the structural features already noted — the steep thresholds at engine displacements that track imported models, the punitive top bands, the compounding KDV base — at least raise a serious case under the second prohibition, and arguably under the first where the tax bites on free-circulation goods at the point of entry.

19B. The temporal argument restated and qualified

The temporal argument advanced in the brief — that these taxes did not exist when Turkey acceded to the customs union arrangements and therefore offend a standstill — requires careful statement, because its strength varies with its precise form. There is no general fiscal standstill clause in the Ankara Agreement of the kind that Article 41(1) provides for establishment and services. What there is, in the customs union, is a prohibition (in Decision No 1/95 and, behind it, in Article 10 of the Ankara Agreement) on customs duties, charges having equivalent effect, and discriminatory or protective internal taxation. The temporal point is therefore best framed not as a breach of a dedicated fiscal

[31]The classic internal-market formulation is in the *Diamantarbeiders* line and is restated, for the Customs Union, in *Istanbul Lojistik* (C-65/16) [39]: any pecuniary charge imposed unilaterally on goods by reason of the fact that they cross a frontier is a charge having equivalent effect, whatever its designation or mode of application.

[32]The Article 110 TFEU analysis distinguishes the first paragraph (similar products: no higher taxation of imports) from the second (competing products: no protective effect); via Article 66 of Decision No 1/95 the same analysis applies within the Customs Union.

standstill, but as evidence bearing on classification and effect: a substantial new tax, introduced in 2002, layered onto goods after the customs union was completed in 1996, is naturally read as a new fiscal burden on trade, and its introduction after the baseline strengthens the inference that it operates to protect domestic production or to claw back at the fiscal border the protection the customs union removed at the tariff border. The brief's instinct is sound; the doctrinal hook is the prohibition on charges of equivalent effect and discriminatory internal taxation, illuminated by the fact that the burden post-dates the bargain.

It must be acknowledged, for balance, that Turkey has a respectable answer available. A state retains, even within a customs union, a wide sovereignty over internal taxation; high excise duties on motor vehicles are not unique to Turkey; and an origin-neutral consumption tax calibrated by engine size and price is, on its face, a legitimate fiscal and environmental instrument, not a customs duty in disguise. The Court has never condemned Turkey's vehicle ÖTV, and it might not, on a full inquiry into incidence. But the existence of a respectable defence does not dispose of the matter; it merely confirms that the question is a serious one that has never been litigated — and the reason it has never been litigated returns, once again, to the enforcement asymmetry. The Union has shown no appetite to test Turkey's fiscal measures against the Customs Union, just as it has shown little appetite to test Member State measures against the standstill. The fiscal breach, like the standstill erosion, persists not because it is clearly lawful but because the machinery that might examine it does not engage.

19C. The cost of the fiscal breach

Whatever its precise legal characterisation, the economic cost of Turkey's vehicle taxation is large and falls on both sides of the relationship. For European manufacturers — including the European producers whose vehicles are, under the customs union, supposed to enjoy free circulation — the ÖTV/KDV regime erects a fiscal wall at the Turkish border that negates much of the market access the customs union was meant to confer. A European-made vehicle that crosses into Turkey duty-free under an A.TR certificate then meets an ÖTV of up to 200 per cent or more and a 20 per cent KDV computed on the inflated base, with the result that the free circulation promised by the customs union is, for this category of goods, substantially illusory. For Turkish consumers, the regime makes new vehicles among the most expensive in the world relative to income and entrenches an ageing, less safe and more polluting fleet. The breach, in short, is not a technicality; it is a significant impairment of the customs union's central promise, borne by European exporters and Turkish consumers alike, and it stands as the clearest single instance of Turkey's failure to honour its side of the bargain.

Part VI — The European Side: Under-Transposition and a Political Guardian

22. Two failures, one pattern

The European side of the ledger contains two distinct but connected failures. The first is the failure of Member States to transpose, into national law and administrative practice, both the obligations of the Agreement itself and the rulings of the Court of Justice interpreting it. The second is the failure of the European Commission, as guardian of the Treaties, to enforce those obligations with anything approaching the vigour it applies to comparable instruments. The two are connected because the second enables the first: a Member State will not trouble to transpose what it will never be made to answer for, and a guardian that does not act removes the incentive to comply. The most fully documented illustration of the whole pattern is the recent United Kingdom experience, which is worth setting out in some detail because it shows, in a single jurisdiction and across a defined period, how the regime's structural weaknesses translate into the silent loss of rights.

23. The failure to transpose: the standstill not preserved

Part IV's figures already show the breadth of under-transposition. Its mechanism is worth naming precisely. The standstill required each Member State to preserve, for Turkish nationals, the most favourable position obtaining on its reference date — and, where its general immigration law had since become harsher, to disapply that harsher law to Turkish applicants. The recurring failure was to do the opposite: to apply the current, points-based, evidence-heavy regime to Turkish applicants as though the standstill did not exist. The United Kingdom's treatment of Turkish businesspersons under the European Communities Association Agreement ("ECAA") route is the documented paradigm. Between roughly 2014 and the end of the Brexit implementation period, the United Kingdom imported into the assessment of Turkish business applications a battery of conditions drawn from its modern points-based system — a requirement that the applicant's funds be "entirely his own, solely under his control," a demand for specified evidential formats, and a requirement to prove the source of funds — none of which had any place in the spare and generous 1973 Rules (paragraph 21 of HC 510) that the standstill froze in place.[33] Each accretion worsened the applicant's position relative to the 1973 baseline; each was therefore, by object or effect, a new restriction prohibited by Article 41(1), permissible only if justified by an overriding public interest and shown proportionate under Demir, Dogan and Genc — a justification the United Kingdom never even attempted, because its decision-makers never approached the matter through the standstill at all.[34]

The procedural dimension was, if anything, more corrosive. The United Kingdom abolished the merits appeal against refusals (by section 15 of the Immigration Act 2014), replacing an independent judicial appeal that could hear oral evidence and remake the decision with an internal administrative review conducted by the Home Office on the papers. The High Court, in *R (Akturk)*, held that the standstill reached the remedy and that administrative review was "markedly less favourable" than the 1973 appeal it replaced; the Court of Appeal, in *CA (Turkey)*, reversed, reading "restrictions" narrowly so as

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[33]Statement of Immigration Rules for Control after Entry (HC 510, 1973) para 21; the modern accretions are analysed against it in the contemporary scholarship and counsel's opinions discussed below. On the 1972/73 Rules being "considerably more favourable" than the modern regime, see *Akinci (paragraph 21 HC 510 — correct approach)* [2012] UKUT 266 (IAC) [9].

[34]Case C-138/13 *Dogan* (ECLI:EU:C:2014:2066) [37]–[38]; Case C-225/12 *Demir* (ECLI:EU:C:2013:725) [40]–[41]; Case C-561/14 *Genc* (ECLI:EU:C:2016:247) [51]–[57].

not to reach remedies.[35] The empirical signature of the change is arresting: where the pre-2015 appeal corrected something like 40 per cent of refusals at first appellate instance (and close to 100 per cent of those reaching the Court of Appeal), the success rate on administrative review for Turkish nationals asserting Association rights ran from under 1 per cent to about 6 per cent.[36] A remedy that corrected four refusals in ten was replaced by one that corrected fewer than one in ten — the quantitative shadow of a remedy degraded from independent adjudication to internal review.

24. The failure to refer: Article 267 as a closed channel

The under-transposition was compounded by the courts' systematic failure to refer the resulting questions to the Court of Justice under Article 267 TFEU. A court against whose decisions there is no judicial remedy must refer a genuinely uncertain and outcome-determinative question unless it is irrelevant, *acte éclairé*, or *acte clair* — the CILFIT conditions, recently tightened in Consorzio Italian Management.[37] Yet on the scope of Article 41(1) — a question on which the High Court and the Court of Appeal had openly divided, the paradigm of a matter not *acte clair* — no reference was made. In the seven years before 2015 the United Kingdom's courts had referred on average about one Turkish-establishment question a year; after April 2015, despite the wholesale transformation of the regime and nearly two thousand Turkish nationals pursuing challenges as far as the Court of Appeal and the Supreme Court, there was not a single reference.[38]

The contrast with the great referring jurisdictions is the deeper point, and it generalises beyond the United Kingdom. The modern law of the Ankara standstill was built almost entirely on German, Dutch, Austrian and Danish references: Demirel, Soysal, Abatay, Demir, Demirkan, Dogan and Tekdemir from Germany; Sahin, Toprak and Oguz, Demirci and Çoban from the Netherlands; Dörr and Ünal and Dereci from Austria; Genc, A and B v Udlændingenævnet from Denmark. The German and Danish courts, in particular, drove the most important modern development of all — the Demir–Dogan–Genc requirement that a standstill restriction be justified and proportionate — entirely without United Kingdom participation, even though that doctrine was dispositive of the very questions the United Kingdom's courts were deciding against Turkish nationals. Where the referring habit is strong, the law develops and rights are vindicated; where it is weak or absent, the regime stagnates and rights are lost. The fragmentation of Part IV is, in part, a fragmentation of judicial engagement.

25. The guardian that would not act

The second European failure is the Commission's. By Article 17(1) TEU the Commission is guardian of the Treaties and is to ensure the application of Union law; but the settled case law — Star Fruit, Sonito, and the Sateba line — holds that it enjoys a very wide and unreviewable discretion whether to bring infringement proceedings under Article 258 TFEU, and that an individual complainant cannot compel

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[35] R (Akturk) [2017] EWHC 297 (Admin), [2017] 4 WLR 62 [83] (Holman J); reversed in *Secretary of State for the Home Department v CA (Turkey)* [2018] EWCA Civ 287, [2019] 1 WLR 2689 [33]–[44] (Newey LJ).

[36] The figures derive from the Joint Advice of 26 February 2021 prepared by Sir Ian Forrester QC, Eleanor Sharpston QC and Ravi Mehta for the Turkish Association to Protect the Rights of Industrial and Commercial Businesspersons in the UK under the ECAA, and are corroborated structurally by the Independent Chief Inspector of Borders and Immigration, *An Inspection of the Administrative Review Processes Introduced Following the 2014 Immigration Act* (HMSO 2017). The authors caution the figures are difficult to verify precisely; their orders of magnitude are not in doubt.

[37] Case 283/81 *CILFIT* [1982] ECR 3415 (ECLI:EU:C:1982:335) [16]–[21]; Case C-561/19 *Consorzio Italian Management* (ECLI:EU:C:2021:799) [39]–[51].

[38] Joint Advice of 26 February 2021 (Forrester, Sharpston and Mehta), paras 11, 15 (about one reference per year before 2015; nearly 2,000 challenges after April 2015; “not a single preliminary reference to the CJEU”). On the comparative referral record, see the Court of Justice's Annual Reports (Judicial Activity).

it to act.[39] That proposition is correct as far as it goes. But it answers only the question whether the Commission can be compelled to litigate, not whether it has discharged its distinct duty of good administration in handling a complaint — and it is in the latter respect that the Commission's stewardship of the Ankara Agreement has been most wanting. When the Turkish businesspersons' association laid a detailed, evidenced complaint of systematic treaty violation before it, the Commission met the central allegation — the abolition of the appeal — with the statement that, having considered the legislation in its consolidated version, it *"appears that this legislation provides for the right of appeal of adverse immigration decisions"* — the precise opposite of the truth, since the object and effect of section 15 of the 2014 Act was to remove that appeal.[40] On three of the most important questions — the points-based requirements under Articles 41(1), 13 of Decision 1/80 and 9; the abolition of the settlement route; and out-of-time extensions during the pandemic — it deferred in identical terms, stating that each "requires further assessment and will be addressed in subsequent correspondence," assessment that never came.[41]

Most revealing of all was the Commission's own admission, in response to an access-to-documents request, that across the entire Brexit process — the Withdrawal Agreement, the transition period, and the successor trade agreement, precisely the window in which the Turkish businesspersons' position was being permanently degraded — it *"does not hold any documents"* corresponding to any action taken to protect their rights, the only responsive material being the files of two historic complaints, each closed without infringement proceedings.[42] An admission, from the guardian's own files, of documented inaction across the decisive period.

26. The enforcement asymmetry: a quantitative contrast

The charge is not merely that the Commission failed to act in one episode, but that its enforcement of the Ankara Agreement has been systematically less vigorous than its enforcement of comparable association instruments. The contrast is structural and can be stated by reference to the architecture of the various agreements, as Figure 6 summarises. The European Economic Area is policed by a dedicated guardian — the EFTA Surveillance Authority — and a dedicated court, the EFTA Court, before which infringements are routinely pursued. The EU–Swiss agreements are bound together by the "guillotine" clause, which makes erosion of any one agreement costly to the whole relationship and gives each side a structural stake in compliance. The Europe Agreements with the central and eastern European candidate states were policed, during the accession era, by the leverage of accession itself and by close Commission engagement, and they generated a trilogy of enforcement rulings against the very same defendant — the United Kingdom — on the very same activity, the establishment of self-employed nationals.

By contrast, the number of infringement actions the Commission has brought to protect the rights of Turkish nationals under the Ankara Agreement is vanishingly small. The landmark is essentially a

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[39] Case 247/87 *Star Fruit v Commission* [1989] ECR 291; Case C-87/89 *Sonito* [1990] ECR I-1981 (ECLI:EU:C:1990:213); Case C-422/97 P *Sateba* [1998] ECR I-4913 (ECLI:EU:C:1998:395).

[40] European Commission (DG NEAR) reply of 30 September 2020 to the complainant association (reproduced in the contemporary scholarship); the statement that the legislation "provides for the right of appeal" is contradicted by section 15 of the Immigration Act 2014.

[41] ibid; the deferral formula recurs across the contested points. The matter culminated in a complaint to the European Ombudsman, who opened an investigation into whether the Commission's handling amounted to maladministration.

[42] European Commission (DG NEAR) access-to-documents decision of 2 October 2020 (Ref GestDem 2020/5481): the only responsive documents were the files of two complaints closed without infringement proceedings, and the Commission held no documents corresponding to any protective action during the Withdrawal Agreement, transition period or trade agreement.

single case — Commission v Netherlands — concerning disproportionate residence-permit charges; beyond it, the corpus is the product of individual preliminary references, not Commission enforcement.[43] Where the Commission pursued the Europe Agreement establishment right against the United Kingdom in Gloszczuk, Kondova and Barkoci and Malik, and where it routinely supports the EEA regime through the EFTA machinery, it brought, in the face of the systematic erosion of Ankara rights, essentially nothing. The disparity is not explicable by the comparative strength of the rights — the Ankara standstill is, where it bites, the most generous of all the association instruments — but by the comparative weakness of the political will to enforce them. The Ankara Agreement is, in the apt phrase of the literature, the softest target in the family: a Member State minded to erode an inconvenient right need only administer it badly and wait.[44]

Figure 6 — Comparative enforcement architecture of the Union's external agreements

Instrument	Substantive technique	Dedicated guardian	Dedicated court	Practical enforcement
EEA Agreement	Dynamic homogeneity with the acquis	EFTA Surveillance Authority	EFTA Court	Strong
EU–Swiss (Bilateral I)	Static, contemporary; “guillotine” linkage	Joint committees + guillotine	Joint committees (no court)	Strong (structural)
Europe Agreements	National treatment; accession teleology	Commission + accession leverage	CJEU (pre-accession)	Moderate–strong (accession era)
Euro-Mediterranean	Equal treatment in employment only	Commission	CJEU	Moderate
Ankara Agreement	Negative standstill freezing a favourable baseline	Commission (discretionary; inactive)	CJEU (via Art 267 references only)	Weak

The Ankara standstill is, on paper, the most generous of the techniques (it freezes a favourable historical baseline) yet is the most weakly enforced, lacking any dedicated guardian or court and depending entirely on individual Article 267 references. Sources: EEA Agreement (OJ 1994 L1/3) and the ESA/EFTA Court Agreement (OJ 1994 L344/3); EU–Swiss Agreement on the Free Movement of Persons (OJ 2002 L114/6); the Europe Agreement trilogy (C-63/99, C-235/99, C-257/99); Commission v Netherlands (C-92/07).

27. The post-Brexit coda: a class with no negotiator

The United Kingdom episode ended with a final, telling asymmetry. When the United Kingdom left the Union, the Withdrawal Agreement protected the EU citizen with an elaborate Part on Citizens' Rights, and parallel citizens'-rights agreements protected the EEA-EFTA and Swiss nationals; the Turkish businessperson, whose right to be in the United Kingdom was no less a creature of Union law, secured nothing, because no one negotiated for him — not the Union (whose mandate concerned its own citizens), not Turkey (not a party), and not the United Kingdom (winding down its obligations).[45] And the successor UK–Turkey Free Trade Agreement of 29 December 2020 was a goods-only “continuity” instrument that said nothing about the residence or establishment of Turkish nationals already in the United Kingdom — unbundling trade from establishment, retaining the part that served

[43]Case C-92/07 *Commission v Netherlands* [2010] ECR I-3683 (ECLI:EU:C:2010:228). It is striking that the single most prominent Commission infringement action under the Ankara regime concerned charges, not the far graver erosions of establishment and remedy documented in the UK.

[44]Case C-63/99 *Gloszczuk*, Case C-235/99 *Kondova* and Case C-257/99 *Barkoci and Malik* (all 27 September 2001) — the Europe Agreement establishment trilogy against the United Kingdom Secretary of State. On the EEA's dedicated guardian and court, see the EFTA Surveillance Authority and the EFTA Court (Agreement of 1994, OJ 1994 L344/3).

[45]Withdrawal Agreement (OJ 2020 L29/7), Part Two (Citizens' Rights), arts 9–39; the EEA EFTA Separation Agreement (2019) and the UK–Swiss Citizens' Rights Agreement (25 February 2019) protected those nationals; no equivalent instrument protected the Turkish national.

United Kingdom exporters and discarding the part that served the Turkish businessperson.[46] The episode is a microcosm of the whole: a powerful right on paper, feeble enforcement in practice, fragmented across instruments and jurisdictions, and abandoned at the moment of greatest need because no institution had both the standing and the will to defend it.

24A. Köbler and the theory of judicial breach

The systematic non-referral documented above is not merely regrettable; it is, on the authorities, capable of constituting a breach of Union law in its own right. In Köbler the Court held that a Member State may incur liability in damages for a sufficiently serious breach of Union law by a court of last resort, including a manifest failure to comply with the duty to refer.[47] And in Commission v France the Court accepted that a persistent failure by a supreme court, resulting in a settled misapplication of Union law that a reference would have avoided, may itself found infringement proceedings against the Member State.[48] A decade of contested Ankara litigation reaching the United Kingdom's Court of Appeal and Supreme Court without a single reference, on questions the lower courts had openly divided upon, is on its face capable of meeting that threshold. That no such proceedings were ever contemplated, still less brought, is a further instance of the enforcement vacuum: the very mechanism Union law provides for policing judicial non-compliance went unused, because the only institution that could deploy it declined to act.

The causal significance of the non-referral is the deepest point. The substantive and procedural erosions of the standstill were able to occur, and to go uncorrected, precisely because the reference channel was closed. Had any contested question been referred, the Court of Justice would have given an authoritative ruling binding on the Member State, and the narrow national construction could not have stood as the final word. The non-referral was thus not a discrete, parallel breach but the enabling condition of all the others — and it interacts cruelly with the limited duty to reopen final decisions, for even a later favourable ruling does not generally oblige a state to revisit administrative decisions that have become final. A refusal that was never referred, and has become final, is therefore largely beyond rescue, which is exactly why the failure to refer at the time was so consequential. The lesson generalises: in a regime whose only working channel of development is the preliminary reference, the failure of national courts to refer is not a peripheral procedural lapse but the central mechanism by which rights are lost.

25A. Good administration versus the discretion not to litigate

The defence of the Commission's inaction rests on a true proposition deployed against the wrong question. It is true that the Commission cannot be compelled by an individual to bring infringement proceedings; the discretion under Article 258 TFEU is wide and unreviewable at the suit of a complainant, as Star Fruit, Sonito and Sateba establish.[49] But that discretion concerns the outcome — whether to litigate — and not the process of stewardship — whether to engage, analyse, and press a Member State to mend its ways. The latter is governed by the duty of good administration, now

[46] Free Trade Agreement between the United Kingdom and the Republic of Turkey (Ankara, 29 December 2020), CP 372 (Turkey No 1 (2021)); the House of Lords Library described it as “not a comprehensive free trade agreement.” Contrast the EU–UK Trade and Cooperation Agreement (OJ 2021 L149/10), with its titles on services and investment.

[47] Case C-224/01 *Köbler v Republik Österreich* [2003] ECR I-10239 (ECLI:EU:C:2003:513) [50]–[59].

[48] Case C-416/17 *Commission v France* (ECLI:EU:C:2018:811) [105]–[114]; see also Case C-154/08 *Commission v Spain* (ECLI:EU:C:2009:695).

[49] Case 247/87 *Star Fruit* [1989] ECR 291; Case C-87/89 *Sonito* [1990] ECR I-1981; Case C-422/97 P *Sateba* [1998] ECR I-4913.

reflected in Article 41 of the Charter, and is not dispensed with merely because the political conjuncture is discouraging. The distinction was put with precision by the senior counsel who advised the Turkish businesspersons' association: the discretion not to sue does not relieve the Commission of the duty, as part of good administration, to engage a serious, evidenced complaint properly — and that duty should be approached with particular rigour where there is a pattern of non-referral by national courts, because where the judicial channel is in effect muzzled, vigilance by the guardian becomes more, not less, necessary.[50]

The logic is compelling and bears restating in general terms, because it is the structural heart of the European-side failure. The two principal channels by which compliance with directly effective rights is policed are the preliminary reference and Commission enforcement. They are complementary: each is a check on the failure of the other. Where national courts refer, the Commission may stand back; where the Commission acts, the absence of references matters less. But where both fail together — where the courts will not refer and the Commission will not enforce — the directly effective right is left with no guardian at all. That is precisely the condition into which the Ankara standstill fell: a right that prevails in the abstract over national and even secondary Union law, but that in practice no court will vindicate and no institution will defend. The European Ombudsman's decision to open an investigation into whether the Commission's handling amounted to maladministration does not establish unlawfulness, but it refutes the suggestion that the grievance was fanciful: it was serious enough to prompt the Union's own administrative watchdog to ask whether the guardian of the Treaties had been asleep at its post.

[50]Joint Advice and Joint Response to the European Ombudsman (Forrester QC, Sharpston QC and Mehta, January–February 2021): the duty of good administration is not discharged by reciting the discretion not to litigate, and is heightened where national courts systematically fail to refer.

Part VII — The Free Trade Agreement Asymmetry

28. The structural unfairness at the heart of the Customs Union

The most economically significant and least defensible feature of the Customs Union is its treatment of third-country trade. Under Decision No 1/95, Turkey is obliged to adopt the Union's Common Customs Tariff and to align its commercial policy, including its preferential arrangements, with the Union's.[51] The practical consequence is that when the Union concludes a free trade agreement with a third country, Turkey must open its own market to that third country's goods on the preferential terms the Union has agreed — yet Turkey is not a party to that agreement, has no vote in its negotiation, and acquires no automatic right of preferential access to the third country's market in return. The third country gains access to the Turkish market through the back door of the Customs Union without conceding anything to Turkey; Turkey must then negotiate a parallel agreement of its own, from a position of weakness, to recover the reciprocity it has already been required to give away.[52]

The mechanism is sometimes described as a one-way door. A third country that signs a free trade agreement with the Union obtains, by operation of the Customs Union, effectively free access to Turkey for its goods, because those goods, once in free circulation in the Union, move into Turkey under cover of the A.TR movement certificate without further duty. Turkey, meanwhile, faces that third country's tariffs until and unless it can conclude its own free trade agreement with it — and the third country has little incentive to grant Turkey reciprocal access, having already secured the Turkish market for nothing. The empirical literature confirms both the asymmetry and its persistence: Turkey's compliance with the Union's external tariff for these “asymmetric” agreements is incomplete, and the divergence between Turkish and Union tariffs lasts, on the evidence, for at least a decade after the Union signs such an agreement and for as long as Turkey fails to conclude its own.

29. Why this is a legal as well as an economic grievance

It would be possible to treat the asymmetry as a mere matter of economic disadvantage — a bad bargain that Turkey accepted with its eyes open in 1995. But it is more than that. The Ankara Agreement's foundational principle, in Article 2(1) and throughout, is reciprocity: the association rests on “reciprocal rights and obligations.” An arrangement under which Turkey bears the obligation of opening its market to the Union's free trade partners while enjoying none of the corresponding right of access to those partners' markets is, on its face, in tension with the reciprocity the Agreement proclaims. The good-faith duty in Article 7 reinforces the point: a party may not, consistently with sincere cooperation, structure the relationship so that the obligations flow predominantly in one direction. The asymmetry is thus not only economically harmful to Turkey; it is difficult to reconcile with the reciprocal premise on which the whole Association is built.

The asymmetry has become more acute over time precisely because the Union's network of free trade agreements has grown enormously since 1995. When the Customs Union was concluded, the Union had few comprehensive free trade agreements; today it has dozens, each of which extends, through the Customs Union, into the Turkish market. The obligation Turkey accepted in 1995 was, in effect, an

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[51] Decision No 1/95, Articles 13–16 (alignment with the Common Customs Tariff) and 54–55 (approximation of commercial policy and preferential arrangements).

[52] This asymmetry is well documented: see European Parliament, *The EU-Turkey Customs Union and trade relations: what options for the future?* (EXPO study, 2021), and the JCMS literature, e.g. *Asymmetric Free Trade Agreements and Misalignment of Incentives: Lessons from the European Union–Turkey Customs Union* (2024) 62 Journal of Common Market Studies.

open-ended commitment to liberalise towards an ever-expanding and unknowable set of third countries chosen by the Union alone. That is a far heavier burden in 2026 than it was in 1996, and it is a burden the 1995 instrument never squarely contemplated or fairly allocated.[53]

30. The services gap as a mirror image

If the third-country asymmetry is unfair to Turkey on the import side, the exclusion of services and establishment from the Customs Union is unfair to Turkey on the export side, and the two together explain why the instrument is now widely regarded as belonging to another age. The Customs Union covers goods only. A Turkish manufacturer may ship goods into the Union freely, but the Turkish enterprise that would establish a subsidiary, the Turkish professional who would provide services across the border, and the Turkish service economy generally — by far the larger part of a modern economy — fall outside the Union's free-circulation discipline entirely, governed only by the frozen, fragmented, negative standstill analysed in Parts II to IV and, for the passive receipt of services, by nothing at all after Demirkan. A customs union confined to goods, designed in an era when goods dominated trade, is structurally mismatched to an economy in which services and establishment are central. The services gap is the mirror image of the FTA asymmetry: in goods, Turkey gives more access than it gets; in services, Turkey gets almost no access at all.

29A. A worked illustration of the one-way door

The abstraction of the asymmetry is best dispelled by a concrete illustration. Suppose the Union concludes a comprehensive free trade agreement with a large third-country economy, eliminating tariffs on that economy's industrial goods. By operation of the customs union, Turkey must align its external tariff and admit that economy's goods on the agreed preferential terms; goods from the third country, once in free circulation in the Union, flow into Turkey under the A.TR certificate without further duty, and Turkey must also extend equivalent treatment directly. The third country thereby gains effectively free access to the Turkish market of some eighty-five million consumers. In return, Turkey gains nothing automatically: the third country's market remains closed to Turkish goods at that country's prevailing tariffs unless and until Turkey negotiates its own free trade agreement with it. And the third country, having already secured the Turkish market through the Union's agreement, has little incentive to grant Turkey reciprocal access — why pay for what one already has for free? Turkey is left to negotiate from a position of structural weakness, having pre-committed to the concession before the negotiation begins.

The empirical literature confirms that this is not a hypothetical concern but a measured reality. Studies of the customs union find that Turkey's compliance with the Union's external tariff for these asymmetric agreements is incomplete — unsurprisingly, since full compliance would mean unilateral liberalisation without reciprocity — and that the resulting tariff divergence persists for at least a decade after the Union signs such an agreement, and for as long as Turkey fails to conclude a parallel deal.[54] The asymmetry thus produces a second-order dysfunction: it gives Turkey a rational incentive not to comply fully with the customs union's external-tariff discipline, which in turn gives the Union a grievance against Turkey, which in turn poisons the relationship and makes modernisation harder.

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[53] On the growth of the asymmetry with the expansion of the Union's FTA network, and Turkey's repeated, only partly successful efforts to conclude parallel agreements (e.g. with South Korea, and the difficulties with larger partners), see the European Parliament EXPO study (2021) and the IKV and Chatham House briefings on modernisation.

[54] "Asymmetric Free Trade Agreements and Misalignment of Incentives: Lessons from the EU–Turkey Customs Union" (2024) 62 *Journal of Common Market Studies*: Turkish compliance with EU tariffs for asymmetric FTAs is low, and the divergence lasts at least ten years after the EU signs such an FTA.

The structural unfairness does not merely harm Turkey; it generates non-compliance and mutual recrimination, exactly as the movement-side dysfunction does. A bargain that is unfair in its design will be unstable in its operation.

There is, moreover, a basic point of legitimacy. The Union's free trade agreements are negotiated by the Union in the interests of the Union, weighing the Union's offensive and defensive trade interests across all sectors. Turkey's interests are not represented at that table, yet Turkey bears a share of the consequences. An arrangement under which one party's market is opened by the unilateral decisions of another party, taken without the first party's participation and in the second party's interest, is difficult to defend as a partnership of equals — and the Ankara Agreement proclaims itself, in Article 2(1) and throughout, to be exactly that. The asymmetry is the point at which the customs union most clearly departs from the reciprocal premise of the Association, and it is for that reason, as much as for its economic cost, that it cannot survive into a modernised relationship.

Part VIII — The Case for Modernisation

31. Modernisation as legal coherence, not political favour

The conclusion to which the preceding Parts lead is that the modernisation of the Ankara Agreement and the Customs Union is not a discretionary political concession to be granted or withheld according to the temperature of EU–Turkey relations, but a requirement of legal coherence. An instrument that promised dynamic, progressive integration and delivered static fragmentation; that froze rights at twenty-eight different dates and then failed to honour even those frozen rights; whose engine of progression has seized for want of unanimity; whose disputes are never referred; whose social-security regime was never implemented; that requires one party to open its market to third countries while denying it the benefits; and that excludes from its scope the services and establishment that a modern economy turns upon — such an instrument is not functioning as law. It is generating breach on both sides precisely because it no longer fits the relationship it was meant to govern. Modernisation is the means of restoring coherence to a body of law that has lost it.

32. The content of a modernised instrument

The shape of the necessary reform follows from the diagnosis. Several elements are essential.

Extension to services, establishment and procurement. The Customs Union must be extended beyond goods to cover trade in services, the right of establishment, and public procurement, replacing the frozen, fragmented standstill with a positive, reciprocal, directly enforceable set of rights of the kind that exists for goods. This is the single most important reform, and it was the centrepiece of the Commission's own 2016 modernisation proposal.

Cure of the FTA asymmetry. A modernised instrument must address the third-country asymmetry, whether by associating Turkey with the Union's free trade negotiations, by a mechanism guaranteeing Turkey reciprocal access to the Union's free trade partners, or by a binding commitment of those partners (through the Union's negotiating mandate) to extend equivalent terms to Turkey. The present arrangement, under which Turkey's market is opened to others' goods without reciprocity, cannot survive in a modernised relationship consistent with the Agreement's reciprocal premise.

A workable governance and dispute mechanism. The unanimity-bound Association Council and the unused Article 25 dispute procedure must be replaced or supplemented by a governance structure capable of adopting progressive measures and of referring or resolving disputes without being held hostage to a single veto. The EEA model — a dedicated surveillance authority and a dedicated court — and the Swiss “guillotine” model both show that effective machinery is possible; the Ankara regime has neither.

Implementation of social-security coordination. The Council should at last adopt the measure, proposed by the Commission in 2012 to replace Decision No 3/80, that would give effect to the social-security coordination Article 39 of the Protocol promised more than half a century ago.

Fiscal discipline on both sides. A modernised instrument should make explicit, and enforceable against both parties, the prohibition on charges having equivalent effect and on discriminatory or protective internal taxation that Istanbul Lojistik already implies — disciplining Turkey's ÖTV/KDV regime on vehicles and other goods, and equally disciplining any Member State measure (such as the Hungarian transit tax) that burdens Turkish goods.

A uniform, transposed standard for persons. Pending or alongside the extension to establishment, the existing rights of Turkish nationals should be rendered uniform and properly transposed — a single, published, EU-wide statement of the standstill's content, binding caseworkers and tribunals in every Member State, ending the fragmentation that Figures 1 to 4 document.

33. The economic prize and the political obstacle

The economic case for modernisation is not seriously contested. Independent studies have estimated that an updated Customs Union could raise Turkey's GDP by as much as 2.5 per cent and increase its exports to the Union by 15 to 25 per cent, with corresponding gains for Union exporters and investors; the Commission's own 2016 impact assessment favoured the "customs-union-plus-FTA" option that would extend the relationship to services, agriculture and procurement.[55] The obstacle is not economic but political. The Commission requested a negotiating mandate in December 2016; the Council, against the background of deteriorating relations after the 2016 coup attempt and concerns over democratic standards, Cyprus and foreign policy, declined to authorise negotiations, and the General Affairs Council declared in June 2018 that no further work was envisaged.[56] The very unanimity that has paralysed the Association Council has thus paralysed the project of reform itself — a fitting, and damning, illustration of the structural defect this article has described. Modernisation is blocked by the same mechanism that made modernisation necessary.

There are recent signs of movement — the first EU–Turkey High-Level Dialogue on Trade was held in July 2024, and ministerial contacts resumed in early 2026 — but no negotiating mandate has been adopted and the structural obstacles remain. The lesson of this article is that those obstacles will not dissolve on their own. A regime that cannot evolve because its evolution requires the unanimous consent of parties one of whom can always find a reason to refuse will continue to generate breach, fragmentation and grievance until the underlying instrument is replaced. The choice is not between modernisation and the comfortable preservation of the status quo; it is between modernisation and the continued, slow, mutual erosion of a relationship that both parties need.

34. What modernisation should borrow from the other models

The comparative survey of Part VI is not merely diagnostic; it is a menu of solutions. Each of the Union's other external instruments solves a problem the Ankara regime has failed to solve, and a modernised instrument could borrow accordingly. From the EEA it could borrow the mechanism of rolling incorporation and a dedicated surveillance-and-court structure, so that the relationship develops continuously and is policed by an institution with both the mandate and the will to act, rather than depending on the accident of individual references. From the EU–Swiss model it could borrow the structural interdependence of the guillotine, giving each party a stake in the health of the whole relationship and a disincentive to chip away at the other's rights. From the Europe Agreements it could borrow the discipline of conditionality and close engagement that the prospect of accession once supplied. And from the EU–UK Trade and Cooperation Agreement — concluded in days at the end of 2020 with substantial titles on services and investment and provisions on the temporary entry of business persons — it could borrow the simple recognition that a modern trade relationship must

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[55] European Commission, Impact Assessment SWD(2016) 475 final, and the accompanying recommendation; the GDP and export estimates are drawn from the modernisation literature (e.g. the institute/Ifo projections reported in 2026) and from World Bank and Commission studies of 2014–16.

[56] European Commission recommendation of December 2016 (SWD(2016) 475/476 final); General Affairs Council conclusions, 26 June 2018 ("no further work towards the modernisation of the EU-Turkey Customs Union is envisaged"). Momentum revived with the first EU–Turkey High-Level Dialogue on Trade in July 2024.

address services, establishment and mobility, not goods alone. The drafting tools exist; what has been missing is the will to deploy them for Turkey.

None of this requires reinventing the wheel. The Commission's own 2016 proposal already sketched the substantive content: extension to services, public procurement and agriculture, an improved institutional and dispute-settlement structure, and the association of Turkey with the Union's trade policy so as to cure the asymmetry. The World Bank and the Commission's impact assessment both modelled the gains. The materials for a modernised instrument are, in short, already drafted and costed; they sit in the Council awaiting a mandate that the requirement of consensus has, for a decade, withheld.[57]

35. A realistic appraisal

It would be naive to present modernisation as straightforward. The obstacles are real and not merely procedural. The Cyprus question — Turkey's refusal to extend the customs union to the Republic of Cyprus, and the Republic's consequent veto — is a genuine and longstanding impasse. Concerns about the rule of law and democratic standards in Turkey are sincerely held and have hardened since 2016. The migration relationship has at times overshadowed and at times hostage-held the trade relationship. And the prospect of Turkish accession, the original telos of the whole Agreement, has receded to the point where some Member States would prefer to recast the relationship as a neighbourhood arrangement rather than an antechamber to membership. These are not trivial difficulties, and a candid case for modernisation must acknowledge them. But none of them is an argument for leaving the existing instrument in place; they are arguments about the terms and the timing of its replacement, not about the need for it. A defective instrument does not become less defective because the politics of fixing it are hard. The dysfunction documented in this article will continue, and will continue to generate breach and grievance on both sides, for precisely as long as the instrument that produces it remains unreformed.

[57] European Commission, *Study of the EU-Turkey Bilateral Preferential Trade Framework, including the Customs Union* (2016) and Impact Assessment SWD(2016) 475 final; World Bank, *Evaluation of the EU-Turkey Customs Union* (2014).

Part IX — Conclusion

The Ankara Agreement was, in 1963, one of the most ambitious external instruments the European Community had ever concluded: a customs union, the progressive freedom of movement of workers, the abolition of restrictions on establishment and services, and the eventual prospect of accession. More than six decades later, almost none of that ambition has been realised. The customs union exists, but only for goods, and only on terms that require Turkey to open its market to the Union's free trade partners without reciprocity. The freedom of movement of workers does not exist. The abolition of restrictions on establishment and services never occurred; the businessperson has only a negative standstill, frozen at twenty-eight different dates, unevenly preserved, and patchily transposed. Social-security coordination was promised and never implemented. Accession is at a standstill. The Agreement has delivered a fraction of what it pledged, and even that fraction is administered so inconsistently that the uniform enjoyment of rights it was meant to secure does not exist.

The dysfunction is structural, and it runs in both directions. The instrument cannot move forward because the Association Council acts by unanimity and any Member State can block it; disputes are never referred because referral too requires consensus; and the law develops, if at all, only through the accident of individual litigation before whichever national courts happen to refer. Member States have failed to preserve the favourable historical baseline the standstill demanded and have failed to transpose the case law that interpreted it; the Commission, the guardian of the Treaties, has enforced the Agreement with a fraction of the vigour it brings to comparable instruments, treating clear breaches as matters for indefinite further assessment. Turkey, for its part, has breached the bargain too — most clearly through a system of internal taxation on vehicles and other goods, introduced after the customs union was completed and operating in a manner difficult to reconcile with the prohibition on charges having equivalent effect and discriminatory internal taxation that Istanbul Lojistik confirms. The breach is mutual because the instrument is defective: a framework this ill-fitted to the relationship it governs will produce non-compliance on every side.

The remedy is not to apportion blame but to replace the framework. The modernisation of the Ankara Agreement and the Customs Union — extending the relationship to services and establishment, curing the free trade agreement asymmetry, building governance and dispute machinery that can actually function, implementing the social-security coordination promised half a century ago, disciplining the fiscal breaches on both sides, and rendering the rights of persons uniform and properly transposed — is overdue. It is overdue not because relations between Turkey and the Union are warm, for they are not, but because the existing instrument has ceased to function as coherent law. The standstill was meant to be a ratchet that permitted improvement and forbade retreat. In practice it has done neither: it has not moved forward, because the machinery of progression has seized; and it has not honestly held its ground, because both parties have eroded it. A standstill that neither advances nor holds is not a standstill at all. It is a slow collapse, conducted under cover of the forms. The task now is to build, in its place, something that moves.

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