Taking Stock of Sixty Years of Association Law between the European Union and Türkiye: Case Law Reaching Its Limits and the Imperative for Normative Actions

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Abstract

Sixty years have passed since the entry into force of the Ankara Agreement, which established an association between the European Union (EU) and Türkiye. Broadly speaking, during the first half of this period, the Parties established the current normative framework of the association, comprising primarily the Ankara Agreement itself, its Additional Protocol (1970), and several Association Council Decisions, particularly Nos. 1/80, 3/80, and 1/95. In the latter half, the Court of Justice of the European Union (CJEU) emerged as a pivotal actor through its rulings, which clarified that the instruments of association law form part of EU law, benefiting especially from the principles of direct effect and primacy. Today, it is evident that the CJEU has almost reached the limits of judicial interpretation. Both case law and policy papers underscore the pressing need for normative actions to revise and enhance the current framework. Against this backdrop, this manuscript aims to review sixty years of EU–Türkiye association law, focusing on its norm-making and judicial interpretation. It addresses the questions: How far has CJEU case law progressed, and how can normative actions resolve the remaining challenges?

Keywords: EU–Türkiye Association Law, Case Law, Ankara Agreement, Additional Protocol, Association Council Decisions, Effects of Association Law, Freedom of Establishment and to Provide Services, Free Movement of Workers, Free Movement of Goods, Revision of Association

A. Introduction

EU–Türkiye relations, which date back nearly to the inception of European integration, encompass two primary dimensions: *association* and *accession*.[1] The *association* relationship is rooted in the EU's competence to conclude agreements establishing associations with third countries.[2] On July 31, 1959, Türkiye applied for association

1 One may add the migration cooperation relationship, which is based on the EU's Visa Liberalisation Dialogue with Türkiye and the EU–Türkiye Readmission Agreement, respectively launched and signed on 16 December 2013, as a third aspect. For the former, see COM(2016) 278 final, and for the latter, see OJ L 134 of 7/5/2014, p. 3. Nonetheless, this aspect of the relationship has been at an impasse. See *Göçmen*, in: Legal Issues in Turkey – European Union Relations, pp. 47–64. For a work focusing generally on EU – Türkiye relations, see *Reiners/Turhan* (eds).

2 Art. 238 of the Treaty on EEC (now Art. of the 217 TFEU).

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with the European Economic Community (EEC),[3] shortly after its establishment. Subsequently, on September 12, 1963, the EEC (together with its Member States) and Türkiye signed the Ankara Agreement,[4] which established an association between the parties and served as an interim step towards accession.[5]

In contrast, the *accession* relationship is primarily anchored in the EU's enlargement policy.[6] On April 14, 1987, Türkiye applied for accession to the European Communities.[7] On December 10-11, 1999, Türkiye was declared a candidate State destined to join the EU,[8] shortly after the association entered its final stage. Accession negotiations officially opened on October 3, 2005,[9] but have largely been at a standstill, particularly since the 2010s.[10] If accession were to occur, Türkiye would become a Member State of the EU, marking the end of the association relationship. Yet, this has not materialized. Accordingly, the stagnation in the accession process underscores the contemporary relevance and importance of the association relationship, which forms the subject matter of this manuscript.

Against this backdrop, this manuscript aims to take stock of sixty years of association between the EU and Türkiye, focusing on both its norm-making and judicial interpretation. In this context, while normative activity under the EU–Türkiye association was relatively robust until the 2000s, it has since diminished due to a shift in focus toward the accession process. However, as Türkiye's accession to the EU remains unresolved, the legal relations between the parties – including the Customs Union – continue to be governed by association law, which was initially conceived as a transitional regime. Meanwhile, the Court of Justice of the European Union (CJEU), through its judgments, has clarified almost all aspects of the current normative framework. Consequently, association law has reached the limits of judicial interpretation, necessitating further normative action to advance.

Therefore, the research question explored in this manuscript is: Within the current normative framework of EU–Türkiye association law, how far has CJEU case law progressed, and how can normative actions address the unresolved issues? To address this question, the manuscript will proceed as follows: First, it will

3 *Bulletin of the European Economic Community*, October 1959, p. 22, available at: http://aei.pitt.edu/56212/1/BUL038.pdf (5/2/2025).
4 OJ L 361 of 31/12/1977, p. 29.
5 Respectively, see Arts. 1 and 28 of the Ankara Agreement.
6 Art. 237 of the Treaty on EEC (now Art. 49 of the TEU as amended by Treaty of Lisbon). For legal issues related to Türkiye's accession to the EU, see *Hillion*, ECLR 2007/2, pp. 269–284; *Tezcan/Idriz*.
7 See *Council of the European Communities General Secretariat*, Press Release, 5801/87 (Presse 55), Brussels, 14 April 1987, available at: http://aei.pitt.edu/id/eprint/91040 (5/2/2025).
8 Conclusions of the Presidency, December 10–11, 1999, pt. 12.
9 Conclusions of the Presidency, December 16–17, 2004, pt. 22. See *Council of the European Union*, Press Release, 12514/1/05 REV 1 (Presse 241), Luxembourg, 3 October 2005, available at: https://data.consilium.europa.eu/doc/document/ST-12514-2005-REV-1/en/pdf (5/2/2025).
10 See <https://www.ab.gov.tr/current-situation_65_en.html> (5/2/2025). Also see Conclusions of the Presidency, December 14–15, 2006, pt. 10.

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outline the current normative framework of EU–Türkiye association law, providing essential context for subsequent judicial interpretations. Second, it will analyse the existing judicial interpretations of this framework as provided by the CJEU, demonstrating that judicial developments have nearly reached their limits. Third, it will examine the necessity for further normative action, as evidenced in both case law and policy papers, and explore the potential forms such actions could take.

B. The Current Normative Framework of EU–Türkiye Association Law

The current normative framework of EU–Türkiye association law consists mainly of the Ankara Agreement, which establishes the association (1); the Additional Protocol, which regulates the transitional stage of the association (2); and key Association Council Decisions, including Decision 1/95, which defines the final stage of the association.

I. Establishment of the Association: The Ankara Agreement

The Ankara Agreement, which established an *association* between the parties,[11] can first be clarified as an international agreement.[12] It was *signed* on September 12, 1963 between the EEC and its Member States (France, Germany, Italy, Belgium, Netherlands, and Luxembourg) on one side, and Türkiye on the other side.[13] Thus, it is a "mixed agreement" under EU law terminology.[14] It entered into force on December 1, 1964.[15] It is concluded indefinitely and does not include specific provisions regarding termination; therefore, it is subject to the principles of public international law.

The Ankara Agreement, with *two aims* in mind, outlines *three stages* of the EU–Türkiye association. The *economic aim* is "to promote the continuous and balanced strengthening of trade and economic relations between the Parties",[16] and the *political aim* is pursuing "the accession of Türkiye to the [EU]".[17] Three *stages* refer to

11 Art. 1 of the Ankara Agreement. Association agreements have been defined as "more than commercial agreement, and naturally less than full membership". *Schloh*, International Journal of Law Libraries 1977/1, p. 25.

12 For further discussion on the Ankara Agreement, see *Lasok,* Marmara Avrupa Araştırmaları Dergisi 1991/1&2, pp. 27–37.

13 On Türkiye's side, see OJ 11858 of 17/11/1964. On the EU's side, see OJ L 361 of 31/12/1977, p. 29.

14 For instance, see *Van Elsuwege/Chamon*, pp. 15 ff. Moreover, this mixity can be subject to discussion. For instance, see *Leopold*, The International and Comparative Law Quarterly 26/1, p. 63; *Castillo de la Torre*, in: Eeckhout/Lopez-Escudero (eds.), p. 180.

15 See Arts. 31 and 32 of the Ankara Agreement.

16 Art. 2(1) of the Ankara Agreement.

17 Art. 28 of the Ankara Agreement. In this regard, as Boyle states, "the Ankara Agreement contemplated Turkey's eventual full membership in the EEC." *Boyle*, Netherlands Quarterly of Human Rights 2005/1, p. 3. For further discussion on Art. 28 of the Ankara Agreement, see *Lichtenberg*, Marmara Avrupa Araştırmaları Dergisi 1998/1, pp. 144–145.

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a preparatory stage, a transitional stage, and a final stage.[18] During the *preparatory stage*, Türkiye receives assistance from the Community to strengthen its economy, preparing it for fulfilling obligations in the transitional and final stages.[19] In the *transitional stage*, Türkiye and the Community progressively establish a customs union between themselves and align their economic policies to ensure the proper functioning of the association.[20] In the *final stage*, which is based on the customs union, Türkiye and the Community closely coordinate their economic policies.[21]

The Ankara Agreement employs two *means*, one primary and one ancillary. The *primary means* is the progressive establishment of a customs union (free movement of goods) between the Parties.[22] While the customs union is intended to cover "all trade in goods",[23] certain exceptions apply. Agricultural products are subject to the special rules of the EEC's common agricultural policy,[24] the products falling within the scope of the European Coal and Steel Community (ECSC) are excluded.[25] The customs union involves eliminating customs duties, quantitative restrictions, and measures with equivalent effect between the parties, as well as Türkiye adopting the EEC's common customs tariff and aligning with EEC's other external trade rules.[26] The *ancillary means* involve progressively securing freedom of movement for workers, establishment, services, and capital.[27] Additionally, provisions related to transport, competition, taxation, and the approximation of laws within the framework of the Treaty establishing the EEC can be incorporated into the association.[28] Lastly, the Parties agree to establish a consultation procedure to coordinate their commercial policies towards third countries and safeguard mutual interests.[29]

The Ankara Agreement foresees two *general principles*. The first one, the *principle of loyalty*, currently referred to as the principle of sincere cooperation, requires the Parties to take appropriate measures to fulfil the obligations of the Ankara Agreement and avoid measures that could hinder its objectives.[30] The second one, the *prohibition of discrimination on the basis of nationality*, requires the Parties to apply this prohibition within the scope of the Ankara Agreement, in line with Art. 7 of the Treaty establishing the EEC (today Art. 18 of the Treaty on EU as amended by Treaty of Lisbon).[31]

The Ankara Agreement establishes an *institutional framework* with the *Association Council* as its central organ. The Council's primary role is to oversee the

18 Art. 2(3) of the Ankara Agreement.
19 Art. 3(1) of the Ankara Agreement.
20 Art. 4(1) of the Ankara Agreement.
21 Art. 5 of the Ankara Agreement.
22 Art. 2(2) of the Ankara Agreement.
23 Art. 10(1) of the Ankara Agreement.
24 Art. 11 of the Ankara Agreement.
25 Art. 26 of the Ankara Agreement.
26 Art. 10(2) of the Ankara Agreement.
27 Arts. 12, 13, 14, 19 and 20 of the Ankara Agreement.
28 Arts. 15 and 16 of the Ankara Agreement.
29 Art. 21 of the Ankara Agreement.
30 Art. 7 of the Ankara Agreement.
31 Art. 9 of the Ankara Agreement.

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implementation and progressive development of the association.[32] It is *composed* of representatives from the governments of the EU Member States, the EU Council, and Commission on one side, and members from the Turkish Government on the other.[33] Decisions are made *unanimously*.[34] The Council may *adopt* decisions either when the necessary powers are granted by the Ankara Agreement or, in the absence of such powers, to achieve the objectives of the Agreement during the association's implementation.[35] Specifically, the Council may establish committees to assist in its work or to facilitate the cooperation necessary for the association.[36] Additionally, the Council is responsible for periodically reviewing the functioning of the association.[37] Finally, it may resolve disputes concerning the Agreement, refer them to a court or tribunal (including the CJEU), or establish detailed rules for arbitration or other judicial procedures.[38]

II. Regulating the Transitional Stage: The Additional Protocol

Additional Protocol, which governs the *transitional stage* of the association, is an international agreement. It was *signed* on November 13, 1970 between the EEC and its Member States (France, Germany, Italy, Belgium, Netherlands, and Luxembourg) on one side, and Türkiye on the other side.[39] In EU law terminology, it is classified as a "mixed agreement".[40] The Protocol entered into force on January 1, 1973,[41] and, together with its annexes, constitutes an integral part of the Ankara Agreement.[42] It establishes the conditions, arrangements, and timetables for implementing the transitional stage of the association.[43]

Aligned with the primary means of the association – the progressive establishment of a customs union –[44] the Additional Protocol provides detailed provisions on the free movement of goods. In brief, the Customs Union encompasses goods produced in the Community or Türkiye, as well as third-country goods in free circulation within the Community or Türkiye.[45] However, agricultural products are subject to a distinct regime: Türkiye is required to align its agricultural policy with the Community's common agricultural policy over a 22-year period.[46] At the end of

32 Art. 6 of the Ankara Agreement.
33 Art. 23 of the Ankara Agreement.
34 Art. 23 of the Ankara Agreement.
35 Art. 22(1 and 3) of the Ankara Agreement.
36 Art. 24 of the Ankara Agreement.
37 Art. 22(2) of the Ankara Agreement.
38 Art. 25 of the Ankara Agreement.
39 On Türkiye's side, see OJ 13915 of 17/11/1971. On the EU's side, see OJ C 113 of 24/12/73, p. 1.
40 See fn. 14.
41 See Art. 63(1 and 2) of the Additional Protocol.
42 Art. 62 of the Additional Protocol.
43 Art. 1 of the Additional Protocol.
44 Art. 2(2) of the Ankara Agreement.
45 Art. 2(1) of the Additional Protocol.
46 Art. 33(1) of the Additional Protocol.

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this period, the Association Council will assess Türkiye's progress and, if successful, adopt the necessary provisions to achieve the free movement of agricultural products.[47] Furthermore, customs duties, quantitative restrictions, and measures with equivalent effect shall be *progressively* abolished over a period of at least 22 years,[48] based on *standstill* provisions.[49] Additionally, internal taxation that discriminates against similar products or protects other products is prohibited.[50] Lastly, Türkiye will align its legislation with the Community's common customs tariff over at least 22 years,[51] and both parties may approximate their laws on customs matters as necessary for the effective functioning of the association,[52] as well as seek to coordinate their commercial policies in relation to third countries.[53]

The Additional Protocol also addresses the *ancillary means* of the association. The free movement of workers will be progressively established between 1976 and 1986, in accordance with decisions made by the Association Council.[54] Additionally, a prohibition is in place against discrimination based on nationality regarding the conditions of work and remuneration for Turkish workers employed in the Community.[55] Moreover, the Association Council is tasked with adopting social security measures for Turkish workers moving within the Community and for their families residing in the Community.[56] The freedom of establishment and to provide services will also be gradually established, in line with the decisions by the Association Council.[57] Furthermore, a standstill provision prohibits the introduction of new restrictions on these freedoms.[58] The free movement of payments and capital is outlined in vague terms.[59] Additionally, the Association Council is granted the necessary powers to adopt decisions to extend the transport provisions of the Treaty establishing the EEC to Türkiye,[60] apply the competition provisions of this Treaty,[61] and implement a prohibition on discrimination based on nationality in the field of public procurement.[62]

Lastly, the Additional Protocol establishes rules on certain *horizontal* matters. First, in the fields covered by this Protocol, Türkiye is prohibited from discriminating between Member States, their nationals or their companies and the Community is similarly prohibited from discriminating between Turkish nationals or Turkish

47 Art. 34(1) of the Additional Protocol.
48 Arts. 7–16 and 21–30 of the Additional Protocol.
49 Arts. 7(1), 22(1) and 23 of the Additional Protocol.
50 Art. 44(1) of the Additional Protocol.
51 Arts. 17–20 of the Additional Protocol.
52 Art. 6 of the Additional Protocol.
53 Art. 53 of the Additional Protocol.
54 Art. 36 of the Additional Protocol.
55 Art. 37 of the Additional Protocol.
56 Art. 39 of the Additional Protocol.
57 Art. 41(2) of the Additional Protocol.
58 Art. 41(1) of the Additional Protocol.
59 Arts. 50–53 of the Additional Protocol.
60 Art. 42 of the Additional Protocol.
61 Art. 43 of the Additional Protocol.
62 Art. 57 of the Additional Protocol.

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companies.[63] Second, in these fields, Türkiye shall not receive more favourable treatment than that granted by Member States to one another under the Treaty establishing the EEC.[64] Third, the Parties may adopt necessary protective measures under specific circumstances, subject to certain procedural requirements.[65] Fourth, if a third state accedes to the Community, consultations will be held in the Association Council to address the mutual interests of the Community and Türkiye.[66]

III. Defining the Final Stage: Key Association Council Decisions (Including Decision 1/95)

Although the Association Council has had the authority to further deepen the association, as envisioned not only in the Ankara Agreement but also in the Additional Protocol, its decisions were limited to improvements in the areas of free movement of workers and goods. Key decisions in the area of workers include 2/76, 1/80 and 3/80, while the primary decision regarding goods is 1/95, which also defines the final stage of the association.

1. Decisions Relating to Workers: Decisions 2/76, 1/80 and 3/80

Regarding workers, the key decisions are Association Council Decisions No. 2/76, 1/80 and 3/80.[67] Decision 2/76 pertains to the "first stage" (from 1 December 1976 to 1 December 1980),[68] while Decision 1/80 addresses the "second stage" (from 1 December 1980 to the present)[69] of the progressive establishment of the free movement of workers. Decision 3/80 concerns the application of the social security schemes for Turkish workers and their family members in the Member States. Since then, no further decisions have been made on this matter, resulting in a lack of a fully integrated regime for the free movement of workers. Therefore, generally, Decisions 1/80 and 3/80 contain the most advanced rules regarding workers.

The contents of Decision 1/80 can be summarised as follows.[70] A Turkish worker legally employed in a Member State is entitled to renew their work permit after one year with the same employer, change employers for the same occupation after three years, and freely access any paid employment of their choice after four years.[71] Their family members are entitled to respond to any job offer after three years of legal residence and freely access any paid employment of their choice after five

63 Art. 58 of the Additional Protocol.
64 Art. 59 of the Additional Protocol.
65 Art. 60 of the Additional Protocol.
66 Art. 56 of the Additional Protocol.
67 For their texts, see <https://www.ab.gov.tr/files/_files/okk_eng.pdf> (5/2/2025).
68 Art. 1 of the Association Council Decision No. 2/76.
69 Art. 16 of the Association Council Decision No. 1/80.
70 For further discussion on Association Council Decision No. 1/80, see *Barnard*, pp. 393–401; *Boeles/den Heijer/Lodder/Wouters*, pp. 104–120, 123–125; *Peers*, pp. 418–423.
71 Art. 6(1) of the Association Council Decision No. 1/80.

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years of legal residence.[72] The children of Turkish workers who have completed vocational training in the host country may accept any job offer there, regardless of their length of residence, as long as one of their parents has been legally employed in that Member State for at least three years.[73] Turkish children legally residing in a Member State with employed parents shall have the same educational access to general education, apprenticeship, and vocational training as the children of nationals of that Member State.[74] There is a prohibition of discrimination based on nationality regarding the conditions of work and remuneration for Turkish workers employed in the Community.[75] The foregoing rights and advantages are also extended to nationals of Member States and their family members, provided they meet the specified conditions.[76] Furthermore, a standstill provision prohibits the introduction of new restrictions on access to employment.[77] Limitations may be applied to the above rules based on public policy, public security, or public health concerns.[78] Lastly, the Parties may adopt necessary protective measures under specific circumstances, subject to certain procedural requirements.[79]

The contents of Decision 3/80 can be summarised as follows.[80] It applies to Turkish workers subject to the legislation of one or more Member States, their family members residing in a Member State, and the survivors of these workers.[81] A "worker" is defined as anyone insured against social security contingencies under an employed persons' scheme or a general scheme for all residents or workers, identifiable by the scheme's administration, financing, or coverage of specified contingencies.[82] Social security benefits covered by the Decision include: (a) sickness and maternity benefits; (b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity; (c) old-age benefits; (d) survivors' benefits; (e) benefits in respect of accidents at work and occupational diseases; (f) death grants; (g) unemployment benefits; (h) family benefits.[83] Persons covered by this Decision and residing in a Member State are entitled to the same rights and obligations under its social security laws as that state's nationals, including participation in the governance of social security institutions.[84] The Decision also contains

72 Art. 7/1 of the Association Council Decision No. 1/80.
73 Art. 7/2 of the Association Council Decision No. 1/80.
74 Art. 9 of the Association Council Decision No. 1/80.
75 Art. 10 of the Association Council Decision No. 1/80.
76 Art. 11 of the Association Council Decision No. 1/80.
77 Art. 13 of the Association Council Decision No. 1/80.
78 Art. 14(1) of the Association Council Decision No. 1/80.
79 Art. 12 of the Association Council Decision No. 1/80.
80 For further discussion on Association Council Decision No. 3/80, see *Sieveking*, Marmara Avrupa Araştırmaları Dergisi 2002/1, pp. 65–79; *Minderhoud*, European Journal of Social Security 2016/3, pp. 65–79.
81 Art. 2 of the Association Council Decision No. 3/80.
82 Art. 1(b) of the Association Council Decision No. 3/80.
83 Art. 4(1) of Association Council Decision No. 3/80.
84 Art. 3 of Association Council Decision No. 3/80.

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specific provisions on waiving residence clauses,[85] revalorization of benefits,[86] and preventing the overlapping of benefits.[87] Finally, it includes special provisions on various categories of benefits, referencing the application of Regulation No. 1408/71 on social security schemes for employed persons and their families moving within the Community to the EU–Türkiye association framework.[88]

2. Decision Relating to Goods: Decision 1/95 (Defining the Final Stage)

Regarding goods, the key decision is Association Council Decisions No. 1/95,[89] which lays down the rules for implementing the *final stage* of the association.[90]

Decision 1/95 addresses the *scope of application* of the free movement of goods within the Customs Union. The Customs Union covers goods produced in the Community or Türkiye, as well as third-country goods in free circulation within the Community or Türkiye.[91] However, its scope is limited to products other than agricultural products[92] and processed agricultural products, insofar as they have been processed,[93] while agricultural products remain subject to special provisions.[94] Furthermore, the customs territory of the Customs Union comprises the customs territories of both the Community and Türkiye.[95]

Decision 1/95 establishes the framework for *negative integration* concerning the free movement of goods within the Customs Union. It includes three key prohibitions: first, on customs duties and charges having equivalent effect on imports and exports between the Community and Türkiye;[96] second, on quantitative restrictions and measures having equivalent effect on such trade;[97] and third, on internal taxation that discriminates against similar products or protects other products.[98]

Decision 1/95 establishes the framework for *positive integration* regarding the free movement of goods within the Customs Union, placing specific and general obligations on Türkiye.[99] Under *specific obligations*, for example, Türkiye under-

85 Art. 6 of Association Council Decision No. 3/80.
86 Art. 7 of Association Council Decision No. 3/80.
87 Art. 8 of Association Council Decision No. 3/80.
88 Arts. 10–19 of Association Council Decision No. 3/80.
89 On Türkiye's side, it was not published in the OJ. On the EU's side, see OJ L 35 of 13/2/1996, p. 1. For further discussion on Association Council Decision No. 1/95, see *Kabaalioğlu*, Marmara Avrupa Araştırmaları Dergisi 1998/1, pp. 113–140; *Peers*, EJIL 1996/4, pp. 411–430.
90 Art. 1 of the Association Council Decision No. 1/95. See Arts. 2 and 5 of the Ankara Agreement.
91 Art. 3(1, 2 and 4) of the Association Council Decision No. 1/95.
92 Art. 2 of the Association Council Decision No. 1/95.
93 Arts. 17–23 of the Association Council Decision No. 1/95.
94 Arts. 2 and 24–27 of the Association Council Decision No. 1/95.
95 Art. 3(3) of the Association Council Decision No. 1/95.
96 Art. 4 of the Association Council Decision No. 1/95.
97 Arts. 5–7 of the Association Council Decision No. 1/95.
98 Art. 50 of the Association Council Decision No. 1/95.
99 This is referred to as an "extensive programme". See *Editorial Comments*, CMLR 2005/6, p. 1561.

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took the incorporation of certain EU *acquis* related to the removal of technical barriers to trade,[100] protection of intellectual, industrial and commercial property,[101] competition rules,[102] customs provisions,[103] commercial policy,[104] and Common Customs Tariff and preferential tariff policies.[105] In addition to these specific commitments, Türkiye also bears a *general obligation* to harmonize its legislation with EU legislation, as far as possible, in areas of direct relevance to the operations of the Customs Union.[106] These areas include: "commercial policy and agreements with third countries comprising a commercial dimension for industrial products, legislation on the abolition of technical barriers to trade in industrial products, competition and industrial and intellectual property law and customs legislation".[107] Moreover, the Association Council is empowered to expand this list of areas.[108]

Decision 1/95 establishes several *institutional* provisions for the free movement of goods within the Customs Union. First, a *Joint Committee for the Customs Union* is created to facilitate the exchange views and information, make recommendations to the Association Council, and issue opinions to ensure the effective functioning of the Customs Union.[109] Second, there are detailed procedural rules – referred to as *consultation and decision procedures* – that complement Türkiye's general obligation to harmonize its legislation with EU legislation in areas of direct relevance to the operations of the Customs Union.[110] Third, *arbitration* is available solely for protective, safeguard, or rebalancing measures, and only if the Association Council fails to resolve the dispute within six months.[111] Finally, an *interpretation rule* stipulates that provisions of Decision 1/95, identical in substance to those of the Treaty on the Functioning of the European Union (TFEU), must be interpreted and applied to products within the Customs Union in accordance with the relevant rulings of the CJEU.[112]

For the sake of completeness, there are several more recent instruments concerning goods. First, on May 20, 1996, the Customs Cooperation Committee[113] adopted measures to enable the functioning of the Customs Union mechanism

100 Art. 8 of Association Council Decision No. 1/95.
101 Art. 31 of Association Council Decision No. 1/95.
102 Art. 39 of Association Council Decision No. 1/95.
103 Art. 28 of Association Council Decision No. 1/95.
104 Art. 12 of Association Council Decision No. 1/95.
105 Arts. 13 and 16 of Association Council Decision No. 1/95.
106 Art. 54(1) of Association Council Decision No. 1/95.
107 Art. 54(2) of Association Council Decision No. 1/95.
108 Art. 54(2) of Association Council Decision No. 1/95.
109 Art. 52(1) of Association Council Decision No. 1/95.
110 Arts. 55–60 of Association Council Decision No. 1/95.
111 Arts. 61–62 of Association Council Decision No. 1/95.
112 Art. 66 of Association Council Decision No. 1/95.
113 See Association Council Decision No. 2/69.

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through administrative cooperation,[114] which was later replaced in 2006.[115] Second, on July 25, 1996, the EU and Türkiye established a free trade area for the coal and steel products covered by the Treaty establishing the ECSC through a Free Trade Agreement.[116] Third, on April 29, 1997, the Association Council adopted rules for preferential arrangements for certain processed agricultural products,[117] which were replaced in 2007.[118] Fourth, on February 25, 1998, the Association Council adopted rules for preferential arrangements for trade in agricultural products,[119] which were last amended in 2018.[120] Finally, on May 15, 2006, the Association Council adopted procedural rules to implement the provision stating that once Türkiye enacts the provisions of the Community instrument(s) to remove technical barriers to trade in a specific product, trade in that product between the Parties will proceed according to those instrument(s).[121]

To sum up, *norm-making activity* under EU–Türkiye association was relatively *dynamic* until the early 2000s but has since diminished. This decline can be attributed to the predominant focus of EU–Türkiye relations on the accession process within the EU's enlargement policy, which created an expectation that association law would naturally conclude with Türkiye's EU membership. However, this expectation has not materialized; instead, EU–Türkiye relations have deteriorated, leading to *stagnation* in norm-making activity. In contrast, on the *judicial front*, the CJEU has played a proactive role in interpreting and enforcing association law, beginning with the *Demirel* decision in 1987, a trend that continues to this day.[122]

114 Customs Cooperation Committee Decision No. 1/96. On the EU's side, see OJ L 200 of 9/8/1996, p. 14.

115 Customs Cooperation Committee Decision No. 1/2001. On the EU's side, see OJ L 98 of 7/4/2001, p. 31.
Customs Cooperation Committee Decision No. 1/2006. On the EU's side, see OJ L 265 of 26/9/2006, p. 18.

116 On Türkiye's side, see OJ 22714 of 1/8/1996. On the EU's side, see OJ L 227 of 7/9/1996, p. 3. Also see Art. 26 of the Ankara Agreement. There is also Decision No. 2/99 of the Joint Committee which amended Protocol 1 of the Agreement. On the EU's side, see OJ L 212 of 12/8/1999, p. 21.

117 Association Council Decision No. 1/97. On the EU's side, see OJ L 126 of 17/5/1997, p. 26.

118 Association Council Decision No. 1/2007. On the EU's side, see OJ L 202 of 31/7/2008, p. 50.

119 Association Council Decision No. 1/98. On the EU's side, see OJ L 86 of 20/3/1998, p. 1.

120 Association Council Decision No. 1/2018. On the EU's side, see OJ L 184 of 20/7/2018, p. 10.

121 Association Council Decision No. 1/2006. On the EU's side, see OJ L 271 of 30/9/2006, p. 58. The list of the instrument(s) can be found in Association Council Decision No. 2/97. On the EU's side, see OJ L 191 of 21/7/1997, p. 1.

122 For instance, according to Wiesbrock, "… the Court has taken an activist stance in EU–Turkey relations …" and "… the Court has become the main motor of EU–Turkey integration …". *Wiesbrock*, ELJ 2013/3, p. 423.

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C. The Current Judicial Interpretation of EU–Türkiye Association Law (The Case Law of the Court of Justice of the European Union)

The current judicial interpretation of EU–Türkiye association law may apply to either Türkiye or the EU. However, the effects of association law *in Türkiye* remain unsettled due to a lack of judicial decisions, particularly from the High Courts of Türkiye, and a lack of consensus in the literature.[123] In contrast, the effects of these sources *in the EU* have been clearly established, primarily due to extensive case law from the CJEU. Therefore, this section will focus on the judicial interpretation of association law within the EU legal order.[124]

To assess the judicial interpretation of association law, two perspectives will be considered: institutional aspects (1) and substantive aspects (2). This analysis will outline the current state of case law and, where applicable, identify gaps in the case law while proposing potential solutions to address them.

I. Institutional Aspects

The *institutional aspects* of the judicial interpretation of EU–Türkiye association law includes the status of association law within EU law, the effects of these legal provisions, and the interpretative rules that guide their application.

1. On the Status of Association Law under European Union Law

The status of association law within EU law centres on whether these sources are considered part of EU law.[125] According to the *Demirel* decision, the provisions of the Ankara Agreement became an integral part of the EU legal system upon their entry into force.[126] This principle extends to other international agreements based on the Ankara Agreement, such as the Additional Protocol.[127] Similarly, as per the *Sevince* decision, the decisions of the Association Council are also regarded as integral to the EU legal system upon their entry into force.[128] What about the decisions of the other organs of the association, such as the Customs Cooperation Committee? In *C.A.S.* decision, the CJEU not only references one of its decisions under the heading "Legislation relating to the Association Agreement" but also

123 See *Göçmen*, Türkiye Barolar Birliği Dergisi 2020/139, pp. 253–284. In general, also see *Hoffmeister*, in: Ott/Inglis (eds.), pp. 209–220.
124 In this regard, also see *Rogers/Scannell/Walsh*, pp. 327–389.
125 See and *cf*. Art. 216(2) of the TFEU.
126 ECJ, Case 12/86, *Demirel*, judgment of 30 September 1987, ECLI:EU:C:1987:400, paras. 9, 7.
127 Art. 62 of the Additional Protocol.
128 ECJ, Case C-192/89, *Sevince*, judgment of 20 September 1990, ECLI:EU:C:1990:322, para.9. In this regard, for instance, according to Lichtenberg, such classification "... ensures a much higher level of legal certainty and protection..." *Lichtenberg*, Marmara Avrupa Araştırmaları Dergisi 1998/1, p. 143.

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appears to assign legal value to its provisions.[129] Therefore, it could be argued that the decisions of the other organs of the association may also be considered integral to the EU legal system upon their entry into force.

Next, what is the place of the sources of association law within the norm hierarchy of EU law? In the *Soysal* case, the CJEU, addressing this issue indirectly, reiterated the "primacy of international agreements concluded by the Community over provisions of secondary Community legislation" within the context of the Additional Protocol.[130] This principle applies also to the Ankara Agreement and to other international agreements based on it. Although there is no explicit case law regarding the decisions of the Association Council, following the reasoning in the *Sevince* decision – regarding their direct connection to the Ankara Agreement – it can be argued that the same principle should extend to them "in the same way as the Agreement itself".[131] Consequently, it can be argued that the sources of association law are positioned above the EU's secondary law but below its primary law in terms of the norm hierarchy of EU law.

2. On the Effects of Association Law under European Union Law

The effects of association law under EU law can be addressed separately: first, in relation to the laws of the Member States, and second, within the framework of EU law itself.

In relation to the laws of the Member States, the principles of primacy, direct effect, consistent interpretation and state liability apply as equally to association law. It also operates in conjunction with the EU's fundamental rights protection regime. The *Demirel* and *Sevince* decisions demonstrate that both the Ankara Agreement and other international agreements based on it, such as the Additional Protocol, as well as Association Council Decisions, are capable of being directly effective, considering their wording, purpose, and nature.[132] However, their relevant provision is directly effective only when it "contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure".[133] Flowing from the principle of primacy of EU law, where a provision of association law has direct effect, national authorities, particularly courts, must apply that law in its entirety and set aside any national law that may conflict with

129 ECJ, Case C-204/07 P, *C.A.S.*, judgment of 25 July 2008, ECLI:EU:C:2008:446, paras. 103–104, 124.

130 ECJ, Case C-228/06, *Soysal and Savatli*, judgment of 19 February 2009, ECLI:EU:C:2009:101, para. 59.

131 See ECJ, Case C-192/89, *Sevince*, judgment of 20 September 1990, ECLI:EU:C:1990:322, para. 9.

132 ECJ, Case 12/86, *Demirel*, judgment of 30 September 1987, ECLI:EU:C:1987:400, para. 14; ECJ, Case C-192/89, *Sevince*, judgment of 20 September 1990, ECLI:EU:C:1990:322, para. 14.

133 ECJ, Case 12/86, *Demirel*, judgment of 30 September 1987, ECLI:EU:C:1987:400, para. 14; ECJ, Case C-192/89, *Sevince*, judgment of 20 September 1990, ECLI:EU:C:1990:322, paras. 14 and 15.

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it.[134] Although the principles of consistent interpretation and state liability have not been directly addressed in relation to association law by the CJEU, it can be argued, by analogy with its case law on EU external relations law, that they are applicable here.[135] Finally, where a situation falls within the scope of association law, similar to the case with EU internal market law freedoms, Member States must adhere to the EU fundamental rights regime.[136]

Within the framework of EU law itself, association law can serve as a basis for reviewing legality, ensuring consistent interpretation, and requesting damages. While the CJEU has not directly addressed the review of EU acts' legality in relation to association law, it can be argued, by analogy with its case law on EU external relations law, that provisions of association law with direct effect can act as benchmarks for such reviews.[137] Moreover, the CJEU has, on one occasion, ruled that EU provisions must, as far as possible, be interpreted consistently with association law, although it has not elaborated on the specifics of this obligation.[138] Additionally, the CJEU has, on one occasion, stated that the EU may incur non-contractual liability if the relevant conditions are met, including the requirement that the provision of association law in question has direct effect.[139] Nevertheless, such claims have not yet been successfully invoked.[140]

3. On the Rule of Interpretation of Association Law

Since the association law has legal effects within the EU legal order, a key question arises: how should the provisions of EU–Türkiye association law be *interpreted*?[141] Specifically, if a provision of the EU's international agreement is similar or identical

134 ECJ, Case C-484/07, *Pehlivan*, judgment of 16 June 2011, ECLI:EU:C:2011:395, paras. 56, 64.

135 For the former, *cf*. ECJ, Case C-245/02, *Anheuser-Busch*, judgment of 16 November 2004, ECLI:EU:C:2004:717, para. 55. *Cf*. ECJ, Case C-228/06, *Soysal and Savatli*, judgment of 19 February 2009, ECLI:EU:C:2009:101, paras. 53, 58, 59. For the latter, *cf*. GC, Case T-52/99, *T Port*, judgment of 20 March 2001, ECLI:EU:T:2001:95, paras. 46, 51, 58–60.

136 See ECJ, Case C-70/18, *A and Others*, judgment of 3 October 2019, ECLI:EU:C:2019:823, para. 52.

137 *Cf*. GC, Case T-115/94, *Opel Austria*, judgment of 22 January 1993, ECLI:EU:T:1997:3, paras. 96, 99, 100, 102, 103, 119, 123, 135.

138 ECJ, Case C-228/06, *Soysal and Savatli*, judgment of 19 February 2009, ECLI:EU:C:2009:101, para. 59.

139 GC, Case T-367/03, *Yedaş*, judgment of 30 March 2006, ECLI:EU:T:2006:96, paras. 34, 35, 42, 49.

140 See ECJ, Case C-255/06 P, *Yedaş*, judgment of 30 March 2006, ECLI:EU:C:2007:414, para. 66. *Cf*. *Nicola*, American University International Law Review 2009/24, pp. 739–782.

141 Also see *Boeles/den Heijer/Lodder/Wouters*, p. 102; *Ott*, Legal Issues of Economic Integration 2015/1, pp. 5–30.

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to a provision of EU law, should it be interpreted in the same way as EU law?[142] Addressing this question requires a distinction between the interpretation of provisions relating to the free movement of persons and services, and those concerning the free movement of goods under association law.

Regarding the *free movement of persons and services*, the CJEU has established a *rule of interpretation* in its case law. In *Bozkurt* and *Abatay and Sahin*, the Court ruled that the relevant provisions of association law should, insofar as possible, be interpreted in the same manner as EU internal market law.[143] This approach has led to the alignment of concepts like "worker",[144] "family member",[145] "public order"[146] and the "prohibition of discrimination on the basis of nationality"[147] with their counterparts in EU internal market law.

However, this parallelism has not been absolute. In the *Ziebell* and *Demirkan* cases, the CJEU deviated from this approach by comparing the objectives and context of association law with those of EU law. In *Ziebell*, the Court declined to extend the protections against expulsion under Directive 2004/38 – applicable to Union citizens – to Turkish nationals, as such protections were deemed outside the scope of association law.[148] Conversely, in *Demirkan*, the Court refused to interpret the freedom to provide services in Art. 41(1) of the Additional Protocol as including service recipients.[149] The *Ziebell* decision can be considered sound, as it is reasonable not to extend a scheme enjoyed by Union citizens (and thus outside EU internal market law) to association law. However, the *Demirkan* decision is more contentious, as it diverges from established interpretations of the freedom to provide services in EU internal market law.[150] Overall, apart from these, the CJEU has consistently interpreted provisions on the free movement of persons and services in alignment with EU internal market law, leaving no significant gaps in this respect.

142 Sometimes, the same interpretation may not lead to the same result, particularly when the regulatory frameworks differ significantly. See ECJ, Case C-72/09, *Rimbaud*, judgment of 28 October 2010, ECLI:EU:C:2010:645.

143 ECJ, Case C-434/93, *Bozkurt*, judgment of 6 June 1995, ECLI:EU:C:1995:168, para. 20; ECJ, joined cases C-317/01 and C-369/01, *Abatay and Sahin*, judgment of 21 October 2003, ECLI:EU:C:2003:572, para. 112. For analysis of the former decision, see *Foubert*, Columbia Journal of European Law 1995/3, pp. 515–523; *Peers*, CMLR 1996/1, pp. 103–112.

144 ECJ, Case C-1/97, *Birden*, judgment of 26 November 1998, ECLI:EU:C:1998:568, paras. 23–24.

145 ECJ, Case C-275/02, *Ayaz*, judgment of 30 September 2004, ECLI:EU:C:2004:570, paras. 44–45.

146 ECJ, Case C-349/06, *Polat*, judgment of 4 October 2004, ECLI:EU:C:2007:581, paras. 29–30.

147 ECJ, Case C-171/01, *Wählergruppe*, judgment of 3 May 2003, ECLI:EU:C:2003:260, paras. 72–73.

148 ECJ, Case C-371/08, *Ziebell*, judgment of 8 December 2011, ECLI:EU:C:2011:809, paras. 62, 60.

149 ECJ, Case C-221/11, *Demirkan*, judgment of 24 September 2013, ECLI:EU:C:2013:583, paras. 47, 63.

150 See *Hatzopoulos*, *CMLR* 51/2, pp. 663–664.

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Regarding the *free movement of goods*, the *rule of interpretation* is codified in Art. 66 of Association Council Decision No. 1/95. This Article mandates that provisions of the Decision identical in substance to those of the [TFEU] must be interpreted and applied in conformity with the relevant case law of the CJEU. In the *Istanbul Lojistik* case, the only decision rendered to date, the Court ruled that Art. 4 of the Decision, being identical in substance to Art. 30 TFEU, should be interpreted in line with the CJEU's case law on the latter provision.[151] Thus, Art. 66 *guarantees* the *same interpretation* of association law rules on the free movement of goods with their EU internal market counterparts.[152] Nonetheless, further case law from the CJEU may be required to fully elaborate on this point.

II. Substantive Aspects

The *substantive aspects* of the judicial interpretation of EU–Türkiye association law encompass three subjects, each with varying degrees of *liberalisation*.[153] The first relates to the freedom of establishment and to provide services, which is essentially non-liberalised. The second pertains to the free movement of workers, which is liberalized to some extent. The third concerns the free movement of goods (Customs Union), which is essentially liberalised.

1. Freedom of Establishment and to Provide Services

The most advanced provision regarding the freedom of establishment and the freedom to provide services is Art. 41(1) of the Additional Protocol, commonly referred to as the standstill clause,[154] which has been substantially clarified through CJEU case law, starting with the confirmation of its direct effect in 2000.[155]

The CJEU has elaborated on the scope *ratione personae* of Art. 41(1), distinguishing between the freedom of establishment and the freedom to provide services. The freedom of establishment, which entails *stable and continuous* activities,[156] applies to self-employed individuals[157] and undertakings (not yet been exemplified in case

151 ECJ, Case C-65/16, *Istanbul Lojistik*, judgment of 19 October 2017, ECLI:EU:C:2017:770, para. 38.
152 In this regard, also see *Tatham*, p. 147.
153 *Cf.* ECJ, Case C-629/16, *CX*, judgment of 11 July 2018, ECLI:EU:C:2018:556, para. 36. Also see *Tezcan/Idriz*, pp. 61–122. In this context, some studies examine association law through specific cross-cutting topics, such as the free movement of students or the issue of first admission of Turkish nationals into the territory of a Member State. Respectively, see *Hoogenboom*, European Journal of Migration and Law 2013/4, pp. 387–412; *Karayiğit*, European Journal of Migration and Law 2011/4, pp. 411–441.
154 Also see *Baykal*, in: Turkey-EC Association Law, pp. 13–51; *Boeles/den Heijer/Lodder/Wouters*, pp. 118–122; *Göçmen*, Ankara Law Review 2011/1, pp. 71–109.
155 ECJ, Case C-37/98, *Savas*, judgment of 11 May 2000, ECLI:EU:C:2000:224, paras. 46–54.
156 *Cf.* ECJ, Case C-55/94, *Gebhard*, judgment of 30 November 1995, ECLI:EU:C:1995:411, paras. 25–27.
157 ECJ, Case C-138/13, *Dogan*, judgment of 10 July 2014, ECLI:EU:C:2014:2066, para. 31.

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law).[158] In contrast, the freedom to provide services implies a *temporary* nature of activities.[159] Within this framework, it applies to self-employed individuals (not yet been exemplified in case law), undertakings[160] and – regardless of nationality – their workforce.[161] However, unlike in EU internal market law, service recipients are excluded from this scope.[162]

Turning to the scope *ratione materiae* of Art. 41(1) of the Additional Protocol, three remarks are necessary. First, this Article does not render relevant substantive law it replaces inapplicable, as a substantive rule would.[163] Instead, it operates as a *quasi-procedural* rule that determines which provisions of a Member State's legislation are applicable *ratione temporis*.[164] Second, within this framework, the standstill clause prohibits the introduction of new restrictions in several areas, all supported by case law: (i) first admission to the territory of a Member State,[165] including visa,[166] (ii) issues related to the freedom of establishment (including access to and exercise of this right),[167] (iii) freedom to provide services (including access to and exercise of this right),[168] (iv) family reunification,[169] and (v) expulsion.[170] Third, triggering Art. 41(1) requires a cross-border element between Türkiye and the EU.[171] Overall, there appear to be no gaps in the interpretation of the scope of application of Art. 41(1) of the Additional Protocol.

158 *Cf*. ECJ, joined cases C-317/01 and C-369/01, *Abatay and Sahin*, judgment of 21 October 2003, ECLI:EU:C:2003:572, paras. 104–105.

159 See ECJ, Case C-55/94, *Gebhard*, judgment of 30 November 1995, ECLI:EU:C:1995:411, paras. 25–27..

160 ECJ, Case C-629/16, *CX*, judgment of 11 July 2018, ECLI:EU:C:2018:556, para. 53.

161 ECJ, joined cases C-317/01 and C-369/01, *Abatay and Sahin*, judgment of 21 October 2003, ECLI:EU:C:2003:572, para. 106.

162 ECJ, Case C-221/11, *Demirkan*, judgment of 24 September 2013, ECLI:EU:C:2013:583, para. 63.

163 ECJ, Case C-16/05, *Tum and Dari*, judgment of 20 September 2007, ECLI:EU:C:2007:530, para. 55.

164 *Ibid*.

165 *Ibid.*, paras. 55, 58, 60–61, 63, 69. Regarding Turkish workers, see ECJ, Case C-225/12, *Demir*, judgment of 7 November 2013, ECLI:EU:C:2013:725, para. 39.

166 ECJ, Case C-228/06, *Soysal and Savatli*, judgment of 19 February 2009, ECLI:EU:C:2009:101, paras. 48–51. For analysis of the decision, see *Göçmen*, Legal Issues of Economic Integration 2018/2, pp. 149–162; *Kaya*, in: Cengiz/Hoffmann (eds.), pp. 121–137.

167 ECJ, Case C-37/98, *Savas*, ECLI:EU:C:2000:224, para. 65. Regarding Turkish workers, see ECJ, joined cases C-317/01 and C-369/01, *Abatay and Sahin*, judgment of 21 October 2003, ECLI:EU:C:2003:572, para. 80.

168 ECJ, joined cases C-317/01 and C-369/01, *Abatay and Sahin*, judgment of 21 October 2003, ECLI:EU:C:2003:572, paras. 67, 111.

169 ECJ, Case C-138/13, *Dogan*, judgment of 10 July 2014, ECLI:EU:C:2014:2066, paras. 28–35.

170 *Cf*. ECJ, Case C-402/21, *S and E, C*, judgment of 9 February 2023, ECLI:EU:C:2023:77, paras. 57, 77.

171 ECJ, joined cases C-317/01 and C-369/01, *Abatay and Sahin*, judgment of 21 October 2003, ECLI:EU:C:2003:572, para. 108; ECJ, Case C-91/13, *Essent Energie Productie*, judgment of 11 September 2014, ECLI:EU:C:2014:2206, para. 34; ECJ, Case C-507/15, *Agro Foreign Trade*, judgment of 16 February 2017, ECLI:EU:C:2017:129, paras. 48–49.

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The application of the standstill clause under Art. 41(1) of the Additional Protocol has been clarified by the CJEU through a series of inquiries. First, it must be determined whether a measure *restricts* the exercise of relevant freedoms.[172] Second, a restriction is deemed *new* if it either intensifies existing practices at the Protocol's entry into force – January 1, 1973, for the original nine Member States,[173] or the EU accession date for others[174] – or reintroduces stricter practices after a period of relaxation.[175] Finally, a new restriction may be justified by an overriding reason in the public interest – such as the objective of ensuring the successful integration of third-country nationals[176] – if proportionality is observed;[177] otherwise, the pre-existing legal framework applies.[178]

Lastly, the prohibition of discrimination on the basis of nationality under Art. 9 of the Ankara Agreement[179] appears to extend to the freedom of establishment and the provision of services. In the *CX* case, after determining that the national legislation in question could not be considered a new restriction,[180] the CJEU addressed CX's argument that Austria's quota system violated Art. 9 by discriminating against Turkish hauliers on the basis of nationality.[181] The Court concluded that Turkish hauliers were not specifically targeted by the quota system, as Austria had established similar agreements with other third countries.[182] Additionally, hauliers established in the EU operate under a distinct regulatory framework requiring Community licences under Regulation No. 1072/2009.[183] Thus, the differing treatment stemmed from the distinct legal regimes applicable to EU hauliers and those from Türkiye or other third countries, rather than constituting unlawful discrimination.[184] The *CX* case illustrates that, pursuant to Art. 41 of the Additional Protocol read in conjunction with Art. 9 of the Ankara Agreement, discrimination based on nationality is, in principle, prohibited in situations falling within the scope of the former provision.

172 For instance, see ECJ, Case C-228/06, *Soysal and Savatli*, judgment of 19 February 2009, ECLI:EU:C:2009:101, paras. 55–57.
173 These Member States are Germany, France, Italy, Belgium, Netherlands, Luxembourg, United Kingdom, Ireland and Denmark. United Kingdom left the EU in 2020.
174 See ECJ, Case C-256/11, *Dereci and Others*, judgment of 15 November 2011, ECLI:EU:C:2011:734, para. 84.
175 *Ibid.*, para. 98.
176 ECJ, Case C-561/14, *Genc*, judgment of 12 April 2016, ECLI:EU:C:2016:247, para. 56. For analysis of the decision, see *Tezcan/Idriz*, CMLR 2017/1, pp. 263–280.
177 ECJ, Case C-138/13, *Dogan*, judgment of 10 July 2014, ECLI:EU:C:2014:2066, para. 37.
178 See ECJ, Case C-256/11, *Dereci and Others*, judgment of 15 November 2011, ECLI:EU:C:2011:734, para. 89.
179 For further discussion on Article 9 of the Ankara Agreement, see *Lasok*, Marmara Avrupa Araştırmaları Dergisi 1991/1&2, p. 30.
180 ECJ, Case C-629/16, *CX*, judgment of 11 July 2018, ECLI:EU:C:2018:556, para. 54.
181 *Ibid.*, para. 55.
182 *Ibid.*, para. 56.
183 *Ibid.*, paras. 56–57.
184 *Ibid.*, para. 57.

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2. Free Movement of Workers

The provisions governing the free movement of workers are set out in Association Council Decisions Nos. 1/80 and 3/80.[185] These decisions confer certain rights on Turkish workers and their family members and have been substantially clarified through CJEU case law.[186]

First, as a common denominator, the scope *ratione personae* of these provisions requires the presence of either a Turkish "worker" or their "family member". Similar to EU internal market law, the concept of a "worker" refers to a person engaged in effective and genuine activities, providing services under the direction of another person in exchange for remuneration for a specified period.[187] The concept of a "family member" primarily aligns with the scope defined in Art. 10(1) of the (repealed) Regulation No. 1612/68.[188] Accordingly, it includes the spouse, descendants under 21 years of age or dependents, and dependent relatives in the ascending line of both the worker and their spouse.[189] Moreover, this term is not restricted to the worker's blood relations[190] and applies to family members regardless of their nationality.[191] However, it remains uncertain whether the term "family member" under Decision 1/80 fully corresponds to its interpretation under Directive 2004/38.[192]

Turkish workers are entitled to both a *work permit*, as stipulated in Art. 6 of Decision 1/80, and a *residence permit*, as interpreted by the CJEU. First, after one year of legal employment, a Turkish worker can renew their work permit for the same employer.[193] Second, after three years of legal employment with the same employer,[194] they may accept another offer of employment with an employer of their

185 In addition, for an analysis of the complementarity between Association Council Decisions No. 1/80 and 3/80 and the Long-Term Residents Directive (Directive 2003/109 OJ L 16 of 23/1/2004, p. 44) and the Family Reunification Directive (Directive 2003/86 OJ L 251 of 3/10/2003, p. 12), see *Groenendijk*, in: Baldaccini/Guild/Toner (eds.), pp. 442–443.

186 Also see *Barnard*, pp. 393–401; *Boeles/den Heijer/Lodder/Wouters*, pp. 104–120, 123–125; *Peers*, pp. 418–424; *Tezcan/Idriz*, CMLR 2009/5, pp. 1621–1665; *Wiesbrock*, ELJ 2013/3, pp. 422–442.

187 ECJ, Case C-1/97, *Birden*, judgment of 26 November 1998, ECLI:EU:C:1998:568, para. 25. As an example, see ECJ, Case C-188/00, *Kurz*, judgment of 19 November 2002, ECLI:EU:C:2002:694, paras. 30–36.

188 ECJ, Case C-275/02, *Ayaz*, judgment of 30 September 2004, ECLI:EU:C:2004:570, para. 45.

189 Art. 10(1) of Regulation No. 1612/68.

190 ECJ, Case C-275/02, *Ayaz*, judgment of 30 September 2004, ECLI:EU:C:2004:570, para. 46.

191 ECJ, Case C-451/11, *Dülger*, judgment of 19 July 2012, ECLI:EU:C:2012:504, para. 65. For a case of double nationality, see ECJ, joined cases C-7/10 and C-9/10, *Kahveci and Inan*, judgment of 29 March 2012, ECLI:EU:C:2012:180, para. 41.

192 *Cf*. ECJ, Case C-451/11, *Dülger*, judgment of 19 July 2012, ECLI:EU:C:2012:504, paras. 51, 64.

193 See ECJ, Case C-230/03, *Sedef*, judgment of 10 January 2006, ECLI:EU:C:2006:5, para. 44.

194 See *Ibid.;* ECJ, Case C-4/05, *Güzeli*, judgment of 26 October 2006, ECLI:EU:C:2006:670, para. 49.

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choice, provided it is within the same occupation. Third, after four years of legal employment (three of which must be with the same employer),[195] Turkish workers gain free access to any paid employment of their choice within that Member State. Among other rights, they also acquire the right to seek new employment.[196] Although not explicitly regulated in Decision 1/80, the CJEU has ruled that the rights conferred by Art. 6 necessarily imply a corresponding right of residence for the individuals concerned.[197]

The family members of Turkish workers are entitled to both a *work permit*, as stipulated in Art. 7 of Decision 1/80, and a *residence permit*, as interpreted by the CJEU. As a preliminary observation, Art. 7 draws a distinction between family members and children, aiming to afford distinct and tailored treatment to children compared to other family members of a Turkish worker.[198] Accordingly, children may assert rights either as part of the family unit or independently in their own capacity.[199] Family members are entitled to respond to any job offer after three years of legal residence and to access freely any paid employment of their choice after five years of legal residence.[200] Notably, in contrast to Turkish workers to whom Art. 6(1) applies, the status of family members under Art. 7 is not contingent upon engagement in paid employment.[201] Furthermore, children who have completed vocational training in the host country may accept any job offer there, provided that one of their parents has been legally employed in that Member State for at least three years, regardless of their own length of residence.[202] Although not explicitly regulated in Decision 1/80, the CJEU has ruled that the rights conferred by Art. 7 necessarily imply a corresponding right of residence for the individuals concerned.[203]

The aforementioned rights may, however, be terminated under certain circumstances. First, they may be revoked on grounds of public order, security, and

195 See ECJ, Case C-230/03, *Sedef*, judgment of 10 January 2006, ECLI:EU:C:2006:5, para. 44.

196 See ECJ, Case C-171/95, *Tetik*, judgment of 23 January 1997, ECLI:EU:C:1997:31, para. 30.

197 ECJ, Case C-36/96, *Günaydin*, judgment of 30 September 1997, ECLI:EU:C:1997:445, para. 26.

198 ECJ, Case C-502/04, *Torun*, judgment of 16 February 2016, ECLI:EU:C:2006:112, paras. 18, 23.

199 ECJ, Case C-210/97, *Akman*, judgment of 19 November 1998, ECLI:EU:C:1998:555, para. 34.

200 See ECJ, Case C-451/11, *Dülger*, judgment of 19 July 2012, ECLI:EU:C:2012:504, para. 29. For the time periods, see ECJ, joined Cases C-508/15 and C-509/15, *Ucar and Kilic*, judgment of 21 December 2016, ECLI:EU:C:2016:986, para. 76.

201 ECJ, Case C-325/05, *Derin*, judgment of 18 July 2007, ECLI:EU:C:2007:442, para. 56.

202 ECJ, Case C-210/97, *Akman*, judgment of 19 November 1998, ECLI:EU:C:1998:555, para. 25. For the "age" of the child, see ECJ, Case C-502/04, *Torun*, judgment of 16 February 2016, ECLI:EU:C:2006:112, para.27.

203 ECJ, Case C-325/05, *Derin*, judgment of 19 July 2012, ECLI:EU:C:2007:442, para. 51; ECJ, Case C-453/07, *Er*, judgment of 25 September 2008, ECLI:EU:C:2008:524, para. 31; ECJ, Case C-502/04, *Torun*, judgment of 16 February 2016, ECLI:EU:C:2006:112, para. 20.

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health.[204] In this context, these grounds are generally interpreted alignment with their meanings under EU internal market law, providing not only substantive protections[205] but also procedural safeguards.[206] However, Turkish workers do not benefit from the enhanced protection framework afforded to Union citizens under Directive 2004/38.[207] Second, for Turkish workers, these rights may be terminated if they have definitively ceased to be part of the labour force because they no longer have any realistic prospect of rejoining it or have exceeded a reasonable time limit for finding new employment.[208] Similarly, for family members, these rights may be terminated if they have left the territory of the relevant Member State for an extended period without a legitimate reason.[209]

Turkish workers and their family members are also entitled to *protection against discrimination based on nationality*.[210] First, for Turkish workers, Art. 10 of Decision 1/80 provides this protection concerning remuneration and other conditions of work, aligning with analogous provisions in EU internal market law.[211] However, CJEU rulings suggest that the provision does not extend to "employment in the public service", reflecting a similar limitation in EU internal market law.[212] Second, for Turkish workers and their family members (as defined under the Decision), Art. 3 of Decision 3/80[213] extends this protection to include social security benefits.[214] Third, for Turkish children, Art. 9 of Decision 1/80 specifically safeguards their access to courses of general education, apprenticeship and vocational training.[215] As in EU internal market law, the prohibition of discrimination encompasses

204 Art. 14 of the Association Council Decision No. 1/80.

205 ECJ, Case C-340/97, *Nazli*, judgment of 10 February 2000, ECLI:EU:C:2000:77, para. 56; ECJ, Case C-303/08, *Bozkurt*, judgment of 22 December 2010, ECLI:EU:C:2010:800, paras. 55–60.

206 ECJ, Case C-340/97, *Nazli*, judgment of 10 February 2000, ECLI:EU:C:2000:77, para. 56.

207 ECJ, Case C-371/08, *Ziebell*, judgment of 8 December 2011, ECLI:EU:C:2011:809, paras. 58–74.

208 ECJ, Case C-383/03, *Dogan*, judgment of 10 July 2014, ECLI:EU:C:2005:436, para. 23.

209 ECJ, Case C-453/07, *Er*, judgment of 25 September 2008, ECLI:EU:C:2008:524, para. 30; ECJ, Case C-502/04, *Torun*, judgment of 16 February 2016, ECLI:EU:C:2006:112, para. 25.

210 Also see *Tobler*, Ankara Law Review 2010/1, pp. 1–28.

211 ECJ, Case C-171/01, *Wählergruppe*, judgment of 8 May 2003, ECLI:EU:C:2003:260, paras. 85 and 88.

212 *Ibid.*, paras. 90–92. Although the legal basis for this conclusion has not been explicitly discussed, it can be argued that it derives from Art. 60 of the Additional Protocol, which stipulates that Türkiye shall not receive more favourable treatment than that granted by Member States to one another under the TEEC. For such an argument, for instance see ECJ, Case C-451/11, *Dülger*, judgment of 19 July 2012, ECLI:EU:C:2012:504, para. 63.

213 Moreover, Art. 3 of the Association Council Decision No. 3/80 is subject to the specific provisions of the same Decision. In this context, the Akdas case is noteworthy, where the CJEU determined that Art. 6 of the Decision also possesses direct effect. ECJ, Case C-485/07, *Akdas,* judgment of 26 May 2011, ECLI:EU:C:2011:346, paras. 74, 99–100.

214 ECJ, Case C-262/96, *Sürül*, judgment of 18 December 1997, ECLI:EU:C:1999:228, para. 94.

215 ECJ, Case C-374/03, *Gürol*, judgment of 7 July 2005, ECLI:EU:C:2005:435, para. 36.

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both direct and indirect discrimination.[216] Direct discrimination may only be justified on grounds of public order, security, and health,[217] provided the principle of proportionality is respected. Indirect discrimination, however, can also be justified by reference to other public interests,[218] again subject to proportionality. Finally, these provisions reflect the broader principle of non-discrimination on grounds of nationality enshrined in Art. 9 of the Ankara Agreement.[219] Where specific provisions do not apply but the situation still falls within the scope of association law, Art. 9 may serve as a supplementary safeguard.

Lastly, Art. 13 of Decision 1/80, commonly referred to as the *standstill clause*, prohibits the introduction of new restrictions on access to employment for Turkish workers and their family members. This Article has been determined to share the same type, purpose, and meaning as the Art. 41(1) of the Additional Protocol.[220] While these two Articles differ in scope *ratione personae*, they share the same scope *ratione materiae* and the same principles governing the application of the standstill clause.[221] Thus, for any Turkish worker or family member benefiting from this prohibition, the explanations regarding Art. 41(1) apply *mutatis mutandis* to Art. 13 as well.[222] It is worth noting, however, that no cases have been decided thus far specifically concerning family members under Art. 13.[223]

216 For direct discrimination see ECJ, Case C-171/01, *Wählergruppe*, judgment of 8 May 2003, ECLI:EU:C:2003:260, para. 58. For indirect discrimination see ECJ, Case C-373/02, *Öztürk*, judgment of 28 April 2004, ECLI:EU:C:2004:232, paras. 54 and 57. See ECJ, Case C-374/03, *Gürol*, judgment of 7 July 2005, ECLI:EU:C:2005:435, para. 44. Also see *Tezcan/İdriz*, CMLR 2009/5, pp. 1645–1646.

217 Art. 14 of the Association Council Decision No. 1/80. However, this suggestion has not been settled yet with regard to Association Council Decision No. 3/80.

218 See ECJ, Case C-373/02, *Öztürk*, judgment of 28 April 2004, ECLI:EU:C:2004:232, para. 66.

219 ECJ, Case C-171/01, *Wählergruppe*, judgment of 8 May 2003, ECLI:EU:C:2003:260, para. 59; ECJ, Case C-373/02, *Öztürk*, judgment of 28 April 2004, ECLI:EU:C:2004:232, para. 49; ECJ, Case C-171/13, *Demirci and Others*, judgment of 14 January 2015, ECLI:EU:C:2015:8, para. 50.

220 See ECJ, Case C-242/06, *Sahin*, judgment of 17 September 2009, ECLI:EU:C:2009:554, para. 65.

221 See ECJ, Case C-225/12, *Demir*, judgment of 7 November 2013, ECLI:EU:C:2013:725, paras. 32–42.

222 See "1. Freedom of Establishment and to Provide Services", p. 15.

223 *Cf*. ECJ, Case C-561/14, *Genc*, judgment of 12 April 2016, ECLI:EU:C:2016:247, paras. 36–37.

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3. Free Movement of Goods

The provisions most likely to be applied under the free movement of goods[224] are Arts. 4, 5–7, and 50 of Association Council Decision No. 1/95, which prohibit customs duties and charges having equivalent effect, quantitative restrictions or measures having equivalent effect, and discriminatory or protective internal taxation, respectively. Notably, the scope of Decision 1/95 is limited to products other than agricultural products[225] and excludes agricultural products[226] and processed agricultural products, except insofar as they have undergone processing.[227] The CJEU has ruled on the first of these provisions only once, in 2017, but that ruling has offered clear guidance on the interpretation of the other provisions. The limited number of decisions concerning Decision 1/95 may also be partly attributed to its restricted scope *ratione materiae*.

The prohibition of customs duties and charges having equivalent effect, as regulated by Art. 4 of Decision 1/95, was subject to interpretation in the *Istanbul Lojistik* case.[228] Under the framework of Art. 66 of this Decision, the CJEU interpreted Art. 4 in alignment with Art. 30 of the TFEU.[229] Consequently, the CJEU clarified that "any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect".[230] They are prohibited without any possibility of justification.[231]

The other prohibitions related to the free movement of goods have not been interpreted by the CJEU but are likely to align with their EU law counterparts, flowing from the reasoning in the *Istanbul Lojistik* case.[232] Briefly, in line with Art. 110 TFEU, Art. 50 of Decision 1/95 will likely be interpreted to allow states to set their own tax systems, provided they avoid *discrimination* between imported and *similar* domestic products[233] and *protection* for *other* domestic products over imported

224 Additionally, it might not be possible to exhaust all the potential avenues. For example, the CJEU ruled that Art. 47 of the Association Council Decision No. 1/95, which imposes an obligation on the authorities of the importing State to require the importer to indicate the origin of the products concerned on the customs declaration, has direct effect. ECJ, Case C-372/06, *Asda Stores*, judgment of 13 December 2007, ECLI:EU:C:2007:787, para. 90.

225 Art. 2 of the Association Council Decision No. 1/95.

226 Arts. 2 and 24–27 of the Association Council Decision No. 1/95.

227 Arts. 17–23 of the Association Council Decision No. 1/95.

228 Also see *Göçmen*, Legal Issues of Economic Integration 2018/3, pp. 289–298.

229 ECJ, Case C-65/16, *Istanbul Lojistik*, judgment of 19 October 2017, ECLI:EU:C:2017:770, para. 38.

230 *Ibid.*, paras. 39, 44.

231 *Ibid.*, paras. 40–41, 44, 49.

232 See *Ibid.*, paras. 38, 44.

233 *Cf.* ECJ, Case 148/77, *Hansen*, judgment of 10 October 1978, ECLI:EU:C:1978:173, para. 17; ECJ, Case 196/85, *Commission v. France*, judgment of 7 April 1987, ECLI:EU:C:1987:182, para. 6.

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ones.[234] Concisely, in line with Art. 34-36 TFEU, Art. 5-7 of Decision 1/95 will likely be interpreted to prohibit quantitative restrictions and measures capable of hindering intra-Customs Union trade, whether directly or indirectly, actually or potentially.[235] These restrictions may only be justified by explicit derogations under Art. 7 of Decision 1/95 if they are directly discriminatory, or by an overriding reason in the public interest if they are not directly discriminatory, provided the principle of proportionality is observed.[236] Nonetheless, further clarification from the CJEU on these prohibitions would be beneficial.

While not all possibilities for future judicial interpretation can be exhaustively outlined, two potential areas stand out.[237] First, the interpretation of Art. 5-7 of Decision 1/95 may extend to the application of the principle of mutual recognition in intra-Customs Union trade. Under this principle, goods legally produced and marketed in one Party should, as a rule, be marketable in another Party.[238] Although the European Commission is not the final interpreter of EU law, it has affirmed in its interpretative communication that Türkiye is also subject to this principle through Art. 5-7, read in conjunction with Art. 66 of Decision 1/95.[239]

Second, the interpretation of Art. 9 of Decision 1/95, read in connection with Decision 1/2006, may have significant implications for trade between the Parties. According to Art. 9, once Türkiye enacts the provisions of the relevant EU instrument(s) to remove technical barriers to trade for a specific product, trade in that product between the Parties will be governed by those instrument(s).[240] Art. 1 of Decision 1/2006 further stipulates that the Customs Union Joint Committee will issue a statement confirming Türkiye's effective enactment of these provisions.[241] According to the website of Türkiye's Ministry of Trade, two such statements have been issued.[242] Consequently, judicial interpretation may further clarify the legal framework for trade between the Parties, as governed by the relevant EU instrument(s).

234 *Cf.* ECJ, Case 170/78, *Commission v. United Kingdom*, judgment of 12 July 1983, ECLI:EU:C:1980:53, para. 27.
235 *Cf.* ECJ, Case 8/74, *Dassonville*, judgment of 11 July 1974, ECLI:EU:C:1974:82, para. 5.
236 *Cf.* ECJ, Case C-21/88, *Du Pont*, judgment of 20 March 1990, ECLI:EU:C:1990:121, para. 14; ECJ, Case C-265/06, *Commission v. Portugal,* judgment of 10 April 2008, ECLI:EU:C:2007:784, para. 37.
237 See fn. 223.
238 *Cf.* ECJ, Case 120/78, *Cassis de Dijon*, judgment of 20 February 1979, ECLI:EU:C:1979:42, para. 14.
239 *European Commission*, Interpretative Communication on Facilitating the Access of Products to the Markets of Other Member States: The Practical Application of Mutual Recognition (Text with EEA relevance) OJ C 265 of 4/11/2003, p. 2, pt. 2.2., fn. 18.
240 Art. 9 of the Association Council Decision No. 1/95. The list of the instrument(s), see fn. 121.
241 Art. 1 of the Association Council Decision No. 1/2006.
242 See <https://trade.gov.tr/data/5b8f964d13b8761f041fea14/a3d2d3cb942ef8cd0d7ff3aa7d35a0ba.pdf> (5/2/2025). Also see <https://www.trade.gov.tr/legislation/product-safety-and-technical-regulation/general-rules-and-procedures-on-technical-regulations-and-standarts> (5/2/2025).

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To sum up, on the *judicial front*, the CJEU has assumed a proactive role in enforcing association law, beginning with the *Demirel* decision in 1987, a trend that continues to the present day.[243] As a result, it is reasonable to assert that a significant portion of association law has been interpreted by the CJEU, aiming for alignment with EU internal market law to the extent possible. Accordingly, judicial activity is approaching its limits,[244] indicating a need to reinvigorate the law of integration through association. This can be achieved by activating normative activity.

D. Addressing Normative Gaps: Potential Actions

As demonstrated above, judicial activity is nearing its limits within the existing normative framework, necessitating normative action. This need is evidenced not only in case law but also in policy papers (1). Potential normative actions can take two forms: either through international agreements and/or Association Council decisions (2).

I. The Need for Normative Action

The current normative framework under association law was originally designed as a transitional regime.[245] However, especially over the past decade, the need to revise this framework has increasingly emerged.[246] This necessity is evidenced through both case law and policy papers.

1. The Need Documented in Case Law

While it is not feasible to exhaustively cover all cases that highlight the necessity of deepening association law, five key decisions of the CJEU will be analysed chronologically to illustrate this need.[247]

The *Taflan-Met* case (1996) concerns Association Council Decision No. 3/80, which governs *social security schemes* for Turkish workers and their family members

243 For instance, according to the *Boeles/den Heijer/Lodder/Wouters*, the CJEU's case law "shows how influential the interpretative function of a court can be". *Boeles/den Heijer/Lodder/Wouters*, p. 125.

244 For instance, according to Wiesbrock, "… the Court has [pushed] the limits of judicial competences to the limits. …". *Wiesbrock*, ELJ 2013/3, p. 424.

245 See *Neuwahl*, European Foreign Affairs Review 1999/4, pp. 37–62; *Peers*, EJIL 1996/4, pp. 411–430; *Pirim*, Legal Issues of Economic Integration 42/1, pp. 31–56.

246 Also see *Mathis*, Legal Issues of Economic Integration 2013/4, pp. 291–296; *Göral/Dartan*, Marmara Avrupa Araştırmaları Dergisi 2016/2, pp. 1–31; *Bilgin*, Athens Journal of Mediterranean Studies 2018/2, pp. 123–136.

247 In addition, according to Lasok, the *Sevince* decision "demonstrates the weakness of the Ankara Agreement and inaction if not impotence of the Council of Association on whose decisions the implementation of the Agreement depends". *Lasok*, Marmara Avrupa Araştırmaları Dergisi 1991/1&2, p. 45.

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in the Member States.[248] The CJEU affirmed that Decision 3/80 became binding upon its adoption.[249] However, the Court ruled that Art. 12 and 13 of the Decision required supplementation and implementation by a subsequent EU act, rendering them without direct effect.[250] As a result, individuals cannot rely on these provisions before national courts.[251]

The *Taflan-Met* case, along with subsequent developments in the field of social security schemes, underscores the pressing need for normative action. In 1983, the Commission proposed a Council Regulation to establish supplementary detailed rules for implementing Decision 3/80.[252] However, as no such regulation could be adopted by the 2010s, the Commission shifted its approach.[253] It proposed a new decision to be adopted by the Association Council to replace Decision 3/80, aiming to reflect advancements in EU social security coordination and to fully implement its principles.[254] In the same year, the Council adopted a position on behalf of the EU within the Association Council to pursue this goal.[255] Consequently, in 2013, the Commission withdrew its earlier proposal for a Council Regulation.[256] Despite these efforts, no decision has been adopted by the Association Council to date to replace Decision 3/80.[257]

The *Asda Stores* (2007) case concerns, among other issues, the application of *trade defence instruments*, other than safeguards, under association law.[258] Asda Stores, a UK-based company, imported colour television receivers (CTVs) into the UK, which were assembled in Türkiye by Vestel, a Turkish company.[259] However, the customs authorities determined that the true places of origin of the CTVs were China and Korea, both of which were subject to anti-dumping measures, and thus imposed anti-dumping duties.[260] Asda Stores argued, among others points, that these anti-dumping duties were established on the basis of provisions adopted by the

248 ECJ, Case C-277/94, *Taflan-Met*, judgment of 10 September 1996, ECLI:EU:C:1996:315.
249 *Ibid.*, para. 22.
250 *Ibid.*, paras. 33, 38.
251 *Ibid.*, para. 38.
252 COM(1983)13, OJ C 110 of 25/4/1983, p. 1.
253 Additionally, Regulation No. 1231/2010 extends the provisions of Regulation No. 883/2004 and Regulation No. 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the basis of their nationality. OJ L 344 of 29/12/2010, p. 1.
254 COM(2012)152 final.
255 Council Decision 2012/776, OJ L 340 of 13/12/2012, p. 19. Although this Council Decision was challenged in annulment proceedings, it ultimately withstood the legal scrutiny. ECJ, Case C-81/13, *United Kingdom v. Council*, ECLI:EU:C:2014:2449, para. 68. For an analysis of the decision, see *Melin*, Maastricht Journal of European and Comparative Law 2015/3, pp. 440–452.
256 OJ C 109 of 16/4/2013, p. 7.
257 Also see *Sieveking*, Marmara Avrupa Araştırmaları Dergisi 2002/1, pp. 65–79; *Minderhoud*, European Journal of Social Security 2016/3, pp. 65–79.
258 ECJ, Case C-372/06, *Asda Stores*, judgment of 13 December 2007, ECLI:EU:C:2007:787.
259 *Ibid.*, para. 23.
260 *Ibid.*, paras. 25–26.

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Commission in violation of its obligations, relying on provisions related to anti-dumping duties in the Additional Protocol and Association Council Decision No. 1/95.[261] The CJEU ruled that neither Art. 47 of the Additional Protocol nor Art. 44 of Decision 1/95 have direct effect, meaning they do not allow individual operators to invoke these provisions in order to resist the payment of anti-dumping duties normally due.[262]

The *Asda Stores* case highlights the normative possibilities already envisaged by association law concerning the application of trade defence instruments. Aside from Art. 47 of the Additional Protocol, which outlines rules for the transitional period (spanning twenty-two years), Art. 44 of Decision 1/95 grants the Association Council the authority to suspend the application of trade defence instruments. However, this can only occur if Türkiye has implemented the competition rules, state aid control, and other relevant components of the EU's *acquis* and ensured their effective enforcement.[263] The rationale behind this is to provide safeguards against unfair competition in Türkiye that are comparable to those within the EU internal market. In the absence of such a decision, trade defence instruments continue to apply between the Parties.

The *Agro Foreign Trade & Agency* (2017) case concerns the limits of *freedom to provide services* under association law.[264] Agro, a Turkish company, entered into a commercial agency contract with Petersime, a Belgian company, in 1992.[265] The contract was automatically renewed each year unless terminated by either party and was governed by Belgian law, with jurisdiction assigned to the courts of Ghent, Belgium.[266] After Petersime decided to terminate the contract in 2013, Agro sought compensation for the termination before the Ghent courts.[267] While Agro relied on the protection afforded to commercial agents by the Belgian Commercial Agency Contracts Act of 1995, which incorporates Directive 86/653,[268] Petersime argued that this law did not apply to the case.[269]

The CJEU ruled as follows in this case. It initially concluded that a commercial agent operating under a commercial agency contract in Türkiye is not covered by the provisions of Directive 86/653, regardless of whether the principal is based in a Member State.[270] It then examined whether the applicability of Directive 86/653 to commercial agents established in Türkiye could arise from association law.[271] By

261 *Ibid.*, para.75.
262 *Ibid.*, paras. 85–88, 91.
263 See *Ibid.*, para. 85.
264 ECJ, Case C-507/15, *Agro Foreign Trade*, judgment of 16 February 2017, ECLI:EU:C:2017:129.
265 *Ibid.*, paras. 14–15.
266 *Ibid.*, para. 15.
267 *Ibid.*, para. 16.
268 OJ L 382 of 31/12/1986, p. 17.
269 ECJ, Case C-507/15, *Agro Foreign Trade*, judgment of 16 February 2017, ECLI:EU:C:2017:129, para. 17.
270 *Ibid.*, para. 35.
271 *Ibid.*, para. 37.

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comparing the objectives and context of association law with those of EU law, the Court determined that the protection system outlined in Directive 86/653 cannot be extended to such agents.[272] Furthermore, this conclusion is unaffected by Türkiye's transposition of the directive into its national law, since "such a transposition results not from an obligation imposed by the Association Agreement, but from the will of that third State".[273] Lastly, the Court held that Art. 41(1) of the Additional Protocol, the standstill provision, does not apply in this case because the situation falls outside its scope, as Agro does not provide services in Belgium.[274]

The *Agro Foreign Trade & Agency* case exemplifies the limitations of the current normative framework under association law and highlights the potential complementarity between the association and accession relationships. Regarding the first point, the Art. 41(1) of the Additional Protocol is the most advanced provision concerning the freedom of establishment and to provide services between the Parties. However, even if it could be applicable in this case, it would not render the substantive law it replaces inapplicable in the same manner as a substantive rule would.[275] Regarding the second point, the ruling implicitly emphasizes that even if Türkiye transposed an EU act – in this case Directive 86/653 – into its national law, as part of adopting the EU's *acquis* under the accession negotiations,[276] it does not have automatic consequences for association law. However, if such a transposition were the result of association law, for instance, stemming from an Association Council decision under Art. 41(2) of the Additional Protocol, it would completely alter the legal situation.[277] This reveals the potential complementarity between the association and accession relationships.[278]

The *CX* (2018) case concerns *international road transport*, particularly *transport quotas*, under association law, highlighting the consequences of the incomplete normative framework between the freedoms.[279] The central issue is that a Turkish undertaking can only transport goods by road to Austria, or through its territory, if it holds a permit issued by the Austrian authorities, within the limits of a quota established under the bilateral agreement between Austria and Türkiye.[280] The CJEU held that the free movement of goods, the freedom to provide services, and transport are distinct matters, each governed by different rules and subject to varying degrees of market liberalisation.[281] Based on the purpose of the relevant measure, it falls within the field of transport services, rather than the free movement of

272 *Ibid.*, para. 45.
273 *Ibid.*, para. 46.
274 *Ibid.*, paras. 49–50.
275 ECJ, Case C-16/05, *Tum and Dari*, judgment of 20 September 2007, ECLI:EU:C:2007:530, para. 55.
276 See fn. 9.
277 *Cf.* ECJ, Case C-507/15, *Agro Foreign Trade*, judgment of 16 February 2017, ECLI:EU:C:2017:129, para. 46.
278 Also see *Mathis*, Legal Issues of Economic Integration 2013/4, pp. 292–293.
279 ECJ, Case C-629/16, *CX*, judgment of 11 July 2018, ECLI:EU:C:2018:556.
280 *Ibid.*, para. 35.
281 *Ibid.*, para. 36.

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goods.[282] In this regard, despite being empowered to do so by Art. 42 of the Additional Protocol, the Association Council has not yet taken any decisions to extend the EU law on transport services to Türkiye.[283] Thus, in the absence of such decisions, the conditions for access of Turkish undertakings to the EU transport market remain governed by the laws of the Member States.[284] Lastly, there seems to be no infringement of Art. 41(1) of the Additional Protocol, as no new restrictions arise within the field of transport services.[285]

The *Kolin* (2024) case concerns *public procurement*, again highlighting the limitations of the current normative framework under association law.[286] The central question here is whether a Turkish economic operator can invoke Directive 2014/25,[287] which pertains to procurement in certain sectors, to challenge a decision made by a Member State regarding the awarding of a public contract.[288] According to the CJEU, based on Art. 43 of Directive 2014/25, where the EU has an international agreement with a third country, such as the Agreement on Government Procurement (GPA), which guarantees access to public procurement, economic operators from those countries may invoke the provisions of Directive 2014/25 to challenge procurement decisions.[289] However, Türkiye is not considered such a third country, especially since there has been no decision by the Association Council to mutually open public procurement markets, despite Art. 57 of the Additional Protocol empowering it to do so.[290] Lastly, there seems to be no infringement of Art. 41(1) of the Additional Protocol, as no new restrictions arise within the field of public procurement.[291] Thus, given that association law does not have the ability to alter the legal situation, Kolin, a Turkish economic operator, cannot rely on Directive 2014/25 to challenge procurement decisions.[292]

Both the *CX* and the *Kolin* cases highlight areas with untapped potential within the association law framework. Despite the Association Council being empowered to act under the Additional Protocol since 1973, it has not adopted decisions in the fields of transport services or public procurement. Although the contested measures in both cases fell within the scope of the standstill clause in Art. 41(1) of the Additional Protocol, the clause did not affect the outcomes, as no infringements were found. These cases, decided in 2018 and 2024 respectively, underscore how the growing volume of commercial relations between the EU and Türkiye has reached a point where the absence of such decisions is increasingly difficult to justify.

282 *Ibid.*, paras. 37, 43.
283 *Ibid.*, para. 46.
284 *Ibid.*, para. 47.
285 *Ibid.*, paras. 50, 54.
286 ECJ, Case C-652/22, *Kolin*, judgment of 22 October 2024, ECLI:EU:C:2024:910.
287 OJ L 94 of 28/3/2014, p. 243.
288 ECJ, Case C-652/22, *Kolin*, judgment of 22 October 2024, ECLI:EU:C:2024:910, para. 39.
289 *Ibid.*, paras. 41–43.
290 *Ibid.*, paras. 48–49.
291 *Ibid.*, para. 50.
292 *Ibid.*, para. 51.

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In addition to the need to revise the existing normative framework of association law, as demonstrated by the case law, several policy papers also emphasize this necessity, highlighting areas where reform and modernization are required.

2. The Need Documented in Policy Papers

The policy papers commonly reference the term EU–Türkiye trade framework, established under the association law, and emphasize the need for its revision, primarily due to its perceived obsolescence.[293] This revision encompasses both procedural and substantive dimensions.

The *procedural* dimension of the revision of EU–Türkiye trade framework unfolds as follows. First, in February 2014, EU and Türkiye "established a joint Senior Officials Working Group which was tasked to study the options for the modernisation of [trade framework]".[294] Second, on March 28, 2014, the World Bank published a report titled: "Evaluation of the EU – Turkey Customs Union", which was requested by Commission.[295] Third, on May 12, 2015, EU and Türkiye reached an agreement to enhance the trade framework.[296] Fourth, on March 18, 2016, with the so-called "EU–Turkey Statement", both parties welcomed ongoing work on upgrading the Customs Union.[297] Fifth, on December 21, 2016, the Commission requested authorisation from the Council to open negotiations with Türkiye to improve the trade framework.[298] Sixth, on June 26, 2018, the Council noted that: "no further work towards the modernisation of the EU–[Türkiye] Customs Union is foreseen".[299] Hence, although there has been an intention to enhance the EU–Türkiye trade framework, negotiations have not yet been initiated.

The *substantive* dimension of the revision of EU–Türkiye trade framework can be outlined as follows.[300] On one hand, there are issues related to the *modernisation*

293 *European Commission*, Inception Impact Assessment: Enhancement of EU-Turkey bilateral trade relations and modernisation of the EU-Turkey Customs Union, p. 1. ("Inception Impact Assessment") <http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_trade_035_turkey_en.pdf> (5/2/2025).

294 *European Commission*, Impact Assessment, Accompanying the document Recommendation for a Council Decision authorising the opening of negotiations with Turkey on an Agreement on the extension of the scope of the bilateral preferential trade relationship and on the modernisation of the Customs Union, SWD(2016) 475 final, p. 6. ("SWD(2016) 475 final").

295 <https://www.worldbank.org/content/dam/Worldbank/document/eca/turkey/tr-eu-customs-union-eng.pdf> (5/2/2025).

296 SWD(2016) 475 final, p. 6.

297 <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (5/2/2025), pt. 7.

298 COM(2016) 830. This document is accompanied by SWD(2016) 475 final.

299 *Council of the European Union*, Council Conclusions on Enlargement and Stabilisation and Association Process, Brussels, 26 June 2018, pt. 35. <https://www.consilium.europa.eu/media/35863/st10555-en18.pdf> (5/2/2025).

300 Besides, it was accepted by the parties (EU and Turkey) that "… there is a need to address these shortcomings in a single comprehensive 'package'…" SWD(2016) 475 final, p. 22.

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of customs union between the parties, often referred to as "design problems".[301] Firstly, concerning Türkiye's alignment with EU's Common Commercial Policy in general, and EU's Free Trade Agreements (FTAs) with third countries in particular,[302] Türkiye *lacks* legal mechanisms to ensure that third countries engage in parallel FTAs with her.[303] Secondly, regarding Türkiye's alignment with EU's related economic and technical *acquis*,[304] Türkiye faces challenges due to *insufficient* legal mechanisms enabling its participation in decision-making and shaping processes.[305] Thirdly, concerning the dispute settlement mechanism between the EU and Türkiye,[306] it is deemed *ineffective* as it is subject to political consensus by the parties, thereby impacting its efficacy.[307]

On the other hand, there are issues related to the *enhancement* of EU–Türkiye bilateral preferential trade framework (BPTF). Firstly, under the current BPTF, trade between parties is (fully) liberalised primarily in relation to goods, excluding agricultural products.[308] Consequently, to align with the EU's recent practices with other third countries, additional *areas* of deep integration, such as agricultural products, services, and public procurement, need to be addressed to enhance this framework.[309] Secondly, in line with EU's recent practice with other third countries,[310] other *rules* aimed at fostering "a stable legal and economic environment",[311] such as those concerning trade and sustainable development (TSD),[312] need to be incorporated to enhance this BPTF.[313]

The need to revise the normative framework of association law is evident from both case law and policy papers. These insights underline the importance of exploring potential normative actions to address these deficiencies.

301 SWD(2016) 475 final, p. 19. For a discussion on asymmetry in the EU's association policy, see *Alkan*, Ankara Avrupa Çalışmaları Dergisi 19/2, pp. 382–391.
302 See Arts. 16 and 54 of the Association Council Decision No. 1/95.
303 SWD(2016) 475 final, p. 15.
304 See Arts. 54–60 of the Association Council Decision No. 1/95.
305 SWD(2016) 475 final, p. 15.
306 See Art. 25 of the Ankara Agreement and Art. 61 and 62 of the Association Council Decision No. 1/95.
307 SWD(2016) 475 final, pp. 15–16. Also see ECJ, Case C-251/00, *Ilumitrónica*, judgment of 14 November 2002, ECLI:EU:C:2002:655, paras. 72–73.
308 *Cf.* Association Council Decision No. 2/2000.
309 SWD(2016) 475 final, p. 19.
310 See SWD(2016) 475 final, p. 48.
311 SWD(2016) 475 final, p. 11.
312 Also see *Akdoğan*; *Göçmen*, in: Legal Issues in Turkey – European Union Relations, pp. 143–185; *Hoffmeister/Siemer*, ZEuS 2024/3, pp. 269–304.
313 SWD(2016) 475 final, p. 20.

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II. Types of Potential Normative Actions

The revision of the EU–Türkiye association law framework, assuming it aims to enhance rather than loosen the existing normative framework,[314] could be achieved through one or both of the following types of normative actions: international agreements and/or Association Council decisions.[315] What follows is a comparative analysis of these instruments.

First, the *effects* of these instruments differ. While Association Council decisions are considered an integral part of the EU legal system upon their entry into force,[316] their status within the Turkish legal order remains unclear.[317] On the other hand, international agreements between the Parties are also considered part of the EU legal system upon their entry into force.[318] Although there has been no specific ruling from the Turkish High Courts, they will likely become part of the Turkish legal system upon entry into force, having the force of law.[319] Nevertheless, their precise effects within the Turkish legal order require further exploration, given the absence of relevant decisions concerning association law.

Second, these instruments differ in terms of the *matters* they can regulate. On the one hand, the Association Council may adopt decisions in two scenarios:[320] either when the necessary powers are expressly granted by the Ankara Agreement or another international agreement, such as the Additional Protocol,[321] or, in the absence of such powers, when necessary to achieve the objectives of the Ankara Agreement during the implementation of the association.[322] As demonstrated above,

314 For the potential *scenarios* in the revision of the EU–Türkiye trade framework, see SWD(2016) 475 final, pp. 22–26. It is worth noting that, according to the Commission's Impact Assessment in 2015, both parties deemed the enhancement of the existing normative framework more likely than its loosening, given the prevailing political context at the time. See SWD(2016) 475 final, pp. 24–25. In this regard, for an argument in favour of broader and deeper economic integration between the parties, see *Özer*, Turkish Studies 2020/3, pp. 436–461. Conversely, for a perspective advocating a shift from the customs union to a free trade agreement, see *Colares/Durmus*, Journal of International Economic Law 2019/1, pp. 99–123.

315 For the potential *method*, see Inception Impact Assessment, p. 3. Also see *Göçmen*, Ankara Avrupa Çalışmaları Dergisi 2016/1, pp. 85–115. In addition, according to Lasok, "… the efficacy of the Agreement depends entirely upon the action or inaction of the [Council of Association]". *Lasok*, Marmara Avrupa Araştırmaları Dergisi 1991/1&2, p. 46.

316 ECJ, Case C-192/89, *Sevince*, judgment of 20 September 1990, ECLI:EU:C:1990:322, para. 9.

317 See *Göçmen*, Türkiye Barolar Birliği Dergisi 2020/139, pp. 253–284.

318 ECJ, Case 12/86, *Demirel*, judgment of 30 September 1987, ECLI:EU:C:1987:400, paras. 9, 7.

319 Art. 90 of the Turkish Constitution OJ 17863 of 9/11/1982.

320 Art. 22(1 and 3) of the Ankara Agreement.

321 See Art. 62 of the Additional Protocol.

322 *Cf*. Art. 352 of the TFEU. Also *cf*. ECJ, Opinion 2/94, *Accession of the Community to the European Human Rights Convention,* ECLI:EU:C:1996:140.

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these powers include, for instance, agricultural products,[323] services,[324] and public procurement.[325] However, the matters that can be regulated by Association Council decisions are confined to these boundaries.[326] On the other hand, the EU and Türkiye may conclude international agreements between themselves, likely based on the Ankara Agreement, which could address fields beyond the remit of the Association Council, subject, among other considerations, to the principle of conferral within the EU.[327]

Third, these instruments differ in terms of the *procedure* by which they are adopted. With regard to *international agreements*, the *preliminary issue* is whether the EU has the competence to act, and if so, to what extent. Starting with the *existence* of this competence, the EU, for example, has competence under its Common Commercial Policy (CCP) to act in the areas of agricultural products,[328] services,[329] and public procurement.[330] Additionally, these areas should be considered as falling within Art. 217 TFEU, since, as AG Kokott stated, "if Art. 217 TFEU permits the far-reaching step of establishing an association between the Union and a third country, it must, *a fortiori*, also serve as the legal basis for *ad hoc* measures to modify, extend, or further develop an existing association".[331] Furthermore, as the CJEU ruled, "Art. 217 TFEU necessarily empowers the [EU] to guarantee commitments towards third countries in all the fields covered by the [TFEU]".[332]

Turning to the *extent* of this competence, it is linked to whether the EU can conclude the international agreement alone or in conjunction with its Member States. Using agricultural products, services, and public procurement as examples, these areas fall under the EU's exclusive competence under the CCP.[333] Moreover, as Eeckhout states, since Art. 217 TFEU "enabled the [EU] to undertake commitments in all the areas covered by the Treaty", "it would therefore not require much creative effort or loss of subject matter to design association agreements in such a way that they may be concluded as pure EU agreements".[334] In this context, the recently signed but not yet concluded association agreement between the EU and Andorra

323 Art. 34 of the Additional Protocol. See Art. 11 of the Ankara Agreement.
324 Art. 41(2) of the Additional Protocol. See Arts. 13 and 14 of the Ankara Agreement.
325 Art. 48 of the Association Council Decision No. 1/95. See Art. 57 of the Additional Protocol.
326 *Cf.* ECJ, Case C-277/94, *Taflan-Met*, judgment of 10 September 1996, ECLI:EU:C:1996:315, para. 18.
327 Art. 5(2) of the TFEU.
328 Art. 207(1) of the TFEU. See ECJ, Opinion 1/94, *Competence of the Community to conclude international agreements concerning services and the protection of intellectual property,* ECLI:EU:C:1994:384, paras. 29, 34.
329 Art. 207(1) of the TFEU. *Cf. Ibid.*, paras. 36–53.
330 Art. 207(1) of the TFEU. See ECJ, Case C-652/22, *Kolin*, judgment of 22 October 2024, ECLI:EU:C:2024:910, paras. 54–61.
331 Opinion of AG Kokott, Case C-81/13, *United Kingdom v. Council*, judgment of 18 December 2014, ECLI:EU:C:2014:2114, para. 29.
332 ECJ, Case C-81/13, *United Kingdom v. Council*, judgment of 18 December 2014, ECLI:EU:C:2014:2449, para. 61.
333 Art. 3(1) in conjunction with 207(1) of the TFEU.
334 *Eeckhout*, p. 219.

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and San Marino reflects the current practice of using Art. 217 TFEU as a legal basis, with its broad coverage and the EU as the sole party.[335] Based on this reasoning, the EU could be the sole party to an agreement with Türkiye, despite the fact that the original Ankara Agreement is a mixed agreement.[336]

Nonetheless, if the EU chooses to conclude such an agreement jointly with its Member States,[337] the following considerations emerge. First, mixed agreements require close cooperation between Member States and EU throughout the negotiation and conclusion phases, as well as in the implementation of the commitments undertaken.[338] Second, as illustrated by the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU and its Member States, it is possible to provisionally apply the sections of the agreement falling within the EU's competence while awaiting the completion of the procedures necessary for its formal conclusion.[339] Similarly, following the CJEU's Opinion 2/15 on the EU–Singapore Free Trade Agreement,[340] an agreement may be split into two parts: one falling within the EU's exclusive competence and the other outside it.[341] Third, as exemplified by the İstanbul Convention,[342] in the context of mixed agreements, the EU may conclude the agreement without awaiting the common accord of Member States to bind themselves in areas falling within their respective competences.[343]

The *procedure* for concluding international agreements, determined by the chosen legal basis,[344] proceeds as follows. As noted above, at least one legal basis for such an agreement will likely be Art. 217 TFEU. The process begins with the Commission submitting *recommendations* to the Council regarding the initiation of negotiations and serving as the *negotiator* if negotiations commence.[345] The Council acts *unanimously* to open negotiations, adopt negotiating directives, authorize the signing of the agreement, and ultimately conclude it.[346] The European Parliament's

335 COM(2024) 189 final.
336 See fn. 14.
337 See *Chalmers/Davies/Monti*, p. 650.
338 ECJ, Case C-246/07, *Commission v. Sweden*, judgment of 20 April 2010, ECLI:EU:C:2010:203, para. 73.
339 Council Decision 2017/38, OJ L 11 of 14/1/2017, p. 1080.
340 ECJ, Opinion 2/15, *Free Trade Agreement between the European Union and the Republic of Singapore*, ECLI:EU:C:2017:376.
341 See Council Decision 2018/1599, OJ L 267 of 25/10/2018, p. 1 and Council Decision 2018/1676, OJ L 279 of 9/11/2018, p. 1. Also see *Svoboda*, Croatian Yearbook of European Law and Policy 2019/15, pp. 205–207.
342 See ECJ, Opinion 1/19, *Istanbul Convention*, ECLI:EU:C:2021:198, para. 274.
343 Council Decision 2023/1075, OJ L 143I of 2/6/2023, p. 1 and Council Decision 2023/1076, OJ L 143I of 2/6/2023, p. 4. According to the eur-lex, six EU Member States have not yet ratified the convention themselves. See <https://eur-lex.europa.eu/EN/legal-content/summary/eu-accession-to-the-istanbul-convention.html> (5/2/2025).
344 ECJ, Case C-94/03, *Commission v. Council*, judgment of 10 January 2006, ECLI:EU:C:2006:2, paras. 34–36.
345 Arts. 218(3) and 207(3) of the TFEU and Art. 17(1) of the TEU as amended by the Treaty of Lisbon.
346 Art. 218(2 and 8/2) of the TFEU.

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consent is required for the agreement's conclusion.[347] Additionally, the CJEU may be consulted to provide a *binding opinion* on whether the proposed agreement is compatible with EU law.[348]

With regard to *Association Council decisions*, the *procedure* unfolds as follows. The Association Council is *composed* of representatives from the governments of the EU Member States, the EU Council, and the Commission on one side, and representatives from the Turkish Government on the other.[349] Decisions are adopted *unanimously*.[350] The key question here is how the EU side determines its vote. Similar to the discussion above concerning international agreements, this depends on the legal basis, which also delineates the existence and extent of the EU's competence.[351] At least one legal basis is likely to be Art. 217 TFEU, which reflects the EU's exclusive competence in this context. Additionally, a specific procedure applies to establishing the positions to be adopted on the EU's behalf in a body established by an agreement, except in cases involving acts that supplement or amend the institutional framework of the agreement.[352] In such cases, the Council, *upon* a proposal from the Commission, adopts the position by a *qualified majority*, *without* requiring the approval of the European Parliament.[353] Furthermore, based on the interpretation of the term "agreement" in the case law,[354] the CJEU may be consulted to provide a *binding opinion* on whether the proposed decision aligns with EU law.[355]

After examining the current normative framework of association law, its interpretation by the CJEU, and the need for as well as the types of potential normative action, several conclusions can be drawn.

E. Conclusion

This manuscript aimed to review sixty years of EU–Türkiye association law. After outlining the current normative framework, it examined the progress of CJEU case law within that framework and assessed the need for normative actions to address unresolved issues. The analysis concludes that judicial interpretation has reached its limits, highlighting the urgent need for further normative action, a need that is also recognized in policy papers, particularly in light of Türkiye's ongoing non-accession to the EU.

347 Art. 218(6/a/(i)) of the TFEU.
348 Art. 218(11) of the TFEU.
349 Art. 23 of the Ankara Agreement.
350 Art. 23 of the Ankara Agreement.
351 See *Heliskoski*, in Hillion/Koutrakos (eds.), pp. 146–154..
352 Art. 218(9) of the TFEU. See *Eeckhout*, p. 208.
353 Art. 218(8 and 9) of the TFEU and ECJ, Case C-81/13, *United Kingdom v. Council*, judgment of 18 December 2014, ECLI:EU:C:2014:2449, para. 66. Also see *Newwahl*, CMLR 33/1, pp. 51–68.
354 ECJ, Opinion 1/75, *OECD Understanding on a Local Cost Standard*, ECLI:EU:C:1975:145, pp. 1359–1360. *Cf*. ECJ, Case C-233/02, *France v. Commission*, judgment of 23 March 2004, ECLI:EU:C:2004:173, para. 45.
355 Art. 218(11) of the TFEU.

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From a *substantive* perspective, the deficiencies in EU–Türkiye association law arise from its incomplete internal market framework.[356] These shortcomings primarily concern areas already recognized in the current normative framework but have not been fully implemented or acted upon. Examples from case law – such as social security schemes[357] in *Taflan-Met* (1996), trade defence instruments[358] in *Asda Stores* (2007), international road transport and quotas[359] in *CX* (2018), and public procurement[360] in *Kolin* (2024) – illustrate that while association law has the potential to evolve, its development has been inconsistent. Similarly, areas identified in policy papers, such as agricultural products,[361] services,[362] and (again) public procurement,[363] demonstrate a persistent lack of structured progress.[364] Interestingly, the CJEU has implicitly suggested that transposition of EU law into Turkish law, when grounded in association law, may carry legal effects.[365] Türkiye's alignment of its national legislation with various EU laws – particularly those governing the internal market – as part of its accession process,[366] alongside its association relationship,[367] presents an opportunity to create a more coherent and structured legal framework that bridges the association and accession processes. However, for the association relationship to remain viable in the long term, it must evolve beyond mere legislative approximation toward a clearly defined and functionally effective model of integration. As substantive economic integration deepens, the accompanying institutional framework must develop in parallel, ensuring it is sufficiently robust to support and sustain this enhanced relationship.

From a *procedural* perspective, these deficiencies could be addressed through new international agreements, Association Council decisions, or a hybrid approach. Each mechanism has advantages and constraints. First, while international agreements, once ratified, provide a robust legal foundation within the respective legal orders, the status of Association Council decisions in Türkiye's legal order remains contentious. Second, international agreements can address a broader range of issues, whereas Association Council decisions are more limited in scope. Third, international agreements involve formal treaty-making procedures that are often lengthy

356 *Cf.* Arts. 2(2), 12, 13, 14, 19 and 20 of the Ankara Agreement. In this regard, for instance, according to Lichtenberg, "... the basic principles structuring the Association [include] the four freedoms constituting the internal market..." *Lichtenberg*, Marmara Avrupa Araştırmaları Dergisi 1998/1, pp. 142–143.
357 Art. 39 of the Additional Protocol and Association Council Decision No. 3/80.
358 Art. 47 of the Additional Protocol and Art. 44 of the Association Council Decision No. 1/95.
359 Art. 42 of the Additional Protocol.
360 Art. 48 of the Association Council Decision No. 1/95. See Art. 57 of the Additional Protocol.
361 Art. 34 of the Additional Protocol. See Art. 11 of the Ankara Agreement.
362 Art. 41(2) of the Additional Protocol. See Art. 13 and 14 of the Ankara Agreement.
363 See fn. 358.
364 SWD(2016) 475 final, p. 19.
365 *Cf.* ECJ, Case C-507/15, *Agro Foreign Trade*, judgment of 16 February 2017, ECLI:EU:C:2017:129, para. 46.
366 See fn. 9.
367 See Art. 54(1) of the Association Council Decision No. 1/95.

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and complex, whereas Association Council decisions, adopted by an established body, are not subject to such procedural intricacies. In sum, international agreements offer a stronger legal foundation but involve complex ratification processes, while Association Council decisions provide a more flexible alternative but suffer from legal uncertainty within Türkiye's legal order. Ultimately, neither mechanism can function without political commitment, which remains the decisive challenge.[368]

Moving forward, if there is sufficient political will,[369] the association relationship is broad enough – both substantively and procedurally – to address key issues and reinforce its legal foundation.[370] However, a passive, reactive approach – relying solely on judicial interpretation or incremental technical adjustments – will no longer suffice. A proactive, forward-looking strategy is essential. One approach is to strengthen the association framework, making it institutionally more robust, economically deeper, and adaptable to the extension of other EU policies, ultimately bridging the association and accession processes. Depending on the EU's trajectory,[371] this could eventually result in full membership for Türkiye or an alternative form of membership. At the very least, immediate steps must be taken to consolidate the legal framework,[372] ensuring that the association relationship remains relevant and responsive to contemporary challenges.

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368 See *European Commission/High Representative*, Joint Communication to the European Council, State of play of EU-Türkiye political, economic and trade relations, JOIN(2023) 50 final, pp. 10–11. Conclusions of the Presidency, April 17–18, 2024, pt. 9–10. Joint Statement by Executive Vice-President Dombrovskis and Minister of Trade Bolat at the EU-Türkiye High-Level Dialogue on Trade, July 8, 2024, <https://ec.europa.eu/commission/presscorner/detail/en/statement_24_3684> (5/2/2025).

369 On the importance of "will", see *Lasok*, Marmara Avrupa Araştırmaları Dergisi 1991/1&2, p. 29.

370 For instance, according to Lichtenberg, Ankara Agreement "... constitutes a reliable and effective basis for... facilitating a partial integration of [Türkiye] into the [EU]". *Lichtenberg*, Marmara Avrupa Araştırmaları Dergisi 1998/1, p. 144. In addition, according to Lasok, Ankara Agreement "... reveals a great potential as a framework agreement for a fruitful association leading to full membership". *Lasok*, Marmara Avrupa Araştırmaları Dergisi 1991/1&2, p. 47.

371 For instance, see COM(2017) 2025 final.

372 See *Peers*, EJIL 1996/4, p. 428.

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