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**Cross-border Relations between Turkey and the  
European Union**

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**An Analysis of the Freedom of Services for Turkish Nationals**

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**Thesis for the Bachelor of Arts in European Studies  
University of Twente, Netherlands**

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*The relationship between Turkey and the European Union is a complex issue with many different aspects that need to be considered. In a case study, the following Bachelor thesis will focus on the topic of cross-border movement by Turkish service recipients and providers. It will analyse the EU visa regime and the way Turkey is affected thereby. One part will look at legislation and case law governing the rights and obligations of EU member states towards those Turks that want to provide or receive a service in their territory. Another part will elaborate how the member states deal with these rights, to what extent they are applied and what are the problematics. A next part is to look at the dynamics of cross-border movement between Turkey and the EU, that is Turkish and transit immigration. The thesis will then check for a possible relationship between immigration and the choice for a visa restriction as some scholars suspect some explanatory potential of the former.*

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## Abbreviations

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|        |   |
|--------|---|
| EEC/EC | European (Economic) Communities                 |
| ECJ    | European Court of Justice                       |
| EU     | European Union                                  |
| TEEC   | Treaty Establishing the European Communities    |
| TEU    | Treaty on the European Union                    |
| TFEU   | Treaty on the Functioning of the European Union |

## 01 Introduction

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With the Republic of Turkey gaining importance as a regional power, not only having contributed to stability of Europe in times of the Cold War, but also stabilizing the region of the Middle East nowadays (CEPS, 2004), it is time for the European Union to decide on a strategy on how to address its long-time applicant state. As a matter of fact, Turkey is the oldest "associate" to the EU (Ates, 1999), with official relations and negotiations dating back to 1959, followed by the Agreement establishing an Association between the EEC and Turkey (hereafter called Ankara Agreement) in 1963 (Groenendijk & Guild, 2010). Up to this date, June 2012<sup>1</sup>, Turkey is neither part of the EU Internal Market, not to mention membership to the EU that is still far away (CEPS, 2004; Groenendijk & Guild, 2010).

This Bachelor thesis seeks to take up the issue of Turkish-EU relations from the level of individuals crossing borders, more specifically, service providers and recipients. EU citizens being able to travel within countries of the Schengen signatories without visa requirements or border controls, in line with the Schengen Agreement of 1985 (European Commission, 2008), is one of the great achievements of the EU since its existence in 1951. As part of the project of establishing an Internal or Single Market until 1992, the abolishment of barriers for goods, persons, services and capital became a major European project (Meisel, Ràcz, & Vida, 2009). The chosen topic of Turkish cross-border relations deserves much attention due to a broad set of reasons:

EU-membership candidacy:

With more than half a century of negotiations, Turkey still remains outside the EU. Being an official candidate for membership since the 1999 Helsinki Summit (European Parliament, 1999), negotiations only opened in 2005 (European Commission, 2012). Still, it does not look as if Turkey was able to join the EU as a full member within the near future: Only one out of 35 chapters of the Union *acquis* (an EU membership candidate has to fulfil) is closed and therewith completed, 18 remain in a deadlock situation for political reasons (BBC News, 2012). In addition, some of the member states have declared their opposition or Turkish membership which is similar to a veto against Turkish accession as unanimity is required for new membership (PressTV, 2012).

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<sup>1</sup> This is the date at which I started my Bachelor thesis and thus the date of reference for the findings in my thesis. As this topic is up for discussion on the EU level, I will however not consider any changes from 01. June 2012 on.

#### Turkish immigration:

Especially in the early 1960s, so-called "guest workers" were attracted to member states of the EEC (European Economic Community, the predecessor of the EU) (Abadan-Unat, 2011). Followed by family reunifications a decade later, Turkish immigration, which is a second aspect, continued (González-Ferrer, 2007) - being legally backed by the Ankara Agreement that will be discussed further in Chapter 04.01 of the thesis. Immigration, even though now countered by back-migration of Turks from Europe (Kirişçi, 2007), still plays a politically important role for EU-Turkey relations (Apap, Carrera, & Kirişçi, 2004) especially with the new dynamics of transit migration from other states that explains for the why there is still a high number of people entering the EU via Turkey, even though the amount of Turkish immigrants has dropped (Neumayer, 2006).

#### Turkish diaspora:

Another aspect, stemming from immigration, is the great number of Turkish nationals who reside in the European Union member states. The book "Ethnic Groups of Europe" suggests a number of 9 million people to live in the wider Europe (Cole, 2011), another source approximates the number of Turks within the EU at 3 million (Groenendijk & Guild, 2010) - the real number probably lies somewhere between these two. In addition, there is a significant number of people stemming from Turkey who have naturalised in the past, becoming officially nationals of their home country that lies outside Turkey (Auswärtiges Amt, 2012). The size of the Turkish diaspora in Europe further stresses the relations of integration and visa requirements, especially in countries where Turks represent one of the major minorities.

#### Service Providers and Recipients:

Even though the biggest share of Turks or people with Turkish background in the EU have been part of the guest-worker inflow or the following family reunifications, as mentioned in the paragraph above, I will concentrate on another aspect in my thesis in order to meet the topicality of the issue. In the following, I will only look closer on the freedom of services for Turkish nationals towards the EU and its member states. As was laid out in the so-called Service Directive under the free movement of services are not only understood those who provide services but those who receive services as well. For this reason tourists, students, businessmen and sportsmen are included into the scope of Article 50 TFEU (Directive 2006/123/EC). This topic is interesting as especially tourists normally do not underly a complex set of visa requirements in OECD countries, the Schengen states provide an exception when it concerns Turkish tourists (VisaHQ, 2012).

Having this said, there are still obstacles for Turkish service providers and recipients to enter the European Union in terms of visa requirements (Greek Ministry of Foreign Affairs, 2012; Deutsches Generalkonsulat Istanbul, 2012), even though case law and EU legislation offer different ways of interpretation and identify some problematics of how member states uphold their visa regimes towards Turkish nationals despite EU agreements and case law providing for conflictive rules (Groenendijk & Guild, 2010). What is criticized by Turkish nationals and represents the visa restrictions is, in short, a list of documents as well as a temporal and financial burden (Groenendijk & Guild, 2010). Turkish citizens have to pay 60 € for the visa, in some countries appointment fees and Bank commission costs incur as well (IKV, 2010). Documents for the application include, next to the regular requirements of an application form, passport and photographs, a great number of additional certificates and proofs<sup>2</sup> ranging from a "detailed itinerary of the stay" to a "bank statement showing updated credit limit of the credit card" (IKV, 2010).

The problematics that serve as reason and justification for my research and the corresponding writing of a thesis are, to sum up, the difference between two factors: On the one hand, EU-Turkey relations that are very extended and subject to a great number of agreements and treaties (EUROPA, 2012), on top of which is the Ankara Agreement that even foresees full membership (Agreement 64/733/EWG), to which Turkey is an applicant for 13 years now (Morelli, 2011). On the other hand, there are the relatively high obstacles for Turkish nationals to cross the border to an EU member state as remaining on the Schengen Black List for countries whose nationals face visa requirements (Groenendijk & Guild, 2010).

Normally in bilateral relations, there is a high level of reciprocity in visa regulations (Neumayer, 2006), however, EU member states require different conditions than Turkey does vice versa for border-crossings (Groenendijk & Guild, 2010). While nationals from EU member states are guaranteed either visa-free entrance to Turkey, mostly for three months within a time-period of six months, or a visa that can be obtained at the Turkish border for a small amount of money (15 €) (Groenendijk & Guild, 2010), Turkish nationals cannot move that freely (Greek Ministry of Foreign Affairs, 2012; Deutsches Generalkonsulat Istanbul, 2012; Möckelmann, 2011).

Next to the analysis of responsible legal documents governing the Schengen Convention and its overarching EU Internal or Single Market as well as EU legislation and corresponding case law, I will also look for reasons that might be explanatory for existent visa requirements or states' behaviour to or not to implement deriving rules towards Turkey. Scientific articles by well-cited scholars show research on the level of different forms of immigration and the resulting choice for visa regimes (Houtum &

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<sup>2</sup> A complete list containing the Standard Documentation demanded by consulates for a Short Stay Tourist Visa can be found in Appendix 1

Pijpers, 2007; Kirişçi, 2007; Neumayer, 2006; Glazar & Strielkowski, 2010). I will thus elaborate what immigration, or the prospect of a change in immigration, can offer as an explanation for visa requirements in the case of Turkey.

## 02 Research Questions

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For this thesis, I have come up with an overarching research question and several subquestions. The choice for these and their analysis and answering will give the paper a structure and build up on each other making the topic better understandable. In the following paragraphs I will shortly explain the questions, the next chapter will explain how I will go about to answer them.

The main research question is very complex and includes all necessary aspects of this thesis:

*Q: Which rights do Turkish citizens enjoy on the basis of the EU rules on the freedom of services and to which extent do EU member states apply these rules?*

This question includes many subquestions that need to be answered in order to understand the broad issue. I have chosen to divide the research question into smaller units as will be seen in the following.

In terms of the rights that Turkish citizens enjoy on the basis of the EU rules on the freedom of services, I have designed two descriptive subquestions:

*Q1: What are the relevant legal and political documents that cover the rights of Turkish citizens who want to enter the European Union within the freedom of services?*

*Q2: What rights can be derived from these documents?*

As a next part, I want to see to which extent EU member states apply these rules – do they comply with binding EU legislation, do they possibly not comply with EU rules, do they grant Turkish nationals more rights than decided upon on EU level, or less rights? – those might be questions within Q3 that imply possible answers. The overarching, descriptive question is thus:



Q3: *To what extent do the EU member states apply these rules for Turkish service providers and recipients?*

This question also implies the analysis of possible reluctance of EU member states to implement the rules for Turkish service providers and recipients who enter or want to enter an EU member state.

Building up on each other, the answering of these three descriptive questions will need an analysis of EU-Turkey relations on the level of the Internal Market's freedom of services. Now - as explained in the introduction - I want to include a possible explanatory factor. This final question will link the two variables a) immigration with b) visa restrictions, asking for a possible relationship between them and finally leading to the topic of immigration:

Q4: *What is the relationship between immigration from Turkey to the EU and the EU member states' decisions for the implementation of rules derived from its legal documents and judgments?*

Explanatory in character, this research question adds some depth to the thesis and goes beyond the pure description of the EU visa regime, its legal sources and its application by member states, but also seeks to find the reasons for their application or non-application. It should be noted that in asking "what is the relation between immigration and member state reluctance", I might find a range of answers between 'no relation at all' to a further explanation of any possible relationship. However, literature about visa requirements serves as a hint that there is some causal link between the two variables.

## 03 Research Methodology

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The complete analysis is subject to a case study. I found it appropriate within the extent of a Bachelor thesis to make use of an extensive literature review for my analysis. Key factor is to not repeat articles in which scholars already discussed Turkey-EU cross-border relations, but to establish an analysis of a new topic that is up to date. Even though the choice for a case study as a research plan especially lacks external validity, I want to underline that my demand however is not to establish a set of relations that are generalizable for another set of circumstances, but - due to the

uniqueness of the EU - should be coherent in itself. Thus I seek to have a high level of internal validity and case comparability for which a case study is an appropriate choice (Gerring, 2004, p.352). The study itself will be comparative, that is to mean, it will compare three different cases, the three EU member states, as well as looking at the change in visa requirements for Turkish nationals over time.

### 03.01 Case Selection

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The following step is to look at the degree to which service providers and recipients from Turkey are allowed to enter the EU, whether or not some individuals are rejected, for what reasons and, if member states are doing so, on what legal grounds they can justify the rejection. I decided to describe three cases for this analysis in order to meet the limits of a Bachelor thesis. Furthermore, I did not randomly select the member states but used a type of sampling called "politically important case" (Punch, 2005, p.56). This means that I chose the cases by importance for my research. Furthermore, cases should show a "representative sample" and show "useful variations on the dimensions of theoretical interest" (Seawright & Gerring, 2008, p.296). For these reasons the countries of analysis will be Finland, Germany and Italy, all three member states to both, the European Union and to the Schengen Protocol.

Finland serves as an interesting case. Not being one of the founding states to the European Union while having joined only in 1995 (Groenendijk & Guild, 2010), Finland has never faced a massive influx of Turks (Cömertler, 2007). It is hard to get data on Turkish-stemming citizens in Finland as citizenship is based on birth in Finland, leading to many 2nd generation foreigners having naturalised already. However, the number of those born in Turkey and living in Finland can be retrieved: in 2011, only 5400 Turks have been living in Finland (Statistics Finland, 2012), a number that is very low (<0.2% of the total population).

The second member state to analyze will be Germany. Being a founding member and the most populous EU country with the greatest share of Turkish migrants, Germany was, and still is, very important as a destination for Turkish citizens (Auswärtiges Amt, 2012). Furthermore, *Soysal* as being the most far-reaching case in the issue of visa restrictions towards Turkish citizens, has been held in the Federal Administrative Court of Germany and was, due to its implications with Union law, brought before the European Court of Justice (ECJ) (USAK, 2009).

Italy will serve as my third country of analysis. Being a founding member of the European Union, Italy is home to about 17.000 Turkish citizens (I.Stat, 2012). What makes this member state so interesting is the fact that Italy had already visa

requirements for Turkish citizens when the Ankara Agreement came into force. What effects this will have on e.g. the *Soysal* judgment will be elaborated in a later part.

The reason for this selection of countries for a closer analysis is the fact that all of them have different circumstances that are at the heart of problematics when it comes to their applicability to the legal document that will be the center of the following analysis, the Additional Protocol to the Ankara Agreement and its "standstill clause".

### 03.02 Research Plan

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In order to answer the four research questions, I will employ an analysis that - step by step - builds up on another and finally leads to the explanation of the overarching research question:

First I will list and mention and then discuss and analyze the documents that are responsible for the freedom of services between the EU and Turkey. They comprise EU legislation such as Regulations and Directives, the Treaty on the European Union and the Treaty on the Functioning of the European Union, agreements between the two contractors such as the Ankara Agreement with its Additional Protocol as well as case law such as the *Tum and Dari* case or the most recent *Soysal* case.

For the next part, that seeks to give an overview of how the rights deprived from EU documents and cases are put into force, I have come up with the selection of three European Union and Schengen member states: Finland, Germany and Italy. Their analysis will help to understand the complex of problems in a diverse EU and show how members deal with the judgments and laws they created themselves.

The following part of the thesis seeks to picture the historical as well as current state of Turkish immigration the EU and the importance of a Turkish minority in the respective country. The three member states will be discussed again, as well as the EU's plan how to combat illegal immigration by use of bilateral agreements.

In the final chapter I will put together the two analyses by using arguments and data of both, visa regimes and immigration for the EU-Turkey relations and conclude where the problem lies and what the prospects for future developments are.

## 04 EU Visa Regime

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The first part of this section will enlist and describe the legal documents responsible for the free movement of services between Turkey and the EU Schengen states briefly

in order to get an overview (Q1), while the second part is going to extract the obligations and rights that can be deprived from the documents (Q2).

#### 04.01 Legal Documents

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There are quite a number of important legal documents for my study. The following is a list of Directives and Treaty articles for the general provisions for the freedom to provide services, international agreements on the relations between Turkey and the EEC and its successor, the EU as well as case law that specifically and in a more detailed way covers these topics and applies them to a real events that have led to court cases and corresponding judgements:

- 1958 - Treaty establishing the European Economic Community (TEEC), since 1993 Treaty on the Functioning of the European Union (TFEU)
- 1963 - Agreement establishing an Association between Turkey and the EEC
- 1964 - Directive 64/221/EEC
- 1970 - Additional Protocol to the Ankara Agreement
- 1984 - Case *Luisi & Carbone* C-286/82 and C-26/83
- 1985 - Agreement on the Gradual Abolition of Checks at their Common Border
- 1993 - Treaty on European Union (TEU)  
Treaty on the Functioning of the European Union (TFEU), TEEC before
- 2001 - Council Regulation No 539/2001
- 2003 - Case *Abatay & Others* C-317/01  
Case *Sahin* C-369/01  
Case *Gambelli* C-243/01
- 2006 - Directive 2006/123/EC
- 2007 - Case *Tüm & Darı* C-16/05
- 2009 - Case *Soysal* C-228/06
- 2011 - Case M 23 K 10.1983

## 04.02 Rights deprived from the documents

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The general rules and obligations of EU-Turkey relations are laid down in the Ankara Agreement and its counterparts:

Signed in September 1963, the Ankara Agreement came into force in December 1964 with the signatures of the EEC and its six member states and the Republic of Turkey (Ates, 1999). It was set up in order to "promote the continuous and balanced strengthening of trade and economic relations between the contracting parties" (64/733/EWG: Ankara Agreement) in order to "facilitate the accession of Turkey to the Community at a later date" (preamble of the Agreement (Turkish Ministry for EU Affairs, 2011)). Furthermore, the agreement should "establish free movement of goods [...], free movement of workers, services, capital and freedom of establishment" (Tezcan-Idriz, 2010, p.9).

Its realization foresaw three steps: The first, preparatory stage, that should last five years, was aimed at strengthening the Turkish economy with EU means (Article 3, Ankara Agreement). A second, transitional stage for establishing a Customs Union was set for 12 years (Article 4; 10, Ankara Agreement). The third and final state should give Turkey full membership to the Community (Article 28, Ankara Agreement). The Ankara Agreement was established in order to guarantee good relations between the signatories as well as to give a framework for the hundreds of thousands immigrants who entered the EEC member states as guest workers and were now in need of rules and principles governing their existence in Europe having left their families in Turkey (Glazar & Strielkowski, 2010). The Ankara Agreement has not proven to completely pave the way of EU-Turkey relations as the latter has only reached the official candidate status but is not a full member yet, as aimed at by this agreement.

As this paper will concentrate on the freedom of services, the main document from 1963 is not of greatest importance, a more interesting part is the Additional Protocol to the Ankara Agreement that was signed in 1970 (Ates, 1999). Especially important is Article 41 of the protocol, called the "standstill clause": "The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services." (Tezcan-Idriz & Slot, 2010). This phrase declares that a member state, that was member to the EEC at time of the Additional Protocol entering into force on 01.01.1973, must not introduce new restrictions towards Turkish nationals. Furthermore, a state that joins the EEC after this date– now as a new member – must not introduce new restrictions (Groenendijk & Guild, 2010). This rule is the foundation of my argumentation in the next chapter, making the Additional Protocol Article 41(1) the key document for this Bachelor thesis. I will then take a look whether member states have actually acted according to this rule or disrespected it by establishing new visa requirements after the mentioned date.

In 1985, the Agreement on the Gradual Abolition of Checks at their Common Border – the so-called Schengen Convention, was signed by the EEC member states. Since then, it governs the Schengen Area which is composed of 26 European states, namely all EU member states but the UK and Ireland, who underlie a Common Travel Area (CTA) as their individual set of border and visa controls (UK Border Agency, 2012), and Bulgaria, Cyprus and Romania, who do not yet comply with the necessary *acquis* (European Commission, 2008)<sup>3</sup>. Implemented into EU law in 1999 by the Amsterdam Treaty, the Schengen Agreement is now an important part of the EU's set of legislation (EU, 2009). By stating that "Internal borders may be crossed at any point without any checks on persons being carried out" (Article 2, L-239, Schengen *Acquis*), it continues making necessary that "for stays not exceeding three months [...] the aliens are in possession of a valid visa if required" (Article 4, L-239, Schengen *Acquis*). This agreement is interesting as it opens the internal borders of the 26-state territory. Once legally inside one of the member states, every person, be it an EU citizen or an alien, can cross borders without border checks, therefore obliging all member states to have similar rules for allowing aliens to enter in order to guarantee coherence.

That such a visa is required for Turkey in order to enter one of the states is set out by Council Regulation No 539/2001. This regulation, being a piece of legislation that is binding across the EU "in its entirety" (EUROPA, 2012), is "listing the third countries whose nationals must be in possession of visas when crossing the external borders" (OJ L-81/1, 2001) where Turkey is named as well.

For a preliminary conclusion, it is to say that Turkey is on the visa black list for Schengen countries, however, once they legally entered its territory by means of a visa, they may cross its internal borders for the time period of their legal stay. The Ankara Agreement seeks full membership for Turkey and its Additional Protocol Article 41 (1) sets the rule that after a certain date, member states are not allowed to employ any visa restrictions on Turkish citizens if they were not existent before that date. However, while the Schengen Convention and the Council Regulation 539/2001 lead to a harmonization of rules among the member states, the Additional Protocol article foresees rules that may differ from member state to member state, an initial situation that could lead to a conflict between Schengen rules and the EU Internal Market, which will be discussed later.

In terms of the freedom to provide services, the following cases and legislative acts give some more legal explanation:

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<sup>3</sup> The remaining Schengen member states that are no EU member states are Iceland, Liechtenstein, Norway and Switzerland (European Commission, 2008).

Directive 64/221/EEC already gives an overview as to how the Community should function in this respect and lays down a programme "for the abolition of restrictions on freedom of establishment and on freedom to provide services" (Preamble of Directive 64/221/EEC).

In the case *Luisi & Carbone* (1984), the European Court of Justice (ECJ) stated that "tourists, persons receiving medical treatment and persons travelling for the purposes of education or business are to be regarded as recipients of services" (Paragraph 1, Joined cases C-286/82 and C-26/83). This is interesting as tourists are therewith given an official classification within the EU framework.

What a 'recipient of services' legally represents clarifies the case *Gambelli* (2003) as it explains that the notion 'freedom to provide services' does not only include "the freedom of the provider to offer and supply services to recipients" but also the "freedom to receive or to benefit as a recipient from the services offered by a supplier established in another Member State" (Paragraph 55, C-243/01, ECR I-5154). This should be kept in mind as normally the sole notion 'freedom to provide services' is otherwise misleading as it does not describe all individuals that it actually stands for.

Another important legal act is the so-called Service Directive 2006/123/EC that should extend the Internal Market and remove "legal and administrative barriers to trade in the services sector " while increasing transparency to "provide or use services in the Single Market" (European Commission , 2012).

As a second preliminary conclusion, the EU tries to improve its field of the freedom of services. This implies the provision and the receiving of services – where tourists are included as well.

Now coming to court judgments that are based on the agreements, legislation and case law mentioned above, there are major cases in which courts have ruled in favor of the plaintiff, covering the freedom of services.

The cases *Abatay and Others* (2003) and *Şahin* (2003) are of importance as they give Article 41(1) of the Additional Protocol direct effect as the provisions laid down are "clearly, precisely and unconditionally, unequivocal standstill clauses" (Paragraph 58, Joined cases C-317/01 and C-369/01). These are the requirements for a document to have direct effect after the *Van Gend en Loos* (1963) case where the principle of direct effect was established (EUROPA, 2010), allowing individuals to take action before a national or European court on basis of Article 41(1) of the Additional Protocol. Making the standstill clause directly effective is the basis for individuals to rely on it before the court, giving it a wider range of possible application.

One case is *Tüm & Darı* (2007) stating that a visa requirement that was put into force

after 1973, as laid out in the standstill clause of Article 41(1) of the Additional Protocol, represents a new restriction on the basic freedoms (Groenendijk & Guild, 2010). The ECJ "precludes a Member State from adopting any new measure having the object or effect of making the establishment and, as a corollary, the residence of a Turkish national in its territory subject to stricter conditions than those which applied at the time when the Additional Protocol entered into force with regard to the Member State concerned." (Tezcan-Idriz & Slot, 2010). Therefore, in terms of Turkish nationals who want to provide a service in a member state, this state is required to act according to its national law in power on 1. January 1973. The case is the confirmation of the standstill clause 34 years after it has been established.

In case *Soysal* (2009), the two Turkish plaintiffs, the lorry drivers M. Soysal and I. Savati, filed a case before the Administrative Court of Germany after they had been rejected a visa to enter Germany after years of successful visa application. Their lawsuit was considered successful by the ECJ and now has a much wider scope than just concerning Turkish lorry drivers in relation to the Federal Republic of Germany (Tezcan-Idriz & Slot, 2010) - but has an effect, as has been indicated above, on the freedom to provide services, where the freedom to receive services is meant with as well. It therefore is as far-reaching as allowing Turkish tourists to travel to an EU country – provided the standstill clause includes the possibility – without a visa (Groenendijk & Guild, 2010).

The most recent case was another one in Germany, held by the Administrative Court in Munich. The court ruled on February 9th, 2011 for "Direct effect of Art. 41 Par. 1 of the Additional Protocol of the Association Agreement between the EEC and Turkey", "Visa-free entrance of Turkish nationals, possessing a valid passport and for reasons of receiving a service, especially for touristic reasons." and "No necessity for a residence permit for a period of up to three months for the receipt of a service." (translated from German<sup>4</sup>) (M 23 K 10.1983, 2011). These rulings sum up what rights Turkish nationals have and how member states that are affected by the standstill clause are to behave, what rules they are underlying.

The next part will therefore discuss the application of the standstill clause – and whether or not member states comply with the objectives that are directly applicable.

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<sup>4</sup> Original Wording:

"Unmittelbare Wirkung des Art. 41 Abs. 1 Zusatzprotokoll zum Assoziierungsabkommen EWG-Türkei;

Visumsfreie Einreise von türkischen Staatsangehörigen, die Inhaber von gültigen Nationalpässen sind, zu Zwecken des Dienstleistungsempfangs, insbesondere zu touristischen Zwecken;

Erfordernis einer Aufenthaltserlaubnis für einen Aufenthaltszeitraum von bis zu drei Monaten zu Zwecken des Dienstleistungsempfangs verneint." (M 23 K 10.1983, 2011)



As can be extracted from the rights that are expressed and stemming from EU legislation and case law, there is a quite extensive set of obligations for member states to follow when it comes to third-country nationals trying to enter the Schengen territory – especially when these third-country nationals are Turkish. Turkey-EU relations underlie a set of almost 50 years of agreements that have been amended, extended and were subject to a great number of cases in the past (Chapter 4.01). As laws need to be interpreted, there is some range in which member states can operate. However, the following analysis shall shed some light on Q3: the choice and performance of member states to take account of and implement the rights deprived from the legal documents and case judgments. Are there indications of a non-compliance with EU rules? Why is it that many Turkish nationals have filed a case before a national member state court and successfully established a new framework on which future cases may base their complaint upon?

### 05.01 Finland

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The Scandinavian country of Finland offers an interesting situation. At the date of the implication of the Additional Protocol and therewith the standstill clause, the 1. January 1973, there was no visa requirement in force. In 1976, the government denounced the responsible bilateral agreement, as a result requiring a visa for Turkish nationals from now on (Groenendijk & Guild, 2010). As Finland has not been a signatory to the Additional Protocol, and joined the EU more than twenty years later, in 1995 (EUROPA, 2012), the obligation for Turkish nationals in force to obtain a visa in order to travel to Finland is based upon Regulation 539/2001 (Groenendijk & Guild, 2010). Finland is therewith neither affected by either the *Tum and Dari* case, nor by the *Soysal* case. National practices do not oppose EU laws and case judgments, simply as Finland has joined the EU very late and thus acts according to the Additional Protocol.

What is striking nevertheless is the fact that, in 2007, Finland has rejected 16% of Turkish visa applicants - a proportion that lies high above the EU average of 6.4% rejections (IKV, 2010). Finland therefore shows to have a restrictive visa regime against Turkish nationals, however, legally without doubt.

## 05.02 Germany

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For Germany, as one of the founding members of the EEC, the situation looks quite different. Having composed an agreement with Turkey in 1961, West Germany recruited "low-skilled temporary workers on mutually beneficial conditions" (Glazar & Strielkowski, 2010). What was meant to be a temporary stay soon turned out to be long-term, even leading to the naturalisation of Turks in Germany, as many of the guest workers, that would otherwise be suffering from unemployment in Turkey, settled down in Germany with their families (Glazar & Strielkowski, 2010), supported by the Ankara Agreement's rules. When Germany stopped the recruitment of guest workers in 1973, family reunions and asylum seekers nevertheless increased the number of Turkish nationals living in Germany (Villaverde, 2011).

In terms of the national legal framework, Germany had no visa requirements for Turkish citizens in 1973, when the Additional Protocol and thus the standstill clause came into force. Service recipients were allowed to stay for a period of three months, service providers, artists and researchers could legally reside for a limit of two months (Groenendijk & Guild, 2010).

Only in 1980, Germany introduced a general visa obligation for Turkish nationals with the "11. Änderungsverordnung zur DVAusIG" (BGBl.I, p.782) (Migrationsrecht.net, 2009) and later joined the Council Regulation No 539/2001 listing countries whose nationals face visa requirements for the EU. Germany thus reacted to the "economic stagnation in Europe" and "political turmoil in Turkey" (Tezcan-Idriz, 2010, p.10). However, meant to be a "temporary measure" (Tezcan-Idriz, 2010, p.11), Germany still employs its visa requirements for Turkish nationals.

What has then been argued in *Soysal*, and was later rephrased in the judgment, is that Turkish nationals are not exempted from visa requirements despite the standstill clause. The group of people that did not face any visa requirements in 1. January 1973 does now require a visa in order to enter Germany. This group consists of Turkish providers and recipients of services, which are businessmen, artists, sportspersons, those who travel for receiving a medical treatment as well as tourists (Migrationsrecht.net, 2009). Paragraph 55 of the judgment not only states: "national legislation that makes the exercise of the right to freedom to provide services conditional on the issuing of a visa" interferes with the actual exercise of that freedom as it involves administrative and financial burdens (Tezcan-Idriz & Slot, 2010), but goes further in saying that in cases "where a visa is denied [...] legislation of that kind prevents the exercise of that freedom" (Paragraph 55, C-228/06, 2009). This gives effect to the standstill clause of the Additional Protocol and makes the issuing of a visa as a violation of the free movement of services illegal.

In fact, German authorities do *not* make use of this ruling: 9.6% of Turkish nationals were refused a Schengen short-stay visa in 2011, accounting for more than 15.000 rejected Turkish visa applicants (European Stability Initiative, 2012). The IKV (Iktisadi Kalkinma Vakfi – Economic Development Foundation) and the ECAS (European Civic Action Service) issued the "Visa Hotline Project" in order to objectively present "the hindrances encountered in the visa application process" (IKV, 2010). They found out that while 93% of the complaints were voiced by service providers or recipients who faced problems with their visa application, in more than one third (293 out of 832) of complaints Germany was subject to grievance.

At the same time, however, once Turkish nationals file a lawsuit against a German court, they are very likely to be successful on basis of the *Soysal* case (Özoğuz, 2011): in 2011, for instance, the *Bayerische Verwaltungsgericht München* (Bavarian Administrative Court Munich) ruled in favor of visa-free entry of a Turkish national who was a tourists and thus service recipient, as has been the case for a Turkish manager in 2008 as well (Nal, 2011).

To sum up the German case, visa-free entry is - by law - granted, however, not applied in reality, German authorities are reluctant to follow the judgments and do not comply with the direct effect of the Additional Protocol Article 41(1).

### 05.03 Italy

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Italy, however, offers again different circumstances than does either Finland or Germany. As one of the founding countries of the EEC in 1957, there has not been an inflow of guest workers as Germany or the Netherlands have experienced in the 1960s. Furthermore, in 1973, the date of reference for the standstill clause, Italy had already employed visa restrictions against Turkish nationals (Groenendijk & Guild, 2010). Therefore, Italy acts in line with the Additional Protocol Article 41(1) as it has not introduced any new restrictions for Turkish nationals after the protocol came into force. The *Soysal* case does not apply on Italy in terms of any violations of earlier legislation. Italy is subject to the Regulation 536/2001 and therefore employs visa requirements for Turkish citizens who are providers or recipients of services.

### 05.04 Conclusion

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The three countries selected for the case study show to have different circumstances and thus are differently affected by the agreements, legislation and case law concerning the freedom of services for Turkish nationals in the European Union. Finland, already enforcing visa requirements before joining the EU in 1995, Italy as a

founding member already employing a visa regime towards Turks before becoming signatory to the Additional Protocol. Therefore they are subject to Regulation 539/2001, stating Turkish nationals' visa requirement. They do not conflict with Schengen rules on the one hand and the standstill clause on the other hand. Germany, as the other example, which is a founding member as well, reintroduced visa requirements after 1973 – and is therefore conflicting with the crucial Additional Protocol Article 41(1) responsible for the problematics. However, Germany is reluctant to concede free entry to Turkish service providers and recipients.

For the whole of the EU, there are states that fall within one of these groups. Romania for instance joined in 2007 while already requiring visa for Turks (just like Finland). Belgium, the Netherlands and France resemble the German case – they are subject to the standstill clause of the Additional Protocol and thus legally required to ensure Turkish providers and recipients of services to enter their territory for a certain period without a visa requirement (Groenendijk & Guild, 2010).

The complex of problems lies within this diversity among EU member states itself. Up to this date, there are not the old 6 member states that were the original signatories to the Ankara Agreement, but 27 member states, each of them offering a different set of national rules and thus a different visa regime towards Turkish nationals. At the same time, there is an area of 26 Schengen states, overlapping with the EU to a large extent, the Schengen area being a territory without internal border controls. Once a single state lifts its visa requirements towards Turkish nationals, according to the standstill clause, it will offer entry to the whole Schengen Area. Member states thus have to harmonize rules in order not to undermine coherence of the Schengen Convention, in this case leading to visa obligations in all member states, irrespective of rules that legal rules they are obliged to respect.

## o6    Migrational Effects

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The analysis of migrational effects is the analysis leading to the answering of Research Question 4. In this chapter, I will step back from the issue of service recipients and providers, as the sole intention is to find out why there are still visa requirements for Turkish citizens who want to cross the border to an EU member state, while the country is a candidate state and some rules (the standstill clause) actually allow for visa-free travel. Why does the EU, in order to circumvent the problematics with its standstill clause that conflicts with the Schengen Convention, still require an extensive procedure to obtain a visa?

Visa restrictions in general successfully determine who may and who may not enter a nation state's territory (Neumayer, 2006). The same applies for the Schengen Area, whose visa system organizes the inflow of non-Schengen nationals. Globalization has increased mobility in terms of trade and tourism, leading to a seemingly borderless world "where borders and boundaries have become increasingly porous" (Inda & Rosaldo, 2002). This applies to Turkey–EU mobility to some extent as well, with Turkey being part of the customs union of the EU, many Turks are living or working in an EU member state and vice versa. Some Turkish citizens are even able to enter the EU without visa requirements, for instance the holders of the Green Passport which is exclusively given to members of the national assembly or public servants and their families (UNHCR, 2012). However, not every Turkish national is, because of his profession, reputation, family or affluence in the position to travel without a visa, as has been elaborated in the chapters above: the Schengen Area thus represents a block of 26 sovereign countries, to which, even though sharing a border with Turkey, entrance may be refused. The corresponding question is then, why does the EU want to organize the inflow of Turkish nationals? Does the EU expect a drastic increase in the number of immigrants from Turkey, as has happened in the 1950s in Germany? In order to give an answer, the next part will take a closer look at the amount of immigration of Turks or from Turkish territory to the EU and Schengen member states.

### o6.01 Turkish migrants to the EU

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In 2006, 1.8 million non-EU nationals immigrated to the EU (eurostat, 2008), while the annual increase rate of immigration is slowing down. In terms of net migration from Turkey, about 35.000 Turkish nationals immigrate to the 27 EU member states every year (Elitok, 2010). At the same time, there have been a number of 7.220 asylum seekers from Turkey, which are the fifth biggest group of asylum seekers to the EU (eurostat, 2007). These numbers seem to be quite moderate, compared to the 48.000 immigrants that landed in Italy only in the first half of 2011 from Libya and Tunisia (The Tripoli Post, 2011), or the 78.000 Moroccans that entered only Spain in 2006 (eurostat, 2008).

Predicting the growth of the EU and of Turkey, scholars have employed several estimations about the amount of Turkish immigrants to the EU. One of these prospects about the future changes in Turkish migration towards the EU is subject to the analysis of three models, where the number of Turkish immigrants in the case of continuing visa restrictions is compared with the case of Turkish membership to the EU in 2015 (Erzan, Kuzubas, & Yildiz, 2004). Theoretical membership implies the opening of the borders and therewith the abolishing of visa restrictions towards Turkish nationals. It was concluded that even in the most extreme scenario, the number of Turkish

immigrants the 27 EU member states have to expect would lie at about 2.1 million people (Erzan, Kuzubas & Yildiz, 2004; Erzan & Kirişçi, 2004).

Furthermore, İçduygu and Yüksek (2010) argue, that even though European states have adopted "restrictive control systems against incoming migrant flows", their economies have shown to be "able to absorb thousands of irregular migrants" (İçduygu & Yüksek, 2010, p.1).

On the other hand, discrimination, poverty, natural catastrophes, conflicts or economic recessions are push-factors that might occur and are frequent explanations for the migration of people. They are at the same time difficult if not impossible to check for in any estimation. Being a very populous country (more than 79 Million people live there (CIA , 2012)) with a GDP rate per capita that is ranked only 86th in the world (CIA , 2012), the potential for immigration to the more prosperous and possibly safer EU as pull-factors is an important factor.

What role Turkish immigrants play in the three selected countries will be explained in the next sections:

#### o6.01.01 Finland

Statistics only show a number of 5.400 Turks have been living in the country (Statistics Finland, 2012), a number that is very low (<0.2%) compared to the stock of 183.000 foreigners that live in Finland (OECD, 2012). Turkish immigrants do not play a significant role for Finland – in a list of the five most common home countries to immigrants that move to Finland, Turkey is not even listed (eurostat, 2008). Therefore, Finland has never been and is also not very likely to become a major destination for Turkish immigrants in the near future.

#### o6.01.02 Germany

Immigration of Turkish nationals to Germany started in 1957 and was given a sustained framework with the Turkish-German agreement for guest workers in 1961. The hired Turkish males should meet the labour shortages of post-war Germany in terms of the WWII reconstructions as the pool of workers from the neighboring East was inaccessible for West Germany due to the political situation and the occupation of East Germany by the Soviet Union (Gülçiçek, 2006). In the 1970s, Turkish family reunifications and political asylum seekers increased the number of Turks once again, leading to a shift of the Turks from being temporary guest workers to becoming immigrants (Villaverde, 2011).

Today, Turks represent the fifth biggest share of incoming migrants to Germany – the biggest share of non-EU nationals still (OECD, 2012). However, this plays a decreasing

role, as in 2011 there was a net loss of 22.000 Turks in Germany (Süddeutsche Zeitung, 2011). Furthermore, there is a great number of emigrations of foreigners, as well among the Turkish nationals, who see a growing potential in their country of origin as a response to the strong Turkish GDP growth (Der Spiegel, 2010).

For Turks, however, Germany is still the favorite country of destination. About 76% of Turks migrating to Europe go to Germany (Glazar & Strielkowski, 2010). With 170.511 Schengen visa applications of Turkish nationals in 2007 (IKV, 2010), Germany is the most popular destination of Turkish service providers and recipients within Europe as well. Nevertheless, estimations show that even in the case of the inclusion of Turkey into the EU Internal Market, the numbers of Turks immigrating is unlikely to "increase dramatically" (Glazar & Strielkowski, 2010).

### 06.01.03 Italy

Located at the Mediterranean Sea in the South of the European Union, Italy is exposed to a great number of immigrants with an increase of 424.000 people in the stock of foreign people living in Italy in the year 2010 (OECD, 2012). Turkish nationals play, with a number of only 19.000 people a minor role (eurostat, 2012), compared to the stock of 969.000 Romanians in the country (OECD, 2012).

However, especially the comparison of Romanians and Turks in Italy serves as a good example and explanation for the EU's visa regulations. With Romania being a new member state to the EU since 2007, it is the origin of most immigrants to Italy. Analogue, one could argue that once Turkey became a new member state to the EU, the level of immigrants would increase as the example of Romania has shown in 2007.

### 06.02 Transit migration

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Being located between the countries of Iran, Iraq and Syria on the Eastern side, while sharing a border with Bulgaria and Greece, two Schengen countries, on the Western side, Turkey is a transit country for many immigrants that want to reach Europe (Ersoy, 2008). Therefore, immigrants from these countries are far more likely to pose a problem than decreasing Turkish immigration, especially in times of regional unrests.

In total there are far more than 100.000 immigrants that enter the EU territory through the Turkish border per year (WDR, 2012). The documentary by the German TV channel WDR describes that despite massive border controls at the Greek border, the immigrants try, in search of a better life, to get within the border to the Schengen member by crossing the river Evros. The European Parliament underlines that it is the "land border between Greece and Turkey at which currently 90% of detected irregular crossings of migrants along the EU's external borders take place." (European

Parliament, 2011) This is confirmed by the "Annual Risk Analysis" report of FRONTEX, the EU agency responsible for the security of the external borders, that sees the Turko-Greek land border as an important entry point for illegal immigrants. Turkish membership or the opening of Turkish borders to the Schengen area therefore stand in opposition to the visa regime of Turkey towards its neighboring countries, such as Iraq, Iran and Syria, and its closeness to Afghanistan and Sudan, many of which enjoy visa-free entrance to Turkey (VisaHQ, 2012).

### 06.03 Readmission Agreement between the EU and Turkey

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The European Union has, for the reasons named in the previous chapter, started negotiations with Turkey in order to more effectively overcome the problem of irregular immigration from Turkey. Subject to these negotiations is the so-called Readmission Agreement, which is set up to "facilitate the readmission of third-country nationals to their country of origin" or the country whose border was crossed as means of the illegal immigration (EUROPA, 2012). Turkey would, by signature, guarantee the readmission of every immigrant that crossed its border towards the EU illegally. EU politicians have declared that they will not engage in guaranteeing visa-free travel of Turkish nationals (and therewith service providers and recipients) if Turkey is not willing to sign the readmission agreement - thus making it a package deal in which Turkish nationals could for the first time enjoy the crossing of the border to the EU without a visa (ESI, 2012).

### 06.04 Conclusion

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All of the countries selected for the case study show different degrees of immigration statistics. While Finland is a country with a relatively small share of immigrants, Germany is still a popular destination, especially from nationals of the new EU member states (Süddeutsche Zeitung, 2011). Italy experiences a massive influx of immigrants from North Africa, which are drawn out of their countries due to political unrests and pulled by the geographical proximity of the African continent to Italian territory. This portfolio of three member states is generalizable to the whole EU – not only are the visa regimes of the three countries as well as every other member state unique and thus respond differently to the standstill clause of the Additional Protocol to the Ankara Agreement, but the level of Turkish immigration and the size of a Turkish diaspora varies as well. As diverse as the 27 EU member states are, when it comes to the harmonization of rules, the whole community is affected, the more restrictive harmonization is therefore the more likely choice.



What can be noted is that Turkish immigration – as the estimates of several studies show – is not very likely to become a problem in the case of Turkish EU-membership while if there is no event that might lead to a change in this trend. What is interesting as well is the fact that there is a high number of Turks that have been living in Europe for decades but chose to move back to their homeland (Spiegel Online, 2011; Marketplace.org, 2011). The articles explain that benefiting from education in their "host" country, they return to Turkey where they are better able to find jobs within their ethnic and cultural home.

However, what can become a problem, as discussed in the articles, is the increasing amount of transit migrants that come from North African or Middle Eastern countries to use Turkey's proximity to the EU for crossing the border illegally (Neumayer, 2006; Kirişçi, 2007). So far, Turkey serves as a gateway to Europe, membership would lead to external EU borders of a completely different extent with five new neighbours and the respective borders. What increases the scope of the issue of illegal immigration is the fact that many illegal immigrants represent individuals who are overstaying their visa which is why visa requirements are harsh and daunting, trying to make sure that those people who enter are not to overstay their legal time. (Samers, 2003; Deutscher Bundestag, 2012).

## 07 Evaluation of the Findings

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To wrap up the findings, I am going to give a résumé over the answers to the research questions as the analysis has elaborated.

As described in the introduction of this thesis, visa requirements are in place for Turks who want to enter an EU member state. The visa cannot be easily obtained at the border for a small amount of money as is the case for EU nationals travelling to Turkey, but requires an extensive set of documents as well as the payment of a comparably large amount of money. Taking this as a basis, the research questions, step by step, led to the analysis of the actual legal framework overarching this visa requirements and the search for an explanatory variable for their existence.

Chapter 04 gives a list of documents that are responsible for covering the rules and obligations member states underly in the issue of the freedom of services for Turkish nationals (Q1). As has been seen, there are many legal documents ranging from multilateral agreements over treaties, regulations and directives to case law that are explaining the rules for member states as well as rights Turks are guaranteed when travelling to the EU. It is then elaborated, according to the Additional Protocol Article 41(1) of the Ankara Agreement, the standstill clause, and corresponding case law, that

Turkish service providers and recipients, including tourists, have a certain right to visa-free entrance to some EU member states. At the same time, the Schengen Convention of 1985 lays down the absence of internal border checks within the Schengen Area while making necessary a visa for Turkish nationals for the whole of their 26 members' territory. That these two rules are conflicting has become obvious, problematic is that once there is a country that allows visa-free entry to Turkish citizens as it is obliged to by agreements, it thus serves as the entrance to the whole Schengen Area.

The following Chapter 05 discussed the extent to which the member states actually apply rules that they are subject to by the beforementioned legal documents. In a case analysis of three EU member states, it becomes obvious that not all governments in Europe take account of what they are obliged to by law, the case of Germany illustrates this example. Germany underlies the standstill clause in a way that it must not require a visa, however, uses the visa black list and Regulation No 539/2001 to justify its visa regime. This reality, showing that Germany remains unwilling to change its visa regime towards Turkish nationals, coincides with the previous reason not to undermine the functioning of the Schengen Convention. Not only are Turkish service providers and recipients still obliged to obtain a visa for these countries, but there is also a certain level of rejections of visa applications. Cases grant the plaintiffs of these disputes the right of visa-free entrance, however, the general visa requirement is still in place. The direct answer to Q3 is thus that there are member states that do not apply the rules derived from legal documents concerning the visa regime towards Turkish recipients and providers of services, they actually violate EU rules. To back this up once again, the case, filed as "M 23 K 10.1983" by the Administrative Court Munich clearly states that Article 41 (1) of the Additional Protocol has direct effect and thus prevails over Regulation No 539/2001 (M 23 K 10.1983, 2001, p.8), while Germany does not apply this as a general rule.

In the next chapter, several articles and statistics confirmed the assumption of Q4 that immigration is a reason for the visa requirements in force. Throughout history, especially in the middle of the 20th century, Turks have emigrated to European countries for the search of jobs. Even though the level is declining and backmigration is on the rise, Turkish immigrants still play a role. What is by the by far bigger factor for border controls and restrictive visa requirements are transit migrants who use Turkey as a gateway to the EU, accounting for a relatively small common border with the EU of 446 km while the by far larger proportion of 2.193 km falls on the side of common borders with her Northern, Eastern and Southern non-EU neighbours. And even if Turkey was to set up restrictive visa requirements for these states, the vast length of the borders would lead to illegal immigration that is difficult to control (euinside.eu, 2012) – a fear of the EU and a reason to keep border closed for now (Vukasinovic, 2011).

Now taking the complete research question of this paper (*Which rights do Turkish citizens enjoy on the basis of the EU rules on the freedom of services and to which extent do EU member states apply these rules?*), I can conclude the following:

Turkish nationals, travelling for the receipt or the provision of services, enjoy the right to enter some of the EU member states, and therewith the Schengen Area, without the need for a visa. However, these member states, which are the ones that fall within the scope of the standstill clause, do not apply this rule and thus deprive those Turkish nationals of their rights. It takes a legal dispute before a national or European court to get granted such a right which represents a restriction on the freedom of services.

On one hand, diplomacy to its oldest associate, the Republic of Turkey, should be kept high. Even though membership is not foreseeable in the next years, it is beneficial if Turkey keeps up the effort to comply with EU rules and therefore modernizes and democratizes its country by use of political, social and economic reforms. The EU, in return, explicitly attached the prospect of membership into its first agreement with Turkey, the Ankara Agreement, and, by means of the Additional Protocol Article 41(1), made sure that member states will not introduce new visa requirements after 1973.

On the other hand, by launching the project of visa-free travel with the Schengen Convention of 1985, the EU, or rather the signatories of the Schengen Convention, harmonized their visa regimes and established, among others, a Schengen-wide black list for countries whose nationals are in need of a visa to enter a member state. Within the Area, free movement is guaranteed by the absence of internal border controls.

Problematically, these two projects are overlapping and contradicting each other, as the analysis of Turkish service providers and recipients to the EU has shown. Even though the standstill clause prevails over the visa black list, this is not reality in the application of rules among the member states. The rules deriving from the standstill clause undermine the coherence of the idea underlying the Schengen Convention that member states should have harmonized visa regimes vis-à-vis third countries. This leads to a situation in which some member states do not apply their obligations to lift visa requirements for the sake of safeguarding the rules of the Schengen Convention and its visa black list.

What serves as an explanation for this behaviour to rather follow Schengen rules than those by the Ankara Agreement, is the potential of irregular immigration from Turkey.

For this reason, "securitisation of the European international migratory regime" (Neumayer, 2006, p.1) can describe the EU visa policy best. Securitisation generates political unity and consensus "by means of placing it in an existentially hostile environment and asserting an obligation to free it from threat." (Huysmans, 2006). Securitisation of the EU, leading to the notion of "Fortress Europe" by some scholars (Albrecht, 2002; Geddes, 1999), has the downside of obliging member states to violate ECJ judgments and EU agreements, therefore it is up for criticism.

Not only have scholars, especially Neumayer (2006), picked the relationship of immigration and visa regime out as a central theme to their articles, but the actual linking of a Readmission Agreement as a mandatory requirement and precondition to allow all Turkish nationals visa-free entry to EU member states proves this point. The "fear" of illegal immigrants (Kirişçi, 2007) leads to a restrictive visa system concerning Turkish nationals. However, the group of service providers and recipients is, on the other hand, equipped with the right to visa-free travel to some EU member states, as has the analysis of EU legislation and cases in application to the state of Germany shown. This is clearly an unsatisfactory and problematic situation, as there are, and will be, Turkish tourists rejected to obtain a visa that they, by law, do not even have to apply for by law. The financial and temporal burdens for Turkish visa applicants are disproportional when comparing it to visa procedures between other OECD countries – if there are any (VisaHQ, 2012).

It is questionable how the member states can justify such behaviour of contradicting its self-made rules for such a long time already. Furthermore, in general it is questionable how the EU can allow Turkey to participate in its Customs Union while sustaining their visa requirements for Turkish service providers. While goods can move freely, those who promote, manage or sell these goods have to fulfil the visa requirements to do so, leading to unfair competition.

A solution for Turkey becoming a member of the Internal Market of the EU Turkey is the adaptation of its current visa regime in accordance with the EU visa black list to have a harmonized set of rules - which Turkey is willing to do. However, Turkey is unlikely to adopt the framework the EU offers without having the prospective of obtaining visa-free entrance for its nationals at the same time, which the EU does not grant. Up for negotiation is therefore the package deal of a Readmission Agreement to simultaneously close Turkish borders to its Eastern neighbours while opening borders to its Western ones with allowing for the readmission of illegal immigrants that enter the EU from Turkish territory.

Interestingly, at the beginning of research for the writing of this thesis (May, 2012), news coverage on the topic of Turkey-EU visa requirements was not eye-catching. However, in the last half of June, major news sources published articles such as "Visa exemption in Europe within 3-4 years" (europeanunionplatform.org, 2012), "Turkey hopes for EU visa breakthrough this week" (EUobserver , 2012), or a Turkish daily newspaper issuing an article "Turkey, EU set to launch negotiations on visa exemption" (Today's Zaman, 2012). The reason for the increase is a meeting held between Turkey's Minister for EU Affairs, Egemen Bağış and the European Commissioner for Home Affairs, Cecilia Malmström, negotiating on the development of "cooperation with Turkey in the areas of Justice and Home Affairs" as the official report states (Council of the European Union, 2012). It foresees "parallel to the signature of the readmission agreement between Turkey and the EU, to take steps towards visa liberalisation as a gradual and long term perspective".

Therefore a very realistic outlook for the future is the ratification and signing of a Readmission Agreement of the Turkish government for, in return, visa-free access for its citizens to the European Union member states, including those who wish to provide and receive services, which have been underlying a restrictive set of visa requirements up to this date. Until the possible day of visa-free border-crossings between the EU member states and the Republic of Turkey, the topic and especially the *Soysal* case will still serve as one of the delicate examples of how the EU and its member states struggle to implement rules and laws they have created themselves and their courts have judged upon. Turkish tourists will still be rejected a visa for travelling to an EU member state and most citizens of the longest associate to the European Union are still not able to cross the border without enduring the temporal and financial process of visa-application.

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## Appendices

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### Appendix I

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#### Standard documentation demanded by the consulates for a Schengen short stay visa

1. Passport valid for minimum 6 months from the date of application, signed and enough empty pages for visa issuance;
2. Copy of the passport (front-back pages, pages with visas);
3. Old passport(s) if exist;
4. Visa application form / statement;
5. 2 passport type photographs (biometric / not older than 6 months / no retouching and with visible contrast);
6. Letter indicating the purpose and detailed itinerary of the stay;
7. Visa application letter from Turkish company on a letterhead / guarantee letter (for employer and employee);
8. Copy of company's list of authorized signatures (for employer and employee);
9. Company's chamber of commerce registration and trade corporation registration (for employer and employee);
10. Company's operating certificate (for employer and employee);
11. Company's tax registration (for employer and employee);
12. Company related pages of the Trade Registry Gazette (for employer and employee);
13. Hotel reservation (for employer and employee);
14. Plane return ticket reservation (for employer and employee);
15. Travel insurance starting from the first day of the travel in question and covering the demanded visa period (should be valid in all Schengen countries) (for employer and employee);
16. Letter verifying registration with the Social Security Institution or notarized employment contract (for employee);
17. Breakdown of last 4 months payments to the Social Insurance Institution (for those affiliated with SII) (for employee);
18. Student certificate original (for students);
19. Retired identity and a copy (for the retired);

20. Application fee of bank slip showing the payment is made (for employer and employee);

21. If the applicant is self-employed, a letter from the applicant's trade/craft institution;

22. Update documents and information showing the original income and livelihood status (bank passbooks –original and copy-, certificate of real estate and car license – if exist-, documents regarding all assets, like bank statement showing updated credit limit of the credit card –original and copy-) (for employer and employee);

23. For children under 18, notarized assent of the family “my child can go abroad”, notarized translation of the assent to the language of the country travelled or to English.

Source: <http://www.esiweb.org/pdf/IKV%20Visa%20Hotline%20Project%20Final%20Report.pdf>