



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

11 July 2018*

(Reference for a preliminary ruling — International road transport — Agreement establishing an Association between the European Economic Community and Turkey — Article 9 — Additional Protocol — Articles 41 and 42 — Freedom to provide services — Standstill clause — Decision No 1/95 of the EC-Turkey Association Council — Articles 5 and 7 — Free movement of goods — National legislation restricting the right of road haulage undertakings with their seat in Turkey to operate their vehicles in the territory of the Member State concerned — Obligation to obtain an authorisation issued within the limits of a quota determined on the basis of a bilateral agreement concluded between that Member State and Turkey or a permit granted for a single transport of substantial public interest)

In Case C-629/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decision of 22 November 2016, received at the Court on 7 December 2016, in the proceedings brought by

CX,

other party:

Bezirkshauptmannschaft Schärding,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader, A. Prechal and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 31 January 2018,

after considering the observations submitted on behalf of:

- CX, by V. Weiss, H. Wollmann and V. Wolfbauer, Rechtsanwälte,
- the Austrian Government, by S. Rubenz, M. Klamert, J. Bauer and G. Eberhard, acting as Agents,
- the Hungarian Government, by M.Z. Fehér, G. Koós and E.E. Sebestyén, acting as Agents,

* Language of the case: German.

– the European Commission, by W. Mölls, L. Havas and M. Afonso, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 26 April 2018,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the Agreement establishing an Association between the European Economic Community and Turkey signed on 12 September 1963 at Ankara by the Republic of Turkey, of the one part, and the Member States of the EEC and the Community, of the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1) ('the EEC-Turkey Agreement'); the Additional Protocol signed on 23 November 1970 at Brussels, annexed to the EEC-Turkey Agreement, and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17) ('the Additional Protocol'); and Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (OJ 1996 L 35, p. 1) ('Decision No 1/95 of the Association Council').
- 2 The request has been made in proceedings brought by CX concerning a fine imposed on him by the Bezirkshauptmannschaft Schärding (Schärding District Authority, Austria) for carrying out the commercial transport of goods from Turkey in Austrian territory without having the required permit.

Legal context

EU law

- 3 Article 1 of the EEC-Turkey Agreement provides:

'By this Agreement an Association is established between the European Economic Community and Turkey.'

- 4 In accordance with Article 2 of the Agreement:

'1. The aim of [the EEC-Turkey] Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people.

2. In order to attain the objectives set out in paragraph 1, a customs union shall be progressively established in accordance with Article 3, 4 and 5.

3. Association shall comprise:

- (a) a preparatory stage;
- (b) a transitional stage;
- (c) a final stage.'

5 Article 5 of the Agreement provides:

‘The final stage shall be based on the customs union and shall entail closer coordination of the economic policies of the Contracting Parties.’

6 Article 7 of the Agreement provides:

‘The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from [the EEC-Turkey] Agreement.

They shall refrain from any measures liable to jeopardise the attainment of the objectives of [the EEC-Turkey] Agreement.’

7 Article 9 of the Agreement reads as follows:

‘The Contracting Parties recognise that within the scope of [the EEC-Turkey] Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the [EEC Treaty].’

8 In accordance with Article 10 of the Agreement:

‘1. The customs union provided for in Article 2(2) of [the EEC-Turkey] Agreement shall cover all trade in goods.

2. The customs union shall involve:

– the prohibition between Member States of the Community and Turkey, of customs duties on imports and exports and of all charges having equivalent effect, quantitative restrictions and all other measures having equivalent effect which are designed to protect national production in a manner contrary to the objectives of [the EEC-Turkey] Agreement;

...’

9 Article 14 of the Agreement provides:

‘The Contracting Parties agree to be guided by Articles 55, 56 and 58 to 65 of the [EEC Treaty] for the purpose of abolishing restrictions on freedom to provide services between them.’

10 Article 15 of the Agreement provides:

‘The rules and conditions for extension to Turkey of the transport provisions contained in the [EEC Treaty], and measures adopted in implementation of those provisions shall be laid down with due regard to the geographical situation of Turkey.’

11 In accordance with Article 41 of the Additional Protocol, which forms part of Chapter II, ‘Right of establishment, services and transport’, of Title II, ‘Movement of persons and services’, of the protocol:

‘1. The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.

2. The Council of Association shall, in accordance with the principles set out in Articles 13 and 14 of the [EEC-Turkey Agreement], determine the timetable and rules for the progressive abolition by the Contracting Parties, between themselves, of restrictions on freedom of establishment and on freedom to provide services.

The Council of Association shall, when determining such timetable and rules for the various classes of activity, take into account corresponding measures already adopted by the Community in these fields and also the special economic and social circumstances of Turkey. Priority shall be given to activities making a particular contribution to the development of production and trade.'

12 Article 42(1) of the Additional Protocol provides:

'The Council of Association shall extend to Turkey, in accordance with the rules which it shall determine, the transport provisions of the [EEC Treaty] with due regard to the geographical situation of Turkey. In the same way it may extend to Turkey measures taken by the Community in applying those provisions in respect of transport by rail, road and inland waterway.'

13 Article 62 of the Additional Protocol provides that it is to form an integral part of the EEC-Turkey Agreement.

14 In accordance with Article 1 of Decision No 1/95 of the Association Council:

'Without prejudice to the provisions of the [EEC-Turkey] Agreement, its Additional and Supplementary Protocols, the Association Council hereby lays down the rules for implementing the final phase of the Customs Union, laid down in Articles 2 and 5 of the abovementioned Agreement.'

15 Article 5 of that decision, in Chapter I on free movement of goods and commercial policy, Section II, 'Elimination of quantitative restrictions or measures having equivalent effect', provides:

'Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between the Parties.'

16 Under Article 6 of the decision:

'Quantitative restrictions on exports and all measures having equivalent effect shall be prohibited between the Parties.'

17 Article 7 of the decision reads as follows:

'The provisions of Articles 5 and 6 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.'

Austrian law

- 18 In accordance with Paragraph 1(1) of the Güterbeförderungsgesetz 1995 (Law on the transport of goods 1995, BGBl. 593/1995), in the version published at BGBl. I, 96/2013) ('the GütbefG'):

'This Federal Law shall apply to:

1. the commercial carriage of goods by road motor vehicles or such vehicles with trailers, where the sum of the maximum authorised gross weights exceeds a total of 3 500 kg, effected by transport undertakings,

...'

- 19 Paragraph 2 of the GütbefG, entitled 'Licence obligation and types of licences', provides in subparagraph 1:

'The commercial carriage of goods by motor vehicles may be carried on only on the basis of a licence, unless provided otherwise by this Federal Law (Paragraph 4) ...'

- 20 Paragraph 7(1) of the GütbefG reads as follows:

'Commercial carriage of goods by motor vehicles from places outside Federal territory into Federal territory or through Federal territory, or from places within Federal territory to places abroad, shall be permitted, in addition to holders of licences under Paragraph 2, to operators who, in accordance with the rules in force in the State in which their undertaking is located, are entitled to transport goods by motor vehicles and are holders of one of the following authorisations:

1. Community licence in accordance with Regulation (EC) No 1072/2009 [of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72)];

2. authorisation on the basis of the Resolution of the Council of the European Conference of Ministers of Transport (ECMT) of 14 June 1973 [concerning the actual coming into force of a multilateral quota for international transport of goods by road];

3. permit of the Federal Minister for Transport, Innovation and Technology for transport into, through or out of Austria;

4. authorisation of the Federal Minister for Transport, Innovation and Technology issued on the basis of international agreements. ...'

- 21 Paragraph 8 of the GütbefG, 'Obtaining of authorisations', provides:

'(1) A permit under Paragraph 7(1)(3) shall be granted for individual transports of goods. A permit is to be granted only if there is a substantial public interest therein. The applicant must show credibly that the journey cannot be avoided either by organisational measures or by the choice of another means of transport. A permit is to be refused if (in view in particular of the transport facilities already existing in Federal territory) there is no need for the transport of goods applied for. The transport and economic interests of Austria, the protection of the population and the environment, and the possibility of carrying out the transport of goods by way of other transport facilities are to be taken into account. ...'

(3) On the basis of this Federal Law, agreements may be concluded on the cross-border carriage of goods in accordance with Paragraph 7 if the volume of goods traffic between States requires this. Provision is to be made in the agreements that motor vehicles with foreign number plates may carry out journeys into, through and out of Austria on a reciprocal basis. Quotas may also be laid down between States, in defining the extent of which the transport and economic interests of Austria and the protection of the population and the environment are to be taken into account ...

(4) The agreed quotas are to be issued in a simplified procedure. The competent authority can issue confirmations that the conditions laid down in the agreement, in particular compliance with the agreed quota, are satisfied (quota authorisation). ...

(5) By regulation of the Federal Minister for Transport, Innovation and Technology, the issue of the quota authorisation in accordance with subparagraph 4 from the temporal, geographical and material point of view, its external form, the detailed provisions of the procedure for issue, and the professional competence and conditions of operational capacity of the operator of carriage of goods for the cross-border carriage of goods shall be regulated. New applicants for the issue of a quota authorisation are to be taken into account appropriately in relation to the market shares of the operators already active in the cross-border carriage of goods ...'

22 In accordance with Paragraph 9 of the GütbefG:

'(1) The operator must ensure that the documents evidencing the authorisations mentioned in Paragraph 7(1) are, in the case of the cross-border carriage of goods, carried throughout the journey, fully completed and if necessary endorsed.

(2) The driver must, during every cross-border carriage of goods, carry in the vehicle throughout the journey the documents evidencing the authorisations mentioned in Paragraph 7(1), fully completed and if necessary endorsed, and produce them on demand to the supervisory authorities.

...'

23 Paragraph 23 of the GütbefG provides:

'(1) ... an administrative offence punishable by a penalty of up to EUR 7 267 shall be committed by a person who, as an operator,

...

3. carries out transports under Paragraphs 7 to 9 without the required authorisation or does not comply with requirements or prohibitions in international agreements;

...'

24 Article 4 of the Abkommen zwischen dem Bundesminister für Handel, Gewerbe und Industrie der Republik Österreich und dem Außenminister der türkischen Republik über den internationalen Straßentransport (Agreement between the Federal Minister for Trade, Business and Industry of the Republic of Austria and the Foreign Minister of the Republic of Turkey on international road transport, BGBl. 274/1970, in the version published in BGBl. 327/1976) ('the Austria-Turkey Agreement on road transport') reads as follows:

'1. For motor vehicles, including trailers, registered in one of the two States and used for the carriage of goods between those States or in transit between the two States, a pass shall be required.

2. No pass shall be required for empty journeys and for vehicles with a payload of up to two tonnes.

...'

25 Article 6 of the Agreement provides:

- '1. The passes shall be issued to transport operators. They shall authorise the carriage of goods by motor vehicles including trailers.
2. A pass of one State shall authorise the carrying out of transports to and from the other State and transit through that State.
3. Passes must be carried in the vehicle during the journey through the territory of the State for which the pass is valid, and are to be produced to the competent supervisory authorities of that State on demand.'

26 Under Article 7 of the Agreement:

- '1. The passes shall be issued by the competent authorities of the State in which the vehicle is registered on behalf of the competent authority of the other State, within the limits of the quota determined by agreement by 30 November of each year for the following year by the competent authorities of the two States.
2. The competent authorities of the two States shall exchange the necessary number of forms for the carriage of goods under this Agreement.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 27 CX is the manager of FU, a company whose seat is in Turkey and whose activity is the international carriage of goods.
- 28 By decision of 17 June 2015, the Schärding District Authority (Austria) fined CX the sum of EUR 1 453 on the ground that FU had carried goods commercially without having the required permit. The transport in question was a transport of textiles on 2 April 2015, from Turkey through Austria to a destination in Germany.
- 29 CX contested the decision before the Landesverwaltungsgericht Oberösterreich (Regional Administrative Court, Upper Austria, Austria). By judgment of 28 December 2015, that court dismissed the action, holding that CX had indeed infringed Paragraphs 23(1)(3) and 7(1)(4) of the GütbefG in conjunction with Articles 4(1), 6 and 7 of the Austria-Turkey Agreement on road transport, as the driver of the vehicle had not been able to produce to the competent authorities the necessary permit for such a transport through Austrian territory.
- 30 CX appealed on a point of law against that judgment to the Verwaltungsgerichtshof (Supreme Administrative Court, Austria). CX argued before that court that the quota of authorisations issued to Turkish hauliers for the international carriage by road of goods to or through the territory of the Republic of Austria was inadequate, which forced those hauliers to use the 'Rollende Landstraße' ('highway on rails'), which allows semi-trailers to be transported by rail but entails additional costs and extends the transport time compared to road transport. According to CX, the annual quota infringes the rules of the association between the European Union and the Republic of Turkey, in particular Articles 5 and 6 of Decision No 1/95 of the Association Council, in that it restricts the free movement of goods within the association and discriminates against Turkish hauliers on grounds of their nationality, contrary to Article 9 of the EEC-Turkey Agreement.

- 31 The referring court states that, in order to carry out the transport of goods at issue in the main proceedings, CX should have obtained a permit from the Minister of Transport, Innovation and Technology pursuant to Paragraph 8(1) of the *GütbefG* or an authorisation on the basis of the Austria-Turkey Agreement on road transport establishing a quota. The referring court observes that a permit for a single transport of goods can be issued, in accordance with Paragraph 7(1)(3) in conjunction with Paragraph 8(1) of the *GütbefG*, only if the transport is of substantial public interest. It is for the applicant to show that the transport cannot be carried out by other organisational measures or by another means of transport.
- 32 The referring court states that the question raised by the case before it is whether such a system has the effect of discriminating against Turkish hauliers. The court is uncertain whether CX can rely on the free movement of goods between the European Union and Turkey when FU is a goods transport undertaking which does not produce those goods itself.
- 33 In this respect, the referring court considers that the dispute in the main proceedings should be examined from the point of view not of the free movement of goods but of the freedom to provide services in the field of transport.
- 34 In those circumstances, the *Verwaltungsgerichtshof* (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Does EU law, in particular the [EEC-Turkey] Agreement ..., the Additional Protocol ... and Decision No 1/95 of the ... Association Council ..., preclude national legislation under which goods transport operators established in Turkey may carry out the cross-border commercial carriage of goods by motor vehicles to or through the territory of the Republic of Austria only if they have passes for the motor vehicles issued as part of a quota established between [the Republic of] Austria and [the Republic of] Turkey on the basis of a bilateral agreement, or if they are granted authorisation for the individual carriage of goods, in which case there must be a significant public interest in the individual carriage of goods and the applicant must show credibly that the journey cannot be avoided by organisational measures or by the choice of a different means of transport?’

Consideration of the question referred

- 35 By its question the referring court essentially asks whether the provisions of the EEC-Turkey Agreement, the Additional Protocol and Decision No 1/95 of the Association Council must be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings, under which road haulage undertakings with their seat in Turkey can transport goods by road to that Member State or through its territory only if they have passes issued within the limits of a quota determined for such transport on the basis of the bilateral agreement concluded between that Member State and the Republic of Turkey or if a permit has been issued to them on the ground of substantial public interest.
- 36 It must be observed that, in the EEC-Turkey Association, the free movement of goods, freedom to provide services and transport are distinct matters subject to different rules reflecting, as the Advocate General observes in point 41 of his Opinion and the referring court remarks in its request for a preliminary ruling, a varying degree of liberalisation of the markets concerned. While the free movement of goods between the European Union and Turkey is governed in particular by Decision No 1/95 of the Association Council, the fields of services and transport remain essentially non-liberalised in the present state of development of the EEC-Turkey Association.

- 37 To determine whether national legislation falls within the scope of one or other of those freedoms, it follows from the case-law of the Court that the purpose of the legislation concerned must be taken into consideration (judgments of 23 January 2014, *DMC*, C-164/12, EU:C:2014:20, paragraph 29 and the case-law cited, and of 7 September 2017, *Eqiom and Enka*, C-6/16, EU:C:2017:641, paragraph 40).
- 38 In the present case, it appears from the order for reference that the *GütbefG* provides for a system of authorisations of the transport of goods in national territory. That system may, for Turkish hauliers, take the form of an authorisation issued within the limits of the quota determined on the basis of the Austria-Turkey Agreement on road transport, or of a permit issued for a single transport of substantial public interest. Those rules thus impose restrictions on the access of Turkish hauliers to the market of the international transport of goods by road in Austrian territory.
- 39 Consequently, although the national legislation at issue in the main proceedings relates — according to its title — to the transport of goods, its purpose is in fact to determine the conditions to be satisfied for carrying on the activity of transport services in Austrian territory, whatever the goods transported.
- 40 On this point, it should be observed that the legislation at issue in the main proceedings may be distinguished from that at issue in the case in which judgment was given on 19 October 2017, *Istanbul Lojistik* (C-65/16, EU:C:2017:770). In that case, which concerned a tax on heavy goods vehicles which had to be paid when they entered Hungarian territory, both on the outward and on the return journey, the amount of which depended on criteria linked inter alia to the quantity of goods that could be carried and to their destination, the Court found, in paragraphs 45 and 46 of that judgment, that, even though the tax on heavy goods vehicles was not levied on the products transported as such, it was imposed on goods transported by vehicles registered in a third country when they crossed the border, and therefore had to be examined with respect to the rules applicable to the free movement of goods.
- 41 In the present case, the legislation at issue in the main proceedings does not require a tax to be paid in connection with the transport of goods, but prior authorisation to be obtained for access to the transport market in Austrian territory, granted within the limits of a quota or by reason of a substantial public interest, regardless of the quantity of goods transported.
- 42 For transport undertakings established in Turkey, such as that of which CX is manager, the provision of their road transport services in Austrian territory depends on that authorisation. As the Advocate General also observes in points 69 to 71 of his Opinion, it follows that the national legislation at issue in the main proceedings lays down conditions specifically for access to a market in services and cannot be categorised in the same way as the legislation of a tax nature at issue in the case referred to in paragraph 40 above.
- 43 Consequently, legislation such as that at issue in the main proceedings must, having regard to the case-law cited in paragraph 37 above, be regarded as falling within the field of transport services, not that of the free movement of goods, so that the provisions concerning the free movement of goods between the Republic of Turkey and the European Union, such as those of Decision No 1/95 of the Association Council, do not apply to the dispute in the main proceedings. The fact, relied on by CX, that the additional cost of a possible use of alternative itineraries or means of transport may have an indirect effect on the movement of the goods is of no relevance in this respect. Such a possible indirect effect of the legislation in question does not invalidate the conclusion that the purpose of the legislation is to impose certain conditions on the provision of transport services.
- 44 It must therefore be examined whether in the association between the Republic of Turkey and the European Union there is a provision in the field of transport services which precludes legislation of a Member State such as that at issue in the main proceedings.

- 45 It should be recalled here that it is apparent from Article 15 of the EEC-Turkey Association Agreement and Article 42(1) of the Additional Protocol that the provisions of EU law on transport and the acts adopted pursuant to those provisions may be extended by the Association Council to the Republic of Turkey, with due regard to its geographical situation. That implies that the rules to be adopted in this field are not necessarily the same as those applicable under the FEU Treaty, and that the extension to the Republic of Turkey of the transport provisions of the FEU Treaty is merely optional (see, to that effect, judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraphs 96 and 97).
- 46 To this date, the Association Council has not taken any measure to extend the provisions of EU law on transport services to the Republic of Turkey, so that in the present state of development of the association between the Republic of Turkey and the European Union there are no specific rules in this field.
- 47 So, as long as the Association Council has not adopted rules on transport services pursuant to Article 15 of the EEC-Turkey Association Agreement and Article 42(1) of the Additional Protocol, the conditions of access of Turkish hauliers to the EU transport market remain governed by the national legislation of the Member States and the bilateral agreements concluded between the Member States and the Republic of Turkey. It follows that, in a situation such as that at issue in the main proceedings, transport services can be provided only within the limits of the quotas determined in those bilateral agreements or in national legislation (see, by analogy, judgment of 13 July 1989, *Lambrechts Transportbedrijf*, 4/88, EU:C:1989:320, paragraph 14).
- 48 For all that, Article 41(1) of the Additional Protocol has direct effect and may therefore be relied on before the national authorities to prevent the application of inconsistent rules of national law (judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraphs 58 and 59 and the case-law cited).
- 49 That provision lays down a standstill clause containing an obligation for the Member States of the European Union not to adopt any new measure whose purpose or effect would be to subject the establishment of a Turkish national or the provision of a service by him to stricter conditions than those which applied when the Additional Protocol entered into force with regard to the Member State concerned (see judgments of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraphs 58, 59 and 66 and the case-law cited; of 19 February 2009, *Soysal and Savatli*, C-228/06, EU:C:2009:101, paragraph 47 and the case-law cited; of 24 September 2013, *Demirkan*, C-221/11, EU:C:2013:583, paragraph 39 and the case-law cited; and of 10 July 2014, *Dogan*, C-138/13, EU:C:2014:2066, paragraph 26), namely, for the Republic of Austria, 1 January 1995.
- 50 As the Court has previously stated, that obligation also applies in the field of transport services (judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraphs 92 and 93).
- 51 To determine whether the standstill obligation thus stated precludes national legislation such as that at issue in the main proceedings, it must be examined whether that legislation entails a restriction on the freedom to provide services and, if so, whether that restriction must be considered to be a new one (judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraph 110).
- 52 As to whether national legislation entails a restriction on the freedom to provide services, it must be recalled that, according to settled case-law of the Court, national legislation which makes the provision of services in national territory by an undertaking established in another Member State subject to the issue of an authorisation constitutes a restriction on the fundamental principle enshrined in Article 56 TFEU (see, to that effect, judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraph 111 and the case-law cited).

- 53 In the present case, it is common ground that the national legislation at issue in the main proceedings is intended precisely to make the exercise by operators established in Turkey of an activity of the provision of transport services in Austrian territory subject to the issue of prior authorisation, in the form of an authorisation issued within the limits of the quota determined under the Austria-Turkey Agreement on road transport or a permit for a single transport of substantial public interest. This results in a restriction of the right of natural or legal persons established in Turkey to provide transport services freely in Austrian territory.
- 54 As to whether the national legislation at issue in the main proceedings is a new restriction, which the Austrian Government contests, it is for the national courts, which alone have jurisdiction to interpret national law, to determine whether that legislation is new in character, in that its consequence is to make the position of Turkish operators worse than their position under the rules applicable to them in Austria on the date of the entry into force of the Additional Protocol for the Republic of Austria, namely 1 January 1995 (see, by analogy, judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraph 116). As the Advocate General observes in points 79 and 80 of his Opinion, it appears — subject to verification by the referring court — that, having regard to the fact that the quota system provided for by the Austria-Turkey Agreement already existed at the time of the accession of the Republic of Austria to the European Union, there can be no question of a new restriction within the meaning of Article 41(1) of the Additional Protocol.
- 55 Finally, CX argues before the referring court that the national legislation at issue in the main proceedings amounts to discrimination contrary to Article 9 of the EEC-Turkey Agreement, which prohibits all discrimination on grounds of nationality within the scope of the Agreement, in that the restrictions linked to the quota system at issue in the main proceedings apply only to Turkish hauliers, not to those established in the European Union.
- 56 In this respect, it should be observed that Turkish hauliers are not the specific target of the quota system thus established, since the Austrian authorities have concluded agreements of the same kind laying down quotas with other third States. Moreover, Regulation No 1072/2009 lays down an obligation for hauliers established within the European Union to hold Community licences in order to be authorised to carry out their activity in Austrian territory.
- 57 Consequently, as the Advocate General also observes in point 85 of his Opinion, the different treatment complained of by CX is merely the consequence of the different regulatory frameworks applicable to hauliers established within the European Union, on the one hand, and those established in Turkey or other third States, on the other. While the former are subject to the common rules on international transport, the latter are subject to the rules established by the bilateral agreements negotiated in particular by their State of establishment.
- 58 It follows from all the above that the provisions of the EEC-Turkey Agreement, the Additional Protocol and Decision No 1/95 of the Association Council must be interpreted as not precluding legislation of a Member State such as that at issue in the main proceedings, under which road haulage undertakings with their seat in Turkey can transport goods by road to that Member State or through its territory only if they have passes issued within the limits of a quota determined for such transport on the basis of the bilateral agreement concluded between that Member State and the Republic of Turkey or if a permit has been granted to them on the ground of substantial public interest, provided that that legislation is not a new restriction on the freedom to provide services within the meaning of Article 41(1) of the Additional Protocol, which is for the referring court to ascertain.

Costs

- ⁵⁹ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

The provisions of the Agreement establishing an Association between the European Economic Community and Turkey signed on 12 September 1963 at Ankara by the Republic of Turkey, of the one part, and the Member States of the EEC and the Community, of the other part, concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, the Additional Protocol signed on 23 November 1970 at Brussels, concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, and Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union must be interpreted as not precluding legislation of a Member State such as that at issue in the main proceedings, under which road haulage undertakings with their seat in Turkey can transport goods by road to that Member State or through its territory only if they have passes issued within the limits of a quota determined for such transport on the basis of the bilateral agreement concluded between that Member State and the Republic of Turkey or if a permit has been granted to them on the ground of substantial public interest, provided that that legislation is not a new restriction on the freedom to provide services within the meaning of Article 41(1) of the Additional Protocol, which is for the referring court to ascertain.

[Signatures]