

ANNEX 38

GUIDELINES ON THE MOVEMENT OF TURKISH NATIONALS CROSSING THE EXTERNAL BORDERS OF EU MEMBER STATES IN ORDER TO PROVIDE SERVICES WITHIN THE EU¹

The objective of these Guidelines is to provide clarifications regarding the short-stay visa obligation for Turkish nationals residing and exercising their activities in Turkey and wishing to enter the territory of a Member State in order to provide services there (referred below as "Turkish nationals").

The need for this clarification has arisen from the ruling of the Court of Justice of the European Communities of 19 February 2009 in Case C-228/06, *Mehmet Soysal and Ibrahim Savatli*, in which the Court ruled that Turkish nationals residing in Turkey and travelling to a Member State in order to provide services there on behalf of an undertaking established in Turkey are not required to have a visa to enter the territory of that Member State, if the Member State in question did not require such a visa at the time of the entry into force, with regard to that Member State, of the Additional Protocol of 23 November 1970 to the Agreement establishing an Association between the EEC and Turkey of 12 September 1963².

Limited exemption from the visa requirement

In principle, Turkish nationals need a visa to enter one or several Member States for a short stay (of no more than three months in any six-month period).

However, a Turkish national residing and exercising his/her activities in Turkey can enter a Member State without a visa in order to provide services on the territory of that Member State only when the following conditions are cumulatively met:

1. Entry without a visa is only possible in the following Member States: Germany, Denmark and the Netherlands³.

However, when a Turkish national wishes to enter the territory of one of these three Member States **via the territory of one or more other Member States**, he/she still needs a visa to transit through the territories of these other Member States.

2. The purpose of the visit falls within the scope of the "standstill clause" of the Additional Protocol, i.e. cases where, on the date that the Additional Protocol entered into force for Germany/Denmark/the Netherlands, these Member States did not require Turkish nationals entering their territory in order to provide services there to hold a visa.

¹ These Guidelines are accessible through the hyperlink introduced by Commission Recommendation of 29 September 2009 (C (2009) 7376 final).

² These Guidelines are a provisional reaction to this Court ruling. They do not prejudge the outcome of a full analysis of this Court ruling. Nor do they give detailed consideration to the issue of travel in the context of the right of establishment or as a recipient of services. They apply without prejudice to any obligation to hold a work permit.

³ The reason is that, on the date that the Additional Protocol entered into force for these three Member States, they did not require Turkish nationals entering their territory in order to provide services there to hold a visa (under the conditions mentioned hereafter under point 2).

For Germany: cases where a Turkish national residing and exercising his/her activities in Turkey enters the territory of Germany for a stay of up to two months

- for the purpose of lawfully providing services there as employee of an employer established in Turkey, either as a mobile worker (driver) employed in the cross-border transport of passengers or goods (excluding itinerant trade), or to perform assembly or maintenance work or repair on delivered plants and machinery;

or

- for the purpose of lawfully providing services there consisting of paid lectures or performances of special artistic or scientific value or consisting of paid sports performances.

For Denmark/the Netherlands: cases where a Turkish national residing and exercising his/her activities in Turkey enters the territory of Denmark/the Netherlands, for one or several visits, the duration of which does not exceed three months, for the purpose of lawfully providing services there on a temporary basis, either on his own behalf (Turkish nationals exercising self-employed activities) or on behalf of an undertaking established in Turkey (Turkish nationals lawfully employed by such an undertaking who are temporarily sent by their employer to provide services in Denmark/the Netherlands).

For example, a Turkish lorry driver established in Turkey travelling to Denmark/the Netherlands in order to deliver goods to an undertaking established in that Member State is to be considered as providing services in that Member State. Likewise, Turkish architects, builders, lawyers, computer scientists, commercial agents, scientists and lecturers, artists, fitters and instructors installing or repairing machinery or informing of the use thereof, professional athletes and trainers, etc. established in Turkey and travelling to Denmark/the Netherlands in order to carry out their services under a contract are also to be considered as providing services.

In any case, when a Turkish national presents himself/herself at the external border without a visa for the Member State where he/she intends to provide services, he/she must be in a position to **prove** that he/she meets the conditions to be exempted from the visa obligation as service provider as defined above. The Turkish national must prove that he/she is lawfully established in Turkey (by presenting, for example, a certificate delivered by a Chamber of Commerce or any other means of proof that he/she is actually carrying out service activities in Turkey), and where applicable that the employer for whom he/she works is lawfully established in Turkey and that he is lawfully employed, and that he/she is travelling in order to temporarily provide a service in the Member State concerned (by presenting, for example, a contract concluded with the service recipient). It is for each Member State to give more detailed instructions to its competent authorities on which documentation the service provider shall present.

Practical instructions⁴

Case 1. Entry into a Member State from a third country (including the United Kingdom and Ireland)

⁴ These cases cover the most relevant examples but are not exhaustive.

1.1. Turkish national *travelling to Poland* (or to any of the other Member States that do not permit entry without a visa) by plane or ship in order to provide services there

A visa is required to travel to Poland (or to any other Member State that does not permit entry without a visa).

1.2. Turkish national *travelling to Germany/Denmark/the Netherlands* (Member States that permit entry without a visa) by plane or ship in order to provide services there

If the Turkish national presents himself/herself at the German/Danish/Dutch border without a Schengen visa, the competent authorities shall establish, by examining the presented documents, whether, due to the purpose of his/her travel, the Turkish national meets the conditions to be exempted from the visa obligation. If so, the border guards shall allow him/her to enter into the territory of Germany/Denmark/the Netherlands without a visa.

If the Turkish national applies for a short-stay visa from the German/Danish/Dutch consular authorities, those authorities shall inform him/her that he/she can benefit from a visa exemption to enter Germany/Denmark/the Netherlands and they shall therefore refrain from issuing him/her a visa.

Case 2. Entry into a Member State by transiting through one or several other Member States

2.1. Turkish national *travelling to Poland* (or to any of the other Member States that do not permit entry without a visa) through amongst others Germany, to provide services in Poland

A visa is required to travel to Poland. A Schengen visa issued by Poland, as the main destination of the travel, enables its holder to transit through all other Schengen States and through Bulgaria, Cyprus and Romania (see Part Two, Section I, point 9.2, of the Handbook).

2.2. Turkish national *travelling to Germany/Denmark/the Netherlands* (Member States that permit entry without a visa) *through Bulgaria, Hungary and Austria* (Member States that do not permit entry without a visa) to provide services in Germany/Denmark/the Netherlands only

Although a Turkish national is exempted from the visa obligation to enter the territory of Germany/Denmark/the Netherlands in order, for example, to drive lorries or to deliver goods to a German/Danish/Dutch undertaking, a visa is still required to transit through Bulgaria, Hungary and Austria.

If the Turkish national applies for a short-stay visa from the German/Danish/Dutch consular authorities, they shall inform him/her that he/she can benefit from a visa exemption to enter Germany/Denmark/the Netherlands and they shall therefore refrain from issuing him/her a visa. However, they shall inform him/her that he/she needs a visa for some part of his/her journey.

As he/she does not need a visa for entering into the Member State that constitutes his/her main destination, but for passing through other Member States, the Turkish national shall apply for a short-stay visa from the consular authorities of the Member State of his/her first entry in the Schengen area (in this case Hungary).

If a Turkish national presents himself/herself at, for example, the Hungarian border without a visa, the border guards shall refuse him/her entry into the Schengen area⁵. In exceptional cases⁶, they can issue him/her a visa at the border (see Part Two, Section I, point 7, of the Handbook).

Bulgaria and Romania do not issue Schengen visas but allow the holder of a Schengen visa to transit through their territory (see Part Two, Section I, point 9.2, of the Handbook).

Case 3. Entry into a Member State after a stay in another Member State

Turkish national, *lawfully staying without a visa in Germany* (Member State that permits entry without a visa), where he/she provides services, *travelling to Denmark/the Netherlands* (Member State that permits entry without a visa) *or to Austria* (or to any of the other Member States that do not permit entry without a visa) to provide services there

In these circumstances, a Turkish national is exempted from the visa obligation to enter Denmark/the Netherlands. On the other hand, a visa is still required to enter Austria; the Turkish national shall obtain this visa before travelling to Germany, if his/her travel to Austria is already planned, or at the latest in Germany, before arriving at the Austrian border. The Member State responsible for examining his/her visa application is the Member State of his/her first entry in the Schengen area after his/her stay in Germany/Denmark/the Netherlands (in this case Austria).

A Turkish national travelling directly to Germany by air without a visa, for example to replace another lorry driver who fell ill in Germany and drive this lorry from Germany back to Turkey, needs a visa to drive this lorry through other Member States on his/her way back to Turkey. In this situation, he/she will also be exempted from the visa obligation to drive this lorry through Denmark/the Netherlands, provided all the other conditions are satisfied.

⁵ On the basis of Articles 5 and 13 of the Schengen Borders Code.

⁶ Council Regulation n° 415/2003/EC of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit.