Chapter 4

The Basis for Differential Treatment among Third-Country Nationals

EU Association Agreements and Cooperation Frameworks

1 Introduction

The EU is an emerging central figure on the international plane that maintains strong relations with other countries and organisations. The creation of the EEAS illustrates that the EU is keen to represent its interests visibly and effectively on a world-wide scale. The EU’s external relations comprises of a broad network of association, partnership and cooperation mechanisms: to date the EU has concluded some 782 bilateral agreements and 242 multilateral agreements concerning a wide number of cooperation areas, according to Treaties Office Database of the European External Action Service.1 The Common Commercial Policy and the competence to conclude association agreements were the first explicit powers with regard to external relations until the application of the European Single Act in 1987. The EU makes use of a variety of different cooperation instruments for the purpose of collaborating with third countries, in a formal setting, to achieve its foreign policy objectives.

With a view to tackling the question as to why certain third-country nationals enjoy a more favourable legal status than others, Chapter 4 breaks down the various association agreements and cooperation frameworks that are of relevance for individuals in that they stipulate rules on the status and/or movement of persons. Chapter 4 examines the reasons for which the EU has concluded such agreements and frameworks with third countries. First, however, Section 2 of Chapter 4 investigates how such frameworks, providing for preferential treatment for third-country nationals holding a certain nationality, relate to and mesh with the principle of non-discrimination on grounds of nationality that forms the cornerstone of the EU integration process.

Sections 3 to 14 of Chapter 4 list and explain the association agreements and cooperation mechanisms examined in this contribution. It is no secret that some legal frameworks provide for a closer cooperation with the EU, and consequently more extensive rights for the respective nationals, than

others. This is evident, for example, for the Europe Agreements that have led to the EU enlargements of 2004 and of 2007; also, the treaty with Switzerland on the “free movement of persons” speaks for itself. Against this background Sections 3 to 14 are structured by starting with the frameworks endowing individuals with the most advantageous legal positions, followed by those which stipulate a less beneficial regime. Association, cooperation and partnership agreements are legally binding for all contracting parties, whereas umbrella frameworks such as the ENP and the Euro-Mediterranean Partnership allow for policy collaboration on a more flexible basis. Interestingly enough, the EU has introduced customs unions establishing a free trade area with a common external tariff with only three countries: Turkey, Andorra and San Marino.

While the EU entered into association agreements with the OECD countries of Iceland, Norway and Liechtenstein (in the EEA framework), Switzerland, Turkey, Israel and Chile, it is important to take into account that no comparable international agreements containing migration-related provisions with other OECD countries, such as Japan, the United States, Australia, New Zealand and Canada were concluded. Yet, nationals of these other OECD states benefit from favourable rules concerning entry and residence either based on the EU visa policy or based on bilateral regulation.

2 Differential Treatment and the Prohibition of Nationality Discrimination

The assorted association, cooperation and partnership agreements that are analysed in this Chapter 4 constitute the legal basis for the more generous treatment that some third-country nationals enjoy. The question arises how this difference in treatment is compatible with the prohibition of nationality discrimination. It must be borne in mind that the rules found in the Treaty and in EU secondary legislation prohibiting discrimination by reason of nationality are merely specific enunciations of the general principle of equality which is one of the fundamental principles of EU law and which requires that similar situations shall not be treated differently unless differentiation is objectively justified. It was emphasized that “cet arrêt [Ruckdeschel] institue donc par la