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#### **INFORMATION NOTE**

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From: Legal Service  
To: Permanent Representatives Committee (Part 2)  
Subject: Cases before the General Court of the European Union

- T-192/16 NF v. European Council
- T-193/16 NG v. European Council
- T-257/16 NM v. European Council

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1. The European Council has been notified on 31 May and 2 June 2016 of three similar applications for annulment lodged under Article 263 TFEU with the General of the EU Court of Justice.<sup>1</sup> The three applications are directed against the European Council and request the Court to annul the "EU-Turkey statement" which was issued following the meeting of 18 March 2016 of the Members of the European Council and their Turkish counterpart (See press release 114/16 of 18 March 2016).
2. The applications in Cases T-192/16 and T-257/16 state that they are brought on behalf of individuals who are nationals of Pakistan and who are currently staying at the "No Borders Refugee Camp", in Lesbos, Greece. The application in Case T-193/16 states that it is brought on behalf of an individual who is a national of Afghanistan and who is currently staying at the "Onofiyta Refugee Camp", in Athens, Greece. All three applicants have applied for anonymity to the Court, requesting that their names should not be rendered public.

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<sup>1</sup> Cases T-192 and T-193 were notified on 31 May 2016 and Case T-257/16 was notified on 2 June 2016.

3. The applicants challenge the "EU-Turkey statement" of 18 March 2016. They consider that the "EU-Turkey statement" constitutes an agreement entered into by the European Council with Turkey and claim that it is an act that produces legal effects adversely affecting the applicants' rights and interests. The applicants argue, *inter alia*, that this act rendered them at risk of *refoulement* to Turkey or 'chain *refoulement*' to Pakistan or Afghanistan and hence compelled them to make their applications for international protection in Greece, against their will.
4. In support of their request for annulment of the "EU-Turkey statement" the applicants raise a number of pleas, among which:
- failure to comply with the procedures set out in Article 218 TFEU and/or 78(3) TFEU;
  - failure to apply Council Directive 2001/55/EC of 20 July 2001;<sup>2</sup>
  - incompatibility with EU fundamental rights, notably with Articles 1, 18 and 19 of the Charter of the Fundamental Rights,
  - invalidity on the grounds that the case law of the European Court of Human Rights<sup>3</sup> and the Court of Justice<sup>4</sup> shows that there are serious flaws in the present Greek asylum system at all levels, including absence of an effective remedy and deficient reception facilities;
  - incompatibility with the prohibition of direct and indirect *refoulement*;
  - invalidity on the grounds of being based on the unlawful conclusive assumption that Turkey is a safe country;
  - invalidity on the grounds of breach of the prohibition of collective expulsion.

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<sup>2</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, O.J., 7.8.2001, L 212/12.

<sup>3</sup> M.S.S v Belgium and Greece (application no. 30696/09) Judgment of the ECtHR Grand Chamber, dated 21 January 2011.

<sup>4</sup> Joined Cases C-411/10 and C-493/10, N. S. and Others, Judgment of the CJEU (Grand Chamber) of 21 December 2011 ECLI:EU:C:2011:865

4. The applicants have requested that the case be adjudicated under an expedited procedure, in accordance with Article 152 of the General Court's rules of procedure. The European Council will therefore have to lodge its defence within one month of the service of the applications unless the General Court decides to reject the application for expedition. In that latter case the Court may extend the deadline by one month.
5. The Legal Service intends to request that should the Court decide to adjudicate the case under an expedited procedure, parties that wish to intervene should be allowed to do so in writing.
6. The Legal Service also intends to request that the case be transferred to a Grand Chamber of the General Court. Should the referral to the Grand Chamber be rejected, the Legal Service will request that the case shall be heard by a Chamber sitting with at least five Judges. Under Article 28(5) of the General Court's rules of procedure, the latter request cannot be refused.
7. The Director General of the Legal Service of the Council has appointed Mr Krzysztof PLESNIAK, Ms Sonja BOELAERT and Mr Alvaro DE ELERA, legal advisors in the Legal Service of the Council, as the European Council's agents in the three cases.

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