



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels, 18 November 2016
sj.g(2016) 7120191

Court procedural documents

**TO THE PRESIDENT AND MEMBERS
OF THE GENERAL COURT OF THE EUROPEAN UNION**

REPLY TO QUESTIONS FROM THE GENERAL COURT

submitted pursuant to Articles 24(2) of the Statute of the Court of Justice by

the **European Commission**, represented by Mrs Dominique MAIDANI and Mr Geert WILS, acting as Agents, with a postal address for service in Brussels at the Legal Service, *Grefte contentieux*, BERL 1/169, 200, rue de la Loi, 1049 Brussels, who consent to service by e-Curia,

in Case T-193/16

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- Applicant -

against

European Council

- Defendant -

in which the Applicant seeks annulment of the "EU-Turkey Statement" of 18 March 2016.

The General Court has by letter of 4 November 2016, ref. T-193/16-61, requested the European Commission to answer questions which were contained on two pages.

On the first page, there is first the following question:

"whether ... the 'additional action points' referred to in the 'EU-Turkey Statement, 18 March 2016' can be regarded as reflecting the existence of an oral/unwritten agreement or of a written agreement".

The Commission understands the two paragraphs numbered (a) and (b) to be a continuation of the first question, whereby the introductory words of the paragraphs numbered (a) and (b) are to be complemented by "[If] the reply to the preceding question is that if" [there is a written agreement ...]" and ""[If] the reply to the preceding question is that there does not such a written [agreement, ...].

The Commission answers to the preceding questions first in general and then in the form suggested by the three subparts of the first page of the Court's letter.

General answer to the questions asked on the first page of the Court's letter

The 'additional actions points', nine in total, listed in the press release 144/16 of 18 March 2016 and entitled 'EU-Turkey statement, 18 March 2016', constitute themselves the written expression of a political arrangement reached by the Members of the European Council (i.e. the Heads of State or Government of the Member States, the President of the European Council and the President of the Commission) on 18 March 2016.

The word 'additional' refers to the preceding political arrangements to which reference is made in the first and third paragraphs of the quoted press release. As an example of such preceding political arrangements, the joint action plan of 15 October 2015 can be mentioned. The word 'additional' denotes that those preceding political arrangements are not being replaced but rather being complemented by the nine action points contained in the statement of 18 March 2016.

The vocabulary of the EU-Turkey statement ('action points', use of the auxiliary 'will', indication of the respective actors who 'will' implement the action points) make clear that the statement is not a legally binding agreement, but a political arrangement. In the context of the present reply to a question, the Commission does not feel authorised by the General Court to expand on this point. The Commission does however hope to obtain the opportunity to do so in the context of an intervention in support of the European Council, which it requested.

Specific answers to the questions asked on the first page of the Court's letter

(unnumbered first question) The additional action points reflect in writing a political arrangement.

(a) The text of press release 144/16 contains the entirety of the political arrangement expressed in the additional action points.

(b) The parties which politically agreed the additional action points are the Members of the European Council, i.e. the Heads of State or Government of the Member States, the President of the European Council and the President of the Commission, and their Turkish counterpart.

The second page contains three questions, numbered a) to c).

The “EU-Turkey Statement, 18 March 2016” refers, in point 1¹, to the fact that the costs of the return operations of irregular migrants will be covered by European Union. The Commission is requested to indicate to the General Court:

(a) The legal basis and the decision-making mechanism in accordance with which the financing operations were undertaken;

EU funding to support migration management activities is essentially provided through the Asylum, Migration and Integration Fund (AMIF). According to Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the AMIF, one of its main objectives is to support measures aiming at ensuring the return and effective readmission of third country nationals in the countries of origin and transit.

The AMIF is implemented essentially under shared management, through Member States multi-annual national programmes in which are identified each Member State's main objectives and priorities to be covered with AMIF funding during the period 2014-2020, in accordance with Regulation 516/2014. The support to return measures (both voluntary and forced returns) is one of the main priorities of Greece's AMIF national programme adopted on 31 July 2015 by Commission Decision C(2015) 5313 final. This Commission Decision constitutes the financing decision for the Greek national programme under AMIF within the meaning of Article 84 of Regulation (EU, Euratom) N° 966/2012.

On the basis of this decision, Greece can since 31 July 2015 use the financial resources of its AMIF National Programme to cover the costs of return of illegally staying third-country nationals to any third-country, including that means to Turkey. This being said, the Commission is not aware of the use of any funds from Greece's AMIF national programme to support returns to Turkey until now. In its financial and technical reporting on the implementation of the national programme, officially submitted to the Commission respectively in February and March 2016 (covering an implementation

¹ The letter of the Court referred to point 2), but the registry confirmed, in reply to an email by the Commission, that point 1) was meant.

period from 1 January 2014 until 15 October 2015), Greece did not report any cost/action covered by its AMIF national programme.

Funding to support return measures is also provided through Union Actions or Emergency Assistance, which are the other components than National Programmes within AMIF.

Since the start of the migratory crisis Greece has received substantial emergency assistance from AMIF, including two grants to support forced and voluntary returns of third country nationals. One of the grants was directly awarded to the International Organisation for Migration (IOM), to support assisted voluntary returns, while the second one was directly awarded to the Greek authorities, with IOM as co-beneficiary, to cover the costs of both forced and voluntary returns: this latest grant is currently being amended exactly to better adjust it to the most pressing needs, including the need to provide the possibility for assisted voluntary return of some third country nationals to Turkey in the context of the EU-Turkey Statement. Regulation 516/2014 constitutes the legal basis of such actions, whereas the AMIF 2015 and 2016 Annual Work Programmes for Emergency Assistance constitute the respective financing decisions.

In parallel, the European Border and Coast Guard Agency ('EBCGA', also referred to as 'Frontex') can also provide support to the return of third country nationals to countries of origin or transit in the form of operational and technical support such as chartering aircraft or other means of transportation for the purpose of returning migrants in what are called 'joint return operations'. The possibility to request and use such support is open to all Member States. Between 1 January 2016 and 7 November 2016, the EBCGA carried out over 165 such joint-return operations to destinations all over the world. At this point in time all return or readmission operations from Greece to Turkey which have occurred since the EU-Turkey Statement have been carried out with operational support through Frontex. The legal basis for such activities is today Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard, before 5 October 2016 it was the predecessor Regulation (EC) No 2007/2004.

(b) Whether those financing operations were decided and undertaken before 18 March 2016;

As noted above, the financing decision concerning the Greek AMIF national programme was adopted on 31 July 2015, when the Commission adopted that national programme.

The AMIF 2015 Annual Work Programme for Emergency Assistance was adopted by Commission Implementing Decision C(2015) 653 of 12 February 2015, revised by Commission Implementing Decisions C(2015) 6187 of 11 September 2015 and C(2015)8480 of 1 December 2015, whereas the Annual Work Programme for 2016 was adopted on 15 December 2015 (Commission Implementing Decision C(2015)9534) and subsequently modified on 10 March 2016 (Commission Implementing Decision C(2016) 1568 final) and 28 April 2016 (non-substantial modification by Decision of the Director-General of Directorate-General Migration and Home Affairs registered under the number Ares(2016)2020131). The two emergency assistance grants mentioned above were signed before 18 March 2016.

(c) Whether, from a budgetary perspective, the Member States could have competence to conclude themselves the agreement at issue with a third State, without the Commission's involvement.

It is not clear to the Commission whether "the agreement at issue" refers to readmission agreements with third states.

In any case, apart from the information provided under (b) above, the Commission can confirm that return operations do not have to be conducted in the framework of formal readmission agreements between the EU and third countries to be eligible for funding under AMIF.

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