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From:	Legal Service
To:	Permanent Representatives Committee (Part 2)
No. prev. doc.:	9148/17
Subject:	Cases before the Court of Justice Cases C-208/17 P, C-209/17 P and C-210/17 P - EU-Turkey Statement - Final dismissal of appeals

1. By Order of 12 September 2018, the Court of Justice (First Chamber) has dismissed the appeals¹ brought against the Orders of 28 February 2017² rendered by the General Court regarding the actions for annulment brought on behalf of three individuals against the European Council regarding the EU-Turkey Statement of 18 March 2016.
2. In its Order, the Court of Justice holds that the appeals did not allow it to carry out its review of legality.³ In addition, the Court holds that the appellants merely sought to express their disagreement with the General Court's assessment of the facts, while requesting that those facts be assessed again by the Court of Justice, without claiming or establishing that the General Court's assessment of the facts was manifestly inaccurate.⁴

¹ See Information Note to Coreper of 12 May 2017 (doc. 9148/17).

² Orders of the General Court of 28 February 2017 in the following three cases: T-192/16, NF v European Council, EU:T:2017:128; T-193/16, NG v European Council, EU:T:2017:129; T-257/16, NM v European Council, EU:T:2017:130.

³ Court of Justice (First Chamber), Order of 12 September 2018 in NF v European Council, Joined Cases C-208/17 P, C-209/17 P, C-210/17 P, EU:C:2018:705, paragraphs 10-17.

⁴ Order, paragraphs 20-29.

3. The Order of the Court of Justice dismissing the appeals in their entirety is in line with the main response which was filed on behalf of the European Council, requesting that the appeals be dismissed as manifestly inadmissible pursuant to Article 181 of the Rules of Procedure.
 4. The direct actions for annulment brought in 2016 against the European Council pertaining to the EU-Turkey Statement of 18 March 2016 have thereby come to a definitive end. The dismissal of the three appeals means that the General Court's main finding according to which the aforementioned EU-Turkey Statement does not relate to an act of the European Council nor of any other body, office or agency of the Union and hence that the actions fell outside jurisdiction of the Court of Justice,⁵ stands.
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⁵ See Order of the General Court of 28 February 2017 in the case of *NF v European Council*, EU:T:2017:128, paragraph 71: "*It follows from all of the foregoing considerations that, independently of whether it constitutes, as maintained by the European Council, the Council and the Commission, a political statement or, on the contrary, as the applicant submits, a measure capable of producing binding legal effects, the EU-Turkey statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure.*" The same finding was made by the General Court in its Order of 28 February 2017 in the cases of NG and NM.