

THE AGREEMENT BETWEEN THE EUROPEAN COUNCIL AND TURKEY OF 17/18 MARCH 2016 IS ILLEGAL.

It seriously violates European law and radically betrays the EU's and Italy's judicial culture.

The agreement of 17/18 March 2016 is a decision by the heads of state and of the governments of the EU which runs contrary to the European law that is in force. **The violations which have been recorded are numerous**, including the following:

1. The agreement envisages the forced return to Turkey of asylum seekers who entered Greek territory passing through Turkish territory after their asylum application was declared inadmissible. According to what the European Council reported, such inadmissibility will be declared by the Greek authorities, in cooperation with UNHCR, following an examination which is defined as individual but is described in terms which apply to collective refoulements. Art. 33 of EU Directive 32/2013 (on common procedures) establishes that asylum applications can only be deemed inadmissible following an individual assessment which may lead, in such cases, to establishing that an asylum seeker may be readmitted into a third country which may be deemed a “first country of asylum” or “safe third country”. These two notions are specified better in arts. 35 and 38 of the same directive, and are subject to compliance with requisites which cannot be observed as applying to the case of Turkey in any way. In fact, the latter country, apart from violating human rights and not guaranteeing democratic principles to its citizens, does not offer “sufficient protection” to asylum seekers for it to be defined a first country of asylum (art. 35), nor does it offer “the possibility to apply for refugee status” or to “obtain protection in accordance with the Geneva Convention” to an extent that may allow it to be deemed a safe third country (art. 38). In other terms, the agreement wants to break through the current normative framework (Directive 32/2013) to qualify Turkey as a “first country of asylum” or “safe third country”, in order to trigger a system of absolutely summary evaluation of asylum applications which will lead to quick declarations of inadmissibility and, as a result, to forced deportations on the basis of the sole precondition that such asylum seekers have passed through Turkey and that, just for this reason, they may be sent back to that country.
2. The agreement envisages the possibility of enacting forced returns towards Turkey of all the foreign citizens who have reached Greece after crossing Turkish territory without submitting an asylum application. In this case as well, the agreement defines as individual a mechanism which, conversely, is described as a collective refoulement, enacted *en masse* against all the foreign citizens who have not submitted an application (or who are unlikely to manage to express their will to do so), solely on the basis of the fact that they have crossed the Turkish border. Hence, this is a mechanism which openly contravenes the prohibition of collective refoulements which is enshrined by art. 4 of the 4th Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. Finally, the agreement which has just been reached represents a decision by the heads of states and of governments, and not an authentic EU agreement. Thus, it requires ratification by the Italian Parliament if it is to be deemed binding for Italy.

In view of its illegal aspects highlighted above, the signatory associations demand:

- I. That the authorities of the European Union immediately reassess the terms of the agreement and thereby exclude the possibility that Turkey may be considered a “first country of asylum” or a “safe third country” in accordance with arts. 35 and 38 of EU Directive 32/2013. Further, we ASK that, in any case, they respect the individual nature of the examination of an asylum application, allowing asylum seekers the concrete chance to have effective access to the procedure for recognition of international protection and to express any reason they may have to exercise a genuine right to legal defence.
- II. That UNHCR should not participate in operations of mass evaluation of the inadmissibility of requests for international protection submitted in Greece by applicants who have arrived from Turkey. Such an assessment concerning inadmissibility represents a waiting room for collective refoulements and UNHCR cannot and must not legitimate such an operation.
- III. That the Italian Parliament subject the decision by heads of states and of governments to ratification and not to authorise it because it contravenes European law, the European Union’s Charter of Fundamental Rights, article 10.3 of the Italian Constitution and, more generally, the fundamental principles of our legal civility and our democratic tradition.

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Arci, Asgi, Federazione delle Chiese Evangeliche in Italia, Centro Astalli, FOCUS - Casa dei Diritti Sociali, Medici per i Diritti Umani, Consiglio Italiano per i rifugiati (CIR), SenzaConfine

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The original is available in the site of the Associazione di Studi Giuridici sull’Immigrazione (ASGI) at:

<http://www.asgi.it/wp-content/uploads/2016/03/2016- Comunicato accordi-turchia-17-18-marzo-2016.pdf>