



Maastricht University
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Frontex before the Court: How to Ensure Judicial Review of Frontex's Conduct

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**MCEL Master's Thesis Series
No 2026/10**



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This paper was produced as part of a master's thesis project on migration, co-organised
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Published in Maastricht, March 2026

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This paper is to be cited as MCEL Master's Thesis Series 2026/10

Abstract

This thesis examines the issues with the judicial oversight over Frontex's operations and proposes possible solutions to ensure that the CJEU can review the Agency's conduct. Firstly, the thesis provides definitions of Frontex's operations, and the concept of "composite procedures" - situations in which Frontex and Member State authorities operate side by side in the context of integrated border management, as well as how the Agency participates in FR violations. Following this, the thesis examines all past relevant cases where persons have sought a review of Frontex's operations and have failed to obtain it. With this information, the thesis proposes a systematic view of the issues which litigants face, rationalizing the situations in three grand problems: complex and obfuscated responsibility in composite procedures, insufficient transparency obligations, and the CJEU's insurmountable burden of proof obligations. From this point, the thesis suggests multiple lines of solutions: targeted amendments to the Frontex Regulation, strategic and proactive jurisprudence in two upcoming CJEU decisions, and a potential alternative for judicial oversight before the ECtHR, in light of the New Draft Accession Agreement.

Acknowledgements

To V. Mincheva, V. Ivanov, S.M. Toma, K. Hegedus, who made this thesis possible.

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1 Introduction

The European Economic Community is a Community based on Rule of Law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic Constitutional Charter, the Treaty.¹

This rings especially true in the current era of European Integrated Border Management, where both European Union and Member State actors cooperate. The EU institution present at the Union's external borders, is Frontex.

Frontex is the unofficial name of the European Border and Coast Guard Agency.² It is the European body whose self-described role is to support EU Member States and Schengen-associated Countries in the management of the EU's external borders and the fight against cross-border crime.³ The key roles of the agency are the oversight of the effective functioning of border control at the external borders; the carrying out of risk-analysis and vulnerability assessments; the provision of technical and operational assistance to Member States, ensuring the effective implementation of Integrated Border Management.⁴

At its core, Frontex is an agency concerned with the control and the security of the European Union's external borders, where it exercises its functions and mandate alongside Member State authorities, and in certain cases operating with a level of control over said national organs.⁵

Within the exercise of its functions, the Agency is bound to ensure the protection of Fundamental Rights, where in any of its actions and operations, the Agency must have due regard for persons' rights,⁶ and operations must be terminated or not launched if there is a serious threat of violations, or violations are already occurring.⁷

In theory, this paints the picture of an Agency which would have a relatively clear-cut mandate and responsibility in the operations it undertakes. However, the

1 Case 294/83 Parti écologiste "Les Verts" v European Parliament [1986] ECLI:EU:C:1986:166 para 23.

2 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 [2019] OJ L 295/1, recital 3. *Hereby Frontex Regulation.*

3 European Border and Coast Guard Agency (Frontex), 'Who We Are' (Frontex 2025) < <https://www.frontex.europa.eu/about-frontex/who-we-are/tasks-mission/> > accessed 26/8/2025.

4 Melanie Fink and Jorrit J. Rijpma, "The Management of the European Union's external borders" in Evangelia (Lilian) Tsoardi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (EEP 2024) 420-425.

5 Melanie Fink, 'The Action for Damages as a Fundamental Rights Remedy: Holding Frontex Liable, (2020) Volume 21 Special Issue 3 German Law Journal 532, 540-541.

6 Frontex Regulation recitals 1,24, 103, Arts 1, 5(4), 10(1e, 1ad), 80; Fink and Rijpma (n4) 425-426.

7 Frontex Regulation Art 46.

reality differs, with there being a multitude of controversies and scandals surrounding Frontex's responsibility in FR violations.⁸

Throughout many different investigations and reports on the agency, Frontex, with its staff and assets, has been implicated in alleged FR violations. One of Frontex's own vessels, the Romanian boat MAI 1103 directly blocked a boat with 47 refugees on board, and then proceeded to make waves – an incredibly dangerous manoeuvre to conduct next to a dinghy full of migrants – after which the Greek coast guard moved in and conducted a pushback towards Turkish waters.⁹ This manner of intercepting and diverting a vessel is not a one-off occurrence, but a persistent practice of the Agency.¹⁰ On land, the Agency has been present and operating detention centres alongside MS, who have later been found by the European Court of Human Rights to be violating FR in said centres. And furthermore, the agency has been found to conceal and erase evidence of violations, in order to shield itself and MS from responsibility.¹¹

Ultimately, all these statements, accounts, investigations, and official reports paint the image of a very concerning reality – an Agency shirking its FR responsibilities.¹² This conduct, in consideration of the law and the fundamental rights obligations and mechanisms in place, cannot and must not be disregarded. This begets the question of what judicial oversight exists to regulate this conduct. Academics, who have undertaken this question in the past, have found many hurdles posed by the nature of the Agency on the path to judicial oversight.¹³ This, in turn, raises the question of whether judicial

8 Human Rights Watch, 'Frontex Failing to Protect People at EU Borders' (HRW 23 June 2021) < Frontex Failing to Protect People at EU Borders | Human Rights Watch > accessed 25/8/2025; Sara Creta, Bashar Deeb, Klaas van Dijken, Emmanuel Freudenthal, Steffen Lüdke and Maximilian Popp, 'How Frontex Helps Haul Migrants Back To Libyan Torture Camps' (Spiegel International 29 April 2022) < <https://www.spiegel.de/international/europe/libya-how-frontex-helps-haul-migrants-back-to-libyan-torture-camps-a-d62c3960-ece2-499b-8a3f-1ede2eaefb83> > accessed 25/8/2025.

9 Giorgos Christides, Emmanuel Freudenthal, Steffen Lüdke and Maximilian Popp, 'EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign' (Spiegel International 23 October 2020) < <https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7> > accessed 25/8/2025; Katy Fallon, 'EU border force 'complicit' in illegal campaign to stop refugees landing' (The Guardian, 24 October 2020) < <https://www.theguardian.com/global-development/2020/oct/24/eu-border-force-complicit-in-campaign-to-stop-refugees-landing> > accessed 25/8/2025.

10 Sarah Tas, 'Frontex actions: out of control? The complexity of composite decision-making procedures' (2020) TARN Working Paper 03/2020 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3632712 > accessed 27/8/2025, 10.

11 Gemma Bird, 'EU border agency Frontex accused of covering up human rights violations in Greece – the allegations explained' (The Conversation 17 October 2022) < <https://theconversation.com/eu-border-agency-frontex-accused-of-covering-up-human-rights-violations-in-greece-the-allegations-explained-192372#:~:text=A%20classified%20report%20by%20EU%20anti-fraud%20office%20Olaf,The%20report%20was%20made%20public%20by%20German%20media> > accessed 25/8/2025.

12 Human Rights Watch (n8).

13 Izabella Majcher, 'Human Rights Violations During EU Border Surveillance and Return Operations: Frontex's Shared Responsibility or Complicity?' (2015) Issue 7/2015 Silesian Journal

oversight over the Agency even exists, and further than that – what needs to change, in order to ensure that Frontex’s actions can be subject to a judicial review.

Consequently, this thesis seeks to answer the following research question:

“What are the issues with the Judicial Review of Frontex’s operations, and subsequently how can Judicial Review be ensured?”

To effectively tackle this research question, it is further divided into multiple sub-questions:

“How does Frontex conduct its operations and how they render judicial review difficult? What is the EU Judicial Review Framework? What renders the Framework inoperable? How can Oversight be ensured?”

This thesis employs a doctrinal and jurisprudential approach to answering the research question – in examining the Frontex Regulation and the relevant TFEU¹⁴ articles, the thesis further works with jurisprudence in the field, academic commentaries, and Ombudsman suggestions, as well as examining the ECHR as a possible solution to the research question.

In light of the size limitations on this thesis, and in order to ensure a more in-depth examination of the chosen field, the thesis focuses exclusively on judicial oversight – it will not go into administrative supervision,¹⁵ the role of the European Parliament,¹⁶ or a potential board of appeal¹⁷ for the Agency, on which great works have already been produced. Furthermore, while Chapter 4 goes into possible legislative amendments, judicial activism, and a still uncertain EU-ECHR accession, it does not go into possible Treaty amendments – the ramification of those are too broad, and disproportionate towards the question of Frontex and oversight.

Chapter 2 will cover the relevant procedures of the Agency, as well as the notion of composite procedures and how Frontex participates in FR violations. Chapter 3 will then focus on the CJEU’s judicial oversight toolbox. As each of the three available actions is described, its limitations and failed operationalizations will be presented, and the broader systematic failures of judicial oversight will be assessed. Chapter 4 will then

of Legal Studies 45; Melanie Fink, ‘Why it is so Hard to Hold Frontex Accountable: On Blame-Shifting and an Outdated Remedies System’ (EJIL:Talk! 26 November 2020) < <https://www.ejiltalk.org/why-it-is-so-hard-to-hold-frontex-accountable-on-blame-shifting-and-an-outdated-remedies-system/> > accessed 25/8/2025.

14 Consolidated Version of the Treaty on European Union [2012] OJ C326/47. *Hereby TFEU*.

15 Jorrit J. Rijpma, ‘Watching the guards: Ensuring compliance with fundamental rights at the external borders’ (2024) 30 *European Law Journal* 74.

16 Tineke Strik, ‘Frontex’s expanding mandate: Has democratic control caught up?’ (2024) 30 *European Law Journal* 217.

17 Agostina Pirrello and Mariolina Eliantonio ‘A Board of Appeals for Frontex’ (2024) 49(1) *European Law Review* 51.

present three ways to ensure oversight: through legislative change (4.1), through judicial action (4.2), through finding scrutiny outside the CJEU (4.3)

2 The EBCG's Operations and troubled relations with Fundamental Rights

Chapter 2.1 Examines the Agency's actions, FR obligations, and defines the term Composite Procedures, due to their relevance in establishing the complications with the judicial review of Frontex. Chapter 2.2 In turn examines how it participates in FR violations both directly and complicitly.

2.1 Integrated border management and compliance with fundamental rights

Joint Operations have been described by Frontex itself as being among its "most visible activities."¹⁸ Such JOs consist of the deployment of staff and equipment,¹⁹ in order to assist Member States in implementing external border management. The operational plans for such JOs, pursuant to Article 38 of the Frontex Regulation, are drawn up by the Executive Director of Frontex, and must include all aspects of the operations.²⁰ It is noteworthy that these operational plans, drawn up by Frontex, also must include instructions on how to ensure the safeguarding of FR, and procedures on how to ensure the assistance of vulnerable persons and those in need of international protection.²¹

In *Search and Rescue Operations*, viewed as a "priority" by Frontex,²² the agency is obliged to provide technical and operational assistance in support of such operations that may arise during border surveillance operations.²³ Furthermore, such search and rescue activities are part of every Frontex sea operational plan.²⁴ The Frontex Regulation also details that the agency has an obligation to transmit to search and rescue authorities any relevant information on situations that arise in a timely manner.²⁵ Importantly, the legislation portrays the Agency's role as one of supporting Member States.²⁶ This becomes relevant in establishing responsibility, as will be observed in later chapters.

18 European Border and Coast Guard Agency (Frontex), 'The Agency at a Glance' (European Union Publications Office) < https://prd.frontex.europa.eu/wp-content/uploads/agency_at_glance_2018_en_web.pdf > accessed 25/8/2025, 3.

19 Frontex Regulation Art 37; per Frontex (n18) this includes the deployment of "hundreds of border and coast guard officers, along with boats, cars, airplanes and other equipment."

20 Frontex Regulation Art 38(2).

21 Frontex Regulation Art 38(3d, 3i, 3l, 3n).

22 European Border and Coast Guard Agency (Frontex), *The Role of Frontex in European Coast Guard Functions* (2022) < <https://www.frontex.europa.eu/assets/Publications/General/EUCGFunctionsBooklet.pdf> > accessed 25/8/2025; Frontex (n18) 4.

23 Frontex Regulation Art 10.

24 Frontex (n18) 4.

25 Frontex Regulation Art 28.

26 Frontex Regulation Art 10(1i) explicitly states that the Agency "provides *assistance*" "in support" of SARs.

Return Operations are organized or coordinated by Frontex,²⁷ and involve the transfer of persons who may not remain in the EU back to their countries of origin. The agency is to provide technical and operational assistance to Member States through a multitude of methods, including the collection of necessary information, acquisition of travel documents, through interpreting services, advice on the implementation of return decisions, and even by providing the necessary equipment, or the chartering of flights or other methods of transportation.²⁸ Very importantly, Frontex must act in respect of FR, international law, and the principle of non-refoulement during return operations.²⁹ If the agency has any FR concerns during operations, those must be communicated to both participating Member States and the Commission.³⁰ Very importantly, despite organizing and coordinating returns, and assisting member states in the execution of such operations on a technical and operational level, Frontex is not to enter into the merits of return decisions, as those explicitly remain the sole responsibility of Member States.³¹ Interestingly, in recital 81, it is stated that Frontex should provide assistance “in full respect of FR”, whilst also being “without prejudice to Member States’ responsibility for issuing return decisions.” This becomes especially relevant when establishing responsibility.

This manner of conducting operations alongside MS has been described under the term of *Composite Procedures*.³² Such procedures may take on a factual or decisional nature.³³ In factual conduct, both national authorities and the Agency together work towards the execution and enforcement of EU law (e.g. during the course of SAR, or when Frontex staff is deployed to external borders alongside the MS personnel.)³⁴ In decisional composite procedures the defining of a position or taking of a decision is subject to acts, communication and sharing of information between the Agency and MS (e.g. coordination under EUROSUR³⁵).³⁶ These procedures lack clear and precise definitions and guidelines, as well as involving a myriad of actors from both

27 Fink and Rijpma (n4), 420

28 Frontex Regulation Art. 50(1).

29 Frontex Regulation Arts. 48(1), 50(3).

30 Frontex Regulation Art. 50(6)

31 Frontex Regulation Art. 10(1n), 48(1), 50(1).

32 Mariolina Eliantonio, ‘Access to Justice in Composite Procedures for the Implementation of EU Law: the Story so Far’ in P. Van Creynenbreugel and J. Wildemeersch (eds), *Questions choisies de droit européen des affaires / Selected Issues in European Business Law: 60 ans d’études juridiques européennes à Liège / 60 years of European legal studies at Liège* (Bruylant 2023) < <https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/211795399/Eliantonio-2023-Access-to-Justice-in-Composite.pdf> > accessed 26/8/2025 1,2; Tas (n10) 2.

33 Mariolina Eliantonio, ‘Composite Procedures, the Violation of Fundamental Rights, and the Availability of Sufficient Remedies in the Multi-level EU Judicial Architecture’ in Mellanie Fink (ed) *Redressing Fundamental Rights Violations by the EU: The Promise of the ‘Complete System of Remedies’* (CUP 2024) 345, 347-352.

34 *ibid* 348-350.

35 Frontex Regulation Arts 18 – 21.

³⁶ Eliantonio (n33) 350-352.

national authorities and Frontex. Such procedures occur without a clear delineation of responsibility between EU and MS actors, with the Frontex Regulation being silent on the matter,³⁷ reinforcing the veiled nature of composite procedures. Consequently, significant uncertainty arises as to who holds responsibility over these composite procedures, and whether a national or EU court has competence to receive actions.³⁸

A common theme throughout the Frontex Regulation and many of the agency's communications, is the consistent restatement of their *FR obligations*. In the first sentence of the first paragraph of Article 1 of the Regulation itself states that the agency is established to ensure effective external border management which is in full compliance with FR. Article 80 also states that the agency must perform its tasks whilst guaranteeing protection of FR, in accordance with the CFREU,³⁹ relevant international law, and EU obligations on access to international protection. Furthermore, the Agency is to establish a code of conduct which applies to all border control operations coordinated by the Agency, which code is to respect the aforementioned FR obligations.⁴⁰ The Regulation also establishes that a Fundamental Rights Officer and Monitors must be appointed, to ensure the Agency's adherence to its FR obligations.⁴¹

In this regard, Article 46 of the Frontex Regulation establishes a mechanism for decisions to suspend, terminate, or not launch activities. Under this mechanism, the ED of Frontex is to terminate *any* activity of the Agency if the conditions for its execution no longer exist, at the request of a participating Member State, if the host Member State does not respect the operational plan, or under the conditions of paragraphs 4 and 5. Paragraph 4 states that after consultation with the FRO, the ED is to terminate any activity if they consider that there is a violation of FR. Paragraph 5 pertains to activities not yet launched, where after consultation with the FRO, the ED considers that the activity could lead to violations of FR. Importantly for both paragraphs, violations must be "of a serious nature", or there must be "serious reasons" for such suspicions for future activities, and pursuant to paragraph 6, such decisions to terminate activities must be based on "duly justified grounds."

³⁷ Fink and Rijpma (n4) 425-426.

³⁸ Eliantonio (n33) 356-359.

³⁹ Charter of Fundamental Rights of the European Union [2012] C 326/02.

⁴⁰ Frontex Regulation Art. 81; European Border and Coast Guard Agency 'Code of Conduct' < https://prd.frontex.europa.eu/wp-content/uploads/fpi-24.0090-code-of-conduct_en.pdf > accessed 23/8/2025 Art 1(3), 4, 6a.

⁴¹ Frontex Regulation Art. 109, 110; 'Fundamental Rights at Frontex' < <https://www.frontex.europa.eu/fundamental-rights/fundamental-rights-at-frontex/fundamental-rights-at-frontex/#:~:text=A%20Serious%20Incident%20Report%20%28SIR%29%20procedure%20stem%20from,any%20situation%20of%20possible%20violations%20of%20fundamental%20rights.>> accessed 25/8/2025.

2.2 Alleged participation and complicity in fundamental rights violations

Despite the previously mentioned FR obligations, as cases before the ECtHR, independent investigations, and the OLAF report on Frontex itself the Agency has on many occasions been placed near or at the site of FR violations, with credible claims that it may be participating in them.⁴² In practice, Frontex may be participating in two ways: by directly conducting FR violations, or through complicity.

As claimed by one Danish commander of a Frontex vessel during operation Poseidon, a Frontex boat was responsible for pushing migrants back to Turkish waters. A situation for which an incident report was never filed.⁴³ This is an example of the Agency staff and assets directly conducting a pushback – where responsibility could be attributed to Frontex. Alternatively, as alleged in ongoing proceedings against Frontex, they could be held responsible for FR violations when they return a person, without properly checking whether a valid return decision was issued.⁴⁴

On the front of complicity, Melanie Fink and Jorrit Rijpma have argued that through the interpretation of the Agency's FR obligations, that it could incur derivative responsibility for FR violations committed by MS, due to the assistance MSs receive by the Agency in JOs.⁴⁵

Omer Shatz, the legal affairs director of "front-Lex" – an NGO which conducts strategic litigation against Frontex⁴⁶ – has presented three ways in which the Agency is complicit in MS violations.⁴⁷ He points to Frontex facilitating pull-backs by the Libyan authorities under the guise of the Agency's SAR duties, by transferring the locations of migrants in peril, who are then subject to the cruelty of the Libyan authorities.⁴⁸ Additionally, Shatz claims that between the Agency and Greece occurs a so-called "division of labour," where Frontex conducts surveillance and monitoring, following which Greek authorities are able to move in and conduct the push-backs. Thirdly, Shatz also contends that Frontex does so called "killing through omission," whereby the Agency pulls out of important and critical areas where migrants might find themselves

⁴² Christides, Freudenthal, Lüdke, Popp (n9); Creta, Deeb, Dijken, Freudenthal, Lüdke and Popp (n8).

⁴³ Human Rights Watch (n8).

⁴⁴ Case T-600/21 *WS and Others v Frontex* [2023] ECLI:EU:T:2023:492.

⁴⁵ Fink and Rijpma (n4) 428.

⁴⁶ Front-Lex. 'What We Do' < <https://front-lex.eu/about/> > accessed 20/7/2025.

⁴⁷ Guilia Carbonaro, 'A collapse of the rule of law': How does Frontex get away with 'plain murder?' (Euronews 2023) < <https://www.euronews.com/2023/03/28/a-collapse-of-the-rule-of-law-how-does-frontex-get-away-with-plain-murder> > accessed 26/8/2025.

⁴⁸ Guilia Carbonaro (n47); Creta, Deeb, Dijken, Freudenthal, Lüdke and Popp (n8).

in dangerous situations and requiring rescue, whereby increasing chances of incidents and death.⁴⁹

Furthermore, FR violations could be subject to concealment and erasure of evidence to cover up Frontex participation. There are claims by humanitarian organizations⁵⁰ that in relation to the operations occurring in Greece, the Agency has been misreporting serious incidents and violations. These allegations of the failings of the SIR mechanism were further proven by OLAF's (the European Anti-Fraud Office) report on Frontex, which shows that not only were SIRs not properly filed, but they were also concealed and kept away from the FRO – a figure instrumental for the proper monitoring of the Agency's FR obligations.⁵¹

⁴⁹ Guilia Carbonaro (n47).

⁵⁰ Christides, Freudenhal, Lüdke and Popp (n9); Human Rights Watch (n8).

⁵¹ Luisa Izuzquiza, Vera Deleja-Hotko, Arne Semsrott, 'Revealed: The OLAF report on Frontex' (FragDenStaat, 13 October 2022) < <https://fragdenstaat.de/en/articles/exclusive/2022/10/frontex-olaf-report-leaked/> > accessed 25/8/2025; European Anti-Fraud Office (OLAF), *Final report: Investigation OC/2021/0451/A1* (03 May 2021) < <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/#%5B%7B%22num%22%3A368%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C70.85%2C628.689%2C0%5D> > accessed 25/8/2025, 122. For a general brief into the OLAF report see also: Nikolaj Nielsen, 'Frontex's 'serious incident reports' – revealed' (EUobserver, 8 March 2021) < <https://euobserver.com/migration/arf39e1f4b> > accessed 25/8/2025.

3 The current EU framework for Judicial Oversight

Having highlighted the complicated manner in which Frontex operates in Chapter 2, as well as the way it violates its FR obligations, the question of how to judicially review those obligations arises. In that regard, Chapter 3.1 assesses the Court's toolbox, and Chapter 3.2 – its systematic failings.

3.1 The Court of Justice's 'legal toolbox'

Article 97(1) of the regulation states that Frontex is liable for *any activities* it undertakes in accordance with the Regulation. Article 98 Frontex Regulation points to three judicial actions, which can be taken against Frontex, with the Agency having to take the necessary measures to comply with the judgements produced by the Court.⁵² Each action will be discussed in turn.

3.1.1 Action for Annulment.

The action for annulment is found in Article 263 TFEU. It provides the CJEU with the mandate to review the legality and annul the actions of EU agencies. Importantly, this action can be used only against acts that are intended to produce legal effects vis-a-vis third parties, based on a legitimate ground for review under the second paragraph of the Article.⁵³ When such an action is brought by a natural or legal person, it may only be brought if they are challenging an act addressed to them, or of direct and individual concern to them,⁵⁴ or regulatory acts⁵⁵ of direct concern that do not require implementing measures. Another requirement is the existence of interest for the applicant, with the burden of proof falling upon them.⁵⁶

Therein, litigants may attempt to have the Court annul a decision on a dangerous JO, by way of it infringing on the Treaties through FR violations the JO enables. Alternatively, litigants may seek the annulment of an ED decision to not terminate an activity through Article 46 Frontex Regulation, for a similar reason – the continuation of FR violations.

⁵² Frontex Regulation Art 98(2).

⁵³ In the case of Frontex and violations of fundamental rights, the third ground "infringement of the Treaties or any rule of law relating to their application" is relevant.

⁵⁴ This is referred to as the Plaumann test, which can be found in Case 25/62, *Plaumann v Commission* [1963] ECR 95 107. For further explanation see: Tom Boeckstein, 'Plaumann and the Rule of Law' (Verfassungsblog, 21 November 2021) < <https://verfassungsblog.de/plaumann-and-the-rule-of-law/> > accessed 25/8/2025.

⁵⁵ As regulatory acts include non-legislative acts, the adoption of Operational Plans and decisions under Article 46 of the Frontex Regulation fall under Article 263 TFEU's scope. Robert Schutze, *An Introduction To European Law* (Third Edition, OUP 2020), 203; Case C-583/11P, *Case C-583/11 P Inuit Tapiriit Kanatami and Others v European Parliament and Council* [2013] ECR I-0000, para 56.

⁵⁶ Case T-600/22 *ST v Frontex* [2023] ECLI:EU:T:2023:776 para 23.

When applied to Frontex, Article 263 TFEU enables the judicial review of only a limited amount of the Agency's actions. Firstly, as only the annulment of specific actions can be sought, Article 263 TFEU cannot be used against factual conduct on ground or at sea. Secondly, even if an Act of the Agency merits a challenge, the admissibility criteria are very likely to preclude a judicial review. No admissible actions are addressed to specific persons. Under the individual concern, the persons affected by Frontex OPs would not fulfil the requirement of belonging to a closed class of applicants.⁵⁷

The ***ST v Frontex***⁵⁸ case from 2023 further showcases how this action fails against Frontex, through the "interest" requirement. As mentioned, the interest requirement must be proven by the applicant, and requires proof that annulment produces an advantage on the applicant.

In the case, the applicant claims that a suspension or termination of Frontex's operations in the Aegean sea would reduce the risk of exposure "during his imminent and inevitable further crossing attempt" to FR violations committed by Greece and Frontex, and that this produces an interest in the annulment of the decision not to suspend operations under Article 46 of the Frontex Regulation.⁵⁹

The General Court dismantled this claim, by stating that the action for annulment will in any way suspend or terminate Frontex's operations, and will instead only annul the decision which rejects such suspension, from which point the ED would decide anew.⁶⁰ Therein, the advantage sought would not be produced by the outcome of the annulment proceedings, but from a re-examination of the Article 46 procedure.⁶¹

The Court continues that even if the decision is annulled, and Frontex favourably suspends the Aegean operations, that would still not facilitate the applicant's entry into Greece, as that is considered a sole competence of the Member State.⁶²

In conclusion, the GC found that the applicant had failed to present a genuine vested interest and advantage that can be produced from the annulment procedure, and declared it inadmissible.⁶³ This decision was confirmed by the CoJ in the 2024 appeal.⁶⁴

As of now, this is the only case which has attempted to utilize Art. 263 TFEU against Frontex, by arguing that annulling a decision to not suspend operations reduces

⁵⁷ Supra notes 52, 53.

⁵⁸ Case T-600/22 *ST v Frontex* [2023] ECLI:EU:T:2023:776.

⁵⁹ *ST v Frontex* para. 22.

⁶⁰ *ibid* para. 28.

⁶¹ *ibid* paras. 33-37.

⁶² *ibid* para. 30.

⁶³ *ibid* paras 38-39.

⁶⁴ Case-62/24 P *ST v Frontex* [2024] ECLI:EU:C:2024:882.

exposure to FR violations. However, currently the Court rejects this view, and coupled with the other limitations on admissibility, the action for annulment seemingly does not provide an effective vehicle for ensuring judicial oversight on Frontex’s FR violations.

3.1.2 Action for Failure to Act

Article 265 details that if an agency fails to act, in infringement of the Treaties, an action may be brought against them.⁶⁵ The conditions for the applicability of this action is that the agency in question has been first called upon to act, and has failed to define its position in the due time.⁶⁶ Importantly, alongside the conditions of the text of the action for failure to act, the Court has appended the criteria that an obligation to act has to exist, for there to be a failure to do so.⁶⁷

This action is relevant to litigation against Frontex on account of the previously explained mechanism of Article 46 Frontex Regulation. Where that does not happen, the litigants may attempt to force the Agency to act, by first calling upon them to do so, and if that does not happen – by launching an action for failure to act. However, even if successful, this action does not guarantee that the ED will order the termination of an operation, but is only obliged to decide whether it should be terminated.

In practice, this has been attempted in the ***SS and ST v Frontex***,⁶⁸ and ***ST v Frontex cases***, both showcasing the ineffectiveness of this action.

SS and ST v Frontex is a 2022 case, in which a Burundian and Congolese nationals, supported by two NGOs,⁶⁹ sought the suspension of operations in the Aegean by claiming that the ED had failed to act under Article 46 Frontex Regulation.⁷⁰ In 2021, the NGOs had sent a letter to the ED inviting him to terminate the operations, which he declined to do, stating that Frontex’s conduct was compliant with their FR responsibilities.⁷¹ In the proceedings, the applicants claimed that the ED’s response was not sufficiently clear to constitute a definition of position – subsequently, Frontex did not define their position, and an Article 265 TFEU action could be brought.⁷²

In its response, the Court rejects this interpretation of events, instead declaring that Frontex did “in clear terms” define their position by their response to the invitation.⁷³ The Court affirmed that the contents of the Agency’s response constitute a definition of their position (the response being that the conditions to trigger Article 46(4)

⁶⁵ TFEU Art 265 paras 1,3.

⁶⁶ Two months per TFEU Art 265 para 2.

⁶⁷ Case 247/87 *Star Fruit Co v Commission* [1989] ECR 291 para 12; *Schutze* (n55) pp 187.

⁶⁸ Case T-282/21 *SS and ST v Frontex* [2022] OJ C 266/26 ECLI:EU:T:2022:235.

⁶⁹ *Front-Lex and Legal Centre Lesvos per SS and ST v Frontex* para 2

⁷⁰ *SS and ST v Frontex* paras 4-11

⁷¹ *ibid* paras 2-3

⁷² *ibid* para 4

⁷³ *ibid* para 31.

of the Regulation are not met, that isolated incidents cannot fulfil the required level of seriousness of incidents, and that the incidents referred to in the NGO's invitation had already been examined).⁷⁴

The 2023 *ST v Frontex* case follows similar proceedings. In 2023, one of the NGOs sent another invitation to suspend activities in the Aegean, which the ED rejected, even referring to the previous invitation and SS and ST.⁷⁵ In the proceedings that ensued, the GC once more rejected the interpretation that Frontex had failed to define their position.⁷⁶ Additionally, the Court stated that the action was inadmissible, as the applicant could not prove that they were the same persons who sent the invitation to act,⁷⁷ and that the fact Front-Lex were the ones who sent it, and who brought the case on behalf of the applicant, was irrelevant⁷⁸ – and therefore the entire case did not satisfy that essential procedural requirement, before even going into the substance of the action.⁷⁹

As it stands, Article 263 TFEU is ill-equipped to serve as a judicial oversight tool on Frontex. Due to the way in which failure to act works, an action may feasibly be only brought in regards to Article 46 Frontex Regulation. And therein, 263 TFEU first requires that the ED be invited to act. The Court has validated the Agency's responses as a definition of position.⁸⁰ By giving a (reasoned) statement that Article 46 Frontex Regulation cannot be triggered, the Agency fulfils its Article 263 TFEU obligations, disarming any opportunity to substantively examine for Treaty (and subsequently FR) violations. Additionally, the manner in which the NGO and applicants introduced the invitation to act and case also resulted in inadmissibility. And even if an action succeeds, the merits are questionable - the Agency is fully capable of deciding not to suspend or terminate operations. Therefore, Article 265 TFEU appears to be an ineffective method of protecting FR against the actions of Frontex, further proven by the attempted litigation on the matter.

3.1.3 Action for Damages

The final of the three actions that can be brought before the Court is the action for damages. Under Article 340 TFEU, applicants can bring proceedings to challenge any

⁷⁴ *ibid* paras 26, 28.

⁷⁵ *ST v Frontex* paras 3-4.

⁷⁶ *ibid* para 19.

⁷⁷ *ibid* paras 15-18.

⁷⁸ *ibid* para 16.

⁷⁹ *ibid* para 20.

⁸⁰ *SS and ST v Frontex* para 31; *ST v Frontex* para 19.

action or inaction by the Union,⁸¹ that the applicant claims has caused them damage.⁸² Importantly, liability of the Union can only arise in respect of conduct of its institutions and servants in the performance of their duties.⁸³ Substantively, the criteria for the action for damages are defined in the case law of the Court: the conduct must be unlawful; actual damage must have been suffered; and there must be a causal link between the alleged conduct and the damage pleaded.⁸⁴ A very important limitation of Art. 340 is that it cannot be used to substitute an action for annulment – if the applicant’s procedure under Art. 340 is aimed at withdrawing an individual decision, it is declared inadmissible.⁸⁵

The execution of border management quite frequently occurs not through the adoption of legally binding acts, but through factual on-field conduct,⁸⁶ which puts them out of the scope of Article 263 and 265 TFEU. Thereby, the action for damages can serve as the judicial oversight mechanism for the whole of Frontex’s border management operations.⁸⁷

If successful, an action for damages serves both as individual redress and strategic litigation against the Agency. As explained by Melanie Fink, the action for damages enables individuals to demand justification from Frontex for their actions, highlighting the accountability aspect of the action.⁸⁸ Additionally, a successful case would result in the Court recognizing that there are deficiencies in the FR protection awarded by Frontex, whether in the particular case, or in relation to systematic violations. This recognition can aid in the push for increased transparency and accountability in border management situations, which would have a holistically beneficial effect for the protection of FR in the field of migration.

However, concerns emerge when considering Frontex’s role in integrated border management. As explained in Chapter 2.1, through composite procedures, the Agency acts alongside national authorities, conducting border procedures, or undertaking a supervisory or advisory role. These are all situations where the establishment of the factual circumstances is difficult and the sole attribution of responsibility and causality

⁸¹ The Court has clarified that in the interest of good administration of justice the defendant in such proceedings is the institution or agency against whose act the liability is alleged. The defendant in such proceedings is the institution or agency against whose act the liability is alleged. *Schutze* (n55) 205.

⁸² *Schutze* (n55) 205.

⁸³ TFEU Art 340. This has been interpreted as meaning the acts of servants which “by virtue of an internal and direct relationship, are the necessary extension of the tasks entrusted to the institutions.” See to this effect *Fink* (n5) 536-537.

⁸⁴ Case T-726/14 *Novar v EUIPO* [2017] EU: T:2017:99, para 25.

⁸⁵ *Schutze* (n55) 204-205.

⁸⁶ *Fink* (n5) 533.

⁸⁷ *ibid* 534-536.

⁸⁸ *ibid* 535.

can be challenging.⁸⁹ Additionally, the Court has adopted a strict and narrow application of the rules regarding admissibility,⁹⁰ which can have a particularly restrictive effect, considering that the applicants in cases of FR violations are asylum seekers – persons without considerable means for litigation.

To date, there are two cases, which have attempted to employ Article 340 TFEU: ***WS v Frontex***⁹¹ and ***Alaa Hamoudi v Frontex***,⁹² with the appeal of both cases underway. Both cases bear great significance and have shaped the current narrative on the discussion of Frontex's responsibility, and paint a concerning picture of an agency which seems to elude juridical supervision.

WS v Frontex concerns an action for damages lodged by a Syrian family. The applicants arrived on a Greek island in 2016, among a group of 114 refugees.⁹³ After their arrival, they were shifted to the Centre in Leros, where they lodged an asylum application, but 4 days later were flown to Turkey in a joint return operation by Frontex and Greece.⁹⁴ Following this return, the applicants lodged complaints with Frontex and with Greek authorities, with neither the Frontex nor Greek investigations yielding any positive results.⁹⁵ In their application to the Court, the applicants allege damages caused by Frontex, in non-observance of their FR obligations towards the applicants.⁹⁶

WS v Frontex gives the Court the opportunity to examine the Agency's FR obligations as part of the action for damages. Under the second condition of Article 340 TFEU (unlawful conduct of the Agency), the Court would have to clarify how Frontex must respect their FR obligations in joint return operations, considering the specific competence the Agency enjoys in the matter.

However, instead, the Court relied on its prerogative to examine the three conditions of non-contractual liability in whichever order it selects.⁹⁷ Thus, it began by looking at whether there is causality, between damage and Agency conduct, neither of which had been established.⁹⁸

From there, the Court focused on Frontex's role in return operations,⁹⁹ emphasising that its task is "only to provide technical and operational support to

⁸⁹ Eliantonio (n33) 356-359.

⁹⁰ Fink (n5) 537-538.

⁹¹ Case T-600/21 *WS and Others v Frontex* [2023] ECLI:EU:T:2023:492.

⁹² Case T-136/22 *Alaa Hamoudi v European Border and Coast Guard Agency (Frontex)* [2023] EU:T:2023:821.

⁹³ *WS and Others v Frontex* para 2.

⁹⁴ *ibid* paras 3-4.

⁹⁵ *ibid* paras 6-16.

⁹⁶ *ibid* paras 1,17-18.

⁹⁷ *ibid* paras 53, 55, 72.

⁹⁸ *ibid* para 55.

⁹⁹ Kindly refer to (2.1) for an explanation on the relevant aspects of Return Operations.

Member States” and paid specific attention to the fact that the Agency, both in the 2016 and 2019 Frontex Regulations, is not to enter the merits of return decisions, which remain a sole competence of the Member States.¹⁰⁰ Based on these statements, the Court rejects the existence of a direct causal link between the damage suffered by the applicants and the conduct of the Agency.¹⁰¹ After declaring the condition of causality as not fulfilled, the Court, based on the cumulative nature of the requirements of Article 340 TFEU, found that it is not necessary to examine the other two conditions, and dismissed the action.¹⁰²

Through focusing on the causality requirement first, and using it to declare the action unfounded, the Court avoided having to go into an in-depth examination of the conduct of the Agency, and exactly how they participated into a return operation on which there are serious allegations of FR violations. This case has been seen as a “missed opportunity,”¹⁰³ or perhaps an attempt by the Court to “shelter” the Agency and perpetuate a distinct lack of accountability and transparency.¹⁰⁴

In ***Alaa Hamoudi v Frontex***, another aspect of the issues with Article 340 TFEU is portrayed – the difficulty in gathering sufficient evidence to substantiate one’s claims, and the Court’s stringent requirements on the condition of proving damages.

Hamoudi is a Syrian national who claims to have arrived at the island of Samos with a group of other asylum seekers.¹⁰⁵ According to the applicant, after reaching Greece, they were intercepted, put on a boat, and sent back out to sea. After being reallocated to Turkey, to avoid expulsion, he had to live clandestinely and in threat of refoulement.¹⁰⁶ According to Hamoudi, while out at sea, Frontex surveillance aircraft flew over them twice during this 17-hour pushback operation.¹⁰⁷

¹⁰⁰ WS and Others v Frontex para 64.

¹⁰¹ *ibid* para 66.

¹⁰² *ibid* paras 71-72.

¹⁰³ Sarah Tas, ‘Op-Ed: “Frontex above the law – a missed opportunity for a landmark judgment on Frontex’s responsibility with regards fundamental rights violations: WS and Others v Frontex (T-600/21)”’ (EU Law Live 20 September 2023) <<https://eulawlive.com/op-ed-frontex-above-the-law-a-missed-opportunity-for-a-landmark-judgment-on-frontexs-responsibility-with-regards-fundamental-rights-violations-ws-and-others-v-frontex-t-600-21/>> accessed 15/8/2025; Melanie Fink and Jorrit J Rijpma, ‘Responsibility in Joint Returns after WS and Others v Frontex: Letting the Active By-Stander Off the Hook’ (EU Law Analysis, 22 September 2023) <<https://eulawanalysis.blogspot.com/2023/09/responsibility-in-joint-returns-after.html>> accessed 25/8/2025.

¹⁰⁴ Joyce De Coninck, ‘The Good, the Bad and the Ugly’ (Verfassungsblog, 25 November 2024) <<https://verfassungsblog.de/the-good-the-bad-and-the-ugly-3/>> accessed 25/8/2025.

¹⁰⁵ Hamoudi v Frontex para 2.

¹⁰⁶ *ibid* paras 2,4.

¹⁰⁷ front-Lex, ‘For the First Time, a “Pushback” Victim Sues Frontex for Half a Million Euro’ (front-Lex, March 2022) <<https://front-lex.eu/litigation/for-the-first-time-a-pushback-victim-sues-frontex-for-half-a-million-euro/>> accessed 25/8/2025.

In their examination of the case, the Court began by ascertaining if there is actual damage – one of the conditions of Article 340 TFEU.¹⁰⁸ The GC reasserted that the applicant must adduce evidence proving that they were inflicted actual and certain damage. As regards the evidence, the Court has defined certain requirements of reliability and credibility of what evidence may be presented.¹⁰⁹ In their submission, Hamoudi and Front-Lex presented the applicant’s own testimony alongside a joint investigation report by Bellingcat, Lighthouse Reports, Der Spiegel, and ARD.¹¹⁰

In response, the Court saw the applicant’s testimony and the investigative report to be of little value, also because it does not mention names.¹¹¹ After further stating the applicant’s facial features do not match the pictures of him presented as evidence, the Court declared that the applicant had failed to produce sufficient evidence to effectively prove that he was present at the alleged incident.¹¹² Following that, the Court finds that the first condition of the applicant having suffered damage to be unfulfilled, and subsequently declared the action inadmissible, without having to consider the other conditions of Article 340 TFEU.¹¹³ Thus, the Court once more avoided having to examine how Frontex potentially participated, or was a front-line witness¹¹⁴ to a pushback at sea.

Hamoudi, at its core, presents an evidentiary issue. Specifically, how is it possible to adduce sufficient evidence to substantiate a claim for damages in the course of a pushback. When it comes to border management, both Member States and the European Union operate with a certain level of “opaqueness” and lack of transparency in their operations.¹¹⁵ On the other side, the victims and those who wish to challenge Frontex or Member States, may find it overwhelmingly difficult to present sufficient evidence to substantiate a claim. Considering the position of Hamoudi – an asylum seeker, traveling by sea to Greece: does he truly have the means to take the dangerous trip, whilst also making sure to secure evidence in the eventuality of needing to present it before a court?

Combined, *WS* and *Hamoudi*, present a narrative where Court seems unwilling to engage FR questions raised under the action for damages, instead relying on the other requirements of the mechanism to declare cases inadmissible. This entire situation calls into question whether the action for damages is the correct mechanism for FR protection and accountability of Frontex, considering the stringent requirements, and

¹⁰⁸ Hamoudi v Frontex paras 19-24.

¹⁰⁹ *ibid* paras 31-35.

¹¹⁰ Front-Lex (n107).

¹¹¹ Hamoudi v Frontex para 43.

¹¹² *ibid* paras 44-57.

¹¹³ *ibid* paras 61-62.

¹¹⁴ *ibid* para 3.

¹¹⁵ *Tas* (n10), 4-5.

the ability for the Court to examine the conditions in an order favourable to them, and by extension, the Agency. However, aside from the issues particular to Article 340 TFEU, this raises a broader concern.

3.2 Systematic Issues in Reviewing Frontex's Actions

If the action for annulment and action for failure to act are both procedurally ill-suited and of little effectiveness, then what can be done when the action for damages also fails at offering protection against FR violations? In a situation where none of the available actions can purchase footing and award protection against Frontex's conduct and their participation in FR violations, this leaves victims in a setting where they are incapable of protecting themselves from these violations, and offers no option for strategic litigation for actors who try to hold the Agency accountable to its obligations. This goes against the whole of the European Union, as in the *Les Verts* case, the Court states that the Union is based on rule of law, and its institutions cannot avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter and the Treaty.¹¹⁶ Such required judicial oversight, is precluded by Frontex's operational setup and secrecy, and the way in which the CJEU interprets the available judicial actions.

3.2.1 How Composite Procedures frustrate attempts to establish responsibility

The actions of Frontex, in the modern context, and under the current regulatory framework, take the form of composite procedures, where both Member State and Agency actors are involved. Therein, the establishment of operations and their execution involves a myriad of actors from both national authorities and Frontex. This creates a situation where it is difficult to establish who drafted the complete plan, who bears factual control over its execution.¹¹⁷ Consequently, significant uncertainty arises as to who can be held accountable for FR violations which occur.¹¹⁸ The separation of jurisdictions between national and European Courts and the necessity to establish who can be held responsible heavily complicate the establishment of an effective judicial review against Frontex.¹¹⁹

Aside from the complicated operation of composite procedures, this situation is further frustrated by the provisions of the Regulation, which themselves also seek to shift the blame for the fallout of operations. For example, Chapter 2 defined return

¹¹⁶ Case 294/83 *Parti écologiste "Les Verts" v European Parliament* [1986] ECLI:EU:C:1986:166 para 23; Eliantonio (n32), 22.

¹¹⁷ Eliantonio (n33) 356-359. (2.1) Offers the necessary explanation of composite procedures for this section.

¹¹⁸ Strik (n16) 224-225.

¹¹⁹ *Supra* notes 115, 116.

operations, where Frontex is tasked with organizing and coordinating return operations. However, at the same time, Frontex cannot not enter into the merits of return decisions, which remains a sole responsibility of Member States. Such language of “support and assistance” is not exclusive to return operations.¹²⁰ This creates a situation where the Regulation prescribes factual conduct onto the Agency, while responsibility still ultimately falls in the hands of Member State Authorities, as the agency merely “provides MS with technical and operational assistance.” This narrative of Frontex only having a support function does not align with the extensive operational powers and discretion the Agency has. It only serves to shift the burden of accountability off Frontex and out of the hands of the CJEU, especially given their interpretation of the Agency’s role, as in the *WS* judgement, where this “support” narrative undermines the possibility of a judicial review of Frontex.¹²¹

The issues with the legislation do not end with the distribution of responsibility between the EU and MS in composite procedures, but extend to the internal structure and exercise of powers. Article 46 on the suspension and termination of the Agency’s activities bequeaths to the ED nearly uncontested discretion as to whether to proceed with such a suspension. The Regulation only mandates that the ED should consult with the FRO, and suspension is contingent on whether the ED “considers” there to be FR violations.¹²² This language decouples findings of FR violations and the FRO’s role of safeguarding FR from the obligation to suspend activities, providing discretion where an autonomous suspension would be more suitable for safeguarding FR – a core commitment of the Agency.¹²³ Furthermore, this discretion also disarms the actions for annulment and failure to act, and the Court has said that neither action obliges the Agency to suspend operations, but merely to examine the necessity of such a suspension.¹²⁴

3.2.2 How the insufficient Transparency of the Agency precludes effective fact-finding

Another issue which compounds onto the shortfalls caused by composite procedures and Article 46 is the shroud of secrecy which surrounds and obfuscates the

¹²⁰ Frontex Regulation Arts 10(1g, 1h, 1i, 1m, 1v, 1ag).

¹²¹ Gareth Davies, ‘The General Court finds Frontex not liable for helping with illegal pushbacks: it was just following orders.’ (European Law Blog 11 September 2023) <<https://www.europeanlawblog.eu/pub/the-general-court-finds-frontex-not-liable-for-helping-with-illegal-pushbacks-it-was-just-following-orders/release/1#:~:text=The%20General%20Court%20finds%20Frontex%20not%20liable%20for,logical%20basis%2C%20a%20confusion%20of%20competences%20with%20causes>> accessed 27/8/2025.

¹²² Frontex Regulation Art 46.

¹²³ Frontex Regulation recitals 1,24, 103, Arts 1, 5(4), 10(1e, 1ad), 80; Fink and Rijpma (n4) 425-426.

¹²⁴ supra (n 60).

Agency's operations. Even the OLAF report on the Agency, which to date offers one of the most transparent views the problems of Frontex, was never meant to be released to the public.¹²⁵ Additionally, the rules on the JOs themselves are found in the Regulation, in the OPs, the Handbooks of the Plans and their Annexes, where all of these are necessary to piece together the entire framework from which responsibility can be ascertained.¹²⁶ As Melanie Fink has described: "the roles, powers, and authority of all actors involved are obscure and have to be laboriously pieced together from a broad range of documents. We often do not really know who played what role in determining a particular outcome that led to a FR violation, and who was in a position to prevent it."¹²⁷ Through this deficiency in transparency, litigants are placed in a position where they lack the necessary information to effectively challenge Frontex's actions.¹²⁸

3.2.3 The issues of establishing the factual circumstances and the burden of proof

Aside from issues inherent to the law itself, the CoJ also plays a role in the current deteriorated situation of unaccountability for the Agency. As discovered through *WS v Frontex* and *Hamoudi v Frontex*, the Court adages the burden of proof within the relevant judicial mechanisms as a barrier, through which an examination of the Agency's potential breaches of FR violations is precluded.

Within Article 340 TFEU the burden of proof falls upon the applicant who alleges victimhood, to prove that such exists. When this system is applied to Frontex, and allegations that they infringe FR in the course of their operations, a particular problem emerges. Here, one must consider what this entails in practice for the applicants in such proceedings, who are all asylum seekers, searching for access to the protection offered by the European Union and its Member States. These are people who have often spent multiple months travelling covertly through territory in the hopes of reaching a safe haven,¹²⁹ and are most certainly not in a position to consider the possibility that they have to collect sufficient evidence in the course of their migration, to prepare themselves for potential refoulement or other FR violations by authorities, resulting in the availability of only weak evidence, which they must utilize to prove their presence at

¹²⁵ Izuzquiza, Deleja-Hotko, Semsrott (n 51).

¹²⁶ Melanie Fink, 'Frontex: Human Rights Responsibility and Access to Justice' (EU Immigration and Asylum Law and Policy, 30 April 2020) < <https://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/> > accessed 15 July 2025.

¹²⁷ Fink (n 13).

¹²⁸ Antje Kunst, 'Hamoudi v Frontex, an EU Courts pushback case: Shifting the burden of proof and a duty to assist the Court (a duty of candour?)' (EU Law Analysis, 28 February 2025) < <https://eulawanalysis.blogspot.com/2025/02/hamoudi-v-frontex-eu-courts-pushback.html> > accessed 25/8/2025.

¹²⁹ Rossalyn Warren, 'Here Is The Long Route Many Refugees Take To Travel From Syria To Germany' (Buzzfeed 14 September 2015) < <https://www.buzzfeed.com/rossalynwarren/here-is-the-long-route-many-refugees-take-to-travel-from-syr> > accessed 20/7/2025.

the alleged violation, and proof to showcase that the violation was done by Frontex. This troublesome application of the burden of proof inherently places them in a weak position during proceedings, that the Court of Justice has used to dismiss actions as unfounded, without having to address whether Frontex's actions constitute FR violations.¹³⁰

This is particularly troublesome considering the already lacking transparency obligations of Frontex, as it may be the case that the Agency is the one who possess the necessary evidentiary information to prove their participation or sole conduction of FR violations and the presence of the applicant at said events.¹³¹ An example of this can be extracted from the *Sea-Watch v Frontex*¹³² case, where the Agency refused access to 73 documents, which could be capable of revealing the agency's presence during a pull-back conducted by the Libyan Coast Guard,¹³³ evidence which could be instrumental in holding both the third State and the Agency accountable for their actions.¹³⁴ In their judgement on the case, the Court largely upheld Frontex's refusal to disclose said information, propagating the Agency's capacity to withhold information, and continuing the trend of "evidentiary imbalance" between applicant and defendant in proceedings against Frontex.¹³⁵

In consideration of these facts, one may conclude that within proceedings against Frontex, the burden of proof and the strict evidentiary requirements in proceedings serve to undermine the possibility to hold the Agency accountable for their actions.

¹³⁰ See to this end the General Court's decision in *Hamoudi v Frontex*.

¹³¹ Case C-136/24 P *Alaa Hamoudi v European Border and Coast Guard Agency (Frontex)* [2025] ECLI:EU:C:2025:257, Opinion of AG Norkus, para 51.

¹³² Case T-205/22 *Naass and Sea-Watch v Frontex* [2024] ECLI:EU:T:2024:266.

¹³³ De Coninck (n 104).

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

4 Moving Forwards: How to ensure Judicial Oversight

With Chapter 3.2 having established the systematic issues which Judicial Oversight faces, Chapter 4 seeks solutions to these issues along three lines: legislative reform, judicial action, and solutions outside the EU.

4.1 What are the possible changes to the Frontex Legislation which resolve the issues

Having established the issues with transparency and responsibility, this section examines potential legislative amendments to the Frontex Regulation which would address them.

The issues arising out of the “support” and “assistance” narratives within the Frontex Regulation require legislative amendments to better reflect the actual role the Agency plays within operations and to ensure that no responsibility shift can occur, especially when the legislation is interpreted and operationalized before the Court. For example, the articles on Returns could be amended to remove the support narrative, while still including that the agency must not enter into the merits of decisions and still concretely defining the Agency’s tasks and competences. The existing mentions of “assistance” and “support” need not be removed from the Regulation, but they should not be used to describe the general role the Agency plays, and must not be used by the Court to automatically deny that the Agency’s actions can be the cause of damages under Article 340 as in *WS*.

In regards to the obscure designation of roles between national and Frontex actors, and the lacking dispersal of information, an enhancement of the Agency’s transparency obligations can alleviate the issue. The European Ombudsman has given suggestions for certain reforms.¹³⁶

The Ombudsman has suggested that the Agency should publish “rules on how the ED takes decisions to suspend, terminate or withdraw the financing of Frontex activities for which there are FR concerns.”¹³⁷ Furthermore, they call for the publishing of the ED’s replies to FRO negative opinions on planned activities under Articles 46 and 109.¹³⁸ These amendments serve a common theme – take discretionary power out of

¹³⁶ European Ombudsman, Decision in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities (Case OI/4/2021/MHZ) (04 March 2021) < <https://www.ombudsman.europa.eu/en/decision/en/151369> > accessed 25/8/2025; European Ombudsman, Decision on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations with regard to search and rescue in the context of its maritime surveillance activities, in particular the Adriana shipwreck (Case OI/3/2023/MHZ) (26 February 2024) < <https://www.ombudsman.europa.eu/en/decision/en/182665> > accessed 25/8/2025.

¹³⁷ Case OI/4/2021/MHZ Conclusion Suggestion II.

¹³⁸ Ibid.

the hands of the ED by obliging them to follow a clearer and more transparent procedure, and bring the actions of Frontex into the light and scrutiny of the public. By disclosing how decisions on operations are taken and what considerations are observed, the Court and related third parties are then better equipped to assess the breadth and depth of Frontex's conduct, and what FR violations might have occurred. If such a reform is adopted, the actions for annulment and damages would be greatly and positively impacted, as persons will have the necessary clarity to showcase the illegality of ED-adopted decisions, where those decisions promulgate FR violations occurring during operations.

Regarding the operations themselves, the Ombudsman has suggested that operational plans must include provisions on the distribution of roles, obligations and responsibilities in operations and incidents between participating actors.¹³⁹ While the issue of transparency and the suggestion arose in the context of maritime SARs,¹⁴⁰ this kind of informational standard would be fully applicable to all Frontex's JO plans, and ought to be included the drafting of all the Agency's on-field activities.

However, the public availability of this information is of vital importance just as much as its existence is – for judicial reviewability to occur, related parties and aggrieved victims need to be able to utilize these declarations of responsibility before Courts. In this regard, Melanie Fink has suggested the drawing up of documents that “[set] out in a comprehensive and unambiguous manner who does what during a JO, including chains of command and possibilities to intervene and influence decision-making,” with such a method already receiving practice within EU CSDP operations, in a manner that avoids the release of sensitive information while providing the necessary information to the concerned third parties.¹⁴¹

Therein, this solution can be enshrined within the Frontex Regulation, as an explicit obligation for the agency to publish information on the delineation of responsibility between participating actors. The Agency is not obliged to explicitly mention said actors and locations, but can refer in broader terms to “host states,” “participating member states,” “area of operations,” and “the Agency” itself, thus enhancing oversight without jeopardizing the legitimate pursuit of operational secrecy, security, and efficiency.¹⁴²

¹³⁹ Case OI/3/2023/MHZ para 68, Conclusion Suggestion D.I.

¹⁴⁰ *ibid* paras 1-16.

¹⁴¹ Fink (n 126).

¹⁴² *Ibid*.

4.2 What actions can the Court undertake to ensure Oversight

The current issues with judicial oversight over Frontex stem from the applicable legislation and jurisprudence. In this environment, the Court is able to play a large role, by interpreting the applicable rules in a manner favourable towards the establishment of judicial review. Specifically, the two cases of *Hamoudi v Frontex* and *WS v Frontex* are both under appeal, with the AG opinions in both providing great opportunity for the Court to restore judicial oversight.

In the *Hamoudi* appeal AG Norkus's opinion proposes a solution to the excessive difficulty posed by the strict evidentiary requirements posited on applicants.¹⁴³ Within his opinion, the AG confirms the previously described issue – the current system creates a nearly insurmountable burden of proof for the applicants, where they may even be asked to present evidence which is in the hands of the Agency.¹⁴⁴ According to the AG, a failure to adjust the burden of proof may hinder all judicial proceedings by victims of pushbacks, systematically jeopardising FR protection.

Within this context, Norkus suggest a reversal of the burden of proof. Furthermore, he provides a test through which the burden of proof can be reversed under the action for damages.

The first condition is that the applicant must present *prima facie* evidence to support their case. Through this evidence, the claimant must be able to show their presence at a particular collective expulsion. In this matter, their account must be consistent, coherent, and must meet some level of credibility.¹⁴⁵

The second condition revolves around the alleged imbalance of information. The claimant must be faced with clear structural imbalance of evidence where the claimant experiences considerable difficulty in producing it, while the defendant enjoys a "privileged position" in rebutting accusations.¹⁴⁶ The purpose of this is to balance the evidentiary requirements, and not place an undue burden on the respondent.

The third condition is whether a failure to shift the burden of proof once an applicant has adduced *prima facie* proof results in undermining the applicant's rights, particularly the right to an effective remedy and to a fair trial, whilst also the shift not undermining the respondent's rights.

¹⁴³ Antje Kunst, 'Hamoudi v Frontex: Advocate General Norkus' Opinion - Reversing the Burden of Proof and the Presumption of Frontex's Privileged Access to Evidence' (EU Law Analysis, 19 April 2025) < <https://eulawanalysis.blogspot.com/2025/04/hamoudi-v-frontex-advocate-general.html> > accessed 25/8/2025.

¹⁴⁴ Case C-136/24 P *Alaa Hamoudi v European Border and Coast Guard Agency (Frontex)* [2025] ECLI:EU:C:2025:257, Opinion of AG Norkus, para 51.

¹⁴⁵ *ibid* paras 57-58.

¹⁴⁶ *ibid* para 59.

Upon the fulfilment of these conditions (*prima facie* evidence, privileged position of defendant, effects of failing to shift the burden,) the burden of proof should shift to the respondent, who must adduce evidence that they did not commit the alleged offence.¹⁴⁷

However, the AG also argues, that Frontex cannot be presumed to be a privileged respondent, due to having more limited powers compared to States, making their evidentiary privilege less clear.¹⁴⁸ Subsequently, an examination by the Court is required to determine if Frontex fulfils said criteria, and a reversal of the burden of proof should occur. Even if this test is adopted, allowing the Court to consider the nature of Frontex's privilege opens the possibility to declare the Agency a non-privileged respondent, which leads to maintaining the current insurmountable burden of proof, and maintaining a dangerous precedent for further proceedings, propagating the ails of the judicial system.

As argued by Antje Kunst, this privilege must be assessed in relation to Hamoudi and Frontex, and that this is not an issue of powers between the Agency and Greece.¹⁴⁹ This is a situation where the Agency does not face an unreasonable burden of proof, but is instead solely capable of confirming or denying the *prima facie* evidence provided by the applicant.¹⁵⁰ Kunst also states that Frontex must be considered a privileged applicant in cases concerning "its own responsibility to comply with its own FR obligations."¹⁵¹

This reversal test, if accepted by the CoJ, would be then utilized by the GC in the *Hamoudi v Frontex* case, and could form a precedent in other similar judgements. This reversal of the burden of proof effectively resolves the two outstanding, systematic issues– the excessively high burden of proof is mitigated, and the issue with Frontex's lacking transparency is averted, by obliging the Agency to present the necessary evidence themselves.

The *WS* appeal also provides an opportunity to ensure judicial oversight on FR obligations.¹⁵² In her Opinion, AG Capeta recommends that the GC's dismissal, which is based on a lack of causal link, be set aside.¹⁵³ The AG pointedly states that in return

¹⁴⁷ *ibid* para 61.

¹⁴⁸ Kunst (n 143).

¹⁴⁹ *Ibid*.

¹⁵⁰ *Ibid*.

¹⁵¹ *Ibid*.

¹⁵² Antje Kunst, 'WS and Others v Frontex before the Grand Chamber: Ensuring Meaningful Protection of Fundamental Rights in Forced Returns by an EU Agency acting as a Safety-Net' (EU Law Analysis, 26 February 2025) < <https://eulawanalysis.blogspot.com/2025/02/ws-and-others-v-frontex-before-grand.html> > accessed 25/8/2025.

¹⁵³ Leiden University, 'AG Capeta Opinion in WS and Others v Frontex: Academic research on Frontex' liability reaches the CJEU's Grand Chamber' (Leiden University, 16 June 2025) < <https://www.universiteitleiden.nl/en/news/2025/06/ag-capeta-opinion-in-ws-and-others-v-frontex-academic-research-on-frontex-liability-reaches-the-cjeus-grand-chamber> > accessed 25/8/2025.

operations Frontex has clearly defined and independent obligations.¹⁵⁴ Even if the agency cannot enter into the merits of return decisions, which is a sole competence of MS, Frontex must verify that a valid return decision exists for everyone subject to a return procedure.¹⁵⁵ Furthermore, she accentuates the point that the Agency must uphold FR when performing its tasks.¹⁵⁶ This effectively proves the existence of a possible causal link, and provides a clear FR obligation that may be assessed by the Court.

Furthermore, Capeta dismantles the notion that Frontex's subsidiary role to MS precludes liability, through the application of joint and several liability.¹⁵⁷ Clarifying that joint and several liability does not need to be expressly provided in law, the AG declares that where Frontex and MS share obligations in JOs, the Agency can be held liable for damages caused by a breach of obligations.¹⁵⁸ Thus, both the responsibility of MS and of Frontex is ensured, even where MS are stated to have primary responsibility.

Capeta also assesses GC's viewpoint on the causal link being further broken by own decisions, stating that the WS family decisions cannot be regarded as a "free choice," and that a breach of FR and non-refoulement cannot be attributed to them, instead of the authorities.¹⁵⁹

As it stands, the *Hamoudi* and *WS* appeals, and the respective AG opinions provide the CoJ with significant opportunities to undo the GC's erroneous practice. Aside from reopening the proceedings for Alaa Hamoudi and WS's family these cases offer the Court the opportunity to reevaluate how the action for damages operates, and how can responsibility in composite procedures be attributed to Frontex, thus playing a part in resolving the outstanding issues with the Agency's lacking judicial oversight.

4.3 Looking Beyond the EU – The alternative for Judicial Oversight found in the ECtHR.

The following section looks to the ECHR as means to establish judicial oversight over Frontex outside of the CJEU.

¹⁵⁴ Antje Kunst, 'Advocate General Ćapeta's Opinion in *WS and Others v Frontex* before the Grand Chamber: The End of Frontex's Shielding? Joint Liability of Frontex and Member States in Return Operations' (EU Law Analysis, 17 June 2025) < <https://eulawanalysis.blogspot.com/2025/06/the-advocate-general-capetas-opinion-in.html> > accessed 25/8/2025.

¹⁵⁵ Case C-679/23 P *WS and Others v European Border and Coast Guard Agency (Frontex)* [2025] ECLI:EU:C:2025:427 Opinion of AG Ćapeta, paras 77-83.

¹⁵⁶ *ibid* 71-72.

¹⁵⁷ *ibid* 84-97.

¹⁵⁸ Kunst (n 154).

¹⁵⁹ *Ibid*.

4.3.1 Trouble with the whole EU system

As has been examined in Chapter 3, the European Union's System for holding Frontex accountable for their actions and their alleged causation of FR violations, is insufficient and lacking in multiple areas. The challenges posed by the separation of responsibility between MS and EU actors, the high evidentiary requirements, the veiled operations of the Agency, and the lacking CJEU framework which does not include a pointed procedure for FR scrutiny, result in a system that is ill-equipped to deal with the reality in which the Agency operates.

4.3.2 Solutions outside the EU system

Where Chapter 4.1 and 4.2 examined ways to improve the EU system, 4.3 will look for solutions beyond it. In this regard, if one were to look beyond the EU legal system, the most relevant alternative to discuss is the ECtHR and the role it may play. The ECHR itself contains multiple rights which may be impacted by Frontex, and which form effective bases for scrutiny of the Agency's actions.¹⁶⁰

The ECHR system, unlike the CJEU, is from the ground up geared for the protection of FR and its system of review is specifically geared towards it. Where the EU judicial framework required the jerry-rigging of actions for annulment, failure to act, and damages, in an attempt to seek the enforcement of Frontex's FR obligations and to seek oversight on their actions, the ECtHR offers a significantly more pointed procedure – it assesses whether a Party has violated a person's or a group of persons' FR.

There is but one caveat: this alternative is not available, yet. Article 6 TEU poses an obligation on the EU to accede to the ECHR, and to subsequently be bound by it and to have an obligation to uphold the ECtHR's cases. However, currently, the EU is not a party to the Convention, following a failed draft agreement and the now infamous CJEU Opinion 2/13, which found the functioning of the EU judicial system as incompatible with an Accession to the Convention.¹⁶¹ However, in 2023, the 46+1 working group, made to reconcile Opinion 2/13 and other outstanding issues, drafted the New Draft Accession Agreement,¹⁶² with a view of continuing the accession process. In the present day, the New Draft Accession Agreement, and the developments within the EU's own framework, have once again opened the possibility of and discourse on accession.¹⁶³ Based on this,

¹⁶⁰ European Convention on Human Rights (1953) Arts 3, 13, Protocol 4 Art 4.

¹⁶¹ Opinion 2/13 Opinion pursuant to Article 218(11) TFEU — Draft international agreement — Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Compatibility of the draft agreement with the EU and FEU Treaties. [2014] ECLI:EU:C:2014:2454 para 258 and the opinion of the Full Court.

¹⁶² Steering Committee for Human Rights, 'CDDH Ad Hoc Negotiation Group ("46+1") on The Accession of The European Union to The European Convention on Human Rights' 46+1(2023)35FINAL. *Hereby the NDAA*.

¹⁶³ At present, the NDAA does not offer a complete solution to Opinion 2/13 and the issues with accession, but it represents necessary convergence and a solution of some of the outstanding

and the inevitability of EU accession, the ECtHR's mechanism has once again become a tangible and real opportunity to broaden the judicial toolbox applicable to Frontex, offering unique means to disentangle the "Gordian Knot" of the Agency's accountability.

4.3.3 Article 3 ECHR as a standard of assessment of FR obligations

Article 3 ECHR has been especially salient before the ECtHR and has been previously brought up in the context of border management. In that regard, in the *Hirsi Jamaa* case the ECtHR has established that the Italian Authority's usage of a naval vessel in the interception and return of asylum seekers to Libya, all happening in the Mediterranean Sea, fell within the jurisdiction of the ECtHR, where an Article 3 violation was found on account of possible further returns.¹⁶⁴ This extension of the Convention to external border management, interception of migrants and what essentially constitutes pushbacks, has been applied to land borders as well.¹⁶⁵ This line of jurisprudence is particularly relevant to Frontex's operations, and can serve as a standard through which to assess what the FR obligations of the Agency entail substantively.

4.3.4 The ECHR solution to responsibility attribution

One of the biggest issues before the CJEU is attributability of actions between Frontex and the EU against Member States and their authorities. As per 2.1, in composite procedures, the different levels are accountable to different courts, which creates a system where it is difficult to pointedly prosecute either EU or MS actors. Ideally, this would be resolved by having a system of joint and separate liability before one court, which would avoid the massive pitfall of attempting to understand which authority was responsible for what actions during a JO, prior to beginning judicial actions against Frontex before the CJEU and against MS authorities before national courts.

This is resolved through the Convention system, which provides the Strasbourg Court, before which Parties can be held jointly liable. In regards to the EU, this is further explained in the New Draft Accession Agreement.

The NDAA recognizes that under EU law, the acts, measures and omissions of the EU institutions, bodies, offices or agencies, and persons acting on their behalf, are attributed to the EU.¹⁶⁶ This is not contingent on or affected by the context in which

problems. See: Eleonora Di Franco and Mateus Correia de Carvalho, 'Mutual Trust and EU Accession to the ECHR: Are We Over the Opinion 2/13 Hurdle?' (2023) Vol 8, No 3, European Papers 1221, 1226-1233 on the convergence in mutual trust, and the outstanding differences.

¹⁶⁴ *Hirsi Jamaa and Others v Italy* Application no. 27765/09 (23 February 2012 ECtHR), paras 83-158; European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to asylum, borders and immigration (Edition 2020, Publications Office of the European Union 2020).

¹⁶⁵ *M.A. and Others v Lithuania* Application no. 59793/17 (11 December 2018 ECtHR), paras 102-115.

¹⁶⁶ NDAA, Appendix 5 para 27.

these acts occur.¹⁶⁷ In that regard, Article 1(4) of the NDAA is to be applied conversely, where not only are MS responsible for acts they undertake while executing EU law, but the EU must be held accountable for the acts of its agencies, and in relevantly to this thesis – the acts of Frontex.¹⁶⁸ Thereby, the Agreement provides a method of attributing responsibility between actors.

Furthermore, the attribution of acts to different parties *does not preclude* the EU from being a co-respondent in proceedings brought against an MS,¹⁶⁹ and importantly, under Article 3(8) of the NDAA, the EU *can be held jointly responsible for violations that occur.*¹⁷⁰ This is quite valuable, as it does away completely with the issues arising out of the separation of courts under composite procedures, and presents a unified nexus where actions can be brought against Frontex and MS authorities acting together during JOs, and the EU and national level can be held jointly accountable, greatly reducing the burden of the separation of actors prior to judicial review of their actions.¹⁷¹

Within the ECtHR, and as argued by Melanie Fink, two kinds of responsibility can be established.¹⁷² Primary responsibility puts the accountability onto whoever actor the HR-violating conduct can be attributed to.¹⁷³ However, aside from pinning all liability on one actor, multiple Parties can be held accountable, through the ECHR's associated responsibility and the obligation to protect, which posits that when a party knows or ought to know that ill-treatment exists, they have to take steps to prevent it¹⁷⁴ (in the case of Frontex - not executing a return decision where it would result in Article 3 violations.) This understanding presents a system where both the established conduct and the non-prevention of violations can be persecuted, which is greatly beneficial in understanding the FR obligations of Frontex in situations where the Agency supports MS, such as through surveillance or the execution of return decisions.

4.3.5 The ECHR solution to evidentiary requirements

When it comes to evidentiary requirements, as explained above,¹⁷⁵ the CJEU system places an unfair burden on the applicants, through which they are put in a position where much of the evidence they are obliged to produce not being within their

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ *ibid* Appendix 5 paras 27,29.

¹⁷⁰ *ibid* Appendix 1 Art 3(8), Appendix 5 paras 29, 71.

¹⁷¹ *ibid*. For the separation of actors prior to judicial review, refer to (2.1) and (3.2.1) on composite procedures.

¹⁷² Melanie Fink, *Frontex and human rights: responsibility in 'multi-actor situations' under the ECHR and EU public liability law*. (The Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University 2017) 22-24.

¹⁷³ *ibid* 133-167.

¹⁷⁴ *ibid* 188-200.

¹⁷⁵ Kindly refer to (3.2.3) for an explanation of the issues with the CJEU's burden of proof, particularly in TFEU Article 340 proceedings.

hands, but instead being within the hands of Frontex, or more generally the requested “evidence” not existing in a manner the applicants could possibly adduce it. In that regard, the ECHR system is not without blemishes, and there have been arguments that there is systematic erasure of evidence before the ECtHR, and that it too has its evidentiary quirks which result in the refusal of otherwise viable cases.¹⁷⁶ However, recent cases show a turn in this regard, with the ECtHR establishing important judgements, that create a system through which the burden of proof is lifted off the applicant,¹⁷⁷ and is placed upon the defendant, and in spite of lacking official government evidence of a pushbacks, utilizing applicant-adduced and non-official evidence to establish proof of pushbacks and to find a FR violation.¹⁷⁸

In addition to these cases, the ECtHR has on many occasions examined how both EU and non-EU States conduct returns, detentions, removals to safe third countries, and other matters of border management, creating a robust body of case law, creating ties between the FR protected by the Convention and the external border management of Convention Parties, thereby creating obligations to respect asylum seekers’ rights.¹⁷⁹

In *A.R.E. v Greece*,¹⁸⁰ the ECtHR established the reversal of burden of proof, which was proposed by the AG in *Hamoudi v Frontex*.¹⁸¹ Recognizing the existence of systematic pushbacks on the Greek-Turkish border, and that the applicant had produced sufficient evidence to *prima facie* support their claim of being a victim, the ECtHR placed the burden of proof on Greece – it was up to them to disprove that the applicant was a victim, which they failed to do.¹⁸² Importantly, in this case the applicant had not proven that they were individually a victim of the pushbacks – but the ECtHR accepted that this is impossible to prove, as they had their phone taken away from them, and had no other methods of producing evidence.¹⁸³ Furthermore, the AG in the CJEU *Hamoudi* case also points out that the ECtHR had taken into account testimonies gathered by FR

¹⁷⁶ Maybritt Jill Alpes and Grazyna Baranowska, ‘The Politics of Legal Facts: The Erasure of Pushbacks Evidence from the European Court of Human Rights’ (2025) 50 Law & Social Inquiry 225, 237-243.

¹⁷⁷ Isabel Kienzle and Melina Riemer, ‘Feeble Recognition of a Systematic Pushback Practice’ (Verfassungsblog 30 January 2025) < <https://verfassungsblog.de/pushbacks-echr-greece-turkiye/> > accessed 25/8/2025.

¹⁷⁸ Jill Alpes and Grażyna Baranowska, ‘Official recognition of unofficial practices in M.A. and Z.R. v Cyprus: Examining the politics of legal facts for pushback cases at the ECtHR’ (RLI 20 November 2024) < <https://rli.blogs.sas.ac.uk/2024/11/20/official-recognition-of-unofficial-practices-in-m-a-and-z-r-v-cyprus-examining-the-politics-of-legal-facts-for-pushback-cases-at-the-ecthr/#:~:text=On%20the%20European%20Court%20of,a%20border%20without%20states%20assessing%20their%20protection%20needs.> > accessed 25/8/2025.

¹⁷⁹ Bernadette Rainey, Pamela McCormick, Claire Ovey, *The European Convention on Human Rights* (Eighth Edition, Oxford University Press 2021) 192-195; Tas (n10), 9-11.

¹⁸⁰ *A.R.E. v Greece* Application no. 15783/21 (7 January 2025 ECtHR).

¹⁸¹ *Hamoudi v Frontex Appeal*, Opinion of AG Norkus, paras 40-50, 52.

¹⁸² *A.R.E. v Greece*, para 241.

¹⁸³ *ibid* paras 139, 152-154, 168, 253, 266.

institutions, and that is possible to provide *prima facie* evidence without having to prove the existence of systematic pushbacks.¹⁸⁴ Ultimately, according to the ECtHR, the applicant must link their particular alleged violation of FR to the practice by providing a detailed, specific, and consistent account of the refoulement supported by detailed and consistent evidence.¹⁸⁵

What this showcases is the capacity of the ECtHR to offer a great deal of flexibility regarding the establishment of the factual background, in the favour of the applicant – yes, they are still required to produce solid evidence, but there is acceptance of evidence gathered by NGOs and FR institutions, and after the establishment of sufficient *prima facie* evidence, the burden is transferred upon the state to disprove it.

Another valuable case is *M.A. and Z.R. v Cyprus*,¹⁸⁶ due to its favourable handling of evidence. The ECtHR dedicated a significant portion of the judgement – 12 out of 45 pages – to NGO and IO-produced evidence, and even based their decision on this evidence, which is a shift from the previous setting aside of such evidence in favour of state-crafted versions of events.¹⁸⁷ Furthermore the ECtHR also dedicates a part of their reasoning to addressing state misconduct and the misfiling of evidence by the State – brooking no quarter where a State does not provide requested records without a plausible explanation.¹⁸⁸ The Court goes even further than this, in debunking the information provided by Cyprus, instead of taking it as direct and truthful evidence.¹⁸⁹ On the whole, even if this case only managed to appear before the Courts due to an exceptional slip-up by Cyprus in providing official confirmation of an unofficial practice,¹⁹⁰ it showcases that the ECtHR in its more recent judgements is willing to offer a degree of flexibility to applicants in order to establish the existence of violations of HR, in spite of the covert conduct of states.

These two judgements by the Strasbourg Court would be invaluable when applied against Frontex. The reversal of proof after the establishment of *prima facie* evidence, the recognition of systemic pushbacks, the recognition of IO and NGO evidence, and the obligations on defendants to disclose relevant information held by them all serve to undo the issues of deficient transparency and evidentiary hurdles, which applicants face, when trying to challenge Frontex's actions.

¹⁸⁴ *Hamoudi v Frontex Appeal*, Opinion of AG Norkus, para 48.

¹⁸⁵ *ibid* para 50.

¹⁸⁶ *M.A. and Z.R. v Cyprus* Application no. 39090/20 (8 October 2024 ECtHR).

¹⁸⁷ *ibid* paras 40-61; Alpes and Baranowska (n176).

¹⁸⁸ *M.A. and Z.R. v Cyprus* paras 87, 116.

¹⁸⁹ Baranowska and Jill Alpes (n 176).

¹⁹⁰ Jill Alpes and Grażyna Baranowska, 'What's beneath the iceberg in M.A. and Z.R. v Cyprus? The erasure of pushback evidence at borders' (Faculty of Law Blogs/University of Oxford 25 October 2024) < <https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2024/10/whats-beneath-iceberg-ma-and-zr-v-cyprus-erasure> > accessed 25/8/2025.

5 Conclusion

This thesis set out to investigate and answer the question of what are the issues with enacting judicial oversight over Frontex's operations, and subsequently how can judicial oversight be ensured. The way Frontex operates alongside MS, without a clear definition and division of responsibility, with severely lacking transparency, creates an environment where there is great uncertainty whether the Agency is the one responsible for the conduct in which it participates. This thesis, through the examination of jurisprudence, has demonstrated that the three available judicial remedies are ill-suited for providing judicial oversight and addressing fundamental rights violations. This has led to the Court rejecting the existence of violations not on the merits of FR, but by failing to establish Frontex's responsibility, or denying the applicant's circumstances.

Within this judicial landscape, barring a Treaty amendment to the CJEU's actions, there are multiple ways to ensure oversight, by dismantling the obstacles in its way. Through amendments to the Frontex Regulation, the Agency's responsibility and transparency obligations can be strengthened, removing the ill-fitting "support of MS" narrative, and obliging Frontex to disclose the delineation of responsibility between EU and national actors.

The CJEU itself may play an active role as well. Through the *WS* and *Hamoudi* cases currently on appeal, and the respective AG opinions, the Court can confirm that Frontex and MS may both be held jointly and severally liable and explain the Agency's FR role in returns, and can offer means to reverse the burden of proof, lifting the pressure off applicants. As such, the CJEU can play a tangible role in ensuring effective oversight by rejecting prior jurisprudential barriers and reinterpreting its toolbox.

Outside of the EU system, the Strasbourg Court offers a judicial review mechanism tailored towards FR, which is greatly equipped to deal with the challenges of review Frontex's conduct. The biggest benefits of the ECtHR are the clarification of responsibility in the NDAA, the body of case law migration issues, and the recent developments in overcoming the evidentiary burden. As the EU has a Treaty-enshrined duty to accede to the ECHR, in the future the ECtHR will provide a viable alternative to judicial oversight on Frontex outside of the confines of the CJEU.

List of References

1. Case Law (CJEU & General Court)

Case 25/62, *Plaumann v Commission* [1963] ECR 95 107

Case 294/83 *Parti écologiste "Les Verts" v European Parliament* [1986] ECLI:EU:C:1986:166

Case 247/87 *Star Fruit Co v Commission* [1989] ECR 291

Case C-583/11 P *Inuit Tapiriit Kanatami and Others v European Parliament and Council* [2013] ECR I-0000

Case T-726/14 *Novar v EUIPO* [2017] EU: T:2017:99

Case T-282/21 *SS and ST v Frontex* [2022] OJ C 266/26 ECLI:EU:T:2022:235

Case T-600/21 *WS and Others v Frontex* [2023] ECLI:EU:T:2023:492

Case T-136/22 *Alaa Hamoudi v European Border and Coast Guard Agency (Frontex)* [2023] EU:T:2023:821

Case T 600/22 *ST v Frontex* [2023] ECLI:EU:T:2023:776

Case T-205/22 *Naass and Sea-Watch v Frontex* [2024] ECLI:EU:T:2024:266

Case-62/24 P *ST v Frontex* [2024] ECLI:EU:C:2024:882

2. Opinions of Advocates General

Case C-136/24 P *Alaa Hamoudi v European Border and Coast Guard Agency (Frontex)* [2025], Opinion of AG Norkus, ECLI:EU:C:2025:257

Case C-679/23 P *WS and Others v European Border and Coast Guard Agency (Frontex)* [2025], Opinion of AG Čapeta, ECLI:EU:C:2025:427

3. Documents on EU Institution Websites (Not in OJ)

European Border and Coast Guard Agency (Frontex), 'The Agency at a Glance' (European Union Publications Office 2018) < https://prd.frontex.europa.eu/wp-content/uploads/agency_at_glance_2018_en_web.pdf > accessed 25/8/2025

European Border and Coast Guard Agency (Frontex), The Role of Frontex in European Coast Guard Functions (2022) < <https://www.frontex.europa.eu/assets/Publications/General/EUCGFunctionsBooklet.pdf> > accessed 25/8/2025

European Border and Coast Guard Agency (Frontex), 'Who We Are' (Frontex 2025) < <https://www.frontex.europa.eu/about-frontex/who-we-are/tasks-mission/> > accessed 26/8/2025

European Border and Coast Guard Agency 'Code of Conduct' < https://prd.frontex.europa.eu/wp-content/uploads/fpi-24.0090-code-of-conduct_en.pdf > accessed 23/8/2025

European Border and Coast Guard Agency (Frontex) 'Fundamental Rights at Frontex' < <https://www.frontex.europa.eu/fundamental-rights/fundamental-rights-at-frontex/fundamental-rights-at-frontex/#:~:text=A%20Serious%20Incident%20Report%20%28SIR%29%20procedure%20stems%20from,any%20situation%20of%20possible%20violations%20of%20fundamental%20rights.> > accessed 25/8/2025

European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to asylum, borders and immigration (Edition 2020, Publications Office of the European Union 2020) < <https://fra.europa.eu/en/publication/2020/handbook-european-law-relating-asylum-borders-and-immigration-edition-2020> > accessed 23/8/2025

Legal Sources

European Convention on Human Rights (1953)

Charter of Fundamental Rights of the European Union [2012] C 326/02

Consolidated Version of the Treaty on European Union [2012] OJ C326/47

Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 [2019] OJ L 295/1

Opinion 2/13 Opinion pursuant to Article 218(11) TFEU — Draft international agreement — Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Compatibility of the draft agreement with the EU and FEU Treaties. [2014] ECLI:EU:C:2014:2454

Hirsi Jamaa and Others v Italy Application no. 27765/09 (23 February 2012 ECtHR)

M.A. and Others v Lithuania Application no. 59793/17 (11 December 2018 ECtHR)

M.A. and Z.R. v Cyprus Application no. 39090/20 (8 October 2024 ECtHR)

A.R.E. v Greece Application no. 15783/21 (7 January 2025 ECtHR)

European Ombudsman, Decision in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities (Case OI/4/2021/MHZ)

(04 March 2021) < <https://www.ombudsman.europa.eu/en/decision/en/151369> > accessed 25/8/2025

European Ombudsman, Decision on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations with regard to search and rescue in the context of its maritime surveillance activities, in particular the Adriana shipwreck (Case OI/3/2023/MHZ) (26 February 2024) < <https://www.ombudsman.europa.eu/en/decision/en/182665> > accessed 25/8/2025

Steering Committee for Human Rights, 'CDDH Ad Hoc Negotiation Group ("46+1") on The Accession of The European Union to The European Convention on Human Rights' 46+1(2023)35FINAL

Academic Sources

Alpes J and Baranowska G, 'What's beneath the iceberg in M.A. and Z.R. v Cyprus? The erasure of pushback evidence at borders' (Faculty of Law Blogs/University of Oxford 25 October 2024) < <https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2024/10/whats-beneath-iceberg-ma-and-zr-v-cyprus-erasure> > accessed 25/8/2025

— — and — —, 'Official recognition of unofficial practices in M.A. and Z.R. v Cyprus: Examining the politics of legal facts for pushback cases at the ECtHR' (RLI 20 November 2024) < <https://rli.blogs.sas.ac.uk/2024/11/20/official-recognition-of-unofficial-practices-in-m-a-and-z-r-v-cyprus-examining-the-politics-of-legal-facts-for-pushback-cases-at-the-ecthr/#:~:text=On%208%20October%202024%2C%20the%20European%20Court%20of,a%20border%2C%20without%20states%20assessing%20their%20protection%20needs.> > accessed 25/8/2025

— — and — —, 'The Politics of Legal Facts: The Erasure of Pushbacks Evidence from the European Court of Human Rights' (2025) 50 Law & Social Inquiry 225, 237-243

Boekestein T, 'Plaumann and the Rule of Law' (Verfassungsblog, 21 November 2021) < <https://verfassungsblog.de/plaumann-and-the-rule-of-law/> > accessed 25/8/2025

Davies G, 'The General Court finds Frontex not liable for helping with illegal pushbacks: it was just following orders.' (European Law Blog 11 September 2023) < <https://www.europeanlawblog.eu/pub/the-general-court-finds-frontex-not-liable-for-helping-with-illegal-pushbacks-it-was-just-following-orders/release/1#:~:text=The%20General%20Court%20finds%20Frontex%20not%2>

[Oliable%20for,logical%20basis%2C%20a%20confusion%20of%20competences%20with%20causes.](#) > accessed 27/8/2025

De Coninck J, 'The Good, the Bad and the Ugly' (Verfassungsblog, 25 November 2024) < <https://verfassungsblog.de/the-good-the-bad-and-the-ugly-3/> > accessed 25/8/2025

Di Franco E and de Carvalho MC, 'Mutual Trust and EU Accession to the ECHR: Are We Over the Opinion 2/13 Hurdle?' (2023) Vol 8, No 3, European Papers 1221

Eliantonio M, 'Access to Justice in Composite Procedures for the Implementation of EU Law: the Story so Far' in P. Van Creynenbreugel and J. Wildemeersch (eds), *Questions choisies de droit européen des affaires / Selected Issues in European Business Law: 60 ans d'études juridiques européennes à Liège / 60 years of European legal studies at Liège* (Bruylant 2023) < <https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/211795399/Eliantonio-2023-Access-to-Justice-in-Composite.pdf> > accessed 26/8/2025

— —, 'Composite Procedures, the Violation of Fundamental Rights, and the Availability of Sufficient Remedies in the Multi-level EU Judicial Architecture' in Mellanie Fink (ed) *Redressing Fundamental Rights Violations by the EU: The Promise of the 'Complete System of Remedies'* (CUP 2024) 345

Fink M, *Frontex and human rights: responsibility in 'multi-actor situations' under the ECHR and EU public liability law*. (The Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University 2017)

— —, 'The Action for Damages as a Fundamental Rights Remedy: Holding Frontex Liable, (2020) Volume 21 Special Issue 3 German Law Journal 532

— —, 'Why it is so Hard to Hold Frontex Accountable: On Blame-Shifting and an Outdated Remedies System' (EJIL:Talk! 26 November 2020) < <https://www.ejiltalk.org/why-it-is-so-hard-to-hold-frontex-accountable-on-blame-shifting-and-an-outdated-remedies-system/> > accessed 25/8/2025

— —, 'Frontex: Human Rights Responsibility and Access to Justice' (EU Immigration and Asylum Law and Policy, 30 April 2020) < <https://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/> > accessed 15 July 2025

— — and Rijpma J, 'Responsibility in Joint Returns after WS and Others v Frontex: Letting the Active By-Stander Off the Hook' (EU Law Analysis, 22 September 2023) < <https://eulawanalysis.blogspot.com/2023/09/responsibility-in-joint-returns-after.html> > accessed 25/8/2025

— — and Rijpma J, “The Management of the European Union’s external borders” in Evangelia (Lilian) Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (EEP 2024)

Kienzle I and Riemer M, ‘Feeble Recognition of a Systematic Pushback Practice’ (Verfassungsblog 30 January 2025) < <https://verfassungsblog.de/pushbacks-echr-greece-turkiye/> > accessed 25/8/2025

Antje Kunst, ‘WS and Others v Frontex before the Grand Chamber: Ensuring Meaningful Protection of Fundamental Rights in Forced Returns by an EU Agency acting as a Safety-Net’ (EU Law Analysis, 26 February 2025) < <https://eulawanalysis.blogspot.com/2025/02/ws-and-others-v-frontex-before-grand.html> > accessed 25/8/2025

Antje Kunst, ‘Hamoudi v Frontex, an EU Courts pushback case: Shifting the burden of proof and a duty to assist the Court (a duty of candour?)’ (EU Law Analysis, 28 February 2025) < <https://eulawanalysis.blogspot.com/2025/02/hamoudi-v-frontex-eu-courts-pushback.html> > accessed 25/8/2025

Antje Kunst, ‘Hamoudi v Frontex: Advocate General Norkus’ Opinion - Reversing the Burden of Proof and the Presumption of Frontex’s Privileged Access to Evidence’ (EU Law Analysis, 19 April 2025) < <https://eulawanalysis.blogspot.com/2025/04/hamoudi-v-frontex-advocate-general.html> > accessed 25/8/2025

Antje Kunst, ‘Advocate General Ćapeta’s Opinion in WS and Others v Frontex before the Grand Chamber: The End of Frontex’s Shielding? Joint Liability of Frontex and Member States in Return Operations’ (EU Law Analysis, 17 June 2025) < <https://eulawanalysis.blogspot.com/2025/06/the-advocate-general-capetas-opinion-in.html> > accessed 25/8/2025

Leiden University, ‘AG Ćapeta Opinion in WS and Others v Frontex: Academic research on Frontex’ liability reaches the CJEU’s Grand Chamber’ (Leiden University, 16 June 2025) < <https://www.universiteitleiden.nl/en/news/2025/06/ag-capeta-opinion-in-ws-and-others-v-frontex-academic-research-on-frontex-liability-reaches-the-cjeus-grand-chamber> > accessed 25/8/2025

Majcher I, ‘Human Rights Violations During EU Border Surveillance and Return Operations: Frontex’s Shared Responsibility or Complicity?’ (2015) Issue 7/2015 *Silesian Journal of Legal Studies* 45

Pirrello A and Eliantonio M, ‘A Board of Appeals for Frontex’ (2024) 49(1) *European Law Review* 51

Rainey B, McCormick P and Ovey C, *The European Convention on Human Rights* (Eighth Edition, Oxford University Press 2021)

Rijpma J, 'Watching the guards: Ensuring compliance with fundamental rights at the external borders' (2024) Volume 30 Issue 1-2 *European Law Journal* 74

Schutze R, *An Introduction To European Law* (Third Edition, OUP 2020) pp. 203

Strik T, 'Frontex's expanding mandate: Has democratic control caught up?' (2024) Volume 30 Issue 1-2 *European Law Journal* 217

Tas S, 'Frontex actions: out of control? The complexity of composite decision-making procedures' (2020) TARN Working Paper 03/2020 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3632712 > accessed 27/8/2025

— —, 'Op-Ed: "Frontex above the law – a missed opportunity for a landmark judgment on Frontex's responsibility with regards fundamental rights violations: WS and Others v Frontex (T-600/21)"' (EU Law Live 20 September 2023) <<https://eulawlive.com/op-ed-frontex-above-the-law-a-missed-opportunity-for-a-landmark-judgment-on-frontexs-responsibility-with-regards-fundamental-rights-violations-ws-and-others-v-frontex-t-600-21/>> accessed 15/8/2025

Non-Academic Sources

Bird G, 'EU border agency Frontex accused of covering up human rights violations in Greece – the allegations explained' (The Conversation 17 October 2022) < <https://theconversation.com/eu-border-agency-frontex-accused-of-covering-up-human-rights-violations-in-greece-the-allegations-explained-192372#:~:text=A%20classified%20report%20by%20EU%20anti-fraud%20office%20Olaf,The%20report%20was%20made%20public%20by%20German%20media> > accessed 25/8/2025

Carbonaro G, 'A collapse of the rule of law': How does Frontex get away with 'plain murder'?' (Euronews 2023) < <https://www.euronews.com/2023/03/28/a-collapse-of-the-rule-of-law-how-does-frontex-get-away-with-plain-murder> > accessed 26/8/2025

Christides G, Freudenthal E, Lüdke S and Popp M, 'EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign' (Spiegel International 23 October 2020) < <https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7> > accessed 25/8/2025

Creta S, Deeb B, van Dijken K, Freudenthal E, Lüdke S and Popp M, 'How Frontex Helps Haul Migrants Back To Libyan Torture Camps' (Spiegel International 29 April

2022) < <https://www.spiegel.de/international/europe/libya-how-frontex-helps-haul-migrants-back-to-libyan-torture-camps-a-d62c3960-ece2-499b-8a3f-1ede2eaefb83> > accessed 25/8/2025

Fallon K, 'EU border force 'complicit' in illegal campaign to stop refugees landing' (The Guardian, 24 October 2020) < <https://www.theguardian.com/global-development/2020/oct/24/eu-border-force-complicit-in-campaign-to-stop-refugees-landing> > accessed 25/8/2025

front-Lex, 'For the First Time, a "Pushback" Victim Sues Frontex for Half a Million Euro' (front-Lex, March 2022) < <https://front-lex.eu/litigation/for-the-first-time-a-pushback-victim-sues-frontex-for-half-a-million-euro/> > accessed 25/8/2025

Human Rights Watch, 'Frontex Failing to Protect People at EU Borders' (HRW 23 June 2021) < [Frontex Failing to Protect People at EU Borders | Human Rights Watch](https://www.hrw.org/news/2021/06/23/frontex-failing-to-protect-people-at-eu-borders) > accessed 25/8/2025

Izuzquiza L, Deleja-Hotko V and Semsrott A, 'Revealed: The OLAF report on Frontex' (FragDenStaat, 13 October 2022) < <https://fragdenstaat.de/en/articles/exclusive/2022/10/frontex-olaf-report-leaked/> > accessed 25/8/2025; European Anti-Fraud Office (OLAF), *Final report: Investigation OC/2021/0451/A1* (03 May 2021) < <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/#%5B%7B%22num%22%3A368%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C70.85%2C628.689%2C0%5D> > accessed 25/8/2025

Nielsen N, 'Frontex's 'serious incident reports' – revealed' (EUobserver, 8 March 2021) < <https://euobserver.com/migration/arf39e1f4b> > accessed 25/8/2025

Warren R, 'Here Is The Long Route Many Refugees Take To Travel From Syria To Germany' (Buzzfeed 14 September 2015) < <https://www.buzzfeed.com/rossalynwarren/here-is-the-long-route-many-refugees-take-to-travel-from-syr> > accessed 20/7/2025

Appendix 1: [Table of Abbreviations]

AG	Advocate General
CJEU	Court of Justice of the European Union
CoJ	Court of justice
CSDP	Common Security and Defence Policy
EBCG	European Border and Coast Guard
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ED	Executive Director
EU	European Union
EUROSUR	European Border Surveillance System
FR	Fundamental Rights
FRO	Fundamental Rights Officer
GC	General Court
JO	Joint Operation
NDAA	New Draft Accession Agreement
OLAF	European Anti-Fraud Office
OP	Operation Plan
SAR	Search and Rescue
SIR	Serious Incident Report
TFEU	Treaty on the Functioning of the European Union