JUDGMENT OF THE COURT (Grand Chamber)

18 December 2025 (*)

(Appeal – Common policy on asylum and immigration – Regulation (EU) 2019/1896 – European integrated management of the European Union's external borders – European Border and Coast Guard – European Border and Coast Guard Agency (Frontex) – Frontex's obligations relating to the protection of fundamental rights – Practices of pushback to a third country in the Aegean Sea region – Non-contractual liability of Frontex – Actual and certain damage – Burden of proof – Effective judicial protection – Prima facie evidence – Duty of the General Court of the European Union to investigate the case)

In Case C-136/24 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 February 2024,

Alaa Hamoudi, represented initially by F. Gatta, avvocato, and subsequently by F. Gatta, avvocato, and A. Musco Eklund, professor, and by J. De Coninck, expert,

appellant,

the other party to the proceedings being:

European Border and Coast Guard Agency (Frontex), represented initially by C. Carroll and R.-A. Popa, acting as Agents, and by B. Wägenbaur, avocat, and subsequently by H.Y. Caniard, C. Carroll and R.-A. Popa, acting as Agents, and by B. Wägenbaur, avocat,

defendant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, K. Jürimäe, L. Arastey Sahún, I. Ziemele, J. Passer, O. Spineanu-Matei, Presidents of Chambers, S. Rodin, D. Gratsias, M. Gavalec, Z. Csehi and B. Smulders (Rapporteur), Judges,

Advocate General: R. Norkus,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 4 February 2025,

after hearing the Opinion of the Advocate General at the sitting on 10 April 2025,

gives the following

Judgment

1 By his appeal, Mr Alaa Hamoudi seeks to have set aside the order of the General Court of the European Union of 13 December 2023, *Hamoudi* v *Frontex* (T-136/22, 'the order under appeal', EU:T:2023:821), by which that court dismissed his action under Article 268 TFEU seeking compensation for damage he claims to have suffered following alleged infringements of Union law by

the European Border and Coast Guard Agency (Frontex) in the context of expulsion measures allegedly taken against him by the Greek authorities.

Legal context

Regulation (EU) 2019/1896

2 Recitals 2, 3, 24, 81 and 103 of 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 (OJ 2019 L 295, p. 1), state:

‘(2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was established by Council Regulation (EC) No 2007/2004 [of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2004 L 349, p. 1)]. Since taking up its responsibilities on 1 May 2005, it has been successful in assisting Member States with implementing the operational aspects of external border management through joint operations and rapid border interventions, risk analysis, information exchange, relations with third countries and the return of returnees.

(3) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union has been renamed the European Border and Coast Guard Agency [,] commonly referred to as Frontex, and its tasks have been expanded with full continuity in all its activities and procedures. The key roles of [Frontex] should be: to establish a technical and operational strategy as part of the implementation of the multiannual strategic policy cycle for European integrated border management; to oversee the effective functioning of border control at the external borders; to carry out risk analysis and vulnerability assessments; to provide increased technical and operational assistance to Member States and third countries through joint operations and rapid border interventions; to ensure the practical execution of measures in a situation requiring urgent action at the external borders; to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organise, coordinate and conduct return operations and return interventions.

…

(24) The extended tasks and competence of [Frontex] should be balanced with strengthened fundamental rights safeguards and increased accountability and liability, in particular in terms of the exercise of executive powers by the statutory staff.

…

(81) [Frontex] should, in full respect for fundamental rights and without prejudice to the Member States’ responsibility for issuing return decisions, provide technical and operational assistance to Member States in the return process, including in the identification of third-country nationals and in other pre-return and return-related activities of the Member States. In addition, [Frontex] should assist Member States in the acquisition of travel documents for return, in cooperation with the authorities of the relevant third countries.

…

(103) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 TEU and by the Charter of Fundamental Rights of the European Union (‘the Charter’), in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child.’

3 Article 1 of that regulation, entitled ‘Subject matter’, provides:

‘This Regulation establishes a European Border and Coast Guard to ensure European integrated border management at the external borders with a view to managing those borders efficiently in full compliance with fundamental rights and to increasing the efficiency of the Union return policy.

This Regulation addresses migratory challenges and potential future challenges and threats at the external borders. It ensures a high level of internal security within the Union in full respect of fundamental rights, while safeguarding the free movement of persons within the Union. It contributes to the detection, prevention and combating of cross-border crime at the external borders.’

4 Article 4 of that Regulation, entitled ‘European Border and Coast Guard’, provides:

‘The national authorities of Member States responsible for border management, including coast guards to the extent that they carry out border control tasks, the national authorities responsible for return and [Frontex] shall constitute the European Border and Coast Guard.’

5 Article 5 of that regulation, entitled ‘[Frontex]’, provides, in paragraphs 3 and 4 thereof:

‘3. To ensure coherent European integrated border management, [Frontex] shall facilitate and render more effective the application of Union measures relating to the management of the external borders, in particular [Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1)], and of Union measures relating to return.

4. [Frontex] shall contribute to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, in particular the [Charter], at external borders. Its contribution shall include the exchange of good practices.’

6 Article 7 of Regulation 2019/1896, entitled ‘Shared responsibility’, is worded as follows:

‘1. The European Border and Coast Guard shall implement European integrated border management as a shared responsibility of [Frontex] and of the national authorities responsible for border management, including coast guards to the extent that they carry out maritime border surveillance operations and any other border control tasks. Member States shall retain primary responsibility for the management of their sections of the external borders.

…

4. [Frontex] shall support the application of Union measures relating to the management of the external borders and the enforcement of return decisions by reinforcing, assessing and coordinating the actions of Member States and by providing technical and operational assistance in the implementation of those measures and in return matters. [Frontex] shall not support any measures or be involved in any activities related to controls at internal borders. [Frontex] shall be fully responsible and accountable for any decision it takes and for any activity for which it is solely responsible under this Regulation.

…’

7 Article 10 of that regulation, headed ‘Tasks of [Frontex]’, provides:

‘1. [Frontex] shall perform the following tasks:

(a) monitor migratory flows and carry out risk analysis as regards all aspects of integrated border management;

(b) monitor the operational needs of Member States related to the implementation of returns, including by collecting operational data;

…

(e) monitor compliance with fundamental rights in all of its activities at the external borders and in return operations;

…

(g) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations may involve humanitarian emergencies and rescue at sea in accordance with Union and international law;

…’

8 Article 36 of that regulation, entitled ‘Actions by [Frontex] at the external borders’, provides, in paragraph 2 thereof:

‘[Frontex] shall organise the appropriate technical and operational assistance for the host Member State and it may, acting in accordance with the relevant Union and international law, including the principle of [non-refoulement], take one or more of the following measures:

(a) coordinate joint operations for one or more Member States and deploy the standing corps and technical equipment;

(b) organise rapid border interventions and deploy the standing corps and technical equipment;

…

(e) within the framework of operations referred to in points (a), (b) and (c) of this paragraph and in accordance with [Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2014 L 189, p. 93)] and international law, provide technical and operational assistance to Member States and third countries in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea;

…’

9 Article 37 of that regulation, entitled ‘Initiating joint operations and rapid border interventions at the external borders’, provides:

‘1. A Member State may request that [Frontex] launch joint operations to face upcoming challenges, including illegal immigration, present or future threats at its external borders or cross-border crime, or provide increased technical and operational assistance when implementing its obligations with regard to external border control. As part of such a request, a Member State may also indicate the profiles of operational staff needed for the joint operation in question, including those staff having executive powers, as applicable.

2. At the request of a Member State faced with a situation of specific and disproportionate challenges, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State without authorisation, [Frontex] may deploy a rapid border intervention for a limited period of time on the territory of that host Member State.

3. The executive director shall evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions. Joint operations and rapid border interventions shall be preceded by a thorough[,] reliable and up-to-date risk analysis, thereby enabling [Frontex] to set an order of priority for the proposed joint operations and rapid border interventions, taking into account the impact levels attributed to external border sections in accordance with Article 34 and the availability of resources.

…’

10 Under Article 38 of Regulation 2019/1896, entitled ‘Operational plans for joint operations’:

‘1. In preparation of a joint operation the executive director, in cooperation with the host Member State, shall draw up a list of technical equipment, staff and profiles of staff needed, including those staff having executive powers, as applicable, to be authorised in accordance with Article 82(2). …

2. The executive director shall draw up an operational plan for joint operations at the external borders. The executive director and the host Member State, in close and timely consultation with the participating Member States, shall agree on the operational plan detailing the organisational and procedural aspects of the joint operation.

3. The operational plan shall be binding on [Frontex], the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following:

…

(d) a description of the tasks, including those requiring executive powers, responsibilities, including with regard to the respect for fundamental rights and data protection requirements, and special instructions for the teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;

…

(i) a reporting and evaluation scheme containing benchmarks for the evaluation report, including with regard to the protection of fundamental rights, and final date of submission of the final evaluation report;

…

(l) general instructions on how to ensure the safeguarding of fundamental rights during the operational activity of [Frontex];

…’

11 Article 39 of that regulation, entitled ‘Procedure for launching a rapid border intervention’, provides:

‘1. A request by a Member State to launch a rapid border intervention shall include a description of the situation, possible aims and envisaged needs, and the profiles of staff needed, including those staff having executive powers, as applicable. …

…

5. The executive director shall take a decision on the request to launch a rapid border intervention within two working days from the date of receipt of the request. The executive director shall simultaneously notify the Member State concerned and the management board in writing of the decision. The decision shall state the main reasons on which it is based.

…

8. The executive director together with the host Member State shall draw up and agree upon an operational plan as referred to in Article 38(2) immediately and, in any event, no later than three working days from the date of the decision.

…’

12 Article 44 of that regulation, entitled ‘Coordinating officer’, is worded as follows:

‘1. [Frontex] shall ensure the operational implementation of all the organisational aspects of joint operations, pilot projects or rapid border interventions, including the presence of statutory staff.

…

3. The coordinating officer shall act on behalf of [Frontex] in all aspects of the deployment of the teams. The role of the coordinating officer shall be to foster cooperation and coordination among host and participating Member States. At least one fundamental rights monitor shall assist and advise the coordinating officer. In particular, the coordinating officer shall:

…

(b) monitor the correct implementation of the operational plan, including, in cooperation with the fundamental rights monitors, as regards the protection of fundamental rights and report to the executive director on this;

…

d) report to the executive director where the instructions issued to the teams by the host Member States are not in compliance with the operational plan, in particular as regards fundamental rights and, where appropriate, suggest that the executive director consider taking a decision in accordance with Article 46.

…’

13 Article 46 of that regulation, entitled ‘Decisions to suspend, terminate or not launch activities’, provides, in paragraphs 4 and 5 thereof:

‘4. The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by [Frontex], or suspend or terminate any activity by [Frontex], in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.

5. The executive director shall, after consulting the fundamental rights officer, decide not to launch any activity by [Frontex] where he or she considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature. The executive director shall inform the Member State concerned of that decision.’

14 Article 48 of Regulation 2019/1896, entitled ‘Return’, provides, in paragraph 1 thereof:

‘Without entering into the merits of return decisions, which remain the sole responsibility of the Member States, and in accordance with the respect for fundamental rights, general principles of Union law and international law, including international protection, the respect for the principle of [non-refoulement] and children’s rights, with regard to return, [Frontex] shall:

(a) provide technical and operational assistance to Member States in the area of return, including in:

(i) the collection of information necessary for issuing return decisions, the identification of third-country nationals subject to return procedures and other pre-return, return-related and post-arrival and post-return activities of the Member States, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders;

…’

15 Article 80 of that regulation, entitled ‘Protection of fundamental rights and a fundamental rights strategy’, is worded as follows:

‘1. The European Border and Coast Guard shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, and relevant international law, including the [Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954))], [as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967], the Convention on the Rights of the Child [adopted by the United Nations General Assembly on 20 November 1989 (*United Nations Treaty Series*, Vol. 1577, p. 3, No 27531 (1990))] and obligations related to access to international protection, in particular the principle of [non-refoulement].

For that purpose, [Frontex], with the contribution of and subject to the endorsement by the fundamental rights officer, shall draw up, implement and further develop a fundamental rights strategy and action plan, including an effective mechanism for monitoring respect for fundamental rights in all activities of [Frontex].

2. In the performance of its tasks, the European Border and Coast Guard shall ensure that no person, in contravention of the principle of [non-refoulement], be forced to disembark in, forced to enter, or conducted to a country, or be otherwise handed over or returned to the authorities of a country where there is, inter alia, a serious risk that he or she would be subjected to the death penalty, torture, persecution, or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a risk of expulsion, removal, extradition or return to another country in contravention of the principle of [non-refoulement].

3. In the performance of its tasks, the European Border and Coast Guard shall take into account the special needs of children, unaccompanied minors, persons with disabilities, victims of trafficking in human beings, persons in need of medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation, and shall address those needs within its mandate. The European Border and Coast Guard shall in all its activities pay particular attention to children’s rights and ensure that the best interests of the child are respected.

…’

16 Article 97 of that regulation, entitled ‘Liability’, provides, in paragraph 4 thereof:

‘In the case of non-contractual liability, [Frontex] shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties, including those related to the use of executive powers.’

Rules of procedure of the General Court

17 Article 88 of the Rules of Procedure of the General Court provides:

‘1. Measures of organisation of procedure and measures of inquiry may be taken or modified at any stage of the proceedings either of the General Court’s own motion or on the application of a main party.

2. The application referred to in paragraph 1 must state precisely the purpose of the measures sought and the reasons for them. Where the application is made after the first exchange of pleadings, the party submitting that application must state the reasons for which he was unable to submit it earlier.

3. Where an application for measures of organisation of procedure or for measures of inquiry is made, the President shall give the other parties an opportunity to comment on that application.’

18 Article 89 of those rules provides:

‘1. The purpose of measures of organisation of procedure shall be to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions.

2. Measures of organisation of procedure shall, in particular, have as their purpose:

(a) to ensure the efficient conduct of the written or oral part of the procedure and to facilitate the taking of evidence;

(b) to determine the points on which the parties must present further argument or which call for measures of inquiry;

(c) to clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them;

(d) to facilitate the amicable settlement of proceedings.

3. Measures of organisation of procedure may, in particular, consist of:

(a) putting questions to the parties;

(b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;

(c) asking the parties or third parties for the information referred to in the second paragraph of Article 24 of the Statute [of the Court of Justice of the European Union];

(d) asking the parties to produce any material relating to the case;

(e) summoning the parties to meetings.

4. Where a hearing is organised, the General Court shall, in so far as possible, invite the parties to concentrate in their oral pleadings on one or more specified issues.'

19 Article 90(1) of those rules is worded as follows:

'Measures of organisation of procedure shall be prescribed by the General Court.'

20 Article 91 of those rules provides:

'Without prejudice to Articles 24 and 25 of the Statute [of the Court of Justice of the European Union], the following measures of inquiry may be adopted:

(a) the personal appearance of the parties;

(b) a request to a party for information or for production of any material relating to the case;

(c) a request for production of documents to which access has been denied by an institution in proceedings relating to the legality of that denial;

(d) oral testimony;

(e) the commissioning of an expert's report;

(f) an inspection of the place or thing in question.'

21 Under Article 92(1) of the Rules of Procedure of the General Court, that court is to prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved.

22 Article 93 of those rules provides:

'1. Witnesses whose examination is deemed necessary shall be summoned by an order, referred to in Article 92(1), containing the following information:

(a) the name, description and address of the witness;

(b) the date and place of the examination;

(c) an indication of the facts to be established and which witnesses are to be heard in respect of each of those facts.

2. Witnesses shall be summoned by the General Court, where appropriate after lodgement of the security provided for in Article 100(1).'

23 Article 94 of those rules is worded as follows:

'1. After the identity of the witness has been established, the President shall inform him that he will be required to vouch the truth of his evidence in the manner laid down in paragraph 5 and in Article 97.

2. The witness shall give his evidence to the General Court, the parties having been given notice to attend. After the witness has given his evidence the President may, at the request of one of the parties or of his own motion, put questions to him.

3. The other Judges and the Advocate General may do likewise.

4. Subject to the control of the President, questions may be put to witnesses by the representatives of the parties.

5. Subject to the provisions of Article 97, the witness shall, after giving his evidence, take the following oath: "I swear that I have spoken the truth, the whole truth and nothing but the truth."

6. The General Court may, after hearing the main parties, exempt a witness from taking the oath.'

24 Article 95 of those rules provides:

'1. Witnesses who have been duly summoned shall obey the summons and attend for examination.

2. If, without good reason, a witness who has been duly summoned fails to appear before the General Court, the General Court may impose upon him a pecuniary penalty not exceeding EUR 5 000 and may order that a further summons be served on the witness at his own expense.

3. The same penalty may be imposed upon a witness who, without good reason, refuses to give evidence or to take the oath.'

25 Article 106 of the Rules of Procedure of the General Court provides:

'1. The procedure before the General Court shall include, in the oral part, a hearing arranged either of the General Court's own motion or at the request of a main party.

2. Any request for a hearing made by a main party must state the reasons for which that party wishes to be heard. It must be submitted within three weeks after service on the parties of notification of the close of the written part of the procedure. That time limit may be extended by the President.

3. If there is no request as referred to in paragraph 2, the General Court may, if it considers that it has sufficient information available to it from the material in the file, decide to rule on the action without an oral part of the procedure. In that case, it may nevertheless later decide to open the oral part of the procedure.'

26 Article 126 of those rules provides:

'Where it is clear that the General Court has no jurisdiction to hear and determine an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the General Court may, on a proposal from the Judge-Rapporteur, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.'

Background to the dispute

27 The facts of the dispute are set out as follows in paragraphs 2 to 5 and 10 of the order under appeal:

‘2 The [appellant] is a Syrian national. He claims that, on 28 April 2020, when he arrived from Türkiye by boat, he entered Greek territory, namely the island of Samos, with a group of other people in order to seek asylum. He states, moreover, that, after disembarking on that island, the local police intercepted him and the others and, that same day, the Greek authorities sent him back out to sea where, the day after, a vessel of the Turkish coast guard took him aboard and relocated him to Turkish territory (“the alleged incident of 28 and 29 April 2020”).

3 Furthermore, the [appellant] claims that on 29 April 2020, during his time at sea, a private surveillance aeroplane, allegedly equipped with a camera and operated by Frontex, flew over the scene twice.

4 The [appellant] states that, following the alleged incident of 28 and 29 April 2020, he was transferred to a detention centre in Türkiye where he was detained for 10 days. He subsequently received an expulsion order and had his Syrian passport confiscated. Consequently, he was trapped in Türkiye without access to the asylum system, and lived as a clandestine under imminent threat of refoulement to Syria.

5 It is apparent from his written pleadings before the General Court that the [appellant] has, in the meantime, managed to enter the territory of the EU Member States and lodge an application for international protection in Germany.

…

10 At the time of the alleged incident [of] 28 and 29 April 2020, two Frontex operational activities were ongoing in the geographical zone where the [appellant] claims it took place, namely the rapid border intervention in the Aegean Sea and joint operation “Poseidon”.’

The procedure before the General Court and the order under appeal

28 By application lodged at the Registry of the General Court on 10 March 2022, the appellant brought an action under Article 268 and 340 TFEU seeking compensation for damage he claims to have suffered as a result of the unlawful conduct of Frontex in the context of its operations in the Aegean Sea during the alleged incident of 28 and 29 April 2020. To that end, he claims that Frontex should be ordered to pay him the sum of EUR 500 000 in compensation for the non-material damage he allegedly suffered on the basis of the infringement of Articles 38, 46 and 80 of Regulation 2019/1896 and of Article 1 (human dignity), Article 2 (right to life), Article 3 (right to the integrity of the person), Article 4 (prohibition of torture and inhuman or degrading treatment or punishment), Article 6 (right to liberty and security), Article 18 (right to asylum), Article 19 (protection in the event of removal, expulsion or extradition) and Article 21 (non-discrimination) of the Charter.

29 On 10 March 2022, the appellant requested that the General Court adopt measures of organisation of procedure or measures of inquiry to have Frontex produce documents in its possession and, also, organise a hearing. On 29 April and 18 May 2022, the appellant requested that the General Court adopt measures of organisation of procedure seeking the production of other documents by Frontex.

30 By the order under appeal, the General Court dismissed the appellant’s action. After recalling, in paragraphs 19 to 23 of that order, the principles governing the conditions which must be met in order for the European Union to incur non-contractual liability and, in paragraphs 28 to 34 of that order, those relating in particular to the condition that actual damage must have been suffered, the General Court summarised, in paragraph 36 of that order, the events relating to the alleged damage which were relied on by the appellant in his application at first instance, in the following terms:

‘The [appellant] claims in his application that, on 28 April 2020, at around 7.30 a.m., 22 people, including himself, arrived on the island of Samos in Greece. They arrived on a beach next to mountains

which they began to climb after leaving the boat. According to the [appellant], once they reached the top of the mountain, he took photos and videos which he sent to an acquaintance of his in Austria. The group spent a few hours asking the residents to call the police. When the police officers arrived, they confiscated their phones and drove the group to the beach in a pickup truck where there was a small ship and a small boat. All the members of the group were subsequently brought on board a small orange boat which, according to the [appellant], was a life raft without any means of propulsion. Once at sea, the group was forced to change boats twice more. According to the [appellant], that push and pull continued overnight and into the afternoon of 29 April 2020, when the Turkish coast guard finally picked them up.'

31 In paragraph 37 of the order under appeal, the General Court noted that, 'in order to substantiate those claims regarding his presence [at] and involvement in the alleged incident of 28 and 29 April 2020, the [appellant] relies on the following evidence:

– in the first place, his own witness statement, included as annex A.1 to the application;

– in the second place, a Bellingcat media article, published on 20 May 2020 on the internet ("[the Bellingcat article]") and, in particular, two YouTube videos included in that article. The application includes a hypertext link to the website featuring the article, in both its text and in annex A.2;

– and, in the third place, four photographs, included as annex A.2 to the application. Those photographs are colour screen shots taken from the videos featured in [the Bellingcat article].'

32 In paragraph 39 of the order under appeal, the General Court took the view that that evidence was manifestly insufficient to demonstrate conclusively that the appellant was present at and involved in the alleged incident of 28 and 29 April 2020. For the reasons set out in paragraphs 40 to 60 of that order, it found, in paragraph 61 thereof, that the appellant had not demonstrated the actual damage alleged and, therefore, the condition relating to actual damage had clearly not been satisfied.

33 Accordingly, the General Court, in paragraph 62 of that order, dismissed the action as manifestly lacking any foundation in law, without it being necessary to examine whether the other conditions for the non-contractual liability of Frontex were satisfied.

Forms of order sought by the parties to the appeal

34 The appellant claims that the Court of Justice should:

– set aside the order under appeal;

– give judgment on the substantive issues of the case if it is of the opinion that it has sufficient information from the documents before it; in the alternative, refer the case back to the General Court so that it may conduct a complete examination of the facts; and

– order Frontex to pay the costs of both sets of proceedings.

35 Frontex contends that the Court should:

– dismiss the appeal and

– order the appellant to pay the costs, including those incurred by Frontex.

The appeal

36 In support of his appeal, the appellant relies on a single ground of appeal, alleging infringements by the General Court of the principles governing the burden of proof, in disregard of the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), which must be respected as a minimum level of protection

under Article 52(3) of the Charter. That single ground of appeal consists of two parts, which it is appropriate to examine together.

Arguments of the parties

37 In the first part of his single ground of appeal, the appellant submits, in essence, that the General Court failed correctly to apply the principles governing the burden of proof when, in paragraphs 35, 39, 61 and 62 of the order under appeal, it found that he had manifestly not demonstrated to the requisite standard that the condition relating to actual damage, which must be met in order for the European Union to incur non-contractual liability, had been satisfied.

38 As is apparent, the appellant argues, from the case-law of the European Court of Human Rights ('the ECtHR') in cases concerning the expulsion of asylum seekers, in the light of the vulnerable position of the latter, account must be taken of the difficulty, if not the impossibility, for them to obtain evidence. In particular, the ECtHR takes the view that, in such circumstances, the absence of direct evidence is not a decisive factor, that it is often necessary to grant such persons the benefit of the doubt when assessing the credibility of their statements and the documents submitted in support thereof, and that, when they present prima facie evidence, the burden of proof is reversed (see, to that effect, ECtHR, 23 August 2016, *J.K. and Others v. Sweden*, CE:ECHR:2016:0823JUD005916612, §§ 92 to 97; ECtHR, 13 February 2020, *N.D. and N.T. v. Spain*, CE:ECHR:2017:1003JUD000867515, § 85; and ECtHR, 18 November 2021, *M.H. and Others v. Croatia*, CE:ECHR:2021:1118JUD001567018, § 268).

39 In the appellant's view, by imposing requirements concerning the burden of proof which are difficult, or even impossible, to meet in the context of refoulement operations, the General Court infringed the fundamental rights guaranteed by the Charter, including the right to an effective remedy and to the complete system of remedies established by the FEU Treaty. Those requirements would effectively exempt Frontex from any legal obligation to provide relevant information to which it has exclusive access and from any legal consequences for failing to produce that information.

40 Moreover, it argues, imposing those requirements led the General Court to err in the legal characterisation of the facts and distort the clear sense of the evidence.

41 Accordingly, first, the assessments of the General Court in paragraphs 37, 42, 46, 47, 53 and 55 of the order under appeal, according to which the photographs and videos featured in the Bellingcat article did not allow for the identification of either the appellant or the location at and date on which those photographs and videos had been taken, distorted the clear sense of those photographs and videos.

42 Secondly, in those paragraphs, the General Court erred in the legal characterisation of the facts and infringed the principle of sound administration of justice by taking the view that the evidence submitted by the appellant was too imprecise to be regarded as relevant and probative. In that regard, in the appellant's view, the photographs and videos produced before the General Court allow for both his identification and the confirmation of his presence during the alleged incident of 28 and 29 April 2020. Those facts are, he argues, supported by the report of the European Anti-Fraud Office (OLAF) drawn up following investigation OC/2020/0866/A1 and concerning serious irregularities alleged to have been committed by Frontex, which has remained silent on or been involved in the pushback of migrants ('the OLAF report'), to which the appellant gained access following press leaks. The appellant states that he requested that the General Court adopt a measure of organisation of procedure to have that report produced. However, in his view, no action was taken regarding that request and it was not even referred to in the order under appeal.

43 Thirdly, in paragraphs 40 and 41 of the order under appeal, the General Court erred in the legal characterisation of the facts and distorted the clear sense of the evidence by finding that the appellant's witness statement as annexed to the application at first instance had only weak probative value, that it was insufficiently specific and that it did not allow for the identification of the other persons present during the alleged incident of 28 and 29 April 2020. The appellant, in that context, relies on the OLAF report, which establishes, at the outset, that assets co-financed by Frontex were involved in the execution of collective expulsions, contrary to the submissions made by Frontex in the course of the investigation. Next, he argues, that report attests to the fact that Frontex decided to relocate its aerial assets to avoid witnessing incidents in the Aegean Sea and the fact that its officers, out of fear of

retaliation from the host Member State, refrained from reporting incidents. That evidence supports the appellant's argument that the alleged incident of 28 and 29 April 2020 was more so a case of failure to report an incident than a case of failure to detect it. Lastly, in the appellant's view, that report confirms the credibility of the Bellingcat article on the alleged incident of 28 and 29 April 2020. In the light of that evidence, which had been submitted to the General Court, that court should have granted the appellant the benefit of the doubt for the purpose of determining the truth of the facts in question.

44 In the second part of the single ground of appeal, the appellant alleges that the General Court erred in law and in the legal characterisation of the facts by finding, in paragraphs 14 and 62 of the order under appeal, that it had sufficient information from the documents in the file and that the action was manifestly lacking any foundation in law. The appellant, in essence, complains that the General Court did not properly investigate the case and that it incorrectly applied Article 126 of the Rules of Procedure of the General Court. More specifically, by refusing, without giving reasons, to act on the appellant's requests to produce and take into account the OLAF report and the three reports in the database of the Joint Operations Reporting Application ('JORA reports') to which Frontex had exclusive access, and by refusing to organise a hearing as requested by the appellant so that he might testify at it, the General Court, in his view, infringed the principle of sound administration of justice and the principle of equality of arms and conducted an incomplete examination of the facts. Those errors, he argues, which undermine the complete system of remedies established by the Treaties and result in the unjust exemption of Frontex from any liability, vitiate the findings of the General Court in paragraphs 14, 58, 59, 61 and 62 of the order under appeal.

45 The appellant also takes the view that, contrary to Frontex's submission, the present ground of appeal is admissible. First, he argues that he does not rely on evidence which was not included in the file, but on requests for measures of organisation of procedure made to the General Court seeking the production of documents to which Frontex had exclusive access. Secondly, the appellant submits that there was a distortion of the clear sense of evidence which is manifestly apparent from the documents in the file, with the result that the Court of Justice need not conduct a new assessment of the facts and evidence.

46 Frontex contends that the single ground of appeal is manifestly inadmissible and, in any event, manifestly unfounded.

47 In the first place, it contends that the first part of the single ground of appeal is inadmissible. First of all, in Frontex's view, the appellant merely requests the re-examination of evidence or the examination of evidence produced for the first time at the stage of the appeal. Next, it argues, he does not state which paragraphs of the order under appeal he is contesting when he alleges infringement of both the principles governing the burden of proof and of Article 52(3) of the Charter. In addition, the appellant presents factual assessments as points of law. That applies to the issue of whether the appellant should be granted the benefit of the doubt, within the meaning of the case-law of the ECtHR. Frontex states, in that regard, that that case-law cannot prevail over the rule in the Statute of the Court of Justice of the European Union that an appeal is limited to points of law. Lastly, Frontex takes the view that, in several respects, the appellant merely repeats the arguments which were put forward at first instance.

48 In any event, that part is, it argues, in part ineffective and in part unfounded. First of all, it is not disputed that the Bellingcat article does not feature the appellant's name and that the graphical quality of those videos is relatively poor. In addition, it argues, the alleged distortion or errors are not proven, and are not manifestly apparent from the documents in the file. Next, the OLAF report is irrelevant since it in no way proves that the appellant is shown in the photographs he produced. Lastly, contrary to the appellant's allegations, the General Court, in Frontex's view, took due consideration of the arguments and evidence submitted by the appellant.

49 In the second place, Frontex contends that the second part of the single ground of appeal is also inadmissible. First, it argues that the appellant relies on an OLAF report which was not included in the file at first instance. Secondly, as regards the JORA reports, he does not indicate which paragraphs of the order under appeal he contests on the basis of those reports.

50 In any event, in Frontex's view, that part is unfounded. In that regard, Frontex is of the opinion that the appellant cannot dispute the assessment of the General Court set out in paragraph 14 of the order under

appeal, according to which it had sufficient information from the documents in the file, or the dismissal of the action as manifestly lacking any foundation in law, in paragraph 62 of that order, by relying on the OLAF report, the JORA reports or his request for a hearing to allow him to appear before the General Court.

51 Frontex contends that, as regards the appellant's request that the General Court order that the OLAF report be produced in its entirety with the annexes thereto, it is apparent from the judgment of 16 July 2009, *SELEX Sistemi Integrati* v *Commission* (C-481/07 P, EU:C:2009:461, paragraph 44), that the General Court is the sole judge of whether the information it possesses may need to be supplemented by ordering measures of organisation of procedure or measures of inquiry, which cannot be intended to make up for the appellant's omission before that court in the taking of evidence. In any event, it argues, that report is irrelevant since the appellant does not show that his name is cited therein or that that report makes it possible to prove that he was shown in the photographs which he produced at first instance.

52 In addition, as regards the appellant's request that a hearing be organised so that he might appear as a witness, Frontex is of the opinion that the appellant fails to acknowledge that it is for the General Court to decide whether a case requires that a witness be examined or that a hearing be held. Frontex contends that, since the appellant has not provided any evidence demonstrating that he is a person affected by the measures taken by the Greek authorities and/or shown in the photographs produced at first instance, the General Court cannot be required to adopt measures of organisation of procedure or measures of inquiry since such measures cannot provide evidence which the appellant failed to produce. Neither the General Court, nor the Court of Justice, it argues, may presume that the appellant was affected by the alleged incident of 28 and 29 April 2020. The appellant, in its view, also does not show how a hearing before the General Court would have made it possible to prove that he was one of the persons shown in the low quality photographs produced at first instance.

Findings of the Court

Admissibility

53 Frontex contests, in the first place, the admissibility of the single ground of appeal on the ground, in essence, that the appellant has not identified with sufficient precision the paragraphs of the order under appeal which he challenges.

54 In that regard, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested paragraphs of the judgment which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal concerned is to be inadmissible (judgment of 12 December 2024, *DD* v *FRA*, C-680/22 P, EU:C:2024:1019, paragraph 99 and the case-law cited).

55 In particular, a ground of appeal supported by an argument that is not sufficiently clear and precise to enable the Court to exercise its powers of judicial review, in particular because essential elements on which the ground of appeal relies are not indicated sufficiently coherently and intelligibly in the text of the appeal, which is worded in a vague and ambiguous manner in that regard, does not satisfy those requirements and must be declared inadmissible. The Court of Justice has also held that an appeal lacking any coherent structure which simply makes general statements and contains no specific indications as to the points of the decision under appeal which may be vitiated by an error of law must be dismissed as clearly inadmissible (judgment of 12 December 2024, *DD* v *FRA*, C-680/22 P, EU:C:2024:1019, paragraph 100 and the case-law cited).

56 In the present case, in his single ground of appeal, the appellant sets out the consequences of the alleged infringements of the principles governing the burden of proof, as regards the rights guaranteed by the ECHR and Article 52(3) of the Charter, on both the investigation of the present case by the General Court and its assessment of the documents in the file at first instance. Furthermore, in each part of that ground of appeal, the appellant indicated the paragraphs of the order under appeal which would be vitiated by the errors in law alleged. It follows that the essential elements on which that ground of

appeal relies are indicated sufficiently coherently and intelligibly in the text of the appeal and that the appellant's argument is sufficiently clear and precise to enable the Court to exercise its powers of judicial review.

57 Accordingly, the plea of inadmissibility based on a failure to identify the disputed paragraphs of the order under appeal with sufficient precision must be rejected.

58 In the second place, Frontex submits that the appeal is inadmissible in that the appellant attempts to present points of fact as points of law and requests that the Court conduct a new assessment of the facts or evidence. In particular, Frontex contends that the question whether there is some doubt from which the appellant should benefit is a factual issue and that the guidance from the case-law of the ECtHR concerning the burden of proof on asylum seekers in expulsion cases cannot prevail over the rule in the Statute of the Court of Justice of the European Union that an appeal is limited to points of law.

59 In that regard, it is apparent from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal lies on points of law only. The General Court has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of those facts and the assessment of that evidence thus do not, save where the facts or evidence are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 61 and the case-law cited).

60 However, the question whether, in the light of the case-law of the ECtHR and Article 52(3) of the Charter, the rules on the burden of proof applicable to persons in a position such as that of the appellant must be adapted so that those persons may be granted the benefit of the doubt is a point of law. Indeed, the question of the allocation of the burden of proof, although it may have an impact on the findings of fact made by the General Court, is a question of law (judgment of 6 January 2004, *BAI and Commission* v *Bayer*, C-2/01 P and C-3/01 P, EU:C:2004:2, paragraph 61).

61 In addition, in his appeal, the appellant explains, in a specific manner, the distortions which he alleges were committed by the General Court. The alleged distortions accordingly do not correspond to a request for reassessment of the facts or evidence.

62 It follows that the plea of inadmissibility based on the presentation of points of fact as points of law must also be rejected.

63 In the third place, in so far as Frontex disputes the admissibility of the appeal by claiming that the appellant merely repeats the arguments which were put forward at first instance, it is admittedly apparent from the case-law of the Court of Justice that an appeal cannot merely repeat the pleas in law and arguments already submitted to the General Court without putting forward arguments to establish that it erred in law (judgment of 26 June 2025, *Mainova* v *Commission*, C-484/23 P, EU:C:2025:482, paragraph 56 and the case-law cited). However, in the present case, the appellant specifically put forward arguments intended to establish that the General Court, in the order under appeal, erred in law, with the result that that plea of inadmissibility must be rejected.

64 In the light of all of the foregoing considerations, the appellant's appeal is admissible.

Substance

65 The appellant submits, in essence, that the General Court infringed the principles governing the burden of proof, distorted the clear sense of the evidence and erred in the legal characterisation of the facts by finding that the evidence which he had produced was manifestly insufficient to demonstrate conclusively that he was present at and involved in the alleged incident of 28 and 29 April 2020, with the result that he had not demonstrated the fact of the damage alleged and, accordingly, not satisfied the condition relating to actual damage which must be met in order for the European Union to incur non-contractual liability for the actions of Frontex.

– *Preliminary observations*

66 In the first place, it should be borne in mind that Frontex is an agency of the European Union created by Regulation No 2007/2004 in order to improve the integrated management of the external borders of the European Union as referred to, at present, by Article 77(1)(c) TFEU. It follows from Article 7(1) and (4) of Regulation 2019/1896 that, while Frontex and the national authorities responsible for border management have a shared responsibility in that regard, Frontex is fully responsible and accountable for any decision it takes and for any activity for which it is solely responsible under that regulation.

67 Article 97(4) of Regulation 2019/1896 provides – like the second paragraph of Article 340 TFEU, to which it gives concrete expression – that, in the case of non-contractual liability, Frontex is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its departments or by its staff in the performance of their duties. Consequently, the case-law of the Court of Justice relating to that provision of the FEU Treaty is relevant in the present case.

68 According to the Court's settled case-law, the European Union may incur non-contractual liability under the second paragraph of Article 340 TFEU only if a number of conditions are fulfilled, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals, the fact of damage and the existence of a direct causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties (see judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 51, and of 5 March 2024, *Kočner* v *Europol*, C-755/21 P, EU:C:2024:202, paragraph 117 and the case-law cited).

69 It is also apparent from that case-law that, if any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for non-contractual liability on the part of the European Union, and that the EU judicature is not required to examine those conditions in any particular order (judgment of 21 December 2023, *United Parcel Service* v *Commission*, C-297/22 P, EU:C:2023:1027, paragraphs 61 and the case-law cited).

70 As regards, more specifically, the second of those conditions, which relates to the actual damage, that condition requires that the damage for which compensation is sought be real and certain (see, to that effect, the judgment of 14 October 2014, *Giordano* v *Commission*, C-611/12 P, EU:C:2014:2282, paragraph 36 and the case-law cited).

71 In the second place, as regards the rules on the burden of proof and the taking of evidence in relation to the European Union incurring non-contractual liability under the second paragraph of Article 340 TFEU, it is, in principle, the party seeking to establish that liability which must show by way of conclusive proof that the conditions necessary for it to incur such liability have been satisfied. Accordingly, that party must, in particular, adduce such proof as to the existence and the extent of the damage it alleges (see, to that effect, judgment of 12 December 2024, *Nemea Bank* v *ECB and Others*, C-181/22 P, EU:C:2024:1020, paragraph 60 and the case-law cited). To that end, that party may rely on any form of evidence, since the principle in EU law is that of the unfettered production of evidence (see, to that effect, judgment of 12 December 2024, *DD* v *FRA*, C-130/22 P, EU:C:2024:1018, paragraph 92 and the case-law cited).

72 However, when exercising the jurisdiction which Article 268 TFEU, read in conjunction with Article 256(1) TFEU, confers on the General Court to hear and determine at first instance disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340 TFEU, and on the Court of Justice to hear and determine those cases on appeal, the EU judicature must guarantee the effective judicial protection of individuals.

73 An action for damages under Article 268 TFEU must be assessed having regard to the whole of the system established by the treaties for the judicial protection of the individual and contribute to the effectiveness of that protection (judgment of 6 October 2020, *Bank Refah Kargaran* v *Council*, C-134/19 P, EU:C:2020:793, paragraph 34 and the case-law cited).

74 In that regard, it should be recalled that it follows from Article 2 TEU that the European Union is founded, inter alia, on the values of equality and the rule of law. The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule

of law (judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 58 and the case-law cited).

75 Moreover, Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article (judgment of 6 October 2020, *Bank Refah Kargaran* v *Council*, C-134/19 P, EU:C:2020:793, paragraph 36 and the case-law cited).

76 Furthermore, it should be noted that, as is apparent from the preamble of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), the General Court was created in order to maintain the quality and effectiveness of judicial review in the Community legal order, which became the EU legal order. That preamble states, on that subject, that granting the General Court the jurisdiction to deal, at first instance, with actions requiring close examination of complex facts, thus establishing a second court, would improve the judicial protection of individual interests.

77 Consequently, the application by the General Court of the rules relating to the burden of proof and the taking of evidence cannot undermine the effectiveness of the judicial protection of the rights which are conferred on individuals by EU law. That application also may not lead to the imposition on a party of a burden of proof which is excessive if not impossible to discharge (*probatio diabolica*) or to the calling into question of the principle of equality of arms, which implies, as the Court of Justice has held, that each party must be afforded a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage vis-à-vis its opponent (judgment of 17 November 2022, *Harman International Industries*, C-175/21, EU:C:2022:895, paragraph 62 and the case-law cited).

78 Accordingly, in the application of those rules, the General Court must ensure full respect for the right to an effective remedy, as guaranteed by Article 47 of the Charter, by taking into account the particular circumstances of the case before it. If, in the light of those circumstances, it appears that the application of those rules imposes on a party to the dispute a burden of proof which is excessively difficult, if not impossible, to discharge, those rules must be adapted.

79 In the third place, it should be recalled that the General Court has been granted powers for the purpose of preparing the cases before it for hearing and investigating them. Under Articles 88 and 89 of its Rules of Procedure, the General Court may adopt measures of organisation of procedure the purpose of which is to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions. As is apparent from a combined reading of Article 24 of the Statute of the Court of Justice of the European Union, which applies to the General Court under Article 53 thereof, and Article 89 of the Rules of Procedure of the General Court, the General Court may adopt measures consisting, in particular, in requiring the parties to produce all documents and to supply all information which it considers necessary. Article 91 of those rules of procedure enables the General Court to adopt measures of inquiry, which include, inter alia, the personal appearance of the parties and requests to those parties for information or for production of any material relating to the case. Furthermore, under Articles 26 to 30 of the Statute of the Court of Justice of the European Union, which apply to the General Court under Article 53 thereof, read in conjunction with Articles 93 to 95 of the Rules of Procedure of the General Court, the General Court may hear witnesses under oath. Lastly, during a hearing, Article 32 of the Statute of the Court of Justice of the European Union, which applies to the General Court under Article 53 thereof, enables the General Court to hear the parties and the witnesses.

80 While it is true that it is for the General Court to decide on the need to make use of those powers (see, to that effect, judgment of 28 January 2016, *Heli-Flight* v *EASA*, C-61/15 P, EU:C:2016:59, paragraph 94 and the case-law cited), it remains the case that the General Court must exercise those powers in full compliance with the requirements stemming from Article 47 of the Charter. Accordingly, in exceptional cases where the application of the rules on the burden of proof and the taking of evidence do not make it possible to guarantee the effective judicial protection of an applicant, the General Court must, in order to guarantee that protection which is fundamental in the European Union

as a Union based on the rule of law, make use of those powers to supplement the information it possesses in the case before it.

81 Thus, the General Court may not simply dismiss claims made by applicants on the ground of insufficient evidence, when it is that court that has the power, in particular by granting a request of those applicants, to order measures of inquiry, such as the production of documents, to remove any uncertainty there might be as to the correctness of those claims, or to explain the reasons for which such a document could not, in any event and whatever its content, be material to the outcome of the dispute (see, to that effect, judgment of 4 March 1999, *Ufex and Others* v *Commission*, C-119/97 P, EU:C:1999:116, paragraphs 110 and 111, and order of 4 October 2007, *Olsen* v *Commission*, C-320/05 P, EU:C:2007:573, paragraph 64).

82 In the same vein, it is apparent from settled case-law of the General Court that the latter engages in seeking evidence for the benefit of an applicant through measures of organisation of procedure in exceptional cases where that applicant has actual need of that evidence to support his or her arguments and is encountering difficulty or refusal in accessing it (see, to that effect, judgments of the General Court of 25 September 2002, *Ajour and Others* v *Commission*, T-201/00 and T-384/00, EU:T:2002:224, paragraph 75; of 16 October 2013, *TF1* v *Commission*, T-275/11, EU:T:2013:535, paragraph 116; and of 11 December 2014, *van der Aat and Others* v *Commission*, T-304/13 P, EU:T:2014:1055, paragraph 61; and order of the General Court of 4 February 2005, *Aguar Fernandez and Others* v *Commission*, T-20/04, EU:T:2005:35, paragraph 36).

83 In order to obtain the General Court's intervention in seeking evidence, the party which requests it to do so must however provide at least a minimum of information indicating the utility of that intervention for the purposes of the proceedings (see, to that effect, judgment of 28 July 2011, *Diputación Foral de Vizcaya and Others* v *Commission*, C-474/09 P to C-476/09 P, EU:C:2011:522, paragraph 92 and the case-law cited).

84 It is for the Court of Justice, in the context of an appeal calling into question the General Court's application of the rules on the burden of proof and the taking of evidence, to ascertain whether that court met the obligations referred to in paragraphs 78 and 80 above in full compliance with the requirements stemming from Article 47 of the Charter.

85 It is in the light of those preliminary considerations that it is necessary to examine whether, in the present case, the General Court failed to meet its obligation to adapt the rules on the burden of proof and the taking of evidence for the purpose of ensuring effective judicial protection.

– *The need to adapt the burden of proof*

86 In paragraph 39 of the order under appeal, the General Court found that the evidence produced by the appellant was manifestly insufficient to demonstrate conclusively that the appellant was present at and involved in the alleged incident of 28 and 29 April 2020.

87 In order to determine whether, as the appellant argues, that finding is vitiated by an error of law, on the ground that the General Court failed to have regard to the need to adapt the burden of proof given the specific circumstances of the action for non-contractual liability against the European Union for damages which he claims to have suffered in the light of the alleged infringements of Article 46(4) and (5) of Regulation 2019/1896 and of his fundamental rights deriving from Articles 1 to 4, 6, 18, 19 and 21 of the Charter by Frontex during the alleged incident, it must be observed that the following specific features are present in that action.

88 First, that alleged incident consisted in an operation involving refoulement from EU territory, by sea, to a third country, of persons who, like the appellant, have fled their country of origin, without those persons having received the opportunity to lodge an application for international protection in that territory. A pushback operation such as that is characterised by the significant vulnerability of the persons subject to it and by the absence of the identification and personalised treatment of those persons by the authorities. In addition, those persons are, at the time of the facts, in a position which makes it very difficult for them to collect evidence for the purpose of proving such facts, or even

excludes any possibility of their doing so at all, in particular when the national authorities have confiscated their phones.

89 Secondly, as is apparent from paragraph 10 of the order under appeal, at the time of the alleged incident of 28 and 29 April 2020, there were two ongoing Frontex operational activities in the geographical zone where that alleged incident took place, namely the rapid border intervention in the Aegean Sea and joint operation ‘Poseidon’.

90 As is apparent from Articles 1 and 4 of Regulation 2019/1896, Frontex is an agency of the European Union which constitutes, together with the national authorities referred to in Article 4, the European Border and Coast Guard which is responsible for ensuring European integrated border management at the external borders with a view to managing those borders efficiently in full compliance with fundamental rights and to increasing the efficiency of the EU return policy.

91 It is apparent, inter alia, from recital 3 of Regulation 2019/1896 that Frontex has, for that purpose, been assigned extended tasks and powers concerning the control of the European Union’s external borders, which are, as stated in recital 24 of that regulation, balanced with strengthened fundamental rights safeguards and the increased accountability and liability of that agency.

92 Accordingly, under Article 5(3) of Regulation 2019/1896, Frontex is to facilitate and render more effective the application of EU measures relating to the management of the external borders and to returns. Article 7(4) of that regulation states in that regard that Frontex is to support the application of those measures by reinforcing, assessing and coordinating the actions of Member States and by providing technical and operational assistance in the implementation of those measures. In addition, Article 10(1)(a), (b) and (g) of that regulation provides that Frontex is to be tasked with, inter alia, monitoring migratory flows and carrying out risk analysis as regards all aspects of integrated border management, monitoring the operational needs of Member States related to the implementation of returns, including by collecting operational data, and assisting Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations may involve humanitarian emergencies and rescue at sea in accordance with EU and international law.

93 At the same time, as recital 103 of Regulation 2019/1896 states, that regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 TEU and by the Charter. Article 5(4) of that regulation thus provides that Frontex is to contribute to the application of the EU acquis on fundamental rights, in particular the Charter, at external borders, and Article 10(1)(e) of that regulation confers on Frontex the task of monitoring compliance with fundamental rights in all of its activities at the external borders and in return operations.

94 Article 80(1) and (2) of Regulation 2019/1896 states in that regard that the European Border and Coast Guard is to guarantee the protection of fundamental rights in the performance of its tasks under that regulation in accordance with relevant EU law, in particular the Charter, and relevant international law, including the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (*United Nations Treaty Series*, Vol. 1577, p. 3, No 27531 (1990)), and obligations related to access to international protection, in particular the principle of non-refoulement. More specifically, it is to ensure that, in the performance of its tasks, no person is forced to disembark in, forced to enter, or conducted to a country, or is otherwise handed over or returned to the authorities of a country in contravention of the principle of non-refoulement.

95 In addition, as regards technical and operational assistance in the area of return, Article 48(1)(a)(i) of Regulation 2019/1896, read in conjunction with recital 81 of that regulation, states that that assistance must be given in full respect for fundamental rights and includes the identification of third-country nationals subject to return procedures and other pre-return activities of the Member States.

96 Given its tasks of monitoring, collecting operational data and assisting the authorities of Member States, and its duty to apply the EU acquis on fundamental rights at the external borders of the

European Union, Frontex is, in principle, likely to possess information that is relevant for the purpose of proving the existence of pushbacks.

97 That agency is, with all the more reason, likely to possess such information as regards geographical zones in which it is participating in specific operational activities, such as, in the present case, the rapid border intervention in the Aegean Sea and joint operation ‘Poseidon’, as referred to in paragraph 89 above, which were ongoing at the time of and in the same geographical zone as the alleged incident of 28 and 29 April 2020.

98 As is apparent from Article 36(2)(a), (b) and (e), Article 37(1) to (3), Article 38(2) and Article 39(5) and (8) or Regulation 2019/1896, it is for the executive director of Frontex to evaluate, approve and coordinate such operational activities and to draw up, together with the host Member State and in consultation with participating Member States, an operational plan for those activities.

99 Under Article 38(3)(d), (i) and (l) of that regulation, the operational plan is binding both on Frontex and on those Member States as regards, inter alia, a description of the tasks, a reporting and evaluation scheme and general instructions on how to ensure the safeguarding of fundamental rights during such operational activities.

100 In particular, Frontex must ensure respect for fundamental rights in the operational implementation by the coordinating officer whose role, according to Article 44(1) and (3)(b) and (d) of that regulation, is to monitor the correct implementation of the operational plan and to report to the executive director where the instructions issued to the teams by the host Member States are not in compliance with the operational plan, in particular as regards fundamental rights.

101 Furthermore, under Article 46(4) of that regulation, the executive director of Frontex is to suspend or terminate activities of that agency if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.

102 In addition, the duty to apply the EU acquis on fundamental rights at the external borders of the European Union, which derives from the provisions referred to both in the previous paragraph and in paragraphs 93 and 95 above, requires Frontex to cooperate diligently with any administrative investigation or legal proceedings concerning suspected violations of those fundamental rights at the external borders of the European Union.

103 Thirdly, it must be observed that an action for non-contractual liability under Article 268 TFEU may be the only legal remedy capable of ensuring, to the requisite standard, judicial protection before the EU judicature against Frontex.

104 In the light of the specific features of an action for non-contractual liability against the European Union on the basis of alleged unlawful conduct by Frontex in relation to an operation involving pushback to a third country of which persons, such as the appellant, claim to have been victims, those persons cannot be requested to adduce conclusive proof that that operation occurred and that they were present during it.

105 As the Advocate General also noted, in essence, in point 52 of his Opinion, failure to adapt the burden of proof imposed on those persons might hinder all legal action by victims of a pushback operation against Frontex on the basis of alleged unlawful conduct by that agency, granting the latter de facto immunity and thus jeopardising the effective protection of the fundamental rights of those victims as enshrined, in particular, in Articles 18, 19 and 47 of the Charter.

106 Accordingly, where persons claim to have been victims of a pushback operation, full respect for the right to an effective remedy, as guaranteed by Article 47 of the Charter, requires that it be sufficient for those persons to present prima facie evidence that that operation, in which Frontex participated, occurred and that they were present during it.

107 That conclusion is consistent with the case-law of the ECtHR.

108 Under Article 52(3) of the Charter, the Court must take into account, as a minimum level of protection, the rights as guaranteed by the ECHR which correspond to those of the Charter (see, to that effect, judgment of 3 April 2025, *Alchaster II*, C-743/24, EU:C:2025:230, paragraph 24). Accordingly, the Court must ensure that the interpretation which it gives to Article 47 of the Charter, the first and second paragraphs of which correspond to Article 6(1) and Article 13 ECHR, safeguards a level of protection which does not fall below the level of protection established in those provisions of the ECHR, as interpreted by the ECtHR (see, to that effect, judgment of 10 September 2024, *KS and Others* v *Council and Others*, C-29/22 P and C-44/22 P, EU:C:2024:725, paragraph 77 and the case-law cited).

109 The ECtHR has held consistently, in the context of collective expulsions of migrants, that, where the absence of identification and personalised treatment by State authorities is at the core of an applicant's complaint, that it is sufficient for an applicant to furnish prima facie evidence in support of his or her version of events. To that end, it is sufficient that the applicant provide a detailed, specific and consistent account of the events in issue (see, in particular, ECtHR, 13 February 2020, *N.D. and N.T. v. Spain*, CE:ECHR:2020:0213JUD000867515, § 85; ECtHR, 18 November 2021, *M.H. and Others v. Croatia*, CE:ECHR:2021:1118JUD001567018, § 268; and ECtHR, 7 January 2025, *A.R.E. v. Greece*, CE:ECHR:2025:0107JUD001578321, § 214).

110 It follows that the General Court, in paragraph 39 of the order under appeal, erred in law by finding that it was necessary to assess whether the appellant had adduced conclusive proof of his presence at and involvement in the alleged incident of 28 and 29 April 2020, rather than examining whether the appellant had produced prima facie evidence of his presence at that incident and involvement in it.

111 That error of law necessarily vitiated the findings of the General Court, in paragraphs 40 to 57 of the order under appeal, regarding the evidence produced by the appellant since its assessment was carried out in the light of a standard of proof that was too high.

112 Although that error of law is sufficient to result in the order under appeal being set aside, the Court of Justice must nevertheless, in order to ensure full compliance with the requirements stemming from Article 47 of the Charter, assess, on the basis of the General Court's findings, whether the appellant provided prima facie evidence of his presence at and involvement in the alleged incident of 28 and 29 April 2020.

– *The existence of prima facie evidence*

113 In paragraph 37 of the order under appeal, the General Court noted that, in order to prove that he was present at and involved in the alleged incident of 28 and 29 April 2020, the appellant relies, in the first place, on his own witness statement, in the second place, on the Bellingcat article and, in the third place, on four photographs which are colour screenshots from the videos featured in that article.

114 In order to ascertain whether that evidence relied on and produced by the appellant may be regarded as sufficient to provide prima facie evidence of his presence at and involvement in the alleged incident of 28 and 29 April 2020, it should, first of all, be observed, as the General Court correctly recalled in paragraphs 31 and 32 of the order under appeal, that the corollary of the principle of the unfettered production of evidence is the principle of the unfettered assessment of evidence. Under the latter principle, the only relevant criterion for the purpose of assessing the probative value of evidence lawfully adduced relates to its credibility (judgment of 26 September 2018, *Infineon Technologies* v *Commission*, C-99/17 P, EU:C:2018:773, paragraph 65 and the case-law cited).

115 As regards, in the first place, the appellant's witness statement, it should be borne in mind that the assessment of its probative value requires that the credibility of that witness statement and the plausibility of the information contained therein be established by taking into account, inter alia, the circumstances in which that witness statement was drawn up and the person to whom it is addressed, and that it be determined whether, on its face, the document appears to be sound and reliable (see, by analogy, order of 12 June 2019, *OY* v *Commission*, C-816/18 P, EU:C:2019:486, paragraph 4 (point 6 of the position of Advocate General Pikamäe)).

116 In particular, the witness evidence of an applicant cannot be dismissed as having little probative value without account being taken of all the evidence submitted in a specific case.

117 It follows that, in paragraphs 33 and 40 of the order under appeal, the General Court erred in law by finding that, as a general rule, an applicant's own witness evidence has little probative value.

118 As is apparent from the findings in paragraphs 36 and 37 of that order, the appellant, in his witness statement annexed to the application initiating the proceedings before the General Court, gives a detailed and coherent description of his crossing to the island of Samos, confirming also that said crossing took place in April 2020, and of the pushback operation of which he claims to have been a victim after reaching the island.

119 On the basis of those findings, the General Court ought to have concluded that the witness statement of the appellant was sufficiently detailed, specific and consistent to constitute prima facie evidence that the appellant was, in fact, a victim of an operation involving pushback from the island of Samos in April 2020.

120 The General Court's assessment, in paragraph 41 of the order under appeal, that that witness statement contains several statements which are insufficiently specific regarding the essential points of fact does not make it possible to conclude that that witness statement does not constitute such prima facie evidence.

121 In that regard, it is apparent from paragraph 41 of the order under appeal that, in order to justify that assessment, the General Court indicated, first, that the appellant had, in response to the question of whether he remembered the date on which he had undertaken the journey to Europe, stated that he did not in fact remember that date, but thought that it was in April, and, secondly, that he had stated that he was part of a group of 22 people during the alleged incident of 28 and 29 April 2020, but that he had not identified any of the other persons in his witness statement and nor provided any witness evidence from those persons.

122 However, the sole fact that a person, who claims to have been a victim of a pushback operation, may not remember the exact date on which he or she undertook the journey to Europe and may not be in a position to identify precisely the other victims of that operation, or even provide their witness evidence, is manifestly not a sufficient basis upon which to dismiss the probative value of that person's witness evidence for the purpose of determining whether it constitutes prima facie evidence.

123 As is apparent from paragraphs 109 and 115 above, that probative value depends solely on the account set out in the witness evidence being detailed, specific and consistent, and the information contained therein being credible.

124 As regards, in the second place, the Bellingcat article, it must be observed that that article chronicles, as is apparent from the findings in paragraphs 50 and 53 to 55 of the order under appeal, a group of persons arriving on the island of Samos by sea on 28 April 2020, the Greek authorities carrying out a pushback of those persons, who were aboard a makeshift vessel without an engine, and the Turkish coast guard taking charge of those persons at sea the following day. Accordingly, the content of that article is consistent with the appellant's witness statement.

125 That finding is not called into question by the General Court's assessments in paragraph 55 of the order under appeal, that, in essence, first, the information set out in that article as to the date and location of the events chronicled therein are too imprecise and, secondly, the sources on which the statements of the authors of that article were based could not be verified. While those assessments may establish that the Bellingcat article cannot be regarded as conclusive proof of the alleged incident of 28 and 29 April 2020, they cannot negate the probative value of that article and, accordingly, prevent it from being regarded as supporting the prima facie evidence provided by the witness statement of the appellant.

126 As regards, in the third place, the four photographs featured in the Bellingcat article, the General Court found, in paragraph 48 of the order under appeal, that the appellant is not easily identifiable or clearly recognisable therein and that, accordingly, those photographs do not demonstrate that the person indicated in the photographs is the same person pictured in the appellant's passport. Even if that were the case, it must be held that those assessments by the General Court do not affect the fact that the witness statement of the appellant, which recounts in a detailed, specific and consistent manner a

pushback operation of which he claims to have been a victim in April 2020 when he arrived on the island of Samos, and which is supported by the Bellingcat article, constitutes prima facie evidence, in accordance with paragraph 106 above.

127 Furthermore, the prima facie evidence provided by the appellant as regards his presence at and involvement in the alleged incident of 28 and 29 April 2020 is not called into question by Frontex's argument, as set out in paragraph 38 of the order under appeal, that it had neither been notified about an incident nor received any information linked to that alleged incident. In the light of its obligation to ensure respect for fundamental rights and the information on that subject which it must have had at its disposal, in particular, in the context of the rapid border intervention in the Aegean Sea and joint operation 'Poseidon', that agency cannot rely, without further clarification, on its lack of knowledge as to that alleged incident.

128 Accordingly, given that the appellant is required to adduce not conclusive proof but rather prima facie evidence of his presence at and involvement in the alleged incident of 28 and 29 April 2020, it must be found that the evidence relied on and produced by the appellant, which forms a body of consistent evidence, was sufficient to provide that prima facie evidence.

– *Duty of the General Court to take further steps in the proceedings and to investigate the case*

129 It follows from the findings in paragraphs 110 and 128 above that the General Court erred in law, in paragraphs 13, 14, 61 and 62 of the order under appeal, by finding that, since the appellant failed to demonstrate the fact of damage, the latter's action had to be dismissed, in accordance with Article 126 of the Rules of Procedure of the General Court, as manifestly lacking any foundation in law, without it being necessary to take further steps in the procedure.

130 First, irrespective of the probative value of the evidence submitted by the appellant, the General Court erred in law by holding that the appellant's failure to demonstrate the fact of damage justified the dismissal of his action for non-contractual liability as manifestly lacking any foundation in law, pursuant to Article 126 of the Rules of Procedure of the General Court.

131 Secondly, taking into account both the specific features of the dispute as set out in paragraphs 88 to 103 above and the fact that the appellant provided prima facie evidence of a pushback, of which he claims to have been a victim, by producing a witness statement and the Bellingcat article, the General Court erred in law by failing to take further steps in the proceedings to investigate the case pending before it prior to ruling on it.

132 Where an applicant provides prima facie evidence that he or she has been a victim of a pushback and complains of Frontex's involvement in that pushback, the General Court is required to take further steps in the proceedings and investigate the case before it in order to assess, on the basis of all of the information at its disposal, the truth of that circumstance. If the General Court reaches the conclusion that that prima facie evidence has not been rebutted during a hearing of the appellant as a witness or by evidence and arguments presented by the other parties to that case in their pleadings or even by other possible evidence obtained in the course of its investigation of the case, that circumstance must be deemed to have been proved.

133 In particular, in view of the information which Frontex must have had at its disposal for the purposes of carrying out its tasks and exercising its powers, and in view of its duty to ensure respect for fundamental rights during the rapid border intervention in the Aegean Sea and joint operation 'Poseidon', the General Court was required, in the present case, to adopt measures of organisation of procedure or measures of inquiry to obtain, from that agency, all relevant information at its disposal with a view to clarifying the facts of the alleged incident of 28 and 29 April 2020. That investigation was necessary, taking into account the adaptation of the burden of proof from which the appellant benefits for the reasons set out in paragraph 106 above, so that the General Court might effectively have sufficient information on the basis of which to assess whether the appellant's action was well founded, and might guarantee the effective judicial protection of the latter's rights.

134 In that regard, it must be noted that, in the proceedings before the General Court, the appellant made several requests for such measures to be adopted.

135 First, on 10 March 2022, the appellant requested that the General Court, by means of measures of organisation of procedure or measures of inquiry, invite Frontex to grant him access to the following documents.

136 First of all, he sought access to the main parts of the operational plan, all annexes thereto and the handbook to the operational plan in relation to the rapid border intervention in the Aegean Sea in 2020.

137 Next, he requested the communication of any and all correspondence, including, but not limited to, letters, emails, and any attachment; documents, including but not limited to, evaluations, descriptions, briefing, notes, reports and analyses; exchanges between the defendant and the Greek authorities in preparation for the rapid border intervention in the Aegean Sea in 2020, including any and all documents exchanged containing a description of the situation and aims of the operation in question in accordance with Article 39 of Regulation 2019/1896.

138 Lastly, he requested the production of all correspondence, including, but not limited to, emails, messages, notes and letters, as well as all attachments between, on the one hand, the executive director of Frontex and, on the other, the Greek Ministry of Migration and Asylum, the Fundamental Rights Office of Frontex and any other person, regarding the documented refoulement operations which took place on 18 and 19 April 2020, that is to say 10 days before the alleged incident of 28 and 29 April 2020.

139 Secondly, in his request of 10 March 2022, the appellant also requested that the General Court organise a hearing so that he might give oral testimony about the refoulement operation in the Aegean Sea of which he claims to have been a victim and of the non-material damage he suffered in connection with it.

140 Thirdly, on 29 April 2022, the appellant requested that the General Court, by means of a measure of organisation of procedure, request that Frontex produce the OLAF report in its entirety, including the annexes thereto.

141 Fourthly, on 18 May 2022, the appellant requested that the General Court, by means of a measure of organisation of procedure, order Frontex to produce the JORA reports on the incident which took place on 28 and 29 April 2020.

142 In addition, for each of the requests for measures of organisation of procedure or measures of inquiry, the appellant provided a minimum of information indicating the utility of that intervention for the purposes of the proceedings, in accordance with the case-law referred to in paragraph 83 above.

143 As regards the request for the production of the OLAF report in its entirety, the appellant submitted that that report, which had not yet been published when he lodged his action before the General Court, documented, among others, a refoulement operation in the Aegean Sea which took place on 28 and 29 April 2020. In addition, he submitted that that report confirmed his allegations before the General Court that, first, the management board of Frontex had been informed of the involvement of assets and staff of that agency in unlawful refoulement operations and, secondly, the information and evidence relating to those actions and omissions had been concealed and distorted, preventing, in particular, Frontex from exercising its powers in accordance with Article 46(4) and (5) of Regulation 2019/1896. Furthermore, in his view, that report would make it possible to prove that the failure to report the refoulement operation of 28 and 29 April 2020 was not due to a failure, by a highly equipped Frontex Surveillance Aircraft flying over a zone where the routes to cross the sea are very short, to detect it, but to an organisational culture within Frontex of ‘turning a blind eye’ to infringements of migrants’ fundamental rights.

144 In support of his request that the JORA reports be produced, the appellant claimed that, following an investigation conducted by a consortium of investigative journalists published on 28 April 2022, he had managed to obtain evidence proving that three distinct operations took place on 28 and 29 April 2020 in a zone covered by Frontex operations, and that they were all classified in the *Joint Operations Reporting Application* database, hosted on Frontex’s server, as ‘prevention of departure’ operations.

145 As regards the requests for the production of documents made on 10 March 2022, the appellant was of the opinion, in essence, that they were necessary for the General Court to be able to ascertain whether the actions and omissions alleged against Frontex were such that it might incur non-contractual liability, as he claimed in his application at first instance.

146 In the light of the requests for measures of organisation of procedure and measures of inquiry from the appellant and the evidence provided by him to indicate the utility of those measures, it must be borne in mind that, although it is for the General Court, having regard to Article 90(1), Article 92(1) and Article 106 of its Rules of Procedure, to decide on whether such measures serve the purpose of resolving the dispute before it, the Court of Justice is nevertheless required to ascertain whether the General Court erred in law by rejecting those requests (see, to that effect, judgment of 28 July 2011, *Diputación Foral de Vizcaya and Others* v *Commission*, C-474/09 P to C-476/09 P, EU:C:2011:522, paragraph 93 and the case-law cited).

147 In particular, as is apparent from paragraphs 80 and 84 above, it is for the Court of Justice, in the context of an appeal calling into question the General Court's application of the rules on the burden of proof and the taking of evidence, to ascertain whether the latter court exercised that power in full compliance with the requirements stemming from Article 47 of the Charter.

148 It must be held that, since the appellant has provided prima facie evidence that he was affected by a pushback operation and since Frontex has failed voluntarily to cooperate, the appellant is in one of the exceptional cases envisaged by the case-law referred to in paragraphs 81 and 82 above which justifies the General Court's involvement, through the adoption of measures of organisation of procedure and measures of inquiry as suggested by the appellant, in seeking evidence which may be in Frontex's possession relating to that pushback.

149 In that regard, it must be noted in particular that the OLAF report which has been disclosed in part by various media outlets and included in the appellant's appeal, makes explicit reference, in point 2.2.1(c), to collective expulsion operations taking place on 28 and 29 April 2020, of which the appellant claims to have been a victim, and states that two entities of Frontex (the Risk Analysis Unit or 'RAU' and the Vulnerability Assessment Unit or 'VAU') confirmed the credibility of certain 'open source' reports, including the Bellingcat article, which relate specifically to those facts.

150 Accordingly, the General Court could not, without erring in law, reject the appellant's requests for measures of organisation of procedure or measures of inquiry on the grounds relied on in paragraph 60 of the order under appeal, namely that the General Court is by no means obliged to adopt any further measure for the taking of evidence of facts at issue, even if at the end of its assessment it concludes that none of that evidence is of any probative value.

151 In addition, as regards the appellant's request that a hearing be organised so that he might give oral testimony before the General Court, the latter erred in law, in paragraph 58 of the order under appeal, by rejecting that request on the ground that, having regard to the finding that the evidence produced by the appellant was manifestly not capable of establishing the events relating to the alleged damage and to the fact that, in general, the witness evidence of an applicant has little probative value, hearing the appellant as a witness would not enable him to discharge the burden of proof which lay with him regarding the events relating to the alleged damage, especially since he had already provided his witness statement.

152 As has been held in paragraphs 116 and 117 above, the General Court cannot find, a priori, that, as a general rule, an applicant's own witness evidence has little probative value. In addition, for the reasons set out in paragraphs 113 to 128 above, the witness statement of the appellant, as supported by the Bellingcat article and thus forming a body of consistent evidence, constitutes prima facie evidence that he was affected by the alleged incident of 28 and 29 April 2020, with the result that hearing the appellant might have enabled the General Court to obtain clarification as to the facts put forward in the appellant's witness statement and to assess fully the credibility of that statement.

153 In the light of all the foregoing considerations, the single ground of appeal must be upheld and, accordingly, the order under appeal must be set aside.

Referral of the case back to the General Court

154 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court of Justice quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits.

155 That is not the case here. Since the General Court has not properly investigated the dispute for the purpose of establishing whether the conditions for the non-contractual liability of Frontex are satisfied, the state of the proceedings does not permit final judgment to be given. The case must, accordingly, be referred back to the General Court for it to rule on the appellant's action.

Costs

156 Since the case has been referred back to the General Court, the costs must be reserved.

On those grounds, the Court (Grand Chamber) hereby:

1. **Sets aside the order of the General Court of the European Union of 13 December 2023, *Hamoudi* v *Frontex* (T-136/22, EU:T:2023:821);**

2. **Refers the case back to the General Court of the European Union;**

3. **Reserves the costs.**

Lenaerts	von Danwitz	Biltgen
Jürimäe	Arastey Sahún	Ziemele
Passer	Spineanu-Matei	Rodin
Gratsias	Gavalec	Csehi
	Smulders	

Delivered in open court in Luxembourg on 18 December 2025.

A. Calot Escobar	K. Lenaerts
Registrar	President

* Language of the case: English.