JUDGMENT OF THE COURT (Grand Chamber)

18 December 2025 (*)

(Appeal – Common policy on asylum and immigration – Regulation (EU) 2016/1624 – European integrated border management of the external borders of the European Union – European Border and Coast Guard – European Border and Coast Guard Agency (Frontex) – Frontex's obligations to protect fundamental rights – Joint return operation coordinated by Frontex – Frontex's non-contractual liability – Causal link between the breach of such obligations and the damage suffered)

In Case C-679/23 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 14 November 2023,

WS,

WT,

WY,

WZ,

YA,

YB,

represented by L.-M. Komp, A.M. van Eik, advocaten, and E. Sharpston, Barrister-at-Law,

appellants,

the other party to the proceedings being:

European Border and Coast Guard Agency (Frontex), represented initially by H. Caniard, R.-A. Popa and C. Rueger, acting as Agents, and subsequently by H. 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, M.L. Arastey Sahún, I. Ziemele, J. Passer, O. Spineanu-Matei (Rapporteur), Presidents of Chambers, S. Rodin, D. Gratsias, M. Gavalec, Z. Csehi and B. Smulders, Judges,

Advocate General: T. Ćapeta,

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 12 June 2025,

gives the following

Judgment

1 By their appeal, WS and Others seek the setting aside of the judgment of the General Court of the European Union of 6 September 2023, *WS and Others* v *Frontex* (T-600/21, 'the judgment under appeal', EU:T:2023:492), by which that court rejected their claim for compensation for the damage allegedly suffered by them following the failure of the European Border and Coast Guard Agency (Frontex) to comply with its obligations pursuant to (i) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ 2016 L 251, p. 1); (ii) steps 1 to 5 of Frontex's Standard Operating Procedure seeking to guarantee respect for fundamental rights in the joint operations and pilot projects carried out by that agency ('the standard operating procedure'); and, (iii) Article 4 of the Code of conduct for joint return operations coordinated by Frontex ('Frontex's code of conduct').

I. Legal context

A. Regulation 2016/1624

2 Regulation 2016/1624 was repealed by 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) with effect from 3 December 2019, with the exception of Articles 20, 30 and 31 of Regulation 2016/1624, which were repealed with effect from 1 January 2021. However, given the dates of the facts of the dispute, the latter regulation remains applicable *ratione temporis* to that dispute.

3 Regulation 2016/1624 included, inter alia, the following recitals:

'…

(6) European integrated border management should be implemented as a shared responsibility of [Frontex] and 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. While Member States retain the primary responsibility for the management of their external borders in their interest and in the interest of all Member States, [Frontex] should support the application of [European] Union measures relating to the management of the external borders by reinforcing, assessing and coordinating the actions of Member States which implement those measures.

…

(14) The extended tasks and competence of [Frontex] should be balanced with strengthened fundamental rights safeguards and increased accountability.

…

(16) [Frontex] relies on the cooperation of Member States to be able to perform its tasks effectively. In this respect, it is important for [Frontex] and the Member States to act in good faith and to exchange accurate information in a timely manner. …

…

(32) On 15 October 2015, the European Council called for an enlargement of Frontex's mandate on return, to include the right to organise joint return operations on its own initiative …

(33) [Frontex] should step up its assistance to Member States for returning third-country nationals, subject to the Union return policy and in compliance with Directive 2008/115/EC of the European Parliament and of the Council [of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008

L 348, p. 98)]. In particular, it should coordinate and organise return operations from one or more Member States and organise and conduct return interventions to reinforce the return systems of Member States requiring increased technical and operational assistance to comply with their obligation to return third-country nationals in accordance with that Directive.

(34) [Frontex] should, in full respect for fundamental rights, provide the necessary assistance to Member States in organising return operations and return interventions of returnees. It should not enter into the merits of return decisions issued by Member States. …

…

(36) The possible existence of an arrangement between a Member State and a third country does not absolve [Frontex] or the Member States from their obligations under Union or international law, in particular as regards compliance with the principle of non-refoulement.

(37) [Frontex] should establish pools of forced-return monitors, forced-return escorts and return specialists made available by Member States, who should be deployed during return operations and who should form part of tailor-made European return intervention teams deployed in return interventions. The pools should include staff with specific expertise in child protection. [Frontex] should provide them with the necessary training.

…

(39) Special provision should be made for staff involved in activities relating to return to specify their tasks, powers and responsibilities. …

…

(47) The European Border and Coast Guard, which includes [Frontex] and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, should fulfil its tasks in full respect for fundamental rights, in particular the Charter of Fundamental Rights of the European Union ("the Charter"), the European Convention for the Protection of Human Rights and Fundamental Freedoms, [signed in Rome on 4 November 1950,] relevant international law, including the United Nations Convention on the Rights of the Child, [which was adopted by the United Nations General Assembly on 20 November 1989 (*United Nations Treaty Series*, Vol. 1577, p. 3) and entered into force on 2 September 1990,] the Convention on the Elimination of All Forms of Discrimination Against Women, [which was adopted by the United Nations General Assembly on 18 December 1979 (*United Nations Treaty Series*, Vol. 1249, No I-20378, p. 13) and entered into force on 3 September 1981,] 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)), which entered into force on 22 April 1954 and was supplemented by the Protocol relating to the status of refugees, which was concluded in New York on 31 January 1967 and entered into force on 4 October 1967] and obligations related to access to international protection, in particular the principle of *non-refoulement* …

(48) Given the increased number of its tasks, [Frontex] should further develop and implement a strategy to monitor and ensure the protection of fundamental rights. To that end it should provide its fundamental rights officer with adequate resources and staff corresponding to its mandate and size. The fundamental rights officer should have access to all information necessary to fulfil her or his tasks. [Frontex] should use its role to actively promote the application of the Union acquis relating to the management of the external borders, including with regard to respect for fundamental rights and international protection.

…

(50) This Regulation should establish a complaints mechanism for [Frontex] in cooperation with the fundamental rights officer, to safeguard the respect for fundamental rights in all the activities of [Frontex]. This should be an administrative mechanism whereby the fundamental rights officer

should be responsible for handling complaints received by [Frontex] in accordance with the right to good administration. The fundamental rights officer should review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the executive director, forward complaints concerning members of the teams to the home Member State, and register the follow-up by [Frontex] or that Member State. The mechanism should be effective, ensuring that complaints are properly followed up. The complaints mechanism should be without prejudice to access to administrative and judicial remedies and not constitute a requirement for seeking such remedies. …

…’

4 Article 2 of that regulation provided:

‘For the purposes of this Regulation, the following definitions apply:

…

(4) “European Border and Coast Guard teams” means teams of border guards and other relevant staff from participating Member States, including border guards and other relevant staff who are seconded as national experts by Member States to [Frontex], to be deployed during joint operations, rapid border interventions as well as in the framework of migration management support teams;

(5) “host Member State” means a Member State in which a joint operation or a rapid border intervention, a return operation or a return intervention takes place, or from which it is launched, or in which a migration management support team is deployed;

(6) “home Member State” means the Member State of which a member of a European Border and Coast Guard team is a border guard or other relevant staff member;

…

(8) “member of the teams” means a member of the European Border and Coast Guard teams or teams of staff involved in return-related tasks participating in return operations or return interventions;

…

(11) “return” means return as defined in point 3 of Article 3 of Directive 2008/115/EC;

(12) “return decision” means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC;

(13) “returnee” means an illegally staying third-country national who is the subject of a return decision issued by a Member State;

(14) “return operation” means an operation that is coordinated by [Frontex] and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis;

(15) “return intervention” means an activity of [Frontex] providing Member States with enhanced technical and operational assistance consisting of the deployment of European return intervention teams to Member States and the organisation of return operations;

…’

5 Article 3 of that regulation, entitled ‘European Border and Coast Guard’, provided in paragraph 1:

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

6 Article 4 of that regulation, entitled ‘European integrated border management’, provided:

‘European integrated border management shall consist of the following components:

…

(h) return of third-country nationals who are the subject of return decisions issued by a Member State;

…’

7 Article 5 of Regulation 2016/1624, entitled ‘Shared responsibility’, provided in paragraphs 1 and 3:

‘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 …

…

3. [Frontex] shall support the application of Union measures relating to the management of the external borders by reinforcing, assessing and coordinating the actions of Member States in the implementation of those measures and in return.’

8 Under Article 9 of that regulation, entitled ‘Duty to cooperate in good faith’:

‘[Frontex] and the national authorities which are responsible for border management and return … shall be subject to a duty to cooperate in good faith and an obligation to exchange information.’

9 Article 14 of that regulation, entitled ‘Actions by [Frontex] at the external borders’, provided:

‘1. A Member State may request [Frontex’s] assistance in implementing its obligations with regard to the control of the external borders. [Frontex] shall also carry out measures in accordance with Article 19.

2. [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 European Border and Coast Guard teams;

…’

10 Article 22 of the same regulation provided:

‘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 staff members of [Frontex].

…

3. The coordinating officer shall act on behalf of [Frontex] in all aspects of the deployment of the European Border and Coast Guard teams. The role of the coordinating officer shall be to foster cooperation and coordination among host and participating Member States. In particular, the coordinating officer shall:

…

(b) monitor the correct implementation of the operational plan, including as regards the protection of fundamental rights and report to [Frontex] on this;

…’

11 Article 25 of Regulation 2016/1624, entitled ‘Suspension or termination of activities’, provided in paragraphs 1, 3 and 4:

‘1. The executive director shall terminate activities of [Frontex] if the conditions to conduct those activities are no longer fulfilled. The executive director shall inform the Member State concerned prior to such termination.

…

3. The executive director may, after informing the Member State concerned, withdraw the financing of an activity or suspend or terminate it if the operational plan is not respected by the host Member State.

4. The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing of a joint operation, rapid border intervention, pilot project, migration management support team deployment, return operation, return intervention or working arrangement or suspend or terminate, in whole or in part such activities, if he or she considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist. The executive director shall inform the management board of such a decision.’

12 Article 26 of that regulation, entitled ‘Evaluation of activities’, provided:

‘The executive director shall evaluate the results of the joint operations and rapid border interventions, pilot projects, migration management support team deployments and operational cooperation with third countries. He or she shall transmit detailed evaluation reports within 60 days following the end of those activities to the management board, together with the observations of the fundamental rights officer. The executive director shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future activities, and shall include that analysis in [Frontex’s] annual activity report.’

13 Article 27 of that regulation, entitled ‘Return’, provided:

‘1. [Frontex] shall, with regard to return, and in accordance with the respect for fundamental rights and general principles of Union law as well as for international law, including refugee protection and children’s rights, in particular:

(a) coordinate at a technical and operational level return-related activities of the Member States, including voluntary departures, 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;

(b) provide technical and operational assistance to Member States experiencing particular challenges with regard to their return systems;

…

2. The technical and operational assistance referred to in point (b) of paragraph 1 shall include activities to help Member States carry out return procedures by the competent national authorities by providing, in particular:

(a) interpreting services;

…

(c) advice on the implementation and management of return procedures in compliance with Directive 2008/115/EC;

(d) advice and assistance on measures necessary to ensure the availability of returnees for return purposes and to prevent returnees from absconding, in accordance with Directive 2008/115/EC and international law.

…’

14 Article 28 of that regulation, entitled ‘Return operations’, provided:

‘1. Without entering into the merits of return decisions and in accordance with Directive 2008/115/EC, [Frontex] shall provide the necessary assistance and, at the request of one or several participating Member States, ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations. [Frontex] may, on its own initiative, propose to Member States that it coordinate or organise return operations.

2. Member States shall on a monthly basis inform [Frontex] of their indicative planning of the number of returnees and of the third countries of return, both with respect to relevant national return operations, and of their needs for assistance or coordination by [Frontex]. [Frontex] shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational reinforcements, including through technical equipment. …

…

8. The executive director shall evaluate the results of the return operations. Every six months, he or she shall transmit a detailed evaluation report covering all return operations conducted in the previous semester to the management board, together with the observations of the fundamental rights officer. The executive director shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future return operations. The executive director shall include that analysis in [Frontex’s] annual activity report.

…’

15 Article 34 of that regulation, entitled ‘Protection of fundamental rights and a fundamental rights strategy’, was 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, relevant international law – including the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol thereto and obligations related to access to international protection, in particular the principle of non-refoulement.

For that purpose, [Frontex] shall draw up, further develop and implement a fundamental rights strategy including an effective mechanism to monitor the respect for fundamental rights in all the activities of [Frontex].

2. In performing of its tasks, the European Border and Coast Guard shall ensure that no person is disembarked in, forced to enter, conducted to, or otherwise handed over or returned to, the authorities of a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle.

3. In performing 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.

…’

16 Article 35 of Regulation 2016/1624, entitled ‘Codes of conduct’, provided:

‘…

2. [Frontex] shall, in cooperation with the consultative forum, draw up and further develop a code of conduct for the return of returnees, which shall apply during all return operations and return interventions coordinated or organised by [Frontex]. That code of conduct shall describe common standardised procedures to simplify the organisation of return operations and return interventions, and assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the right to the protection of personal data and non-discrimination.

3. [Frontex’s] code of conduct for return shall in particular pay attention to the obligation of Member States to provide for an effective forced-return monitoring system as set out in Article 8(6) of Directive 2008/115/EC and to the fundamental rights strategy.’

17 Article 42 of Regulation 2016/1624, entitled ‘Civil liability’, provided in paragraphs 1 and 2:

‘1. Where members of the teams are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.

2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.’

18 Article 60 of that regulation, entitled ‘Liability’, provided, in paragraph 3:

‘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.’

19 Article 71 of the regulation, entitled ‘Fundamental rights officer’, provided:

‘1. A fundamental rights officer shall be appointed by the management board. He or she shall have the tasks of contributing to [Frontex’s] fundamental rights strategy, of monitoring its compliance with fundamental rights and of promoting its respect of fundamental rights. …

…

3. The fundamental rights officer shall be consulted on the operational plans drawn up in accordance with Articles 16, 17 and 28 and Article 33(4). He or she shall have access to all information concerning respect for fundamental rights in all the activities of [Frontex].’

20 Article 72 of Regulation 2016/1624, entitled ‘Complaints mechanism’, provided:

‘1. [Frontex] shall, in cooperation with the fundamental rights officer, take the necessary measures to set up a complaints mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of [Frontex].

2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation or return intervention and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any party representing such a person, may submit a complaint in writing to [Frontex].

…

4. The fundamental rights officer shall be responsible for handling complaints received by [Frontex] in accordance with the right to good administration. For this purpose, the fundamental rights officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the executive director, forward complaints concerning members of the teams to the home Member State, inform the relevant authority or body competent for fundamental rights in a Member State, and register and ensure the follow-up by [Frontex] or that Member State.

…

10. …

[Frontex] shall ensure that information about the possibility and procedure for making a complaint is readily available, including for vulnerable persons. The standardised complaint form shall be made available on [Frontex's] website and in hardcopy during all activities of [Frontex], in languages that third-country nationals understand or are reasonably believed to understand. Complaints shall be considered by the fundamental rights officer even when they are not submitted in the standardised complaint form.

…'

B. Directive 2008/115

21 Article 6 of Directive 2008/115, entitled 'Return decision', provides, in paragraph 1:

'Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.'

22 Article 8 of that directive, entitled 'Removal', provides, in paragraph 6:

'Member States shall provide for an effective forced-return monitoring system.'

23 Article 12 of that directive, entitled 'Form', provides, in paragraph 1:

'Return decisions … shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies.'

C. The Rules of Procedure of the General Court

24 In accordance with Article 76(f) of the Rules of Procedure of the General Court, 'an application shall contain … where appropriate, any evidence produced or offered'.

25 Article 85 of the Rules of Procedure provides:

'1. Evidence produced or offered shall be submitted in the first exchange of pleadings.

2. In reply or rejoinder a main party may produce or offer further evidence in support of his arguments, provided that the delay in the submission of such evidence is justified.

3. The main parties may, exceptionally, produce or offer further evidence before the oral part of the procedure is closed or before the decision of the General Court to rule without an oral part of the procedure, provided that the delay in the submission of such evidence is justified.

4. Without prejudice to the decision to be taken by the General Court on the admissibility of the evidence produced or offered pursuant to paragraphs 2 and 3, the President shall give the other parties an opportunity to comment on such evidence.'

II. Background to the dispute

26 The background to the dispute was set out in paragraphs 2 to 16 of the judgment under appeal and can be summarised as follows.

27 The appellants are Syrian nationals who arrived on the island of Milos (Greece) on 9 October 2016 amongst a group of refugees. On 14 October 2016, they were transferred to a reception and identification centre in Greece, where they indicated that they wished to lodge an application for international protection.

28 On 20 October 2016, following a joint return operation coordinated by Frontex, the appellants were transferred to Türkiye, to a temporary reception centre in the south east of that country.

29 On 2 November 2016, the Turkish authorities issued the appellants with temporary protection documents and a temporary travel permit to travel to Sanliurfa (Türkiye). The appellants moved temporarily to Saruj (Türkiye), before settling in Erbil (Iraq).

30 On 4 January 2017, the appellants lodged an initial complaint with the Frontex Fundamental Rights Officer by which they submitted that they had been returned from Greece to Türkiye as a result of the return operation carried out by Frontex. In parallel, the appellants lodged a complaint against the Hellenic Republic before the European Court of Human Rights.

31 On 15 February 2017, that complaint was declared admissible and forwarded to Frontex's Executive Director and to the Greek Ombudsman, and the latter forwarded it to the Hellenic police, of which the appellants were informed on 7 June 2017.

32 On 17 July 2018, the appellants lodged a second complaint with the Fundamental Rights Officer concerning the handling of their first complaint, regarding which they received information on 25 July 2018. On 9 August 2018, their second complaint was declared admissible and joined to their first complaint.

33 On 29 November 2018, the Fundamental Rights Officer informed the appellants that Frontex was still awaiting the outcome of the Hellenic Police authority's internal investigation into the first complaint. On 25 November 2019, the Fundamental Rights Officer informed them of the closure of that investigation by those authorities and of the decision of those authorities not to share their internal investigation report because of its confidential nature. On 6 October 2020, the Fundamental Rights Officer sent the appellants his final report on the complaints and closed the complaints procedure.

34 By an email of 8 October 2020 sent to the Fundamental Rights Officer, the appellants submitted that that final report did not address either Frontex's role in the return operation or the second complaint. In his response of 13 October 2020, the Fundamental Rights Officer informed the appellants that Frontex had complied with its obligations concerning the handling of their complaints.

35 In the appeal notice, the appellants, who are a family composed of two parents and four children of Kurdish ethnicity, indicated that they had stated, before the General Court, that a declaration of an amicable settlement, signed by the parties, had been approved on 19 February 2023 by the European Court of Human Rights in the context of an action brought before it against the Hellenic Republic. At the hearing before the Court of Justice, they stated that, in execution of that declaration, the Hellenic Republic had agreed to pay the sum of EUR 12 500 to each of the appellants in respect of material and non-material damage, namely a sum of EUR 75 000 in total, as well as the sum of EUR 1 500 for costs and expenses.

III. The action before the General Court and the judgment under appeal

36 By an application lodged before the General Court on 20 September 2021, the appellants brought an action for damages seeking compensation for the material and non-material damage which they claimed to have suffered as a result of Frontex's alleged unlawful conduct before, during and after the return operation at issue, which they assessed at EUR 96 212.55 in respect of material damage, and EUR 40 000 in respect of non-material damage, together with interest.

37 In the judgment under appeal, as regards the admissibility of certain documents produced by the appellants, the General Court held, first, in paragraphs 43 to 46 of that judgment, that Annexes C.1 and C.3 to C.6 of the reply were inadmissible because they were submitted out of time without justification. Secondly, for the same reason, in paragraphs 49 to 51 of that judgment, the General Court rejected Annex E.1., produced by the appellants on 7 March 2023, namely two days before the hearing.

38 As regards the substance, after finding, in paragraph 53 of the judgment under appeal, that the conditions for the European Union to incur non-contractual liability within the meaning of the second paragraph of Article 340 TFEU are cumulative, the General Court decided, in paragraph 55 of that judgment, to examine in the first place the condition relating to whether there was a causal link between the conduct alleged against Frontex and the alleged damage.

39 In that respect, in paragraph 56 of the judgment under appeal, the General Court considered that the damage pleaded must be a sufficiently direct consequence of the conduct complained of, which must be the determining cause of the damage, although there is no obligation to make good every harmful consequence, even a remote one, of an unlawful situation.

40 First of all, in paragraph 61 of the judgment under appeal, it held that the expenses incurred by the appellants to travel to Greece could not be a direct consequence of the conduct of which Frontex is accused since they predated the return operation at issue.

41 Next, in paragraph 62 of the judgment under appeal, the General Court held that the appellants' argument that there was a causal link between Frontex's alleged failures to fulfil its obligations relating to the protection of fundamental rights in the context of that return operation and the other claims for damages were based on the incorrect premiss that, but for those alleged failures, the appellants would not have been returned to Türkiye and would have obtained international protection in Greece and, therefore, the material assistance to which they were entitled, with the result that they would not have had to suffer the damages in question.

42 In that regard, in paragraphs 64 and 65 of the judgment under appeal, the General Court found that, in accordance with Article 27(1)(a) and (b) and Article 28(1) of Regulation 2016/1624, Article 6(1) of Directive 2008/115 and Article 2(f) and Articles 4, 6, 8 and 31 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), Frontex's task within the framework of the return operation at issue was only to provide technical and operational support to the Member States and not to enter into the merits of decisions to return the persons included in that operation, those decisions, as well as those relating to the granting of international protection, being taken on the basis of an assessment which is within the sole competence of the Member States.

43 Next, in paragraph 66 of the judgment under appeal, the General Court held that a direct causal link was not established in respect of either the material damage connected with the costs incurred by the appellants in Türkiye and Iraq or the non-material damage consisting, inter alia, of feelings of anguish connected with the return flight to Türkiye, a flight which it considered, furthermore, in principle to be the sole responsibility of the host Member State, under Article 42(1) and (2) of Regulation 2016/1624.

44 In addition, in paragraphs 67 to 69 of the judgment under appeal, considering that the damage alleged must result directly from the illegality relied upon and not from a choice made by the appellants as to how to react to the allegedly unlawful act, the General Court held that the alleged material and non-material damage relating to the costs of rent and furniture in Saruj, the fees incurred in order to travel to Iraq, the various expenses incurred since their settlement in that country and the feelings of fear and suffering connected with their difficult journey to that country was the result of their own choices.

45 In that regard, in paragraph 68 of the judgment under appeal, the General Court held, in essence, that it was clear, first, from the case file, that the appellants' move to Saruj resulted from their choice not to comply with the instructions from the temporary travel permit issued by the Turkish authorities and, secondly, from the appellants' written submissions, that their fleeing to Iraq was a consequence of their fear of being returned to Syria by those authorities for having failed to comply with those instructions.

46 Finally, in paragraph 70 of the judgment under appeal, the General Court held that where representation by a lawyer or adviser in the pre-litigation procedure is not mandatory, there is no causal link between the cost of such representation and any wrongful conduct of the institution or body concerned. In those circumstances, it held that the material damage alleged relating to the costs of legal assistance incurred by the appellants in the context of the complaints brought within Frontex could not be directly attributed to Frontex.

47 In conclusion, the General Court held that the appellants had not adduced evidence of a sufficiently direct causal link between the conduct of which Frontex was accused and the damage alleged, and, consequently, dismissed the action for damages in its entirety.

IV. Forms of order sought by the parties to the appeal

48 By their appeal, the appellants claim that the Court should:

– set aside the judgment under appeal and refer the case back to the General Court;

– in the alternative, declare the pleas in their action at first instance to be well founded;

– order Frontex to pay the costs incurred in the proceedings at first instance and on appeal, together with interest.

49 Frontex contends that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs incurred in the proceedings at first instance and on appeal.

V. The appeal

50 The appellants put forward four grounds in support of their appeal.

51 The first ground of appeal, which essentially concerns paragraphs 62 to 66 of the judgment under appeal, raises, in essence, errors of law made by the General Court in finding that there was no causal link between the conduct of which Frontex is accused and the alleged damages resulting from the inclusion of the appellants in the return operation at issue. That ground is comprised, in substance, of three parts.

52 The second ground of appeal, which also concerns paragraphs 62 to 66 of the judgment under appeal, raises, in essence, errors of law made by the General Court in finding that there was no causal link between Frontex's conduct and the alleged non-material damage resulting from breaches of fundamental rights committed during the return flight to Türkiye. That ground is comprised, in substance, of two parts.

53 The third ground of appeal, which is comprised of two parts and concerns paragraphs 67 to 71 of the judgment under appeal, raises errors of law made by the General Court in finding that the requisite causal link between the actions and omissions for which Frontex is criticised and some of the damages alleged had been broken by the appellants' own choices.

54 Lastly, the fourth ground of appeal, which concerns paragraphs 44 to 46 of the judgment under appeal, raises errors of law made by the General Court in finding that various items of evidence that the appellants had produced in support of their action for damages were inadmissible.

A. The second and third parts of the first ground of appeal

1. Arguments of the parties

55 By the second and third parts of the first ground of appeal, which it is appropriate to examine together and in the first place, the appellants submit, in essence, that the General Court erred in law by failing to rule, prior to the examination of whether there was a causal link, on the eight pleas in law in the action by which the appellants sought to establish the existence of irregularities committed by Frontex, in particular on the eighth of those pleas, concerning the examination of their complaints by that agency. The appellants submit that that omission affected the operative part of the judgment under appeal because, if the General Court had examined those pleas, it would necessarily have assessed the actions and omissions of Frontex referred to in those pleas and would have concluded that the conditions for that agency to incur non-contractual liability were satisfied.

56 Frontex submits that the first ground of appeal is inadmissible in its entirety, since the appellants have not identified with sufficient precision the grounds of the judgment under appeal which are referred to. Furthermore, the second and third parts of that ground are ineffective and, in any event, unfounded, since, if the Court finds that one of the three conditions for the European Union to incur non-contractual liability is not satisfied, it is not required to assess the other two conditions.

2. Findings of the Court

57 As regards, in the first place, the plea of inadmissibility concerning the first ground of appeal, raised by Frontex, in that the appellants have not identified with sufficient precision the grounds of the judgment under appeal referred to in the various parts of that ground of appeal, 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 and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must identify precisely the contested points in the grounds of the judgment which the appellant seeks to have set aside and indicate precisely the legal arguments specifically advanced in support of the appeal, failing which the appeal or ground of appeal concerned is inadmissible (see order of 26 April 1993, *Kupka-Floridi* v *ESC*, C-244/92 P, EU:C:1993:152, paragraphs 8 and 9, and judgments of 3 September 2015, *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 53 and the case-law cited, and of 15 July 2021, *Deutsche Lufthansa* v *Commission*, C-453/19 P, EU:C:2021:608, paragraph 95).

58 In the present case, it is sufficient to note that the arguments put forward by the appellants in the context of the second and third parts of the first ground of appeal appear, as a whole, to be sufficiently clear for it to be possible to identify with the requisite precision the contested elements of the judgment under appeal and the legal arguments relied on in support of that criticism and, consequently, to enable the Court to carry out its review of legality.

59 As regards, in the second place, the examination of the substance of the second and third parts of the first ground of appeal, it should be recalled, as a preliminary point, that Article 60(3) of Regulation 2016/1624 provides – like the second paragraph of Article 340 TFEU, of which it constitutes a specific 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 Court's case-law on that provision of the FEU Treaty is relevant in the present case.

60 According to an established line of the Court's 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 (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).

61 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, without it being necessary 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 (see judgment of 21 December 2023, *United Parcel Service* v *Commission*, C-297/22 P, EU:C:2023:1027, paragraph 61 and the case-law cited).

62 Consequently, first, the General Court did not err in principle in deciding to examine, in the first place, the condition relating to the existence of a causal link without examining beforehand the eight pleas by which the appellants sought to establish the existence of irregularities committed by Frontex. Secondly, since it concluded from that examination that that condition was not satisfied, it was not required to examine, in addition, the other two conditions for Frontex to incur non-contractual liability, in particular that relating to the alleged unlawfulness of Frontex's conduct, which was the subject of the eight pleas in law which the appellants complain that the General Court failed to examine.

63 The second and third parts of the first ground of appeal are therefore unfounded.

B. The first part of the first ground of appeal and the first part of the second ground of appeal

64 The first part of the first ground of appeal alleges, in essence, that the General Court infringed, first, Article 14(2), Article 27(1), Article 28(1) and Article 34(1) to (3) of Regulation 2016/1624 and, second, Article 5(1) of that regulation, in finding that there was no causal link between the conduct of which Frontex is accused and the alleged damage due to the inclusion of the appellants in the return operation at issue, which they submit was irregular in the absence of return decisions adopted in respect of them.

65 The first part of the second ground of appeal alleges that the same provisions as those referred to in the first part of the first ground of appeal were infringed in the finding by the General Court that there was no causal link between the conduct of which Frontex is accused and the alleged damage due to infringements of their fundamental rights committed during the return flight to Türkiye in the context of the return operation at issue. In addition, that part of the second ground repeats the criticism made in the first part of the first ground.

66 Since the first part of the first ground of appeal and the first part of the second ground of appeal allege, in essence, the infringement of the same provisions and relate to the same assessment by the General Court, namely that set out in paragraphs 62 to 66 of the judgment under appeal, it is appropriate to examine them together.

1. Arguments of the parties

67 The first part of the first ground of appeal, in which the appellants allege the unlawfulness of their removal to Türkiye on the ground that no return decision had been adopted in respect of them by the Greek authorities, contains two complaints.

68 By the first complaint, the appellants criticise the General Court, in essence, for having implicitly held that Frontex was under no obligation to verify that such a decision existed.

69 They submit that it follows, first, from Article 2(13) and (14) of Regulation 2016/1624, that the national authorities are required to adopt a written return decision before a third-country national may legally be removed from their territory in the context of a return operation and, secondly, from Article 14(2), Article 27(1) and Article 34(1) to (3) of that regulation, that Frontex must ensure that persons are not included in a return operation which it coordinates if they have not been the subject of such a decision.

70 Consequently, the General Court was wrong to rely on the prohibition on Frontex addressing the merits of a return decision, laid down in Article 28(1) of Regulation 2016/1624, in order to exempt it from any obligation in that regard.

71 By the second complaint, the appellants submit, in essence, that the General Court infringed Article 5(1) of Regulation 2016/1624, which establishes joint and several liability of Frontex and the Member State concerned for damage suffered by persons included in a joint return operation as a result of breaches of fundamental rights committed in the context of that operation.

72 Lastly, by the first part of the second ground of appeal, the appellants submit, in essence, that, if the General Court had taken account of Frontex's obligation to verify that they had in fact been the subject of a return decision, it should have found that there was a causal link between the conduct of which Frontex is accused and the unlawful treatment which they claim to have suffered during the return

flight, since compliance with that obligation would have required Frontex to prevent their unlawful removal. In addition, they reiterate their arguments relating to the existence of joint and several liability.

73 Frontex contends, primarily, that the first part of the first ground and the first part of the second ground are inadmissible. First, they are based on putting at issue the finding by the General Court that there was a return decision. Secondly, the complaint relating to the existence of joint and several liability on the part of Frontex and the Hellenic Republic, advanced in those two parts, is new, since the existence of such liability was not raised before the General Court. Thirdly, the appellants do not identify in a sufficiently precise manner the grounds of the judgment under appeal concerned by those parts.

74 In the alternative, Frontex disputes the merits of those parts.

75 In addition to the fact that, contrary to the appellants' submissions, the General Court did not err in classifying their action as being directed against the decisions of the Greek authorities refusing to grant them international protection and ordering their return, Frontex considers, first of all, that the appellants rely on an incorrect interpretation of the provisions of Regulation 2016/1624 they rely on, which is contrary to the principle of sincere cooperation and the principle of conferral, set out in Article 4(3) and Article 5(1) and (2) TEU respectively.

76 First, the principle of sincere cooperation means that Frontex must be able to assume in full confidence that the documents provided by the national authorities, in this case a list of the persons subject to the return operation at issue, are correct, which entails a presumption of legality, the corollary of which is an obligation to recognise those documents as legally valid. Frontex can call that presumption into question only in situations where that agency is aware of sufficiently objective and explicit circumstances of fact that indicate the possibility that the documents provided by the national authorities may be incorrect, leading to a verification obligation. The appellants did not claim before the General Court that such factual circumstances existed in the present case.

77 Second, Frontex submits, in essence, that the principle of conferral requires it to respect the exclusive competence of the Member States with regard to the possible grant of international protection and the adoption of return decisions.

78 Next, Frontex submits that the provisions of the Charter cannot confer on it any power which it does not have under other provisions of EU law.

79 Lastly, as regards whether there is joint and several liability in respect of compensation, Frontex submits, first, that the existence of such liability does not relieve the appellants of the burden of proving, inter alia, the existence of a direct causal link, which they failed to do. Secondly, the existence of joint and several liability on the part of Frontex presupposes the existence of liability on the part of the Greek authorities under Greek law, which would require the General Court to make an assessment that is a matter of national law and not within its jurisdiction. Accordingly, the fact of not having carried out an assessment in that regard cannot constitute an infringement of EU law.

2. Findings of the Court

(a) Admissibility of the first and second complaints in the first part of the first ground of appeal and the first part of the second ground of appeal

80 In the first place, Frontex raises a plea of inadmissibility concerning the first part of the first ground of appeal, in its entirety, and the first part of the second ground of appeal on the ground that, by those parts, the appellants call into question a finding of fact made by the General Court, namely the existence of a return decision relating to them adopted by the Greek authorities.

81 In that respect, it suffices to observe that that argument is based on a misreading of the judgment under appeal. In that judgment, the General Court limited its assessment of Frontex's non-contractual liability to examining only the condition of the existence of a causal link between the conduct complained of and the alleged damage, without ruling on the question of whether the appellants were the subject of a return decision.

82 In the second place, as regards the second complaint in the first part of the first ground of appeal, which is, moreover, repeated in particular in the context of the first part of the second ground and which relates to the existence of joint and several liability on the part of Frontex and the Hellenic Republic, Frontex disputes its admissibility on the ground that it is allegedly new. The appellants state, however, that they raised a plea in law relating to that joint and several liability before the General Court and refer in that regard to paragraphs 5 and 13 of the application at first instance. They add, as regards the substance, that the fact that more than one actor is involved in the occurrence of damage does not exonerate either party from liability for its acts and that it is not necessary to know whether the Hellenic Republic has fulfilled its own obligations.

83 According to Article 170(1) of the Rules of Procedure of the Court of Justice, the subject matter of the proceedings before the General Court may not be changed in the appeal. Thus, the jurisdiction of the Court of Justice in an appeal is limited to review of the findings of law on the pleas and arguments debated before the General Court. A party cannot, therefore, put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court since that would allow that party to bring before the Court of Justice, whose jurisdiction in appeal proceedings is limited, a wider case than that heard by the General Court (judgment of 6 October 2021, *Sigma Alimentos Exterior* v *Commission*, C-50/19 P, EU:C:2021:792, paragraph 38 and the case-law cited).

84 In the present case, it must be noted that, in the two paragraphs of the application at first instance to which the appellants refer, the appellants relied on the possibility that Frontex might incur liability for the acts of its own staff, in parallel with the liability of the Member States for the acts of their own staff.

85 In that regard, it should be borne in mind that, in principle, joint and several liability means that, where damage is inflicted on a third party as a result of the wrongful conduct of several persons, each of them is required to compensate for the damage in its entirety, the injured third party being entitled to claim from each of them full compensation for the damage suffered until he or she has been fully compensated, subject to an action for contribution which the person liable who has made full reparation for the damage suffered may bring against any other jointly and severally liable in view of their relative liability for the damage. Such a system of joint and several liability derogates from the general principles of non-contractual liability of the European Union (see, to that effect, judgment of 5 March 2024, *Kočner* v *Europol*, C-755/21 P, EU:C:2024:202, paragraphs 62 and 64).

86 First, it must be observed that, in the paragraphs of their application before the General Court to which they refer in order to challenge the novelty of the complaint relating to the existence of joint and several liability on the part of Frontex and the Hellenic Republic, the appellants have not alleged the existence of such liability, which would entail an obligation for Frontex to compensate them in full for the harmful consequences of the unlawful conduct of its staff and those of the Hellenic Republic, irrespective of the actual consequences of their respective wrongful acts. The appellants merely maintained that Frontex had incurred liability for the damage caused by the wrongful conduct of its departments or its staff, in parallel with the liability of that Member State for the damage caused by the wrongful conduct of its own staff, and that, consequently, it was important to distinguish the duties and obligations of Frontex from those of the Member State, emphasising, as they also do in the context of the appeal, that Frontex could be held liable irrespective of whether or not the Hellenic Republic had complied with its obligations.

87 Second, although an appellant is entitled to lodge an appeal relying, before the Court of Justice, on grounds which seek to criticise in law the merits of considerations of a legal nature arising from the judgment under appeal itself, in the sense that they constitute the grounds on which the General Court based some of its assessments, irrespective of the arguments put forward before it by the parties (see, to that effect, judgments of 29 November 2007, *Stadtwerke Schwäbisch Hall and Others* v *Commission*, C-176/06 P, EU:C:2007:730, paragraph 17, and of 3 July 2025, *Parliament* v *TC*, C-529/23 P, EU:C:2025:521, paragraph 82), it must be held that, in the present case, the judgment under appeal does not contain any passage relating to the existence of any joint and several liability on the part of Frontex. Moreover, the General Court cannot have implicitly addressed that question. That question concerns the determination of the damage for which compensation may be awarded to a person who has previously been recognised as a joint perpetrator of that damage. That question therefore has no

bearing on the examination of the condition relating to the existence of a causal link between the alleged fault and the alleged damage, to which the General Court confined itself in the judgment under appeal.

88 Consequently, the second complaint in the first part of the first ground of appeal, relating to the existence of joint and several liability on the part of Frontex and the Hellenic Republic, repeated in particular in the context of the first part of the second ground, is inadmissible.

89 In the third and last place, as regards the inadmissibility of those parts which Frontex pleads on account of the failure to identify in a sufficiently precise manner the grounds of the judgment under appeal referred to by that part, that must be rejected for the same reasons as those set out in paragraph 58 of the present judgment.

(b) The merits of the first complaint in the first part of the first ground of appeal and of the first part of the second ground of appeal

90 By the first complaint in the first part of the first ground of appeal and by the first part of the second ground of appeal, the appellants submit in essence that the General Court erred in law by failing to recognise the obligation imposed on Frontex by Regulation 2016/1624 to ensure that any person included in a return operation coordinated by it was the subject of a written return decision, even though they had stated that such a decision had not been taken in respect of them. They infer therefrom that, if it had not made that error, the General Court would have had to find that there was a causal link between Frontex's conduct and the damage which they claim to have suffered, in particular as a result of how the return flight to Türkiye was carried out.

91 Before the General Court, the appellants complained that Frontex had coordinated a joint return operation in the context of which they suffered the infringement of several fundamental rights, resulting in various types of material and non-material damage in respect of which they sought compensation from that agency.

92 As regards the inclusion of the appellants in that operation, the General Court noted, in paragraphs 64 and 65 of the judgment under appeal, that, first, Article 2(f) and Articles 4, 6, 8 and 31 of Directive 2013/32 and Article 6(1) of Directive 2008/115 confer on the Member States exclusive competence to examine applications for international protection and the merits of return decisions, respectively, and, secondly, in accordance with Article 27(1)(a) and (b) and Article 28(1) of Regulation 2016/1624, Frontex has the sole task of providing technical and operational support to the Member States, without addressing the merits of return decisions. It concluded, in paragraph 66 of the judgment under appeal, that, since competence as regards both the examination of applications for international protection and the assessment of the merits of return decisions was conferred on the Member States and not on Frontex, a direct causal link could not be established between the conduct alleged against that agency and the alleged material damage relating to the expenses incurred by the appellants in Türkiye and Iraq and the alleged non-material damage consisting, inter alia, of feelings of anguish connected with the return flight to Türkiye.

93 By those considerations, the General Court therefore ruled out the existence of a causal link between the conduct alleged against Frontex and the damage concerned, without first ruling on whether a return decision had been adopted in respect of the appellants, taking the view that that decision was not relevant in the absence of competence on the part of Frontex to assess whether such a decision was well founded.

94 The appellants submit, in essence, that those considerations are vitiated by an error of law in that they fail to take account of Frontex's own obligations as regards the protection of fundamental rights, in particular as regards compliance with the principle of non-refoulement, by virtue of which that agency is required to ensure that the persons included in a joint return operation coordinated by Frontex were the subject of a return decision.

95 In that regard, under Article 51(1) of the Charter, the Charter's provisions are addressed to the institutions, bodies, offices and agencies of the European Union with due regard for the principle of subsidiarity and to the Member States when they are implementing EU law, with the result that they are

to respect the rights, observe the principles and promote the application thereof, in accordance with their respective powers and respecting the limits of the powers of the European Union as conferred on it in the Treaties.

96 Article 34(1) and (2) of Regulation 2016/1624 reflects those obligations vis-à-vis Frontex and the national authorities of the Member States responsible for border management, which, in accordance with Article 3 of that regulation, together make up the European Border and Coast Guard, by requiring it to ensure the protection of fundamental rights in the performance of its tasks under that regulation, in particular the principle of non-refoulement. To that end, the second subparagraph of Article 34(1) provides that Frontex is to draw up, further develop and implement a fundamental rights strategy including an effective mechanism to monitor the respect for fundamental rights in all its activities.

97 That obligation, under Regulation 2016/1624, to ensure the protection of fundamental rights in the performance of the tasks of the European Border and Coast Guard, which is thus incumbent on Frontex in particular, is also given specific expression with regard to that agency by various provisions of that regulation.

98 Thus, Article 16(2) and (3) of Regulation 2016/1624 provides that, for any joint operation at the external borders, the Executive Director of Frontex is to draw up an operational plan, to be agreed with the host Member State, in consultation with the participating Member States, which is to be binding on all parties involved in that operation. That plan is to set out in detail the organisational and procedural aspects of the plan considered necessary for its implementation, including a description of the tasks and responsibilities as regards respect for fundamental rights. In accordance with Article 22(1) and (3)(b) of that regulation, Frontex is to ensure the correct implementation of the operational plan, in particular through the coordinating officers appointed by its Executive Director, who are to act in all aspects of the deployment of the European Border and Coast Guard teams, including by monitoring the correct implementation of the operational plan as regards the protection of fundamental rights.

99 As regards returns in particular, Article 27(1) and (2) of Regulation 2016/1624 provides, amongst other things, that, in compliance with fundamental rights and general principles of EU law as well as international law, including refugee protection and children's rights, Frontex is to coordinate at a technical and operational level Member States' return-related activities, and provide technical and operational assistance to Member States experiencing particular 'challenges' with regard to their return systems, which includes providing advice on the implementation and management of return procedures in accordance with Directive 2008/115.

100 As regards, more specifically, return operations, which, in accordance with Article 2(12) and (14) of Regulation 2016/1624, are operations coordinated by Frontex concerning the return of persons who are the subject of a return decision which complies with Directive 2008/115, Article 28(1) of that regulation provides that Frontex, in accordance with that directive, is to provide the necessary assistance and, at the request of one or several participating Member States, is to ensure the coordination or the organisation of return operations.

101 As the Advocate General observed in point 77 of her Opinion, it follows from all the provisions referred to in paragraphs 96 and 98 to 100 of the present judgment that joint return operations coordinated by Frontex may only concern persons who have been the subject of enforceable individual return decisions, which Article 12(1) of Directive 2008/115 states must be given in writing.

102 Therefore, in the light of the specific obligations which Regulation 2016/1624 imposes on Frontex in the context of the coordination of joint return operations, that agency is required to verify that such decisions exist for all persons whom a Member State intends to include in such operations, in order to ensure that they comply with the requirements arising from that regulation and with the fundamental rights of the persons concerned, and in particular the principle of non-refoulement.

103 Therefore, the General Court erred in finding that Frontex was not under any obligation as regards the return decisions which must be adopted in respect of persons covered by a joint return operation coordinated by that agency, on the ground that Frontex's task consists solely in providing technical and operational support to the Member States, without having the power to consider the merits of return decisions. As the Advocate General observed in point 79 of her Opinion, the verification of the

existence of such decisions is unconnected with any examination of their merits and therefore does not encroach on the exclusive competence of the Member States in that area under Article 6(1) of Directive 2008/115.

104 Moreover, the arguments relied on by Frontex to support its submission that, in essence, it does not assume an obligation in that regard are irrelevant.

105 First, the principle of conferral set out in Article 5(1) and (2) TEU, in accordance with which the European Union is to act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out in those Treaties, is in no way infringed by Frontex's obligation to verify the existence of return decisions, since that obligation is imposed on it by Regulation 2016/1624 with due regard for the competences of the Member States.

106 Second, the principle of sincere cooperation, which is set out in Article 4(3) TEU and specifically recalled, in the context of Regulation 2016/1624, in Article 9 thereof, relating to the duty to cooperate in good faith, to which Frontex and the national authorities responsible for border management and return are subject, is admittedly of considerable importance in the context of relations between that agency and those national authorities within the European Border and Coast Guard.

107 However, the principle of sincere cooperation cannot be interpreted as allowing Frontex to escape the specific obligations imposed on it by Regulation 2016/1624 in the context of the coordination of joint return operations, and in particular the obligation to verify that written and enforceable return decisions exist for all persons whom a Member State intends to include in such operations, in order to ensure that they comply with the requirements arising from that regulation and with the fundamental rights of the persons concerned, and in particular the principle of non-refoulement.

108 On the contrary, the duty of sincere cooperation, in so far as it is also incumbent on Frontex, reinforces those obligations and should encourage Frontex to support the Member States so that they carry out their tasks in such operations in a manner that fully respects EU law and, in particular, fundamental rights.

109 Furthermore, the question whether, as Frontex submits, the principle of sincere cooperation gives rise to a presumption of legality attaching, in the absence of special circumstances, to the documents submitted by the Member States is not relevant in the present case. As that agency confirmed at the hearing before the Court, the Greek authorities had not provided it, before the joint return operation at issue, with a list of persons who had been the subject of return decisions, but had merely sent it a list of persons who had not lodged an application for asylum. That list is, in itself, unconnected with the existence of return decisions, within the meaning of Article 6(1) of Directive 2008/115, with the result that, even if such a document could benefit from a presumption of legality, it did not make it possible for Frontex to presume that the appellants had been the subject of written and enforceable return decisions.

110 It follows from the foregoing that the General Court's assessment in paragraph 66 of the judgment under appeal, according to which, in essence, there was no causal link between Frontex's conduct and the alleged damage referred to in that paragraph of the judgment under appeal, is based on the incorrect finding that Frontex is under no obligation as regards the issue of whether or not all the persons covered by a joint return operation coordinated by that agency were the subject of a return decision.

111 However, contrary to the appellants' submission in the context of the first part of the second ground of appeal, the fact that Frontex is under a verification obligation in that respect does not mean that there is necessarily a causal link between a possible infringement of that obligation and all or part of the damage which the appellants claim to have suffered.

112 It is true that the existence of such a causal link must be examined in the light of that verification obligation and, more generally, of the obligations imposed on Frontex in order to ensure that joint return operations comply with the requirements flowing from Regulation 2016/1624 and the fundamental rights of the persons concerned. However, that examination must be undertaken taking account of all the relevant facts, the determination of which is a matter for the General Court, and the legal assessments required.

113 It follows from all the foregoing considerations that the first complaint of the first part of the first ground of appeal is well founded and that the first part of the second ground of appeal must be rejected as unfounded.

C. The second part of the second ground of appeal

1. Arguments of the parties

114 By the second part of the second ground of appeal, the appellants challenge the assessment made by the General Court in paragraph 66 of the judgment under appeal, according to which liability for any infringements of their fundamental rights committed during the return flight to Türkiye lies solely with the Hellenic Republic.

115 They submit that that assessment, based on Article 42(1) and (2) of Regulation 2016/1624, is incorrect, since those provisions merely address the liability of the personnel of the host Member State 'at the lower, executive, level', and do not cover Frontex's liability for the failure of its staff to comply with their duties under that regulation. The relevant provision in that regard is Article 60(3) of the regulation, relating to Frontex's non-contractual liability for damage caused by its departments or its staff in the performance of their duties.

116 According to the appellants, the General Court's interpretation of Article 42(1) and (2) of Regulation 2016/1624 deprives of their substance Articles 16, 22, 25, 26, 28 and 34 of that regulation, Article 4 of Frontex's Code of Conduct and steps 1 to 5 of the standard operating procedure, which constitute a set of provisions attributing to Frontex its own duties to ensure the effective monitoring of compliance with fundamental rights. That interpretation also undermines the proper application of Article 8(6) of Directive 2008/115, under which the Member States are to provide for an effective forced-return monitoring system.

117 The appellants also reiterate the complaint relating to the existence of joint and several liability on the part of Frontex and the Hellenic Republic, as formulated in the first part of the first ground of appeal.

118 Frontex submits, first of all, that the second part of the second ground of appeal is ineffective, since the reason set out in paragraph 66 of the judgment under appeal concerning Article 42(1) and (2) of Regulation 2016/1624 is given as an additional reason.

119 Next, Frontex contends that the complaint alleging joint and several liability is inadmissible because it is a new plea.

120 Lastly, the second part of the second ground of appeal, in the context of which the appellants reiterate arguments which they put forward at first instance, relating to Frontex's alleged competences, in particular to verify that the persons included in a joint return operation were the subject of a return decision, is unfounded, since the EU legislature did not confer that competence on it.

2. Findings of the Court

121 As regards, in the first place, the argument that the second part of the second ground of appeal is ineffective, it follows from paragraph 110 of the present judgment that the General Court erred in law in its assessment that any causal link between the conduct of which Frontex is accused and the damage alleged by the appellants should be rejected on the ground that that agency does not assume any obligation to verify the existence of a return decision concerning the persons included in a joint return operation coordinated by that agency. Accordingly, that part, which alleges an additional error of law made by the General Court in finding in essence that liability for any infringements of fundamental rights committed during a return flight lies exclusively with the host Member State, is not ineffective.

122 As regards, in the second place, the repetition of the complaint alleging that Frontex and the Hellenic Republic are jointly and severally liable, that complaint is inadmissible, for the reasons set out in paragraphs 83 to 87 of the present judgment.

123 As regards, in the third and last place, the merits of the second part of the second ground of appeal, it should be noted that, as is apparent from the final part of the second sentence in paragraph 66 of the judgment under appeal, the General Court held, in essence, that, in accordance with Article 42(1) of Regulation 2016/1624, the return flight to Türkiye was, in principle, the sole responsibility of the host Member State, subject to the action it may bring under paragraph (2) of that article against the home Member State of the member of a team for damage caused by that team member's gross negligence or intentional misconduct.

124 In so doing, the General Court implicitly held that Frontex does not itself assume any obligation in relation to possible infringements of fundamental rights committed during a return flight taking place in the context of a joint return operation. Accordingly, the occurrence of such infringements cannot in any event be attributed to it and, therefore, there can be no causal link between the conduct alleged against Frontex and the non-material damage resulting from infringements of the appellants' fundamental rights suffered during the return flight to Türkiye.

125 In that regard, it must be held that the General Court was correct in law in deciding that Article 42(1) of Regulation 2016/1624 lays down the principle that, where European Border and Coast Guard teams operate in a host Member State, that Member State is to be held liable for any damage caused by members of those teams. That liability is consistent with the rule laid down in Article 21(1) and Article 40(3) of that regulation, according to which members of the teams are to receive instructions from the host Member State and may only perform tasks and exercise powers under instructions from, and, as a general rule, in the presence of, border guards or staff involved in tasks of the host Member State related to return.

126 However, Article 42(1) of Regulation 2016/1624 cannot be interpreted as meaning that the host Member State's liability excludes, absolutely, any liability on the part of Frontex in relation to possible breaches of fundamental rights committed during a return operation.

127 Under Article 60(3) of that regulation, Frontex must assume non-contractual liability for any damage caused by its departments or by its staff in the performance of their duties, in accordance with the same principles as those governing the non-contractual liability of the European Union. Consequently, the possibility of concurrent liabilities cannot be rejected a priori.

128 In circumstances such as those of the present case, Frontex's liability can be ruled out only if it is established that the irregularities alleged are necessarily unconnected with any wrongful act or omission on the part of Frontex's departments or staff, or that there is in any event no link between the alleged failures of that agency and the alleged damage.

129 That is not the case here, however.

130 As is apparent from paragraphs 96 to 102 of the present judgment, Regulation 2016/1624 imposes duties on Frontex in order to ensure compliance, inter alia, with fundamental rights in the context of the return operations which it coordinates, arising, first, from the general obligation of the European Border and Coast Guard, of which Frontex is a component, to ensure the protection of fundamental rights in the performance of that body's tasks under that regulation and, second, from Frontex's obligation to monitor effectively respect for fundamental rights in all its activities. In particular, all of those obligations must be implemented, inter alia, by means of the operational plan provided for in Article 16 of that regulation, which Frontex must draw up for each joint return operation and which is binding on all parties involved in that operation, Article 21(1) and (3) of that regulation stating that the host Member State is required to comply with it for the instructions it sends to the European Border and Coast Guard teams during their deployment, under the supervision of the Frontex Coordinating Officer.

131 In addition, in accordance with Article 21(2) of Regulation 2016/1624, through that officer, Frontex may communicate its views to the host Member State on the instructions given by that State. Furthermore, Article 20(1) of the regulation allows Frontex to deploy experts from its own staff during joint return operations in addition to coordinating officers.

132 It follows from those considerations that in accordance with Regulation 2016/1624 Frontex is under a set of obligations intended to ensure respect for fundamental rights in the context of joint return

operations. Therefore, it cannot be excluded a priori that a breach of those obligations by its departments or staff in the context of a particular operation may have contributed to infringements of fundamental rights taking place during a return flight, to the detriment of the persons being removed. It is irrelevant in that regard that, in accordance with Article 8(6) of Directive 2008/115, and as recalled in Article 29(4) of Regulation 2016/1624, the monitoring of forced returns is a matter for the Member States. Under Article 28(1) of that regulation, the assistance provided by Frontex or the coordination or organisation it ensures for joint return operations must be provided in accordance with that directive and, in accordance with that regulation, Frontex is under monitoring obligations additional to those of the Member States.

133 Furthermore, in so far as Frontex staff participate or may participate themselves in such operations, whether as coordinating officers or as experts deployed in the context of those operations, it also cannot be excluded a priori that wrongful acts or omissions on the part of those members of staff may have a causal link with the occurrence of such infringements of fundamental rights.

134 It follows from all the foregoing considerations that the second part of the second ground of appeal is well founded.

D. The third ground of appeal

135 The third ground of appeal, which essentially concerns paragraphs 67 to 71 of the judgment under appeal, consists of two parts. The first concerns the General Court's assessment that the alleged material and non-material damage relating to the appellants' temporary residence in Türkiye and their flight to Iraq, and then their residence in Iraq, do not have a direct causal link with the conduct alleged against Frontex. The second part concerns the same assessment by the General Court relating to the material damage alleged by the appellants in respect of the costs of legal assistance relating to the complaints that they lodged with that agency.

1. The first part of the third ground of appeal

(a) Arguments of the parties

136 By the first part of the third ground of appeal, which comprises four complaints, the appellants submit that the General Court erred in law in holding, in paragraphs 67 to 69 of the judgment under appeal, that the material and non-material damage linked to their temporary residence in Türkiye and their flight to Iraq was the consequence of their own choices, and not of the conduct alleged against Frontex, with the result that the appellants had not established the existence of a sufficiently direct causal link between the alleged damage and the conduct alleged against Frontex.

137 First, the appellants submit that the General Court misapplied the case-law of the Court of Justice on causation in the event of negligent conduct of the injured party or of that party's own choice. The contribution of the injured party to the occurrence of the damage is capable only of limiting the compensation payable by the European Union and cannot therefore be regarded as a ground for breaking the chain of causation.

138 Secondly, the General Court erred in law, in essence, by failing to take into account the appellants' vulnerability as asylum seekers, as required by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 4 of the Charter, whereas, as a result of that vulnerability, they had no real freedom of choice as to their decision to flee to Iraq.

139 Thirdly, the appellants submit that, in the context of its assessment relating to their having a choice, the General Court made various findings and assessments which were factually incorrect.

140 Fourthly and lastly, they repeat the complaint relating to the existence of joint and several liability on the part of Frontex and the Hellenic Republic, as formulated in the context of the first ground of appeal and referred to in paragraphs 71 and 72 of the present judgment.

141 Frontex submits, first of all, in essence, that the line of argument put forward by the appellants in the context, inter alia, of the first part of the third ground of appeal is inadmissible in so far as it contains

various allegations by which they seek to call into question the General Court's findings of fact, by submitting that the damage concerned is not the consequence of their own choices.

142 Next, Frontex contends that the complaint alleging joint and several liability is also inadmissible because it is a new plea.

143 Lastly, in any event, Frontex disputes the merits of the first part of the third ground of appeal, contending that the appellants rely on case-law which is not relevant in the present case, since it relates to situations in which both the European Union and the party which suffered damage contributed to the occurrence of the damage, whereas, in the judgment under appeal, the General Court held that the damage concerned had been caused exclusively by the appellants' choices.

(b) Findings of the Court

144 In the first place, as regards the admissibility of the third complaint of the first part of the third ground of appeal, it follows from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess those facts. Therefore, the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 103 and 104 and the case-law cited).

145 By that complaint, the appellants dispute the General Court's findings relating to the failure to comply with the instructions on the temporary travel permit which the Turkish authorities had issued to them and to their fear of being removed to Syria by those authorities on account of that failure. In so doing, they seek to call into question certain findings of fact contained in the judgment under appeal, without alleging distortion. The third complaint is therefore inadmissible.

146 Secondly, the fourth complaint alleging that Frontex and the Hellenic Republic are jointly and severally liable is also inadmissible, for the reasons set out in paragraphs 83 to 87 of the present judgment.

147 In the second place, as regards the substance of the first two complaints in the first part of the third ground of appeal, it should be borne in mind that, in paragraphs 67 and 68 of the judgment under appeal, after noting that the alleged damage had to result directly from the conduct complained of, the General Court held that the damage associated with the temporary residence of the appellants in Türkiye and their flight to Iraq had been the result of their own choices. In support of that assessment, it found, first, that their move to Saruj had resulted from their choice not to comply with the instructions of the Turkish authorities and, second, that their flight to Iraq had resulted from their fear of being returned to Syria by those authorities on account of the failure to comply with those instructions.

148 It must be recalled that, in accordance with the settled case-law of the Court referred to in paragraph 60 of the present judgment, in order for the European Union to incur non-contractual liability, there must be a direct causal link between the conduct complained of and the damage alleged.

149 In that regard, the Court has already had occasion to hold that neither the second paragraph of Article 340 TFEU nor the principles common to the laws of the Member States to which that article refers can justify an obligation to make good every harmful consequence, even a remote one, of an unlawful act (see, to that effect, judgment of 4 October 1979, *Dumortier and Others* v *Council*, 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79, EU:C:1979:223, paragraph 21).

150 The direct nature of the causal link must be understood not restrictively but as meaning that the damage must flow sufficiently directly from the unlawful conduct of the institutions (see, to that effect, judgments of 4 October 1979, *Dumortier and Others* v *Council*, 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79, EU:C:1979:223, paragraph 21, and of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 61). Thus, the condition relating to a causal link between the conduct complained of and the alleged damage concerns the existence of a sufficiently direct causal

nexus so that the conduct complained of must be the determining cause of the alleged damage (judgments of 13 December 2018, *European Union* v *Gascogne Sack Deutschland and Gascogne*, C-138/17 P and C-146/17 P, EU:C:2018:1013, paragraph 22, and of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 32).

151 In addition, that link may be broken, inter alia, by an act of the person adversely affected, which arises between the conduct complained of and the damage alleged, where that act constitutes the determinant cause of the damage (see, to that effect, judgment of 18 March 2010, *Trubowest Handel and Makarov* v *Council and Commission*, C-419/08 P, EU:C:2010:147, paragraph 61).

152 Such an act may consist, inter alia, of a decision of the adversely affected person, provided, however, that he or she was not obliged to take that decision (see, to that effect, judgments of 16 July 2009, *Commission* v *Schneider Electric*, C-440/07 P, EU:C:2009:459, paragraph 205, and of 13 December 2018, *European Union* v *Gascogne Sack Deutschland and Gascogne*, C-138/17 P and C-146/17 P, EU:C:2018:1013, paragraph 31).

153 Thus, it follows from the case-law referred to in paragraphs 148 to 152 of the present judgment that the General Court did not err in law, first, in finding, in paragraph 67 of the judgment under appeal, that the fact that the conduct complained of constituted a necessary condition for the damage arising, in the sense that the damage would not have arisen in the absence of that conduct, is not sufficient to establish a causal link and, secondly, in examining the possibility, in the present case, that the causal link between the conduct of which Frontex is accused and the damage concerned had been broken by certain acts of the appellants.

154 However, such an examination must necessarily be carried out *in concreto*, taking into consideration all the relevant circumstances characterising the situation of the adversely affected person.

155 Thus, while entirely rational decision-making may be expected of economic operators experienced in the management of risks involved in the exercise of their usual activities (see, to that effect, judgments of 16 July 2009, *Commission* v *Schneider Electric*, C-440/07 P, EU:C:2009:459, paragraphs 200 to 206, and of 13 December 2018, *European Union* v *Gascogne Sack Deutschland and Gascogne*, C-138/17 P and C-146/17 P, EU:C:2018:1013, paragraphs 23 to 31), such rational behaviour cannot be elevated to the rank of a criterion of general application, in particular when natural persons are concerned.

156 That is particularly so in the case of family members who have fled their country of origin in search of international protection and are faced with exceptional circumstances and unforeseeable risks. Asylum seekers may be particularly vulnerable by reason of their migration and the traumatic experiences they are likely to have endured prior to that migration (ECtHR, 18 November 2021, *M.H. and Others v. Croatia*, CE:ECHR:2021:1118JUD001567018, § 207); and that vulnerability is likely to affect their judgment.

157 Therefore, in such an exceptional situation, the causal link between the conduct complained of and the alleged damage may remain unbroken despite a decision of the adversely affected person taken at a time between that conduct and that damage, where that decision, although not the only possible response, may be regarded as a reasonable response having regard to all the circumstances characterising that situation.

158 That conclusion is all the more compelling in a situation in which asylum seekers have been conducted to a country in which there is a concrete risk of a breach of the principle of non-refoulement.

159 In that regard, it should be noted that the appellants alleged before the General Court that the reason for their decision to travel to Erbil had been the fear of being returned to Syria by the Turkish authorities, which was based on their understanding of the law and the Turkish practice of returning Syrian nationals seeking international protection to Syria in breach of the principle of non-refoulement, a matter which they sought to establish by means of an expert opinion cited in their application before the General Court, which it is for it alone to assess.

160 It must be observed that, in the judgment under appeal, the General Court classified the decisions by the appellants after they had been removed to Türkiye as their own ‘choice’ without having carried out a specific examination of the context in which that choice was made – in particular their family situation, their vulnerable state and a possible risk of expulsion to Syria – in order to determine whether, having regard to that context, those decisions could be regarded as reasonable.

161 Therefore, the General Court erred in law in holding, in paragraph 69 of the judgment under appeal, that the damage concerned could not be regarded as being a direct consequence of the conduct alleged against Frontex owing to the choices made by the appellants after the return operation at issue, without having assessed *in concreto* whether those choices were reasonable in the light of all the circumstances characterising the context in which they were made.

162 Accordingly, the second complaint of the first part of the third ground of appeal is well founded. The remainder of that part of that ground must rejected as being inadmissible or unfounded.

2. The second part of the third ground of appeal

(a) Arguments of the parties

163 By the second part of the third ground of appeal, the appellants submit that the General Court erred in law in finding, in paragraph 70 of the judgment under appeal, that it was their own choice to be assisted by lawyers in respect of complaints lodged with Frontex, with the result that there was no causal link between any wrongful conduct on the part of Frontex and the costs relating to that assistance. In the circumstances of the present case, that assistance was necessary, since the appellants are not EU citizens, cannot communicate in any of the official languages of the European Union and were in a particularly vulnerable situation.

164 The appellants add that the General Court should have found that those costs for legal assistance had been caused, at least in their greater part, by Frontex’s negligent handing of their complaints owing to the slowness of their examination and the ineffectiveness of the complaint mechanism, in breach of the principle of sound administration and their right to an effective remedy, as well as of Article 72 of Regulation 2016/1624.

165 Frontex submits that this part is inadmissible, since the question of whether or not it was necessary to obtain legal representation in respect of complaints lodged with Frontex is an assessment of fact which cannot be examined on appeal.

(b) Findings of the Court

166 By the second part of the third ground of appeal, the appellants complain, in essence, that the General Court made an incorrect assessment as to their need to be assisted by lawyers in respect of the complaints that they lodged with Frontex, under the complaint mechanism provided for in Article 72 of Regulation 2016/1624, and, as a result, as to the causal link between the conduct of which Frontex is accused concerning alleged breaches of their fundamental rights attributable to that agency and the damage resulting from the costs of that assistance.

167 In paragraph 70 of the judgment under appeal, the General Court held that, where representation by a lawyer or adviser in a pre-litigation procedure is not mandatory, there is no causal link between the alleged damage, namely the cost of such representation, and any exceptionable conduct on the part of the institution or body concerned. Since recourse to the advice of a lawyer is, in that context, a matter of the concerned person’s own choice, it cannot be attributed to the institution or body in question.

168 In that regard, the Court of Justice has held that the costs of consulting a lawyer at the stage of an administrative complaint or in the context of referral to the European Ombudsman, respectively, must be distinguished from lawyers’ fees incurred in contentious proceedings (judgments of 9 March 1978, *Herpels* v *Commission*, 54/77, EU:C:1978:45, paragraph 45, and of 28 June 2007, *Internationaler Hilfsfonds* v *Commission*, C-331/05 P, EU:C:2007:390, paragraph 25).

169 However, although the Court of Justice found, in the cases which gave rise to the judgments referred to in the preceding paragraph, that the assistance of a lawyer arose from the concerned person's 'own decision' (judgment of 9 March 1978, *Herpels* v *Commission*, 54/77, EU:C:1978:45, paragraph 48) or as a result of the persons concerned being 'free to choose' (judgment of 28 June 2007, *Internationaler Hilfsfonds* v *Commission*, C-331/05 P, EU:C:2007:390, paragraph 27), that finding was made in the light of the features of each of those procedures, and not on the basis of a fundamental understanding of administrative complaints or alternative methods of dispute settlement.

170 In the present case, it must be observed that, first, the complaints mechanism provided for in Article 72 of Regulation 2016/1624 is not an EU citizens' right aimed at eliminating cases of maladministration in the public interest. On the contrary, under Article 72(2) and (3) of that regulation, it is available only to persons directly affected by the actions of staff participating in, inter alia, a return operation, who consider that those actions have involved concrete breaches of their fundamental rights.

171 Secondly, although the Fundamental Rights Officer carries out his or her tasks independently, that officer does so in the context of Frontex's organisation. Furthermore, that officer is seised by a person who, as stated in paragraph 156 of the present judgment, is in a particularly vulnerable situation, in circumstances such as those of the present case, in order to report a concrete breach of a fundamental right resulting from an action of Frontex staff itself.

172 Thirdly, the complaints mechanism established under Article 72 of Regulation 2016/1624 does not guarantee that the complainant will, at a certain point in time, benefit from the safeguards associated with the right to an effective remedy, including the right to be advised, defended and represented enshrined in the second paragraph of Article 47 of the Charter. Unlike the administrative complaint procedure at issue in the case which gave rise to the judgment of 9 March 1978, *Herpels* v *Commission* (54/77, EU:C:1978:45), use of the complaints mechanism is not, as is apparent from recital 50 of that regulation, a precondition for the exercise of a judicial remedy.

173 It follows from the considerations set out in paragraphs 167 to 172 of the present judgment that the General Court erred in law in holding, in paragraph 70 of the judgment under appeal, that, as a matter of principle, where representation by a lawyer or adviser in a pre-litigation procedure is not mandatory, there is no causal link between the costs of such representation and any conduct on the part of the institution or body concerned for which it may be criticised.

174 Accordingly, the second part of the third ground of appeal is well founded.

E. The fourth ground of appeal

1. Arguments of the parties

175 By the fourth ground of appeal, which concerns paragraphs 44 to 46 of the judgment under appeal, the appellants submit, in essence, that by rejecting as inadmissible certain documents which they produced at first instance, namely Annexes C.1 and C.3 to C.6 to the reply and Annex E.1, the General Court infringed Article 85(2) of its Rules of Procedure and the adversarial principle.

176 They submit that Article 85(2) does not cover new evidence or the amplification of offers of evidence where they are submitted in response to arguments put forward by the opposing party in its defence. That is true a fortiori with regard to publicly available documents on which the appellants based their arguments, but the evidential value of which was disputed by Frontex in its defence. Accordingly, the General Court should have found that Annexes C.1 and C.4 to C.6 to the reply constituted 'evidence in rebuttal' and that Annex C.3 to the reply was an 'amplification' of the offers of evidence. As regards Annex E.1, although it was lodged after the close of the written part of the procedure, the General Court should have found that its production could not infringe Frontex's rights of defence since it was a document originating from that agency.

177 Frontex submits, first, that the fourth ground of appeal is ineffective, since the appellants state in that ground that whether or not the documents concerned were placed on the file of the proceedings before the General Court had no bearing on the outcome of their action for damages.

178 Secondly, Frontex contends that those documents did not constitute evidence in rebuttal and submits that the General Court found that the appellants had not justified submitting those documents at the stage of the reply.

2. Findings of the Court

179 As regards, in the first place, the allegedly ineffective nature of the fourth ground of appeal, it must be held that the appellants' view that the documents concerned were not decisive for the outcome of their action for damages has no bearing on their right to produce them before the General Court, subject to their admissibility. That right is not linked to their objective necessity for the debate, since each party is free to assess the usefulness of the documents which it intends to submit in order to support its position or to enlighten the Court. Consequently, contrary to Frontex's submission, the present ground of appeal is not ineffective.

180 As regards, in the second place, the merits of that plea, it should be noted that Article 76(f) and Article 85(1) of the Rules of Procedure of the General Court lay down the rule that the parties must establish the file of evidence or make offers of evidence at the stage of the first exchange of written pleadings, namely at the stage of the application and the defence. That is a time-bar rule (see, to that effect, judgments of 16 September 2020 *BP* v *FRA*, C-669/19 P, EU:C:2020:713, paragraph 41, and of 23 November 2023, *Ryanair and Airport Marketing Services*, C-758/21 P, EU:C:2023:917, paragraph 43).

181 Those provisions take into account the principles of adversarial proceedings and equality of arms and also the right to a fair trial. They require the other parties to be informed of evidence in support of the arguments advanced and seek to enable them to prepare an effective defence or reply, in accordance with those principles and that right to a fair trial. In addition, the requirement to submit or offer evidence at the initial stage of the procedure is also justified by the objective of the sound administration of justice, inasmuch as it enables the case to be dealt with expeditiously, by means of the swift preparation of the case file (see, to that effect, judgments of 14 April 2005, *Gaki-Kakouri* v *Court of Justice*, C-243/04 P, EU:C:2005:238, paragraph 30, and of 23 November 2023, *Ryanair and Airport Marketing Services*, C-758/21 P, EU:C:2023:917, paragraph 41).

182 By way of derogation from the rule of principle laid down in Article 76(f) and in Article 85(1) of the Rules of Procedure of the General Court, Article 85(2) nevertheless authorises the parties to submit or offer evidence in the second exchange of pleadings, provided that the delay in the submitting or offering evidence is justified.

183 Article 85(2) of the Rules of Procedure of the General Court is thus an expression of the requirement for a fair trial and, more specifically, the requirement to protect the rights of defence of the party seeking to submit certain evidence or offers of evidence at that stage, since that submission may be justified, inter alia, by the fact that that party did not previously have the evidence in question at its disposal or by the need to supplement the file in the event of the belated production of evidence by the opposing party, so that observance of adversarial principle is ensured (see, to that effect, judgments of 14 April 2005, *Gaki-Kakouri* v *Court of Justice*, C-243/04 P, EU:C:2005:238, paragraph 33, and of 23 November 2023, *Ryanair and Airport Marketing Services*, C-758/21 P, EU:C:2023:917, paragraphs 42 and 43).

184 Since a delay in the submission of evidence or offers of evidence must be justified, the General Court has jurisdiction to review the merits of the reasons for the delay and, depending on the case, the content of that evidence or the evidence offered and also, as appropriate, to reject it, if its late submission is not justified to the requisite legal standard or is unfounded (see, to that effect, judgments of 16 September 2020 *BP* v *FRA*, C-669/19 P, EU:C:2020:713, paragraph 33, and of 23 November 2023, *Ryanair and Airport Marketing Services*, C-758/21 P, EU:C:2023:917, paragraph 43).

185 It is by way of exception both to the rule of principle laid down in Article 76(f) and Article 85(1) of the Rules of Procedure of the General Court and to the derogation as defined in Article 85(2) that Article 85(3) authorises the parties to submit further evidence or offers of evidence at a later stage, namely before the oral part of the procedure is closed or before the decision of the General Court to rule without an oral part of the procedure, always provided that the delay in offering such evidence is

justified. The considerations set out in paragraphs 183 and 184 of the present judgment apply a fortiori to the evidence produced and the offers of evidence made at that later stage, the admissibility of which presupposes that exceptional circumstances be established (see, to that effect, judgments of 14 April 2005, *Gaki-Kakouri* v *Court of Justice*, C-243/04 P, EU:C:2005:238, paragraph 33, and of 23 November 2023, *Ryanair and Airport Marketing Services*, C-758/21 P, EU:C:2023:917, paragraph 44).

186 It follows from all the foregoing considerations that it is precisely the application of the rules set out in Article 85 of the Rules of Procedure of the General Court that makes it possible to ensure the observance of the adversarial principle, the principle of equality of arms and the right to a fair trial (see, to that effect, judgment of 23 November 2023, *Ryanair and Airport Marketing Services*, C-758/21 P, EU:C:2023:917, paragraph 45).

187 In the present case, first, as regards Annexes C.1 and C.3 to C.6 to the reply, it is apparent from paragraph 42 of the judgment under appeal that they consisted of public documents pre-dating the lodging of the application, with the exception of a translation of an undated statement of one of the appellants and an ‘expert opinion’, which is, in fact, a legal consultation expressly drawn up in the context of the case pending before the General Court.

188 In paragraph 45 of the judgment under appeal, the General Court’s reasons for the inadmissibility of those annexes were, in essence, that the appellants’ discovery during the court proceedings of the supposed relevance of those documents could not in any way constitute a valid reason for their late production when the documents in question were intended to establish facts alleged in the application which most of the documents predated.

189 In so finding, the General Court correctly applied Article 85(2) of its Rules of Procedure. Where the reason for the document being submitted late on the basis of that provision is that an opposing party submitted evidence or made an allegation, in order to justify that delay – as required by that provision for the derogation to apply – the party lodging the application must specify which evidence or allegation, submitted or made by an opposing party, is deemed to make it necessary for that document to be lodged out of time, and must do so with sufficient precision so that the Court is able to carry out its review of that justification, as it is required to do.

190 In the present case, it is apparent from paragraph 41 of the judgment under appeal that, in order to justify the late production of the annexes at issue, the appellants had argued, at the hearing, that the relevance of those annexes was apparent to them only after they had become aware of the arguments put forward by Frontex in the defence. However, it is apparent from an examination of the appellants’ reply at first instance that they did not provide any details as to which of Frontex’s allegations might have justified the lodging of those documents.

191 Therefore, in the light of the considerations and case-law referred to in paragraphs 180 to 186 of the present judgment, the General Court did not infringe either the adversarial principle or the appellants’ rights of defence by rejecting Annexes C.1 and C.3 to C.6 to their reply on the ground that the delay in their production had not been justified to the requisite legal standard.

192 Secondly, as regards Annex E.1, produced two days prior to the hearing before the General Court, it is apparent from paragraphs 47 and 50 of the judgment under appeal that that annex consisted of a document which Frontex had sent to the appellants before they lodged their action. The appellants stated that the failure to produce that document at the application stage was the result of an oversight, which the General Court held was not a reason capable of justifying its late submission.

193 As is clear from the case-law referred to in paragraph 185 of the present judgment, such a reason does not satisfy the requirements for a justification for lodging a document pursuant to Article 85(3) of the Rules of Procedure of the General Court. Accordingly, the General Court correctly applied that provision by excluding Annex E.1.

194 The appellants’ argument that the lodging of that document could not infringe Frontex’s rights of defence, since that document originated from that agency, is irrelevant in that regard.

195 First, it cannot be inferred from Article 85 of the Rules of Procedure of the General Court that that court is, as a matter of principle, obliged to accept documents produced belatedly unless it finds that the rejection of those documents is necessary in order to ensure respect for certain rights or general principles, in particular the rights of the defence of the other party (see, to that effect, judgment of 23 November 2023, *Ryanair and Airport Marketing Services*, C-758/21 P, EU:C:2023:917, paragraph 46), since Article 85(1) of those Rules of Procedure lays down a time-bar rule based on the opposite principle, according to which documents must be produced at the stage of the first exchange of written pleadings. Secondly, as is apparent from paragraph 181 of the present judgment, the purpose of Article 85(1) of those rules is not only to enable the opposing party to prepare an effective defence or reply, but also pursues the objective of the sound administration of justice.

196 It follows from all of the foregoing considerations that the fourth ground of appeal must be rejected as unfounded.

197 Having regard to the findings that the first complaint in the first part of the first ground of appeal, the second part of the second ground of appeal, the second complaint in the first part of the third ground of appeal and the second part of the third ground of appeal are well founded, the judgment under appeal must be set aside in so far as, by that judgment, the General Court dismissed the appellants' action for damages on the ground that there was no sufficiently direct causal link between the conduct of which Frontex is accused and the damage alleged, with the exception of the damage relating to the costs incurred by the appellants in travelling to Greece, on the grounds, in essence:

– first, that, in the context of the tasks of the European Border and Coast Guard, Regulation 2016/1624 does not impose any obligation on Frontex as regards return decisions, of which the persons included in a joint return operation must have been the subject,

– secondly, that, in the same context, any breaches of fundamental rights occurring during a return flight fall within the sole responsibility of the host Member State, to the exclusion of any responsibility on the part of Frontex,

– thirdly, that the appellants' own choices, relating to their temporary residence in Türkiye, their flight to Iraq and their residence in Iraq, had broken any sufficiently direct causal link between the conduct of which Frontex is accused and the alleged damage, without having carried out an assessment *in concreto* of the reasonableness of those choices in the light of all the circumstances which characterised the specific context in which that choice was made, and,

– fourthly, that, where representation by a lawyer or adviser in the pre-litigation procedure is not mandatory, there is no causal link, as a matter of principle, between the costs of such representation and any conduct on the part of the institution or body for which it may be criticised.

VI. The action before the General Court

198 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice may, where it quashes the decision of the General Court, itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

199 In the present case, since the General Court did not rule on most of the appellants' pleas, the Court considers that it is not in a position to rule on the substance of the case.

200 Consequently, the case must be referred back to the General Court.

VII. Costs

201 Since the case has been referred back to the General Court, the costs relating to the present appeal must be reserved.

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

1. **Declares that the judgment of the General Court of the European Union of 6 September 2023, *WS and Others* v *Frontex* (T-600/21, EU:T:2023:492), is set aside except in so far as, first, it dismisses as inadmissible Annexes C.1 and C.3 to C.6 to the reply and Annex E.1 lodged by WS, WT, WY, WZ, YA and YB, and, secondly, it finds that there is no causal link between the conduct alleged against the European Border and Coast Guard Agency (Frontex) and the damage alleged by WS, WT, WY, WZ, YA and YB in relation to the costs incurred in travelling to Greece.**

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.