



## *front-LEX* Files Legal Notice pursuant to Art. 265 TFEU to ED Leijtens

### Challenging the complicity of Frontex Aerial Surveillance activities in Crimes Against Humanity

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**BREAKING:** *front-LEX* and Refugees in Libya file a legal notice pursuant to Art. 265 TFEU requesting Frontex’s director to partially terminate the Agency’s aerial surveillance activities in the ‘pre-frontier area’ in the Central Mediterranean. To prevent asylum seekers fleeing crimes against humanity in Libya from reaching the EU, Frontex systematically and unlawfully transmits the geolocalisation of refugee boats at high seas to the Libyan Coast Guard/Libyan Militia. Every day, Frontex allows for the systematic interception and pulling back of refugees to Libya, from where they have managed to escape by the skin of their teeth, and where they are subjected once more to crimes against humanity. Now, *front-LEX* brings an unprecedented legal challenge against Frontex’s airborne complicity.

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29 May 2024 – *front-LEX* and Refugees in Libya, on behalf of X.Y, a refugee trapped in Libya in dire need of international protection, have filed a legal notice pursuant to ART. 265 TFEU, requesting Frontex’s Executive Director (ED), Mr. Hans Leijtens, to partially suspend or terminate the Agency’s aerial surveillance activities in the Central Mediterranean, with a view to terminating the unlawful *direct* and *indirect* provision of coordinates and other information regarding refugee boats, gathered during Frontex aerial surveillance activities in the Central Mediterranean to Libyan actors.

Between 2021 and 2023, Frontex has shared [2,200 emails](#) communicating the exact geolocalisation data of refugee boats with Libyan actors to enable their unlawful interception and forcible return back to Libya. There, the ‘pulled back’ refugees are arbitrarily detained and subjected to [crimes against humanity](#) of, *inter alia*, murder, enforced disappearance, torture, enslavement, sexual violence, rape, and other inhumane acts. It is Frontex’s sharing of geolocalisation data which enables the commission of these crimes – **making the Agency complicit in the ongoing and systematic attack directed against refugees and asylum seekers in the Central Med.**

Frontex’s complicity in these ‘pullbacks’ and ensuing crimes against humanity committed against refugees has been well-documented by leading [human rights organisations](#), [UN organs](#), and [investigative journalists](#). Now, based on this clear-cut evidence, *front-LEX* and Refugees in Libya filed an unprecedented legal notice challenging the Agency’s airborne complicity in crimes against humanity committed against people on the move.



In the context of its aerial surveillance activities in the ‘pre-frontier area’ in the Central Mediterranean, the Agency’s ploy to circumvent its obligation relating to the principle of **non-refoulement** and the **prohibition of torture** and inhuman or degrading treatment, from which no derogation is permitted, it relies on its intentional failure to have guidelines in place for a systematic and consistent classification of distress / emergency situations. Situations at sea potentially developing into one that requires search and rescue operations are classified into three, escalating phases in international maritime and relevant EU law. The phases of uncertainty, alert, distress not only describe different situations, but also require different actions. Frontex claims not to have internal rules or guidelines on how to make this classification. Despite this, a very clear pattern of instrumentalization of ‘distress situations’ of detected refugee-boats has emerged. Classification of the situation of detected refugee-boats **is made according to their geographical location, rather than their actual need of immediate assistance**, so that in the ‘pre-frontier area’ in the Central Mediterranean “the detected boats were in vast majority in a distress situation at sea”, and thus swiftly handed over to Libyan entities before reaching the SAR zone or territorial waters of a Member State. Conversely, the detected boats were typically not being classified as being in ‘distress situations’ when they were located within the SAR zone or territorial waters of a Member State, leaving the respective Member State with just enough leverage to avoid engaging with SAR operations which would have otherwise resulted in the disembarkation in Europe of refugees fleeing crimes against humanity in Libya. By failing to make any preliminary attempts to establish contact with the concerned refugee-boat to inquire whether it is in a ‘phase of alert’ or in a ‘phase of distress’ (a requirement that is needed for making that classification), by ignoring mounting evidence of refugees resisting ‘assistance’ by Libyan actors, to the point where refugee-boats are actually moving at a steady speed and on a steady course toward European territorial waters, Frontex is carrying out activities that result in pullback operations to Libya.

At the same time, this instrumentalization results in deaths in where EU Member States are responsible for search and rescue operations, as it was made pertinently clear by the well-known Pylos case of 14 June 2023. Following its investigation of the case, the EU Ombudsman established that Frontex failed to broadcast a mayday distress signal, despite one of its aircraft having observed several hours prior to the sinking that the boat was overcrowded and passengers had no life jackets. After the boat capsized and sank, at least 500 people were presumed dead. Similarly in the case of the Crotona shipwreck on 26 February 2023 where 60 people perished close to the shores of Cutro, Italy, Frontex falsely asserted that the boat showed “no signs of distress” and that it was up to Italy to decide whether to launch a rescue operation, while Italy’s prime minister claimed that Italian officials didn’t know the boat “risked sinking” and didn’t intervene because Frontex didn’t send them an “emergency communication”.

Mr. Bassel Nahas’ case, reported by [Lighthouse Reports](#), is emblematic of the challenged Frontex policy of illegal ‘pullbacks’. On August 16, 2023, Frontex unlawfully communicated the coordinates of a refugee boat to Tripoli. The coordinates were then handed over to the notorious [Tariq Ben Zeyad \(TBZ\) militia](#), whose commission of war crimes including torture and enforced disappearances, is well-established. TBZ intercepted the refugee boat, ‘pulling’ 109 people back to Libya. While the *refoulement* operation was unfolding, a Frontex aerial surveillance asset continued circling over the crime scene.



**One of the refugees whom Frontex handed over to the Libyan militia was Bassel Nahas.**

Upon forced return to Libya, he was tortured in a Benghazi harbour for weeks. Following this ordeal he ultimately managed to reach safety in Europe where he uncovered his real name, Mustafa, and started [telling his story](#).

Given the CJEU's prospectivity requirements, *front-LEX* and Refugees in Libya have filed this legal notice on behalf of X.Y, a 29-year-old Sudanese asylum seeker born in Darfur, at risk of being exposed to the same crimes Mustafa has endured. X.Y. has been forced to flee Sudan owing to well-founded fears of persecution. Upon arriving in Libya in 2019, he now holds a UNHCR-issued 'Asylum Seeker Certificate' but lacks access to an asylum procedure and effective protection. **X.Y is stuck in Libya, at constant risk of being arbitrarily detained and subjected to crimes against humanity.**

In dire need of international protection, it is unavoidable and imminent that X.Y. will attempt to cross the Central Mediterranean – in search of a safe haven, just like Mustafa. **The systematic *refoulement* operations, jointly executed by Frontex and Libyan entities, are directly threatening his pursuit of safety.**

To end this unlawful Frontex policy of illegal *refoulement* operations threatening not just the Applicant but hundreds of thousands of refugees trapped in Libya, *front-LEX* and Refugees in Libya request the partial suspension or termination of Frontex's aerial surveillance activities in the Central Mediterranean. **Frontex's unlawful policy of 'pullbacks' to Libya is widespread, systematic and ongoing. This legal notice under Art. 265 TFEU intends to terminate it. Under Art. 265 TFEU, if, within two months of the present submission, Frontex would not define its position, or otherwise will refuse to suspend or terminate communications with Libyan entities, Front-Lex and Refugees in Libya would bring a legal action for failure to act or for annulment within a further period of two months.**

In light of the irrefutable evidence, also presented in detail in the legal notice submitted to the Agency's Executive Director, Front-Lex and Refugees in Libya, on behalf of X.Y., repeat here what they requested in the letter of formal notice before action is taken at the Court of Justice of the European Union:

**"We hereby invite ED Leijtens to act pursuant to Article 265 TFEU, and to partly suspend or terminate Frontex's aerial surveillance activities under the framework of the EUROSUR Fusion Services in the 'pre-frontier area' in the Central Mediterranean, as well as respective Maritime Aerial Surveillance under the framework of Joint Operations, in compliance with the Agency's legal obligations under Article 46(4) of the European Border and Coast Guard Regulation."**



## **Contact Information**

### ***front-LEX***

- Website: [www.front-lex.eu](http://www.front-lex.eu)
- Updates on the Case: <https://www.front-lex.eu/frontex-complicity-crimes-against-humanity>
- Twitter/X: @front\_LEX

### **Legal Team**

- Adv. Iftach Cohen, Senior Legal Advisor *front-LEX*, [iftach.cohen@front-lex.eu](mailto:iftach.cohen@front-lex.eu)  
[English, Italian, Spanish]
- Adv. Omer Shatz, Legal Director *front-LEX*, [omer.shatz@front-lex.eu](mailto:omer.shatz@front-lex.eu), Twitter/X: @shatzomer  
[English, French]
- Adv. Francesco Luigi Gatta, Legal Advisor *front-LEX*, [francesco.gatta@front-lex.eu](mailto:francesco.gatta@front-lex.eu)  
[English, Italian]
- Adv. Sarah Easy, Legal Advisor *front-LEX*, [sarah.easy@front-lex.eu](mailto:sarah.easy@front-lex.eu)  
[English, Spanish]

### **Advocacy Team**

- Nike Hüttermann, Advocacy Officer *front-LEX*, [nike.huttermann@front-lex.eu](mailto:nike.huttermann@front-lex.eu)  
[English, German]

### **Refugees in Libya**

- Website: <https://www.refugeesinlibya.org/>
- Twitter/X: @RefugeesinLybia
- David Yambio, co-founder, +393515129972 (Signal/WhatsApp/Telegram), Twitter/X: @DavidYambio