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CASE NOTES

The Concept of "Provisions that May Contravene Environmental Law" Pursuant to the (Reformed) Regulation (EC) 1367/2006: Filling the Gap between Acts and Omissions Amenable to Internal Review

Case T-1049/23 *Bloom* [2025] ECLI:EU:T:2025:754

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Abstract

In *Bloom*, the General Court was confronted with the interpretation of one of the conditions for the admissibility of requests for internal review introduced by the 2021 reform of the Aarhus Regulation: the requirement that the act contested contains "provisions that may contravene environmental law." That issue emerged from an NGO request to the Commission seeking the review of an external act that prevented the binding legal effect of new international provisions on tuna fishing. Given that such an act did not entail any modification of the pre-existing legal framework, the Commission contended that it did not contain any provision contravening environmental law. The General Court's judgment contradicts the Commission's stance by unveiling that the dividing line between acts and omissions is not self-evident. Indeed, the peculiar layout of some decision-making procedures at the EU and international levels may give rise to legal instruments sitting on the boundary between acts and omissions. That is the case of the act at issue in *Bloom,* which, similarly to an omission, does not entail any amendment to the legal status quo. Against this background, the case under analysis shows that even such hybrid "formally acts/substantively omissions" decisions must be amenable to internal review.

Keywords: access to justice; acts and omissions; internal review

I. Introduction

Among the various changes introduced by the 2021 reform[1] of Regulation (EC) 1367/2006 (hereinafter, the "Aarhus Regulation"), the widening of the scope of application of the internal review mechanism established therein is among the most significant.[2] Such a

[1] Regulation (EU) No 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2021] OJ L356/1.

[2] On the 2021 reform of the Aarhus Regulation, among many, see M Pagano, "Climate Legal Mobilization Under the New Aarhus Regulation" (2024) 25 German Law Journal 919; G C Leonelli, "Access to the EU Courts in Environmental and Public Health Cases and the Reform of the Aarhus Regulation: Systemic Vision, Pragmatism,

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remedy constitutes the crucial tool for implementing at the EU level the obligation to afford access to justice in environmental matters to members of the public, as mandated by Article 9(3) of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter, the "Aarhus Convention") to which the Union is a Contracting Party.[3] To fulfil this requirement, the Aarhus Regulation provides NGOs – and, following the 2021 reform, other members of the public collectively organised[4] – with the right to request that EU institutions, bodies and agencies review the compliance of their administrative acts and omissions with environmental law.[5]

Still, the original wording of the Aarhus Regulation narrowed the material scope of internal review, leaving significant loopholes that violated Article 9(3) of the Aarhus Convention. Indeed, Article 2(1)(g) therein limited the definition of "administrative act" to measures of individual scope adopted under the EU environmental policy and having binding legal effects. As a consequence, EU environmental law acts of general scope (and omissions to adopt them), as well as any act or omission grounded on legal bases other than those falling within the scope of the EU environmental policy, were excluded from internal review.[6] Moreover, only legally binding acts were amenable to review. Following submissions filed by NGOs, the Aarhus Convention Compliance Committee (ACCC) – the body responsible for overseeing the Contracting Parties' correct implementation of the Convention – found that the original version of the Aarhus Regulation provided an overly narrow scope of review in violation of Article 9(3) of the Aarhus Convention. In particular, the ACCC firstly held that there could be no valid basis to interpret the obligation to establish mechanisms for review of "acts" stemming from Article 9(3) of the Aarhus Convention as exclusively referring to those "of individual scope."[7] Secondly, the very same provision of the Aarhus Convention stipulates that any act or omission, regardless of the policy domain, must be subject to review if it contravenes environmental law.[8] Finally, the ACCC emphasised that the Aarhus Convention does not allow restricting the scope of review to acts (or failures to adopt such acts) having "legally binding and external effects."[9] Following the ACCC findings, some NGOs attempted to challenge the Aarhus Regulation's limited scope of application by raising pleas of illegality in proceedings before Union Courts against inadmissibility decisions issued in response to their requests for internal review of acts of general scope. To that end, the applicants invoked Article 9(3) of the Convention as a parameter for assessing the legality of Article 2(1)(g) of the Aarhus

and a Happy Ending" (2021) 21 Yearbook of European Law 230; I Anrò, "Il difficile accesso alla giustizia ambientale per le ONG e la riforma del Regolamento di Aarhus" (2022) 11 Federalismi 1; L D Lucia, "The New Aarhus Regulation and the Defensive Behaviour of the European Legislator" (2022) 15 Review of European Administrative Law 7.

[3] UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, Denmark, 25 June 1998) UNTS XXVII–13.

[4] The specific requirements for collective entities other than NGOs to file requests for internal review are set by Art. 11 of Regulation (EC) No 1367/2006 in its current version.

[5] Art. 10 of Regulation (EC) No 1367/2006.

[6] On this point, among many, see J H Jans and G Harryvan, "Internal Review of EU Environmental Measures. It's True: Baron Van Munchausen Doesn't Exist! Some Remarks on the Application of the So-Called Aarhus Regulation" (2010) 3 Review of European Administrative Law 53; H Schoukens, "Access to Justice before EU Courts in Environmental Cases against the Backdrop of the Aarhus Convention: Balancing Pathological Stubbornness and Cognitive Dissonance?" in C Voigt (ed), *International Judicial Practice on the Environment: Questions of Legitimacy* (Cambridge University Press 2019) 86; Pal Wennerås, *The Enforcement of EC Environmental Law* (Oxford University Press 2007) p 234.

[7] ACCC, *Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) concerning compliance by the European Union*, para 53.

[8] ACCC, *Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) concerning compliance by the European Union*, para 100.

[9] Ibid, para 104.

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Regulation. While the General Court initially upheld the plea,[10] the ECJ overturned the first-instance judgments, holding that such a provision lacks the essential conditions for direct invocation by private parties to review the legality of EU institutions' acts.[11] Therefore, no judicial avenue was available to align the scope of review provided by the original Aarhus Regulation to what is required by the Convention.

To overcome such an inconsistency, the 2021 reform extended the material scope of application of the Aarhus Regulation to any non-legislative act or omission, irrespective of individual or general scope, insofar as it "may contravene environmental law." In this respect, Regulation (EU) 2021/1767 specifies at recital 10 that the potential contravention of environmental law shall result from the act or omission's adverse effects on the attainment of EU environmental objectives pursuant to Article 191 TFEU. Against this guidance, the interpretation and implications of this expression have remained almost in the shadows in the context of post-2021 practice and case-law on internal review. This situation raises several questions about how much the requirement that the contested act or omission "may contravene environmental law" limits the scope of the internal review mechanism. Specifically, does such a prerequisite entail that not all EU acts can be challenged under the Aarhus Regulation? And, more precisely, does it imply that only acts that modify the pre-existing legal framework can be reviewed? The General Court's ruling in *Bloom* provides some seminal clarification in this respect. After briefly recalling the case's factual background (II) and the General Court's reasoning (III), this contribution highlights that the interpretation of the expression "may contravene environmental law" advanced by the judgment at issue commendably bridges a potential gap between the concepts of act and omission pursuant to the Aarhus Regulation (IV). The last section provides some concluding remarks (V).

II. Facts of the case

The judgment under analysis arose from a direct action filed before the General Court by Bloom, an NGO dedicated to the preservation of the marine environment. The action sought the annulment of the decision by which the Commission rejected as inadmissible the applicant's request for internal review of the Union's objection to a resolution of the Indian Ocean Tuna Commission (hereinafter, "IOTC") on the management of floating Fish Aggregating Devices (hereinafter, "FADs").[12]

The European Union is a party to the IOTC, an intergovernmental body established within the framework of the United Nations Food and Agriculture Organisation and aimed at strengthening cooperation for the management and conservation of fishery resources in the Indian Ocean and adjacent seas.[13] Pursuant to its founding Agreement, the IOTC may issue binding measures on management and conservation by means of resolutions adopted by a two-thirds majority of its members.[14] However, each Contracting Party may avoid

[10] Case T-396/09 *Stichting Natuur en Milieu* [2012] ECLI:EU:T:2012:301, para 77; Case T-338/08 *Vereniging Milieudefensie* [2012] ECLI:EU:T:2012:300, para 66.

[11] Case C-401/12 P *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* [2015] ECLI:EU:C:2015:4, paras 54–5; Case C-404/12 P *Council and Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe* [2015] ECLI:EU:C:2015:5, paras 46–7.

[12] IOTC Resolution No 23/02 on Management of Drifting Fish Aggregating Devices (DFADS) in the IOTC Area of Competence <https://iotc.org/sites/default/files/documents/2023/02/Resolution_23-02E_-_On_Management_of_Drifting_Fish_Aggregating_Devices_DFADs_in_the_IOTC_area_of_competence.pdf>. The text of the Commission's objection is enclosed to IOTC Circular 2023-26 of 11 April 2023, <https://iotc.org/sites/default/files/documents/2023/04/Circular_2023-26_-_Communication_from_the_European_UnionE.pdf>.

[13] See Art. V of the Agreement for the Establishment of the Indian Ocean Tuna Commission (Rome, 25 November 1993) UNTS No 32888.

[14] Ibid, Art. IX(1).

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being bound by such resolutions by filing an objection within 120 days. If objections from more than one-third of IOTC members are received, the resolution loses its binding force for all Contracting Parties.[15]

In February 2023, the IOTC adopted a resolution to regulate the use of FADs.[16] In particular, the resolution provided for the establishment of a drifting FADs register, a limit of 200 devices counted through the register, and an annual foreclosure period of 72 days.[17] However, the resolution did not acquire binding force as the European Union, together with ten other IOTC Contracting Parties, objected to it.[18] The Commission justified its objection on grounds of the measures' alleged disproportion vis-à-vis the aim pursued. In particular, the resolution's provision limiting the number of drifting FADs to 200 has been deemed by the Union to imply "a gradual phasing out of DFADs instead of establishing a sound and sustainable management framework for DFADs."[19] In the same vein, the Commission depicted a lack of scientific evidence sustaining the effectiveness of the 72-day foreclosure period.[20]

Against these circumstances, Bloom filed before the Commission a request for internal review of such an objection pursuant to Article 10 of the Aarhus Regulation. However, the Commission rejected it as inadmissible on the grounds that the objection contested was not an act amenable to review under said regulation. In the Commission's view, insofar as the objection at issue did not entail any alteration of the pre-existing legal framework on FADs, it cannot be qualified as an "administrative act" which, pursuant to Article 2(1)(g) of the Aarhus Regulation, contains provisions "that may contravene environmental law." By its action for annulment, Bloom contested this conclusion before the General Court.

III. The general court's judgment

The action was composed of three pleas in law alleging, respectively, a violation of Article 2(1) of the Aarhus Regulation insofar as it defines the material scope of acts amenable to internal review, a violation of the precautionary principle, and, finally, a breach of the legal provisions governing the Common Fisheries Policy.[21] The General Court's ruling upheld the first plea in law, thus annulling the Commission's inadmissibility decision without delving into the second and third pleas.

The first plea was aimed at contesting the Commission's stance according to which its objection to IOTC Resolution No 23/02 did not consist of an act that "contains provisions that may contravene environmental law."[22] In particular, Bloom contended that the objection filed by the Commission before the IOTC on behalf of the Union violated the precautionary principle[23] governing EU environmental law, as well as Council Regulation (EC) 1224/2009 on a compliance system with the rules of the common fisheries policy. The Commission, on its part, contested the admissibility of the applicant's plea and maintained, on the merits, that the contested act merely preserved the legal status quo on the regulation of FADs. On those grounds, the Commission reiterated that the act at issue did not entail any adverse effects on the EU environmental objectives, thus not qualifying as an administrative act containing "provisions that may contravene environmental law" pursuant to Article 2(1)(g) of the Aarhus Regulation.

[15] Ibid, Art. IX(6).
[16] See *supra*, note 7.
[17] Case T-1049/23 *Bloom* [2025] ECLI:EU:T:2025:754, para 9.
[18] Ibid, paras 12–13.
[19] See the reference to the text of the Commission's objection enshrined in note 12 *supra*.
[20] Case T-1049/23 *Bloom* [2025] ECLI:EU:T:2025:754, para 12.
[21] Ibid, para 19.
[22] Art. 2(1)(g) of the Regulation (EC) No 1367/2006.
[23] See Art. 191(2) TFEU, as well as the policy lines of action defined by the 2000 Commission Communication (Commission, "Communication from the Commission on the precautionary principle" COM (2000) 1 final).

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The General Court briefly rejected the Commission's plea of inadmissibility and, on the merits, it confirmed that the admissibility of requests for internal review under the Aarhus Regulation is "conditional on the existence of an administrative act or an administrative omission that may contravene environmental law within the meaning of the Aarhus Regulation."[24] The key point is whether an EU objection to a resolution adopted within an intergovernmental body which has the effect of depriving that act of binding effects on the Union fulfils that requirement.

To assess that issue, the Court advances a systematic reading of the definition of "administrative act" as enshrined in Article 2(1)(g) of the Aarhus Regulation.[25] That provision envisages a potential violation of environmental law as a constituent element of the concept of "administrative act." On that point, recital 10 of Regulation (EU) 2021/1767 – which amended the Aarhus Regulation – specifies that a potential violation exists insofar as the act "could have an adverse effect on the attainment of the objectives of Union policy on the environment set out in Article 191 TFEU." Could such adverse effects arise if the act at issue ultimately preserves the legal status quo? According to the General Court, the answer should be in the affirmative. Indeed, the contested act halts new provisions that would enhance environmental protection, a consequence that potentially clashes with environmental legal obligations established under EU law.[26] That is the case, in particular, of the precautionary principle, which envisages timely action by the Union and the Member States to prevent environmental damage even in the case of scientific uncertainties.[27] That is exactly the ground of review raised by the applicant. Indeed, Bloom alleged a violation of that principle as applying to the Common Fisheries Policy by virtue of Article 2(2) of Regulation (EU) 1380/2013, which provides that such a policy "shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield."

It thus appears that the request for internal review concerns an act that may contravene environmental law by reason of its effects, even if the direct consequence of that action is the maintenance of the legal framework already in force.[28] This conclusion is further substantiated by a broader systematic look at the remedial system established by the Aarhus Regulation, which envisages the internal review not only of EU administrative acts, but also of administrative omissions. The latter are defined by Article 2(1)(h) of the Aarhus Regulation as comprising "any failure of a Union institution or body to adopt a non-legislative act which has legal and external effects, where such failure may contravene environmental law." Omissions, by definition, do not entail any alteration of the relevant legal framework, which they rather kept unchanged. Therefore, it would be unreasonable to conclude at the outset that an EU act cannot contravene environmental law for the only reason that it does not entail any modification of the pre-existing legal framework.[29]

[24] Case T-1049/23 *Bloom* [2025] ECLI:EU:T:2025:754, para 30.

[25] Ibid, para 37.

[26] Ibid, para 40.

[27] In case-law, among many, see Case T-412/22 *PAN Europe v Commission* [2025] ECLI:EU:T:2025:1034, para 48; Case C-77/09 *Gowan Comércio Internacional e Serviços* [2010] ECLI:EU:C:2010:803, paras 73 and 76; Case C-157/14 *Neptune Distribution* [2015] ECLI: EU:C:2015:823, paras 81–2. Among extensive scholarship, see A Wiersema, "The Precautionary Principle in Environmental Governance" in D Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar Publishing 2022); R von Schomberg, "The Precautionary Principle: Its Use Within Hard and Soft Law" (2012) 3 European Journal of Risk Regulation 147; K D Smedt and E Vos, "The Application of the Precautionary Principle in the EU" in H A Mieg (ed), *The Responsibility of Science* (Springer 2022); P Thieffry, *Traité de droit européen de l'environnement et du climat* (4ème edn, Bruylant 2020) p 346 ff.

[28] Case T-1049/23 *Bloom* [2025] ECLI:EU:T:2025:754, para 43.

[29] Ibid, para 44.

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On those grounds, the General Court concluded that the Commission has erred in law in declaring the applicant's request for internal review as inadmissible, since the contested act does fall within the scope of the remedy established by the Aarhus Regulation.

IV. Comment

At first glance, the legal issue raised by the *Bloom* case may appear to be a mere technicality concerning the interpretation of the Aarhus Regulation in a very specific factual and legal context. In reality, the rather brief legal reasoning advanced by the General Court unveils a twofold added value for the ever-growing debate on the avenues for access to justice provided by the Aarhus Regulation. First, and most importantly, the judgment appears to bridge a potential gap between the concepts of "act" and "omission" which define the material scope of application of the internal review mechanism. Secondly, the *Bloom* case sheds light on the potential of internal review proceedings as an avenue for NGOs and members of the public to indirectly contribute to shaping the Union's external action in environmental protection.

On the first aspect, it is worth recalling that the scholarly discourse on the scope of application of Regulation (EC) 1367/2006 and its compatibility with the Aarhus Convention after the 2021 reform has primarily focused on two points: on the one hand, the definition of the "administrative" nature of acts and omissions amenable to review; on the other hand, the definition of "environmental law."[30] Conversely, the concept of acts and omissions containing "provisions that may contravene environmental law" introduced by Regulation (EU) 2021/1767 has remained quite unexplored in the case-law and practice. That is probably because this concept may appear self-evident at first glance. Under the Aarhus Regulation, an administrative act may contravene environmental law if, having considered its effects,[31] it clashes with the attainment of EU environmental objectives pursuant to Article 191 TFEU.[32] Symmetrically, an administrative omission may contravene environmental law where such inaction clashes with positive obligations to act in pursuit of those objectives.[33] Within the EU system of remedies, actions and omissions are generally considered two distinct yet complementary legal categories, separated by a clear dividing line that leaves neither gaps nor overlaps. This understanding is inherent in the Court's longstanding case-law on the relationship between the action for annulment[34] and the action for failure to act.[35] Those two procedures – tackling the legality of, respectively, EU acts and omissions – are strictly complementary, as they "merely prescribe one and the same method of recourse."[36] Therefore, there cannot be any gap between acts and omissions subject to scrutiny in the EU system of remedies.[37] The *Bloom* case demonstrates that this assumption holds true for the Aarhus internal review mechanism as well; still, the judgment also shows

[30] On this academic debate, see the contributions referenced in *supra* notes 2 and 6.

[31] Recital 10 of Regulation (EU) No 2021/1767.

[32] Art. 2(1)(g) of Regulation (EC) No 1367/2006.

[33] Art. 2(1)(h) of Regulation (EC) No 1367/2006.

[34] Art. 263 TFEU.

[35] Art. 265 TFEU.

[36] Case 15/70 *Chevalley v Commission* [1970] ECLI:EU:C:1970:95, para 6; Case C-68/95 *T. Port v Bundesanstalt für Landwirtschaft und Ernährung* [1996] ECLI:EU:C:1996:452, para 59. On this point, in literature, see K Lenaerts, K Gutman and J T Nowak, *EU Procedural Law* (2nd edn, Oxford University Press 2023) p 416.

[37] On the relationship between the right to an effective remedy afforded by Art. 47 of the Charter and the obligation to ensure access to justice in environmental matters pursuant to Art. 9(3) of the Aarhus Convention, among many, see: M Eliantonio "The Relationship Between EU Secondary Rules and the Principles of Effectiveness and Effective Judicial Protection in Environmental Matters: Towards a New Dawn for the 'Language of Rights'?" (2019) 12 Review of European Administrative Law 95; I Hadjiyianni, "Judicial Protection and the Environment in the EU Legal Order: Missing Pieces for a Complete Puzzle of Legal Remedies" (2021) 58 Common Market Law Review 777.

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that the dividing line between acts and omissions containing "provisions that may contravene environmental law" may not always be as self-evident as we might expect.

Indeed, the *Bloom* ruling reveals that the peculiar layout of certain decision-making procedures may give rise to legal instruments that sit on the boundary between acts and omissions. That is the case with the Commission's objection under review, which manifests a hybridisation of the concepts of acts and omissions under the Aarhus Regulation. Indeed, such an act had the effect of depriving a new set of international law provisions in the environmental field of binding effect. From a formal viewpoint, the Commission's objection uncontestably qualifies as an act; however, from a substantive viewpoint, its effect entails maintaining the pre-existing legal framework, in a way which is similar to an omission. Could this characteristic imply that such an act is excluded from review since it does not entail adverse effects on EU environmental objectives, thus not matching the definition of "administrative act" provided by Article 2(1)(g) of the Aarhus Regulation? If that were the case, a new gap in the remedial system established by Regulation (EC) 1367/2006 would have emerged, thereby revealing an unexpected inconsistency with the obligation to afford access to justice in environmental matters set out in Article 9(3) of the Aarhus Convention.

The General Court avoided such a consequence precisely by building upon the hybridisation of legal categories just underlined. If the contested act maintains the legal status quo, its legitimacy vis-à-vis EU environmental law may be internally reviewed not by reference to its effects on the environmental provisions which it addresses – as the Aarhus Regulation requires for the review of actions – but rather with reference to EU environmental provisions entailing positive obligations to act for modifying such a legal framework – as it happens for omissions. On those grounds, the Commission's decision to object to IOTC Resolution No 23/02 may well be contested through the angle of its compliance with the obligations stemming from the precautionary principle.

It thus follows that the General Court's judgment in *Bloom* commendably bridges a gap between acts and omissions, thus confirming that the Aarhus Regulation does not envisage any loophole between the two categories of legal circumstances amenable to internal review. More precisely, the General Court demonstrated that assessing the admissibility of requests for review concerning hybrid "formally acts/substantively omissions" decisions requires a hybrid approach as well. While qualifying as acts pursuant to Article 2(1)(f) of the Aarhus Regulation, they could "contravene environmental law" whenever they entail adverse effects on provisions warranting positive actions within the scope of Article 191 TFEU, as required for the review of omissions.

A second (and final) profile stemming from the case should not go unnoticed. The request for internal review at issue in *Bloom* concerned an act that is peculiar not only for its previously highlighted effects but also for its external nature. Indeed, it amounted to an objection that the Commission submitted to an intergovernmental body established within the FAO framework. Therefore, the object of the request for review was an act adopted under the external dimension of the Common Fisheries Policy. While the possibility of requesting an internal review of EU external acts has never been in question, it was particularly limited under the original version of the Aarhus Regulation. The new definition of "administrative act" resulting from the 2021 reform of Regulation (EC) 1367/2006 – which, as underlined in the introduction, extends that concept to any non-legislative decision either of individual or general scope adopted in whichever EU policy (insofar as it contains "provisions that may contravene environmental law") – significantly broadens the possibility to rely on internal review proceedings to contest EU external acts. The objection at issue in *Bloom* is a clear example in this respect, as it qualifies as a decision falling within the scope of the Common Fisheries Policy rather than the environmental one. Against this background, the case under analysis shows that

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such a broader possibility to tackle EU external acts inaugurated by the reformed Aarhus Regulation consecrates access to justice via internal review proceedings as a tool for NGOs and other members of the public to address the Union's action in the environmental field on the global stage and thus, indirectly, contribute to the progressive evolution of the international legal framework.

V. Concluding remarks

The General Court's judgment in *Bloom* demonstrates the potential of systematic interpretation for avoiding loopholes in legal protection under the Aarhus Regulation. That was the risk at issue in the case under analysis, whereas the Commission's reading of the definition of "administrative act" containing provisions that "may contravene environmental law" risked giving rise to a gap between such a concept and that of "administrative omission." The General Court's reasoning shall be welcomed since it not only bridges the concepts of act and omission under the Aarhus Regulation but also discloses that the dividing line between them is not as straightforward as it may seem at first glance. Indeed, it might well be the case that an act forming the object of a request for internal review does not entail any modification of the relevant legal framework, thus sidelining the characteristics of an omission. The *Bloom* judgment demonstrates that such a form of hybrid "formally acts/substantively omissions" decisions is not excluded from the scope of internal review, as a hybrid approach is required even to assess whether they contain provisions that may "contravene environmental law." Given that these acts do not modify the relevant legal framework, the potential contravention cannot be found in such a feature, as it usually happens for acts; conversely, it may consist of a violation of EU environmental provisions and principles requiring the Union to take action to mitigate the risks of environmental damage, as if the object of the review was an omission.

Such a conclusion further emphasises the crucial role of positive obligations under EU environmental law in shaping the scope of political institutions' discretion not only in the internal but also in the external dimension of EU policies. On this point, the *Bloom* judgment does not provide further guidance: such a profile concerns the merits of the applicant's request for review rather than its admissibility and thus falls beyond the scope of the case at issue. From that perspective, the subsequent review procedure and potential litigation before the Union Courts following the General Court's annulment of the inadmissibility decision in *Bloom* would arguably represent a key opportunity to clarify whether and to what extent the precautionary principle imposes positive obligations upon the Union institutions to act in international fora for the prevention of environmental damage.[38] Moreover, it is interesting to note that the General Court nonetheless took the opportunity of the *Bloom* case to reaffirm the standard that applicants must meet to have their arguments upheld by the administrative authority in review proceedings, as well as by Union Courts in the event of a subsequent action for annulment. Indeed, the General Court recalled that the grounds for review should be "such as to give rise to plausible, that is to say, substantial, doubts to the assessment of environmental law by the EU institution or body upon submission of the objection at issue."[39] This choice appears to reflect the General Court's willingness to draw further

[38] On the issue of whether the precautionary principle "requires" or "allows" preventive action, among many, see Wiersema (n 27) 366.

[39] Case T-1049/23 *Bloom* [2025] ECLI:EU:T:2025:754, para 45.

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attention to a standard that the Union Courts are currently refining in the case-law,[40] as further contributions in the Symposium emphasise.

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[40] On errors of law by Union's institutions, bodies and agencies in the performance of internal review, see: Case T-412/22 *PAN Europe v Commission* [2025] ECLI:EU:T:2025:1034, paras 90–1; Case T-94/23 *Pollinis France v Commission* [2025] ECLI:EU:T:2025:1036, paras 112–16; Case T-565/23 *Aurelia Stiftung v Commissione* [2025] ECLI:EU:T:2025:1040, paras 63–6; On manifests errors of assessment, see: Case T-536/22 *PAN Europe v Commission* [2024] ECLI:EU:T:2024:98, point 52–3; Case T-579/22 *ClientEarth v Commission* [2025] ECLI:EU:T:2025:862, paras 28, 31–3 and 226; Case T-399/23 *ClientEarth and Collectif Nourrir v Commission* [2025] ECLI:EU:T:2025:1002, paras 16, 18–19 and 257–66. On the implications (and limits) of the scope of judicial review for constraining administrative discretion in internal review proceedings, a reference may be allowed to L Grossio, "Access to Justice in Environmental Matters Beyond the Aarhus Regulation: Towards an Alternative Adjudicatory Model at the EU Level" (2025) 2 Review of European Litigation 451, in particular 471–4.

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