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The End of *Plaumann* in Climate Litigation: Now or Never?

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ABSTRACT: This article examines the possible impact of the ECtHR's *KlimaSeniorinnen* judgment on the case law of the CJEU regarding legal standing of legal and natural persons. Specifically, it focuses on the implications of the ECtHR's interpretation of victim status under Article 34 ECHR in *KlimaSeniorinnen* for the CJEU's *Plaumann* test to determine legal standing for individual applicants under Article 263, paragraph 4, TFEU. The diverging approaches by the ECtHR and the CJEU towards the shared goal of preventing the possibility for an *actio popularis* in climate litigation cases are juxtaposed. This contribution critiques the static approach of the CJEU in this regard, which has interpreted the legal standing of individual applicants and associations rather restrictively in climate litigation, specifically in the cases of *Carvalho* and *Sabo*. Different points of criticism, especially regarding access to justice, are discussed. The article argues that the *Plaumann* test is not immutable and that the CJEU should reconsider its restrictive approach by taking inspiration from the novel approach applied by the ECtHR in *KlimaSeniorinnen.* While the CJEU may not be legally required to adopt the ECtHR's standards on legal standing under EU law – that is, until the EU's accession to the ECHR – the *KlimaSeniorinnen* judgment could still have an indirect impact on the CJEU. Furthermore, the pending cases of *Medel* and *Asociația Inițiativa pentru Justiție* provide the CJEU with

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the occasion to address the continued relevance of *Plaumann*. Moreover, both AG Emiliou's Opinion and the Court's judgement in *Nicoventures* are critically assessed.

KEYWORDS: climate litigation – legal standing – *locus standi* – victim status – *actio popularis* – *KlimaSeniorinnen*.

1. Introduction

As has been acknowledged by the European Court of Human Rights (ECtHR) in *KlimaSeniorinnen*, 'everyone may be, one way or another and to some degree, directly affected, or at a real risk of being directly affected, by the adverse effects of climate change.'[1] This simple truth leads into murky waters when applied to legal standing for individual applicants and associations in climate litigation cases. It begs the question how Courts can avoid allowing for *actio popularis* while steering clear of an overly restrictive understanding of *locus standi*.[2] The Court of Justice of the European Union (CJEU) and the ECtHR have adopted contrasting approaches thus far. This contribution seeks to analyse the implications of the *KlimaSeniorinnen* judgment for the CJEU's future case law on legal standing for natural and legal persons.

The *Plaumann* test has been at the core of the legal standing test for private applicants in annulment procedures under Article 263, paragraph 4, TFEU before the CJEU for over 60 years.[3] Consequently, in its two most prominent climate litigation cases, i.e., *Carvalho* and *Sabo,* the CJEU dismissed the applications due to lack of standing, citing the *Plaumann* criteria for individual concern.[4] However, after the *KlimaSeniorinnen* judgment by the ECtHR, it must be queried whether the CJEU will maintain this restrictive approach to the legal standing of individual applicants. Therefore, this contribution queries whether it is necessary to revisit *Plaumann* after *KlimaSeniorinnen*.

The article is based on the research question whether the *Plaumann* criteria should still be applied by the CJEU in climate litigation cases under the annulment procedure today in light of the recent ECtHR case law in *KlimaSeniorinnen*. Therefore, it adopts a normative approach. In order to answer the research question, the

[1] *Verein KlimaSeniorinnen and Others v Switzerland* no 53600/20 (ECtHR 9 April 2024) para 483. See also O Kelleher, 'Systemic Climate Change Litigation, Standing Rules and the Aarhus Convention: A Purposive Approach' (2022) 34 *Journal of Environmental Law* 107, 109.

[2] Cf. M Milanovic, 'A Quick Take on the European Court's Climate Change Judgments' (EJIL: Talk!, 9 April 2024) at www.ejiltalk.org.

[3] Case 25/62 *Plaumann & Co. v Commission of the European Economic Community,* EU:C:1963:17. See R Schütze, *European Union Law* (Oxford University Press 2025) 387–398.

[4] Case C-565/19 P *Armando Carvalho and Others v European Parliament and Council of the European Union,* EU:C:2021:252; Case T-330/18 *Armando Carvalho et al. v European Parliament and Council of the European Union,* EU:T:2019:324; Case C-297/20 P *Peter Sabo et al. v European Parliament and Council of the European Union,* EU:C:2021:24; Case T-141/19 *Peter Sabo et al. v European Parliament and Council of the European Union,* EU:T:2020:179.

article mainly employs doctrinal legal analysis. Moreover, there is a brief section on the CJEU's reasons for not abandoning *Plaumann* which relies on different political science methodologies (part 2.2.3.). Said section aims at offering a fuller picture of the CJEU's approach by adopting an interdisciplinary lens.

There are several terms that need to be defined at the outset: climate litigation, *actio popularis*, strategic litigation, and public interest litigation. Firstly, climate litigation is defined, for the scope of this research, as 'cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law'.[5] Secondly, an *actio popularis* is commonly defined in international law as a 'right resident in any member of a community to take legal action in vindication of a public interest'.[6] In other words, it can be understood as a 'right of "any person" to challenge [an] act or omission of a public authority before [an] administrative court, "sanctioned" by the legislator (established by law)'.[7] The ECtHR has held that the European Convention of Human Rights (ECHR) does not allow for an *actio popularis* as applicants are not allowed to 'complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention'.[8] Similarly, the EU legal order 'does not recognize an *actio popularis*' either.[9] Thirdly, strategic litigation forms part of legal mobilisation

[5] Sabin Center for Climate Change Law, 'Methodology' (The Climate Litigation Database, 2025), at climatecasechart.com; J Setzer and C Higham, 'Global trends in climate change litigation: 2025 snapshot' (Grantham Research Institute on Climate Change and the Environment, LSE 2025), at www.lse.ac.uk, 8; N Young, 'Climate Litigation and Impact Evaluation' (2025) 19 *Carbon & Climate Law Review* 54, 55; see also S Fleerackers, 'Hidden in Plain Sight? Corporate Strategic Litigation in the EU Emissions Trading System' (2024) 25 *German Law Journal* 873, 878–879; J Peel and HM Osofsky, 'Climate Change Litigation' (2020) 16 *Annual Review of Law and Social Science* 21; K Pouikli, 'Editorial: a short history of the climate change litigation boom across Europe' (2021) 22 *ERA Forum* 569.

[6] *South West Africa (Ethiopia v South Africa)* (Second phase judgment) (ICJ, 18 July 1966) para 88; cf. A Gattini, 'Actio Popularis', *Oxford Public International Law* (2019), at opil.ouplaw.com.

[7] Ž Mikosa, 'Implementation of the Aarhus Convention through Actio Popularis' in J Jendrośka and M Bar (eds), *Procedural environmental rights: Principle X in theory and practice* (Intersentia 2018) 261, 264.

[8] *KlimaSeniorinnen* (n 1) para 460; cf. *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* App no 47848/08 (ECtHR, 17 July 2014) para 101; *Lindsay and Others v the United Kingdom* App no 31699/96 (ECtHR, 17 January 1997) para 1; *İlhan v Turkey* App no 22277/93 (ECtHR, 27 June 2000) paras 52–53; *Aksu v Turkey* App nos 4149/04 and 41029/04 (ECtHR, 15 March 2012) paras 50-51; I Domenici, 'The European Court of Human Right's landmark judgment in the case of *Cannavacciuolo and Others v Italy*' (2025) 34 *Review of European, Comparative & International Environmental Law* 582, 585; R Luporini, 'Victim Status and Locus Standi Before the European Court of Human Rights in Climate Change Cases: Where Next?' (2025) *European Convention on Human Rights Law Review* 1, 7; L Prete, 'EU Environmental Law: A Complete and Effective System of Remedies before the Courts of the European Union?' in M Eliantonio and E Lees (eds), *The legitimacy of EU environmental governance and the role of the European courts* (Oxford University Press 2025) 207, 258, n. 170; A Savaresi, '*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*: Making climate change litigation history' (2025) 34 *Review of European, Comparative & International Environmental Law* 279, 284.

[9] Opinion of AG Cosmas in Case C-321/95 P *Stichting Greenpeace Council (Greenpeace International) and Others v Commission of the European Communities*, EU:C:1997:421, para 53; cf. Opinion of AG Emiliou in Case C-731/23 P *Nicoventures Trading Ltd, British American Tobacco (Germany)*

and can be defined as 'legal action initiated to achieve broader social, political, or economic ends'.[10] Thus, strategic litigation can pursue either public or private interests.[11] Fourthly, public interest litigation, a concept rooted in the US legal tradition, traditionally has been defined as lawyers pursuing litigation for the 'common good'.[12] Today, it can be understood as a 'broad and contested range of activities that include legal advocacy focused on the representation of individuals shut out of the private market for legal services as well as lawyering to advance the collective interests of defined groups or constituencies (both liberal and conservative)'.[13]

The article is divided into three main parts. Firstly, relevant CJEU case law on the *Plaumann* test in general and regarding climate litigation will be briefly presented, along with the respective criticism by the literature (part 2). Secondly, the potential impact of the *KlimaSeniorinnen* decision on the CJEU's future case law will be discussed (part 3), analysing various proposals for a different understanding of the concept of individual concern. Thirdly, a short conclusion will argue that the CJEU should ease its tight grip on the *Plaumann* criteria (part 4).

2. *Plaumann* in CJEU climate litigation cases before *KlimaSeniorinnen*

2.1. CJEU case law on the application of *Plaumann* in climate litigation

According to Article 263, paragraph 4, TFEU, private applicants have legal standing before the CJEU concerning acts not addressed to them that are 'of direct and indi-

GmbH, British American Tobacco Italia SpA (BAT Italia), British American Tobacco Polska Trading sp. z o.o., British American Tobacco España SA, P.J. Carroll & Company Ltd v European Commission, EU:C:2025:435, para 58; Prete (n 8) 258.

[10] P Cebulak, M Morvillo and S Salomon, 'Strategic Litigation in EU Law: Who does it Empower?' (2024) 25 *German Law Journal* 800, 800; see, for greater detail, Fleerackers (n 5) 876–877; F Palmiotto and D Ozkul, 'Climbing a Wall: Strategic Litigation Against Automated Systems in Migration and Asylum' (2024) 25 *German Law Journal* 935, 937–940; M Ramsden and K Gledhill, 'Defining strategic litigation' (2019) 38 *Civil Justice Quarterly* 407; K van der Pas, *The 'Strategy' in Strategic Litigation: The Why and How of Strategic Litigation by Civil Society Organizations in the Field of Asylum Law in Europe* (European Law Publishing 2024) 20–32.

[11] Cebulak, Morvillo and Salomon (n 10) 800.

[12] See LD Brandeis, 'The Opportunity in the Law' (1905) 3 *Law Journal Library Commonwealth Law Review* 22, 28; cf. M Van Wolferen, 'The Limits to the CJEU's Interpretation of Locus Standi, a Theoretical Framework' (2016) 12 *Journal of Contemporary European Research* 914, 917; M Pagano, *Overcoming Plaumann: Environmental NGOs and access to justice before the CJEU* (EUI PhD Thesis 2022) 54. Similarly, the European Center for Constitutional and Human Rights e.V. (ECCHR) points out that public interest litigation is 'designed to serve a broader public interest, for example in cases where those affected by a wrong cannot afford to bring legal action themselves or for who for other reasons do not have access to the legal system.', www.ecchr.eu. See also K van der Pas, 'Public Interest Litigation in the EU: Advocating for the introduction of the class action before the CJEU' (unpublished manuscript), 2–3.

[13] A Chen and SL Cummings, *Public interest lawyering: A contemporary perspective* (Aspen 2013) 27.

vidual concern to them'. This contribution focuses on the criterion of individual concern, specifically on the *Plaumann* criteria adopted by the CJEU to define this term.[14] In the 1963 *Plaumann* case, the CJEU ruled that '[p]ersons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them *by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons* and by virtue of these factors *distinguishes them individually just as in the case of the person addressed*'.[15] In the case at hand, the Court stated that 'the applicant is affected by the disputed Decision […] by reason of a commercial activity which may at any time be practised by any person and is not therefore such as to distinguish the applicant in relation to the contested Decision as in the case of the addressee'[16]. Instead, in order to be able to be individually concerned by measures that affect a group of persons based on general and abstract criteria, the applicants must belong to a 'closed group'.[17] Therefore, the Court declared the action for annulment by the Plaumann company inadmissible due to lack of individual concern.[18]

The debate surrounding the interpretation and application of the admissibility criteria for individual applicants has been described as 'perennial'.[19] In the early 2000s, Advocate General (AG) Jacobs heavily criticized the *Plaumann* test in his Opinions in *UPA* and *Jégo-Quéré*.[20] AG Jacobs proposed a new interpretation of the criterion of individual concern, namely that 'an applicant is individually concerned by a [Union] […] measure where the measure has, or is liable to have, a substantial

[14] For an overview of direct concern see M Rhimes, 'The EU Courts Stand Their Ground: Why Are the Standing Rules for Direct Actions Still So Restrictive?' (2016) 9 *European Journal of Legal Studies* 103, 108–109 and 126–135; cf. L Krämer, 'Article 47 of the Charter and Effective Judicial Protection in Environmental Matters: The Need to Grant Civil Society the Right to Defend the Environment' in M Bonelli, M Eliantonio and G Gentile (eds), *Article 47 of the EU Charter and Effective Judicial Protection; Volume 1: The Court of Justice's Perspective* (Bloomsbury Publishing 2022) 195, 198; see 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, 781–786 on the problematic nature of the direct concern requirement in environmental and climate litigation.

[15] *Plaumann* (n 3) 107 (emphasis added).

[16] Ibid.

[17] AG Emiliou in *Nicoventures* (n 9) para 26. See also M Eliantonio and N Stratieva, 'From *Plaumann*, through *UPA* and *Jégo-Quéré*, to the Lisbon Treaty: The *Locus Standi* of Private Applicants under Article 230(4) EC through a political lens' (Maastricht Faculty of Law Working Paper 2009/13), at www.researchgate.net, 2–3; Schütze (n 3) 391; see TC Hartley, *The Foundations of European Union Law: An Introduction to the Constitutional and Administrative Law of the European Union* (Oxford University Press 2014) 370 for definitions of closed and open groups.

[18] *Plaumann* (n 3) 108.

[19] Opinion of AG Ćapeta in Case C-97/23 P *WhatsApp Ireland Ltd v European Data Protection Board*, EU:C:2025:210, para 1.

[20] Opinion of AG Jacobs in Case C-50/00 P *Unión de Pequeños Agricultores v Council of the European Union* ('*UPA*'), EU:C:2002:197; Opinion of AG Jacobs in Case C-263/02 P *Commission of the European Communities v Jégo-Quéré & Cie SA*, EU:C:2003:410.

adverse effect on his interests'.[21] In *Jégo Quéré*, the Court of First Instance (CFI; today, General Court, GC) even followed AG Jacobs in his critique of the *Plaumann* test. It proposed a new interpretation of 'individual concern' as meaning that 'a natural or legal person is to be regarded as individually concerned by a [Union] measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him'.[22] However, the CJEU did not adhere to the proposed new approaches but rather maintained the *Plaumann* test.[23]

To date, there have been two key cases of climate litigation before the CJEU which have been dismissed for lack of standing, namely the judgment in *Carvalho* (also known as 'People's Climate case'[24]) and the order in *Sabo* (also known as 'EU Biomass case'[25]). *Carvalho* can be categorized as a so-called 'government framework case'[26] since the applicants 'challenge the ambition or implementation of climate targets and policies affecting the whole of a country's economy and society', or rather, in this particular setting, of the EU's economy and society.[27] *Sabo*, on the other hand, does not seem to fit neatly into any of the established categories. It seems most likely that it could be framed as a case of climate washing regarding sustainable sources of energy since the applicants challenge 'inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future', or rather, in this case, an EU narrative concerning the presumed sustainability of biomass as a source of renewable energy.[28]

[21] AG Jacobs in *UPA* (n 20) para 102.

[22] Case T-177/01 *Jégo-Quéré et Cie SA v Commission*, EU:T:2002:112, paras 38 and 49–51.

[23] Case C-50/00 P *Unión de Pequeños Agricultores v Council of the European Union* ('*UPA*'), EU:C:2002:462, paras 36–46; Case C-263/02 P *Commission of the European Communities v Jégo-Quéré & Cie SA*, EU:C:2004:210, paras 29–39.

[24] See L Hornkohl, 'The CJEU dismissed the People's Climate Case as inadmissible: the limit of Plaumann is Plaumann' (European Law Blog, 6 April 2021), at www.europeanlawblog.eu.

[25] See M Pagano, 'Climate change litigation before EU Courts and the "butterfly effect"' (Blogdroiteuropéen, 16 October 2019) at blogdroiteuropeen.com.

[26] Setzer and Higham (n 5) 29: Government framework cases, '[s]ometimes also referred to as "systemic" cases, […] challenge a national or subnational government's overall approach to climate action'.

[27] See J Setzer and C Higham, 'Global trends in climate change litigation: 2024 snapshot' (Grantham Research Institute on Climate Change and the Environment, LSE 2024), at www.lse.ac.uk, 26; see also C Garofalo, '"Foot in the Door" or "Door in the Face"? The development of legal strategies in European climate litigation between structure and agency' (2023) 29 *European Law Journal* 340, 340–342 who describes *Carvalho* as a *Urgenda*-style systemic mitigation case.

[28] See Setzer and Higham (n 27) 25. While the present article does not position itself on the question whether biomass can count as a source of renewable energy, as this question goes beyond the scope of its analysis, it seems that this category is the most fitting to this case, based on the *petitio* of the applicants, see Case T-141/19 *Sabo* (n 4) par. 19: 'According to the applicants, taking into account forest biomass as a renewable energy source undermines the goals of the contested directive owing to the amount of carbon discharged by burning wood and to the increase in industrial logging.' Otherwise, one could also frame it as a *sui generis* case.

In *Carvalho*, the applicants consisted of more than 30 individuals, living in different EU Member States and third countries, as well as of the association Sáminuorra, established under Swedish law to protect the interests of Sámi Indigenous Peoples.[29] They sought annulment of the 2018 EU climate package as well as compensation for the damage they had allegedly suffered.[30] Regarding their legal standing, firstly, they claimed to be directly affected by the 2018 EU climate package since it allegedly violated their fundamental rights.[31] Secondly, they argued that they were individually affected since the 'effects of climate change, to which the legislative package contributes, and, accordingly, the infringement of those rights will be unique to and different for each individual'.[32] In addition, they requested a more flexible interpretation of the *Plaumann* criteria, referring to the so-called '*Plaumann* paradox' according to which 'the more serious the damage and the higher the number of affected persons, the less judicial protection is available'.[33] This paradox becomes especially evident when applied to climate change: Climate change has negative impacts on every person to a certain extent, as the ECtHR has explicitly acknowledged.[34] This fact, under *Plaumann*, leads to the result that no one can challenge EU legal acts regarding such an all-encompassing phenomenon.

In fact, the CJEU held that 'the fact that the effects of climate change may be different for one person than they are for another and that they depend on the personal circumstances specific to each person does not mean that the acts at issue distinguish each of the appellants individually', confirming the GC's ruling.[35] Furthermore, the Court rejected the idea that the alleged violation of fundamental rights could lead to the assumption of individual concern.[36] Thus, the Court rejected the appeal against the GC's application of the *Plaumann* criteria to this case.[37]

[29] Case T-330/18 *Carvalho* (n 4), para 1.

[30] Directive 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814; Regulation 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013; Regulation 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU; cf. Case C-565/19 P *Carvalho* (n 4) para 1.

[31] Case T-330/18 *Carvalho* (n 4), para 30.

[32] Ibid para 31.

[33] Ibid para 32; see also AG Emiliou in *Nicoventures* (n 9) para 41; cf. Hornkohl (n 24); M Osojnik, 'Der EuGH und Klimaklagen – (k)ein Weg vorbei an der Plaumann-Formel?' (2024) 9 *ELSA Austria Law Review* 115, 118; Prete (n 8) 253; G Winter, '*Armando Carvalho and Others* v. *EU:* Invoking Human Rights and the Paris Agreement for Better Climate Protection Legislation' (2020) 9 *Transnational Environmental Law* 137, 158.

[34] See n 1.

[35] Case C-565/19 P *Carvalho* (n 4) para 40; Case T-330/18 *Carvalho* (n 4) para 50.

[36] Case C-565/19 P *Carvalho* (n 4) paras 45–51.

[37] Ibid para 52.

Additionally, the CJEU recalled that there are three groups of cases in which associations can be individually concerned under its case law: 'firstly, where a legal provision expressly grants a series of procedural powers to trade associations; secondly, where the association represents the interests of its members, who would themselves be entitled to bring proceedings; and, thirdly, where the association is distinguished individually because its own interests as an association are affected, in particular because its negotiating position has been affected by the act in respect of which annulment is sought'.[38] In the first case, an association may be granted legal standing even though its members are not directly and individually concerned if a EU law provision foresees a procedure before the adoption of a decision 'under which a person is entitled to claim rights that might be available to him, including the right to be heard'.[39] In the second case, an association challenging a legal act for the protection of collective interest is considered individually concerned if at least some of its members fulfil the *Plaumann* criteria.[40] In the third case, the association must 'prove an interest of its own', e.g., by being a 'negotiator of the discipline' with the Commission.[41] In *Carvalho*, the association Sáminuorra did not fulfil any of these criteria. Furthermore, these criteria do not allow for public interest litigation.[42]

In *Sabo*, the applicants, similarly to *Carvalho*, were mostly comprised of individuals from various EU Member States as well as of associations with their respective seats in various Member States.[43] The applicants sought a partial annulment of directive 2018/2001[44] insofar as this directive frames forest biomass as a source of

[38] Case T-330/18 *Carvalho* (n 4) para 51; cf. Case T-122/96 *Federolio v Commission*, EU:T:1997:142, paras 60-61; *UPA* (n 23) para 8 and Case T-173/98 *Unión de Pequeños Agricultores (UPA) v Council of the European Union*, EU:T:1999:296, para 47.

[39] Case C-368/05 P *PPG v Commission*, EU:C:2006:771, paras 58–59; cf. Krämer (n 14) 199.

[40] Case C-384/16 P *European Union Copper Taskforce v Commission,* EU:C:2018:176, para 87; Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187 v Commission,* EU:C:2006:416, para 56; Krämer (n 14) 198.

[41] *Belgium and Forum 187 v Commission* (n 40) para 56; Case C-313/90 *CIRFS and Others v Commission,* EU:C:1993:111, paras 29 and 30.

[42] See Van Wolferen (n 12) 919: 'Applicants who defend the interests of us all can never stand out.'; van der Pas (n 12) 9. Interestingly, the association Sáminuorra, one of the applicants in *Carvalho*, had argued for a the recognition of an 'action of a collective defending a collective good'. The CJEU did not analyse this point since it was not admissible in the appeal due to Art 170, para 1, of the Rules of Procedure of the Court of Justice, see Case C-565/19 P *Carvalho* (n 4) para 91. On this point, see S Dukarm and J Prantl, 'Konflikt um den Zwang – Wie Plaumann schon das Entstehen eines Konfliktes verhindert und es zur Frage des Zwangs gar nicht erst kommt' in S Nitsch and others (eds), *Nachhaltigkeitsrecht im Konflikt* (Nomos 2025) 101, 110: 'Zwar beantragten die Kläger:innen des PCC in ihrem Rechtsmittel die Anerkennung einer "*action of a collective defending a collective good*", einer Klagelegitimation, die an das Verbandsklagerecht im *KlimaSeniorinnen*-Fall erinnert; auf diese Argumentation ging der EuGH in seinem Urteil unter Verweis, das Argument sei in erster Instanz nicht vorgebracht worden (Art. 170 Abs. 1 der Verfahrensordnung des Gerichtshofs), jedoch nicht ein'.

[43] Case T-141/19 *Sabo* (n 4) para 1.

[44] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

renewable energy.[45] They argued that they were individually concerned by the directive since they form 'part of a limited category of persons that is affected by the deforestation and the operation of power plants which the directive causes'.[46] Furthermore, they alleged that their individual legal interests and fundamental rights were being violated.[47]

Nonetheless, the CJEU held that, given that the directive applies to all legal and natural persons in the EU, the applicants 'were not in a situation which was different from that of the indeterminate and indeterminable body of EU citizens and were, therefore, not differentiated by the fact of holding a specific acquired right'.[48] Moreover, the Court stated that the claim that the applicants' fundamental rights were violated cannot constitute individual concern, 'without running the risk of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless'.[49]

In conclusion, the CJEU has thus far adopted a highly restrictive interpretation of the criterion of individual concern in climate litigation cases under Article 263, paragraph 4, TFEU by applying the *Plaumann* test.[50]

Furthermore, the issue of the continued relevance of *Plaumann* is timely not only regarding climate litigation, but also concerning other areas of substantial law. This finding is supported *inter alia* by the pending appeal in *Medel*, which concerns the rule of law conditionality regarding Next Generation EU (NGEU) funds.[51] In their appeal, the applicants challenge the 'application of the *Carvalho* case law' by invoking, inter alia, 'the *KlimaSeniorinnen* jurisprudence of the European Court of Human Rights'.[52] In addition, the General Court has explicitly addressed the issue of the influence of *KlimaSeniorinnen* on Article 263, paragraph 4, TFEU in *Asociația Inițiativa pentru Justiție* (for more detail, see section 3.2.1).[53] Furthermore, recently,

[45] Case T-141/19 *Sabo* (n 4) paras 3–10, 19.

[46] Ibid para 21.

[47] Ibid.

[48] Case C-297/20 P *Sabo* (n 4) para 28; cf. Case T-141/19 *Sabo* (n 4) paras 29–31.

[49] Case C-297/20 P *Sabo* (n 4) para 28; cf. Case T-141/19 *Sabo* (n 4), paras 33–34.

[50] B Steible, 'Los criterios *Plaumann* frente a la emergencia climática: Una perspectiva constitucional europea' (2024) 7 *Revista Electrónica de Derecho Internacional Contemporáneo: REDIC* 77, 79; Eliantonio and Stratieva (n 17) 2.

[51] Case C-555/24 P, Appeal brought on 14 August 2024 by *Magistrats européens pour la démocratie et les libertés (Medel), International Association of Judges, Association of European Administrative Judges, Stichting Rechters voor Rechters* against the order of the General Court (Grand Chamber) delivered on 4 June 2024 in Case T-530/22, *Medel and Others v Council*. The *Medel* case is a part of the case law on the rule of law crisis in Poland and concerns the Council's decision to release NGEU funds to Poland, which were previous withheld due to rule of law shortcomings, see TL Boekestein, 'This Chapter is Closed, but the Saga Continues: *MEDEL and Others v. Council of the European Union*' (2024) *Rivista del contenzioso europeo* 191; M Leson, 'Umkämpfte Meilensteine' (Verfassungsblog, 2 October 2024) at verfassungsblog.de.

[52] *Medel* Appeal (n 51), Pleas in law and main arguments (italics added); see P Pohjankoski, 'Op-Ed: "Standing for the Rule of Law? Judge Associations' locus standi before EU Courts in Medel (T-530/22 to T-533/22)"' (EU Law Live, 23 October 2024) at eulawlive.com.

[53] Case T-1126/23 *Asociația Inițiativa pentru Justiție v Commission*, EU:T:2025:138.

AG Emiliou has substantively contributed to the discussion around *Plaumann* with his Opinion in *Nicoventures* since, in his view, this case offered 'the Court the opportunity to revisit' the *Plaumann* case law.[54] *Nicoventures* concerned the prohibition of flavoured heated tobacco products.[55] In the Opinion, the AG called for a 'a more supple and realistic application'[56] of the *Plaumann* case law, as will be explained in more detail below (part 3.2.2.). While the Court did not follow the AG's Opinion, the AG's proposals will, nevertheless, be discussed. The Opinion represents a crucial development in the discussion of the continued relevance of the *Plaumann* test. Hence, the Court has and has had more than one occasion to discuss the continued relevance of the *Plaumann* test, albeit not in the climate litigation context. Those cases show, firstly, that *Plaumann* is anything but an old hat. Secondly, the *Plaumann* doctrine poses problems not only regarding environmental and climate litigation, but also regarding other crucial areas, such as the rule of law.

2.2 A critique of *Plaumann*: general points of criticism and applicability in climate litigation

The *Plaumann* test has been controversial for a long time, even before the phenomenon of climate litigation emerged.[57] As shown in section 2.1, AG Jacobs already heavily criticized the *Plaumann* case law more than 20 years ago. As critical voices in the literature point out, the Court 'reiterates the same reading of the Treaty provisions on access to justice in a very static and rigid way.'[58] In an almost Kafkaesque manner,[59] the approach of the Court has been: '*Plaumann* means *Plaumann* means *Plaumann*'.[60] The Court seems to be unwilling to question its own interpretation, even in the face of the ongoing and outspoken criticism by some of its AGs and many academics.[61]

In recent years, the criticism of *Plaumann* has been voiced with increasing fervour regarding environmental and climate litigation. As has been pointed out in the literature, it is noteworthy that in *Carvalho* and *Sabo*, there were neither AG opinions

[54] AG Emiliou in *Nicoventures* (n 9) para 5.

[55] The *Nicoventures* case focuses on the Commission's delegated directive which bans flavoured heated tobacco products, see Case T-706/22 *Nicoventures Trading and Others v Commission,* paras 2–6.

[56] AG Emiliou in *Nicoventures* (n 9) para. 6.

[57] For a brief overview of the current state of climate litigation globally, see Setzer and Higham (n 5); Pouikli (n 5).

[58] M Pagano, 'Op-Ed: "Legal Standing in Climate Litigation before the ECtHR and the CJEU"' (EU Law Live, 28 May 2024) at eulawlive.com.

[59] H Schoukens, 'Access to Justice in Environmental Cases after the Rulings of the Court of Justice of 13 January 2015: Kafka Revisited?' (2015) 31 *Utrecht Journal of International and European Law* 46; J Schlake, 'Closed Doors in Luxembourg? Climate Change Litigation before the CJEU in a "Complete System of Remedies"' in I Alogna and others (eds), *Climate Change Litigation in Europe: Regional, Comparative and Sectoral Perspectives* (Intersentia 2023) 247, 248.

[60] Schlake (n 59) 248.

[61] Pagano (n 58).

nor referrals to the Grand Chamber.[62] Furthermore, both of the rulings are noticeably short. Moreover, the final decisions are only available in English and French on the CURIA database instead of in all the official languages of the EU.[63] These formalistic observations alone could create the impression that the Court has not attributed great relevance to them. In fact, one might argue that the question of individual concern in climate litigation cases did indeed raise new points of law, rendering an AG opinion necessary.[64] Thus, it is true that the 'emphasis' placed by the ECtHR and the CJEU respectively on cases dealing with climate change is notably different, with the CJEU cases being much less in the spotlight than the ECtHR cases so far.[65]

On substance, it has been observed that *Plaumann* poses 'an insurmountable barrier for private parties to challenge EU legislative acts on climate-related issues'[66] since its restrictive interpretation renders access to the CJEU close to impossible in environmental and climate cases.[67] Winter, a counsel to the applicants in *Carvalho*, has even argued that the *Plaumann* test does not call for individual, but rather for 'exclusive' concern in climate cases.[68] While it is true that this criticism often seems to be 'outcome driven',[69] the substantive arguments against the *Plaumann* case law shall nevertheless be explored. The following sub-sections provide a general critique of *Plaumann*, applying the criticism to the climate litigation context and juxtaposing the CJEU's approach with the critique in the literature.

2.2.1. Plaumann*: one interpretation of many*

The CJEU has argued, in different ways, that the *Plaumann* test represents the only possible interpretation of the criterion of individual concern under Article 263, paragraph 4, TFEU.

Firstly, in *Carvalho* and *Sabo*, the CJEU stated that accepting a wider interpretation of the *locus standi* for the applicants in the case would 'render the requirements of the fourth paragraph of Article 263 TFEU meaningless and would create *locus*

[62] See Ibid; Prete (n 8) 217.

[63] Pagano (n 58).

[64] See Art 20, para 5, of the Statute of the CJEU: 'Where it considers that the case raises no new point of law, the Court may decide, after hearing the Advocate General, that the case shall be determined without a submission from the Advocate General.'

[65] Pagano (n 58).

[66] Pouikli (n 5) 571; see also O Feraci, *Contenzioso climatico e diritto internazionale privato dell'Unione Europea* (Giappichelli 2025) 57.

[67] F Gallarati, 'Caso *Carvalho*: la Corte di Giustizia rimanda l'appuntamento con la giustizia climatica' (2021) 47 *DPCE Online* 2603, 2611; Pagano (n 12) 149; cf. Steible (n 50) 77.

[68] G Winter, '*Armando Carvalho et alii versus Europäische Union*: Rechtsdogmatische und staatstheoretische Probleme einer Klimaklage vor dem Europäischen Gericht' (2019) 30 *Zeitschrift für Umweltrecht* 259, 259–260; cf. L Christiansen and C Masche, 'Klimarechtsschutz und Paradoxien beim EuGH – Warum die Plaumann-Formel nicht mehr zeitgemäß ist' (2023) 26 *Zeitschrift für europarechtliche Studien* 31, 33.

[69] Opinion of AG Emiliou in *Nicoventures* (n 9) para 47.

standi for all without the criterion of individual concern referred to in the judgment in *Plaumann* being fulfilled'.[70] This argumentation has been aptly described as a 'classic *circulus in probando:* the limit of *Plaumann* is *Plaumann*'.[71] Moreover, this passage seems to display the Court's 'fear of softening the standing requirements, which might lead […] to a scenario of *actio popularis*'.[72]

The CJEU's approach seems problematic, as it conflates the wording of the Treaty text with the CJEU's own interpretation of said text. The CJEU continues to rely on 'a formulaic method',[73] alleging that *Plaumann* is intrinsically linked to the Treaty formulation. This approach is not convincing since Article 263, paragraph 4, TFEU only refers to direct and individual concern as general terms, not to a specific interpretation of those terms.[74] In fact, in the words of AG Jacobs, 'the notion of individual concern is capable of carrying a number of different interpretations'.[75] Thus, the *Plaumann* test is only one of several possible interpretations of the notion of individual concern.[76] Several proposals for different interpretations will be analysed in section 3.2.2. For instance, AG Jacobs argued in his conclusions in *UPA* that there are 'no compelling reasons to read into that notion a requirement that an individual applicant seeking to challenge a general measure must be differentiated from

[70] Case C-565/19 P *Carvalho* (n 4) para 41; Case C-297/20 P *Sabo* (n 4) para 28; cf. Case T-141/19 *Sabo* (n 4), paras 33–34; Case C-583/11 P *Inuit Tapiriit Kanatami et al. ('Inuit I-P'),* EU:C:2013:625, para 51. See also Case C-345/00 P *FNAB and Others v Commission,* EU:C:2001:270, para 40: 'The seriousness of the alleged infringement by the institution concerned or the extent of its adverse impact on the observance of fundamental rights could not, in any event, give rise to non-application of the rules for admissibility expressly laid down by the Treaty'.

[71] Hornkohl (n 24); Osojnik (n 33) 117.

[72] Pagano (n 58). As a demonstration of said fear, see Opinion of AG Cosmas in Case C-321/95 P *Greenpeace Council and Others v Commission*, EU:C:1997:421, para 117: 'I believe that a relaxation by the Court, to the extent sought, of the criteria of admissibility could be abused and lead to aberrant consequences. Natural persons without *locus standi* under the fourth paragraph of Article 173 of the Treaty could circumvent that procedural impediment by setting up an environmental association. Moreover, whilst the number of natural persons, that is to say citizens of the European Union, however high it may be, none the less remains limited, the number of environmental associations capable of being created is, at least in theory, infinite. […] If the Court were ultimately to follow the proposal of the appellant associations, in future every measure of a Community institution concerning the environment or having an impact on it could be expected, on each occasion, to form the subject-matter of proceedings brought by a plethora of environmental associations.'

[73] H De Waele, 'Re-appraising Success and Failure in the Life of the European Court of Justice' (2021) 23 *Cambridge Yearbook of European Legal Studies* 54, 65; M Campins i Eritja, 'The European Union and climate change litigation: promising much but delivering little?' in F Sindico and others (eds), *Research Handbook on Climate Change Litigation* (Edward Elgar 2024) 364, 374; for a critique of the CJEU's approach of judicial copy-pasting see FX Millet, 'In the name of analogy: Judicial copy-pasting and competence creep in the connection data case law' (2024) 61 *Common Market Law Review* 1289.

[74] Christiansen and Masche (n 68) 44; Gallarati (n 67) 2609.

[75] AG Jacobs in *UPA* (n 20) para 75; cf. Winter (n 33) 158.

[76] See Y Nakanishi, 'Possibility of Extending Legal Standing under Article 263 (4) TFEU in the matter of Climate Litigation' (blogdroiteuropéen, 4 April 2024) at blogdroiteuropeen.com; Osojnik (n 33) 118–119; Prete (n 8) 249.

all others affected by it in the same way as an addressee'.[77] Therefore, there seems to be no legal basis for stating that without the *Plaumann* criteria Article 263, paragraph 4, TFEU would be stripped of its meaning.

Secondly, the Court alleges that interpreting legal standing for private applicants in a broader way would require a Treaty change by the Member States since a more lenient interpretation of the individual concern criterion would mean an excess of the CJEU's competences.[78] However, the *Plaumann* test, as has been shown above, is a product of the CJEU case law and not expressly enshrined in the Treaties.[79] Therefore, it is not convincing that a Treaty change would be legally required. Instead, the CJEU itself is competent to adopt a certain interpretation of the criterion of individual concern.[80] At least in theory, there is no *stare decisis* obligation for the CJEU.[81] Nonetheless, in practice, the CJEU seems to rely on binding precedents, using the 'overruling technique' when departing from previous case law.[82] In fact, turning the back on legal precedents may lead to problems regarding 'legal certainty, coherence and *res iudicata*'.[83] Thus, the CJEU uses varying degrees of overruling carefully.[84] In the case of *Plaumann*, the CJEU could overrule or adapt the test without the need for a Treaty change. In this case, there would be the need for a reconsideration or an express overruling, respecting the principles of legal certainty, coherence, and *res iudicata*.

In support of this argument, it must be remembered that in other areas, the CJEU has interpreted the standing requirements of Article 263, paragraph 4, TFEU innovatively and teleologically. For instance, in the *Venezuela* case, it stated that 'an interpretation of the fourth paragraph of Article 263 TFEU in the light of the principles of effective judicial review and the rule of law militates in favour of finding that a

[77] AG Jacobs in *UPA* (n 20) para 59.

[78] *UPA* (n 23) para 45; Case C-565/19 P *Carvalho* (n 4) para 48; see also K Lenaerts, 'Recourse to Constitutional Courts in Climate Litigation Cases: A Perspective from the CJEU' (2023) 43 *Human Rights Law Journal* 347, 348.

[79] See Hornkohl (n 24); Krämer (n 14) 204; A Krężel, 'Access to justice and strategic climate litigation in the EU: Curing the incurable?' (2023) 29 *European Law Journal* 265, 270; K Szepelak, 'Litigating Public Interest. Some Remarks on the Opinion Of Advocate General Emiliou Delivered on 12 June 2025 in C-731/23 P *Nicoventures Trading Ltd*' (2025) 3 *Rivista del contenzioso europeo* 605, 612.

[80] Schütze (n 3) 392 calls this argument 'disingenuous'.

[81] A Arnull, 'Owning up to fallibility: Precedent and the Court of Justice' (1993) 30 *Common Market Law Review* 247, 248; Christiansen and Masche (n 68) 46; Nakanishi (n 76).

[82] D Sarmiento, 'The "overruling technique" at the Court of Justice of the European Union' (2023) *European Journal of Legal Studies* 107, 108–109; D Gallo, *Direct Effect in EU Law* (Oxford University Press 2025) 41–43.

[83] Sarmiento (n 82) 110.

[84] Ibid 116–118 distinguishes between evolution, clarification, and reconsideration, while T Tridimas differentiates between precedent, express overrulings, and implicit overrulings; cf. T Tridimas, 'Precedent and the Court of Justice: A Jurisprudence of Doubt?' in J Dickson and P Eleftheriadis (eds), *Philosophical Foundations of European Union Law* (Oxford University Press 2012) 307.

third State should have standing to bring proceedings, as a "legal person" within the meaning of the fourth paragraph of Article 263 TFEU'.[85] Thus, the Court has shown that it is willing to interpret the criteria set forth in Article 263, paragraph 4, TFEU in an evolving manner, giving priority to the principles of effective judicial review and the rule of law.[86] In the 1990 case of *Parliament v Council*, the Court even attributed legal standing to the European Parliament, even though this institution was not explicitly granted standing under Article 263 TFEU's predecessor, Article 173 EEC Treaty.[87] Naturally, none of the cases mentioned in this paragraph are focused on the criterion of individual concern, as they centre around other aspects of Article 263, paragraph 4, TFEU. However, on a more abstract level, they show that the CJEU has taken major interpretative liberty regarding the criteria of Article 263 TFEU in the past, even going against the Treaty text in *Parliament v Council*.

It has been argued by Van Wolferen that the CJEU's 'power as the final arbiter of the Treaty has, from the inception of the European project, been limited when it comes to all applicants'.[88] He bases this argument on the fact that the CJEU had been awarded a rather limited mandate at the beginning of European integration and that the subsequent Treaty changes had not extended the interpretative margin of the Court regarding individual concern.[89] However, it seems from the case law mentioned in the previous paragraph that the CJEU has interpreted the criteria of Article 263 TFEU in a more flexible manner if a novel legal situation requires such an approach, i.e., regarding the European Parliament and third States.[90]

In support of the argument that *Plaumann* is not inevitable, it needs to be pointed out that in various cases, the CJEU does not apply the *Plaumann* criteria consistently in certain areas of substantive law, such as competition law, state aid, and anti-dumping, as has been noted in the literature.[91] It has been proposed that the following three

[85] Case C-872/19 P *République bolivarienne du Venezuela v Council of the European Union,* EU:C:2021:507, para 50.

[86] Cf. Prete (n 8) 254.

[87] Case C-70/88 *European Parliament v Council of the European Communities,* EU:C:1990:217, paras 15–27. See Eliantonio and Stratieva (n 17) 9: 'One way of interpreting the long-standing traditional interpretation of the standing requirements by the Court of Justice is through the theory of rational choice institutionalism [RCI]. The facts on which the explanation is based are, on the one hand, the active role of the ECJ in upgrading the standing of the European Parliament to a fully fledged privileged applicant and, on the other hand, the subsequent choice to leave the decision regarding the locus standi of private parties in the hands of the Member States. RCI, much like liberal intergovernmentalism, views states as the leading actors. [...] This would explain why the ECJ took an active role in awarding privileged standing to the EP – it was merely fulfilling its function as redistributor of power.'

[88] Van Wolferen (n 12) 929–930; see also M Van Wolferen, 'To Justifie the Wayes of God to Men: Limits to the Court's powers of interpretation' (PhD Thesis University of Groningen 2018).

[89] Van Wolferen (n 12) 923–924, 929–930.

[90] See Krężel (n 79) 268.

[91] Case C-11/82 *Piraiki-Patraiki v Commission,* EU:C:1985:18, paras 11–31: several companies exporting Greek cotton yarn to France who had a series of contracts of sale with French customers; Case

groups of case law constitute individual concern: firstly, formal participation in the administrative procedure adopting the legal act, e.g., *Metro*;[92] secondly, when economic operators have already been conclusively determined to be affected by a certain legal act, e.g., *Sofrimport*; thirdly, applicants that are affected in specific market positions or rights, such as trademark rights, e.g., *Extramet* and *Codorníu*.[93] However, it seems questionable whether *Extramet* and *Codorníu* belong in the same category since the exclusive market position in *Extramet* is different from the trademark right in *Codorníu* as the former is a factual, not a legal attribute. In these areas, especially in anti-dumping, the 'comparative view imbedded in the formal "distinctiveness" test vanishes and a substantial orientation that looks at severity for the individual actor creeps in' when determining their market position.[94] The Court appears to be 'more liberal' in these areas.[95] This contrast is illustrated by the juxtaposition of the cases *Timex* and *WWF-UK v Council*.[96] On the one hand, the Court held in *Timex*, an anti-

264/82 *Timex Corporation v Council and Commission,* EU:C:1985:119, paras 11–16: a manufacturer of mechanical wrist watches which, firstly, participated in the procedure leading up to the adoption of an anti-dumping measure (paras 13–14) and, secondly, is a 'leading manufacturer of mechanical watches and watch movements in the Community and the only remaining manufacturer of those products in the United Kingdom' (para 15); Joined Cases C-67/85, C-68/85, and C-70/85 *Van der Kooy v Commission,* EU:C:1988:38, paras 17–25; *PPG* (n 38) paras 58–59; *CIRFS* (n 41) paras 29–30; Case C-152/88 *Sofrimport v Commission,* EU:C:1990:259, para 11: 'importers of Chilean apples whose goods were in transit when Regulation No 962/88 was adopted'; Case C-358/89 *Extramet Industrie v Council,* EU:C:1991:214, para 17: 'The applicant is the largest importer of the product forming the subject-matter of the anti-dumping measure and, at the same time, the end-user of the product. In addition, its business activities depend to a very large extent on those imports and are seriously affected by the contested regulation in view of the limited number of manufacturers of the product concerned and of the difficulties which it encounters in obtaining supplies from the sole Community producer, which, moreover, is its main competitor for the processed product.'; Case C-309/89 *Codorníu SA v Council of the European Union,* EU:C:1994:197, paras 17–23: holder of the trade mark right for 'Gran Cremant de Codorniu'; Case T-480/93 *Antillean Rice Mills NV et al. v Commission,* EU:T:1995:162, paras 64–78: rice processing companies that had shipments of rice in transit when the decisions in question were adopted or amended; Cases T-481/93 and T-484/93 *Vereniging van Exporteurs in Levende Varkens et al. v Commission,* EU:T:1995:209, para 61; Case C-415/15 P *Stichting Woonpunt and Others v European Commission,* EU:C:2017:216, para 59; Case C-348/20 P *Nord Stream 2 AG v European Parliament and Council of the European Union,* EU:C:2022:548, paras 152–163, para 161: '[…] the Nord Stream 2 gas pipeline is the only pipeline which is, or which could be, in such a situation, in so far as the operators of all the other interconnectors covered by Directive 2009/73 have had or will have had the possibility of being granted an exemption or derogation under one of the provisions of that directive referred to in the preceding para graph, as the appellant submits without being contradicted.; cf. Christiansen and Masche (n 68) 44–45; Hadjiyianni (n 14) 785–786; Hartley (n 17) 369–370; Krämer (n 14) 199; Krężel (n 79) 268; Schütze (n 3) 392.

[92] See Case 26-76 *Metro SB-Großmärkte GmbH & Co. KG v Commission of the European Communities,* EU:C:1977:167, paras 6–13.

[93] Schlake (n 59) 249.

[94] G Winter, '*Plaumann* Withering : Standing before the EU General Court Underway from Distinctive to Substantial Concern' (2023) *European Journal of Legal Studies* 85, 93.

[95] Krężel (n 79) 268.

[96] See Pagano (n 12) 43.

dumping case, that 'the part played by the applicant in the anti-dumping proceedings'[97] was part of why the applicant was considered individually concerned by the measure in question.[98] In particular, Timex had lodged a complaint which was rejected by the Commission, similarly to the complaint at the base of the investigation procedure, and had been heard in the procedure leading to the adoption of the contested measure.[99] On the other hand, the CJEU set out a two-step test in *WWF-UK*, a case concerning sustainable fishing practices. Firstly, the Court stated that a person 'involved in the procedure leading to the adoption of a [EU] […] measure' is considered individually concerned 'only if the applicable [EU] […] legislation grants him certain procedural guarantees'.[100] Secondly, according to the Court, 'the mere fact of relying on the existence of a procedural guarantee before the Community judicature does not mean that an action will be admissible where it is based on pleas alleging the infringement of substantive rules of law'.[101] In the second case, the Court appears to set much higher standards for accepting individual concern based on the participation in the procedure leading to the adoption of the measure in question.

This case law begs the question whether the CJEU applies the *Plaumann* test consistently and in an unbiased fashion when determining legal standing for private applicants.[102] Until now, the CJEU only seems to relax the *Plaumann* test in cases where a legal person alleges a violation of its economic interests.[103] Thus, the Court appears to interpret the requirement of individual concern as privileging (private) economic over public interests.[104] In fact, the Court has been criticized for applying a 'double standard'.[105] On the one hand, some authors discussing environmental litigation have alleged that the CJEU sticks to the *Plaumann* criteria for ideological reasons since it would not 'wish to see environmental organizations or individuals raise the infringement of environmental provisions by EU institutions before the Court'.[106] It has been argued that the choice to prefer economic motives is 'questionable'.[107] On the other hand, some argue that economically relevant positions, e.g., trademark rights as in *Codorníu*, are 'more suitable for clearly distinguishing an individual from others in a

[97] *Timex* (n 91) para 12.
[98] Ibid para 16.
[99] Ibid paras 13–14.
[100] Case C-355/08 P *WWF-UK Ltd v Council*, EU:C:2009:286, para 42.
[101] Ibid para 47.
[102] See *Sofrimport* (n 91) para 11.
[103] Christiansen and Masche (n 68) 50; Schlake (n 59) 252.
[104] Schlake (n 59) 252. See AG Emiliou in *Nicoventures* (n 9) paras 101–112.
[105] Christiansen and Masche (n 68) 34; L Krämer, 'Access to Environmental Justice: the Double Standards of the ECJ' (2017) 14 *Journal for European Environmental & Planning Law* 159; see also Dukarm and Prantl (n 42) 106–107. For a critical perspective on this argument, see Pagano (n 12) 41–46.
[106] L Krämer, 'The Environment before the European Court of Justice' in C Voigt (ed), *International Judicial Practice on the Environment: Questions of Legitimacy* (Cambridge University Press 2019) 25, 32 and 36.
[107] Hornkohl (n 24).

similar way to an addressee of a single-case decision'.[108] This last argument certainly holds some truth concerning the practicability of the criteria, but it is difficult to assess whether this is the sole reason why the Court is willing to accept individual concern in some cases that do not quite fit under the *Plaumann* test exclusively when they relate to economic interests. It can be inferred from the above-mentioned case law that *Plaumann* is not, as the Court alleges, a one-fits-all solution to assess individual concern under Article 263, paragraph 4, TFEU.[109]

However, some authors do not fully agree with this 'double standard' criticism, which has been described as 'too simplistic'.[110] Pagano raises two objections to this argument. Firstly, he states that the Court has 'refused to grant standing to private corporations even in competition and State Aid cases in a significant number of rulings'.[111] Secondly, he recalls that the CJEU in the 1988 *Commission v Denmark* case has held that environmental protection can be used to justify restrictions on the four freedoms.[112] In Pagano's view, these arguments are proof that the CJEU 'does not favour corporate interests over environmental interests in absolute terms'.[113] However, on the first argument, it could be argued that a more robust quantitative analysis would be needed to render this point on the 'significant number of rulings' more convincing. Moreover, the fact that the Court appears to be inconsistent even in these areas shows that the *Plaumann* case law remains too opaque. Regarding the second argument, it could still be said that criticizing the Court's inconsistent approach to legal standing for environmental NGOs does not necessarily entail implying that the CJEU is (or was) 'anti-environmental' 'in absolute terms'. The double-standard criticism can still be valid when confined to the specific area of legal standing.

Pagano instead proposed to distinguish between 'acts of quasi-judicial nature' and 'acts based purely on policy and discretion', basing his analysis on Hartley's work.[114] In this framework, individual concern for 'acts of quasi-judicial nature', on the one hand, is defined based on 'objective consideration' and adopted through a 'procedure which has judicial features'.[115] On the other hand, there are two tests for 'acts based purely on policy and discretion'. Firstly, there is a 'small group test' for when a 'measure is drafted in general terms but the persons affected, though members of a theoretically open category, in fact consist of a small and easily identifiable group'.[116] Secondly, the 'closed category test' applies in two cases, either when a 'measure though

[108] Schlake (n 59) 252–253; Osojnik (n 33) 120.

[109] See Christiansen and Masche (n 68) 33.

[110] Pagano (n 12) 43.

[111] Ibid 44. See *Jégo-Quéré* (n 23); C-78/03 P *Commission v Aktionsgemeinschaft Recht und Eigentum eV,* EU:C:2005:761; C-287/12 P *Ryanair Ltd v Commission,* EU:C:2013:395.

[112] C-302/86 *Commission v Denmark*, EU:C:1988:421, paras 20–22; Pagano (n 12) 43; Prete (n 8) 246.

[113] Pagano (n 12) 44.

[114] Ibid 45; see Hartley (n 17) 369–391.

[115] Hartley (n 17) 379.

[116] Ibid 371.

drafted in abstract terms, applies (in whole or in part) to a closed category of persons'[117] or when the measure is a regulation[118]. According to Pagano, 'Hartley's distinction can therefore help to understand not only the Court's rigidity on *Plaumann* in the field of environmental protection, but also the so called "double standard" of the EU judiciary when dealing with cases in different legal domains'.[119] Nonetheless, while being an interesting lens through which cases concerning individual concern can be categorized, Hartley's approach does not seem to leave room for environmental and climate cases at all, since they do not seem to fit in any of his categories.

2.2.2. A complete system of remedies?

In addition to the argument that *Plaumann* is the only possible interpretation of the criterion of individual concern, the Court also relies on another line of reasoning, i.e., on a more systemic argument. In fact, the Court argues that the EU legal order is based on a 'complete system of remedies'[120], leaving individual applicants the option to instigate proceedings before national courts which can initiate a preliminary reference procedure before the CJEU as an indirect action if direct actions, such as an annulment procedure, are not admissible.[121] This means that 'there will be no possible means by which any act will be able to exist without being open to review by the Court'.[122]

However, as stated already by AG Jacobs in *UPA*, '[p]roceedings before national courts do not […] always provide effective judicial protection of individual applicants and may, in some cases, provide no legal protection whatsoever'.[123] As is well-known, national courts cannot declare measures of EU law invalid.[124] Moreover, applicants cannot legally enforce that national courts refer any preliminary questions

[117] Ibid 372.

[118] Ibid 374–379.

[119] Pagano (n 12) 46.

[120] 'Complete' can be interpreted as 'the possibility to ensure, directly or indirectly, judicial review of the legality of EU acts producing legal effects and of national acts that apply EU law', see Prete (n 8) 207.

[121] Case C-565/19 P *Carvalho* (n 4), para 68; cf. Case 294/83 *Parti écologiste 'Les Verts' v European Parliament,* EU:C:1986:166, para 23; Case C-50/00 P *Unión de Pequeños Agricultores v Council of the European Union,* EU:C:2002:462, para 40; see also T Hilpold, 'Op-Ed: "A 'complete System of legal Remedies and Procedures': Court of Justice defends but does not expand the Action for Annulment (Case C-121/23 P, Swissgrid)"' (EU Law Live, 4 March 2025) at eulawlive.com; AM Romito, 'La completezza dei rimedi giurisdizionali nell'ordinamento dell'UE ed il contezioso sul cambiamento climatico' in B Cortese (ed), *Il diritto dell'Unione europea nei rapporti tra ordinamenti: tra collaborazione, integrazione e identità, Atti del V Convegno annuale AISDUE, Padova, 2-3 novembre 2023* (Editoriale Scientifica 2024) 539, 546–548.

[122] M Van Wolferen and M Eliantonio, 'Access to Justice in Environmental Matters in the EU: The EU's Difficult Road towards Non-Compliance with the Aarhus Convention' in M Peeters and M Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 148, 149.

[123] AG Jacobs in *UPA* (n 20) para 37; see also Nakanishi (n 76).

[124] CJ Case 314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost*, EU:C:1987:452, para 20; AG Jacobs in *UPA* (n 20) para 41; cf. S Bogojević, 'Judicial Protection of Individual Applicants Revisited: Access to Justice through the Prism of Judicial Subsidiarity' (2015) *Yearbook of European Law* 5, 23; Schlake (n 59) 261.

to the CJEU.[125] Furthermore, even if the national courts choose to refer preliminary questions to the CJEU, the formulation of the preliminary questions remains within the competence of the national courts, not of the applicants.[126] Lastly, according to AG Jacobs, it is extremely cumbersome to challenge EU acts which do not call for any act of implementation by national authorities.[127] On this point, it must be remembered, however, that for once, the Lisbon Treaty has introduced the third limb of Article 263, paragraph 4, TFEU, resolving this problem at least regarding regulatory acts, i.e., non-legislative acts of general application.[128] Moreover, the Court has held in *BAT* that '[t]he opportunity open to individuals to plead the invalidity of a[n] [EU] […] act of general application before national courts is not conditional upon that act's actually having been the subject of implementing measures adopted pursuant to national law'.[129] In addition, when indirectly challenging EU law through domestic procedures, the overall duration and costs of the procedures before the national court, the CJEU and, again, the national court will likely be higher than those for a direct action.[130] According to AG Jacobs, in terms of effective judicial protection, Article 267 TFEU and Article 263, paragraph 4, TFEU do generally not offer the same level of agency and protection to individual applicants.[131]

[125] AG Jacobs in *UPA* (n 20) para 42; AG Ćapeta in *WhatsApp* (n 19) para 176; cf. AG Emiliou in *Nicoventures* (n 9) para 126; Hadjiyianni (n 14) 805; Krämer (n 14) 203; Osojnik (n 33) 117; Prete (n 8) 255; Schlake (n 59) 257; Schütze (n 3) 400; Steible (n 50) 80; van der Pas (n 12) 12–13.

[126] AG Jacobs in *UPA* (n 20) para 42; cf. Krämer (n 14) 203; Krężel (n 79) 269; van der Pas (n 12) 4. See also V Passalacqua, 'Explore the Silence: The Absence of Preliminary References from Greek Courts on Migration and Asylum' (2024) 25 *German Law Journal* 977.

[127] AG Jacobs in *UPA* (n 20) para 43. See also Schütze (n 3) 400; van der Pas (n 12) 13.

[128] *Inuit I-P* (n 70) para 61; see Opinion of AG Cruz Villalón in Case C-456/13 P *T & L Sugars Ltd, Sidul Açúcares, Unipessoal Lda v European Commission*, EU:C:2014:2283, paras 16–33; Schütze (n 3) 392–394.

[129] Case C-491/01, *The Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd ('BAT'),* EU:C:2002:741, para 40, in full: 'The opportunity open to individuals to plead the invalidity of a Community act of general application before national courts is not conditional upon that act's actually having been the subject of implementing measures adopted pursuant to national law. In that respect, it is sufficient if the national court is called upon to hear a genuine dispute in which the question of the validity of such an act is raised indirectly.' Cf. Pagano (n 12) 124–126.

[130] See M Eliantonio and B Kas, 'Private Parties and the Annulment Procedure: Can the Gap in the European System of Judicial Protection Be Closed?' (2010) 3 *Journal of Politics and Law* 121, 125; Prete (n 8) 255. Naturally, this assessment depends on the existing legal framework in the respective Member State and available forms of legal aid; cf. Case C-530/11 *European Commission v United Kingdom of Great Britain and Northern Ireland*, EU:C:2014:67 para 46; Bogojević (n 124) 22.

[131] See also the general criticism by AG Bobek regarding Art 263, para 4, TFEU, who professes to being 'at an institutional level, […] perplexed by a judicial structure, and an ongoing judicial policy which petrifies that structure, that, by restricting direct access to the EU Courts, channels cases in which the validity of EU acts is at stake before the national courts, in order for those cases to eventually arrive many years later before the Court of Justice via the preliminary ruling procedure. This complex and time consuming combination of procedures is simply unreasonable in view of the latest reform to the judicial structure of the Union which gave the General Court the means required to carry out its constitutional role as the EU first-instance adjudicator which, within the ambit of its jurisdiction, can exercise full judicial review by examining both the relevant law and facts'; see Opinion of AG Bobel in Joined Cases C-177/19

Furthermore, it has been correctly stated by AG Bobek that the 'architecture' of the EU judicial system has profoundly changed over the last decades:

> 'Jurisprudentially restricting direct access, while generously allowing for the indirect one via the preliminary ruling procedure, was perhaps a good recipe in the early 2000s. However, with the radically changed structure of the EU Courts some 20 years later, the insistence that there still be limited access through the door which has capacity, while allowing for unfettered access on the same issues through the other door which, by now, has limited capacity, is bound to lead to congestion and an evident lowering of the quality of the traffic'.[132]

Regarding climate litigation, the preliminary reference procedure seems to be inapt to address government framework climate litigation cases[133] like *Carvalho* against EU legislative acts in particular.[134] In fact, it would be difficult to imagine a case where a national court would have to refer a question on the compatibility of EU climate legislation with primary law in order to be able to solve a domestic dispute.[135] As Schlake points out, this would only make sense if the 'unambitious' EU legislation stood in the way of a more ambitious policy on the Member State level.[136] However, according to Article 193 TFEU, climate protection is an area of minimum harmonisation, leaving Member States the freedom to maintain or adopt 'more stringent protective measures', if they wish to do so.[137] Thus, there seems to be little hope for a preliminary procedure in framework cases, such as *Carvalho* or *KlimaSeniorinnen*.[138]

Moreover, as is well-known, in *European Parliament v Council*, the Court held that the other procedural avenues available to the Parliament at the time were 'not sufficient to guarantee, with certainty and in all circumstances', that the European

P, C-178/19 P and C-179/19 P *Federal Republic of Germany v Ville de Paris, Ville de Bruxelles, Ayuntamiento de Madrid, European Commission (C-177/19 P) and Hungary v Ville de Paris, Ville de Bruxelles, Ayuntamiento de Madrid, European Commission (C-178/19 P) and European Commission v Ville de Paris, Ville de Bruxelles, Ayuntamiento de Madrid (C-179/19 P)*, EU:C:2021:476, para 108.

[132] Opinion of AG Bobek in Case C-352/19 P *Région de Bruxelles-Capitale v European Commission*, EU:C:2020:588.

[133] See n 26.

[134] Schlake (n 59) 257–260; Hadjiyianni (n 14) 805.

[135] Schlake (n 59) 259. However, it must be remembered that in the Czech case *Klimatická žaloba ČR v Czech Republic* the applicants attempted to challenge the EU's Nationally Determined Contribution (NDC) under the Paris Agreement. The case was successful in the first instance but dismissed by the Supreme Court on appeal. See E Balounová, 'The Czech Climate Case: Uncertainty after the Case's Dismissal' (Climate Law Blog, 6 March 2025) at blogs.law.columbia.edu; E Balounová, 'Guest Commentary: An Unexpected Success for Czech Climate Litigation' (Climate Law Blog, 18 October 2022) at blogs.law.columbia.edu; T Žuffová-Kunčová and M Kovalčík, 'Czechia's First Climate Judgment' (Verfassungsblog, 3 September 2022) at verfassungsblog.de.

[136] Schlake (n 59) 259.

[137] See L Reins, 'Where Eagles Dare: How Much Further May EU Member States Go under Article 193 TFEU?' in M Peeters and M Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 22; Schlake (n 59) 259.

[138] See also Dukarm and Prantl (n 42) 107; Hornkohl (n 24) on this point.

Parliament's goal of judicial review was achieved.[139] Thus, in this case, the CJEU itself did not deem the 'complete system of remedies' sufficient to protect the principle of institutional balance. This argument could be replicated by underlining that preliminary reference procedures are 'not sufficient to guarantee, with certainty and in all circumstances' to ensure the individual applicant's goal of reviewing the EU climate legislation, potentially violating the principle of effective legal protection, today enshrined in Article 47 Charter of Fundamental Rights of the European Union (CFR). Thus, adopting the same logic, it seems preferable to ensure access to the CJEU for private applicants through direct actions at least in cases in which a preliminary reference procedure would not seem possible, such as in framework cases against EU legal acts regarding climate targets.[140]

Indeed, the restrictive understanding of individual concern in climate cases must be questioned in light of the issue of access to justice, i.e., the right to an effective remedy under Article 47 CFR and under Article 9, paragraph 3, of the Aarhus Convention.[141]

Firstly, the compatibility with Article 47 CFR must be assessed.[142] On the one hand, it is true, as the Court held in *Carvalho*, that 'the protection conferred by Article 47 CFR does not require that an individual should have an unconditional entitlement to bring an action for annulment of such a legislative act of the Union directly before the Courts of the European Union'.[143] In the same vein, it is clear that an interpretation in conformity with Article 47 CFR cannot lead to 'setting aside the conditions expressly laid down in that Treaty'.[144] On the other hand, no right to unconditional access to the CJEU does not equal no right to access to justice at all. It is questionable whether there is another effective legal remedy available in (framework) climate litigation cases. In fact, it has been argued that applying the *Plaumann* criteria in climate litigation cases could amount to a denial of justice.[145] In addition, as shown above, an interpretation in conformity with Article 47 of the Charter does not mean setting aside the conditions established by the Treaty. At most, it would mean setting aside the *Plaumann* test, which, as pointed out above, is not established by the Treaties.

[139] *European Parliament v Council of the European Communities* (n 87) para 20.

[140] Osojnik (n 33) 119–120. See also AG Emiliou in *Nicoventures* (n 9) paras 142–143.

[141] G Agrati, 'I limiti della formula *Plaumann* in tema di diritto ambientale: brevi note alla sentenza della Corte di giustizia nella causa C-565/19 P, *Carvalho e a. c. Parlamento e Consiglio*' (Eurojus, 23 May 2021) at rivista.eurojus.it.

[142] T Lock and J Tomkin, 'Article 47 CFR' in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary* (Oxford University Press 2024) 566, 569.

[143] Case C-565/19 P *Carvalho* (n 4) para 77; cf. *Inuit I-P* (n 70) para 105.

[144] Case C-565/19 P *Carvalho* (n 4) para 78; cf. *UPA* (n 23) para 44; *Jégo Quéré* (n 23) para 36.

[145] M Eliantonio and H Roer-Eide, 'Regional Courts and locus standi for Private Parties: Can the CJEU Learn Something from the Others?' (2014) 13 *The Law & Practice of International Courts and Tribunals* 27, 28; Steible (n 50) 81. See also van der Pas (n 12) 14–15.

Secondly, the question of access to justice must be analysed in the light of the Aarhus Convention. The Aarhus Convention was adopted as an international agreement in 1998 and entered into force in 2001. Among the currently 48 parties to the agreement are both the EU and all EU Member States.[146] It is built on three pillars: access to information, public participation in decision making, and access to justice in environmental matters.[147] In the context of *Plaumann*, the third pillar is of particular importance. Article 9, paragraph 3, Aarhus Convention states that parties to the Convention, such as the EU, shall ensure that 'members of the public have access to […] judicial procedures to challenge acts and omissions by […] public authorities which contravene provisions of its national law relating to the environment.' The CJEU has held in *Brown Bear I* that this provision lacks direct effect.[148]

In 2006, shortly after having ratified the Convention, the EU adopted the Aarhus Regulation, adapting the Aarhus Convention to the context of the EU institutions.[149] The Regulation has been updated in 2021.[150] According to Article 10 of the Regulation, '[a]ny non-governmental organisation or other members of the public […] shall be entitled to make a request for internal review to the Union institution or body that adopted the administrative act or, in the case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law'. Article 12 of the Aarhus Regulation states that the NGO 'which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the TFEU'.

[146] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters [1998].

[147] See ibid Art 1.

[148] Case C-240/09 *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* (*'Brown Bear I'*), EU:C:2011:125, para 52; Gallo (n 82) 217–272; CHL Labus, 'Sul mancato effetto diretto e indiretto degli accordi internazionali nell'ordinamento dell'Unione: riflessioni alla luce della sentenza KaiKai' (2025) *Quaderni AISDUE* 41, 50.

[149] Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 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.

[150] Regulation (EU) 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. See extensively I Anrò, 'Il difficile accesso alla giustizia ambientale per le ONG e la riforma del Regolamento di Aarhus' (2022) 10, n. 11 *Federalismi* 1; M Eliantonio and J Richelle, 'Access to Justice in Environmental Matters in the EU Legal Order: The "Sectoral" Turn in Legislation and Its Pitfalls' (2024) 9 *European Papers* 261; C Franzius, 'Klimaklagen – warum tut sich der EuGH so schwer?' (2023) 34 *Zeitschrift für Umweltrecht* 650; Hadjiyianni (n 14) 792; Osojnik (n 33) 120–122; Pagano (n 12) 100–104; M Pagano, 'Climate Legal Mobilization Under the New Aarhus Regulation' (2024) 25 *German Law Journal* 919, 921–924; Romito (n 121) 550–553.

Against this background, it must be recalled that the *Plaumann* criteria as well as the Aarhus Regulation have also been criticized for their incompatibility with the Aarhus Convention[151]. In the absence of direct effect of the provisions of the Aarhus Convention, Article 263, paragraph 4, TFEU must be interpreted consistently with Article 9, paragraph 3, Aarhus Convention.[152] The Aarhus Convention Compliance Committee (ACCC) has held that the formulation of Article 9, paragraph 3, of the Aarhus Convention ('the criteria, if any, laid down in national law') implies 'self-restraint on the parties not to set too strict criteria' and that '[a]ccess to such procedures should thus be the presumption, not the exception.'[153] The ACCC has concluded that the EU has not respected Article 9, paragraph 3, of the Aarhus Convention, arguing that the *Plaumann* criteria in their current form are 'too strict to meet the criteria of the Convention'.[154] Subsequently, the EU amended the Aarhus regulation in 2021, as mentioned above. However, this reform did not lead to a revision of the *Plaumann* criteria, but only added, *inter alia*, the possibility for 'other members of the public' to launch an internal review request and broadened the definition of 'administrative act'. Therefore, the EU seems to remain non-compliant with Article 9, paragraph 3, of the Aarhus Convention regarding legal standing for individuals.[155]

In any case, it must be remembered that the Aarhus Convention has a limited scope of application. While the Aarhus Convention does not explicitly cover climate-change litigation, voices in the literature have proposed to adopt a teleological interpretation of Article 9 Aarhus Convention in order to extend its scope of application to climate change.[156] The CJEU does seem to interpret the Aarhus Convention in this

[151] ACCC, Findings and Recommendations, Communication ACCC/C/2008/32 (Part I) concerning compliance by the European Union, 14 April 2011, para 87; ACCC, Findings and Recommendations, Communication ACCC/C/2008/32 (Part II) concerning compliance by the European Union, 17 March 2017.

[152] Hadjiyianni (n 14) 801–802.

[153] ACCC, Findings and Recommendations, Communication ACCC/C/2005/11 with regard to compliance by Belgium with its obligations under the Aarhus Convention in relation to the rights of environmental organizations to have access to justice, 28 July 2006, para 36. On the role of the ACCC see Pagano (n 12) 76–79.

[154] ACCC, Findings and Recommendations, Communication ACCC/C/2008/32 (Part I) (n 151), para 87; ACCC, Findings and Recommendations, Communication ACCC/C/2008/32 (Part II) (n 151); see M Pagano, 'Overcoming Plaumann in EU Environmental Litigation – An Analysis of ENGOs Legal Arguments in Actions for Annulment' (2019) *Diritto e Processo* 311, 339–342.

[155] See in depth T Trapp, 'The Failure of the Aarhus Regulation? The Impossible Possibility of Substantive Judicial Review Under the Internal Review Mechanism of the Aarhus Regulation' (Amsterdam Law School Research Paper No. 2025-07; Amsterdam Centre for European Law and Governance Research Paper No. 2025-01), at www.ssrn.com; see also Kelleher (n 1) 117–118. Cf, however, Decision VII/8f concerning compliance by the European Union with its obligations under the Convention Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its seventh session, 2021, paras 4-5.

[156] Kelleher (n 1) 112. See also C Eckes and T Trapp, 'The Aarhus Convention's Relevance for Climate Litigation Through the Lens of *KlimaSeniorinnen*' (European Law Blog, 8 November 2024), at www.europeanlawblog.eu.

broader sense, which also encompasses climate litigation cases.[157] Notably, the ECtHR has not followed this interpretation in *KlimaSeniorinnen*.[158]

Moreover, the Aarhus Convention does not cover legislative, but only administrative acts.[159] Therefore, Article 9, paragraph 3, of the Aarhus Convention cannot affect the interpretation of Article 263, paragraph 4, TFEU regarding acts adopted through the legislative procedure.[160] For this reason, the scope of application of the Aarhus Convention in climate litigation cases is limited.

However, while the theoretical implications of Article 47 CFR and Article 9, paragraph 3, Aarhus Convention militate for a different interpretation of legal standing for individuals, there will be no legal consequences if the CJEU does not (fully) respect this right. No Court could condemn the CJEU since, as is well known, there is no higher court on the EU level.[161] Nonetheless, the EU's potential accession to the ECHR would change this situation.[162] In the case of accession, it could be argued by the ECtHR that the CJEU does not fully respect Article 6 ECHR.[163] Nonetheless, until the actual accession of the EU becomes more concrete, this remains little more than a thought experiment. Regarding the compliance with the Aarhus Convention, on the other hand, the ACCC could issue new reports on the EU's (non-)compliance with the Convention. It must be noted, however, that those reports are not legally

[157] See, for example, Case T-331/22 *NLVOW v Commission*, EU:T:2024:243, on the Dutch national energy and climate plan ('NECP').

[158] *KlimaSeniorinnen* (n 1) para 494.

[159] See Art 2, para 2, of the Aarhus Convention; see also Case C-297/20 P *Sabo* (n 4) para 36; Case T-141/19 *Sabo* (n 4) para 40.

[160] See Hadjiyianni (n 14) 783.

[161] Christiansen and Masche (n 68) 39.

[162] Ibid.

[163] See AG Emiliou in *Nicoventures* (n 9) para 144: 'Filling those gaps would also be of the utmost importance were the European Union to accede to the ECHR, as required by Article 6(2) TEU. As the ECtHR has consistently stated, Article 6 ECHR concerning the right to a fair trial is a provision, inter alia, (i) laying down one of the fundamental principles of any democratic society; (ii) that cannot be interpreted restrictively; (iii) which guarantees not rights that are 'theoretical or illusory' but rights that are 'practical and effective'; and (iv) whose requirements must be met in all cases. In the light of the ECtHR judgment in *KlimaSeniorinnen*, and given the correlation between Article 47 of the Charter and Article 6 ECHR, a reflection on this matter would seem particularly timely. Indeed, after the successful conclusion of the negotiations of a revised agreement in March 2023 and the delivery of the judgment of the Court in *KS and KD*, some observers take the view that the path towards accession might be open again.' See also M Eliantonio and others, 'Standing up for your right(s) in Europe: Locus standi' (European Parliament's Committee on Legal Affairs 2012), at www.europarl.europa.eu, 13, 46–47. The recent decisions *KS and KD* and *Neves 77* seem to make the possibility of the EU's accession enshrined in Article 6, paragraph 2, Treaty on European Union (TEU) more tangible again, leaving behind the CJEU's restrictive approach formerly adopted in *Opinion 2/13*, see Case C-29/22 P and C-44/22 P *KS and KD,* EU:C:2024:725; Case C-351/22 *Neves 77 v Agenția Națională de Administrare Fiscală – Direcția Generală Antifraudă Fiscală,* EU:C:2024:723; D Sarmiento and S Iglesias Sánchez, 'Insight: "*KS and Neves 77*: Paving the Way to the EU's Accession to the ECHR"' (EU Law Live, 12 September 2024) at eulawlive.com; cf. Opinion 2/13 *Opinion pursuant to Article 218(11) TFEU*, EU:C:2014:2454.

binding.[164] However, at the Meeting of the Parties in Geneva in November 2025, the EU was found to have reached compliance with the ACCC findings concerning access to justice concerning State aid procedures (ACCC/C/2015/128), which could be seen as testament to the general willingness of the EU to work towards compliance with the Aarhus Convention, without changing the criteria for legal standing.[165]

In conclusion, the argument relating to the complete system of remedies does not appear to be fully convincing.[166]

2.2.3. Why still Plaumann*?*

In light of the foregoing, one might question why the Court has not yet overruled *Plaumann*, notwithstanding the broad criticism over the years. Eliantonio and Stratieva have relied on three different theories from political science to shed light on the CJEU's position: firstly, rational choice; secondly, historical institutionalism; thirdly, path dependency.[167]

Firstly, according to rational choice theory, the Court only acts in an 'activist manner' when it reckons that such activism will be approved by the Member States.[168] Consequently, '[t]he fact that, in *UPA* and *Jégo-Quéré*, the ECJ refrained from initiating reforms could thus be regarded as a reflection of the Court's expectations that the Member States would disapprove of it'.[169] Against this interpretation, one might say that the Court has adopted bold stances against the Member States' resistance on various occasions in the past.[170] Therefore, this first theory alone does not seem entirely convincing.

Secondly, according to historical institutionalism, the CJEU could be motivated by self-interest, either to protect itself from an overwhelming caseload ('docket control') or to preserve the integrity of EU legal acts.[171] This theory seems plausible but lacks concrete evidence. Further research would be required to strengthen this argument. Regarding 'docket control', it is often stated that the overwhelming workload

[164] Pagano (n 154) 345.

[165] See Report of the eighth session of the Meeting of the Parties, Addendum Decisions adopted by the Meeting of the Parties, ECE/MP.PP/2025/2/Add.1, 2026, Decision VIII/8e, Compliance by the European Union with its obligations under the Convention; cf. J Delarue, 'Op-Ed: "New State Aid Rules: will the Public finally have Access to Justice?"' (EU Law Live, 3 June 2025) at eulawlive.com; CHL Labus, 'The New Internal Review Mechanism Concerning the Compatibility of State Aid Decisions with EU Environmental Law' (2025) 1 *Unione europea e diritti* 457, 467.

[166] Indeed, AG Bobek has called this line of argument 'conceptually not entirely warranted', see AG Bobek in *Région de Bruxelles-Capitale* (n 132) para 140.

[167] Eliantonio and Stratieva (n 17).

[168] Ibid 9.

[169] Ibid (italics added).

[170] Ibid 10. Cf. Case 26-62 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*, EU:C:1963:1; Joined cases C-6/90 and C-9/90 *Andrea Francovich and Danila Bonifaci and others v Italian Republic*, EU:C:1991:428.

[171] Eliantonio and Stratieva (n 17) 10; van der Pas (n 12) 12.

for CJEU judges constitutes a major problem.[172] It seems that the judges expect a wave of (climate) litigation brought by individuals and associations in case they relaxed *Plaumann*.[173] While no definitive judgments can be made in this regard, one should nonetheless take account of the practical implications a wider understanding of *locus standi* for private applicants might have on the CJEU and its workload. In overturning *Plaumann*, the Court would have to be extremely careful not to open its doors too wide. This must also be monitored and reevaluated in the context of the recent reform of the division of competences between CJ and GC for preliminary rulings.[174] In any case, the fears of *actio popularis* seem to be overstated since it has been shown in the literature that even in countries which allow for *actio popularis* or broad standing rules in environmental matters, there has been no extreme increase in cases filed.[175] While this observation cannot be directly applied to climate litigation on the EU level, AG Jacobs has already put forward in his Opinion in *UPA* that he was

> 'not convinced that a relaxation of the requirements for individual concern would result in a deluge of cases which would overwhelm the judicial machinery. There is no record of that having happened in those legal systems, inside and outside the European Union, which have in recent years progressively relaxed their requirements for standing. […] It may be thought that a relaxation of the requirements for standing would therefore result in an increase in the number of applications under the fourth paragraph of Article 230 EC which, though appreciable, would not be insuperable.'[176]

[172] Christiansen and Masche (n 68) 49; Eliantonio and Stratieva (n 17) 10; Hadjiyianni (n 14) 809–810; Hornkohl (n 24); see also M Borowski, 'Die Nichtigkeitsklage gemäß Art. 230 Abs. 4 EGV' (2004) 39 *Europarecht* 879, 903; M Nettesheim, 'Effektive Rechtsschutzgewährleistung im arbeitsteiligen System europäischen Rechtsschutzes' (2002) 57 *Juristenzeitung* 928, 932; G Letsas, 'Did the Court in *Klimaseniorinnen* create an actio popularis?' (EJIL:Talk!, 13 May 2024) at www.ejiltalk.org.

[173] Cf. AG Emiliou in *Nicoventures* (n 9) para 115.

[174] See, *ex multis*, M Bobek, 'Preliminary rulings before the General Court: What judicial architecture for the European Union?' (2023) 60 *Common Market Law Review* 1515; M Bobek, 'Op-Ed: "The Future Will Tell. Of course it will, but on what criteria?"' (EU Law Live, 24 September 2024) at eulawlive.com; K Bradley, '"The Court of Justice appeal filter mechanism and effective judicial protection: throwing out the baby with the bathwater?"' (EU Law Live, 1 July 2024) at eulawlive.com; D Petrić, 'The Preliminary Ruling Procedure 2.0' (2023) 8 *European Papers* 25; D Sarmiento, 'On the Road to a Constitutional Court of the European Union: The Court of Justice After the Transfer of the Preliminary Reference Jurisdiction to the General Court' (2023) 19 *Croatian Yearbook of European Law and Policy* VII.

[175] Krämer (n 14) 200; see Mikosa (n 7) 281 for a case-study on Latvia, which introduced an 'environmental exception clause' in 2006: 'In relation to cases before Latvian administrative courts, although there are no official statistics distinguishing environmental disputes from other cases of the administrative court, it has been estimated that cases claiming a breach of environmental law as the main concern (and thus, an environmental exception clause has been applied) account for about 1% of all disputes before the Supreme Administrative Courts each year (it might be twice as much before lower courts, which as well is not a significant amount).'; see also N de Sadeleer, G Roller and M Dross, *Access to justice in environmental matters and the role of NGOs: empirical findings and legal appraisal* (Europa Law Publishing 2005).

[176] AG Jacobs in *UPA* (n 20).

In addition, as has been pointed out by AG Sharpston in *Djurgården-Lilla Värtans Miljöskyddsförening*,

> '[b]y encouraging people to channel environmental disputes through non-governmental organisations promoting environmental protection, the Aarhus Convention and Directive 85/337, as amended, recognise that these organisations do not overload or paralyse the courts. Rather, they bring together the claims of many individuals in a single action. Although it is true that nothing prevents members of a non-governmental organisation also taking part in proceedings on an individual basis, the overall result of this policy is to create a filter which, in the long run, assists the work of the courts.'[177]

This assessment by AG Jacobs and AG Sharpston shows, firstly, that the CJEU must not be afraid of the floodgates being opened. Secondly, AG Sharpston's Opinion supports the view that the CJEU should be more open towards access to justice for associations, ensuring both compliance with the Aarhus Convention and greater efficiency of the Court. Otherwise, there could be the risk that the CJEU might 'deprive some interested parties of a voice and penalize the effectiveness of the court proceedings by depriving the bench of valuable sources of information'.[178] Indeed, the CJEU, constrained by its mandate, seems to be unable to deal with climate cases as part of public interest litigation,[179] which promote, 'albeit indirectly, the interests of all victims of climate change'.[180] Regarding environmental issues, the importance of public interest litigation has been highlighted by different AGs in the past.[181] The legitimacy and impacts of strategic litigation before the CJEU remain understudied.[182] In the future, such considerations should guide the debate around legal standing for individuals and associations. The Court's understanding of its mandate should, therefore, evolve towards being more inclusive towards public interest litigation in environmental and climate litigation.[183] In conclusion, the dangers of *actio popularis* in practice should generally not be overstated.[184] Lastly, legally, 'docket

[177] Opinion of AG Sharpston in Case C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening v Stockholms kommun genom dess marknämnd*, EU:C:2009:421, para 62; see also Opinion of AG Sharpston in Case C-115/09, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen ('Trianel')*, EU:C:2011:289; Opinion of AG Kokott in Case C-260/11 *The Queen, on the application of David Edwards and Lilian Pallikaropoulos v Environment Agency and Others*, EU:C:2012:645, para 51; cf. AG Emiliou in *Nicoventures* (n 9) para 117.

[178] Prete (n 8) 249.

[179] See Kelleher (n 1) 109; see Cebulak, Morvillo and Salomon (n 10) 808: '[S]trategic litigation can be deployed by actors who already hold significant power in the society or economy and pursue their private but generalizable interests; or it can be used by disempowered actors who pursue general public interests'.

[180] Campins i Eritja (n 73) 377.

[181] See AG Sharpston in *Djurgården* (n 177); AG Sharpston in *Trianel* (n 177) paras 39–49; cf. Pagano (n 12) 37–38.

[182] Cebulak, Morvillo and Salomon (n 10).

[183] See also van der Pas (n 12) for a recent proposal of introducing a '(direct) class action against the EU and/or EU bodies' in the Treaties.

[184] In this regard, see also AG Sharpston in *Djurgården* (n 177).

control' would be 'hardly a convincing or legitimate justification' for restricting access to justice in environmental or climate cases.[185]

Regarding the Court's willingness to preserve EU legal acts, it must be observed that a similar tendency to shield secondary EU law from legal review exists also in other areas, such as in the CJEU jurisprudence regarding the direct effect of EU international agreements. In this area, the CJEU seems more ready to accept direct effect for the norms of international agreements in cases in which acts by Member States are challenged than in cases in which acts of EU secondary law are under review.[186] This dynamic is mirrored by the CJEU's approach to climate and environmental cases, with the CJEU adopting some rulings in favour of stricter measures when addressing Member State legislation, such as in the *Deutsche Umwelthilfe* and *Janecek* cases.[187] However, as has been highlighted in this article, when it comes to EU acts, the CJEU hides behind its restrictive standing criteria. The same applies to the implementation of Article 9, paragraph 3, Aarhus Convention, since the Court demands that national courts interpret their standing criteria consistently with said provision, while the Luxembourg judges themselves do not seem to be willing to conform the standing criteria of Article 263, paragraph 4, TFEU to the Aarhus Convention.[188] Admittedly, from a strictly formalistic perspective, this could be seen as a natural result of the in the hierarchy of norms since international agreements rank between the Treaties and secondary law.[189] However, as pointed out by AG Bobek in *Région de Bruxelles-Capitale*, the CJEU has held in its case law that 'primary law can and should be interpreted, where appropriate and as far as possible, in conformity with international law'.[190] Therefore, as AG Bobek argues,'[w]hat is required of the national courts must also be required of the EU Courts'.[191] Otherwise, there is the risk of creating an unjustifiable double standard.[192] In addition, from a policy perspective, this Janus-like approach by the CJEU towards compliance with international law should be further studied in future research.

[185] Hadjiyianni (n 14) 809; van der Pas (n 12) 24.

[186] See Gallo (n 82) 268; A von Bogdandy and M Smrkolj, 'European Union Law and International Law', *Max Planck Encyclopedia of Public International Law [MPEPIL]* (2011), at opil.ouplaw.com.

[187] Case C-873/19 *Deutsche Umwelthilfe (Réception des véhicules à moteur),* EU:C:2022:857; Case C-237/07 *Dieter Janecek v Freistaat Bayern,* EU:C:2008:447; cf. Lenaerts (n 78) 348–349. See also European Commission 'Communication: Improving access to justice in environmental matters in the EU and its Member States', COM(2020)64; cf. Hadjiyianni (n 14) 803–804.

[188] Kelleher (n 1) 115–117.

[189] Cf. RA Wessel, 'Reconsidering the relationship between international and EU law: Towards a content-based approach?' in E Cannizzaro, P Palchetti and RA Wessel (eds), *International Law as Law of the European Union* (Martinus Nijhoff Publishers 2012) 7, 11–12.

[190] AG Bobek in *Région de Bruxelles-Capitale* (n 132), para 116.

[191] AG Bobek in *Région de Bruxelles-Capitale* (n 132) para 117; cf. Opinion of AG Jääskinen in Joined Cases C-401/ 12 P to C-403/ 12 P *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht,* EU:C:2014:310, para 132: 'It does not therefore appear to me to be conceivable for a different approach to be adopted with regard to the European Union itself.'

[192] Krämer (n 105) 182; Prete (n 8) 253.

Thirdly, under the lens of path dependency, the 'rigidity of the conditions for standing could be attributed to the constraints of long-standing case law which cannot be easily discarded'.[193] According to Eliantonio and Stratieva, the 'costs of reversing […] [the case law on legal standing for individuals] would include not only a higher case load, but also loss of legal certainty'.[194] This theory seems quite probable. However, as laid out above, the CJEU can change its case law while still respecting legal certainty.

In conclusion, the three theories provide valuable insight into the Court's reasoning. However, none of them can fully grasp the Court's motivation.

3. *Plaumann* in CJEU climate litigation cases after *KlimaSeniorinnen*

3.1. Victim Status and Legal Standing in *KlimaSeniorinnen*

KlimaSeniorinnen was the first case in which the ECtHR explicitly ruled on the unprecedented legal implications of climate change, distinguishing the issue explicitly from its environmental case law.[195] The Court clearly stated that 'climate change is one of the most pressing issues of our times'.[196] It recognized that the 'widely acknowledged inadequacy of past State action to combat climate change globally entails an aggravation of the risks of its adverse consequences, and the ensuing threats arising therefrom, for the enjoyment of human rights'.[197] This case is further proof that the Convention is defined as a 'living instrument which must be interpreted in the light of present-day conditions'.[198] The Court has ruled that Switzerland has violated Articles 8 (right to respect for private and family life) and 6 (right to a fair trial) ECHR by failing to adopt effective measures against the negative impacts of climate change and denying the KlimaSeniorinnen association access to Swiss courts.[199]

Victim status under Article 34 ECHR generally means that the 'applicant must be directly affected by the impugned measure', establishing the most common case in which the applicant is a direct victim of the measure(s) at stake.[200] It represents an autonomous notion not synonymous with categories of national law such as legal

[193] Eliantonio and Stratieva (n 17) 10.
[194] Ibid 11.
[195] *KlimaSeniorinnen* (n 1) paras 414–416; Steible (n 50) 84.
[196] *KlimaSeniorinnen* (n 1) para 410.
[197] Ibid para 413.
[198] Ibid para 434; cf. *Tyrer v the United Kingdom* no 5856/72 (ECtHR, 25 April 1978) para 31.
[199] *KlimaSeniorinnen* (n 1) paras 629–640.
[200] Ibid para 462; W Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 737. Cf. *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* (n 8) para 96.

standing.[201] The attribution of victim status requires a 'sufficiently direct link between the applicant and the harm which they consider they have sustained on account of the alleged violation'.[202] In contrast to the *Plaumann* test, victim status under the ECHR can even be granted when a potentially indefinite number of people is affected by the measure in question.[203] Thus, under the ECHR, it is not a *conditio sine qua non* for admissibility that an 'individual victim must be affected differently from others'.[204] Instead, Article 34 ECHR covers direct victims as well as, under certain conditions, indirect, and potential victims.[205]

The applicants in *KlimaSeniorinnen* consisted of the 'Verein KlimaSeniorinnen Schweiz', a non-profit association established under Swiss law, and four elderly women as individual applicants, who are members of the applicant association.[206] As a preliminary observation regarding the victim status and legal standing in this case, the Court acknowledged the thorniness of defining victim status and *locus standi* in climate cases since 'the number of persons affected, in different ways and to varying degrees, is indefinite'.[207] Furthermore, the Court reiterated that the notion of victim status must not be interpreted in a 'rigid, mechanical and inflexible way', but rather 'in an evolutive manner in the light of conditions in contemporary society'.[208] The Court thus stated that the requirement of a 'special approach to victim

[201] Luporini (n 8) 6; Schabas (n 200) 738. Cf. *Vallianatos and Others v Greece* App nos 29381/09 and 32684/09 (ECtHR, 7 November 2013) para 47; *Gorraiz Lizarraga and Others v Spain* App no 62543/00 (ECtHR, 27 April 2004) para 35.

[202] *Gorraiz Lizarraga and Others v Spain* (n 201) para 35; cf. *Narvii Tauira and 18 Others v France* App no 28204/95 (ECtHR, 4 December 1995) Decision on the admissibility of the application, 130.

[203] Letsas (n 172); G Letsas, 'The European Court's Legitimacy After KlimaSeniorinnen' (2024) 5 *European Convention on Human Rights Law Review* 444–453. Cf. *Modinos v Cyprus* App no 15070/89 (ECtHR, 22 April 1993).

[204] Letsas (n 172); Savaresi (n 8) 284–285.

[205] *KlimaSeniorinnen* (n 1) para 463; cf. *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* (n 8) paras 96-101; *Vallianatos* (n 201) para 47. V Sefkow-Werner, 'Consistent Inconsistencies in the ECtHR's Approach to Victim Status and Locus Standi' (2025) 16 *European Journal of Risk Regulation* 814, 818 puts forward an interesting proposition regarding the category of potential victims: 'The Court's approach may be seen as a missed opportunity to rely on its existing case law to apply the notion of individual victim status in the context of climate change in a more inclusive way. Based on the Court's own statement that the concept of victim must be interpreted in a flexible and evolutive fashion, the case group of future violations together with the case law on environmental harm would have been an interesting avenue to explore. The Court could have considered climate risks as sufficiently impending harm analogous to imminent environmental hazards. Instead, the ECtHR in *KlimaSeniorinnen* quickly declared this exception unfit for climate cases because it would confer victim status to everyone and thus not fulfil a limiting function. The Court also argued that because the applicants' claim was aimed at general prevention or mitigation measures rather than the redress of specific harm already suffered – it required a more restrictive approach. This shows the Court's reluctance to incorporate protection against risks into the Convention system'.

[206] *KlimaSeniorinnen* (n 1) paras 479.

[207] Ibid para 478.

[208] Ibid para 461.

status, and its delimitation, therefore arises from the fact that complaints may concern acts or omissions in respect of various types of general measures, the consequences of which are not limited to certain identifiable individuals or groups but affect the population more widely.'[209] Moreover, the ECtHR argued that 'any excessively formalistic interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory.'[210]

Firstly, the ECtHR assessed the victim status of the four individual applicants. The ECtHR acknowledged that an overly broad interpretation of the victim status in climate cases would 'risk disrupting national constitutional principles and the separation of powers by opening broad access to the judicial branch as a means of prompting changes in general policies regarding climate change'.[211] But, in contrast to the CJEU, the ECtHR also sees a risk in drawing 'this circle […] too tightly and restrictively'[212], since this could potentially lead to the result that 'even obvious deficiencies or dysfunctions in government action or democratic processes could lead to the Convention rights of individuals and groups of individuals being affected without them having any judicial recourse before the Court'.[213] The Court therefore adopts a new understanding of victim status for individual applicants, tailored to the specific situation in climate litigation cases.

The ECtHR sets two factors as criteria for the victim status of individuals in climate cases. For once, 'the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant'.[214] In addition, 'there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm'.[215] In its assessment of these criteria the Court will, amongst other considerations, take into account 'the nature and scope of the applicant's Convention complaint, the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability'.[216] In

[209] Ibid para 478.
[210] Ibid para 482.
[211] Ibid para 484.
[212] Ibid.
[213] Ibid.
[214] Ibid para 487.
[215] Ibid.
[216] Ibid para 488.

order to exclude an *actio popularis*, the Court considers the threshold for fulfilling the two above-mentioned criteria as 'especially high.'[217]

Secondly, the ECtHR discusses the criteria under which associations have legal standing in climate cases. According to the Court, civil society associations can be victims under Article 34 ECHR if the Convention right in question can also be enjoyed by legal persons, e.g., procedural rights under Article 6 ECHR.[218] In contrast, a legal person cannot be a victim of a violation of Article 8 ECHR. Consequently, it is important to note the difference between victim status and legal standing in this regard as the 'latter relates to the questions of representation of the (direct) victims' complaints before the Court' and might also be called 'representation'.[219] Notably, the Court has traditionally been hesitant to admit legal standing for applicants who themselves were not victims.[220] In general, the ECtHR acknowledges that 'the special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context […], speak in favour of recognising the standing of associations before the Court in climate-change cases'.[221] The Court sets three criteria for associations to have legal standing in climate change cases. The association in question must prove, firstly, that it is lawfully established; secondly, that it pursues a specific purpose in defending human rights in line with its statute; and, thirdly, that it is qualified to represent its members or other affected individuals.[222]

Importantly, the ECtHR separates the victim status of the members from the legal standing for associations, meaning that associations can have legal standing in climate change cases even if neither the association in question nor its members individually fulfil the criteria for victim status outlined above.[223] This distinction has been described as a 'key innovation'.[224] On a more critical note, this result begs the question 'who the

[217] Ibid; cf. J Hohnerlein, 'Who is afraid of *actio popularis*?' (Verfassungsblog, 26 April 2024), at verfassungsblog.de: 'For fears of *actio popularis*, the Court decided that individuals could only lodge complaints under very high thresholds'.

[218] See *Project-Trade d.o.o. v Croatia* App no 1920/14 (ECtHR, 19 November 2020) para 68; Savaresi (n 8) 284.

[219] *KlimaSeniorinnen* (n 1) para 464; cf. *Centre for Legal Resources on behalf of Valentin Câmpeanu* (n 8) paras 102–103.

[220] Savaresi (n 8) 284.

[221] *KlimaSeniorinnen* (n 1) para 499.

[222] Ibid para 502: '(a) lawfully established in the jurisdiction concerned […]; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members […]; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention'.

[223] *KlimaSeniorinnen* (n 1) paras 496, 498 and 502; cf. Sefkow-Werner (n 205) 820.

[224] J Letwin, 'Klimaseniorinnen: the Innovative and the Orthodox' (EJIL: Talk!, 17 April 2024) at www.ejiltalk.org; cf. L-A Sicilianos and M-L Deftou, 'Breaking New Ground: Climate Change before the Strasbourg Court' (EJIL: Talk!, 12 April 2024) at www.ejiltalk.org.

victim is in this context'.[225] Similarly, Judge Eicke has argued in his Partly Concurring, Partly Dissenting Opinion that the majority has 'created exactly what the judgment repeatedly asserts it wishes to avoid, namely a basis for *actio popularis* type complaints'.[226] Some voices in the literature have concurred with this opinion, claiming that 'the Court has, for better or worse, created a "loophole" for associations in climate change cases allowing them to bypass all ordinary rules on victim-status'.[227] Similarly, other authors have argued that the ECtHR implicitly created an exemption to the necessity for victim status for associations in public interest litigation.[228] Others have maintained that the Court still sticks to the basic principle of avoiding *actio popularis*, while applying the victim status to future generations represented by associations.[229] Lastly, it has also been proposed to read the respective passage in *KlimaSeniorinnen* as not subjecting the associations members to the strict *KlimaSeniorinnen* test for victim status for individual applicants, but only to the 'regular' victim status test.[230]

In conclusion, the way in which the Court phrased this aspect seems to permit various interpretations on the issue of *actio popularis*. In the author's opinion, it does not appear that this new rule would allow for *actio popularis* since the applicant association still has to fulfil the three criteria outlined above, which means that not just 'anyone' could bring a case before the ECtHR 'without having been directly affected by it'. Indeed, in *Fliegenschnee*, the Court expressed doubts about the applicant organisation's fulfilment of the second and third criteria since the organisation had not submitted any detailed information about its members or its statute to the Court.[231] In the end, the Court did not specify whether the association had legal standing since the case was ruled inadmissible for different reasons.[232] In any case, the ECtHR will need to further clarify this aspect in its future case law.

In the *KlimaSeniorinnen* case, the ECtHR concludes that the applicant association has legal standing,[233] while the individual applicants have neither victim status nor legal standing.[234] The Court justifies the rejection of the victim status of the individual applicants by stating that the mere fact that 'the applicants belong to a group which is

[225] Savaresi (n 8) 285.

[226] *KlimaSeniorinnen* (n 1) Partly Concurring, Partly Dissenting Opinion of Judge Eicke para 45.

[227] Letwin (n 224).

[228] Sicilianos and Deftou (n 224); cf. Letsas (n 172).

[229] Letsas (n 172); see also Sefkow-Werner (n 205) 820–821.

[230] C Heri, 'KlimaSeniorinnen, the prohibition of actio popularis cases, and future generations – a false dilemma?' (EJIL: Talk!, 19 December 2024) at www.ejiltalk.org.

[231] *Fliegenschnee and Others v Austria* App no 40054/23 (ECtHR, 18 November 2025) para 32.

[232] Ibid paras 32–35; see C Heri, 'Learning from Inadmissibility: The Latest on Climate Change in Fliegenschnee' (ECHR Blog, 12 December 2025) at www.echrblog.com.

[233] *KlimaSeniorinnen* (n 1) para 526. On the implications of broadening standing for associations before the ECtHR see K Dzehtsiarou, 'KlimaSeniorinnen Revolution': The New Approach to Standing' (2024) 5 *European Convention on Human Rights Law Review* 423–431.

[234] *KlimaSeniorinnen* (n 1) para 535.

particularly susceptible to the effects of climate change'[235] is not enough to grant victim status. Instead, it must be assessed for every single applicant 'that the requirement of a particular level and severity of the adverse consequences affecting the applicant concerned is satisfied, including the applicants' individual vulnerabilities which may give rise to a pressing need to ensure their individual protection.'[236] Thus, the Court applies the victim status for individual applicants rather restrictively, setting a high standard for the level of adverse consequences that affect them. This has been criticized in the literature as a flawed approach, ignoring the fact that victims, differently from the *Plaumann* test, must not be affected differently than all other people.[237]

In line with the distinction between environmental and climate law that the Court has maintained in *KlimaSeniorinnen*, in the *Cannavacciuolo* case concerning environmental pollution caused by the so-called '*Terra dei Fuochi*' ('Land of Fires', i.e., areas affected by illegal dumping, burning, and burial of hazardous waste in Italy's Campania region[238]), the ECtHR has held that the standing criteria for associations in climate cases established in *KlimaSeniorinnen* are not applicable to cases on environmental issues such as *Cannavacciuolo*.[239] Thus, the Court remains coherent with its logic advanced in *KlimaSeniorinnen* in arguing that climate change cases are fundamentally different from environmental cases.[240] However, Judges Krenc and Serghides have criticized this approach, expressing a 'certain bewilderment' at this argumentation.[241] Indeed, the distinction the ECtHR makes between climate and environmental cases could be seen as artificial and even counterproductive, also in light of the Reykjavik Declaration which addressed the 'triple planetary crisis of pollution, climate change and loss of biodiversity'[242], as underlined by Judge Krenc and some voices in the literature.[243] Moreover, said distinction, on its flipside, seems problematic also regarding the possible application of the Aarhus Convention to climate

[235] Ibid para 531.

[236] Ibid para 531.

[237] See Letsas (n 203) 449; Savaresi (n 8) 285.

[238] See *Cannavacciuolo and Others v Italy* App nos 51567/14 and 3 others (ECtHR, 30 January 2025) paras 5–6.

[239] Ibid paras 220–221.

[240] See Domenici (n 8) 586; J Sommardal, 'A Landmark Judgment: Three Crucial Aspects of *Cannavacciuolo and Others v. Italy*' (ECHR Blog, 4 February 2025) at www.echrblog.com; S Zirulia, 'Terra dei Fuochi: violato il diritto alla vita degli abitanti. Prime osservazioni in ordine alle possibili ripercussioni sul diritto penale ambientale di una storica sentenza' (2025) 7 *Sistema Penale* 139.

[241]. *Cannavacciuolo* (n 238) Concurring Opinion of Judge Krenc para 3; cf. Partly Concurring, Partly Dissenting Opinion of Judge Serghides para 2.

[242] Reykjavik Declaration: United around our values [2023].

[243] *Cannavacciuolo* (n 238) Concurring Opinion of Judge Krenc para 3; cf. Partly Concurring, Partly Dissenting Opinion of Judge Serghides para 2; L Acconciamessa, 'The Strange Case of Dr Jeckyll and Mr Hyde: Victim Status for Life-Threatening Environmental Harm in the ECtHR's "Terra dei Fuochi" Judgment' (SIDIBlog, 28 February 2025), at www.sidiblog.org; Domenici (n 8) 586–588; E Krajnyák, 'Up in Smoke? Victim Status in Environmental Litigation before the ECtHR' (EJIL: Talk!, 14 March 2025), at www.ejiltalk.org; G Pane, 'Ambiente vs clima? La posizione della Corte europea sulla "Terra

cases, as the Court held in *KlimaSeniorinnen*.[244] Lastly, the impacts of large-scale environmental harm on future generations must also be taken into account in this regard.[245]

3.2. Impact of *KlimaSeniorinnen* on *Plaumann*

3.2.1. Interactions between the ECHR and the EU legal system

It has been said that with *Carvalho*, the CJEU 'de facto excludes any possibility for climate change litigation under Article 263, paragraph 4, TFEU', at least regarding framework cases.[246] It must be questioned whether this is still the case after *KlimaSeniorinnen*.

It has been observed in the literature that the ECtHR and the CJEU seem to be diametrically opposed: While the ECtHR shows itself open to the possibility of adopting a dynamic approach to the interpretation of the Convention in the face of the climate crisis, the CJEU seems set in its ways.[247] Thus, how can the *KlimaSeniorinnen* judgment influence the CJEU's reasoning? Some authors have indeed argued that *KlimaSeniorinnen* must bring the CJEU 'to make an exception for the "appropriate and tailored" remedy which that judgment constructed, exclusively in the sphere of climate change policy'.[248] This section analyses the potential impacts of the *KlimaSeniorinnen* judgment on the CJEU's case law.

Naturally, the differences between the two legal systems must be borne in mind. Firstly, the CJEU and the ECtHR have different mandates.[249] Secondly, victim status under Article 34 ECHR cannot be understood synonymously to legal standing under

dei Fuochi" nel caso *Cannavacciuolo e altri c. Italia*' (2025) 9 *Diritto e salute* 1, 12–14; Sommardal (n 240); H Tigroudja, 'Massive Pollution, States' Positive Obligations and Remedies Critical Appraisal of the European Court of Human Rights' *Cannavacciuolo et al. v. Italy* Judgment' (National University of Singapore Centre for International Law Blog, 23 February 2025), at cil.nus.edu.sg.

[244] *KlimaSeniorinnen* (n 1) paras 494 and 501; see Eckes and Trapp (n 156).

[245] Domenici (n 8) 587–588.

[246] Pagano (n 58); Schlake (n 59) 250.

[247] E Krajnyák, 'The Changing Climate of EU Accession to the ECHR – Consequences and Challenges for Climate Change Litigation?' (Constitutional Discourse, 30 January 2025), at constitutionaldiscourse.com; Leson (n 51); Pagano (n 58).

[248] P Eeckhout, 'From Strasbourg to Luxembourg?' (Verfassungsblog, 5 June 2024), at verfassungsblog.de.

[249] S O'Leary, 'The EU Charter Ten Years On: A View from Strasbourg' in M Bobek and J Adams-Prassl (eds), *The EU Charter of Fundamental Rights in the Member States* (Hart Publishing 2020) 37, 37–38; M Bobek and J Adams-Prassl, 'Conclusion' in M Bobek and J Adams-Prassl (eds), *The EU Charter of Fundamental Rights in the Member States* (Hart Publishing 2020) 559, 567 state that 'the Court of Justice is not a human rights court. That, of course, does not mean that the Luxembourg court would not care about and respect fundamental rights. Rather, and in contrast to a jurisdiction the main and key task of which is to protect fundamental rights, such as is the one of the ECtHR, [...] the key task of the Court of Justice is a different one'.

Article 263, paragraph 4, TFEU. However, from a functional perspective, victim status and individual concern serve a similar purpose, i.e., preventing *actio popularis*.[250]

The CJEU has repeatedly held that 'the ECHR does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law'.[251] Nonetheless, while being separate legal systems (for the time being), the EU legal system is connected to the ECHR through different provisions of primary law, i.e., Article 6, paragraphs 2 and 3, TEU and Articles 52 and 53 CFR.[252] Furthermore, long before the adoption of the Charter, the ECtHR's jurisprudence was a fundamental source of interpretation in shaping general principles of EU law regarding fundamental rights protection.[253] Today, Article 6, paragraph 3, TEU establishes that the human rights guaranteed by the ECHR serve as general principles of European law.[254] Therefore, it seems plausible, necessary even, to query if and how the landmark ruling by the ECtHR might influence the CJEU regarding its approach to the prevention of *actio popularis*.

Against this backdrop, it must be analysed how ECtHR judgments can influence the CJEU's jurisprudence. Article 52, paragraph 3, CFR, the so-called 'consistency clause',[255] requires the Charter rights to be interpreted consistently with their respective ECHR counterparts.[256] Consequently, through the consistency clause, the CJEU has replicated the ECtHR's ambitious jurisprudence on different occasions in the past, for instance in the field of data protection. In *Digital Rights Ireland*, the CJEU relied heavily on the *Marper* judgment by the ECtHR in order to establish a more stringent approach to data protection.[257] In addition, the CJEU's jurisprudence on

[250] See, e.g., Hohnerlein (n 217).

[251] Case C-617/10 *Åklagaren v Hans Åkerberg Fransson,* EU:C:2013:105, para 44; Joined cases C-203 and 698/15, *Tele2 Sverige*, EU:C:2016:970, para 127; Case C-601/15 PPU *J. N. v Staatssecretaris van Veiligheid en Justitie*, EU:C:2016:84, para 45; *Asociația Inițiativa pentru Justiție v Commission* (n 53) para 79.

[252] See also Romito (n 121) 557.

[253] See, e.g., Case 36/75 *Rutili v Ministre de l'intérieur*, EU:C:1975:137, para 32. Cf. V Davio and E Muir, 'Introduction. The ECHR in the ECJ's Case-law Post-Charter: A Dual Perspective' (2023) 8 *European Papers* 317, 317; S Peers and S Prechal, 'Article 52 – Scope and Interpretation of Rights and Principle' in S Peers and others (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart 2021) 1611, 1617–1622 and 1644; R Tinière, 'The Use of ECtHR Case Law by the CJEU: Instrumentalisation or Quest for Autonomy and Legitimacy?' (2023) 8 *European Papers* 323, 323–324.

[254] See *Asociația Inițiativa pentru Justiție v Commission* (n 53) para 79.

[255] C Langenfeld, 'The "autonomization" of EU fundamental rights protection: Insights into the recent ECJ case law on Article 52(3) CFR' (2024) 31 *Maastricht Journal of European and Comparative Law* 188, 189.

[256] Peers and Prechal (n 253) 1644–1645. See, e.g., Case C-400/10 PPU *J. McB. v L. E.*, EU:C:2010:582.

[257] Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others,* EU:C:2014:238, paras 47–55; cf. *S. and Marper v the United Kingdom* App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008). However, see Tinière (n 253) 326: '[T]he Court prefaces each ECHR law reference with "see as regards art. 8 of the ECHR". This "as regards" seems to have a clear function: to

migration has been heavily influenced by the ECtHR's jurisprudence. For example, in *Abdida*, the CJEU referenced the ECtHR's jurisprudence on expulsions.[258] Moreover, Article 52, paragraph 3, CFR, together with Article 53 CFR, establishes that the ECHR serves as a minimum level of protection.[259] In this regard, it has been argued that these norms require the CJEU to adopt an interpretation in conformity with the *KlimaSeniorinnen* ruling.[260] It must be noted that this observation applies to corresponding fundamental rights, not procedural requirements.

When it comes to legal standing, a direct influence in the sense of a legal obligation for the CJEU to mirror the ECtHR's view on legal standing seems difficult to construe. Article 52, paragraph 3, CFR concerns the interpretation only of CFR rights, not of all sources of EU primary law.[261] Hence, this provision does not directly apply to the interpretation of TFEU provisions such as Article 263, paragraph 4, TFEU. However, one could imagine the following detour: As a first step, Article 47 CFR must be interpreted in light of Article 6 ECHR through Article 52, paragraph 3, CFR.[262] As a second step, Article 263, paragraph 4, TFEU must respect Article 47 CFR.[263] Thus, one could take into consideration that the CJEU would have to 'indirectly' interpret Article 263, paragraph 4, TFEU in light of the ECtHR's interpretation of Article 6, paragraph 1, ECHR. As discussed above, the CJEU's restrictive approach to legal standing seems to be at odds with Article 47 CFR and Article 9, paragraph 3, Aarhus Convention. Thus, this indirect influence of Article 6 ECHR on the interpretation of Article 263, paragraph 4, TFEU could strengthen this argument. In practice, however, as noted above, the CJEU has continuously held that Article 47 CFR cannot change the standing requirements set out in the Treaties.[264] In addition, the ECtHR's ruling on Article 6 concerned the access to domestic courts, not to the ECtHR.[265] Thus, it would be difficult to transpose this line of argumentation to access to the CJEU, especially as this would only prompt the CJEU to repeat the well-known 'complete system of legal remedies' argument. Therefore, this argumentation would have little practical impact.

In any case, the CJEU would be required to consider the ECtHR's interpretation of Article 8 ECHR when assessing the merits of climate litigation cases if applicants

give some space for the Charter's interpretation. And never mind if the right referred to is a "corresponding right" according to art. 52(3) of the Charter and must therefore be given the same meaning and scope as laid down by the Convention.'

[258] Case C-562/13 *Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v Moussa Abdida*, EU:C:2014:2453, paras 47–52.

[259] Peers and Prechal (n 253) 1654; B De Witte, 'Article 53 – Level of Protection' in S Peers and others (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart 2021) 1675, 1677.

[260] Dukarm and Prantl (n 42) 115–116.

[261] Peers and Prechal (n 253) 1646–1647.

[262] See Lock and Tomkin (n 142) 567.

[263] Ibid 569.

[264] See Case C-565/19 P *Carvalho* (n 4) para 78.

[265] See *KlimaSeniorinnen* (n 1) paras 577–640.

rely on Article 7 CFR.[266] Naturally, this would only be the case if such a case were found to be admissible.

In the recent *Asociația Inițiativa pentru Justiție* case, which in substance concerns the rule of law, the General Court has directly analysed the applicant's claim that the approach used by the ECtHR in *KlimaSeniorinnen* 'should apply *mutatis mutandis* in the present case'.[267] In response to this claim, at the outset, the GC repeats three well-known arguments against the widening of legal standing for individual applicants. Firstly, there must not be any interpretation of standing requirements which effectively undermines the conditions set out by the TFEU.[268] Secondly, the Court reiterates that Article 47 CFR cannot amend the system of judicial review enshrined in the Treaties and does not grant unconditional access to EU courts to individuals.[269] Thirdly, the Court refers to the 'complete system of legal remedies'.[270]

Regarding the question of applying the ECtHR's approach to Article 6, paragraph 1, ECHR in *KlimaSeniorinnen* to the present case, the GC held that

> 'it is sufficient to recall that whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of EU law and whilst Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR, the latter does not constitute, for as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law'.[271]

[266] AB Auner, 'Legal Standing and Victim Status of Individuals and Associations after the "KlimaSeniorinnen" Case' (2024) 24 *Facta Universitatis, Series: Law and Politics* 131, 143. Cf. *McB* (n 256) para 53; Joined cases C-92/09 and C-93/09 *Volker und Markus Schecke GbR (C-92/09) and Hartmut Eifert (C-93/09) v Land Hessen*, EU:C:2010:662, para 47; see Peers and Prechal (n 253) 1646–1647.

[267] *Asociația Inițiativa pentru Justiție v Commission* (n 53) para 74: 'According to the applicant, it is necessary, in circumstances such as those of the present case, to ease the conditions of admissibility of the action. It argues that the conditions of admissibility should be applied with some flexibility, in particular because of the requirements relating to effective judicial protection and the rule of law, the latter being a founding value of the European Union and forming part of its very identity. In addition, relying on the judgment of the European Court of Human Rights of 9 April 2024, *Verein KlimaSeniorinnen* […], in which that court accepted, on the basis of Article 6(1) of the […] the ECHR […], the standing to bring proceedings of an association established with the aim of promoting and implementing effective climate protection measures, the applicant submits, in essence, that, in so far as the considerations relating to the protection of the value of the rule of law are of equivalent importance to those relating to climate protection, the approach set out in that judgment should apply *mutatis mutandis* in the present case. Furthermore, an alignment of the requirements for associations to have standing to bring proceedings would, it submits, be preferable with a view to the European Union's accession to the ECHR'.

[267] Ibid para 75.

[268] Ibid. See G Fransoni, 'Op-Ed: "When Direct Effect Meets Direct Concern: Understanding Admissibility ex Article 263(4) TFUE in Case T-1126/23, Asociația Inițiativa pentru Justiție v Commission"' (EU Law Live, 7 March 2025) at eulawlive.com.

[269] *Asociația Inițiativa pentru Justiție v Commission* (n 53) paras 76–77.

[270] Ibid para 81.

[271] Ibid para 79.

The GC concludes on this point that 'an easing of the conditions of admissibility, as sought by the applicant, would in fact mean setting aside the condition of direct concern expressly laid down in the fourth paragraph of Article 263 TFEU'.[272]

Interestingly, the Court seems to blend a question of substantial law (the ECtHR's interpretation of Article 6 ECHR) with the question of admissibility. As outlined above, Article 6 ECHR cannot have a direct impact on the standing criteria under Article 263, paragraph 4, TFEU since Article 52, paragraph 3, CFR does not apply between the ECHR and procedural norms of the TFEU. Perhaps, it would have been more convincing to maintain a clearer differentiation between procedural and substantive law. The Court could, firstly, have assessed the interpretation of Article 47 CFR in light of the ECtHR's interpretation of Article 6 ECHR under Article 52, paragraph 3, CFR. As a second step, the Court could have assessed the interplay of Article 47 CFR with Article 263, paragraph 4, TFEU in this case. However, Court has already mentioned before that Article 47 CFR does not change its interpretation of the standing criteria under Article 263, paragraph 4, TFEU in order not to rob this provision of its meaning. In the author's view, such a two-fold structure would have made the Court's reasoning easier to follow instead of blurring the lines between admissibility and merits. The appeal against this order is currently pending before the CJ.[273] It will be crucial to see how the CJ will address this line of argument.

Furthermore, it remains questionable which legal consequences the EU Member States might face under their ECHR obligations after *KlimaSeniorinnen* if the CJEU continues to apply the *Plaumann* test. In fact, it has been argued that 'if the ECJ sticks to its restrictive position on access to justice for associations before EU courts, EU membership may expose Member States to the risk of being held responsible in Strasbourg' under the *Bosphorus*[274] doctrine.[275] In other words, EU Member States might still be responsible under the ECHR and subject to the ECtHR's full review of national climate plans regarding effective protection of fundamental rights, should the ECtHR find that the EU's level of protection is not equivalent to that under the ECHR.[276] The future of said doctrine after the accession of the EU to the ECHR appears uncertain, however.[277]

[272] Ibid para 80.

[273] Case C-284/25 P, Appeal brought on 14 April 2025 by Asociația Inițiativa pentru Justiție against the order of the General Court in Case T-1126/23, *Asociația Inițiativa pentru Justiție v Commission* (pending).

[274] *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* App no 45036/98 (ECtHR, 30 June 2005) paras 159–165. The *Bosphorus* doctrine essentially entails that the ECtHR presumes that the EU's protection of fundamental rights is equivalent to the protection under the ECHR, unless said presumption is rebutted. See Š Imamović, 'Post-EU Accession to the ECHR: The Argument for Why the ECtHR Should Abandon the *Bosphorus* Doctrine' (2024) 39 *Utrecht Journal of International and European Law* 17, 18.

[275] Eckes and Trapp (n 156); Pagano (n 12) 179–186.

[276] Pagano (n 12) 183.

[277] Imamović (n 274).

Lastly, the ruling could produce indirect impacts[278] insofar as it could influence the European and even global legal culture, which has been dubbed the '*KlimaSeniorinnen* revolution'.[279] In fact, the judgment constitutes a 'significant milestone for climate litigation' globally.[280] The main takeaway from *KlimaSeniorinnen* for the CJEU should be that legal standing in climate litigation cases requires a novel approach to the concept of legal standing itself, an adaption of the traditional criteria to an unprecedented situation: the climate crisis. In addition, the fact that the CJEU judges are very familiar with the ECtHR's jurisprudence might lead to a cross-fertilisation across jurisdictions regarding legal standing.[281] This can be traced back to the concept of judicial comfort, according to which progressive decisions from different courts can lead to a 'sense of safety and support that judges derive from seeing other judges taking new interpretative steps, leading a judge to diverge from the established case law on a given subject matter'.[282]

In conclusion, there are various ways in which the *KlimaSeniorinnen* judgment could potentially influence the CJEU's approach to legal standing for individual applicants. It is notable that the judgment has so far been cited by applicants not in climate litigation, but rule of law cases, i.e., *Medel* and *Asociația Inițiativa pentru Justiție.* After the ruling of the GC in the latter case, a direct impact does not seem very likely, at least until the EU's accession to the ECHR. Nonetheless, the Court still has the opportunity to reverse the ruling on appeal.

3.2.2. Revisiting Plaumann

Adopting a constructive approach, the strong criticism of *Plaumann* and the radically new approach of the ECtHR in *KlimaSeniorinnen* beg the question which understanding of legal standing for individual applicants could potentially replace the *Plaumann* test. This section strives to critically evaluate different suggestions, both old and new, with specific regard to their applicability in climate litigation cases.

Firstly, in 2023, the European Parliament had proposed to scrap the requirement of 'individual concern' altogether.[283] Currently, it seems unlikely that the Member

[278] See J Peel and HM Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015) 310–340; J Setzer, N Silbert and L Vanhala, 'The Effectiveness of Climate Change Litigation' in F Sindico and others (eds), *Research Handbook on Climate Change Litigation* (Edward Elgar Publishing 2024) 245, 248–249; Young (n 5) 64; see also C Rodríguez-Garavito, *Climate Change on Trial: Mobilizing Human Rights Litigation to Accelerate Climate Action* (Cambridge University Press 2025) 89.

[279] Dzehtsiarou (n 233); in this regard, see also A Sikora-Kaléda, 'Op-Ed: "Just as ripples spread out when a single pebble is dropped into water'- ECHR *KlimaSeniorinnen* judgement's systemic effects on the EU legal order"' (EU Law Live, 27 June 2024), at eulawlive.com.

[280] Savaresi (n 8) 286.

[281] See Romito (n 121) 557; Pagano (n 12) 173.

[282] Pagano (n 12) 165–166.

[283] European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties, 2022/2051(INL), amendment 205, proposes to amend Art 263, para

States will accept this radical proposal.[284] Nonetheless, this process should be closely monitored.

Secondly, as mentioned in section 2.1, AG Jacobs has proposed in his Opinion in *UPA* that 'an applicant is individually concerned by a [Union] […] measure where the measure has, or is liable to have, a substantial adverse effect on his interests'.[285] However, this criterion might be too broad when applied to climate change litigation cases since climate change unarguably has a substantial adverse effect on the interests of any person to a certain extent, as recognized by the ECtHR. Moreover, as laid out above, the Court has already rejected this proposal.

Thirdly, the GC[286] had ruled in its judgment in *Jégo-Quéré*, later overturned by the Court of Justice, that 'a natural or legal person is to be regarded as individually concerned by a [Union] […] measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him'.[287] It has been argued in the literature that this interpretation stays within the textual limits of Article 263, paragraph 4 TFEU, constituting merely 'a new way of interpreting the Treaty-based condition for individual concern'.[288] Nonetheless, this approach does not seem to be apt to deal with climate cases since it would be very difficult to prove that an EU legal act affects the applicant's legal position in a manner which is both definite and immediate, since the effects of (unsatisfactory) climate legislation will only show over time.[289] Moreover, this approach seems slightly overbroad as well. Lastly, as laid out above, the Court has already rejected this proposal on appeal.

Fourthly, some have proposed to assume individual concern where fundamental or subjective rights might be violated.[290] This option seems overbroad and unrealistic whilst also ignoring the division of labour between the CJEU and national courts.[291] It has been argued that for such an interpretation, which is inspired by the German

4, TFEU as follows: 'Any natural or legal person may, under the conditions laid down in the first and second para graphs, institute proceedings against an act addressed to that person or which is of direct concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'. See E Muir, 'Winds of Treaty change? Taking fundamental rights in the EU *yet* more seriously' (2023) 30 *Maastricht Journal of European and Comparative Law* 543, 550.

[284] Osojnik (n 33) 122.

[285] AG Jacobs in *UPA* (n 20) para 102.

[286] At the time: CFI.

[287] Case T-177/01 *Jégo-Quéré* (n 22) para 51.

[288] Eliantonio and Stratieva (n 17) 5.

[289] Eeckhout (n 248).

[290] R Frielé and others, 'Der 60. Deutsche Juristentag in Münster vom 20. bis 23. September 1994' (1995) 50 *Juristenzeitung* 189, 193; cf. the account by Eliantonio and Kas (n 130) 125–126. See also the proposal by Szepelak (n 79) 614: 'the applicant should also be considered "individually" concerned if the EU measure had a substantial adverse effect on their human rights'.

[291] See Schlake (n 59) 265.

Verfassungsbeschwerde, a Treaty change would indeed be necessary.[292] In fact, such an interpretation would go beyond the character of the annulment procedure.[293]

Fifthly, as mentioned in the introduction, AG Emiliou's recent Opinion in *Nicoventures* makes a case for a revisitation of the *Plaumann* case law, without abandoning *Plaumann* altogether.[294]

Generally, AG Emiliou argues that the *Plaumann* test fits the criterion of individual concern from a textual, historical, and systematic perspective.[295] Regarding the textual interpretation, he argues that the term 'individual' strongly implies that 'the greater the number of the persons alleging a special effect, the less likely that they can all be considered to be "individually concerned"'.[296] Concerning the systematic and the historical interpretation, in essence, he repeats two well-known arguments: Firstly, he argues that the Member States did not and do not want to broaden legal standing for individuals, as can be seen from the drafting processes of the Treaties and of the European Constitution.[297] Secondly, he relies on the argument of the complete system of remedies and the division of labour between the CJEU and national courts concerning direct and indirect actions,[298] which has been discussed above.

However, AG Emiliou proposes three key changes to the Court's case law.[299] Firstly, the AG calls for a systematisation and categorisation of the case law. He argues that the Court should issue a landmark judgment in the interest of legal clarity to 'offer a coherent and exhaustive framework' of the criterion of individual concern.[300] Secondly, the AG highlights the need for a refinement of the closed-group test. He makes a case for abandoning the so-called 'future element'.[301] This 'future element' means that the 'EU Courts required (or appeared to require) that the category of persons particularly affected by the contested measure, to which the applicant alleges to belong, is composed of a fixed number of persons that cannot be enlarged after the adoption of the contested measure'.[302] In his Opinion, the AG proposes opening the case law of the Court to the possibility of enlarging a closed group after the adoption of the measure in question.[303] Thirdly, the AG underlines the need for the 'equivalent treatment of all persons in respect of all rights'.[304] He observes that the *Plaumann* criteria have been 'applied more rigorously at times and more leniently at others, in cases that – at least

[292] AG Emiliou in *Nicoventures* (n 9) para 58; Franzius (n 150) 652–653.
[293] Franzius (n 150) 654–655; see also Eliantonio and Kas (n 130) 129.
[294] AG Emiliou in *Nicoventures* (n 9).
[295] Ibid paras 53–65.
[296] Ibid para 54. See also Prete (n 8) 249–250.
[297] Ibid paras 55–47. See also Prete (n 8) 249–250.
[298] AG Emiliou in *Nicoventures* (n 9) paras 60–64.
[299] Ibid paras 69–112.
[300] Ibid paras 69–75, cf. paras 28–36.
[301] Ibid paras 82–100.
[302] Ibid para 83.
[303] Ibid para 100.
[304] Ibid paras 101–112.

when viewed with today's eyes – are largely similar', see the discussion on the 'double standard' of the CJEU's application of *Plaumann* above (section 2.2.1.).[305] Consequently, according to the AG, '(i) non-profit entities (such as associations and non-governmental organisations) should generally be considered by the same standards applied to profit-making entities (such as companies), and (ii) it should be of no relevance whether the applicants' rights or interests affected by the contested measures are of an economic nature or of a different nature'.[306]

The proposal by AG Emiliou marks a turning point, as it is the first AG Opinion in years to examine the *Plaumann* case law in such depth.[307] Regarding climate litigation, the last of the three proposals seems to be the most relevant. As has been shown above, the Court seems to apply a 'double standard' regarding companies versus non-profit organisations, or rather, economic versus non-economic interests. The shift proposed by the AG would be a major step towards creating a level playing field for applicants in environmental and climate litigation before the CJEU. However, it is questionable whether the changes proposed by AG Emiliou are far-reaching enough to adequately ensure access to justice for individuals in environmental and climate litigation cases. At the end of the day, AG Emiliou still defends the *Plaumann* test with the well-known arguments of the unwillingness of the Member States to amend the Treaties and of the complete system of remedies. Therefore, framework cases as *Carvalho* would likely still not be admissible under AG Emiliou's framework. Nonetheless, this proposal generally seems to have a better chance at being accepted by the Court in the long run, as it is less radical than previous attempts by AG Jacobs and the GC in *UPA* and *Jégo Quéré*.[308] Consequently, it is a laudable step in the right direction.[309]

However, the Court did not follow AG Emiliou's tripartite suggestion on systemizing the case law on *Plaumann*.[310] Instead, it only provided deeper insights into the definition of acquired rights.[311] Thus, the Court responded only to the second of the three reform proposals put forward by AG Emiliou, namely the call for abandoning the 'future element'. In this regard, the Court specified that acquired rights require a two-step test, namely, firstly, the applicant being identified or identifiable at

[305] Ibid para 101.

[306] Ibid para 106.

[307] See, however, AG Bobek in *Région de Bruxelles-Capitale* (n 132) paras 137–147.

[308] T Hilpold, 'Op-Ed: "Will the Doorkeeper Become More Accommodating Towards Actions for Annulment? AG Emiliou's Opinion in *Nicoventures Trading and Others* (C-731/23 P)"' (EU Law Live, 30 June 2025), at eulawlive.com.

[309] Cf. Szepelak (n 79) 611.

[310] M Ferri, 'La sentenza *Nicoventures Trading*: non ora, ma quando un ripensamento dei criteri *Plaumann*?' (2026) 3 *Rivista del Contenzioso Europeo* 2; C Kinsella, 'Op-Ed: "Building 'A Better Tomorrow'? Standing and Individual Concern in *Nicoventures Trading and Others v. Commission* (C-731/23 P)"' (EU Law Live, 12 January 2026) at eulawlive.com.

[311] Kinsella (n 310).

the time of the adoption of the measure and, secondly, that the applicant in question possesses 'specific characteristics in comparison with other persons to whom that act is intended to apply'.[312] Moreover, the mere 'fact that the marketing authorisations at issue were non-exclusive […] can have no bearing on the ability to distinguish the appellants individually'.[313] This refinement can be seen as a 'partial response' to AG Emiliou's reform proposals.[314] However, this clarification is rather tame, certainly not as innovative as the AG Opinion.[315]

Sixthly, Winter has proposed a substantial approach to individual concern in which individual concern is defined as the material criterion of 'personal and severe concern',[316] taking into account factors such as 'degrees of harm (superficial, serious, lasting, reversible, etc.), legitimate expectations (vested interests vs newcomers), cognition (degree of certainty of harm), causality (cause – effect – intervening factors), and time (imminent vs future interference)'.[317] AG Emiliou has pointed out that this test partly resembles the approaches of AG Jacobs in *UPA* and of the GC in *Jégo Quéré*.[318] In addition, this approach seems to be similar to the first limb of the two-prong test adopted by the ECtHR in *KlimaSeniorinnen* for individual applicants ('high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant') since both tests rely on severity/intensity. It must be queried whether this approach could be transferred to a new interpretation of individual concern for individual applicants under Article 263, paragraph 4, TFEU in climate litigation cases. It has been stated that individual concern has nothing to do with the intensity of rights violations.[319] While this might hold true for the past CJEU case law, there seems to be no logical reason why individual concern as a category should not be understood in terms of intensity, particularly if the CJEU should decide to revisit *Plaumann*.[320] Furthermore, the ECtHR shows in *KlimaSeniorinnen* that adopting a new understanding of legal standing in climate cases does not necessarily

[312] Case C-731/23 P, *Nicoventures Trading Limited and Others v Commission*, EU:C:2025:982, para 60. See Ferri (n 310) 4–5.

[313] *Nicoventures* (n 312*)* para 70.

[314] Kinsella (n 310).

[315] Ferri (n 310) 6.

[316] Winter (n 94) 105–120.

[317] Ibid 112–113.

[318] Opinion of AG Emiliou in *Nicoventures* (n 9) para 47.

[319] Schlake (n 59) 249.

[320] However, the Court already does seem to accept intensity to some extent, see Eliantonio and Kas (n 130) 123: 'the *Extramet* case [...] can be seen as an exceptional case, since the ECJ considered the degree of factual injury to determine whether the applicant was individually concerned'; Prete (n 8) 252: 'The CJEU's case law on standing in the field of antitrust, state aids, and anti-dumping shows quite clearly that (i) the fulfilment of the distinctive criterion is not a black-or-white situation but rather a matter of degree and (ii) the applicant need not be in a unique position, since other persons may also be in a position that is distinctive enough'.

lead to the admission of any type of climate-related claims, as it rejected legal standing for the individual applicants in the case in question.[321]

Therefore, the criteria that the ECHR adopts, both regarding individual applicants as well as associations, could serve as a source of inspiration for the CJEU. Individual concern could be interpreted in the sense that individual applicants must prove, firstly, to be '[…] subject to a high intensity of exposure to the adverse effects of climate change […]'.[322] Indeed, it seems plausible that a person is individually concerned by an act if said act affects said person on a significantly higher scale than it affects other people. This is especially important for the phenomenon of climate change, since it will never affect only a 'closed group of people'.[323] Instead, it will affect everyone to some extent, as the ECtHR pointed out. Thus, at least regarding climate change, intensity seems to be the only way to establish individual concern. Admittedly, this is an innovative proposal, but, in the author's opinion, it would be possible to interpret individual concern in such a manner.

In Winter's approach, the second part of the ECtHR's test ('pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures') seems to be missing. It appears most convincing if the CJEU mirrored the two-step test adopted by the ECtHR to establish individual concern in climate litigation cases: firstly, a substantive test of the degree of harm to the applicant, relying on the criteria established by the ECtHR in *KlimaSeniorinnen* or the criteria proposed by Winter; secondly, a 'subsidiarity test', mirroring the second prong of the test in *KlimaSeniorinnen*. In this second part of the test, the CJEU could evaluate whether in the case at hand other procedures are available to the applicants under EU law. The difficulty for this second step is that the CJEU cannot assess other available remedies under national law since the CJEU does not have the competence to interpret Member States' procedural law.[324] This theoretical and practical hurdle seems to be difficult to overcome. However, a solution to this issue could be sought. For instance, one could establish that the parties would have to provide an expert opinion from a legal professional from the respective Member State as part of their application.

Even more importantly, the CJEU should follow the ECtHR in accepting that associations are of particular importance in climate litigation and should not be subject to overly restrictive standing criteria.[325] Under the current case law, the CJEU would likely not be able to accept legal standing for associations whose members are

[321] See also *Greenpeace Nordic and Others v Norway* App no 34068/21 (ECtHR, 28 October 2025) paras 301–306; *Fliegenschnee* (n 231) para 31.

[322] *KlimaSeniorinnen* (n 1) para 487.

[323] Schlake (n 59) 249; R Schütze, *European Constitutional Law* (Oxford University Press 2021) 370.

[324] Case T-173/98 *UPA* (n 38) para 43; Case T-177/01 *Jégo-Quéré* (n 22) para 33; Case T-279/11 *T&L Sugars Ltd and Sidul Açúcares, Unipessoal Lda v European Commission*, EU:T:2013:299, paras 68–70; cf. Schlake (n 59) 260; see also Prete (n 8) 256.

[325] For a more critical perspective on relying on associations to bring human rights claims, see Hohnerlein (n 217).

not themselves individually concerned under *Plaumann* since the second category established by the case law requires that 'the association represents the interests of its members, who would themselves be entitled to bring proceedings'. However, the ECtHR has convincingly shown that the victim status, or in the case of EU law, individual concern, of the members of the association does not necessarily have to be the precondition for recognizing the legal standing of the association. Naturally, this approach may theoretically bear the risk of many associations being able to instigate annulment procedures before the Court. However, if applied carefully and confined to climate cases, this does not necessarily have to lead to *actio popularis*. Instead, broadening legal standing for associations could, at least to some extent, ease the *Plaumann* paradox.[326] In order to prevent abuse, i.e., individuals creating associations for the sole purpose of initiating an annulment procedure, and, again, *actio popularis*,[327] the Court could rely on the criteria for associations set forth in *KlimaSeniorinnen*.[328] Lastly, relying on associations bringing cases before the CJEU instead of individuals could help in 'streamlining litigation'.[329]

All things considered, the Court should, as a bare minimum, implement the changes proposed by AG Emiliou in *Nicoventures* in its case law. These changes, especially the third proposal, would already be a crucial improvement for the legal standing of environmental NGOs. However, as outlined above, the Court, for the time being, has not followed this proposal in its ruling in *Nicoventures*. It remains to be seen if the Court will be more open to change in its future case law, e.g., in the appeal ruling in the case *Asociația Inițiativa pentru Justiție.* In addition, it would be auspicial that the Court adopt a tailored approach to legal standing for individuals and associations in climate litigation, even though this more ambitious proposal appears to be even less realistic for the time being.

4. Conclusion

In conclusion, the ECtHR's progressive approach in *KlimaSeniorinnen* could serve as an example for the CJEU's case law regarding legal standing for individuals under Article 263, paragraph 4, TFEU. As has been shown in this article, it is high time for the CJEU to reconsider the traditional *Plaumann* criteria for defining 'individual concern', at least in part, and to adapt it to the current phase of European integration in the 21st century. This revision is especially important for climate litigation, as highlighted above, since individual applicants and associations are functionally excluded from bringing annulment procedures before the CJEU in framework cases. The Court should 'overrule' this test developed in its case law – or, at the very least,

[326] AG Emiliou in *Nicoventures* (n 9) para 118.

[327] See AG Cosmas in *Greenpeace* (n 72).

[328] See *KlimaSeniorinnen* (n 1) para 502; cf. AG Emiliou in *Nicoventures* (n 9) paras 120–123.

[329] C Poncelet, 'Access to Justice in Environmental Matters – Does the European Union Comply with its Obligations?' (2012) 24 *Journal of Environmental Law* 287, 300; Bogojević (n 124) 10.

apply it more coherently and fairly, as suggested by AG Emiliou in *Nicoventures*. On the one hand, it still seems questionable whether the CJEU will ever cease its static approach since it has consistently resisted the strong criticism of the *Plaumann* criteria by both AG Jacobs and the literature. However, the *KlimaSeniorinnen* judgment is a development in European legal culture which cannot be ignored.

The suggested avenue in this contribution is to interpret individual concern in climate litigation as a two-prong test for individual applicants and to broaden the standing for associations, drawing inspiration from the approach in *KlimaSeniorinnen*. While such a change might seem ambitious,[330] it would arguably be the only way to effectively ensure access to justice in climate litigation relating to EU climate targets. Naturally, sector-specific solutions are difficult to justify, but in this area the principles of access to justice and effective judicial protection require such a step.

It remains to be seen if either the 'revolutionary' ruling by the ECtHR in *KlimaSeniorinnen* or the more diplomatic proposal by AG Emiliou in *Nicoventures* will lead to a change in the CJEU's approach. As shown in this article, the pending rulings in *Medel* and *Asociația Inițiativa pentru Justiție* provide the CJEU with the opportunity to revise and refine its case law regarding legal standing of individuals and associations. However, arguing for such change might be little more than an idle hope.

In any case, all procedural avenues available in the EU legal order should be explored in order to nurture a better understanding of which role the CJEU can play in European and global climate change litigation.[331] It remains an open question whether Article 263, paragraph 4, TFEU is the most promising procedural avenue for climate change litigation under EU law, with or without *Plaumann*. The two-month deadline after the publication of the acts of EU climate legislation envisaged by Article 263, paragraph 6, TFEU is rather restrictive.[332] Thus, in addition to being limited in personal scope, there is also a temporary restriction. In the case of climate change litigation, 'the fact that EU action is inadequate may only become apparent with time, as the intensity of the climate emergency manifests itself.'[333] Therefore, Article 263, paragraph 4, TFEU might not be a 'one fits all' solution for climate litigation before the CJEU. Future research should therefore continue to explore the potential impacts of preliminary rulings in climate change litigation[334], even though this avenue has its pitfalls, as analysed above, as well as of other procedural avenues, such as infringement procedures, actions for failure to act, and non-contractual liability of the Union.

In summary, the analysis of the role of the CJEU in climate litigation through the annulment procedure and other procedures requires continued research efforts. The

[330] See Prete (n 8) 250.

[331] See Hadjiyianni (n 14) 777.

[332] See also Eeckhout (n 248); Schütze (n 3) 400.

[333] Eeckhout (n 248).

[334] See, for example, Franzius (n 150) 655; Hadjiyianni (n 14) 808–809; Krężel (n 79) 272–276; Lenaerts (n 78) 348–349; Schlake (n 59) 262–264.

future will show whether the CJEU will choose to follow the ECtHR's way and embrace an innovative approach to legal standing for individual applicants in climate litigation or if it will continue to adhere to the restrictive approach of the *Plaumann* test. After *KlimaSeniorinnen* and the Opinion by AG Emiliou in *Nicoventures*, it seems that in the next framework climate litigation case the CJEU would have to at least address these recent developments. However, the outcome remains uncertain: One could argue that we are in a 'now or never' situation regarding the overruling of *Plaumann*.