

CASE NOTES

Environmental Justice in Times of Emergency: Democratic Constraints in Case T-535/23 CEE *Bankwatch Network and Ökobüro v Council*

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Abstract

This case note focuses on the General Court's judgment in T-535/23 CEE *Bankwatch Network and Ökobüro v Council*, which concerns a request for internal review made by environmental NGOs under the Aarhus Regulation. The request was filed with respect to the EU Emergency Regulation, adopted in December 2022 to accelerate renewable energy deployment. In this case, the Court discussed the distinction between “administrative acts” and “legislative acts,” in an attempt to finetune the scope of the internal review mechanism. In doing so, the Court ultimately excluded emergency measures adopted under Article 122(1) TFEU, such as the Emergency Regulation, from internal review. This case note therefore illustrates the tensions between emergency governance and environmental procedural rights, as it argues that the Court may have created an “Aarhus-free zone” for emergency measures. Moreover, this case note explores the broader implications of the judgment for access to justice in environmental matters in the EU.

Keywords: Aarhus regulation; access to justice; emergency; environmental democracy

I. Introduction

The Aarhus Convention, to which the EU and its Member States are Parties, creates a system of protection of environmental procedural rights, including access to justice in environmental matters.¹ The corresponding obligations of the EU institutions and bodies can mainly be found in the so-called “Aarhus Regulation.”² This Regulation, adopted in 2006, and updated in 2021 following findings of non-compliance by the Aarhus Convention Compliance Committee,³ enables individuals and environmental NGOs (ENGOS) to make a request for internal review of administrative acts adopted under environmental law.⁴

¹ UNECE, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998.

² Commission 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, OJ 2006 L 264/13 13–19.

³ Findings and recommendations of the Aarhus Convention Compliance Committee (ACCC) with regard to communication ACCC/C/2008/32 European Union, part I (2011) and part II (2017).

⁴ Art. 10 of the Aarhus Regulation.

Under this mechanism, the responsible EU institution or body is therefore asked to re-examine the legality of its own acts. Such a request lies at the heart of the case at hand.

In December 2022, the EU adopted an Emergency Council Regulation to accelerate renewable energy deployment,⁵ in response to the energy crisis caused by Russia's war of aggression on Ukraine.⁶ The Regulation was adopted on the legal basis of Article 122(1) TFEU, which empowers the Council to adopt emergency measures if severe difficulties arise in the supply of certain products, such as energy. In essence, the Emergency Regulation, which entered into force on 1 January 2023 for a duration of eighteen months, aimed at streamlining and accelerating permitting procedures of renewable energy installations in the EU, based on the argument that developing renewable energy infrastructures is presumed to be of "overriding public interest."⁷ In practice, this translated into the possible exemption of specific projects from certain environmental impact assessment obligations that exist under EU environmental law.⁸

In early 2023, ENGOs filed requests for internal review of the Emergency Regulation, mainly questioning its legal basis and impact on environmental procedural rights.⁹ Following the Council's decisions to reject such requests, the ENGOs brought the matter to court.¹⁰

In T-535/23 *CEE Bankwatch Network and Ökobüro v Council*, the General Court finetuned the scope of the internal review mechanism under the revised Aarhus Regulation, ultimately excluding emergency measures adopted under Article 122(1) TFEU.

This case note discusses the reasoning of the Court, and specifically the distinction it made between "administrative acts" and "legislative acts." It provides a reflection about the reasons for – and potential dangers of – excluding emergency legislation from internal review, and argues that the Court may have created an "Aarhus-free zone" for emergency measures. Furthermore, it explores the broader implications of the judgment for access to justice in environmental matters in the EU.

⁵ Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022, pp 36–44. This Regulation is no longer in force. Its application was extended once, until 30 June 2025, by Council Regulation (EU) 2024/223 of 22 December 2023 amending Regulation (EU) 2022/2577 laying down a framework to accelerate the deployment of renewable energy.

⁶ See the Preamble of the Emergency Regulation, which details the impact of the Russian invasion of Ukraine on the security of energy supply in the EU.

⁷ Art. 3 of the Emergency Regulation.

⁸ On the possibility for renewable energy projects to be exempted from certain environmental impact assessment requirements because they are viewed as being of "overriding public interest," see for instance: J Darpö, "Will European Biodiversity Be Sacrificed on the Green Transition Altar?: Perspectives on Habitats and Species Protection in Times of Energy Crises" in M Reese et al. (ed), *EELF 2023 – Legal Implementation and Impacts of the European Green Deal* (2023) pp 135–58; and R Rehage and A Forns Gómez, "Accelerating Authorizations vs Public Participation in the Decision-Making Chain of Renewable Hydrogen in Germany and Spain: A Dilemma" (2024) 21(3–4) *Journal for European Environmental and Planning Law* 297–317.

⁹ The internal review request made by the ENGOs can be found here: Council of the European Union, Interinstitutional file 2022/0367 (NLE), Note from the General Secretariat of the Council, Request from CEE Bankwatch Network and ÖKOBÜRO for an internal review according to Art. 10 of Regulation 1367/2006 2 (the "Aarhus Regulation") and Commission Decision 2008/50/EC of 13 December 2007, in relation to the Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy <<https://data.consilium.europa.eu/doc/document/ST-7216-2023-INIT/en/pdf>> (last accessed 31 March 2026).

¹⁰ The Council's decision to reject the request can be found here: <<https://data.consilium.europa.eu/doc/document/ST-10026-2023-INIT/en/pdf>> (last accessed 31 March 2026).

In addition to the case at hand, other ENGOs brought another similar complaint in Case T-534/23 *Föreningen Svenskt Landskapsskydd and Others v Council* [2025] ECLI:EU:T:2025:1020. This action was also dismissed by the General Court. While this case note focuses on T-535/23, it is important to note that both cases run in parallel.

II. Facts of the case

On 20 February 2023, the two ENGOs CEE Bankwatch Network z.s., established in Czech Republic, and Ökobüro – Allianz der Umweltbewegung, established in Austria (the applicants in this case), submitted a request for internal review of Regulation 2022/2577 (the Emergency Regulation) to the Council of the European Union (hereinafter: the Council, the defendant in this case) under Article 10(1) of the Aarhus Regulation.¹¹

On 13 June 2023, the Council notified the applicants that it rejected the internal review as inadmissible, on the ground that the Emergency Regulation, “adopted on the basis of Article 122(1) TFEU, introduced targeted and temporary derogations from acts adopted in accordance with an ordinary or special legislative procedure within the meaning of Article 289(1) and (2) TFEU and could not therefore fall within the definition of an “administrative act” within the meaning of Article 2(1)(g) of the Aarhus Regulation.”¹² The Council moreover stated that, even though the Emergency Regulation was not a “legislative act” within the meaning of the TFEU, it “nevertheless constituted a legislative act in the light of the Aarhus Convention.”¹³

The applicants brought an action under Article 263 TFEU before the General Court, challenging that refusal and seeking annulment thereof, based on three pleas in law.

First, the applicants argued that the Council “erred in law in rejecting as inadmissible the request for internal review of Regulation 2022/2577” on the ground that the Emergency Regulation was not an “administrative act” within the meaning of the Aarhus Regulation.¹⁴ The applicants referred to Article 2(1)(g) of the Aarhus Regulation, which defines an “administrative act” as “any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law (...).”¹⁵ In their view, this includes acts which were not formally adopted by way of the legislative procedures set out in Article 289(1) and (2) TFEU.¹⁶ On this basis, the applicants claim that, since the Emergency Regulation was not adopted by way of one of the legislative procedures provided for in Article 289(1) and (2) TFEU, it constitutes a non-legislative act and is, therefore, an administrative act.¹⁷ Additionally, the Emergency Regulation was passed by a “public authority” in the sense of Article 9(3) of the Aarhus Convention and can as such be challenged by the public.¹⁸ Lastly, the applicants claimed that excluding acts such as the Emergency Regulation from the scope of internal review would circumvent the Aarhus Regulation.¹⁹ The second plea raised by the applicants concerned Article 122(1) TFEU, which they argued was not the appropriate legal basis for the adoption of Regulation 2022/2577. Third, the applicants claimed that the Council’s decision was “vitiated by a manifest error of assessment.”²⁰

III. Judgment

On 12 November 2025, the General Court dismissed the action and upheld the Council’s refusal to admit the internal review request, on the ground that the Emergency Regulation was not capable of being the subject of an internal review because it was not an

¹¹ *Supra* 2.

¹² Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, para. 8.

¹³ *Ibid.*

¹⁴ *Ibid.*, paras. 12–13.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, paras. 15–16.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, paras. 17–18.

¹⁹ *Ibid.*, para. 21.

²⁰ *Ibid.*, para. 12.

“administrative act” under the Aarhus Regulation, having been adopted in a legislative capacity.

The General Court answered the question of whether or not the Emergency Regulation did constitute an “administrative act” by jointly reading Article 2(1)(g) of the Aarhus Regulation, which defines such an act as “any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions which may contravene environmental law (...)”²¹ and Article 2(1)(c) of the Aarhus Regulation, which excludes acts adopted in a legislative capacity from the scope of the Regulation. In this regard, the Court mentioned that the Aarhus Regulation does not refer “to the category of acts adopted under an ordinary or special legislative procedure within the meaning of Article 289(1) and (2) TFEU.”²²

The Court furthermore referred to environmental law jurisprudence to support its reasoning that the term “legislation,” which appears in Article 2(1)(f) of the Aarhus Regulation, does not have to be interpreted “in the precise and formalistic sense that follows from Article 289 TFEU.”²³ Rather, the Court interpreted the Aarhus Regulation and the Aarhus Convention itself – by relying on the interpretation of the Aarhus Convention Compliance Committee (ACCC) – adopting a teleological approach.²⁴

The Court stressed that the “interpretation of the term ‘legislation’ for the purposes of an instrument of public international law must remain independent from the domestic law of the contracting parties.”²⁵ This reasoning was used as a further argument against an interpretation that would support a “purely formal approach” limiting the interpretation to Article 289 (1) and (2) TFEU.²⁶

The Court concluded that “although the organic criterion constitutes evidence for characterising a legislative act within the meaning of the Aarhus Regulation, it is not in itself decisive.”²⁷ The Court clarified that “the concept of ‘legislative capacity’ set out in Article 2(1)(c) of the Aarhus Regulation cannot be interpreted as covering only acts which have been adopted under an ordinary or special legislative procedure in accordance with Article 289(1) and (2) TFEU.”²⁸ Specifically applying this reasoning to the case at hand, the Court acknowledged that the Council is a body exercising legislative functions. It found, however, that this criterion was not decisive and that the substance of the Emergency Regulation should be taken into account.²⁹ The Court identified several elements supporting the “legislative” function of the Council in this case, including: the Council’s broad discretion as to the type of measures to be adopted; the political context in which the Regulation was adopted and the resulting special nature of the Regulation; and the fact that the Council may adopt acts which entail implementing measures under Article 122(1) TFEU.³⁰

On this basis, the Court concluded that, when adopting the Emergency Regulation, the Council had exercised powers in what amounts to its “legislative capacity” under the Aarhus Regulation. The Court therefore dismissed the action. As it found the first plea to be unfounded and the Council to have been “fully entitled to reject the request for internal review of Regulation 2022/2577 as inadmissible,” the Court rejected the second and the third pleas without further discussion.³¹

²¹ Art. 2(1)(g) of the Aarhus Regulation.

²² Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, para. 27.

²³ *Ibid.*, para. 36.

²⁴ *Ibid.*, para. 38.

²⁵ *Ibid.*, para. 48.

²⁶ *Ibid.*, para. 54.

²⁷ *Ibid.*, para. 53.

²⁸ *Ibid.*, para. 54.

²⁹ *Ibid.*, paras. 57–8.

³⁰ *Ibid.*, paras. 64–8.

³¹ *Ibid.*, paras. 92, 94.

IV. Comments

1. On what can(not) be an administrative act

As mentioned above, the central issue in this case was whether the Emergency Regulation qualified as an “administrative act” within the meaning of the Aarhus Regulation. The General Court answered this question in the negative, holding, first, that Article 289(3) TFEU is not determinative in this context and, second, that the Emergency Regulation should instead be classified as a “legislative act.” The following analysis looks at both aspects of the Court’s reasoning.

First, the General Court interprets the notions of “administrative acts” and “legislative acts” under the Aarhus Regulation in a different way than that provided in Article 289 TFEU.³² According to Article 289(3) TFEU, indeed, “legislative acts” include those acts adopted under an ordinary or special legislative procedure within the meaning of Article 289(1) and (2) TFEU. The distinction between legislative and non-legislative acts is thus a formal one, based on the procedure under which the said act is adopted. It follows from this definition that any act that is not adopted under the ordinary or special legislative procedures is a “non-legislative act.”

While the applicants argued that the distinction set out in Article 289 TFEU should equally apply to the acts covered by the Aarhus Regulation, the Court considered that the Aarhus framework leaves room for a broader understanding of “legislative acts.”³³ It can be argued that the Court, however, did not present strong legal arguments to support its wider interpretation.³⁴ Rather, the Court pointed towards the ambiguous interpretation of Article 2(1)(f) of the Aarhus Regulation,³⁵ and stressed that the “interpretation of the term “legislation” for the purposes of an instrument of public international law must remain independent from the domestic law of the contracting parties.”³⁶

However, this reasoning is not entirely convincing. While the Court’s observations may open interpretative space, they do not in themselves justify privileging a broader interpretation over alternative readings. The judgment ultimately lacks a clear account of how, and according to which criteria, “legislative acts” under Article 2(1)(f) of the Aarhus Regulation should be defined. In particular, the Court does not substantiate why the term “legislative acts” should not be understood more narrowly, for instance as referring only to Regulations and Directives, as has been suggested in the literature.³⁷

Second, the Court classifies the Emergency Regulation as a “legislative act” by listing several elements which, in its view, support that the Emergency Regulation is a legislative act. Among them, the Court notes that “the powers conferred on the Council under Article 122(1) TFEU do not depend, unlike delegated and implementing powers, on prior

³² JT Nowak, “EU non-legislative acts can still be legislative acts for the purposes of the Aarhus Regulation” (LinkedIn, 20 November 2025) <<https://www.linkedin.com/pulse/eu-non-legislative-acts-can-still-legislative-purposes-nowak-sshce/?trackingId=nmsU46dySoeYjAM4sscEwg%3D%3D>> (last accessed 10 March 2026).

³³ Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, para. 32 with reference to: Judgment of 3 September 2020, *Mlifera v Commission*, C-784/18 P, not published, EU:C:2020:630, para. 81; and Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, paras. 35–6.

³⁴ E.g., the General Court implicitly applies the functional approach when arguing that the Emergency Regulation is to be understood as legislation.

³⁵ Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, para. 35 with reference to: Judgment of 6 July 2023, C-212/21 P and C-223/21 P *EIB and Commission v ClientEarth* [2023] EU:C:2023:546, para. 85.

³⁶ Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, para. 48.

³⁷ E Rehbinder, “Die neue Aarhus-Verordnung der Europäischen Union – ein Schritt zu mehr Rechtsschutz gegen Entscheidungen der Organe und Einrichtungen der Union” (2022) NuR 293, 295; L Christmann, “Das verwaltungsbehördliche Verfahren im Rahmen der geänderten Aarhus-Verordnung der Europäischen Union: Status quo und rechtliche Bewertung” (2022) NVwZ 1004, 1008.

authorisation by way of a basic legislative act.”³⁸ Most notably, the Court finds the Council’s “broad discretion”³⁹ and independence from prior authorisation constitutive for the Emergency Regulation’s classification as a “legislative act.”⁴⁰ While these elements may indeed be indicative of legislative action, the Court fails to articulate a general benchmark for identifying what constitutes a “legislative act.” Rather than defining general and exhaustive criteria, it limits itself to finding that the features peculiar to the Emergency Regulation are sufficient for such a classification. In light of its departure from Article 289 TFEU, it would, however, have been essential for the Court to clarify which elements it considers constitutive of legislation.

This omission is particularly problematic given that the distinction between legislative and non-legislative acts is closely tied to the principle of democracy.⁴¹ One possible approach to differentiate between legislative and non-legislative acts would in fact be to differentiate between reviewable and non-reviewable acts, based on their degree of democratic legitimation.⁴² This view is reflected in the applicants’ argument that “the reason why legislative acts are excluded from a review of legality is that acts which derive directly from a democratic process are to be excluded from judicial review.”⁴³ In other words, the exclusion of legislative acts from review can be understood as reflecting their heightened democratic legitimation, thereby respecting the will of the people as expressed representative processes.⁴⁴ Applied to the present case, this rationale is however difficult to sustain: the Emergency Regulation was adopted under Article 122(1) TFEU, without the involvement of the European Parliament, the Union’s directly elected legislative body. The Emergency Regulation’s classification as a “legislative act” therefore risks shielding a measure with potentially significant environmental effects from review, without a corresponding level of democratic legitimation.⁴⁵ This concern is not merely academic: research has shown that practitioners involved in environmental litigation would favour the ability to challenge legislative acts under the Aarhus Convention as a tool for governmental accountability.⁴⁶ The case at hand, however, moves in the opposite direction, as discussed in the next section.

2. Broader impact on access to justice in environmental matters in the EU

While this case primarily tackles the question of interpretation of “administrative” and “legislative” acts for the purpose of the internal review mechanism under the Aarhus

³⁸ Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, para. 71.

³⁹ *Ibid.*, para. 83.

⁴⁰ See for a summary of the discussed elements: *ibid.*, paras. 83–89.

⁴¹ See generally on “environmental democracy” in the Aarhus Convention: E Barritt, *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship* (Hart Publishing 2020) pp 26–9, 39–73.

⁴² In the past, a further differentiation was discussed: “[T]he relevant criterion for determining whether or not an act falls within the category of legislative acts, for the purposes of the convention, might be the existence or otherwise of a higher-ranking rule of environmental law,” Opinion of Advocate General Jääskinen, delivered on 8 May 2014, Joined Cases C-404/12 P and C-405/12 P, *Council of the European Union and European Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe*, ECLI:EU:C:2015:5 [2015], para. 34.

⁴³ Case T-535/23 *CEE Bankwatch Network and Ökobüro v Council* [2025] ECLI:EU:T:2025:1021, para. 18.

⁴⁴ In this sense, democracy could also be considered a limiting factor to the Aarhus Convention’s promise of access to justice, see for instance: M Lee, “The Aarhus Convention 1998 and the Environment Act 2021: Eroding Public Participation” (2023) 86 *The Modern Law Review* 756, 762. See for arguments on access to justice as enhancing the democratic purpose in the Aarhus Convention: *ibid.*, p 760; Barritt (n 41) 146.

⁴⁵ On the risks of emergency measures for future policy making see: E Leenders and others, “Beyond Exceptional and Ordinary: Analysing the Effects of Emergency Frames on EU Renewable Energy Policy-Making” (2025) *Journal of Common Market Studies* 1–25.

⁴⁶ M Pagano, *Environmental NGOs and Access to Justice Before the CJEU* (Hart 2025) 218, which explains that interviews carried out with relevant practitioners indicate that “Most of Them Would Actually Prefer to Be Able to also Challenge Legislative Acts (...).”

Regulation as shown above, it also raises broader questions about access to justice in environmental matters in the EU. This section aims to shed the light on these implications.

The functional interpretation adopted by the General Court in this case expands the category of acts that can be excluded from the internal review mechanism under the Aarhus Regulation. In other words, the Court's judgment restricts the scope of the mechanism, which goes against the spirit of the Aarhus Convention, designed to grant broad access to justice in environmental matters, and the 2021 amendment to the Aarhus Regulation, aimed to facilitate NGOs' access to justice.⁴⁷

By treating the measures adopted under Article 122(1) TFEU as excluded from the internal review process, the General Court in fact created an "Aarhus-free zone" for emergency legislation which may have significant effects on the environment and on democratic decision-making. Given that an increase in the use of Article 122 TFEU as a legal basis can be observed in recent years,⁴⁸ excluding such legislation from the internal review process could therefore pose a threat to the exercise of environmental procedural rights and, ultimately, environmental protection. The tension between the choice of Article 122 TFEU as a legal basis has been previously addressed by scholars.⁴⁹ More concretely, the consequences of the creation of such an "Aarhus-free zone" are twofold. On the one hand, the Court's judgment in this case may incentivise the legislator to use the "emergency procedure" provided for in Article 122 TFEU as a way out of the internal review mechanism, evading democratic checks. On the other hand, applicants in environmental cases (often NGOs) may question which procedure to pursue when challenging a decision having an impact on the environment. Indeed, if an EU measure is excluded from the internal review mechanism and cannot be challenged directly under the procedure laid down in Article 263(4) TFEU due to restrictive standing requirements,⁵⁰ NGOs may be left without an effective option to access justice in environmental matters at EU level. Since NGOs play a crucial role in protecting the voiceless environment in decision-making procedures,⁵¹ limiting their ability to request internal reviews of EU measures weakens judicial and environmental accountability in the EU.⁵² It therefore

⁴⁷ On the changes brought by the 2021 amendment, see, for instance: GC Leonelli, "Access to EU Courts in Environmental and Public Health Cases and the Reform of the Aarhus Regulation: Systemic Vision, Pragmatism, and a Happy Ending?" (2021) 40 Yearbook of European Law 230–264.

⁴⁸ For instance, in addition to the Emergency Regulation challenged in this case, several other Regulations were adopted on the basis of Art. 122(1) TFEU in the context of the energy crisis: Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas; Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices; Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders; and Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices. In addition, other Regulations have been based on Art. 122 TFEU in the past years, for instance in the context of the COVID-19 crisis.

⁴⁹ See, for instance: J Jendroška and A Anapyanova, "Towards a Green Energy Transition: REPowerEU Directive vs Environmental Acquis?" (2023) 23 Elni Review 1–5; and J Darpö, "Will European Biodiversity Be Sacrificed on the Green Transition Altar?: Perspectives on Habitats and Species Protection in Times of Energy Crises" in M Reese et al. (ed), *EELF 2023 – Legal Implementation and Impacts of the European Green Deal* (2023) pp 135–58.

⁵⁰ M Eliantonio and J Richelle, "Holding the EU Accountable for Environmental Law Violations: Legitimacy Assets, 'Complete' System of Remedies and Unexplored Pathways" (2025) 34(3) European Energy and Environmental Law Review 52–63.

⁵¹ See: M Peeters, "About Silent Objects and Barking Watchdogs: The Role and Accountability of Environmental NGOs" (2018) 24(3) European Public Law 449–72.

⁵² See, for instance, this piece arguing that the judgment in T-535/23 represents an obstacle for applicants challenging acts with an environmental impact: C Sersale, *The General Court's Judgment in the Case T-535/23 Bankwatch Network: an Additional Obstacle for the Aarhus Regulation?*, *Review of European Litigation* 1/2026 <<https://europeanlitigation.eu/en/2026/02/10/the-general-courts-judgment-in-the-case-t-535-23-bankwatch-network-an-additional-obstacle-for-the-aarhus-regulation-2/>> (last accessed 31 March 2026).

remains to be seen whether a shift in strategic litigation could be observed, with judicial review procedures being launched at national level.⁵³

3. Reflections on environmental procedural rights in times of emergencies and crises

More broadly, from an environmental law perspective, the outcome of case T-535/23 is concerning as, in fact, environmental considerations did not come up in the reasoning of the Court. Indeed, the Court discusses energy security, as well as economic and social hardship,⁵⁴ but does not address the potential impact of the Emergency Regulation on the environment in its reasoning. While this is mostly because the Court only addressed the first plea in law raised by the applicants, the absence of environmental concerns from the Court's judgment nevertheless gives the impression that the Court makes an implicit hierarchy among various considerations in times of emergency. This is, in fact, inconsistent with the interpretation of the Aarhus Convention. Indeed, although the Convention does not contain any provision on procedural rights in emergency decision-making procedures, the Meeting of the Parties to the Convention emphasised, during the COVID-19 pandemic, that the rights guaranteed under the Convention must be respected fully.⁵⁵ In addition, the ACCC, when requested to provide advice on the implementation of the Convention during the military aggression of Russia against Ukraine, confirmed that the Convention remains applicable in full in times of war.⁵⁶ Although these interpretations did not concern the energy crisis, it can be inferred that the environmental procedural rights enshrined in the Convention should remain fully operative in all emergency and crises situations. Such a reading of the Convention would furthermore be compatible with the Geneva Declaration on advancing public rights to tackle the triple planetary crisis in the face of geopolitical tensions, adopted by the Meeting of the Parties to the Aarhus Convention in November 2025.⁵⁷ To recall, the EU is a Party to the Convention and should, therefore, ensure compliance with the environmental procedural rights therein.

Moreover, and as a final point, the above observation can also be linked with a broader debate about the Court's discretion in balancing emergencies and crises. Emergencies and crises must be understood as different concepts: "(...) emergency is a narrower concept than crisis, in that it typically encompasses only 'fast-burning' threats, understood as sudden and abrupt shocks that require immediate action. Conversely, the notion of 'crisis' also covers 'slow-burning' threats that are gradual and creeping."⁵⁸ The Emergency Regulation was adopted in the context of an energy emergency but may have long-standing implications on the acceleration of the energy transition, necessary to achieve the objectives of the European Green Deal and Clean Industrial Deal. While it is true that

⁵³ It is unclear whether national procedures challenging the Regulation have taken place or not. See: M Peeters, "Gerecht EU 12 November 2025" (2026) 53(3) *Milieu en Recht*, jurisprudentienummer 27 (forthcoming).

⁵⁴ Para. 75 of the case.

⁵⁵ ECE/MP.PP/2021/16/Add.1—ECE/MP.PRTR/2021/2/Add.1. See also: Á Ryall, "A Brave New World: The Aarhus Convention in Tempestuous Times" (2023) 35 *Journal of Environmental Law* 161–6.

⁵⁶ ECE/MP.PP/C.1/2025/3.

⁵⁷ ECE/MP.PP/2025/15—ECE/MP.PRTR/2025/12.

⁵⁸ G Bellenghi, "Neither Normalcy nor Crisis: The Quest for a Definition of Emergency under EU Constitutional Law" (2026) 17 *European Journal of Risk Regulation* 20–39, 25, citing: P 't Hart and A Boin, "Between Crisis and Normalcy: The Long Shadow of Post-Crisis Politics" in U Rosenthal, MT Charles and P 't Hart (eds), *Coping with Crises: The Management of Disasters, Riots, and Terrorism* (CC Thomas 2001) pp 32–4; L Seabrooke and E Tsingou, "Europe's Fast-and Slow-Burning Crises" (2019) 26 *Journal of European Public Policy* 468, 470–2; J Hupkens, C Neuhold and S Vanhoonacker, "One Crisis Is Not Like Another: Exploring Different Shades of Crisis in the EU" (2023) 11 *Politics and Governance* 252, 257. On EU emergency law, see also for instance: B de Witte, "Guest Editorial: EU Emergency Law and Its Impact on the EU Legal Order" (2022) 59(1) *Common Market Law Review* 3–18; and C Cinnirella, "Emergency Powers' of the European Union: An Inquiry on the Supranational Model" (2025) 10(3) *European Papers* 525–53.

the 2022 energy crisis came as a sudden and abrupt shock, climate change “is a gradual and creeping threat that requires long-term coordination.”⁵⁹ Keeping this distinction in mind, one may wonder whether this judgment does not leave the door open for the Court to implicitly agree that environmental law rules, which are designed to address environmental law issues, could be bypassed in cases of energy emergencies, although we currently live in a long-standing climate and environmental crisis.⁶⁰ Such a reasoning would place the emphasis on short-term solutions while, in fact, the EU is facing a long-term problem.

V. Conclusion and the way forward

This case note has illustrated the tensions between EU emergency governance and environmental democracy and procedural rights highlighted in T-535/23 *CEE Bankwatch Network and Ökobüro v Council*, by delving into the General Court’s reasoning on the notions of “administrative act” and “legislative act.” In doing so, it has also highlighted the democratic dimension of the Court’s interpretation, in particular the tension between the exclusion of certain acts from review and their limited degree of democratic legitimation. Although the General Court itself did not engage in substantive questions relevant to environmental law in its judgment, this case note explored the broader implications of the judgment for ENGOs’ access to justice in environmental matters and situated the case with a wider discussion on procedural rights in times of emergency.

The concerns raised in T-535/23 regarding the compatibility of EU emergency governance with the rights guaranteed under the Aarhus Convention and, in turn, the Aarhus Regulation may in fact be taken up by the Court of Justice of the European Union (CJEU). Indeed, in early 2026, appeals have been lodged before the CJEU both for this case and case T-534/23.⁶¹ The CJEU will therefore have to position itself on the various matters addressed in these cases.

Finally, it is also possible that members of the public bring this case to the ACCC, which would be able to review the EU’s compliance with the Convention. Although the findings and advice of the ACCC are not binding until adopted by the Meeting of the Parties, they may nonetheless provide valuable guidance on the interpretation of the Convention in times of emergencies.

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⁵⁹ A Devis, “The Renewable Energy Directive III and the Streamlining of Environmental Procedures: A Paradigm Shift in EU Environmental Policy?” (2025) 37(3) *Journal of Environmental Law* 443–66.

⁶⁰ On this debate more broadly, see for instance: A Devis, Change of paradigm in EU environmental law: does the climate crisis now “override” the biodiversity crisis?, *European Law Blog*, 21 November 2024, <<https://www.europeanlawblog.eu/pub/174pacq5/release/4>> (last accessed 31 March 2026); S Četković et al., “Policy Integration in the EU Under Crisis: Shifting the Balance Between Renewable Energy Expansion and Biodiversity Protection” (2026) *Journal of Environmental Policy and Planning* 1–21; J Tosun, “The European Union’s Climate and Environmental Policy in Times of Geopolitical Crisis” (2023) 61 *Journal of Common Market Studies* 147–56.

⁶¹ The pending appeal of T-535/23 is C-25/26 P – *CEE Bankwatch Network and Ökobüro v Council*; and for T-534/23: C-33/26 P – *Nederlandse Vereniging Omwonenden Windturbines and Others v Council*.