



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber, Extended Composition)

23 July 2025 *

(Common fisheries policy – IOTC Resolution on the management of fish aggregating devices –
Objection submitted by the Commission – Refusal of the request for internal review –
Article 10(1) of Regulation (EC) No 1367/2006 – Act which may be the subject of a request for
internal review – Concept of ‘provisions that may contravene environmental law’ – Article 2(1)(f)
of Regulation No 1367/2006)

In Case T-1049/23,

Bloom, established in Paris (France), represented by F. Lafforgue, lawyer,

applicant,

supported by

Blue Marine Foundation, established in London (United Kingdom), represented by P. de Bandt
and C. Binet, lawyers,

intervener,

v

European Commission, represented by A. Dawes, B. Hofstötter and D. Milanowska, acting as
Agents,

defendant,

supported by

Kingdom of Spain, represented by A. Pérez-Zurita Gutiérrez and A. Gavela Llopis, acting as
Agents,

and by

French Republic, represented by B. Fodda, M. de Lisi, B. Travard and P. Chansou, acting as
Agents,

interveners,

* Language of the case: French.

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed of K. Kowalik-Bańczyk, President, E. Buttigieg, G. Hesse (Rapporteur),
I. Dimitrakopoulos and B. Ricziová, Judges,

Registrar: P. Nuñez Ruiz, Administrator,

having regard to the written part of the procedure,

further to the hearing on 13 February 2025,

gives the following

Judgment

- 1 By its action under Article 263 TFEU, the applicant, Bloom, seeks the annulment of the decision of the European Commission of 30 August 2023 rejecting as inadmissible its request for internal review of 11 May 2023 concerning the Commission decision objecting to Resolution No 23/02 of the Indian Ocean Tuna Commission (IOTC) on the management of fish aggregating devices ('FADs') in the IOTC area of competence ('the contested decision').

Background to the dispute

- 2 The applicant is a non-governmental organisation (NGO) whose mission is to contribute to the preservation of marine biodiversity and marine habitats.
- 3 The IOTC is an international organisation whose mission is to preserve the tuna resources in the Indian Ocean. The European Union is a contracting party to the IOTC under Council Decision 95/399/EC of 18 September 1995 on the accession of the Community to the Agreement for the establishment of the [IOTC] (OJ 1995 L 236, p. 24).
- 4 Under Article IX(1) of the Agreement for the establishment of the [IOTC] (OJ 1995 L 236, p. 25), the IOTC 'may, by a two-thirds majority of its members ... adopt conservation and management measures binding on members of the [IOTC]'.
- 5 Article IX(5) of the Agreement for the establishment of the [IOTC] provides that:

'Any member of the [IOTC] may, within 120 days from the date specified or within such other period as may be specified by the [IOTC] ..., object to a conservation and management measure adopted pursuant to paragraph 1. A member of the [IOTC] which has objected to a measure shall not be bound thereby. Any other member of the [IOTC] may similarly object within a further period of 60 days from the expiry of the 120-day period. ...'
- 6 Article IX(6) of the Agreement for the establishment of the [IOTC] provides as follows:

'If objections to a measure adopted pursuant to paragraph 1 are made by more than one-third of the members of the [IOTC], the other members shall not be bound by that measure; but this shall not preclude any or all of them from giving effect thereto.'

7 Council Decision (EU) 2019/860 of 14 May 2019 on the position to be taken on behalf of the European Union in the [IOTC], and repealing the Decision of 19 May 2014 on the position to be adopted on behalf of the Union in the IOTC (OJ 2019, L 140, p. 33) sets out the position to be adopted by the European Union in the IOTC for the period 2019-2023. Annex I to Decision 2019/860 contains ‘principles’ and ‘orientations’. In accordance with paragraph 2(f) of that annex, the European Union is, where appropriate, to endeavour to support the adoption by the IOTC of measures to manage the use of FADs notably to improve collection of data, to accurately quantify, track and monitor FADs use, to reduce impact on vulnerable tuna stocks, to mitigate their potential effects on target and non-target species, as well as on the ecosystem.

8 Annex II to Decision 2019/860 defines the procedure applied to establish the European Union’s position every year and provides that:

‘Before each meeting of the IOTC, when that body is called upon to adopt decisions having legal effects on the Union, the necessary steps shall be taken so that the position to be expressed on the Union’s behalf takes account of the latest scientific and other relevant information transmitted to the Commission, in accordance with the principles and orientations set out in Annex I.

To this effect, and based on that information, the Commission shall transmit to the Council in sufficient time before each meeting of the IOTC, a written document setting out the particulars of the proposed specification of the Union’s position for discussion and endorsement of the details of the position to be expressed on the Union’s behalf.

If in the course of [an] IOTC meeting it is impossible to reach an agreement, including on the spot, in order for the Union’s position to take account of new elements, the matter shall be referred to the Council or its preparatory bodies.’

9 During its sixth Special Session, which was held from 3 to 5 February 2023, the IOTC adopted Resolution No 23/02 on the management of FADs. FADs are artificial floating systems designed to attract fish and facilitate fishing. That resolution provided for, inter alia, a progressive reduction of the number of drifting FADs authorised per vessel, the creation of a drifting FAD registry in order to increase the transparency and monitoring of those devices and a 72-day closure period for drifting FADs in the Indian Ocean every year.

10 According to the second recital of Resolution No 23/02, Articles 5 and 6 of the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (OJ 1998 L 189, p. 17) require States to apply the precautionary approach widely to conservation, management and exploitation of highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

11 According to the third recital of Resolution No 23/02, in applying the precautionary approach, Article 6 of the agreement mentioned in paragraph 10 above requires States to be more cautious when information is uncertain, unreliable or inadequate and prohibits the use of an absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures.

12 On 11 April 2023, the Commission submitted, on behalf of the European Union, an objection within the meaning of Article IX(5) of the Agreement for the establishment of the [IOTC] against Resolution No 23/02 (‘the objection at issue’) (see paragraph 5 above). It indicates in the

explanatory letter, in essence, that the implementation of Resolution No 23/02 would result in a disproportionate burden on the purse seine fleets, or that it is practically not implementable. It indicates, moreover, that the measures contained in that resolution are not supported by scientific advice.

- 13 Ten other IOTC members objected to Resolution No 23/02 within the time limits laid down in Article IX(5) of the Agreement for the establishment of the [IOTC]. Accordingly, that resolution did not become binding, pursuant to paragraph 6 of that article (see paragraphs 5 and 6 above).
- 14 On 11 May 2023, the applicant submitted a request to the Commission for internal review of the objection at issue under Article 10 of Regulation (EC) No 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 (OJ 2006 L 264, p. 13) as amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 (OJ 2021 L 356, p. 1) ('the Aarhus Regulation').
- 15 By the contested decision, the Commission rejected the applicant's request for internal review as inadmissible, on the ground that the objection at issue was not an 'administrative act' within the meaning of Article 2(1)(g) of the Aarhus Regulation, since that objection does not contain any provision that may contravene environmental law as defined in Article 2(1)(f) thereof. According to the Commission, the submission of the objection at issue to the adoption of new rules within the IOTC will not result in any adverse effect on the objectives of EU policy on the environment.

Forms of order sought

- 16 The applicant, supported by Blue Marine Foundation, claims that the Court should:
 - annul the contested decision;
 - order the Commission to pay the costs.
- 17 The Commission, supported by the Kingdom of Spain and the French Republic, contends that the Court should:
 - dismiss the application;
 - order the applicant to pay the costs.

Law

- 18 In support of the action, the applicant relies on three pleas in law. The first plea alleges, in essence, infringement of Article 2(1)(f) of the Aarhus Regulation. The second plea in law alleges breach of the precautionary principle. The third plea alleges infringement of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC)

No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ 2009 L 343, p. 1).

- 19 By the first plea in law, the applicant, supported by Blue Marine Foundation, maintains, in essence, that the Commission erred in rejecting its request for review of the objection at issue as inadmissible on the ground that that objection did not include ‘provisions that may contravene environmental law’ within the meaning of Article 2(1)(g) of the Aarhus Regulation. According to the applicant, the objection at issue infringes, first, the precautionary principle and, secondly, Regulation No 1224/2009. Such infringements indeed constitute infringements of EU environmental law, independently of the implementation of the Resolution No 23/02 in the EU legal order.
- 20 The Commission, supported by the Kingdom of Spain and the French Republic, disputes the applicant’s arguments. It submits, first of all, that the first plea in law is inadmissible given that it refers to the request for review in a general manner. It does not therefore include the essential elements of fact and law on which it is based. In the alternative, it argues that the first plea in law is unfounded. The applicant has not demonstrated how the objection at issue may have an adverse effect on the attainment of the objectives of EU policy on the environment set out in Article 191 TFEU.
- 21 The Commission notes, in that regard, that the decision to submit an objection to the adoption of new rules by the IOTC, while continuing to respect the existing EU legal framework, cannot result in adverse effects on the objectives of EU policy on the environment and therefore could not, as such, contravene environmental law within the meaning of Article 2(1)(f) of the Aarhus Regulation.

Admissibility of the first plea

- 22 With regard to the admissibility of the first plea, the Commission considers, without stating any specific reasons, that the applicant merely reiterates the grounds of its request for internal review.
- 23 In that regard, it should be noted that, under Article 76(d) of the Rules of Procedure of the General Court, an application must state the subject matter of the proceedings and a summary of the pleas in law, and that that statement must be sufficiently clear and precise as to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without any other supporting information (judgment of 7 March 2017, *United Parcel Service v Commission*, T-194/13, EU:T:2017:144, paragraph 191).
- 24 It should also be noted that, in particular, for an action before the Court to be admissible, it is necessary that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the abovementioned provisions, must appear in the application (see judgment of 7 March 2017, *United Parcel Service v Commission*, T-194/13, EU:T:2017:144, paragraph 192 and the case-law cited).

- 25 In the present case, having regard to paragraphs 48 to 51 of the application, relating to the first plea in law, and to paragraphs 42 to 47 thereof, relating to the concept of ‘provisions that may contravene environmental law’, it must be found that the elements of fact and law on which the applicant bases its arguments, as summarised in paragraph 19 above, are immediately intelligible from the text of the application itself, even though the applicant refers to its request for internal review and to its second and third pleas in law to demonstrate that the objection at issue infringes the precautionary principle and Regulation No 1224/2009.
- 26 It follows from the foregoing considerations that, contrary to what the Commission submits, the first plea in law is admissible having regard to the requirements of Article 76(d) of the Rules of Procedure.

Substance of the first plea

- 27 In accordance with Article 10(1) of the Aarhus Regulation, any NGO or other members of the public that meet the criteria set out in Article 11 of that regulation are to be entitled to make a request for internal review to the EU 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 within the meaning of Article 2(1)(f) of that regulation. Such a request is to be made in writing and within a time limit not exceeding eight weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged administrative omission, eight weeks after the date when the administrative act was required. That request is to state the grounds for the review.
- 28 Article 2(1)(g) of the Aarhus Regulation defines ‘administrative act’ for the purposes of that regulation 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 within the meaning of point (f) of Article 2(1)’.
- 29 Under Article 2(1)(f) of the Aarhus Regulation, the concept of ‘environmental law’ means ‘Union legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union policy on the environment as set out in [the Treaty]: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems’.
- 30 In those circumstances, the admissibility of a request for internal review is effectively conditional on the existence of an administrative act or an administrative omission that may contravene environmental law within the meaning of the Aarhus Regulation (order of 6 June 2024, *Asociația pentru Energie Curată și Combaterea Schimbărilor Climatice v Council*, T-1151/23, not published, EU:T:2024:391, paragraph 12).
- 31 It is in the light of those considerations that the Court must consider the applicant’s arguments and determine whether the Commission could reject the request for review of the objection at issue as inadmissible on the ground that that objection did not include ‘provisions that may contravene environmental law’ within the meaning of Article 2(1)(g) of the Aarhus Regulation.

- 32 In the present case, in the contested decision, the Commission asserts that it had merely raised an objection in accordance with Article IX(5) of the Agreement for the establishment of the [IOTC]. As a result of that action, Resolution No 23/02 is not binding on the European Union, and the European Union therefore was not obliged to implement that resolution in its legal order.
- 33 Thus, according to the Commission, ‘the submission of an objection to the adoption of new rules, while continuing to respect the existing EU legal framework, including EU environmental law, does not result in adverse effects on the objectives of Union policy on the environment and therefore cannot, as such, contravene environmental law within the meaning of Article 2(1)(f) of the Aarhus Regulation’ (paragraph 2.1 of the contested decision).
- 34 It is important to note, from the outset, that the Commission did not reject the request for review as unfounded, on the ground that the objection at issue did not contravene environmental law, but as ‘inadmissible’, on the ground that that objection did not contain any ‘provisions that may contravene environmental law’ within the meaning of Article 2(1)(f) of the Aarhus Regulation and that, as a result, it did not constitute an ‘administrative act’ within the meaning of Article 2(1)(g) thereof.
- 35 In that regard, it should be noted that the administrative acts which may be the subject of a request for internal review under Article 10 of the Aarhus Regulation are, pursuant to Article 2(1)(g) thereof, non-legislative acts adopted by an EU institution or body which have legal and external effects and contain provisions that may contravene environmental law within the meaning of Article 2(1)(f) of that regulation.
- 36 In the present case, the Commission deemed the applicant’s request for review to be inadmissible solely on the ground that it did not concern an act containing provisions that could contravene environmental law. It should be noted therefore that the Commission did not reject the request for internal review as inadmissible on the ground that other conditions provided for in Article 10(1) of the Aarhus Regulation, with regard to such requests, or set out in Article 2(1)(g) of the Aarhus Regulation, concerning the concept of an ‘administrative act’, were not met in the present case.
- 37 As regards the question whether the request for review at issue concerned an act that may contravene EU environmental law, it must be borne in mind that, according to recital 10 of Regulation 2021/1767, when assessing whether an administrative act contains provisions which could, because of their effects, contravene environmental law, it is necessary to consider whether such provisions could have an adverse effect on the attainment of the objectives of EU policy on the environment set out in Article 191 TFEU, which includes the ‘prudent and rational utilisation of natural resources’ and ‘promoting measures at international level to deal with regional or worldwide environmental problems’.
- 38 In its request for review, the applicant, which was also supported during that administrative phase by Blue Marine Foundation, submits that the objection at issue could contravene the precautionary principle as set out in Article 191 TFEU. Moreover, more specifically, the objection at issue infringes Article 2(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ 2013 L 354, p. 22), which sets out the objectives of the common fisheries policy (CFP),

including that ‘the CFP shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.’

- 39 According to the applicant, the objection at issue was also incompatible with Regulation No 1224/2009 on the CFP control system. The applicant notes, in that regard, that Article 14(3) of that regulation sets out that ‘the permitted margin of tolerance in estimates recorded in the fishing logbook of the quantities in kilograms of fish retained on board shall be 10% for all species.’ According to the applicant, the extensive use of FADs by French and Spanish fleets in the Indian Ocean for tuna fishing contributes to estimates being exceeded in that respect.
- 40 Therefore, it appears that the grounds for review submitted by the applicant in its request for review relate to potential infringements of concrete provisions of environmental law, enshrining inter alia the precautionary principle in the field of the CFP.
- 41 In that regard, it should be noted that, as is apparent, inter alia, from paragraphs 10 and 11 above, the second and third recitals of Resolution No 23/02 mention the conservation of fish stocks as an objective.
- 42 Thus, in submitting the objection at issue, the European Union actively opposed the adoption of measures aimed at increasing the protection of certain fish stocks. More specifically, the effect of that objection was that the European Union was not required to establish and implement the measures provided for in Resolution No 23/02 in its legal order.
- 43 Consequently, contrary to what the Commission stated in the contested decision and even though the objection at issue did not result in any change in the state of environmental law of the European Union, the objection at issue was capable of producing adverse effects on the attainment of the objectives of EU policy on the environment set out in Article 191 TFEU.
- 44 In that context, it should be noted that it follows from recital 11 of the Aarhus Regulation that even an omission can be the subject of a request for review even though, by definition, such an omission does not change the environmental law of the European Union.
- 45 In those circumstances, the Commission erred in rejecting the applicant’s request for review as inadmissible on the ground given in the contested decision without examining in substance if the grounds for review put forward by the applicant were such as to give rise to plausible, that is to say, substantial, doubts as to the assessment of environmental law by the EU institution or body upon submission of the objection at issue (see, to that effect, judgments of 12 September 2019, *TestBioTech and Others v Commission*, C-82/17 P, EU:C:2019:719, paragraph 69, and of 6 October 2021, *ClientEarth v Commission*, C-458/19 P, EU:C:2021:802, paragraph 60).
- 46 Accordingly, the first plea in law must be upheld and the contested decision must be annulled, and there is no need to examine the second and third pleas.

Costs

- 47 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to bear its own costs and to pay those of the applicant, in accordance with the form of order sought by the applicant.
- 48 Under Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Kingdom of Spain and the French Republic must therefore bear their own costs.
- 49 Under Article 138(3) of the Rules of Procedure, the General Court may order an intervener other than those referred to in paragraphs 1 and 2 thereof to bear its own costs. Blue Marine Foundation, which intervened in support of the form of order sought by the applicant, must bear its own costs, given that it did not request that the Commission be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

- 1. Annuls the decision of the European Commission, notified to Bloom by letter of 30 August 2023, with reference Ares (2023) 5917994, and rejecting as inadmissible Bloom's request for internal review of the Commission's letter objecting to Resolution No 23/02 on the management of fish aggregating devices in the Indian Ocean Tuna Commission area of competence;**
- 2. Orders the Commission to bear its own costs and to pay those incurred by Bloom;**
- 3. Orders the Kingdom of Spain, the French Republic and Blue Marine Foundation to bear their own costs.**

Kowalik-Bańczyk

Buttigieg

Hesse

Dimitrakopoulos

Ricziová

Delivered in open court in Luxembourg on 23 July 2025.

[Signatures]