An Off-Ramp for the Plaumann Paradox

Access to Justice for Associations in the Medel AG Opinion

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On 16 April 2026, Advocate General (AG) Ćapeta delivered an Opinion in the *Medel* case (C-555/24) on the standing of NGOs to bring actions for annulment under conditions that they are directly and individually concerned. Instead of copying the ECtHR's approach in *KlimaSeniorinnen*, she gives an elegant and simple spin to the Plaumann formula. At its core, AG Ćapeta recognises that associations protecting collective interests have a separate identity of their own with a distinct interest. The Opinion gives the Court of Justice an argumentative avenue to finally amend its self-inflicted access to justice paradox.

Medel and the Plaumann paradox

The substance of *Medel* deals with judicial independence in Poland and whether the Council should have approved the Polish Recovery and Resilience Fund in light of several proposed "milestones". The case was brought as an action for annulment by several associations representing judges and advocating for the independence of the judiciary and the rule of law. In light of the Court of Justice of the EU's (CJEU) strict interpretation of the standing provisions, the case was also a standing stress-test, as previously discussed on Verfassungsblog.

To bring an action for annulment under Art. 263(4) TFEU, a non-privileged applicant must demonstrate direct and individual concern. The 1963 ruling in *Plaumann* interpreted this provision very narrowly. The resulting paradox is that the more people are affected by an issue (e.g. the climate crisis), and the more important it is therefore to address a possible illegality, the harder it is to access the court. Consequently, NGOs and individuals seeking to raise public interest arguments have consistently been denied access to the courts. *Carvalho,* known as the *People's Climate Case,* is a recent prominent example. Much has been written on the continuing absurdity of this strict interpretation (see e.g. here for an excellent overview of the *Plaumann* problem and the flawed arguments that have kept it going).

Following the European Court of Human Right's (ECtHR) landmark ruling on climate change in *KlimaSeniorinnen,* where the ECtHR set out a new approach to the standing of associations in the climate context, suggestions regarding the transferability of the ECtHR's approach to the CJEU gained some traction.

After the General Court declared the action in *Medel* inadmissible (T-530/22), *Medel* was the first case to put the standing arguments successfully applied in the *KlimaSeniorinnen* case to the Court of Justice in an appeal lodged in August 2024. This contribution focuses on the AG's approach to the standing of associations in light of *KlimaSeniorinnen.* An analysis of the opinion more broadly can be found in Guillermo Íñiguez's blog who aptly describes the issues in the case as having "all the makings of an EU law classic".

Conceptualising collective and individual interest

AG Ćapeta rejected direct parallels with the standing requirements set out in *KlimaSeniorinnen* (§177). She drew a clear distinction between the ECtHR's role to protect individual rights and the CJEU's judicial review role, as well as their respective access requirements (§§179-180). She further considered that any equivalence in rights protected by the ECHR and the Charter of Fundamental Rights only applies to substantial rights, and not the acceptance of procedures (§181).

However, the impact of *KlimaSeniorinnen* does not end there. Instead, AG Ćapeta considered that "the underlying logic" behind the ECtHR's approach to

standing for associations in the climate context can be taken into consideration when interpreting Art. 263(4) TFEU – even though *Medel* is not a climate case (§182).

Rather than proposing to overthrow *Plaumann* or to radically re-interpret it, AG Ćapeta suggested a narrow interpretative extension focused on the conceptualisation of the identity of associations protecting collective interest. She considered such associations to have a distinct interest, separate from those of its members (§186-187). This seems to build upon an argument the association Sáminuorra sought to raise in *Carvalho*, arguing it should be granted standing on the basis of its "action of a collective defending a collective good" (§91 *Carvalho*). While this argument was not admissible at the time, as it was raised for the first time on appeal, it seems to have sown the seed for the interpretation AG Ćapeta now proposes (§188). This development may also reflect AG Emiliou's reasoning in *Nicoventures* that associations should be granted standing if "the contested measure can have a significant impact on [its core activity], as defined in its statute" (§196).

AG Ćapeta then distinguished two types of associations. First, those that exist to represent the interests of their members where the association's interest corresponds to those of its members – for example associations representing certain commercial actors or a particular profession. As she puts it "those associations [...] would not even be established if it was not for their members" (§189).

Second, associations representing interests that go beyond those of their individual members and are understood as "general societal interests" such as democratic elections, human rights or environmental protection, which "would have a reason to exist even if they had no members" (§190). Put simply, the interests of such associations are bigger than the sum of its parts with this bigger purpose being the entire reason for their existence (§191). This independent identity can easily be gleaned from the statutes and past activities of an association, making it possible to clearly determine what this identity and interest is and to differentiate it from others (§191-192).

According to AG Ćapeta, associations that do not have "their own interests" to defend would still not be able to bypass the lack of standing requirements of their individual members (§193). Consequently, this approach does not derogate from the current Treaty system (§194). Instead, it would recognise the separate interests of associations as such with an identity and related interest separate from the sum of its members.

Ćapeta's proposal for direct and individual concern

Based on these considerations, AG Ćapeta proposed to interpret the first limb of direct concern for association: "whether the challenged act is a direct source of the effects on the collective interests that the association defends." (§207) The second limb remains that the challenged act must not leave any discretion to implement it (§208).

For individual concern of an association, she proposed the following test:

> *"Whether its core interests and activities differentiate it from other associations and from its members in relation to the challenged measure. In that respect, it does not matter that the association at issue is not the only one protecting the collective interests at issue; it only needs to be identifiable through the collective interests that are involved in a case." (§210)*

AG Ćapeta therefore concluded:

> *"If associations are to have standing in their own right, it must be possible for them to be individualised on the basis of their individual interests, which are in fact collective interests, and which are affected by objectively determined situations." (§211).*

Cautious optimism

AG Ćapeta's Opinion gives reason for cautious optimism that access to justice for NGOs could be within reach. Her approach and reasoning appear to make it easier for the Court to take the arguably fairly small step that would enable access to justice for associations.

First, unlike previous AG opinions dealing with the Plaumann problem, she did not precede her proposal with an extensive critique of the current approach. She briefly referred to the paradox highlighted in AG Jacob's Opinion in *UPA* and that allowing associations access to justice could make up for this "illogical consequence" (§185). Yet, she did not critique *Plaumann* as such which seems helpful in presenting this line of arguments as an approach consistent with it.

Second, she did not frame the issue as a pure CJEU-only problem but considered that in fact the ECtHR adopted a similarly narrow approach for individual applicants in *KlimaSeniorinnen* (comparable to Art. 263(4) TFEU) (§183). By framing the standing of individual applicants as a common problem, it seems easier for the CJEU to then draw inspiration from the ECtHR and build on its approach.

Third, while previous proposals could be seen as more focused on tinkering with the test as such, her approach focused on the conceptualization of individual interests. By focusing on the nature of the interest, she did not need to propose a genuine change to the standing test or even a big extension to the current interpretation.

Fourth, her approach of considering associations acting for the collective interest, bigger than the sum of its parts, and therefore with a purpose and specific interest of their own, seems simple and easy to convey, as it goes to the root of the raison d'être of civil society organisations.

Fifth, her approach stays clear of any fears (whether well-founded or not) that a re-interpretation of the CJEU's standing rules could open the "floodgates" for a large volume of public interest cases brought by individual applicants. Her narrow focus on associations protecting collective interests would thus enable the broadening of access to justice while circumventing *actio popularis* fears (§169).

Lastly, it may also help that this is a rule of law case with judges themselves at the heart of it. The AG's recognition that there is a general interest in associations bringing judicial review cases to ensure the legality of the EU legal order (§201), and that this is also one of the modalities for realising participatory democracy at EU level (§164), may just hit home a bit differently than if this was, e.g., a climate case.

Unlike AG Emiliou's suggestions in *Nicoventures*, the Court cannot easily dodge the issue of the standing of associations in this case. While AG Ćapeta concluded that the appellants have standing on behalf of their members on two milestones (referred to as F2G and F3G, in line with the annex of the challenged decision; §218-225), she took a different approach for milestone F1G, concerning the strengthening of the independence and impartiality of courts in Poland. In that context, she found that the appellants only have standing in their own name, based on the collective interest that is the core identity and activity of the appellants (§228-234). Therefore, to deal with the admissibility of F1G, it seems that the Court has to engage with AG Ćapeta's interpretation.

The proposal of AG Ćapeta therefore gives the Court an excellent opportunity to finally address the illogical consequences of *Plaumann*, on which the Court has insisted for way too long, whilst saving face and doing so without big upheaval. The Court should make use of the elegant off-ramp provided rather than digging its heels in even more deeply.

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