

Case C-392/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

12 August 2020

Referring court:

Sąd Rejonowy dla Warszawy-Mokotowa w Warszawie (Poland)

Date of the decision to refer:

30 June 2020

Applicant in enforcement clause proceedings:

European Chemicals Agency (ECHA)

Debtor bringing an action against the order of the court registrar:

Miejskie Przedsiębiorstwo Energetyki Ciepłej sp. z o.o.

Subject matter of the case in the main proceedings

The main proceedings concern the appending of an enforcement clause to an ECHA decision to charge a Polish company an amount equivalent to the balance of the full fee charged to large entities pursuant to Article 13(4) of Regulation No 340/2008, on the ground that the company was considered ineligible for a fee reduction to which small enterprises are entitled.

In essence, the dispute between the parties concerns the question whether the ECHA decision comes within the scope of Article 299 TFEU and therefore constitutes an enforceable order to which Polish civil-procedure rules should be applied in the present case. The dispute between the parties also concerns the question of how the verification of the authenticity of the enforceable order is to be understood within the meaning of that provision, and in particular whether the court appending the enforcement clause examines solely the ‘authenticity’ (that is to say, whether the enforceable order was issued by one of the EU institutions referred to in Article 299 TFEU and whether it imposes a pecuniary obligation on persons other than States) or if it also examines whether the motion for the clause

to be appended was lodged before the expiry of the period laid down by EU law or whether the claim to which the enforceable order relates is time-barred.

Subject matter and legal basis of the request for a preliminary ruling

In the context of the request made under Article 267 TFEU, the referring court seeks to establish the correct interpretation of Article 299 TFEU. Firstly, the referring court wishes to determine the material scope of that provision in order to be able to determine whether an ECHA decision constitutes an enforceable order within the meaning of Article 299 TFEU. Secondly, the referring court wishes to determine the scope of jurisdiction of the court ruling on the enforcement clause in order to establish whether the appending of that clause should be preceded, in addition to verifying the authenticity of the enforceable order, by a review of whether or not the time limit for lodging the relevant motion has passed and whether or not the claim is time-barred.

Questions referred

1. Must Article 299 TFEU be interpreted as being applicable solely to decisions taken by the Council, the Commission or the European Central Bank, or is it also applicable to decisions taken by the European Chemicals Agency relating to the imposition of an additional administrative charge?
2. Must the provision of Article 299 TFEU that an enforcement clause is to be appended without any formality other than verification of the authenticity of the decision be interpreted as meaning that the national court, when ruling on the enforcement clause and applying national civil-procedure rules, is not entitled to examine whether or not the claim to which the enforceable order relates is time-barred?

Applicable provisions of EU law

TFEU: Articles 288, 291, 299

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1): Articles 75, 76, 83, 91, 94, 100 ('Regulation No 1907/2006')

Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC)

No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6): Article 13 ('Regulation No 340/2008')

Applicable provisions of national law

Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Law of 17 November 1964 – Code of Civil Procedure) (*Journal of Laws* [Dz. U.] of 2019, item 1460): Articles 776, 777, 782¹ ('the CCP')

Brief outline of the facts and procedure in the main proceedings

- 1 On 2 October 2012, the Executive Director of the European Chemicals Agency (the ECHA), which has its seat in Helsinki, issued Decision No SME(2012)3472. In that decision he indicated that, at the time of submission of its registration, Miejskie Przedsiębiorstwo Energetyki Ciepłej sp. z o.o., with its seat in Bochnia, ('the debtor') was regarded as a large enterprise pursuant to Commission Recommendation 2003/361/EC and was therefore ineligible for a reduction in fees to which small enterprises are entitled. Consequently, he charged the company an amount equivalent to the balance of the correct level of the full fee charged to large entities pursuant to Regulation No 340/2008 and an additional administrative charge of EUR 20 700. The company received the above decision on 8 October 2012. It did not bring an action contesting that decision, and thus the decision became final and enforceable.
- 2 On 2 January 2019 the ECHA, as the creditor, lodged a motion with the Sąd Rejonowy dla Warszawy-Mokotowa w Warszawie (District Court for Warsaw-Mokotów) ('the referring court') for an enforcement clause to be appended to the aforementioned decision, with a view to recovering from the debtor the balance of the full fee and the administrative charge imposed on it.
- 3 By order of 24 July 2019, the registrar of the referring court, following verification of authenticity, ruled as the creditor had requested in its motion.
- 4 On 10 January 2020, the debtor brought an action against that order, challenging it in its entirety and requesting that it be amended by dismissing the creditor's motion or, alternatively, by refusing to append an enforcement clause.
- 5 The referring court has sought a preliminary ruling.

Principal arguments of the parties to the main proceedings

- 6 When lodging a motion for the enforcement clause to be appended, the ECHA cited Articles 288, 291 and 299 TFEU, claiming that the decision in question constitutes an enforceable order to which, pursuant to the civil procedure in force

in Poland, an enforcement clause may be appended and enforcement proceedings subsequently initiated in accordance with the provisions of the CCP.

- 7 In its action against the order appending the enforcement clause, the debtor submits, firstly, that the interpretation of Articles 291 and 299 TFEU underlying that order was incorrect, since it was overly broad in assuming that the ECHA decision constitutes an enforceable order within the meaning of those provisions. Secondly, in its plea of infringement of the Financial Regulations,¹ the debtor claims that, when appending an enforcement clause, the national authority is entitled not only to examine the authenticity of the enforceable order but also to examine whether the creditor lodged a motion for the enforcement clause to be appended before the expiry of the period laid down in Community legislation for lodging such a motion.

Brief summary of the basis for the request

- 8 Firstly, the referring court has doubts as to whether **the ECHA's decision can be considered an enforceable order within the meaning of Article 299 TFEU** to which an enforcement clause can be appended in accordance with the provisions of the Polish CCP. This is the subject of the first question referred. Under EU law, it can be argued, on the one hand, that the ECHA is an [EU] body, has legal personality, implements Regulation No 1907/2006 and, within the limits of the powers delegated to it, adopts acts in certain areas which are legally binding on natural and legal persons and are subject to judicial review by the Court of Justice of the European Union (Articles 263, 265, 267 and 277 TFEU and Article 94(1), in conjunction with Article 20(5), of Regulation No 1907/2006), and, if its decision concerns a private party (as opposed to a State), such a decision may be declared enforceable within the meaning of Article 299 TFEU. However, this is potentially an example of a broad functional interpretation. On the other hand, from a linguistic interpretation of Article 299 TFEU it follows that that provision refers to specific bodies whose acts constitute enforceable orders, and the ECHA is **not** mentioned among these. With respect to certain EU institutions other than those listed in Article 299 TFEU, the EU legislature uses a legislative technique whereby it explicitly indicates that decisions taken by these institutions are enforceable within the meaning of Article 299 TFEU; examples are Article 280 TFEU, Article 2(b), in conjunction with the first sentence of Article 79(2), of Regulation No 966/2012 as well as Article 110(1) and (2) of Regulation (EU)

¹ Article 58b of Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, Article 1(3), in conjunction with Article 73a, of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, and Article 66 of Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council.

2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark. In view of these two mutually exclusive interpretations, the referring court has doubts as to whether an ECHA decision can be considered to come within the material scope of Article 299 TFEU. From the point of view of the Polish legal order (Article 777(1)(3) of the CCP), this would be permissible and would make it possible to append an enforcement clause to an ECHA decision, which is a prerequisite for initiating enforcement proceedings.

- 9 In the event that the Court of Justice should rule that an ECHA decision does constitute an enforceable order within the meaning of Article 299 TFEU, the referring court wishes, secondly, **to establish the scope of its jurisdiction in enforcement clause proceedings**, that is to say, whether the verification of the authenticity of the enforceable order also includes an assessment as to whether or not the claim established by the decision in question is time-barred. Article 299 TFEU provides that the national court is, on the basis of national law, merely to verify the **authenticity** of the enforcement order. This is the subject of the [second] question referred. In the Polish legal system, when examining whether an enforcement clause can be appended, a court or registrar establishes solely whether the order in question satisfies the formal conditions applicable to an enforceable order (Article 777 of the CCP). As part of last year's amendment of the CCP, Article 782¹ was added, according to which a court (registrar) is **additionally** obliged to assess whether the circumstances of the case and the contents of the enforceable order indicate that the claim covered by the enforceable order is time-barred. Where a claim is found to be time-barred, an enforcement clause must not be appended unless the creditor produces a document showing that the limitation period has been interrupted. Therefore, having regard to the scope of the review applicable to enforcement clause proceedings under Polish law, the national court has doubts as to the meaning of the term 'authenticity' featuring in Article 299 TFEU. In the view of the national court, this term is vague and requires clarification with respect to the scope of the review to be performed by the court.