Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

5 September 2024*

(Reference for a preliminary ruling – Article 299 TFEU – Regulation (EC) No 1907/2006 – Registration, evaluation, authorisation and restriction of chemicals (REACH) – Article 94(1) – Regulation (EC) No 340/2008 – Second subparagraph of Article 11(3) and third subparagraph of Article 13(4) – Fees due to the European Chemicals Agency (ECHA) – Fee for registration of a substance – Reduction granted to small and medium-sized enterprises (SMEs) – Verification by ECHA of the declaration relating to the size of the enterprise in question – Failure to provide certain information within the prescribed period – ECHA decision demanding payment of the full fee in question and imposing an administrative charge – Enforcement – Possibility for ECHA to bring an action before a national court in order to obtain payment of that administrative charge)

In Joined Cases C-256/23 and C-290/23,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Bayerisches Verwaltungsgericht Regensburg (Bavarian Administrative Court, Regensburg, Germany) (C-256/23) and the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Higher Administrative Court of the Land of Saxony-Anhalt, Germany) (C-290/23), made by decisions of 11 April 2023 and 6 April 2023, received at the Court on 20 April 2023 and 8 May 2023, respectively, in the proceedings

European Chemicals Agency (ECHA)

v

Hallertauer Hopfenveredelungsges. m.b.H.,

intervening party:

Regierung von Niederbayern (C-256/23),

and

European Chemicals Agency (ECHA)

v

B. GmbH (C-290/23),

* Language of the case: German.

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, F. Biltgen, N. Wahl, J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: T. Ćapeta,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2024,

after considering the observations submitted on behalf of:

– the European Chemicals Agency (ECHA), by F. Becker and M. Heikkilä, acting as Agents, and by H. Tammert, Rechtsanwalt,

– Hallertauer Hopfenveredelungsges. m.b.H., by K. Lüdtke, Rechtsanwältin,

– the Greek Government, by V. Baroutas and M. Tassopoulou, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by F. Erlbacher, J. Flett, P. Ortega Sánchez de Lerín and S. Romoli, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2024,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 299 TFEU, Article 94(1) of 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, and corrigendum OJ 2007 L 136, p. 3), as amended by Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 (OJ 2008 L 353, p. 1) ('the REACH Regulation'), and the second subparagraph of Article 11(3) and the third subparagraph of Article 13(4) of Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the ECHA pursuant to Regulation No 1907/2006 (OJ 2008 L 107, p. 6).

2 The requests have been made in proceedings between, in Case C-256/23, the European Chemicals Agency (ECHA) and Hallertauer Hopfenveredelungsges. m.b.H. ('Hallertauer') and, in Case C-290/23, ECHA and B. GmbH, concerning the recovery by ECHA of an administrative fee owed by those companies following the submission to that EU agency of an application for registration of a chemical substance under the REACH Regulation, since it was found, in a decision taken by

that EU agency, that those companies were not entitled to the reduced fee provided for in respect of small and medium-sized enterprises (SMEs) that they had claimed when submitting their application.

Legal context

European Union law

The REACH Regulation

3 In accordance with Article 6(1) of the REACH Regulation, manufacturers and importers producing or importing chemical substances in quantities of one tonne or more per year must submit to ECHA an application for registration for those substances. Article 6(4) of that regulation provides that the fee required in accordance with Title IX thereof must be paid when the application for registration is submitted.

4 Under Article 20(2) and (5) of that regulation:

'2. [ECHA] shall undertake a completeness check of each registration in order to ascertain that all the elements … as well as the registration fee referred to in Article 6(4) … have been provided. The completeness check shall not include an assessment of the quality or the adequacy of any data or justifications submitted.

[ECHA] shall undertake the completeness check within three weeks of the submission date …

If a registration is incomplete, [ECHA] shall inform the registrant, before expiry of the three-week … period referred to in the second subparagraph, as to what further information is required in order for the registration to be complete, while setting a reasonable deadline for this. The registrant shall complete his registration and submit it to [ECHA] within the deadline set. [ECHA] shall confirm the submission date of the further information to the registrant. [ECHA] shall perform a further completeness check, considering the further information submitted.

[ECHA] shall reject the registration if the registrant fails to complete his registration within the deadline set. The registration fee shall not be reimbursed in such cases.

…

5. An appeal may be brought, in accordance with Articles 91, 92 and 93, against [ECHA] decisions under paragraph 2 of this Article.'

5 Article 74 of that regulation, entitled 'Fees and charges', in Title IX thereof, provides:

'1. The fees that are required according to Article 6(4), … shall be specified in a [European] Commission Regulation adopted in accordance with the procedure referred to in Article 133(3) by 1 June 2008.

…

3. The structure and amount of the fees referred to in paragraph 1 shall take account of the work required by this Regulation to be carried out by [ECHA] and the competent authority and shall be fixed at such a level as to ensure that the revenue derived from them when combined with other sources of [ECHA]'s revenue pursuant to Article 96(1) is sufficient to cover the cost of the services delivered. …

…

In all cases, a reduced fee shall be set for SMEs.

…

4. The Regulation referred to in paragraph 1 shall specify the circumstances under which a proportion of the fees will be transferred to the relevant Member State competent authority.

5. [ECHA] may collect charges for other services it provides.'

6 Articles 91 to 93 of the REACH Regulation concern actions brought against ECHA decisions before the Board of Appeal of ECHA, such as decisions refusing registration referred to in Article 20(2) of that regulation.

7 Article 94 of the REACH Regulation, entitled 'Actions before the [General Court] and the Court of Justice', provides, in paragraph 1 thereof:

'An action may be brought before the [General Court] or the Court of Justice, in accordance with Article [263 TFEU], contesting a decision taken by the Board of Appeal or, in cases where no right of appeal lies before the Board, by [ECHA].'

Regulation No 340/2008

8 Article 3 of Regulation No 340/2008, entitled 'Fees for registrations submitted under Articles 6, 7 or 11 of [the REACH Regulation]', provides:

'1. [ECHA] shall levy a fee, as provided for in paragraphs 2, 3 and 4 of this Article, for any registration of a substance under Article 6, 7 or 11 of [the REACH Regulation].

…

4. Where the registrant is an SME, [ECHA] shall levy a reduced fee …

…

6. Where the payment is not made before expiry of the deadline provided for in paragraph 5, [ECHA] shall set a second deadline for the payment. Where the payment is not made before the expiry of the second deadline, the registration shall be rejected.

…'

9 Article 11 of that regulation, headed ‘Other charges’, provides:

‘1. A charge may be levied for administrative and technical services provided by [ECHA] at the request of a party which are not covered by another fee or charge provided for in this Regulation. The level of the charge shall take into account the workload involved.

…

2. The charges for administrative services shall be paid within 30 calendar days from the date on which the invoice is notified by [ECHA].

3. Where the payment is not made before expiry of the deadline provided for in paragraph 2, [ECHA] shall set a second deadline for the payment.

Where the payment is not made before expiry of the second deadline, [ECHA] shall reject the request.

…

5. A classification of the services and charges shall be drawn up by the Management Board of [ECHA] and adopted after a favourable opinion by the Commission.’

10 Under Article 13 of that regulation, entitled ‘Reductions and fee waiver’:

‘1. A natural or legal person that claims to be entitled to a reduced fee or charge under Articles 3 to 10 shall inform [ECHA] thereof at the time of the submission of the registration, update of registration, request, notification, application, review report or appeal giving rise to the payment of the fee.

…

3. [ECHA] may request, at any time, evidence that the conditions for a reduction of fees or charges or for a fee waiver apply.

4. Where a natural or legal person that claims to be entitled to a reduction or a fee waiver cannot demonstrate that it is entitled to such a reduction or waiver, [ECHA] shall levy the full fee or charge as well as an administrative charge.

Where a natural or legal person that has claimed to be entitled to a reduction has already paid a reduced fee or charge, but cannot demonstrate that it is entitled to such a reduction, [ECHA] shall levy the balance of the full fee or charge as well as an administrative charge.

Paragraphs 2, 3 and 5 of Article 11 shall apply *mutatis mutandis*.’

German law

11 Under Paragraph 40(1) of the Verwaltungsgerichtsordnung (Code of Administrative Court Procedure) of 21 January 1960 (BGBl. 1960 I, p. 17), in the version published on 19 March 1991 (BGBl. 1991 I, p. 686), as amended by Paragraph 1 of the Gesetz zur Beschleunigung von

verwaltungsgerichtlichen Verfahren im Infrastrukturbereich (Law on the acceleration of administrative procedures in the field of infrastructure) of 14 March 2023 (BGBl. 2023 I, no 71) ('the VwGO'):

'Recourse to the administrative courts shall be available in all public-law disputes of a non-constitutional nature in so far as the disputes are not explicitly allocated to another court by a federal statute; public-law disputes in an area falling within the competence of the Länder may also be assigned to another court by a law of the Land.'

12 Paragraph 167(1) of the VwGO provides:

'Unless the present Law provides otherwise, Book Eight of the Zivilprozeßordnung [(German Code of Civil Procedure; "the ZPO")] shall apply *mutatis mutandis* to enforcement. The court having ruled at first instance is the court responsible for enforcement.'

13 Paragraph 753 of the ZPO, in the version published on 5 December 2005 (BGBl. 2005 I, p. 3202), as amended by Paragraph 19 of the Gesetz zur Umsetzung der Umwandlungsrichtlinie und zur Änderung weiterer Gesetze (Law on the transposition of the directive on the transformation of undertakings and amending other laws) of 22 February 2023 (BGBl. 2023 I, No 51), provides in paragraph 1:

'Unless the compulsory enforcement is assigned to the courts, it will be implemented by bailiffs who are to effect it on behalf of the creditor.'

14 According to Paragraph 764 of the ZPO:

'1. Where it is for the courts to order enforcement measures or to assist with them, that responsibility falls to the relevant Amtsgericht (Local Court, Germany) as the court responsible for enforcement.

2. Unless another Amstgericht (Local Court) is designated by law, the court responsible for enforcement shall be the Amstgericht (Local Court) for the district in which the enforcement proceedings are to be performed or have been performed.

3. The decisions of the enforcement court are issued by a court order.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-256/23

15 On 16 November 2010, Hallertauer filed with the ECHA an application for registration of a chemical substance, claiming that it was an SME and, more specifically, a 'micro enterprise', within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36), in order to benefit from a reduced registration fee.

16 In 2013, ECHA reviewed the information provided by Hallertauer concerning the size of the enterprise. In that connection, ECHA informed Hallertauer by letter of 31 May 2013 that, although SMEs were eligible for a reduction in fees and charges, it was necessary to submit, to that end, evidence of the size of the undertaking concerned, and if such evidence was not provided within the prescribed period any reduction would be excluded.

17 On 20 November 2013, ECHA adopted Decision SME (2013) 4439 ('the ECHA decision at issue in the main proceedings in Case C-256/23') and notified it to Hallertauer. In that decision, ECHA found that that company could not claim a reduction in fees and charges because it had not provided evidence of its status as a 'micro enterprise' and that it was therefore appropriate to charge that company administrative charges in the amount of EUR 9 950. That decision also contained information on the legal remedies available, which explained that the company was entitled to bring an action before the General Court within two months of notification of the decision in order to contest that decision.

18 By letter of 22 November 2013, ECHA sent Hallertauer the invoice for those administrative charges, payment of which was due on 22 December 2013.

19 By letter of 22 December 2013, ECHA issued Hallertauer a reminder, in which the due date for that invoice was then specified as 20 February 2014.

20 Hallertauer neither paid those administrative charges nor brought an action before the General Court for annulment of the ECHA decision at issue in the main proceedings in Case C-256/23 within the prescribed period.

21 On 15 May 2019, ECHA brought an action before the Bayerisches Verwaltungsgericht Regensburg (Bavarian Administrative Court, Regensburg, Germany), which is the referring court in Case C-256/23, seeking an order that Hallertauer pay the sum of EUR 9 950, as set out in the ECHA decision at issue in the main proceedings in Case C-256/23.

22 That court asks, in the first place, whether the courts of the Member States have jurisdiction to hear an action brought by an EU agency, such as ECHA, seeking enforcement of a pecuniary obligation imposed by a decision that can no longer be the subject of an action before the EU judicature, such as the ECHA decision at issue in the main proceedings in Case C-256/23.

23 That court notes that, under German law, a court is entitled to rule on the merits of an action only if it has, inter alia, determined that the action comes within the competence of the legal system of which that court forms part. As regards the jurisdiction of the legal system of which the referring court forms part, the question arises as to whether the action brought in the main proceedings in Case C-256/23 concerns a 'public-law dispute of a non-constitutional nature' within the meaning of the first sentence of Paragraph 40(1) of the VwGO, which is to be heard by the administrative courts.

24 However, the jurisdiction of the German administrative courts over enforcement proceedings such as those at issue in the main proceedings in Case C-256/23, which do not seek to obtain a decision on the merits of a claim, is governed solely by Paragraph 167 of the VwGO, which, as *lex specialis*, prevails over the general rule laid down in the first sentence of Paragraph 40(1) of the VwGO. Yet Paragraph 167 presupposes that the enforcement order is the result of court proceedings, a condition which is not satisfied in the dispute in the main proceedings in Case C-256/23.

25 The question thus arises as to whether the action brought in that dispute comes within the specific jurisdiction of the EU judicature provided for in Article 94(1) of the REACH Regulation, with the result that it falls outside the jurisdiction of the courts of the Member States.

26 The referring court somewhat agrees with the argument put forward by the defendant in the main proceedings that that provision must be interpreted as meaning that the EU judicature has jurisdiction to hear an action seeking the enforcement of an act of EU law.

27 First of all, in its view, a distinction between the setting of administrative fees or charges, on the one hand, and their collection, on the other, is artificial and unlikely, given that that provision seeks to make the administrative action of the applicant in the main proceedings, as an EU body, subject to full review.

28 Next, it is of the view that a situation such as that in the main proceedings in Case C-256/23 consists of a direct implementation of EU law by an EU agency in the form of the adoption of a decision imposing pecuniary obligations. The German courts have jurisdiction only in the event of indirect implementation of EU law involving an act of public authority on the part of the national authorities concerned. It is therefore appropriate that public-law decisions taken by an EU agency should be made subject to full review by the EU Courts.

29 Lastly, it considers that, in order to ensure uniform application of the law within the European Union, it is not only the suspension of enforcement of an EU act as provided for in the fourth paragraph of Article 299 TFEU, but also, with the exception of the second sentence of the fourth paragraph of Article 299 TFEU, the entire enforcement procedure that should be reviewable by the EU judicature.

30 Should the Court hold that Article 94(1) of the REACH Regulation does not apply to a recovery action such as that brought in the main proceedings, the referring court asks, in the second place, whether the ECHA decision at issue in the main proceedings in Case C-256/23 is enforceable within the meaning of the first paragraph of Article 299 TFEU.

31 In that regard, the referring court considers that, in view of its position in the scheme of the FEU Treaty and its subject matter and purpose, it cannot be ruled out that the first paragraph of Article 299 TFEU must be interpreted broadly, so as also to cover acts entailing pecuniary obligations imposed by EU agencies such as ECHA.

32 Such an interpretation is also supported by the fact that neither the REACH Regulation nor Regulation No 340/2008 contains specific rules on enforcement. However, since ECHA has the power to levy administrative charges and fees, it should have the necessary means to enforce decisions imposing those charges and fees.

33 In the third place, if the Court were to hold that the ECHA decision at issue in the main proceedings in Case C-256/23 comes within the scope of Article 299 TFEU, as defined in the first paragraph of that article, the referring court wishes to ascertain whether the reference to the rules of civil procedure in force in the State in the territory of which enforcement is carried out, made in the second paragraph of Article 299 TFEU, is a ‘comprehensive reference’ that covers the rules on jurisdiction of the competent enforcement body.

34 In those circumstances, the Bayerisches Verwaltungsgericht Regensburg (Bavarian Administrative Court, Regensburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 94(1) of [the REACH Regulation], according to which an action may be brought before the [General Court] against a decision of [ECHA], to be interpreted as meaning that the enforceability of decisions of [ECHA] may also be the subject of an action?

(2) If the first question is … answered in the negative: Is the first paragraph of Article 299 TFEU to be interpreted as meaning that it applies not only to acts adopted by the Council [of the European Union], the Commission or the European Central Bank [(ECB)], but also to decisions of [ECHA] imposing an administrative charge?

(3) If the second question is … answered in the affirmative: Is the second paragraph of Article 299 TFEU to be interpreted as meaning that the reference to the Member State's rules of civil procedure encompasses not only the rules of procedure but also the rules governing jurisdiction?'

Case C-290/23

35 In 2010, B. submitted a registration dossier under the REACH Regulation, stating that it was a medium-sized enterprise within the meaning of Recommendation 2003/361.

36 Since that company did not provide the necessary evidence to that effect within the prescribed period, on 9 August 2016 ECHA adopted Decision SME (2016) 3729 ('the ECHA decision at issue in the main proceedings in Case C-290/23').

37 In that decision, ECHA found that B. was not eligible for the reduced fee for, inter alia, medium-sized enterprises and that it was therefore liable, under Article 13(4) of Regulation No 340/2008, to pay the difference between the fee already paid and that payable by large enterprises and, accordingly, an administrative charge in the amount of EUR 17 437. That decision was accompanied by information on the available legal remedies, which stated that, in accordance with Article 94(1) of the REACH Regulation read in conjunction with Article 263 TFEU, an action could be brought before the General Court within two months of receipt of that decision in order to have the lawfulness of that decision reviewed.

38 B. neither brought an action before the General Court against the ECHA decision at issue in the main proceedings in Case C-290/23 within the prescribed period, nor paid the sum claimed in that decision, despite several reminders being sent to it by ECHA.

39 ECHA brought an action before the Verwaltungsgericht Halle (Administrative Court, Halle, Germany), requesting that B. be ordered to pay it the sum of EUR 17 437 set out in the ECHA decision at issue in the main proceedings in Case C-290/23.

40 That court dismissed that action as inadmissible on the ground, in essence, that, contrary to ECHA's claims, there was no administrative remedy available under Paragraph 40 of the VwGO.

41 Hearing the appeal brought against the judgment of the Verwaltungsgericht Halle (Administrative Court, Halle), the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Higher Administrative Court of the Land of Saxony-Anhalt, Germany), which is the referring court in Case C-290/23, takes the view, in the first place, that, contrary to what is stated in that judgment, the action cannot be dismissed as inadmissible on the ground that the administrative remedy provided for in Paragraph 40(1) of the VwGO is not available in the absence of a legal act emanating from a German public authority.

42 In its view, since the EU Courts do not have jurisdiction to hear actions concerning the enforcement of a public-law debt owed to an EU body in accordance with Article 256 et seq. TFEU, it is the national courts which, under Article 274 TFEU, have jurisdiction to examine those actions.

43 According to that court, Article 94(1) of the REACH Regulation does not confer jurisdiction on the EU judicature to hear such actions since, according to its very wording, that provision applies only if the EU judicature has jurisdiction in accordance with Article 263 TFEU. That is not the case in these actions, since they concern the performance of pecuniary obligations and not the annulment of an EU act.

44 In the second place, the question arises as to whether the ECHA decision at issue in the main proceedings in Case C-290/23, imposing an administrative charge in accordance with Article 13(4) of Regulation No 340/2008, is enforceable. That would be the case if that decision came within the scope of Article 299 TFEU as defined in the first paragraph thereof.

45 The referring court considers, in that regard, that there are grounds for doubting the applicability of Article 299 TFEU to a decision such as the ECHA decision at issue in the main proceedings in Case C-290/23.

46 In the third and last place, if it should be concluded that the ECHA decision at issue in the main proceedings in Case C-290/23 does not come within the scope of Article 299 TFEU, the referring court asks whether the third subparagraph of Article 13(4) read in conjunction with the second subparagraph of Article 11(3) of Regulation No 340/2008 must be interpreted as meaning that an action brought by ECHA for enforcement of an obligation to pay an administrative charge must be ruled out.

47 According to that court, those provisions of Regulation No 340/2008, read together, could be interpreted as meaning that, in the event of failure to pay administrative fees or charges before the expiry of the second time limit set by ECHA, the only consequence provided for by that regulation is the rejection of the application for registration of the chemical substance concerned and that, therefore, that legislature intended to exclude actions for enforcement of decisions imposing an administrative charge before the national courts.

48 In those circumstances, the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Higher Administrative Court of the Land of Saxony-Anhalt), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the … first paragraph of Article 299 [TFEU] be interpreted as applying only to decisions taken by the Council, the Commission or the [ECB], or does it also apply to decisions of [ECHA] imposing an administrative charge under Article 13(4) of [Regulation No 340/2008] pursuant to [the REACH Regulation]?

(2) In the event that the decision of [ECHA] on the imposition of such an administrative charge is not enforceable [within the meaning of the first paragraph of Article 299 TFEU]:

Must the third subparagraph of Article 13(4) in conjunction with the second subparagraph of Article 11(3) of [Regulation No 340/2008] be interpreted as meaning that an action for enforcement of payment of the administrative charge should be ruled out?'

Consideration of the questions referred

The first question in Case C-256/23

49 By its first question in Case C-256/23, which it is appropriate to examine first, the referring court in that case asks, in essence, whether Article 94(1) of the REACH Regulation must be interpreted as meaning that ECHA may bring an action before the EU judicature seeking enforcement of a pecuniary obligation imposed on a person in a decision taken by that agency.

50 Since, under Articles 91 to 93 of the REACH Regulation, there is no right of appeal to the Board of Appeal of ECHA as regards challenges to ECHA decisions setting out pecuniary obligations in relation to the registration of a chemical substance, that question requires an examination of whether an action for enforcement of a pecuniary obligation, such as that at issue in the main proceedings in Case C-256/23, constitutes a challenge to a 'decision taken by [ECHA]', within the meaning of Article 94(1) of that regulation, which may be brought before the EU judicature in accordance with Article 263 TFEU.

51 In that regard, it must be stated at the outset that Article 94(1) of the REACH Regulation, in so far as it refers expressly to the jurisdiction conferred on the EU judicature by Article 263 TFEU, is declaratory in nature and cannot extend that jurisdiction.

52 Against that background, it must be borne in mind that an action for annulment for the purposes of Article 263 TFEU is generally available against all measures adopted by the EU institutions, whatever their nature or form, which are intended to have binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in the legal position of that applicant (judgment of 16 July 2020, *ADR Center* v *Commission*, C-584/17 P, EU:C:2020:576, paragraph 62 and the case-law cited).

53 The jurisdiction provided for in Article 263 TFEU covers, inter alia, review by the EU judicature of the 'legality' of 'acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties'.

54 In particular, a natural or legal person may institute proceedings under Article 263 TFEU for annulment of an ECHA decision imposing a pecuniary obligation on that person in connection with its application for registration of a chemical substance under the REACH Regulation, since such a decision constitutes an act intended to produce legal effects vis-à-vis third parties addressed to such a person.

55 In the present case, it is common ground that, in the ECHA decisions at issue in the main proceedings, the companies concerned were expressly notified of their right to bring an action before the General Court against the decision addressed to them, but that they did not exercise that right of action within the two-month period laid down in the sixth paragraph of Article 263 TFEU.

56 In addition, it is true that the fifth paragraph of Article 263 TFEU allows the EU legislature to lay down in acts setting up bodies, offices and agencies of the European Union 'specific conditions and arrangements' concerning actions brought by natural or legal persons against acts of those bodies, offices or agencies intended to produce legal effects in relation to them.

57 However, first, Case C-256/23 concerns an action brought by an EU agency against a legal person and, second, in any event, the EU legislature cannot on that basis extend the jurisdiction provided for in Article 263 TFEU to include the examination of actions seeking the enforcement of pecuniary obligations imposed by such acts of bodies, offices or agencies, since, in so doing, the EU legislature would not be laying down 'specific conditions and detailed rules' concerning the actions referred to in that provision, but would be creating a new remedy not provided for in the FEU Treaty.

58 If the EU judicature were to consider that it had jurisdiction to hear and determine actions brought by EU bodies, offices or agencies for the enforcement of pecuniary obligations, it would risk extending its jurisdiction beyond the limits laid down in Article 274 TFEU, which confers on national courts or tribunals ordinary jurisdiction over disputes to which the European Union is a party (see, by analogy, judgment of 16 July 2020, *ADR Center* v *Commission*, C-584/17 P, EU:C:2020:576, paragraph 64 and the case-law cited).

59 Similarly, the EU legislature cannot, by the adoption of secondary legislation, create a remedy not provided for by the FEU Treaty, since that Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Courts of the European Union (judgment of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 40).

60 Consequently, an extension of the jurisdiction provided for in Article 263 TFEU to include the examination of actions seeking the enforcement of pecuniary obligations would be incompatible with the fundamental characteristic of the action referred to in that provision, namely that that action constitutes an action for annulment seeking to challenge the legality of the act concerned, and would therefore infringe primary EU law.

61 In those circumstances, since the EU judicature does not have jurisdiction under Article 263 TFEU to hear an action brought by ECHA seeking to recover the costs associated with the registration of a chemical substance, and no other provision of EU primary law confers such jurisdiction on the EU judicature, it follows from Article 274 TFEU that such an action is entrusted to the national courts or tribunals, which have ordinary jurisdiction over disputes to which the European Union is a party (see, by analogy, judgment of 16 July 2020, *ADR Center* v *Commission*, C-584/17 P, EU:C:2020:576, paragraph 64 and the case-law cited).

62 The opposite view, put forward by Hallertauer before the referring court, cannot be accepted.

63 Irrespective of whether, from a practical point of view, it would be appropriate, for reasons of effectiveness, for the EU judicature to have jurisdiction not only in respect of the legality of ECHA acts but also in respect of the enforcement of the pecuniary obligations imposed by those acts, it is apparent from paragraph 59 of the present judgment that that is clearly not the case within the system of legal remedies and procedures currently laid down in the FEU Treaty.

64 Such jurisdiction is not, moreover, essential in order to ensure the uniform application of EU law, since an action for annulment before the General Court is possible as regards the legality of the acts concerned and questions of interpretation of EU law which may be brought before the national courts or tribunals in an action for the enforcement of those acts may and, in some circumstances, must be submitted to the Court of Justice under Article 267 TFEU.

65 Lastly, the fact that, in the present case, there is a situation in which EU law is directly implemented by an EU agency in the form of the imposition of a pecuniary obligation is irrelevant to the jurisdiction of the national courts, having regard to the system of remedies and procedures as currently provided for in the FEU Treaty, in particular in Article 274 thereof.

66 In the light of all of the foregoing, the answer to the first question in Case C-256/23 is that Article 94(1) of the REACH Regulation must be interpreted as meaning that ECHA may not bring an action before the EU judicature seeking enforcement of a pecuniary obligation imposed on a person in a decision taken by that agency.

The second question in Case C-256/23 and the first question in Case C-290/23

67 By the second question in Case C-256/23 and the first question in Case C-290/23, which it is appropriate to examine together and in the second place, the referring courts in those cases ask, in essence, whether the first paragraph of Article 299 TFEU must be interpreted as meaning that an ECHA decision imposing, on a person, a pecuniary obligation in connection with the registration with that agency of a chemical substance is enforceable within the meaning of that provision.

68 Pursuant to the first paragraph of Article 299 TFEU, acts of the Council, the Commission or the ECB which impose a pecuniary obligation on persons other than States, are to be enforceable.

69 It follows from that provision that those acts may be enforced against persons to whom they relate, other than States (judgment of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 29).

70 Since the list in the first paragraph of Article 299 TFEU is, in the light of its wording, manifestly exhaustive and that provision does not lend itself to a broad interpretation, having regard, in particular, to the fact that it is intended to confer a public power, it must be held that neither the acts of EU institutions that do not appear in that list nor the acts of bodies, offices or agencies of the European Union, including ECHA, even if they impose a pecuniary obligation on persons other than States, are enforceable, within the meaning of that provision, and cannot therefore be enforced under Article 299 TFEU in accordance with the detailed rules laid down therein.

71 As the Advocate General observed, in essence, in points 48 to 50 of her Opinion, the exhaustive nature of that list is also borne out by the legislative history of Article 299 TFEU, in particular by the fact that, in the context of the amendments made to the Treaties by the Treaty of Lisbon, the authors of that amending treaty merely added a reference in that list to the ECB, alone, and did not include other EU institutions, bodies, offices or agencies in the same list.

72 Furthermore, it must be noted that the REACH Regulation does not contain provisions relating to the enforcement of ECHA decisions such as those at issue in the main proceedings.

73 By contrast, as the Advocate General also observed in points 65 to 67 of her Opinion, several regulations establishing bodies, offices or agencies of the European Union contain provisions relating to the enforcement of decisions taken by those entities, in particular as regards fees connected with registration procedures, that are in essence identical to those of Article 299 TFEU.

74 That is true, in particular, of Article 110 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1), entitled 'Enforcement of decisions fixing the amount of costs', which provides, in paragraph 1, that any final decision of the European Union Intellectual Property Office (EUIPO) fixing the amount of costs is to be enforceable and, in paragraphs 2 to 4, provisions which are in essence identical to those of the second to fourth paragraphs of Article 299 TFEU.

75 Similarly, Article 41(3) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1) provides, in its first paragraph, that fines and periodic penalty payments imposed by the Single Resolution Board (SRB) pursuant to Articles 38 and 39 of that regulation are to be enforceable and contains, in its second to fourth paragraphs, provisions in essence identical to those of the second to fourth paragraphs of Article 299 TFEU.

76 However, as regards, in particular, the recovery of costs and charges, it must be noted, as the Advocate General observed, in essence, in points 69 and 70 of her Opinion, that some regulations establishing a body, office or agency of the European Union such as Council Regulation (EC) No 297/95 of 10 February 1995 on fees payable to the European Agency for the Evaluation of Medicinal Products (OJ 1995 L 35, p. 1), and a significant number of Commission regulations by which the Commission delegates some of its own powers to EU agencies already established, do not contain specific rules relating to the enforceability of acts adopted by those agencies like those modelled on the rules laid down in Article 299 TFEU.

77 It follows that it must be held that, as regards ECHA, the EU legislature deliberately did not lay down, in the REACH Regulation, rules relating to the enforcement of decisions of that agency like those laid down in Article 299 TFEU for the acts of the EU institutions referred to in the first paragraph of that article.

78 It should also be noted that it is true that the second subparagraph of Article 100(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1) allows, under certain conditions and in 'exceptional circumstances', 'other Union institutions' to request the Commission to adopt an enforceable decision for their benefit.

79 Nevertheless, irrespective of whether that possibility is open to ECHA, it must, in any event, be stated that that possibility is limited to claims arising in relation to staff or in relation to members or former members of the institution concerned and therefore does not cover other types of claims such as those of ECHA at issue in the main proceedings relating to the recovery of administrative charges payable by private operators.

80 Moreover, as the Advocate General observed, in essence, in points 63 and 64 of her Opinion, the possibility thus afforded to certain EU institutions other than those referred to in the first paragraph of Article 299 TFEU of obtaining an enforceable decision operates to reinforce the argument in favour of the interpretation of that provision to the effect that it contains an exhaustive list.

81 Lastly, it should be added that it follows from Article 19(1) TEU read in conjunction with Article 274 TFEU that it is for the Member States, which enjoy broad discretion for so doing by reason of their procedural autonomy in that regard, to determine in their national legal order sufficient remedies and to lay down the detailed procedural rules governing those remedies to ensure the effective implementation of decisions of the institutions, bodies, offices and agencies of the European Union imposing pecuniary obligations on persons such as those at issue in the main proceedings, subject, however, to the principles of equivalence and effectiveness.

82 That obligation on the Member States also arises by virtue of the principle of sincere cooperation enshrined in Article 4(3) TEU and, in particular, the second subparagraph of that provision, which provides that the Member States are to take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the European Union.

83 Such a system of remedies and detailed procedural rules must not undermine the application and effectiveness of EU law. That would be the case, in particular, if the application of that system made the recovery by ECHA of the sums concerned practically impossible. That system must also be applied in a manner which is not discriminatory as compared to procedures for deciding similar national disputes and the national courts and tribunals must act with the same degree of care, and in accordance with rules and procedures which do not make the recovery of the sums in question more difficult, as in comparable cases concerning solely the application of corresponding national legislation (see, to that effect, judgment of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 16).

84 In the light of all of the foregoing, the answer to the second question in Case C-256/23 and the first question in Case C-290/23 is that the first paragraph of Article 299 TFEU must be interpreted as meaning that an ECHA decision imposing, on a person, a pecuniary obligation in connection with an application for registration by that agency of a chemical substance is not enforceable within the meaning of that provision.

The second question in Case C-290/23

85 By the second question in Case C-290/23, which it is appropriate to examine in the third place, the referring court in that case asks, in essence, whether the second subparagraph of Article 11(3) in conjunction with the second and third subparagraphs of Article 13(4) of Regulation No 340/2008 must be interpreted as meaning that, where ECHA finds that the full fee and an administrative charge are payable where the person concerned who has claimed to be entitled to a reduced fee cannot demonstrate, within the prescribed period, that it is entitled to such a reduction, those

provisions preclude that EU agency from bringing an enforcement action before the national courts or tribunals seeking to recover the administrative charge concerned if that charge has not been paid within the prescribed period.

86 In that regard, in the first place, it should, be noted, first of all, that Article 11(1) of Regulation No 340/2008 provides that a charge may be levied for administrative and technical services provided by ECHA at the request of a party which are not covered by another fee or charge provided for in that regulation. Next, Article 11(2) of that regulation provides that the charges for administrative services are to be paid within 30 calendar days from the date on which the invoice is notified by ECHA. Lastly, Article 11(3) of that regulation provides that where payment is not made before expiry of that thirty day period, ECHA is to set a second deadline for the payment and that where the payment is not made before the expiry of the second deadline, ECHA 'shall reject the request'.

87 It follows from a reading of those provisions as a whole that the request which ECHA is required to reject pursuant to the second subparagraph of Article 11(3) of Regulation No 340/2008 is the request for administrative services referred to in Article 11(1).

88 In the second place, it is true that, according to the third subparagraph of Article 13(4) of Regulation No 340/2008, paragraphs 2, 3 and 5 of Article 11 of that regulation 'shall apply *mutatis mutandis*'.

89 However, such a '*mutatis mutandis*' application of the second subparagraph of Article 11(3) of Regulation No 340/2008 in the context of the chargeability of the specific administrative charge referred to in the second subparagraph of Article 13(4) of that regulation does not mean that, if the full fee is not paid before the expiry of the second period, ECHA cannot recover that administrative charge by means of an enforcement action before the national courts.

90 First of all, as is apparent from paragraph 87 of the present judgment, the second subparagraph of Article 11(3) of Regulation No 340/2008 does not refer to the rejection of the application for registration.

91 Next, Article 13 of Regulation No 340/2008 supplements the provisions of Article 20 of the REACH Regulation relating to the so-called procedure for the 'completeness check of the application'.

92 Unlike the payment of the registration fee, which is expressly referred to in Article 20(2) of the REACH Regulation, payment of the administrative charge referred to in the second subparagraph of Article 13(4) of Regulation No 340/2008 does not form part of that procedure. Therefore, even in the absence of such a payment, the application is complete and registration can proceed.

93 Lastly, such an interpretation is not invalidated by the fact that, contrary to what is provided for in Article 10(3) of Regulation No 297/95 in relation to the European Agency for the Evaluation of Medicinal Products, now referred to as the European Medicines Agency (EMA), the REACH Regulation does not contain any express reference to the fact that ECHA has the possibility of bringing proceedings before a national court in the event of non-payment of administrative fees and charges within the prescribed time limits.

94 Indeed, such a reference is clearly declaratory in nature. As stated in paragraphs 81 and 82 of the present judgment, it is apparent from a combined reading of Article 19(1) TEU and Article 274 TFEU as well as from the principle of sincere cooperation enshrined in Article 4(3) TEU that the Member States are required to provide for the remedies and procedural rules necessary to ensure that ECHA can effectively recover the sums due under the second subparagraph of Article 13(4) of Regulation No 340/2008.

95 In the light of all of the foregoing, the answer to the second question in Case C-290/23 is that the second subparagraph of Article 11(3) read in conjunction with the second and third subparagraphs of Article 13(4) of Regulation No 340/2008 must be interpreted as meaning that, where ECHA finds that the full fee and an administrative charge are payable where the person concerned who has claimed to be entitled to a reduced fee cannot demonstrate, within the prescribed period, that it is entitled to such a reduction, those provisions do not preclude that EU agency from bringing an enforcement action before the national courts or tribunals seeking to recover the administrative charge concerned if that charge has not been paid within the prescribed period.

The third question in Case C-256/23

96 There is no need to examine the third question referred in Case C-256/23 concerning the interpretation of the second paragraph of Article 299 TFEU, since it is raised only in the event that the Court should answer in the affirmative the second question in that case, relating to the applicability of Article 299, which concerns the first paragraph of that article. It follows from the grounds set out in paragraphs 67 to 84 of the present judgment that that second question must be answered in the negative.

Costs

97 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 94(1) of 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, as amended by Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008,**

   must be interpreted as meaning that the European Chemicals Agency (ECHA) may not bring an action before the EU judicature seeking enforcement of a pecuniary obligation imposed on a person in a decision taken by that agency.

2. **The first paragraph of Article 299 TFEU**

must be interpreted as meaning that a decision of the European Chemicals Agency (ECHA) imposing, on a person, a pecuniary obligation in connection with an application for registration by that agency of a chemical substance is not enforceable within the meaning of that provision.

3. **The second subparagraph of Article 11(3) read in conjunction with the second and third subparagraphs of Article 13(4) of Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation No 1907/2006**

must be interpreted as meaning that, where the European Chemicals Agency (ECHA) finds that the full fee and an administrative charge are payable where the person concerned who has claimed to be entitled to a reduced fee cannot demonstrate, within the prescribed period, that it is entitled to such a reduction, those provisions do not preclude that EU agency from bringing an enforcement action before the national courts or tribunals seeking to recover the administrative charge concerned if that charge has not been paid within the prescribed period.

[Signatures]