Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

1 August 2025 *

(Reference for a preliminary ruling – Regulation (EC) No 1907/2006 (REACH Regulation) – Registration, evaluation and authorisation of chemicals – Annex XVII – Restrictions on the manufacture, placing on the market and use of certain dangerous substances, mixtures and articles – Restrictions concerning cadmium – Maximum concentration in metal parts of jewellery and imitation jewellery articles and hair accessories – Derogation – Silver bracelet dating from the 1940s, the brazing of which contains cadmium)

In Case C-512/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Budapest High Court, Hungary), made by decision of 12 July 2024, received at the Court on 23 July 2024, in the proceedings

BÁV Zrt.

v

Budapest Főváros Kormányhivatala,

THE COURT (Ninth Chamber),

composed of N. Jääskinen, President of the Chamber, A. Arabadjiev (Rapporteur) and R. Frendo, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– BÁV Zrt., by P. Balázs, ügyvéd,

– the Portuguese Government, by H. Almeida, P. Barros da Costa and A. Cunha, acting as Agents,

– the European Commission, by K. Mifsud-Bonnici and K. Talabér-Ritz, acting as Agents,

* Language of the case: Hungarian.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of entry 23(10)(i) of Annex XVII to 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 Commission Regulation (EU) No 494/2011 of 20 May 2011 (OJ 2011 L 134, p. 2) ('the REACH Regulation').

2 The request has been made in proceedings between BÁV Zrt. and the Budapest Főváros Kormányhivatala (Budapest Metropolitan Government Office, Hungary) concerning the decision of that office by which it imposed a fine on BÁV for placing on the market a silver bracelet, the brazing of which contains cadmium, and prohibited the placing on the market of that bracelet.

Legal context

The REACH Regulation

3 Annex XVII to the REACH Regulation, entitled 'Restrictions on the manufacture, placing on the market and use of certain dangerous substances, mixtures and articles', is worded as follows:

'…

Column 1 Designation of the substance, of the group of substances or of the mixture	Column 2 Conditions of restriction
…	…
23. Cadmium CAS No 7440-43-9 EC No 231-152-8 and its compounds	… 8. Shall not be used in brazing fillers in concentration equal to or greater than [0.01]% by weight. Brazing fillers shall not be placed on the market if the concentration of cadmium (expressed as Cd metal) is equal to or greater than [0.01]% by weight. For the purpose of this paragraph brazing shall mean a joining technique using alloys and undertaken at temperatures above 450 °C. 9. By way of derogation, paragraph 8 shall not apply to brazing fillers used in defence and aerospace applications and to brazing fillers used for safety reasons. 10. Shall not be used or placed on the market if the concentration is equal to or greater than [0.01]% by weight of the metal in: (i) metal beads and other metal components for jewellery making; (ii) metal parts of jewellery and imitation jewellery articles and hair accessories, including: – bracelets, necklaces and rings, – piercing jewellery, – wrist-watches and wrist-wear, – brooches and cufflinks. 11. By way of derogation, paragraph 10 shall not apply to articles placed on the market before 10 December 2011 and jewellery more than 50 years old on 10 December 2011.
…	…

…’

Regulation (EU) No 494/2011

4 Recitals 1, 2, 3, 5 and 6 of Commission Regulation (EU) No 494/2011 of 20 May 2011 amending Regulation No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XVII (Cadmium) (OJ 2011 L 134, p. 2 and corrigendum OJ 2011 L 136, p. 105) state:

‘(1) By its Resolution of 25 January 1988 on a Community action programme … the Council invited the [European] Commission to combat environmental pollution by cadmium.

(2) In the table set out in Annex XVII to [the REACH Regulation], entry 23 contains restrictions on the use and marketing of cadmium in mixtures and articles.

(3) Cadmium and cadmium oxide are classified as carcinogen category 1B and aquatic acute and chronic toxicity category 1.

…

(5) In 2007 the European risk assessment on cadmium … under Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances [(OJ 1993 L 84, p. 1)] was completed. On 14 June 2008 the Commission published a Communication on the results of the risk evaluation and the risk reduction strategies for cadmium and cadmium oxide … which recommended a marketing and use restriction for cadmium in brazing sticks and jewellery.

(6) The Communication outlined the need for specific measures to limit the risks from the use of cadmium-containing brazing sticks and from wearing cadmium-containing jewellery. Professionals and hobbyists are exposed to fumes in the process of brazing. Consumers including children are exposed to cadmium in jewellery through skin contact or licking.'

The dispute in the main proceedings and the question referred for a preliminary ruling

5 On 13 September 2023, BÁV submitted to the Budapest Metropolitan Government Office a silver bracelet and the relevant application form to be stamped with a hallmark. That office carried out an X-ray spectrometry analysis of that bracelet which found that the cadmium content of the brazing of that bracelet was between 1 and 2%.

6 On 26 September 2023, that office carried out an official inspection of BÁV's establishment and ordered the seizure of that bracelet, which was displayed as an object intended for sale by auction, so that additional analyses could be carried out.

7 By decision of 24 November 2023, the Budapest Metropolitan Government Office found that BÁV had unlawfully placed the bracelet on the market and, consequently, issued it with a fine in the amount of 150 000 forint (HUF) (approximately EUR 370). It also ordered that the bracelet be released from seizure and handed over to BÁV or its authorised representative, while prohibiting it from being placed on the market. That office based its decision on the fact that the cadmium content in the bracelet had exceeded the limit of 0.01% by weight, set out in entry 23 of Annex XVII to the REACH Regulation, and that paragraph 8 of that entry prohibits the use or placing on the market of brazing fillers with a cadmium content above that limit.

8 BÁV brought an action seeking, inter alia, annulment of that decision before the Fővárosi Törvényszék (Budapest High Court, Hungary), which is the referring court, claiming, in essence, that the Budapest Metropolitan Government Office infringed entry 23(8) to (11) of Annex XVII to the REACH Regulation by failing to conduct an investigation to determine the age of the bracelet at issue in the main proceedings and the date on which it was placed on the market, despite BÁV's statement that the jewellery dated from the 1940s. That company is of the view that the items of jewellery containing brazed joints should not be regarded as brazing fillers and cannot be subject to the provisions of paragraph 8 of that entry. In that regard, BÁV claims that it is paragraph 10(i) of that entry which is relevant for certain categories of articles, including jewellery. That paragraph provides that such articles cannot be used or put on the market if their cadmium content exceeds 0.01% by weight. However, that provision should be read in

conjunction with entry 23(11) which provides for a derogation applicable to articles placed on the market before 10 December 2011 and to jewellery more than 50 years old on 10 December 2011.

9 The Budapest Metropolitan Government Office submits, in essence, that, on account of the harmful effects of cadmium on physical integrity and health, the EU legislature, since the entry into force of the REACH Regulation, imposes a general prohibition on the placing on the market of brazing fillers containing an unauthorised concentration of cadmium and which may be found in articles not referred to in the derogations provided for in entry 23(9) of Annex XVII to that regulation. The rules laid down in paragraphs 10 and 11 of that entry relate to the concentration level of cadmium in metal alloys of objects and in their other metal components, distinct from brazing fillers, and are therefore not relevant in the present case.

10 The referring court is uncertain as to the interpretation of the expression 'other metal components for jewellery making' in entry 23(10)(i) of Annex XVII to the REACH Regulation. More specifically, it seeks to ascertain whether the brazing filler for the jewellery at issue in the main proceedings can be regarded as a 'component' or whether it is excluded from that concept, in which case the derogation provided for in paragraph 11 of that entry would not be applicable.

11 According to that court, paragraph 10 of that entry constitutes a special rule in relation to paragraph 8 of the same entry, with the result that, in accordance with the principle *lex specialis derogat legi generali*, that rule takes precedence over the general rule. It follows that brazing fillers may be included in the concept of 'other metal components for jewellery making'. That interpretation preserves the meaning of the derogation provided for in entry 23(11) of Annex XVII to the REACH Regulation in respect of jewellery which is more than 50 years old, such as the bracelet at issue in the main proceedings, which dates from the 1940s. The referring court also notes that, in the case of items of precious metal, the quantity of cadmium which may be present in the brazing material constitutes an insignificant part of the total weight of the jewellery.

12 However, the referring court observes that, in order to ensure a high level of protection for human health and the environment, the EU legislature has made the rules concerning cadmium more stringent on account of its toxicity and probable carcinogenic nature.

13 In those circumstances, the Fővárosi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must the concept "other metal components for jewellery making", which appears in [entry 23(10)(i)] of Annex XVII to [the REACH Regulation], be interpreted as meaning that fillers used in brazing are also included in that concept?'

Consideration of the question referred

14 As a preliminary point, it should be noted that, under the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not

expressly indicated in the questions referred to the Court of Justice by those courts (judgment of 7 November 2019, *K.H.K. (Account preservation)*, C-555/18, EU:C:2019:937, paragraph 28 and the case-law cited).

15 In that regard, it is for the Court to extract from all of the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the main dispute (judgment of 7 November 2019, *K.H.K. (Account preservation)*, C-555/18, EU:C:2019:937, paragraph 29 and the case-law cited).

16 In the present case, it is apparent from those factors that the parties to the main proceedings are in dispute as to whether the bracelet at issue is covered by entry 23(8) of Annex XVII to the REACH Regulation or whether it is covered by paragraph 10 of that entry, in which case that bracelet could fall within the scope of the derogation provided for in paragraph 11 of that entry.

17 In those circumstances, it must be held that, by its question, the referring court asks, in essence, whether entry 23(8) and (10) of Annex XVII to the REACH Regulation must be interpreted as meaning that a silver bracelet, the brazing of which contains cadmium, may fall within the scope of paragraph 8 of that entry or must be regarded as capable of falling within the scope of paragraph 10 of that entry.

18 In that regard, entry 23(8) of Annex XVII to the REACH Regulation provides, in its second subparagraph, that brazing fillers are not to be placed on the market if the concentration of cadmium (expressed as Cd metal) is equal to or greater than 0.01% by weight. In accordance with the third subparagraph of entry 23(8), for the purpose of that paragraph, 'brazing' is to mean a joining technique using alloys and undertaken at temperatures above 450 °C.

19 As noted by the Commission, that provision, placed in the context of recital 6 of Regulation No 494/2011, is intended to regulate the cadmium content of 'brazing sticks' in order to protect professionals and hobbyists who are exposed to fumes in the process of brazing.

20 Entry 23(10) of Annex XVII to the REACH Regulation provides that, first, metal beads and other metal components for jewellery making and, second, metal parts of jewellery and imitation jewellery articles and hair accessories, including, inter alia, bracelets, are not to be used or placed on the market if the concentration of cadmium is equal to or greater than 0.01% by weight of the metal.

21 That provision is intended, in essence, as is apparent from recital 6 of Regulation No 494/2011, to protect consumers from the risks associated with wearing jewellery containing cadmium, namely exposure to that chemical element through skin contact or licking.

22 In the present case, it is apparent from the information provided by the referring court that BÁV offered for sale a silver bracelet, the brazing of which contains cadmium.

23 Such a bracelet cannot be regarded as a 'brazing filler', within the meaning of entry 23(8) of Annex XVII to the REACH Regulation, in so far as it is not intended to be used as such in the context of 'brazing'. That bracelet cannot therefore be covered by the derogation laid down in that provision.

24 By contrast, such a bracelet is capable of falling within the scope of the prohibition laid down in entry 23(10)(ii) of Annex XVII to the REACH Regulation.

25 It should be noted, first, that, since the brazing fillers of that bracelet are, in accordance with the definition of 'brazing' set out in entry 23(8) of Annex XVII to the REACH Regulation, incorporated into such a bracelet when it is assembled by that process, they must be regarded as 'metal parts [of a] bracelet' within the meaning of entry 23(10)(ii) of Annex XVII to that regulation.

26 Second, the bracelet at issue in the main proceedings is an item of jewellery which is likely to be worn and therefore potentially expose consumers, through skin contact or licking, to the risks associated with wearing jewellery containing cadmium, which entry 23(10)(ii) of Annex XVII to that regulation is intended to prevent.

27 In the light of all the foregoing considerations, the answer to the question referred for a preliminary ruling is that entry 23(8) and (10) of Annex XVII to the REACH Regulation must be interpreted as meaning that a silver bracelet, the brazing of which contains cadmium, falls within the scope of the prohibition laid down in entry 23(10)(ii) of Annex XVII to that regulation if the concentration level of cadmium referred to in that provision is reached or exceeded.

28 It follows that it is for the referring court, which alone has jurisdiction to assess the facts, to determine whether, in the light of the date of manufacture of the bracelet at issue in the main proceedings, it is capable of falling within the scope of the derogation provided for in entry 23(11) of Annex XVII to the REACH Regulation, which concerns, inter alia, jewellery more than 50 years old on 10 December 2011.

Costs

29 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

Entry 23(8) and (10) of Annex XVII to 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 Commission Regulation (EU) No 494/2011 of 20 May 2011,

must be interpreted as meaning that a silver bracelet, the brazing of which contains cadmium, falls within the scope of the prohibition laid down in entry 23(10)(ii) of Annex XVII to that regulation if the concentration level of cadmium referred to in that provision is reached or exceeded.

[Signatures]