

[REDACTED]  
Helsinki, 9 October 2018

*The Claimant*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Copy to:  
*The Other Party*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

*Represented by*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Decision number: [REDACTED]  
Dispute reference number: [REDACTED]  
Name of the substance (the 'Substance'): [REDACTED]  
EC number of the Substance: [REDACTED]

**DECISION ON A DISPUTE RELATED TO ACCESS TO A JOINT SUBMISSION AND THE SHARING OF DATA**

**A. Decision**

Based on Article 27(6) of Regulation (EC) No 1907/2006 ('REACH Regulation')<sup>1</sup>,

**ECHA grants you permission to refer to the information you requested from the Existing Registrant of the Substance and access to the joint submission.**

This decision is adopted under Articles 27(6) and 11 of Regulation (EC) No 1907/2006 ('REACH Regulation')<sup>2</sup> and Article 5 of the Commission Implementing Regulation (EU) 2016/9

<sup>1</sup> Regulation (EC) N° 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 L 396, 30.12.2006, p.1, as last amended.

<sup>2</sup> Regulation (EC) N° 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

on joint submission of data and data-sharing in accordance with REACH ('Implementing Regulation 2016/9')<sup>3</sup>.

The reasons for this decision are set out in Annex I. The list of studies that ECHA grants you permission to refer to, along with copies of the (robust) study summaries, can be found in Annexes II and III, respectively. Instructions on how to submit your registration dossier are provided in Annex IV.

This decision will be published in an anonymised version on ECHA's website<sup>4</sup>.

## **B. Observations**

ECHA reminds both parties that despite the present decision they are still free to reach a voluntary agreement. Accordingly, ECHA strongly encourages the parties to negotiate further in order to reach an agreement that will be satisfactory for both parties.

According to Article 27(6) of REACH Regulation, the Existing Registrant shall have a claim on you for an equal share of the cost, which shall be enforceable in the national courts, provided that the full study report or reports (if applicable) are made available to you.

## **C. Appeal**

Either party may appeal this decision to the Board of Appeal of ECHA within three months of its notification. The appeal must set out the grounds for appeal. If an appeal is submitted, this decision will be suspended. Further details including the appeal fee are set out at <http://echa.europa.eu/web/guest/regulations/appeals>.

Yours sincerely,

Christel Schilliger-Musset<sup>5</sup>

Director of Registration

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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 L 396*, 30.12.2006, p.1, as last amended.

<sup>3</sup> Commission Implementing Regulation (EU) 2016/9 of 5 January 2016 on joint submission of data and data sharing in accordance with Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), *OJ L 3*, 6.1.2016, p.41.

<sup>4</sup> Available at <https://echa.europa.eu/regulations/reach/registration/data-sharing/data-sharing-disputes/echa-decisions-on-data-sharing-disputes-under-reach>.

<sup>5</sup> As this is an electronic document, it is not physically signed. This decision has been approved according to the ECHA's internal decision-approval process.

## Annex I: REASONS FOR THE DECISION

### A. Applicable law

1. When a dispute is submitted to ECHA pursuant to Article 27(5) of the REACH Regulation, ECHA performs an assessment of the parties' efforts to reach an agreement (Article 5 of the Implementing Regulation 2016/9). According to Article 27(6) of the REACH Regulation and Article 3(2) of the Implementing Regulation 2016/9, ECHA may grant permission to refer to the requested studies and access to the joint submission, if the claimant has made every effort to find an agreement on the sharing of the data and access to the joint submission and the other party has failed to do so. The permission to refer is subject to the proof that the potential registrant has paid a share of the costs incurred by the previous registrant(s).
2. The obligation to make every effort to find an agreement that is fair, transparent and non-discriminatory is laid down in Articles 27(2) and 27(3) of the REACH Regulation. It is further defined in Articles 2 and 4 of the Commission Implementing Regulation. Under Article 11 of the REACH Regulation and Article 3 of the Commission Implementing Regulation, all registrants of the same substance must be part of the same registration ('joint submission obligation') and share the costs related to the joint submission.
3. Making every effort means that the existing and potential registrants must negotiate as constructively as possible and in good faith. They must make sure that the negotiations move forward in a timely manner, express their arguments and concerns, ask questions and reply to each other's arguments, concerns and questions. They must try to understand each other's position and consider it in the negotiations. Making every effort also means that the parties need to be consistent in their negotiating strategy. They should raise their concerns in a timely manner and behave in a consistent and predictable manner as reliable negotiators. When they face dissent on an aspect, the parties have to explore alternative routes and make suitable attempts to unblock the negotiations. As the potential and existing registrants themselves bear the obligation to make every effort to find an agreement, they need to exhaust all possible efforts before submitting a dispute to ECHA with the claim that negotiations have failed.

### B. Summary of facts

4. This summary of facts is based on the documentary evidence submitted by the Claimant on 20 August 2018. The Other Party did not provide any evidence to ECHA.
5. On 1 September 2016, the Other Party informed the pre-SIEF members for the Substance that they planned to register in the tonnage band [REDACTED] tpa using the same 'category approach' as for other similar substances. In addition, the Other Party proposed a preliminary Substance Identity Profile (SIP) and asked the other pre-SIEF members to provide their opinions by 30 September 2016.
6. On 3 November 2016, the Claimant informed the Other Party that they agreed with the SIP and the Other Party's role as the lead registrant. They expressed their interest to register in the tonnage band [REDACTED] tpa and asked for a Letter of Access (LoA) cost offer from the Other Party.
7. On 29 May 2017, the Other Party apologised to the Claimant for the delay in replying '*due to a change of internal organization.*' They said that the lead dossier would be submitted '*before the end of 2017,*' and, in case the Claimant's substance contained impurities, the Other Party would be '*glad to find a strategy to cover [the Claimant's] composition profile too.*' Further, the Other Party indicated that the LoA cost for the Claimant's tonnage band would be [REDACTED] euros, with possible reimbursements after the registration deadline depending on the number

of registrants.

8. On 15 August 2017, the Claimant wrote that they '[were] *totally interested to register* [the Substance] *in a range* [redacted] [tpa]', and would like to order the LoA at the requested price.
9. On 1 September 2017, the Claimant realised that the dossier had not been submitted yet; therefore, a LoA and a corresponding joint submission access token would be '*difficult to sell.*' They apologised for their oversight and instead asked the Other Party to provide a SIEF agreement in order to '*start the process.*' Otherwise, the Other Party could also '*simply wait until the Lead Registrant's [d]ossier is submitted and a [token could] be generated.*'
10. On 12 January 2018, the Claimant repeated their interest in registering the Substance and said that they could not find the registration '*on the ECHA website*', even though the Other Party had promised to submit the lead dossier '*before the end of 2017.*' The Claimant requested the Other Party to provide a new deadline for the registration, and to send a SIEF agreement for the Substance in the tonnage band [redacted] tpa as soon as possible.
11. On 18 May 2018, the Claimant sent the Other Party a letter in which they summarised the previous communications and requested an update on the lead dossier's status and advice on how to register before the REACH deadline of 31 May 2018. The Claimant indicated that they had tried to contact the Other Party's representative in April 2018 but had received no answer from them.
12. On 12 June 2018, the Claimant wrote to the Other Party to thank them for a phone conversation between the parties regarding the registration, and repeated their interest in buying a LoA.
13. On 13 June 2018, the Claimant confirmed that they wanted to register the Substance in the tonnage band [redacted] tpa at the price offered by the Other Party. The Claimant requested the Other Party to send them a SIEF agreement as soon as possible, considering the fact that the registration was already listed on the ECHA dissemination page. On the same day, the Other Party promised to reply the following day.
14. On 15 June 2018, the Claimant repeated their request to receive the SIEF agreement and LoA invoice as soon as possible in order to join the joint submission.
15. On 18 June 2018, the Claimant expressed their disappointment in the fact that another company had been able to join the joint submission, whereas the Claimant had not received replies to their requests. They repeated their request for a SIEF agreement and LoA invoice.
16. On 20 June 2018, the Claimant sent the Other Party a letter in which they summarised the previous communications and repeated their requests for a SIEF agreement and LoA invoice.
17. On [redacted] 2018, the Claimant contacted the REACH helpdesk of the [redacted] ([redacted]), with the Other Party copied into the email. The Claimant asked for advice from the [redacted] on how to proceed with the registration, and mentioned raising a data-sharing dispute as one option.
18. On 9 July 2018, the Claimant contacted the Other Party and asked them to deliver a SIEF agreement, because timely delivery was '*very urgent and important.*' On the same day, the Other Party replied that '*works [were] in progress*' and that they would reply to the Claimant '*in the shortest time.*'
19. On 10 July 2018, the Claimant wrote to the Other Party informing them that they would file a dispute with ECHA on 20 July 2018, unless the SIEF agreement and LoA invoice were

delivered before that date.

20. On 20 July 2018, the Claimant submitted a claim under Article 30(3) of the REACH Regulation concerning the failure to reach an agreement on the access to the joint submission and the sharing of information with the Other Party. ECHA confirmed receipt of a request from the Claimant dated 20 August 2018 for the dispute to be treated under Article 27(5) of the REACH Regulation. Accordingly, ECHA closed the dispute under Article 30(3) of the REACH Regulation with reference [REDACTED] and communicated the opening of this dispute with reference [REDACTED] to both parties, at which time both parties were asked to submit any further evidence of data-sharing negotiations for the Substance. Neither party submitted additional evidence.

### C. Assessment

21. As explained in section A., ECHA assesses the efforts made by the parties in the negotiations that were outlined in section B.

22. The Claimant first indicated their interest in registering the Substance on 3 November 2016, when they requested the Other Party to provide a LoA cost offer. The Other Party replied after six months, on 29 May 2017, indicating that the LoA cost would be [REDACTED] euros and that they would submit the lead dossier 'before the end of 2017.' The Claimant later confirmed their interest in registering in the tonnage band [REDACTED] tpa and ordered a LoA.<sup>6</sup> Following this, the Claimant repeated their request several times<sup>7</sup> but did not receive any answer from the Other Party until June 2018.<sup>8</sup>

23. ECHA notes that the Other Party made an effort to reach an agreement when they provided the Claimant with information on the SIP, LoA cost, and their registration schedule.<sup>9</sup> However, the Other Party ceased to reply to the Claimant's requests and questions after this, except for two brief and insubstantial answers in June and July 2018, in which they promised to proceed with the LoA sale but did not follow through on this promise.<sup>10</sup> Therefore, the Other Party did not make every effort to reach an agreement with the Claimant and effectively blocked them from registering the Substance, especially considering that another company had been able to join the joint submission during the negotiations.

24. The Claimant made every effort to reach an agreement as they tried to start substantive negotiations by contacting the Other Party several times. In all of their communications, the Claimant made clear requests to join the joint submission by signing the SIEF agreement and paying the LoA invoice once provided by the Other Party, emphasising repeatedly the urgency of the matter. However, without any adequate reply from the Other Party, and in some instances no reply whatsoever, the Claimant was unable to progress the negotiations. Therefore, it was not possible for the Claimant to make any further efforts to find an agreement with the Other Party.

25. In the light of the above, and considering the filing of the dispute with ECHA as the last resort in the negotiations, the Claimant made every effort to reach an agreement, whereas the Other Party failed to do so.

### D. Conclusion

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<sup>6</sup> The Claimant, 15 August 2017.

<sup>7</sup> The Claimant, 1 September 2017, 12 January 2018, 18 May 2018, 12 June 2018 & 13 June 2018.

<sup>8</sup> The Other Party, 13 June 2018.

<sup>9</sup> The Other Party, 29 May 2017.

<sup>10</sup> The Other Party, 13 June 2018 & 9 July 2018.

11. The Claimant made every effort to reach an agreement on access to the joint submission and the sharing of information.
12. Therefore, ECHA grants the Claimant access to the joint submission and permission to refer to the studies specified in Annex II.

"ECHA reminds you that following Article 16 of Regulation (EC) No 1049/2001, the documents attached are subject to copyright protection."