

Contribution to the consultation on Lanxess Deutschland GmbH – Review Report

The applicable provisions on transparency

ECHA has an obligation to ensure transparency in the REACH processes,¹ including the public consultations held as part of the authorisation process. These public consultations embody the right to participate to environmental decisions protected by Article 6 (1) of the Aarhus Convention. The participation must be meaningful, which requires among other things to be given access to the relevant information.

When justified, ECHA may grant confidentiality requests. But under REACH article 118 (2), in the authorisation process, only the full composition of a mixture and the precise tonnage of the substance or mixture manufactured or placed on the market shall normally be deemed confidential. For any other information, the common regime applies, and it clearly requires transparency to be the rule and confidentiality the exception², particularly when an effective public participation is at stake.

ECHA has therefore the obligation to reject confidentiality requests when the applicant does not bring **verifiable and precise evidence** that the disclosure would **specifically, actually and seriously** undermine a **legitimate and legally protected interest**.

This is even more imperative in the authorisation process as excessive confidentiality undermines the scope and quality of the discussions in SEAC plenary as well as the clarity of the final opinion.

¹ In accordance with Article 11(1)-(2) of the Treaty on the Functioning of the European Union. Transparency is also a core value of ECHA :

https://echa.europa.eu/documents/10162/13608/mb_61_2014_echa_transparency_en.pdf/068580f5-a523-4fb0-9fb8-90fd27c5277a

² Court of Justice of the EU, Case C-39/05P, Sweden v. Council, ECR 2008, p.I-4723, paragraph 36: “In view of the objectives pursued by Regulation 1049/2001, [the] exceptions must be interpreted and applied strictly.” This interpretation rule is also laid down in Article 4(4), last subparagraph of the Aarhus Convention and in Regulation 1367/2006, Article 6(1).

The excessive confidentiality in the Lanxess report

Most of the information contained in the Lanxess Review Report – in particular the substitution plan – has been **blanked out based on confidentiality claims**, making any understanding of the company's reasons for demanding a renewed authorisation (for 7 years) almost impossible.

The claims for confidentiality in this case clearly jeopardise any meaningful contribution to the review of the report by third-parties in the context of the present public consultation – the very aim of this exercise.

Some the information claimed confidential relates to the difficulties the company has faced in implementing the solventless sulphonation technique, which has been identified as the most suitable alternative to the use of dichloroethane in the manufacture of strong acid cation exchange resins (SAC ERs). It is based on those exact difficulties that Lanxess says it was not able to achieve substitution in the allocated time period of the initial authorisation. For instance, the report highlights that customers reported "performance problems" with the identified alternative, which has caused delays in the substitution plan. However, none of these problems have been made legible in the report.

ECHA has also granted confidentiality to the list of substitution activities, and related timeline, which are essential parts of the substitution plan and should thus, in principle, be accessible. Understandably, some R&D activities may be sensitive and could legitimately, upon the conditions reminded above, be kept confidential. Nevertheless, in order to give the public a chance to contribute to the review process, some general indications about the type of activity and broad time range envisaged to achieve substitution should be provided by the applicant, along with a valid justification for claiming this information confidential.

For third-parties not having this information necessarily impedes the capability to analyse the credibility of the applicant's claim for renewed authorisation.

The high number of unjustified confidentiality claims in the Lanxess review report prevents the public from assessing the company's substitution activities and its reasons for applying for a renewed 7-year review period. In addition, granted confidentiality claims that are so extensive also undermine the work of SEAC, as they drastically limit the extent and quality of the assessment of the report during the plenaries.

ECHA should be more critical with confidentiality claims in Review Reports, assess only the ones that comply with EU law and, when accepted, explain to the public why they were accepted.

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