

Helsinki, 05 -11- 2010

[REDACTED]

EC number: [REDACTED]  
Reference number: DSH-30-3-[REDACTED]-2010

Decision No: DSH-30-3-D-[REDACTED]-2010

**DECISION ON REQUEST FOR PERMISSION TO REFER TO INFORMATION  
REQUESTED FROM [REDACTED] UNDER ARTICLE 30(3) OF REGULATION (EC)  
No 1907/2006**

In accordance with Article 30(3) of Regulation (EC) No 1907/2006 ("the REACH Regulation"), the European Chemicals Agency (ECHA) has examined the information you (for [REDACTED]) provided on 5 September 2010, regarding failure in reaching an agreement on data sharing under Article 30(3) of the REACH Regulation with [REDACTED] as a data owner.

The information you provided was considered complete and appropriately documented, as indicated in our communication to you dated 5 October 2010. ECHA received information from [REDACTED] within the set deadline and conducted a contradictory assessment of the information provided by both parties.

As a result of this assessment according to Article 30(3) covering the exchange of communication up to the date of the complaint, ECHA has decided to **not grant you permission to refer to the following information requested from [REDACTED]:**  
[REDACTED] and information requirements as listed in Annexes [REDACTED]

On the basis of the information provided by both you and the other party, ECHA concluded that you have not made every effort, pursuant to Article 30(1) of the REACH Regulation, to reach an agreement on the sharing of the information you requested and the sharing of the costs in a fair, transparent and non-discriminatory way.

More specifically, ECHA took its decision on the basis of the following reason(s): From the correspondence you have provided, there was no clear indication that you requested specific studies from the data owner. Furthermore you have not been willing to share the costs of the studies as you claimed that as a lead registrant ("LR") you can have access to data 'free of charge'. Please note that according to Article 30(1) "the participant(s) and the data owner shall make every effort to ensure that the costs of sharing the information are determined in a fair, transparent and non discriminatory way. [...] If they (the parties) cannot reach such an agreement the cost shall be shared equally".

Even though on 5 September 2010 you have challenged the offer of [REDACTED] regarding the preparation of the confidentiality agreement, by offering to draft it on your own, you lodged the data sharing complaint to ECHA on the same day, without giving the other party a reasonable time to reply and to contest your arguments. In addition, the conduct of the data owner appears to be appropriate as [REDACTED] has been sufficiently diligent in providing the answers requested by you, regarding the studies.

Based on these circumstances, as well as considering the complexity of data sharing negotiations in general and the time still available for you before you are compelled to register, ECHA considers that you have stopped the negotiations prematurely without making every effort to reach an agreement.

Consequently, ECHA advises that you continue the negotiations to reach an agreement with the data owner.

Besides the result of its assessment, ECHA would like to make some general observations in order to facilitate a future agreement between you and [REDACTED]

We remind you that ECHA does not endorse, or refuse a submission of information, via the corresponding webform or a registration dossier, regarding the lead registrant role within a given SIEF. It is the responsibility of all SIEF members to agree on the identity of their LR. ECHA has not remit in the SIEF activities.

Also according to the requirements set in Article 11, relevant to the Joint Submission obligations of registrants, before being entitled to register as a lead registrant, you first need "to act with the agreement of the other assenting registrants" and take into account that "[all] registrants may decide [...] whether one registrant [ie the lead] is to submit [the] information on behalf of the others".

We remind you that in accordance with Article 41 of the REACH Regulation, the Agency may examine your registration dossier and start a compliance check procedure at any time.

If you have a specific concern about the content of this message you can contact ECHA using the webform at [http://echa.europa.eu/about/contact-form\\_en.asp](http://echa.europa.eu/about/contact-form_en.asp) and then selecting the menu item 'Enquiry on specific submission to ECHA'.

In accordance with Article 30(5) of the REACH Regulation, you may appeal against this decision to the Board of Appeal of ECHA within three months of receiving notification of this decision. The procedure for lodging an appeal is described at [http://echa.europa.eu/appeals/app\\_procedure\\_en.asp](http://echa.europa.eu/appeals/app_procedure_en.asp).

Yours sincerely,

[REDACTED]  
Geert Danneberg  
Executive Director