

[REDACTED]
31 August 2023

The Claimant

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

Copy to:
The Other Party

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

Sent via REACH-IT

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 THE SHARING OF DATA

A. Decision

Based on Article 27(6) of Regulation (EC) No 1907/2006 ('REACH Regulation')¹ and Article 5 of the Commission Implementing Regulation (EU) 2016/9 on joint submission of data and data sharing in accordance with REACH ('Implementing Regulation 2016/9')²,

ECHA grants the Claimant permission to refer to information requested from the Other Party for the purpose of a registration under the REACH Regulation. However, this decision is subject to the receipt by ECHA of the proof that the Claimant has paid the Other Party a share of the costs incurred pursuant to Article 27(6) of the

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

² 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.

REACH Regulation ('proof of payment'), within two months from the notification of the present decision, i.e. by 31 October 2023.

The reasons for this decision are set out in Annex I.

The list of studies covered by the present decision, along with copies of the (robust) study summaries, can be found in Annexes II and III, respectively. However, **the Claimant cannot make use of this permission to refer** to submit a registration dossier for the Substance **before submitting to ECHA a proof of payment and before receiving from ECHA an acknowledgment of receipt.**

Provided that the Other Party makes the full study report available to the Claimant, the Other Party shall have a claim on the Claimant for an equal share of the cost it has incurred, which shall be enforceable in the national courts.

If the Claimant does not provide ECHA with a proof of payment within two months from the notification of the present decision, ECHA will issue a decision revoking the present decision. In such case, the Claimant may continue negotiating to reach an agreement with the Other Party. Should these subsequent negotiations fail, the Claimant can submit a new dispute to ECHA.

(Robust) study summaries submitted at least twelve years previously are not subject to cost sharing. It is useful to note that (robust) study summaries for some of the studies listed in Annex II have been submitted to ECHA more than 12 years ago in an earlier registration dossier. Article 25(3) of the REACH Regulation allows registrants to use any (robust) study summary submitted in the framework of a registration at least twelve years previously for the purposes of registration. These can be used for REACH registration purposes without compensation. In case the Claimant wishes to use in their registration dossier these (robust) study summaries older than 12 years, the share of the cost the Claimant will pay to the Other Party will not have to cover these (robust) study summaries. Such (robust) study summaries can be obtained upon request using the following contact form: https://comments.echa.europa.eu/comments/cms/Contact_REACH.aspx.

This decision will be published in an anonymised version on ECHA's website³.

B. Observations

The present decision may not cover all the Claimant's information needs under [REDACTED] of the REACH Regulation.

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

Instructions to the Claimant on how to submit a registration dossier making use of the permission to refer are provided in Annex IV.

³ Available at <https://echa.europa.eu/regulations/reach/registration/data-sharing/data-sharing-disputes/echa-decisions-on-data-sharing-disputes-under-reach>.

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. Further details, including the appeal fee, are set out at <http://echa.europa.eu/web/guest/regulations/appeals>.

Authorised⁴ by Minna Heikkilä, Head of Legal Affairs

⁴ As this is an electronic document, it is not physically signed. This communication has been approved according to ECHA's internal decision-approval process.

Annex I: REASONS FOR THE DECISION

A. Applicable law

1. In a dispute pursuant to Article 27(5) of the REACH Regulation, ECHA performs an assessment of the efforts of the parties to reach an agreement (Article 5 of Implementing Regulation 2016/9). According to Article 27(6) of the REACH Regulation and Article 3(2) of Implementing Regulation 2016/9, ECHA may grant permission to refer to the requested studies, if the claimant has made every effort to find an agreement on the sharing of the data 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 transparent, fair 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 Implementing Regulation 2016/9.
3. Making every effort means that the 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 the other party'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 13 and 18 July 2023, and by the Other Party on 2 August 2023.
5. Based on available evidence, contacts between the Claimant and the Other Party concerning the Substance have occurred at least since November 2017. However, the negotiations to which this dispute claim refers to appear to have started in February 2023.
5. On 1 February 2023, the Claimant contacted the Other Party, indicating it was acting as an Only Representative ('OR') on behalf of their client and requesting the costs of a Letter of Access ('LoA') for a registration of the Substance in the tonnage band [REDACTED].⁵
6. The following day, the Other Party invited the Claimant to consult the website of the Consortium to find the necessary information for a registration.⁶
7. On 22 March 2023, the Claimant reverted to the Other Party, attaching '*the required documents necessary to obtain the LoA*'.⁷ On the same day, the Other Party replied that the requested questionnaire was incomplete and asked the Claimant to fill in the missing information with regard to both their client and themselves as OR. Without that information, they added, they would not be able to proceed with the agreement.⁸ The Other Party furthermore asked the Claimant to '*specify the requested information for each direct and*

⁵ E-mail from the Claimant; 01/02/2023.

⁶ E-mail from the Other Party; 02/02/2023.

⁷ E-mail from the Claimant; 22/03/2023.

⁸ E-mail from the Other Party; 22/03/2023, 13:18.

indirect shareholder, as well as information on *'the voting rights [...] in the immediate subsidiary'*.⁹

8. The Claimant replied that they were *'gathering the needed information'* and promised to revert to the Other Party as soon as possible. The Claimant however added that their client *'does not want their name to be shared'*, thus they had *'ticked the box that their name needs to stay confidential'*. The Claimant then asked with whom the information on their client would be shared.¹⁰
9. The Other Party noted the Claimant's client name could be kept confidential towards other Consortium members, but, since *'the Consortium is also using an external provider to carry out the necessary checks'*, such service provider would need to receive *'all relevant information to carry out its duties'*.¹¹
10. The Claimant again asked for an explanation on why all the details were needed *'also for [their] OR client'* and with whom the information would be shared.¹² They added that their *'client usually consider their ownership information company confidential and they want to understand the need for this information better'*, particularly in connection to *'the 3rd party who collects the information'*.¹³ In reply to these requests, the Other Party directed the Claimant to information published on the Other Party's webpage.¹⁴
11. On 6 July 2023, the Claimant sent a new version of the questionnaire, including information on the Claimant and the Claimant's shareholders, directors and beneficial owners, but without information on the Claimant's client.¹⁵ In doing so, they stated their wish to *'obtain the LoA without providing the information for [their] client'* and urged the Other Party to *'fasten up the process'*. The Claimant added that, in case of further delay, they would *'contact ECHA and report a data sharing dispute'*.¹⁶
12. The Other Party, however, reiterated the request for the information on the Claimant's client, noting that *'the provision of the requested data and information not only in relation to an only representative, but also in relation to its client is mandatory in order to comply with the obligations of the [Other Party] under the EU sanctions regime'*.¹⁷
13. On 13 July 2023, the Claimant lodged this dispute claim with ECHA. On 18 July 2023, the Claimant submitted additional information in the form of attachments exchanged between the parties during the negotiations.

C. Assessment

14. As explained in section A, ECHA is called upon to determine whether the parties complied with their obligations related to the sharing of data and data costs in the negotiations outlined in section B.
15. In addition, when carrying out its assessment, the Agency must pay due regard to all individual actions and communications of the parties as well as the development of the

⁹ E-mail from the Other Party (legal representative); 22/03/2023, 17:36.

¹⁰ E-mail from the Claimant; 29/03/2023.

¹¹ E-mail from the Other Party; 29/03/2023.

¹² E-mail from the Claimant; 11/05/2023.

¹³ E-mail from the Claimant; 19/06/2023.

¹⁴ E-mail from the Other Party; 19/06/2023.

¹⁵ [REDACTED] Consortium; 'Identification of shareholders/beneficiaries'; attached to e-mail from the Claimant; 06/07/2023.

¹⁶ E-mail from the Claimant; 06/07/2023.

¹⁷ E-mail from the Other Party; 10/07/2023.

negotiations over time.¹⁸ Finally, the Agency's assessment centres upon those elements on which the parties could not agree during their negotiations, and which therefore led to the submission of the dispute claim.¹⁹

16. In the present case, the negotiations between the Claimant and the Other Party did not include any discussion on the identification of the data to be shared, its cost or any other term of the sharing. However, the Other Party imposed on the Claimant to provide, among other data, information on the Claimant's company structure, as OR, but also on their client and their respective shareholders, directors and beneficial owners. In response, the Claimant offered information on their own structure as well as on the identity of their client, but claimed confidentiality regarding their client's shareholders and beneficial owners.
17. The Other Party refused to continue the negotiations, arguing that they needed the data to comply with obligations under an EU sanctions regime. However, EU sanctions are not a new legal development and some were already in place at the time of the entry into force of the REACH Regulation.²⁰ In this case, the Other Party never provided a justification on why the shareholder information on the non-EU manufacturer was needed in the concrete circumstances of the case, especially in view of the disclosed identity of the Claimant's client and the lack of any concrete indication of a possible breach of sanction legislation.
18. Especially after the Claimant's expressed confidentiality concerns, the Other Party should have provided a specific reason to justify their request or an alternative option to address remaining concerns on compliance with EU sanctions. By refusing to negotiate further, the Other Party imposed a disproportionate burden on the Claimant and effectively obstructed the sharing of data. Therefore, the Other Party failed to make every effort to share data with the Claimant in a fair, transparent and non-discriminatory way, in accordance with Article 27 of the REACH Regulation.

D. Conclusion

19. The Claimant made every effort to reach an agreement on the sharing of information, while the Other Party failed to do so.
20. Therefore, ECHA grants the Claimant permission to refer to the studies specified in the Annex II, subject to the receipt by ECHA of the proof that the Claimant has paid the Other Party a share of the costs incurred. This proof of payment must be submitted to ECHA by 31 October 2023. In case it is not submitted by the indicated date, the present permission to refer will be revoked.

¹⁸ See, to this effect, Decision of the Board of Appeal of 15 April 2019, Case A-010-2017, *REACH & Colours and REACH & Colours Italia*, paragraph 87.

¹⁹ *Ibid.*, paragraph 88.

²⁰ For an exhaustive list of sanctioned persons, see the "EU sanction map" (www.sanctionsmap.eu). The "EU sanction map" was created by the European Commission on 29 September 2017 to provide general up-to-date information on sanctions that are applicable in the EU jurisdiction. Sanctions are applicable for many years to hundreds of citizens from more than 20 countries.