

[REDACTED]
9 October 2023

The Claimant

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

Copy to:
The Other Party

[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 REACH Regulation ('proof of payment'), within two months from the notification of the present decision, i.e. by 11 December 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**

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.

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.

This decision will be published in an anonymised version on ECHA's website.³

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.

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

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

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

5. This summary of facts is based on the documentary evidence submitted by the Claimant on 24 August 2023. The Other Party did not submit any further evidence by the set deadline, 14 September 2023. Therefore, the assessment has been conducted on the basis of the information provided by the Claimant.
6. On 20 June 2023, the Claimant approached the Other Party by e-mail, requesting the cost for a letter of access to data for registration purposes for the Substance for the bracket [REDACTED].⁵ On the same day, the Other Party provided the Claimant with the price of the letter of access and invited the Claimant to place their purchase order to a designated contact person of the Other Party.⁶ The Claimant did so on 22 June 2023.⁷
7. In a follow-up email, the Claimant expressed their anticipation for receiving the data sharing agreement soon from the Other Party.⁸ In the absence of reply between 7 July 2023 and 2 August 2023, the Claimant sent reminders to the Other Party, reiterating their request for the draft data sharing agreement and noting that they had tried to reach the Other Party on the phone number provided in REACH-IT without success.⁹ In their e-mail of 2 August 2023, the

⁵ E-mail message of the Claimant of 20 June 2023.

⁶ E-mail message of the Other Party of 20 June 2023.

⁷ E-mail message of the Claimant of 22 June 2023.

⁸ E-mail message of the Claimant of 28 June 2023.

⁹ E-mail message of the Claimant of 7 July 2023, 12 July 2023 and 26 July 2023.

Claimant asked again for an update on the status of the procedure and stressed that, in the absence of reply, they would turn to ECHA for resolution.¹⁰

8. On 8 August 2023, the Claimant turned again to the Other Party, noting that their purchase order had contained a clerical mistake and attached the corrected document. At the same time, the Claimant again requested for an update on the status of the data sharing agreement and an acknowledgement of receipt.¹¹ In the absence of a reply from the Other Party, the Claimant sent two further reminders.¹²
9. On 24 August 2023, in the absence of any reaction from the Other Party, the Claimant lodged the present dispute claim.

C. Assessment

10. 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.
11. 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 negotiations over time.¹³ 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.¹⁴
12. In the present case, there was no disagreement between the Claimant and the Other Party with regard to the identification of the data to be shared, its cost or any other related condition. This was because the parties never came to the point of exchanging a data sharing agreement on the Substance.
13. At the outset of the negotiations, the Other Party provided to the Claimant the costs of the letter of access for the tonnage band of interest. The Claimant then sent their purchase order and requested the draft data sharing agreement. Since the Other Party failed to respond, the Claimant sent multiple reminders to get a draft data sharing agreement and an update on the status of the procedure. The Claimant further noted the possibility of a dispute claim with ECHA in case the Other Party failed to respond.
14. For their part, the Other Party never provided the draft agreement, nor replied to the Claimant's reminders.
15. Based on the available evidence, the Claimant made every effort that could reasonably be expected in the circumstances of the case. On the other hand, the lack of co-operation and response from the Other Party made it impossible to achieve a data sharing agreement for the tonnage band of interest to the Claimant.

¹⁰ E-mail message of the Claimant of 2 August 2023.

¹¹ E-mail message of the Claimant of 8 August 2023.

¹² E-mail messages of the Claimant of 14 August 2023 and 18 August 2023.

¹³ 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.

¹⁴ *Ibid*, paragraph 88.



D. Conclusion

16. The Claimant made every effort to reach an agreement on the sharing of information, pursuant to Article 27(2) and (3) of the REACH Regulation, whilst the Other Party failed to do so.
17. Therefore, ECHA grants the Claimant permission to refer to the studies specified in 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 11 December 2023. In case it is not submitted by that date, this permission to refer will be revoked.