

September 19, 2019

(Updated)

Questions & Answers

CTACSub Consortium¹ (CTAC Submission Consortium)

REACH Authorization of Certain Uses of Chromium Trioxide

Question 1: What is the status of these applications for authorization ('AfA')?

Response: The REACH Committee of the European Commission ('Commission') approved the CTACSub authorization Decision ('Decision') on February 15, 2019 (24 out of 28 Member States in favor). The Commission was therefore expected to issue the Decision towards the end of March 2019.² However, on March 7, the EU General Court issued a ruling (T-837/16) on another authorization that sets strict conditions for future Commission decision making on REACH authorizations. In addition, the European Parliament issued a Resolution of March 27, 2019 requesting that the Commission withdraw the Decision and submit a new draft.

Due the General Court ruling, the Commission is expected to make some changes to the Decision text. However, the Commission has confirmed in its written reply to the European Parliament on the Resolution that the CTACSub authorization Decision should be granted. Unfortunately, for legal reasons, these wording changes will require that the Decision be re-voted in the REACH Committee.

This re-vote could take place at the November 19/20 REACH Committee meeting or the next regular meeting thereafter (February 3/4, 2020). For additional information on Use 3 (functional chrome plating with decorative character), please see at Q 3 below.

Question 2: Will the Commission reject the applications for authorization after the General Court ruling and the European Parliament Resolution?

Response: The European Parliament Resolution, which was adopted with only 309 votes in favor and 286 votes against, has no binding force on the Commission. The Commission has re-evaluated its work and sent back a response to the European Parliament in which the Commission continues to support authorization of CTACSub. Thus, the CTACSub Consortium is confident that the Commission will continue to support granting authorizations.

Question 3 – Following the General Court ruling in T-837/16, will the applicants be required to submit so-called Substitution plans (detailing their activities and time plan to substitute the use of chromium trioxide)?

Response: Further to the General Court ruling, the Commission is expected to request the applicants to submit a Substitution plan for Use 3 (functional chrome plating with decorative character) within 9 months.

¹ Members of the CTACSub Consortium are: Atotech Deutschland GmbH; Boeing Distribution Inc. (name changed: formerly Aviall Services Inc); Prospere Logistic Baltic OÜ (as legal successor to BONDEX TRADING LTD), in its legal capacity as Only Representative of Aktyubinsk Chromium Chemicals Plant, Kazakhstan; CROMITAL S.P.A. in its legal capacity as Only Representative of Soda Sanayii A.S.; Elementis UK Ltd.GmbH in its legal capacity as Only Representative of Elementis Chromium Inc.; Enthone GmbH (now MacDermid Enthone); LANXESS Deutschland GmbH in its legal capacity as Only Representative of LANXESS CISA (Pty) Ltd.

² To view the current draft authorization Decision approved by the REACH Committee on February 15, 2019, please refer to CTACSub Consortium Press release of February 21, 2019, available at: <https://jonesdayreach.com/news/>

The applicants will call on their downstream users ('DUs') for information to include into that Substitution plan. No Substitution plans are expected to be necessary for the other Uses. The Commission will not decide on the authorization of Use 3 pending the submission of the Substitution plan. In other words, for Use 3, the application for authorization will remain pending and uses can continue until a decision on the application will have been taken.

Question 4: What does the continued delay mean for the use of chromium trioxide?

Response: DUs of the applicants can continue their uses applied for as long as the applications for authorization are pending³ with the Commission, regardless of how long this delay will be. The Article 66 REACH DU notification to ECHA is not applicable as long as the AfA is pending.

Question 5: (No-deal Brexit) What will happen with a UK DU relying on a REACH AfA by an EU-based company where the European Chemicals Agency ('ECHA') has adopted its final opinion but the European Commission has not adopted its final decision – i.e. likely the case of the CTACSub AfA? What should DUs do?

Response: The initial legislative proposal in the UK did not provide for any transitional period for UK DUs relying on a pending AfA by an EU-based company. However, the latest UK Statutory Instrument on REACH 'EU-Exit' legislation (to be signed into law after October 4, 2019) would postpone for pending EU AfAs the EU so-called Latest application dates and Sunset dates by 18 months from the UK exit day to allow UK importers and DUs to file new UK authorization applications and in the meantime continue their use in the UK pending UK authorization. See here.⁴ In other words, uses in the UK may continue provided new UK AfAs will be filed within 18 months of the UK's exit from the EU.

Please contact the HSE REACH helpdesk for further information:

<http://www.hse.gov.uk/reach/helpdesk.htm>

Question 6: Will the CTACSub members seek to extend their authorizations and thus introduce review reports at the latest 18 months before the end of the respective review periods?

Response: The CTACSub members have not yet decided this. Their decision will depend, among others, on the following factors:

- ✓ The consumption of the substance in the EU;
- ✓ The availability of comprehensive exposure and emissions monitoring data from the DUs' reporting to ECHA once authorizations will have been granted⁵;
- ✓ Organization and financing of a collaboration;
- ✓ The impact of the EU General Court ruling on the Commission's decision-making practice;
- ✓ Status of availability and implementation of alternatives.

³ Once adopted, the review periods for Uses 3 (functional plating with decorative character), 5 (miscellaneous surface treatment) and 6 (passivation of tin-plated steel (ETP)) are expected to be 4 years from the date of the Decision; and 7 years from the Sunset date, that is until September 21, 2024 for Uses 1 (formulation), 2 (functional plating) and 4 (surface treatment in the aeronautics and aerospace industry).

⁴ <http://www.legislation.gov.uk/uksi/2019/1144/made>

⁵ One year after publication of the authorization decisions, DUs will have to provide exposure and environmental monitoring data to ECHA.

Companies in the Aerospace and Defence ('A&D') sectors are currently forming a new consortium to support renewal of upstream authorizations for the use of chromates in these sectors only. Relevant portions of CTACSub uses 1, 2, 4 and 5 will be represented. Current CTACSub applicants have been invited to join.⁶

Question 7: What immediate steps do DUs have to take now?

Response: Given the continued uncertainty, CTACSub strongly recommend that where feasible, DUs file their own AfAs. CTACSub also recommend that companies conduct exposure monitoring according to the Good Practice Sheets (see Q 8).

Question 8: Is there any practical guidance available that DUs can utilize to adapt their operating conditions?

Response: YES. CTACSub has developed and published⁷ a series of easy to understand illustrative practical Task Sheets ('Good Practice Sheets'; 'GPS') that set out the operational conditions and risk management measures that are recommended when handling chromium trioxide. The GPS also contain advice on personal protective equipment and exposure / emissions monitoring. The GPS do not replace the exposure scenarios in the safety data sheets, but both are consistent. The GPS are just easier to understand for non-experts.

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⁶ Details of the Aerospace and Defence Reauthorization Consortium can be found at <https://www.adcr-consortium.eu/>

⁷ <https://jonesdayreach.com/substances/>