

**PRESS RELEASE**  
**April 20, 2023<sup>1</sup>**

Today the European Court of Justice (“ECJ”) upon legal action initiated by the European Parliament against the European Commission (“Commission”), annulled the Commission’s REACH authorization decision C(2020) 8797 of December 18, 2020 on certain uses of chromium trioxide (so-called ‘CTACSub authorization’)<sup>2</sup>. See [Case C-144/21, Parliament v Commission, judgment of April 20, 2023](#).

Importantly and in line with previous case law in case C-389/19 P (*Lead Chromates* case), the ECJ, however, maintained the effects of the annulled authorization decision. This means in practice that downstream users of chromium trioxide in the supply chain of the seven authorization holders<sup>3</sup> can continue their uses of chromium trioxide as long as they are within the scope of the annulled authorization decision and the downstream users continue to apply the risk management measures and conditions (including monitoring) of the annulled decision. This regime will remain in place until the Commission will reassess the case and issue a new decision on the application for authorization originally filed with ECHA in 2015. Importantly, the ECJ has limited this time frame for the Commission to a maximum of one year from today’s date.

In the meantime, and as required under the now annulled authorization decision, five of the seven authorization holders (so-called “CTACSub2”) on February 21, 2023 filed a review report with ECHA to continue the use of chromium trioxide beyond the end of the review period (September 21, 2024) of the now annulled authorization decision.<sup>4</sup> The authorization holders call upon the Commission to make use of the updated information in the review report for the reassessment of the application now required. Indeed, the Commission is legally required to base its decisions on all available information.

Finally, the authorization holders recall that the authorization decision of December 18, 2020 did not include a decision on Use 3 (functional chrome with decorative character). That use may therefore continue until the Commission will decide on it (possibly second semester of 2023).

The authorization holders and the many hundred companies relying on the authorization are frustrated with the events.

ECHA in 2015 encouraged CTACSub to file an upstream application for authorization encompassing uses downstream. All stakeholders wanted to achieve consistency and efficiency. Otherwise, ECHA would have had to process more than 1500 individual downstream use applications, whilst its capacity is known to be 50 per year for all Annex XIV REACH substances combined. ECHA raised no concerns with the content and approach of the application at the time of the application.

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<sup>2</sup> The case did not concern Use 6 (ETP).

<sup>3</sup> The authorization holders are: Atotech Deutschland GmbH & Co KG; Boeing Distribution Inc.; Chemservice GmbH; CROMITAL S.P.A.; Elementis Minerals B.V. (to be replaced in the future by Polychrome Holding B.V.); MacDermid Enthone GmbH; and Prospere Chemical Logistic OÜ.

<sup>4</sup> See press release of February 2023 at [www.jonesdayreach.com](http://www.jonesdayreach.com), or [here](#).

Over the six years during which the application for authorization was pending, however, the bar was continuously raised by ECHA's RAC and SEAC committees and the ECJ. Finally, it seems that the wording applied by the Commission in its authorization decision did not convince the ECJ that the scope of the authorization was well defined and no alternatives were available – which is the case.

Indeed, approximately 32 company specific authorization decisions have been issued since May 31, 2017 for similar uses. This proves that no alternatives are indeed available on the market. Ironically, none of the individual authorizations have been challenged in court, whereas the many SMEs that are covered by CTACSub see their existence threatened by the action taken by the European Parliament.

We are witnessing a classic case of unequal treatment eventually leading to job losses in the EU, whereas chromated articles from abroad can continue to be marketed in the EU.