**January 4, 2021**

**Information Note and Sign-Up Commitment CTACSub2 Review Period**

**Information - Background**

The CTACSub Consortium has received REACH authorization for its Members and Downstream Users (‘DU’) for certain use of Chromium trioxide (chromic acid).[[1]](#footnote-1) The review periods for these uses will end on September 21, 2024.

According to Article 2 (4) of the CTACSub Consortium Agreement:

“The cooperation shall continue beyond the date of the authorization decisions pursuant to Article 64(8) REACH so as to be able to cooperate in case the authorization decisions set review dates. However, any cooperation of the Members for review of authorizations shall be subject to a Decision of the Steering Committee involving those Members interested in such continued cooperation. Any such Decision shall not have an effect on the other Members and these other Members shall not participate in cost sharing under the cost sharing rules of this Agreement.”

Five Members of the CTACSub Consortium (so-called ‘CTACSub2’)[[2]](#footnote-2) and ReachLaw Ltd. (as Only Representative for JSC NPCC)[[3]](#footnote-3) have agreed in principle to continue to work together and to file a Review report at the latest 18 months before the end of the review period, hence by March 20, 2023 latest.

If granted, such a continued so-called upstream authorization will provide flexibility for OEMs in choosing their part suppliers, allow for market newcomers, create financial and organizational efficiencies, and not least permit SMEs to benefit from the experience of the upstream suppliers in a situation where obtaining REACH authorization will become ever more complicated. Indeed, as shown in the cost comparison below, continued upstream authorization will cost less than for DUs to have their own authorization.

Cost Comparison

|  |  |  |  |
| --- | --- | --- | --- |
|  | Small company  (individual AfA) | Medium company  (individual AfA) | Cost for a small or medium sized company if it participates in CTACSub2 Review report |
| Consultancy Cost, 1 use | EUR 100,000 | EUR 100,000 |  |
| ECHA Fees 1 Use | EUR 19,476 | EUR 32,460 |  |
| Total cost | **EUR 119,476** | **EUR 132,460** | **EUR 15,000** |
| Cost **per year** (7 years in case of joint review report, 12 years in case of individual AfA) | **EUR 9,956** | **EUR 11,038** | **EUR 2,143** |

Given that the aim of the REACH authorization provisions is to progressively substitute Chromium trioxide, it is vital that any Review report include comprehensive information about uses, potential alternatives, exposure to workers and environment and non-use scenarios. Experience has shown and new ECHA Guidance requires that in order to be successful and achieve acceptable review periods in an upstream application scenario, all DUs must actively contribute to the gathering of information that is mostly available in their sphere.

Simultaneously with the increased information requirements, the volume of Chromium trioxide covered by the CTACSub2 Review report will decrease for three reasons: dislocation of manufacturing to third countries; coverage of DUs by their own DU specific authorization; and substitution. It is for this reason and the significant cost of the CTACSub upstream application that CTACSub2 can only continue with upstream application if there are a sufficient number of DUs that are willing to sign-up for continued cooperation **and these DUs entirely finance the required work**. The cost of the Work Plan 2021-2026 is currently estimated at EUR 1.5-2 Million for up to 5 Uses.

Set out below is the Work Plan.

**Work Plan**

| **Scope of Work** | **Timing** | **Tasks** |
| --- | --- | --- |
| Obtain information from DUs on their interest in continued upstream application (‘scoping exercise’) | By March 31, 2021 | Gather information on:   * Tonnage for continued use * Required uses (including description of use) * Obtain commitment from DUs for participation by signature of sign-up document and payment of financial contribution. * Decide whether there is a sufficient number of DUs to merit the continuation of work. If not, reimburse DUs who signed up except for initial costs until that time and stop all work. If it becomes clear already at this time that certain uses cannot be supported because of lack of interest, reimburse only those DUs except for the costs in relation to the scoping exercise |
| Decision on which uses to support and their exact description | End of 2021 latest | * Gather detailed information from DUs who have signed up (see above) and decide on this basis * Reimburse those DUs whose use has finally not been taken up (except for expenses used up until end of 2021) * Allow market new comers |
| Draft review report, validation with DUs and filing with ECHA, follow procedure with ECHA and European Commission | End of 2021 until 2025/26 | * Draft Review report * Consult participating DUs and validate Review report * File Review report by March 2023 latest * Pursue ECHA public consultation and RAC / SEAC opinion making and questioning; * Accompany decision making in REACH Committee and European Commission * Make any changes required throughout the procedure (revision of REACH Regulation anticipated for 2024 which may make authorization more difficult) * Pursue third party communication (European Parliament, Member States etc.) |

Set out below are the principles of participation and commitments to be made by DUs.

**Commitments and Principles of DU Participation**

(1) DU commits to fully participate in the information gathering exercises at all times during the Work Plan and will provide accurate and comprehensive information (confidential information will be aggregated and neutralized by technical consultants who will act as trustees).

(2) DU commits to always adhere to the CTACSub and ReachLaw authorization decisions and their conditions; to observe the safety data sheets including exposure scenarios supplied by DU’s suppliers and to strictly adhere to the CTACSub Good Practice Sheets.[[4]](#footnote-4) DU will allow the technical consultants of CTACSub2 to visit DU’s operations to inspect the operational conditions and risk management measures on site and to scrutinize DU’s exposure monitoring results submitted to ECHA under Article 66 REACH. DU acknowledges that the success of the Review report would be jeopardized by non-compliant DUs and that CTACSub2 shall, therefore, have the right to refuse or end participation of DUs in the Review report works if CTACSub becomes aware of non-compliance of DU with the above requirements or national and EU environmental and workers health & safety laws and regulations. This includes the obligation to minimize workers exposure to Chromium trioxide.

(3) DU shall pay by March 31, 2021 a participation fee[[5]](#footnote-5) of EUR 15,000 for small and medium sized companies or EUR 30,000 for large size companies[[6]](#footnote-6), regardless of the number of uses DU is interested in. CTACSub2 reserves the right to request verifiable documentation about the company size. This participation fee will be partially refunded if the scoping exercise or later work concludes that the specific uses requested cannot be supported or the Work Plan is ended early because the number of DUs that participate is not sufficient to cover the anticipated cost of the work. Any left-overs after the review procedure will have ended will be reimbursed at the end of the work life of CTACSub2. Should the authorization procedure prove exceptionally complicated or lengthy, CTACSub reserves the right to request an additional participation fee.

(4) DU acknowledges and recognizes that DU shall no longer receive Chromium trioxide deliveries from CTACSub2 authorization holders and/or their supply chain (distributors) as of September 21, 2024 if DU does not participate in this Work Plan, unless DU holds an individual valid authorization for its Use(s).

(5) Market newcomers (defined as natural or legal persons who have not previously used Chromium trioxide in the European Union, Iceland, Norway and Liechtenstein, including their affiliates, predecessors and successors in law) can join the Work Plan late, provided their uses squarely fit within the work already done and they pay the extra work caused by their late joining. No other late-joining mechanism is foreseen.

(6) DU commits to keep all information and documentation received during the Work Plan confidential and not to disseminate or use any information and documentation outside its company or with external advisers unless subject to appropriate non-disclosure agreements or required by law. CTACSub2 Members are entitled to claim damages in case of breaches of the aforementioned confidentiality commitment.

(7) DU commits at all times in the context of this Work Plan to comply with all applicable laws, including competition law and trade sanctions. DU recognizes that it is DU’s sole responsibility to comply with REACH. DU recognizes that CTACSub2 Members cannot guarantee or be held liable that the Review report will be successful in achieving continued authorization; nor can CTACSub2 Members commit, despite best efforts, to support any or all uses brought forward by the individual DU.

(8) DU commits and represents with respect to any information submitted for consideration in the Review report (i) that it is the rightful owner or grantee of the information and free to grant rights therein, (ii) that, to the knowledge of this DU, this information does not infringe on the rights, in particular, but without limitation, intellectual property rights, of any third party and (iii) that DU has not received a claim or notice of any alleged infringement.

(9) DU agrees that Belgian law shall apply for any disputes arising and in connection with the Work Plan and the commitments hereunder and that any disputes that cannot be amicably resolved shall be subject to arbitration under the rules of CEPANI to take place in Brussels, Belgium in the English language. The arbitral tribunal shall consist of three (3) arbitrators: each party designates one (1) arbitrator; these two (2) arbitrators then designate the third arbitrator, who acts as chairperson; the chairperson shall have a university / state degree in law. The arbitration award shall include a decision on who bears the cost of arbitration. No other recourse shall be available. The decision shall be binding on the parties.

(10) DU acknowledges that any breach of the commitments taken hereunder and representations made entitle the CTACSub2 Members to exclude DU with immediate effect from any further cooperation hereunder, unless the DU is able to cure its breach within five calendar days after having received notice of the breach. The obligation to render compensation for damages, other remedies and injunction or other equitable relief in accordance with the applicable legal provisions shall remain unaffected.

**Commitment**

I, ……………………………………………………, on behalf of and for the account of DU company

…………………………………………………………………………………………………………...,

and its Affiliates, …………………………………………………………………………………………,

duly authorized, hereby commit to the above principles of participation and shall participate in the Work Plan.

For Company:

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| --- | --- |
| Signature: | ………………………………………………………………………………. |
| Date: | ………………………………………………………………………………. |
| Company name: | ………………………………………………………………………………. |
|  | ………………………………………………………………………………. |
| Company stamp: |  |
|  |  |
| Contact information of responsible person for further communication: | |
| Name: | ………………………………………………………………………………. |
| Function: | ………………………………………………………………………………. |
| E-mail address: | ………………………………………………………………………………. |
| Telephone number: | ………………………………………………………………………………. |

Size of the company (*check the appropriate box*)

🞎 small / medium

🞎 large

Use(s) desired for continued authorization (*check the appropriate box*):

🞎 Use 1 Formulation of mixtures exclusively for uses REACH/20/X/7 to REACH/20/X/34

🞎 Use 2 Functional chrome plating where any of the following key functionalities is necessary for the intended use: wear resistance, hardness, layer thickness, corrosion resistance, coefficient of friction, or effect on surface morphology

🞎 Use 4 Surface treatment for applications in the aeronautics and aerospace industries, unrelated to functional chrome plating or functional chrome plating with decorative character, where any of the following key functionalities is necessary for the intended use: corrosion resistance / active corrosion inhibition, chemical resistance, hardness, adhesion promotion (adhesion to subsequent coating or paint), temperature resistance, resistance to embrittlement, wear resistance, surface properties impeding deposition of organisms, layer thickness, flexibility, and resistivity

🞎 Use 5 Surface treatment (except passivation of tin-plated steel (electrolytic tin plating - ETP)) for applications in architectural, automotive, metal manufacturing and finishing, and general engineering industry sectors, unrelated to functional chrome plating or functional chrome plating with decorative character, where any of the following key functionalities is necessary for the intended use: corrosion resistance/ active corrosion inhibition, layer thickness, humidity resistance, adhesion promotion (adhesion to subsequent coating or paint), resistivity, chemical resistance, wear resistance, electrical conductivity, compatibility with substrate, (thermo) optical properties (visual appearance), heat resistance, food safety, coating tension, electric insulation or deposition speed

🞎 Use 6 Passivation of tin-plated steel (electrolytic tin plating - ETP

For the uses ticked above, DU provides additional information (in broad terms; using the terminology of the CTACSub authorization decision and the previous application texts indicating the types of industry sectors for which the parts are chromated / surface treated):

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| --- |
| …………………………………………………………………………………………………………. |
| …………………………………………………………………………………………………………. |
| …………………………………………………………………………………………………………. |

Please insert Tonnage[[7]](#footnote-7) for all Uses (estimated annually; 2021 – 2026; separate per year);

|  |  |
| --- | --- |
| **Tonnage** | **Estimate** |
| 2021 | ………………………………………. |
| 2022 | ………………………………………. |
| 2023 | ………………………………………. |
| 2024 | ………………………………………. |
| 2025 | ………………………………………. |
| 2026 | ………………………………………. |

If in addition to the above uses, DU is also interested in Use 3[[8]](#footnote-8) (functional plating with decorative character) (*mark the box*) 🞎 YES

Annual tonnage affected by Use 3: ………………………………………….. (*fill in the tonnage).*

Substitution of Use 3 is planned for the year …………………………………… (*fill in the year*).

**Additional information**:

🞎 Interested in United Kingdom REACH authorization for the above Uses (Note: Not yet decided whether CTACSub2 will file for authorization in the UK in 2023).

DU is kindly requested to provide invoicing details (*entity name, complete address and VAT number*)

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| …………………………………………………………………………………………………………. |
| …………………………………………………………………………………………………………. |

*Completed sign-up forms are to be sent to the attention of* [*ReachTeam@jonesday.com*](mailto:ReachTeam@jonesday.com) *by* ***March 31, 2021*** *at the latest. On receipt of this information, Jones Day will acknowledge receipt and issue a proforma notice to be paid by DU by* ***March 31, 2021****.*

*For questions related to the above Communication, you can call Ursula Schliessner at 32-2-6451460 or mail uschliessner@jonesday.com.*

\* \* \*

1. See press release and Q&A at [www.jonesdayreach.com](http://www.jonesdayreach.com). [↑](#footnote-ref-1)
2. Elementis Chromium LLP (replaced January 1, 2021 due to Brexit by Elementis Minerals BV), SODA SANAYİİ A.Ş., Chemservice GmbH (as OR for Brother Cisa), MacDermid Enthone GmbH and Prospere Chemical Logistic OÜ. [↑](#footnote-ref-2)
3. ReachLaw Ltd. (as OR for JSC NPCC) has joined CTACSub as Member as of January 1, 2021. [↑](#footnote-ref-3)
4. www.jonesdayreach.com. [↑](#footnote-ref-4)
5. The amounts stated are net amounts, excl. any potentially applicable tax, which would have to be added. [↑](#footnote-ref-5)
6. Definition as per Commission Recommendation 2003/361/EC; To be calculated at the date of February 15, 2021 or at the joining date for late joiners and market newcomers.

   <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

   <https://ec.europa.eu/regional_policy/sources/conferences/state-aid/sme/smedefinitionguide_en.pdf> [↑](#footnote-ref-6)
7. This information shall be kept confidential by Jones Day and will not be released to CTACSub2 Members. [↑](#footnote-ref-7)
8. Please note that CTACSub2 will at this time not do any work on Use 3 as the Use 3 authorization has not been granted as yet (review of the submitted Substitution Plan is pending). However, CTACSub2 is interested to know whether in addition to the other Uses, company is also currently involved in Use 3. [↑](#footnote-ref-8)