

## UPDATE

May 7, 2018

### Questions & Answers

*See also translations into German, French, Spanish and Italian below*

#### **CTACSub Consortium**<sup>1</sup> (CTAC Submission Consortium)

#### **Applications for REACH Authorization of Certain Uses of Chromium Trioxide**<sup>2</sup>

##### **Question 1: What is the status of these applications for authorizations?**

**Response:** The ECHA Committees for Risk Assessment (RAC) and Socio-economic Analysis (SEAC) recommended in September 2016 that the European Commission ('Commission') grant the authorizations for continuation of the 6 uses of chromium trioxide (EC 215-607-8; CAS 1333-82-01)<sup>3</sup> applied for by the members of the CTACSub Consortium, on the basis that the socio economic benefits of continued use outweigh the health and environmental risks thereof.<sup>4</sup>

Subsequently, the Commission was to develop proposed authorization decisions within three months for qualified majority approval by the REACH Committee consisting of Member States representatives. After approval by the REACH Committee, the Commission would then have to issue the authorization decisions. However, this procedure is now delayed<sup>5</sup> for almost 1.5 years.

Given the number of procedural steps still required within the Commission and with the REACH Committee thereafter, in view of the accumulated delay, adoption may now be expected for March 2019 earliest.

##### **Question 2: Do downstream users of chromium trioxide have to stop using the substance at the Sunset Date (September 21, 2017)?**

**Response:** NO. Article 58(1)(c)(ii) REACH provides that downstream users supplied directly or indirectly by one or more of the 7 applicants may continue their uses of chromium trioxide from those suppliers beyond the Sunset Date until the Commission will have decided on the authorizations.<sup>6</sup> Please note though

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<sup>1</sup> Members of the CTACSub Consortium are: Atotech Deutschland GmbH; 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 Chromium LLP 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.

<sup>2</sup> For additional information, please contact the CTACSub Consortium Manager [uschliessner@jonesday.com](mailto:uschliessner@jonesday.com), tel. +32-2-6451460.

<sup>3</sup> Authorization consultations No. 0032-01 to 0032-06; see at <https://echa.europa.eu/applications-for-authorisation-previous-consultations>. RAC and SEAC have recommended the following review periods (to be counted as of September 21, 2017): Formulation of mixtures (0032-01) / Functional chrome plating (0032-02) / Surface treatment in the aeronautic and aerospace industry (0032-04) – all 7 years; Functional plating with decorative character (0032-03) / Surface treatment in other industries (0032-05) / Passivation of tin-plated steel (ETP) (0032-06) - all 4 years.

<sup>4</sup> For more information on the applications, see previous press release at [www.jonesdayreach.com](http://www.jonesdayreach.com)

<sup>5</sup> Pursuant to Article 64(8) REACH, the Commission is obliged to prepare its authorization Decision within three months after receipt of the RAC/SEAC opinions from ECHA. In the case of CTACSub, the Commission was therefore obliged to prepare its proposal for authorization decisions by December 2016 (RAC/SEAC issued their opinions on September 16, 2016). However, to date, the Commission has not finalized its work (at least Cabinet approval and interservice consultation are still outstanding) and has therefore not forwarded its proposed Decisions to the REACH Committee.

<sup>6</sup> [https://echa.europa.eu/de/support/qas-support/qas/-/q-and-a/5a109f43-fc76-70f8-501b-64b5ec456d45?\\_journalqassearch\\_WAR\\_journalqaportlet\\_backURL=https%3A%2F%2Fecha.europa.eu%2Fde%2Fsupport%2Fqas-support%2Fqas%3Fp\\_p\\_id%3Djournalqassearch\\_WAR\\_journalqaportlet%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-2%26p\\_p\\_col\\_pos%3D2%26p\\_p\\_col\\_count%3D3%26\\_journalqassearch\\_WAR\\_journalqaportlet\\_keywords%3D1358%26\\_journalqassearch\\_WAR\\_journalqaportlet\\_formDate%3D1499779597651%26\\_journalqassearch\\_WAR\\_journalqaportlet\\_basicSearch%3Dtrue%26\\_journalqassearch\\_WAR\\_journalqaportlet\\_doSearch%3Dtrue](https://echa.europa.eu/de/support/qas-support/qas/-/q-and-a/5a109f43-fc76-70f8-501b-64b5ec456d45?_journalqassearch_WAR_journalqaportlet_backURL=https%3A%2F%2Fecha.europa.eu%2Fde%2Fsupport%2Fqas-support%2Fqas%3Fp_p_id%3Djournalqassearch_WAR_journalqaportlet%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_pos%3D2%26p_p_col_count%3D3%26_journalqassearch_WAR_journalqaportlet_keywords%3D1358%26_journalqassearch_WAR_journalqaportlet_formDate%3D1499779597651%26_journalqassearch_WAR_journalqaportlet_basicSearch%3Dtrue%26_journalqassearch_WAR_journalqaportlet_doSearch%3Dtrue)

that such continued use is only permitted in as far as the uses are within the remit of the authorization applied for.

**Question 3: How does the Commission calculate the review periods?**

**Response:** The ‘review period’ is the time during which an authorization remains valid. If a use is intended to be continued beyond the ‘review period’, the applicant must file a ‘review report’ at the latest 18 months before the end of the review period. It is standing Commission practice for applications for authorization that were submitted before the Latest Application Date, such as CTACSub’s applications, to calculate the ‘review period’ from the Sunset Date<sup>7</sup>, regardless of how long the Commission is delayed with the processing of the applications for authorization.

**Question 4: How does a downstream user know or find out whether the chromium trioxide he uses originates (was supplied directly or indirectly by) from one or more of the 7 CTACSub applicants?**

**Response:** There are several possibilities. In case the substance (or mixture containing chromium trioxide) is supplied directly by the applicants, this is clear. The name of the applicants will be on the label, the safety data sheet and the invoices (except in cases of Only Representatives). In case the substance (or chromium trioxide in mixture) is supplied by distributors or formulators, the safety data sheets, labels and invoices may not contain this information. In this case, the downstream users should ask their individual suppliers to confirm in writing<sup>8</sup> that the chromium trioxide originates from one of the 7 applicants. The suppliers in turn may have to ask the same questions to their suppliers further upstream to trace the supply chain fully.

**Question 5: Article 66 REACH requires downstream users to notify<sup>9</sup> ECHA within three months of the first supply of a substance subject to authorization with the identity of the company, the authorization number and their contact information. Additional information can be submitted voluntarily or may be mandatory in the future. Is this obligation applicable to downstream users that receive chromium trioxide directly or indirectly from the 7 applicants?**

**Response:** NO. This obligation is not applicable as long as the authorization applications are still pending and have not been granted.<sup>10</sup> As long as there are no authorization decisions, there are no authorization numbers and therefore the notification template in its present form cannot be filled in and submitted to ECHA.

**Question 6: What does a downstream user do in case a customer wishes to have evidence that the downstream user is entitled to use chromium trioxide at its facility?**

**Response:** In case an authorization has been granted, the downstream user may provide his customer with a copy of his Article 66 downstream user notification that he submitted to ECHA. As long as the

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<sup>7</sup> [https://echa.europa.eu/support/qas-support/qas/-/q-and-a/17855122-2830-ea0d-672c-5827f5176632?journalqasearch\\_WAR\\_journalqaportlet\\_backURL=https%3A%2F%2Fecha.europa.eu%2Fsupport%2Fqas-support%2Fqas%3Fp\\_p\\_id%3Djournalqasearch\\_WAR\\_journalqaportlet%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_pos%3D2%26p\\_p\\_col\\_count%3D3%26journalqasearch\\_WAR\\_journalqaportlet\\_keywords%3Dsunset%2Bdate%26journalqasearch\\_WAR\\_journalqaportlet\\_formDate%3D1525684650197%26journalqasearch\\_WAR\\_journalqaportlet\\_basicSearch%3Dfalse%26journalqasearch\\_WAR\\_journalqaportlet\\_topic%3D%26journalqasearch\\_WAR\\_journalqaportlet\\_from%3D%26journalqasearch\\_WAR\\_journalqaportlet\\_to%3D%26journalqasearch\\_WAR\\_journalqaportlet\\_doSearch%3Dtrue%26journalqasearch\\_WAR\\_journalqaportlet\\_uniqueIds%3D](https://echa.europa.eu/support/qas-support/qas/-/q-and-a/17855122-2830-ea0d-672c-5827f5176632?journalqasearch_WAR_journalqaportlet_backURL=https%3A%2F%2Fecha.europa.eu%2Fsupport%2Fqas-support%2Fqas%3Fp_p_id%3Djournalqasearch_WAR_journalqaportlet%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D2%26p_p_col_count%3D3%26journalqasearch_WAR_journalqaportlet_keywords%3Dsunset%2Bdate%26journalqasearch_WAR_journalqaportlet_formDate%3D1525684650197%26journalqasearch_WAR_journalqaportlet_basicSearch%3Dfalse%26journalqasearch_WAR_journalqaportlet_topic%3D%26journalqasearch_WAR_journalqaportlet_from%3D%26journalqasearch_WAR_journalqaportlet_to%3D%26journalqasearch_WAR_journalqaportlet_doSearch%3Dtrue%26journalqasearch_WAR_journalqaportlet_uniqueIds%3D)

<sup>8</sup> The certification could be as follows: „We, company X, hereby confirm that all chromium trioxide as a substance or in a preparation that we currently deliver and will in the future deliver to our customer Z, originates, directly or indirectly, from one or more of the 7 applicants for REACH authorization organized as CTACSub Consortium as per [www.jonesdayreach.com](http://www.jonesdayreach.com). We hereby undertake to inform Z immediately and before the next delivery should this certification no longer be correct.“ Optional: „We shall be held liable for any direct and/or indirect damages Z may suffer from any potential inaccuracy of our certification.“  
<sup>9</sup> <https://echa.europa.eu/support/dossier-submission-tools/reach-it/downstream-user-authorized-use>

<sup>10</sup> [https://echa.europa.eu/de/support/qas-support/qas/-/q-and-a/5a109f43-fc76-70f8-501b-64b5ec456d45?journalqasearch\\_WAR\\_journalqaportlet\\_backURL=https%3A%2F%2Fecha.europa.eu%2Fde%2Fsupport%2Fqas-support%2Fqas%3Fp\\_p\\_id%3Djournalqasearch\\_WAR\\_journalqaportlet%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-2%26p\\_p\\_col\\_pos%3D2%26p\\_p\\_col\\_count%3D3%26journalqasearch\\_WAR\\_journalqaportlet\\_keywords%3D1358%26journalqasearch\\_WAR\\_journalqaportlet\\_formDate%3D1499779597651%26journalqasearch\\_WAR\\_journalqaportlet\\_basicSearch%3Dtrue%26journalqasearch\\_WAR\\_journalqaportlet\\_doSearch%3Dtrue](https://echa.europa.eu/de/support/qas-support/qas/-/q-and-a/5a109f43-fc76-70f8-501b-64b5ec456d45?journalqasearch_WAR_journalqaportlet_backURL=https%3A%2F%2Fecha.europa.eu%2Fde%2Fsupport%2Fqas-support%2Fqas%3Fp_p_id%3Djournalqasearch_WAR_journalqaportlet%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_pos%3D2%26p_p_col_count%3D3%26journalqasearch_WAR_journalqaportlet_keywords%3D1358%26journalqasearch_WAR_journalqaportlet_formDate%3D1499779597651%26journalqasearch_WAR_journalqaportlet_basicSearch%3Dtrue%26journalqasearch_WAR_journalqaportlet_doSearch%3Dtrue)

authorizations will not have been granted, the downstream user can only draw up a statement on his letterhead that *he is entitled to continue using chromium trioxide pursuant to the transitional regime set out in Article 58(1)(c)(ii) REACH as all chromium trioxide used at its facility is supplied directly or indirectly by one or more of the 7 CTACSub applicants and the use is within the scope and the limitations of the authorization applied for.* A copy of this Q&A may be attached to the downstream user statement.

**Question 7: What does a downstream user do in case of an inspection?**

**Response:** First, please note that the REACH Forum<sup>11</sup> has decided that compliance with REACH authorizations for chromates will be a priority of national enforcement in 2019. Downstream users should therefore expect an inspection at the latest in 2019. Several Member States (including France and the United Kingdom) started inspection campaigns already in 2017, immediately after the Sunset Date had passed.

In case of an inspection, the inspector will ask the downstream user for his Article 66 REACH notification. In this case, the downstream user will have to explain that the Article 66 REACH notification obligation is not yet applicable to him due to the authorization applications still pending, see above. In addition, the downstream user should be able to demonstrate that he is aware of the details of the applications for authorization applied for. He should be able to demonstrate and have documented by a self-assessment that his activity falls within the scope of the applications for authorization applied for and that he applies as a minimum the operational conditions and risk management measures described in the CTACSub application(s) for authorization. Moreover, he should demonstrate that he is compliant with national legislation on health & safety at the workplace, including occupational exposure limits, the obligation to make a safety assessment for each workplace and to observe the hierarchy of prevention measures for carcinogens at the workplace.

**Question 8: How does a downstream user know whether his activity falls within the scope of the CTACSub application for authorization? What does he need to do if this is not the case?**

**Response:** The only way to make this determination is by reviewing in depth the application documents available on the ECHA website,<sup>12</sup> in particular the so-called Broad Descriptions of Uses, the Analyses of Alternatives describing the uses and the Chemical Safety Reports. In case of doubt, he may seek external help from specialized consultants. If an activity is not described in an Exposure Scenario in the Chemical Safety Reports or if the actual operational conditions and risk management measures at the facility are not in line with the description in the Chemical Safety Reports, the downstream user cannot rely on the pending CTACSub applications for authorization. He is not covered. In such case, he should urgently submit his own application for authorization to ECHA and he should have stopped at the Sunset Date his use of chromium trioxide until he has obtained his own authorization. Alternatively, he can investigate whether his activity is covered by another authorization pending or granted – in which case he will have to change supplier for chromium trioxide.

**Question 9: Will there be any changes in the future that downstream users must be aware of in relation to the exposure scenarios, operational conditions and risk management measures set out in the CTACSub applications for authorizations?**

**Response:** YES. The RAC has recommended in its Opinions that the Commission set conditions in the authorization decisions (e.g. exposure measurements). As in the case of other authorization decisions, it is expected that such conditions will be set. These conditions must be observed by the downstream users. It is also possible that the applicants will in the future have to revise their exposure scenarios. Should this be the case, the information and new exposure scenarios will be available through updates in safety data sheets supplied with the chromium trioxide.

**Question 10: Is there any practical guidance available that downstream users can utilize to adapt their operating conditions from now on in expectation of the authorizations and in order to be considered as covered by the pending applications during the transitional period pursuant to Article 58 58(1)(c)(ii) REACH?**

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<sup>11</sup> Article 86 REACH. Consisting of national inspectors. Responsible for coordination of enforcement across the EU. <https://echa.europa.eu/-/more-enforcement-on-authorisation-and-registration-coming-up-for-2019>

<sup>12</sup> <https://echa.europa.eu/applications-for-authorisation-previous-consultations>

**Response:** YES. CTACSub has developed and published<sup>13</sup> by the Sunset Date a series of easily comprehensible illustrative practical Task Sheets ('Good Practice Sheets') that set out the operational conditions and risk management measures that are recommended to be applied when handling chromium trioxide. The Good Practice Sheets also contain advice on personal protective equipment and exposure monitoring. Compliance with the Good Practice Sheets as of the Sunset Date is voluntary but is recommended in order for the downstream user to demonstrate coverage and compliance with the pending applications for authorization.

**Question 11: Given the current delays of the Commission with the CTACSub application for authorization, what should downstream users do in order to gain more operational and legal certainty whether their use of chromium trioxide will be permitted in the future and for how long?**

**Response:** CTACSub recommend that downstream users do the following:

- (1) Strictly apply the Good Practice Sheets (these may also be shown in case of inspections);
- (2) Conduct exposure and environmental monitoring as set out in the Good Practice Sheets;
- (3) Get ready to potentially file downstream user applications for authorization with ECHA by the dates recommended in the below table.

| Use No. | Use name*  | Proposed review periods by CTACSub applicants*** | Recommended review periods by RAC/SEAC | Recommended start of preparing DU AfA, assuming 1 year lead time is required | Recommended filing deadline for DU AfA* | End of review period based on RAC/SEAC recommendations** |
|---------|--|--|--|--|---|--|
| 1       | Formulation of mixtures  | 12 years+  | 7 years                                | 21.03.2021   | 21.3.2022                               | 21.9.2024  |
| 2       | Functional chrome plating (Hard Chrome)  | 12 years   | 7 years                                | 21.03.2021   | 21.3.2022                               | 21.9.2024  |
| 3       | Functional chrome plating with decorative character incl. Etching of plastics  | 7 years  | 4 years                                | 21.03.2018   | 21.3.2019                               | 21.9.2021  |
| 4       | Surface treatment for applications in the aeronautics and aerospace industries, unrelated to Functional chrome plating or Functional plating with decorative character | 12 years   | 7 years                                | 21.03.2021   | 21.3.2022                               | 21.9.2024  |
| 5       | Surface treatment (except ETP) for applications in various industry sectors namely architectural, automotive, metal manufacturing                                      | 7 years  | 4 years                                | 21.03.2018   | 21.3.2019                               | 21.9.2021  |

<sup>13</sup> See <http://www.jonesdayreach.com/SitePages/Home.aspx>

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|---------|--|--|--|--|---|--|
|         | and finishing, and general engineering |  |  |  |   |  |
| 6       | Passivation of tin-plated steel (ETP)  | 4 years  | 4 years                                | 21.03.2018   | 21.3.2019                               | 21.9.2021  |

\*30 months before expiry of recommended review period (according to the Commission, the average duration of the application procedure is 24 months). Please note that DUs, unlike previous applicants, are not protected by any transitional periods. If they do not have their own authorization by the end of the review period or are not covered by another granted authorization, they must stop the use.

\*\*Please note that often the Commission proposes shorter review periods than recommended by RAC/SEAC.

\*\*\* Counting from Sunset date 21.09.2017.