**Follow up to the European Parliament non-legislative resolution on the draft Commission implementing decision granting an authorisation for certain uses of chromium trioxide under Regulation (EC) No 1907/2006 of the European Parliament and of the Council (Lanxess Deutschland GmbH and others)**

1. **Resolution tabled pursuant to Rule 106 of the European Parliament's Rules of procedure**
2. **Reference numbers:** 2019/2654 (RSP) / B8-0221/2019 / P8\_TA-PROV(2019)0317
3. **Date of adoption of the resolution:** 27 March 2019
4. **Competent Parliamentary Committee:** Committee on the Environment, Public Health and Food Safety (ENVI)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The European Parliament resolution objects to a draft Commission implementing decision granting an authorisation for certain uses of chromium trioxide under Regulation (EC) No 1907/2006 of the European Parliament and of the Council (REACH) (Lanxess GmbH and others) (‘draft decision’). The resolution calls on the Commission to withdraw the draft decision and to submit a new draft decision following a number of considerations, concerning the definition of the uses and the process.

1. **Response to requests and overview of action taken, or intended to be taken, by the Commission:**

The draft decision in question is to be adopted in accordance with the examination procedure under Article 5 of Regulation (EU) No 182/2011. The Commission recalls that, in accordance with Article 11 of that regulation, the scope of the right of scrutiny of the European Parliament and of the Council is limited to the question whether the draft implementing act exceeds the implementing powers provided for in the basic act (in this case the Regulation (EC) No 1907/2006 (REACH)).

The Commission notes that the resolution does not indicate that the draft decision exceeds the implementing powers provided for in the REACH Regulation. However since the resolution refers in its Preamble to Article 11 of Regulation (EU) No 182/2011, the Commission understands that the motivation of the resolution of the European Parliament is similar in its intention.

When preparing the draft implementing decision, the Commission acted within the implementing powers conferred on it by Article 64(8) of REACH, and it respected all the requirements set out in that regulation, notably Article 60, paragraphs (4), (5), (7) and (8). The fact that the Parliament does not agree with the assessment made by the European Chemicals Agency’s (‘the Agency’) Committees for Risk Assessment (RAC) and for Socio-economic Analysis (SEAC) and subsequently with the Commission’s own assessment and conclusions goes beyond the scope of the right of scrutiny of the European Parliament with regard to draft implementing acts.

Nevertheless, the Commission takes note of the position of the Parliament and therefore would like to explain its position on the concerns expressed in the resolution:

1. The Commission rejects the claim that the draft Commission implementing decision proposing the authorisation is in breach of Article 60(7) of REACH due to missing information on exposure scenarios for workers in the application for authorisation. The resolution claims that instead of considering the application not to be in conformity, the draft decision only requires the applicants to provide the missing information in a subsequent review report.

With regard to this claim, the Commission recalls that Article 60(7) does not concern the material conditions for the grant of an authorisation and is limited to enabling the Commission to verify whether an application for authorisation is in conformity with the requirements of Article 62 from a formal point of view[[1]](#footnote-1).

The Commission, taking into account the analysis carried out by RAC and SEAC, considers it is appropriate to grant an authorisation for the uses applied for subject to applicants and their downstream users complying with the detailed measures described in the chemical safety report submitted in the application, together with the additional conditions and monitoring arrangements in the draft decision. In order to address the remaining uncertainties in the risk assessment, it is also appropriate to require additional information through conditions and monitoring arrangements pursuant to Article 60 (8) and (9).

The stringent conditions concerning risk management (including the need for the authorisation holder to develop new and more specific exposure scenarios with the corresponding risk management measures and operational conditions) imposed upon users of chromium trioxide covered by the proposed authorisation are designed to ensure that the combined worker exposure to carcinogenic chromium (VI) will not exceed 2 µg/m3 for most of the uses or 0.5 µg/m3 for formulation uses or even a lower exposure in specific tasks.

These values are, respectively, 5 and 20 times lower than the European binding occupational limit value of 10 µg/m3 adopted by the co-legislators on 12 December 2017[[2]](#footnote-2).

It is therefore expected that this authorisation will complement and substantially enhance the level of worker protection as the companies will be obliged to apply measures that should achieve lower levels of worker exposure in the workplaces covered by this authorisation.

1. The Commission also rejects the claim that the draft Commission implementing decision proposing the authorisation is in breach of Article 60(4) of REACH due to uncertainties in the assessment and the availability of suitable alternatives for the authorised uses.

With regard to the point on uncertainties, SEAC identified uncertainties in the analysis of alternatives due to the broad scope of some of the uses applied for. Nevertheless, SEAC came to the conclusion that overall, there were no technically feasible alternatives for chromium trioxide before the sunset date. The draft decision reflects and addresses those uncertainties by further limiting the scope of those uses, to align them with the conclusions on the analysis of alternatives.

Furthermore, the Commission took note of other elements relevant for the conclusion on the availability of suitable alternatives, such as the complexity of the supply chains and the time and investment necessary to implement a potential alternative, as well as the time necessary for industrialisation and qualification of the resulting products in case a technically feasible alternative is found. Based on the SEAC’s assessment and the above considerations, the Commission concluded that no suitable alternatives were available before the sunset date.

With regard to the point on claimed availability of suitable alternatives, it should be noted that all known alternatives, including those cited in the resolution, have been thoroughly assessed by SEAC. SEAC dismissed those alternatives because of deficiencies regarding technical and/or economic feasibility and concluded that they were not suitable. The same conclusion, i.e. that there are no suitable alternatives, was also reached in a number of cases in which downstream users covered by some uses of the contested draft decision applied for authorisation for their own similar uses (e.g. Decision of 8/02/2017, C(2017) 663 (Grohe AG), Decision of 14/02/2019, C(2019) 1057 (Hansgrohe SE)).

1. The Commission underlines that, in the socio-economic analysis underpinning the condition for granting an authorisation under Article 60(4) of REACH, SEAC has concluded that, if an authorisation is not granted, affected companies in the EU would have to immediately stop their chrome-plating activities. This would result in closure or partial closure of businesses, loss of tens of thousands of jobs, disruption of supply chains of strategic sectors, such as aerospace and automotive, resulting in significant economic and social losses in order of billions of euros.
2. The Commission notes that the request in the resolution to *‘grant, exceptionally, to downstream users… to submit the missing data … and to take swift decisions with regard to those applications*’ is not legally viable in accordance with Article 56(1) of REACH. In this regard, the Commission notes that the addressees of the draft decision are the applicants, not their downstream users, and the identity of the downstream users is not necessarily known until they notify the use of the substance to ECHA after the decision is adopted (in accordance with Article 66 of REACH). Furthermore, the request proposes to treat applicants in this specific case ‘exceptionally’ differently from applicants in other cases. The Commission does not see any grounds for exceptionality that, furthermore, would result in an unjustified unequal treatment *vis-à-vis* other applicants. Separately, the Commission emphasises that further delays in granting the authorisation would result in delays in the imposition of strict risk management related conditions set out in the draft decision on all companies affected aimed at limiting worker exposure to chromium VI to levels below the current EU binding occupational exposure limit values.

Based on the provided reasoning, the Commission cannot follow the objections raised in the European Parliament’s resolution and affirms that the draft decision is within the implementing powers conferred on the Commission under REACH and in full compliance with the REACH Regulation.

The Commission also notes that the draft decision has already been voted in the REACH Committee on 14 February 2019 and received a positive opinion by qualified majority (24 Member States in favour). Nevertheless, as the draft decision has not yet been adopted, the Commission will consider whether the draft decision needs to be revised in the light of the recent judgments of the General Court in cases T-837/16 (*Sweden* v. *Commission*) and T-108/17 (*Client Earth* v *Commission*).

1. Judgment of the General Court of 4 April 2019 in case T-108/17, *Client Earth* v *European Commission*, paragraphs 104 and 106 [↑](#footnote-ref-1)
2. Directive 2017/2398 of the European Parliament and of the Council of 17 December 2017, amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work

This value applies for a transitional period until 17 January 2025 except for some process-generated fumes. After that date, the binding occupational limit value for chromium (VI) will be reduced to 5 µg/m3 for all uses and processes [↑](#footnote-ref-2)