PRESS RELEASE
MARCH 13, 2015

The CCST Consortium (Chromium VI Compounds for Surface Treatment REACH Authorization Consortium), a group of 28 companies that was formed early 2013 to jointly develop draft applications for REACH authorization for use of miscellaneous Chromium VI compounds is pleased to announce that it will soon be concluding its works. The ability to continue using these compounds in the EU is essential for CCST Members as well as their suppliers and customers, which are active in the aeronautics and aerospace sectors, among others.

The CCST Consortium assisted by its consultants Environ UK Ltd and its partner BiPRO GmbH has developed draft applications for REACH authorization for the following uses of specific substances:

<table>
<thead>
<tr>
<th>Substance</th>
<th>Substance Chemical Name</th>
<th>EC / CAS</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>S 2</td>
<td>Dichromium tris (chromate)</td>
<td>EC 246-356-2; CAS 24613-89-6</td>
<td>(i) (iv)</td>
</tr>
<tr>
<td>S 3</td>
<td>Potassium dichromate</td>
<td>EC 231-906-6; CAS 7778-50-9</td>
<td>(i) (iv)</td>
</tr>
<tr>
<td>S 4</td>
<td>Sodium dichromate</td>
<td>EC 234-190-3; CAS 10588-01-9</td>
<td>(i) (iv) (v)</td>
</tr>
<tr>
<td>S 6</td>
<td>Strontium chromate</td>
<td>EC 232-142-6; CAS 7789-06-2</td>
<td>(iii) (iv)</td>
</tr>
<tr>
<td>S 7</td>
<td>Pentazinc chromate octahydroxide (zinc tetrahydroxide chromate)</td>
<td>EC 256-418-0; CAS 49663-84-5</td>
<td>(ii) (iv)</td>
</tr>
<tr>
<td>S 8</td>
<td>Potassium hydroxyoctaoxodizincatedichromate</td>
<td>EC 234-329-8; CAS 11103-86-9</td>
<td>(ii) (iv)</td>
</tr>
</tbody>
</table>

The uses (mainly aimed at aerospace applications) are defined as follows:

(i) Surface treatment of metals with Substances S1, S2, S3, S4, and/or S5 such as aluminium, steel, zinc, magnesium, titanium, alloys, composites, sealings of anodic films;¹
(ii) Use of Substances S1, S7, and S8 in paints, in primer, sealants, lacquers and coatings (including as washprimers);
(iii) Application of paints, primers, and speciality coatings containing S6 in the construction of aerospace and aeronautical parts, including aeroplanes / helicopters, space craft, satellites, launchers, engines, and for the maintenance of such constructions, as well as for such aerospace and aeronautical parts, used elsewhere, where the supply chain and exposure scenarios are identical;
(iv) Formulation of mixtures for Uses (i), (ii), (iii) or (v) except on-site formulation for Uses (i), (ii), (iii), or (v) which is considered to be covered by Uses (i), (ii), (iii) or (v);
(v) Passivation of tin plated steel.

The proposed review period for all uses is 12 years, except passivation of tin plated steel (4 years).

Companies that are not CCST Members who wish to themselves file individual applications for REACH authorization of these uses of the named substances may purchase letters of access for the draft CCST authorization dossier parts (analysis of alternatives, chemical safety report, socio-economic analysis) to adapt and complement them according to their needs. Such letters of access will be available as of April 20, 2015 from the Consortium Manager Jones Day at www.jonesdayreach.com.
In addition, CCST will continue to pursue its work and has built Submission Groups of Consortium Members that will support the filing of (where possible joint) applications for authorization at the upstream level (manufacturer / importer / formulator / Only Representative as the case may be) for the uses of Substances S2, S3, S4, S6. These Submission Groups have elected upstream applicants in order to cover the complete downstream user chain.

For substances S2, S3, S4, and S6, these upstream applications for REACH authorization are planned to be filed with ECHA in November 2015.

The following upstream applicants have been earmarked:

<table>
<thead>
<tr>
<th>Substance</th>
<th>Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>S2</td>
<td>Henkel</td>
</tr>
<tr>
<td>S3</td>
<td>Brenntag</td>
</tr>
<tr>
<td>S4</td>
<td>AD International, Brenntag, Henkel</td>
</tr>
<tr>
<td>S6</td>
<td>Akzo Nobel, Aviall, Habich, Henkel, Indestructible Paint, Mapaero, Mankiewicz, PPG</td>
</tr>
<tr>
<td>S7</td>
<td>Not yet determined(^{ii})</td>
</tr>
<tr>
<td>S8 (SG not yet set up)</td>
<td>Aviall, Mankiewicz, PPG</td>
</tr>
</tbody>
</table>

For further general queries, please contact Ursula Schliessner at uschliessner@jonesday.com. Or contact your supplier (see contact information below).

### Contact Details of Suppliers

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>AkzoNobel Aerospace Coatings</td>
<td><a href="mailto:Luc.Turkenburg@akzonobel.com">Luc.Turkenburg@akzonobel.com</a></td>
</tr>
<tr>
<td>Aviall, a Boeing Company</td>
<td><a href="mailto:john.dickhoff@aviall.com">john.dickhoff@aviall.com</a></td>
</tr>
<tr>
<td>AD International BV</td>
<td><a href="mailto:reach@adinternationalbv.com">reach@adinternationalbv.com</a></td>
</tr>
<tr>
<td>Brenntag UK Ltd</td>
<td><a href="mailto:REACH@brenntag.co.uk">REACH@brenntag.co.uk</a></td>
</tr>
<tr>
<td>Habich GmbH</td>
<td>Dr. Olaf Schmidt-Park, <a href="mailto:schmidt-park@habich.com">schmidt-park@habich.com</a>, Dr. Heinrich-Michael Wirth, <a href="mailto:wirth@habich.com">wirth@habich.com</a></td>
</tr>
<tr>
<td>Henkel AG &amp; Co. KGaA</td>
<td><a href="mailto:Reach@Henkel.com">Reach@Henkel.com</a></td>
</tr>
<tr>
<td>Indestructible Paints</td>
<td><a href="mailto:alann@indestructible.co.uk">alann@indestructible.co.uk</a>, Direct dial: 0044 (0)121 702 1515, <a href="mailto:richard@indestructible.co.uk">richard@indestructible.co.uk</a>, Direct dial: 0044 (0)121 7021517, <a href="mailto:brian@indestructible.co.uk">brian@indestructible.co.uk</a>, Direct dial: 0044 (0)121 702 1510</td>
</tr>
<tr>
<td>Mankiewicz Gebr. &amp; Co. (GmbH &amp; Co. KG)</td>
<td>Gunnar Hansen <a href="mailto:gunnar.hansen@mankiewicz.com">gunnar.hansen@mankiewicz.com</a>, Tel: +49 (0)40 75103-0, Sven Schroeder, <a href="mailto:sven.schroeder@mankiewicz.com">sven.schroeder@mankiewicz.com</a>, Tel: +49 (0)40 75103-0</td>
</tr>
<tr>
<td>Mapaero</td>
<td>Celine Dorignac, <a href="mailto:c.dorignac@mapaero.com">c.dorignac@mapaero.com</a></td>
</tr>
<tr>
<td>PPG Aerospace</td>
<td>Daniel Bencun, Coatings Market Segment Manager, Aerospace EMEA, <a href="mailto:bencun@ppg.com">bencun@ppg.com</a>, Julia Wilson, Product Stewardship Manager, Aerospace EMEA, <a href="mailto:juliawilson@ppg.com">juliawilson@ppg.com</a></td>
</tr>
</tbody>
</table>

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\(^{i}\) Aerospace specific.

\(^{ii}\) No upstream applicant identified within CCST for S7 as yet.
CONSORTIUM AGREEMENT FOR PURPOSES OF REACH AUTHORIZATION
MISCELLANEOUS CHROMIUM VI COMPOUNDS FOR SURFACE TREATMENT ‘CCST’
(JANUARY 10, 2013)

This Consortium Agreement (hereinafter referred to as ‘Agreement’) is made effective by and among the undersigned parties set out in Annex 3.

Preamble

WHEREAS, the Members are legal or natural persons that qualify as applicants for Authorization of the Substances (as defined below) under REACH¹, directly or indirectly through their Affiliates, and have signed this Agreement;

WHEREAS, the Substances below will likely be listed on Annex XIV REACH (“List of substances subject to authorization”);

WHEREAS, the current uses of the Substances are manifold, they may not be easily replaceable, and information and know-how on uses is held by many different stakeholders;

WHEREAS, where legally and practically possible, therefore resources and knowledge should be pooled;

WHEREAS, another consortium for collaboration on Authorization of Chromium trioxide (‘CTAC’) has already been established of which some Members are members;

WHEREAS, the Members are aiming to conclude license agreements with CTAC for use of information that has been elaborated and collected by CTAC;

WHEREAS, several companies involved in the importation and use of the Substances in the EU entered into a Memorandum of Understanding in November 2012 creating a Task Force for a limited duration of four months (‘Phase 1’) to explore whether and to which extent they could cooperate in case the Substances will be listed on Annex XIV REACH and to develop a consortium agreement to this extent;

WHEREAS, the present Consortium Agreement is the result of this Phase 1 organizing the collaboration of interested parties for ‘Phase 2’;

WHEREAS, the Members agree to limit their activities under this Agreement to sharing and developing data for purposes of REACH Authorization and agree not to disclose to, or discuss or exchange with, one another, or any parties to which their discussions and/or cooperation may subsequently be extended, any competitive or otherwise sensitive market information (such as, by way of example but not of limitation, information concerning prices, customers, raw material costs, manufacturing costs, marketing or sales plans, business or product development plans and profit margins). Within this aim, they shall act in accordance with antitrust rules which are attached as Annex 2;

NOW, THEREFORE, in consideration of the mutual agreements and undertakings contained herein, the Members agree to form a Consortium and agree as follows:

¹ EU Regulation 1907/2006, as may be amended from time to time.
**Article 1 - DEFINITIONS**

(1) **Agreement:** The present Agreement among the Members.

(2) **Affiliate:** Any legal or natural person, which directly or indirectly through one or more intermediaries owns, controls, is controlled by, or is under common control with, another legal person. For the purpose of this definition, a legal person shall be deemed to ‘control’ another legal person if it has the direct or indirect power to direct or cause the direction of the general management and policies of another legal person whether through the ownership of securities or capital stock, voting stock, by contract or otherwise. A legal person shall presumptively be deemed to control another legal person if it owns, directly or indirectly through one or more intermediaries and whether legally or beneficially fifty per cent (50%) or more of the outstanding voting securities or capital stock or other comparable equity or ownership interest of such legal person. A list of current Affiliates is set out in Annex 3. Annex 3 may be updated by the Manager upon notification of a Member.

(3) **Authorization:** Authorization pursuant to Title VII of REACH.

(4) **CCST Dossier(s):** Sets of Data jointly developed by the Consortium, that may have common and individual parts per Substance related to theUses concerned, and that may be adapted by the individual Members or third parties obtaining a Letter of Access for filing of their respective Authorization applications.

(5) **Chairperson:** Natural person appointed and having the tasks as per Article 7 (12).

(6) **Confidential Information:** Shall include all information within the scope of Article 6.

(7) **Consortium:** Cooperation of Members as contemplated under this Agreement.

(8) **Customer(s):** Customers of Members; or customers of Customers of Members. Customers are not considered third party(ies) unless otherwise stated herein.

(9) **Data:** Studies and other test data and information made available to the Consortium by a Member, or by third parties, or generated / determined by the Consortium within the framework of this Agreement, including but not limited to chemical safety report, assessment of alternatives, substitution plan, use description, justification for not considering certain risks, and socio-economic assessment.

(10) **Effective Date:** March 15, 2013.

(11) **European Union (EU):** the territory² of the European Union (EU), which is comprised of the

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² Means the ‘customs’ territory of the Community as defined in the REACH Guidance for the Navigator. The customs territory of the Community comprises the territory of: Austria; Belgium, Bulgaria, Cyprus, The Czech Republic, Denmark (except the Faroe Islands and Greenland), Germany (except the Island of Helgoland and the territory of Bisingen), Estonia, Finland (including the Aland Islands), France (except New Caledonia, Mayotte, Saint-Pierre and Miquelon, Wallis and Futuna Islands, French Polynesia and French Southern and Antarctic Territories), Greece, Hungary, Ireland, Italy (except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio), Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovenia, The Slovak Republic, Spain (except Ceuta and Melilla), Sweden, The United Kingdom of Great Britain (including Northern Ireland and the Channel Islands and the Isle of Man). The customs territory of the Community includes the territorial waters, the inland maritime waters and the airspace of the Member States and the territory of the Principality of Monaco, except for the territorial
current twenty-seven Member States, as well as any future Member State of the EU. As and when Iceland, Liechtenstein and Norway as members of the European Economic Area implement REACH, they shall be covered by the term EU.

(12) **Letter of Access:** A document granting a third party a non-transferable right of referral and/or use pursuant to Article 63 REACH as the case may be of the CCST Dossier(s) against payment of a license fee. The Letter of Access shall remain valid also for the review of the Authorization but shall not entitle the holder to demand any update of the CCST Dossier(s) for such review, unless a new license fee shall have been mutually agreed among the Members.

(13) **Manager:** Person or entity appointed and having the tasks as per Article 7 (18).

(14) **Member:** Legal or natural persons that qualify as applicants for authorization of the Substances under Title VII REACH, directly or indirectly through their Affiliates, and have signed this Agreement and made in time all payments hereunder due upon signature. This shall include Only Representatives pursuant to Article 8 REACH.

(15) **Member in good standing:** A Member is considered to be in good standing as per Article 7 (2) if (1) there is no outstanding uncured notice of default (in accordance with Article 12 with respect to such Member); and (2) the Member concerned has not given a notice of withdrawal (in accordance with Article 4).

(16) **Steering Committee:** Decision making body of the Consortium which consists of a representative of each Member. Annex 4 contains a list of the representatives and deputies.

(17) **Substances:** Chromium VI containing compounds including their hydrated forms (except chromium trioxide EC 215-607-8) for the Uses, namely Ammonium dichromate (EC 232-143-1; CAS 7789-09-5) (‘S1’); Dichromium tris (chromate) (EC 246-356-2; CAS 24613-89-6) (‘S2’); Potassium dichromate (EC 231-906-6; CAS 7778-50-9) (‘S3’); Sodium dichromate (EC 234-190-3; CAS 10588-01-9) (‘S4’); Sodium chromate (EC 231-889-5; CAS 7775-11-3 (‘S5’); Strontium chromate (EC 232-142-6; CAS 7789-06-2) (‘S6’); Pentazinc chromate octahydroxide (zinc tetrahydroxide chromate) EC 256-418-0; CAS 49663-84-5) (‘S7’); Potassium hydroxyoctaoxodizincatedichromate (EC 234-329-8; CAS 11103-86-9) (‘S8’) with the sameness parameters as registered under REACH.

(18) **Trustee:** Manager or other independent third party appointed for purposes of development and processing of information with whom confidentiality agreement will be concluded.

(19) **Uses:**

(i) surface treatment of metals with Substances S1, S2, S3, S4, and/or S5 such as aluminium, steel, zinc, magnesium, titanium, alloys, composites, sealings of anodic films;

(ii) use of Substances S1, S6, S7, and S8 in paints, in primer, sealants, lacquers and coatings (including as wash primers);

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3 Currently no full registration, only intermediate registration.
(iii) formulation of mixtures for Uses (i) and/or (ii) except on-site formulation for Uses (i) and (ii) which is considered to be covered by Uses (i) and (ii).

Uses may be further broken down into ‘sub-uses’ or amended by decision of the Steering Committee.

To the extent not otherwise defined herein, the definitions in Article 3 of REACH shall apply to this Agreement.

**Article 2 - SCOPE AND PURPOSE - GENERAL OBLIGATIONS**

(1) The Consortium formed under this Agreement shall be formed on the Effective Date of this Agreement between at least two Members for the principal purpose of jointly developing and preparing the CCST Dossier(s), i.e. those parts of the Authorization application(s) that the Members agree should be prepared jointly, including the so-called ‘Broad Information on Uses’, chemical safety report, analysis of the alternatives, substitution plan, socio-economic analysis, and justification for not considering risks to human health pursuant to Article 62(4) and (5) REACH and any guidance adopted by ECHA.\(^4\) To this effect, use shall be made as much as possible of the work carried out by CTAC.

(2) The Members undertake to cooperate and share human and financial resources for the above purpose. In particular, they undertake to pursue jointly the following objectives:

a) reviewing and sharing existing Data, filling of data gaps, and sharing of Costs incurred in developing missing Data on the Substances and their alternatives, in accordance with the provisions of this Agreement for the Uses;

b) development of those parts of the Authorization application(s) set out in Article 62(4) REACH that are agreed to be developed jointly within the work plan of the Consortium, as may be amended from time to time;

c) gathering information on use and exposure scenarios and other necessary Data where necessary;

d) developing the wording for the so-called ‘Broad Information on Uses’;

e) obtaining and issuing licenses for use of Data and the CCST Dossier(s) where necessary in pursuance of the purpose of this Agreement.

(3) The CCST Dossier(s) shall be ready for individual Members and issue of Letters of Access at the latest nine (9) months before the latest application date set in Annex XIV REACH.

Any work on Substances that are not entered into Annex XIV REACH by April 2013 shall not be commenced prior to a decision of the Steering Committee to this effect. The Members not concerned by those Substances shall not vote. Only Members that vote in favor of work on these Substances or notify their interest in these Substances after the vote has taken place shall participate in cost sharing on these Substances (Use Cost and Substance Cost) and shall have the corresponding rights to the Data and CCST Dossier(s) on these Substances.

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\(^4\) European Chemicals Agency.
Substances.

(4) The cooperation shall continue beyond the latest application date set in Annex XIV REACH so as to take account of observations made during the Authorization procedure and to be able to cooperate in case any Authorization decision sets 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. All Costs related to such review shall be considered as Substance and Use Costs according to Article 11 (2) and (4), not as Common Costs pursuant to Article 11 (2) and (3).

(5) This Agreement establishes and defines the respective rights, obligations, and mutual promises among the Members with respect to such cooperation.

(6) Each Member remains responsible on its own to comply with REACH, including to critically assess the CCST Dossier(s).

(7) The Members recognize that any activities carried out under this Agreement have to be carried out in full compliance with applicable competition laws, in particular with Articles 101 and 102 of the Treaty on the Functioning of the European Union. The Members explicitly agree to observe the Code of Conduct (hereinafter the ‘Code of Conduct’) attached as Annex 2 to this Agreement including CEFIC REACH competition law compliance guidance. The Code of Conduct shall be complied with at all times by the bodies of the Consortium, the Members, and any outside consultants and/or experts that may be retained from time to time by the Consortium. Any contractors engaged by Members shall be contractually obliged to comply with EU competition law. Affiliates shall comply with the same rules as Members.

(8) The objectives and activities of the Consortium shall at all times comply with the applicable laws of the EU, its Member States and other jurisdictions where applicable.

(9) Each Member shall comply with all relevant export, import, and sanctions laws, regulations, orders, and authorizations to include without limitation, the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), and regulations and orders administered by the Treasury Department’s Office of Foreign Assets Control. Such performance shall apply to the export, re-export and import of controlled technology, data, software, services, and/or hardware. Accordingly, Members shall not transfer Data without the appropriate government export authorization. Each Member shall be individually responsible for its compliance with any applicable export or import laws and regulations. No Member shall be required to indemnify another Member with regard to export control compliance, and in particular with regard to the sharing, transmission, acceptance or receipt of export or import controlled technical data.

Article 3 - MEMBERSHIP

(1) Membership in the Consortium shall commence by execution of this Agreement as per Article 15 (8) as of the Effective Date and shall be effective upon payment of all payments due upon membership by the due date according to Annex 1 (March 31, 2013). Simultaneous with execution of this Agreement, the Member shall notify the Manager of the Substances and Uses for which it will seek participation. Thereafter, a Member may notify...
the Manager of additional Uses and Substances for participation only.

(2) Membership shall be open to any legal or natural persons active, directly or indirectly through their Affiliates in the manufacturing and/or import, and/or Uses of the Substances. Membership shall also be open to Only Representatives.

(3) Members shall have the rights and obligations set out in this Agreement and shall contribute to all activities of the Consortium in accordance with its provisions.

(4) In view of the deadlines that will be set for Authorization applications, Members are aware that strict adherence to any working deadlines and procedures set under this Agreement is a necessary and indispensable membership condition, failing which a Member can be expelled by decision of the Steering Committee taken in accordance with Article 4 (1) (b) of this Agreement.

(5) Third parties that wish to apply for Authorization of the Substances but do not become Members by the Effective Date may obtain access rights to the CCST Dossier(s) developed hereunder via a Letter of Access granted pursuant to Article 10 of this Agreement.

Article 4 - WITHDRAWAL AND TRANSFER OF MEMBERSHIP

(1) A Member withdraws from the Consortium by termination or through exclusion from the Consortium.

a) Termination is permissible in writing for the first time nine (9) months before the earliest latest application date for any of the Substances, provided notice is received six (6) months before. Thereafter, termination is permissible in writing at the end of a calendar year with a notice period of six (6) months.

b) The Steering Committee is entitled to exclude a Member by 2/3 majority decision of all Members with immediate effect in the event of a material breach of this Agreement. The Member shall have the right before such Steering Committee decision to remedy any material breach that can be remedied. As ‘material breach’ are considered any violations of the obligations concerning Confidentiality, payment (if not cured within thirty (30) days from the date of default pursuant to Article 12 plus 10% interest), use of Data and/or the CCST Dossier(s) outside the provisions of this Agreement, Article 3 (4), and any violations of obligations assigned to Member(s) under the work plan pursuant to Annex 1 of this Agreement. A Member who has failed to make payments within sixty (60) days after due date shall automatically cease to be a Member without the necessity of further Steering Committee action.

c) Membership shall also automatically terminate with immediate effect in the event of a Member being declared bankrupt, or upon completion of winding-up procedures.

d) In the event of termination according to paras. (a) and (c) or exclusion according to

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5 I.e. if the latest application date set in Annex XIV REACH for S1 would be December 31, 2015, for S6 April 1, 2016 and for S7 August 1, 2018, then the earliest effective withdrawal date from the Consortium (provided notice is received by the Manager by September 30, 2014 latest) would be March 31, 2015 (9 months before the latest application date for S1).
para. (b), payment obligations which have arisen up until that point in time, including for currently generated Data approved by the Steering Committee prior to the receipt of the withdrawing Member’s notice of withdrawal, must be met. The rights (related to information according to Articles 8 and 9 of this Agreement) which have been acquired up until the point in time of ending of the membership shall persist, provided that the Member meets all related payment obligations. The withdrawing Member shall not have any ownership or CCST Dossier rights for Data completed after the date of the Member’s notice of withdrawal. However, with regard to Data currently being generated to which the exiting Member committed, the exiting Member shall financially contribute to all further Costs until the Data is completed. Obligations specified in Article 9 (2) of this Agreement persist for a period of twelve (12) years following the Member's, or third party’s submission to ECHA of the Authorization application(s).

e) The withdrawal/exclusion of a Member will not result in the termination of the Consortium. After a Member has been excluded/has withdrawn, the remaining Members shall, subject to (d) above, take over the withdrawing/excluded Member’s share of any financial obligations under this Agreement and they shall retain all rights to existing Data contributed by the exiting Member.

(2) A Member shall be entitled to transfer its membership, including all rights and obligations, to another legal or natural person subject directly or indirectly to Authorization of the Substances. Such transfer requires approval by a 2/3 majority vote of the Steering Committee. The new Member will take over all rights and obligations (including outstanding financial obligations) of the previous Member in relation to the Substances the previous Member had subscribed to. The consent requirement does not apply to the transfer of membership to an Affiliate in the event of restructuring within a group of companies.

A Member in good standing may also assign its membership in the Consortium without approval by the Steering Committee provided that at the time it assigns such membership it also assigns to the same legal or natural person all its business related to the previously subscribed Substances.

Both paragraphs above shall be considered to include assignment of an Only Representative to another Only Representative for the same non-EU Principal or to the non-EU Principal previously represented should this non-EU Principal become established in the EU. It shall equally include assignments by an Only Representative to another Only Representative in follow-up to an assignment of the business related to the respective Substances to another Principal.

In all cases above, it is understood that assignment of the membership for all of the Substances’ business (complete assignment) does not require approval, whereas assignment with regard to specific Uses of the Substances or specific Substances (partial assignment) does require approval. This approval requirement is considered necessary because partial assignment increases the number of Members (the previous Member remaining a Member for some Uses and/or some Substances) and is therefore more complicated in terms of assessing rights and Costs.

Unless otherwise specified above, a Member may not transfer a partial interest in the Consortium.
An assignment shall not be effective until the assignee agrees in writing to assume the responsibilities of the assignor in accordance with this Agreement, including but not limited to any outstanding financial obligations.

(3) The transfer of individual rights and obligations arising from membership is excluded. This also applies to financial claims.

Article 5 - LIABILITY

(1) Members shall only be liable to another Member or Members in connection with the activities contemplated in this Agreement in case of gross negligence and willful misconduct. They shall not be liable for consequential loss, damage and lost profits. This limitation of liability does not apply in case of claims for death, personal injury or willful misconduct. No warranty for acceptance of CCST Dossier(s) by ECHA or granting of an authorization by the European Commission is given.

(2) In accordance with applicable law, each Member shall be individually liable vis-à-vis third parties within the scope of his/her liability, if any.

(3) Members shall jointly fund their defense and damages in case of third party claims against the Consortium or any of its Members in relation to work conducted by the Consortium. If such a claim is brought, the Member must immediately inform the Manager who shall arrange for the defense to be organized.

(4) Each Member having submitted Data which has been used in the CCST Dossier(s) represents to the others (i) that it is the rightful owner or grantee of the Data and free to grant rights therein, (ii) that, to the knowledge of this Member, these Data do not infringe on the rights, in particular, but without limitation, intellectual property rights, of any third party and (iii) that this Member has not received a claim or notice of any alleged infringement.

Article 6 - CONFIDENTIALITY

(1) As used in this Agreement, ‘Confidential Information’ shall include, but not be limited to, all scientific, statistical, commercial or technical data, including but not limited to the composition, characteristics, properties of the Substances and processes and applications related to the Substances, as well as any information concerning the business of any of the Members and any subsidiary and/or Affiliates thereof that is (i) disclosed in writing and marked with the words “Confidential”, “Proprietary” or words with a similar meaning, or (ii) disclosed orally and, at the time of disclosure, the disclosing Member identifies it as information that will be used for the purpose described above. The Members shall maintain confidentiality vis-à-vis third parties concerning all unpublished information made available to them in the context of the cooperation.

(2) The Members undertake, in relation to the Confidential Information as follows:

a) to treat such information as confidential;

b) not to disclose any of the Confidential Information to any Customer, beneficiary or other third party unless prior written approval is granted by the Member disclosing it and subject to the execution by any such third party of a confidentiality
agreement, in a form identical to this Agreement, a copy of which shall be forwarded, without delay, to the Member disclosing the Confidential Information;

c) not to use any of such information for any purpose other than for the aspects described in Article 2 (1);

d) not to analyze, test or reverse engineer or have analyzed, tested or reverse engineered any samples, formulas, combination of formulas or any technical or scientific methodology, chemistry or know-how provided by any of the Members for their components, formulations or processes;

e) not to file any patent, utility model or design application based upon the Members’ information or samples.

(3) The Members may not disclose Confidential Information to any third parties for any reason whatsoever without the express written consent of the Member disclosing it. Confidential Information does not include, and, the Members shall not be under any obligation with respect to any information that:

a) was known to it on a non-confidential basis prior to receipt thereof;

b) was publicly known prior to receipt thereof;

c) became publicly known on a general basis after receipt thereof without breach of this Agreement;

d) was disclosed to it without restriction by a third party who has the right to disclose it lawfully; or

e) was developed independently by the Member, provided that it can demonstrate this through tangible evidence, without reference to or reliance upon the subject Confidential Information.

Specific Confidential Information shall not become exempt from the obligations according to Article 6 of this Agreement merely because it is embraced by general information within any of the exceptions above. Likewise, any combination of specific items of Confidential Information shall not fall within any exception merely because the specific items fall within any exception, but only if the combination itself, and its principles of operation, fall within any exception.

(4) Affiliates as well as experts, other externs and trustees, as well as employees of one or all Member(s), are not regarded as third parties for the purposes of Article 6 of this Agreement. The Members are responsible for full compliance by their Affiliates and experts, other externs and trustees, as well as employees, and shall ensure that these sign adequate confidentiality agreements (except that employees or Affiliates do not need to sign such agreements if confidentiality is adequately assured by their respective employment contracts or company policies). Members will disseminate Confidential Information to their employees, Affiliates or external experts only on a need to know basis and to the extent absolutely necessary for the purpose of this Agreement, and only if the aforementioned are contractually or otherwise obliged to keep the Confidential Information confidential.

Members that are Only Representatives are entitled to disclose information to the Principals
they represent. The Principals are considered as Affiliates for the purpose of this provision.

(5) The Members acknowledge that they may become obliged, under law, to disclose Confidential Information to third parties, and such disclosure shall not constitute a breach of this Agreement. Nevertheless, immediately upon learning of such obligation, and prior to disclosure, if lawful, the respective Member shall notify the Member having disclosed the Confidential Information.

(6) The obligations of confidentiality and non-use related to Confidential Information provided by another Member shall remain in effect and shall survive membership of the Consortium as per Articles 13 (3) and (4) and Article 4 (1)(d).

(7) Nothing in this Agreement shall oblige any Member to disclose Confidential Information which in its absolute discretion it decides not to disclose.

(8) Any Member shall be entitled to disclose Confidential Information of another Member to any of its Affiliates to the extent practicable for the performance of this Agreement. The receiving Member, however, shall remain responsible for its Affiliates’ compliance with the terms of this Agreement.

(9) In the event of non-compliance with the duties here above, the Members are entitled to exclude the breaching Member from any further cooperation, by 2/3 majority voting. 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 notwithstanding the stipulations contained in this Agreement.

(10) Members may designate certain Confidential Information as “Strictly Confidential”. Such designated special Confidential Information shall be made available only to the Manager and the Technical Consultant and shall be neutralized and/or aggregated by them as the case may be before it may be disseminated and used further for elaboration of the CCST Dossier(s). The Manager / Technical Consultant shall submit the aggregation / neutralization for prior approval to the Member having disclosed the special Confidential Information.

Article 7 - WORKING OF THE CONSORTIUM

(1) The Consortium shall operate through a Steering Committee, which will exercise overall direction and control over the Consortium, a Technical Committee, which will be in charge of technical issues, and a Manager. A Technical Committee shall only be established if the Consortium has more than thirty (30) Members. In case the Technical Committee is not established, its tasks shall be carried out by the Steering Committee.

(2) Each Member in good standing shall appoint one representative and a deputy representative to the Steering Committee. The Member representatives are listed in Annex 4. Alternate representatives may be appointed under exceptional circumstances upon prior notification to the Manager. All face-to-face meetings shall be attended by one representative per Member only, unless the attendance of additional representatives and/or experts would not lead to additional substantial Cost for the Consortium. The Steering Committee may adopt detailed rules in this regard. A Member is allowed to withdraw its representative from the Steering Committee in writing by filing a written notice to this effect with the Manager. Withdrawal shall be effective only if another representative is appointed at the same time. The Manager
shall adapt Annex 4 accordingly when such changes are made.

(3) Each representative in the Steering Committee shall act for and bind the Member he/she represents with respect to all matters covered by this Agreement. A Member may also designate in writing to the Manager another Member in good standing to represent it in the Steering Committee and to act on its behalf with regard to all matters covered by this Agreement. Any Member accepting such a mandate may represent its own interests and those of the Member it represents through a single representative, being understood that the Member representing another Member has the number of votes allocated to all the Members he represents.

(4) All decisions of the Consortium shall be taken in meetings, unless decision by written procedure of a particular item is agreed at the previous meeting, or the Chairperson of the Steering Committee so requests, or this Agreement provides otherwise. The terms of such written procedure have to be agreed in advance on a case-by-case basis.

(5) All decisions taken by the Steering Committee shall be binding on the Members and shall enter into effect on the date the minutes are considered as approved.

(6) All meetings of the Consortium (including meetings of the Steering Committee, Technical Committee and any other ad-hoc or sub groups that may be created) shall have an agenda except the meetings of potentially created expert subgroups, e.g. between toxicologists and/or other technical experts, which will be recorded in terms of ‘pending’ and ‘completed’ actions.

All agendas shall be detailed and shall make a distinction between proposed measures on which the Steering Committee or the other bodies of the Consortium are asked for an opinion, issues being put forward for information or simple exchange of views, and issues on which a decision (vote) will be taken. No decision shall be taken on an item which does not appear on the agenda, unless all the Members are present at a particular meeting and consent to the amendment of the agenda and the inclusion and discussion of the additional item is made at the respective meeting.

(7) All meetings of the Consortium (including meetings of the Steering Committee, Technical Committee and any other ad-hoc or sub groups that may be created) shall be minuted and have an attendance list attached to them. Minutes will be drawn up by the Manager (or Technical Consultant for Technical Committee) within seven (7) calendar days after the meeting and made available to Members. Minutes shall be considered as approved if none of the Members explicitly object to the Manager within a further fourteen (14) calendar days. In case of objections, the Chairperson will attempt to resolve the matter and re-circulate them in draft form within a further seven (7) calendar days. In case of continued disagreement, minutes will be discussed, possibly amended, and approved with immediate effect at the next meeting by simple majority. Any persisting disagreement will be annexed to the minutes.

(8) Invitations to Consortium meetings (including meetings of the Steering Committee, Technical Committee and any other ad-hoc or sub groups that may be created) shall be issued at the latest fourteen (14) calendar days in advance and all meeting documents and the agenda have to be issued at the same time, unless in case of extreme urgency to be determined by the Manager. All meeting convocations shall be done via email to the addresses communicated to the Manager by the Members; electronic delivery receipt shall constitute proof of delivery. Each Member is responsible for keeping its mailing lists up to
date and to have available adequate and trained representatives for the work to be conducted.

(9) All meetings shall be conducted in Brussels (unless Members decide differently at the beginning of a calendar year) at a location to be determined by the Manager. Members have to carry their own lodging and travel expenses in relation to the meetings of the Consortium and its bodies. Participation by phone or video rather than in person is permissible.

(10) The working language of the Consortium is English. All meetings of the Consortium and its bodies shall be conducted in the English language and all documents shall be presented and drawn up in English. No translation will be provided. Members are entitled to bring their translators at their own expense if they so desire.

(11) The Steering Committee will meet at least twice every year, unless the Technical Committee or Manager requests to convene additional or fewer meetings or the Members request so by simple majority.

(12) The Steering Committee shall be managed by the Manager. The Manager shall be responsible for correct execution of the agenda of the meetings, coordination with the Technical Committee, consultants and other experts. The Steering Committee shall elect a Chairperson and a deputy Chairperson among the Members for a period of three years, which may be renewed. The Chairperson shall sign the contracts with the Manager, consultants etc. on behalf of the other Members. The Chairperson can be requested to withdraw from his position during a term by 2/3 majority vote of all Members.

The Chairperson may, on his own initiative or at the request of a Member, postpone the vote on a particular agenda item until the end of a meeting or to a later meeting if (i) a substantive change is made to the proposal during the meeting; (ii) if the text of the proposal has been submitted to the group during the meeting; or (iii) if a new point has been added to the agenda.

(13) Each Member in good standing has the number of votes in the Steering Committee allocated pursuant to Article 11 (3), i.e. commensurate with the number of Cost shares. The votes for a Member that is an Only Representative shall be calculated on the basis of the natural or legal person including its Affiliates established outside the EU by whom the Only Representative is designated (‘Principal’). If an Only Representative represents more than one Principal, it will thus have a number of votes corresponding to the number of Principals and their respective Cost shares outside the EU whom it represents.

Members shall not be entitled to vote on matters related to Uses and Substances for which they have not participated in Cost sharing, and they shall in this case not be counted towards the necessary majority required. Moreover, Members not concerned shall not participate in discussions unrelated to their Uses and Substances. The Chairperson and the Manager are jointly in charge of assuring the respective confidentiality and voting rights.

(14) Unless otherwise provided for in this Agreement, the Steering Committee shall decide by two/third (2/3) majority of votes cast (i.e. votes collected from Members in good standing, regardless of presence at the meeting and regardless of nominal number of Members of the Consortium). In those cases in which this Agreement provides for a 2/3 majority of ‘all Members’, this requires a 2/3 majority of the nominal number of Members in good standing. If such 2/3 majority of ‘all Members’ cannot be attained, a new vote may be called by written procedure then requiring 2/3 majority of ‘votes cast’. 

Chromium VI Compounds for Surface Treatment REACH Authorization Consortium Agreement (‘CCST’)
(15) When required for compliance with relevant competition laws, the Steering Committee shall decide on appointing an independent third party as Trustee, for example the Manager or a technical consultant as may be appropriate depending on the type of information to be processed, for the development and processing of Data, including in cases of niche applications which are not accessible to the professional community as identified Uses, or in the case of assessment of alternatives or substitution plans. In such event, the Trustee shall inform the Steering Committee in aggregated form concerning the information obtained, thereby observing confidentiality.

(16) The Steering Committee shall have all powers necessary to ensure that the purpose of the Agreement is achieved in the most efficient and cost-effective way. The tasks of the Steering Committee may include, inter alia:

a) decisions on funding and expenses, scope and matters of policy;

b) decisions on working and finance plan(s) and management of financial resources of the Consortium, including budgeting, funding collection and accountancy; such plans(s) inserted as Annex 1 to this Agreement;

c) appointment of external consultants / law firms etc. to perform technical, scientific, legal, administrative, management, secretarial, accounting, record keeping or other tasks necessary for the fulfillment of the purpose of the Consortium. The Steering Committee shall procure that a third party shall maintain confidentiality concerning all information made available to them through Members for that purpose. A respective obligation must be imposed upon expert or other competent externs;

d) decisions to purchase, collect and elaborate Data;

e) appointment, supervision, and removal of Manager, Trustees and other bodies, and terms of such appointments;

f) approval of the CCST Dossier(s) in whole or in parts to be submitted to ECHA and selecting the Data which will be subject to a request for confidentiality protection in accordance with Article 119 of REACH;

g) approval of financial valuations and Data compensation;

h) approval of work on the review of the CCST Dossier(s) in whole or in its parts;

i) decision(s) regarding provision of rights to third parties;

j) decision(s) on the exclusion of a Member;

k) decisions on amendments of this Agreement and/or its Annexes (except Annex 4 (contact details)) which may be amended at any time by the Manager); including upon potential amendments of REACH; or possible inclusion of other member categories (e.g. associate members);

l) ensuring competition law compliance;

m) granting rights to third parties in accordance with Article 10.
The Steering Committee shall appoint the members of the Technical Committee, upon proposals by the Members of the Consortium (it is not mandatory for each Member of the Consortium to propose a Member of the Technical Committee). The Technical Committee shall be composed of a minimum of one (1) Member per Use and per Substance. The Technical Committee shall oversee and coordinate the activities of technical consultants, engaged to conduct:

a) collection and evaluation of Data, and related analytical methods and gap analysis;

b) collection and evaluation of Uses and development of exposure assessments where necessary to prepare or amend the chemical safety report(s);

c) proposal for collecting and drawing up Data for completion of the CCST Dossier(s);

d) filing of relevant Data into the IUCLID 5 database according to the decision of the Steering Committee; it being understood that the submission of the Authorization application(s) to ECHA shall be done by each Member individually, unless Members arrange differently among themselves bilaterally;

e) assessing the scientific and financial evaluations of the Data and CCST Dossier(s);

f) coordination of the overall technical work.

The Technical Committee may organize task forces or other subgroups responsible for specific issues as identified by the Technical Committee, for example for elaborating Data on individual Uses or Substances.

The decisions of the Technical Committee shall be adopted by consensus of the Members concerned, whereby in case of absence at a specific meeting, non-objection to the minutes of the respective meeting is considered approval. If consensus cannot be reached, the Technical Committee shall bring the matter before the Steering Committee, which shall have the final say. The rules of the Steering Committee concerning non-participation and non-voting for Uses or Substances for which a Member does not share the corresponding Use or Substance Cost pursuant to Article 11 (2) and (4) shall also apply to the Technical Committee and any of its subgroups.

The Manager, who reports to and will be appointed by the Steering Committee by 2/3 majority, shall be in charge of:

a) recordkeeping of all Data shared within the Consortium, the valuation status thereof and access rights thereto, as well as other documents related to the Consortium until December 1, 2025;

b) receiving and responding to third party enquiries;

c) calculating membership and expense allocation and invoice/credit Members accordingly, and other accounting tasks;

d) keeping an up-to-date electronically accessible list of all Members of the Consortium, representatives in the Technical Committee, in the Steering Committee, external consultants / law firms, and other issue holders of the
Consortium, as the case may be;
e) handling any non-technical Confidential Information, Data and other information and documentation that may be sensitive from a competition law point of view;
f) drafting the minutes of the Steering Committee, reviewing the minutes of the Technical Committee and its subgroups with respect to competition laws;
g) overall administration of the Consortium except technical aspects to be ensured by Technical Consultant, financial management, e.g. invoicing, annual reporting to Members thereon; archiving, legal review of contractual arrangements, ad-hoc legal advice on REACH related issues, competition law;
h) following the legislative developments on REACH and informing the Members thereof.

(19) The Technical Consultant who reports to and will be appointed by the Steering Committee by 2/3 majority, shall be in charge of:

a) collection and evaluation of Data from Members, and third parties; preparing the CCST Dossier(s);
b) management, preparation and minute taking for the Technical Committee and its subgroups and interaction with the Steering Committee;
c) handling any technical Confidential Information, Data and other information and documentation that may be sensitive from a competition law point of view;
d) preparation of the work and finance plan in conjunction with the Manager;
e) interaction with ECHA in cooperation with the Steering Committee, national authorities, and technical contractors that may be employed the Consortium, including for the latter supervision / processing of purchase orders for Data in line with the approved working plan;
f) following the technical developments on REACH and informing the Members thereof.

(20) Upon proposal of the Manager, the Steering Committee shall adopt a work and finance plan concerning the planned activities until the completion of the CCST Dossier(s) will have taken place. The work and finance plan shall be updated annually and is attached to this Agreement as Annex 1.

(21) The Chairperson and the Manager shall make their best efforts to ensure that there are no information exchanges or any other type of activities that would contravene Articles 101 and 102 of the Treaty on the Functioning of the European Union. In case of doubt, the Chairperson and Manager may seek legal advice either from the Manager or if necessary from another expert. Should the risk of an infringement be identified, the Chairperson and/or Manager shall propose to the Steering Committee to appoint an external expert (Trustee), who would receive and compile such information and return it to the Members in an aggregated form that does not trigger the application of the EU competition rules. The Steering Committee shall appoint such Trustee. The Trustee shall agree to and observe
confidentiality and secrecy with respect to Confidential Information provided by Members of the Consortium; he/she shall conclude a confidentiality agreement with the Members of the Consortium.

(22) Correspondence relating to the Steering Committee shall be addressed to the Manager. Correspondence for the Members shall be addressed to each Member at the address contained in Annex 4.

Article 8 – EXISTING DATA

(1) The review of Members’ existing Data and of third parties’ Data potentially made available for free or against compensation for the purpose of being used as part of the CCST Dossier(s) either as such or after revision will be conducted by the Technical Committee assisted by a Technical Consultant. Within sixty (60) days after the Effective Date, all Members will make available to the Technical Committee their existing Data. Any exposure data owned by Members shall be made available by them for free.

(2) The Technical Consultant will assess the scientific and financial value of the Data made available in accordance with paragraph (1) on the basis of generally recognized valuation rules normally used for REACH registration and in accordance with best industry practice. The assessment will then be submitted for approval to the Steering Committee. Each Member shall consent to its existing Data being used as part of the CCST Dossier(s). In as far as existing Data is co-owned by third parties, Members shall make best efforts to assist the Consortium Members to obtain a license to use such data at an adequate cost.

(3) The Cost compensation for Members’ existing Data shall be allocated to the contributing Members in equal parts unless they have previously among themselves and any potential third party co-owners mutually agreed on another allocation key.

(4) All payments due to Members from other Members shall be made sixty (60) days after the invoice date.

(5) The rights to Members’ existing Data shall be retained by the Member who presented the existing Data. The other Members having made a payment in accordance with the Cost will have the ability to use and/or refer to the respective Data for their Authorization application(s). Those other Members shall obtain a copy of the Data. The right to use, however, is non-transferable or assignable and it does not give citation rights in other parts of the world outside the EU, nor does it give any ownership or data compensation rights to such Data, or allow the other Members to obtain a hard copy of the Members’ existing Data used. Only the holder of the right(s) pursuant to sentence 1 shall be entitled to use the Data or to grant a right for the use of them to third parties for purposes other than the purposes of this Consortium to the extent not otherwise provided for in the individual case.

(6) The Consortium Members, through decision of the Steering Committee, may jointly grant access to third parties to cite and rely upon the existing Data of a Member in accordance with Article 10.

(7) Any use of Member’s existing Data by Members outside the conditions set forth in Article 8 is subject to negotiations and an agreement outside the scope of this Agreement and does not involve, in any way, the Consortium.
(8) The Consortium Members, through decision of the Steering Committee, may jointly purchase rights to existing Data of third parties, including from CTAC (‘Third Party Data’). The compensation and use rights for such Data shall be determined by contract with the Consortium. If a contractual agreement cannot be reached, the relevant rules of the REACH Regulation (Article 27 to 30) shall apply.

Article 9 – NEW DATA

(1) This Agreement shall confer joint ownership rights and joint data compensation rights to the Members in any Data that they elaborate together or engage experts to draw up. Specifically, as regards such ‘New Data’, each Member will individually have the right to:

a) disclose, use and distribute the Data within its own legal entity including its Affiliates; as well as to the Principal represented in case of Members that act as Only Representatives;

b) prepare abridgements, condensations of, and use and distribute these;

c) disclose, use and distribute the final reports (including supporting documentation and data) with any governmental authority;

d) disclose, use and distribute the final reports (including supporting documentation and data) to those to whom the Members are obliged by law to make such disclosure.

(2) Any such Data generated or developed jointly by the Members in accordance with this Agreement shall be owned jointly by the Members provided that the individual Members have contributed to the Costs thereof in accordance with the Cost allocation method set out in Article 11 of this Agreement. The New Data referred to in the first sentence may be used by the Members who have contributed to the Costs thereof for their own purposes, their Affiliate’s purposes, for any purposes anywhere, not restricted to REACH, including for REACH authorization of other substances (such other substances not including chromium trioxide due to coverage by CTAC) and/or uses for which it is suitable. In the case of Members that are Only Representatives, this right of use extends to the Principal represented, and its Affiliates in accordance with the aforesaid rule on Affiliates. Members and their Affiliates shall not for a period of twelve (12) years from the date of initial submission to the Agency sell, license or otherwise make available to third parties such Data without prior written approval by a 2/3 majority of the remaining owners who have financially contributed to the Costs thereof unless otherwise agreed by the Members.

(3) Any such New Data shall be regarded as confidential and joint proprietary data of the Consortium Members. Subject to the other relevant provisions of this Agreement, each Member agrees, on behalf of itself and its employees, agents, contractors, Principals and Affiliates, to maintain all New Data in strict confidence and not to license or disclose it in any way to any third party without the prior written authorization of all Members of the Consortium. In case a Member would want to license or disclose New Data to a third party, it shall first inform the Chairperson of its intention who shall bring the matter up at the next meeting of the Steering Committee. Upon request of the Member concerned, the name of the third party to whom the Member wants to license or disclose the New Data may not be
disclosed to any of the other Members, but shall be disclosed to the Manager.

(4) Notwithstanding this Agreement, a Member may use the New Data in connection with any civil or criminal litigation in which the Member is a named party or where such Data is the subject of a judicial subpoena (provided such Data is the subject to an appropriate protective order). Prior to submission in connection with such litigation, the Member shall obtain approval of the Steering Committee for any submission and shall provide a copy of the court order.

(5) The Steering Committee shall have the right to negotiate licenses with and receive compensation for said licenses relating to New Data from third parties. Any compensation paid to the Consortium by third parties with respect to such New Data shall be distributed to the Members proportionate to the Cost they have contributed to the development of such New Data previously.

Article 10 - LETTERS OF ACCESS

(1) The Steering Committee shall have the right to negotiate granting access to third parties to use, or refer to the CCST Dossier(s) prepared for submission to ECHA, by means of a Letter of Access.

(2) The Letter of Access will be granted against payment of the Substance Costs, the Use Costs and the Common Costs calculated for the CCST Dossier(s) sought by the Letter of Access applicant, whereby the size of the Letter of Access applicant will be taken into account for the Cost calculation in accordance with the principles for Members set out in Article 11 (3). In addition, a premium will be charged which will be 30% of the Common Costs, the Substance Costs and the Use Costs until the latest date of application set in Annex XIV REACH; or 100% premium of the Common Costs, the Substance Costs and the Use Costs at any point in time thereafter. In both cases, a handling fee of €1,500 will be charged to reimburse the Manager for its work in relation to the administrative handling of the Letter of Access application and invoicing. The amounts so received will be divided by the total number of votes of the total number of Members’ in good standing, who have contributed to the Common Costs, the Substance Costs and the Use Costs of the respective Data and thereafter will be allocated to each such Member in accordance with such Member’s number of votes pursuant to Article 11 (3).

(3) The use and/or referral right shall remain valid as long as the third party has a valid Authorization relying upon the CCST Dossier(s) and/or Data contained therein. The Letter of Access may only be used by the third party to support its own and Affiliates’ own authorizations of the Substance(s) and Uses for which it was issued for purposes of REACH. Under no circumstances will the third party be allowed to cite or otherwise make use of the Data or CCST Dossier(s) for other purposes, or to use it to fulfill any other regulatory requirements, within and/or outside the European Union, unless this is specifically agreed to in the terms of the Letter of Access. Under no circumstances shall the third party be entitled to use the Data for purposes that are not expressly authorized by the Consortium.

Article 11 – COSTS – COST SHARING

(1) Costs (‘Cost(s)’) of the Consortium shall consist of all contract charges, legal, accounting
and other professional fees and all other expenses reasonably incurred in the performance of
the activities of the Consortium under sound accounting practices, including collection and
validation of Data, introduction of Data in electronic files, technical studies and research,
participation of experts, technical meetings, and more generally all activities of the
Consortium, provided those activities have been approved by the Steering Committee.

(2) Costs common to all Members shall be denominated as ‘Common Costs’. All Consortium
management costs (Consortium Manager) shall be Common Costs. Costs related to
individual Substances shall be denominated as ‘Substance Costs’. Costs related to
supporting individual Uses shall be denominated as ‘Use Costs’. Use Costs shall not include
any cost related to generating and filling company specific information into the
Authorization application that is specific to a Member and cannot be used for another
applicant (e.g. specifics of exposure, specifics of a substitution plan). The Manager may
determine when this is the case. Any Costs that have been incurred prior to a Member
adhering to a Substance and Use shall be included into that Member’s Substance and Use
Cost.

(3) Common Costs shall be shared by dividing them into equal shares according to the number
total votes of all Members, each Member bearing the Costs commensurate with its number
of votes. A Member with one vote shall be allocated one Common Cost share, a Member
with two votes shall be allocated two Common Cost shares. An Only Representative
representing several Principals will be counted for purposes of this provision based on the
number of Principals he represents, i.e. if an Only Representative represents three Principals,
he will have to pay the Common Costs for three Members whose voting rights and thus Cost
shares are determined individually for each of them based on the same formula as for the
other Members.

The number of Votes shall be determined based on the size of the Member at the Effective
Date using the same cumulative criteria (and including worldwide linkages and partners) as
are applicable to determine the ECHA administrative fees for Authorization applications
pursuant to Annex VI of Regulation 340/2008 in conjunction with Commission
Recommendation 2003/361/EC.7

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<th>Large enterprise</th>
<th>SME</th>
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<tr>
<td>Employs 250 persons or more; or</td>
<td>Employs less than 250 persons; and</td>
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<tr>
<td>Annual turnover exceeding €50 Million and/or annual balance sheet exceeding €43 Million</td>
<td>Annual turnover €50 Million or less and/or annual balance sheet €43 Million or less</td>
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<td>Two (2) votes</td>
<td>One (1) vote</td>
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For purposes of accountability, the sizes notified by Members at the Effective Date shall be
fixed for the duration of the Consortium, regardless of any changes of individual Members
during the life of the Consortium. However, the Manager shall have the right, at the cost of

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6 Commission Regulation 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to
Regulation 1907/2006, as may be amended.
7 Commission Recommendation 2003/361 concerning the definition of micro, small and medium-sized enterprises.
the individual Member concerned, and during the entire life time of the Consortium, to request and to carry out a third party audit of the accuracy of the size notified. In case the audit reveals that a Member had notified an incorrect size, the Consortium Member shall automatically be considered in default and may be expelled from the Consortium, thereby automatically losing its rights to compensation from Letters of Access.

(4) Substance(s) Costs and Use Costs shall be shared along the same principles as the Common Costs under (3) above among those Members that have notified their interest in the specific Substance(s) and Use to the Manager at the Effective Date (or later in case of additional Substances and Uses). Should despite the broad definition of Use categories contemplated herein a Member consider its Use as confidential, it shall indicate so with the notification to the Manager. The same confidentiality rule shall also apply to notification of Substances. In such cases, the Manager shall inform the Members only about the division factor used for the specific Use and Substance(s), but shall not reveal the identity of the Member wishing to keep its Use or Substance(s) confidential. Should any Use or Substance Costs be common to more than one Use and/or Substance, the Cost so related will be split equally between the Uses and/or Substances concerned. The same shall apply to Use Costs common to several Uses. In case Uses are further subdivided into sub-categories, the cost-sharing will be per sub-category unless the Cost is common to all sub-categories of that Use.

(5) Costs of the Consortium shall be pre-funded based on the work and finance plan set out in Annex 1. This work and finance plan shall cover at least five (5) years. Pre-funding dates shall be indicated in the work and finance plan. All Costs contracted for shall be pre-funded in advance.

(6) Costs shall not include any charges for overhead, time, or out-of-pocket expenses (including for Members own external consultants, lawyers etc.) by the Members or their officers or employees, which may be incurred in connection with the activities of the Consortium, except as may be approved in exceptional cases in advance by the Steering Committee.

(7) All payments due hereunder including for Letters of Access shall be net payments, i.e. free of any bank or transfer charges or similar charges and without deduction of any taxes, levies or other dues payable. If payer is required to withhold any tax or to make any other deduction from any such payments, then the said payments shall be increased to the extent necessary to ensure that, after making of the required deduction or withholding, payee receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which payee would have received and so retained had no such deduction or withholding been made or required to be made (gross-up amount). If upon application of the beneficiary any withholding tax can be reduced, or refunded, or an exemption from withholding tax is granted, payer shall file on behalf of payee for such reduction, refund or exemption. Payee shall render any assistance to payer to obtain such withholding tax reduction, refund or exemption. Payer shall be entitled to any refund of withholding taxes.

Indirect Taxes – including but not limited to value added tax (‘VAT’), goods and service tax (GST), service tax, business tax – as applicable pursuant to the relevant tax law, shall be borne by payer. However, payer is entitled to withhold any payment of indirect taxes unless payee has provided payer with a sufficient invoice for purposes of indirect taxation.
Article 12 - DEFAULT

(1) In addition to Article 11 (3) above, a Member may be deemed in default if it fails to pay an invoice or payment notice within sixty (60) days of invoice / payment notice date (due date). A Member may also be deemed to be in default if it uses Data or the CCST Dossier(s) other than as authorized by this Agreement or breaches the confidentiality provisions hereof. The Steering Committee shall notify in writing any Member in default. A Member in default automatically forfeits the Member’s voting rights, and a Member in default shall own and shall have the right to use (subject to the terms and conditions of these Agreement) only those Data finalized as of the date of the default, unless and until said Member shall cure its default within a further thirty (30) days. A Member shall cure a default based upon failure to make payments, when due, by advancing the funds due, plus ten per cent (10%) interest from the date of default for the period between the date of default and the date of payment.

(2) If a defaulting Member cures its default based upon failure to make payments when due within thirty (30) days (after due date), any sums (including interest) so paid by the defaulting Member shall be paid to any Member or Members who advanced the defaulting Member’s share of additional assessments. A Member who has failed to make payment within sixty (60) days after due date shall automatically cease to be a Member without the necessity of further Steering Committee action.

Article 13 - DURATION AND DISSOLUTION OF THE CONSORTIUM

(1) The Consortium shall commence on the Effective Date and will continue to exist for an indefinite period unless it is terminated in accordance with the provisions of this Agreement.

(2) The Consortium may be dissolved by a decision taken by 2/3 majority vote of all Members. A respective resolution shall be taken if the purpose as defined under this Agreement has been fulfilled to its full extent.

(3) In the event of dissolution of the Consortium, there shall be a winding up of the said Consortium. All financial obligations shall be fulfilled. All rights and obligations of Members among each other and in relation to third parties resulting from this Agreement shall be settled. Article 10 of this Agreement shall survive the dissolution of the Consortium with the following modification: Article 10 shall be performed by a Trustee who shall act instead of the Steering Committee. Article 6 shall survive the dissolution of the Consortium until December 31, 2025.

(4) With regard to Data and the CCST Dossiers, the obligations specified in Article 6 of this Agreement shall survive until December 31, 2025.

Article 14 - INDIVIDUAL OBLIGATIONS

Notwithstanding the foregoing, all Members are individually obliged to comply with all relevant requirements of REACH. They shall critically assess the information submitted to or generated by the Consortium activities. They shall allocate adequate human and financial resources to the Consortium for it to fulfill its tasks. They shall fund in advance the agreed work plans and other agreed actions. They shall immediately inform the Manager of any significant change with respect to their legal status or organization.
Article 15 - FINAL PROVISIONS

(1) The legal relationships of Members with respect to this Consortium shall be governed exclusively by this Agreement. Any other arrangements do not exist or are considered null and void. This Agreement will not be construed, nor will it be implied, to constitute any license from any Member under any of the other Members’ patents or trademarks. There are no promises, terms, conditions or obligations other than those contained herein.

This Agreement or the cooperation contemplated herein shall not constitute or be deemed to constitute a legal entity or partnership between the Members nor make a Member the agent or representative of another Member unless expressly stated otherwise herein. In its relations with third parties, the Consortium will not act under its own name but as a community of all its Members. The Manager shall be allowed, upon prior instruction, to act in his own name but on account of all Members concerned.

(2) Amendments to this Agreement must be in written form to be effective.

(3) Except as otherwise explicitly set out herein, no Member shall assign this Agreement or any of its rights, obligations or beneficial interests hereunder in whole or in part to any other party without the written prior 2/3 majority decision of the Steering Committee.

(4) This Agreement is subject to the laws of Belgium without giving effect to any rules on conflict of laws. All matters which are not covered by this Agreement shall be settled in accordance with the provisions of Belgian law.

(5) In case of a dispute arising out of this Agreement, the parties to the dispute shall first attempt (in good faith) to reach an amicable settlement at Steering Committee level. Should such amicable settlement fail within two (2) months after the conflict has arisen, a Member shall have the right to submit the dispute to arbitration. In such case, the issue shall be definitively decided in accordance with the rules of conciliation and arbitration of the International Chamber of Commerce (ICC). The decision shall be binding on the parties. The arbitral tribunal consists 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 degree in law. The arbitration award shall include a decision on who bears the cost of arbitration. Arbitration shall take place in Brussels, Belgium. The language of the arbitration proceedings shall be English. No other ways of recourse shall be available. The arbitration decision shall be binding on the parties.

(6) If a provision of this Agreement is found to be unclear or incomplete, an interpretation that best approximates the intent of the Members as expressed in this Agreement shall apply.

(7) If a provision is invalid, this does not affect the validity of the other provisions. It is deemed to be agreed upon that an admissible provision which best approximates the intent of the Members replaces the invalid provision; accordingly, the Members agree to make a respective written amendment to this Agreement without any delay.

(8) This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.
IN WITNESS WHEREOF, the Members have caused this Agreement to be executed by their duly authorized representative on the date set forth next to each signature.

----------------------------

Company Name:

Representative Name:

Title:

Date:
**ANNEX 1 - WORK AND FINANCE PLAN**

**Annex 1 (Part 1) - Work Plan**

<table>
<thead>
<tr>
<th>Task</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature and entry into effect Consortium</td>
<td>March 15, 2013</td>
</tr>
<tr>
<td>Pre-funding for 2013 and any multiannual contracts to be concluded 2013</td>
<td>March 31, 2013</td>
</tr>
<tr>
<td>Kick-off meeting SC (TC combined)</td>
<td>April 15, 2013</td>
</tr>
<tr>
<td>Selection of technical consultant</td>
<td>April 2013</td>
</tr>
<tr>
<td>Conclusion of License Agreement with CTAC</td>
<td>May 20, 2013</td>
</tr>
<tr>
<td>Conclusion of License Agreements for CSR with LRs of priority Substances</td>
<td>June 2013</td>
</tr>
<tr>
<td>Start of work on S1</td>
<td>April 2013</td>
</tr>
<tr>
<td>Start of work on S3</td>
<td>April 2013</td>
</tr>
<tr>
<td>Start of work on S4</td>
<td>April 2013</td>
</tr>
<tr>
<td>Start of work on S5</td>
<td>April 2013</td>
</tr>
<tr>
<td>Prefunding 2014 for any annual cost not previously contractually committed for longer period</td>
<td>December 2013</td>
</tr>
<tr>
<td>Prefunding 2015 for any annual cost not previously contractually committed for longer period</td>
<td>December 2014</td>
</tr>
<tr>
<td>Finalization of work on S1</td>
<td>May 2014 in line with CTAC timeline</td>
</tr>
<tr>
<td>Finalization of work on S3</td>
<td>May 2014 in line with CTAC timeline</td>
</tr>
<tr>
<td>Finalization of work on S4</td>
<td>May 2014 in line with CTAC timeline</td>
</tr>
<tr>
<td>Finalization of work on S5</td>
<td>May 2014 in line with CTAC timeline</td>
</tr>
<tr>
<td>Pre-funding for later years for S ?</td>
<td>?</td>
</tr>
<tr>
<td>Conclusion of all works</td>
<td></td>
</tr>
</tbody>
</table>
## Annex 1 (Part 2) - Finance Plan - DRAFT

### CCST draft budget (assumption: 30 Members, 8 substances, 3 uses)

<table>
<thead>
<tr>
<th>Consortium Management</th>
<th>2013 Budget</th>
<th>2014 Budget</th>
<th>2015 Budget</th>
<th>2016 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Events</td>
<td>Cost (Euro)</td>
<td>Events</td>
<td>Cost (Euro)</td>
</tr>
<tr>
<td>Third Party communication for signing up Consortium (recharged from Phase 1 Task Force)</td>
<td>MLA</td>
<td>€ 40,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Steering Committee meetings (one day each) - attend &amp; chair, establish agenda and action plan, prepare minutes and maintain a clear record of decisions and</td>
<td>MLA</td>
<td>2 € 24,240</td>
<td>2 € 25,452</td>
<td>2 € 26,725</td>
</tr>
<tr>
<td>Legal advice</td>
<td>MLA</td>
<td>€ 10,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Annual management and archiving fee</td>
<td>MLA</td>
<td>€ 30,000</td>
<td>€ 31,500</td>
<td>€ 33,075</td>
</tr>
<tr>
<td>Financial management</td>
<td>MLA</td>
<td>€ 60,000</td>
<td>€ 63,000</td>
<td>€ 66,150</td>
</tr>
<tr>
<td>Extranet</td>
<td>MLA</td>
<td>€ 8,500</td>
<td>€ 8,500</td>
<td>€ 8,500</td>
</tr>
<tr>
<td>LoA Management - On line IT Tool</td>
<td>MLA</td>
<td>€ -</td>
<td>€ 7,500</td>
<td>€ -</td>
</tr>
<tr>
<td>LoA Handling fee (€1,500 per LoA - number of LoAs to be confirmed - not included in the budget)</td>
<td>MLA</td>
<td>€ -</td>
<td>€ -</td>
<td>€ -</td>
</tr>
<tr>
<td><strong>Total Consortium Management Cost</strong></td>
<td></td>
<td>€ 172,740</td>
<td>€ 135,952</td>
<td>€ 134,450</td>
</tr>
</tbody>
</table>

### Dossier Preparation (artificially split per share but will be split per use and share)

<table>
<thead>
<tr>
<th>Dossier Preparation (artificially split per share but will be split per use and share)</th>
<th>2013 Budget</th>
<th>2014 Budget</th>
<th>2015 Budget</th>
<th>2016 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Events</td>
<td>Cost (Euro)</td>
<td>Events</td>
<td>Cost (Euro)</td>
</tr>
<tr>
<td>Technical Consultant - Dossier preparation and meetings - raw estimate</td>
<td>€ 250,000</td>
<td>€ 250,000</td>
<td>€ 250,000</td>
<td>€ 250,000</td>
</tr>
<tr>
<td><strong>Total Dossier Preparation Costs</strong></td>
<td>€ 250,000</td>
<td>€ 250,000</td>
<td>€ 250,000</td>
<td>€ 250,000</td>
</tr>
</tbody>
</table>

**TOTAL CONSORTIUM MANAGEMENT & DOSSIER PREPARATION COSTS**

<table>
<thead>
<tr>
<th></th>
<th>2013 Budget</th>
<th>2014 Budget</th>
<th>2015 Budget</th>
<th>2016 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Events</td>
<td>Cost (Euro)</td>
<td>Events</td>
<td>Cost (Euro)</td>
</tr>
<tr>
<td></td>
<td>€ 422,740</td>
<td>€ 385,952</td>
<td>€ 384,450</td>
<td>€ 390,747</td>
</tr>
</tbody>
</table>
ANNEX 2 - ANTITRUST POLICY

In order to avoid any violation of the antitrust law regulations, the Members agree that the following activities shall be avoided:

Discussion or exchange of confidential information including on:

- companies pricing policies, customers credit terms;
- production costs, capacity, sales volumes;
- plans for production, distribution and marketing;
- changes in industry production;
- transportation rates, zone prices, freight equalization;
- company bids on new and existing contracts, company procedures for responding to bid invitations;
- marketing plans and strategies;
- information about raw material suppliers.

The Members further agree to:

- acknowledge this policy before each Consortium meeting;
- inform other company personnel involved in the work of the Consortium about the rules of this antitrust compliance policy;
- limit all discussions during meetings and elsewhere to the topics under the agreed agenda and with the restrictions above;
- protest immediately and leave the room should the discussion or any meeting activity appear to fall within the scope of the activities to be avoided;
- maintain a good record of all meetings.
CEFIC Guidance on Competition Compliance

I.

The Members shall not make any agreements concerning coordination of conduct which restrict or affect competition within the meaning of Article 101 Treaty on the Functioning of the European Union and shall observe the prohibition of abusing a dominant market position pursuant to Article 102 Treaty of the European Union:

Article 101
[Prohibition of agreements and practices distorting competition]

1. The following shall be prohibited and is incompatible with the common market: all agreements between undertakings, decisions of associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of subparagraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,

- any decision or category of decisions by associations of undertakings,

- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
Article 102 TFEU

[Prohibition of abuse of a dominant position within the common market]

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

II.

The Members of the Consortium shall act in compliance with the following checklist:

<table>
<thead>
<tr>
<th>DO</th>
<th>DON’T</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Application of competition law</strong>&lt;br&gt;Articles 101 and 102 may be applicable to the foundation and activities of a Consortium.</td>
<td>Do not assume that conflicts with competition law are excluded simply by the fact that the Consortium complies with the provisions of the REACH.</td>
</tr>
<tr>
<td><strong>Consultation in Matters of Competition Law</strong>&lt;br&gt;An in-house legal expert or the company compliance officer or an external legal counsel should be consulted whenever there are uncertainties relating to compliance with competition law.&lt;br&gt;All Consortium meetings/discussions which are not in compliance with the Code of Conduct shall be stopped until a legal expert is involved.</td>
<td>Do not assume that the Code of Conduct deals with all competition law issues exhaustively. Essentially, compliance with Articles 101 and 102 can be determined only on the basis of market impact in each individual case. The Code may therefore be regarded only as a source of general conduct recommendations.</td>
</tr>
<tr>
<td><strong>DO</strong></td>
<td><strong>DON’T</strong></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Activities of the Consortium</strong></td>
<td>Pursuant to Articles 101 and 102 the following activities are prohibited within the scope of the Consortium:</td>
</tr>
<tr>
<td>Cooperation within the scope of the Consortium should be restricted to the initially defined goals and purposes of the cooperation.</td>
<td>- Coming to arrangements on prices, markets and;</td>
</tr>
<tr>
<td></td>
<td>- Joint boycotting of other companies;</td>
</tr>
<tr>
<td></td>
<td>- Unjustified unequal treatment of trade partners;</td>
</tr>
<tr>
<td></td>
<td>- The abusive exploitation of a dominant market position.</td>
</tr>
<tr>
<td><strong>Exchange of Confidential Information</strong></td>
<td>The exchange of confidential information concerning market behavior is inadmissible, specifically as it relates to</td>
</tr>
<tr>
<td>A trustee may be involved for the exchange of confidential information, if required.</td>
<td>- production capacities,</td>
</tr>
<tr>
<td></td>
<td>- production or sales volumes,</td>
</tr>
<tr>
<td></td>
<td>- import volumes,</td>
</tr>
<tr>
<td></td>
<td>- market shares,</td>
</tr>
<tr>
<td></td>
<td>- price policy,</td>
</tr>
<tr>
<td></td>
<td>- distribution and marketing terms,</td>
</tr>
<tr>
<td></td>
<td>- marketing strategies,</td>
</tr>
<tr>
<td></td>
<td>- information regarding supplier relationships.</td>
</tr>
<tr>
<td><strong>Documentation on Cooperation</strong></td>
<td>Minutes of all meetings of the Consortium shall be kept, which detail the subject of the meeting.</td>
</tr>
<tr>
<td>The contents of the minutes shall be reviewed by an in-house legal expert or the company compliance officer prior to sending them to all participants of the Consortium.</td>
<td>All meetings which are not in compliance with the Code of Conduct shall be stopped until a legal expert is involved.</td>
</tr>
</tbody>
</table>
Cefic REACH Authorisation Competition Law Compliance Guidance
First Edition - 15th December 2010

Introduction
According to Article 55 of the REACH Regulation, the aim of Authorisation is to “ensure the good functioning of the internal market while assuring that the risk from substances of very high concern (SVHC) are properly controlled and that these substances are progressively replaced by suitable alternative substances or technologies where these are economically and technically viable. To this end all manufacturers, importers and downstream users applying for authorisations shall analyse the availability of alternatives and consider their risks, and the technical and economic feasibility of substitution”.

The overall authorisation process involves several steps including identification of SVHC, prioritisation of these substances for inclusion of Annex XIV, the listing of these substances on Annex XIV, application for authorisations, granting or refusing of authorisations and reviewing of granted authorisations.

Authorisation for a given substance will be granted if the applicant(s) can demonstrate that the risk from a specific substance/use is adequately controlled. If the risk is not adequately controlled, an authorisation may still be granted if it is proven that the socio-economic benefits outweigh the risks and there is no suitable substance/use or technology. Furthermore, REACH Authorisation may lead to substance/use substitution.

All activities become sensitive under competition law rules if carried out in co-operation with other companies. Companies entering into discussions whether and under which circumstances a REACH Authorisation should be sought, inter alia, must not collectively agree on the discontinuation of products/uses or agree on issues which may prevent, restrict or distort competition. Therefore, it is important that companies engaged in the REACH Authorisation process are aware of the competition law framework and the unequivocal need to comply with competition law.

This guidance is complementary to the Cefic "main" REACH competition law compliance guidance that is focusing on working in SIEF, Consortia and data sharing. The recommendations included in this guidance are drafted for companies engaged in REACH Authorisation. In addition, it may also be helpful for companies engaged in other legislation leading to substitution (eg the Carcinogens and Mutagens Directive) or in substitution on voluntary basis.

Who is responsible for ensuring compliance of REACH activities?
For both compliance with EU competition law rules and general compliance with the REACH Regulation:

- Each individual company remains responsible.
- Even if a company is member of a Consortium and according to the Consortium Agreement certain obligations under the REACH Regulation are shared among all consortium members, it is ultimately each company’s individual responsibility to comply with the REACH Regulation and competition law rules.
- Neither Cefic, nor its Sector Groups or other Cefic groups would be responsible or liable for compliance regarding Authorisation.
- However, Cefic may provide horizontal and generic stewardship support.

Guidance
Working individually / in Consortia, SIEF or other grouping as for example a sectoral organisation

Unlike the pre-registration and registration phases of REACH, for Authorisation, companies have a choice of acting individually or grouping themselves in a Consortium or any other form of co-operation. There is no provision such as Article 29 of the REACH Regulation prescribing the co-operation of companies in preparing an Authorisation dossier and presenting arguments and files to ECHA / relevant authorities. The analysis here below is made under the assumption that work on REACH Authorisation is conducted in a co-operative way by more than one company acting in full or in part together.
Do ensure appropriate access (objective, transparent and non-discriminatory) to your activities when acting in a particular group such as a Consortia or SIEF (for more details see Cefic main guidance on REACH Competition Law Rules Compliance).

How to conduct discussions
If when cooperating in the Authorisation process companies may wish to engage in discussions potentially leading to de-selection and even substance substitution. Due to the sensitivity of such discussions companies need to be aware of what is and what is not allowed under competition law rules, in particular the requirement to decide autonomously on market relevant behaviour.

Do properly organise and document the discussion on Authorisation and make sure all participants know what may be discussed and what must not be discussed (eg future market behaviour), and for this; and,

Do refer to the existing Cefic main guidance on REACH Competition Law Rules Compliance for the exchange of information and use an independent third party or trustee if needed.

Participation in formal or informal stakeholder consultation from ECHA or Member State Competent Authority – Advocacyf (Annex XIV and Annex XV dossiers)
In the context of consultation companies may act individually or together within a group. Advocacy of a group would normally not raise EU competition law concerns. REACH, and in particular the Authorisation process, however, might trigger elimination of substances from the markets which would come as a natural result of the REACH legislation and not as a result of any anti-competitive agreement or concerted practice. When engaging in advocacy, pay attention to the way you communicate in order to avoid any misunderstanding and always remember:

Do make reference to objective criteria and be careful to avoid disclosing your commercial strategy when deciding upon arguments on which your advocacy is to be based;

Do present possible alternatives without unduly giving the impression that these are the only alternatives;

Do not misuse the process to either boycott a substance/use, or foreclose the market; and,

Do not use REACH advocacy as a tool to denigrate or boycott other substances/use, or producers/users, or non-European substances/uses or producers/users of other substances/use.

Talking to Clients, Users and other companies along the supply chain
These meetings may be sensitive from a competition law perspective.

Do make the distinction between general non-commercial contacts along the chain which can be made by companies acting together subject to the rules here below and individual commercial contacts between each company and their respective clients;

Do ensure all meetings have a proper written agenda communicated in advance, and proper minutes;

Do spend a few moments at the beginning of each of these meetings to remind the participants of the basics of EU competition law and REACH;

Do strictly restrict the topics discussed at meetings to those that do not raise competition law concerns, regardless of whether participants believe that certain topics are relevant REACH Authorisation issues;

Do stop the discussion if a meeting spills over into commercially sensitive topics which cannot be discussed;

Do not discuss commercially sensitive topics such as, but not limited to, prices, production volume, commercial strategy, individual or groups of customers; and,
**Do not** take advantage of these generic discussions, for example to, organise sharing/partitioning of clients between companies, division of market shares, division of sources of supply.

**The Analysis of Alternative (AoA) and Socio Economic Analysis (SEA)**

*Parts of these two documents can be shared and others cannot be shared for competition law reasons. The way the production and process sharing of these documents is organised is of prime importance in view of the content of these two instruments which may be required for Authorisation such as:*

- **Do** always work via an independent third party acting as trustee for information that cannot be disclosed between competitors and/or Confidential business information that downstream users may not wish to share (for example on uses and possible alternatives);

  Such a trustee can also carry out joint AoAs, substitution plans or SEAs, particularly in those cases where a small number of competitors with large market shares wish to submit a group application;

- **Do** consult potential applicants and others within the same supply chain at an early stage on what alternatives may be available and what the scope of the analysis of alternatives will be; and,

- **Do not** presume that these AoAs, substitution plans, and SEAs can be handled by one of the companies co-operating by either signing a confidentiality agreement or building a “Chinese wall” as competition authorities may allege that such safeguards are insufficient.

*This part of the guidance will be completed in its Second Edition to be soon published with regard to more detailed information to be provided by companies in these documents.*

**De-selection and substitution**

*De-selection and substitution is a decision to be taken by each individual company independently. The latter decision may be based on various considerations. However, once it is clear which uses and substances can be supported by each individual company, then further enquiry may be made to assess whether to work a collegial manner, while always remaining careful to observe competition law at all times. For this:*

- **Do** consider the group of potential applicants which may wish to submit a group application for the substance/use within your own supply chain and as regards the substance generally;

- **Do** consider the relative pros and cons of group application taking into consideration the data required for the authorisation application (i.e. via ‘adequate control route’ or via ‘SEA route’), sensitivity of data exchange/disclosure with particular entities, among other considerations;

- **Do** assess all data to be exchanged and disclosed to other potential applicants during the application process whether in written/electronic form or verbally concerning, for example, data on use of a substance. If needed use an independent third party or trustee for this. Particularly in those cases where an applicant may be regarded as a competitor, avoid any sharing of sensitive data not objectively necessary or indispensable for the application process;

- **Do not** exchange non-public information on costs of operation, production or distribution, or individual company information on sources of supply, costs of supply, inventories, sales, prices, profitability, and consider whether this data will be required for the application (e.g. as part of SEA); and,

- **Do not** exchange non-public information as regards to present or future plans of individual companies concerning technology, investments, design, production, distribution or marketing of particular products.

*This part of the Guidance will be completed in its Second Edition to be soon published to further develop how far company can work together on this.*
Testing potential substituting substances – uses
Companies may legitimately decide to engage in joint research on suitable alternative substance/use or technology. However, it is essential that such testing be conducted in compliance with competition law, in particular as specifically giving guidance to joint research (and development). In particular, the decision whether or not to use or commercialize a given substance/use that passed the screening and testing phase or to defend it with Authorities is for each individual company to decide independently.

This part of the Guidance will be completed in its Second Edition having regard to the new competition law rules of the Commission on R&D, and Guidelines on horizontal agreements both adopted on 14th December 2010.

MODEL OF COMPANY INDIVIDUAL OPINION SURVEY TO BE CONDUCTED BY A TRUSTEE
This model can be adapted to the needs of each group and trustee to the various steps of the REACH Authorisation process.

This REACH Authorisation written survey is organized by an independent third party or trustee addressed to several companies on the following subject...................

....................................................................................................................................[introduce the purpose of this Survey]

Please indicate your comment on the following questions:

• ..........................................................................................................................
• ..........................................................................................................................
• ..........................................................................................................................

Responses are to be sent, in writing, at the latest by ..................... These will be considered by the trustee for managing ............. in the REACH Authorisation process.

Please note that responses should be prepared by each individual company based on its own, individual judgment and without discussing these with other companies. In addition, since decisions need to be taken individually, do not share your response with other companies. The results of this survey will be used by the trustee in an appropriate form which fully complies with competition law rules.

This part of the Guidance will be completed in its Second Edition to be soon published with additional options/models.

IMPORTANT NOTE: readers of this guidance should not presume that they know all there is to know about possible application of EU competition law to REACH Authorisation just by reading this document which is designed to allow companies involved into this to make a preliminary assessment of their conduct under EU competition law. They should seek legal advice if needed, well on time.

For Cefic and its members: for further clarification and questions, contact Nicole L. Maréchal, Cefic Senior Legal Counsellor & Governance Officer Tel. + 32 2 676 72 18- E-mail: nma@cefic.be

© Cefic AISBL
Avenue Van Nieuwenhuys 4
B-1160 Brussels, Belgium
www.cefic.eu

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1 Competition law rules in the EU: Articles 101 & 102 TFEU (formerly Articles 81 & 82). This guidance is focused on the application of Article 101 (Cartels). However, application of Article 102 (Abuse of Dominant Position) should not be excluded.

2 For Cefic members see also Cefic Guidelines on Advocacy and Communication.
ANNEX 3 - LIST OF CONSORTIUM MEMBERS

Mr./Mrs. Company
Tel:
Fax:
Tel direct line:
Mobile phone:
E-mail:

Affiliates: ____________________________

______________________________________________________________________________

Mr./Mrs. Company
Tel:
Fax:
Tel direct line:
Mobile phone:
E-mail:

Affiliates: ____________________________

______________________________________________________________________________
ANNEX 4 - CONTACT DETAILS

(including of nominated representatives in various bodies of the Consortium)

**Steering Committee Representatives**

Mr./Mrs.
Company:
Address:
Tel:
Fax:
Tel direct line:
Mobile phone:
E-mail:

Mr./Mrs.
Company:
Address:
Tel:
Fax:
Tel direct line:
Mobile phone:
E-mail:
Technical Committee Representatives (if applicable, i.e. more than 30 Members)

Mr./Mrs.
Company:
Address:
Tel:
Fax:
Tel direct line:
Mobile phone:
E-mail:

Mr./Mrs.
Company:
Address:
Tel:
Fax:
Tel direct line:
Mobile phone:
E-mail:

Mr./Mrs.
Company:
Address:
Tel:
Fax:
Tel direct line:
Mobile phone:
E-mail:

BR:285815.6
AMENDMENTS TO CONSORTIUM AGREEMENT
FOR PURPOSES OF REACH AUTHORIZATION
MISCELLANEOUS CHROMIUM VI COMPOUNDS FOR SURFACE TREATMENT ‘CCST’

AMENDMENT 1

By vote at the kick-off meeting of April 15, 2013, Article 1 (19) Uses was amended as follows:

- In (ii): S6 is deleted.

- New wording:
  “(iii) application of paints, primers, sealants, lacquers and coatings (including as wash primers) containing S6 in the construction of aerospace and aeronautical parts, including aeroplanes / helicopters, space craft, satellites, launchers, engines, and for the maintenance of such constructions.”

Former (iii) becomes (iv) and reads:
  “(iv) formulation of mixtures for Uses (i), (ii) and/or (iii) except on-site formulation for Uses (i), (ii) and (iii) which is considered to be covered by Uses (i), (ii) and (iii).”