

Ms Marie Toulemonde

Sent by email only:  
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**Subject: Reply to your request for access to documents – Third batch**

**Reference: ATD/022/2021**

Dear Ms Toulemonde,

I refer to your application for access to documents of 12 April 2021, registered on 14 April 2021 under reference ATD/022/2021.

This reply covers the third (and final) batch of information falling within the scope of your request relating to 32 PIC export notifications. The replies concerning the first and the second batches of requested information were sent to you on 17 June and 25 October 2021, respectively. The export notifications concerned by this third batch relate to the substances "1,3-dichloropropene", "Clothianidin", "Cyanamide", "Desmedipham", "Dimethoate", "Fenamidone", "Flurtamone", "Imidacloprid", "Iprodione", "Linuron", "Maneb", "Propineb (polymeric zinc propylenebis(dithiocarbamate))", "Simazine", "Trifluralin" and "Triasulfuron", and originate from third parties which have been consulted pursuant to Article 4(4) of the ATD Regulation<sup>1</sup>.

As regards the precise description of the scope of your request and the procedural history, I refer to ECHA's communications of 17 June and 25 October 2021 mentioned above.

## Decision

Based on Article 7(1) of the ATD Regulation,

**ECHA has decided to grant you partial access to the requested document (you will find the non-confidential version of the document enclosed to this letter).**

## Reasons

Following an individual assessment of the document requested under the provisions of the ATD Regulation, and taking into account the comments received from the consulted third parties, ECHA has concluded that disclosure is partly prevented by exceptions to the right of access laid down in Article 4 of this Regulation. The reasons as to why specific redactions have been performed are provided below.

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<sup>1</sup> Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to documents. According to Article 118(1) of the REACH Regulation ((EC) No 1907/2006), Regulation (EC) No 1049/2001 applies to documents held by ECHA.

*Protection of commercial interests**i. Trade name and name of the mixture (section 2.1)*

The exception provided by Article 4(2), first indent, of the ATD Regulation on the protection of commercial interests was found to apply to the information concerning the trade name of the mixture contained in the following export notifications:

- Two (2) export notifications submitted by the company AlzChem Trostberg GmbH for the substance "Cyanamide".
- Two (2) export notifications submitted by the company INDUSTRIAL QUÍMICA KEY, S.A. for the substances "Dimethoate" (1) and "Imidacloprid" (1) respectively.

In both cases of AlzChem Trostberg GmbH and INDUSTRIAL QUÍMICA KEY, S.A., the exporter has provided an "alias" upon submission of these four (4) export notifications and therefore the trade names are not publicly available on the ECHA website<sup>2</sup>. The disclosure of this information, linked with other information in the export notification, would allow deducing the supply chain links for the concerned products in the importing country and it would therefore give competitors an unfair market advantage, undermining the company's commercial interests. Accordingly, the exception provided for in Article 4(2) first indent of the ATD Regulation on the protection of commercial interests was found to apply to the above-mentioned information.

No overriding public interest in the disclosure of the trade names of the mixtures was found to exist in these specific cases. The related information under section 2.1 has therefore been redacted.

*ii. Identity of the exporter (section 3.5)*

The exception provided by Article 4(2) first indent of the ATD Regulation on the protection of commercial interests was found to apply to the identity of the exporter contained in the following export notification:

- One (1) export notification submitted for the substance "1,3-dichloropropene".

In this case, the disclosure of the identity of the exporter, linked with other information in the export notification, would reveal the business strategy of the undertaking concerned, in particular, details of the specific products commercialised, its market shares and business relations in the importing countries. Therefore, it may give competitors an unfair market advantage, undermining the exporter's commercial interests.

In this respect, no overriding public interest in the disclosure of the identity of the exporter was found to exist in this specific case. The related information under section 3.5 has therefore been redacted.

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<sup>2</sup> The information is available on ECHA's website, via the following link: [https://echa.europa.eu/information-on-chemicals/pic/export-notifications?p\\_p\\_id=exportnotifications\\_WAR\\_echapidportlet&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_pos=2&p\\_p\\_col\\_count=3&exportnotifications\\_WAR\\_echapidportlet\\_javax.portlet.action=search](https://echa.europa.eu/information-on-chemicals/pic/export-notifications?p_p_id=exportnotifications_WAR_echapidportlet&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_pos=2&p_p_col_count=3&exportnotifications_WAR_echapidportlet_javax.portlet.action=search).

*iii. Expected yearly amount of exported mixtures (kg/l per year) (section 3.2)*

The exception provided by Article 4(2), first indent, of the ATD Regulation on the protection of commercial interests was found to apply to the information concerning the expected yearly amount of exported mixtures containing the substances "Desmedipham" and "Propineb (polymeric zinc propylenebis(dithiocarbamate))" from the following export notifications:

- One (1) export notification submitted by Bayer CropScience S.L. for the substance "Propineb (polymeric zinc propylenebis(dithiocarbamate))".
- One (1) export notification submitted by Bayer CropScience S.L. for the substance "Desmedipham".
- One (1) export notifications submitted by Bayer AG (D) for the substance "Desmedipham".

The disclosure of this information would provide competitors with valuable insight regarding the exporter's business capacity and sales volume, revealing its shares in the specific market of the importing countries. This would give the exporter's competitor an unfair market advantage, undermining its commercial interest.

ECHA considers that, for these specific export notifications, the expected yearly amount of exported mixtures does not constitute information about the quantity of its foreseeable release into the environment in the course of normal use. Indeed, the above-mentioned export notifications were never activated and hence the related exports could not proceed. Therefore, ECHA concluded that the information on the expected yearly amount reported in these export notifications does not qualify as information relating to 'emissions into the environment' within the meaning of the Aarhus Regulation (EC) No 1367/2006.

On this basis, no overriding public interest in the disclosure of the expected yearly amounts of export was found to exist in these specific cases. The related information under section 3.2 has therefore been redacted.

### **Further observations**

You are reminded that following Article 16 of the ATD Regulation, the document attached may be subject to copyright protection.

Furthermore, we would like to highlight that the volumes reported in Section 3.2 of the export notifications ("Expected amount of the substance or mixture (kg/l per year)") are provided by exporters based on their best knowledge at the moment of submission of the export notification<sup>3</sup> or based on an approximation. The actual quantities exported may differ (i.e. be either higher or lower) from those declared in the notifications or the export may never even take place.

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<sup>3</sup> The intention to export a chemical listed in Annex I of the PIC Regulation must be notified to the designated national authority of the country from which the export will originate before the first yearly export takes place, as well as before the first export in each subsequent calendar year. More information on the PIC export notification procedure can be found via the following link: <https://echa.europa.eu/regulations/prior-informed-consent/export-notification-procedure>.

**Appeal/legal redress**

You are entitled to make a confirmatory application requesting ECHA to review this position by writing to the Executive Director of ECHA (P.O Box 400, 00121 Helsinki, Finland or [executive-director@echa.europa.eu](mailto:executive-director@echa.europa.eu)). This needs to be done within 15 working days of receiving this letter.

Yours sincerely,

*e-signed<sup>4</sup>*

Tiago Pedrosa  
Head of Unit  
Submission and Processing Unit

- Encl.: A document containing the requested information from 32 export notifications for the substances "1,3-dichloropropene", "Clothianidin", "Cyanamide", "Desmedipham", "Dimethoate", "Fenamidone", "Flurtamone", "Imidacloprid", "Iprodione", "Linuron", "Maneb", "Propineb (polymeric zinc propylenebis(dithiocarbamate))", "Simazine", "Trifluralin" and "Triasulfuron".

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<sup>4</sup> As this is an electronic document, it is not physically signed. This communication has been approved according to ECHA's internal decision-approval process.