



# Overview of the Draft Manganese Consortium Agreement

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# Agreement Drafting Process

- The draft Agreement was developed over the summer by the IMnI Legal Committee
- The draft Agreement was presented to the IMnI Steering Committee for consideration at its meeting on 27 September 2007
- The Agreement shares many similarities with other consortia agreements being developed in the metals sector

# Scope of the Consortium

## List of Substances (Appendix 1)

- The list of substances in Appendix 1 will be finalized at the next meeting of the Technical Working Group and may be amended if necessary
- Category groupings of substances will be approved by the Consortium
- If Regular Members produce or import a single substance which does not fall into one of the Category groupings:
  - They will be entitled to use read-across data applicable to that substance (if any)
  - Subject to payment of their pro rata contribution to the costs of the Studies in question
  - They must conduct their own studies which are applicable only to that substance.

# Core Principles

- The Agreement is organized around certain core principles:
  - The consortium is not a legal entity and members retain individual liability
  - Decisions will be made by consensus wherever possible but mechanisms are provided for resolving disputed matters
  - The consortium is open to all qualified European and non-European companies
  - Confidentiality of sensitive business information of members companies will be preserved at all times

# Core Principles

- Members companies only contribute to the cost of data for substances of interest to their registration obligations. The cost is paid by regular members according to their relative market interests and voting rights are proportionate to financial contribution
- Late Members will pay an additional “advantage compensation” fee according to a schedule set out in the Agreement
- The main work of the consortium is to develop the information needed for the registration of manganese substances of interest, but the consortium may need to address issues (authorization and evaluation)

# Membership to the Consortium

- Regular members have the legal obligation to register manganese substances under REACH and will pay the cost of the work of the consortium and participate in the decisions
- Associate members are downstream users that can contribute useful information but do not contribute financially or participate in decision-making
- Third parties which are not Regular or Associate members may be granted observer status by invitation of the Steering Committee to attend meetings

# Membership to the Consortium

- Affiliates of regular members do not have a separate status
  - Instead, their rights and obligations are subsumed within the membership of the regular members
  - Each Group of companies will be represented by a single regular member
  - For the purposes of voting and financial contributions, the turnover of the Regular Member and all its Affiliates will be aggregated and deemed to be that of the Regular Member.
  - An Affiliate will be entitled to apply for regular membership in its own right if justify
  - Only one representative from a Group will be eligible for election as a member of the Steering Committee

# Membership to the Consortium

- In principle, Only Representatives will not qualify for membership of the consortium
- Unless a non-EU producer can satisfy the Steering Committee that it would otherwise qualify for regular membership, but for reasons beyond its control (such as foreign exchange restrictions) is unable to comply with its obligations under the consortium agreement.
- Certain safeguards will however apply
  - Regarding ownership and rights of use of confidential information and intellectual property
  - Certain separate written undertakings will have to be provided
  - The non-EU producer will be required to guarantee the performance of the Only Representative
- Regular Member will be able to appoint proxies for the purpose of voting in the Assembly

# Membership to the Consortium

- The Agreement also includes provision regarding:
  - Acceptance of new members
  - Assignment of membership because of acquisition, merger or absorption
  - Voluntary withdrawal of members and involuntary termination of members who fail to fulfill their obligations under the Agreement
    - Withdrawing or terminated members are responsible for fulfilling the outstanding financial obligations they committed to
    - They must comply with commitments concerning confidentiality, and are liable for actions taken during the term of their membership

# Organization of the Consortium

- An Assembly comprised of the representatives of regular members that has important oversight responsibilities for:
  - Electing the members of the Steering Committee
  - Approving the annual budget and annual accounts
  - Ratifying the strategic programme of the consortium on an annual basis
  - Approving the joint data dossiers and joint chemical safety reports before submission to the authorities;
  - Effectuating necessary amendments and modifications to the Agreement
  - Appointing candidate lead registrants to the substance exchange information forums (SIEFs)
  - Deciding on the expulsion of members

# Organization of the Consortium

- A Steering Committee that is responsible for the day-to-day activities of the consortium
- Its role includes:
  - Managing the financial resources of the consortium
  - Overseeing the work of the Technical Working Group and the Consortium Manager
  - Making decisions concerning the admission of new members
- It is composed of 7 members working in concert to represent the interests of all Regular Members
- Membership is pro rata to the interests represented in the consortium (Mn metals and alloys, sinters and slags, Mn containing compounds)
- It is headed by a chairperson assisted by a vice-chair will also be to replace the chairperson in his or her absence

# Organization of the Consortium

- The Steering Committee is assisted by a Consortium Manager and a Secretariat
- An Executive Committee is available to act on matters of particular importance and urgency that can not await consideration by the Steering Committee
- It is comprised of:
  - The chair and vice-chair of the Steering Committee
  - The Consortium Manager
  - A representative of the Secretariat
- A Technical Working Group will be responsible for carrying out the scientific work of the consortium subject to oversight by the Steering Committee
- A Trustee will serve to preserve the confidentiality of the business secrets of the individual companies

# Data Sharing Principles

- Collation of data is the main objective of the Consortium
- the Agreement includes provisions governing the ownership of:
  - Existing studies provided by members
  - New studies developed by the consortium
- Provision is also made for the licensing of
  - Existing studies from members or third parties
  - The use by others of new studies generated by the consortium

# Financial Rights and Obligations

- A minimum annual contribution of €50 000 is required of all Regular Members
- Both administrative costs and study costs are allocated on a turnover basis
  - Tonnages of substances produced in or imported into the EU in the previous year to be confidentially declared
- The deemed turnover of each of the Regular Members is determined by the Secretariat and each Regular Member will be notified individually of the number of its votes and its contribution

# Financial Rights and Obligations

- The budget must approved annually
- At the end of each year, the Secretariat will calculate the actual expenses incurred that year and issue a debit or credit against the members' accounts
- Account will be taken of payments received from new members who have joined during the year in question
- Payment of contributions must be effected before the beginning of the new financial year
- No claim by Members of the Steering Committee and the Technical Working Group for expenses incurred in carrying out their functions

# Final Provisions

- The Agreement also covers in detail:
  - Liability
  - Confidentiality
  - Duration of the Agreement and terms of dissolution
  - Dispute resolution mechanisms
- In any case, the Consortium activities must be in compliance with competition law



# Thank you!

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