Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 16 November 2023 [1]

Case C-654/22

FOD Volksgezondheid, Veiligheid van de voedselketen & Leefmilieu
v
Triferto Belgium NV

(Request for a preliminary ruling from the Rechtbank van eerste aanleg Oost-Vlaanderen Afdeling Gent (Court of First Instance, East Flanders, Ghent Division, Belgium))

(Reference for a preliminary ruling – Regulation (EC) No 1907/2006 – Registration, Evaluation, Authorisation and Restriction of Chemicals – REACH – Scope – Exemption for substances subject to customs supervision – Registration obligation – Importer – Import – Person subject to registration)

I. Introduction

1. Many consumers encounter urea in the form of a diesel engine fluid known as AdBlue. [2] It is used to reduce the release of nitrogen oxides. However, there are many other uses of that substance, for example in agriculture or the pharmaceutical and cosmetics industries. Therefore, over 10 million tonnes are produced in the Union or imported annually.

2. No particular hazards are known. [3] Nevertheless, importers must register that substance with the European Chemicals Agency (ECHA) at import pursuant to the REACH Regulation. [4] In the present preliminary ruling proceedings, it is therefore necessary to clarify whether an undertaking which purchases urea in a third country is to be regarded as an importer, and is, therefore, subject to that obligation, or whether persons other than that purchaser can assume that obligation by organising the import.

[1] Original language: German.

[2] That designation is protected by the trade marks 003945938, 008526717 and W01042880 of the Verband der deutschen Automobilindustrie.

[3] ECHA, Substance Infocard Urea, https://www.echa.europa.eu/de/substance-information/-/substanceinfo/100.000.286.

[4] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1); the relevant version is as amended by Commission Regulation (EU) 2019/957 of 11 June 2019 (OJ 2019 L 154, p. 37).

II. Legal framework

3. The purpose and fundamental principles of the REACH Regulation are set out in Article 1:

'1. The purpose of this Regulation is to ensure a high level of protection of human health and the environment, including the promotion of alternative methods for assessment of hazards of substances, as well as the free circulation of substances on the internal market while enhancing competitiveness and innovation.

2. …

3. This Regulation is based on the principle that it is for manufacturers, importers and downstream users to ensure that they manufacture, place on the market or use such substances that do not adversely affect human health or the environment. Its provisions are underpinned by the precautionary principle.'

4. Under Article 2(1)(b) of the REACH Regulation, it is not to apply to 'substances, on their own, in a preparation or in an article, which are subject to customs supervision, provided that they do not undergo any treatment or processing, and which are in temporary storage, or in a free zone or free warehouse with a view to re-exportation, or in transit'.

5. Recital 10 of the REACH Regulation explains that exemption as follows:

'Substances under customs supervision which are in temporary storage, in free zones or free warehouses with a view to re-exportation or in transit are not used within the meaning of this Regulation and should therefore be excluded from its scope. …'

6. Article 3(10) to (13) of the REACH Regulation defines various terms:

'10. Import: means the physical introduction into the customs territory of the Community;

11. Importer: means any natural or legal person established within the Community who is responsible for import;

12. Placing on the market: means supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed to be placing on the market;

13. Downstream user: means any natural or legal person established within the Community, other than the manufacturer or the importer, who uses a substance, either on its own or in a preparation, in the course of his industrial or professional activities. A distributor or a consumer is not a downstream user. A re-importer exempted pursuant to Article 2(7)(c) shall be regarded as a downstream user'.

7. Article 5 of the REACH Regulation sets out the consequences of failure to register:

'Subject to Articles 6, 7, 21 and 23, substances on their own, in preparations or in articles shall not be manufactured in the Community or placed on the market unless they have been registered in accordance with the relevant provisions of this Title where this is required.'

8. Article 6(1) of the REACH Regulation lays down a registration obligation:

'Save where this Regulation provides otherwise, any manufacturer or importer of a substance, either on its own or in one or more preparation(s), in quantities of one tonne or more per year shall submit a registration to [ECHA].'

9. The function of that registration obligation is set out in recitals 16, 17 and 19 of the REACH Regulation:

'(16) This Regulation lays down specific duties and obligations on manufacturers, importers and downstream users of substances on their own, in mixtures and in articles. This Regulation is based on the principle that industry should manufacture, import or use substances or place them on the market with such responsibility and care as may be required to ensure that, under reasonably foreseeable conditions, human health and the environment are not adversely affected.

(17) All available and relevant information on substances on their own, in mixtures and in articles should be collected to assist in identifying hazardous properties, and recommendations about risk management measures should systematically be conveyed through supply chains, as reasonably necessary, to prevent adverse effects on human health and the environment. …

…

(19) Therefore, the registration provisions should require manufacturers and importers to generate data on the substances they manufacture or import, to use these data to assess the risks related to these substances and to develop and recommend appropriate risk management measures. To ensure that they actually meet these obligations, as well as for transparency reasons, registration should require them to submit a dossier containing all this information to [ECHA]. Registered substances should be allowed to circulate on the internal market.'

10. Article 7 of REACH Regulation governs the registration and notification of substances in articles, and Article 8 the appointment of only representatives of a non-EU manufacturer. If such a representative has been appointed, the importers of the manufacturer's products are to be regarded as downstream users who are not obliged to register.

III. Facts and reference for a preliminary ruling

11. The following facts emerge from the reference for a preliminary ruling and further information provided by the referring court at the request of the Court of Justice.

12. On 3 July 2019, Transvostok Group Limited (probably established in Cyprus) loaded a total of 7 873.167 tonnes of urea onto the vessel MV 'HC SVEA KIM' at the port of Kavkaz on the Black Sea coast of Russia on the account of Dreymoor Fertilizers Overseas PTE LTD (established in Singapore) and Belor-Eurofert GmbH (established in Bamberg, Germany). An undertaking in Mary, Turkmenistan, had produced the urea originally.

13. NV Triferto Belgium (established in Ghent, Belgium) ('Triferto') ordered a total of 4 000 tonnes of urea CFR Ghent (Incoterms 2010) from Dreymoor on 7 July 2019. Incoterms stands for 'International Commercial Terms'. One of those terms is CFR, which stands for 'cost and freight'. It means that the seller bears the freight costs but not the risk of loss of the goods during transport. The place of delivery under that agreement is Ghent.

14. Belor imported the shipment of urea into the European Union on behalf of Dreymoor at a customs warehouse in Ghent on 9 August 2019. There, Belor engaged other undertakings to perform various tasks related to the landing and storage of the shipment. Belor had previously registered the urea with ECHA as an importer within the meaning of Article 6(1) of the REACH Regulation. It also submitted the customs declaration for that substance.

15. After the first purchase and call, Triferto purchased and called for another 700 tonnes on 21 August 2019 and a further 1 176.173 tonnes on 26 August 2019 from that delivery CIF Ghent (Incoterms 2010). CIF stands for 'cost, insurance and freight' and means that the seller not only bears the transport costs but also insures the goods.

16. During an audit on 11 February 2020, the Federale Overheidsdienst Volksgezondheid, Veiligheid van de voedselketen en Leefmilieu (Belgian Federal Public Service Health, Food Chain Safety and Environment; 'the FOD Volksgezondheid') learnt that Triferto had acquired those quantities of urea from Dreymoor in 2019.

17. There is a contract between Dreymoor and Belor in which Belor confirms that it is responsible for the physical import of urea 46% into the European Union by the vessel MV 'HC SVEA KIM' 'in accordance with the REACH guidelines'.

18. However, the FOD Volksgezondheid takes the view that Triferto, not Belor, should be regarded as the importer within the meaning of Article 6 of the REACH Regulation, in conjunction with Article 3 thereof. Consequently, it should have registered the urea, which it failed to do. The FOD Volksgezondheid therefore imposed a fine of EUR 32 856.00 on Triferto.

19. The FOD Volksgezondheid and Triferto brought a joint action before the Rechtbank van eerste aanleg Oost-Vlaanderen Afdeling Gent (Court of First Instance, East Flanders, Ghent Division, Belgium) for a review of the legality of the fine.

20. The Rechtbank therefore referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Articles 6(1), 3(10) and 3(11) of the REACH Regulation be interpreted as meaning that a registration obligation rests on the person who orders/purchases the substance from a non-EU manufacturer, even though all the arrangements for physically introducing the substance into the customs territory of the Union are in fact made by a third party who also expressly confirms being responsible for doing so?

In answering the foregoing question, is it relevant whether the quantity ordered/purchased forms only part (but exceeds 1 tonne) of a larger shipment of the same substance from the same non-EU manufacturer which is introduced into the customs territory of the Union by that third party to be stored in a customs warehouse?

(2) Must Article 2(1)(b) of the REACH Regulation be interpreted as meaning that a substance which is stored in a customs warehouse (by placing it under procedure J – code 71 00 in box 37 of the single administrative document) also remains outside the scope of the REACH Regulation until it is removed at a later stage and placed under a different customs procedure (e.g. release for free circulation)?

If so, must Articles 6(1) and 3(10) and 3(11) of the REACH Regulation be construed as meaning that, in that circumstance, the registration obligation rests on the person who has directly purchased the substance outside the Union and who calls for it (without having previously physically introduced the substance into the customs territory of the Union), even if the substance has already been registered by the third undertaking which previously physically introduced it into the customs territory of the Union?'

21. Triferto, the Kingdom of Belgium, and the European Commission submitted written observations and participated in the hearing held on 12 October 2023.

IV. Legal assessment

22. By its first question and the second part of its second question, the Rechtbank wishes to ascertain who, within the meaning of Article 6(1) and Article 3(10) of the REACH Regulation, is to be regarded as the importer of a quantity of substance, who must register it with ECHA. In order to answer this question, it makes sense first to examine the first part of the second question, which seeks to determine the time at which the quantity of the substance at issue was imported into the Union.

A. Time of import

23. By the first part of its second question, the referring court seeks to ascertain whether or not a substance which is stored in a customs warehouse (by placing it under procedure J – code 71 00 in box 37 of the single administrative document) also remains outside the scope of the REACH Regulation until it is removed at a later stage and placed under a different customs procedure (for example, release for free circulation).

24. It may seem surprising that this question relates to customs regimes, but this is based on Article 2(1)(b) of the REACH Regulation, which excludes application of the regulation to substances subject to certain customs regimes.

25. If that exemption were applicable here, the urea would have been physically introduced into the customs territory of the Union first, but would not have been imported within the meaning of Article 3(10) of the REACH Regulation as application of the regulation, and thus also of that definition, was excluded by Article 2(1)(b).

26. In practical terms, therefore, this question seeks to clarify whether the quantity of the substance at issue was only imported when it reached Triferto or at the time when Belor first introduced it into the customs territory of the Union and stored it in a customs warehouse.

27. Article 2(1)(b) of the REACH Regulation provides that the regulation is not to apply to substances 'which are subject to customs supervision, provided that they do not undergo any treatment or processing, and which are in temporary storage, or in a free zone or free warehouse with a view to re-exportation, or in transit'.

28. That exemption from the REACH Regulation covers substances which are subject to customs supervision. That is assumed to be the case in the main proceedings as, according to the question referred, the urea was stored in a customs warehouse by placing it under procedure J – code 71 00 in box 37 of the single administrative document.

29. However, the exemption only applies if, in addition, firstly, the negative condition is met that the substance in question undergoes no treatment or processing and, secondly, is subject to one of three special customs regimes.

30. The request for a preliminary ruling contains no evidence of treatment or processing before the urea reached Triferto. It must therefore be assumed that the negative condition was satisfied in the main proceedings.

31. Contrary to the view taken by Belgium, however, the second condition was not satisfied, namely the application of one of the three special customs regimes.

32. According to the question referred, the urea was stored in a customs warehouse by placing it under procedure J – code 71 00 in box 37 of the single administrative document. Code 71 00 in box 37 of the single administrative document also makes this clear. It states that the goods have been placed under the customs warehousing procedure (71) and have not previously been placed under a customs procedure (00).[5]

33. Storage in a customs warehouse is governed by Title VII, Chapter 3, Section 2, of the Customs Code[6] (Articles 240 to 242). That is a special customs procedure. However, it is not one of the three special customs regimes mentioned in Article 2(1)(b) of the REACH Regulation.

34. Temporary storage of goods under Article 5(11) and (17) and Articles 144 to 152 of the Customs Code is the first special customs regime mentioned in Article 2(1)(b) of the REACH Regulation. That is an alternative to placing the goods under a customs procedure, that is to say also to storage in a customs warehouse.

35. The second customs regime mentioned in Article 2(1)(b) of the REACH Regulation is storage in a free zone with a view to re-exportation. Although it is very close to storage in a customs warehouse, it is governed by a different section of Title VII, Chapter 3, of the Customs Code, namely Section 3 (Articles 243 to 249, see also Article 5(14), but not Article 270). Both forms of storage are special customs procedures. They are therefore mutually exclusive.

[5] See Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (OJ 2016 L 69, p. 1), in particular Annex D1.

[6] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1), as amended by Regulation (EU) 2019/632 of the European Parliament and of the Council of 17 April 2019 (OJ 2019 L 111, p. 54).

36. Storage in a free warehouse, which is also mentioned in Article 2(1)(b) and recital 10 of the REACH Regulation, was still subject to the same regime as storage in a free zone in the old Customs Code[7] in force when the REACH Regulation was adopted, but free warehousing is no longer provided for today. In particular, free warehousing is not to be equated with customs warehousing, which was also provided for in the old Customs Code and subject to different regimes.

37. In the German version of Article 2(1)(b) of the REACH Regulation, the third special customs regime is referred to as '*Transitverkehr*' [transit traffic]. However, that term is not contained in the Customs Code. In comparison, the English and French versions of Article 2(1)(b) of the REACH Regulation use the term 'transit', provided for in the corresponding language versions of the Customs Code. That term is rendered as '*Versand*' [dispatch/transit] in the German version of the Customs Code. The use of the term '*Transitverkehr*' in the German version arises therefore, in my view, from an error in translation.

38. Transit includes, as an alternative to storage, other special customs procedures which are governed by Title VII, Chapter 2, of the Customs Code and therefore also exclude storage in a customs warehouse.

39. In conclusion, it may be stated that a substance which is stored in a customs warehouse remains outside the scope of Article 2(1)(b) of the REACH Regulation because it is not subject to any of the special customs regimes mentioned therein. The regulation is thus applicable to such a substance. Consequently, it is imported into the customs territory of the Union within the meaning of the definition in Article 3(10) when it is physically introduced into the customs territory of the Union and must be registered with ECHA before that point in time.

40. This conclusion is consistent with the objective of the exemption in Article 2(1)(b) of the REACH Regulation. The purpose of the REACH Regulation is not to govern the export of substances, but merely to ensure the free movement of goods and a high level of protection in the internal market.[8] In this connection, manufacturers, importers and downstream users of substances should, according to recital 16, manufacture, import or use substances or place them on the market with such responsibility and care as may be required to ensure that, under reasonably foreseeable conditions, human health and the environment are not adversely affected.

41. Therefore, Article 2(1)(b) of the REACH Regulation is intended to exempt goods from the requirements of the REACH Regulation if – as in the case of the three customs regimes mentioned – it can be assumed that the goods are only temporarily in the Union without undergoing further treatment or processing. As set out in recital 10, such substances are not used within the meaning of the REACH Regulation. In this case, it is unlikely that the risks presented by the relevant substances will materialise in the Union. Nevertheless, very hazardous substances may be subject to specific regimes.[9]

7 Articles 166 to 181 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 13).

8 See judgment of 27 April 2017, *Pinckernelle* (C-535/15, EU:C:2017:315, in particular paragraph 43).

9 See, for example, Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ 2012 L 201, p. 60).

42. If, on the other hand, a substance undergoes treatment or processing in the Union, the REACH Regulation must be applied in order to ensure the desired level of protection within the Union. In that case, the necessary measures must be taken to ensure that the risks associated with the substance do not materialise during treatment or processing. On the other hand, whether the substance or the products manufactured with it are subject to customs regimes relating to subsequent export is irrelevant in dealing with that risk.

43. The answer to the first part of the second question must therefore be that the exemption in Article 2(1)(b) of the REACH Regulation applies only if the substances concerned are subject to one of the special customs regimes referred to therein, namely temporary storage (Article 5(11) and (17) and Articles 144 to 152 of the Customs Code), storage in free zones with a view to re-exportation (Article 5(14) and Articles 243 to 249, but not Article 270 of the Customs Code), or transit (Articles 226 to 236 of the Customs Code) and do not undergo any treatment or processing there.

B. Determination of the importer

44. It is now necessary to examine whether the person ordering or purchasing a certain quantity of a substance from a non-EU manufacturer is to be regarded as the importer thereof within the meaning of Article 6(1) and Article 3(10) of the REACH Regulation, who must register that substance with ECHA.

45. The import of a substance is to be deemed placing on the market under Article 3(12) of the REACH Regulation. Since under Article 5 a substance may only be placed on the market if it has been registered, it may therefore only be imported after registration. Article 21(1) even provides that import is only permitted if ECHA does not object to deficiencies in the submission for registration within three weeks after registration.

46. But who is obliged to register? Under Article 6(1) of the REACH Regulation, an importer who imports a substance in quantities of one tonne or more per year is to submit a registration to ECHA. Article 3(11) defines an importer as any natural or legal person established within the Union who is responsible for import. Importation, in turn, means, under Article 3(10), the physical introduction into the customs territory of the Union.

47. In the case of the import of substances, the obligation to register thus depends on who is *responsible* for the physical introduction into the customs territory of the Union.

48. In the ordinary sense of the word, a large number of responsible persons is conceivable. If the exemption in Article 2(1)(b) of the REACH Regulation is not applicable, the crew, and in particular the master, of the vessel MV 'HC SVEA KIM' and the transport undertaking bear direct responsibility for the physical introduction. Nevertheless, it is clear from the request for a preliminary ruling that Belor imported the substance into the European Union, that is to say presumably commissioned and supervised the carrier. Consequently, that undertaking may also be responsible for the import. However, Belor acts on behalf of Dreymoor, which could therefore, for its part, be responsible. Since that commission arises at least in part from the fact that Triferto had already purchased and ordered a large part of the delivery, it too could be responsible.

49. However, Article 3(11) and Article 6 of the REACH Regulation – unlike criminal law, for example – do not seek to identify all responsible persons and penalise them according to their participation in the offence. Rather, according to recital 17, the intention is to ensure that all available and relevant information on substances is collected to assist in identifying hazardous properties. In order to share the effort of providing that information appropriately between the users of the substance, each quantity of substance manufactured in the Union or imported must be registered. It is therefore necessary, but also sufficient, for a single person to register the quantity of substance concerned.

50. However, the REACH Regulation, and in particular Article 3(11), is of limited use in identifying that person, as the term 'responsible', as set out in point 48, is very broad. It is true that the circle of responsible persons is limited by the fact that only persons established in the Union may be deemed importers, which excludes in particular Dreymoor and perhaps also the master and crew of the ship. In the present case, however, at least Triferto and Belor remain as possible responsible persons.

51. In its guidance on the registration obligation, ECHA proposes that the decision on who the importer is should be decided on the basis of the circumstances of each case. On that basis, it determines by way of example who is to be responsible in certain situations. In many cases, the ultimate receiver of the goods, that is to say the person who ordered and purchased the imported substance, is to be regarded as the importer, but in certain circumstances, also the person who arranges the import.[10] The Commission and Belgium refer to that guidance in their submissions.

52. However, ECHA does not have the power to give concrete expression to Article 3(11) of the REACH Regulation by way of a binding interpretation, as it explicitly emphasises in its guidance.[11] Therefore, that guidance is not binding; nevertheless, it can provide useful indications for interpreting an undefined legal term, such as the person *responsible* for the import. For example, it appears compelling that often the ultimate recipient of the delivery should bear the primary responsibility because he has an interest in the delivery being introduced into the Union. Without his initiative, the substance would normally not be imported. Although the seller usually also has such an interest, he cannot be considered the person responsible under Article 3(11) of the REACH Regulation if – as in the present case – he is not established in the Union.

53. However, the interest of the purchaser in the import does not preclude another person – in the present case Belor – from *assuming* responsibility instead of the recipient of the goods, thus becoming the importer within the meaning of Article 3(11) of the REACH Regulation and entering into the obligation to register.

54. As a rule, a mere declaration or even a contract cannot suffice in this regard as otherwise there would be a risk of the importer's obligations under the REACH Regulation being circumvented. In particular, it is necessary to prevent the actual importer of the substance from distributing its imported quantity among various 'sham importers', each of which remains below the threshold of the obligation to register or a threshold for more comprehensive information. This is because under Article 6(1) only importers who import more than one tonne per year are obliged to register, and under Article 12, the registration obligations increase in respect of larger annual quantities per importer (10, 100 or 1 000 tonnes).

[10] European Chemicals Agency, Guidance on registration, August 2021, Version 4.0, p. 19.

[11] Loc. cit., p. 2. See judgment of 13 July 2023, *Commission* v *CK Telecoms UK Investments* (C-376/20 P, EU:C:2023:561, paragraph 123).

55. Moreover, registration is not a mere formality, but involves considerable effort. Under Article 10 and various annexes of the REACH Regulation, the registrant must submit a comprehensive submission on the substance and a chemical safety report. In addition, he is subject to further obligations to provide information after registration, under Article 22.

56. Therefore, an effective assumption of responsibility and registration obligation requires at least the legitimate expectation on the part of the actors involved in the import that the person assuming responsibility has the necessary knowledge and resources to fulfil those obligations. Those actors, in particular the person ordering the substance, cannot have blind trust in that regard, but rather must exercise due diligence in making their choice and at least obtain evidence before import that the registrant has in fact registered the quantity of the substance with ECHA.

57. If, however, as in the present case, the person assuming responsibility for the import has in fact fulfilled the importer's obligations, that is to say, in particular, registered the delivery with ECHA, and also otherwise had a significant part to play in arranging the physical introduction of the delivery into the Union, and if there is no evidence of circumvention or infringement of obligations under the REACH Regulation, then it appears reasonable to accept the assumption of responsibility. Contrary to the view taken by Belgium, however, whether or not that assumption is based on a contract with the purchaser of the goods or on other circumstances – in this case the agreement between Dreymoor and Belor – is not decisive.

58. Article 8 of the REACH Regulation even explicitly provides for the possibility of an agreement with an actor not established in the Union in respect of a special case, namely when the manufacturer of a substance established outside the Union appoints, by mutual agreement, a person established in the Union, to fulfil the obligations on importers as his only representative. Importers are thus to be exempted from the registration obligation as they are considered downstream users in that case.

59. As the Commission also stated at the hearing, those rules on the only representative do not preclude assumption of the registration obligation in other cases. It is true that the regulation does not contain a rule comparable to Article 8 of the REACH Regulation under which the actors involved in the import can agree on who fulfils the registration obligation. However, since the Regulation does not clearly specify the person on whom that obligation is imposed, but at the same time assumes a single registration of imported quantities of substances, it must be possible to agree on who assumes that obligation.

60. This interpretation of Article 3(11) and Article 6 of the REACH Regulation further has the advantage that it covers the case where a commercial undertaking established outside the Union, such as Dreymoor, imports a quantity of a substance produced by another manufacturer into the Union without already having recipients in the Union. In that case, no one could register the delivery and the import would be legally impermissible. Such a commercial undertaking would not be a manufacturer of the substance and therefore could not appoint an only representative under Article 8. Nor could it register the delivery itself if it is not established in the Union. Likewise, if the purchasers have not yet been identified, they cannot bear responsibility for the import either. In order to allow such imports, it must therefore be possible for an actor established in the Union to take responsibility for the importation.

61. In the main proceedings, such a solution would be necessary at least in relation to the quantities which Triferto purchased only after import, and possibly also in relation to the part of the shipment, namely 2 000 tonnes, about whose whereabouts the Court was not informed. According to the answer to the first part of the second question, at least the quantities subsequently sold to Triferto had already been imported before the recipient was established.

62. The answer to the first question and the second part of the second question must therefore be that, under Article 3(10) and (11) and Article 6 of the REACH Regulation, the purchaser of more than one tonne of a substance imported into the Union is not required to register that substance himself or herself where another person established in the Union has assumed responsibility for importing the substance and registered it, and where there is no evidence of circumvention of obligations relating to the registration of the substance.

V. Conclusion

63. I therefore propose that the Court answer the request for a preliminary ruling as follows:

(1) The exemption in Article 2(1)(b) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC is applicable only if the substances concerned are subject to one of the customs regimes referred to therein, namely temporary storage (Article 5(11) and (17) and Articles 144 to 152 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code), storage in free zones with a view to re-exportation (Article 5(14) and Articles 243 to 249, but not Article 270, of the Customs Code), or transit (Articles 226 to 236 of the Customs Code) and do not undergo any treatment or processing there.

(2) The purchaser of more than one tonne of a substance imported into the Union is not required to register that substance himself or herself under Article 3(10) and (11) and Article 6 of Regulation No 1907/2006 where another person established in the Union has assumed responsibility for importing the substance and registered it, and where there is no evidence of circumvention of obligations relating to the registration of the substance.