

Reach

Different analysis on REACH

- Bio-naptha classification under REACH

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The key issue in determining the REACH obligations for imports of bio-naphtha is identifying which EU-established entity qualifies as the “importer” for REACH purposes.

Under Article 3(11) of REACH, the importer is the EU-established person responsible for the import. The REACH concept of importer does not necessarily have to correspond with the entity that purchases the goods, nor is it necessarily determined by the entity identified as the importer in the customs declaration.

The judgment of the Court of Justice of the European Union in Case C-654/22 (Triferto Belgium) confirms that an EU-established entity other than the purchaser can assume responsibility for the import and consequently qualify as the REACH importer. This requires that the entity has actually assumed responsibility for the import, has the applicable REACH registration in place, and that the arrangement is not intended to circumvent the obligations imposed by REACH.

On that basis, an arrangement whereby one EU entity assumes responsibility for the REACH obligations while another entity purchases the goods can work in principle. A sale of the goods to the entity assuming the REACH responsibilities is not, in itself, a requirement under REACH for that entity to qualify as the importer. Such a sale could nevertheless provide additional evidence supporting the commercial and legal substance of the arrangement. The more important consideration is that the contractual arrangements and the actual conduct of the parties clearly demonstrate that the EU entity has assumed responsibility for the import within the meaning of Article 3(11) REACH.

The contractual agreement, such as a service-level agreement or similar arrangement, should therefore be sufficiently explicit. It should clearly state that the relevant EU entity is responsible for the import of the substance into the EU for REACH purposes and for fulfilling the corresponding obligations under REACH, including the registration obligation under Article 6.

It should also be clear that the entity has the relevant REACH registration in place and that the substance and the quantities covered by the imports fall within the scope of that registration. The imported quantities should consequently be appropriately reflected in the registrant’s tonnage calculations.

Accordingly, the absence of a sale of the goods to the entity assuming the REACH responsibilities does not necessarily prevent that entity from qualifying as the REACH importer. Similarly, the fact that the entity does not appear as the importer in the customs declaration does not, by itself, determine the importer for REACH purposes. The decisive factor is whether the entity has

genuinely assumed responsibility for the import and the associated REACH obligations.

For the specific substance concerned, the available SDS identifies the substance as “Hydrocarbons, C5-C7, n-alkanes, isoalkanes, n-hexane rich” and refers to REACH registration number 01-2119497828-14. It should therefore be verified that the relevant REACH registration covers this substance, its intended use and the quantities imported under the proposed arrangement.

The REACH registration obligation should be distinguished from the use of a REACH-related Y-code in the customs declaration. The Y-code addresses the applicable REACH restriction or control requirement and does not determine which entity has the REACH registration obligation.

Where the substance is subject to an Annex XVII restriction and the relevant conditions are fulfilled, Y106 may be the appropriate declaration code. This should, however, be confirmed against the precise substance covered by the SDS and registration, including whether the relevant Annex XVII requirements apply to the specific product and intended use.

A separate assessment is required for the sanctions requirements applicable to the import of petroleum products and, in particular, the potential application of Article 3ma of Regulation (EU) No 833/2014. Where the product is imported from a third country that is not listed as a partner country under Annex LI, the relevant requirements concerning the origin of the crude oil or petroleum feedstock may need to be considered. In such circumstances, appropriate evidence of the origin of the feedstock should be available. Where applicable, this could support the use of Y695 in the customs declaration.

If it can be established that the product is produced entirely from biogenic or other non-crude-oil feedstock, the analysis may be different. In that case, Article 3ma may not apply because the product does not fall within the relevant petroleum-product supply chain based on Russian crude oil. This conclusion should be supported by appropriate documentary evidence regarding the feedstock and production process.

Where the available evidence establishes that the goods are not subject to the relevant import prohibition, Y889 may potentially be considered as the appropriate customs declaration code. The choice between Y695 and Y889 should therefore be based on the precise legal basis for the non-applicability of the prohibition and the evidence available to substantiate that conclusion.

In conclusion, an EU entity can in principle qualify as the REACH importer without purchasing the goods itself, provided that it has genuinely assumed responsibility for the import for REACH purposes and has the relevant registration in place. The contractual documentation should clearly establish this responsibility, and the registration should cover the substance and the relevant import volumes. Neither ownership of the goods nor the entity identified in the customs declaration is, by itself, determinative of the REACH importer.

For the sanctions assessment, the key issue is the origin and nature of the feedstock used to produce the bio-naphtha. Where the product is derived from crude oil, the applicable Article 3ma requirements and corresponding evidence of feedstock origin should be assessed, potentially supporting a Y695 declaration. Where it can be demonstrated that the product is produced from biogenic feedstock and therefore falls outside the scope of Article 3ma, Y889 may potentially be

relevant, subject to confirmation of the applicable customs declaration requirements and supporting evidence.