



Vastuvõtmise kuupäev : 01/12/2022

**Case C-654/22**

**Request for a preliminary ruling**

**Date lodged:**

19 October 2022

**Referring court:**

Rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent  
(Belgium)

**Date of the decision to refer:**

17 October 2022

**Applicant:**

FOD Volksgezondheid, Veiligheid van de voedselketen &  
Leefmilieu

**Defendant:**

Triferto Belgium NV

[...]

**Rechtbank van eerste aanleg (Court of First Instance)**

**Oost-Vlaanderen (East Flanders)**

**afdeling Gent (Ghent Division)**

**sectie burgerlijke rechtbank (Civil Court Section)**

**INTERIM JUDGMENT**

**Question referred for a preliminary ruling**

**Court of Justice of the European Union**

In the case:

**FOD VOLKSGEZONDHEID, VEILIGHEID VAN DE VOEDSELKETEN &  
LEEFMILIEU (BELGIAN FEDERAL PUBLIC SERVICE HEALTH,**

**FOOD CHAIN SAFETY AND ENVIRONMENT**), KBO: 0367.303.762, with its registered office at 1210 Sint-Joost-Ten-Node, [...];

first party appearing voluntarily,

[...]

v

**TRIFERTO BELGIUM NV**, KBO: 0405.608.765,

with its registered office at 9000 Ghent, [...];

second party appearing voluntarily,

[...]

THE RECHTBANK (COURT OF FIRST INSTANCE) RULES AS FOLLOWS:

## **I. PROCEDURE**

On 10 February 2022, the parties together filed a joint application with this Court of First Instance and this Kamer (Chamber). [...]

[...] [procedural aspects irrelevant to the questions]

## **II. RELEVANT FACTS AND BACKGROUND**

On 11 February 2020, the Federale Overheidsdienst Volksgezondheid, Veiligheid van de voedselketen en Leefmilieu (Belgian Federal Public Service Public Health, Food-Chain Safety and Environment; ‘the FOD Volksgezondheid’) conducted an audit at NV Triferto Belgium (‘Triferto’), in respect of compliance with Regulation 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (‘the REACH Regulation’).

In 2019, Triferto purchased over 1 tonne of urea directly from the company Dreymoor Fertilizers Overseas PTE LTD in Singapore (‘Dreymoor’).

Following this purchase, on 9 August 2019, the company Belor imported 7,873.167 tonnes of urea into the European Union on behalf of Dreymoor. Belor registered the urea not as the only representative but as the alleged importer within the meaning of Article 6(1) of the REACH Regulation. It also made the customs declaration for the substance. After the initial purchase and call, a total of about four tonnes were additionally purchased and called by Triferto, at several further consecutive times.

An agreement between Drey Moor and Belor is before the court in which the latter confirms being responsible for the physical importation of urea 46% into the EU with the vessel MV 'HC SVEA KIM', 'in accordance with the REACH guidelines'.

The FOD Volksgezondheid takes the view that not Belor but Triferto should be regarded as the importer within the meaning of Article 6 read in combination with Article 3 of the REACH Regulation. It was thus obliged to register the urea, which it failed to do. The FOD Volksgezondheid imposed a fine on Triferto of EUR 32 856.00.

### III. CLAIMS

The **FOD Volksgezondheid** seeks a ruling ordering Triferto to pay the outstanding fine of EUR 32 856.00 plus statutory interest as of 6 January 2020.

**Triferto** asks the Court of First Instance: *'to rule that neither Article 5 nor Article 6 of the REACH Regulation was violated by it and that therefore there can be no question of any sanction pursuant to Articles 17, §1, 3°, a) and 17, §2, 4° a) of the de wet van 21 december 1998 betreffende de productnormen ter bevordering van duurzame productie- en consumptiepatronen en ter bescherming van het leefmilieu, de volksgezondheid en de werknemers (Law of 21 December 1998 on product standards to promote sustainable production and consumption patterns and to protect the environment, public health and workers);*

- *to dismiss as unfounded the claim of the FOD Volksgezondheid seeking payment of the aforementioned fine;*

- *in the alternative, if the court considers that there is still uncertainty about the substance physically introduced into the customs territory of the Union by Belor not being covered by the exemption under Article 2.1. (b) of the REACH Regulation, or about there not being an obligation on Triferto (as purchaser of part of the shipment of urea that was stored in a bonded warehouse in Belgium without being responsible for physically introducing it into the customs territory of the Union) to register the substance anew, to refer a question to the Court of Justice of the European Union for a preliminary ruling before delivering its judgment.'*

[...]

### III. DISCUSSION

1.

On the applicable EU legislation

The purpose of the REACH 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. The aim is also to ensure the free circulation of substances on the internal market while enhancing competitiveness and innovation (Article 1 of the Regulation).

Article 6(1) of the REACH Regulation provides as follows: *‘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 1 tonne or more per year shall submit a registration to the Agency.’*

An *‘importer’* within the meaning of the REACH Regulation is any natural or legal person established within the Union *‘who is responsible for import’* (Article 3(11) of the REACH Regulation. *‘Import’* is the physical introduction into the customs territory of the Union (Article 3(10) of the REACH Regulation).

Under Article 2(1)(b) of the REACH Regulation, it is not applicable 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.

2.

Essential arguments of the parties

2.1

According to the FOD Volksgezondheid, the term importer within the meaning of the REACH Regulation should be interpreted as referring to the person who purchased the substance directly from the third country and not to the person who introduced/transported the substance into the Union. It refers in this regard to the explanation given on the ECHA website (at <https://echa.europa.eu>).

It is of the view that registration should take place at the moment that the substance ordered was called by the buyer and placed under the free circulation or inward processing regime.

2.2

According to Triferto, the company that is responsible for the physical introduction of the substance must be considered the importer, apart from the person who purchased the substance. According to Triferto, companies can agree that the person who makes the customs declaration is also responsible for the import. This person should be considered the *‘importer’* within the meaning of the REACH regulation and is responsible for registration. According to Triferto, companies can also decide that a forwarding agent/logistics service provider makes the declaration, but that the final responsibility for the import lies with

another company. In that case, the latter company should be regarded as the ‘importer’ within the meaning of the REACH Regulation. In support of its view, Triferto refers to the ‘*factsheet REACH en importeurs*’ (‘*REACH and importers fact sheet*’) of the Netherlands Central Government (at <https://www.chemischestoffengoedgeregeld.nl/content/factsheet-reach-en-importeurs>).

Triferto is of the opinion that, except in the cases mentioned in Article 2 of the REACH Regulation, the registration of the substance should occur as quickly as possible, i.e. at the moment it is introduced into the Union. The fact that the substance is subsequently called by the buyer does not, according to Triferto, alter the foregoing.

The lawyer representing Triferto, which has a presence both in the Netherlands and in Belgium, stressed at the hearing that in practice this difference in vision between the Netherlands and Belgian authorities leads to uncertainty with regard to the designation of the person to be regarded as responsible for the import and who should therefore perform the registration.

3.

Reference of the questions to the Court of Justice for a preliminary ruling

The Court of First Instance considers that it appears necessary, before giving a ruling, to submit to the Court of Justice of the European Union for a preliminary ruling, in accordance with Article 267 TFEU, the questions formulated in the operative part of this judgment.

## V. DECISION OF THE COURT OF FIRST INSTANCE

**The Court of First Instance rules as follows after the exchange of arguments:**

The Court of First Instance reserves judgment until the Court of Justice of the European Union has given a preliminary ruling on the following questions:

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 bonded warehouse?

2. Must Article 2(1)(b) of the REACH Regulation be interpreted as meaning that a substance which is stored in a bonded 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?

Thus delivered and pronounced in open court by the First Chamber of the Court of First Instance of East Flanders, Ghent Division, on Monday, 17 October 2022 [...].

[...] [signatures]