



REACH

Importing raw materials and products into the EU



2009, version 0

Disclaimer

This paper contains a number of examples gathered from companies that are dealing with imports into the EU. This paper does not express any preference from Cefic for any of the presented examples. Each company should decide individually the organisation it may adopt. This may be according to one of the presented examples, adopted in full, partly or according to another scheme.

This paper cannot serve as a substitute for legal advice. The arrangements between individual sellers and individual buyers may be either more complex than the cases considered in this paper or may differ from these. Companies are therefore advised to check individual cases with their company lawyers. Companies need also to check compliance of their contemplated scheme with competition law rules. For example, any exchange of information regarding actual volumes needs to comply with competition law rules. For more information, please refer to [ECHA Guidance on Data Sharing](#) and [Cefic REACH Competition Compliance leaflet](#). It may be the case that there is a need to use an independent third party or modify an example.

The information contained in this paper is intended to give an overview of potential scenarios, and whilst the information is provided in utmost good faith and has been based on the best information currently available, is to be relied upon at the user's own risk. No representations or warranties are made with regards to its completeness or accuracy and no liability will be accepted for damages of any nature whatsoever resulting from the use of or reliance on the information.

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Introduction

Most companies within the EU chemical industry source products from outside the EU or will do so at some stage, regardless of their size. Under REACH, such imported chemicals fall under the same control regime as applies to chemicals manufactured within the EU. For companies that regularly import raw materials or products, or who are part of complex supply chains, tracing and tracking of these imports and ensuring compliance with REACH is vital to their business.

This paper describes different examples of how companies can ensure both REACH compliance and supply chain flexibility. The paper deals only with the REACH implications of imports of materials and describes some of the various legal entity and only representative strategies that have been put in place by some companies.

The objectives for this paper are two-fold:

- The first objective is to share information and examples within industry. Complex supply chains – which are commonplace in the chemical industry – may create questions about compliance and responsibilities. This paper aims to provide information about the different potential scenarios.
- The second objective is to inform the larger public, including relevant authorities, that industry has taken and will take different routes to solve the same, or similar, issues, and that there is not necessarily just one “right” approach to REACH compliance.

The paper outlines solutions as applied.

Legal framework

The REACH Regulation includes the definitions of ‘import’ and ‘importer’ (Article 3 subsections 10 & 11):

- Article 3.10: **Import** means the physical introduction into the customs territory of the Community¹.
- Article 3.11: The **importer** is any natural or legal person established within the Community who is responsible for import.

Different companies will have a different interpretation of what this responsibility encompasses. This “responsibility” will at least be the obligations laid down in the REACH Regulation for importers. This responsibility is not limited to registration and includes among others informing ECHA when the activities cease (article 22.1(c)) or to keep information for ten years (article 36). It is then up to each company’s decision to allocate other responsibilities related to imports such as customs or tax issues.

However, REACH does not describe a relationship with other legal requirements related to import activities such as customs or tax.

¹ The scope of the customs territory of the Community is defined in the relevant Community legislation on customs that should be consulted for further information. [Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code]

- a. This flexibility of the definition of import and importer is also supported by the ECHA guidance on registration:
*Section 1.5.3.3 Who is responsible for the registration in case of import?:
 The responsibility for import depends on many factors such as who orders, who pays, who is dealing with the customs formalities, but this might not be conclusive on its own.*
- b. And the ECHA Q&A on pre-registration:
http://echa.europa.eu/doc/pre-registration/pre_reg_qa_en.pdf
*3.5. Am I an importer? Who is responsible for import?
 [...] It is important to note, however, that the REACH Regulation and the Customs legislation are independent from each other.*
- c. Moreover, the European Commission has publicly stated that it is up to each supply chain to define who will take up the role of the importer (*Workshop on Final countdown to pre-registration and registration of chemicals, April 2008*).
- d. The Guidance on Registration states:
"International companies sometimes have several daughters in the EU acting as importers, often spread over several Member States. Each of those daughters, if it has legal personality, is a legal person within the meaning of REACH. Depending on the distribution of work within the group, each of them can be an "importer" responsible for import. It is for the group or the individual companies to assign the tasks and the responsibilities to companies in the group".
 Companies will need to determine which party is (or will be) considered as the REACH-importer through contract. The REACH importer is liable for the importer's tasks under REACH.
 It is advisable that all parties involved in a transaction (i) are sufficiently aware of the REACH-importer designation, (ii) have documentary evidence proving that goods supplied are covered by such a designation and (iii) that relevant parties are involved in an appropriate contractual arrangement.
- e. Reference to Incoterms (International Chamber of Commerce's (ICC) International Commercial Terms) could potentially be used as a "default" indicator for designating the REACH-importer, if nothing more specific has been agreed between parties involved in an (international) sales transaction concerning substances.

However as already indicated above, the parallel between REACH and customs regulation is not sustained throughout REACH, as (i) article 2 (b) of REACH makes REACH applicable to certain substances undergoing treatment or processing (even if they would be in a customs free or transit zone), (ii) the Guidance on Registration and ECHA Q&A explicitly state that customs clearance alone is not a sufficient criterion to determine the REACH importer, and (iii) the EU customs code itself does not recognize the concept of "importer".

The above may provide some flexibility for companies to administer the introduction of chemicals into the EU in line with their internal structure and their strategies for importation whilst keeping these activities in line with the REACH Regulation. However, a Legal Entity which (pre)registers substances as an importer in the REACH IT needs to be able to demonstrate that it is responsible for the 'physical introduction.' i.e. that it fulfils the REACH definition of importer.

The Cefic OR & Imports Task Force has considered all these aspects in their REACH activities in order to prepare examples of how they have addressed the following:

- Creation of Legal Entity Objects (LEO's) in REACH IT and (pre-)registration.
- Only Representative policies (especially temporary/interim OR agreements due to the re-interpretation of article 2.7 issued by the Commission in April 2008). It should be

noted that even if a legal entity ceases to set as OR, they remain with obligations in terms of data sharing.

- Direct/Indirect imports: very often there are supply chains outside the EU. The guidance on registration include the following remark on page 23:
REACH does not distinguish between direct and indirect imports into the EU and therefore such terms are not used in this guidance. It is essential that there is a clear identification of:
 - *who in the supply chain of a substance is the manufacturer, formulator or producer of an article;*
 - *who has appointed the only representative;*
 - *which imports the OR has responsibility for.*

The next section includes examples which illustrate some strategies that companies have put in place.

EXAMPLES²

SUMMARY

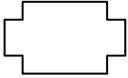
The table below is a summary of the examples that follow. The table provides an overview and comparison of the main elements of the various examples.

Structure	Examples								
	1	2	3	4	5	6a	6b	7	8
one LE REACH responsible for imports from one or multiple non-EU manufacturers			x		x	X		x	x
more LE REACH responsible for imports		x	x	x					
one OR inside company group	x		x	x	x				X
one external OR							x		
Is there a trustee in your OR system?				x					
Are you covered by secrecy agreements?							x		X
Coverage by OR									
only direct imports			x						
all imports	x			x					
partial coverage by individual contracts					x		x		X
not described in the example		x							

The list of examples is not exhaustive. Various examples below, as well as combination of those, can be implemented by the same company. The choice of the strategy is each company's decision based on criteria such as the complexity of the supply chain(s), the wish for a simple system to trace volumes, or communication lines while, of course, fulfilling the regulatory requirements.

² It should be noted that this paper does not express any preference from Cefic for any of the presented options. The paper contains real examples from companies that participate in the Cefic Only Representative and Imports Task Force.

KEY

	Information flow: OR appointment, registration, information, etc.
	Goods flow
	Company legal entity
	Customer
	Only Representative
	Trustee
LEO	Legal Entity Object in REACH-IT
LE	Legal Entity
S	Substance S
OR	Only Representative
DU	Downstream User

EXAMPLE 1

Corporation A is headquartered outside the EU and has 4 principal Legal Entities (LE1, LE2, LE3 & LE4) in the EU.

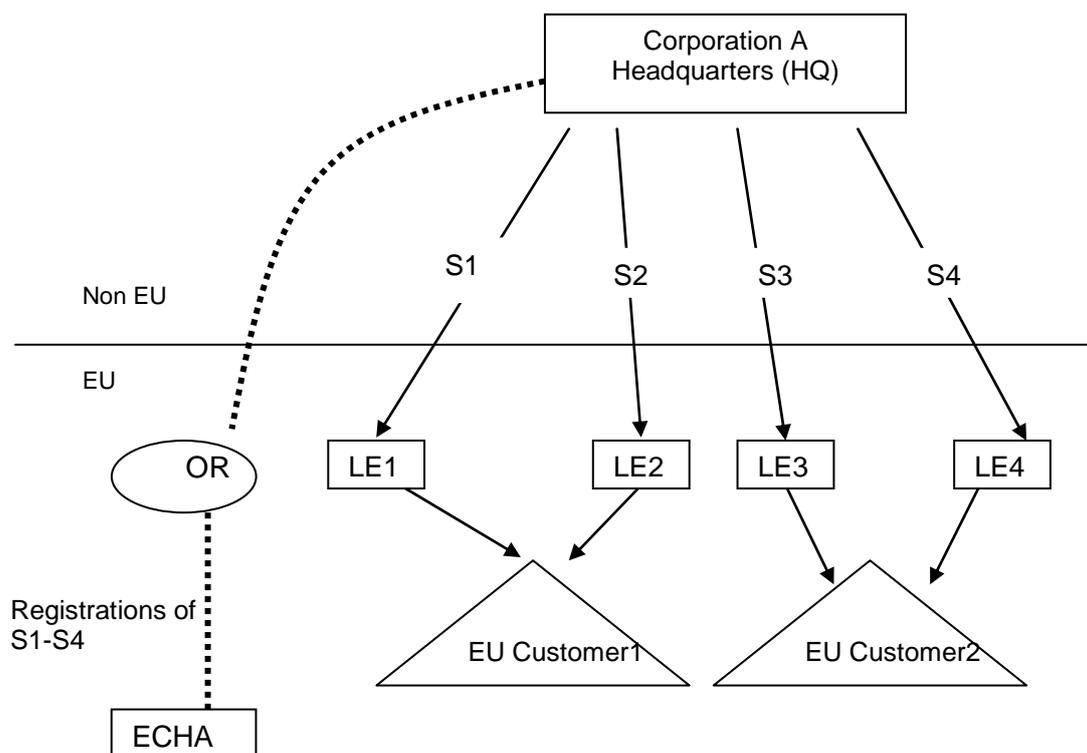
Example 1a

Import of Non-EU manufactured products by Corporation A's EU-based LEs

For import of its own non-EU manufactured products for onward sales to EU customers, Corporation A has set up a Legal Entity which has been appointed OR by its non-EU based Corporate HQ. All in-scope chemicals contained in products imported into the EU (S1-S4) have been pre-registered by this OR so that any of Corporation A's EU-based LEs have become downstream user and can therefore distribute to its EU based customers.

This situation is illustrated in diagram 1 below.

Diagram 1

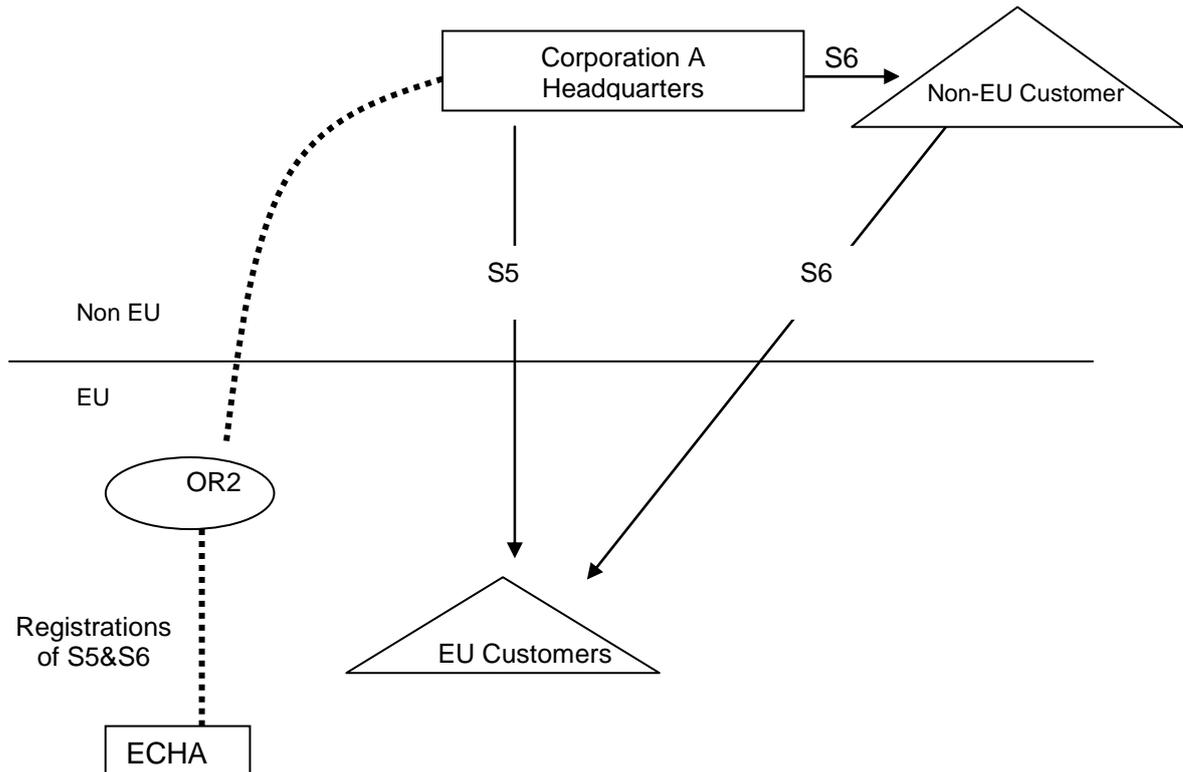


Example 1b

Direct & indirect import of Non-EU manufactured products

In those instances where Corporation A does not wish to provide its importers with the necessary information to register themselves, the company covers direct and indirect imports by setting up ORs (which can be separate Legal Entities for each OR appointment). This situation is illustrated in diagram 2 below.

Diagram 2

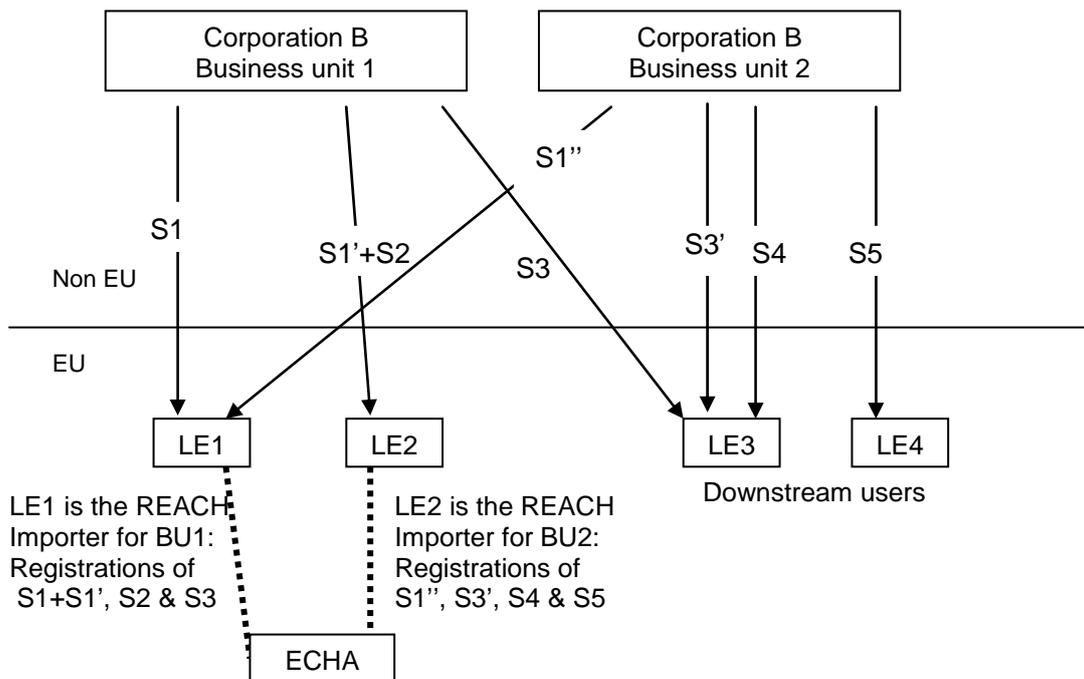


EXAMPLE 2

Corporation B is global with multiple legal entities all over the world and is headquartered outside the EU. It manufactures in the EU and imports from all other areas in the world. It has multiple Legal Entities in the EU, including multiple LE per EU member state. The corporation is organised according to different products and activities in different business units (BU).

The legal entity structure that is implemented in the EU has developed historically and for legal and tax considerations. Some businesses use very sophisticated supply chain management approaches where the same product for the same factory might enter the EU through different channels and may change at short notice (e.g. boat transport via Rotterdam and air transport via Madrid for an operation in France).

To ensure REACH compliance Corporation B has taken the following strategy: each business unit has a European legal entity assigned to it. Where there is manufacturing activity (in the REACH sense), the legal entity that is responsible for the manufacturing will be the first choice to be assigned to that business. Any imports into the EU relating to a particular business unit will be the **responsibility** of the legal entity assigned to that business for REACH purposes – regardless of the location of the **physical import** into the EEA.



With this set-up, Corporation B will be able to ensure a compliant and transparent system. Another advantage is that substances will be registered according to the specific use related to the business.

Although this approach ultimately leads to more registrations, Corporation B believes that this implementation is a closer reflection of the business reality and is therefore more practical and realistic.

EXAMPLE 3

Corporation C is a global company with multiple entities all over the world and is headquartered outside the EU. It manufactures in the EU and imports from all other areas in the world.

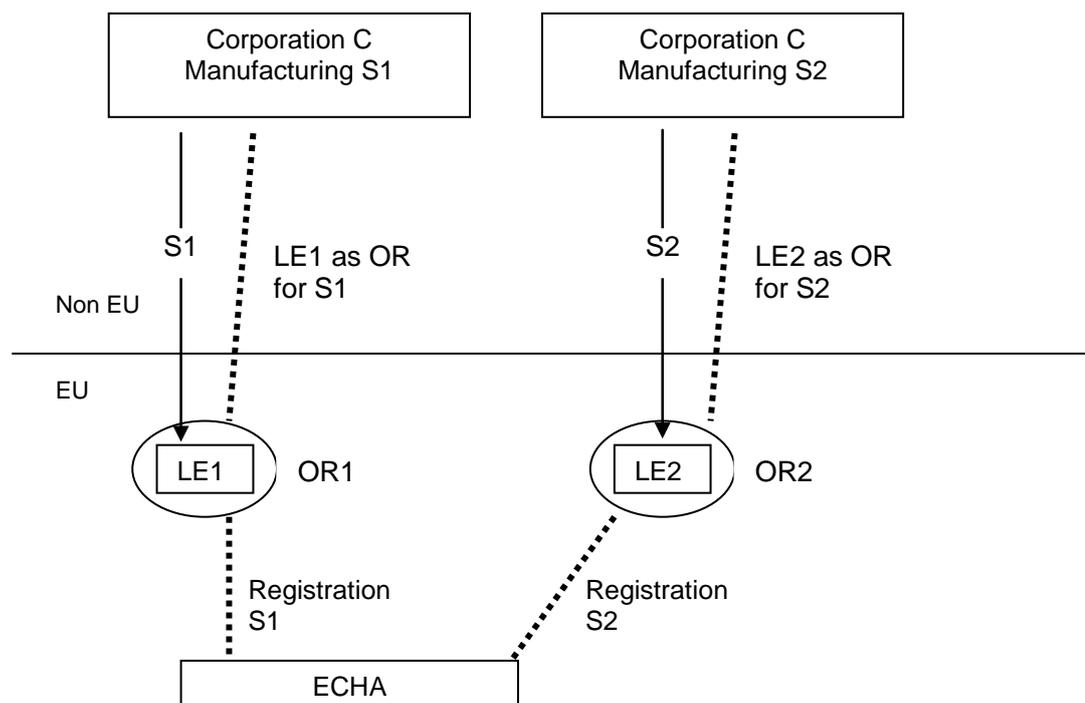
Corporation C has set up accounts in REACH-IT (LEO's) for each manufacturing entity in the EU.

In addition, Corporation C has a number of LE's in various EU countries, each of which has been set up in the REACH-IT system as well (LE1, LE2, LE3). One of these LEs has been appointed to act as Only Representative for Corporation C's non-EU manufacturing entities. A number of OR's have been set up under this one LE, each representing one non-EU manufacturing entity. Please see figure with OR1 and OR2.

Corporation C has used a mixed pre-registration strategy regarding imported materials which can be best described as follows:

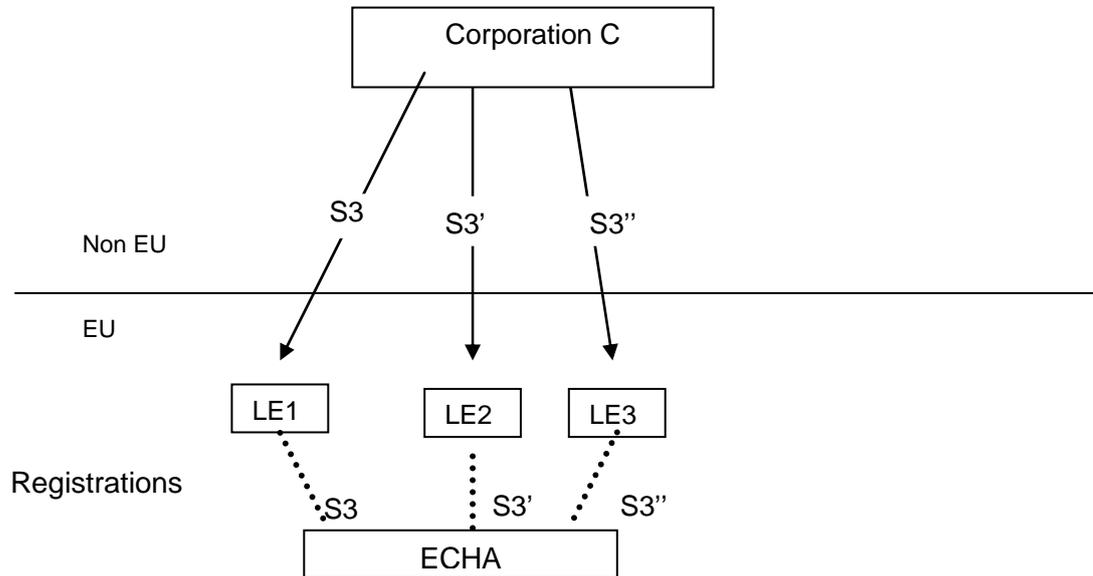
Example 3a

In the base case where individual substances are produced in just one non-EU plant, the OR's have been used. The REACH flows for S1 and S2 are represented by OR1 and OR2 in the figure below.



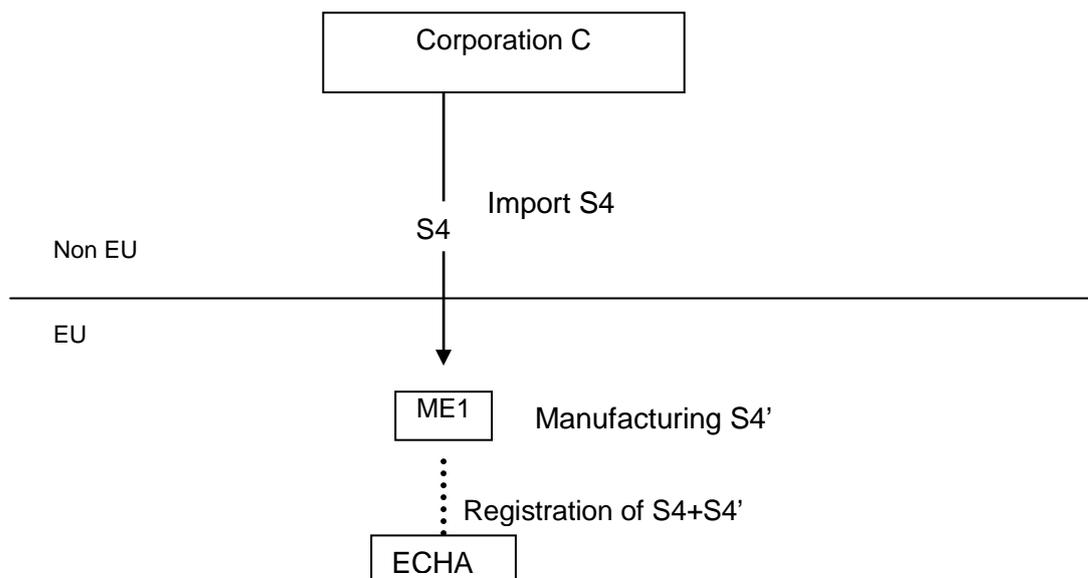
Example 3b

In some cases two or more of the existing LE's have been used as importing entities to optimize the registration strategy. This is represented by the import of S3 via Import Legal Entity 1, 2 and 3 (LE1, 2, 3).



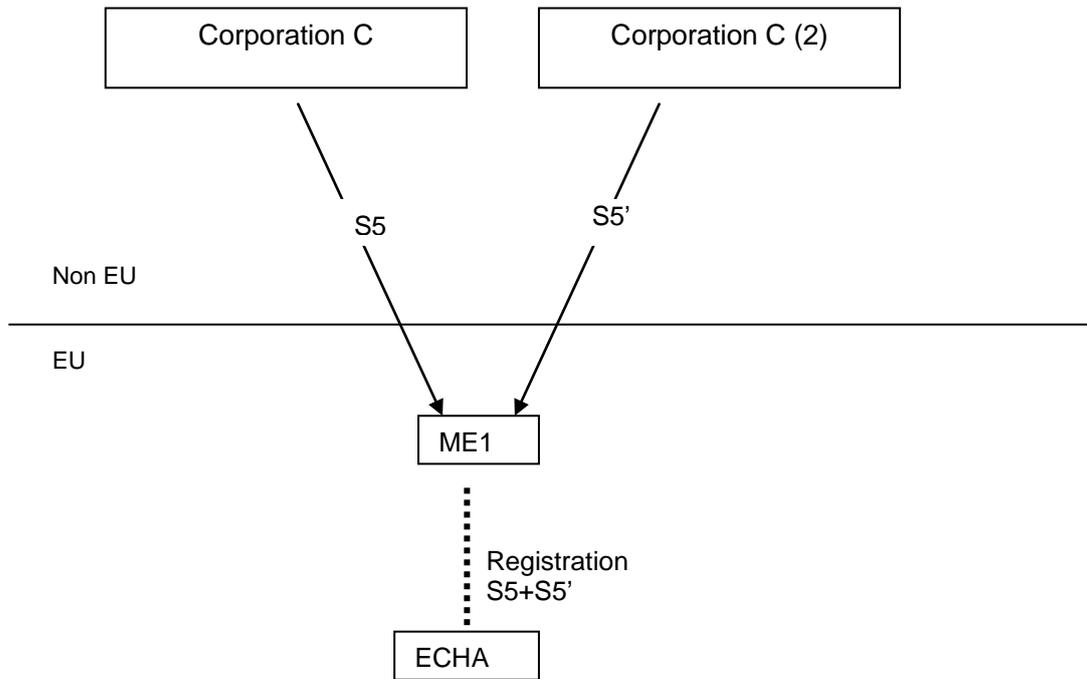
Example 3c

In some cases it made sense to align the business responsible for importing with a particular manufacturing entity (ME1). In these cases the same substance required pre-registration because of both manufacturing in the EU and importing into the EU (S4). The manufacturing entity ME1 has been used for the pre-registration as an importer as well. A single pre-registration is adequate to cover ME1's role as a manufacturer and importer of S4. Obviously volumes of substances related to manufacturing and to imports were added together (Import S4+ Manufacturing S4').



Example 3d

Due to the above-mentioned alignment in some cases where the same substance is imported from more than one non-EU manufacturing entity but is not produced in the EU, the same manufacturing entity (ME1) as in the previous example has been used as the importer as well. This is the case for S5.



EXAMPLE 4

Direct imports

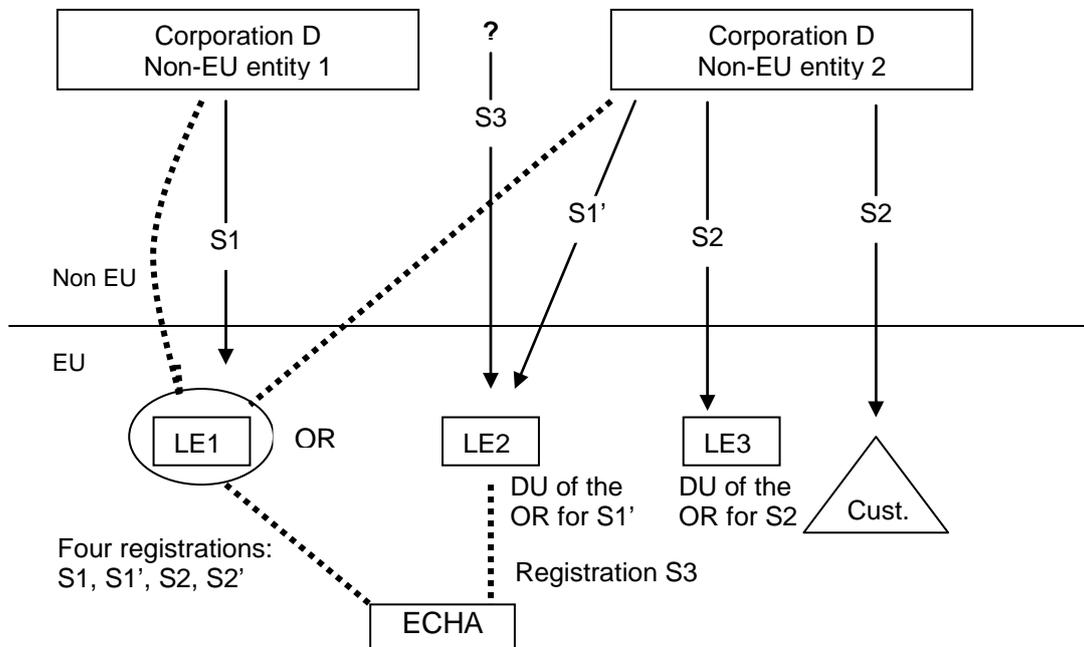
Corporation D is a large multi-national company, with headquarters outside the EU and a large number of (manufacturing and importing) Legal Entities in the European Union. It also has multiple manufacturing locations outside of the EU. Substances can be imported by any of the company's EU Legal Entities from any of the company's non EU manufacturing sites. The supply chain can be very complex and the picture can change fast. Corporation D has applied the concept of Only Representative to the imports of substances by any of the EU Legal Entities that may act as importer.

The company has selected one of its major EU Legal Entities to be the 'default OR'. Each of the non-EU Legal Entities manufacturing substances, formulating mixtures, making polymers that are then imported by any of the companies Legal Entities in the EU, has appointed the 'default OR' to cover imports made by whatever EU Legal Entity. This 'default OR' will cover all imports by any of the EU Legal Entities of the company, whether they are currently importing or not (for those that are not importing a given substance, the volume will be 0, until they start importing).

EU customers that are directly importing any of the substances for which the company has appointed the 'default OR' are notified of the appointment and – if they wish – they can make use of it for the volumes of the substance(s) in question that they import from Corporation D's non EU legal entity.

The above set up means that if Corporation D manufactures a substance in different places (non EU legal entities) outside of the EU, i.e. if there are multiple non-EU manufacturers for the same substance and the company's EU Legal Entities import or can import from all of them, then the default OR will be submitting as many registration dossiers for the same substance as the number of non-EU manufacturers that he represents.

For cases where the origin of the substance is not known in advance (e.g. spot purchases), the EU Legal Entity that is importing (or might start importing later) from multiple, still unknown non-EU manufacturers, has also pre-registered that particular substance to register later as Importer under REACH.

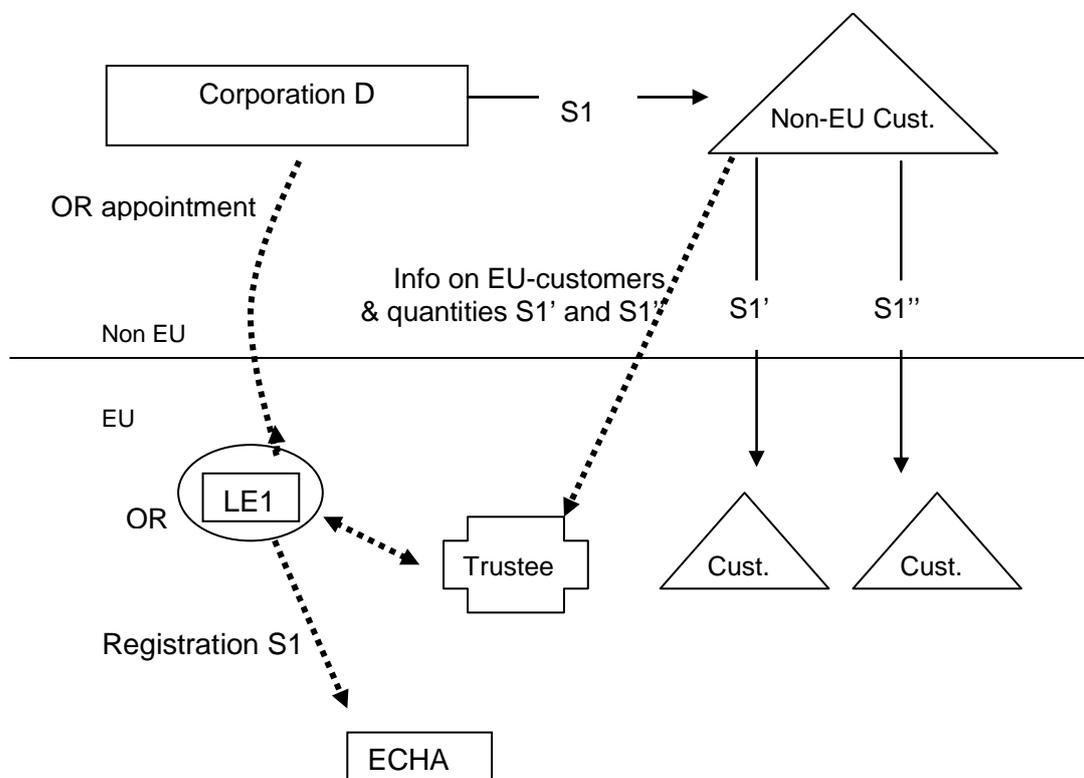


Indirect imports by customers

Corporation D sells products to non-EU based customers. These customers may sell these products to the EU and wish to have their customers in the EU (indirect importers) covered by the supplier's OR.

As Corporation D has appointed one of its EU Legal Entities as the OR for the substances included in these products, in principle the OR can cover the indirect importers, as the REACH regulation does not differentiate between direct and indirect imports.

However, one of the obligations of the OR – in this case an EU based Legal Entity of Corporation D- is to keep up to date and available a list of importers covered by the OR and their specific imported volumes. As indirect importers are in many cases customers of the non-EU customer of Corporation D, the OR would have to acquire market sensitive information in order to comply with the requirement of keeping a list of importers and their volumes. This is solved by the involvement of an independent Trustee who takes care of the administration, keeps the lists of volumes and importers up-to-date and can respond to the enforcement authority when asked to demonstrate REACH compliance in the whole supply chain.

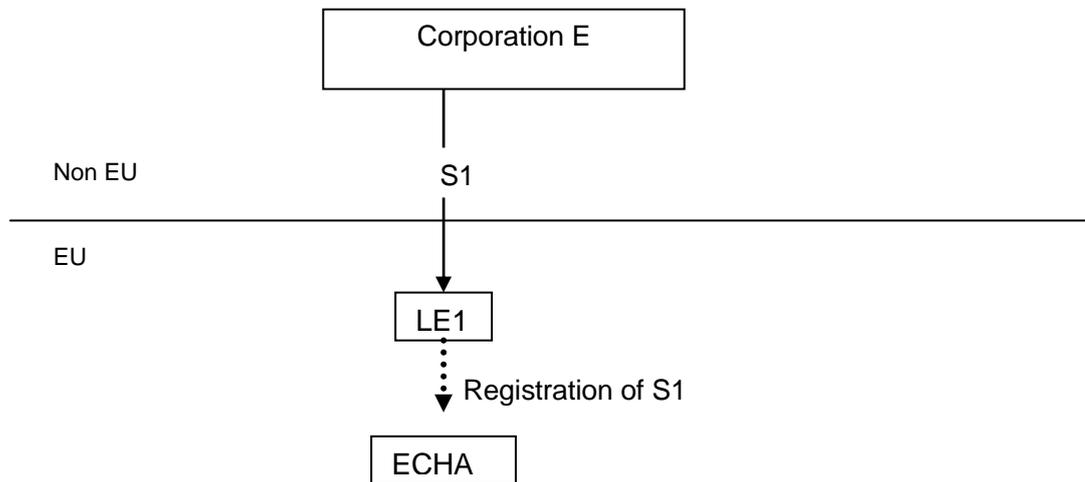


EXAMPLE 5

Corporation E is headquartered outside the EU and has one Legal Entity of an EU based affiliate responsible for imports.

Direct import of non-EU manufactured products by the LE of the EU based affiliate.

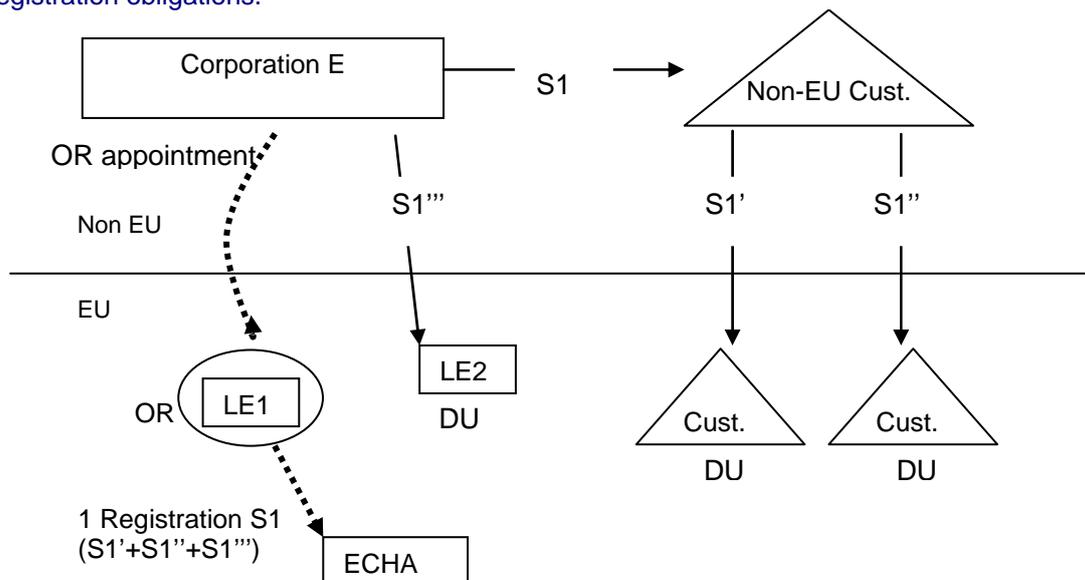
This scenario is the simplest scenario. As importer, this LE is responsible for REACH for all direct imports of non-EU manufactured products into the EU.



Indirect import of non-EU manufactured products

As Corporation E is not established within the EU, it cannot register. Moreover, the REACH registrations of the direct imported products are owned by the LE of the EU based affiliate and **cannot** be used by Corporation E for its indirect imports to the EU.

However, Corporation E can nominate a natural or legal person established within the EU (preferable a LE of its EU based affiliate) as its Only Representative (Article 8) for its products. Subject to agreement between each importer and the OR, all importers of these products of the same supply chain, and also the LE of the EU based affiliate responsible for the direct import, are regarded as downstream users and are therefore relieved from their registration obligations.



EXAMPLE 6

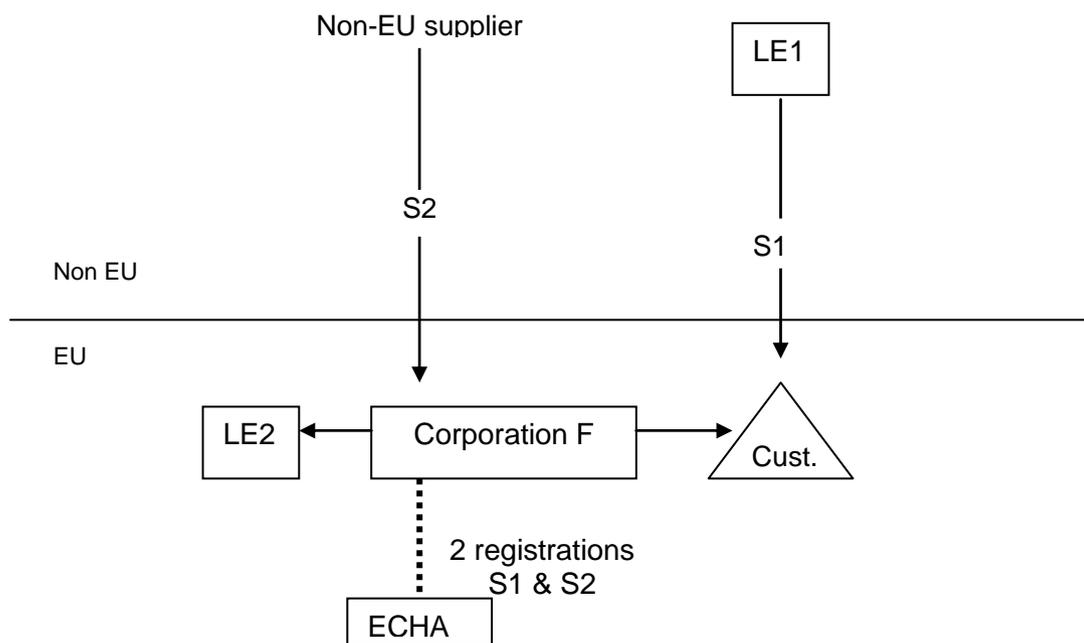
Corporation F is a global company with multiple entities all over the world and is headquartered in the EU. It manufactures both in and outside the EU and imports raw materials and products from all other areas in the world. It has multiple Legal Entities in the EU, including multiple legal entities per EU member state. Corporation F is diverse in its activities and products.

Example 6a

Sole Importer for direct business

The approach for REACH compliant import from non-EU sources is to finally make use of a sole importer model. It is based on (pre-)registrations for all substances relevant for all group companies in the EU by only one legal entity. Responsibility for the physical introduction into the customs territory of the Community, as required for an importer under REACH, is assumed by contracting the respective transport. In order to warrant REACH compliance until the above-mentioned responsibility is fully established, each LE in the EU has also pre-registered all substances which may need to be sourced from non-EU suppliers.

By this procedure, the direct business of non-EU group companies with third party customers in the EU may also finally be supported as the relevant substances are (pre-)registered as well. The legal entity assuming the REACH responsibility in this setup is at no time the owner of the products.



Example 6b

Only Representative for non-EU supply chain support

Direct business of non-EU group companies with EU customers, is facilitated by this sole importer model. Non-EU supply chains need additional consideration. Corporation F makes use of a special Only Representative service. The procedure described below ensures REACH compliance and prevents potential misuse of existing (pre-)registrations while avoiding the need to communicate confidential business information of product composition along the supply chain.

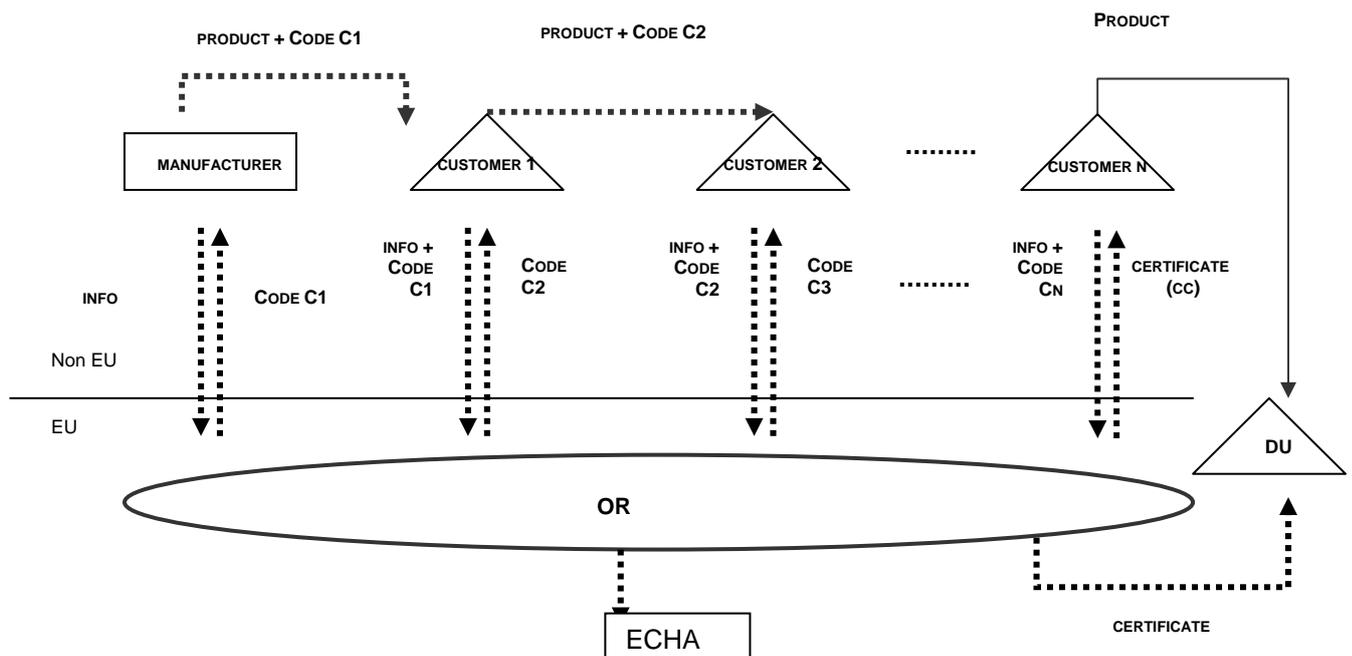
Corporation F chose to generally use external Only Representatives. This circumvents possible reservations of supply chain members regarding disclosure of product compositions and customer related information to a competitor.

The model uses a system of codes, which enable the Only Representative to unambiguously trace substances originating from the manufacturer all through the non-EU supply chain until they enter the EU in a final product. At each step, the following information is provided to the Only Representative:

- identity of manufacturer resp. supplier
- identity of product received including code received from supplier
- identity and amount of (new) product including percentage of REACH compliant product contained
- identity of the recipient

The Only Representative issues an individual code for each set of information received. This code accompanies the business described and allows the supply chain member to identify himself as an 'authorised beneficiary' of the manufacturer's (pre-)registration vis-à-vis customers.

Finally, the Only Representative will issue a *REACH compliance certificate* that the importing customer in the EU can present to enforcement agencies. As a matter of fact, such certificate will only cover substances for which he has been appointed by the manufacturer. For any additional substances which have been formulated along the supply chain into the product imported into the EU, the respective formulator has to consider how to support his customers, e.g., by using the service of the same Only Representative.



EXAMPLE 7

Corporation G has multiple legal entities (G1, G2, G3, G4) in the EU which all import the same substance A from two different non-EU suppliers.

→ Each of these legal entities is responsible for the customs clearance and payment of transport of the substance A

→ Owner of substance A is the headquarter of Corporation G located outside the EU.

In this case, Corporation G has decided to nominate the legal entity G5 of Corporation G also located in the EU as responsible and liable for Registration of substance A, even though this legal entity does not receive the goods, is not the owner of the goods, does not pay for the customs duties and does not pay for the transport of the goods.

The legal entity G5 has sufficient knowledge and capacity to cope with the REACH requirements. G5 will also have access to the hazard and exposure data and be responsible for the risk assessment of the substance and the implementation of the risk management measures. G5 is also aware of the specifications of the substance and will ensure these specifications are met during the sameness discussions.

To support the above, a contract will be made between the parties indicated below and will clearly indicate that G5 will take over the responsibility of importer of substance A under REACH and therefore will be responsible and liable for Registration.

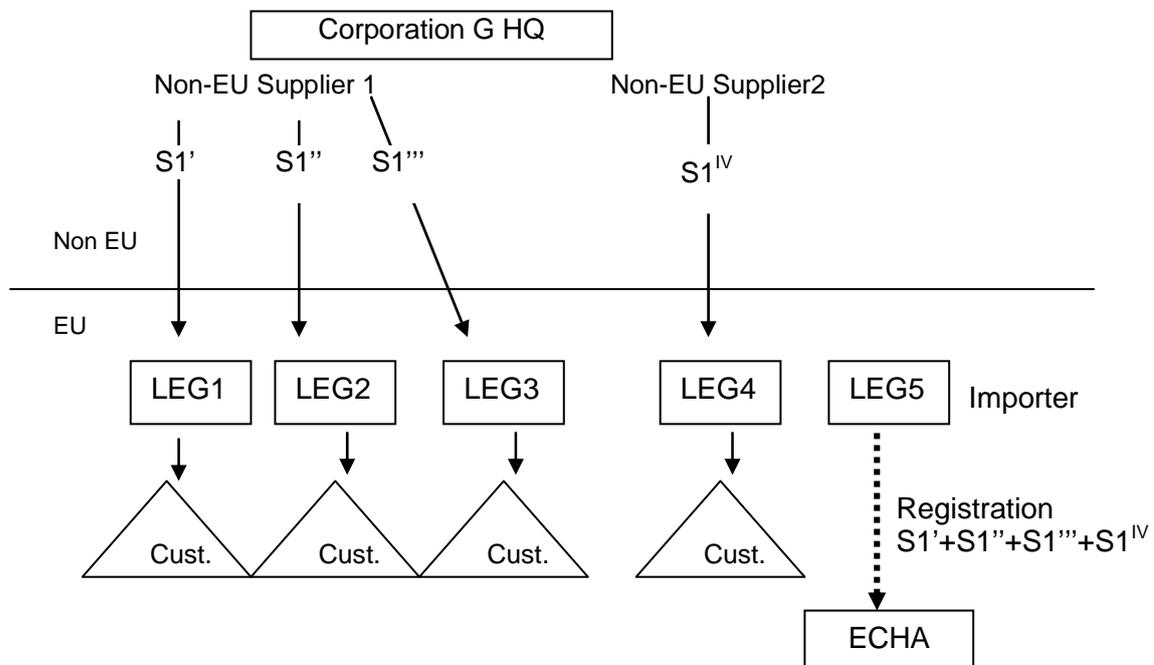
The contract will indicate the name of the substance, the total volume of the substance imported in the EU by the legal entities G1-G4 and will provide the name of these legal entities.

The contract will be made between the following parties:

- the legal entity responsible for Registration i.e. G5,
- the legal entities which receive the goods, which pay for the customs duties and transport of the goods i.e. G1, G2, G3 and G4

and potentially also with

- the owner of the goods i.e. the headquarter of Corporation G outside EU and
- the non-EU supplier(s)



EXAMPLE 8

Corporation H produces mixtures and is headquartered in the EU with several legal entities in the EU, and outside the EU.

Mixtures from one of the non-EU legal entities are imported into the EU. This non-EU manufacturer appointed the legal entity which includes the Corporation G HQ not only as OR to fulfil the REACH importer obligations for the monomer S4, but also as a trustee for the whole mixture containing S1, S2, S3 and S4 to coordinate communication between the different ORs (of S1, S2, S3) and the EU- and non-EU customers without infringing competition law on one hand and without having to disclose the full composition of the mixture on the other hand.

The OR/trustee reports to the ORs of S1, S2 and S3 the volumes imported to Europe and the names of the EU customers. A confidentiality agreement with each of the other ORs needs to be signed before ensuring that this sensitive information is not coming back to the manufacturers of S1, S2 and S3. The EU customer gets a certificate from non-EU company that the whole mixture is REACH compliant without having to disclose the composition.

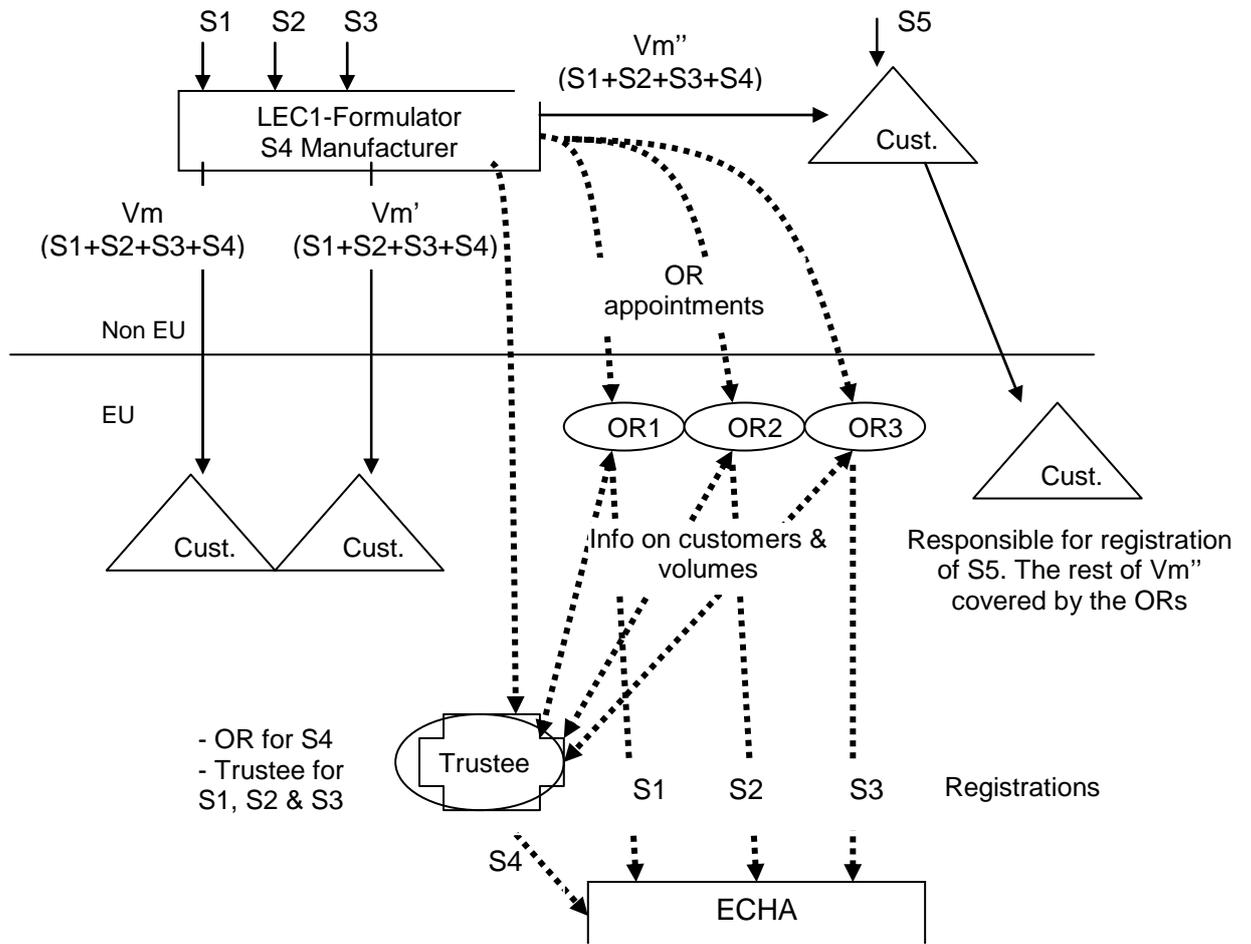
In order to be more flexible on the market, the system also includes indirect imports via non-EU customers if certain criteria are met. It is important to note that if the non-EU customer blends in some additional substances (S5) into the mixture before he sells it to the EU, the responsibility for REACH compliance of those additional substances clearly lies in his own or his EU customers' hands. The OR and trustee of the non-EU manufacturer is only responsible for the substances in the mixture that was supplied to the non-EU customer (S1, S2, S3, S4).

For the sake of keeping the overview of those indirect imports and fulfilling the REACH requirements only "accepted customers" can make use of the OR/Trustee. Therefore, the following process has been developed:

- 1) Non-EU manufacturer sends an "OR information letter" to the non-EU customer which is adding S5 to the mixture and sells it to the EU. The letter contains the information that there is an OR/Trustee for the products and that the pre-requisite to make use of their services is that they accept the terms and conditions of the "OR acceptance letter" which they will receive from the OR/Trustee.
- 2) The OR/Trustee sends the "OR acceptance letter" to the non-EU customer of the non-EU manufacturer. The non-EU customer has to sign that he provides the required information to the OR/Trustee, ie the products, the volumes and the EU customers that import the products. Only these volumes will be covered by the OR/Trustee. The OR/Trustee will handle the obtained information confidentially and will not report it to the non-EU manufacturer!

In order to assure confidentiality the information is stored in a secure place to which only a very limited number of people have access. In addition, those people have to sign a secrecy agreement.

The following diagram reflects the above process:



V_m : volume of mixture