2.1.2.3 Who is responsible for the registration in case of manufacturing?

In case of manufacturing (see definition in section 2.1.1), the registration should be made by the legal entity who undertakes the process of manufacturing. It is important to bear always in mind that only manufacturers established in the EU are required to submit a registration for the substance they manufacture. The registration obligation also applies in the case that the substance is not marketed in the EU but exported outside the EU after manufacturing.

Who is the registrant in case of toll manufacturing?

A toll manufacturer (or subcontractor) is normally understood to be a company that manufactures a **substance** in its own technical facilities following the instructions of a third party in exchange for an economic compensation.

The substance is generally put on the market by the third party. Often this arrangement is used for an intermediate step in the production process for which sophisticated equipment is needed (distillation, centrifugation, etc.).

In this regard, the legal entity that manufactures the substance according to Article 3(8) on behalf of the third party is to be considered a manufacturer for the purposes of REACH and is required to register the substance he manufactures. If the legal entity practically undertaking the manufacturing process is different from the legal entity owning the production facility, one of these entities must register the substance.

For more details on the obligations of toll manufacturers under REACH please consult ECHA fact sheet: 'Toll manufacturer under the REACH Regulation' available at: http://echa.europa.eu/web/guest/publications/fact-sheets.

2.1.2.4 Who is responsible for the registration in case of import?

In case of import (see definition in section 2.1.1), the registration should be made by the legal entity established in the EU who is responsible for the import. The responsibility for import depends on many factors such as who orders, who pays, who is dealing with the customs formalities or the 'INCOTERMS'[4] chosen, but this might not be conclusive on its own.

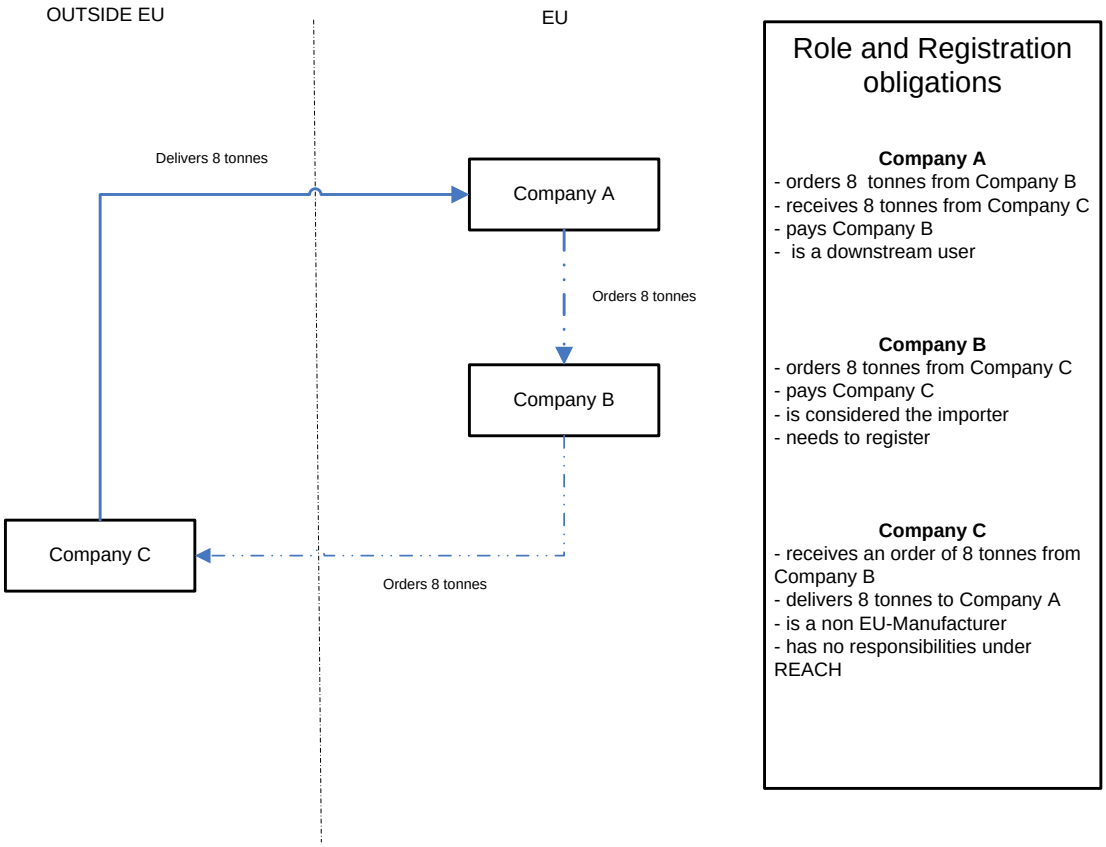
For example, in the case of a 'sales agency' established in the EU and acting as an intermediary, i.e. transmitting an order from a buyer to a non-EU supplier (and being paid for that service) but taking no responsibility whatsoever on the goods or the payment for the goods and not having their ownership at any stage, then, the sales agency is not to be considered as the importer for the purposes of REACH. The sales agency is not responsible for the physical introduction of the goods.

In many instances it will be the ultimate receiver of the goods (the consignee) who is the legal entity that is responsible for the import. However this is not always the case. If for example company A (established in an EU country) orders goods from company B (established in another EU country) who acts as a distributor, company A probably does not know from where the goods originate. Company B may choose to order the goods from either an EU manufacturer or from a non-EU manufacturer. In case company B chooses to order from a non-EU manufacturer (company C) the goods may be delivered directly from company C to company A in order to save on transportation costs. Because of this company A will be stated as the consignee on the documents used by the customs authorities and customs handling will take place in company A's country. Payment for the goods is, however, settled between companies A and B. Also note that in the present example company B is not a 'sales agency' as described above as the 'sales agency' does not choose the manufacturer from which to order the goods. Because the decision whether to order goods from an EU or non-EU manufacturer

[4] International Commercial Terms - a set of international rules for the interpretation of trade terms.

lies with company B, this company (and not company A) should be considered the legal entity responsible for the physical introduction of the goods into the customs territory of the EU, while company A is a downstream user. The registration obligation consequently would lie with company B. Company A on the other hand will have to be able to prove through documentation to the enforcement authorities that it is a downstream user, for example by showing that the order was placed to company B.

Figure 2: Role and registration obligations of different actors in case of import



It is important to note that the 'non-EU manufacturer' or supplier who is exporting a substance or mixture into the EU has no responsibilities under REACH. The shipping company that is transporting the substance or mixture normally has no obligations under REACH either. Exceptions may occur under specific contractual arrangements if the shipping company is established in the EU and if it is responsible for the introduction of the substance into the EU.

In addition, it should be noted that when interpreting the term 'importer' according to the REACH Regulation, it is not possible to fall back upon the Regulation (EU) No 952/2013 laying down the Union Customs Code (UCC).

In case an 'only representative' has been appointed the only representative is responsible for the registration (see next section).