



Dutch Tank Storage
Association

REACH

Guidance document

**Roles and responsibilities for the tank
storage terminal operator**



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GENERIC BUSINESS CASE FOR A TANK STORAGE TERMINAL

ANNEX 2.

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1. Introduction

1.1 Background

VOTOB (The Dutch Association of Tank Storage Companies) strives to create a level playing field for storage companies on a regional, national and international basis. The association provides a wide range of tailored services to members such as monitoring, analyzing and distributing of up-to-date relevant industry information; voicing the opinions of members vis-à-vis regulatory issues; and providing a platform for members to facilitate information and knowledge exchange. VOTOB works with companies on non-competitive issues exclusively, for instance: safety, security, sustainability, training and education, innovation, logistics and customs. The association also provides members with useful model documents and guidelines to help facilitate business contracts.

VOTOB supports tank storage terminal operators in the Netherlands by endorsing safe, sustainable and transparent entrepreneurship. As such, VOTOB Members must comply with the EU Chemicals Legislation such as REACH (REACH, 2006) and CLP (CLP, 2008). Terminal operators in liquid bulk storage have a special position as logistical service provider in the supply chain of (petro)chemical products. Due to the complexity of REACH & CLP legislation, this Guidance document offers help to get a clear insight in the role and responsibilities.

1.2 Objectives and scope

The objective is to provide a clear insight into the main activities of a Terminal and the interactions with the main stakeholders. Thereafter, the roles and responsibilities of the Terminal and Stakeholders under the European Chemicals Legislation (REACH & CLP) are described.

The REACH Guidance document is prepared for the following purposes:

- The VOTOB Members can organise REACH & CLP Compliance activities using a shared understanding of roles and responsibilities under REACH & CLP as a reference. The implementing of recommendations herein will allow VOTOB Members to take a justified position when it comes to their REACH responsibilities towards Stakeholders involved and Competent Authorities;
- The Customer and recipient of products from a Terminal can hence organise their own REACH & CLP Compliance activities from a shared understanding of their own position of the Terminal in their supply chain;
- Competent Authorities achieve a shared understanding of the activities and envisaged roles and responsibilities of a Terminal and the Stakeholders involved.

1.3 Reading instructions

The generic business case to define the main Stakeholders is described in Section 2. To determine the relevant role(s) and main responsibilities of a Terminal under REACH & CLP, a generic business case is clarified in relation to legal framework (Section 3) and with reference to practical guidance (Section 4). The Guidance document presents various conclusions in Section 5. References and abbreviations referred to in the main text are defined in Section 6 and Section 7. Note that Official legal text is presented in *Italics*.

1.4 Disclaimer

The information contained in this document is intended to be used as guidance only and whilst information is provided in good faith and is based on the most accurate information currently available, implementation thereof is at the user's own risk and responsibility. No representations or warranties are made with regard to its completeness or accuracy and no liability will be accepted by VOTOB nor any VOTOB Member for damages of any nature whatsoever resulting from the use of or reliance on the information provided.

2. Generic Business Case

The generic business case for a Terminal in the Netherlands can be seen in Figure 1 and also in Annex 1. It shows main Stakeholders involved (including a short definition of each Stakeholder in bold), the role of formal arrangements between Parties (indicated by red dotted lines) and the product flow (indicated by blue lines).

Stakeholders involved in the generic business case for a tank storage terminal

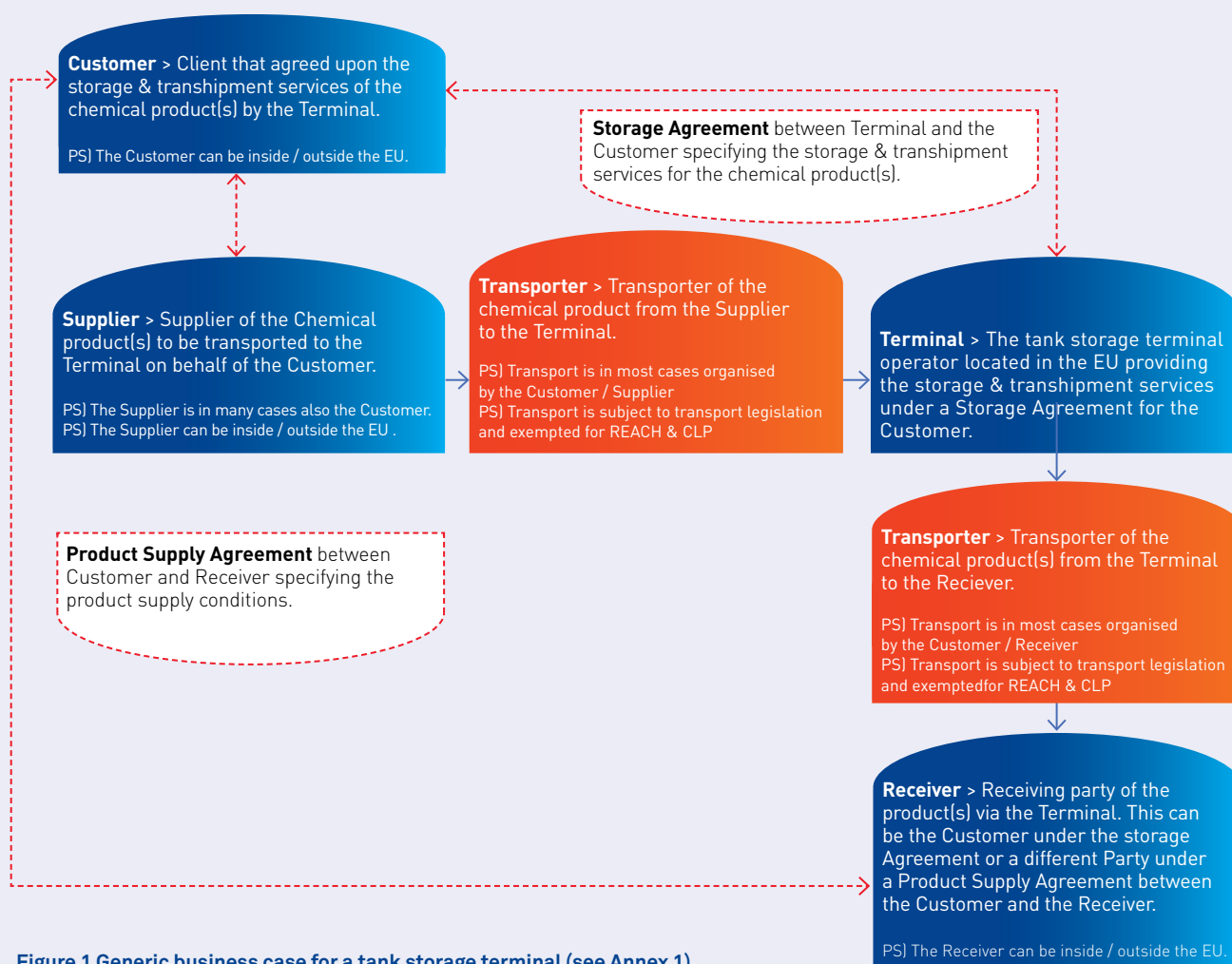


Figure 1 Generic business case for a tank storage terminal (see Annex 1)

The Guidance document describes relevant business scenarios using the stakeholder terms and the generic business case as introduced in Figure 1. Terminals referred to within the Guidance document are assumed to be located in the Netherlands as part of the European Union.

Legal requirements for a Terminal and/or any Stakeholder involved in REACH & CLP depends on the definition of the chemical product held by the terminal as well as on the role(s) of each legal entity regarding whether the chemical product conforms legal definitions outlined in REACH & CLP. High level explanations of the relevant definitions in the generic business case for a Terminal are explained in Section 3. More in-depth descriptions and practical implications for the Terminal and the Stakeholders within a relevant business scenario are explained in Section 4.



3. Legal Requirements under REACH & CLP

3.1 Identification of the relevant product definition(s)

The Terminal provides storage and transshipment services of chemical product(s)¹ within a Storage Agreement with a customer. In order to determine the main legal requirements within REACH & CLP, the product definition of chemical product(s) subject to the storage and transshipment services by the Terminal must be clarified.

Relevant product definitions are listed below in Table 1.

Product	Definition	Reference
Article	<i>means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition</i>	REACH Art.3.3; CLP Art.2.9
Mixture	<i>means a mixture or solution composed of two or more substances</i>	REACH Art. 3.2; CLP Art.2.8
Substance	<i>means a chemical element and its compounds in the natural state or obtained by any manufacturing process,</i> - <i>including any additive necessary to preserve its stability</i> - <i>and any impurity deriving from the process used,</i> - <i>but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition</i>	REACH Art. 3.1; CLP Art.2.7
Waste	<i>Means any substance or object which the holder discards or intends or is required to discard</i> (WFD Art. 3.1). The REACH & CLP Regulation shall not apply to a 'waste' as defined in Directive 2006/12/EC of the European Parliament and of the Council (REACH Art. 2.2 & CLP Art. 1.3).	(WFD, 2008) REACH Art.2.2; CLP Art.1.3

Table 1 Product definitions relevant for REACH and CLP

Firstly, the product definition distinguishing a Terminal when the chemical product should be defined as a 'waste'. This because 'waste' as a term is exempt from REACH (Art 2.2) and CLP (Art.1.3). Therefore, the Terminal must, in the event of 'waste', consider legal requirements from the National Waste legislation and not from REACH & CLP Regulations.

In most business cases, chemical products subject to storage and transshipment services are not referred to as 'waste'. As a consequence, the product is referred to either a 'substance' or it is a 'mixture' and as such is subject to the REACH & CLP requirements. The 'article' definition is not considered to be a relevant product definition in the generic business case for a Terminal and will not be further addressed herein.

The Customer/Supplier (see Figure 1) is responsible for applying the correct product definition, subject to the Storage Agreement with the Terminal. The relevant checks for a Terminal on the product definition are included in Paragraph 4.3.

A special point of attention is if 'waste' in the supply chain ceases to be a 'waste'. For example, there is a recovery process or processing of the 'waste' at the Terminal into a product with a useful application. If the 'waste' meets the so called 'end of waste criteria', the product no longer falls under the waste legislation and becomes a 'substance' or 'mixture' and subject to REACH & CLP.

¹ The chemical products subject of the tank storage services offered by VOTOB Members are in many cases petrochemical products with the special characteristics of these products and its supply chain. Where considered relevant for petrochemical products it has been highlighted in the Guidance.

Thus, the unambiguous determination of the product definition(s) in each relevant business scenario is key to identify the legal requirements of the Terminal and other Stakeholders within REACH & CLP (as further described in section 4). In liquid bulk storage, products are either a substance (i.e. chemicals) or a mixture (i.e. mineral products).

3.2 Identification of the legal entity role(s)

In addition to the product definition, the legal entity role towards the product will determine the actual legal requirements under REACH & CLP. The relevant legal entity role(s) to be distinguished for a Terminal and Stakeholders involved are listed in bold in Table 2.

Role	Definition	Reference
Distributor	<i>Means any natural or legal person established within the Community, including a retailer, who only stores and places on the market a substance, on its own or in a mixture, for third parties.</i>	REACH Art. 2.14; CLP Art.2.20
Downstream user	<i>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 mixture, in the course of his industrial or professional activities. A distributor or a consumer is not a downstream user.</i>	REACH Art. 2.13; CLP Art.2.19
Importer	<i>Means any natural or legal person established within the EC who is responsible for import.</i>	REACH Art. 2.11; CLP Art.2.17
Import	Means the physical introduction into the customs territory of the Community.	REACH Art. 2.10; CLP Art.2.16
Manufacturer	<i>Means any natural or legal person established within the EC who manufactures a substance within the EC.</i>	REACH Art. 2.9; CLP Art.2.15
Manufacturing	Means production or extraction of substances in the natural state.	REACH Art. 2.8; CLP Art.2.14
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.	REACH Art. 2.12; CLP Art.2.18
Supplier	<i>Means any manufacturer, importer, downstream user or distributor placing on the market a substance, on its own or in a mixture, or a mixture</i>	REACH Art. 32; CLP Art.2.26

Table 2 Legal entity role(s) & definitions relevant for REACH and CLP.

Main role of a Terminal

The main role of a Terminal according to ECHA² is a distributor.

The ECHA Guidance for downstream users (ECHA, 2014) does consider a Terminal (*storage provider*), that only stores and makes available substances or mixtures to third parties, as a sub-group of distributors. According to ECHA, as long as the Terminal does not perform any operations or activities which would be defined as “use” under REACH (as specified in table 8), their obligations are limited to forwarding information in the supply chain as described herein (Appendix 1 of the ECHA Guidance). Table 8 of the ECHA Guidance document makes an important note when considering the main role remains to be a distributor based on the Terminal activities: ‘If you undertake any activity with the substance defined as “use”

under REACH, and do not merely store or place it on the market, you will be considered a downstream user.' Therefore, if a Terminal activity that could be seen as a 'use' under REACH fully relates to the main function of storage and placing on the market to third Parties the main role of the Terminal remains to be a distributor.

To clarify and support the identification of the main role of a Terminal, a non-exhaustive list of common activities that merely relate to the main storage and distribution function of the Terminal is included in Table 3. For these activities, the main role of the Terminal is Distributor.

Short description	Remark
Transshipment processes	Any kind of transshipment activity related to the main storage & distribution function: ship to tank; tank to ship; railway wagon to tank; tank to railway wagon; tank car to tank; tank to railway car; tank to tank; tank via pipeline to tank by Receiver; tank by Customer / Supplier via pipeline to tank; ship to ship
Heating and cooling processes	Heating and/or cooling processes to store products using f.e. steam, hot / cold water of thermal oil, not intended to change the composition.
Homogenization products	Homogenization of products in the storage tanks by pumping the product around, e.g. by use of agitators in the storage tank or blowing air through the product in the storage tank (aeration), not intend to change the overall composition.
Filtering processes	Sometimes products can be polluted with solid materials that are filtered out mechanically during the pumping from and to Tanks. The filtering will not change the product definition.
Storage of products	Any kind of storage (substances, mixtures or waste provided; waste water from ships) is by definition subject to the main storage & distribution process.
Sampling products from the storage tanks (quality control).	The in line sampling and closed and open sampling of products for quality control is considered to be a normal activity for the main storage and distribution function of the Terminal.
Blending activities (to bring the substance on spec)	Some Terminals offer as part of the storage and transshipment services also some blending activities at the Terminal or on the ships boarded to the Terminal. When the blending process is to bring a Substance under the same substance identification criteria (e.g. under the same CAS-/EC-number) on spec, this is not considered a manufacturing process (no synthesis of a (new) substance) nor is it considered to be a formulation process (no mixture is formed). As such it is considered to be covered by the roles and responsibilities of the main storage and distribution services offered by the Terminal (included in the REACH Flow chart, Part 1). More details in Paragraph 4.5.
Collection and storage of vapour recovery gases	For most petrochemical products the transshipment and storage activities are required to have a vapour recovery system to collect the volatile vapours. Normally these vapours are collected and stored in separate tanks. As long as these vapour recovery product is stored as a fuel for onsite heating systems, returned in the main storage tank of the relevant substance or discarded as a waste, it is considered to be part of the main storage & distribution function.
Maintenance, cleaning and repair activities of tanks and pipeline systems	Maintenance, cleaning and repair activities are a normal part of the main storage & distribution function. These activities are conducted under a stringent safety regime.

Table 3 Overview activities related to the main storage & distribution function of the Terminal (main role is Distributor)



Similarly, a non-exhaustive list of Terminal activities that are a use under REACH but do not merely relate to the main storage and distribution function is included in Table 4. For these activities, the main role of the Terminal is Downstream user. The practical implementation is included in the REACH flow chart explained in Section 4.

Short description	Remark
Blending activities (resulting in a new substance or mixture)	Some Terminals offer as part of the storage and transshipment services also some blending activities at the Terminal or on the ships boarded to the Terminal. When the blending process results in a new Substance under a different CAS-/EC-number or in a Mixture, it will trigger an additional REACH role (as included in the REACH flow chart, Part 3). More details in Paragraph 4.5.
Collection, storage and distribution of recovered vapours (e.g. as vapour condensate) to third parties	For most petrochemical products the transshipment and storage activities are required to have a vapour recovery system to collect the volatile vapours. If the vapours are collected and stored as vapour condensate in a separate tank for further distribution to third parties it is potentially a manufacturing process under REACH (included in the REACH Flow chart, Part 4). More details in Paragraph 4.6.
Distillation activities	Some Terminals offer in addition to the storage and transshipment services also some distillation services. Since the distillation may result in removal of Impurities or production of new substances, this may trigger additional REACH roles to cover by the Terminal. Since it is not a common additional service, it is not included in the VOTOB decision tree and this REACH Guidance.

Table 4 Overview Terminal activities less related to the main storage and distribution function (main role is Downstream user)

Additional role(s) of a Terminal

Another important note is added in Appendix 1 of the ECHA Guidance that the Terminal may have additional roles besides the main role as distributor. The most common additional roles of a distributor described by ECHA are:

- *Importer of substances or mixtures;*
- *Re-filler, who transfers substances from one container to another is considered a downstream user;*
- *Other downstream user roles, if, for example, you blend the substances with other chemicals to produce a mixture.*

Terminal operators do agree that a Terminal's main function is to store and make available substances or mixtures to third parties and as such the Terminal is meeting the main role of distributor under REACH. Many activities at the Terminal could be seen as a 'use' under REACH, but where they fully relate to the main function of storage and placing on the market for third Parties, the main role of the Terminal still would be a distributor. To clarify how to implement this at the Terminal is included in section 4.

Terminal operators also agree that there can be additional services or special business scenario's applicable, where as described in Appendix 1 of the ECHA Guidance, also an additional REACH role could become applicable for the Terminal. In some cases this could be the additional role of Downstream user. In some exceptional cases, the Terminal could even be a (toll) manufacturer under REACH. Unless otherwise agreed between the Parties involved, it is the common view of terminal operators that in all business scenarios, the Terminal is never an importer of the substances as such or of the substances in mixtures. More detailed guidance is included in section 4.

Main role(s) of the Customer and the Receiver

The Customer, as agreed in the Storage Agreement with the Terminal, is always the product owner of the chemical products under the storage and transshipment services provided by the Terminal. The Customer is also always the responsible Supplier of the products via the Terminal to the EU and Non-EU Receivers.

As such the basic principle is that the EU Customer (located in the EU) is responsible for the REACH registration requirements of the Substance as such or of the Substances in the Mixture. As Supplier he is also responsible for the preparation and distribution of the REACH & CLP Compliant SDS to the EU Receivers. What can be expected from an EU and Non-EU Customer and/or Customer that is not the Supplier of the chemical products, relates to the agreed storage and distribution services under the Storage Agreement with the Terminal and is subject for more detailed guidance in Section 4.

Special status for products under Customs supervision

A special point of attention is that chemical products from outside the EU can and are in many cases stored under customs supervision at the Terminal. In contact with the Customer, the product can be placed on the EU market via a Customs declaration that in some cases is completed by the Terminal as a service on behalf of the Customer or Receiver.

REACH is not applicable for substances, on their own, in a mixture which are subject to customs supervision, provided that the products 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 (REACH Art. 2.1(b)).

More detailed guidance on the implications of changes of the Customs status on the REACH roles and responsibilities is provided in Section 4.

Transport from and to the Terminal is exempted from REACH

As visualised in Figure 1, all forms of transport are used for the logistics of chemical products from the Supplier to the Terminal and from the Terminal to the Receiver.

REACH & CLP is not applicable for the carriage of dangerous substances and dangerous substances in dangerous mixtures by rail, road, inland barge, seagoing vessel or air (REACH Art. 2.1(d) and CLP Art. 1.6).

This because the safe transport requirements (e.g. transport classification and documentation) is considered to be sufficiently covered by the relevant transport legislation (RID, ADR, AND, IMDG and ICAO/IATA). In some cases, the transport to/from the Terminal is via pipeline systems with the Supplier/Receiver. The pipeline operator has to comply with the stringent safety requirements from dedicated legislation for pipelines. This is similar as “transporters” of dangerous substances via the other transport routes that are exempted for REACH. Although not explicitly mentioned in REACH & CLP, in consultation with the Dutch Ministry of Infrastructure and Environment, pipeline transport is assumed to fall under the same exemption for REACH & CLP. More details on the legal requirements for transport are not included in this REACH Guidance.

The practical implications of these common positions are worked out in more detail per relevant business scenario for the Terminal in section 4.

3.3 Determination main legal requirements per product - legal entity role

When the product definition (see 3.1) and the role(s) of the Terminal is/are clear (see 3.2) the legal requirements under REACH & CLP can be identified. Both Regulations describe the legal requirements per role and product definition.

It will be the responsibility of the Terminal and Stakeholders to be aware of and to comply with the relevant legal requirements under REACH & CLP. This REACH Guidance will focus on the main legal requirements under REACH & CLP as listed in Table 5.

Role	Main legal requirements
Distributor	<p>The main obligation under REACH is to pass on information on the goods you distribute from one actor in the supply chain to another. This can be the Safety Data Sheet in line with REACH Art.31 or additional information up and down the supply chain from other REACH requirements (e.g. REACH Art. 32).). A special point of attention is that the distribution of SDS's are normally covered by the Customer as Supplier of the products (via the Terminal) to the Receivers. In addition, the SDS collection and distribution requirements of a Terminal from the transport legislation are a point of attention (since all products do arrive at the Terminal and leave the Terminal via certain Transport means with their own legal framework</p> <p>→ An 'SDS collection and distribution strategy' will be needed</p>
Downstream user	<p>The main obligation under REACH is to use the products safe and in compliance with extended Safety Data Sheet (ext-SDS) provided by the Supplier and in line with the Authorisation / Restriction conditions (if applicable). A Use Compliance Check needs to be completed within 12 months after receipt of the ext-SDS in line with REACH Art. 37-39.</p> <p>→ An 'onsite SDS Assessment strategy' will be needed.</p> <p>As downstream user you need to be aware of substances listed on REACH Annex XIV (authorisation list) and or REACH Annex XVII (restriction list)</p> <p>→ An 'authorisation strategy' and 'restriction strategy' will be needed</p>
Importer	<p>The main obligation under REACH is to keep track on the manufactured and/or imported volumes and to complete (pre-) registration requirements for any substance above 1 ton per year and not exempted for registration. If the registration requirement is organized via an Only Representative in line with REACH Art. 8 by the non-EU Supplier, you will be a downstream user instead of importer.</p> <p>→ A 'registration strategy' is needed</p>
Manufacturer	<p>As importer / manufacturer you need to be aware of substances listed on REACH Annex XIV (authorisation list) and or REACH Annex XVII (restriction list)</p> <p>→ An 'authorisation strategy' and 'restriction strategy' will be needed</p>
Supplier	<p>The Supplier is responsible for the classification and labelling in accordance with CLP. The Supplier being also the Manufacturer / Importer must complete a CLP Notification in line with CLP Art. 40-41.</p> <p>→ A 'CLP Compliance strategy' is needed</p> <p>The main obligation under REACH is to prepare a CLP and REACH compliant safety data sheet (SDS) for the (hazardous) substances or mixtures placed on the market as Supplier in line with REACH Art. 31. When you have registered the substance, the substance SDS needs to be aligned to the registration dossier. When the dossier includes a Chemical Safety Report, the relevant exposure scenario(s) need to be attached to the substance SDS (becoming an extended SDS). As formulator the relevant exposure scenario information of the components needs to be processed in the mixture SDS.</p> <p>→ An 'SDS preparation and distribution strategy' will be needed</p>

Table 5 Overview of the main legal requirements under REACH & CLP



4. Practical Guidance for a Terminal

4.1 Introduction

This Section will provide practical guidance for the Terminal and other Stakeholders interested to identify the roles and responsibilities of the Terminal and other Stakeholders involved under REACH.

The stepwise identification of the role and responsibilities under REACH are supported via a dedicated REACH flow chart.

4.2 REACH flow chart

The practical Guidance is provided via a REACH flow chart, providing a stepwise process to identify the role and responsibilities under REACH for a Terminal and Stakeholders.

The first step of the REACH flow chart is to identify the product definition, the main Terminal role and the relevant business scenario. This is described in paragraph 4.3.

The next step of the REACH flow chart relates to the relevant business scenario identified. This Guidance does include three relevant business scenarios for a Terminal for which guidance is provided how to identify the relevant roles and responsibilities under REACH per scenario:

- Business scenario 1: the storage & transshipment services (see paragraph 4.4)
- Business scenario 2: blending activities (see paragraph 4.5)
- Business scenario 3: processing of the vapour recovery streams (see paragraph 4.6).

4.3 Identification product definition, main Terminal role and relevant business scenario

The first part of the REACH flow chart is visualised in Annex 2.

Product definition clear?

For every Storage Agreement it is recommended to check first if the product definition is clear based on the information provided by the Customer. The most common way to do this is by requesting a Safety Data Sheet (SDS) and checking the product identification in Section 1 and Section 3 of the SDS. However, no SDS is needed for a 'Waste'. It is recommended to include a clear product description and preferably the agreed product definition in your Storage Agreement.

As a Terminal, you need to be able to distinguish that the product is either a 'waste', a 'substance' or a 'mixture' (as explained in paragraph 3.1).



- If the product definition is not clear, it is recommended to contact the Customer to agree upon the product definition subject to the Storage Agreement:
- If from the communication with the Customer the product definition and sub-sequent roles and responsibilities as identified from checking the remainder of this Guidance cannot be agreed upon with the Customer, a business decision needs to be taken by the Terminal if and how they can and will continue the storage & transshipment services accordingly. You can consider seeking for external help if you cannot clarify the business case with your Customer.
 - If from the communication with the Customer the product definition and sub-sequent roles and responsibilities are clarified, it is recommended to document this communication and proceed.



→ If the product definition is clear, proceed with the REACH flow chart using the product definition identified:

- In case the product subject to the Storage Agreement is a 'Waste', check if your business case does comply with the EU Waste framework directive and National waste legislation. This means that the Terminal needs to check if it can provide the storage and transshipment services under the legal requirements of the waste legislation (documentation & permitting). No further guidance on the waste requirements is provided in this REACH Guidance.
- In case the product is a 'Substance', it needs to be identified by a chemical name and CAS number and/or EC number. Normally, this is included for a substance in Section 1 and sometimes in Section 3 of the SDS. Check the REACH requirements for the Substance by checking the remainder of the REACH Flow chart.

PS) Since many chemical products are **petrochemical products**, it is important to realise that the common Industry position is that a petrochemical product (e.g. gasoline, kerosene's, natural gas condensate or any naphtha) is a 'Substance' and not a 'Mixture'. A petrochemical product normally needs to be identified with a specific CAS number and EC number in line with the EC Description with the more detailed description of the substance characteristics. The Concawe Inventory of Petroleum Substances³ provides a good overview list of the relevant substance identification and REACH registration status details of the European petrochemical products.

- In case the product is a 'Mixture', the product name is identified in Section 1 of the SDS and the composition in Section 3 of the SDS. A Mixture does not have a CAS or EC number. Check the REACH requirements for the substances in the Mixture composition by checking the remainder of the REACH Flow chart.

Main role of the Terminal in the storage and transshipment services provided

Check the storage and transshipment services subject to the Storage Agreement. This will determine the main role of the Terminal.

As a Terminal, you need to be able to distinguish the main legal entity role of the Terminal (as explained in paragraph 3.2).



→ If all Terminal activities offered in the Storage Agreement with the Customer are related to the main storage and distribution function of the Terminal, the main role of the Terminal is 'Distributor'. For this check, a non-exhaustive list of such Terminal activities is included in Table 3 in Paragraph 3.2.



→ If some Terminal activities offered in the Storage Agreement are considered a 'Use' under REACH and not merely relate to the main storage and distribution function of the Terminal, the main role of the Terminal is a 'Downstream user'. For this check, a non-exhaustive list of such Terminal activities is included in Table 4 in Paragraph 3.2.

PS) The Terminal is recommended to verify their normal business cases once to check if they fall under the main role of 'Distributor' and/or 'Downstream user'. This check is assumed to be completed once for all main business cases offered by the Terminal. However, this check is also recommended when a new kind of business case is requested by a Customer, with other Terminal activities as a consequence.

PS) Contact VOTOB to consider inclusion of any additional relevant activity not listed in one of these two Tables, if considered to be important for other Terminals as well.

Additional role(s) of the Terminal in the storage and transhipment services provided

As explained in paragraph 3.2, once the main role is clear, the Terminal needs to verify if any additional role may be appropriate per business case as well. The verification of the additional role(s) of the Terminal will relate to the relevant business scenario identified.

- When no blending activities are included in the storage and transhipment services under the Storage Agreement, follow the guidance for business scenario 1, as described in paragraph 4.4.
- When any blending activity is included in the storage and transhipment services under the Storage Agreement, follow the guidance for business scenario 2, as described in paragraph 4.5 as well as follow the guidance for business scenario 1, as described in paragraph 4.4.



Other business scenario(s) to consider for REACH requirements as a Terminal

The storage and transhipment services is the main business case for a Terminal and covered by the Guidance explained above. Nevertheless, this REACH Guidance does recognize another relevant business scenario to provide structured guidance for that is relevant for most Terminals.



- When a Terminal has a Vapour Recovery installation operational at the Terminal, e.g. to capture the volatile components of petrochemical products, it may be that additional requirements from REACH or the Waste legislation becomes applicable. Therefore, in case of use of a Vapour Recovery installation follow the guidance of the additional business scenario 3, as described in paragraph 4.6.

PS) If you are aware of any other business scenario with Terminal Activities that is not part of the REACH flow, but is considered to be relevant to be addressed in this REACH Guidance, please contact VOTOB for consideration.

4.4 Business scenario 1: the storage & transhipment services

The second step of the REACH flow chart for the business scenario 1 'the storage & transhipment services' is visualised in Annex 3.

Waste?



- In case of storage and transhipment services of a Waste, the Terminal, the (EU) Customer and EU Receiver need to comply with the relevant requirements from the EU waste framework directive (as implemented in National law). No further Guidance included in this REACH Guidance.



- The rest of the REACH flow chart will focus on the REACH & CLP roles and responsibilities for the Substances / Mixtures subject to the storage & transhipment services of the Terminal under the Storage Agreement with the Customer.

The general principle for the Terminal is that the Customer/Supplier is responsible for the chemical regulatory compliance requirements of the products provided under the Service Agreement.



EU Customer / EU Supplier?

Since REACH & CLP are EU Chemicals legislation that in principle are only applicable for EU based companies, an important distinction to make is if the Customer is a European legal entity ('EU Customer') or based outside the EU (Non-EU Customer). In addition, another important distinction is if the EU Customer is also the Supplier of the products as defined under REACH (see Table 2) or the Customer is e.g. a buyer / potential receiver of the product and another company is the (EU / Non-EU) Supplier.

When the EU Customer is also the Supplier or the (EU/Non-EU) Customer has a different but known EU Supplier, the EU Supplier needs to be aware of and comply with the REACH Registration requirements for the Substance / Substances in the Mixture and have to prepare, maintain and provide a REACH & CLP Compliant SDS ('REACH SDS') in line with REACH Art 31.



- The Terminal is recommended to have and **SDS Collection and distribution strategy**. This means that for each product under the Storage Agreement, a Safety Data Sheet is collected from the EU Customer / Supplier and stored at the Terminal.

PS) The Terminal is not the Supplier of the products under the Service Agreement. As such he does not have to prepare his own SDS's nor distribute them to the Receivers. Under the Storage Agreement, the EU Customer is the product owner and responsible Supplier to the Receiver(s). As such, the EU Customer is responsible to prepare, maintain and distribute the product SDS in compliance with REACH & CLP to the Terminal as well as to the Receiver(s). The Terminal must meet the SDS distribution requirements in line with his role in the transport of the products as required by the relevant transport legislation.



- If the main role of the Terminal is Downstream user, the Terminal must have an **Onsite SDS Assessment strategy** to complete a use compliance check of the incoming extended Safety Data Sheets (Ext-SDS) in line with REACH Art 37-39. Within 12 months after the receipt date, the Terminal must have checked if their onsite uses are covered by a relevant exposure scenario attached to the Ext-SDS and that the use is safe in compliance with the exposure scenario.

PS) The Terminal is recommended to integrate this process with the SDS Collection and distribution process.

- If the main role of the Terminal is Downstream user, the Terminal must have an **Authorization strategy** and **Restriction strategy**. This means that somehow it is monitored that the Substances / Substances in Mixtures are not listed on the REACH Annex XIV (authorization list) or on the REACH Annex XVII (restrictions list). If any substance would be listed on either one of these lists, a more detailed compliance check is needed to see if and how the Terminal services could be provided for such products.

PS) This is assumed to be actively communicated by the Customer/organized via the above mentioned check of the incoming SDS's.

Non-EU Customer / Non-EU Supplier?

Any product from a Non-EU Customer/Non-EU Supplier being subject of the storage and transshipment services by an EU based Terminal would potentially qualify the Terminal as being the Importer of the Substance, on its own, or in Mixtures. This because he will be the EU based legal entity involved in placing the product on the EU Market. The Non-EU Customer/Non-EU Supplier do not fall under REACH and cannot be the Importer in line with the legal definitions (see Table 2)

However, the Terminal would not be the Importer in any of the following three scenarios:

1. The Substance, on its own, or in Mixture is/are covered by the Non-EU Customer/Non-EU Supplier via an appointed Only Representative (OR) in line with REACH Art. 8. If so, the OR will take or has taken care of the Registration requirements on behalf of the Terminal and EU Receiver(s). The Non-EU Supplier has also to prepare, maintain and distribute a REACH & CLP compliant SDS with the Registration details submitted via his Only Representative.
2. The Substance, on its own, or in Mixture is/are covered by the EU Customer as Importer. If the EU Customer has already a valid registration number, the product could be stored at the Terminal under his registration number. The EU Customer is responsible to have available a REACH & CLP Compliant SDS and to provide it to the Terminal and EU Receiver(s).
3. Finally, the Terminal can store the product under Customs supervision in line with REACH Art. 2.1(b). If so, the product could be transported from the Terminal to any Non-EU Receiver without having to comply with any REACH & CLP requirement since the product has never been formally in the European Union. When such product should be transported to an EU Receiver, a Customs Declaration should first be organized by the Customer / EU Receiver (or in some cases by the Transporter / Terminal on behalf of the Customer / EU Receiver as a service). As a consequence, the EU Receiver would be the Importer of the Substance / Substances in the Mixture.



→ Unless it is a business decision to become an Importer, it is important as Terminal to organize a strategy dealing with Non-EU Customers/Non-EU Suppliers safeguarding that the Terminal is not the Importer of the Substances. A more detailed guidance / support tools could be developed to support the Terminal with the practical implementation.

4.5 Business scenario 2: blending activities

The second step of the REACH flow chart for the business scenario 2 'blending activities' is visualised in Annex 4.

Blending activities?

A common additional service as part of the storage and distribution services by a Terminal can be blending of two or more chemical products on request and based on the specification of the Customer.

To determine the additional role(s) and responsibilities of the Terminal and the Customer, the Parties need to have a common position on the product definition of the blending result. There are three possible results of the blending process to consider:

1. The blending result is still the same Substance as the original Substance received. The blending process is to bring the Substance on spec. This is a common activity for petroleum substances, e.g. to increase the level of C4 ('butanising') or C5 ('pentanising'). By adding some blending component with a high C4 or C5 fraction to a petroleum substance, the fraction of C4 or C5 will increase without affecting the substance identification criteria for the petroleum substance. As such, the butanised / pentanised substance remains the same substance under the same CAS- and EC number criteria with a bit more C4 / C5 in the chemical composition.

The Customer is responsible for the specification of the blending process and determination that the blending result does still meet the substance identification criteria of the original Substance shipped to the Terminal. In practice, when delivering the Substance of the Customer to his Receivers, some additional blending component will be added in line with the specification agreed with the Customer. This is a closed process of controlled by the Terminal in line with the agreed specification with the Customer. For the Terminal, it is not considered a manufacturing process (no synthesis of a (new) substance) nor is it considered to be a formulation process (no mixture is formed). As such it is considered to be covered by the roles and responsibilities of the main storage and distribution services offered by the Terminal (included in the REACH Flow chart, Part 1).

PS) Another common example is adding some additives (e.g. octane boosters like MBTE, ETBE) to gasoline. This is also seen as bringing the gasoline on spec under the same CAS / EC number.



- The blending process to bring a substance on spec is considered to be covered by the role(s) and responsibilities from 'storage and transshipment services' as identified by the REACH flow (Part 1; see 4.3) and the REACH flow (Part 2; see 4.4). No additional role(s) and responsibilities are needed.



- The Terminal needs to take care of the requirements under REACH from the identified roles in the REACH flow chart (Part 1 and Part 2).



2. The blending result can be a Mixture. The blending process is bringing two or more chemical products (Mixture or Substance) together that do not react with each other but form a Mixture.

The Customer is responsible for the specification of the formulation process as well as for the identification of the Mixture. The blending activity at the Terminal resulting in a Mixture is considered a formulation process. As such, the Terminal can be considered as a 'toll-formulator' for the Customer. In addition to the main role identified in the REACH Flow chart (part 1), the additional role will be 'Downstream user'.



- The blending process resulting in a Mixture will be covered by the role(s) and responsibilities from 'storage and transshipment services' as identified by the REACH flow (Part 1; see 4.3) and the REACH flow (Part 2; see 4.4). The additional role for the Terminal will be 'Downstream user'.



- The Terminal needs to take care of the requirements under REACH from the identified roles in the REACH flow chart (Part 1 and Part 2), including the role of Downstream user. The Customer is assumed to remain the Supplier of the new Mixture formulated by the Terminal. This is recommended to be organized under contractual arrangements with the Customer like any other 'toll-formulating contract'.

3. The blending result could be a new Substance that must be identified with a different CAS-/EC-number than the original Substances.

The Customer is responsible for the specification of the formulation process as well as for the substance identification of the Substance. The blending activity at the Terminal resulting in a new substance must be considered as a manufacturing process. As such, the Terminal can be considered as a 'toll-manufacturer' for the Customer.



- The blending process resulting in a new Substance will be covered by the role(s) and responsibilities from 'storage and transshipment services' as identified by the REACH flow (Part 1; see 4.3) and the REACH flow (Part 2; see 4.4). However, the main role of the Terminal will become 'Downstream user' since the blending components are used in the manufacturing process of the new substance and the additional role of the Terminal will be 'Manufacturer'.

- The Terminal needs to take care of the requirements under REACH from the identified roles in the REACH flow chart (Part 1 and Part 2), including the role of Downstream user and Manufacturer.



- As Manufacturer, the Terminal needs to take care of the (pre-) registration requirements of the new substance manufactured. The Customer is assumed to remain the Supplier of the new Substance manufactured. This is recommended to be organized under contractual arrangements with the Customer like any other 'toll-manufacturing contract'.

4.6 Business scenario 3: processing of the vapour recovery condensate

The second step of the REACH flow chart for the business scenario 3, *processing of the vapour recovery condensate*, is illustrated in Annex 5.

Vapour Recovery Installation active?

If the Terminal has a Vapour Recovery installation active and there is some processing of the vapour recovery stream, it is recommended to check if there is any role and responsibility under REACH as worked out in the REACH flow chart (Part 4). The vapour is collected from various transshipment and storage activities for various Customers. As such, the Terminal has become product owner of the Vapour recovery streams and need to consider the relevant legal requirements in relation to the usage of the streams.



- If the vapour recovery condensate is collected and stored to be used as an onsite fuel, this is an accepted activity within the Waste Framework Directive as implemented within Dutch national law.
- If the vapour recovery condensate is collected and stored to be used as an onsite blending component, the legal requirements relate to the blending result.
 - If the result of the blending process is still the same substance no additional role and responsibility is considered to be applicable for the Terminal. The main role as determined under the REACH flow chart is sufficient.
 - If the result of the blending process is a Mixture, the Terminal is a Downstream user (formulator).
 - If the result of the blending process is a new Substance (different CAS-/EC-number), the Terminal is a Manufacturer.

PS) If the Mixture / Substance is supplied to third Parties, the Terminal will also be the Supplier of the Mixture / Substance and needs to provide a REACH & CLP Compliant SDS.



- If the vapour recovery condensate is collected and stored to be supplied to third parties, the Terminal becomes a Manufacturer & Supplier of the vapour recovery condensate as a Substance and needs to take care of the registration and SDS requirements under REACH and classification & labelling requirements under CLP.



- Otherwise, by the lack of useful applications, the vapour recovery condensate is stored and need to be discarded as waste in line with the waste framework directive as implemented in Dutch national law.

5. Conclusions

ECHA has identified the Storage Providers (Terminals) as a special sub-group of Distributors. When activities merely relate to the main storage and distribution function of the Terminal, the main role is *Distributor*; otherwise the main role is *Downstream user*. Additional roles can become applicable related to the Terminal activities offered within the Storage Agreement to the Customer.

This REACH Guidance document illustrates the generic business case and has furthered definitions of the main and sub-roles for the Terminal as explained in the *ECHA Guidance for Downstream users*. It provides guidance to identify the main role and additional roles of the Terminal related to the relevant business scenarios via a REACH flow chart.

When the legal entity role(s) and the product definition of the products under the Storage Agreement with the Customer are clear, this will identify main legal requirements for the Terminal and Stakeholders within REACH & CLP. These are explained in Table 5 and are identified in Section 4 on practical guidance .

Adhering to and implementing the recommendations of this Guidance document will allow VOTOB Members to take a qualified position regarding their REACH responsibilities towards Stakeholders involved and the Competent Authorities.



6. Abbreviations

Abbreviation	Description	Reference
CAS number	Chemical Abstracts Service number (uniquely identifying a substance)	www.cas.org
CLP	EC Regulation on Classification, Labelling and Packaging (EC 1272/2008)	(CLP, 2008)
ECHA	The European Chemicals Agency in Helsinki with a key role in the implementation of REACH & CLP	echa.europa.eu
EC Number	The EC number, i.e. EINECS, ELINCS or NLP, is the official number of the substance within the European Union. The EINECS number can be obtained from the European Inventory of Existing Commercial Chemical Substances (EINECS). The ELINCS number can be obtained from the European List of Notified Substances. The NLP number can be obtained from the list of 'No- longer-polymers'. These lists are published by the Office for Official Publications of the European Communities. The EC number is a seven-digit system of the type XXX-XXX-X which starts at 200-001-8 (EINECS), at 400-010-9 (ELINCS) and at 500-001-0 (NLP).	(DSD, 1967)
REACH	EC Regulation on Registration, Evaluation, Authorisation of Chemical substances (EC 1907/2006)	(REACH, 2006)
SDS	Safety Data Sheet (REACH Art.31&Annex II)	(REACH, 2006)
UCC	Use Compliance Check for downstream user to check his own uses and use conditions meeting the relevant exposure scenario(s) on the Supplier extended SDS within 12 months (REACH Art 37-39)	(REACH, 2006)
VOTOB	Association of the Dutch tank storage terminals ('Vereniging van Nederlandse tankopslagbedrijven') supporting the Dutch Terminals with the safe, sustainable and transparent operations.	www.votob.org
WFD	Waste Framework Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives	(WFD, 2008)

7. References

CLP. 2008.

REGULATION (EC) 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures. sl: European Commission, 2008. EC 1272/2008.

DSD. 1967.

DIRECTIVE 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ("Dangerous Substance Directive; DSD). sl: European Commission, 1967. 67/548/EEC.

ECHA. 2014.

Guidance for downstream users. 2014. ECHA-13-G-09.1-EN.

REACH. 2006.

Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). s.l.: European Commission, 2006. EC 1907/2006.

WFD. 2008.

DIRECTIVE 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives ("Waste Framework Directive"). sl: European Commission, 2008. 2008/98/EC.

Annex

ANNEX 1.

GENERIC BUSINESS CASE FOR A TANK STORAGE TERMINAL

ANNEX 2.

REACH FLOW CHART (Part 1)

Identification product definition, main role of & relevant business scenario for the terminal

ANNEX 3.

REACH FLOW CHART (Part 2)

Business scenario 1 - the storage & transhipment services

ANNEX 4.

REACH FLOW CHART (Part 3)

Business scenario 2 - blending activities

ANNEX 5.

REACH FLOW CHART (Part 4)

Business scenario 3 - processing vapour recovery streams



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Association

