

Case Study – Illegal Shipment of Waste



A company exported in 2019 a container containing various goods from Sweden to **Sierra Leone** via the **UK** (before Brexit).

Arriving in the UK, the container was taken out for inspection. The inspectors found four (4) cars that were not emptied of liquids, four old computers, 20 car tyres, 14 TVs and some refrigerators and freezers.

The exporter/the company had no documents that, according to article 50. 4a must be provided to the authorities, to prove that the items were not waste. Therefore, the transport by the administration was assessed to be an *illegal shipment of waste and a breach of article 36*.

The Swedish EPA decided that the waste should be returned to Sweden for recovery or disposal. EPA reported a suspected crime to the police/prosecutor.

When the container arrived in Sweden, the Police together with an expert from the administration in Sweden inspected the waste. The expert from the administration used the Correspondens Guidelines No 1 and 9 and assessed the items as **waste** exported for **recovery** mainly because

- the items were packed in such a way that there was a risk that the items were damaged during transport, loading and unloading
- no certificates issued by a professional/competent inspector certifying that the items were in function or that only minor repairs were needed

The exporter claimed that the items were **used goods** and not waste and was not exported for recovery/disposal but for **re-use**. He had bought the items at the second-hand market but had no documents to verify it. The measures he would take in Africa to make them work were insignificant and they would mainly be used by himself or his relatives in Africa.

Discussions:

If you are in charge of the criminal investigation, what would you tell the police officers to investigate and document when they examine the container, so that you can prove/not prove that the items are **waste**.

(If you have time... please discuss in the same way, what you need to consider to prove that the waste is exported for **recovery**, not for re-use)

Discuss this with the support of:

- the definition of **waste** in art 3.1 of the waste directive (and if you have time the definition of recovery in art 3.15-19 in the waste directive)
- tools for interpretation EU regulations (see below): how can you use the suggested tools in a criminal case to get help to assess if the items are waste or not
- can you in a criminal case use the reversed burden of proof in art 50. 4a as the administration in the UK used?

The definition of waste

DIRECTIVE 2008/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 19 November 2008
on waste and repealing certain Directives
(Text with EEA relevance)

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. 'waste' means any substance or object which the holder discards or intends or is required to discard;

Tools for interpretation - EU regulation

- Court of Justice of the European Union (CJEU)
- The Preambles
- Non-binding EU guidelines
 - Guidelines provided by the Commission
 - Correspondence Guidelines
- Member states national case law (ENPE's database)

Links to the Guidelines provided by the Commission and the "Correspondence Guidelines"

https://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf

<https://ec.europa.eu/environment/waste/shipments/guidance.htm>

Art 50 in the 1013/2006 regulation

Article 50

Enforcement in Member States

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4a. In order to ascertain that a substance or object being carried by road, rail, air, sea or inland waterway is not waste, the authorities involved in inspections may, without prejudice to Directive 2012/19/EU of the European Parliament and of the Council ⁽¹⁾, require the natural or legal person who is in possession of the substance or object concerned, or who arranges the carriage thereof, to submit documentary evidence:

- (a) as to the origin and destination of the substance or object concerned; and
- (b) that it is not waste, including, where appropriate, evidence of functionality.

For the purpose of the first subparagraph, the protection of the substance or object concerned against damage during transportation, loading and unloading, such as adequate packaging and appropriate stacking, shall also be ascertained.

CHAPTER 2

Exports of waste for recovery

Section 1

Exports to non-OECD Decision countries

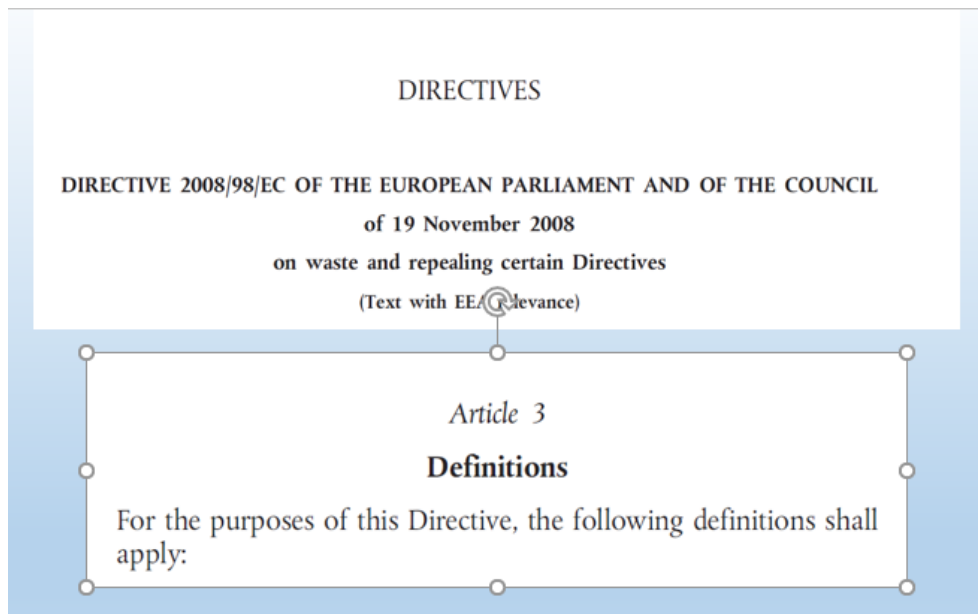
Article 36

Exports prohibition

1. Exports from the Community of the following wastes destined for recovery in countries to which the OECD Decision does not apply are prohibited:

- (a) wastes listed as hazardous in Annex V;
- (b) wastes listed in Annex V, Part 3;
- (c) hazardous wastes not classified under one single entry in Annex V;

Definition of “recovery”



15. 'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;
16. 'preparing for re-use' means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;
17. 'recycling' means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;
18. 'regeneration of waste oils' means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils;