

Case Study – Illegal Shipment of Waste



Guidelines:

First you need to find the provision applicable in the EU-regulation (and then find a national penal law that criminalize the specific provision).

Then you need to interpret the article. The Waste Transport Regulation is directly applicable in all member states and shall be interpreted and applied in the same way. The interpretation of EU acts is *contextual and strong purpose-oriented*. The binding interpretation of EU legislation is the exclusive competence of the European Court of Justice (CJEU). Other sources are the Preambles of the regulation and the preambles of some directives of interest, such as the waste directive. The preambles are explaining the background and purpose of the acts and can give you some guidance of how they shall be interpreted. In addition, there are some non-binding EU guidelines which can be use full.

So, what is **waste** in the meaning of this regulation?

You find the definition of waste in the regulation in article 2. *Waste is as defined in Article 1(1)(a) of Directive 2006/12/EC*. The directive of 2006 has from the 12 December 2010, been replaced by Directive 2008/98/EC on waste (Waste Directive). Art 3.1: *Waste means any substance or object which the holder discards or intends or is required to discard.*

I think we all agree that the definition is rather unclear.

So, we need help. We can go to the CJEU website to find out if there are any interesting cases in this matter.

https://curia.europa.eu/jcms/jcms/j_6/en/

- C-206/88 and C207/88
- C-418/97 and C-419/97
- Shell Nederland, C-241/12 and C-242/12 (EU:C:2013:821)
- C-624/17 (EU:C:2019:564)

Conclusions from the cases:

- The definition shall not be interpreted restrictively

- Discards could be both recovery or disposal
- Attention must be paid to if the objects are not longer of any use to its holder, the object constitutes a burden which he will seek to discard

You can also see if there are there correspondence guidelines or guidelines from the commission. The guidelines are not legally binding.

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

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

An example (Correspondents guidelines no 1; 2.2.1) – “reversed burden of proof”

Criminal law and the principal of legality and the burden of proof.

The above interpretation is an interpretation of EU-law. Could this interpretation be in conflict with criminal law and the principal of legality and the principle that the prosecutor has the burden of proof?

It could be a problem. I Sweden the courts are clear that, no matter what, it is the prosecutor who has the burden of proof.

So, I would tell the police to document the objects in the container in detail to find out

- the functionality/conditions of each object
- which objects that needed to be repaired before it could be used and
- how extensive the repairs were

So, what is **recovery** in the meaning of this regulation?

Your find the definition of recovery in the regulation in article 2.6 and article 3.15 in the waste directive.

But, is al recovery operations in article 3.16-19 in the waste directive “recovery” in the meaning of the regulation? Probably, please see page 3-31 in the Guidance on the interpretation of key provisions of the Directive 2008/98/EC on waste.

It so, the documentation of waste could be the same for recovery (article 3.16). But, could such an interpretation be in conflict with the principle of legality? The Swedish Supreme Court has in a verdict interpreted that al recovery operations (also 3.16) are “recovery”. This has been criticized by a district court: *that conclusion (from the Swedish Supreme Court) does not appear to be supported by the CJEU and is not self-evident in an interpretation of the regulation.*

So, problems.

Another problem is that the definition in the directive 2006 are *recovery shall mean any of the operations provided for in Annex II B*. In the directive 2008 you find recovery and the three recovery

operation definitions. The regulation itself, in article 2 refers to the old directive. Could this be in conflict with the principle of legality; you could not use 3.16 in a criminal case?

This case study is an example of how an environmental law can be an obstacle in prosecution and sanctioning in a criminal case.