

Question referred

Is the operation of a network-connected photovoltaic installation with no independent power storage capability on or adjacent to a privately owned house used for private residential purposes, which is technically designed such that the power generated by the installation is, on a continuing basis, below the total quantity of power privately consumed by the installation operator in the privately owned house, an 'economic activity' of the installation operator within the meaning of Article 4 of the Sixth Directive 77/388/EEC? ⁽¹⁾

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Raad van State (Belgium) lodged on 11 May 2012 — Belgacom NV v Interkommunale voor Teledistributie van het Gewest Antwerpen (INTEGAN) and Others

(Case C-221/12)

(2012/C 243/06)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Belgacom NV

Defendants: Interkommunale voor Teledistributie van het Gewest Antwerpen (INTEGAN), Inter-Media, West-Vlaamse Energie- en Teledistributiemaatschappij (WVEM), Provinciale Brabantse Energiemaatschappij CVBA (PBE)

Interveners: Telenet NV, Telenet Vlaanderen NV, Telenet Group Holding NV

Questions referred

- Should Articles 49 or 56 TFEU be interpreted in such a way that an undertaking established in Belgium may rely on the fundamental rules of European Union law before the Belgian courts, in particular, on the obligation of transparency which is derived from the aforementioned Articles, in respect of an agreement which does not fall within the scope of any of the directives concerning public tenders, under which a Belgian authority transfers rights to another Belgian undertaking without having organised an invitation to tender?
- Can the efforts to prevent the infringement of an existing, in itself undisputed and very specific contractual framework between a legal person governed by public law and a private law undertaking, not controlled by itself, or the conclusion of a transaction or a settlement aimed at the resolution of an existing interpretation dispute regarding

the aforementioned contractual framework, where that settlement is based on the rights of the parties in accordance with a provisional decision of a judge hearing an application for interim relief and where, without such a settlement, the relevant activity of the authority can incur serious damage and depreciation, with the consumers, in the meanwhile, remaining deprived of services, be regarded as an overriding reason in the public interest, or at least an objective ground of justification, justifying the fact that legal persons governed by public law, by way of exception and contrary to the principle of equal treatment and the prohibition of discrimination on the grounds of nationality, which are laid down in Articles 49 and 56 TFEU and the obligation of transparency to which it gives rise, do not organise an invitation to bid and award the tender directly?

- If the second question can be answered in the affirmative, should the aforementioned transaction or settlement, so as not to limit the aforementioned fundamental freedoms guaranteed by European Union law more than is necessary in order to achieve the aim pursued, then be limited to what is strictly required to put an end to the dispute which has arisen, or may the parties devise a more far-reaching settlement with a view to future challenges which have a reasonable and logical connection with the dispute and which at the same time safeguards the interests of the consumers and also entails maximising the value of the transferred activity concerned?

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 14 May 2012 — C. Demir; other party: Staatssecretaris van Justitie

(Case C-225/12)

(2012/C 243/07)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: C. Demir

Other party: Staatssecretaris van Justitie

Questions referred

- Is Article 13 of Decision No 1/80 ⁽¹⁾ to be interpreted as meaning that it is applicable to a substantive and/or formal condition governing first admission, even if such a condition — in the present case, the possession of a temporary residence permit — has as one of its objectives the prevention of illegal entry and illegal residence prior to the submission of an application for a residence permit and, to that extent, can be regarded as a measure, within the terms of paragraph 85 of the judgment in Joined Cases C-317/01 and C-369/01 *Abatay and Others*, ⁽²⁾ which may be made more stringent?

2. (a) What importance is to be attached in this connection to the requirement of legal residence in Article 13 of Decision No 1/80?
- (b) Is it relevant in this connection that, even under national law, the submission of an application renders residence legal so long as that application has not been refused, or is the only relevant factor the fact that residence prior to the submission of an application is regarded as being illegal under national law?

(¹) Decision of 19 September 1980 on the development of the Association, adopted by the Association Council established under the Association Agreement.

(²) [2003] ECR I-12301.

Reference for a preliminary ruling from the Rechtbank te Rotterdam (Netherlands) lodged on 18 May 2012 — Criminal proceedings against EBS Le relais Nord-Pas-De-Calais

(Case C-240/12)

(2012/C 243/08)

Language of the case: Dutch

Referring court

Rechtbank te Rotterdam

Party to the main proceedings

EBS Le relais Nord-Pas-De-Calais

Questions referred

- Where waste is shipped by vessel from an EU Member State (in this case France) to a State in which the OECD-Decision does not apply (in this case the United Arab Emirates), is there 'transit' within the meaning of the former (¹) and the new (²) Waste Shipment Regulation (WSR) if under way the vessel puts in at a port of another EU Member State (in this case the Port of Rotterdam)?
- Does it make any difference to the answer to question 1 if:
 - there is storage and/or transshipment of that waste at that port and/or
 - that waste is taken ashore and/or
 - that waste is declared for import at customs?

(¹) Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (former WSR) (OJ 1993 L 30, p. 1)

(²) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (new WSR) (OJ 2006 L 190, p. 1)

Reference for a preliminary ruling from the Rechtbank te Rotterdam (Netherlands) lodged on 18 May 2012 — Criminal proceedings against Shell Nederland Verkoopmaatschappij BV

(Case C-241/12)

(2012/C 243/09)

Language of the case: Dutch

Referring court

Rechtbank te Rotterdam

Party to the main proceedings

Shell Nederland Verkoopmaatschappij BV

Questions referred

- Must a consignment of diesel be categorised as waste within the meaning of the (former (¹) and new (²)) WSR (Waste Shipment Regulation) in the following circumstances:
 - the consignment consists of Ultra Light Sulphur Diesel, which has been unintentionally mixed with Methyl Tertiary Butyl Ether;
 - after the consignment is delivered to a buyer, it transpires that — because of the mix — it does not satisfy the specifications agreed between the buyer and the vendor and is therefore 'off-spec';
 - the consignment — following a complaint by the buyer — is taken back by the vendor in accordance with the purchase agreement, and the vendor refunds the purchase price;
 - the vendor has the intention — whether or not after mixing it with another product — of placing the consignment back on the market?
- If the answer to question 1 is in the affirmative:
 - is it possible to specify a point in time in the above-mentioned factual circumstances from which this is the case;
 - does the status of the consignment change to a non-waste product at any point in time between the delivery to the buyer and a new blending carried out by or on behalf of the vendor and, if so, at what point?
- Is it relevant to the answer to question 1:
 - whether the consignment could be used as fuel in the same way as pure ULSD, but because of its lower flashpoint it no longer satisfied the (safety) requirements;
 - whether, as result of the new composition, the consignment could not be stored by the buyer pursuant to an environmental permit;
 - whether the consignment could not be used by the buyer for the purpose for which it had been bought, namely for sale as diesel fuel from the pump;
 - whether or not the buyer intended to return the consignment to the vendor pursuant to the purchase agreement;