

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;