Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 18 June 2013[1]

Joined Cases C-241/12 and C-242/12

Shell Nederland Verkoopmaatschappij BV and Belgian Shell NV

(Request for a preliminary ruling from the Rechtbank te Rotterdam (Netherlands))

(Environment — Regulation (EEC) No 259/93 on the supervision and control of shipments of waste — Directive 2006/12/EC on waste — Notion of waste — Off-specification product resulting from accidental contamination)

I – Introduction

1. This case hinges on whether Shell Nederland Verkoopmaatschappij BV and Belgian Shell (together to be referred to as 'Shell') have engaged in transfer of waste by shipping, to one of their places of business in the Netherlands, just over 333 000 kilograms of an oil product returned by a buyer in Belgium. The buyer was unable to store or retain the oil product due to a fault in its composition caused, accidentally, at loading of the initial transfer of the product from the Netherlands to Belgium. In essence, determining whether the oil-product is 'waste' is the only issue on which the national referring court has sought guidance in the course of criminal proceedings instituted against Shell for failure to comply with the procedural requirements set by EU and Dutch law concerning shipment of waste.[2]

2. Article 3(1) of 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,[3] requires notification, prior to shipment of waste, to the competent authority of destination, while Article 5(1) of Regulation No 259/93 precludes shipment without authorisation. Both of these obligations are subject to the precautionary principle of Article 191(2) TFEU,[4] and it is not in dispute that Shell neither notified the shipment of the oil product to the appropriate authorities nor had it authorised.

1 — Original language: English.

2 — Separate proceedings before the Rechtbank te Rotterdam against Shell Nederland Verkoopmaatschappij BV and Belgian Shell BV were joined by order of the Court of 2 July 2012.

3 — OJ 1993 L 30, p. 1, as last amended, as far as the present case is concerned, by Commission Decision 1999/816/EEC of 24 November 1999 adapting, pursuant to Articles 16(1) and 42(3), Annexes II, III, IV and V to Council Regulation (EEC) No 259/93 on the supervision and the control of shipments of waste within, into and out of the European Community. OJ 1999 L 316, p. 45. Note that, pursuant to Article 61 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190 p. 1), Regulation No 259/93 was repealed with effect from 12 July 2007. However, given that the relevant period in the case to hand occurred in September 2006, it is governed *ratione temporis* by Regulation No 259/93.

4 — Note, however, the Treaty provision appertaining to the precautionary principle that is applicable *ratione temporis* in the case to hand is Article 174(2) EC.

II – Legal framework

3. The legal framework that is relevant to this dispute maps out the link between the definition of waste in Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (which entered into force on 17 May 2006) [5] and the obligations enshrined in Regulation No 259/93. It is as follows.

A – *Regulation No 259/93*

4. Recitals 6, 9 and 18 of Regulation No 259/93 provide as follows:

‘(6) Whereas it is important to organize the supervision and control of shipments of wastes in a way which takes account of the need to preserve, protect and improve the quality of the environment;

…

(9) Whereas shipments of waste must be subject to prior notification to the competent authorities enabling them to be duly informed in particular of the type, movement and disposal or recovery of the waste, so that these authorities may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment.

…

(18) Whereas, in the event of illegal traffic, the person whose action is the cause of such traffic must take back and/or dispose of or recover the waste in an alternative and environmentally sound manner; whereas, should he fail to do so, the competent authorities of dispatch or destination, as appropriate, must themselves intervene’.

5. Article 2(a)(i) and (k) of Regulation No 259/93 states as follows:

‘For the purposes of this Regulation:

(a) *waste* is as defined in Article 1(a) of Directive 75/442/EEC

…

(i) *disposal* is as defined in Article 1(e) of Directive 75/442/EEC

…

(k) *recovery* is as defined in Article 1(f) of Directive 75/442/EEC

…’ [6]

5 — OJ 2006 L 114 p. 9. See Article 21. The legislative history on the definition and supervision of the shipment of waste is as follow. Article 1 of Council Directive 75/442/EEC of 15 July 1975 on waste, OJ 1975 L 194, p. 39, provided a definition of waste in which the obligation to dispose referred to national law. A Community definition of waste was introduced by Council Directive 91/156/EC of 18 March 1991 amending Directive 75/442, OJ 1991 L 78, p. 32, and was thereafter provided in Directive 2006/12, OJ 2006 L 114 p. 9, in Article 1(1) (reproduced here at point 11). This is the definition of waste that is applicable *ratione temporis* to Regulation No 259/93 and in the present case. However, in turn Directive 2006/12 was repealed with effect from 12 December 2010 by Article 41 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ 2008 L 312, p. 3.

6 — But see note 5 with respect to the definitions of waste, disposal and recovery in force *ratione temporis*.

6. Title II of Regulation No 259/93 entitled 'Shipments of waste between Member States' contains a Chapter A, entitled 'Waste for disposal'. Article 3(1) of Regulation No 259/93, which appears in this chapter, states:

'Where the notifier intends to ship waste for disposal from one Member State to another Member State and/or pass it in transit through one or several other Member States, and without prejudice to Articles 25(2) and 26(2), he shall notify the competent authority of destination and send a copy of the notification to the competent authorities of dispatch and of transit and to the consignee.'

7. Article 5(1) of Regulation No 259/93 states:

'The shipment may be effected only after the notifier has received authorisation from the competent authority of destination.'

8. Chapter B of Title II is entitled 'Waste for recovery'. Article 6(1) of Regulation No 259/93 states:

'1. Where the notifier intends to ship waste for recovery listed in Annex III from one Member State to another Member State and/or pass it in transit through one or several other Member States, and without prejudice to Articles 25(2) and 26(2), he shall notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.'

9. Article 26 states:

'1. Any shipment of waste effected:

(a) without notification to all competent authorities concerned pursuant to the provisions of this Regulation; or

(b) without the consent of the competent authorities concerned pursuant to the provisions of this Regulation; or

…

shall be deemed to be illegal traffic.

…

5. Member States shall take appropriate legal action to prohibit and punish illegal traffic.'

B – *Directive 2006/12*

10. Directive 2006/12 entered into force on 17 May 2006. Recitals 2, 3, and 4 thereof state:

'(2) The essential objective of all provisions relating to waste management should be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

(3) Common terminology and a definition of waste are needed in order to improve the efficiency of waste management in the Community.

(4) Effective and consistent rules on waste disposal and recovery should be applied, subject to certain exceptions, to movable property which the holder discards or intends or is required to discard.'

11. Article 1(1) of Directive 2006/12 states:

'For the purposes of this Directive:

(a) "waste" shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard;

(b) "producer" shall mean anyone whose activities produce waste ("original producer") and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

(c) "holder" shall mean the producer of the waste or the natural or legal person who is in possession of it;

…

(e) "disposal" shall mean any of the operations provided for in Annex II A;

(f) "recovery" shall mean any of the operations provided for in Annex II B;

…'

12. Article 20 of Directive 2006/12 states:

'Directive 75/442/EEC is hereby repealed, without prejudice to Member States' obligations relating to the time limits for transposition into national law set out in Annex III, Part B.

References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex IV.' [7]

III – The dispute in the main proceedings and the questions referred for a preliminary ruling

13. On 3 September 2006 Shell loaded Ultra Light Sulphur Diesel (ULSD) onto a ship and delivered it to a Belgian client (Gebr. Carens BVBA, 'Carens'). At the time that the ship was loaded the tanks were not completely empty, which resulted in the ULSD being mixed with Methyl Tertiary Butyl Ether (MTBE).

14. The result of that mix was that the ULSD did not satisfy the agreed product specifications and could no longer be used by Carens for the purpose originally intended, namely sale of it by Carens as diesel fuel from the pump. The flashpoint of the mixture was too low for that purpose. Moreover, on the basis of its environmental permit, Carens was precluded from storing a mixture with this flashpoint. The mix of the ULSD with MTBE was discovered only after the consignment had been delivered to Carens in Belgium. According to the written observations of the Commission, between 20 and 22 September 2006 Shell shipped the consignment back to the Netherlands and had it blended, in order to sell the new mixture as fuel. As already mentioned, Shell made neither any notification under Regulation No 259/93 nor sought authorisation before the shipment took place.

7 — Article 2(1) of Regulation (EC) No 1013/2006 provides that 'waste' is defined in Article 1(1)(a) of Directive 2006/12. As explained in note 5 the case to hand is governed *ratione temporis* solely by Regulation No 259/93 rather than Regulation No 1013/2006.

15. Criminal proceedings were then brought against Shell before the Rechtbank Rotterdam. It is alleged by the prosecutor that, during or around the period 20 to 22 September 2006 in Barendrecht and/or Rotterdam, in any case in the Netherlands, and in any event within the territory of the European Union, Shell committed (an) act/acts referred to in Article 26(1) of Regulation No 259/93, since it was shipping from Belgium to the Netherlands in the motorised tanker vessel 'Nimitz' waste, namely (approximately 333 276 kilograms) of gas oil and/or diesel oil contaminated with MTBE, in any case oil waste, in any event waste as referred to under code AC 030 in Annex III to Regulation No 259/93. That shipment was made without notification to and/or securing permission from all/the relevant competent authorities in accordance with Regulation No 259/93.

16. In the light of this, the Rechtbank referred the following questions for a preliminary ruling.

'(1) Must a consignment of diesel be categorised as waste within the meaning of [Regulations Nos 259/93 and 1013/2006] in the following circumstances:

a. the consignment consists of Ultra Light Sulphur Diesel, which has been unintentionally mixed with Methyl Tertiary Butyl Ether;

b. 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';

c. 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;

d. the vendor has the intention – whether or not after mixing it with another product – of placing the consignment back on the market?

(2) If the answer to question 1 is in the affirmative:

a. is it possible to specify a point in time in the abovementioned factual circumstances from which this is the case;

b. 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?

(3) Is it relevant to the answer to question 1:

a. 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;

b. whether, as result of the new composition, the consignment could not be stored by the buyer pursuant to an environmental permit;

c. 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;

d. whether or not the buyer intended to return the consignment to the vendor pursuant to the purchase agreement;

e. whether the vendor did in fact intend to take back the consignment with a view to processing it through blending it and to place it back on the market;

f. whether or not the consignment can be restored either to the state originally intended or processed into a product that is marketable for a price approaching that of the market value of the original ULSD consignment;

g. whether that restoration/processing is a common production process;

h. whether the market value of the consignment in the state that it is in at the time that it is taken back by the vendor is (virtually) the same as the price of a product that does satisfy the agreed specifications;

i. whether the consignment taken back can be sold on the market in the state that it is in at the time that is taken back without being processed;

j. whether trade in products such as the consignment is common and is not regarded in relevant trade circles as trade in waste?'

17. Written observations were received from Shell, the Netherlands Government and the Commission. All of them participated at the hearing held on 6 March 2013.

IV – Analysis

A – *Observations on the notion of waste*

18. In essence, and despite the length of the questions referred, in my opinion the legislation and relevant case law provides a clear answer to the order for reference. The heart of the problem lies in Shell's failure to notify the shipment of the oil product and secure authorisation even though it had become unintentionally contaminated.

19. The mixture transported by Shell from Belgium to the Netherlands may fall within several of the categories mentioned in Annex I to Directive 2006/12, such as, for example, Q2 'Off-specification products Q4', 'Materials spilled, lost or having undergone other mishap, including any materials, equipment etc., contaminated as a result of the mishap' or Q12 'Adulterated materials (e.g. oils contaminated with PCBs etc.)'.[8]

20. None of these factors are determinative in and of themselves, because the list of categories of waste in Annex I to Directive 2006/12 is open-ended. It covers, according to point Q16, any 'materials, substances or products which are not contained in the abovementioned categories'. Further, the lists are only intended as guidance, and the classification of the waste is to be inferred primarily from the holder's actions and the meaning of the term 'discard'.[9]

21. However, they constitute factors supporting the view that the substance in issue in this case amounts to waste. This holds true from the moment of accidental contamination of ULSD with MTBE up to the point where it was blended into a new mixture; i.e. in other words, recovered.[10]

8 — According to the observations of the Commission code AC030 (waste oils unfit for their originally intended use) in Annex III to Regulation No 259/93, referred to in the charges against the defendant is not applicable because neither the defendant nor the buyer have used the oil in question. This category refers according to the Commission to residues of oil that has already been used.

9 — Case C-188/07 *Commune de Mesquer* [2008] ECR I-4501, paragraph 53, and case law cited.

10 — However, even a complete recovery operation may not necessarily mean that a product ceases to be waste. It may still be waste if its holder discards it or intends or is required to discard it. Case C-358/11 *Lapin luonnonsuojelupiiri* [2013] ECR, paragraph 57 and case law cited.

22. The case made out by Shell is based on the following arguments. It is contended: that ‘off-spec’ products, such as the contaminated fuel in issue, cannot amount to waste and that if it did the inevitable result would be a disproportionate disruption to trade; that the fuel was returned to the defendant due to imperatives imposed by its contract with the buyer in Belgium rather than because of its quality as ‘waste’; that the fuel continued to have economic value, thereby precluding it from amounting to waste; that Shell intended to re-sell the product at the time of its re-acquistion in Belgium (whether by re-mixing it or re-selling it in the state it was in when shipped from Belgium) and that resale of this type of product habitually occurs in the course of oil trade; and that the buyer in Belgium, by returning the fuel, did not intend to dispose of it and by the time the fuel was returned to the Netherlands it had lost its quality as waste.

23. However, in my opinion none of these arguments are supported by the court’s case law on the meaning of disposal of waste.

24. Nor are they directly relevant to the key questions arising in this case, which entails determining (i) whether Shell was a ‘holder’ of waste within the meaning of Article 1(c) of Directive 2006/12 either as a ‘producer’ or the legal person who was in possession of it and (ii) whether the contaminated fuel was ‘waste’ within the meaning of Article 1(a) of Directive 2006/12 because it was a substance or object in the categories set out in Annex I which the holder discarded or intended or was required to discard.

25. Moreover, contrary to submissions made by Shell, in my opinion the Court should not take into account any assumptions that do not correspond with the factual background as described in the preliminary reference. Here I have in mind Shell’s assertion that they were aware of the composition of the fuel mixture and the option of it being re-sold without blending before the cargo left Belgium. The uncontested fact of the re-blending of the fuel before its resale, in my opinion, points towards an intention to discard it, and the act of re-blending itself amounts to recovery; in other words, Shell discarding the product. Otherwise, the Court would risk answering hypothetical questions which are inadmissible under established case law.

26. Further, the fact that the contaminated fuel was ‘off-spec’ in relation to the specifications appearing in the contract between Shell and Carens is irrelevant to determining whether it amounts to waste under mandatory EU waste law, the latter being of a public law nature and not subject to the will of the parties to a contract. Here it is necessary to recall that the fuel mixture at stake contains ULSD and MTBE. Any treatment of diesel fuel must take into account the risk of dangers caused by leakages to environment and fire protection risks. MTBE is as such a chemical potentially harmful for human health in the event of contact.[11] These risks are obvious in a situation where the exact composition of the mixture results from unintentional contamination, the precise nature of which can only be ascertained by means of ex-post analysis.

27. I also note that, according to the order for reference, it is not in dispute that Shell (i) accepted the return by Carens of the fuel mixture, (ii) agreed to transport the fuel mixture back to the Netherlands and (iii) in fact blended it in the Netherlands into a new mixture in order to sell it as a fuel. In my opinion, any further debate with respect to what Shell could have done after it became aware of the contamination of fuel, or would have done in different circumstances, are not pertinent to resolving the legal issues to hand.

B – *Application of the concept of waste in the context of pertinent facts*

28. The core issue of the present case consists of determining whether the contaminated substance amounts to ‘waste’, but the meaning of ‘producer’ and ‘disposal’ is also central to the resolution of the dispute.

11 — Written Question E-3582/01 by Ulla Sandbæk (EDD) to the Commision and the answer given by Mrs Wallström (OJ 2002 172 E, p. 92).

29. The term ‘producer’ is defined in Article 1(b) of Directive 2006/12 as meaning ‘anyone whose activities produce waste (“original producer”) and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste. For its part, ‘disposal’ is defined in Article 1(1)(e) as ‘any of the operations provided for in Annex II A’. These provisions need to be read in the light of the established case law on the meaning of waste, which, as I have already noted, is ‘primarily to be inferred from the holder’s actions, which depend on whether or not he intends to discard the substances in question.’ [12]

30. Further, the fact that a substance can be put to re-use for economic gain does not preclude it from being waste, [13] and nor does the fact that a substance forms part of an industrial process exclude it from amounting to waste. [14]

31. Thus, the contention of Shell which draws on the alleged fact that the contaminated mixture could have been resold as fuel without any further treatment is misplaced. As Advocate General Jacobs observed in *Palin Granit*, the composition of a substance does not determine in general terms whether it is waste or not. In contrast, the composition of a substance may determine whether it constitutes hazardous waste, and it may serve as an indication as to whether the substance is intended or required to be discarded. [15]

32. Hence, the scope of the term ‘waste’ turns on the meaning of ‘discard’. [16] Further, rather than placing undue emphasis on the impact on trade, as was argued by Shell, the case law has made it clear that the term ‘discard’ must be interpreted in a way that takes account of the objectives of Directive 2006/12, which is the protection of human health and the environment, and the objectives of the environmental policy of the European Union. This entails a high level of environmental protection, preventative action, and respect for the precautionary principle. Once due account is taken of the objectives of Directive 2006/12, and Article 191(2) TFEU, the notion of waste cannot be interpreted restrictively. [17]

33. According to the case law of the Court, the term ‘discard’ covers both disposal and recovery of a substance or object. [18]

34. Certain circumstances may constitute evidence that a substance or object has been discarded or of an intention or requirement to discard it within the meaning of Article 1(1) of Directive 2006/12. That will be the case in particular where the substance used is a production residue, that is to say a product not sought as such. [19] The Court has thus held that leftover stone from extraction processes of a granite quarry, which was not the product primarily sought by the operator, can constitute waste. [20] This applied despite the fact that there was no difference in the physical quality or mineral composition of the basic rock, leftover stone, and the stone extracted for commercial exploitation. [21]

12 — Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, paragraph 22 and case law cited; see also *Commune de Mesquer*, paragraph 53.

13 — Joined Cases C-206/88 and C-207/88 *Vessoso and Zaneti* [1990] ECR I-1461, paragraph 9; Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 *Tombesi and Others* [1997] ECR I-3561, paragraph 47; *Palin Granit*, paragraph 29.

14 — Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 32.

15 — At points 45 and 46 of his opinion.

16 — *Inter-Environnement Wallonie*, paragraph 26.

17 — *Palin Granit*, paragraph 23 and case law cited; Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 45. As already noted Article 174(2) EC is applicable *ratione temporis* to this case.

18 — *Inter-Environnement Wallonie*, paragraph 27.

19 — *Commune de Mesquer*, paragraph 41 and case law cited.

20 — *Palin Granit*, paragraph 29.

21 — See the Opinion of Advocate General Jacobs in *Palin Granit,* points 44 and 45.

35. On the other hand, the Court has equally held that goods, materials, or raw materials resulting from a manufacturing or extraction process which are not primarily intended to produce that item may constitute not a residue but a by-product which the undertaking concerned does not wish to discard, but intends to exploit or market on economically advantageous terms in a subsequent process, without prior processing.[22] However, having regard to the obligation to interpret the concept of waste widely in order to limit its inherent nuisance and harmful effect, the reasoning of the Court has confined the principles applicable to by-products to situations in which the reuse of goods, materials or raw materials is not a mere possibility but a certainty, without prior processing and as an integral part of the production process.[23]

36. Because the contamination was accidental, the facts in issue in the main proceedings plainly fall outside of the exception pertaining to by-products. The Court's case law is clear. Waste does not to exclude substances and objects capable of recovery as fuel in an environmentally responsible manner.[24] The possibility of re-use of a substance with modifications is not pertinent.[25]

37. In my opinion a consignment consisting of ULSD mixed unintentionally with MTBE and having as a result a flame point lower than allowed for diesel sold from the pump becomes waste within the meaning of Article 1(1)(a) of Directive 2006/12 at the point of contamination, and remains as such up to its recovery by blending or by its commercial re-classification in a manner that is objectively ascertainable. In consequence, there has been a transfer of waste. The situation would only be different if recovery by blending or re-sale to a third party on the basis of documentation revealing the exact composition of the fuel mixture had taken place before re-loading in Belgium.[26]

38. Hence, Shell was both a 'producer' of waste under Article 1(1)(b) of Directive 2006/12 and a 'holder' of waste under Article 1(1)(c) of the same Directive, given that the mixture became 'waste' at the moment of contamination. It remained waste in Belgium where Carens became a holder under Article 1(1)(c), as it was both required to discard the contaminated mix, given that it had no permission to store it, and indeed discarded it by returning it to the defendant.

39. Upon taking back the fuel, Shell became a holder again, in the sense of Article 1(1)(c) of Directive 2006/12, as both the 'producer' and the legal person in possession of it. Shell then remained obliged to discard it up until the point of re-blending in the Netherlands, which constituted the act of recovery whereby the waste was discarded. In other words, given that the recovery process was not undertaken by Shell before the commencement of the return voyage to the Netherlands, the contaminated mixture remained waste for the duration of that voyage.

40. I would like to close by emphasising that mere failure to fulfil agreed contractual specifications does not, as such, mean that a substance or product is necessarily to be considered as waste. If a trader delivers to a restaurant minced meat that is a mixture of beef and horse, instead of pure beef as agreed between the parties, he may be contractually obliged to accept return of the delivery without it thereby becoming waste. However, if the product results from accidental contamination of beef with horse meat during the processing of minced meat, he has an obligation to discard the minced meat up and until its precise characteristics have been ascertained and the minced meat is either disposed of or commercially reclassified, for example, as feed for minks, or as a beef-horse meat mixture for human consumption, provided it satisfies the relevant requirements under food-stuffs

22 — *Commune de Mesquer*, paragraph 42 and case law cited.

23 — *Commune de Mesquer*, paragraph 44 and case law cited.

24 — C-418/97 ARCO Chemie Nederland Ltd [2000] ECR I – 4475.

25 — *Commune de Mesquer*, paragraph 40, and case law cited.

26 — For a pithy summary of the law on when a substance ceases to be waste see points 76 to 79 of the Opinion of Advocate General Kokott of 13 December 2012 in *Lapin luonnonsuojelupiiri*. The Court issued its judgment on 7 March 2013. Note that this case concerns Directive 2008/98 and more specifically, at paragraphs 53 to 60, the question of when a substance ceases to be waste under Article 6 of Directive 2008/98 because it has undergone recovery.

regulations.[27] More generally, a non-intentionally manufactured mixture of compound is *prima facie* waste if the use to which it is intended to be put is not safe, in the absence of knowledge of its composition. This applies to products such as food or fuel whose qualities are important to human health and the environment.[28]

41. Thus the minced meat would constitute 'waste' under EU waste law, more particularly an off-specification product contaminated as a result of mishap,[29] in the period from contamination to disposal or recovery by means of reclassification.

42. Therefore, contrary to arguments made by Shell at the hearing, the answer I will propose will not cause inordinate disruption to the normal course of trade, but would rather emphasise the standard of care any responsible trader can be expected to follow, namely to consider as waste any product contaminated as a result of a mishap.

V – Conclusion

43. In the light of the above, I propose the following answer in response to all the questions referred by the Rechtbank te Rotterdam:

A consignment consisting of fuel which the vendor takes back and processes through blending with a view to placing it back on the market, because the fuel had been unintentionally mixed with a substance and therefore no longer satisfies safety requirements so that it could not be stored by the buyer pursuant to an environmental permit, must be considered as waste under Article 2(a) of 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 from the moment of unintentional contamination up to its recovery by blending.

27 — For an analysis of the circumstances in which meat and bone meal can be considered to be waste see case C-176/05 *KVZ retec GmbH* [2007] ECR I-1721.

28 — See for example Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ 1998 L 350, p. 58), as amended by Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (OJ 2009 L 140 p. 88) and Commission Directive 2011/63/EU of 1 June 2011 amending, for the purpose of its adaptation to technical progress, Directive 98/70/EC of the European Parliament and of the Council relating to the quality of the petrol and diesel fuels OJ 2011 L 147 p. 15.

29 — See Annex I to Directive 2006/12, categories Q2 and Q4.