

**LAWS AND REGULATIONS IN
TOURISM**

ERRORS REGARDING THE PENALTY OF TRANSACTIONS WITH PRODUCTS RESULTING FROM WASTE RECYCLING, THROUGH PRISM REGULATION FROM DIRECTION 2006/12/CE THE EUROPEAN PARLIAMENT.

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***Abstract:** The waste regime of batteries and accumulators is regulated in normative acts with a special and general character, with the aim of encouraging o manage them effectively.*

Recycling spent batteries and lead recovery resulting in a lead-containing slag, without being able to extract the existing technology in Romania.

In the previous years, an industrial company has received authorization to process the slag by crushing and sorting, to obtain a material called lead concentrate, which was exported to China. After the company went into insolvency the liquidator sold the remaining amount to another company. She tried to export it to China through a company from Switzerland, who had experience in this field.

Customs authorities and the National Environmental Guard have blocked exports, with the motivation that a laboratory analysis has established that the lead content is lower than the one mentioned in the documents. It was not taken into account that the analysis was performed with an inappropriate methodology, being contradicted by numerous other analyzes.

Administrator of the Romanian society has been sued for 3 serious crimes ignoring the provisions of Directive 2006/12 EC. This material has been sent to a repository of hazardous materials from Ialomita County, with high cost prices. In the same area, such materials will be stored in the future, such matters, which is harms Romania's interests.

***Keywords:** waste; recycled, lead concentrates; export; criminal sanction.*

1. THE PROCESSING OF THE SLAG RESULTED FROM RECYCLING LEAD BATTERIES.

The recovery of the lead from used batteries was performed at SC Rebat Copșa Mică, resulting the oxidic slag, for which there are no processing technologies in Romania, although it also contains lead and other useful substances.

In previous years, a part of this product was taken over by the company Minprod 2005 SRL Șoimuș, which had an integrated environmental permit in the field of *“Installations for the disposal and recovery of dangerous waste, with a capacity of more than 10 tons/day and a maximum capacity of 2500 tons/year”*.¹

In this way, a huge amount of over 35000 tons of lead concentrate was obtained. The resulted product was no longer waste, this being obvious because it no longer had a code in that category, as is was mandatory for any waste. This sub-product could no longer be processed in Romania due to the closure of the profile industry. It was exported to China through the Swiss company Werco Trade, which held world supremacy in transactions with powder materials.

At the beginning of 2015, SC Minprod 2005 SRL got into insolvency, the *Integrated environmental permit* being cancelled the. As a result, it could no longer export the material, which remained in stock with a quantity of approx. 1500 tons, which had been processed in previous years.

A quantity of over 2000 tons of similar material, belonging to other insolvent companies, was also found in the localities of Mintia and Hunedoara.

For the liquidation of SC Minprod's assets had succeeded several specialized companies, and the last liquidator tried to reactivate the export trade relationship to China, through the Swiss company Werko Trade. It indicated its intention to export all material stocks only if they had lead concentrations above 15%. At this time, it ordered that the material to be analyzed before purchase, in order to meet the requirements of the Chinese partner. As a result, in September 2017 it ordered that the tests to be performed by the English laboratory Alfred H Knight in England.

The concentration of over 15% was found only for the existing materials in Șoimuș and Hunedoara. As a result, it was agreed to be bought only the lead concentrate existing in these locations, starting with the one in Șoimuș.

The purchase was made through SC Stock Resource SRL, managed by the so-called C.A., and it was mentioned that it will also do some customs formalities, because the Swiss company Werko Trade did not have an EORI code in Romania.

In reality, all operations were further performed by Werco Trade AG and Werco Logistic, an important role being played by the customs

¹ The Integrated Environmental Permit was issued in 2008 by Timisoara Agency and extended in 2013 by Deva Agency.

commissioner SC Elvada Company SRL Constanța, employed by the last company for export and storage.

The transport of the material to harbour of Constanța was performed by SC Werko Logistic SRL, and at unloading were taken samples from each container by the representatives of the Alfred H Knight laboratory, being established the lead concentrations of 19,74%, 18,17% and 19,72%.

A few days before receiving these results from England, the National Environmental Guard ordered the analysis of the material by the Wessling laboratory in Târgu Mureș, which took samples on 14th of December 2017. Due to the erroneous sampling and analysis, was established a reduced concentration of lead by only 4,77% and 4,38%.

From the improperly collected samples, the National Environmental Guard sent samples to the Romanian Geological Institute, which established a concentration of 13,33% Pb and 12% Pb, respectively, because it worked with other methods of analysis.

The results established by the Wessling laboratory were contested by all the parties involved in export, so it was decided to take other complete samples both from the material stored in the harbour and from the one returned with 3 trucks on the platform in Șoimuș.

The second analysis performed by the Wessling laboratory established a concentration of 19% Pb for the material in the harbour.

The criminal investigation body sent to Polytechnic University of Bucharest a part of these samples, being established a concentration of 29,84% for the sample from the harbour and 30,79% for the sample collected from the material returned on the platform from Șoimuș. It specified that there are other reusable materials, such as iron in a concentration of 67%.²

2. ERRORS IN ESTABLISHING GUILT.

The laboratory analyzes that indicated high concentrations of lead were not taken into account, the so called C.A. being sent to the Court of Law, and also the company SC Stock Resource SRL that he managed, for the criminal offences of qualified smuggling provided by art. 271 of Law 86/2006; the use of unreal acts in customs, provided by art. 272 of Law 86/2006; illegal export of waste, provided by art. 4 of Law 101/2011, in conjunction with art. 2 point 35 of the EC Regulation no. 1013/2006. ³

² Analysis bulletin no. 737/DECPB/20 IV 2018, sheet 415.

³ The prosecutor's office of Constanța Court of Appeal, indictment no. 525/P/2018.

The accusations were based only on the fact that the exported material would have been waste, and in the customs documents it was mentioned that it was lead concentrate.

The results of the laboratory analyzes, the aspects recorded in the Integrated Environmental Permit and the statements of the witnesses were not taken into account. It was also ignored the fact that the export was actually carried out by the Swiss company Werco Trade AG, which was mentioned in this capacity on the invoices accompanying the goods to China and on the bill of lading, which is the main export document. The Defendant knew only the harbor of destination in China, not knowing the recipient, due to the prudence of the Swiss company in keeping the secrecy regarding the clientele. In reality, all operations were further performed by Werco Trade AG and Werco Logistic, an important role being played by the customs commissioner SC Elvada Company SRL Constanța, employed by the last company for export and storage. The customs commissioner drew up some of the documents for which C.A. was accused, as it went to Constanța only after the beginning of the criminal investigations. It was also ignored that the sale was made with the Ex Works commercial clause, which involved minimum obligations for SC Stock Resource SRL. At the same time, the interposition to export of some companies from Romania or of some customs commissioners is a frequent practice, accepted in the case of foreign companies that do not have EORI code.

3. WASTE RECOVERY IN ACCORDANCE WITH DIRECTIVE 2006/12 OF THE EUROPEAN PARLIAMENT.

There are numerous internal regulations governing the processing, recycling and recovery of waste⁴, which have not been considered in solving this case.

The classification of the product as waste did not take into account nor the provisions of the Directive 2006/12 of the European Parliament⁵, which provides that a material that has been classified as waste may be

⁴ Law no. 211/2011 regarding the waste regime; Emergency Ordinance no. 68/2016 for the amendment and completion regarding the waste regime; Government Decision no. 1132/2008 regarding the regime of batteries and accumulators and batteries and accumulators waste

⁵ European Parliament, Directive 2006/12 of 5 April 2006 regarding waste, published in the Official Journal of the European Union L 114/9, Volume 16.

changed from this category by the operations listed in Annex II B, respectively by recycling, recovery or use⁶.

The preamble to this document refers to the need to recover waste and use the recovered materials as raw materials in order to conserve natural resources. It is emphasized that it is very important for the European Community that, as a whole, to be able to ensure the elimination of waste, and it is desired that the Member States also be individually targeted to such an objective.⁷

It is decided the obligation of the Member States to take measures to encourage *“recovery of waste by recycling, reuse, regeneration or any other process, in order to extract auxiliary raw materials”*.⁸

The Member States are obliged *“to take appropriate measures, in cooperation with other Member States, where necessary or advisable, to set up an integrated and adequate network of disposal facilities, taking into account the best available techniques, without generating excessive costs. The network must enable that the Community as a whole, to ensure the complete disposal of waste and Member States to strive for the same purpose individually, taking into account the geographical or necessary conditions of special facilities for certain types of waste.”*⁹

In order to achieve the objectives set out in Part One of the Directive, it shall be established that *“The mentioned competent authority or authorities shall, as soon as possible, draw up one or more waste management plans”, including adequate disposal sites or facilities.*

The Directive also refers to the significance of the Integrated Environmental Permit, stating that *“Any establishment or enterprise carrying out the operations mentioned in Annex II A must obtain a permit from the competent authority.”* The authorizations may be granted for a specified period, may be renewed, subject to certain conditions and obligations, or, in particular, if the method of disposal is not acceptable from the point of view of environmental protection, their granting may be refused.¹⁰

It is established that the facilities or enterprises that carry out waste recovery may be exempted from meeting the requirements of the permit,

6 Directive 2006/12, article 1, point I.

7 Directive 2006/12, point 5 and point 8.

8 Directive 2006/12, article 3, paragraph 1, point III.

9 Directive 2006/12, article 5, paragraph 1.

10 Directive 2006/12, article 9.

provided that they meet the requirements of environmental protection and are registered with the competent authorities.¹¹

Annex I refers to the category of waste, which includes discarded batteries, spent catalysts, contaminated acids, slag resulting from industrial processes, slag milled by mechanical processing, mining residues, products that are no longer used by the holder, etc. An extensive interpretation of the concept of waste is given in the final part of that Annex, stating that it may include any material, substance or product which is not included in the above mentioned categories.

Annex II B deals with recovery operations, listing also the recycling by recovery of metals and metal compounds.

CONCLUSIONS

The waste processing operation at SC Minprod 2005 Șoimuș and the obtaining of lead concentrate has been approved, known and verified by the competent authorities for over 10 years.

The action of blocking the export of lead-containing material and applying the criminal sanctions is unfounded from a technical and legal point of view.

It was decided that the concerned material was waste and not lead concentrate, only based on one analysis, subsequently contradicted by the same laboratory and numerous other analyzes and samples, without justifying what would have been the limit of differentiation between these two notions.

This decision has more serious consequences than those referring to the company involved, as it affects Romania's interests. Thus, the Swiss company Werco Trade AG no longer operates in Romania, being at the same time interrupted the delivery of other quantities of the respective material to China. Other companies were discouraged from processing and exporting similar material. It is significant the fact that an Albanian company intended to take over the lead concentrate with a concentration of less than 15%, but the Romanian partner did not risk the transaction. More than three years after the erroneous decisions were taken by the National Environmental Guard, more than 2,000 tons of lead concentrates remained in three locations in Hunedoara County, despite numerous efforts made by the competent bodies.

As a result, in Romania significant amounts of money will be spent for the neutralization or storage of materials, which may generate dangers for long periods of time.

¹¹ Directive 2006/12, article 11 paragraph 1 letter b).

NOTES ON THE AUTHORS

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- included in the "*Dictionary of Hunedoara personalities from the arts, science and technology*", edit. EMIA 2000 edition p. 307 and 2004 edition, p.332 on the basis of published works and documentaries made;
- included in the "*Encyclopedia personalities in Romania*", 2011 edition, p.1100-1101.