Questions referred

1. Must Article 2(i) and (k) 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, ([1]) in conjunction with Article 1(e) and (f) of Council Directive 75/442/EEC of 15 July 1975 on waste, ([2]) and with point D10 of Annex IIA and point R1 of Annex IIB to that directive, be interpreted to the effect that the first of the criteria defined by the Court of Justice in its judgment of 13 February 2003 in Case C-458/00 *Commission* v *Luxembourg* [2003] ECR I-1553 for it to be possible for the incineration of waste to be regarded as the recovery of waste to generate energy within the meaning of point R1 of Annex IIB to that directive (that is, the main purpose of the operation must be to enable waste to fulfil a useful function, namely the generation of energy) may also be satisfied in a case in which none of the circumstances is present which the Court of Justice mentioned in that judgment as factors testifying to recovery of waste, that is to say, where the operator of the installation in which waste is to be incinerated does not make a payment for the operation to the supplier of the waste and the installation is not technically adapted to be capable of operation on the basis of primary energy sources in the event of a shortage of waste?

2. If the answer to that question is in the affirmative, under what conditions may the operation be regarded in such a case as the recovery of waste?

   (a) May the aspect of payment for the waste operation be disregarded altogether, or is it necessary at the very least, for it to be possible to regard the operation as the recovery of waste, that the income of the operator of the installation from the sale of the thermal or electrical energy obtained by the incineration of a certain quantity of waste exceeds the income of the operator of the installation from the payment for receiving the waste?

   (b) As regards the nature of the installation of the recipient of waste, may it be regarded as a sufficient factor testifying to a waste recovery operation that in the decision authorising the operation of the installation it is formally classified as an installation for the recovery of waste for energy purposes and that the operator of the installation has contractually bound himself to feeding a certain quantity of thermal energy into the network and would face a contractual penalty if that obligation were breached, or is it a minimum condition for assessing the operation as the recovery of waste that the operator of the installation would from the legal, technical and economic point of view actually be capable of operating the installation, at least temporarily, on the basis of fuels other than waste?

([1]) OJ 1993 L 30, p. 1.
([2]) OJ 1975 L 194, p. 39.

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 30 July 2009 — Staatssecretaris van Justitie; other party: F. Toprak

(Case C-300/09)

(2009/C 267/60)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Staatssecretaris van Justitie

Other party: F. Toprak

Question referred

Must Article 13 of Decision No 1/80 [of 19 September 1980 on the development of the Association, taken by the Association Council set up under the Agreement establishing an Association between the European Economic Community and Turkey] be interpreted as meaning that a new restriction, within the terms of that provision, includes a tightening in respect of a provision which entered into force after 1 December 1980, and which constituted a relaxation of the provision which had been in force on 1 December 1980, if that tightening does not amount to a deterioration vis-à-vis the provision which was in force on 1 December 1980?

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 30 July 2009 — Staatssecretaris van Justitie; other party: I. Oguz

(Case C-301/09)

(2009/C 267/61)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Staatssecretaris van Justitie

Other party: I. Oguz

Question referred

Must Article 13 of Decision No 1/80 [of 19 September 1980 on the development of the Association, taken by the Association Council set up under the Agreement establishing an Association between the European Economic Community and Turkey] be interpreted as meaning that a new restriction, within the terms of that provision, includes a tightening in respect of a provision which entered into force after 1 December 1980, and which constituted a relaxation of the provision which had been in force on 1 December 1980, if that tightening does not amount to a deterioration vis-à-vis the provision which was in force on 1 December 1980?

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 3 August 2009 — Vicoplus SC PUH; other party: Minister van Sociale Zaken en Werkgelegenheid

(Case C-307/09)

(2009/C 267/62)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Vicoplus SC PUH

Other party: Minister van Sociale Zaken en Werkgelegenheid

Questions referred

1. Must Articles 49 EC and 50 EC be interpreted as precluding a national arrangement, as set out in Article 2 of the Netherlands Law on the Employment of Foreign Nationals (Wet arbeid vreemdelingen), read in conjunction with Article 1e(1)(c) of the Decree implementing the Law on the Employment of Foreign Nationals (Besluit uitvoering Wet arbeid vreemdelingen), under which a work permit is required for the hiring-out of workers as referred to in Article 1(3)(c) of Directive 96/71/EC? [1]

2. On the basis of what criteria should it be determined whether workers have been hired out within the meaning of Article 1(3)(c) of Directive 96/71/EC?

[1] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 3 August 2009 — B.A.M. Vermeer Contracting Sp. z o.o.; other party: Minister van Sociale Zaken en Werkgelegenheid

(Case C-308/09)

(2009/C 267/63)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: B.A.M. Vermeer Contracting Sp. z. o.o.

Other party: Minister van Sociale Zaken en Werkgelegenheid

Questions referred

1. Must Articles 49 EC and 50 EC be interpreted as precluding a national arrangement, as set out in Article 2 of the Netherlands Law on the Employment of Foreign Nationals (Wet arbeid vreemdelingen), read in conjunction with Article 1e(1)(c) of the Decree implementing the Law on the Employment of Foreign Nationals (Besluit uitvoering Wet arbeid vreemdelingen), under which a work permit is required for the hiring-out of workers as referred to in Article 1(3)(c) of Directive 96/71/EC? [1]

2. On the basis of what criteria should it be determined whether workers have been hired out within the meaning of Article 1(3)(c) of Directive 96/71/EC?

[1] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 3 August 2009 — Olbek Industrial Services sp. z.o.o.; other party: Minister van Sociale Zaken en Werkgelegenheid

(Case C-309/09)

(2009/C 267/64)

Language of the case: Dutch

Referring court

Raad van State