2. If the answer to the first question is in the affirmative, is it in accordance with the general principles of the right to deduct VAT that are laid down in Directive 2006/112/EC if such legislation provides that a VAT payer has the right to deduct input and/or import VAT in respect of goods and/or services acquired before the date of his registration as a VAT payer only if those goods will be used for an activity of that VAT payer that is subject to VAT, that is to say, input and/or import VAT in respect of goods and services acquired before the date of his registration as a VAT payer may not be deducted if those goods have already been used for that activity?

Reference for a preliminary ruling from the Cour de travail Bruxelles (Belgium) lodged on 30 September 2009 — Jhonny Briot v Randstad Interim, Sodexho SA, Council of the European Union

(Case C-386/09)

(2009/C 312/29)

Language of the case: French

Referring court

Cour du travail de Bruxelles

Parties to the main proceedings

Applicant: Jhonny Briot

Defendants: Randstad Interim, Sodexho SA and Council of the European Union

Questions referred

1. Where, in the framework of a transfer of an undertaking within the meaning of Article 1(1) of Directive 2001/23, [1] it appears that the entity transferred, namely the staff restaurant of a Community institution, used a significant number of temporary agency workers under a framework contract concluded with various temporary employment agencies, must the temporary employment agency, or failing that the institution under whose control and direction the temporary workers worked, be regarded as an employer-transferor within the meaning of Article 2(1)(a) of that directive?

   Where neither the temporary employment agency nor the undertaking using the worker can be recognised as having the status of employer-transferor, must the temporary agency workers be considered not to be entitled to the safeguards offered by Directive 2001/2003?

2. Must Article 4(1) of Directive 2001/23/EC be interpreted as meaning that the non-renewal of the fixed-term contracts of employment of the temporary agency workers attributable to the transfer of the activity to which they were assigned disregards the prohibition laid down in that provision in such a way that those temporary agency workers must be regarded as still being available to the user on the date of the transfer?

3. Must Article 3(1) of Directive 2001/23/EC, read where appropriate in conjunction with Article 2(2)(c), be interpreted as requiring the transferee to maintain an employment relationship with the temporary agency workers who were assigned to the activity that is being transferred or who must be regarded as still being available to the user on the date of the transfer?

   If that question is answered in the affirmative, must Article 3(1) be interpreted as requiring the conclusion of an employment contract of indeterminate duration where the transferee is not a temporary employment agency and cannot conclude a temporary agency contract of employment?

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[1] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

Reference for a preliminary ruling from the Juzgado Mercantil (Spain) lodged on 1 October 2009 — Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA) v Magnatrading S.L.

(Case C-387/09)

(2009/C 312/30)

Language of the case: Spanish

Referring court

Juzgado Mercantil No 1 de Santa Cruz de Tenerife

Parties to the main proceedings

Applicant: Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA)

Defendant: Magnatrading S.L.