

**Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 25 February 2013 -
Essent Energie Productie BV; other party: Minister van Sociale Zaken en Werkgelegenheid**

(Case C-91/13)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Essent Energie Productie BV

Other party: Minister van Sociale Zaken en Werkgelegenheid

Questions referred

In a situation such as that at issue in the main proceedings, can a principal contractor which must, pursuant to Article 2(1) of the Wet arbeid vreemdelingen 1994 (1994 Netherlands Law on the employment of foreign nationals), be regarded as the employer of the Turkish workers concerned rely, as against the Netherlands authorities, on the standstill rule in Article 13 of Decision No 1/80 ² or on the standstill rule in Article 41 of the Additional Protocol?

a. Must the standstill rule in Article 13 of Decision No 1/80 or the standstill rule in Article 41 of the Additional Protocol be interpreted as precluding the introduction of a prohibition, as referred to in Article 2(1) of the Wet arbeid vreemdelingen 1994, for principal contractors to have work carried out in the Netherlands by workers who are nationals of a third country, in this case Turkey, without a work permit, if those workers are in the employ of a German undertaking and work for the principal contractor in the Netherlands via a Netherlands user undertaking?

b. Is it significant in that regard that an employer was already prohibited, before both the standstill rule in Article 41 of the Additional Protocol and the standstill rule in Article 13 of Decision No 1/80 entered into force, from having work carried out by a foreign national without a work permit under a contract of employment and that that prohibition was extended, likewise before the standstill rule in Article 13 of Decision No 1/80 entered into force, to user undertakings to which foreign nationals are posted?

¹ - Decision No 1/80 of the Association Council of 19 September 1980 on the development of the EEC-Turkey Association.

² - Signed in Brussels on 23 November 1970 and concluded, approved and confirmed by means of Council Regulation (EEC) No 2760.72 of 19 December 1972 (OJ 1972 L 293, p. 1).