



C/2024/1395

19.2.2024

**Request for a preliminary ruling from the Gerechtshof Den Haag (Netherlands) lodged on  
17 November 2023 — AVR-Afvalverwerking BV v NV BAR-Afvalbeheer and Others**

**(Case C-692/23, AVR-Afvalverwerking)**

(C/2024/1395)

*Language of the case: Dutch*

**Referring court**

Gerechtshof Den Haag

**Parties to the main proceedings**

*Applicant:* AVR-Afvalverwerking BV

*Defendants:* NV BAR-Afvalbeheer, Gemeente Barendrecht, Gemeente Albrandswaard, Gemeente Ridderkerk, NV Irado, Afvalsturing Friesland NV

**Questions referred**

1. Should the activity criterion set out in point (b) of the first subparagraph of Article 12(3) of Directive 2014/24/EU, <sup>(1)</sup> read in conjunction with Article 12(5) of that directive, be interpreted as meaning that,  
where the percentage of activities referred to in those provisions is determined on the basis of turnover and the controlled legal person is part of a group,  
only the turnover of the controlled legal person itself should be taken into consideration, or also the turnover of affiliated or non-affiliated companies within the group, such as:
  - (i) the consolidated turnover in which the turnover of the relevant legal person is to be added to that of other group entities pursuant to the national transposition of Articles 22 and 24 of Directive 2013/34/EU <sup>(2)</sup>; or
  - (ii) the turnover of the entities with which the controlled legal person constitutes an economic unit within the meaning of the concept of ‘undertaking’ under EU competition law?
2. If the answer to Question 1 is that only the turnover of the controlled legal person itself should be taken into consideration, should the activity criterion referred to in that question be interpreted as meaning that  
the turnover derived from third-party users who dispose of waste in a landfill which the controlled legal person operates on behalf of controlling contracting authorities is to be regarded as turnover achieved in the performance of tasks entrusted to that legal person by those controlling contracting authorities, having regard to the fact that the controlled legal person competes, inter alia, with private parties in operating the landfill?

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<sup>(1)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

<sup>(2)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ 2013 L 182, p. 19).