ECLI:EU:C:2014:2185

JUDGMENT OF THE COURT (Second Chamber)

10 September 2014 ([\*](https://curia.europa.eu/juris/document/document.jsf;jsessionid=317A4C01B53EA814E956171ED0724910?text=&docid=157484&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3055929" \l "Footnote*))

(Reference for a preliminary ruling — Freedom of movement for workers — Article 45(1) and (4) TFEU — Concept of worker — Employment in the public service –Post of President of a Port Authority — Participation in the exercise of powers of a public authority — Nationality requirement)

In Case C‑270/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 8 January 2013, received at the Court on 17 May 2013, in the proceedings

**Iraklis Haralambidis**

v

**Calogero Casilli,**

intervening parties:

**Autorità Portuale di Brindisi,**

**Ministero delle Infrastrutture e dei Trasporti,**

**Regione Puglia,**

**Provincia di Brindisi,**

**Comune di Brindisi,**

**Camera di Commercio Industria Artigianato ed Agricoltura di Brindisi,**

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J. L. da Cruz Vilaça (Rapporteur), G. Arestis, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: N. Wahl,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 26 March 2014,

after considering the observations submitted on behalf of:

–        Mr Haralambidis, by G. Giacomini, R. Damonte, G. Scuras and G. Demartini, avvocati,

–        Mr Casilli, by R. Russo, avvocato,

–        the Autorità Portuale di Brindisi, by G. Giacomini and R. Damonte, avvocati,

–        the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

–        the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,

–        the Netherlands Government, by B. Koopman and M. Bulterman, acting as Agents,

–        the European Commission, by G. Gattinara, D. Martin and H. Tserepa-Lacombe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 June 2014,

gives the following

**Judgment**

1        This request for a preliminary ruling concerns the interpretation of Articles 45 TFEU, 49 TFEU and 51 TFEU, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36), and Articles 15 and 21(2) of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2        The request has been made in proceedings between Mr Haralambidis, a Greek national, and Mr Casilli concerning the appointment of Mr Haralambidis as President of the Autorità Portuale di Brindisi (the Port Authority of Brindisi).

**Italian law**

3        Article 51 of the Italian Constitution provides that ‘[t]he holding of public office or elected positions shall be open, on equal terms, to any citizen of either sex, in accordance with the conditions established by law’ and that ‘[f]or the purposes of access to public offices and elected positions, Italians not belonging to the Republic may be deemed by law to be equivalent to citizens’.

4        It is apparent from the order for reference that the expression ‘Italians not belonging to the Republic’ refers to citizens of Italian nationality residing abroad.

5        Article 38(1) and (2) of Legislative Decree No 165 concerning General rules for the organisation of work in the public administration (decreto legislativo n.165, Norme generali sull’ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche) of 30 March 2001 (Ordinary Supplement to GURI No 106 of 9 May 2001 (‘Legislative Decree No 165/01’) provides:

‘1.      Citizens of [European Union] Member States shall have access to posts in the public administration that do not involve the direct or indirect exercise of public powers, or do not relate to the protection of the national interest.

2.      A decree of the President of the Council of Ministers ... shall determine the posts and functions for which access is restricted to Italian nationals, as well as the mandatory criteria governing the access to posts of the citizens referred to in paragraph 1.’

6        Decree No 174 of the President of the Council of Ministers laying down the rules on access by citizens of European Union Member States to posts within the public administration (Decreto del Presidente del Consiglio dei Ministri, Regolamento recante norme sull’accesso dei cittadini degli Stati membri dell’Unione europea ai posti di lavoro presso le amministrazioni pubbliche) of 7 February 1994 (GURI No 61 of 15 March 1994) sets out the posts and duties for which Italian nationality is required. That decree was adopted pursuant to the decree preceding Legislative Decree No 165/01, namely Legislative Decree No 29 of 3 February 1993 (GURI No 30 of 6 February 1993), where wording did not differ significantly from that of Legislative Decree No 165/01.

7        Article 1(1)(b) of Decree No 174 of 7 February 1994 provides:

‘The posts in the public administration to which access cannot be obtained without Italian citizenship include:

…

(b)      the highest administrative posts of the peripheral structures of the public administration, including autonomous administrations, of the non-economic public entities, of provinces and municipalities as well as regions, and of the Bank of Italy’.

8        It is apparent from the order for reference that the Port Authority is a public body, created by Law No 84 concerning the recast of the rules on ports (Legge n. 84, Riordino della legislazione in materia portuale) of 28 January 1994 (Ordinary Supplement to GURI No 28 of 4 February 1994) (‘Law No 84/94’).

9        Article 6 of Law No 84/94 provides:

‘1.      … [A] Port Authority shall be established in the ports of … Brindisi ..., entrusted with the following tasks:

(a)      Direction, programming, coordination, promotion and control of port operations and other commercial and industrial activities in ports, with powers of regulation and order, including with respect to safety against risks of accidents related to such activities and health at work ...;

(b)      Ordinary and extraordinary maintenance of common areas in the port area ...;

(c)      Award and control of activities aimed at providing to port users, for remuneration, services of general interest which are not identical to individual port operations defined by decree of the Minister of Infrastructure and Transport, and which are not strictly connected with them.

2.      The Port Authority is a legal person governed by public law and enjoys administrative autonomy, subject to the provisions of Article 12, as well as budgetary and financial autonomy, within the limits provided for by the present law. The provisions of Law No 70 of 20 March 1975, as amended subsequently, do not apply to it, nor do the provisions of Decree-Law No 29 of 3 February 1993, as amended and supplemented subsequently, except to the extent that that is expressly provided for in Article 23(2) of the present law.

3.       The assets and financial management of the Port Authority are governed by an accounting regulation approved by the Minister of Transport and Navigation, in agreement with the Minister of the Treasury. The balance sheet of the Port Authorities is annexed to the estimate of expenditure and revenue of the Minister of Transport and Navigation for the financial year following that in which it was approved.

4.       The financial statement of the Port Authority is subject to review by the Italian Court of Auditors. …’

10      Article 7 of Law No 84/94 states:

‘…

2.      The remuneration of the President … is defrayed by the Port Authority and is determined by the Port Committee within the maximum limits established … by decree of the Minister of Transport and Navigation …

3.      The Minister of Transport and Navigation shall order by decree the removal from office of the President and the dissolution of the Port Committee where:

(a)       after expiry of the period referred to in Article 9(3)(a), the three-year operational plan has not been approved within the following 30 days;

…

(c)       the balance sheet is in deficit.’

11      Article 8 of Law No 84/94 is worded as follows:

‘1.      The President shall be appointed by decree of the Minister of Transport and Navigation, after obtaining the agreement of the region concerned, from a group of three highly-qualified experts, whose competence is established in the fields of transport and port economics …

2.      The President shall represent the Port Authority and is appointed for a four-year term, which may be renewed only once …

3.      The President of the Port Authority shall:

(a)       chair the Port Committee;

(b)       submit to the Port Committee the three-year operational plan for adoption;

(c)       submit to the Port Committee the port planning scheme for adoption;

(d)       submit to the Port Committee the draft decisions on the budget estimate and the amendments thereto, the balance sheet and the remuneration of the General Secretariat, as well as the implementation of the contractual agreements for the staff of the technical and operational secretariat;

(e)       propose to the Port Committee draft decisions on those concessions referred to in Article 6(5);

(f)       ensure coordination of the activities carried out in the port by the various public administrations, as well as coordination and control of the activities subject to licensing and concession, and of port services; ...

(h)      administer the State-owned maritime property in the area referred to in Article 6(7) on the basis of the applicable legislation, by exercising, after hearing the Port Committee, the functions defined in Articles 36 to 55 and 68 of the Navigation Code and the rules of implementation of those provisions;

(i)      exercise the powers attributed to the Port Authority under Articles 16 and 18 and to award, after hearing the Port Committee, the authorisations and concessions provided for in those articles, when those have a duration not exceeding four years in duration, and to determine the amount of the charges due;

(l)       promote the establishment of a union for the port workers ...;

(m)       ensure navigability in the port area …; for the purposes of excavation and maintenance works of the sea bed, he may organise, assuming the presidency thereof, an interdepartmental conference with the administrations concerned, to be concluded within a period of 60 days; in case of immediate necessity and urgency, he may adopt binding decisions …;

(n)      make proposals concerning the delimitation of free zones, after hearing the Maritime Authority and the local authorities concerned;

(n-bis)      exercise any other powers which this law does not entrust to the other governance bodies of the Port Authority.’

12      Under Article 12 of Law 84/94, entitled ‘Supervision of the Port Authority’:

‘1.       The Port Authority is subject to the supervision of the Minister of Transport and Navigation.

2.       The decisions of the President and of the Port Committee are subject to approval of the supervisory authority when they concern:

(a)       the approval of the estimated budget, possible amendments thereto and the balance sheet;

(b)       recruitment of the technical and operational staff secretariat; …’

13      Article 18 of Law 84/94, to which Article 8(3)(i) thereof refers, concerns the ‘concession of areas and docks’ and provides that it is for the Port Authority to award such concessions to undertakings which are authorised to conduct operations and/or to supply port services. That article provides, moreover, that a concession, which is for the Port Authority to award, also concerns the execution and management of works connected with maritime and port activities, to be carried out in the port area.

14      It follows from the answer of the Italian Government to the written questions of the Court that the President of a Port Authority is the administrative authority empowered to exercise the duties set out in Article 54 of the Navigation Code (Codice della Navigazione, approvato con R. D. 30 marzo 1942, n. 327, Parte aggiornata alla l. 7 marzo 2001, n. 51), namely, the adoption of an administrative measure by which anyone who unlawfully occupies maritime areas located in a port area is ordered to restore them to their original status, with the option, in the event of non-execution, to carry out restoration *ex officio*, at the expense of the offender.

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

15      On 6 April 2010, the date of expiry of the term of office of the President of the Port Authority of Brindisi, a procedure for the appointment of a new president was initiated by the Minister of Infrastructure and Transport (formerly, Minister of Transport and Navigation) (‘the Minister’).

16      In that procedure, the Provincia di Brindisi (Province of Brindisi), the Comune di Brindisi (municipality of Brindisi) and the Camera di Commercio, Industria, Artigianato ed Agricoltura di Brindisi (Chamber of Commerce, Industry, Crafts and Agriculture of Brindisi) each nominated, in accordance with Article 8(1) of Law No 84/94, three experts in the fields of economics, transport and port economics, including Mr Haralambidis and Mr Casilli.

17      By decree of 7 June 2011, the Minister appointed Mr Haralambidis as President of the Port Authority of Brindisi.

18      Mr Casilli brought an action before the Regional Administrative Court of Apulia (Tribunale amministrativo regionale per la Puglia) for annulment of that decree. In support of his action, Mr Casilli claimed that Mr Haralambidis could not be appointed president of that authority in so far as he did not possess Italian nationality.

19      Since that action was upheld on the basis of Article 51 of the Italian Constitution, Mr Haralambidis brought an appeal before the referring court.

20      In its order for reference, the Consiglio di Stato states that, under Italian law, the issue of the legal classification of port authorities has been raised several times since they were created and that in the case-law — including that of the Consiglio di Stato — they are classified as ‘public bodies’ or ‘public economic entities’.

21      In that regard, the Consiglio di Stato states that it is necessary to determine the legal nature of the port authority in the case where a natural person who is not an Italian national is appointed as its president, since if that authority were recognised as having the status of public economic entity operating under private law, there would be no reason to oppose such an appointment. On the other hand, if that authority had the status of public body operating institutionally under public law, and having consequently, as a matter of law, the characteristics of a ‘public administration’, that would not be the case.

22      According to the Consiglio di Stato, it cannot be disputed that the powers of the President of a Port Authority, as provided for in Article 8(3) of Law No 84/94, are of a public nature. That court states that that president must ensure navigability in the port area, prepare the port planning scheme and draw up a three-year operational plan.

23      Furthermore, the Consiglio di Stato states that the duties of the President of a Port Authority appear to resemble not an employment relationship with an administration, but the assignment of a mission entrusted by a governmental authority of the Italian State, limited in time and which must be performed as president of a legal person which is treated under EU law as a body governed by public law.

24      It is on that basis that the Consiglio di Stato decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1.       Given that the derogation laid down in Article 45(4) TFEU does not appear to apply to the present case [which concerns the appointment of a national of another Member State of the European Union as President of a Port Authority, a legal entity which can be classed as a body governed by public law] in that it relates to ... employment in the public service (which is not an issue ... in the present case) and given also that the fiduciary role of President of [the] Port Authority [of Brindisi] may nevertheless be regarded as an “employment activity” in the broad sense, ... does the provision reserving that post exclusively to Italian nationals constitute discrimination on grounds of nationality prohibited by Article 45 TFEU?

2.       Alternatively, may the holding of the office of President of an Italian Port Authority by a national of another Member State of the European Union be regarded as falling within the scope of the right of establishment laid down in Article 49 et seq. TFEU and, if so, does the prohibition laid down in national law on non-Italian nationals holding that office constitute discrimination on grounds of nationality, or would such a finding be precluded by Article 51 TFEU?

3.       As a further alternative, in the event that the holding of the office of President of an Italian Port Authority by a national of another Member State of the European Union may be regarded as the provision of “services” for the purposes of Directive 2006/123, is the exclusion of port services from the scope of that directive relevant in the present case and, if not, does the prohibition under national law in relation to the holding of that office constitute discrimination on grounds of nationality?

4.       As a yet further alternative, … in the event that the holding of the office of President of an Italian Port Authority by a national of another Member State of the European Union does not fall within the scope of any of the above provisions, may it nevertheless be regarded, more generally, in accordance with Article 15 of the Charter …, as a prerogative coming under the right of Community citizens to “work, to exercise the right of establishment and to provide services in any Member State”, irrespective of the specific “sectoral” provisions laid down in Article 45 and Article 49 et seq. TFEU, and in Directive 2006/123 …, and is the prohibition under national law in relation to the holding of that office accordingly inconsistent with the equally general prohibition of discrimination on grounds of nationality laid down in Article 21(2) of that Charter …?’

**Consideration of the questions referred**

*The first question*

25      By its first question, the referring court asks, in essence, whether, on the assumption that Article 45(4) is applicable to a situation such as that at issue in the main proceedings, that provision must be interpreted as not authorising a Member State to reserve to its nationals the exercise of the duties of President of a Port Authority.

 The concept of ‘worker’ within the meaning of Article 45(1) TFEU

26      First of all, it should be noted that it is apparent from the order for reference and, more specifically, the wording of the first question that the referring court has doubts concerning the nature of the activity exercised by the President of a Port Authority. According to that court, that activity does not appear to resemble an employment relationship, for the purposes of Article 45 TFEU.

27      In that regard, it should be noted that the concept of ‘worker’ for the purposes of Article 45 TFEU has an autonomous meaning specific to EU law and must not be interpreted narrowly (see, inter alia, judgment in *Commission* v *Netherlands*, C‑542/09, EU:C:2012:346, paragraph 68).

28      Any person who pursues activities that are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must this be regarded as a ‘worker’ within the meaning of Article 45 TFEU. According to the case-law of the Court, the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see judgments in *Lawrie-Blum*, 66/85, EU:C:1986:284, paragraph 17, and *Petersen*, C‑544/11, EU:C:2013:124, paragraph 30).

29      It follows that subordination and the payment of remuneration are constituent elements of all employment relationships, in so far as the professional activity at issue is effective and genuine.

30      With regard to subordination, it follows from Law No 84/94 that the Minister has powers of management and supervision and, where appropriate, may sanction the President of a Port Authority.

31      The Minister appoints the president of such an authority for a term of four years renewable once (Article 8(1) and (2) of Law No 84/94) and may remove him if the three-year operational plan relating to management of the port is not approved and if the balance sheet is in deficit, that is to say, in the event of bad financial management (Article 7(3)(a) and (c) of Law No 84/94). It is apparent also from the Italian Government’s answer to the written questions put by the Court that the termination of the mandate of the President of a Port Authority by the Minister ‘may be ordered where there are found to be important irregularities concerning management, such as to compromise the proper functioning of the entity. Those powers may involve also termination of functions where the president fails to comply with the principles of good faith and mutual cooperation’.

32      Furthermore, the Minister exercises powers of supervision in so far as he approves the decisions of the President of a Port Authority relating, in particular, to the approval of the estimated budget, possible amendments thereto and the balance sheet, and to the establishment of the technical and operational staff secretariat (Article 12(2)(a) and (b) of Law No 84/94).

33      On the other hand, as the Advocate General stated in point 32 of his Opinion, the post of President of a Port Authority lacks the features which are typically associated with the functions of an independent service provider, namely, more leeway in terms of choice of the type of work and tasks to be executed, of the manner in which that work or those tasks are to be performed, and of the time and place of work, and more freedom in the recruitment of his own staff.

34      It follows that the duties of the President of a Port Authority are performed under the management and supervision of the Minister, and therefore in a relationship of subordination, within the meaning of the case-law cited in paragraph 28 above.

35      As regards the remuneration of the President of a Port Authority, it is apparent from the Italian Government’s answer to the written questions put by the Court that it is established by a Ministerial Decree of 31 March 2003. Under that decree, that remuneration is calculated on the basis of the basic salary provided for the Directors-general of the Ministry. It is therefore set by reference to that of a senior official of the public administration.

36      The remuneration is paid to the President of a Port Authority in return for the fulfilment of the tasks assigned to him by law. It therefore has the predictability and regularity inherent in an employment relationship.

37      Finally, it should be noted that, as is apparent from the order for reference, in the main proceedings, the effective and genuine nature of the functions performed by the President of a Port Authority is not contested (see judgment in *Lawrie-Blum*, EU:C:1986:284, paragraph 21, last sentence).

38      In those circumstances, it should be found that, in situations such as those at issue in the main proceedings, the President of a Port Authority must be regarded as a worker within the meaning of Article 45(1) TFEU.

39      That finding cannot be invalidated by the assertion of the referring court that the appointment of the President of a Port Authority cannot amount to an employment relationship within the context of the ‘civil service’, but is the attribution of a ‘trust mission’ delegated by a government authority connected with the exercise of public tasks.

40      According to established case-law, the public law or private law nature of the legal relationship of the employer and employee is of no consequence in regard to the application of Article 45 TFEU (see judgments in *Sotgiu*, 152/73, EU:C:1974:13, paragraph 5, and *Bettray*, 344/87, EU:C:1989:226, paragraph 16).

41      Moreover, the Court has previously held, in the context of an examination of the link between a member of the board of directors of a capital company and that company, that board members who, in return for remuneration, provide services to the company which has appointed them and of which they are an integral part, who carry out their activities under the direction or control of another body of that company and who can, at any time, be removed from their duties, satisfy the criteria for being treated as workers within the meaning of the case-law of the Court (judgment in *Danosa*, C‑232/09, EU:C:2010:674, paragraph 51).

 The concept of ‘employment in the public service’ within the meaning of Article 45(4) TFEU

42      Article 45(1) to (3) TFEU lays down the fundamental principle of the freedom of movement for workers and the abolition of all discrimination based on nationality between workers of the Member States. Article 45(4) TFEU provides however that the provisions of that article are not to apply to employment in the public service.

43      According to the Court’s case-law, the concept of ‘public service’ within the meaning of Article 45(4) TFEU must be given uniform interpretation and application throughout the European Union and cannot therefore be left entirely to the discretion of the Member States (see, inter alia, judgments in *Sotgiu*, EU:C:1974:13, paragraph 5, and *Colegio de Oficiales de la Marina Mercante Española*, C‑405/01, EU:C:2003:515, paragraph 38). Furthermore, that derogation must be construed in such a way as to limit its scope to what is strictly necessary for safeguarding the interests which it allows the Member States to protect (see judgment in *Colegio de Oficiales de la Marina Mercante Española*, C‑405/01, EU:C:2003:515, paragraph 41).

44      In that regard, the Court has previously held that the concept of ‘public service’ within the meaning of Article 45(4) TFEU covers posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities and thus presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality (see, inter alia, judgments in *Commission* v *Greece*, C‑290/94, EU:C:1996:265, paragraph 2, and *Colegio de Oficiales de la Marina Mercante Española*, EU:C:2003:515, paragraph 39).

45      On the other hand, the exception provided for in Article 45(4) TFEU does not cover posts which, while coming under the State or other bodies governed by public law, still do not involve any association with tasks belonging to the public service properly so called (judgments in *Commission* v *Greece*, EU:C:1996:265, paragraph 2, and *Colegio de Oficiales de la Marina Mercante Española*, EU:C:2003:515, paragraph 40).

46      It is therefore necessary to determine whether the tasks attributed to the President of a Port Authority involve the exercise of powers of a public law and the safeguard of the general interests of the State such as to justify their being reserved to Italian citizens.

47      Article 8(3) of Law No 84/94 lists the tasks which are conferred on the President of a Port Authority.

48      First of all, it should be noted that, beyond the Board of the Port Committee, the activities referred to in Article 8(3)(a) to (e) and (n) of that law are limited to duties of the President of a Port Authority to propose certain measures to the Port Committee connected with the ongoing management of the port.

49      Such activities cannot fall within the derogation provided for in Article 45(4) TFEU, particularly since the President of a Port Authority is not endowed with a decision-making power, which belongs to the Port Committee.

50      Likewise, the powers described in Article 8(3)(f) and (l) of Law No 84/94, in so far as they cover only powers of coordination and promotion of activities of other bodies, are not capable of coming within the exercise of powers of a public authority and duties designed to safeguard the general interests of the State.

51      It must be observed, in that regard, that it is not apparent from the case file submitted to the Court that the bodies whose activities are coordinated or promoted by the President of a Port Authority are themselves entrusted with duties in the public service, within the meaning of Article 45(4) TFEU.

52      Furthermore, under Article 8(3)(i) of Law No 84/94, read in conjunction with Article 18 of that law, the President of a Port Authority exercises the powers attributed to the Port Authority and awards authorisations and concessions of areas and docks to undertakings wishing to conduct operations or supply port services.

53      However, contrary to the submissions of the Spanish and Netherlands Governments, the award of those authorisations and concessions, in so far as they amount to management tasks which concern primarily economic considerations, can also not be regarded as coming within the scope of application of Article 45(4) TFEU.

54      Finally, in certain circumstances, the President of a Port Authority is empowered, in the exercise of his powers of injunction, to adopt binding decisions in order to safeguard the general interests of the State, in the present case the preservation of common assets.

55      Among those powers of injunction are, first, in the context of the administration of the maritime areas and property, the power to order a person who unlawfully occupies those areas, located within the port area, to restore them to their original status, with the option, in the event of non-execution of that injunction, to carry out the restoration *ex officio* at the expense of the offender (Article 8(3)(h) of Law No 84/94, read in conjunction with Article 54 of the Navigation Code).

56      Secondly, under Article 8(3)(m) of Law No 84/94, the President of a Port Authority ensures navigability of the port area and the carrying out of excavation and maintenance works of the sea bed. For that purpose, and in case of immediate necessity and urgency, the President has the power to adopt binding decisions.

57      In so far as those powers involve the exercise of powers of a public authority, they are capable of coming within the derogation to the freedom of movement for workers provided for in Article 45(4) TFEU.

58      However, recourse to that derogation cannot be justified on the sole ground that powers of a public authority are attributed under national law to the President of a Port Authority. It is also necessary that those powers be in fact exercised on a regular basis by that holder and do not constitute a minor part of his duties.

59      As noted in paragraph 43 above, that derogation must be construed in such a way as to limit its scope to what is strictly necessary for safeguarding the general interests of the Member State concerned, which cannot be imperilled if powers of a public authority are exercised only occasionally, or indeed exceptionally, by nationals of other Member States (see judgments in *Colegio de Oficiales de la Marina Mercante Española*, EU:C:2003:515, paragraph 44; *Anker and Others*, C‑47/02, EU:C:2003:516, paragraph 63; and *Commission* v *France*, C‑89/07, EU:C:2008:154, paragraph 14).

60      According to the information provided by the Italian Government, the powers of the President of a Port Authority are a marginal part of his duties, which are generally of a technical and financial management nature and which cannot be amended by the exercise of those powers. Furthermore, according to the Italian Government, those powers are intended to be exercised solely occasionally or in exceptional circumstances.

61      In those circumstances, a general exclusion of nationals of other Member States from access to the post of President of an Italian Port Authority constitutes discrimination on grounds of nationality prohibited by Article 45(1) to (3) TFEU.

62      Having regard to the foregoing, the answer to the first question is that, in circumstances such as those at issue in the main proceedings, Article 45(4) TFEU must be interpreted as not authorising a Member State to reserve to its nationals the exercise of the duties of President of a Port Authority.

*The second to fourth questions*

63      The second to fourth questions were asked in the alternative and on the assumption that Article 45 TFEU was not applicable to the main proceedings.

64      Given the answer to the first question, there is no need to answer the other questions.

**Costs**

65      Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

**In circumstances such as those at issue in the main proceedings, Article 45(4) TFEU must be interpreted as not authorising a Member State to reserve to its nationals the exercise of the duties of President of a Port Authority.**

[Signatures]