ECLI:EU:C:2021:107

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

11 February 2021 (*)

(Reference for a preliminary ruling – Article 45 TFEU – Freedom of movement for workers – Article 49 TFEU – Freedom of establishment – Article 56 TFEU – Freedom to provide services – Carrying out of port activities – Dockers – Access to the profession and recruitment – Arrangements for the recognition of dockers – Dockers not part of the quota of workers provided for in national legislation – Limitation of the duration of the work contract – Mobility of dockers between different port areas – Workers carrying out logistical work – Safety certificate – Overriding reasons in the public interest – Safety in port areas – Protection of workers – Proportionality)

In Joined Cases C-407/19 and C-471/19,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Belgium) (C-407/19) and the Grondwettelijk Hof (Constitutional Court, Belgium) (C-471/19), made by decisions of 16 May and 6 June 2019, received at the Court on 24 May and 20 June 2019, respectively, in the proceedings

Katoen Natie Bulk Terminals NV,

General Services Antwerp NV

v

Belgische Staat (C-407/19),

and

Middlegate Europe NV

v

Ministerraad (C-471/19),

intervening parties:

Katoen Natie Bulk Terminals NV,

General Services Antwerp NV,

Koninklijk Verbond der Beheerders van Goederenstromen (KVBG) CVBA,

MVH Logistics en Stuwadoring BV,

THE COURT (Fourth Chamber),

composed of M. Vilaras (Rapporteur), President of the Chamber, N. Piçarra, D. Šváby, S. Rodin and K. Jürimäe, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– General Services Antwerp NV, Katoen Natie Bulk Terminals NV and Middlegate Europe NV, by M. Lebbe and E. Simons, advocaten,

– the Belgian Government, by L. Van den Broeck, M. Jacobs and C. Pochet, acting as Agents, and by P. Wytinck, D. D'Hooghe and T. Ruys, advocaten,

– the European Commission, by A. Nijenhuis, S.L. Kalėda and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2020,

gives the following

Judgment

1 The requests for a preliminary ruling concern the interpretation, in Case C-407/19, of Articles 34, 35, 45, 49, 56, 101, 102 and 106(1) TFEU and, in Case C-471/19, of Articles 49 and 56 TFEU, Articles 15 and 16 of the Charter of Fundamental Rights of the European Union ('the Charter') and of the principle of equality.

2 The requests have been made in proceedings between, in Case C-407/19, Katoen Natie Bulk Terminals NV and General Services Antwerp NV, on the one hand, and the Belgische Staat (Belgian State), on the other, and, in Case C-471/19, Middlegate Europe NV and the Ministerraad (Council of Ministers, Belgium) concerning the validity of certain provisions of Belgian law relating to the organisation of dock work and, in particular, their compliance with EU law.

Belgian law

Law on employment contracts

3 Under Belgian law, the common regime applicable to employment contracts, in particular those of workers, is laid down by the Wet betreffende de arbeidsovereenkomsten (Law on employment contracts) of 3 July 1978 (*Belgisch Staatsblad*, 22 August 1978, p. 9277).

Law organising dock work

4 Article 1 of the Wet betreffende de havenarbeid (Law organising dock work) of 8 June 1972 (*Belgisch Staatsblad*, 10 August 1972, p. 8826), in the version applicable to the facts in the main proceedings ('the Law organising dock work'), provides:

'No one shall have dock work carried out in port areas by workers other than recognised dockers.'

5 Article 2 of that law provides:

'The demarcation of port areas and of dock work areas as is established by the King … shall govern the application of this Law.'

6 Article 3 of that law is worded as follows:

'The King shall establish the conditions and arrangements for the recognition of dockers, on the advice of the joint committee competent for the port area concerned.

…'

7 Under Article 3a of the same law:

'On the advice of the joint committee competent for the port area concerned, the King may oblige employers, employing dockers in that area, to become affiliated to an employers' organisation approved by it and which, as agent, fulfils all the obligations which, by virtue of the legislation on individual and collective labour and social legislation, arise for employers from the employment of dockers.

In order to be approved, the employers' organisation referred to in the preceding subparagraph must already have the majority of the employers concerned among its members.'

Royal Decree of 1973

8 Article 1 of the Koninklijk besluit tot oprichting en tot vaststelling van de benaming en van de bevoegdheid van het Paritair Comité van het Havenbedrijf (Royal Decree establishing the Joint Ports Committee and determining its appointment and powers) of 12 January 1973 (*Belgisch Staatsblad*, 23 January 1973, p. 877), in the version applicable to the facts in the main proceedings ('the Royal Decree of 1973'), provides:

'A joint committee, to be known as the "Joint Ports Committee" (responsible for workers in general and their employers), is hereby established for:

all workers and their employers who, in port areas:

A. carry out, as a principal or ancillary activity, dock work, that is to say, the handling in any form of goods transported by sea-going ship or inland waterway vessel, by railway goods wagon or lorry, and the ancillary services connected with those goods, whether such operations take place in docks, on navigable waterways, on quays or in establishments engaged in the importation, exportation and transit of goods, as well as the handling in any form of goods transported by sea-going ship or inland waterway vessel to or from the quays of industrial establishments.

The following definitions shall apply:

1. Handling in any form of goods:

(a) goods: all goods, containers and means of transport associated therewith, with the exception only of:

– bulk transport of oil, (liquid) petroleum products and liquid raw materials for refineries, the chemical industry and storage and processing activities in oil installations;

– fish brought in by fishing vessels;

– pressurised and bulk liquid gases.

(b) handling: loading, unloading, stowing, unstowing, restowing, unloading in bulk, unmooring, classifying, sorting, sizing, stacking, unstacking and assembling and disassembling individual consignments.

2. Ancillary services connected with those goods: marking, weighing, measuring, cubing, checking, receiving, guarding (with the exception of security services provided by undertakings falling within the responsibility of the Joint Committee for Security and/or Surveillance Services on behalf of undertakings overseen by the Joint Ports Committee), delivering, sampling and sealing, lashing and unlashing.

…'

Royal Decree of 2004

9 Before it was amended by the Koninklijk besluit tot wijziging van het koninklijk besluit van 5 juli 2004 betreffende de erkenning van havenarbeiders in de havengebieden die onder het toepassingsgebied vallen van de wet van 8 juni 1972 betreffende de havenarbeid (Royal Decree amending the Royal Decree of 5 July 2004 on the recognition of dockers in port areas falling within the scope of the Law of 8 June 1972 organising dock work) of 10 July 2016 (*Belgisch Staatsblad*, 13 July 2016, p. 43879; 'the Royal Decree of 2016'), Article 2 of the Koninklijk besluit betreffende de erkenning van havenarbeiders in de havengebieden die onder het toepassingsgebied vallen van de wet van 8 juni 1972 betreffende de havenarbeid (Royal Decree on the recognition of dockers in port areas falling within the scope of the Law of 8 June 1972 organising dock work) of 5 July 2004 (*Belgisch Staatsblad*, 4 August 2004, p. 58908) provided:

'After they have been recognised, dockers shall be allocated, either under the "general quota" or under the "logistical quota".

Dockers from the general quota shall be recognised to carry out any dock work within the meaning of Article 1 of [the Royal Decree of 1973].

Dockers from the logistical quota shall be recognised to carry out dock work within the meaning of Article 1 of [the Royal Decree of 1973] at places where goods, in preparation for their further distribution or dispatch, undergo processing which leads indirectly to demonstrable added value.'

10 The Royal Decree on the recognition of dockers in port areas falling within the scope of the Law of 8 June 1972 organising dock work, as amended by the Royal Decree of 2016 ('the Royal Decree of 2004'), inter alia replaced the term 'quota' ('*contingent*') with the term 'pool' ('*pool*'). Article 1 of the Royal Decree of 2004 provides:

'(1) In each port area, dockers shall be recognised by the jointly composed committee, hereinafter referred to as "the Administrative Committee", established within the joint subcommittee responsible for the port area concerned.

The Administrative Committee shall be composed of:

1. a chair and a vice-chair;

2. four full members and four substitute members designated by the employers' organisations represented on the joint subcommittee;

3. four full members and four substitute members designated by the workers' organisations represented on the joint subcommittee;

4. one or more secretaries.

The provisions of the Royal Decree of 6 November 1969 determining the general rules of operation of joint committees and subcommittees and the special rules laid down in Article 10 of this decree shall apply to the functioning of the Administrative Committee.

(2) An application for recognition shall be made in writing to the competent joint subcommittee using a model provided for that purpose.

The application shall indicate whether it is being made with a view to employment within or outside the pool.

(3) By way of derogation from the first subparagraph of Article 1, in the case of workers who carry out work within the meaning of Article 1 of [the Royal Decree of 1973] at places where goods, in preparation for their further distribution or dispatch, undergo processing which leads indirectly to demonstrable added value, and who hold a "logistics workers" safety certificate, that security certificate shall constitute recognition for the purposes of [the Law organising dock work].

The safety certificate shall be requested by an employer who has signed an employment contract with a worker for the performance of activities as referred to in the preceding subparagraph and shall be issued on presentation of the worker's identity card and employment contract. The arrangements for this procedure shall be laid down by collective labour agreement.

11 According to Article 2 of that royal decree:

'(1) The dockers referred to in the first subparagraph of Article 1(1) shall, upon their recognition, either be included or not included in the dockers' pool.

For recognition with a view to inclusion in the pool, account shall be taken of the need for labour.

(2) Dockers included in the pool shall be recognised for a fixed or indefinite period of time.

The arrangements governing the duration of recognition shall be laid down by collective labour agreement.

(3) Dockers not included in the pool shall be engaged under an employment contract in accordance with the Law … on employment contracts.

The duration of recognition shall be limited to the duration of that employment contract.'

12 Article 4 of that royal decree is worded as follows:

'(1) Recognition as a docker as referred to in the first subparagraph of Article 1(1) shall be subject to the following conditions:

…

2. being declared medically fit for dock work by the external service for prevention and protection at work, to which is affiliated the employers' organisation which has been designated as agent in accordance with Article 3a of [the Law organising dock work];

3. having passed the psychotechnical tests conducted by the body appointed for that purpose by the employers' organisation which has been designated as agent in accordance with Article 3a of [the Law organising dock work]; the purpose of those tests is to examine whether the candidate docker is sufficiently intelligent and has the character and motivation necessary to enable him or her, following training, to perform the function of docker;

…

6. having followed, over a three-week period, preparatory courses for working safely and for obtaining a professional qualification and having passed the final test. The competent authority may define the quality criteria that are to be met by the training, which may be provided for free;

7. not having been subject, during the last five years, to a measure withdrawing recognition as a docker on the basis of Article 7[, first subparagraph], point 1 or 3, of this decree;

8. in the case of recognition of a docker referred to in Article 2(3), also having an employment contract.

(2) Recognition of a docker shall be valid in each port area as defined by the King pursuant to Articles 35 and 37 of the Law of 5 December 1968 on collective labour agreements and joint committees.

The conditions and arrangements under which a docker may be employed in a port area other than that in which he or she is recognised shall be laid down by collective labour agreement.

The employers' organisation designated as agent in accordance with Article 3a of [the Law organising dock work] shall continue to act as agent in the event that the docker is employed outside the port area in which he or she has been recognised.

(3) Dockers who are able to prove that they satisfy equivalent conditions, in another Member State of the European Union, in respect of dock work shall no longer be subject, as regards the application of this decree, to these conditions.

(4) Applications for recognition and renewal shall be made to, and processed by, the Administrative Committee.'

13 Article 13/1 of the same royal decree provides:

'(1) [For the period prior to 30 June 2017,] the employment contract referred to in the second subparagraph of Article 2(3) shall be concluded for an indefinite period;

(2) [For the period from 1 July 2017 to 30 June 2018,] the employment contract referred to in the second subparagraph of Article 2(3) shall be concluded for a minimum period of two years;

(3) [For the period from 1 July 2018 to 30 June 2019,] the employment contract referred to in the second subparagraph of Article 2(3) shall be concluded for a minimum period of one year;

(4) [For the period from 1 July 2019 to 30 June 2020,] the employment contract referred to in the second subparagraph of Article 2(3) shall be concluded for a minimum period of six months.'

14 According to Article 15/1 of the Royal Decree of 2004:

'For the application of this decree:

(1) dockers recognised on the basis of the second paragraph of the former Article 2 shall automatically be recognised as dockers included in the pool in accordance with Article 2(1), without prejudice to the application of Articles 5 to 9 of this decree;

(2) dockers recognised on the basis of the third paragraph of the former Article 2 shall automatically be treated in the same way as the logistics workers referred to in Article 1(3), without prejudice to the application of Articles 5 to 9 of this decree.'

The disputes in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

Case C-407/19

15 Katoen Natie Bulk Terminals and General Services Antwerp are two companies established in Belgium, the objects of which include port operations in Belgium and abroad.

16 On 5 September 2016, those two companies brought an action before the referring court in Case C-407/19, the Raad van State (Council of State, Belgium), seeking annulment of the Royal Decree of 2016.

17 That royal decree had been adopted following the letter of formal notice sent to the Kingdom of Belgium by the European Commission, on 28 March 2014, according to which its dock work legislation infringed Article 49 TFEU. The Commission stated, in essence, that the Belgian legislation on the employment of dockers deterred foreign undertakings from setting up establishments in Belgium since they did not have free choice of the members of their staff, but were required to use recognised dockers, even for logistical tasks, which moreover could be

deployed only within a limited geographical area. Following the adoption of the Royal Decree of 2016, the Commission decided, on 17 May 2017, to close the infringement procedure.

18 The Raad van State (Council of State) states, as a preliminary point, that the Royal Decree of 2016, which is a substantive law the annulment *erga omnes* of which is sought in the proceedings pending before it, applies without distinction to undertakings, employers and workers, regardless of their nationality, which carry out dock work or have it carried out in Belgian port areas, or which are established in port areas or wish to establish themselves there.

19 That court also draws attention to the fact that the Royal Decree of 2004 governs dock work in (sea)port areas situated in Belgium, including the ports of Antwerp (Belgium) and Zeebrugge (Belgium), which are seaports oriented towards international transport, which is an extremely competitive environment. It is therefore important not to lose sight of the clearly cross-border interest of seaport areas, having regard in particular to the import and export activities developed there, to the many international operators active there, particularly those from other Member States, to the commercial activities carried out there in the international trade sector and to the attractiveness of a location that might be of interest to foreign operators and foreign workers – from nearby Member States, as the case may be – which those operators would wish to use to deliver their business activities. In the light of those elements, that court is of the view that the dispute before it does not concern a purely internal situation within the meaning of the case-law of the Court.

20 As regards the freedom of movement for workers, guaranteed by Article 45 TFEU, the Raad van State (Council of State) observes that Katoen Natie Bulk Terminals and General Services Antwerp are Belgian logistics companies operating in Belgian port areas which, in order to achieve their social objective, seek to be able to employ dockers other than recognised dockers, irrespective of their nationality. In their capacity as employers wishing to employ, in the Member State in which they are established, workers who are nationals of another Member State, those companies can thus invoke the freedom of movement for workers, enshrined in Article 45 TFEU. In so far as it appears that the conditions set out in the Royal Decree of 2004 make it complicated, for nationals of other Member States, to perform dock work in the Belgian territory and impede the freedom of movement for workers, employers such as the companies referred to should also be able to oppose such legislation. That also shows that the dispute pending before that court cannot be reduced to a purely internal situation.

21 As regards the substance of the dispute, the Raad van State (Council of State) states that Katoen Natie Bulk Terminals and General Services Antwerp dispute, in essence, seven measures contained in the Royal Decree of 2004 that were introduced or amended by the Royal Decree of 2016.

22 That court starts from the premiss that those measures collectively constitute an obstacle to the fundamental freedoms guaranteed by the FEU Treaty, since they are liable to complicate or render less attractive for workers – including those originating from another Member State – the performance of dock work in a Belgian port area, as well as the engagement of such workers by employers.

23 As regards a possible justification of those obstacles in the light of overriding reasons in the public interest, that court observes that Katoen Natie Bulk Terminals and General Services Antwerp dispute that those measures are ‘suitable’ in general for attaining the objective pursued, which is to ensure safety in port areas and, therefore, the safety and labour law protection of dockers. They also

dispute that those measures are proportionate and do not go beyond what is necessary in order to attain that objective while being non-discriminatory.

24 So far as concerns, in the first place, the compulsory recognition of all dockers not charged with carrying out logistical tasks by the administrative committee referred to in Article 1(1) of the Royal Decree of 2004 and composed of employers' organisations and workers' organisations ('the Administrative Committee'), the absence of adequate procedural guarantees in that regard and the necessity of taking account of the need for labour for recognition with a view to inclusion in the pool, the Raad van State (Council of State) states that, under Belgian law, a positive or negative decision by the Administrative Committee on the grant of recognition as a docker may be challenged directly by means of judicial review.

25 In the second place, regarding the verification of the conditions for recognition relating to medical fitness and to the passing of the psychotechnical tests, the Raad van State (Council of State) questions, in particular, whether the additional condition, set in Article 4(1)(8) of the Royal Decree of 2004, requiring the worker to have also an employment contract, is adequate for attaining the objective pursued, which is to ensure safety in port areas.

26 As regards, in the third place, the duration of the recognition of workers not included in the pool, and the transitional regime put in place by the Royal Decree of 2004, the Raad van State (Council of State) observes that each time the worker obtains an employment contract, he or she must complete the recognition procedure, irrespective of the reason for which his or her previous employment contract came to an end.

27 The Raad van State (Council of State) observes, in the fourth place, that, as a result of the transitional regime put in place by the Royal Decree of 2004, an employment contract concluded before 30 June 2017 had to be concluded for an indefinite period. Then, in turn, a contract concluded from 1 July 2017 had to be concluded for a period of at least two years, from 1 July 2018, for a period of at least one year, and, from 1 July 2019, for a period of at least six months. It is only from 1 July 2020 that it has been possible to determine freely the duration of the employment contract. Thus, the status of the docker subject, in accordance with Article 2(3) of the Royal Decree of 2004, to the common regime provided for by the Law on employment contracts is considerably less attractive than that of the docker included in the pool, which may constitute an unjustified restriction on the freedom of movement.

28 With regard, in the fifth place, to the automatic recognition of all dockers employed as dockers 'included in the pool', the Raad van State (Council of State) notes that, according to Katoen Natie Bulk Terminals and General Services Antwerp, that measure deprives employers of the right to engage a quality workforce by concluding directly with the dockers a permanent contract guaranteeing them job security in accordance with the rules of general labour law, since those workers remain 'automatically' included in the pool. The question arises as to whether such a measure must be regarded as adequate and proportionate in the light of the objective pursued, and therefore in accordance with the freedom of establishment and the freedom of movement for workers.

29 In the sixth place, as regards the obligation to lay down by collective labour agreement ('CLA') the terms and arrangements for the employment of workers, with a view to carrying out work in a port area other than that in which they obtained recognition, the Raad van State (Council of State) wonders whether such a measure is reasonable and proportionate or whether, as Katoen Natie Bulk Terminals and General Services Antwerp maintain, it cannot reasonably be argued that

the mobility of workers between different port areas should be restricted or subject to additional conditions in the name of port area safety.

30 Finally, in the seventh place, so far as concerns the obligation, for workers doing logistical work, as defined in Article 1(3) of the Royal Decree of 2004 ('logistics workers'), to hold a 'security certificate', the Raad van State (Council of State) is of the view that such a measure is intended to ensure safety in general and, as a result, also that of the workers concerned. The question nevertheless arises as to whether such a measure, interpreted as meaning that that security certificate must be requested each time a new employment contract is concluded, does not represent a significant and disproportionate administrative burden, in the light of the freedom of establishment and the freedom of movement for workers.

31 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should Article[s] 49, 56, 45, 34, 35, 101 or 102 of the TFEU, whether or not read in conjunction with Article 106(1) of the TFEU, be interpreted as precluding the rule laid down in Article 1 of the [Royal Decree of 2004], read in conjunction with Article 2 of [that royal decree], namely, the rule that the dockers referred to in Article 1(1), first subparagraph, of [that royal decree], upon their recognition by the [Administrative Committee], composed jointly, on the one hand, of members designated by the employer organisations represented in the relevant joint subcommittee and, on the other hand, of members designated by the employee organisations represented on the joint subcommittee, are either included in the pool of dockers or are not included in that pool, whereby recognition for the purpose of inclusion takes into account the need for [labour] and also takes into account that a decision-making deadline has not been prescribed for that [administrative committee] and that against its recognition decisions provision has been made only for a jurisdictional appeal?

(2) Should Article[s] 49, 56, 45, 34, 35, 101 or 102 of the TFEU, whether or not in conjunction with Article 106(1) of the TFEU, be interpreted as precluding the rule introduced by Article 4(1), subparagraphs 2, 3, 6 and 8 of the [Royal Decree of 2004], namely, the rule that lays down as a condition for recognition as a docker that the worker (a) has been declared medically fit by the external service for prevention and protection at the work with which the employer organisation designated as an agent under Article 3a of the [Law organising dock work] is associated, and (b) has passed the psychotechnical tests conducted by the body designated for that purpose by the recognised employer organisation designated as an agent under the same Article 3a of the [Law organising dock work], (c) has attended for three weeks the preparatory courses on safety at work and the attainment of professional competence and has passed the final test and (d) [is] already … in possession of an employment contract in the case of a docker who is not included in the pool, which, read in conjunction with Article 4(3) of the [Royal Decree of 2004], means that foreign dockers must be able to prove that they satisf[y] comparable conditions in another Member State so that, for the purpose of the application of the contested rule, they are no longer subject to those conditions?

(3) Should Article[s] 49, 56, 45, 34, 35, 101 or 102 of the TFEU, whether or not in conjunction with Article 106(1) of the TFEU, be interpreted as precluding the rule introduced by Article 2(3) of the [Royal Decree of 2004], namely, the rule whereby the dockers who are not included in the pool and who are therefore directly recruited by an employer on an employment contract in accordance with the [Law on employment contracts] have the duration of their recognition limited to the duration of that employment contract so that each time a new recognition procedure must be started?

(4) Should Article[s] 49, 56, 45, 34, 35, 101 or 102 of the TFEU, whether or not in conjunction with Article 106(1) TFEU, be interpreted as precluding the rule introduced by Article 13/1 of the [Royal Decree of 2004], namely, the transitional measure whereby the employment contract referred to in Question 3 must initially be concluded for an indefinite period[, second,] from 1 July 2017 for at least two years[, third,] from 1 July 2018 for at least one year, [fourth,] from 1 July 2019 for at least six months[and, fifth and last], from 1 July 2020 for a period to be freely determined?

(5) Should Article[s] 49, 56, 45, 34, 35, 101 or 102 of the TFEU, whether or not in conjunction with Article 106(1) TFEU, be interpreted as precluding the rule laid down in Article 15/1 of the [Royal Decree of 2004,] whereby the dockers recognised under the old rule are automatically recognised as dockers in the pool, as a result of which the possibility of direct employment (on a permanent contract) of those dockers by an employer is hindered and the employers are prevented from engaging and retaining good workers by concluding a permanent contract with them directly and offering them job security in accordance with the general rules of labour law?

(6) Should Article[s] 49, 56, 45, 34, 35, 101 or 102 of the TFEU, whether or not in conjunction with Article 106(1) TFEU, be interpreted as precluding the rule introduced by Article 4(2) of the [Royal Decree of 2004,] whereby a [CLA] determines the conditions and detailed rules under which a docker can be employed in a port area other than the one where he or she was recognised, thereby limiting the mobility of workers between port areas without the regulator itself providing clarity as to what those terms and conditions might be?

(7) Should Article[s] 49, 56, 45, 34, 35, 101 or 102 of the TFEU, whether or not in conjunction with Article 106(1) TFEU, be interpreted as precluding the rule introduced by Article 1(3) of the [Royal Decree of 2004,] whereby (logistics) workers who perform work within the meaning of Article 1 of the [Royal Decree of 1973] at locations where goods which, in preparation for their further distribution or dispatch, undergo a transformation that leads indirectly to demonstrable added value, must have a security certificate, whereby that security certificate constitutes recognition within the meaning of the [Law organising dock work], taking into account that that certificate is requested by the employer who has signed an employment contract with a worker for activities in that sense to be performed and issued upon presentation of the employment contract and identity card and whereby the detailed rules of the procedure to be followed are laid down by [CLA], without the regulator providing clarity on that point?'

Case C-471/19

32 Middlegate Europe is a transport company established in Zeebrugge, and active throughout Europe. In the context of international road haulage, its workers prepare, inter alia, the loading of semi-trailers on the quay of the port of Zeebrugge using a 'tugmaster' (towing tractor) for dispatch to the United Kingdom and Ireland.

33 On 12 January 2011, a worker who was preparing such loads in the context of international road haulage from Virton (Belgium) to Bury (United Kingdom) was subject to a police check. Following that check, the police drew up a report against Middlegate Europe for infringement of Article 1 of the Law organising dock work, that is to say, the carrying out of dock work by an unrecognised docker.

34 By decision of 17 January 2013, an administrative fine of EUR 100 was imposed on Middlegate Europe. That company brought an action against that decision before the Arbeidsrechtbank Gent, afdeling Brugge (Labour Court, Ghent, Bruges Section, Belgium). By judgment of 17 December 2014, that court dismissed the action as unfounded. By judgment of

3 November 2016, the Arbeidshof te Gent (Higher Labour Court, Ghent, Belgium) dismissed as unfounded the appeal brought against the decision taken at first instance.

35 Middlegate Europe then brought an appeal against that judgment before the Hof van Cassatie (Court of Cassation, Belgium). In the context of that procedure, it has argued that Articles 1 and 2 of the Law organising dock work are contrary to Articles 10, 11 and 23 of the Belgian Constitution, in that they disregard the freedom of trade and industry of undertakings. At the request of Middlegate Europe, the Hof van Cassatie (Court of Cassation) decided to submit two questions for a preliminary ruling to the referring court in Case C-471/19, the Grondwettelijk Hof (Constitutional Court, Belgium).

36 That court notes that the freedom of trade and industry, as enshrined in the Belgian Constitution, is closely linked to the freedom to choose an occupation, the right to engage in work and the freedom to conduct a business, which are guaranteed by Articles 15 and 16 of the Charter, and to several fundamental freedoms guaranteed by the FEU Treaty, such as the freedom to provide services (Article 56 TFEU) and the freedom of establishment (Article 49 TFEU).

37 In the first place, the Grondwettelijk Hof (Constitutional Court) considers that the obligation imposed, under the Law organising dock work, on undertakings wishing to carry out dock work in port areas, including activities unrelated to the loading and unloading of ships, to use only recognised dockers and to become obligatorily affiliated to that end to a recognised employers' representative organisation, appears to restrict, with regard to those undertakings, the free selection of staff and the freedom to negotiate working conditions.

38 Therefore, that court considers that Articles 1 and 2 of the Law organising dock work entail a restriction on the freedom of establishment within the meaning of Article 49 TFEU. In the light of the Court's case-law, in particular the judgment of 11 December 2014, *Commission* v *Spain* (C-576/13, not published, EU:C:2014:2430), it wonders whether or not that restriction is justified, having regard to the specific characteristics and circumstances of the national legislation on dock work.

39 It observes, in that regard, that the objective of the Belgian legislature, at the time of the adoption of the Law organising dock work, was to protect the profession of docker by prohibiting unrecognised workers from performing dock work. By placing on a statutory footing the status of 'recognised docker' – which is closely linked to the specific, difficult and dangerous nature of dock work – that legislature sought to reserve the activities of handling cargo in ports, the technical nature of which is evolving rapidly, exclusively to workers who had undergone sound vocational training, aimed at assessing their professional qualifications as much as their physical and mental capacity. By introducing that status and the labour monopoly associated with it, that legislature also wished to address the concern of ensuring safety in port areas and avoiding workplace accidents, on the one hand, and the necessity of having on a daily basis specialised workers at the disposal of a port combining productivity, service and competitiveness, on the other hand. By requiring the employer to become affiliated to a single employers' organisation approved per port area, acting as a supportive social secretariat, the Belgian legislature sought also to guarantee equal treatment in social rights for all dockers in relation to all the social law obligations arising from the status of recognised docker.

40 In the second place, the Grondwettelijk Hof (Constitutional Court) draws attention to the fact that, pending the intervention of the Belgian legislature, the mere finding of unconstitutionality of Articles 1 and 2 of the Law organising dock work could result in thousands of dockers unexpectedly finding themselves, for a certain period of time, in a situation of great uncertainty as to their legal

status on the labour market, which could have adverse social and financial consequences for them. In the same circumstances, the public authorities, too, could face serious consequences.

41 In order to prevent, as the case may be, legal uncertainty and social discontent, and in order to allow the Belgian legislature to bring the organisation of dock work in port areas into line with the obligations arising under the Belgian Constitution, read in conjunction with the freedom of trade and industry guaranteed by Articles 15 and 16 of the Charter and with Article 49 TFEU, the Grondwettelijk Hof (Constitutional Court) notes that it may, under Belgian law, temporarily maintain the effects of Articles 1 and 2 of the Law organising dock work.

42 In those circumstances, the Grondwettelijk Hof (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Should Article 49 [TFEU], whether or not read in conjunction with Article 56 of that Treaty, with Articles 15 and 16 of the [Charter] and with the principle of equality, be interpreted as precluding national legislative provisions that oblige persons or undertakings which, in a Belgian port area, wish to engage in dock-work activities within the meaning of the [Law organising dock work] – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse solely to recognised dockers?

(2) If the first question is answered in the affirmative, may the Grondwettelijk Hof [(Constitutional Court)] provisionally maintain the effects of Articles 1 and 2 of the [Law organising dock work] in order to prevent legal uncertainty and social discontent and to enable the legislature to bring those provisions into line with the obligations arising from European Union law?’

43 By decision of the President of the Court of 19 July 2020, Cases C-407/19 and C-471/19 were joined for the purposes of the written and oral procedure and the judgment.

The request for reopening of the oral procedure

44 By document lodged at the Court Registry on 27 October 2020, Katoen Natie Bulk Terminals, General Services Antwerp and Middlegate Europe requested the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court.

45 In support of their request, they have submitted, in essence, first, that it is apparent from certain documents that became accessible after the delivery of the Opinion of the Advocate General that the Belgian Government and the employers’ and workers’ organisations in the port sector consulted with each other and decided that they would adhere to the rules at issue in the cases in the main proceedings, even if the Court followed the Advocate General’s proposals. Second, they wish to draw the Court’s attention to recent decisions in the field of dock work from courts of the Member States.

46 Under Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

47 This is not the case in this instance. The position which the Belgian Government and the employers' and workers' organisations in the port sector would intend to adopt if the Court were to follow the proposals made by the Advocate General in his Opinion is of no relevance to the answer to be given to the questions referred by the national courts in the present cases. Likewise, the recent court decisions cited by Katoen Natie Bulk Terminals, General Services Antwerp and Middlegate Europe in their request for reopening of the oral procedure are of no relevance, either. Those decisions comprise, first, a decision of the Spanish competition authority adopted following the delivery of the judgment of 11 December 2014, *Commission* v *Spain* (C-576/13, not published, EU:C:2014:2430), and, second, a judgment of a Netherlands court, unrelated to the legislation at issue in the main proceedings.

48 Furthermore, in so far as, in their request for reopening of the oral procedure, Katoen Natie Bulk Terminals, General Services Antwerp and Middlegate Europe express their disagreement with certain findings set out in the Advocate General's Opinion, it should be recalled, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court make no provision for interested parties to submit observations in response to the Advocate General's Opinion (judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 30 and the case-law cited).

49 Second, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. In this regard, the Court is not bound either by the conclusion reached by the Advocate General or by the reasoning which led to that conclusion. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in his or her Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 31 and the case-law cited).

50 In the light of all the foregoing considerations, the Court considers there to be no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

Jurisdiction of the Court

51 It should be borne in mind that, both in Case C-407/19 and in Case C-471/19, the elements of the dispute are confined within a single Member State.

52 In that regard, on the one hand, it is for the referring court to indicate to the Court in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with the provisions of EU law on the fundamental freedoms that makes the preliminary ruling on interpretation necessary for it to give judgment in the dispute in the main proceedings (judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 55). As is apparent from paragraphs 18 to 20 of the present judgment, in Case C-407/19, the Raad van State (Council of State) took care to explain how the international orientation of the port areas situated in Belgium suggests that the situations concerned by the applicable national legislation have such a connecting factor with EU law. Those considerations appear to be fully applicable to the dispute before the Grondwettelijk Hof (Constitutional Court) in Case C-471/19.

53 On the other hand, where the referring court requests a preliminary ruling from the Court in proceedings for the annulment of provisions which apply not only to its own nationals but also to those of other Member States, the decision of the referring court that will be adopted following the Court's preliminary ruling will also have effects on the nationals of other Member States, which justifies the Court giving an answer to the questions put to it in relation to the provisions of the Treaty on the fundamental freedoms, even though the dispute in the main proceedings is confined in all respects within a single Member State (judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 51 and the case-law cited). That consideration also applies where a matter has been referred to the Court in proceedings concerning the conformity of such national provisions with EU law. The national provisions at issue in the cases in the main proceedings are applicable without distinction both to Belgian nationals and to nationals of other Member States.

54 It follows that the Court has jurisdiction to rule on all the questions referred for a preliminary ruling.

The questions referred in Case C-471/19

Question 1

55 By its first question in Case C-471/19, the referring court asks, in essence, whether Articles 49 and 56 TFEU, Articles 15 and 16 of the Charter and the principle of equal treatment must be interpreted as precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation.

56 It should be stated at the outset that, so far as concerns the compatibility with Articles 15 and 16 of the Charter of national legislation by virtue of which undertakings wishing to provide port services must obligatorily have recourse to recognised dockers, examination of the restriction brought about by national legislation from the point of view of Articles 49 and 56 TFEU also covers possible limitations of the exercise of the rights and freedoms laid down in Articles 15 to 17 of the Charter, so that a separate examination from the point of view of possible incompatibility with the freedom to conduct a business is not necessary (see, to that effect, judgment of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 50 and the case-law cited).

57 In so far as the referring court in Case C-471/19 has referred, in its first question, to the principle of equal treatment, it should be noted that national legislation, such as that envisaged by that question, applies equally to both resident and non-resident operators who are therefore treated on an equal footing.

58 However, it follows from the Court's settled case-law that Articles 49 and 56 TFEU preclude any national measure which, even though it is applicable without discrimination on grounds of nationality, is liable to prohibit, impede or render less attractive the exercise by nationals of the European Union of the freedom of establishment and the freedom to provide services guaranteed by those provisions of the Treaty (judgment of 10 July 2014, *Consorzio Stabile Libor Lavori Pubblici*, C-358/12, EU:C:2014:2063, paragraph 28 and the case-law cited).

59 It must be stated, as did the referring court in Case C-471/19 and the Advocate General in points 52 and 53 of his Opinion, that legislation of a Member State obliging undertakings from other Member States that wish to establish themselves in that Member State in order to carry out

port activities there or which, without establishing themselves there, wish to provide port services there, to have recourse only to dockers recognised as such in accordance with that legislation, prevents such an undertaking from using its own workers or from recruiting other non-recognised workers and, therefore, is liable to prevent or disincentivise the establishment of that undertaking in the Member State concerned or the provision, by that undertaking, of services in that Member State.

60 It therefore constitutes a restriction on the freedoms guaranteed by Articles 49 and 56 TFEU (see, by analogy, judgment of 11 December 2014, *Commission* v *Spain*, C-576/13, not published, EU:C:2014:2430, paragraphs 37 and 38).

61 Such restrictions can be justified by overriding reasons in the public interest, provided that they are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary in order to attain it, that is to say, if there are no less restrictive measures which would enable the objective to be attained just as effectively (see, to that effect, judgments of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union*, C-438/05, EU:C:2007:772, paragraph 75; of 10 July 2014, *Consorzio Stabile Libor Lavori Pubblici*, C-358/12, EU:C:2014:2063, paragraph 31; and of 11 December 2014, *Commission* v *Spain*, C-576/13, not published, EU:C:2014:2430, paragraphs 47 and 53).

62 It is apparent from the information provided by the referring court in Case C-471/19, summarised in paragraph 39 of the present judgment, which overlaps with the explanations put forward by the Belgian Government in its written observations, that the provisions of the Law organising dock work at issue in the main proceedings are intended, in essence, to ensure safety in port areas and to avoid workplace accidents, to ensure the availability of specialised labour in view of the fluctuating demand for labour in those areas, as well as to guarantee equal treatment in social right for all dockers.

63 First, regarding the objective of guaranteeing equal treatment in social rights for all dockers, it is appropriate to recall that the protection of workers constitutes an overriding reason in the public interest capable of justifying a restriction on the freedoms of movement (see, inter alia, judgments of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union*, C-438/05, EU:C:2007:772, paragraph 77, and of 11 December 2014, *Commission* v *Spain*, C-576/13, not published, EU:C:2014:2430, paragraph 50).

64 However, such an objective cannot be attained by national legislation which obliges persons or undertakings wishing to carry out port activities in a port area to have recourse only to recognised dockers, in so far as the mere fact that a docker is recognised as such does not mean that he or she will necessarily enjoy the same social rights as all other recognised dockers. After all, it is apparent from the request for a preliminary ruling that that objective could be attained by obliging employers of dockers to become affiliated to a single organisation. Such an obligation may be imposed pursuant to Article 3a of the Law organising dock work, which is not covered by the present question.

65 Second, as regards the objective of ensuring the availability of specialised labour, assuming that it can be regarded as constituting an overriding reason in the public interest, within the meaning of the case-law cited in paragraph 61 of the present judgment, as the Advocate General observed, in essence, in point 68 of his Opinion, a rigid system, providing for the establishment of a limited quota of recognised dockers to which any undertaking wishing to carry out port activities must obligatorily have recourse, goes beyond what is necessary in order to attain the objective of ensuring the availability of specialised labour.

66 Third, so far as concerns the more specific objective of ensuring safety in port areas and preventing workplace accidents, as is apparent from paragraph 63 of the present judgment, the protection of workers is one of the overriding reasons in the public interest capable of justifying a restriction on the freedoms of movement.

67 The same is true of the more specific objective of ensuring safety in port areas (see, to that effect, judgment of 11 December 2014, *Commission* v *Spain*, C-576/13, not published, EU:C:2014:2430, paragraphs 49 to 52).

68 In that regard, as the Advocate General noted in points 70 and 71 of his Opinion, in so far as Articles 1 and 2 of the Law organising dock work simply establish a regime for the recognition of dockers, the specific conditions and arrangements for the implementation of which must be laid down by measures adopted pursuant to Article 3 of that law, it cannot be considered that, taken in isolation, those provisions are, in themselves, unsuitable or disproportionate for attaining the objective of ensuring safety in port areas and preventing workplace accidents.

69 After all, the necessity and proportionality of such a regime, and, consequently, its compatibility with Articles 49 and 56 TFEU, must be assessed globally, taking into account all the conditions laid down for the recognition of dockers and the arrangements for the implementation of such a regime.

70 National legislation under which undertakings wishing to provide port services must obligatorily have recourse to recognised dockers cannot be regarded as proportionate to the aim pursued unless the recognition of dockers was based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise of the discretion of the authority responsible for recognising them and to ensure that it is not used arbitrarily (see, by analogy, judgment of 17 July 2008, *Commission* v *France*, C-389/05, EU:C:2008:411, paragraph 94 and the case-law cited).

71 Moreover, since the objective of such legislation is to ensure safety in port areas and to prevent accidents at work, the conditions for recognition of dockers must logically pertain only to whether they have the qualities and skills necessary to ensure the performance of their tasks in complete safety.

72 To that end, as the Advocate General observed in point 76 of his Opinion, it might be provided, as the case may be, that, in order to be recognised, dockers must have sufficient vocational training.

73 However, requiring such training to be provided or certified by one particular body in the Member State concerned, without taking into account any recognition of the workers concerned as dockers in another Member State of the European Union, or of the training which they have followed in another Member State and the professional skills which they have acquired there, is disproportionate to the aim pursued (see, to that effect, judgment of 5 February 2015, *Commission* v *Belgium*, C-317/14, EU:C:2015:63, paragraphs 27 to 29).

74 Furthermore, as the Advocate General noted, in essence, in point 88 of his Opinion, limiting the number of dockers who may be recognised and, therefore, establishing a limited quota of such workers, to which any undertaking wishing to carry out port activities must obligatorily have recourse, assuming that it is appropriate for ensuring safety in port areas, is certainly disproportionate to the attainment of such an objective.

75 That objective, after all, can also be attained by providing that any worker able to prove that he or she has the necessary professional skills and, where appropriate, has followed appropriate training may be recognised as a docker.

76 In the light of all the foregoing considerations, the answer to the first question in Case C-471/19 is that Articles 49 and 56 TFEU must be interpreted as not precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation, provided that those conditions and arrangements, first, are based on objective, non-discriminatory criteria known in advance and allow dockers from other Member States to prove that they satisfy, in their State of origin, requirements equivalent to those applied to national dockers and, second, do not establish a limited quota of workers eligible for such recognition.

Question 2 in Case C-471/19

77 The second question in Case C-471/19 involves the hypothesis whereby the answer to the first question indicates that Articles 49 and 56 TFEU preclude national legislation such as Articles 1 and 2 of the Law organising dock work. The referring court in that case asks, in essence, whether, in such a hypothesis, it may provisionally maintain the effects of those articles, in order to prevent legal uncertainty and social discontent within the Member State concerned.

78 It is apparent from the answer to the first question, however, that national provisions such as Articles 1 and 2 of the Law organising dock work are not, as such, incompatible with the freedoms enshrined in Articles 49 and 56 TFEU, but that the assessment of the compatibility with those freedoms of the regime established pursuant to such provisions requires a holistic approach, taking into consideration all the conditions and arrangements for the implementation of such a regime.

79 In those circumstances, there is no need to answer the second question in Case C-471/19.

The questions referred in Case C-407/19

Preliminary observations

80 The questions referred in Case C-407/19 seek to enable the referring court in that case to assess the compatibility with EU law of various provisions of the Royal Decree of 2004, which lays down the arrangements for the implementation of the provisions of the Law organising dock work. That court refers, in that context, to the various freedoms of movement guaranteed by the Treaty.

81 In that regard, it is apparent, in the first place, from the answer given to the first question referred in Case C-471/19 that such legislation falls within the scope of the freedom of establishment and the freedom to provide services guaranteed by Articles 49 and 56 TFEU, respectively.

82 In the second place, it should be specified that such legislation also falls within the scope of Article 45 TFEU. After all, that provision may be relied on not only by the workers themselves, but also by their employers. In order to be truly effective, the right of workers to be engaged and employed without discrimination necessarily entails as a corollary the employer's entitlement to engage them in accordance with the rules governing freedom of movement for workers (judgment of 16 April 2013, *Las*, C-202/11, EU:C:2013:239, paragraph 18). The provisions laid down in the

FEU Treaty relating to freedom of movement for persons are intended to facilitate the pursuit by nationals of Member States of occupational activities of all kinds throughout the European Union, and preclude measures which might place those nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State. Those provisions and, in particular, Article 45 TFEU thus preclude any national measure which, even though applicable without discrimination on grounds of nationality, is capable of hindering or rendering less attractive the exercise by Union nationals of the fundamental freedoms guaranteed by the Treaty (judgment of 16 April 2013, *Las*, EU:C:2013:239, paragraphs 19 and 20 and the case-law cited).

83 In the third place, although the referring court in Case C-407/19 has also referred, in the wording of its questions, to Articles 34 and 35 TFEU, relating to the free movement of goods, it should be borne in mind, however, that it has not given any indication as to the practical effect on that freedom of national legislation such as that referred to in those questions.

84 In any event, it should be recalled that, where a national measure affects both the freedom to provide services and the free movement of goods, the Court will, in principle, examine it in relation to just one of those two fundamental freedoms if it is clear that, in the circumstances of the case, one of those freedoms is entirely secondary in relation to the other and may be attached to it (judgment of 14 October 2004, *Omega*, C-36/02, EU:C:2004:614, paragraph 26 and the case-law cited).

85 The same must apply to a measure which affects both the freedom of establishment, or the freedom of movement for workers, and the free movement of goods.

86 Assuming that national legislation such as that referred to in paragraph 80 of the present judgment were liable to restrict also the free movement of goods, in so far as dockers also carry out work relating to the transport of goods transiting through ports, it is clear that such a restriction would be entirely secondary in relation to restrictions on the freedom of movement for workers and services, as well as on the freedom of establishment.

87 In the fourth place, while the referring court in Case C-407/19 refers, in the wording of its questions to the Court, to Articles 101, 102 and 106 TFEU, it has not provided sufficient explanations to enable the Court to assess whether those provisions must be interpreted as precluding national legislation such as that at issue in the main proceedings.

88 Moreover, as the Advocate General observed in point 38 of his Opinion, the Court has already held that legislation, such as that at issue in the main proceedings, which requires individuals to engage, for the performance of dock work, only recognised dockers, does not fall within the scope of Articles 101, 102 and 106(1) TFEU, in so far as, even taken collectively, dockers cannot be regarded as ‘undertakings’ within the meaning of those provisions (see, to that effect, judgment of 16 September 1999, *Becu and Others*, C-22/98, EU:C:1999:419, paragraphs 27, 30 and 31).

89 In the light of the foregoing considerations, it is necessary to examine the questions referred in Case C-407/19 in the light only of Articles 45, 49 and 56 TFEU.

90 In that regard, it is apparent from paragraphs 59 and 60 of the present judgment that legislation of a Member State which, like Articles 1 and 2 of the Law organising dock work, obliges non-resident undertakings that wish to establish themselves in that Member State in order to carry out port activities there or which, without establishing themselves there, wish to provide port

services there, to have recourse only to dockers recognised in accordance with that legislation, constitutes a restriction on the freedoms guaranteed by Articles 49 and 56 TFEU.

91 Similarly, such national legislation is liable to have a dissuasive effect on workers and employers from other Member States and therefore constitutes a restriction on freedom of movement for workers, enshrined in Article 45 TFEU (see, by analogy, judgment of 16 April 2013, *Las*, C-202/11, EU:C:2013:239, paragraph 22).

92 Moreover, it is apparent from paragraphs 61 and 63 of the present judgment, respectively, that such restrictions can be justified by overriding reasons in the public interest and that the objective of ensuring safety in port areas and preventing workplace accidents, invoked by the Belgian Government in its written observations, is capable of constituting such a reason, liable to justify those restrictions, provided that they are necessary and proportionate to the objective pursued.

93 It is therefore necessary to examine whether each of the measures referred to in the questions referred in Case C-407/19 is necessary and proportionate to the objective mentioned in the preceding paragraph.

Question 1, Question 2(d) and Questions 3 and 4

94 By its first question, part (d) of its second question and its third and fourth questions, which it is appropriate to examine together, the referring court in Case C-407/19 asks, in essence, whether Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:

– the recognition of dockers falls to an administrative committee, composed jointly of members designated by employers' organisations and by workers' organisations;

– that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers;

– for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, provided that it is of indefinite duration, it being understood that, pursuant to a transitional provision, that benefit is progressively extended, initially, to dockers who have an employment contract of shorter duration and, subsequently, to those with an employment contract of whatever duration;

– no maximum period within which that committee must act is prescribed, and

– only judicial review is provided for against the decisions of the same committee relating to the recognition of a docker.

95 As regards, first, the composition of the Administrative Committee, it should be noted that, in so far as, as is apparent from paragraph 92 of the present judgment, the requirement of recognising dockers is intended to ensure safety in port areas and to prevent workplace accidents, legislation under which that recognition is granted by an administrative body composed jointly of members designated by employers' and workers' organisations does not appear to be necessary and appropriate for attaining that objective.

96 After all, it is not certain that the members of that body, designated by those organisations, will have the knowledge necessary to determine whether a docker meets the recognition criteria, relating to his or her ability to ensure the performance of his or her tasks in complete safety.

97 In addition, as the Advocate General observed in points 126 to 128 of his Opinion, although the members of the body competent to recognise dockers are designated by operators already present on the market, inter alia by an organisation representing already-recognised dockers who might compete for available workstations with workers who are applying for recognition, it is permissible to question the impartiality of those members and whether they will be able, therefore, to rule on the applications for recognition in an objective, transparent and non-discriminatory manner (see, by analogy, judgments of 15 January 2002, *Commission* v *Italy*, C-439/99, EU:C:2002:14, paragraph 39; of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 51; and of 26 September 2013, *Ottica New Line*, C-539/11, EU:C:2013:591, paragraphs 53 and 54).

98 Second, the absence of a reasonable period within which the body responsible for the recognition of dockers must take its decision does not appear to be necessary and appropriate for attaining the objective of ensuring safety in port areas and preventing workplace accidents, either.

99 On the contrary, the absence of such a period is liable to increase the risk of a docker with the requisite qualities being refused recognition, for the sole purpose of restricting competition on the labour market concerned.

100 Third, as regards the fact that, according to the information provided by the referring court in Case C-407/19, only judicial review is provided for against decisions of the committee responsible for recognising dockers, it should be noted that, in order to be deemed proportionate to the objective pursued, a measure involving the restriction of a fundamental freedom must be amenable to effective judicial review, guaranteed by Article 47 of the Charter (see, to that effect, judgment of 8 May 2019, *PI*, C-230/18, EU:C:2019:383, paragraphs 78 to 81).

101 It is for the referring court in Case C-407/19 to ascertain, if necessary, whether the judicial remedy provided for against the decisions of the Administrative Committee satisfies the requirements of such a review.

102 On the other hand, the fact that there is no provision for appeals before an administrative body against decisions concerning the recognition of dockers is not such as to cast doubt on the necessary and proportional nature of a national measure making such recognition mandatory.

103 Fourth, with regard to the inclusion, or otherwise, of recognised dockers in a quota of workers, by decision of the Administrative Committee, it should be noted that it follows from the information provided by the referring court in Case C-407/19 that the pool provided for in the Royal Decree of 2004 does not constitute a rigid quota, such as that referred to in paragraph 74 of the present judgment, in so far as, as is apparent from Article 2(3) of that royal decree, workers not included in that pool may be engaged as dockers on the basis of an employment contract.

104 It is nevertheless apparent from that latter provision, as well as from the information provided by the referring court, that the recognition of workers not included in the pool is limited to the duration of their employment contract, whereas, in accordance with Article 2(2) of the Royal Decree of 2004, the dockers included in the pool may be recognised for an indefinite period.

105 Moreover, by virtue of the transitional provision of Article 13/1 of the Royal Decree of 2004, the possibility of obtaining recognition without being included in the pool was initially limited

solely to dockers with a contract of indefinite duration and was gradually extended to dockers with a fixed-term employment contract of increasingly shorter duration. It has been only since 1 July 2020 that all dockers with employment contract may be recognised as such, irrespective of the duration of their employment contract.

106 In that respect, it should be noted that it is true that national legislation under which the recognition of dockers must be renewed at reasonable intervals is not incompatible with the objective of ensuring safety in port areas and preventing workplace accidents, in so far as the requirement of periodic renewal of recognition ensures that dockers continue to have the necessary skills to carry out their tasks in complete safety.

107 However, legislation in accordance with which only some dockers may obtain recognition indefinitely, whereas the recognition of certain other dockers expires automatically at the end of their employment contract, even if that contract has been only of a very short duration, such that the latter workers must undergo a new recognition procedure each time they conclude a new employment contract, does not appear to be appropriate and necessary in order to attain the objective mentioned in the preceding paragraph.

108 Indeed, there are no grounds capable of justifying that difference in treatment between two categories of dockers in altogether similar situations, from the point of view of workplace safety.

109 That is particularly so since, as the Advocate General observed in point 157 of his Opinion, short-term tasks are predominant in dock work.

110 During the transitional period referred to in paragraph 105 of the present judgment, only the dockers included in the pool will have the possibility of concluding short-term employment contracts, which leads, in practice, to a situation where the pool is made up of a limited number of dockers who must obligatorily be called upon. It has already been noted in paragraph 74 of the present judgment, however, that the establishment of such a quota constitutes a disproportionate measure in relation to the objective of ensuring safety in port areas and cannot be justified in the light of that objective.

111 Furthermore, even after the end of the transitional period, the fact that dockers not included in the pool must be recognised each time they conclude a new employment contract, even if they had been recently recognised when concluding a previous short-term employment contract, constitutes a restriction on the freedoms enshrined in Articles 45, 49 and 56 TFEU, which cannot be justified in the light of the objective mentioned in the preceding paragraph.

112 Such workers, after all, cannot reasonably be considered likely to have lost, shortly after their being recognised as dockers, the skills and qualities that had justified that recognition scarcely beforehand.

113 In the light of all those considerations, the answer to the first question, part (d) of the second question and the third and fourth questions in Case C-407/19 is that Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:

– the recognition of dockers falls to an administrative committee composed jointly of members designated by employers' organisations and by workers' organisations;

– that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers, it being understood that, for dockers not included in

that quota, the duration of their recognition is limited to the duration of their employment contract, such that a new recognition procedure must be initiated for each new employment contract that they conclude;

– no maximum period within which that committee must act is prescribed.

Question 2(a) to (c)

114 By parts (a) to (c) of its second question, the referring court in Case C-407/19 asks, in essence, whether Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:

– be declared medically fit for dock work by an external prevention and protection at work service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;

– pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;

– attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and

– pass the final test for that training.

115 As the Advocate General observed in point 140 of his Opinion, the requirements of medical fitness, successful completion of a psychological test and prior vocational training are, in principle, all conditions appropriate for ensuring safety in port areas and proportionate to such an objective.

116 Indeed, as the Belgian Government has argued in its written observations, such requirements offer reasonable guarantees that dock work will be carried out in the safest possible manner, by workers with sufficient judgment and adequate training and motivation so as to reduce the number of workplace accidents and other risks to public safety associated with the handling of goods.

117 The fact that the medical fitness of candidates for recognition as dockers is checked by the prevention and protection at work service to which is affiliated the employers' organisation of the port area concerned and that it is that same organisation which designates the body responsible for conducting the psychotechnical tests which those candidates must pass in order to be recognised is not, in itself, such as to cast doubt on the suitability and proportionality of the said requirements.

118 However, as the Advocate General observed in point 141 of his Opinion, such medical examinations or tests must, in order to be deemed necessary and proportionate to the objective pursued, be conducted under conditions of transparency, objectivity and impartiality.

119 It is therefore for the referring court in Case C-407/19 to ascertain whether the role played by the employers' organisation and, as the case may be, by the recognised dockers' unions in the designation of the bodies responsible for conducting such examinations or tests is, in the specific circumstances of the dispute in the main proceedings, such as to call into question the transparent, objective and impartial nature of those examinations or tests.

120 In the light of the foregoing considerations, the answer to parts (a) to (c) of the second question is that Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:

– be declared medically fit for port work by an external prevention and protection at work service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;

– pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;

– attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and

– pass the final test,

in so far as the role conferred on the employers' organisation and, as the case may be, on the recognised dockers' unions in the designation of the bodies responsible for conducting such examinations or tests is not such as to call into question the transparent, objective and impartial nature of those examinations or tests.

Question 5

121 By its fifth question, the referring court asks, in essence, whether Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation.

122 In so far as, as is apparent from paragraph 62 of the present judgment, the objective of a regime for the recognition of dockers, as described by the referring court in Case C-407/19, is to ensure safety in port areas and to prevent workplace accidents, national legislation under which dockers recognised as such under a similar earlier regime retain their recognition under the new regime does not appear to be inappropriate for attaining the objective pursued or disproportionate to that objective.

123 After all, it can reasonably be presumed that dockers already recognised under the previous regime will already have the skills and qualities necessary to ensure safety in port areas.

124 It is apparent from the information provided by the referring court in Case C-407/19 that its fifth question is prompted by the line of argument raised before it by the applicants in the main proceedings in that case, according to which a measure such as that referred to in paragraph 121 of the present judgment is such as to deprive an employer of the possibility of recruiting directly – that is to say, outside the pool – dockers who are already recognised, in so far as those dockers would be reluctant to leave that pool to conclude such an employment contract, since, in so doing, they would lose their recognition.

125 Such a line of argument, however, does not criticise the maintenance, under the new statutory regime, of the recognition obtained by a docker under the previous statutory regime, but the fact

that that maintenance does not persist if the worker concerned leaves the pool to conclude an employment contract with an employer directly.

126 In that regard, and as is apparent from paragraph 113 of the present judgment, Articles 45, 49 and 56 TFEU preclude national legislation under which a docker who is recognised but not included in the quota of workers for which it provides must undergo a new recognition procedure for each new employment contract that he or she concludes.

127 In the light of the foregoing considerations, the answer to the fifth question in Case C-407/19 is that Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation.

Question 6

128 By its sixth question, the referring court in Case C-407/19 asks, in essence, whether Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a CLA.

129 It is important to note from the outset that the fact that such conditions and arrangements are laid down by a CLA does not have the effect of excluding them from the scope of those articles (see, to that effect, judgment of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union*, C-438/05, EU:C:2007:772, paragraphs 33 and 34).

130 In that regard, it should be noted that national legislation which makes the possibility for a recognised docker to work in a port area different from that in which he or she obtained his or her recognition subject to conditions – whether they be fixed by legislation or by a CLA – constitutes a restriction both on the freedom of movement for workers and on the freedom of establishment and freedom to provide services.

131 Such legislation restricts both the freedom of a docker to perform jobs in several different port areas and the possibility, for an undertaking which establishes itself in a particular port area or which wishes to provide services there, of having recourse to the services of a docker of its choice, who obtained his or her recognition in a different port area.

132 However, the Belgian Government has argued, in its written observations, that, in accordance with Article 4(2) of the Royal Decree of 2004, the recognition of a docker is valid in each port area, except where the docker belongs to the pool of a given port area. In the latter case, changing between one port area and another will depend on whether there is a need for labour and whether the recruitment reserve list is open. That provision therefore excludes only the possibility of a docker from the pool being simultaneously active outside that pool, whether that be in the same port area or in another. The possibility of working in another port area nevertheless remains open to any recognised docker not from the pool.

133 In that regard, it should be stated, first, that such legislation is capable of constituting a restriction on the freedoms guaranteed by Articles 45, 49 and 56 TFEU even though it concerns only a limited number of workers.

134 Second, in the light of what is set out in paragraph 132 of the present judgment, it should be noted that, in so far as a pool of dockers, within the meaning of the national legislation at issue in the main proceedings, seeks to satisfy, on an ad hoc basis, the specialised labour needs in each port area of the Member State concerned, the fact that the transfer of a docker between the pools of two different areas is, in those circumstances, made subject to conditions and arrangements intended to ensure that each pool has at its disposal labour in sufficient numbers, is liable to be justified in the light of the legitimate objective of ensuring safety in each port area. After all, a measure laying down such conditions could, inter alia, ensure that there is always a minimum number of qualified workers capable of ensuring the operation of the port in complete safety. It is nevertheless for the referring court to determine whether such a measure is necessary and proportionate to that objective.

135 In the light of all those considerations, the answer to the sixth question in Case C-407/19 is that Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a CLA, provided that those conditions and arrangements prove necessary and proportionate to the objective of ensuring safety in each port area, which is for the national court to determine.

Question 7

136 By its seventh question, the referring court in Case C-407/19 asks, in essence, whether Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation which provides that logistics workers must hold a ‘safety certificate’, issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a CLA.

137 By that question, the referring court seeks to determine the conformity with Articles 45, 49 and 56 TFEU of national legislation which merely provides that the ‘security certificate’ that must be held by logistics workers in a port area is issued on presentation of their identity card and employment contract, the other modalities for the issue of that certificate and the procedure to be followed in order to obtain that document having to be fixed by a CLA.

138 It should be noted, in that regard, that, as is apparent from paragraph 129 of the present judgment, while Articles 45, 49 and 56 TFEU do not, in principle, preclude working conditions in a Member State from being fixed by CLAs, the fact remains that conditions thus laid down are not exempt from the scope of those articles.

139 The assessment of the proportionate and necessary nature of the restrictions on the freedoms enshrined in those articles, which arise from the requirement that every logistics worker active in a port area hold a ‘security certificate’, must necessarily take into consideration the specific modalities for the issue of that certificate, as well as the procedure to be followed to that end, fixed by a CLA.

140 In the context of that assessment, it is necessary to verify that the conditions for the issue of such a certificate relate exclusively to whether the logistics worker concerned has the qualities and skills necessary to ensure safety in port areas and that the procedure prescribed for the obtainment of that certificate does not impose unreasonable and disproportionate administrative burdens.

141 In particular, the requirement that the issue of the ‘security certificate’ necessitates the submission of the employment contract of the person concerned could have the consequence of

obliging the employer or worker concerned to request the issue of a new certificate whenever a new employment contract is concluded. In so far as, as is apparent from paragraph 109 of the present judgment, short-term tasks are predominant in the field of dock work, such a requirement could prove excessive and disproportionate. As the Commission has submitted in its written observations, it would be sufficient to provide for the periodic renewal of such a certificate, stipulating that it remains valid after the termination of a short-term employment contract.

142 In the light of the foregoing considerations, the answer to the seventh question in Case C-407/19 is that Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that logistics workers must hold a 'safety certificate', issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a CLA, provided that the conditions for the issue of such a certificate are necessary and proportionate to the objective of ensuring safety in port areas and the procedure prescribed for its obtainment does not impose unreasonable and disproportionate administrative burdens.

Costs

143 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 (Fourth Chamber) hereby rules:

1. **Articles 49 and 56 TFEU must be interpreted as not precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation, provided that those conditions and arrangements, first, are based on objective, non-discriminatory criteria known in advance and allow dockers from other Member States to prove that they satisfy, in their State of origin, requirements equivalent to those applied to national dockers and, second, do not establish a limited quota of workers eligible for such recognition.**

2. **Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:**

– **the recognition of dockers falls to an administrative committee composed jointly of members designated by employers' organisations and by workers' organisations;**

– **that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers, it being understood that, for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, such that a new recognition procedure must be initiated for each new employment contract that they conclude, and**

– **no maximum period within which that committee must act is prescribed.**

3. **Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:**

– **be declared medically fit for port work by an external prevention and protection at work service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;**

– **pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;**

– **attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and**

– **pass the final test,**

in so far as the role conferred on the employers' organisation and, as the case may be, on the recognised dockers' unions in the designation of the bodies responsible for conducting such examinations or tests is not such as to call into question the transparent, objective and impartial nature of those examinations or tests.

4. **Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation.**

5. **Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a collective labour agreement, provided that those conditions and arrangements prove necessary and proportionate to the objective of ensuring safety in each port area, which is for the national court to determine.**

6. **Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that logistics workers must hold a 'safety certificate', issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a collective labour agreement, provided that the conditions for the issue of such a certificate are necessary and proportionate to the objective of ensuring safety in port areas and the procedure prescribed for its obtainment does not impose unreasonable and disproportionate administrative burdens.**

[Signatures]

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* Language of the case: Dutch.