

WRITTEN QUESTION E-1022/02

by Bartho Pronk (PPE-DE), Maria Martens (PPE-DE), Karla Peijs (PPE-DE) and Albert Maat (PPE-DE)
to the Commission

Subject: Question further to question E-2069/01 concerning free movement of captains

In its reply to written question E-2069/01¹, the Commission referred to its answer to written question E-3440/97² by Mrs Van Dijk for information about nationality requirements for captains. The Commission observes that captains and first mates are employed in the public service as referred to in Article 48(4) (now Article 39(4)). According to the Commission, Member States may require such posts to be reserved for their own nationals, which is justified by invoking Article 48(3) (public policy, public security and public health).

1. Has not this reasoning been superseded by case law, particularly the judgment of 31 May 2001, *Commission v. Italy* (case C-283/99), point 25, and the judgment of 29 October 1998, *Commission v. Spain* (C-114/97), points 41 and 42?
2. Does not the Commission agree that captains who are not employed in the public service cannot fall under Article 39(4), *inter alia* on the grounds that the Court uses the phrase 'whatever the duties of the employee' (judgment in case C-283/99, *Commission v. Italy*)?
3. A number of Member States do not impose any nationality requirements on captains, and evidently do not have any problems with public policy or public security. Why should this be any different in Member States which do impose such a requirement, particularly in fishing?
4. Does the Commission agree that there are also no grounds for invoking public policy, public security and public health (Article 39(3)) in this connection because the entry or residence of a captain in a Member State need not in itself present any danger to public policy, public security and public health (judgment C-114/97, *Commission v. Spain*)?
5. Is the Commission aware that in a number of Member States there are serious shortages of captains, so that the nationality requirement jeopardises both the Community's labour market and its international competitive position?

¹ OJ C 40 E, 14.2.2002, p. 177.

² OJ C 174, 8.6.1998, p. 57.