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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

26 March 2019 (*)

(Actions for annulment — Rules on languages — Selection procedure for contract staff — Call for expressions of interest — Drivers — Function group I — Knowledge of languages — Restriction of the choice of language 2 of the selection procedure to English, French and German — Language of communication — Regulation No 1 — Staff Regulations — Conditions of Employment of Other Servants — Discrimination based on language — Justification — Interests of the service)

In Case C-377/16,

ACTION for annulment under Article 263 TFEU, brought on 7 July 2016,

Kingdom of Spain, represented by M.J. García-Valdecasas Dorrego and M.A. Sampol Pucurull, acting as Agents,

applicant,

v

European Parliament, represented by D. Nessaf, C. Burgos and M. Rantala, acting as Agents,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan, F. Biltgen, K. Jürimäe and C. Lycourgos, Presidents of Chambers, A. Rosas (Rapporteur), E. Juhász, J. Malenovský, E. Levits and L. Bay Larsen, Judges,

Advocate General: E. Sharpston,

Registrar: L. Carrasco Marco, administrator,

after hearing the Opinion of the Advocate General at the sitting on 25 July 2018,

gives the following

Judgment

1 By its action, the Kingdom of Spain requests the annulment of the Call for Expressions of Interest Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016 (OJ 2016 C 131 A, p. 1, ‘the call for expressions of interest’).

Legal context

Regulation No 1/58,

2 Article 1 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1) (‘Regulation No 1/58’), provides:

‘The official languages and the working languages of the institutions of the Union shall be Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.’

3 Article 2 of that regulation provides:

‘Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the [European Union] may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language.’

4 Under Article 6 of that regulation:

‘The institutions of the [European Union] may stipulate in their rules of procedure which of the languages are to be used in specific cases.’

The Staff Regulations and Conditions of Employment of Other Servants

5 The Staff Regulations of European Union Officials (‘the Staff Regulations’) and the Conditions of Employment of Other Servants of the European Union (‘the CEOS’) are established by Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition II, 1968(I), p. 30), as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ 2013 L 287, p. 15).

Staff Regulations

6 Title I of the Staff Regulations, entitled ‘General Provisions’, includes Articles 1 to 10c thereof.

7 Article 1(d) of the Staff Regulations states:

‘1. In the application of these Staff Regulations, any discrimination based on any ground such as ... language ... shall be prohibited.

...

6. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. ...’

8 Title III of the Staff Regulations is entitled ‘Career of officials’.

9 Chapter 1 of Title III, entitled ‘Recruitment’, contains Articles 27 to 34 of the Staff Regulations; Article 28 thereof states:

‘An official may be appointed only on condition that:

...

(f) he produces evidence of a thorough knowledge of one of the languages of the Union and of a satisfactory knowledge of another language of the Union to the extent necessary for the performance of his duties.’

10 In Chapter 3 of Title III, entitled ‘Reports, advancement to a higher step and promotion’, Article 45(2) of the Staff Regulations provides that:

‘Officials shall be required to demonstrate before their first promotion after recruitment the ability to work in a third language among those referred to in Article 55(1) of the Treaty on European Union. ...’

11 Annex III to the Staff Regulations, relating to competition procedures, provides, inter alia, the nature and kind of the competition, the type of duties and tasks involved in the posts to be filled, and the language skills which may be required by that type of employment.

CEOS

12 Title I of the CEOS, entitled ‘General provisions’, includes Articles 1 to 7a of those conditions.

13 In accordance with Article 1 of the CEOS, those conditions apply to all servants engaged under contract by the Union, which, in particular, confers on them the status of ‘contract staff’.

14 Article 3a of the CEOS provides inter alia:

‘1. For the purposes of these Conditions of Employment, “contract staff” means staff not assigned to a post included in the list of posts appended to the section of the budget relating to the institution concerned and engaged for the performance of full-time or part-time duties:

(a) in an institution to carry out manual or administrative support service tasks,

...’

15 Title IV of the CEOS, entitled ‘Contract staff’, includes Articles 79 to 119 of those conditions.

16 In Chapter 1 of that title, entitled ‘General provisions’, Article 80 of the CEOS is worded as follows:

‘1. Contract staff shall be subdivided into four function groups corresponding to the duties to be performed. Each function group shall be subdivided into grades and steps.

2. The types of duties and corresponding function groups shall be as shown in the following table:

Function group	Grades	Duties
IV	13 to 18	Administrative, advisory, linguistic and equivalent technical tasks, performed under the supervision of officials or temporary staff.
III	8 to 12	Executive tasks, drafting, accountancy and other equivalent technical tasks, performed under the supervision of officials or temporary staff.
II	4 to 7	Clerical and secretarial tasks, office management and other equivalent tasks, performed under the supervision of officials or temporary staff.
I	1 to 3	Manual and administrative support service tasks, performed under the supervision of officials or temporary staff.

3. Based on this table the authority [empowered to conclude contracts of employment] of each institution, agency or entity referred to in Article 3a may, after consulting the Staff Regulations Committee, define in more detail the powers attaching to each type of duties.

4. Articles 1d ... of the Staff Regulations shall apply by analogy.

...’

17 Article 82 of the CEOS, which appears in Chapter 3 of Title IV, entitled ‘Conditions of engagement’, provides:

‘ ...

2. Recruitment as a member of the contract staff shall require at least:

(a) in function group I, successful completion of compulsory education;

...

3. A member of the contract staff may be engaged only on condition that he:

...

(e) produces evidence of a thorough knowledge of one of the languages of the Union and of a satisfactory knowledge of another language of the Union to the extent necessary for the performance of his duties.

...

5. The European Communities Personnel Selection Office [(EPSO)] shall, at their request, provide assistance to the different institutions with a view to the selection of contract staff, in particular by defining the contents of the tests and organising the selection procedures. [EPSO] shall ensure the transparency of selection procedures for contract staff.

...’

The selection procedure at issue

18 On 14 April 2016, the European Parliament issued a call for expressions of interest with a view to establishing a database of candidates for recruitment as contract staff members to act as drivers. It is apparent from the introductory part of that call that the total number of posts that may become available was approximately 110 and that they would be based ‘mainly in Brussels’ (Belgium).

19 Section II of the call for expressions of interest, entitled ‘Job description’, provides that ‘under the supervision of an official or temporary staff member, the contract staff member [recruited] will be responsible for performing duties as a driver’ and states that:

‘... for guidance, those duties will include:

– providing transport services for eminent persons and officials and other staff of the European Parliament, mainly in Brussels, Luxembourg [(Luxembourg)] and Strasbourg [(France)], and also in other Member States and third countries,

- providing transport services for visitors (members of the diplomatic corps and other eminent persons),
- transporting goods and documents,
- transporting mail,
- ensuring that the vehicle and its equipment are used properly,
- guaranteeing the safety of persons and goods transported, in keeping with the highway code of the country in question,
- if necessary, loading and unloading vehicles,
- if necessary, carrying out administrative and logistical support work.’

20 Section IV of the call for expressions of interest, entitled ‘Eligibility’, provides that recruitment as contract staff is subject to the fulfilment of several conditions, including knowledge of two official languages of the Union. In that regard candidates must have, on the one hand, a ‘thorough knowledge (at least level C1 ...) of one of the 24 official languages of the European Union’ as ‘language 1’ of the selection procedure and, on the other hand, a ‘satisfactory knowledge (level B2) of English, French or German’ as ‘language 2’ of the selection procedure (‘language 2 of the selection procedure’), on the basis that ‘language 2 must be different from language 1’.

21 The Common European Framework of Reference for Languages, issued by the Council of Europe (Recommendation of the Committee of Ministers of the Council of Europe No R (98) 6 of 17 March 1998, ‘the CEFR’), sets out six levels of language skills, ranging from A1 to C2. It includes various tables, one of which provides an overview of the common levels of knowledge. Level B2, which corresponds to the linguistic knowledge of an ‘independent user’, is presented in the CEFR as follows:

‘Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialisation. Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options.’

22 The grounds for restricting the choice of language 2 of the selection procedure only to English, French and German are set out in Section IV of the call for expressions of interest as follows:

‘Following the judgment handed down by the Court of Justice of the European Union (Grand Chamber) [of 27 November 2012, *Italy v Commission* (C-566/10 P, EU:C:2012:752),] the European Parliament must state the reasons for limiting the choice of the second language in the context of this call for expressions of interest to a small number of official EU languages.

Candidates are thus informed that the three second-language options for this call for expressions of interest, i.e. English, French and German, have been laid down in the interests of the service, which require newly recruited staff to be immediately operational and able to communicate effectively in their daily work.

It has long been the practice to use mainly English, French, and German for internal communication in the European Parliament, and these are also the languages most often needed when communicating with the outside world and in performing day-to-day work. Furthermore, in staff reports for 2013, 92%, 84% and 56% of all staff stated that they had a satisfactory knowledge of English, French and German respectively. For no other official language did that figure exceed 50%.

Therefore, in balancing the interests of the service and the needs and abilities of candidates, and given the specific area in which this selection procedure is being held, the European Parliament is entitled to require knowledge of one of those three languages to ensure that, whatever their first official language, all candidates are proficient in at least one of them.

In addition, in the interests of equality of treatment, all candidates, even if they have one of those three languages as their first official language, are required to have a satisfactory knowledge of a second language, which must be one of those three languages.

The assessment of specific skills enables the European Parliament to judge whether the candidates can be immediately operational in an environment similar to that in which they will be required to work.’

23 Pursuant to Section VI of the call for expressions of interest, entitled ‘How to apply and closing date for applications’, candidates are to submit their applications using an electronic application form available on the EPSO website. In accordance with the indications given in Section VII of that call under the heading ‘Stages in the selection procedure’, the selection is made on the basis of qualifications and it is specified, in that regard, that ‘selection will be solely on the basis of the information provided by candidates using the “Talent screener” tab on the application form’.

24 It is apparent from Section VIII of the call for expressions of interest, entitled ‘Results of the selection procedure’, that, at the end of the selection procedure, the 300 candidates who obtained, in accordance with the relevant criteria, the highest number of points are entered in the database set up for that purpose. Under Section IX of that call, entitled ‘Recruitment’, it is recalled that inclusion in the database does not constitute a guarantee of being offered a job. In the event that recruitment of candidates registered in the database is being contemplated, the call for expressions of interest shall provide in particular:

‘If a contract becomes available, the recruiting services will consult the database and issue invitations to those candidates whose profiles most closely match the requirements of the post in question.

These candidates will sit an interview designed to determine whether their profile matches the requirements of the post available. At that interview their knowledge of languages 1 and 2 will also be assessed. Knowledge of other languages which candidates have stated that they know may also be tested.

...

Depending on the outcome of the interview and of any theoretical and/or practical tests held, candidates may be offered a post.’

25 Successful candidates will be recruited as contract agents ('function group I') and contracts will be drawn up in accordance with Articles 3a, 84 and 85 of the CEOS. They will be for a period of one year and may be renewed for a period of one year before possibly being renewed a second time for an indefinite period.

26 Section X of the call for expressions of interest, entitled 'Communication', provides:

'The European Parliament will contact candidates via their EPSO accounts or by email. Candidates must check their EPSO accounts and their email at regular intervals — at least twice a week — to keep track of the progress of the procedure and to verify the information relevant to their applications. If, as a result of a technical problem, you are unable to check this information, you must inform the European Parliament immediately by sending an email to the mailbox for the procedure:

ACdrivers2016@ep.europa.eu

Please use that mailbox for all correspondence relating to the procedure.'

Forms of order sought by the parties

27 The Kingdom of Spain asks the Court to annul the call for expressions of interest and to order the Parliament to pay the costs. That annulment should also lead to the annulment of the database created pursuant to that call.

28 The Parliament asks the Court to dismiss the action as manifestly unfounded and to order the Kingdom of Spain to pay the costs.

The action

29 In support of its action, the Kingdom of Spain relies on four pleas in law.

30 The first plea alleges an unlawful restriction on the choice of languages that may be used for communications between candidates and EPSO to English, French and German only.

31 The second plea alleges misinterpretation of the language requirements for contract staff laid down in the CEOS.

32 The third and fourth pleas, which will be dealt with together, concern the lawfulness of restricting the choice of language 2 of the selection procedure to English, French and German.

The first plea, relating to the restriction of the choice of language of communication to English, French and German

Arguments of the parties

33 The Kingdom of Spain claims, principally, that the call for expressions of interest infringes Articles 1 and 2 of Regulation No 1/58, Article 22 of the Charter of Fundamental Rights of the European Union ('the Charter'), and Article 1d(1) and (6) of the Staff Regulations, by restricting to English, French and German the languages that candidates may use to communicate with the organisers of the selection procedure in question. The Kingdom of Spain maintains in that regard that the applications submitted in response to the call for expressions of interest constitute

‘documents which ... a person subject to the jurisdiction of a Member State sends to institutions’ within the meaning of Article 2 of Regulation No 1/58 and, therefore, must, in accordance with that article, be capable of being drafted and submitted to the institution concerned, in this case the Parliament, in any one of the official languages selected by the sender.

34 In the alternative, the Kingdom of Spain takes the view that restricting the choice of languages of communication to English, French and German constitutes an infringement of Article 22 of the Charter, concerning the Union’s respect for linguistic diversity, and of Article 1d(1) and (6) of the Staff Regulations, under which any discrimination, such as discrimination on grounds of language, is prohibited unless justified in accordance with that provision. According to the Kingdom of Spain, candidates who cannot complete the application form available on the EPSO website or communicate with Parliament using their mother tongue are at a disadvantage compared to candidates whose mother tongue is English, French or German. It argues that there is no valid reason to justify such discrimination on the basis of language.

35 The Parliament disputes these arguments by stating that the call for expressions of interest does not require the use of any particular language to complete the electronic application form on the EPSO website. Nor does the call limit the use of languages of communication between candidates and EPSO or the Parliament. According to the latter, the fact that, for technical reasons, the application form was only available in English, French and German does not mean that candidates must complete it in one of those three languages. The Parliament further contends that applications have been drafted in a language other than English, French or German, and that they were assessed by the selection committee with the assistance, where appropriate, of language assessors. In those circumstances, the Parliament takes the view that it has fully complied with its obligation to communicate with candidates in a language freely chosen by them.

Findings of the Court

36 In accordance with Article 2 of Regulation No 1/58, which corresponds in substance to the fourth paragraph of Article 24 TFEU and Article 41(4) of the Charter, documents sent to the institutions of the European Union by a person subject to the jurisdiction of a Member State may be drafted in any one of the official languages referred to in Article 1 of that regulation selected by the sender, and the institution’s reply must be drafted in that language. As an essential component of respect for the linguistic diversity of the Union, the importance of which is recalled in the fourth subparagraph of Article 3(3) TEU and Article 22 of the Charter, the right for those persons to choose, from among the official languages of the Union, the language to be used in exchanges with the institutions, such as the European Parliament, is fundamental in nature.

37 However, as is apparent from the case-law of the Court, it cannot be inferred from the European Union’s obligation to respect linguistic diversity that there is a general principle of law entitling each person to have everything likely to affect his or her interests drafted in his or her language in all circumstances, and that the institutions are required, without any derogation being permissible, to use all the official languages in all situations (see, to that effect, judgments of 9 September 2003, *Kik v OHIM*, C-361/01 P, EU:C:2003:434, paragraph 82; of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 88; and of 6 September 2017, *Slovakia and Hungary v Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 203).

38 In the specific context of EU staff selection procedures, the Court has already ruled, in paragraph 88 of the judgment of 27 November 2012, *Italy v Commission* (C-566/10 P, EU:C:2012:752), that restrictions may be made, pursuant to Article 1d(6) of the Staff Regulations, to the prohibition of discrimination on grounds of language. Therefore, without prejudice to the

obligation, recalled in particular in paragraph 71 of that judgment, to publish notices of competitions in the *Official Journal of the European Union*, in accordance with Article 1(2) of Annex III to the Staff Regulations, read in conjunction with Article 5 of Regulation No 1/58, in all the official languages of the Union, the institutions may, where appropriate, provide for limitations on the use of official languages in that context, provided that such limitations are, in accordance with Article 1d(6), objectively and reasonably justified by a legitimate objective of general interest in the framework of staff policy and are proportionate to the aim pursued.

39 It follows from paragraph 88 of the judgment of 27 November 2012, *Italy v Commission*, (C-566/10 P, EU:C:2012:752) that, in the context of EU staff selection procedures, the institutions cannot be required to comply with obligations going beyond the requirements laid down in Article 1d of the Staff Regulations.

40 Consequently, the question of the lawfulness of restricting the languages which candidates may use to communicate with EPSO and the Parliament to English, French and German, which is the subject of the present action, must be examined in the light of Article 1d of the Staff Regulations, applicable to procedures for the selection of contract staff pursuant to Article 80(4) of the CEOS.

41 Since the Parliament disputes the existence of a restriction of the choice of the language of communication between EPSO and candidates to English, French and German, it is necessary, first of all, to examine the Kingdom of Spain's argument that that restriction constitutes a difference of treatment based on language contrary to Article 1d of the Staff Regulations, in order to verify whether, in the light of the arguments put forward by both parties, the call for expressions of interest does in fact lay down such a restriction.

42 In accordance with the indications set out in the call for expressions of interest, the selection procedure referred to therein is carried out solely on the basis of the answers provided by the candidate to the questions in the 'talent screener' tab appearing in the electronic application form available on the EPSO website. Thus, it follows from that call that applications had to be submitted online, using that electronic application form.

43 In that regard, it is not disputed that the electronic application form for the call for expressions of interest was only available on the EPSO website in English, French and German. However, while the Kingdom of Spain infers from the limited number of languages in which the form is available a de facto restriction on the languages that may be used to complete the form, the Parliament maintains that, in so far as that call did not set out any binding provision as to the language to be used to complete the form, candidates remained free to complete it using, in addition to those three languages, other official languages of the Union.

44 In the absence of any indication in the call for expressions of interest that the electronic application form, available on the EPSO website only in English, French and German, could be completed in any of the official languages of the Union, candidates were reasonably entitled to assume that it was mandatory to complete the form in one of those three languages. In those circumstances, it cannot be ruled out that candidates may have been effectively deprived of the possibility of using the official language of the Union of their choice when submitting their applications.

45 In view of that restriction on the choice of the language of communication, it is necessary to examine, secondly, whether that restriction created a difference in treatment between candidates, contrary to Article 1d of the Staff Regulations.

46 In that regard, candidates who, because of the unavailability of the application form in all of the official languages of the Union, concluded that they should complete the application form in English, French or German and who therefore completed their application in one of those languages, even though none of them corresponded to the official language of the Union in which they were most proficient, may have been at a disadvantage, in terms of both a perfect understanding of the form and of the drafting of their application, compared with candidates whose preferred official language was one of those three languages.

47 Thus, the unavailability of the application form on the EPSO website in all of the official languages of the Union meant that candidates who wished to use an official language other than English, French or German in order to complete the form and therefore to submit an application were, in so far as they were deprived of the opportunity to use the official language in which they most proficient, treated less favourably than candidates whose preferred official language was one of those three languages. This resulted in a difference of treatment based on language, which is in principle prohibited by Article 1d(1) of the Staff Regulations.

48 On the other hand, in view of the information provided by the Kingdom of Spain, it does not appear that candidates were not able to communicate, if necessary, by email with the Parliament or EPSO in the official language of their choice. The Kingdom of Spain's plea concerning the restriction on the languages of communication cannot therefore be upheld with regard to such communications. That said, the difference in treatment noted in the previous paragraph, concerning the languages that may be used in order to complete the application form and therefore to submit an application, cannot be offset by the possibility for candidates to communicate in the official language of their choice, if necessary by email, with the Parliament or with EPSO about other aspects of the selection procedure in question.

49 As pointed out in paragraph 38 of the present judgment, it follows from Article 1d(6) of the Staff Regulations that a difference of treatment based on language cannot be permitted when applying those Staff Regulations unless it is objectively and reasonably justified and meets legitimate objectives in the general interest in the framework of staff policy.

50 Since the Kingdom of Spain has demonstrated that the call for expressions of interest gives rise to a difference of treatment which may constitute discrimination based on language within the meaning of Article 1d(1) of the Staff Regulations, it was for the Parliament to show that that restriction was justified.

51 However, in the present case, the Parliament did not provide, either in the call for expressions of interest, in its written submissions or at the hearing before the Court, any grounds capable of demonstrating the existence of a legitimate objective of general interest in the framework of staff policy requiring a difference in treatment, such as that noted in paragraph 47 of the present judgment, concerning the languages to be used in order to complete the electronic application form. It follows that the Parliament has failed to show that the restriction on the choice of language of communication resulting from the call for expressions of interest was justified.

52 Consequently, the first plea in law is well founded.

The second plea in law, alleging infringement of Article 82 of the CEOS

Arguments of the parties

53 By the first part of its second plea, the Kingdom of Spain submits that the requirement, provided for in the call for expressions of interest, of a satisfactory knowledge of a second official language of the Union constitutes a breach of Article 82 of the CEOS, since knowledge of a second language is not necessary for the performance of the duties which the selected candidates will be required to perform. It is apparent from Article 82(3)(e) of the CEOS that an administration may require a candidate for a contract staff post, in addition to a thorough knowledge of one of the official languages of the Union, to have a satisfactory knowledge of a specific second language only on account of the particular nature of the duties to be performed. In the present case, a satisfactory knowledge of a second language is not justified by the performance of the tasks required of the contract agents to be recruited. The Kingdom of Spain recalls in that regard that Article 80 of the CEOS defines the tasks assigned to Group I contract staff as manual and administrative support service tasks, performed under the supervision of officials or temporary staff. By the second part of that plea, the Kingdom of Spain submits that, assuming that a candidate for such tasks may be required to have a thorough knowledge of an official language and a satisfactory knowledge of a second language, the B2 level of knowledge, within the meaning of the CEFR, required in that call for expressions of interest for that second language, is not justified.

54 In response, the Parliament contends that Article 82(3)(e) of the CEOS provides that a satisfactory knowledge of a second official language of the Union is a requirement under the CEOS.

Findings of the Court

55 According to Article 82(3)(e) of the CEOS, ‘a member of the temporary staff may be engaged only on condition that ... he produces evidence of a thorough knowledge of one of the languages of the Union and of a satisfactory knowledge of another language of the Union to the extent necessary for the performance of his duties’. By the first part of its second plea in law, the Kingdom of Spain submits that that provision requires candidates for a contract staff post to have knowledge of a second language of the Union only where the duties they are required to perform dictate it, which is not the case here.

56 It is therefore necessary to determine whether the language requirements laid down in Article 82(3)(e) of the CEOS systematically require candidates for contract agent posts to have a thorough knowledge of one of the official languages of the Union and a satisfactory knowledge of another official language of the Union.

57 In that regard, it should be recalled that Article 28(f) of the Staff Regulations similarly provides that ‘an official may be appointed only on condition that ... he produces evidence of a thorough knowledge of one of the languages of the Union and of a satisfactory knowledge of another language of the Union to the extent necessary for the performance of his duties’. In accordance with Article 45(2) of the Staff Regulations, officials are also required to demonstrate, before their first promotion after recruitment, their ability to work ‘in a third language among those referred to in Article 55(1) TEU’, namely among the official languages of the Union. It necessarily follows therefrom that the condition relating to knowledge of a second language, provided for in Article 28(f) of the Staff Regulations, cannot be regarded as optional for officials.

58 Since contract staff are required to perform their duties, like officials, in a multilingual environment, there is no basis for interpreting the language skills required of contract staff in Article 82(3)(e) of the CEOS in a manner different from those required, in identical terms, of officials under Article 28(f) of the Staff Regulations. The fact that officials, unlike contract staff, may have to demonstrate their knowledge of a third language is due to the fact that the latter are not

subject to the promotion scheme laid down in the Staff Regulations. However, that difference does not affect the interpretation of the requirement of knowledge of a second language set out in Article 28(f) of the Staff Regulations and Article 82(3)(e) of the CEOS.

59 Consequently, as the Advocate General noted in paragraph 111 of her Opinion, Article 82(3)(e) of the CEOS must be interpreted as meaning that candidates for recruitment as contract agents are required to provide proof of knowledge of at least two official languages. It follows that the first branch of the second plea in law put forward by the Kingdom of Spain must be rejected.

60 By the second part of that plea, the Kingdom of Spain submits that, given the nature of the duties that contract staff will be called upon to perform, the level of knowledge required in the call for expressions of interest concerning language 2 of the selection procedure, namely a B2 level within the meaning of the CEFR, is not justified. To the extent that the arguments expounded in support of the second part overlap with those presented in support of the third and fourth pleas in law, that branch will be examined jointly with the latter.

The second part of the second plea and the third and fourth pleas in law, concerning the restriction of the choice of language 2 of the selection procedure to English, French and German

Arguments of the parties

61 The Kingdom of Spain claims that the restriction, in the call for expressions of interest, of the choice of language 2 of the selection procedure to English, French and German is arbitrary, infringes the language regime established by Articles 1 and 6 of Regulation No 1/58 and constitutes discrimination on the grounds of language prohibited by Article 22 of the Charter, Article 1d(1) and (6) of the Staff Regulations and Article 82(3)(e) of the CEOS. None of the reasons set out in the call for expressions of interest could be regarded as constituting a legitimate objective of general interest capable of justifying such a restriction. The reason based on the ‘interests of the service’ resulting from the fact that the staff hired would be operational from the first day in the required languages and could communicate effectively in the course of their work is stereotypical and unrelated to the nature of the duties to be performed. In any event, that restriction is not proportionate to the actual needs of the service. Similarly, the requirement of a B2 level of knowledge, within the meaning of the CEFR, as regards language 2 of the selection procedure is disproportionate.

62 The Parliament disputes those arguments by stating that the restriction on the choice of language 2 of the selection procedure is duly justified in the call for expressions of interest, in particular by the objective of having staff immediately operational and able to communicate effectively in their daily work.

Findings of the Court

63 For the reasons set out in paragraphs 36 to 40 of the present judgment, it is necessary to assess the lawfulness of restricting the choice of language 2 of the selection procedure to English, French and German in the light of Article 1d of the Staff Regulations. Like the restriction on the choice of languages that may be used to complete the electronic application form on the EPSO website and thus to submit an application, which is the subject of the Kingdom of Spain’s first plea, the restriction referred to in the second part of the second plea, as well as in the third and fourth pleas in law, is in the specific context of the organisation of the European Union’s staff selection procedures governed, in particular, by the Staff Regulations.

64 To that end, it is important to recall at the outset, as noted in paragraphs 38 and 49 of the present judgment, that Article 1d(1) of the Staff Regulations, applicable to procedures for the selection of contract staff under Article 80(4) of the CEOS, prohibits, in the application of those Staff Regulations, any discrimination, such as discrimination on the grounds of language, it being understood that, under Article 1d(6), differences of treatment on the grounds of language may be authorised if they are objectively and reasonably justified by a legitimate objective of general interest in the framework of staff policy.

65 In so far as the call for expressions of interest provided, pursuant to the CEOS, for a restriction of the choice of language 2 of the selection procedure to English, French and German, candidates whose language skills did not allow them to meet that requirement were deprived of the opportunity to take part in the selection procedure, even if they had sufficient knowledge, under the requirements laid down in Article 82(3)(e) of the CEOS, of at least two official EU languages.

66 Thus, the fact that candidates were required to choose language 2 of the selection procedure from among English, French and German constitutes a difference of treatment based on language, which is in principle prohibited under Article 1d(1) of the Staff Regulations.

67 With respect, next, to the existence of a legitimate objective of general interest in the framework of staff policy, within the meaning of Article 1d(6) of the Staff Regulations, capable of justifying that difference in treatment, it follows from the Court's case-law that the interests of the service may require that the persons recruited have specific language skills. Consequently, the specific nature of the tasks to be performed may justify recruitment based, inter alia, on a thorough knowledge of a specific language (see, to that effect, judgments of 19 June 1975, *Küster v Parliament*, 79/74, EU:C:1975:85, paragraphs 16 and 17; of 29 October 1975, *Küster v Parliament*, 22/75, EU:C:1975:140, paragraphs 13 and 14; and of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 88).

68 In that regard, in the context of a selection procedure, the institutions have a wide discretion to assess the interest of the service and the qualifications and merits of the candidates to be taken into consideration (see, by analogy, judgments of 4 February 1987, *Bouteiller v Commission*, 324/85, EU:C:1987:59, paragraph 6; of 3 April 2003, *Parliament v Samper*, C-277/01 P, EU:C:2003:196, paragraph 35; and of 9 October 2008, *Chetcuti v Commission*, C-16/07 P, EU:C:2008:549, paragraph 77). It is therefore not for the Court to substitute its assessment for that of the administration as regards, in particular, the specific language knowledge which should be required, in the interests of the service, from candidates (see, by analogy, judgment of 3 April 2003, *Parliament v Samper*, C-277/01 P, EU:C:2003:196, paragraph 35 and the case-law cited).

69 However, it is for the institution which restricted the language regime of a selection procedure to a limited number of official languages of the Union to establish that such a restriction is indeed appropriate for the purpose of meeting the actual needs relating to the duties that the persons recruited will be required to carry out. In addition, any requirement relating to specific language skills must be proportionate to that interest and be based on clear, objective and predictable criteria enabling candidates to understand the reasons for that requirement and allowing the EU judicature to review the lawfulness thereof (see, to that effect, judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraphs 90 and 92).

70 The Parliament takes the view, in that regard, that the interest of the service, as it appears from the call for expressions of interest, consisting in having staff immediately operational and capable of communicating effectively in daily work, does justify restricting the choice of language

2 of the selection procedure to English, French and German. However, the Kingdom of Spain maintains that the grounds set out in the call do not justify that restriction.

71 As is apparent from paragraph 22 of the present judgment, Section IV of the call for expressions of interest provides that the three languages selected under language 2 of the selection procedure, namely English, French and German, were defined in that way in order to meet the ‘interest of the service’ of ensuring that the persons recruited are ‘immediately operational and able to communicate efficiently in their daily work’. In that regard, it is further stated that it has ‘long been the practice to use mainly English, French, and German for internal communication in the European Parliament, and these are also the languages most often needed when communicating with the outside world and in performing day-to-day work’.

72 However, those grounds, although they indicate the existence of an interest of the service in new recruits being able to communicate effectively as soon as they take up their duties, are not in themselves sufficient to establish that the duties in question, namely those of driver in the European Parliament, in practice require knowledge of one of those three languages, to the exclusion of the other official languages of the Union.

73 In that regard, in so far as those grounds state that English, French and German are the most widely used languages in the European Parliament for both internal and external communications, as well as for performing day-to-day work, the call for expressions of interest suggests that those three languages are, in general, the most useful languages for working in that institution. Nonetheless, in so far as the European Parliament has not adopted, pursuant to Article 6 of Regulation No 1/58, internal rules of procedure governing the application of its language regime, it cannot be stated, without regard to the duties that the persons recruited will actually be called upon to perform, that those three languages are necessarily the most useful languages for all the duties in that institution.

74 The reasons given in Section IV of the call for expressions of interest in order to justify the restriction on the choice of language 2 of the selection procedure do not in any way address the justification for that restriction in relation to the actual language needs relating to the duties that the recruited drivers will be required to perform. In those circumstances, those grounds are not based on clear, objective and foreseeable criteria making it possible to conclude that the interest of the service requires, in the present case, such a difference in treatment based on language.

75 Admittedly, the duties that the recruited drivers will be called upon to perform are described in Section II of the call for expressions of interest. In that regard, Section II states that the contract staff member will be responsible ‘for performing duties as a driver’, which consist, in particular, of ‘providing transport services for eminent persons and officials and other staff of the European Parliament, mainly in Brussels, Luxembourg and Strasbourg, and also in other Member States and third countries’, ‘providing transport services for visitors (members of the diplomatic corps and other eminent persons’, and ‘ensuring that the vehicle and its equipment are used properly’.

76 However, neither the circumstance put forward by Parliament that the drivers recruited must perform their duties, in particular in Brussels, Luxembourg and Strasbourg, namely in three cities located in Member States whose official languages include French and German, nor the circumstance put forward by Parliament at the hearing before the Court, that the persons whom the drivers will be called upon to convey mostly use the English language, are such as to justify restricting the choice of language 2 of the selection procedure to the three languages in question.

77 While it cannot be ruled out that the interests of the service may require the recruitment of a set of drivers with varying language skills, taking into account the diversity of the locations in which they will be called upon to perform their duties or the language skills of the persons they will be called upon to convey, the fact remains that the Parliament has not established how each of the languages listed among those designated as language 2 of the selection procedure would be particularly useful for the carrying out of those duties.

78 It follows that, even if understood in the light of the description of the duties set out in Section II of the call for expressions of interest and the explanations provided by the Parliament in that regard, the grounds set out in Section IV of that call are not such as to justify restricting the choice of language 2 of the selection procedure to English, French and German. Consequently, the Parliament has not demonstrated that the restriction to each of the languages designated as language 2 of the selection procedure was objectively and reasonably justified in the light of the functional specificities of the posts to be filled and why, on the other hand, the languages chosen did not include other official languages that might be relevant for such posts.

79 In the light of the foregoing considerations, the third and fourth pleas in law must be upheld. Since the Parliament has not established that the restriction of the choice of language 2 of the selection procedure to English, French and German was objectively and reasonably justified in the light of a legitimate objective of general interest in the framework of staff policy, there is no need to examine the second part of the second plea, which concerns the level of knowledge required in those languages.

80 Since the first, third and fourth pleas in law of the Kingdom of Spain have been upheld, the call for expressions of interest must be annulled.

The consequences of the annulment of the call for expressions of interest

Arguments of the parties

81 The Kingdom of Spain takes the view that the annulment of the call for expressions of interest entails, as a consequence, that the database that was set up as a result thereof must be declared void. While not requesting the setting aside of any commitments that may have been made on the basis of a candidate's inclusion in that database, the Kingdom of Spain emphasises that inclusion therein does not constitute a guarantee of employment and, as regards the candidates who are included therein, the fact that the database is declared void does not therefore imply any breach of the principle of legitimate expectations.

82 On the other hand, the Parliament contends that since that database has already been established, candidates have been informed of the outcome of the selection procedure and recruitment has begun. In order to be consistent with the principle of legitimate expectations, it should be maintained, in accordance with the approach advocated in particular in the judgment of 27 November 2012, *Italy v Commission* (C-566/10 P, EU:C:2012:752).

Findings of the Court

83 When deciding on the consequences arising from the annulment of a measure relating to the selection procedures for EU staff, the Court must seek to reconcile the interests of candidates disadvantaged by an irregularity which occurred during that procedure with the interests of other candidates, as a result of which it must take into account not only the need to restore the injured candidates' rights, but also the legitimate expectations of the candidates already selected (see, to

that effect, judgment of 6 July 1993, *Commission v Albani and Others*, C-242/90 P, EU:C:1993:284, paragraph 14).

84 As regards, in particular, irregularities which occurred in respect of the language regime applicable to a selection procedure, the legitimate expectations of candidates already selected must be taken into account by weighing the effects of any challenge to the lists of candidates drawn up on the basis of that selection procedure against the interest of the injured candidates (see, to that effect, judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 103).

85 In the present case, in so far as the call for expressions of interest is annulled because of the discriminatory conditions imposed on candidates in respect of their language skills, the database in question must be considered to be tainted by those discriminatory conditions. The inclusion of candidates in that database was based on the results obtained in the context of a selection procedure organised under differing conditions.

86 In that regard, it should be noted, as the Kingdom of Spain has done, that the candidates who were included in the database in question did not benefit, as such, from any guarantee of employment. Thus, those candidates, unlike those who have already been offered a contract agent post on the basis of their inclusion in that database and who therefore enjoy a legitimate expectation that their recruitment will not be called into question, did not receive any additional assurance from the administration liable to create a legitimate expectation as to their recruitment.

87 It must therefore be considered that the mere inclusion of candidates in the database in question cannot create a legitimate expectation requiring the effects of the call for expressions of interest which is annulled to continue to apply. On the other hand, the annulment of the database cannot have any impact on any recruitment already made.

88 In those circumstances, the database must be declared void.

Costs

89 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

90 Since the Kingdom of Spain has applied for costs and the Parliament has been unsuccessful, the Parliament must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Annuls the Call for Expressions of Interest Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016;**
- 2. Declares the database established pursuant to Call for Expressions of Interest Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016 void;**
- 3. Orders the European Parliament to pay the costs.**

[Signatures]

* Language of the case: Spanish.
