ECLI:EU:C:2019:251

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

26 March 2019 (*)

(Appeal — Rules on languages — Open competition for the recruitment of administrators — Notice of competition — Administrators (AD 5) — Administrators (AD 6) in the field of data protection — Knowledge of languages — Restriction of the choice of language 2 of the competitions to English, French and German — Language of communication with the European Personnel Selection Office (EPSO) — Regulation No 1 — Staff Regulations — Discrimination based on language — Justification — Interests of the service — Judicial review)

In Case C-621/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 November 2016,

European Commission, represented by L. Pignataro-Nolin and G. Gattinara, acting as Agents,

applicant,

the other parties to the proceedings being:

Italian Republic, represented by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,

applicant at first instance,

supported by:

Kingdom of Spain, represented by M.J. García-Valdecasas Dorrego, acting as Agent,

intervener in the appeal,

Republic of Lithuania,

intervener at first instance,

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: M. Bobek,

Registrar: V. Giacobbo-Peyronnel, Administrator,

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

gives the following

Judgment

1 By its appeal, the European Commission seeks the annulment of the judgment of the General Court of the European Union of 15 September 2016, *Italy* v *Commission* (T-353/14 and T-17/15, 'the judgment under appeal', EU:T:2016:495), by which the General Court annulled notice of open competition EPSO/AD/276/14 to constitute a reserve list of administrators (OJ 2014 C 74 A, p. 4) and notice of open competition EPSO/AD/294/14 to constitute a reserve list of administrators in the field of data protection for the European Data Protection Supervisor (OJ 2014 C 391 A, p. 1) ('the notices of competition at issue').

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.'

Staff Regulations

5 The Staff Regulations of Officials of the European Union ('the Staff Regulations') are set out in 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 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).

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 Article 2 of the Staff Regulations provides:

'1. Each institution shall determine who within it shall exercise the powers conferred by these Staff Regulations on the appointing authority.

2. However, one or more institutions may entrust to any one of them or to an inter-institutional body the exercise of some or all of the powers conferred on the Appointing Authority other than decisions relating to appointments, promotions or transfers of officials.'

9 Title III of the Staff Regulations is entitled 'Career of officials'.

10 Chapter 1, entitled 'Recruitment', contains Articles 27 to 34 of the Staff Regulations; the first paragraph of Article 27 thereof states:

'Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union. No posts shall be reserved for nationals of any specific Member State.'

11 Article 28 of the Staff Regulations provides:

'An official may be appointed only on condition that:

...

(d) he has, subject to Article 29(2) [on the adoption of a recruitment procedure other than that of the competition for the recruitment of senior management and, in exceptional cases, for positions requiring special qualifications], passed a competition based on either qualifications or tests, or both qualifications and tests, as provided in Annex III;

...

(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.'

12 Article 29(1) of the Staff Regulations, which lays down the possibility of commencing the procedure for competitions either on the basis of qualifications, tests, or qualifications and tests in order to fill vacant posts in an institution, provides that 'Annex III lays down the competition procedure'.

13 In Chapter 3 of Title III of the Staff Regulations, 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. ...'

14 Annex III to the Staff Regulations is entitled 'Competitions'. Article 1 thereof provides:

'1. Notice of competitions shall be drawn up by the appointing authority after consulting the Joint Committee.

The notice shall state:

(a) the nature of the competition (competition internal to the institution, competition internal to the institutions, open competition, where appropriate, common to two or more institutions);

(b) the kind of competition (whether on the basis of either qualifications or tests, or of both qualifications and tests);

(c) the type of duties and tasks involved in the post to be filled and grade offered;

(d) ... the diplomas and other evidence of formal qualifications or the degree of experience required for the posts to be filled;

(e) where the competition is on the basis of tests, what kind they will be and how they will be marked;

(f) where applicable, the knowledge of languages required in view of the special nature of the posts to be filled;

(g) where appropriate, the age limit and any extension of the age limit in the case of servants of the Union who have completed not less than one year's service;

(h) the closing date for applications;

...'

15 Under Article 7 of that annex:

‘1. The institutions shall, after consultation of the Staff Regulations Committee, entrust the European Personnel Selection Office [(EPSO)] with responsibility for taking the necessary measures to ensure that uniform standards are applied in the selection procedures for officials of the Union ...

2. [EPSO’s] task shall be to:

(a) organise, at the request of individual institutions, open competitions;

...

(d) assume general responsibility for the definition and organisation of the assessment of linguistic ability in order to ensure that the requirements of Article 45(2) of the Staff Regulations are met in a harmonised and consistent manner.

3. [EPSO] may, at the request of individual institutions, perform other tasks linked to the selection of officials.

...’

Decision 2002/620/EC

16 EPSO was created by Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 (OJ 2002 L 197, p. 53).

17 The first sentence of Article 2(1) of that decision provides that EPSO is to exercise, inter alia, the powers of selection conferred under Annex III to the Staff Regulations on the appointing authorities of the institutions signing that decision.

18 The last sentence of Article 4 of Decision 2002/620 provides that any appeal in the areas referred to in that decision is to be made against the Commission.

The other applicable legislation and the notices of competition at issue

General rules governing open competitions

19 On 1 March 2014, EPSO published a document entitled ‘General Rules governing open competitions’ in the *Official Journal of the European Union* (OJ 2014 C 60 A, p. 1). That document contains, among other specifications, provisions on the knowledge of languages required of candidates for competitions. It is stated in the first page thereof that ‘these general rules are an integral part of the competition notice, and together with the notice they constitute the binding framework of the competition procedure’.

20 Point 1.1 of the general rules governing open competitions, which defines those competitions, states that ‘the European institutions select future officials through open competitions’. It is apparent from point 1.3 of those general rules, entitled ‘Eligibility’, that, by way of required language proficiency, candidates are generally required to have ‘thorough knowledge of one official EU language and a satisfactory knowledge of another one. ... Unless otherwise stated in the competition notice the choice of second language will normally be limited to English, French or German’.

21 Point 2 of the general rules governing open competitions is related to the stages in the competition. In point 2.1.4 thereof, entitled ‘Fill in your online application’, it is made clear that ‘all parts of the online application form, including the “talent screener”, must be completed in English, French or German, unless otherwise specified in the competition notice’.

22 Point 3 of the general rules sets out ‘General information’. Point 3.1.1, entitled ‘EPSO: Communications with candidates’ states, inter alia, that ‘your results and all invitations will be sent to you solely via your EPSO account in English, French or German’.

The general guidelines on the use of languages

23 The General guidelines on the use of languages in EPSO competitions, adopted on 15 May 2013 by the College of Heads of Administration (‘the general guidelines on the use of languages’), are applied by EPSO in the organisation of open competitions, as can be seen from point 1.3 of the general rules governing open competitions. Those guidelines, which are set out in Annex 2 to those general rules, provide:

‘It is confirmed that as a general rule the use of languages in EPSO competitions will be as follows:

...

– Assessment centres will be held in the candidates’ second language only, chosen from English, French and German.

– ...

Several factors justify limiting the choice of second language.

Firstly, the interests of the service require that new recruits should be immediately operational and capable of effectively performing the duties for which they were recruited in the field or role covered by the competition.

English, French and German are the languages most widely used in the institutions. Traditionally they are the languages used in meetings of members of the institutions. They are also the languages used most often for communication both in-house and with the outside world. This is borne out by statistics on the source languages of the texts translated by the institutions’ translation services.

Given the institutions’ actual language requirements for the purposes of internal and external communication, one selection criterion under the first paragraph of Article 27 of the Staff Regulations must be a satisfactory knowledge of one of these three languages, which must be tested by simulating a realistic working situation. ...

Secondly, limiting the languages for the subsequent stages of competitions is justified by the nature of the tests involved. ...

A substantial body of scientific research has shown that assessment centres, simulating real-life working situations, are the best predictor of real-life performance. ... To ensure that candidates can be assessed fairly and can communicate directly with assessors and the other candidates taking part in an exercise, applying this method requires, in particular, that the assessment centre be conducted in a lingua franca or, in certain circumstances, in the one main language of the competition. ...

... Since the traditional usage referred to above is still the current practice in-house, [the] choice [of language used for the tests] has to be between English, French and German. The assessment centres do not involve assessing candidates' knowledge of the language; a satisfactory knowledge of one of the three as a second language is quite sufficient to be able to take the tests (this is in line with the minimum requirements laid down by Article 28 of the Staff Regulations). This level of language knowledge is not in any way disproportionate given the real needs of the service as described above.

... The obligation on candidates to choose a second language (English, French or German) that is different from their first (normally mother tongue or equivalent) ensures that they can be compared on an equal footing. ...

... Limiting the second language options reflects what languages people in Europe currently know. Not only are English, French and German the languages of several Member States of the European Union, they are also the foreign languages most widely known. They are the languages most often learned as foreign languages and the languages that people think are the most useful to learn. The actual requirements of the service thus seem to be a reasonable reflection of the language skills that candidates can be expected to have, especially since language knowledge in the strict sense (errors of grammar, spelling, or vocabulary) is not assessed in the competence tests. Limiting the choice of second language to English, French or German does not, therefore, pose a disproportionate barrier for people wishing to take competitions. Indeed, to go by the information available, it closely matches what people are used to and expect.

The relevant statistics bear out the conclusion that limiting the second language options for certain stages of competitions is proportionate and non-discriminatory. For instance, English, French or German were the most frequent choices when candidates were given the option of choosing their second language from among the 11 official languages in the major generalist EU-25 competitions for administrators and assistants in 2005. The statistics for competitions after the 2010 reform show no bias in favour of nationals of the countries where English, French or German are official languages. And the statistics for the AD 2010 round of competitions show that substantial numbers of candidates still chose one of the three as their second language.

For the same reasons, it seems reasonable to require candidates to choose one of these three for communicating with EPSO and filling in the talent screener.

...'

The notices of competition at issue

24 The General Court set out the content of the notices of competition at issue in the following terms in paragraphs 12 to 24 of the judgment under appeal:

'12 On 13 March 2014, EPSO published the [notices of competition at issue] in the *Official Journal of the European Union*. ...

13 The introductory section of each of the [notices of competition at issue] states that the General Rules are "an integral part" thereof.

14 The eligibility requirements for the competitions to which the [notices of competition at issue] relate include a thorough knowledge of one of the official languages of the European Union, referred to as "language 1" of the competition, and a satisfactory knowledge of a second language,

referred to as “language 2” of the competition, to be chosen by the candidates from German, English or French. They make clear that language 2 must be different from the language chosen by the candidate as language 1 (part III, paragraph 2.3 of the [notices of competition at issue]) [(“language 2 of the competition”)].

15 Information concerning the limitation on the choice of language 2 to the three languages mentioned above is provided in paragraph 2.3 of part III of the [notices of competition at issue]. In that respect, notice of open competition EPSO/AD/276/14 states:

“In the light of the judgment [of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752)], the EU institutions wish to state the reasons for limiting the choice of the second language in this competition to a small number of official EU languages.

Candidates are informed that the second language options in this competition have been defined in line with the interests of the service, which require new recruits to be immediately operational and capable of communicating effectively in their daily work. Otherwise the efficient functioning of the institutions could be severely impaired.

It has long been the practice to use mainly English, French, and German for internal communication in the EU institutions and these are also the languages most often needed when communicating with the outside world and dealing with cases. Moreover, English, French, and German are the most common second languages in the European Union and the most widely studied as a second language. This confirms what is currently expected of candidates for European Union posts in terms of their level of education and professional skills, namely that they have a command of at least one of these languages. Consequently, in balancing the interests and needs of the service and the abilities of candidates, and given the particular field of this competition, it is legitimate to organise tests in these three languages so as to ensure that all candidates are able to work in at least one of them, whatever their first official language. Assessing specific competencies in this way allows the institutions to evaluate candidates’ ability to be immediately operational in an environment that closely matches the reality they would face on the job.

For these same reasons, it is reasonable to limit the language of communication between candidates and the institution, including the language in which applications are to be drafted. Furthermore, this ensures uniformity when comparing candidates and checking their application forms.

To ensure equal treatment for all candidates, everyone — including those whose first official language is one of the three — must take some tests in their second language, chosen from among these three.

None of this affects the possibility of later language training to enable staff to work in a third language, as required under Article 45(2) of the Staff Regulations.”

16 Notice of open competition EPSO/AD/294/14 essentially provides the same information.

17 Part IV of the notice of open competition EPSO/AD/276/14 makes provision for admission tests on computer. These involve tests of verbal reasoning (test a), numerical reasoning (test b), abstract reasoning (test c) and situational judgement (test d). In paragraph 3 of that part of the notice, it is stated that the language of tests (a) to (c) is language 1 of the competition, while the language of test (d) is language 2 of the competition.

18 Part IV of the notice of open competition EPSO/AD/294/14 also makes provision for admission tests on computer. These involve tests of verbal reasoning (test a), numerical reasoning (test b) and abstract reasoning (test c). In paragraph 3 of that part of the notice, it is stated that the language of tests (a) to (c) is language 1 of the competition.

19 Part V of the notice of open competition EPSO/AD/294/14 sets out the procedure for admission to the competition and for selection based on qualifications. It makes clear that a check for compliance with the general and specific conditions and selection based on qualifications will be carried out initially on the basis of the information given by candidates in the application form. Candidates' responses to the questions concerning the general and specific conditions are to be processed to determine whether they can be included in the list of candidates who fulfil all the conditions for admission to the competition, in accordance with what is set out in part III of notice EPSO/AD/294/14. The selection board will then screen the candidates who fulfil the conditions for admission to the competition concerned on the basis of their qualifications to identify those whose profile, particularly as regards their diplomas and professional experience, best matches the duties and selection criteria set out in notice EPSO/AD/294/14. This selection is carried out solely on the basis of the information provided by the candidates in the "Talent Screener" tab, using the marking system set out in paragraph (1)(b) of part V of notice EPSO/AD/294/14.

…

21 The last stage of the selection procedures to which the [notices of competition at issue] relate involves an "assessment centre" (part V of notice EPSO/AD/276/14; part VI of notice EPSO/AD/294/14).

22 In paragraph 3 of part V of notice EPSO/AD/276/14, it is stated that the language of the assessment centre is language 2 of the competition.

23 According to paragraph 2 of part VI of notice EPSO/AD/294/14, at the assessment centre, candidates will sit three types of tests aimed at assessing:

– their reasoning abilities, by means of a verbal reasoning test (test (a)), a numerical reasoning test (test (b)) and an abstract reasoning test (test (c)).

– their specific competencies, by means of a structured interview on their competencies in the field (test (d)).

– their general competencies by means of a case study (test (e)), a group exercise (test (f)), a structured interview (test (g)).

24 Furthermore, paragraph 3 of part VI of notice EPSO/AD/294/14 states that the assessment centre languages will be language 1 of the competition for tests (a) to (c) and language 2 of the competition for tests (d) to (g).'

The proceedings before the General Court and the judgment under appeal

25 By applications lodged at the Registry of the General Court, one on 23 May 2014, and the other on 15 January 2015, the Italian Republic brought actions for the annulment of each of the notices of competition at issue. Those cases were registered under Case T-353/14 and Case T-17/15. The Republic of Lithuania intervened in support of the form of order sought by the Italian Republic in that case.

26 Cases T-353/14 and T-17/15 were joined for the purposes of the oral procedure and the judgment.

27 The Italian Republic disputed the lawfulness of two aspects of the language regime established by the notices of competition at issue, namely that restricting to the English, French and German languages the choice, on the one hand, of language 2 of the competition, and, on the other, of the languages that may be used in communications between candidates and EPSO.

28 Having rejected the Commission's plea of inadmissibility, the General Court first examined, jointly, the third and seventh pleas in law in each action, relating to the first aspect of the disputed language regime, namely the lawfulness of restricting the choice of language 2 of the competition to English, French and German, and alleging infringement of Article 6(3) TEU, Article 18 TFEU, Article 296, second paragraph, TFEU, Article 22 of the Charter of Fundamental Rights of the European Union, Articles 1 and 6 of Regulation No 1/58, as well as Article 1d(1) and (6), Article 27, second paragraph, and Article 28(f) of the Staff Regulations, as well as Article 1(1)(f), (2) and (3) of Annex III thereto, infringement of the principle of proportionality, and 'distortion of the facts'. It upheld those pleas and annulled the notices of competition at issue inasmuch as they laid down those language requirements.

29 Secondly, the General Court examined the sixth plea in each case, relating to the second aspect of the disputed language regime, namely the lawfulness of the restriction to those three languages of the choice of the language of communication between the candidates and EPSO and alleging infringement of Article 18 TFEU, Article 24, fourth paragraph, TFEU, Article 22 of the Charter of Fundamental Rights, Article 2 of Regulation No 1/58, and Article 1d(1) and (6) of the Staff Regulations. The General Court also upheld that plea and, without finding it necessary to examine the other pleas in law, annulled the notices of competition at issue in so far as they laid down such a restriction.

30 Finally, the General Court stated that, notwithstanding the annulment of the notices of competition at issue, there was no need to call into question the results of the competitions to which those notices related.

Forms of order sought by the parties to the appeal

31 The Commission submits that the Court should:

– set aside the judgment under appeal;

– dismiss, to the extent that the state of the proceedings so permits, the actions at first instance as unfounded;

– order the Italian Republic to pay the cost of the present proceedings and those at first instance; and

– order the Republic of Lithuania to bear its own costs.

32 The Italian Republic contends that the Court should:

– dismiss the appeal, and

– order the Commission to pay the costs.

33 By decision of the President of the Court of 30 March 2017, the Kingdom of Spain was granted leave to intervene in support of the form of order sought by the Italian Republic.

The appeal

34 The Commission puts forward four grounds in support of its appeal.

35 The first ground relates to the error of law committed by the General Court in its assessment of the admissibility of the actions brought before it. The second ground relates to the error of law committed by the General Court in interpreting Article 1d of the Staff Regulations and in the interpretation of the extent of the duty to state reasons placed on the Commission. The third ground alleges, on the one hand, errors of law in the interpretation of Article 28(f) of the Staff Regulations and, on the other, the fact that the General Court overstepped the bounds of its power of judicial review in respect of the restriction of the choice of language 2 of the competition to English, French and German. Finally, the fourth ground relates to errors of law in the assessment of the restriction of the language of communication between candidates and EPSO to one of those three languages.

The first ground of appeal, relating to the admissibility of the action before the General Court

Arguments of the parties

36 The first ground of appeal is divided into four parts.

37 In the first part, the Commission alleges that the General Court erred in law by failing to consider, in paragraphs 47 to 52 of the judgment under appeal, that the general rules governing open competitions and the general guidelines on the use of languages were legally binding. In the second part of that ground of appeal, the Commission submits that the General Court, having found, in paragraphs 53 to 57 of the judgment under appeal, that EPSO did not have the power to lay down general and abstract binding rules governing the language arrangements for the competitions it organises, erred in law. The General Court is also alleged to have provided a contradictory statement of reasons for its assessment on that point. In the third part of that ground, the Commission submits that the General Court, having found, in paragraph 58 of the judgment under appeal, that the general rules governing open competitions and the general guidelines on the use of languages had to be regarded as communications which ‘set out’ criteria for restricting the choice of a language as a language 2 of the competition, misinterpreted the reference, in paragraph 91 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), to communications which ‘lay down’ such criteria.

38 By the fourth part of its first ground of appeal, the Commission submits that the General Court misinterpreted, in paragraphs 65 to 71 of the judgment under appeal, the legal nature of the notices of competition at issue, in particular in so far as it held that they did not constitute measures confirming the general rules governing open competitions. It also failed to give sufficient reasons for its assessment in that regard.

39 The Italian Republic disputes all of these arguments.

Findings of the Court

– *Preliminary observations*

40 In so far as the Commission alleges that the General Court held that the Italian Republic's actions were admissible, that ground of appeal relates to paragraphs 43 to 71 of the judgment under appeal and criticises, in particular, the finding set out in paragraph 71 thereof by which the General Court rejected the Commission's plea of inadmissibility.

41 In that regard, although the General Court analysed, in paragraphs 43 to 58 of the judgment under appeal, the nature and legal scope of the general rules governing open competitions, it rejected the Commission's plea of inadmissibility on the basis of an examination of the legal nature of the notices of competition at issue, set out in paragraphs 60 to 69 of the judgment under appeal. It is at the end of that examination, carried out, as is apparent from paragraph 59 of the judgment under appeal, 'in order to rule on the admissibility of the [actions in question]', that the General Court held, in paragraph 70 of that judgment, that '[those] contested notices constitute measures which have binding legal effects as regards the language rules for the competitions at issue, and therefore constitute acts which are open to challenge'.

42 Since the conclusions drawn by the General Court from its examination of the legal nature of the notices of competition at issue have thus been decisive in rejecting the plea of inadmissibility in paragraph 71 of the judgment under appeal, it is necessary first of all to examine, as noted by the Advocate General in point 45 of his Opinion, the fourth part of the first ground of appeal on the legal nature of those notices of competition.

– *The fourth part of the first ground of appeal, alleging misinterpretation of the legal nature of the notices of competition at issue*

43 By the fourth part of its first ground of appeal, the Commission alleges that the General Court erred in law and breached the duty to state reasons in that it failed to assess, in paragraphs 65 to 71 of the judgment under appeal, whether the scope of the notices of competition at issue was purely confirmatory in relation to the general rules governing open competitions. In its view, the General Court was required to make a comparison of the content of those notices of competition and general rules and, in any event, to take account of the fact that those general rules formed an integral part of those notices of competition. An assessment of the content of these instruments and of the relationship between them would have revealed that those general rules constituted the binding rules governing competitions. To the extent that the Italian Republic's actions for annulment were only directed against the notices of competition at issue, the General Court should have declared that they were inadmissible.

44 It is settled case-law that actions for annulment, provided for under Article 263 TFEU, are available in the case of all measures adopted by the institutions of the European Union, whatever their nature or form, which are intended to have binding legal effects (see, in particular, judgments of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 36; of 13 February 2014, *Hungary* v *Commission*, C-31/13 P, EU:C:2014:70, paragraph 54; of 25 October 2017, *Romania* v *Commission*, C-599/15 P, EU:C:2017:801, paragraph 47; and of 20 February 2018, *Belgium* v *Commission*, C-16/16 P, EU:C:2018:79, paragraph 31; see also, to that effect, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9; order of 4 October 1991, *Bosman* v *Commission*, C-117/91, EU:C:1991:382, paragraph 13, and judgment of 9 December 2004, *Commission* v *Greencore*, C-123/03 P, EU:C:2004:783, paragraph 44).

45 Since confirmatory and purely implementing measures do not produce such legal effects, they fall outside the scope of that article (see, to that effect, judgment of 12 September 2006, *Reynolds*

Tobacco and Others v *Commission*, C-131/03 P, EU:C:2006:541, paragraph 55 and the case-law cited).

46 In order to respond to the Commission's submission that the notices of competition at issue were, in relation to the general rules governing open competitions, merely confirmatory or purely implementing measures, the General Court held, in paragraphs 65 and 66 of the judgment under appeal, that 'the terms of the competition notice constitute both the legal framework and the basis for assessment for the selection board', and that 'the essential function of a notice of competition is to give those interested the most accurate information possible about the conditions of eligibility for the post in question, so as to enable them to judge whether they should apply for it', 'each competition notice [being] adopted with a view to introducing rules on the conduct of one or more particular competitions, the regulatory framework of which is laid down in that notice in accordance with the objective set by the appointing authority'.

47 The General Court thus arrived at the conclusion, in paragraph 67 of that judgment, that 'a competition notice, such as the [notices of competition at issue], which, by taking into account the specific needs of the institutions or bodies of the European Union concerned, introduces the regulatory framework for a particular competition, including its language rules, and thus has independent legal effects, cannot, in principle, be regarded as a measure which confirms or merely implements earlier measures'.

48 In order to assess the present part of the first ground of appeal, it is necessary to determine whether those notices of competition constituted, as held by the General Court, the binding legal framework for the competitions at issue. In so far as the notices of competition at issue produced, in themselves, binding legal effects, they cannot be classified either as measures confirming or purely implementing those general rules, and accordingly, the General Court was entitled not to make a comparison of their respective content.

49 In accordance with Article 29(1) of the Staff Regulations, the competition procedure is determined by Annex III thereto. In that regard, Article 1(1) of that annex states that notices of competition are to be drawn up by the appointing authority and must state, in particular, the nature and kind of the competition, the type of duties and tasks involved in the posts to be filled, the diplomas or degree of experience required for them, the closing date for applications, and any other conditions, such as language skills required on account of the specific nature of the posts to be filled. In addition, Annex III contains provisions governing the publication of notices of competition, application forms, the composition and proceedings of the selection board and the conditions under which EU institutions may entrust tasks relating to selection procedures to EPSO.

50 It follows that the organisation of a competition is governed by a notice, the essential elements of which must be laid down in accordance with the provisions of Annex III to the Staff Regulations. In those circumstances, a competition notice establishes, as noted by the General Court in paragraph 66 of the judgment under appeal, the 'regulatory framework' for a specific competition on the basis of the objective laid down by the appointing authority, that framework governing 'the competition procedure from publication of the notice in question until publication of the reserve list containing the names of the successful candidates in the competition concerned'.

51 Consequently, since the notices of competition at issue provide such a regulatory framework, they produce binding legal effects within the meaning of the case-law cited in paragraph 44 of the present judgment.

52 The assessment that the competition notices are legal in nature is, in the present case, borne out by the wording of the general rules governing open competitions adopted by EPSO and by that of the notices of competition at issue.

53 In that regard, it results, on the one hand, from the first page of the general rules governing open competitions that they 'are an integral part of the competition notice, and together with the notice they constitute the binding framework of the competition procedure'. With regard to the knowledge of languages required of candidates under those general rules, it is specified, in particular in points 1.3 and 2.1.4 thereof, that the choice of language 2 of both the competition and application forms is, 'unless otherwise specified in the competition notice', restricted to English, French and German. On the other hand, the introductory part of the notices of competition at issue states, by referring to those general rules, that 'those provisions, which form an integral part of the notice of competition, will help you to understand the rules governing the procedures and how to apply'.

54 Since the general rules governing open competitions are, according to their wording, the binding framework for the competition procedure only in conjunction 'with the notice', they do not, on their own, govern the procedure for the competitions referred to in the notices of competition at issue. Although those general rules are 'an integral part of the notice of competition' and are admittedly likely to be taken into consideration as such in the analysis of a competition notice, they do not, of themselves, provide the legal framework for competitions, such as those governed by the notices of competition at issue.

55 Consequently, the General Court correctly held, in paragraph 70 of the judgment under appeal, that the notices of competition at issue were not confirmatory or purely implementing measures of the general rules governing open competitions, but measures which had 'binding legal effects as regards the language rules for the competitions in question'.

56 In those circumstances, and since the General Court was entitled to reach that conclusion on the basis of the sole examination of the notices of competition at issue themselves, it cannot be held that it infringed its obligation to state reasons by not comparing, when analysing the legal nature of those notices of competition, the content of those notices with that of the general rules governing open competitions.

57 Moreover, with regard to the considerations set out in paragraphs 68 and 69 of the judgment under appeal, they were expressed by the General Court for the sake of completeness, in the event that the notices of competition at issue were to be classified as measures confirming or purely implementing the general rules governing open competitions. In the light of the finding in paragraph 55 of the present judgment, those considerations cannot, even if vitiated by errors, lead to the annulment of the judgment under appeal. The arguments against them are therefore ineffective (see, to that effect, judgment of 24 October 2013, *Kone and Others* v *Commission*, C-510/11 P, not published, EU:C:2013:696, paragraph 69 and the case law cited).

58 In those circumstances, the fourth part of the first ground of appeal must be rejected.

– *The first to third parts of the first ground of appeal, alleging misinterpretation of the legal nature of the general rules governing open competitions*

59 The first to the third parts of the first ground of appeal relate to paragraphs 45 to 59 of the judgment under appeal, which concern the legal nature of the general rules governing open competitions. However, it is apparent from the very wording of paragraph 59 of the judgment under

appeal that the General Court expressed the considerations set out in those paragraphs only as a preliminary point in order to rule, subsequently, on the admissibility of the actions before it.

60 As noted by the Advocate General in point 58 of his Opinion, in so far as the notices of competition at issue produced binding legal effects and may therefore be challenged irrespective of the legal value to be given to the general rules governing open competitions, consideration of the legal nature of those rules was not indispensable in order to assess the admissibility of the actions brought before the General Court.

61 It follows that the arguments put forward in the first to third parts of the first ground of appeal are directed against grounds of the judgment under appeal included for the sake of completeness and cannot, as such, lead to its annulment. They must therefore be rejected as ineffective (see, to that effect, judgment of 24 October 2013, *Kone and Others* v *Commission*, C-510/11 P, not published, EU:C:2013:696, paragraph 69 and the case-law cited).

62 Accordingly, the first ground of appeal must be rejected as in part unfounded and in part ineffective.

The second ground of appeal, alleging infringement of Article 1d of the Staff Regulations and of the obligation to state reasons

The first part of the second ground of appeal, alleging misinterpretation of Article 1d of the Staff Regulations

– *Arguments of the parties*

63 The Commission submits that, in paragraph 91 of the judgment under appeal, the General Court misinterpreted Article 1d of the Staff Regulations and the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), having held that it was apparent from that judgment that 'limiting the choice of the second language of candidates in a competition to a restricted number of languages, to the exclusion of the other official languages, constitutes discrimination on grounds of language'. In that regard, the General Court also erred in law in holding, in paragraph 92 of the judgment under appeal, that Article 1d of the Staff Regulations 'prohibits' discrimination on the basis of language, whereas that provision made it possible to justify differences in treatment, in particular because of considerations relating to the interests of the service.

64 The Italian Republic challenges that line of argument.

– *Findings of the Court*

65 In paragraph 91 of the judgment under appeal, the General Court held, in particular, on the basis of the Staff Regulations and of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), that 'limiting the choice of the second language of candidates in a competition to a restricted number of languages, to the exclusion of the other official languages, constitutes discrimination on grounds of language'. In that regard, the General Court made clear that 'such a provision favours certain potential candidates (namely those who have a satisfactory knowledge of at least one of the designated languages), since they may participate in the competition and thus be recruited as officials or servants of the EU, whereas the others who do not have such knowledge are excluded'. The General Court further held, in paragraph 92 of the judgment under appeal, that the argument put forward by the Commission relating to the lack of

discrimination on the basis of nationality in the present case had to be rejected as ineffective, on the ground that Article 1d of the Staff Regulations not only prohibited discrimination on the basis of nationality, but also discrimination on grounds of language.

66 In the light of those considerations, it should be recalled that, as the Court stated in paragraph 82 of its judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), under the terms of Article 1d(1) of the Staff Regulations, 'in the application of these Staff Regulations, any discrimination based on any ground such as ... language ... shall be prohibited' and, moreover, that Article 1d(6) provides for the possibility of derogating, under certain conditions, from the prohibition set out in Article 1d(1).

67 Contrary to what the Commission argues, the General Court manifestly did not intend to exclude, in paragraph 91 of the judgment under appeal, the possibility of justifying, under certain conditions, restrictions on the use of official languages on the basis of Article 1d(6) of the Staff Regulations. Before finding, in paragraph 91, that 'limiting the choice of the second language of candidates in a competition to a restricted number of languages, to the exclusion of the other official languages, constitutes discrimination on grounds of language', the General Court recalled, in paragraph 88 of that judgment, that 'Article 1d of the Staff Regulations allows restrictions' on the use of official languages, in particular as regards the interests of the service.

68 Similarly, the General Court correctly held, in paragraph 92 of the judgment under appeal, that Article 1d of the Staff Regulations not only prohibited discrimination on the basis of nationality, but also any discrimination on grounds of language.

69 In those circumstances, the first part of the second ground of appeal must be rejected.

The second part of the second ground of appeal, alleging an error of law and a failure to state reasons in the assessment by the General Court of the statement of reasons for the notices of competition at issue

– *Arguments of the parties*

70 The Commission submits that the General Court erred in law by holding that the statements of reasons for the notices of competition at issue were inadequate even though it failed to examine, in paragraphs 98 to 104 of the judgment under appeal, whether the general rules governing open competitions provided sufficient reasons justifying the restriction of the choice of language 2 of the competition to English, French and German. It also infringed its obligation to state reasons by failing to examine whether those general rules constituted other measures, such as communications laying down the criteria for restricting the choice of language as the second language to take part in competitions, within the meaning of paragraph 91 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752).

71 The Italian Republic disputes those arguments.

– *Findings of the Court*

72 In paragraph 103 of the judgment under appeal, the General Court held that the regulatory framework for the competitions at issue was established by the notices of competition at issue, not by the general rules governing open competitions and by the general guidelines on the use of languages annexed thereto, although the notices referred to those documents. It also took the view that the notices laid down independent rules for those competitions, including for the language

regime applicable to those competitions. It therefore decided, in paragraph 104 of the judgment, to examine the reasoning set out by EPSO in the notices of competition at issue in order to justify the restriction of the choice of language 2 of the competition to English, French and German.

73 Admittedly, as was held in paragraph 51 of the present judgment, the notices of competition at issue produced binding legal effects and thus constituted the regulatory framework for the competitions at issue. However, since the general rules governing open competitions 'form an integral part' of those notices, it was for the General Court to assess whether the statement of reasons given by EPSO in order to justify the language requirements in question was well founded, not only with respect to the reasoning set out in the notices of competition at issue themselves, but also with regard to those contained in the general rules.

74 The Commission's argument that the General Court restricted its analysis to the content of the notices of competition at issue is unfounded, since the General Court also reviewed, as is apparent from paragraphs 115 to 117 of the judgment under appeal, the relevant statement of reasons in that regard set out in the general rules governing open competitions, as well as in the general guidelines on the use of languages, as an 'integral part' of the notices of competition at issue.

75 As regards, moreover, the Commission's argument that the General Court 'infringed the obligation to state reasons, in that it failed to examine whether the general rules governing open competitions were communications or other acts, within the meaning of paragraph 91 of the judgment [of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752)]', suffice it to note that the General Court recalled, in particular in paragraphs 58 and 69 of the judgment under appeal, that 'the General Rules ... must be interpreted as constituting ... communications, for the purposes of paragraph 91 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752)'. Therefore, that argument must be rejected.

76 Accordingly, the second part of the second ground of appeal must be rejected and the second ground of appeal dismissed as unfounded in its entirety.

The third ground of appeal, concerning the restriction of the choice of language 2 of the competition to English, French and German

The first part of the third ground of appeal, alleging an error of law and breach of the obligation to state reasons when interpreting Article 28(f) of the Staff Regulations

– *Arguments of the parties*

77 The Commission submits that the General Court erred in law when interpreting Article 28(f) of the Staff Regulations, in that it held, in paragraph 106 of the judgment under appeal, that a difference in treatment based on language was not appropriate for the purpose of facilitating the recruitment of officials of the highest standard of ability, efficiency and integrity, within the meaning of the first paragraph of Article 27 of the Staff Regulations, on the grounds that, in its view, those qualities were clearly independent of a candidate's language knowledge. The Commission takes the view that knowledge of languages falls under the competence requirements within the meaning of that provision.

78 The Italian Republic disputes those arguments.

– *Findings of the Court*

79 In paragraph 105 of the judgment under appeal, the General Court set out the Commission's argument that, when the EU institutions determine the language needs of their services, the principle of non-discrimination is infringed solely in the event that arbitrary or manifestly inadequate choices are made in relation to the objectives of 'having immediately operational candidates' and 'recruiting officials of the highest standard of ability, efficiency and integrity, within the meaning of the first paragraph of Article 27 of the Staff Regulations'. However, the General Court held, in paragraph 106 of that judgment, that only the first of those objectives was capable of justifying, possibly, a difference in treatment based on language, whereas the latter was not such as to justify such a difference, since the competences referred to in the first paragraph of Article 27 of the Staff Regulations were independent of a candidate's knowledge of languages.

80 In that regard, it must be held, on the one hand, that the first paragraph of Article 27 of the Staff Regulations sets out the objective that recruitment should be aimed at ensuring that officials possess 'the highest standards of ability, efficiency and integrity'. In addition, Article 28 of the regulations lists the conditions required for their appointment, including, in particular, those of being a national of a Member State, enjoying full rights as a citizen, having fulfilled any obligations relating to military service, producing character references, having passed a competition, satisfying the necessary physical fitness requirement, and possessing the requisite language skills.

81 Inasmuch as the Court has already held, in paragraph 94 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), that the objective of recruiting officials of 'the highest standard of ability, efficiency and integrity', within the meaning of the first paragraph of Article 27 of the Staff Regulations, may be better attained 'when the candidates are allowed to sit the selection tests in their mother tongue or in the second language of which they think they have the best command', it recognised that knowledge of languages is, in principle, independent of the competences referred to in that article.

82 Thus, although a candidate's knowledge of languages may, or must, be assessed as part of a competition procedure, in order for the institutions to ensure that the candidate possesses the knowledge required by Article 28(f) of the Staff Regulations, the purpose of that assessment is independent of the objective of determining 'the highest standard of ability, efficiency and integrity' within the meaning of the first paragraph of Article 27 of the Staff Regulations. It follows that the knowledge of languages required under Article 28(f) of the Staff Regulations cannot be regarded as equivalent to 'ability' within the meaning of the first paragraph of Article 27 of the Staff Regulations.

83 In those circumstances, the General Court did not err in law in holding, in paragraph 106 of the judgment under appeal, that 'the highest standard of ability, efficiency and integrity' was 'independent of a candidate's knowledge of languages'. It also follows that the General Court did not infringe its obligation to state reasons by failing to examine — in the light of the objective of recruiting officials of the highest standard of ability, efficiency and integrity, within the meaning of the first paragraph of Article 27 of the Staff Regulations — the restriction on the choice of language 2 of the competition, set out in the notices of competition at issue, to English, French and German.

84 Consequently, the first part of the third ground of appeal must be rejected.

The second part of the third ground of appeal, alleging incorrect definition of the intensity of applicable judicial review and incorrect interpretation of the general guidelines on the use of languages

– *Arguments of the parties*

85 The Commission submits that the General Court erred in law when it carried out, in paragraphs 107 to 117 of the judgment under appeal, the review of the lawfulness of the notices of competition at issue, in that it failed to have regard to EPSO's wide discretion in determining the criteria pertaining to the language ability required of candidates. Even though the Court of Justice required, in paragraph 90 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), the adoption of 'clear, objective and foreseeable' criteria capable of objectively justifying the restriction of the choice of language 2 of the competition to English, French and German, the General Court incorrectly required EPSO to provide a detailed statement of reasons with 'concrete indications' on the reasons for the restriction of that choice. In any event, the detailed statement of reasons set out in the general guidelines on the use of languages and in the notices of competition at issue set out such criteria.

86 The Italian Republic disputes those arguments.

– *Findings of the Court*

87 In paragraphs 107 to 109 of the judgment under appeal, the General Court noted that, notwithstanding the wide discretion enjoyed by EU institutions 'as regards the creation of posts for officials or agents, the choice of the official or agent in order to fill the post created, and the nature of the employment relationship with the agent', those institutions must ensure compliance with the relevant provisions, including Article 1d of the Staff Regulations. It also clarified that it was for the EU judicature to verify, where appropriate, that any requirements relating to candidates' specific knowledge of languages are objectively justified and proportionate to the actual needs of the service.

88 In that regard, it should be recalled, first, that, according to the settled case-law of the Court, EU institutions must enjoy a wide discretion in the organisation of their departments and, in particular, in the determination of the criteria of ability required for the positions to be filled and, in the light of these criteria and in the interests of the service, the conditions and procedure for organising competitions (see, to that effect, judgments of 16 October 1975, *Deboeck* v *Commission*, 90/74, EU:C:1975:128, paragraph 29; of 9 February 1984, *Fabius* v *Commission*, 39/83, EU:C:1984:52, paragraph 7; and of 9 October 2008, *Chetcuti* v *Commission*, C-16/07 P, EU:C:2008:549, paragraph 76). Accordingly, the institutions, like EPSO, where the latter exercises powers devolved to it by the institutions, must be able to determine, on the basis of their needs, the abilities that it is appropriate to require of candidates taking part in competitions in order to organise their departments in a useful and reasonable manner.

89 However, as pointed out in paragraph 66 of the present judgment, the institutions must ensure, in the application of the Staff Regulations, compliance with Article 1d of the Staff Regulations, which prohibits discrimination on grounds of language. While Article 1d(6) provides that limitations to that prohibition are possible, they must be 'justified on objective and reasonable grounds' and correspond to 'legitimate objectives in the general interest in the framework of staff policy'.

90 Thus, the broad discretion enjoyed by the EU institutions with regard to the organisation of their departments, like EPSO under the conditions referred to in paragraph 88 of the present judgment, is governed in mandatory terms by Article 1d of the Staff Regulations, so that differences of treatment based on language resulting from restrictions on the language regime of a competition to a limited number of official languages can only be accepted if such a restriction is objectively justified and proportionate to the real needs of the service (see, to that effect, judgment of 27 November 2012, *Italy* v *Commission*, C-566/10 P, EU:C:2012:752, paragraph 88). In those

circumstances, the General Court correctly held, in paragraph 107 of the judgment under appeal, that EPSO's discretion does not exempt it from the obligation to comply, in particular, with Article 1d of the Staff Regulations.

91 As regards, secondly, the judicial review which the General Court is required to exercise in respect of a difference in treatment based on language, such as that resulting from the restriction of the choice of language 2 of the competition to a limited number of official languages of the Union, it must be recalled, as is clear from the case-law cited in the previous paragraph, that such a restriction may, in principle, be justified on the basis of the interests of the service, provided that such interests are objectively justified and that the level of language knowledge required is proportionate to the actual needs of the service. Moreover, it is apparent from that case-law that the rules restricting the choice of language 2 of the competition must be based on 'clear, objective and foreseeable' criteria (see, to that effect, judgment of 27 November 2012, *Italy* v *Commission*, C-566/10 P, EU:C:2012:752, paragraphs 88 and 90).

92 In so far as the lawfulness of restricting the choice of language 2 of the competition thus depends, in accordance with Article 1d of the Staff Regulations, on whether that restriction is justified and proportionate, and in so far as, according to the case-law of the Court of Justice, the justified and proportionate character of the restriction must be emphasised by clear, objective and foreseeable criteria, the General Court correctly held, in paragraphs 108 and 109 of the judgment under appeal, that the EU judicature is entitled to verify whether the restriction of the choice of language 2 of the competition is objectively justified and proportionate to the actual needs of the service.

93 Moreover, as regards the argument that the General Court, in particular in paragraph 113 of the judgment under appeal, incorrectly required 'concrete indications' so as to supplement the statement of reasons for the notices of competition at issue in respect of the restriction of the choice of language 2 of the competition, it should be pointed out that it is for the institution which instituted a difference in treatment based on language to establish that that difference is well suited to meet the actual needs relating to the duties which 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 judgment of today's date, *Spain* v *Parliament*, C-377/16, paragraph 69).

94 Therefore, in order for the General Court to be in a position to check whether the rules governing the competitions at issue were consistent with Article 1d of the Staff Regulations, it was incumbent upon it to carry out an actual assessment of those rules and the specific circumstances at issue. Only an assessment is capable of establishing knowledge of languages which may objectively be required, in the interests of the service, by the institutions for specific duties and, consequently, whether the restriction on the choice of the languages which may be used in order to participate in those competitions is objectively justified and proportionate to the actual needs of the service.

95 In those circumstances, the General Court was entitled to undertake, in particular in paragraph 113 of the judgment under appeal, an assessment of whether the notices of competition at issue, the general rules governing open competitions or the evidence provided by the Commission included 'concrete indications' capable of establishing, objectively, whether the interests of the service justified, in the present case, the restriction of the choice of language 2 of the competition.

96 Thirdly, in so far as the Commission submits that the detailed statement of reasons set out in the general guidelines on the use of languages and in the notices of competition at issue 'clearly'

included, in any event, clear, objective and foreseeable criteria justifying the restriction to English, French and German of the choice of language 2 of the competition, it is important to note, on the one hand, that that argument is not substantiated, as a result of which it cannot be upheld.

97 Moreover, inasmuch as, by that argument, the Commission intends to call into question the General Court's analysis, in paragraphs 110 to 117 of the judgment under appeal, of the content of the general rules governing open competitions, including the general guidelines on the use of languages, and of the notices of competition at issue and the Commission's pleadings before it, it should be recalled that, according to settled case-law, it is apparent from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the appeal is limited to points of law. The General Court thus has exclusive jurisdiction to find and appraise the relevant facts. The appraisal of those facts thus does not, save where they are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 8 November 2016, *BSH* v *EUIPO*, C-43/15 P, EU:C:2016:837, paragraph 50). The Commission did not plead such a distortion.

98 In the light of the foregoing, the second part of the third ground of appeal must be rejected as unfounded.

The third part of the third ground of appeal, alleging errors of law committed by the General Court in the exercise of its judicial review

– *Arguments of the parties*

99 The Commission submits that the General Court exceeded the limits of its judicial review and substituted its own assessment for that of the administration in paragraphs 120 to 144 of the judgment under appeal and, in particular, in paragraphs 129 to 131, 139, 140, 142 and 146 thereof. In its view, the General Court was to confine itself to establishing the arbitrary or manifestly inadequate nature of EPSO's assessments concerning the restriction of the choice of language 2 of the competition to English, French and German, since the definition of staff policy and the criteria pertaining to the ability of candidates in a competition involves complex assessments which can only be the subject of judicial review limited to searching for possible manifest errors of assessment.

100 The Italian Republic disputes those arguments.

– *Findings of the Court*

101 In paragraphs 118 to 146 of the judgment under appeal, the General Court successively disputed the Commission's arguments that, first, the three languages to which the choice of language 2 of the competition was restricted in the notices of competition at issue were the main languages of the EU institutions' deliberations; secondly, that almost all the Commission's translations were carried out in those three languages; thirdly, that those languages were the languages most widely spoken by officials and other servants of the Commission; and, fourthly, that those languages were the languages most widely studied and spoken, as foreign languages, in the Member States of the European Union.

102 In so far as the Commission submits that the General Court unduly substituted its own assessment for that of EPSO, it is important to recall, as noted in paragraphs 89 and 90 of the present judgment, that, when EPSO determines the language requirements for a competition, its discretion is, like that of the institutions which entrust it with its tasks, governed by the

requirements laid down in Article 1d of the Staff Regulations, according to which any difference in treatment based on language must be objectively justified and proportionate to the actual needs of the service.

103 It is true that it follows from the principles recalled in paragraph 88 of the present judgment that the General Court cannot substitute its own assessment for that of EPSO as regards the definition of staff policy and the criteria pertaining to ability which may be required, in the interests of the service, from candidates in a competition. However, as explained in paragraphs 91 to 94 of the present judgment, the fact remains that it is for the General Court to exercise both *de jure* and de facto control over the choices made by EPSO in that area in order to ensure that any difference in treatment based on language between candidates is, in accordance with Article 1d of the Staff Regulations, objectively justified and proportionate to the actual needs of the service and that those choices are based on clear, objective and foreseeable criteria.

104 As the Court has held, even in the case of complex assessments, the EU judicature must not only establish whether the evidence relied on is factually accurate, reliable and consistent but also ascertain whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of supporting the conclusions drawn from it (see, to that effect, judgments of 15 February 2005, *Commission* v *Tetra Laval*, C-12/03 P, EU:C:2005:87, paragraph 39; of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraph 54; and of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 59).

105 In order to assess whether the General Court substituted its assessment for that of EPSO in the judgment under appeal and thus exceeded the limits of its judicial review, it is necessary to examine, first of all, paragraphs 120 to 126, 132 to 138 and 141 to 144 of the judgment under appeal, which include the grounds primarily given by the General Court.

106 For the reasons set out in paragraphs 120 to 122 of the judgment under appeal, the General Court first rejected the Commission's assertion that English, French and German were the main languages of the EU institutions' deliberations, on the ground that it was 'vague and general'. In that regard, it took the view, inter alia, that that assertion was neither corroborated by the language rules of the Court of Justice of the European Union nor by that of the European Parliament. It added, in substance, that, even assuming that the claim was correct, it could not be presumed, without further explanation, that a newly recruited official who is not fluent in any of the debating languages would not be capable of being immediately operational. Next, in paragraphs 123 to 126 of that judgment, the General Court rejected the relevance of the statistics put forward by the Commission in relation to documents translated by the Directorate-General for Translation of that institution, noting, in particular, that they did not make it possible to support the conclusion that those three languages are the languages most widely used in all the institutions. Similarly, in paragraphs 132 to 136 of the judgment, the General Court rejected the conclusions drawn by the Commission from a table drawn up by the latter setting out the languages most widely indicated as main languages by its officials and servants. On the one hand, it took the view that that table was intended only for Commission staff and, on the other, that the information concerning the main language of officials and other servants of the Commission did not, in any event, permit the proportion of the languages spoken by them to be established, since the latter must have satisfactory command of at least one other language, as required by Article 28(f) of the Staff Regulations. Finally, in paragraphs 141 to 144 of the judgment under appeal, the General Court rejected the statistics put forward by the Commission, according to which English, French and German are the foreign languages most studied and spoken in the European Union, on the grounds that it cannot be presumed that those statistics reflect the language skills of officials of the European Union and that,

in any event, that fact was relevant only if the Commission had demonstrated that the restriction in question was in the interests of the service, which it had not done.

107 It must be stated that, at those points, the General Court criticised the fact that the factual information submitted by the Commission in support of its arguments do not support the conclusions drawn therefrom. In those circumstances, the General Court merely assessed the relevance and consistency of the justifications and evidence submitted by that institution. It cannot therefore be criticised for having substituted its assessment in that context to that of EPSO.

108 Moreover, in so far as the Commission, in essence, criticises the General Court for not limiting itself to checking the manifest error in the assessments made by EPSO, it must be added that, in the light of paragraphs 89, 90 and 102 of the present judgment, there is nothing to justify such a restriction on the examination of the validity of the grounds put forward by EPSO in order to justify restricting the choice of language 2 of the competition.

109 As regards, secondly, the Commission's arguments in favour of finding that the General Court exceeded the limits of its judicial review in paragraphs 127 to 131, 139 and 140 of the judgment under appeal, when it held that, in any event, the restriction of the choice of language 2 of the competition to English, French and German cannot be justified on the grounds that the data provided by the Commission demonstrated, inter alia, the considerable gap between the use of English in relation to French and, in particular, German, those arguments are directed against paragraphs of the judgment under appeal relating to grounds given for the sake of completeness.

110 In those circumstances, even assuming that the General Court overstepped the bounds of judicial review in the assessment made in those paragraphs, that fact does not, in any event, lead, in accordance with the case-law referred to in paragraphs 57 and 61 of the present judgment, to the annulment of the judgment under appeal. Therefore, the arguments in paragraph 109 of the present judgment are ineffective.

111 The third part of the third ground of appeal should therefore be dismissed as partly unfounded and, in part, ineffective.

112 In the light of the foregoing, the third ground of appeal must be rejected as in part unfounded and in part ineffective.

The fourth ground of appeal, concerning the restriction of the choice of the language of communication between candidates and EPSO to English, French and German

Arguments of the parties

113 The Commission submits that the General Court erred in law by relying, in paragraphs 183 to 185 of the judgment under appeal, on an extensive reading of paragraphs 68 and 69 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), in order to find that Regulation No 1/58 was fully applicable to communications between candidates and EPSO. In the Commission's view, those paragraphs of the latter judgment only relate to the obligation to publish notices of competition in all the official languages of the European Union. Although the Court found that candidates in a competition are not 'totally excluded' from the scope of Regulation No 1/58, it took the view, however, that they remain subject to the Staff Regulations. Therefore, the Court should have found that Article 1d of the Staff Regulations allowed, where appropriate, the languages of communication that could be used in a competition to be restricted.

114 The Italian Republic disputes those arguments.

Findings of the Court

115 Having recalled, in paragraph 183 of the judgment under appeal, that it had held in the past that Regulation No 1/58 was not applicable to relations between, on the one hand, EU institutions and, on the other, officials and servants, to whom candidates for such posts were to be assimilated, the General Court continued its reasoning in the following terms:

'184 However, following the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), these considerations can no longer be considered as valid. The Court held that, in the absence of specific regulations applicable to officials and servants or stipulations in that regard in the rules of procedure of the institutions concerned, no document exists on the basis of which it could be concluded that the relationship between those institutions and their officials and servants is completely excluded from the scope of Regulation No 1[/58]. That is all the more the case, according to the Court, with regard to the relationship between the institutions and the candidates in an external competition who are not, in principle, either officials or servants (judgment of 27 November 2012, *Italy* v *Commission*, C-566/10 P, EU:C:2012:752, paragraphs 68 and 69).

185 This Court must reject the Commission's argument ... relating to the irrelevance of this section of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), concerning the lawfulness of the limitation on the languages used for communication between candidates and EPSO. In that section of its judgment, the Court examined the applicability of Regulation No 1[/58] to candidates in a competition and held that it applied to them. This finding is also relevant to the question raised in the sixth plea in law of the Italian Republic [relating to the lawfulness of the restriction on the languages that may be used in communications between candidates and EPSO].'

116 Taking the view that Regulation No 1/58 governed communications between candidates and EPSO, the General Court held, in paragraph 188 of the judgment under appeal, that the notices of competition at issue infringed that regulation in so far as they provided that candidates were required to communicate with EPSO in a language chosen by them from among English, French and German.

117 It must be borne in mind, inasmuch as the present ground of appeal alleges that the General Court misinterpreted the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), that the reasoning followed by the Court of Justice in that judgment was divided into two parts. On the one hand, paragraphs 62 to 78 of that judgment concerned the assessment of the Italian Republic's grounds of appeal relating to the failure to publish the notices of competition at issue in all the official languages of the European Union in the *Official Journal of the European Union*. On the other hand, in paragraphs 79 to 98 of that judgment, the Court of Justice ruled on the grounds of appeal alleging that those competition notices required either English, French or German to be chosen as language 2 of the competition, the language of communication between candidates and EPSO, and the language to be used for the competition tests.

118 It is true that the Court held, in paragraphs 68 and 69 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), that, in the absence of special rules applicable to officials and servants in the internal rules of the institutions concerned by the notices of competition at issue, there was no provision making it possible for them to conclude that relations between those institutions and their officials and servants were totally excluded from the scope of Regulation

No 1/58. It held that that conclusion should apply, even more so, to relations between institutions and candidates in an external competition.

119 It should, however, be noted that, as is apparent from paragraphs 62 to 78 of that judgment, that clarification concerning the scope of Regulation No 1/58 as regards relations between the institutions and candidates for the competition was laid down by the Court not in respect of the languages of communication between EPSO and the candidates, but in respect of the languages used to publish the competition notices. Thus, the Court held, in particular in paragraph 71 of that judgment, that the competition notices challenged in that case should have been published in full in the *Official Journal of the European Union* in all the official languages 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.

120 By contrast, in the part of its statement of reasons devoted to assessing the lawfulness of the restriction of the choice of language 2 of the competition to English, French and German and, in particular, the requirement that these three languages were the only languages of communication allowed by the notices of competition at issue, the Court held, in 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 personnel selection procedures, differences in treatment as regards the language arrangements for competitions may be authorised, pursuant to Article 1d(6) of the Staff Regulations, if they are objectively and reasonably justified by a legitimate objective in the general interest in the framework of staff policy. It follows therefrom 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.

121 In those circumstances, as the Advocate General observed in point 124 of his Opinion, since the Court of Justice ruled on the question of the languages required for communications between candidates for competitions and EPSO only in paragraphs 79 to 98 of the judgment of 27 November 2012, *Italy* v *Commission* (C-566/10 P, EU:C:2012:752), the General Court was not entitled validly to infer from paragraphs 68 and 69 of that judgment, in paragraphs 184 and 185 of the judgment under appeal, that the Court had held that the languages which could be used in those communications had been determined in accordance with Article 2 of Regulation No 1/58.

122 Consequently, the reasoning followed by the General Court, in paragraphs 184 to 188 of the judgment under appeal, in finding, by way of analogy, that Regulation No 1/58 governed, in line with what was held by the Court of Justice in the context of the publication of the notices of competition, any restriction on the official languages required for communications between EPSO and candidates to the competitions, is flawed.

123 However, it should be pointed out that, in paragraphs 204 to 211 of the judgment under appeal, the General Court in essence added that, in any event, the grounds given in order to justify the choice of the language of communication were not capable of justifying, within the meaning of Article 1d(1) and (6) of the Staff Regulations, the restriction on the choice of languages for communication with EPSO.

124 In that regard, although it is not excluded that the interests of the service may justify restricting the choice of language 2 of the competition to a limited number of official languages which are most widely known in the European Union (see, by analogy, judgment of 9 September 2003, *Kik* v *OHIM*, C-361/01 P, EU:C:2003:434, paragraph 94), even in the context of competitions of a general nature, such as that referred to in ‘Notice of Open Competition — EPSO/AD/276/14 — Administrators (AD 5)’, such a restriction must nevertheless, having regard to the requirements set

out in paragraphs 92 and 93 of the present judgment, be based on elements which are objectively verifiable, both by candidates and by the Courts of the European Union, such as to justify the knowledge of languages required, which must be proportionate to the actual needs of the service.

125 Since the competition notices do not provide information of that sort making it possible to establish the reasons justifying the restriction of the choice of the language of communication between candidates and EPSO to one of the three languages chosen for language 2 of the competition, these notices of competition were adopted in disregard of Article 1d(1) and (6) of the Staff Regulations. Accordingly, the General Court was required in any event to uphold the Italian Republic's action in so far as it concerned that restriction.

126 In those circumstances, the error of law, identified in paragraph 122 of the present judgment, vitiating the judgment under appeal is not such as to invalidate that judgment.

127 Accordingly, the fourth ground of appeal should be rejected and, in the light of all of the foregoing, the appeal dismissed.

Costs

128 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

129 Since the Italian Republic has applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs.

130 Under Article 140(1) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 184(1) of those rules, the Member States and institutions which intervene in the proceedings are to bear their own costs. In accordance with that provision, it must therefore be ordered that the Kingdom of Spain is to bear its own costs.

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

1. **Dismisses the appeal;**

2. **Orders the European Commission to bear its own costs and to pay those incurred by the Italian Republic;**

3. **Orders the Kingdom of Spain to bear its own costs.**

[Signatures]

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* Language of the case: Italian.