Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

24 September 2015*

(Languages — Notices of open competition for the recruitment of administrators and assistants — Choice of second language from three languages — Language of communication with candidates in competitions — Regulation No 1 — Article 1d(1), Article 27 and Article 28(f) of the Staff Regulations — Principle of non-discrimination — Proportionality)

In Cases T-124/13 and T-191/13,

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

applicant in Case T-124/13,

Kingdom of Spain, represented initially by S. Centeno Huerta, and subsequently by J. García-Valdecasas Dorrego, abogados del Estado,

applicant in Case T-191/13 and intervener in support of the Italian Republic in Case T-124/13,

v

European Commission, represented in Case T-124/13 by J. Currall, B. Eggers and G. Gattinara, and in Case T-191/13 by J. Currall, J. Baquero Cruz and B. Eggers, acting as Agents,

defendant,

APPLICATION FOR ANNULMENT, in Case T-124/13, first, of the notice of open competition EPSO/AST/125/12 to constitute a reserve from which to recruit assistants in the fields of audit, finance and accounting, and economics and statistics (OJ 2012 C 394 A, p. 1), secondly, of the notice of open competition EPSO/AST/126/12 to constitute a reserve from which to recruit assistants in the fields of biology, life and health sciences, chemistry, physics and material sciences, nuclear research, civil and mechanical engineering, and electrical engineering and electronics (OJ 2012 C 394 A, p. 11) and, thirdly, of the notice of open competition EPSO/AD/248/13 to constitute a reserve from which to recruit administrators (AD 6) in the fields of buildings security and engineering in special building techniques (OJ 2013 C 29 A, p. 1), and, in Case T-191/13, of the notice of open competition EPSO/AD/248/13.

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias (Rapporteur), President, M. Kancheva and C. Wetter, Judges,

Registrars: J. Palacio-González, Principal Administrator, and S. Bukšek Tomac, Administrator,

* Languages of the case: Italian and Spanish.

having regard to the written procedure and further to the hearings on 26 February and 4 March 2015,

gives the following

Judgment

Background to the dispute

1 The European Personnel Selection Office (EPSO) is an interinstitutional body 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 establishing EPSO (OJ 2002 L 197, p. 53). Under the third paragraph of Article 2 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), as worded prior to Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations (OJ 2004 L 124, p. 1), the institutions signing that decision entrusted to EPSO, by means of Article 2(1) thereof, the exercise the powers of selection conferred under the first paragraph of Article 30 of the Staff Regulations and under Annex III thereto on their appointing authorities. Article 4 of the decision provides that even though, in accordance with Article 91a of the Staff Regulations, requests and complaints relating to the exercise of the powers conferred on EPSO are to be lodged with EPSO, any appeal in these areas is to be made against the European Commission.

2 On 7 September 2012, EPSO published a Guide to open competitions ('the Guide') in the *Official Journal of the European Union* (OJ 2012 C 270 A, p. 1). Section 3 of the Guide, entitled 'Communication', states:

'To ensure that all general texts and all communication between you and EPSO are clearly understood on both sides, only English, French, or German will be used for the invitations to the various tests and correspondence between you and EPSO.'

3 On 20 December 2012, EPSO published in the *Official Journal of the European Union* the notice of open competition EPSO/AST/125/12 to constitute a reserve from which to recruit assistants in the fields of audit, finance and accounting, and economics and statistics (OJ 2012 C 394 A, p. 1) and the notice of open competition EPSO/AST/126/12 to constitute a reserve from which to recruit assistants in the fields of biology, life and health sciences, chemistry, physics and material sciences, nuclear research, civil and mechanical engineering, and electrical engineering and electronics (OJ 2012 C 394 A, p. 11). On 31 January 2013, it published in the *Official Journal of the European Union* the notice of open competition EPSO/AD/248/13 to constitute a reserve from which to recruit administrators (AD 6) in the fields of buildings security and engineering in special building techniques (OJ 2013 C 29 A, p. 1). These are the competition notices which the present actions seek to have annulled (together, 'the contested notices').

4 The introductory section of each of the contested notices states that the Guide 'is an integral part' thereof.

5 The eligibility requirements for the competitions to which the contested notices relate include a thorough knowledge of one of the official languages of the European Union (which, at that time, numbered 23), 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 each candidate from German, English or French. They make clear that language 2 must be different from the language chosen by the candidate as language 1 (section III, point 2.3 of the contested notices).

6 Information concerning the limitation on the choice of language 2 to the three languages mentioned above is provided in the same place in each of the contested notices. In this respect, notice of open competition EPSO/AD/248/13 states:

'In conformity with the judgment [of 27 November 2012 in *Italy* v *Commission* (C-566/10 P, ECR, EU:C:2012:752)] the EU institutions are required to state the reasons for limiting the choice of the second language in this competition to a restricted number of EU official languages.

Candidates are therefore informed that the second language options in the present competition have been defined in accordance with the interest of the service which requires that newly recruited colleagues are immediately operational and able to communicate efficiently in their daily work. Otherwise the effective functioning of the institutions would be severely impaired.

On the basis of long-standing practice in the EU institutions as regards the languages used for internal communication, and taking into account the needs of the services regarding external communication and the handling of files, English, French and German remain the most widely used languages. Moreover, English, French and German are the second languages that are by far the most widely chosen by candidates in competitions where they are able to choose their second language. This confirms current educational and professional standards, whereby candidates for European Union posts can be deemed to master at least one of these languages. Therefore, in balancing the interests of the service and the needs and capacities of the candidates, and taking account of the particular field of this competition, it is legitimate to organise tests in these three languages in order to ensure that, whatever their first official language, all candidates master at least one of these three official languages at working level. Moreover, in the interests of equal treatment of all candidates, everyone, including those whose first official language is one of these three, is required to take the test in their second language, chosen from among these three. Assessing specific competencies in this way allows the institutions to evaluate the ability of candidates to be immediately effective in an environment that closely matches the reality they would face on the job. This is without prejudice to later language training so as to acquire a capacity to work in a third language in accordance with Article 45(2) of the Staff Regulations.'

The other two contested notices essentially contain the same information drafted, in some language versions, in slightly different terms.

7 Competition notices EPSO/AST/125/12 and EPSO/AD/248/13 provide for the organisation of 'admission tests' to be taken on a computer (section IV of both notices). In the case of competition notice EPSO/AD/248/13, it is stated that these tests will be organised only if the number of candidates applying exceeds 1 000 per field covered by the competition.

8 Competition notices EPSO/AST/126/12 and EPSO/AD/248/13 contain one section (section IV in the former and section V in the latter) entitled 'admission to the competition and selection based on qualifications'. It provides that a check for compliance with the general and specific conditions and the selection based on qualifications will be carried out, 'initially', on the basis of the information given by candidates in the application form. In this connection, it makes clear that candidates' responses to the questions concerning the general and specific conditions will be processed to determine whether they can be included in the list of candidates who fulfil all the conditions for admission to the competition. The selection board will then screen the candidates who fulfil the conditions for admission to the competition 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 the competition notices.

9 This selection is carried out solely on the basis of the information provided by applicants in the 'Talent Screener' tab of the application form. This information is, where appropriate, checked in due course based on the supporting documents provided by candidates, for candidates securing pass marks and

the highest marks at the next stage of the competition. The selection involves two stages. A first selection based on qualifications is made solely on the basis of the responses ticked under the 'Talent Screener' tab of the application form and the weighting assigned to each of the questions. The selection board sets the weighting (1 to 3) according to the importance attached to each criterion set out in point 4 of the annexes to the contested notices, before examining the applications. The online applications of the candidates who obtain the highest number of points will then go through to a second selection stage. The number of files to be examined during the second stage is, for each field, approximately nine times the number of successful candidates sought that is indicated in the competition notice at issue. The selection board examines candidates' answers and awards 0 to 4 points for each answer. The points are then multiplied by the weighting for each question and added together to give an overall score. The selection board then draws up a list of candidates in the order of the overall scores awarded.

10 The last stage of the selection procedures to which the contested notices relate involves, in the case of competition notices EPSO/AST/125/12 and EPSO/AD/248/13, an 'assessment centre' (see, respectively, sections V and VI of these two competition notices) and, in the case of competition notice EPSO/AST/126/12, an 'open competition' (see section V of the notice at issue). The number of candidates invited to the 'assessment centre' is not to exceed, for each field, three times the number of successful candidates sought.

11 Competition notices EPSO/AST/126/12 and EPSO/AD/248/13 include annexes, each of which relates to one of the fields covered by these two notices. Point 4 of each annex lists the selection criteria which the selection board takes into account when deciding on the weighting to be attached to the responses ticked by candidates under the 'Talent Screener' tab of the application form (see paragraph 9 above).

Procedure and forms of order sought by the parties

12 By application lodged at the Court Registry on 4 March 2013, the Italian Republic brought the action in Case T-124/13.

13 By document lodged at the Court Registry on 4 July 2013, the Kingdom of Spain applied for leave to intervene in support of the form of order sought by the Italian Republic. By order of 11 September 2013, the President of the Third Chamber of the General Court granted leave to intervene. The Kingdom of Spain lodged its statement in intervention on 22 November 2013.

14 In Case T-124/13, the Italian Republic claims that the Court should:

— annul the contested notices;

— order the Commission to pay the costs.

15 The Kingdom of Spain supports the form of order sought by the Italian Republic seeking annulment of the contested notices and also claims that the Commission should be ordered to pay the costs associated with its intervention.

16 The Commission contends that the Court should:

— dismiss the action;

— order the Italian Republic to pay the costs.

17 By application lodged at the Court Registry on 5 April 2013, the Kingdom of Spain brought the action in Case T-191/13.

18 The Kingdom of Spain claims that the Court should:

— annul competition notice EPSO/AD/248/13;

— order the Commission to pay the costs.

19 The Commission contends that the Court should:

— dismiss the action;

— order the Kingdom of Spain to pay the costs.

20 After a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Eighth Chamber, to which the present cases were, consequently, assigned.

21 On hearing the report of the Judge-Rapporteur, the Court (Eighth Chamber) decided to open the oral procedure in these cases and, by way of measures of organisation of procedure provided for under Article 64 of the Rules of Procedure of the General Court of 2 May 1991, asked the parties in Case T-191/13 to provide written answers to some questions. The parties did so within the prescribed time-limit.

22 The parties presented oral arguments and replied to the oral questions put to them by the Court at the hearings on 26 February 2015, in Case T-191/13, and 4 March 2015, in Case T-124/13.

23 At the hearing in Case T-191/13, the Court set a time-limit by which the Kingdom of Spain was to submit its written observations on the possible joinder of the present cases for the purposes of the judgment. Following submission of the Kingdom of Spain's observations, the oral procedure was closed on 3 March 2015.

Law

24 Since the parties stated, in answer to an oral question put by the Court during the hearings or, in the case of the Kingdom of Spain, a written question (see paragraph 23 above), that they had no objections to make in that regard, the Court decided to join the cases for the purposes of the decision which closes the proceedings, in accordance with Article 68 of the Rules of Procedure of the General Court.

25 In support of its action in Case T-124/13, the Italian Republic relies on seven pleas in law, alleging (i) infringement of Article 263 TFEU, Article 264 TFEU and Article 266 TFEU; (ii) infringement of Article 342 TFEU and Articles 1 and 6 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; (iii) infringement of Article 6(3) EU, Article 18 TFEU, Article 22 of the Charter of Fundamental Rights of the European Union proclaimed on 7 December 2000 at Nice (OJ 2000 C 364, p. 1), Articles 1 and 6 of Regulation No 1, Article 1d(1) and (6), the second paragraph of Article 27 and Article 28(f) of the Staff Regulations, and Article 1(2) and (3) of Annex III to the Staff Regulations; (iv) infringement of Article 6(3) EU and the principle of the protection of legitimate expectations; (v) misuse of powers and infringement of the 'substantive rules concerning the nature and purpose of competition notices', particularly Article 1d(1) and (6), the second paragraph of Article 27, Article 28(f), Article 34(3) and Article 45(1) of the Staff Regulations, as well as infringement of the principle of proportionality; (vi) infringement of Article 18 TFEU, the fourth paragraph of Article 24 TFEU, Article 22 of the Charter of Fundamental Rights, Article 2 of Regulation No 1 and

Article 1d(1) and (6) of the Staff Regulations; and (vii) infringement of the second paragraph of Article 296 TFEU, Articles 1 and 6 of Regulation No 1, Article 1d(1) and (6) and Article 28(f) of the Staff Regulations, Article 1(1)(f) of Annex III to the Staff Regulations and the principle of proportionality, as well as 'distortion of the facts'.

26 In Case T-124/13, the Kingdom of Spain submits, in support of the form of order sought by the Italian Republic, that the contested notices must be annulled since they infringe Article 22 of the Charter of Fundamental Rights, Article 342 TFEU, Articles 1 and 6 of Regulation No 1, Articles 1d and 27 of the Staff Regulations and the case-law stemming from the judgment of 27 November 2012 in *Italy* v *Commission* (C-566/10 P, ECR, EU:C:2012:752). It also argues that the contested notices are discriminatory, because of their overemphasis on German, English and French, that they infringe Article 27 of the Staff Regulations, since the selection system laid down therein does not ensure that the best candidates are recruited, and that they infringe the principle of proportionality, as they are not the best way of achieving the objective set.

27 In Case T-191/13, the Kingdom of Spain essentially relies on three pleas in law, alleging (i) infringement of Regulation No 1; (ii) infringement of Article 1d of the Staff Regulations and the principles of non-discrimination and proportionality; and (iii) infringement of Article 27 of the Staff Regulations.

28 It should be noted that, by means of the abovementioned pleas in law, the Italian Republic and the Kingdom of Spain dispute two different aspects of the contested notices: first, the limitation on the languages that can be used in correspondence between candidates and EPSO to German, English and French and, secondly, the limitation on the choice of the second language of candidates in the competitions to which the notices relate to these three languages. Furthermore, in Case T-191/13, the Kingdom of Spain disputes a third aspect of competition notice EPSO/AD/248/13, namely the use of the second language, chosen by each candidate in the competition to which this notice relates from German, English and French, for certain tests at the last stage of the competition ('assessment centre'; see paragraph 10 above).

29 It is necessary to examine in turn, in the light of the pleas relied on by the Italian Republic and the Kingdom of Spain, the lawfulness of the two aspects of the contested notices which they dispute (see paragraph 28 above). Thereafter, it will be appropriate, as the case may be, to consider the lawfulness of the third aspect of competition notice EPSO/AD/248/13, disputed by the Kingdom of Spain (see paragraph 28 above).

30 However, before embarking on that examination, it is first of all necessary to consider the admissibility of the first plea in law raised by the Kingdom of Spain in Case T-191/13, essentially alleging infringement of Regulation No 1, since it its disputed by the Commission.

The admissibility of the first plea in law in Case T-191/13

31 In the application in Case T-191/13, the Kingdom of Spain maintains that it seeks the annulment of competition notice EPSO/AD/248/13 on the basis of, in particular, Articles 1 and 6 of Regulation No 1, adding that, in its opinion, the notice at issue does not comply with the rules governing languages laid down in that regulation.

32 However, the Commission essentially submits that the plea in law alleging infringement of Regulation No 1 is only mentioned 'in passing' by the Kingdom of Spain and is not sufficiently substantiated. In its view, such an argument does not meet the requirements of Article 44(1)(c) of the Rules of Procedure of 2 May 1991 and the case-law concerning its application.

33 It should be recalled that, in accordance with the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1)(c) of the Rules of Procedure of 2 May 1991, all applications must contain the subject-matter of the dispute and a brief statement of the grounds on which the application is based. Irrespective of any question of terminology, that statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to exercise its power of judicial review. In order to guarantee legal certainty and sound administration of justice, it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. More specifically, whilst it should be acknowledged that the statement of the grounds in the application need not conform with the terminology and layout of the Rules of Procedure, and whilst the grounds may be expressed in terms of their substance rather than of their legal classification, the application must none the less set out the said grounds with sufficient clarity. A mere abstract statement of the grounds in the application does not alone satisfy the requirements of the Statute of the Court or the Rules of Procedure and the expression 'brief statement of the pleas in law' or 'summary of the pleas in law' used therein means that the application must specify on what grounds the action is based (see order of 28 April 1993 in *De Hoe* v *Commission*, T-85/92, ECR, EU:T:1993:39, paragraphs 20 and 21 and the case-law cited).

34 It follows from this case-law that, apart from public order pleas, which the Courts of the European Union must, where appropriate, raise of their own motion, it is for the applicant to set out in the application the grounds on which he relies in support of his action. An abstract reference to the heading of a plea in law is not sufficient for that purpose. It is also necessary to flesh out the plea in law relied on, in other words explain how it is connected to the form of order sought in the action and, if it is held to be well-founded, how it should result in the Court granting the form of order sought.

35 However, it is also settled case-law that, within the framework of the dispute as defined by the parties, the EU judicature, whilst it must rule only on the application submitted by the parties, cannot confine itself to the arguments put forward by the parties in support of their claims or it may be forced to base its decision on erroneous legal considerations (see judgment of 5 October 2009 in *Commission* v *Roodhuijzen*, T-58/08 P, ECR, EU:T:2009:385, paragraph 35 and the case-law cited). In particular, in a dispute between the parties concerning the interpretation and application of a provision of EU law, the EU judicature is required to apply to the facts put before it by the parties the relevant rules of law for the solution of the dispute. According to the principle *iura novit curia*, determining the meaning of the law does not fall within the scope of application of a principle which allows the parties a free hand to determine the scope of the case (see judgment in *Commission* v *Roodhuijzen*, EU:T:2009:385, paragraph 36 and the case-law cited).

36 It is apparent from this case-law that the admissibility of a plea in law does not depend on the use of specific terminology. It is sufficient for the wording of the application to set out the substance of the plea with sufficient clarity. Nor does the admissibility of a plea depend on specific legal rules or principles being relied on. It is for the EU judicature to identify the relevant provisions and to apply them to the facts put before it by the parties, even if the parties do not refer to the provisions in question or rely on different provisions.

37 Lastly, it is also apparent from the case-law cited in paragraph 35 above that, although the applicant raised a plea in law in an admissible manner, the Court may not, when examining that plea, restrict itself to the arguments put forward by the applicant; it must conduct a full analysis of the plea, taking account of all applicable legal rules and principles, precisely so that it does not base its decision on erroneous legal considerations, which the case-law in question seeks to avoid.

38 Having regard to all of the foregoing, in contrast to the view taken by the Commission, the Court cannot accept that the Kingdom of Spain failed to raise, in an admissible manner, a plea in law alleging infringement of Regulation No 1 in the application in Case T-191/13. The Kingdom of Spain

did not simply refer to this regulation in the abstract in paragraph 27 of the application. In paragraph 30 of the application, it clearly stated that, in its opinion, the contested notice did not comply with the rules governing languages laid down in Regulation No 1. It then devoted two full sections of the application to analysing the questions relating to these rules. The remainder of the application also contains several references to Regulation No 1 and the rules governing languages set out therein.

39 In particular, in paragraph 68 of the application in Case T-191/13, the Kingdom of Spain contends that 'limiting communication between candidates and EPSO to three languages infringes the rules laid down in Regulation No 1'. Reference should also be made to paragraph 96 of the application, which appears in the final section entitled 'Conclusion' and states:

'The [contested] notice renders Article 1 of Regulation No 1 meaningless …, by ruling out, in practice, the use and assessment of other official languages of the European Union in favour of English, French or German, without justifying that limitation by reference to specific objective reasons relating to the posts to be filled. The contested … notice is not a mere arrangement; it actually amends the rules on the use of languages governed by Article 1 of Regulation No 1 in their entirety.'

40 Accordingly, the first plea in law raised by the Kingdom of Spain, alleging infringement of Regulation No 1, meets the requirements of the first paragraph of Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of 2 May 1991 and is therefore admissible.

The limitation on the languages that can be used in communications between candidates and EPSO

41 In Case T-124/13, this aspect of the contested notices is covered by the sixth plea in law raised by the Italian Republic, alleging infringement of Article 18 TFEU, the fourth paragraph of Article 24 TFEU, Article 22 of the Charter of Fundamental Rights, Article 2 of Regulation No 1 and Article 1d(1) and (6) of the Staff Regulations.

42 According to the Italian Republic, the limitation in question patently infringes Article 18 TFEU, the fourth paragraph of Article 24 TFEU, Article 22 of the Charter of Fundamental Rights, Article 2 of Regulation No 1 and Article 1d(1) and (6) of the Staff Regulations. It claims that these provisions clearly show that Union citizens have the right to address the EU institutions using any one of the 23 official languages, and that they have the right to receive answers from the institutions in the same language. This conclusion is also apparent from the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752). The abovementioned limitation discriminates against citizens of Member States which do not have German, English or French as an official language.

43 The Italian Republic rejects the argument that participating in a competition to recruit EU officials or servants is not a form of citizen participation in the democratic life of the European Union. On the contrary, it submits that the competition procedure and the language of communication used are 'the constituent elements of a relationship of a constitutional nature between the citizen concerned and the European Union'. It concludes that 'the competition language must be the language of the citizen'. In addition, relying on the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752), the Italian Republic contests the view that participation in a competition is internal to the organisation of the institution. In its opinion, what is involved is a relationship between the institution concerned and an individual (a citizen), who is not yet a member of that institution's staff.

44 In its statement in intervention, the Kingdom of Spain supports the arguments of the Italian Republic. It contends that the limitation on the languages that can be used in communications between candidates and EPSO confers, in practice, a competitive advantage on all candidates whose first language is one of the three designated languages (German, English or French). In its opinion, it is 'understandable' to wish to limit, for operational reasons, the languages that can be used in

communications from EPSO, but the limitation to the three abovementioned languages infringes Regulation No 1. That limitation is, moreover, discriminatory. The Kingdom of Spain also rejects the argument that the recruitment of officials and servants by an institution is purely an internal matter.

45 In Case T-191/13, as the Court has already pointed out (see paragraphs 38 and 39 above), the Kingdom of Spain claims, in its first plea in law, that limiting the languages used for communication between EPSO and candidates in the competition to which competition notice EPSO/AD/248/13 relates to German, English and French infringes the rules governing languages laid down by Regulation No 1.

46 The Commission replies, first of all, that the paragraphs of the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752), on which the Italian Republic relies, have nothing to do with the question of the languages used in the tests of a competition and instead concern the different matter of the publication of competition notices. In that context, it also recalls the case-law, particularly the judgment of 9 September 2003 in *Kik* v *OHIM* (C-361/01 P, ECR, EU:C:2003:434, paragraph 82), according to which the numerous references in the TFEU to the use of languages in the European Union cannot be regarded as evidencing a general principle of EU law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances.

47 The Commission also submits that candidates in a competition procedure are in an 'intermediate position'. It is true that they learn of the existence of a competition procedure by reading the competition notice published in the *Official Journal of the European Union* and for this reason the contested notices were published in all official languages of the European Union. However, once the candidate is in contact with the authorities for the purpose of his participation in the competition, it is reasonable to expect him to master at least one official language other than his mother tongue.

48 According to the Commission, the language abilities of candidates in a competition cannot be of secondary importance. Such a proposition infringes the principle of autonomy of the EU institutions, laid down in Articles 335 TFEU and 336 TFEU. In accordance with this principle, the determination of the language needs of the service is exclusively a matter for the institutions, not the Member States. In its judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752, paragraphs 87 and 88), the Court conceded that the interest of the service is a legitimate objective which may warrant limitations on the principle of non-discrimination based on language, as referred to in Article 1d of the Staff Regulations.

49 The Commission thus contends that claiming, in the context of a competition procedure, that candidates may use any official language of the European Union without distinction is untenable. The institutions need operational staff and it is therefore inevitable that, in contacts of an administrative nature concerning the organisation of the competition, candidates must also be able to communicate in languages relevant to the institutions, such as English, French and German. These administrative communications are already factors associated with the working environment in which candidates would be immersed if they were to pass the competition.

50 The Commission adds that, in any event, communications between candidates and EPSO cover basic information relating to the conduct of the tests and the different stages of the competition procedure. As regards the level of knowledge and use of German, English or French required in the contested notices, candidates whose knowledge of languages is such that they cannot even understand the communications at issue, drawn up in one of these languages, can certainly not expect to be recruited by an EU institution. For the same reasons, candidates whose mother tongue is German, English or French are not placed at any advantage. In support of its assertions, the Commission relies on statistics concerning the competition to which notice EPSO/AST/126 relates, statistics which, in its opinion, demonstrate that first place on the list of candidates whose applications were validated was occupied by Italian nationals.

51 Furthermore, general information relating to competition procedures appearing on EPSO's website, such as the Guide, is published in all official languages. According to the Commission, imposing on EPSO the obligation to ensure that all applications received are translated from the candidate's mother tongue into English, French or German would be clearly incompatible with the interest of the service. In addition, translating candidates' curriculum vitae would place them at a disadvantage, as they would lose control of the information they themselves provided.

52 For the purpose of considering these arguments, it is necessary to recall, first of all, the wording of the relevant provisions of Regulation No 1. Article 1 of the regulation, in the version applicable when the contested notices were published, provides:

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

53 Article 2 of the regulation states:

'Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language.'

54 Article 6 of Regulation No 1 provides that the institutions may stipulate in their rules of procedure which of the languages are to be used in specific cases. However, as the Court held in paragraph 67 of its judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752), the institutions concerned by the contested notices (which were also the institutions concerned by the competition notices in issue in that case) have not, on the basis of Article 6 of Regulation No 1, stipulated in their rules of procedure which of the languages are to be used in specific cases. The Court also stated that the competition notices could not be regarded as rules of procedure in that regard.

55 Prior to delivery of the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752), the General Court had held that Regulation No 1 did not apply to relations between the institutions and their officials and servants since it only lays down the rules governing languages applying between the institutions and a Member State or a person coming under the jurisdiction of one of the Member States. The General Court had also found that officials and other servants of the European Union, and candidates for such posts, fall solely within the jurisdiction of the EU, as regards application of the provisions of the Staff Regulations, including those relating to recruitment within an institution. According to that decision, applying the same rules governing languages to candidates for posts of officials and other servants of the European Union as to officials and other servants themselves is justified by the fact that such candidates enter into a relationship with an EU institution solely in order to obtain a post of official or servant for which certain knowledge of languages is necessary and may be required by the provisions applying in respect of appointment to the post concerned. This decision also referred to Article 6 of Regulation No 1 and to the possibility for the institutions, laid down in this article, to stipulate in their rules of procedure which of the languages are to be used in specific cases (see, to that effect, judgment of 20 November 2008 in *Italy* v *Commission*, T-185/05, ECR, EU:T:2008:519, paragraphs 117 to 119 and the case-law cited).

56 However, following the judgment in *Italy* v *Commission*, paragraph 26 above (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. 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 in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraphs 68 and 69).

57 This Court must reject the Commission's argument (see paragraph 46 above) relating to the irrelevance of this section of the judgment in *Italy* v *Commission*, cited in paragraph 26 above (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 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 and the first plea in law of the Kingdom of Spain.

58 Furthermore, in the light of the above considerations, the Commission's argument (see paragraph 47 above) that candidates in a competition procedure are in an 'intermediate position' must also be rejected.

59 As regards the Commission's argument based on the judgment in *Kik* v *OHIM*, cited in paragraph 46 above (EU:C:2003:434, paragraph 82), suffice it to note that, unlike the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), whose language rules were at issue in the case giving rise to that judgment, no specific rules governing languages apply to the institutions concerned by the contested notices (judgment in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraph 86). They are subject to the language rules laid down in Regulation No 1.

60 In the light of these considerations, as well as the clear and unambiguous wording of Article 2 of Regulation No 1, it must be concluded that the contested notices, in so far as they provide that candidates in the competitions in dispute are required to communicate with EPSO in a language chosen by them from German, English and French, infringe Regulation No 1. This ground is sufficient to justify their annulment, without there being any need to examine whether, as the Italian Republic and the Kingdom of Spain submit, this stipulation gives rise to unlawful discrimination on grounds of language.

61 Applications are, without any doubt, documents addressed to the institutions which established EPSO from persons coming under the jurisdiction of a Member State, namely candidates. Therefore, under Article 2 of Regulation No 1, these persons (the candidates) are entitled to choose the language in which such documents are drawn up from all of the official languages listed in Article 1 thereof. Since the contested notices limit this choice to German, English and French, they infringe these provisions. The same is true of other possible communications that candidates may have to send to EPSO concerning the competitions to which the contested notices relate.

62 Furthermore, communications sent by EPSO to each candidate who submitted an application constitute replies, within the meaning of Article 2 of Regulation No 1, to the application and to other documents that may be sent to it by the candidate in question. Accordingly, pursuant to this provision, such replies must be drawn up in the language chosen by the candidate, from all of the official languages, for the drafting of his documents. The contested notices also infringe Regulation No 1 in so far as they provide that EPSO will send communications to candidates in one of the languages chosen by them from German, English or French, and not from all of the official languages.

63 Compliance by EPSO with its obligation, flowing from Article 2 of Regulation No 1, to communicate with candidates in the competitions to which the contested notices relate in a language freely chosen by them from all of the official languages, and not only in German, English or French, is even more important where the contested notices provide for 'selection based on qualifications' (see paragraphs 8 and 9 above), carried out 'on the basis of the information given in the [candidates'] online application'. It is therefore important that this information be given in the language chosen by each candidate, as

the case may be his mother tongue, and not in a language which, for some candidates, will not be the language in which they best express themselves, despite having a satisfactory knowledge of that language.

64 The fact that section 3 of the Guide points out that the choice of languages for communication between candidates and EPSO is limited '[t]o ensure that all general texts and all communication between [candidates] and EPSO are clearly understood on both sides' cannot lead to a different conclusion. EPSO's requirement that candidates, who would have preferred to communicate with it in another official language, use one of the three abovementioned languages cannot 'ensure' that general texts and communications sent by EPSO to these candidates will be 'clearly understood' by them. The same is true of EPSO's understanding of communications it will receive from candidates, since their clarity may be affected by the fact that they are drawn up in a language which is not the first choice of the candidates concerned.

65 In any event, it is sufficient to note that Article 2 of Regulation No 1 does not provide for any exception to the obligation it imposes either on the grounds mentioned in section 3 of the Guide or on any other grounds (see, to that effect and by analogy, judgment in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraph 72).

66 Based on these considerations, the other arguments put forward by the Commission can also be rejected.

67 The argument relating to the autonomy of the EU institutions (see paragraph 48 above) cannot succeed. It is true that the case-law acknowledges the principle that the EU institutions have functional autonomy as to their choice of officials and servants, laid down in Article 2 of the Staff Regulations. These institutions thus have a wide margin of discretion and autonomy as regards the creation of posts for officials or servants, the choice of the official or servant in order to fill the post created, and the nature of the employment relationship with the servant (see, to that effect, judgment of 8 September 2005 in *AB*, C-288/04, ECR, EU:C:2005:526, paragraphs 26 and 28). However, this autonomy does not release them from the obligation to comply with the applicable provisions of EU law, including those of Article 2 of Regulation No 1, which were infringed in the present case.

68 It should be added that the necessity of complying with the obligations flowing from Regulation No 1 does not prevent the EU institutions from determining themselves, in the exercise of their functional autonomy to which the Commission refers, their language needs. Article 2 of Regulation No 1, at issue in this case, does not preclude a provision in a competition notice requiring candidates in the competition to have specific knowledge of languages. It provides only that, even in such a situation, the author of the competition notice, in this case EPSO, must communicate with candidates in the official language chosen by them, and not in a language chosen from a smaller group of languages, even if candidates are required to possess knowledge of at least one of those languages to be able to participate in the competition.

69 The Commission's argument that communications between candidates and EPSO covering basic information that a candidate possessing a sufficient knowledge of German, English or French in order to be able to participate in the competition would have no difficulty in understanding must also be rejected, as must the argument that the obligation to translate applications from the language in which they were drafted into German, English or French would be incompatible with the interest of the service. Article 2 of Regulation No 1 provides no exceptions to the obligation it imposes, either for reasons relating to the interest of the service or for any other reasons. Furthermore, it has already been found that this article allows a person who sends a document to an institution to choose the language in which that document is drawn up and imposes the obligation on the institutions to reply to him in the same language, irrespective of any knowledge he may possess of another language.

70 Lastly, the Court must also reject the argument that the information appearing on EPSO's website and the Guide are available in all official languages as well as the argument that candidates holding Italian nationality suffered no harm whatsoever from being unable to use Italian in their communications with EPSO.

71 As regards the first argument, suffice it to note that the matter at hand in the present case is the language used in individual communications between candidates and EPSO, and the circumstances invoked have no effect on EPSO's obligation to comply with Article 2 of Regulation No 1, so far as these communications are concerned.

72 As for the second argument, the infringement of a rule of EU law, in this instance Article 2 of Regulation No 1, with which EPSO is bound to comply, is sufficient to bring about the annulment of the contested notices, without there being any need to demonstrate that the infringement harmed specific candidates.

73 To conclude, in the light of all of the above considerations, the Court must uphold the sixth plea in law raised by the Italian Republic and the first plea in law raised by the Kingdom of Spain, and must annul the contested notices in so far as they restrict the languages that can be used in communications between candidates and EPSO to German, English and French.

The lawfulness of limiting the choice of the second language of candidates in the competitions to which the contested notices relate to German, English or French

74 It is necessary to examine the lawfulness of limiting the choice of the second language of candidates in the competitions to which the contested notices relate to German, English or French, since this concerns a different aspect of the notices which is not affected by the unlawfulness found to exist in paragraph 60 above.

75 In this connection, the Court must consider the third and seventh pleas in law raised by the Italian Republic in Case T-124/13 as well as the second plea in law relied on by the Kingdom of Spain in Case T-191/13.

76 The third plea in law raised by the Italian Republic alleges infringement of Article 6(3) EU, Article 18 TFEU, Article 22 of the Charter of Fundamental Rights, Articles 1 and 6 of Regulation No 1, Article 1d(1) and (6), the second paragraph of Article 27 and Article 28(f) of the Staff Regulations, and Article 1(2) and (3) of Annex III to the Staff Regulations. In essence, the Italian Republic contends that the limitation, provided for in the contested notices, on the choice of the second language of candidates in the competitions in question to German, English and French infringes all of those provisions.

77 The seventh plea in law raised by the Italian Republic alleges infringement of the second paragraph of Article 296 TFEU, Articles 1 and 6 of Regulation No 1, Article 1d(1) and (6) and Article 28(f) of the Staff Regulations, Article 1(1)(f) of Annex III to the Staff Regulations and the principle of proportionality, and also alleges 'distortion of the facts'. By this plea in law, the Italian Republic essentially claims that the statement of reasons for the contested notices is lacking and inadequate. It also claims that the statement of reasons is not well-founded and does not comply with the abovementioned provisions.

78 By its second plea in law in Case T-191/13, the Kingdom of Spain alleges, in essence, infringement of the principle of non-discrimination on grounds of language, laid down in Article 1d of the Staff Regulations.

79 It contends that the statement of reasons for limiting the choice of the second language (see paragraph 6 above) is 'boilerplate', which is not sufficient to comply with the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752). Thus, in the Kingdom of Spain's opinion, competition notice EPSO/AD/248/13 suffers the same flaws as the notices in question in the case giving rise to that judgment. It claims that the statement of reason for the notice is of a general nature and does not meet the 'minimum requirements as regards evidence justifying a limitation on the rules governing languages in their entirety'. The Kingdom of Spain puts forward similar arguments in its statement in intervention in Case T-124/13.

80 As regards, first of all, the argument that the statement of reasons for the contested notice is lacking or inadequate, it should be noted that, in Case T-191/13, the Commission contends that the Kingdom of Spain raised no such plea in its action.

81 It must, however, be remembered that the plea alleging infringement of the obligation to state reasons goes to an issue of infringement of essential procedural requirements, within the meaning of the second paragraph of Article 263 TFEU and, involving a matter of public policy, must be raised by the EU judicature of its own motion (see judgment of 2 April 1998 in *Commission* v *Sytraval and Brink's France*, C-367/95 P, ECR, EU:C:1998:154, paragraph 67 and the case-law cited). Furthermore, as pointed out above, in its seventh plea in law in Case T-124/13 the Italian Republic claims, inter alia, that the authors of the contested notices failed to comply with the obligation to state reasons.

82 Reference should also be made to settled case-law according to which the obligation to state reasons in decisions is an essential procedural requirement which must be distinguished from the question whether the reasoning is well-founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a measure consists in a formal statement of the grounds on which that decision is based. If those grounds contain errors, the latter will affect the substantive legality of the measure in question, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see judgment of 10 July 2008 in *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, ECR, EU:C:2008:392, paragraph 181 and the case-law cited).

83 In the present case, as indicated in paragraph 6 above, the contested notices indeed contain reasons intended to justify the requirement that candidates must have a satisfactory knowledge of German, English or French, being the languages to which their choice of the second language of the competition is limited. Consequently, it cannot be claimed that their author, EPSO, infringed the obligation to state reasons. The question whether this statement of reasons is well-founded is separate and will be examined below.

84 Secondly, for the purpose of examining this latter question, it is necessary to bear in mind the wording of the provisions mentioned by the Court in its judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752), which the Italian Republic and the Kingdom of Spain also rely on in their arguments, as well as the findings that the Court drew from those provisions.

85 In paragraphs 81 to 84 of its judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752), the Court referred, in addition to Article 1 of Regulation No 1 (see paragraph 52 above), to Article 1d(1) and (6) and Article 28(f) of the Staff Regulations, as well as Article 1(1)(f) of Annex III to the Staff Regulations.

86 Article 1d(1) of the Staff Regulations provides that, in the application of those regulations, any discrimination, such as that based on, inter alia, language, is prohibited. In terms of Article 1d(6) of the Staff Regulations, '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'.

87 Article 28(f) of the Staff Regulations provides that an official may be appointed only on condition that he produce evidence of a thorough knowledge of one of the languages of the European Union and of a satisfactory knowledge of another language of the European Union. As the Court observed in its judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752, paragraph 83), while that provision lays down that the satisfactory knowledge of another language is required 'to the extent necessary for the performance of [the] duties' which the candidate is called upon to carry out, it does not state the criteria which may be taken into consideration in order to limit the choice of that language among the official languages mentioned in Article 1 of Regulation No 1.

88 Under Article 1(1)(f) of Annex III to the Staff Regulations, the competition notice may where applicable lay down the knowledge of languages required in view of the special nature of the posts to be filled. However, as the Court pointed out in its judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752, paragraph 84), no general authorisation to derogate from the requirements of Article 1 of Regulation No 1 can be derived from that provision.

89 The Court therefore found that the provisions mentioned in paragraphs 86 to 88 above do not provide for explicit criteria which would allow the choice of the second language that candidates in a competition to recruit EU officials must master to be limited, either to the three languages required by the contested notices or to other official languages (judgment in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraph 85). It also held that the institutions concerned by the contested notices (which were also concerned by the competition notices at issue in the case before the Court) were not subject to any specific rules governing languages (see paragraph 59 above).

90 The Court nevertheless pointed out that it was apparent from all the abovementioned provisions that the interest of the service could be a legitimate objective that may be taken into consideration. In particular, Article 1(d) of the Staff Regulations authorises limitations on the principles of non-discrimination and proportionality. According to the Court, this interest of the service must however be objectively justified and the required level of knowledge of languages must be proportionate to the genuine needs of the service (judgment in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraph 88).

91 In that regard, the Court noted that the rules limiting the choice of the second language must provide for clear, objective and foreseeable criteria so that the candidates may know, sufficiently in advance, what the language requirements are and can prepare to take part in the competitions in the best possible circumstances (judgment in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraph 90).

92 In the case which gave rise to its judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752, paragraph 91), the Court found that the institutions concerned had never adopted rules of procedure in accordance with Article 6 of Regulation No 1. Nor, it added, had the Commission referred to other measures such as communications which lay down criteria governing the choice of a language as a second language for participation in the competitions at issue in those proceedings. Lastly, it found that the competition notices in question in that case did not contain any reasoning that might justify the choice of the three languages (German, English and French) to which the choice of the second language of candidates in the competitions was limited.

93 It is apparent from these considerations of the Court 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 (see, to that effect, judgment in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraph 102). It is 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.

94 The Commission submits that this is not discrimination based on nationality. Such an argument is ineffective, since Article 1d of the Staff Regulations prohibits not only discrimination based on nationality, but also several other forms of discrimination, including that based on language.

95 In the same context, the Commission contends in Case T-124/13 that no discrimination could 'subsist in law, because the candidates could sit part of the competition[s to which the contested notices relate] in their mother tongue and the choice of the second language was made on the basis of the most common, most widely studied, languages in Europe'.

96 That argument must be rejected. Article 1d of the Staff Regulations prohibits all discrimination based on language, even if the number of victims of such discrimination is fairly small. Quite a different matter is whether discrimination may be tolerated on other grounds, in which case the restricted number of potential victims of discrimination may be a valid argument, militating in favour of the proportionality of the measure in question.

97 Accordingly, it is necessary to examine whether, by limiting the choice of the second language for candidates to whom the contested notices relate to German, English and French, EPSO, as author of the notices, infringed Article 1d of the Staff Regulations, by unlawfully discriminating on the basis of language.

98 It should be noted that, unlike the competition notices at issue in the case giving rise to the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752), the contested notices contain a statement of reasons (see paragraph 6 above), included specifically to meet the requirements of that judgment. It is apparent from this statement of reasons, in particular, that 'the second language options in the … competition have been defined in accordance with the interest of the service which requires that newly recruited colleagues are immediately operational and able to communicate efficiently in their daily work' and that 'otherwise the effective functioning of the institutions would be severely impaired'.

99 However, it should be observed that the other findings of the Court referred to in paragraph 92 above remain valid also as regards the circumstances of the present cases. Indeed, as the Commission confirmed during the hearing, the institutions concerned by the contested notice did not adopt, between delivery of the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752) and publication of the contested notices, any rules of procedure in accordance with Article 6 of Regulation No 1 or any other measures such as communications laying down criteria limiting the choice of a language as a second language for participation in a competition to recruit EU officials. Among other things, it is important to note that no provisions to that effect appear in the Guide.

100 It is apparent from the judgment in *Italy* v *Commission*, cited in paragraph 26 above (EU:C:2012:752, paragraph 95), that the absence of rules or communications as such as those contemplated in paragraph 99 above cannot be offset by the content of a competition notice which, necessarily, relates only to a specific competition. The period between publication of a competition notice and the date of the tests provided for therein does not necessarily allow a candidate to acquire sufficient language skills to establish his professional competences. Regarding the possibility of learning one of the three languages to which the contested notices limit the choice of the second language with a view to future competitions, this presupposes that the languages which will be required by EPSO can be determined far in advance. The absence of rules such as those referred to in paragraph 92 above means, however, that it cannot be at all certain that the languages chosen for the competition will remain the same and makes the situation unforeseeable.

101 Nevertheless, it is necessary to examine whether the statement of reasons included in the contested notices demonstrates that the limitation on the choice of the second language of candidates in the competition at issue to German, English and French is justified by the interest of the service and complies with the principle of proportionality.

102 The first step is to establish the parameters of such an examination. The Commission relies on the principle of the autonomy of the EU institutions (see paragraph 67 above) to argue that the institutions have a 'particularly broad' discretion, since they alone have the power to decide on their staff policy. It concludes that, against that background, the principle of non-discrimination is infringed only where choices are made that are arbitrary or manifestly inappropriate having regard to the objective sought which, in the Commission's view, is to have immediately operational candidates and to recruit officials of the highest standards of ability, efficiency and integrity.

103 In this connection, it is to be noted that only the objective of having immediately operational candidates is capable of justifying, as the case may be, discrimination based on language. By contrast, such discrimination is not an appropriate way of facilitating the recruitment of officials of the highest standards of ability, efficiency and integrity, since such standards are obviously independent of a candidate's knowledge of languages.

104 It must also be recalled that the functional autonomy of the institutions does not release them from the obligation to comply with the applicable provisions of EU law, of which Article 1d of the Staff Regulations forms part.

105 In addition, it is indeed true that, according to settled case-law, as regards matters falling within the exercise of a discretion, the principle of non-discrimination is infringed where the institution concerned treats a person differently in a manner which is arbitrary or manifestly inappropriate having regard to the objective of the rules (see judgment of 20 March 2012 in *Kurrer and Others* v *Commission*, T-441/10 P to T-443/10 P, ECR-SC, EU:T:2012:133, paragraph 54 and the case-law cited; also see, to that effect, judgment of 15 April 2010 in *Gualtieri* v *Commission*, C-485/08 P, ECR, EU:C:2010:188, paragraph 72).

106 However, this case-law does not preclude the EU judicature from reviewing possible requirements relating to specific knowledge of languages imposed on candidates in competitions for the recruitment of EU officials or servants. On the contrary, it is apparent from the Court's considerations mentioned in paragraph 90 above that it is for the EU judicature to check that such requirements are objectively justified and proportionate to the actual needs of the service, in other words that they are not arbitrary or manifestly inappropriate in the light of the objective pursued.

107 According to the statement of reasons for the contested notices, 'the interest of the service … requires that newly recruited colleagues are immediately operational and able to communicate efficiently in their daily work'. On the basis of the 'long-standing practice in the EU institutions as regards the languages used for internal communication' and 'taking into account the needs of the services regarding external communication and the handling of files', the conclusion is drawn that the three abovementioned languages 'remain the most widely used'.

108 It is then stated that these three languages 'are the second languages that are by far the most widely chosen by candidates in competitions where they are able to choose their second language'. According to the contested notices, 'this confirms current educational and professional standards, whereby candidates for European Union posts can be deemed to master at least one of these languages'. In view of these considerations, it is concluded that 'in balancing the interests of the service and the needs and capacities of the candidates, and taking account of the particular field of this competition, it is legitimate to organise tests in these three languages in order to ensure that, whatever their first official language, all candidates master at least one of these three official languages at working level'.

109 The consideration that 'assessing specific competencies … allows the institutions to evaluate the ability of candidates to be immediately effective in an environment that closely matches the reality they would face on the job' seems to be cited to justify the organisation of some tests in the second language, chosen by each candidate from German, English and French. The requirement that candidates who

choose one of these three languages as their first language must, nevertheless, sit the tests in another of these three languages, chosen as their second language, is said to be 'in the interests of equal treatment'.

110 The assertion that the three abovementioned languages 'remain the most widely used' having regard to, in particular, the 'long-standing practice in the EU institutions as regards the languages used for internal communication', is of key importance in this reasoning. However, it must be stated that this assertion is vague and is not supplemented by specific details.

111 This alleged practice of the EU institutions as regards the languages used for internal communications is not clarified in any way. In particular, no details are provided as to whether these three languages are used in parallel as languages for internal communication in all services of all of the institutions concerned by the contested notices, or whether some services use one of these languages whilst others use another. In the latter situation, there is a risk that services which may be interested in candidates who pass the disputed competitions might not use one or other of the three abovementioned languages as their language for internal communication, which would call in question the reasonableness and proportionality of the limitation on the choice of the second language of candidates in the competition in question to these three languages. In that case, either some candidates, despite passing the competition, would not be taken on, or the services concerned would be required to take on at least some candidates who do not master the language used for internal communication, in which case the question legitimately arises as to the sense and use of having such a limitation.

112 In its pleadings, the Commission provided some details in this respect and adduced additional evidence. However, their examination does not dispel the serious concerns to which the abovementioned assertions in the contested notices give rise.

113 First, the Commission submits that German, English and French are 'the three main languages used in deliberations of the EU institutions'. In its opinion, this situation was characterised by the initial use of French and German and was bolstered, after 1973, by the introduction of English. It adds that the language historically used in deliberations of the Courts within the Court of Justice of the European Union is French, while English is 'the most widely used working language in the agencies'. This fact is confirmed, in particular, by the rules governing languages of the committee of permanent representatives (Coreper) which, under Article 16(7) TEU, is responsible for preparing the work of the Council of the European Union.

114 However, it must be noted that, except for copies of some e-mails produced in Case T-124/13 to demonstrate that German, English and French are the vehicular languages used by the Member States within Coreper, the Commission adduced no other evidence in support of the claims summarised above.

115 In the absence of such evidence, the vague and general assertion that German, English and French are the 'main' languages used in deliberations of the EU institutions cannot be accepted. The Commission itself concedes that the only language used in deliberations of all the Courts making up the Court of Justice of the European Union is, historically, French. Furthermore, it is common knowledge that the members of the European Parliament express themselves, during plenary sittings and in committee, in all official languages. The same is true of Member States' representatives in Council meetings.

116 In addition, even if the Court were to accept that, as the Commission contends, the three abovementioned languages are the 'vehicular languages' used within Coreper (which, moreover, the Italian Republic disputes in Case T-124/13), this fact is irrelevant to the outcome of the proceedings. It is not apparent from the documents in the case nor is it claimed by the Commission that there is any link whatsoever between Coreper's activities and the duties that candidates in the competitions at issue are likely to perform, if they pass the competitions and are taken on.

117 That consideration is valid, more generally, for all possible arguments based on the use of one or more languages as 'languages of deliberation' of an EU institution: even if the members of a given institution only use one or some languages in their deliberations, it cannot be presumed, without further explanation, that a newly recruited official who does not master any of these languages would be incapable of immediately carrying out useful work in the institution concerned.

118 Secondly, the Commission argues that German, English and French are the three languages into which almost all documents are translated by its Directorate-General for Translation. In support of this assertion, the Commission produces statistics on the source and target languages of documents translated between 2000 and 2012. According to the Commission, it can be clearly inferred from the statistics that the three languages at issue are the most commonly requested by its services in their requests for translations of documents, both as source languages, where external documents are translated for internal use, and target languages, where internal documents are intended for external use.

119 It should be recalled from the outset that these statistics are of limited relevance, as they relate only to the Commission. There is nothing to suggest that the situation is the same in respect of the other institutions concerned by the contested notices.

120 Furthermore, it should be noted that the Commission is wrong to start from the premiss that the statistics on the source language of translated documents only cover external documents, translated for the purpose of internal use, and that, conversely, the statistics on the target language of translated documents only cover internal documents, intended for external use. The statistics it relies on contain a breakdown of the number of pages translated based on the language of the original document (source language) or the language into which the document was translated (target language), without distinguishing between translations intended for internal or external use.

121 It is therefore impossible to ascertain what proportion of documents taken into consideration in these statistics are of internal origin, intended for internal use, or relevant to the fields covered by the contested notices. If a high proportion of the pages translated is of external origin, the relevance of the statistics relating to the source language of the documents translated, in order to establish the internal languages of communication of the Commission, is questionable. In addition, since there is no distinction as regards the services for which each translation is intended, any conclusions that may be drawn from these statistics, as to the use of languages within the Commission taken as a whole, will not necessary reflect the situation within its individual services which may be concerned by the fields covered by the contested notices.

122 In any event, the statistics produced by the Commission cannot substantiate the assertions it makes, which reflect the assertions also set out in the contested notices.

123 As regards the statistics relating to the source language of the documents translated, although these admittedly show that English, French and German occupy, respectively, first, second and third place in terms of the source language of pages translated, the difference between these three languages is considerable.

124 Thus, in 2012, English documents accounted for 77.06% of translations, compared to 5.20% for French and 2.90% for German. The situation was broadly similar in 2011, when 80.63% of translations were from English, 5.76% from French and 2.28% from German. Between 2000 and 2012, the proportion of translations from English rose considerably (from 55.08% to 77.06%), while French fell substantially (from 32.49% to 5.20%) and German also decreased (from 4.08% to 2.90%). In addition, it should be pointed out that the difference between German and Italian, which, except in 2012, occupied fourth place, is not considerable. Their respective proportions were 2.24% compared to 2.06% in 2010 and 2.28% compared to 1.49% in 2011. In 2012, fourth place was occupied by Spanish and Greek, accounting for 1.61% of pages translated compared to 2.90% for German.

125 As regards statistics relating to the target languages of the documents translated, it is true that English, French and German occupy, respectively, the top three places in the most recent statistics (2011 and 2012). However, the difference between the number of pages translated into these three languages and those translated into other languages is not particularly significant. Thus, in 2011, 12.31% of pages were translated into English, 7.92% into French, 6.53% into German, 4.27% into Italian, 4.20% into Spanish, 4.13% into Dutch, 4.09% into Portuguese and 3.94% into Greek. Translations into other official languages, except Irish (0.61% of pages translated) accounted for, in each case, more than 3.50% of pages translated. In 2012, the proportions of pages translated into English, French and German were, respectively, 14.92%, 8.25% and 6.47%, compared to 4.40% for Italian and 4.26% for Spanish. Translations into other official languages (except Irish, 0.41% of pages translated) accounted for, in each case, at least 3.35% of pages translated. It cannot be concluded from these statistics that a candidate who has passed the disputed competition and who has a satisfactory knowledge of English, French or German would be fully operational from his first day at work, while a candidate with at least a satisfactory knowledge of two other official languages would not be.

126 It is admittedly apparent from these statistics that a very high proportion of pages translated were originally drafted in English (source language). However, the contested notices do not require exclusively a satisfactory knowledge of English. A candidate who does not have a satisfactory knowledge of English may participate in the competitions to which these notices relate if he possesses a satisfactory knowledge of at least German or French. As indicated above, each of these two languages, as both source and target language, represents a relatively low proportion of pages translated by the Commission's services. If a candidate who masters only one of these two languages as his second language is able to participate in the competitions at issue, there does not seem to be any justification for excluding potential candidates who master other official languages from such competitions.

127 Thirdly, the Commission argues in Case T-124/13 that German, English and French are the most widely spoken languages among its officials and servants. As proof of this assertion, it produces a table, taken from a record containing the personal information of its officials and servants, which was also sent by the Director-General for Personnel of the Commission to the Italian Republic by e-mail of 14 March 2013. According to the Commission, this table shows that French and German, then English, are most commonly chosen by its officials and servants as their main language, followed by Dutch and Italian.

128 It should be recalled, first of all, that the reservations expressed above as regards the fact that the statistics concerning translated documents relate only to the Commission also apply to the table, which only covers Commission staff.

129 Furthermore, this notwithstanding, the table groups together the officials and servants of the Commission on the basis of their main language, that is to say their mother tongue. Consequently, in contrast to the Commission's claims, it is not possible to draw any useful conclusions from this table as regards the languages spoken by its officials, since the officials and servants of the Commission must have, in addition to their mother tongue, a satisfactory command of at least one other language, as required by Article 28(f) of the Staff Regulations (see paragraph 87 above).

130 In addition, the Commission misinterprets the table when it states that officials and servants having English as their main language (9.1%) are the third-largest group, following those with French (26.9%) and German (11.1%) as their main language. In actual fact, officials and servants having English as their main language occupy fourth place, after those with Dutch as their main language (9.2%). Officials and servants with Italian as their main language (9%) are in fifth place, followed by those with Spanish (6.8%), Greek (4%) and Polish (4%) as their main language.

131 These figures cannot therefore justify — not even as far as the Commission alone is concerned — a requirement such as that included in the contested notices, according to which a newly recruited official or servant must possess a satisfactory knowledge of German, English or French. At best, where a competition candidate has a satisfactory knowledge of French, he will be in the company of approximately one quarter of Commission officials and servants with French as their main language. The other two languages concerned (German and English) are the main languages of approximately one out of ten Commission officials and servants. Thus, it is impossible to see why such knowledge must be regarded as necessary for a newly recruited official or servant, all the more so because similar knowledge of other languages, particularly Italian, which are the main languages of comparable groups of officials and servants, is not required.

132 As an annex to its rejoinder in the same case, the Commission produced a further table containing a breakdown of its officials and servants based on their nationality and second language. This table also includes a line indicating the 'average' by language, being 56.4% for English, 19.8% for French, 5.5% for German, 2.2% for Dutch, 2% for Italian and 1.6% for Spanish, the average for all other official languages being less than 1% per language. An 'average' of 11.5% appears in the 'n/a' column which, as the Commission explained at the hearing, refers to its staff members who did not declare any second language.

133 Again, even if we restrict ourselves to the Commission, the data set out in this table cannot justify a requirement relating to the knowledge of languages of candidates in competitions such as those at issue in the present case. First of all, the table takes into consideration only the second language declared by each official and does not, therefore, provide a very accurate picture of the knowledge of languages of Commission officials and servants. In order to ascertain how many officials and servants have at least a satisfactory knowledge of, for instance, English, it is also necessary to take into account those having English as their main language as well as those for whom English is their third or fourth language (not only their second language), since it is not inconceivable that an official or agent may have a satisfactory knowledge of more than two languages.

134 In any event, even if the percentages recorded for English and, to a lesser extent, French are capable of justifying a requirement according to which candidates hoping to secure a post at the Commission must have a satisfactory knowledge of at least one of these two languages, the data contained in the table cannot justify the inclusion, among the languages of which knowledge is required, of German, namely a language which is the main language of approximately one out of ten officials and which was declared as a second language by only 5.5% of Commission officials. Furthermore, if German is included, the inclusion of Italian, Spanish or even Dutch does not seem unreasonable, as there is not a huge difference between the percentages recorded for each of these three languages and that recorded for German.

135 Limiting the choice of the second language of candidates in a competition to a restricted number of official languages cannot be regarded as objectively justified and proportionate where these languages include, in addition to a language knowledge of which is desirable or even necessary, other languages which do not confer any particular advantage. If we accept, as an alternative to the only language which it is advantageous for a newly recruited official to know, other languages knowledge of which is not beneficial, there is no valid reason not to accept all other official languages, too.

136 Fourthly, the Commission submits that German, English and French are the languages most commonly studied and spoken as foreign languages in the EU Member States. In support of its claims, it produces a report from Eurostat, published in *Statistics in Focus* No 49/2010, which concludes that English is 'by far the foreign language most studied [in Europe] at all levels of education, followed by French, German, Russian, and, to a lesser extent, Spanish' and that the 'best known foreign language by far is perceived to be English, followed by German, Russian, French and Spanish'.

137 These statistics refer to EU citizens as a whole and it cannot be presumed that they properly reflect the knowledge of languages of EU officials. In any event, the only thing that these statistics show is that the number of potential candidates who are adversely affected by limiting to German, English and French the languages that may be chosen as second languages in the competitions to which the contested notices relate is lower than would be the case were this choice limited to other languages. This is not sufficient to conclude that the limitation at issue is not discriminatory, since the potentially restricted number of adversely affected persons cannot constitute a valid argument in that regard (see paragraph 96 above).

138 At most, these findings could demonstrate that the limitation at issue is proportionate, if it proved to be in the interest of the service. However, the Commission has precisely failed to prove that this condition was satisfied.

139 The preceding considerations also apply as regards the evidence relied on by the Commission to show that, where candidates in the competition were not limited in their choice of second language, the most commonly chosen languages were German, English and French. The fact that the number of candidates who are prevented from choosing another language as their second language in the competition is, as the case may be, reduced does not mean that these candidates suffered no discrimination.

140 Fifthly, in its rejoinder in Case T-124/13, the Commission maintains that the College of Heads of Administration of the EU institutions carried out the necessary analyses to determine whether German, English and French could be regarded as the most representative languages among those used in the services of the institutions. It adds that the College noted that there was an agreement on the general policy concerning the use of languages in competitions organised by EPSO.

141 The Commission produced a letter from the President of the College, dated 10 June 2013, showing that the College took note of an agreement between the Heads of Administration of the EU institutions to approve a general draft policy on the use of languages in competitions organised by EPSO, with the exception of the reservation entered by the Court of Justice's representative, who stated that he declined to take a position. It also produced the policy document to which the agreement relates.

142 This evidence — which, moreover, post-dates the contested notices and the lodging of the actions — cannot call in question the considerations set out above. The policy approved by the College of Heads of Administration does not refer to any new factual elements in addition to those already examined above. The Commission itself argues that the data considered by the Heads of Administration 'are broadly the same' as those produced by the Commission as an annex to its defence. However, for the reasons set out above, such data cannot justify the assertions relating to the use of languages within the EU institutions contained in the statement of reasons for the contested notices and put forward by the Commission in its pleadings. The fact that the Heads of Administration of the EU institutions — with the exception of the Court of Justice's representative, who abstained — reached a different conclusion is irrelevant.

143 Sixthly and lastly, the Commission submits that the limitation on the choice of second language laid down in the contested notices is justified by the nature of the tests. In particular, in order to ensure that candidates are evaluated uniformly and to facilitate communication between them and the other participants in the competition as well as the selection board, the 'assessment centre' stage requires these tests to be taken in a vehicular language.

144 In reply to that argument, suffice it to note that the statement of reasons for the contested notices contains no such justification for the limitation at issue. However, it cannot be concluded that discrimination based on language as a result of the contested notices is justified for different reasons than those set out in the notices. Consequently, this argument must also be rejected.

145 For all of the above reasons, it must therefore be held that the limitation in the contested notices on the choice of the second language of candidates in the competitions to which the notices relate to German, English and French is neither objectively justified nor proportionate to the aim pursued, which, according to the Commission, is to recruit immediately operational officials and servants.

146 It is not sufficient to defend the principle of such a limitation by referring to the large number of languages recognised under Article 1 of Regulation No 1 as official languages and working languages of the European Union and by citing the resulting need to choose a smaller number of languages, even a single language, as languages for internal communication or 'vehicular languages'. It is also necessary to provide objective justification for the choice of one or more specific languages, to the exclusion of all others.

147 This is precisely what both EPSO, as author of the contested notices, and the Commission, as defendant before the Court, failed to do. Nothing in the data provided by the Commission demonstrates that a newly recruited official who has a satisfactory knowledge of German, English or French would be immediately operational, while a candidate possessing at least a satisfactory knowledge of two other official languages would not be.

148 Consequently, the Court must uphold the third and seventh pleas in law raised by the Italian Republic in Case T-124/13 as well as the second plea in law invoked by the Kingdom of Spain in Case T-191/13, and, without it being necessary to consider the other unexamined pleas in law, must annul the contested notices also in so far as they limit the choice of the second language of candidates to German, English and French.

149 In addition, in the light of this finding, it is not necessary to rule on the objection, raised by the Kingdom of Spain in Case T-191/13, to the lawfulness of using the second language, chosen by each candidate in the competition to which notice EPSO/AD/248/13 relates from German, English and French, for some of the tests in the last stage of this competition.

150 The inevitable consequence of finding that the competition notice at issue, in so far as it limits the choice of the second language of candidates, is unlawful is that the limitation on the language that can be used for some of the tests in the last stage of the competition is also unlawful, so that, in the circumstances of the present case, the examination of the lawfulness of this third aspect of notice EPSO/AD/248/13, disputed by the Kingdom of Spain, is devoid of purpose.

151 Lastly, having heard the parties at the hearing in Case T-124/13, who did not raise any objections in that regard, the Court considers that the results of the competitions to which the contested notices relate are not to be called into question (see, to that effect, judgments in *Italy* v *Commission*, cited in paragraph 26 above, EU:C:2012:752, paragraph 103, and of 16 October 2013 in *Italy* v *Commission*, T-248/10, EU:T:2013:534, paragraphs 45 to 51).

Costs

152 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay, in addition to its own costs, the costs incurred by the Italian Republic in Case T-124/13 and those incurred by the Kingdom of Spain in Case T-191/13, in accordance with the form of order sought by those two Member States.

153 The Kingdom of Spain, intervener in Case T-124/13, must bear its own costs relating to its intervention, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Eighth Chamber),

hereby:

1. **Joins Cases T-124/13 and T-191/13 for the purposes of the judgment;**

2. **Annuls the notice of open competition EPSO/AST/125/12 to constitute a reserve from which to recruit assistants in the fields of audit, finance and accounting, and economics and statistics, the notice of open competition EPSO/AST/126/12 to constitute a reserve from which to recruit assistants in the fields of biology, life and health sciences, chemistry, physics and material sciences, nuclear research, civil and mechanical engineering, and electrical engineering and electronics, and the notice of open competition EPSO/AD/248/13 to constitute a reserve from which to recruit administrators (AD 6) in the fields of buildings security and engineering in special building techniques;**

3. **Orders the European Commission to bear its own costs and to pay those incurred by the Italian Republic in Case T-124/13 and those incurred by the Kingdom of Spain in Case T-191/13;**

4. **Orders the Kingdom of Spain to bear its own costs relating to its intervention in Case T-124/13.**

Gratsias Kancheva Wetter

Delivered in open court in Luxembourg on 24 September 2015.

[Signatures]