Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Full Court)

29 June 2011 *

(Civil service — Contract staff — Call for expression of interest — Pre-selection procedure — Requirements relating to knowledge of languages — Discrimination — Incidents during the tests)

In Case F-7/07,

ACTION under Articles 236 EC and 152 EA,

Marie-Thérèse Angioi, residing in Valenciennes (France), represented by M.-A. Lucas, lawyer,

applicant,

supported by

Kingdom of Spain, represented by F. Díez Moreno, lawyer,

and

Italian Republic, represented initially by I. Braguglia, acting as Agent, and by P. Gentili, lawyer, and subsequently by G. Palmieri, acting as Agent, and by P. Gentili, lawyer,

interveners,

v

European Commission, represented by J. Currall and M. Velardo, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (Full Court),

composed of P. Mahoney, President, S. Gervasoni, President of Chamber, H. Kreppel (Rapporteur), H. Tagaras and S. Van Raepenbusch, Judges,

Registrar: W. Hakenberg,

having regard to the written procedure and further to the hearing on 30 June 2009,

gives the following

* Language of the case: French.

Judgment

1 By application received at the Registry of the Tribunal on 29 January 2007 by fax (the original being lodged on 2 February 2007), Ms Angioi seeks annulment of the decision of 14 March 2006 by which the European Personnel Selection Office (EPSO), in the context of a Call for expression of interest to constitute a database of candidates to be recruited as contract staff, decided to exclude her from the remainder of the pre-selection tests because of insufficient marks obtained during the first tests to assess her verbal and numerical reasoning capacity.

Legal context

1. *Statutory provisions*

2 The first paragraph of Article 12 EC, in force at the date on which the decision mentioned in the previous paragraph was adopted, states:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

3 Article 290 EC provides:

'The rules governing the languages of the institutions of the [European Union] shall, without prejudice to the provisions contained in the Statute of the Court of Justice [of the European Union], be determined by the Council [of the European Union], acting unanimously.'

4 In accordance with Article 22, headed 'Cultural, religious and linguistic diversity', of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1, 'the Charter of Fundamental Rights'):

'The Union shall respect cultural, religious and linguistic diversity.'

5 Articles 1 to 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), in the version applying in this case, provide:

'Article 1

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

Article 2

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

Article 3

Documents which an institution of the [European Union] sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State.

Article 4

Regulations and other documents of general application shall be drafted in the [20] official languages.

Article 5

The *Official Journal of the* [*European Union*] shall be published in the [20] official languages.

Article 6

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

6 Article 1d of the Staff Regulations of Officials of the European Union, in the version applicable in the present case ('the Staff Regulations'), states:

'1. In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

…

6. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. Such objectives may in particular justify stipulating a mandatory retirement age and a minimum age for drawing a retirement pension.'

7 Article 82 of the Conditions of Employment of Other Servants of the European Union, in the version applicable in this case ('the CEOS'), provides:

'1. Contract staff shall be selected on the broadest possible geographical basis from among nationals of Member States and without distinction as to racial or ethnic origin, political, philosophical or religious beliefs, age or disability, gender or sexual orientation and without reference to their marital status or family situation.

…

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

…

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

…

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

…'

8 Article 3(2) of 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) provides that '[EPSO] may assist the institutions, bodies, offices and agencies established by or in accordance with the Treaties with internal competitions and the selection of other servants'.

2. *Call for expression of interest*

9 In 2005, EPSO published, 'on behalf of the European Institutions and of the Commission and the Council in particular', a Call for expression of interest to 'constitute a database of candidates to be recruited as contract agents carrying out various tasks within the European Institutions' ('the CEI'). The CEI was published on EPSO's internet site from 20 June to 20 July 2005.

10 Section A(2) of the CEI, headed 'Profiles sought', was worded as follows:

'The purpose of this [CEI] is to recruit staff with the following general competences:

For function group I: mail staff, drivers, administrative support, skilled workers.

For function group II: crèche (mainly nurses), office managers/clerks, secretaries, technical staff.

For function group III: financial management, informatics/technical, executive tasks.

For function group IV: administrative, communication and advisory tasks, researchers, engineers, linguists, architects. …'

11 Section A(3) of the CEI, headed 'Eligibility criteria and general conditions', provided that, in order to apply for a post as a contract agent, candidates must meet the following eligibility criteria within each function group and the general conditions.

12 With regard to the eligibility criteria, section A(3)(a) of the CEI, headed 'Minimal educational requirements', stipulated, in the case of candidates for contract agent positions in function group II, a post-secondary education attested by a diploma, or a secondary education attested by a diploma giving access to post-secondary education and appropriate professional experience of three years (such a diploma being replaceable by a certificate of adequate professional training of not less than three years on condition that there was no similar professional training giving access to higher education at the time it was issued), or successful completion of intermediate education plus two years' relevant supplementary specialised training plus five years' appropriate professional experience.

13 With regard to the general conditions, section A(3)(b) of the French version of the CEI required candidates, among other conditions, to have 'a thorough knowledge of one of the official languages of the European Union ([Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovakian, Slovenian, Spanish or Swedish]) — main language (by default, the main language [could] be considered that of the candidate's nationality or that of the compulsory education) and a satisfactory knowledge [of English, French or German] — second language (which [had to] be different from main language)'.

14 The terms 'main language' and 'second language' in section A(3)(b) of the CEI appeared in bold characters.

15 According to section C of the CEI, headed 'Successive stages of the selection procedure', the selection procedure was to take place in three successive stages: 'validation', 'pre-selection tests' and 'selection for potential recruitment'.

16 With regard to the first stage — validation — it was envisaged that EPSO would prepare a validated database of candidates who fitted the competence profiles and qualifications as set out in the CEI and submit this database to a selection committee so that the latter could draw up a list of candidates admitted to sit the pre-selection tests.

17 With regard to the second stage — the pre-selection tests — the CEI stated that candidates included in the database mentioned in the previous paragraph would be invited to three series of tests, in this instance:

— aptitude tests to assess their 'general aptitudes' and in particular 'their verbal and non-verbal reasoning capacity and their linguistic ability';

— at the same time, a test to assess 'their knowledge of the European integration process and of the Institutions';

— at a later stage, a specific test to ascertain 'their specific competencies'.

18 It stated that the pre-selection tests would take place 'in [the] second language (English, French or German)', which was to 'be different from [the] main language'.

19 With regard, finally, to the third stage — selection for potential recruitment –, the CEI envisaged that candidates having passed the tests would have their names placed in a final database accessible to the European institutions so that they could select and invite for an interview those candidates who 'best fit their requirements'.

20 The Application Guide, to which section B of the CEI referred in order to enable candidates 'to submit [their] application[s] correctly', informed them that, as regards their choice of main language, they should state their 'first language' by selecting it from the drop-down menu.

21 Finally, the 'Frequently asked questions' section of EPSO's internet site stated, with regard to the CEI:

'How are "main" and "second" languages defined?

As a general rule the main language is the language of your nationality if it is one of the 20 official languages of the EU. In the case of countries having two or more official languages, the main language would be the language in which you took your compulsory education. The second language is the language in which you will be sitting the tests if pre-selected. It must be different from your main language. For the purpose of this call your second language must be English, French or German. You should have a satisfactory knowledge of your second language.'

Facts

22 Following the publication of the CEI, the applicant, a French national born of parents of Italian nationality, submitted her application for a contract agent position in function group II, profile 'office management (secretary)'.

23 In her application form, completed electronically, the applicant stated that both her main language and her second language — that in which she was required to sit the pre-selection tests — would be French.

24 By an email of 4 October 2005, EPSO informed the applicant that the selection committee had accepted her candidature and that she would subsequently be invited to take part in the pre-selection tests. That message stated that the applicant's 'main language' would be French and her 'language for the tests' English.

25 On 15 November 2005, the applicant sent EPSO an email to remind it that she had chosen French as the language for the pre-selection tests and not English.

26 By email of 28 November 2005, EPSO replied to the applicant that the language for the pre-selection tests could not be the main language and invited her to 're-read the [CEI]'. Following that email, the applicant agreed to sit the pre-selection tests in English.

27 On 21 November 2005, EPSO published a notice relating to the structure and evaluation of the pre-selection tests ('the notice of 21 November 2005'). That notice stated:

— that the first tests, to ascertain verbal reasoning aptitude and numerical reasoning aptitude, would comprise 25 and 20 multiple-choice questions respectively;

— that the second test, covering knowledge of the European Union, would comprise 30 multiple-choice questions;

— that the third test would be to ascertain 'specific knowledge (in the area of interest indicated as first choice in the application form)'.

28 The notice of 21 November 2005 further stated that '[o]nly the reasoning and EU knowledge tests w[ould] be administered in this phase' and that 'candidates w[ould] be called for the specific knowledge tests at a later stage', with the exception of 'candidates for [f]unction group II, secretarial profile, who w[ould] [sit] all the tests at the same time in this phase'.

29 Finally, the notice of 21 November 2005 also drew attention to the fact that the 'pass thresholds, to enable inclusion in the database' would be 45% for posts in function group II for all the tests as a whole, 35% being the minimum required for the tests to ascertain verbal and numerical reasoning aptitude.

30 On 6 January 2006, in Brussels (Belgium), under the supervision of officials of the company to which EPSO had entrusted the organisation of the pre-selection tests, the applicant sat the tests to ascertain her verbal and numerical reasoning aptitude, the test covering her knowledge of the European Union and the test to ascertain her specific knowledge. According to the applicant, the conduct of the pre-selection tests was disrupted by the malfunctioning, on at least four occasions, of her computer. Her request for a statement acknowledging those incidents to be issued to her was not acted upon.

31 By an email of 27 February 2006, EPSO informed the applicant that she had passed the pre-selection tests and that her name would be placed in the database to which the European institutions would have access in order to select and invite to interview the candidates best fitting their requirements.

32 On 14 March 2006, EPSO sent the applicant an email worded as follows ('the decision of 14 March 2006'):

'Dear candidate,

In a limited number of cases and in consequence of an error which occurred in the submission of the letter sent to candidates, some candidates, including yourself, have received two different and contradictory letters concerning the results obtained.

In order to clarify the information concerning you, it is my duty to confirm that your marks are:

— Verbal : 32.00%

— Numerical : 35.00%

Total verbal and numerical obtained : 33.33%

Minimum required for function group II: 35.00%

I therefore regret to inform you that your marks in [the tests to ascertain verbal and numerical reasoning aptitude] are not sufficient to enable EPSO to admit you to the next selection stage.

…

Please accept my apologies for this inconvenience.'

33 By an email of 10 April 2006, headed 'contesting test results', the applicant challenged the decision of 14 March 2006. She pointed out that she had been obliged, during her pre-selection tests, to interrupt them 'many times' due to 'computer bugs' and that '[h]er inclusion in the EPSO database should be maintained'.

34 By email of 19 April 2006, EPSO replied to the applicant confirming that she had obtained only 33.33% of correct answers in the tests to ascertain verbal and numerical reasoning aptitude, whereas the minimum required was 35%. As regards the applicant's complaints concerning the computer incidents with which she had been faced, EPSO stated that those complaints were being made 'much too late', that 'it [was] no longer possible to ascertain whether there [had] in fact been anomalies with [the computer work station on which she had sat the tests] and that, in any event, '[t]he results which [had] been recorded appear[ed] perfectly normal'.

35 By email sent to EPSO on the same day, the applicant, after pointing out that she had reported the computer incidents both in the room where she had sat the tests and then on receipt of the decision of 14 March 2006, stated that it was possible that those incidents may have had a bearing on the rejection of her candidature.

36 In reply, on 20 April 2006, EPSO sent the applicant the following email:

'…

We are perfectly willing to analyse the evidence which you submit, but you should have sent us the right information. If, at the time of the events to which you refer, you submitted a request to the supervisors, you will have received an incident number. Would you therefore please send us that number to enable us to carry out investigations. Since the tests were recorded, if a problem occurred, the supervisors will have transferred it to the daybook and we will trace the record of those events.'

37 On the same day, the applicant sent EPSO an email in which she stated that, 'in no way [had she been] given an incident number' even though she had requested one, and pointed out that neither the name of the supervisor nor that of the person called in to resolve the computer incidents had been communicated to her.

38 The applicant was able to find out, on the EPSO internet site, from a table showing, for each of the questions to which she had been subjected, the appropriate answer, the answer she had given and the time spent answering it. That table, which did not show the text of the questions which had been put to her, did however include an entry stating that she had automatically been awarded one point on account of an illegible question.

39 By note dated 14 June 2006 and received on the same day at the Commission of the European Communities by fax, the applicant submitted a complaint under Article 90(2) of the Staff Regulations against, inter alia, the decision of 14 March 2006. In that note, the applicant requested that the administration communicate to her the text of the questions which had been put to her during the tests to ascertain her verbal and numerical reasoning aptitude.

40 By decision of 11 October 2006, the authority empowered to conclude contracts ('the AECE') rejected the complaint.

Forms of order sought by the parties and procedure

41 The applicant brought the present action on 29 January 2007.

42 The applicant claims that the Tribunal should:

'– … annul the decision of 14 March 2006 …;

– … annul the decision of EPSO and/or of the selection committee not to register the applicant in the database of candidates who had passed the pre-selection tests;

– … annul the subsequent selection processes;

– … order the [Commission] to pay the costs.'

43 The Commission contends that the Tribunal should:

'– dismiss the action;

– make an appropriate order as to costs.'

44 By application lodged at the Registry of the Tribunal on 30 April 2007, the Kingdom of Spain sought leave to intervene in support of the forms of order sought by the applicant.

45 By application received at the Registry of the Tribunal on 3 May 2007 (the original being lodged on 4 May 2007), the Italian Republic sought leave to intervene in support of the forms of order sought by the applicant.

46 By orders of 19 June 2007 of the President of the Second Chamber of the Tribunal, the Kingdom of Spain and the Italian Republic were granted leave to intervene in support of the forms of order sought by the applicant.

47 By decision of 19 February 2009, the case, having initially been assigned to the Second Chamber of the Tribunal, was reassigned to the First Chamber.

48 By decision of 17 June 2009, the case was referred to the full court.

49 By various measures of organisation of procedure, the Tribunal requested that the parties reply to certain questions and produce a number of documents. The parties complied with those measures.

50 The Tribunal also requested that the parties submit any observations as to whether EPSO was competent to adopt the decision of 14 March 2006.

51 Finally, at the request of the Tribunal, the parties, with the exception of the Italian Republic, submitted observations on the relevance to the present case of the judgments of the General Court of 13 September 2010 in Joined Cases T-156/07 and T-232/07 *Spain* v *Commission* and Joined Cases T-166/07 and T-285/07 *Italy* v *Commission*.

52 Two of the seven judges who had sat at the hearing were unable to participate in the deliberations, one having left the Tribunal to perform the duties of a judge at the General Court, the other having been prevented from attending on medical grounds.

Law

1. *The claim for annulment of the 'subsequent selection processes'*

53 It should be remembered that, under the first paragraph of Article 21 of the Statute of the Court of Justice, which applies to the procedure before the Tribunal pursuant to Article 7(1) of Annex I to that Statute, and under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis* to the Tribunal — pursuant to Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7) — for actions brought prior to the entry into force on 1 November 2007 of the Tribunal's Rules of Procedure, the application initiating proceedings must, inter alia, contain the subject-matter of the dispute and a summary of the pleas in law on which the application is based.. Those particulars must be sufficiently clear and precise to enable the defendant to prepare his defence and to enable the Tribunal to give judgment in the action, if appropriate, without having to seek further information.

54 In the present case, the abovementioned claim does not enable the act or acts annulment of which is sought to be clearly identified; and must, for that reason, be rejected as inadmissible.

2. *The claims for annulment of the decision of 14 March 2006 and of the 'decision of EPSO and/or of the selection committee not to register the applicant in the database of candidates who had passed the pre-selection tests'*

55 In support of the abovementioned claims, the applicant puts forward three pleas in law, the first alleging infringement of the first paragraph of Article 12 EC and of Article 82(1) and (3)(e) of the CEOS, the second 'infringement of the principles of sound administration, equal treatment, objectivity and protection of legitimate expectations', the third 'infringement of the principle of equal treatment[,] the principles of protection of legitimate expectations and transparency, and of the obligation to state reasons'.

56 In addition, at the hearing, the applicant put forward a fourth plea, alleging that the decision of 14 March 2006 was adopted by an authority lacking competence.

The first plea in law, alleging infringement of the first paragraph of Article 12 EC and of Article 82(1) and (3)(e) of the CEOS

57 By this plea, the applicant and the interveners raise in essence a plea of illegality against the CEI, a plea which can be subdivided into three parts. The CEI is claimed to be illegal in so far as it:

— required candidates to state, as their main language, that of their nationality or that of their compulsory education (first part),

— restricted their choice of second language to English, French or German only (second part),

— was unlawfully published only in English, French and German and limited to those languages the choice of language of correspondence between EPSO and the candidates (third part).

The first part of the first plea, alleging that the CEI unlawfully required candidates to state, as their main language, that of their nationality or education

– Arguments of the parties

58 The applicant submits that Article 82(3)(e) of the CEOS, under which a member of the contract staff may be engaged only on condition that he produces 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 to the extent necessary for the performance of his duties, does not at all require the language of which a candidate for a contract staff post must have a thorough knowledge to be that of his nationality or that in which he underwent his education.

59 However, in section A(3)(b) of the CEI, EPSO inserted the clarification that 'by default', the 'main language' of each candidate, that is to say, the language of which he must have a thorough knowledge, would be 'considered that of the candidate['s] nationality or that of the compulsory education'. By that clarification, EPSO sought to make it impossible, in contravention of Article 82(3)(e) of the CEOS, for a candidate to state as his main language a language other than that of his nationality or education. The applicant points out that she was thus deprived of the right to choose as her main language that in which she was brought up, in this case Italian.

60 Furthermore, the obligation, imposed by the CEI and confirmed by the Application Guide, to which the CEI referred, and the 'Frequently asked questions' section of EPSO's internet site, to state the language of nationality or the language of education is contrary to the first paragraph of Article 12 EC and to Article 82(1) of the CEOS, in so far as it gives rise to a difference in treatment as between candidates on the basis of their nationality or national origin. Indeed, it indirectly precluded some candidates from sitting the tests in their mother tongue, whereas it continued to allow that possibility for candidates of other nationalities or national origins.

61 The applicant adds that the argument, set out by the Commission in the decision rejecting the complaint, that the words 'by default' contained in the CEI show that candidates were free to choose their main language cannot be accepted. Apart from their vagueness, the words 'by default' appear only in the English and French versions of the CEI, and not in the German version.

62 In any event, the CEI was not consistent with its legal purpose, which was to inform interested persons as accurately as possible of the conditions required for holding the positions to be filled, in such a way as to enable them to assess whether it was appropriate for them to apply.

63 In its defence, the Commission contends that the first part of the first plea should be rejected.

64 The Commission submits, first of all, that neither any provision of the CEI nor any requirement of the Application Guide or EPSO's internet site obliged candidates to take as their main language that of their nationality or that of their education. According to the Commission, the criteria of nationality and education were included in the CEI only by way of alternatives, in order to compensate for possible omissions by candidates during the registration processes.

65 In any event, the Commission points out, in its rejoinder, that the applicant could not have chosen any language other than French. According to the Commission, candidates were required to choose, as their main language, that of which they have the best command. In this case, the applicant's command of French is superior to her command of Italian. Consequently, had the applicant chosen Italian as her main language and French as her second language, she would have obtained an undue advantage, since the tests would have taken place in the language of which she has the best command. However, the purpose of the CEI was to place all candidates on the same footing by requiring them to sit the pre-selection tests in a language which they are presumed to have mastered less well than their main language.

66 At the hearing, the Commission nevertheless expressly stated that, contrary to what it had intimated in its rejoinder, candidates were free to choose, as their main language, any language of which they had a thorough knowledge. Consequently, according to the Commission, it was open to the applicant to take Italian as her main language and French as her second language, and therefore to sit the pre-selection tests in French. However, the Commission adds that the applicant freely made the choice of French as her main language.

– Findings of the Tribunal

67 As a preliminary point, it must be recalled that, pursuant to Article 82(3)(e) of the CEOS, a member of the contract staff may be engaged only on condition that he produces evidence of, inter alia, 'a thorough knowledge of one of the languages of the [European Union]'.

68 Although the language of which a candidate for a contract staff post has a thorough knowledge corresponds, as a general rule, to that of his nationality or that of his education, the possibility nevertheless remains, as the Commission in fact acknowledged at the hearing, that a candidate may also have a thorough command of another language. It is clear, in the absence of any clarification on this point in Article 82(3)(e) of the CEOS, that the drafters of that article did not intend that the language of which a candidate for a contract staff post has a thorough knowledge should be limited only to the language of his nationality or, in the case of a candidate who is a national of a Member State having more than one official language, only to that in which he underwent his education.

69 The question is therefore whether, in this case, as the applicant maintains, EPSO required candidates to take as their main language that of their nationality or that in which they underwent their education, in disregard of Article 82(3)(e) of the CEOS.

70 In that regard, it should be noted that section A(3)(b) of the French version of the CEI required candidates, among other conditions, to have 'a thorough knowledge of one of the official languages of the European Union … — main language' and added the clarification in brackets that 'by default, the main language [could] be considered that of the candidate's nationality or that of the compulsory education'.

71 Contrary to what the applicant maintains, the latter clarification, which also appears in the English version of the CEI, cannot be read as having obliged candidates to state, as their main language, that of their nationality or, in the case of candidates having undergone their education in a Member State having two or more official languages, that in which they underwent that education. The use of the words 'by default' shows that EPSO inserted that clarification for the sole purpose of informing

candidates that, should a candidate have omitted, during the registration processes, to state his main language, EPSO would have compensated for that omission by entering for that purpose the language of his nationality or education, being the language presumed to be that of which the candidate has the best command.

72 It is true that the German version of the CEI differed from the French and English versions, being worded as follows: 'Sie müssen über eine gründliche Kenntnis einer der Amtssprachen der Europäischen Union verfügen … — Hauptsprache (als Hauptsprache wird die Landessprache des Bewerbers oder die Sprache der Pflichtschule betrachtet) …' ('You must have a thorough knowledge of one of the official languages of the European Union … — main language (the main language shall be considered that of the candidate's nationality or that of the compulsory education) …'). However, according to settled case-law, the need for a uniform application and, accordingly, interpretation of the provisions of EU law makes it impossible to consider one version of a text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim pursued by that author, in the light in particular of the other versions drawn up in the languages of the European Union (see, to that effect, judgment of 30 November 2009 in Case F-83/07 *Zangerl-Posselt* v *Commission*, paragraph 49 and the case-law cited, the subject of an appeal pending before the General Court, Case T-62/10 P). However, in this case, since the German version is in the minority in relation to the other two language versions of the text in question, the latter must be allowed to prevail. Moreover, the applicant, who did not indicate at all in her application that she had any, even rudimentary, command of the German language, cannot claim that the German version of the CEI misled her by letting her believe that she was obliged to choose, as her main language, that of her nationality.

73 Finally, it should be noted that, in the 'Frequently asked questions' section of its internet site, EPSO stated, in answer to the question 'How are "main" and "second" languages defined?' that '[a]s a general rule the main language is the language of your nationality if it is one of the 20 official languages of the EU. In the case of countries having two or more official languages, the main language would be the language in which you took your compulsory education'. Thus, the use of the phrase 'as a general rule' shows that EPSO did not rule out the possibility that a candidate might choose, as his main language, in the CEI tests, a language different from the language of his nationality or education, provided that the candidate had a thorough knowledge of it.

74 In those circumstances, since the applicant is not justified in maintaining that she was obliged by EPSO to state the language of her nationality as her main language, the claim alleging infringement of Article 82(3)(e) of the CEOS cannot be upheld. The same applies, for the same reason, to the claims alleging infringement of the first paragraph of Article 12 EC and of Article 82(1) of the CEOS.

75 It follows that the first part of the first plea must be rejected as unfounded.

The second part of the first plea, alleging that the CEI unlawfully restricted the choice of second language to English, French or German only

– Arguments of the parties

76 The applicant submits as a preliminary point that Article 82(3)(e) of the CEOS shows that an administration may require a candidate for a contract staff post to have a satisfactory knowledge of a specific language only on account of the particular nature of the post to be filled. However, according to the applicant, EPSO did not comply with that condition, since, in the CEI, it decided to restrict the choice of second language to English, German or French, whereas the duties which candidates were intended to perform if recruited did not all, or not all to the same extent, require a satisfactory knowledge of English, French or German.

77 The applicant further states that EPSO, by restricting the choice of second language to English, French or German, disregarded the 'external dimension' of contract staff duties, since members of the contract staff find it necessary, in their relations with the Member States or with persons falling under the jurisdiction of the Member States, to use all the official languages of the institutions of the European Union.

78 The applicant adds that none of the grounds which may be put forward by the Commission to justify the restriction in the choice of second language can be accepted.

79 Should the Commission justify that restriction by the existence of administrative constraints — the fact that EPSO or the company which it entrusted with the organisation of the pre-selection tests was unable to obtain sufficient material and human resources to organise those tests in all the official languages of the European Union –, that restriction is unlawful since it is unrelated to the nature of the posts which had to be filled.

80 Similarly, if the reason given for the restriction is the purported fact that English, French and German are the main working languages of the European institutions, that justification is no more valid. Firstly, Article 1 of Regulation No 1 provides that all the official languages of the European Union, and not only English, French and German, are to be the working languages of the institutions. Secondly, although Article 6 of Regulation No 1 permits the institutions to lay down simplified rules governing the languages to be used for their purely internal requirements, it is not at all established that those institutions have adopted such rules. In any event, it has not been proved that those three languages are actually the most commonly used languages in the internal functioning of those institutions.

81 In the alternative, where English, French and German are, at least within the institutions having their seat in Brussels or Luxembourg, the languages of internal communication, the applicant claims that there is no relationship of appropriateness or, still less, of proportionality between the aim pursued and the means used by EPSO to achieve it. As regards candidates who took, as their main language, English, French or German, the requirement imposed by EPSO on those candidates that they choose another of those three languages as their second language had the effect of compelling them to produce evidence of knowledge of two languages of internal communication of the institutions, whereas candidates who chose, as their main language, a language other than English, French or German were required to have a knowledge of only one language of internal communication.

82 The applicant therefore concludes that, by limiting to English, French or German the choice of second language and thereby preventing her from choosing Italian, EPSO infringed Article 12 EC, the principle of non-discrimination and Article 82(3)(e) of the CEOS.

83 In its defence, the Commission contends that the obligation imposed on candidates to choose, as their second language, English, French or German merely reflects the importance of having effective internal communication within the institutions. In view of the significant increase in the number of official languages, it has to be possible to ensure internal communication by ensuring that all officials and other staff know at least one of the languages which are, de facto, commonly used in the institutions, in particular within the Commission.

84 The Commission adds that, in the case of candidates who took English, French or German as their main language, it was still justifiable to require them to have a satisfactory knowledge of another of those languages, firstly in order to ensure equal treatment as between all the candidates, and secondly for the purpose of enhancing the scope for internal communication.

85 In addition, the Commission points out that the purpose of the CEI was to constitute a database intended to satisfy future recruitment needs and not to fill a particular post and that, accordingly, EPSO had all the more reason to satisfy itself that all the candidates included in that database produced evidence of a knowledge of languages suitable for any post in their function group which they might be offered.

86 The Kingdom of Spain and the Italian Republic maintain that, by limiting the language of which candidates had to have a satisfactory knowledge to English, French or German, EPSO also infringed both Article 290 EC, which confers on the Council exclusive competence to determine the rules governing the languages of the institutions of the European Union, and Decision 2002/620, which did not confer on EPSO any competence in regard to the rules governing languages, as well as Article 22 of the Charter of Fundamental Rights, which guarantees the principle of multilingualism. Finally, according to the interveners, who argue that candidates should have been able to choose their second language from all the official languages of the European Union, such a restriction also infringed the principle of the protection of legitimate expectations and lacked any statement of the reasons on which it was based.

87 The Kingdom of Spain adds that the Commission does not provide any explanation to demonstrate that the English, French and German languages are the most used languages within that institution or that objective considerations justified the choice of those languages as languages of internal communication. In any event, no decision to that effect has been adopted by the College of Commissioners.

88 Finally, the Kingdom of Spain points out that the language requirement contained in the CEI favoured candidates who are nationals of Member States having English, French or German as their official language, in contravention of Article 12 EC.

– Findings of the Tribunal

89 As a preliminary point, it should be noted that the language requirements set out in Article 82(3)(e) of the CEOS, in this instance having a thorough knowledge of one of the languages of the European Union and a satisfactory knowledge of another language of the European Union to the extent necessary for the performance of the duties involved, constitute only minimum conditions for the recruitment of members of the contract staff.

90 It follows that the administration may, if necessary, where the needs of the service or those of the post require it, legitimately specify the language(s) of which a thorough or satisfactory knowledge is required (see, by contrary inference, judgment of 4 March 1964 in Case 15/63 *Lassalle* v *Parliament*, 37, 38; Opinion of Advocate General Lagrange in that case, 49; and also *Spain* v *Commission*, paragraph 65, and *Italy* v *Commission*, paragraph 81).

91 Although such a specific language requirement may result from the particular profile of the post that the member of the contract staff is required to fill, it may result more generally from the existence, within the institution, of one or more languages of internal communication. Since an institution has the right, even without taking a formal decision to that effect, to choose a limited number of languages of internal communication, provided that that choice is based on objective considerations relating to its operational needs (see, to that effect, Opinion of Advocate General Poiares Maduro in Case C-160/03 *Spain* v *Eurojust*, points 49 and 56; *Spain* v *Commission*, paragraph 75; and *Italy* v *Commission*, paragraph 93), it follows that that institution may legitimately impose on contract staff whom it intends to recruit a knowledge of languages matching those languages of internal communication. Otherwise it would be exposed to the risk of employing a staff member who was unable adequately to perform his duties within the institution, since that staff member would be put in a position, in some circumstances, where he was unable, or found it extremely difficult, to

communicate with his work colleagues and to understand the instructions issued by his hierarchical superiors. In that regard, it must be pointed out that, in the judgment in *Italy* v *Commission*, given in a case where EPSO had published competition notices for the purpose of establishing reserve lists intended to fill vacancies for administrators and assistants within the European institutions, the General Court accepted not only that the choice of English, French and German corresponded to the operational needs of the institutions and bodies of the European Union, but also that EPSO had been properly entitled to require the candidates in those competitions to have a knowledge, as their second language, of one of those three languages (*Italy* v *Commission*, paragraph 103).

92 However, it should be recalled that any discrimination based on language is expressly prohibited by Article 1d(1) of the Staff Regulations and that, under Article 1d(6), while respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. It follows that a language requirement which did not have a reasonable relationship of proportionality to the objective pursued would be contrary to the principle of the prohibition of discrimination based on language, guaranteed by Article 1d(1) of the Staff Regulations. Such a requirement would also infringe Article 27 of the Staff Regulations, under which an administration must fill available posts by choosing officials of the highest standard of ability, efficiency and integrity. Finally, requiring candidates for posts as members of the contract staff to know, if only to a satisfactory level, several specified languages, without that requirement's being proportionate to the objective pursued, would have the effect of conferring a privileged status on those languages, whereas, under Article 290 EC, it is exclusively for the Council, acting unanimously, to determine the rules governing the languages of the European Union and, under Article 22 of the Charter of Fundamental Rights, the Union must respect 'cultural, religious and linguistic diversity'.

93 It is in the light of the above considerations that the pleas of the applicant and of the interveners must be dealt with by examining, first, whether the language requirements set out in the CEI pursued a legitimate objective in the general interest in the framework of staff policy, then, if so, whether there was a reasonable relationship of proportionality between those requirements and the objective envisaged.

94 As regards, first, the question whether the language requirements set out in the CEI pursued a legitimate objective in the general interest in the framework of staff policy, it is important to remember that the CEI was published 'on behalf of the European Institutions and of the Commission and the Council in particular', in order to 'constitute a database of candidates to be recruited as contract agents carrying out various tasks within the European Institutions'. It is apparent from the documents produced in the course of the proceedings that English, French and German are, in varying degrees, used as the languages of internal communication within the institutions which are likely to recruit a significant proportion of the candidates who pass the selection tests, namely the Commission and the Council.

95 Consequently, in the light of the position occupied by the English, French and German languages within the institutions in which the contract staff recruited were required to perform their duties, the language requirements set out in the CEI pursued a legitimate objective in the general interest in the framework of staff policy, namely to ensure that those members of staff had a knowledge of languages matching those languages of internal communication.

96 It is important to add that, in this case, the CEI was designed to constitute a database intended for the recruitment into various EU institutions of contract staff in the four function groups and required to 'carry … out various tasks' within those institutions. Thus, in view, on the one hand, of the diversity of the institutions likely to employ the persons who passed the pre-selection tests and, on the other, of the variety of the posts to be filled, it was reasonable for EPSO to ascertain that those persons could immediately perform their duties, that is to say, inter alia, that they would be able to understand at least one of the working languages of the institutions which come to recruit them.

97 In addition, it should be remembered that, unlike officials, members of the contract staff are intended, in principle, to remain within the institutions only for a limited period determined by the CEOS and that, therefore, any language deficiencies on the part of those staff members cannot be remedied by means of training programmes established by the institutions in order to foster and promote linguistic pluralism.

98 Secondly, the question remains whether there was a reasonable relationship of proportionality between the language requirements set out in the CEI and the objective pursued. In that regard, it should be pointed out that, in the judgments in *Italy* v *Commission*, paragraph 94, and *Spain* v *Commission*, paragraph 75, the General Court held that, where an institution chooses several languages of internal communication, it cannot require the persons whom it intends to recruit to have a knowledge of more than one of those languages. According to the General Court, the requirement of a cumulative knowledge of several languages cannot be justified by internal communication needs and can only be indicative of a wish to accord a privileged status to certain official languages.

99 In this case, it is not disputed that, in the CEI, EPSO required candidates to have, as their main language, a thorough knowledge of one of the official languages and a satisfactory knowledge, as a second language, of English, French or German, that second language having to be different from the main language. Thus, the Tribunal finds that EPSO required candidates to have a knowledge of only one of the languages of internal communication in force in the institutions likely to recruit them.

100 Admittedly, in the particular case of candidates who, like the applicant, chose, as their main language, English, French or German, the requirement that they take as a second language another of those three languages had the effect of obliging them to provide proof of knowledge of two languages of internal communication, one as their main language, the other as their second language.

101 However, that circumstance cannot be regarded as disproportionate to the objective pursued by EPSO.

102 Firstly, the fact that certain candidates chose, as their main language, English, French or German, was the result of circumstances specific to each of them (see, to that effect, judgment of 5 April 2005 in Case T-376/03 *Hendrickx* v *Council*, paragraph 33).

103 Secondly, it must be recalled that the principle of non-discrimination, which is a specific enunciation of the general principle of equality (see, to that effect, judgment of 19 October 1977 in Joined Cases 117/76 and 16/77 *Ruckdeschel and Others*, paragraph 7), constitutes, together with the latter, one of the fundamental rights in EU law, the observance of which the Court of Justice ensures (judgment of 12 December 2002 in Case C-442/00 *Rodríguez Caballero*, paragraph 32). In *Italy* v *Commission*, paragraph 94, the General Court pointed out that the language requirements imposed on candidates for posts within the institutions and bodies of the European Union must not give rise to unjustified differences of treatment as between Union citizens or compromise equal access for the latter to the jobs offered.

104 In the present case, it is true that the approach adopted by EPSO had the effect of treating differently, on the one hand, candidates having taken, as their main language, a language other than English, French or German and, on the other, candidates having taken, likewise as their main language, one of those three languages. Whereas the former were able to choose their second language from three languages, namely English, French or German, the latter had that range of options reduced to two languages. However, if, as the applicant would have wished, EPSO had adopted a different approach consisting in allowing candidates having chosen, as their main language, English, French or German, the freedom to choose their second language from all the official languages, with the exception of that taken as their main language, that approach would have given those candidates, as compared with the others, a much greater advantage than that which the latter actually received. Thus, faced as it was

with a choice between two approaches, both giving rise to a difference in treatment as between two groups of candidates, EPSO opted for the approach involving the lesser difference in treatment and cannot therefore be regarded as having set inappropriate language requirements.

105 Consequently, the complaints alleging that the requirement that candidates having chosen, as their main language, English, French or German take as their second language another of those three languages infringes Article 22 of the Charter of Fundamental Rights, the principle of non-discrimination and Article 82(3)(e) of the CEOS must be rejected.

106 Moreover, in the context of the internal functioning of the EU institutions, the choice of language of internal communication is the responsibility of those institutions which have the power to impose it on their staff. As provided in Article 6 of Regulation No 1 — which was adopted by the Council under the Treaty provisions conferring on it competence to adopt the rules governing the languages of the institutions of the European Union –, the 'institutions … may stipulate in their rules of procedure which of the languages are to be used in specific cases'. Accordingly, contrary to what the Kingdom of Spain and the Italian Republic maintain, EPSO was properly entitled to limit the choice of second language to English, French or German, as it did in the CEI, which had been launched 'on behalf of the European Institutions and of the Commission and the Council in particular'.

107 The argument that EPSO should, in the CEI, have justified the choice of the three languages to be used in order to participate in the pre-selection tests must also be rejected, since it is common ground that that choice reflected the internal requirements of the institutions (see, to that effect, *Spain* v *Commission*, paragraph 88).

108 The argument put forward by the Kingdom of Spain that the language requirement set out in the CEI favoured candidates who were nationals of Member States having as their official language English, French or German, in contravention of Article 12 EC, which prohibits any discrimination on the grounds of nationality, cannot be accepted either, since those candidates, like those who were nationals of the other Member States, had to sit the pre-selection tests in a language different from that of which they had a thorough knowledge.

109 Finally, while the Italian Republic, in order to maintain that the limitation in the choice of second language constitutes a breach of the principle of protection of legitimate expectations, submits that EPSO's usual practice, even after the accession of the 10 new Member States in 2003, consists in not imposing any restriction in the choice of second language in the organisation of competitions for the recruitment of officials, it is not apparent from any document in the file that EPSO has publicly committed itself — which it was not legally entitled to do, moreover — not to set any limitation as regards the second language in procedures for the selection of contract staff which it finds it necessary to organise.

110 The second part of the first plea must therefore be rejected.

The third part of the first plea, alleging unlawfulness of the manner of publication of the CEI and of the choice of language of correspondence between EPSO and the candidates

111 The Italian Republic claims that, by deciding, without providing any justification, that the CEI would be published only in English, French and German and that the language of correspondence between the administration and the candidates could be chosen only from those three languages, EPSO infringed Article 12 EC, Article 22 of the Charter of Fundamental Rights and Articles 1 to 6 of Regulation No 1.

112 However, such illegalities could not have harmed the interests of the applicant since she was able, following the advertising of the CEI, to register for the tests, participate in the pre-selection tests and communicate with EPSO (see, to that effect, judgment of 9 February 1994 in Case T-3/92 *Latham* v *Commission*, paragraph 53). An intervener does not have standing to advance an argument which the applicant would not be entitled to put forward.

113 In those circumstances, and in any event, the third part of first plea must be rejected.

114 Since all three parts of the first plea have been rejected, it must be rejected.

The second plea in law, alleging 'infringement of the principles of sound administration, equal treatment, objectivity and protection of legitimate expectations'

Arguments of the parties

115 The plea is essentially divided into two parts.

116 In the first part of the plea, the applicant claims that the pre-selection tests which she sat on 6 January 2006 were punctuated by technical incidents. Thus, on at least four occasions, the conduct of those tests was interrupted due to a malfunction of the computer she was given to use, which required, for each interruption, the intervention of an IT operative. Those incidents disturbed her and deprived her of part of the time allotted to her, without her having been authorised to start the tests over again or be granted extra time to make up for the time lost.

117 The applicant states that, generally speaking, the tests organised by EPSO in December 2005 and January 2006 took place in 'great confusion', as is established by the statements of several candidates collected by the Union syndicale, and that, by way of illustration, a number of those candidates, although properly registered, were unable to participate in those tests or, at the very least, were unable to access the test questionnaires because of computer incidents. Moreover, at the 10th meeting of the selection committee with EPSO, the staff representatives on that committee refused to validate the selection result on account, inter alia, of the technical incidents which occurred during all the tests organised in connection with the CEI.

118 The applicant maintains that the irregularities vitiating the conduct of her pre-selection tests are manifestly substantial, since, owing to their recurrence and frequency and the time taken to remedy them, they seriously compromised her concentration.

119 In a second part of the plea, the applicant calls into question the results which were communicated to her by the decision of 14 March 2006. She submits that the sending to her, and to 62 other candidates, of the email of 27 February 2006 informing her that she had passed the pre-selection tests then, on 14 March 2006, of another email informing her of the contrary demonstrates a problem in the recording or processing of the test results. Moreover, there is a contradiction between, on the one hand, the decision of 14 March 2006 which informed her that the email of 27 February 2006 wrongly informing her that she had passed arose from an 'error which occurred in the submission of the letter addressed to the candidates' and, on the other hand, the email of 19 April 2006, according to which the cause of that error was a mistake in the calculation of her overall mark. Finally, it is apparent from the written evidence of another candidate that the computerised database in which the answers of the candidates in the pre-selection tests were stored was damaged.

120 In its defence, the Commission contends that both parts of the plea should be rejected.

121 As regards the first part, the Commission argues that the applicant does not provide any proof or prima facie evidence in support of the assertion that irregularities affected the conduct of her tests.

122 With regard to the second part of the plea, the Commission states that the fact that the applicant was informed by mistake, by the email of 27 February 2006, that she had passed the pre-selection tests was the result of a computer programming error, the computer not having taken into account the fact that the applicant, by obtaining only 33.33% of correct answers during the tests to ascertain her verbal and numerical reasoning capacity, had not attained the minimum required by the notice of 21 November 2005, that is 35%.

Findings of the Tribunal

– The first part of the second plea

123 In accordance with the principles of sound administration and equal treatment, the institutions have a duty to all candidates in a competition to ensure that the tests are conducted as smoothly and properly as possible. However, an irregularity that occurs during the tests of a competition does not affect the legality of those tests unless it is substantive in nature and capable of distorting the results of the tests. Where such an irregularity occurs, it is for the defendant institution to prove that the irregularity did not affect the results of the tests (judgment of 13 December 2006 in Case F-22/05 *Neophytou* v *Commission*, paragraph 60).

124 In this case, the applicant claims that the pre-selection tests which she sat on 6 January 2006 were punctuated by technical incidents and that, inter alia, on at least four occasions, the conduct of those tests was interrupted as a result of a malfunction of the computer made available to her. However, none of the evidence on which she relies is capable of establishing with certainty the nature of the incidents of which she was personally a victim. In particular, such proof is not furnished either by the fact that other candidates were faced, during the tests, with technical malfunctions or by the fact that the staff representatives on the selection committee refused, at a meeting with EPSO, to validate the results of the selection on account, inter alia, of those malfunctions. Likewise, although the table of the applicant's results, to which she had access via EPSO's internet site, demonstrates that the length of time taken by the applicant to answer four of the questions in the test to assess her verbal reasoning capacity was greater than the length of time taken to answer the other questions in that test, that circumstance does not prove that the alleged incidents occurred; the existence of those incidents has, moreover, been formally disputed by a statement from the company which organised the pre-selection tests. Finally, it is important to note that the applicant has established that she reported the existence of such incidents only after she became aware of the decision of 14 March 2006.

125 Consequently, the first part of the second plea must be rejected.

– The second part of the second plea

126 It is common ground that, initially, by an email of 27 February 2006, EPSO informed the applicant that she had passed the pre-selection tests then, subsequently, by the decision of 14 March 2006, informed her of her failure. Moreover, it is apparent from the documents in the file that the administration gave various explanations for the existence of such contradictory messages. Thus, after EPSO had referred, in the decision of 14 March 2006, to an 'error which occurred in the submission of the letter', then, in the letter of 19 April 2006, to a 'mistake in the calculation', the Commission, in response to a measure of organisation of procedure ordered by the Tribunal, attributed that incident to a 'computer programming error', explaining that the computer did not take into account the fact that the applicant, by obtaining only 33.33% of correct answers in the tests to ascertain verbal and numerical reasoning capacity, had not attained the minimum of 35% required.

127 However, it should be pointed out that the Commission has produced the table showing the coded list of questions which were put to the applicant in the tests to ascertain her aptitude in verbal and numerical reasoning, the correct answers which should have been given to those questions, and the

answers which the applicant actually gave to each of them. While the applicant contests in general terms the reliability of the results communicated by EPSO to the candidates, she does not prove or even allege that, as regards her results in the pre-selection tests to ascertain her verbal and numerical reasoning aptitude, the overall rate of correct answers was higher than 33.33%.

128 The argument challenging the overall reliability of the results communicated to the candidates by EPSO could properly be relied on by the applicant in support of her claim for the annulment of the decision of 14 March 2006 only to the extent that that argument demonstrated that the applicant had satisfied the requirements laid down in the notice of 21 November 2005, namely to attain a minimum of 35% of correct answers in the pre-selection tests. Since that is not the case here, the second part of the applicant's second plea must be rejected, even though EPSO seriously infringed the principle of sound administration by sending the applicant contradictory messages concerning the results of her pre-selection tests.

129 It follows that the second plea must be rejected.

The third plea in law, alleging 'infringement of the principle of equal treatment, the principles of protection of legitimate expectations and transparency, and of the obligation to state reasons'

130 The third plea is divided into two parts, the first part alleging infringement of the principles of protection of legitimate expectations and transparency and of the obligation to state reasons, the second part infringement of the principle of equal treatment.

The first part of the third plea, alleging infringement of the principles of protection of legitimate expectations and transparency and of the obligation to state reasons

– Arguments of the parties

131 The applicant states that, at a meeting which took place on 26 July 2005, EPSO assured the selection committee that candidates would be able to have access to their tests in the event of a dispute or on request. However, the applicant complains that the administration refused to communicate to her, notwithstanding a request to that effect contained in the note of 14 June 2006, the text of the questions which had been put to her during the pre-selection tests.

132 The applicant adds that EPSO's refusal to communicate the questions to her made it impossible for her and for the Tribunal to determine whether they were valid and of a level of difficulty approximately equal to that of the questions put to the other candidates.

133 In its defence, the Commission counters that, according to case-law developed in regard to competitions, the only documents to which the candidate may have access are his own written tests (judgment of 27 March 2003 in Case T-33/00 *Martínez Páramo and Others* v *Commission*). In this case, the applicant obtained the correct version of her answers in table form.

134 The Commission adds that, while, in the note of 14 June 2006, the applicant also asked the administration to send her the text of the questions put to her, such a request fell within the scope of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43). However, only the General Court of the European Union has jurisdiction to hear and determine such an issue. Consequently, the action is inadmissible in that regard.

135 The Commission contends in any event that the communication to the applicant of the text of the questions which were put to her would not have enabled her to achieve the objective pursued, which was to ascertain whether the questions put to all the candidates displayed an identical level of validity and difficulty.

– Findings of the Tribunal

136 It must be recalled that, pursuant to the second paragraph of Article 25 of the Staff Regulations, any decision relating to a specific individual which is taken under the Staff Regulations and adversely affecting him must state the grounds on which it is based. According to settled case-law, the purpose of the obligation to state the grounds on which a decision adversely affecting an official is based is, firstly, to provide the person concerned with the information necessary to allow him to ascertain whether or not the decision adversely affecting him is well founded and, secondly, to make it possible for the decision to be the subject of judicial review (judgment of 23 January 2003 in Case T-53/00 *Angioli* v *Commission*, paragraph 67, and *Martínez Páramo and Others* v *Commission*, paragraph 43).

137 Moreover, it has been held, in cases where applicants who were candidates in competitions had failed tests organised in the form of multiple-choice questions, that the administration had complied with its obligation to state reasons by communicating to them the marks obtained in those tests and by informing them that certain questions had been cancelled (see, to that effect, judgments of 17 January 2001 in Case T-189/99 *Gerochristos* v *Commission*, paragraph 34, and of 2 May 2001 in Joined Cases T-167/99 and T-174/99 *Giulietti and Others* v *Commission*, paragraphs 81 and 82).

138 Consequently, in the absence of special circumstances, an administration which organises recruitment tests in the form of multiple-choice questions complies with its obligation to state reasons by communicating to the candidates who have failed those tests the proportion, as a percentage, of correct answers and by sending to them, upon request to that effect, the answer which should have been given to each of the questions asked. It could be otherwise only where the applicant, in his complaint, specifically disputes the relevance of certain questions or the validity of the answer adopted as correct and provided that the difference between his results and the pass threshold is such that, assuming that his objection is well founded (which would require the discovery on the part of the Court of factual inaccuracy — see, on this aspect, the judgment of 11 September 2008 in Case F-127/07 *Coto Moreno* v *Commission*, paragraph 32), he could be among the candidates who passed the tests in question. In such a case, it would be for the administration, in its reply to the complaint, to communicate the information to that effect, in particular the text of the questions put to him during the tests.

139 In the present case, it should first of all be noted, as has been stated above, that the applicant was informed, by email of 14 March 2006, that she had obtained 32% of correct answers in the test to assess her verbal reasoning aptitude and 35% of correct answers in the test to assess her numerical reasoning aptitude, that is a total of 33.33% of correct answers, which was below the minimum required for function group II, in this instance 35%. Moreover, shortly before submitting her complaint, the applicant was able to examine, on the EPSO internet site, a table showing, for each of the questions which had been put to her, the appropriate answer, the answer she had given and the time she had spent answering it. That same table also stated that one of the questions put to the applicant was illegible and that, for that reason, she had been awarded one point.

140 Admittedly, it is common ground that, in the complaint submitted against the decision of 14 March 2006 in accordance with Article 90(2) of the Staff Regulations, the applicant requested that the administration communicate to her the text of the questions which had been put to her during the tests to ascertain her verbal and numerical reasoning capacity and that, in its reply to the complaint, the AECE did not grant such a request. However, it is important to note that, in that complaint, the applicant did not specifically dispute the relevance of certain questions or even, more generally, claim

that she was personally subjected to manifestly inappropriate or invalid questions. Thus, the fact that the Commission did not communicate to the applicant the text of the questions which were put to her during the tests cannot be regarded as giving rise to an infringement of the obligation to state reasons.

141 It follows that the first part of the third plea must be rejected.

The second part of the third plea, alleging infringement of the principle of equal treatment

– Arguments of the parties

142 The applicant recalls, relying inter alia on the judgment of 27 June 1991 in Case T-156/89 *Valverde Mordt* v *Court of Justice*, paragraphs 121 to 123, and *Giulietti and Others* v *Commission*, paragraphs 73 and 74, that, although candidates in the same test do not necessarily have to be asked the same questions, they should in any event be asked questions of an equivalent level. However, in the present case, the selection committee was concerned on several occasions about the risk of the tests being unsuitable, arising from the fact that some of the questions had been devised, not by the institutions themselves, but by private companies which had entered into contracts with EPSO. Likewise, the selection committee mentioned the risk that, given that some of the questions were excessively difficult and in view of the random choice of the questions, candidates could be faced with tests of different degrees of difficulty.

143 In its defence, the Commission replies that the applicant does not adduce any evidence capable of giving rise to the suspicion of the inappropriate nature of the questions asked.

– Findings of the Tribunal

144 According to settled case-law, the selection board in a competition has a wide discretion with regard to the detailed content of the tests forming part of that competition. It is not for the Courts of the European Union to criticise that content unless it is not confined to the limits laid down in the competition notice or is not consistent with the purposes of the test of the competition (judgments of 8 March 1988 in Joined Cases 64/86, 71/86 to 73/86 and 78/86 *Sergio and Others* v *Commission*, paragraph 22, and of 9 November 2004 in Joined Cases T-285/02 and T-395/02 *Vega Rodríguez* v *Commission*, paragraph 35). Thus, in the case of tests made up of multiple-choice questions, it is not for the Tribunal to substitute its own correction for that of the selection board in the competition. Criticism of a question is called for, possibly in the light of the answers it proposes, only if it appears that the question was manifestly inappropriate in view of the purpose of the competition in question (*Vega Rodríguez* v *Commission*, paragraph 36). By analogy, that case-law, which was developed in regard to competitions, must be applied to a call for expression of interest.

145 In this case, it is apparent from the documents in the file that, in order to ensure equal treatment of candidates, it had been decided by EPSO that the questions contained in the question database would be classified according to five levels of difficulty and that, in particular, so far as concerns candidates for contract staff posts in function group II, the computer would choose at random, at the time of the verbal reasoning test, 20 questions of difficulty level 4 and 5 questions of difficulty level 3, and, at the time of the numerical reasoning test, 15 questions of difficulty level 4 and 5 questions of difficulty level 3. Thus, EPSO endeavoured to ensure an equivalent level of difficulty for all candidates.

146 Moreover, the Tribunal cannot cast doubt on the validity of the classification of the questions according to the various levels of difficulty except on the basis of an examination of all the questions, an examination which it is not for it to make unless it has before it numerous indications that the classification made by the organisers is vitiated by errors exceeding the discretion enjoyed by them. However, in this case it is important to note that the applicant merely expressed, in general terms,

doubts as to the validity and degree of difficulty of some of the questions contained in the database as a whole, but gave absolutely no indication that, with the exception of one question which was cancelled and for which she received one point, she was personally subjected to questions which were manifestly inappropriate or invalid in the light of the purpose of the CEI.

147 The second part of the third plea cannot therefore be upheld.

148 It follows that the third plea must be rejected.

The plea in law alleging EPSO's lack of competence

Arguments of the parties

149 At the hearing, the applicant expressed doubts as to whether EPSO was competent to adopt the decision of 14 March 2006.

150 The Italian Republic has pointed out that, according to Article 82(5) of the CEOS and the General implementing provisions on the procedures governing the engagement and the use of contract staff at the Commission, adopted by decision of 7 April 2004 (published in *Administrative Notices* No 49-2004 of 1 June 2004, 'the GIP CS'), EPSO's competence is limited, as regards the selection of contract staff, to defining the tests and organising the selection procedures, but does not extend to the possibility of rejecting applications. Consequently, according to the Italian Republic, in the present case, that was a matter within the competence of the institutions interested in the constitution of a database of contract staff.

Findings of the Tribunal

151 It should be recalled that, in the words of the first sentence of Article 82(5) of the CEOS, '[EPSO] shall, at their request, provide assistance to the different institutions with a view to the selection of contract staff, in particular by defining the contents of the tests and organising the selection procedures'. In addition, under Article 3(2) of Decision 2002/620, '[EPSO] may assist the institutions, bodies, offices and agencies established by or in accordance with the Treaties with internal competitions and the selection of other servants'. Finally, Article 5(2) of the GIP CS provides that the tests to ascertain the candidates' verbal and numerical reasoning capacity 'shall be organised by EPSO or under its responsibility'.

152 In this case, while it is clear from the express wording of the CEI that it was published by EPSO 'on behalf of the European Institutions and of the Commission and the Council in particular', EPSO was competent, under the legislation referred to in the previous paragraph, to organise the pre-selection tests and to reject the applications of candidates who failed those tests.

153 Accordingly, the plea alleging EPSO's lack of competence to adopt the decision of 14 March 2006 cannot be upheld.

154 Consequently, the claim for annulment of the decision of 14 March 2006 must be rejected, as must, therefore, the claim for annulment of the 'decision of EPSO and/or of the selection committee not to register the applicant in the database of candidates who had passed the pre-selection tests'.

155 It follows from all the foregoing that the action must be dismissed.

Costs

156 Under Article 122 of the Rules of Procedure, the provisions of Title 2, Chapter 8, of those rules, on costs, are to apply only to cases brought before the Tribunal from the date on which those Rules of Procedure entered into force, namely 1 November 2007. The relevant provisions of the Rules of Procedure of the General Court on the subject are to continue to apply *mutatis mutandis* to cases pending before the Tribunal before that date.

157 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 88 of those rules, in proceedings between the European Union and its servants the institutions are to bear their own costs. Since the applicant has been unsuccessful, each party must be ordered to bear its own costs.

158 Likewise, in accordance with the first subparagraph of Article 87(4) of the Rules of Procedure of the General Court, the Kingdom of Spain and the Italian Republic are to bear their own costs.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Full Court)

hereby:

1. Dismisses the action;

2. Orders Ms Angioi and the European Commission to bear their own costs;

3. Orders the Kingdom of Spain and the Italian Republic, interveners, to bear their own costs.

Mahoney Gervasoni

Kreppel Tagaras Van Raepenbusch

Delivered in open court in Luxembourg on 29 June 2011.

Die Kanzlerin
W. Hakenberg

Der Präsident
P. Mahoney