ECLI:EU:C:2023:97

Provisional text

JUDGMENT OF THE COURT (First Chamber)

16 February 2023 (*)

(Appeal – Rules on languages – Notice of open competition for the recruitment of administrators in the field of audit – Knowledge of languages – Restriction of the choice of the second competition language to English, French and German – Language of communication with the European Personnel Selection Office (EPSO) – Regulation No 1 – Staff Regulations – Article 1d(1) – Difference in treatment based on language – Justification – Interests of the service – Requirement to recruit administrators who are 'immediately operational' – Judicial review – Standard of proof required)

In Case C-623/20 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 November 2020,

European Commission, represented by G. Gattinara, T. Lilamand and D. Milanowska, acting as Agents,

appellant,

the other parties to the proceedings being:

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

applicant at first instance,

Kingdom of Spain, represented by L. Aguilera Ruiz and A. Gavela Llopis, acting as Agents,

intervener at first instance,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts, President of the Court, L. Bay Larsen, Vice-President of the Court, acting as Judges of the First Chamber, A. Kumin and I. Ziemele (Rapporteur), Judges,

Advocate General: A.M. Collins,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 2 March 2022,

after hearing the Opinion of the Advocate General at the sitting on 19 May 2022,

gives the following

Judgment

1 By its appeal, the European Commission seeks to have set aside the judgment of the General Court of the European Union of 9 September 2020, *Italy* v *Commission* (T-437/16, EU:T:2020:410) ('the judgment under appeal'), by which the General Court annulled the notice of open competition EPSO/AD/322/16 in order to draw up reserve lists of administrators in the field of audit (AD 5/AD 7) (OJ 2016 C 171 A, p. 1) ('the notice of competition at issue').

Legal context

Regulation No 1/58

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

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

3 Article 2 of that regulation provides:

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

4 Under Article 6 of that regulation:

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

The Staff Regulations

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

6 Title I of the Staff Regulations, entitled 'General provisions', includes Articles 1 to 10c thereof.

7 Article 1d of the Staff Regulations provides:

'1. In the application of these Staff Regulations, any discrimination based on … language … shall be prohibited.

…

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

8 Article 2 of the Staff Regulations provides:

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

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

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

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

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

11 Article 28 of the Staff Regulations provides:

'An official may be appointed only on condition that:

…

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

…

(f) he [or she] produces evidence of a thorough knowledge of one of the languages of the Union and of a satisfactory knowledge of another language of the Union to the extent necessary for the performance of his [or her] duties.'

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

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

The notice shall state:

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

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

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

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

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

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

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

(h) the closing date for applications;

…'

13 In accordance with Article 7 of that annex:

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

Decision 2002/620/EC

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

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

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

The other applicable legislation

General rules governing open competitions

17 On 27 February 2015, EPSO published in the Official Journal of the European Union a document entitled 'General rules governing open competitions' (OJ 2015 C 70 A, p. 1), the first page of which states that those 'general rules are an integral part of the competition notice, together with the notice they constitute the binding framework of the competition procedure'.

18 Point 1.3 of those general rules, entitled 'Eligibility', states, with regard to knowledge of languages:

'…

It has long been the practice to use mainly English, French, and German for internal communication in the EU institutions and these are also the languages most often needed when communicating with the outside world and dealing with cases.

The second language options for competitions have been defined in the interests of the service, which require new recruits to be immediately operational and capable of communicating effectively in their daily work. Otherwise the efficient functioning of the institutions could be severely impaired.

To ensure equal treatment for all candidates, everyone – including those whose first official language is one of the three [languages in question] – must take certain test[s] in their second language, chosen from among these three. Assessing specific competencies in this way allows the institutions to evaluate candidates' ability to be immediately operational in an environment that closely matches the reality they would face on the job. None of this affects the possibility of later language training to enable staff to work in a third language, as required under Article 45(2) of the Staff Regulations …'

The notice of competition at issue

19 In paragraphs 1 to 13 of the judgment under appeal, the General Court set out the content of the notice of competition at issue as follows:

'1 On 12 May 2016, [EPSO] published in the Official Journal of the European Union [the notice of competition at issue]. …

2 It is … stated in the introduction to the [notice of competition at issue] that the latter, together with the general rules governing open competitions …, forms the legally binding framework for the selection procedure concerned. It is specified, however, that Annex II to the [General rules applicable to open competitions] … does not apply to the selection procedure in question and is replaced by the provisions in Annex II to the [notice of competition at issue].

…

4 In the part of the [notice of competition at issue] entitled “Am I eligible to apply?”, which sets out the conditions to be met by the persons concerned when they validate their applications, the specific conditions for eligibility include the requirements of a “minimum level – C1 [of the Common European Framework of Reference for Languages (CEFR)] in 1 of the 24 official EU languages” designated as “language 1” of the competition, and a “minimum level – B2 [of the CEFR] in English, French or German”. That second language, designated as “language 2” of the competition, must be different from the language chosen by the candidate as language 1.

5 It is also stated that “you must fill in your application form in English, French, or German”.

6 In the same part, the [notice of competition at issue] states that “the second language chosen must be English, French or German”, that “these are the main working languages of the EU institutions and, [that] in the interests of the service, new recruits must be immediately able to work and communicate effectively in their daily work in at least one of them”. In that regard, candidates are invited to refer to Annex II to the [notice of competition at issue], entitled “Justification of the language regime for this selection procedure”, “for additional information on the languages required for this competition”.

…

8 The introductory part of Annex II to the [notice of competition at issue] is worded as follows:

“This competition is a specialist competition to recruit Administrators in the field of Audit. The requirements set out in the “AM I ELIGIBLE TO APPLY?” section of this Notice of Competition are in line with the EU institutions’ primary requirements for specialist skills, experience and knowledge and the need for new recruits to be able to work effectively, in particular with other members of staff.

For this reason, candidates are required to select their second competition language from a limited number of EU official languages. This limitation is also due to budgetary and operational constraints and the nature of EPSO’s selection methods described in points 1, 2 and 3 below. The language requirements for this competition have been adopted by the EPSO Management Board taking into account these factors and other specific requirements relating to the nature of the duties or the particular needs of the EU institutions …

The main purpose of this competition is to create a reserve of administrators for recruitment within the European Commission, as well as a limited number for recruitment within the European Court of Auditors. Once recruited, it is essential that the administrators are operational immediately and are able to communicate with their colleagues and managers. In the light of the criteria on the use of languages in EU selection procedures set out under point 2 below, the EU institutions consider that English, French and German are the most appropriate second language options for this competition.

Given the fact that English, French and German are the languages most frequently spoken, translated and used for administrative communication by staff in the EU institutions, candidates must offer at least one of them among their two compulsory languages.

Furthermore, a good command of English, French or German is deemed to be essential for analysing the situation of the auditees, making presentations, holding discussions and writing

reports, so as to ensure effective cooperation and information exchange with the services being audited and the appropriate authorities.

Candidates must use their second competition language (English, French or German) when filling in the online applications and EPSO must use these languages for mass communication to candidates who have submitted a valid application and for some tests described under point 3."

9 Point 1 of Annex II to the [notice of competition at issue], entitled "Justification for selecting languages for each selection procedure" states:

"The EU institutions believe that the decision on the specific languages to be used in each individual selection procedure and, in particular, any restriction of the choice of languages, must be made on the basis of the following considerations:

(i) Requirement that new recruits be immediately operational

New recruits need to be immediately operational and capable of performing the duties for which they were recruited. Therefore, EPSO must ensure that successful candidates possess adequate knowledge of a combination of languages that will enable them to carry out their duties in an effective manner and in particular that successful candidates are able to communicate effectively in their daily work with their colleagues and managers.

It may therefore be legitimate to organise some tests in a limited number of vehicular languages to ensure that all candidates are able to work in at least one of these, whatever their first official language. Failure to do so would create a high risk that a substantial proportion of successful candidates would be unable to undertake the tasks for which they are recruited within a reasonable time frame. Moreover, it would neglect the evident consideration that candidates applying to work in the EU civil service are willing to join an international organisation that must make use of vehicular languages in order to work properly and carry out the tasks entrusted to it under the EU Treaties.

(ii) The nature of the selection procedure

In some cases, limiting candidates' choice of languages may also be justified by the nature of the selection procedure.

In line with Article 27 of the Staff Regulations, EPSO assesses candidates in open competitions which it uses to evaluate candidates' skills and better predict whether candidates will be capable of performing their duties.

The assessment centre is a selection method that consists of evaluating candidates in a standardised manner, based on various scenarios observed by several selection board members. The assessment uses a competency framework drawn up in advance by the appointing authorities and a common scoring method and joint decision making.

Assessing specific skills in this way enables the EU institutions to evaluate candidates' ability to be immediately operational in an environment that closely matches the reality of the job. A substantial body of scientific research has shown that assessment centres simulating real-life working situations are the best predictor of real-life performance. Assessment centres are therefore used worldwide. Given the length of careers and the degree of mobility within the EU institutions this kind of assessment is crucial, in particular when selecting permanent officials.

To ensure that candidates can be assessed on an equal footing and can communicate directly with assessors and the other candidates taking part in an exercise, candidates are assessed together in a group with a common language. Unless the assessment centre takes place in a competition with a single main language, this necessarily requires that the assessment centre be organised in a restricted number of languages.

(iii) Budgetary and operational constraints

For several reasons, the EPSO Management Board believes it would be impractical to organise the assessment centre phase of a single competition in all EU official languages.

Firstly, such an approach would have very serious resource implications, rendering it impossible for the EU institutions to meet their recruitment needs within the current budgetary framework. It would also not be reasonable value for money for the European taxpayer.

Secondly, conducting the assessment centre in all official languages would require a substantial number of interpreters to work on EPSO competitions and the use of appropriate premises with interpreting booths.

Thirdly, a much higher number of selection board members would be needed to cover the different languages used by candidates."

10 According to point 2 of Annex II to the notice of competition [at issue], which is entitled "Criteria for selecting languages for each selection procedure":

"If candidates are required to choose from a limited number of official EU languages, the EPSO Management Board must determine on a case-by-case basis the languages to be used for individual open competitions, taking into account the following:

(i) any specific internal rules on the use of languages within the institution(s) or bodies concerned;

(ii) specific requirements related to the nature of the duties and the particular needs of the institution(s) concerned;

(iii) the languages most frequently used within the institution(s) concerned, determined on the basis of:

– the declared and proven language skills at level B2 or higher of the [CEFR] for Languages of permanent EU officials in active employment;

– the most frequent target languages into which documents intended for internal use within the EU institutions are translated;

– the most frequent source languages from which documents produced internally by the EU institutions and intended for external use are translated;

(iv) the languages used for administrative communication within the institution(s) concerned."

11 Lastly, point 3 of Annex II to the [notice of competition at issue], entitled "Languages of communication", states:

“This section describes the general rules concerning the use of languages for communication between EPSO and prospective candidates. Other, specific requirements may be set out in each notice of competition.

EPSO takes due account of candidates’ right as EU citizens to communicate in their mother tongue. It also recognises that candidates who have validated their application are prospective members of the EU civil service who benefit from the rights and obligations conferred on them by the Staff Regulations. The EU institutions therefore believe that EPSO should, wherever possible, communicate with candidates and provide candidates with information concerning their applications in all EU official languages. … To achieve this, stable elements on the EPSO website, competition notices and the general rules governing open competitions will be published in all official languages.

The languages to be used when filling in the online application forms are specified in each notice of competition. Instructions on filling in the application form must be provided in all official languages. These provisions will apply during the transition period required to put in place an initial online application procedure in all official languages.

In order to communicate quickly and efficiently, once a candidate’s initial application has been validated, mass communication from EPSO to large candidate populations will be in a limited number of official EU languages. This will be either the candidate’s first or the second language, as set out in the relevant notice of competition.

Candidates may contact EPSO in any official EU language but, in order for EPSO to handle their query more efficiently, candidates are encouraged to choose from among a limited number of languages for which EPSO staff is able to provide immediate linguistic coverage without the need to resort to translation.

Certain tests may also be held in a limited number of official EU languages in order to ensure that candidates have the language ability needed to participate in the assessment phase of open competitions. The languages for the various tests will be specified in each notice of competition.

The EU institutions believe that these arrangements ensure a fair and appropriate balance between the interests of the service and the principle of multilingualism and non-discrimination by language. The obligation on candidates to choose a second language that is different from their first (normally mother tongue or equivalent) ensures that they can be compared on an equal footing. …”

12 In the part of the [notice of competition at issue] entitled “How will I be selected?”, it is stated, in point 1, that computer-based “Multiple-Choice Question” (MCQ) tests, namely verbal reasoning, numerical reasoning and abstract reasoning tests, which constitute the first stage of the selection procedure concerned, are to be organised in the language chosen by each candidate as their first competition language.

13 Furthermore, according to point 3 of that part, after the “selection based on qualifications”, which is the second stage of the competition to which the notice of competition [at issue] relates, the candidates who scored the highest total marks will be invited to attend an assessment centre to take tests in the language they chose as their second competition language. This is the final stage of the competition, and involves several tests to assess the candidates’ various competencies’.

The procedure before the General Court and the judgment under appeal

20 By application lodged at the Registry of the General Court on 5 August 2016, the Italian Republic brought an action for annulment of the notice of competition at issue. The Kingdom of Spain intervened on the side of the Italian Republic.

21 By its action, the Italian Republic challenged the legality of two aspects of the language regime established by the notice of competition at issue limiting to English, French and German the choice, first, of the second language of the competitions and, second, of the language of communication between candidates and EPSO.

22 In the first place, the General Court examined, together, the third and seventh pleas raised relating to the first aspect of that language regime.

23 In that regard, the General Court noted, in paragraph 62 of the judgment under appeal, that the restriction to English, French and German of the choice of the second language of the competition covered by the notice of competition at issue ('the restriction of the choice of language 2 of the competition' or 'the restriction at issue') constitutes, in essence, a difference in treatment based on language, which is in principle prohibited under Article 1d(1) of the Staff Regulations, while adding that such a difference in treatment could be justified.

24 Consequently, in paragraphs 63 to 199 of the judgment under appeal, it examined such a justification.

25 In the context of that examination, it assessed, in paragraphs 80 to 100 of the judgment under appeal, the three reasons put forward in the notice of competition at issue to justify the restriction at issue.

26 The General Court held, in paragraph 88 of the judgment under appeal, that neither the budgetary and operational constraints nor the specific nature of the assessment centre tests could justify the difference in treatment found to exist.

27 In that context, the General Court found, in paragraph 91 of the judgment under appeal, that, while the need for new recruits to be immediately operational may possibly be capable of justifying a restriction to the three languages in question, neither the budgetary and operational constraints nor the nature of the selection procedure are reasons capable of justifying such a restriction.

28 As regards the first of those three reasons, the General Court noted, first of all, in paragraphs 93 and 94 of the judgment under appeal, that the considerations set out in the introductory part and point 1(i) of Annex II to the notice of competition at issue, although they indicate that the service does have an interest in new recruits being able to carry out their tasks and to communicate effectively as soon as they take up their duties, are not in themselves sufficient to establish that the duties in question, namely the duties of administrator in the field of audit, in the institutions concerned by the notice at issue, in practice require sufficient knowledge of English, French or German, to the exclusion of the other official EU languages.

29 Second, in paragraphs 95 to 98 of the judgment under appeal, the General Court considered that that analysis is not invalidated by the description of the duties which the successful candidates recruited will be required to perform, as set out in the notice of competition at issue, since it does not appear possible to establish, on the basis of that description alone, that the three languages to which the choice of language 2 of the competition in question is limited would enable all the successful candidates in that competition to be immediately operational. In particular, there is nothing in that notice of competition showing actual use of those three languages in carrying out the

duties listed in Annex I thereto or for preparing presentations, holding discussions or writing reports, to which reference is made in the introductory part of its Annex II. Similarly, there is no indication from that notice or from the files in these cases that administrators performing audit duties actually use the three abovementioned languages in their dealings with the auditees or services being audited or with the appropriate authorities.

30 Consequently, the General Court concluded, in paragraph 100 of the judgment under appeal, that the reason given for the need for new recruits to be immediately operational cannot justify the restriction of the choice of language 2 of the competition, in view of the vague and general wording of the notice of competition at issue and the absence of any specific evidence to support it.

31 In those circumstances, the General Court subsequently assessed whether the evidence produced by the Commission in support of that reason was capable of demonstrating that, in the light of the functional specificities of the posts to be filled, the restriction at issue was objectively and reasonably justified by the need to have administrators who are immediately operational.

32 For the purposes of that verification, the General Court, first, examined, in paragraphs 106 to 149 of the judgment under appeal, the evidence relating to the Commission's internal language practice, namely:

– Memorandum SEC(2000) 2071/6 from the President of the Commission of 29 November 2000 simplifying the Commission's decision-making process and an extract from the minutes of the Commission's 1502nd meeting of 29 November 2000, drawn up on 6 December 2000 (PV (2002) 1502) confirming the approval of that memorandum by the College of Commissioners;

– the Rules of Procedure of the Commission (OJ 2000 L 308, p. 26), as amended by Commission Decision 2010/138/EU, Euratom of 24 February 2010 (OJ 2010 L 55, p. 60, 'the Rules of Procedure of the Commission') and the Rules giving effect to those rules of procedure (C (2010) 1200 final);

– an extract from the Commission's 'Manual of Operating Procedures', entitled 'Language rules depending on adoption procedures' and certain documents relating thereto; and

– the annex to Commission communication SEC(2006) 1489 final of 20 December 2006 on translation in the Commission, entitled 'Translation rules beyond 2006' ('Translation rules beyond 2006').

33 As regards memorandum SEC(2000) 2071/6 in particular, the General Court examined it in paragraphs 112 to 117 of the judgment under appeal, finding, in paragraph 113 of that judgment, that its purpose is, in essence, to assess the different types of procedures used by the College of Commissioners to take decisions, as provided for in the Rules of Procedure of the Commission in the version in force when that memorandum was issued and to propose ways of simplifying them. It is in that context and by reference to a specific type of procedure, namely the written procedure, that point 2.2 of that memorandum states that 'the documents have to be circulated in the three working languages of the Commission', without, moreover, identifying those languages. Although that reference alone includes the expression 'working languages', it is not sufficient in itself to establish that English, French and German are the languages actually used by all the Commission services in their daily work. Having noted, in paragraphs 114 to 116 of that judgment, that the scope of that reference is, moreover, clarified by other passages of memorandum SEC(2000) 2071/6, the General Court concluded, in paragraph 117 of that judgment, that that memorandum 'does not allow any useful conclusions to be drawn on the actual use of English, French and German in the daily

work of the Commission services, nor, a fortiori, in the performance of the duties referred to in the competition notice [at issue].

34 In paragraph 118 of the judgment under appeal, the General Court added that that finding could not be called into question by the other texts in the light of which the Commission proposes to analyse memorandum SEC(2000) 2071/6, namely the Rules of Procedure of the Commission, the Rules giving effect to those rules and the document entitled 'Language rules depending on adoption procedures', by examining, in turn, those three texts in paragraphs 119 to 121 of that judgment.

35 In paragraph 132 of the judgment under appeal, the General Court pointed out, in that regard, that, taken as a whole, the texts referred to in paragraph 34 of the present judgment cannot be regarded as rules giving effect to the application, in the Rules of Procedure of the Commission, of the general language regime established by Regulation No 1/58, for the purposes of Article 6 thereof. As the Commission also maintained, those texts merely 'reflect a long-standing administrative practice within that institution, consisting of using English, French and German as the languages in which documents must be made available in order to be submitted to the College of Commissioners for approval'. Furthermore, after finding, inter alia, in paragraphs 133 and 134 of the judgment under appeal, that, in particular, the document entitled 'Language rules depending on adoption procedures' taken from the 'Manual of Operating Procedures' cannot be regarded as a decision of its President stipulating the languages to be used in the documents presented to the College of Commissioners, the General Court observed, in paragraph 135 of that judgment, that the Commission acknowledged that there was no internal decision stipulating the working languages of the Commission.

36 Having made those 'preliminary observations', the General Court subsequently found, in paragraph 136 of the judgment under appeal, that, in so far as all the texts provided by the Commission have the sole purpose of establishing the languages required in order to carry out Commission's various decision-making procedures, they do not show that the restriction of the choice of language 2 of the competition to English, French and German is justified in the light of the functional specificities of the posts referred to in the notice of competition at issue.

37 In that regard, the General Court stated, in paragraph 137 of the judgment under appeal, that it is not apparent from those texts that there is a necessary link between the Commission's decision-making procedures, particularly those carried out by the College of Commissioners, and the duties, that the successful candidates in the competition at issue might perform. In any event, even if the members of a given institution use only one or some languages in their deliberations, it cannot be presumed, without further explanation, that a newly recruited official who is not proficient in any of those languages would be incapable of immediately carrying out useful work in the institution concerned.

38 Furthermore, the General Court pointed out, in paragraph 138 of the judgment under appeal, that it is not apparent from the documents provided by the Commission that all three languages described as 'procedural languages' are actually used by the Commission services in their daily work. Moreover, memorandum SEC(2000) 2071/6 suggests that it is not the service responsible for the actual drafting of a document, but in fact the Directorate-General for Translation which produces the versions of that document in the required 'procedural' languages in order to transmit them to the College of Commissioners. In paragraph 139 of that judgment, it added that, given that no officials are required to have a satisfactory knowledge of all three of the languages required by the notice of competition at issue, it is equally unlikely that the task of producing a draft act in the language versions required in order for it to be transmitted to the Commissioners would be carried out simultaneously by a corresponding number of officials from the service responsible for

producing that draft. Furthermore, after rejecting, in paragraphs 140 to 143 of that judgment, the Commission's arguments based on communication SEC (2006) 1489 final, the General Court pointed out, in paragraphs 144 to 148 of that judgment, that the texts produced by the Commission do not provide evidence of the exclusive use of the three 'procedural' languages in the procedures to which they relate.

39 In the light of that analysis, the General Court held, in paragraph 149 of the judgment under appeal, that the texts in question do not show that the restriction at issue is appropriate for the purpose of meeting the actual needs of the service or, therefore, for the purpose of establishing, in the light of the functional specificities of the posts referred to in that notice, that the service has an interest in new recruits being immediately operational.

40 Second, the General Court examined, in paragraphs 150 to 165 of the judgment under appeal, the evidence relating to languages used by the members of the Commission staff responsible for audit functions.

41 On the one hand, the General Court analysed, in paragraphs 152 to 163 of the judgment under appeal, the annex entitled 'Dati sulla diffusione dell'inglese, del francese e del tedesco utilizzate come lingue veicolari dal personale della Commissione in funzione nel settore dell'audit al 30.09.2016' (Data on the use of English, French and German as vehicular languages by Commission staff active in the field of audit on 30 September 2016), finding, in paragraph 157 of that judgment, that those data do not in themselves or in conjunction with the texts examined in paragraphs 106 to 149 of that judgment make it possible to establish which vehicular language or languages are actually used by the services in question in their daily work, or even the language or languages which are essential for the performance of audit duties. Therefore, the General Court considered that it is not possible to establish, on the basis of those data, which language or languages the successful candidates in the competition to which the notice of competition at issue relates would need to have a satisfactory knowledge of, in order to be immediately operational as administrators. In paragraph 158 of the same judgment, it added that, for those same reasons, the additional information provided by the Commission concerning the knowledge of languages among its staff working in the field of audit and in function group AST in the category of contract staff is of no relevance to the resolution of the dispute before it.

42 Furthermore, after recalling, in paragraph 159 of the judgment under appeal, its case-law according to which limiting the choice of candidates' second language in a competition to a restricted number of official languages cannot be regarded as objectively justified and proportionate where those languages include, in addition to a language knowledge of which is desirable or even necessary, other languages which do not confer any particular advantage on potentially successful candidates in a competition over another official language, the General Court held, in paragraph 160 of that judgment, that even if it were to be considered that the knowledge of languages among staff in active employment indicates that, in order to be immediately operational in terms of internal communication, a new recruit would need to have a command of a language that was particularly widely used among those staff, the data in question do not justify the limitation stipulated in the notice of competition at issue concerning the choice of language 2.

43 In that regard, the General Court observed, in paragraph 161 of the judgment under appeal, that, in effect, it is apparent from an analysis of the data relating to languages declared as 'language 1' and 'language 2' that only a satisfactory knowledge of the English language could be regarded as conferring an advantage on potentially successful candidates in the competition in question. However, those data do not explain why a candidate who has, for example, a thorough knowledge of the Italian language and a satisfactory knowledge of the German language could be immediately

operational in terms of internal communication, whereas a candidate with a thorough knowledge of the Italian language and a satisfactory knowledge of the Dutch language could not be. As regards, moreover, the data relating to 'language 3', the General Court stated, in paragraph 162 of that judgment, that, although the content of those data does not in any way alter that assessment, they could not, in any event, be taken into account, since it is not apparent from the annex provided by the Commission that the staff referred to therein have already demonstrated the ability to work in their third language.

44 The General Court thus concluded, in paragraph 163 of the judgment under appeal, that the data relating to the knowledge of languages of Commission staff responsible for audit duties does not justify the restriction at issue in the light of the objective of recruiting successful candidates who are immediately operational.

45 On the other hand, as regards the document provided by the Commission containing data gathered from its internal audit service, indicating that consultations between that internal service and other Commission services take place only in English and French, while final audit reports are adopted only in English, the General Court considered, in paragraphs 164 and 165 of the judgment under appeal, that that document is not relevant, since it does not contain any evidence capable of demonstrating use of German as a working or vehicular language within the services concerned.

46 Third, the General Court analysed, in paragraphs 166 to 187 of the judgment under appeal, the information relating to the functioning of the Court of Auditors. As regards, first of all, Decision 22-2004 of the Court of Auditors of 25 May 2004 on rules for the translation of documents for Court Member, Audit Group and Administrative Committee meetings ('Decision 22-2004'), the General Court found, in paragraph 172 of that judgment, that that decision is of no relevance in the present case in so far as it does not include any information relating to the use of German as a working language or as a vehicular language in the services of the Court of Auditors.

47 Next, the General Court analysed, in paragraphs 175 to 179 of the judgment under appeal, the memorandum of the President of the Court of Auditors of 11 November 1983 and the annexes thereto, namely, the minutes of the restricted session of 12 October 1982 and a memorandum from the President on the same day, concerning interpreting for meetings of the Court of Auditors and the practical organisation of those meetings ('the memorandum of 11 November 1983') finding in particular in paragraph 177 of the judgment, that those documents did not make it possible to determine the working languages or vehicular languages used by the services to which the successful candidates in the competition to which the notice of competition at issue relates were to be recruited.

48 Lastly, the General Court analysed, in paragraphs 181 to 187 of the judgment under appeal, a table provided by the Commission entitled 'LINGUE PARLATE DAL PERSONALE DELLA CORTE DEI CONTI IN SERVIZIO AL 30.09.2016' (Languages spoken by the staff of the Court of Auditors in active service on 30 September 2016', and pointed out, in paragraph 185 of the judgment, that that document also does not make it possible to establish which language or languages the successful candidates in the competition to which the notice of competition at issue relates would need to have a satisfactory knowledge of in order to be immediately operational since, like the data provided by the Commission concerning its own staff, it merely shows the languages known by various categories of officials of the Court of Auditors.

49 In those circumstances, the General Court concluded, in paragraphs 187 and 188 of the judgment under appeal, that, similar to the evidence produced by the Commission as regards its internal language practice, that relating to the languages used by staff from the Court of Auditors do

not make it possible to establish that the restriction at issue is justified by the objective that the administrators recruited should be immediately operational.

50 Fourth, the General Court examined, in paragraphs 189 to 196 of the judgment under appeal, the evidence relating to the dissemination of English, French and German as foreign languages spoken and studied in Europe, by holding, in paragraphs 195 and 196 of that judgment, that they are not capable, either on their own or in conjunction with other evidence in the files, of justifying the restriction at issue, since, at most, that evidence could possibly demonstrate the proportionate nature of that limitation, if it were found that it met the need to have successful candidates who are immediately operational, which the Commission has however failed to demonstrate.

51 Having regard to its examination of all the evidence put forward by the Commission, the General Court concluded, in paragraphs 197 to 199 of the judgment under appeal, that the Commission had not shown that the restriction of the choice of language 2 is objectively justified and proportionate to the main aim it seeks to achieve, namely to recruit administrators who are immediately operational. It is not sufficient to defend the principle of such a limitation by referring to the large number of official languages of the European Union and the need to choose a smaller number of languages, or even one, as languages of internal communication or 'vehicular languages'. It is also necessary, in the light of Article 1d(1) and (6) of the Staff Regulations, to provide objective justification for the choice of one or more specific languages, to the exclusion of all others.

52 Consequently, the General Court upheld the third and seventh pleas in law and annulled the notice of competition at issue in so far as it limits the choice of language 2 of the competition to English, French and German.

53 In the second place, the General Court examined the sixth plea relating to the second aspect of the disputed language regime, alleging infringement of Article 18 TFEU, the fourth paragraph of Article 24 TFEU, Article 22 of the Charter of Fundamental Rights of the European Union, Articles 1 and 2 of Regulation No 1/58 and Article 1d(1) and (6) of the Staff Regulations. In paragraph 222 of the judgment under appeal, the General Court upheld that plea and annulled the notice of competition at issue in so far as it limits the choice of languages of communication between candidates and EPSO to English, French and German.

54 Consequently, in paragraph 223 of the judgment under appeal, the General Court upheld the action and annulled the notice of competition at issue in its entirety. It also stated, in paragraphs 225 to 230 of that judgment, that, for the reasons set out in those paragraphs, that annulment cannot have any impact on the recruitments already carried out on the basis of the reserve lists drawn up at the end of the selection procedure at issue.

Forms of order sought by the parties to the appeal

55 The Commission contends that the Court should:

– set aside the judgment under appeal;

– dismiss, if the state of the proceedings so permits, the action at first instance as unfounded; and

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

– order the Kingdom of Spain to bear its own costs.

56 The Italian Republic and the Kingdom of Spain claim that the Court should:

– dismiss the appeal, and

– order the Commission to pay the costs.

The appeal

57 The Commission puts forward three grounds in support of its appeal.

58 The first and second grounds of appeal concern the legality of the limitation to English, French and German of the choice of language 2 of the competition, while the third plea relates to the lawfulness of the limitation on the languages that may be used in communications between the candidates concerned by the notice of competition at issue and EPSO.

The first ground of appeal

59 The first ground of appeal, which is divided into three parts, alleges errors of law in the interpretation of Article 1d(6) of the Staff Regulations and in the definition of the Commission's obligation to state reasons and infringement of that obligation on the part of the General Court.

The first part: alleging an error of law as regards the objective of having candidates who are immediately operational and an infringement of the General Court's obligation to state reasons

– *Arguments of the parties*

60 The Commission claims that, in its examination of the data relating to the Commission's internal language practice and the languages used by staff of that institution responsible for performing audit duties, the General Court applied, without stating any reasons, unlawful criteria in order to assess whether those data demonstrated that the restriction at issue was justified, namely, in paragraph 137 of the judgment under appeal, the ability of a newly recruited official immediately to carry out 'useful work' in the recruiting institution and, in paragraphs 159 to 161 of that judgment, the lack of a 'specific advantage' that some languages to which that choice is limited, confer on that official. However, the fact of relying on those criteria amounts to a denial of the interests of the service whereby new recruits should be immediately able to work.

61 As regards, more specifically, the criterion set out in paragraph 137 of the judgment under appeal, the Commission submits, first, that, since the interest of the service requires the recruitment of candidates who are immediately operational, the fact that those candidates are nevertheless capable of performing 'useful work' is irrelevant.

62 According to the Commission, requiring newly recruited staff to be immediately operational is intended to ensure continuity with active staff in the service to which they are assigned and goes beyond mere ability to perform useful work immediately.

63 Second, the Commission submits that the General Court did not define what is covered by that concept of 'useful work' nor supported the finding that it is possible to carry out such work, in breach of the obligation to state reasons.

64 Third, the Commission maintains that it is ‘impossible’ for a newly recruited candidate who does not have a command of one of the three languages eligible under the terms of the notice of competition at issue as language 2, to be able to provide useful work in an institution whose policy-making and guiding body, namely the College of Commissioners, takes its internal decisions in only one of those three languages. In that regard, it submits, in essence, that the reference made by the General Court in paragraphs 121 and 122 of the judgment of 15 September 2016, *Italy* v *Commission* (T-353/14 and T-17/15, EU:T:2016:495), is incorrect, in so far as the Committee of Permanent Representatives (Coreper), which is referred to in those paragraphs, is a body, specifically provided for in Article 16(7) TEU, which is distinct from the other institutions. The present case concerns the members of one institution, comprising both the College of Commissioners and the various services of that institution. Moreover, the specific nature of the duties to be performed in the services to which members of staff are assigned has no bearing on the fact that, ultimately, it is the services that submit any draft measures to the College of Commissioners.

65 Fourth, the Commission asserts that the General Court exceeded the limits of its power of judicial review in finding that it should have provided further explanations to justify limiting the restriction at issue, without, in addition, giving any reasons for such an assessment.

66 The Italian Republic and the Kingdom of Spain dispute those arguments.

– *Findings of the Court*

67 It should be recalled that, according to the settled case-law of the Court of Justice, EU institutions must enjoy a wide discretion in the organisation of their departments and, in particular, in the determination of the criteria of ability required for the positions to be filled and, in the light of these criteria and in the interests of the service, the conditions and procedure for organising competitions. Accordingly, the institutions, like EPSO, where the latter exercises powers devolved to it by the institutions, must be able to determine, on the basis of their needs, the abilities that it is appropriate to require of candidates taking part in competitions in order to organise their departments in a useful and reasonable manner (judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraph 88).

68 However, the institutions must ensure, in the application of the Staff Regulations, compliance with Article 1d thereof, which prohibits discrimination on grounds of language. While Article 1d(6) provides that limitations to that prohibition are possible, they must be ‘justified on objective and reasonable grounds’ and correspond to ‘legitimate objectives in the general interest in the framework of staff policy’ (judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraph 89).

69 Thus, the broad discretion enjoyed by the EU institutions with regard to the organisation of their departments, like EPSO under the conditions referred to in paragraph 68 above, is governed in mandatory terms by Article 1d of the Staff Regulations, so that differences of treatment based on language resulting from restrictions on the language regime of a competition to a limited number of official languages can only be accepted if such a restriction is objectively justified and proportionate to the real needs of the service. In addition, any requirement relating to specific language skills must be based on clear, objective and foreseeable criteria enabling candidates to understand the reasons for that requirement and allowing the EU judicature to review the lawfulness thereof (see, to that effect, judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraphs 90 to 93 and the case-law cited).

70 It is for the institution which has limited the language regime of a selection procedure to a restricted number of official languages of the European Union to establish that such a restriction is indeed appropriate for the purpose of meeting the actual needs relating to the duties that the persons recruited will be required to carry out, that it is proportionate to those needs and that it is based on clear, objective and foreseeable criteria, whereas it is for the General Court to carry out an actual assessment of whether that restriction is objectively justified and proportionate in the light of those needs (see, to that effect, judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraphs 93 and 94).

71 In the context of that examination, the EU judicature must not only establish whether the evidence relied on is factually accurate, reliable and consistent, but also ascertain whether that evidence contains all the information which must be taken into account in order to assess a complex situation, and whether it is capable of supporting the conclusions drawn from it (see judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraph 104).

72 By the first part of the present ground of appeal, the Commission complains, in essence, that the General Court examined the justification for the restriction of the choice of language 2 of the competition in the light of an objective which did not correspond to that set out in the notice of competition at issue.

73 It must be stated that that complaint is based on a misreading of paragraphs 137 and 159 to 161 of the judgment under appeal, the content of which was set out in paragraphs 37, 42 and 43 above.

74 It follows from those paragraphs of the judgment under appeal, read in context, that it is indeed in the light of the ‘need to recruit administrators who are immediately operational’, put forward in particular in point 1(i) of Annex II to the notice of competition at issue as justification for such a restriction, that the General Court examined whether the evidence produced by the Commission relating to its internal language practice and the languages used by staff of that institution responsible for performing audit duties was capable of demonstrating that that restriction was objectively justified and proportionate.

75 Thus, as regards, in the first place, paragraph 137 of the judgment under appeal, the General Court, in considering that ‘it cannot be presumed, without further explanation, that a newly recruited official who is not proficient in any [of the languages eligible as a language 2] would be incapable of immediately carrying out useful work in the institution concerned’, did not in any way call into question the interests of the service in having administrators who are immediately operational but, on the contrary sought to determine whether the evidence put forward by the Commission concerning its internal language practice shows that, in order to satisfy that interest, it is necessary, having regard to the specific functional characteristics of the posts covered by the notice of competition at issue and the languages actually used by the services concerned in their daily work, that the choice of language 2 in that competition is limited to the English, French and German languages (see, also, concerning the case-law of the General Court cited in that paragraph 137, judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraph 106).

76 However, in so doing, the General Court neither failed to fulfil its obligation to state reasons nor exceeded the limits of its power of judicial review.

77 In accordance with the case-law referred to in paragraphs 70 and 71 above, the General Court is fully entitled, without exceeding the limits of its review, to verify whether the restriction of the

choice of language 2 was objectively justified by the need to recruit administrators who are immediately operational and whether the level of knowledge of languages required was proportionate to the actual needs of the service.

78 As regards the Commission's argument relating to its own decision-making procedures, and its complaint that the General Court erred in referring to the judgment of 15 September 2016, *Italy* v *Commission* (T-353/14 and T-17/15, EU:T:2016:495), and in finding that the duties concerned in the notice of competition at issue were of a specific nature in order to reject the justification based on the objective of having administrators who are immediately operational, it must first of all be observed that the General Court examined all the texts produced by the Commission and that, at the end of that examination, it concluded that there was no necessary link between the Commission's decision-making procedures and the duties of auditor which the successful candidates in the competition at issue might perform. The Commission does not dispute that conclusion, but merely contends that it would be 'impossible' to use a language other than the three languages in question.

79 Next, although paragraph 121 of the judgment of 15 September 2016, *Italy* v *Commission* (T-353/14 and T-17/15, EU:T:2016:495), to which paragraph 137 of the judgment under appeal refers, examines the Commission's arguments relating to the languages used in Coreper, it should be noted that the General Court also held, in paragraph 122 of that judgment, that, in general, as regards the arguments concerning the use of one or more languages as 'languages of deliberation' of an EU institution, it cannot be presumed, without further explanation, that a newly recruited official who is not proficient in any of those languages would be incapable of immediately carrying out useful work in the institution in question. It follows that the Commission is not, in any event, justified in claiming that the General Court had incorrectly cited its own case-law.

80 Finally, as regards the specific nature of the duties concerned in the notice of competition at issue, it must be noted that the General Court found, in paragraph 137 of the judgment under appeal, that the justification based on the objective of having administrators who are immediately operational had not been substantiated to the requisite legal standard.

81 In that regard, the General Court merely carried out, in accordance with what has been stated in paragraphs 70 and 71 above, the examination necessary to determine the knowledge of languages which may objectively be required by the Commission in the interests of the service, in the light of the particular duties referred to in the notice of competition at issue.

82 Second, concerning the Commission's objections directed against paragraphs 159 to 161 of the judgment under appeal, it should be noted that, in accordance with the case-law referred to in paragraph 70 above, it was for the Commission to establish that the restriction of the choice of language 2 of the competition was indeed capable of meeting actual needs relating to the duties which the persons recruited would be called upon to perform.

83 That is precisely what the General Court ascertained, in paragraphs 159 to 161 of the judgment under appeal, in finding that the data submitted by the Commission concerning the knowledge of languages the staff of that institution responsible for performing audit duties lead, at best, to the conclusion that, while a command of the English language could be such as to confer an advantage in internal communication on successful candidates in the competition at issue and thus to enable them to be immediately operational in terms of that communication, such a conclusion is not valid as regards a command of French and German.

84 Consequently, the General Court was fully entitled to conclude that the Commission had failed to establish that satisfactory knowledge of one of those other two languages confers an

advantage with a view to achieving the objective of having administrators who are immediately operational.

85 Since none of the complaints is well founded, the first part of the first ground of appeal must be rejected.

The second part: alleging an error of law in the definition of the burden of proof and of the Commission's obligation to state reasons in a notice of competition

– *Arguments of the parties*

86 The Commission submits that the General Court erred in law by defining in an excessively strict manner both the obligation to state reasons in the notice of competition at issue justifying the restriction at issue, and the burden of proving the that that justification is valid.

87 Thus, first, according to the Commission the burden of proof imposed by the General Court on the Commission in order to prove the existence of the justifications relied on goes well beyond the degree of precision required by the case-law, in that it held, in the last sentence of paragraph 113, in the first sentence of paragraph 138 and in paragraph 157 of the judgment under appeal that the Commission had failed to prove that the three languages eligible as language 2 in the notice of competition at issue were actually used on a daily basis by 'all the services' of that institution.

88 Second, the Commission maintains that the General Court required, in paragraph 144 of the judgment under appeal, proof of the 'exclusive use' of those three languages in the Commission's decision-making procedures, whereas that notice stated that the EU institutions are not using those languages exclusively but mainly. Thus, the General Court should have ascertained whether those three languages were actually the most used by the institution, and not the only languages used. Furthermore, the General Court made that same error in paragraphs 159 to 161 of that judgment, by adding an examination criterion according to which it is necessary to assess whether the three languages in question confer a 'particular advantage' on the candidates in the competition at issue.

89 Third, contrary to what the General Court states in the last sentence of paragraph 147 of the judgment under appeal, it is not for the Commission to identify which of the three languages may be used and the relative importance of each of those languages is irrelevant.

90 Fourth, the Commission criticises the General Court for having rejected, in paragraph 193 of the judgment under appeal, all the statistical data that it submitted, on the grounds that it cannot be presumed that they accurately reflect the knowledge of languages of the potential candidates in the competition at issue.

91 According to that institution, the standard of proof required under the case-law of the Court of Justice relates to the identification of the most widely known official languages in the European Union. Therefore, the restriction of the choice of language 2 of the competition is justified by objective evidence relating to the distribution of languages from which it may reasonably be inferred that those data correspond to the knowledge of languages of those persons wishing to take part in EU competitions. In those circumstances, it is not for the Commission to prove that such correspondence is correctly established.

92 Furthermore, the Commission submits that the conclusion in the first sentence of paragraph 197 of the judgment under appeal, in so far as it is based on the same false premiss, is also vitiated by an error of law.

93 Fifth and lastly, the Commission asserts that, in paragraph 139 of the judgment under appeal, the General Court made purely hypothetical assessments by significantly reducing the scope of memorandum SEC(2000) 2071/6.

94 The Italian Republic and the Kingdom of Spain dispute those arguments.

– *Findings of the Court*

95 First, it must be recalled, as is apparent from paragraph 69 above, that any requirement relating to specific knowledge of languages must be based on clear, objective and foreseeable criteria enabling candidates to understand the reasons for that requirement and allowing the EU judicature to review the lawfulness thereof.

96 The statement of the reasons for the decision of an EU institution, body, office or agency is particularly important in so far as it allows persons concerned to decide in full knowledge of the circumstances whether it is worthwhile to bring an action against the decision and the court with jurisdiction to review it, and it is therefore a requirement for ensuring that the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights is effective (judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 103 and the case-law cited).

97 As regards the restriction of the choice of language 2 in a notice of competition, the Court of Justice has held that it is for the General Court to ascertain whether that notice, the general rules governing open competitions or the evidence provided by the Commission include ‘concrete indications’ capable of establishing, objectively, whether the interests of the service justified that restriction (see, to that effect, judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraph 95).

98 Accordingly, the General Court was fully entitled, in the judgment under appeal, to conduct that assessment and it found, in paragraph 100 of that judgment and after the examination carried out in particular in paragraphs 93 to 99 thereof, the content of which was set out in paragraphs 28 and 29 above, that, even if it were understood in the light of the description of the duties set out in the notice of competition at issue, the ground for needing new recruits to be immediately operational, put forward in that notice, cannot, in view of its vague and general wording and in the absence in that notice of any concrete evidence to support it, justify the restriction of the choice of language 2 of the competition to English, French and German.

99 Moreover, the Commission emphasised in its appeal that it does not dispute paragraphs 86 to 100 of the judgment under appeal.

100 In second place, in so far as the Commission objects that the General Court imposed a disproportionate burden of proof on it, it follows from paragraphs 70 and 71 of the present judgment that, on the one hand, the Commission was required to establish, in the context of the present case, that the restriction of the choice of language 2 of the competition is well suited to meet the actual needs relating to the duties which the persons recruited will be required to carry out, that it is proportionate to those needs and that it is based on clear, objective and foreseeable criteria, and, on the other hand, the General Court had to carry out an actual assessment of the objectively

justified and proportionate nature of that restriction in the light of those needs, by not only establishing whether the evidence relied on by the Commission is factually accurate, reliable and consistent, but also whether that evidence contains all the information which must be taken into account in order to assess the justification for that restriction and whether it is capable of supporting the conclusions which are drawn from it.

101 That is precisely what the General Court did when it examined, in paragraphs 106 to 199 of the judgment under appeal, the evidence produced by the Commission in support of the ground for needing new recruits to be immediately operational.

102 First, as regards the objections to the last sentence of paragraph 113, the first sentence of paragraph 138 and paragraph 157 of the judgment under appeal, the content of which was set out in paragraphs 33, 38 and 41 above, it should be noted that, contrary to that maintained by the Commission, the General Court did not require it, in order to establish that the restriction at issue was justified, to show that the English, French and German languages are used by all of the Commission services in their daily work.

103 Thus, in paragraph 113 of the judgment under appeal, the General Court merely reviewed the Commission's argument that memorandum SEC(2000) 2071/6, and in particular point 2.2 thereof, limits the number of 'working languages' of that institution to three, considering that, having regard in particular to the context of that point, which relates to the adoption of a decision by the College of Commissioners by written procedure, the only reference in that point to the 'three working languages of the Commission' is not sufficient to establish that that argument is well founded.

104 Following the same reasoning, in paragraphs 136 to 138 of the judgment under appeal, the General Court found, with regard to all the data put forward by the Commission concerning its internal language practice, that, in so far as its sole purpose is to establish the languages required in order to carry out Commission's various decision-making procedures and, where it does not follow either that there is a necessary link between those procedures and the duties which the successful candidates in the competition at issue might perform, or that all three languages described as 'procedural languages' are actually used by its services in their daily work, those data are not such as to justify the restriction at issue with regard to the functional specificities of the posts referred to in the notice of competition at issue.

105 In addition, in paragraph 157 of the judgment under appeal, the General Court noted that the data provided by the Commission relating to the knowledge of languages of staff of that institution responsible for carrying out audit duties is neither alone nor in conjunction with the data relating to its internal language practice capable of establishing which vehicular language or languages are actually used in the daily work of the various services from which those data originate, or even which language or languages are essential to the performance of the duties referred to in the notice of competition at issue and that, therefore, it is not possible to establish, on the basis of those data, which language or languages the successful candidates in that competition would need to have a satisfactory knowledge of in order to be immediately operational as administrators.

106 It thus follows from paragraphs 113, 138 and 157 of the judgment under appeal, read in context, that the General Court merely verified, as it was fully entitled to do, whether the evidence adduced by the Commission in support of the justification concerning the need for new recruits to be immediately operational, is such as to show that English, French and German are actually used, in the performance of their regular tasks, by the staff in the services to which the candidates in the competition in question are, in principle, supposed to be assigned, so that a satisfactory command of

at least one of those three languages is both necessary and sufficient to enable those candidates to be immediately operational.

107 Second, the same considerations apply to the complaint directed against the General Court's assessment, in paragraph 144 of the judgment under appeal, that, in any event and irrespective even of the existence of a link between the Commission's decision-making procedures and the specific functions referred to in the notice of competition at issue, the evidence put forward by the Commission relating to its internal language practice is far from indicating an exclusive use of the three 'procedural' languages. In paragraph 144 of that judgment, the General Court merely stated, for the sake of completeness, that the evidence in question is not capable of supporting the conclusion that those procedures are limited to those three languages. Furthermore, the possibility for staff in the service to which candidates in a competition are supposed to be assigned to carry out their regular tasks in languages other than those to which the choice of language 2 of the competition is restricted may, as the case may be, cast doubt on the need for those candidates to have a command of one of those languages in order to be immediately operational.

108 Furthermore, the Commission's objection, that in paragraphs 159 to 161 of the judgment under appeal, the General Court required that a satisfactory knowledge of one of the languages eligible as language 2 in the competition at issue confers a particular advantage on successful candidates, is based on a misreading of the judgment under appeal.

109 The General Court found, at paragraph 161 of the judgment under appeal, that the data submitted by the Commission concerning the knowledge of languages of the staff of that institution responsible for performing audit duties lead, at best, to the conclusion that, although the command of the English language might be such as to confer an advantage in internal communication on successful candidates in the competition at issue and thus to allow them to be immediately operational in terms of that communication, such a conclusion does not apply to a command of the French and German languages.

110 Accordingly, the General Court was right to conclude that the Commission had not succeeded in proving that a satisfactory knowledge of French or German, rather than a combination including another official language of the European Union, would be essential in order to guarantee the achievement of the objective of having administrators who are immediately operational.

111 Third, it follows from the foregoing matters that the General Court cannot be criticised for having considered, in the last sentence of paragraph 147 of the judgment under appeal, that the notes from the Secretary-General of the Commission which the Commission provided and which, in accordance with the document entitled 'Language rules depending on adoption procedures', give permanent derogations in certain areas by authorising the submission of draft acts in a single 'procedural' language, do not enable useful conclusions to be drawn, since they do not specifically identify which of those languages may in fact be used.

112 Fourth, as regards the Commission's objection directed against paragraphs 193 and 197 of the judgment under appeal, it must be held that it is based on a misreading of the judgment under appeal. First of all, contrary to what is claimed by the Commission, the General Court, in paragraph 193 of that judgment, did not in any way reject in its entirety the taking into account of the statistics relating to the languages most studied in 2012 at the lower secondary education level on the ground that the Commission had not proved that those data correctly reflect the knowledge of languages of potential candidates in the competition at issue, but simply made an observation that the probative value of those data is weaker because they refer to all Union citizens, including those who have not reached the age of majority.

113 Next, the Commission does not dispute the General Court's finding in paragraph 194 of that judgment, according to which the only aspect that those data could show is that the number of potential candidates whose situation is affected by the restriction at issue is less than it would be if that choice were restricted to other languages.

114 Finally and above all, as the General Court essentially pointed out in paragraph 195 of the judgment under appeal, those same data are not capable of demonstrating that the restriction of the choice of language 2 of the competition is appropriate and necessary for the achievement of the objective of having successful candidates who are immediately operational. Therefore, in so far as the General Court concluded, in particular in paragraphs 149 and 188 of that judgment, that the Commission failed to adduce that evidence, the statistics relating to the languages most studied were not able to show that the limitation was objectively justified with regard to that objective.

115 Fifth, by disputing the finding, in paragraph 139 of the judgment under appeal, set out in paragraph 38 above, which it considers hypothetical, and by claiming that the General Court significantly reduced the scope of memorandum SEC(2000) 2071/6, the Commission is not alleging an error of law but asks the Court of Justice to substitute its own assessment of that piece of evidence for that of the General Court.

116 It is apparent from Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal is limited to points of law and that the General Court therefore has sole jurisdiction to find and appraise the relevant facts and evidence. The assessment of the facts and evidence thus does not, save where the facts and evidence are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (order of 27 January 2022, FT and Others v Commission, C-518/21 P, not published, EU:C:2022:70, paragraph 12 and the case-law cited).

117 It follows from all those considerations that the second part of the first ground of appeal must be rejected.

The third part: the General Court required production of a legally binding act in order to justify the restriction of the choice of the second language in accordance with the notice of competition at issue

– *Arguments of the parties*

118 The Commission submits that, in paragraphs 132 to 135 of the judgment under appeal, the General Court reduced the scope of the evidence that it provided concerning its internal language practice on the basis of an incorrect assessment criterion, namely the existence of a legally binding act defining the working languages of the institution concerned. It does not follow either from Article 1d(6) of the Staff Regulations or from the case-law of the Court of Justice that only such acts can justify a restriction of the choice of the second competition language.

119 Furthermore, both the note from the Secretary-General of the Commission on the implementation of memorandum SEC(2000) 2071/6 and the 'Language rules depending on adoption procedures' contained in the Manual of Operating Procedures constitute 'internal rules' within the meaning of point 2 of Annex II to the notice of competition at issue, in so far as they are binding on the institution.

120 The Italian Republic and the Kingdom of Spain dispute that argument.

– *Findings of the Court*

121 As the Advocate General observed in points 71 to 73 of his Opinion, the third part of the first ground of appeal, according to which the General Court reduced the scope of the evidence relating to the Commission's internal language practice in finding that only a legally binding act could justify a language restriction such as that imposed by the notice of competition at issue, is based on a misreading of paragraphs 132 to 135 of the judgment under appeal, the content of which was set out in paragraph 35 above.

122 It follows from those paragraphs, read in conjunction with paragraphs 136 to 149 of the judgment under appeal, set out in paragraphs 36 to 39 above, that it was only by way of preliminary remarks that the General Court correctly found that that evidence could not be regarded as rules implementing the general language regime established for the purposes of Article 6 of Regulation No 1/58, while subsequently examining in detail whether that evidence is capable of justifying the restriction at issue in the light of the functional specificities of the posts covered by the notice of competition at issue. Thus, the General Court's conclusion that that is not the case does not relate to the absence of an internal decision establishing the working languages within the Commission, noted by the General Court in paragraph 135 of the judgment under appeal and, moreover, not disputed by the Commission, but to the fact that the sole purpose of that evidence is to establish the languages required in order to carry out the Commission's various decision-making procedures.

123 Consequently, the third part of the first ground of appeal cannot be upheld.

124 It follows from the foregoing that the first ground of appeal must be rejected.

The second ground of appeal

125 The second ground of appeal consists of seven parts by which the Commission relies on distortion of the clear sense of the evidence adduced before the General Court and an error of law.

126 As a preliminary point, it should be noted that, on appeal, complaints based on findings of fact and on the assessment of those facts in the contested decision are admissible on appeal where it is claimed that the General Court has made findings which the documents in the file show to be substantially incorrect or that it has distorted the clear sense of the evidence before it (judgment of 18 January 2007, *PKK and KNK* v *Council*, C-229/05 P, EU:C:2007:32, paragraph 35).

127 In that regard, where an appellant alleges distortion of the evidence by the General Court, that person must, under Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in that person's view, led to such distortion. In addition, that distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new appraisal of the facts and the evidence (judgment of 28 January 2021, *Qualcomm and Qualcomm Europe* v *Commission*, C-466/19 P, EU:C:2021:76, paragraph 43).

128 Furthermore, although distortion of the evidence may consist of an interpretation of a document contrary to the content of that document, it must be obvious from the file before the Court of Justice, and it presupposes that the General Court has manifestly exceeded the limits of a reasonable assessment of that evidence. In that regard, it is not sufficient to show that a document could be interpreted differently from the interpretation adopted by the General Court (judgment of

28 January 2021, *Qualcomm and Qualcomm Europe* v *Commission*, C-466/19 P, EU:C:2021:76, paragraph 44).

129 It is in the light of those principles that the seven parts of the second ground of appeal must be analysed.

First part: distortion of memorandum SEC(2000) 2071/6 and its approval by the College of Commissioners

– *Arguments of the parties*

130 The Commission submits that, in paragraphs 112 to 117 and 138 of the judgment under appeal, the General Court has distorted the meaning and scope of the memorandum SEC(2000) 2071/6. First, the Commission asserts, concerning paragraph 113 of the judgment under appeal that that memorandum, far from constituting a mere assessment of the decision-making procedures of the institution, clearly limits the number of working languages of that institution to three, as reflected in point 2.2 of that memorandum.

131 Second, according to the Commission, the reference, made in point 2.2, to the fact that a document may be approved in the authentic language does not, contrary to what the General Court held in paragraph 115 of the judgment under appeal, remove the obligation also to approve it in one of the three working languages.

132 Third, the Commission maintains that the involvement of the translation service cannot be ascribed the significance attributed to it by the General Court in paragraphs 116 and 138 of the judgment under appeal. That involvement is intended only to ensure more efficient management of resources in the different services and does not alter the fact that, in particular, the service which drew up the draft act to be submitted to the College of Commissioners must, in view of its active participation in the decision-making process and the obligation to comply with the rules on languages referred to in point 4 of that memorandum, have officials with a command of the three working languages.

133 The Italian Republic and the Kingdom of Spain submit that that part of the ground of appeal is inadmissible, on the ground that the Commission merely asks the Court of Justice to carry out a fresh assessment of the evidence which it produced before the General Court, without establishing that it distorted that evidence.

– *Findings of the Court*

134 It should be observed that, contrary to the Commission's contention, the General Court, during its examination of memorandum SEC (2000) 2071/6 carried out in paragraphs 112 to 117 and 138 of the judgment under appeal, the content of which was set out in paragraphs 33 and 38 of this judgment, in no way distorted the clear sense of that memorandum.

135 In that regard, it should be noted that it is clear from point 1.2 of memorandum SEC(2000) 2071/6 that that memorandum seeks to identify ways and means of making decision-making procedures more efficient and transparent. In order to do so, it lists, in its points 2 and 3, the procedures in force and proposes, in point 4, the means of simplification and, in point 5, other measures to be taken. As regards, in particular, point 2.2 of that memorandum, it states, inter alia, that in the written procedure 'documents have to be circulated in the three working languages of the

Commission' whereas, in the context of the empowerment procedure, the text of the decision to be adopted is 'presented in a single working language and/or the authentic language versions'.

136 Therefore, the General Court clearly did not distort memorandum SEC(2000) 2071/6 when it found, in paragraph 113 of the judgment under appeal, that the purpose of that memorandum 'consists, in essence, of assessing the different types of procedures used by the College of Commissioners to take decisions … and of proposing ways of simplifying them' and that 'it is in such a context and by reference to a specific type of procedure, namely the written procedure', that point 2.2 of the memorandum, where the passage in question is reproduced in a faithful way, refers to 'working languages'. Furthermore, the General Court did not in any way exceed the limits of a reasonable assessment of point 2.2 in holding that that reference alone is not sufficient to establish that English, French and German are actually used by all the Commission services in their daily work.

137 The same is true as regards the finding made by the General Court in paragraph 115 of the judgment under appeal, which merely faithfully reproduces point 2.2 of memorandum SEC(2000) 2071/6 as regards the language arrangements applicable in the context of the empowerment procedure, and the assessment made in paragraph 114 of that judgment that those arrangements clarify the scope of that reference. Moreover, that finding is not called into question by point 4 of that memorandum, to which the Commission refers, which states, inter alia, that the proposed measures will also have the effect of simplifying the language requirements for decisions, by stating that when an act is adopted by written procedure, 'the proposal must be available at least in the working languages of the Commission', whereas in the case of decisions taken by empowerment or delegation procedures, 'the text is required only in the language or languages of the party or parties to whom the decision is addressed'.

138 Furthermore, the General Court also did not distort point 5.2 of memorandum SEC(2000) 2071/6, entitled 'Simplifying the language arrangements', by stating, in paragraph 116 of the judgment under appeal, that it 'highlights the role of the Commission's Directorate-General (DG) for Translation', in so far as it states that '"one of the major causes of delay in initiating or finalising written procedures and empowerment procedures is obtaining the translations, including the texts revised by the lawyer linguists", which is why it is essential that any documents to be translated are transmitted [to DG Translation] promptly', and by finding, in paragraph 114 of that judgment, that point 5.2 also therefore qualifies the scope of the reference to 'working languages' of the Commission.

139 Consequently, without distorting memorandum SEC(2000) 2071/6 the General Court held, in paragraph 117 of the judgment under appeal, that point 2.2 of that memorandum does not allow any useful conclusions to be drawn on the actual use of the English, French and German languages in the daily work of the Commission services, nor a fortiori in the performance of the duties referred to in the notice of competition at issue.

140 Similarly, the General Court did not distort point 5.2 of that communication by holding, in paragraph 138 of the judgment under appeal, that it is not the service responsible for the actual drafting of a document, but in fact the Directorate-General for Translation which produces the versions of that document in the required procedural languages in order to transmit them to the College of Commissioners, the service responsible merely for having the task of reviewing the translated text.

141 Indeed, in the absence of any distortion, the significance attributed by the General Court to one or other of the possibilities expressly envisaged by that memorandum falls within the scope of

the assessment of the evidence which, by its very nature, falls outside the jurisdiction of the Court of Justice on appeal.

142 Consequently, the first part of the second ground of appeal cannot succeed.

Second part: distortion of the clear sense of the Rules of Procedure of the Commission and the Rules giving effect to those rules

– *Arguments of the parties*

143 The Commission submits that, in paragraphs 119 to 126 of the judgment under appeal, the General Court distorted the clear sense of the link between the Rules of Procedure of the Commission, the Rules giving effect to those rules, memorandum SEC(2000) 2071/6 and the document entitled 'Language rules depending on adoption procedures'.

144 The General Court made a selective reading of the Rules giving effect to the Rules of Procedure of the Commission, in failing to consider that the President of that institution may stipulate the languages in which the documents must be available, taking account of the minimum requirements of the College of Commissioners or the requirements connected with the adoption of an act.

145 The President of the Commission exercised that option by adopting memorandum SEC(2000) 2071/6.

146 Therefore, even though that memorandum does not specifically mention the three working languages to be used by the College of Commissioners, it confirms the internal practice relating to the use of English, French or German in the Commission's decision-making procedures.

147 The Italian Republic and the Kingdom of Spain submit that that part of the second ground of appeal is inadmissible, on the ground that the Commission merely asks the Court of Justice to carry out a fresh assessment of the evidence which it adduced before the General Court, without establishing that the General Court distorted the clear sense of that evidence.

– *Findings of the Court*

148 It should be noted that the Commission does not dispute that the General Court faithfully recalled, in paragraphs 119 to 126 of the judgment under appeal, the relevant provisions of the Rules of Procedure of the Commission and the Rules giving effect to those rules, before undertaking an analysis of the content of the document entitled 'Language rules depending on adoption procedures'.

149 Thus, the Commission complains that the General Court merely made such a reference, whereas it should have considered that those documents confirm the use of English, French and German as working languages.

150 It must be stated that, not only does the Commission call into question the assessment of those documents without showing how the General Court distorted them, but its arguments are also based on a misreading of the judgment under appeal.

151 Contrary to what the Commission claims, the General Court did not in any way confine itself to setting out the content of the relevant provisions of those documents. On the contrary, it fully

assessed those documents together with the other evidence relating to the Commission's internal language practice, including memorandum SEC(2000) 2071/6, by finding, first, in paragraph 132 of the judgment under appeal, that, taken together, those texts 'merely describe the Commission's long-standing administrative practice of using English, French and German as the languages in which documents must be available in order to be submitted to the College of Commissioners for approval' and, second, in paragraphs 137 and 138 of that judgment it does not follow from those texts or from other documents in the file that there is 'a necessary link between the Commission's decision-making procedures, particularly those carried out by the College of Commissioners, and the duties that the successful candidates in the competition at issue might perform', or that 'all three languages [in question] are actually used by the Commission services in their daily work'. It was on that ground that the General Court concluded, in paragraph 149 of that judgment, that those texts are not capable of demonstrating that the restriction at issue can meet the real needs of the service and, therefore, of establishing that, in the light of the functional specificities of the posts referred to in that notice, the service does have an interest in new recruits being immediately operational.

152 Thus, the Commission confines itself, in reality, to arguing that the documents on which it relies may be given an interpretation which differs from of the General Court, which, as has been pointed out in paragraph 128 above, does not constitute proof of a distortion of those documents.

153 It follows that the second part of the second ground of appeal cannot succeed.

Third part: distortion of the section relating to the 'Language rules depending on adoption procedures', contained in the Manual of Operating Procedures

– *Arguments of the parties*

154 The Commission submits that, in paragraphs 145 to 149 of the judgment under appeal, the General Court distorted the meaning and scope of the document entitled 'Language rules depending on adoption procedures'.

155 The Commission maintains, in particular, that in its assessment of that document the General Court manifestly disregarded two aspects. Thus, the General Court failed to have regard, first, to the fact that the existence of the derogation regime supports rather than invalidates the rule of three procedural languages and, second, that that document unequivocally confirms that it was the services of the institution that had to comply with the language requirements laid down therein.

156 The Italian Republic and the Kingdom of Spain submit that this part of the second ground of appeal is inadmissible, on the ground that the Commission merely asks the Court of Justice to carry out a fresh assessment of the evidence which it produced before the General Court, without establishing that the latter distorted that evidence.

– *Findings of the Court*

157 It must be stated that, by that objection, the Commission asks the Court of Justice, in reality, to substitute its own assessment of the document entitled 'Language rules depending on adoption procedures' for that of the General Court, without establishing that the latter manifestly exceeded the limits of a reasonable assessment of that document.

158 Accordingly, that line of argument does not, as pointed out in paragraph 128 above, demonstrate distortion of the document entitled 'Language rules depending on adoption procedures'.

159 In those circumstances, the third part of the second ground of appeal is inadmissible.

Fourth part: failure to carry out an overall assessment of memorandum SEC(2000) 2071/6, the Rules of Procedure of the Commission and the Rules giving effect to the rules of procedure as well as the section on 'Language rules depending on adoption procedures'

– *Arguments of the parties*

160 The Commission submits that, by classifying, in paragraph 132 of the judgment under appeal, as reflecting an administrative practice memorandum SEC(2000) 2071/6, the Rules of Procedure of the Commission and the Rules giving effect to the Rules of Procedure of the Commission and the document entitled 'Language rules depending on adoption procedures', the General Court disregarded the fact that those documents establish a binding rule for the adoption of measures by the Commission.

161 In those circumstances, according to the Commission, the General Court distorted, in paragraphs 132 to 137 and 139 of the judgment under appeal, those documents by denying them the status of internal rules, referred to in point 2 of Annex II to the notice of competition at issue, which it was required to take into account in assessing the legality of the reasoning put forward regarding the objective and proportional nature of the restriction at issue.

162 The Italian Republic and the Kingdom of Spain submit that this part of the second ground of appeal is inadmissible, on the ground that the Commission merely asks the Court of Justice to carry out a fresh assessment of the evidence which it adduced before the General Court, without establishing that the General Court distorted that evidence.

– *Findings of the Court*

163 At the outset, it should be recalled that, in paragraphs 136 and 137 of the judgment under appeal, the General Court found that the sole purpose of the documents mentioned in paragraphs 107 and 108 of that judgment was to define the languages required in order to carry out that institution's various decision-making procedures, but did not make it possible to establish the necessary link between those procedures and the duties which the successful candidates in the competition at issue might perform.

164 The Commission considers that, in view of the binding force of the language arrangements within that institution, the General Court could not, without distorting those documents, conclude that there was no such link.

165 First, it follows from paragraph 122 above that, contrary to what the Commission appears to consider, the General Court did not reach that conclusion on the ground that the language regime applicable to the various decision-making procedures is not binding within that institution.

166 Second, the Commission has not shown that, in reaching that conclusion, the General Court manifestly exceeded the limits of a reasonable assessment of those documents, which, contrary to what the Commission appears to claim, it assessed both individually and in their entirety.

167 It follows from those considerations that the fourth part of the second ground of appeal cannot succeed.

Fifth part: alleging distortion of the clear sense of communication SEC(2006) 1489 final

– *Arguments of the parties*

168 The Commission considers that, in paragraphs 140 to 143 of the judgment under appeal, the General Court distorted the clear sense of communication SEC(2006) 1489 final and, in particular, the annex thereto entitled ‘Translation rules beyond 2006’.

169 In particular, the Commission criticises the General Court for having disregarded, by stating in paragraph 141 of that judgment that those translation rules referred to documents drafted in English, French and German not as original languages but as target languages, the fact that those three languages were the languages of translation of documents for internal use and that the majority of documents intended for such use were to be translated only into those languages. Thus, it was on the basis of the translation of a document into one of those languages that the services of the institution were to work.

170 The fact that certain documents are translated into all official languages is, in that regard, irrelevant, since such a translation concerns only documents intended for external use.

171 In addition, the examination of the argument relating to ‘grey’ translations, carried out in paragraph 142 of the judgment under appeal, constitutes an additional distortion, since the General Court focused on the content of an extremely limited paragraph of the document in question, ignoring the broader scope resulting from the remainder of that document.

172 The Italian Republic and the Kingdom of Spain submit that this part of the second ground of appeal is inadmissible on the ground that the Commission merely requests the Court of Justice to carry out a fresh assessment of the evidence which it produced before the General Court, without establishing that the General Court distorted that evidence.

– *Findings of the Court*

173 In paragraphs 140 to 143 of the judgment under appeal, the General Court held that the assessment it carried out of memorandum SEC(2000)2071/6, the Rules of Procedure of the Commission, the giving effect to the Rules of Procedure and the document entitled ‘Language rules depending on adoption procedures’, cannot be called into question by the arguments that the Commission bases on memorandum SEC(2006) 1489 final, and in particular from the annex thereto entitled ‘Translation rules beyond 2006’, namely that it follows, as regards documents for internal use, that only a translation into English, French and German is required, in addition to any authentic language, and, that furthermore, the Commission services are called upon to produce translations using the language skills of their staff, known as ‘grey’ translations.

174 In that regard, the General Court noted, first, in paragraph 141 of the judgment under appeal, that the content of communication SEC(2006) 1489 final has the effect not of invalidating but, on the contrary, of confirming the assessment set out in paragraphs 137 and 138 of that judgment. Indeed, the ‘Translation rules beyond 2006’ set out in annex to that communication mention the English, French and German languages only as target languages into which certain categories of documents must be translated, without stating the source language at all. Moreover, for the vast majority of the categories of documents referred to in that annex, a translation into all the official languages must be provided, and instances where a translation is required into English, French and German only are, in reality, the exception.

175 In paragraph 142 of the judgment under appeal, the General Court found, second, that the argument relating to the production of ‘grey’ translations, is not supported by any evidence of the

exact proportion of grey translations representing that type of translation with regard to the overall volume of translations produced in the Commission. Although point 2.2 of communication SEC(2006) 1489 final acknowledges that it is 'extremely difficult to quantify for lack of reliable indicators', point 3.1 nonetheless gives an estimate for the year 2007 according to which the translations produced by the Directorate-General for Translation amount to 1 700 000 pages, while 'grey' translations make up 100 000 pages. However, since the latter figure corresponds to all Commission services other than that Directorate-General, it is obvious that 'grey' translations represent only a very small quantity in relation to the volume produced by that Directorate-General alone. Finally, and above all, there is nothing in the file to show that the three abovementioned languages are the languages into which those 'grey' translations are produced.

176 It must be stated that the Commission has failed to demonstrate that the General Court's assessment of communication SEC(2006) 1489 final and of the annex thereto, entitled 'Translation rules beyond 2006', which the General Court made in those paragraphs of the judgment under appeal, is manifestly incorrect, but merely claims, in reality, that those texts may be given an interpretation which differs from that of the General Court.

177 In those circumstances, the fifth part of the second ground of appeal cannot be upheld.

The sixth part, alleging distortion of the clear sense of the data relating to the languages used by the members of the Commission staff responsible for performing audit duties and infringement of the obligation to state reasons

– *Arguments of the parties*

178 The Commission considers that, in view of the erroneous nature, relied on in its first ground of appeal, of the definition of the criteria for assessing the evidence, adopted by the General Court in paragraphs 157 to 161 of the judgment under appeal, the General Court distorted, in paragraphs 157 to 163 of that judgment, the clear sense of the data relating to the languages used by the members of the Commission's staff responsible for performing audit duties, by taking the view that they were not capable of establishing that knowledge of one of the three languages in question enabled candidates of the competition at issue to be immediately operational. The Commission asserts in that regard that it is in order to describe the language working environment in which the successful candidates in the competition at issue would be required to perform their duties that it produced the statistical data relating to the second and third languages in which administrators performing audit duties were proficient.

179 Accordingly, in the Commission's view, the General Court could not deny the relevance of those data without disregarding their nature, since they showed that the combination of the three languages available as language 2 in the notice of competition at issue would allow effective interaction among the staff, ensuring that successful candidates were immediately operational.

180 Furthermore, the Commission maintains that the General Court was not entitled to confine itself to using a purely quantitative criterion in the analysis of those data in order to conclude that only a command of the English language would provide an advantage in the language environment of the Commission service to which the notice of competition at issue relates.

181 Contrary to what the General Court held in paragraph 162 of the judgment under appeal, according to the Commission, the data relating to the third language of the staff members of the services concerned are relevant in terms of giving the most accurate picture of that language environment.

182 The Italian Republic and the Kingdom of Spain submit that this part of the second ground of appeal is inadmissible, on the ground that the Commission merely asks the Court of Justice to carry out a fresh assessment of the evidence which it produced before the General Court, without establishing that the General Court distorted that evidence in any way.

– *Findings of the Court*

183 It should be recalled that, in paragraph 157 of the judgment under appeal, the General Court found that the data submitted by the Commission did not make it possible to identify the vehicular language or languages actually used by the various services that issued those data, in their daily work. Moreover, it extended that finding, in paragraph 158 of the judgment under appeal, to data concerning the knowledge of languages among its staff working in the field of audit and in function group AST in the category of contract staff.

184 In addition, in paragraphs 159 to 161 of the judgment under appeal, the General Court pointed out that it followed from the data produced by the Commission that, unlike knowledge of English, knowledge of German and French did not confer a particular advantage over knowledge of other official languages of the European Union as regards the need to have administrators who are immediately operational.

185 As is apparent from paragraphs 82 to 84, 105 and 108 to 110 above, the General Court was fully entitled to base its examination of the justification for the restriction at issue on such a requirement.

186 In particular, in accordance with paragraphs 108 and 109 above, it should be noted that the Commission incorrectly reads the judgment under appeal when it criticises the General Court for having relied, in paragraphs 159 and 161 of the judgment under appeal, on the concept of 'advantage'. Indeed, far from confining itself to a quantitative assessment of the data submitted by the Commission, the General Court correctly pointed out that knowledge of German and French was no more justified than that of another language of the European Union.

187 Furthermore, as regards the data referred to in paragraph 162 of the judgment under appeal relating to the knowledge declared by administrators performing the duties envisaged by the notice of competition at issue as regards their third language, it should be noted that those data were mentioned 'even though [their] content … does not in any way change the assessment set out in paragraph 161 [of the judgment under appeal]'.

188 Since the ground set out in paragraph 162 of the judgment under appeal is superfluous, the complaints arguing distortion of those data and contradictory reasoning directed against that paragraph are ineffective.

189 It follows from the foregoing considerations that the sixth part of the second ground of appeal must be rejected.

The seventh part, alleging distortion of Decision 22-2004, of the memorandum of 11 November 1983 and of the data on the knowledge of languages among the staff of the Court of Auditors

– *Arguments of the parties*

190 The Commission maintains that Decision 22-2004 and the memorandum of 11 November 1983 must be read together in order to assess whether it is necessary for candidates in the

competition at issue to have satisfactory knowledge of one of the three languages eligible as a language 2 under the notice of competition at issue.

191 By merely reading those documents individually, the General Court wrongly inferred that they are not relevant for identifying the vehicular languages used within the Court of Auditors.

192 According to the Commission, the statistical data relating to languages used by the staff of the Court of Auditors show that English, French and German are the most widely used as vehicular languages within that institution. Therefore, it was only on the basis of a distortion of those data that the General Court was entitled to take the view that they did not justify the restriction at issue in the light of the objective of having administrators who are immediately operational.

193 The Italian Republic and the Kingdom of Spain submit that this part of the second ground of appeal is inadmissible, on the ground that the Commission merely asks the Court of Justice to confirm its assessment of the evidence which it adduced before the General Court, without establishing that the General Court distorted the clear sense of that evidence in any way.

– *Findings of the Court*

194 First, it should be noted, that the General Court, in essence, found in paragraphs 173, 174 and 177 of the judgment under appeal that in so far as Decision 22-2004 and the memorandum of 11 November 1983 merely established the system for translation and interpretation applicable in particular for meetings of the Court of Auditors, those documents did not allow any useful conclusions to be drawn as to the working languages or vehicular languages used by all the services of that institution.

195 Thus, the General Court recalled, in paragraph 173 of the judgment under appeal, the purpose of Decision 22-2004, as is apparent from its title, is the drawing up of rules concerning ‘translation of documents for meetings of the Court [of Auditors], Audit Groups and the Administrative Committee’.

196 Moreover, the General Court found, in paragraph 177 of the judgment under appeal, that the memorandum of 11 November 1983 concerned interpreting for meetings of the Court of Auditors.

197 The Commission does not dispute that the General Court had correctly identified the purposes of Decision 22-2004 and of the memorandum of 11 November 1983, but criticises it for having carried out an incorrect analysis of those documents, without however establishing distortion of their clear sense.

198 Second, it should be noted that, in paragraphs 178 and 179 of the judgment under appeal, the General Court emphasised that the purpose of the memorandum of 11 November 1983 is clearly different to that of Decision 22-2004 and, therefore, the Commission’s argument by which it sought, in essence, to establish that by that memorandum, German was added to the two ‘drafting/pivot languages’ namely, according to that subsequent decision, English and French, cannot succeed. Moreover, even if the memorandum of 11 November 1983 reflects a practice which is still in use as regards interpreting at meetings of the members of the Court of Auditors, the fact remains that, as is apparent from the very wording of the memorandum in question, such a factual situation is dependent on mutual agreement between those members and on the ‘good will’ of each of them, which are factors that are liable to change at any time.

199 Consequently, the judgment under appeal cannot be criticised for relying on a reading of Decision 22-2004, taken in isolation. In addition, the Commission did not establish that the General Court, at paragraph 179 of the judgment under appeal, manifestly exceeded the limits of a reasonable analysis of that decision or of the memorandum of 11 November 1983.

200 Third, and for the reasons set out in paragraphs 184 to 186 above, the General Court cannot be criticised for having distorted the clear sense of the data produced by the Commission as regards the knowledge of languages among the staff of the Court of Auditors, by finding, in paragraph 187 of the judgment under appeal, that that data cannot justify the restriction at issue in the light of the objective of recruiting successful candidates who are immediately operational.

201 Since the seventh part cannot succeed, the second ground of appeal must therefore be rejected in its entirety.

The third ground of appeal

Arguments of the parties

202 The Commission submits that, since the General Court upheld the action at first instance, first, on the basis of an incorrect legal assessment of the justification for the restriction at issue and, second, by distorting the clear sense of the evidence produced by that institution, the grounds of the judgment under appeal relating to the second aspect of the notice of competition at issue are vitiated by an error of law.

203 The Italian Republic and the Kingdom of Spain contend that that ground of appeal is inadmissible for the since it does not contain any independent statement of reasons but confines itself to reiterating the lines of argument contending that the General Court erred in law with regard to the restriction at issue.

Findings of the Court

204 It follows from the assessments relating to the first and second grounds of appeal that the Commission has failed to demonstrate the existence of the alleged errors of law and distortion of the clear sense of the evidence.

205 Since the third ground of appeal is based on those same allegations, it must be rejected as unfounded.

206 It follows from all of the foregoing considerations that, since none of the grounds of appeal has been upheld, the appeal must be dismissed in its entirety.

Costs

207 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party’s pleadings.

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

209 Article 184(4) of the Rules of Procedure provides that, where, without having brought the appeal itself, an intervener at first instance has participated in the written or oral part of the proceedings before the Court of Justice, the latter may decide that it is to pay its own costs. In the present case, the Kingdom of Spain, which was an intervener at first instance, participated, without being the author of the appeal, in the written and oral stages of the proceedings before the Court of Justice and requested that the Commission be ordered to pay the costs. The Kingdom of Spain must be ordered to bear its own costs.

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

1. **Dismisses the appeal;**

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

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

[Signatures]

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* Language of the case: Italian.