



Action brought on 15 January 2026 – Spain v Commission

(Case T-28/26)

(C/2026/1355)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Gavela Llopis, L. Aguilera Ruiz and S. Núñez Silva, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul Article 11 and Article 12 of Commission Decision C(2025)7357 of 6 November 2025 on the general provisions for implementing Article 27 of the Staff Regulations of Officials of the European Union and Article 12(1) of the Conditions of Employment of Other Servants of the European Union, in so far as they enable them to be implemented;
- Order the European Commission to pay the costs, in so far as it contests the present action.

Pleas in law and main arguments

In support of its action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of Article 9 TEU, Article 18 TFEU and Article 1d of the Staff Regulations, read in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union, in that the contested decision infringes the principle of equality and non-discrimination in access to public employment with the European Union, as expressed by non-discrimination on grounds of nationality and age. That infringement is not sufficiently justified and it is disproportionate.

The contested decision, by allowing preference to be given to a candidate on the basis of nationality in the final stage of the staff selection procedure (namely, the recruitment stage) in a situation where the candidates have equal merits, limits the chances of another candidate on that sole ground – nationality of another Member State that is more represented. (Measure (b) of Article 11 of the contested decision) lays down a discrimination on the ground of nationality.

Likewise, the introduction of the possibility of applying nationality-based recruitment targets (measure (d) of Article 11 of the contested decision) constitutes a more serious and obvious breach of the principles of equality and non-discrimination invoked. In this case, moreover, the indeterminate and rather generic nature of the wording of the measure would allow the Commission, in a largely discretionary manner, to approach recruitment procedures including selection procedures with the objective of benefiting candidates who are nationals of geographically under-represented Member States.

The Kingdom of Spain therefore takes the view that the Commission, by introducing such measures in Articles 11 and 12 of its decision, which make it possible to bring about a distinction which is manifestly inappropriate and disproportionate to the attainment of an objective, which is in principle legitimate, such as that of achieving geographical balance, has infringed Article 18 TFEU, read in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union, and Articles 1d and 21(1) of the Staff Regulations; those measures must therefore be annulled.

2. Second plea in law, alleging breach of the principle of merit for access to public employment, laid down in Article 27 of the Staff Regulations, the need to take effective measures to remedy a situation of geographical imbalance does not allow for derogation from, or erosion of, the principle of merit as a criterion for the recruitment of staff in the service of the European Union.

The contested decision, in so far as it establishes measures that give rise to a restriction consisting in conducting recruitment procedures on the basis of nationality criteria, or giving priority to nationals of a specific Member State in situations of equal merit, entails or, in any event, renders possible a breach of the principle of merit in the selection of staff.

The Kingdom of Spain considers that Articles 11 and 12 of the contested decision manifestly infringe Article 27 of the Staff Regulations in that they do not take into account criteria relating to the merits which candidates may present, but favour, at the time of their recruitment, their status as nationals of certain geographically under-represented Member States. That approach constitutes a failure to comply with the obligations which Article 27 imposes on the institutions in recruiting staff, which consist of taking into account criteria strictly related to merit and the interests of the service, and may result, de facto, in posts being reserved to certain nationalities.

The Kingdom of Spain also takes the view that geographical imbalances have very different origins and causes and therefore require the adoption of appropriate measures to remedy that situation; those measures do not consist in prioritising nationality as a determining criterion for recruitment, which, as stated in the first plea, infringes primary and secondary EU law and does not meet the proportionality test established by the Court of Justice in the field of restrictions to fundamental EU rules.
