Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber, Extended Composition)

3 March 2021 *

(Civil service – Officials – Promotion – Certification procedure – Exclusion of the applicant from the final list of officials entitled to take part in the training programme – Article 45a of the Staff Regulations – Action for annulment – Communication by registered letter – Article 26 of the Staff Regulations – Registered letter not collected by the person to whom it was addressed – Starting point of the period prescribed for instituting proceedings – Admissibility – Obligation to state reasons – Right to be heard – Principle of sound administration – Proportionality – Rules on the use of languages)

In Case T-723/18,

João Miguel Barata, residing in Evere (Belgium), represented by G. Pandey, D. Rovetta and V. Villante, lawyers,

applicant,

v

European Parliament, represented by J. Steele and I. Terwinghe, acting as Agents,

defendant,

APPLICATION under Article 270 TFEU seeking annulment of the decision of 23 July 2018, the act of 7 December 2017, the act of 21 December 2017, the letter of 1 March 2018, the letter of 22 March 2018 concerning the applicant's candidacy in the 2017 certification procedure and the notice of internal competition of 22 September 2017,

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed of R. da Silva Passos, President, V. Valančius, I. Reine, L. Truchot and M. Sampol Pucurull (Rapporteur), Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 1 July 2020,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 On 22 September 2017, the European Parliament published a call for applications ('the notice of competition') for the 2017 certification exercise, in order to select officials in the AST function group who were suitable for appointment to a post in the AD function group. On 27 September 2017, the applicant, Mr João Miguel Barata, who is an official of the Parliament, submitted an application.

2 On 7 December 2017, the appointing authority rejected that application as inadmissible, on the ground that it was not accompanied by the obligatory list of annexes ('the act of 7 December 2017').

3 On 13 December 2017, the applicant requested a further examination of his application.

4 On 21 December 2017, the appointing authority confirmed the act of 7 December 2017 ('the act of 21 December 2017').

5 On 2 February 2018, the applicant lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations').

6 By letter of 1 March 2018 ('the letter of 1 March 2018'), the appointing authority reiterated that the applicant was not allowed to participate in the 2017 certification procedure and informed him of the possibility of lodging an appeal with the Joint Certification Procedure Committee ('COPAC').

7 On 8 March 2018, the applicant lodged an appeal with COPAC.

8 By letter of 22 March 2018, COPAC indicated to the applicant that it had advised the appointing authority to reject that appeal ('the letter of 22 March 2018').

9 On 28 March 2018, the appointing authority confirmed the rejection of the applicant's application.

10 On 13 April 2018, the applicant lodged a complaint against the decision of 28 March 2018.

11 On 16 April 2018, the Parliament published the list of successful candidates.

12 On 23 July 2018, the appointing authority rejected the applicant's complaints and confirmed its decision not to allow him to participate in the procedure for the selection of officials suitable for appointment to a post in the AD function group ('the decision of 23 July 2018'). The Parliament communicated that decision by registered letter with acknowledgement of receipt, sent to the applicant's home address. On 25 July 2018, the Belgian postal service delivered that letter to the applicant's home address and, in the applicant's absence, left a notice of attempted delivery. As that letter was not collected by the applicant, the Belgian postal service sent it back to the Parliament on 9 August 2018.

13 On 28 August 2018, the Parliament sent an email to the applicant to which the decision of 23 July 2018 was annexed.

Procedure and forms of order sought

14 By application lodged at the Court Registry on 7 December 2018, the applicant brought the present action.

15 The defence, the reply and the rejoinder were lodged at the Court Registry on 25 February, 25 April, and 7 June 2019, respectively.

16 On 9 July 2019, the applicant lodged a request for a hearing.

17 Following a change in the composition of the General Court by decision of 18 October 2019, the President of the General Court, pursuant to Article 27(3) of the Rules of Procedure of the General Court, reallocated the case to a new Judge-Rapporteur, assigned to the Seventh Chamber.

18 On a proposal from the Seventh Chamber, the Court decided on 6 December 2019, under Article 28 of the Rules of Procedure, to refer the case to a chamber sitting in extended composition.

19 On a proposal from the Judge-Rapporteur, the Court (Seventh Chamber, Extended Composition) decided to open the oral part of the procedure and, by way of measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, put written questions to the parties. The parties replied to those questions within the period prescribed. The hearing, scheduled for 2 April 2020, was postponed to 1 July 2020.

20 The applicant claims that the Court should:

– annul the decision of 23 July 2018, the act of 7 December 2017, the act of 21 December 2017, the letter of 1 March 2018, the letter of 22 March 2018 and the notice of competition;

– order the Parliament to bear the costs.

21 The Parliament contends that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded, and

– order the applicant to pay all the costs.

Law

Admissibility

22 The Parliament raises two pleas of inadmissibility, alleging, first, that the application was brought out of time and, secondly, that the application does not comply with Article 76(d) of the Rules of Procedure.

The action being brought out of time

23 The Parliament maintains that the action is inadmissible as it was brought out of time. It states that it notified the decision of 23 July 2018 to the applicant by means of a registered letter with acknowledgement of receipt. On 25 July 2018, the postal service delivered that letter to the applicant's home address, in Brussels (Belgium), and, in his absence, left a notice of attempted delivery. As the applicant did not collect that letter before the expiry of the legally required period of retention by the postal services on 9 August 2018, the period for appeal started to run from that date and expired on 19 November 2018. The action, brought on 7 December 2018, was therefore brought out of time.

24 The applicant challenges the validity of the notification by post of the decision of 23 July 2018, which he claims was only made available to him when the Parliament sent it to him by email on 28 August 2018. He claims that, since the period for bringing an action began to run from that date, the action was not brought out of time.

25 It should be noted that the second paragraph of Article 25 of the Staff Regulations provides that 'any decision relating to a specific individual which is taken under [the] Staff Regulations shall at once be communicated in writing to the official concerned'. Since it does not prescribe the method or methods for communicating an individual decision 'in writing', that provision must be interpreted as meaning that the administration has several possibilities in that regard, including by electronic means (see, to that effect, judgment of 29 November 2018, *WL* v *ERCEA*, T-493/17, not published, EU:T:2018:852, paragraph 54).

26 Electronic means are not the only possible way of notifying administrative decisions. The administration may also use registered post with acknowledgement of receipt, a method expressly provided for in the third paragraph of Article 26 of the Staff Regulations, which states that 'the communication of any document to an official shall be evidenced by his signing it or, failing that, shall be effected by registered letter to the last address communicated by the official'. Due to the specific guarantees it offers both to the official and to the administration, the registered letter with acknowledgement of receipt is recognised as a reliable method of notification (see, to that effect, judgment of 29 November 2018, *WL* v *ERCEA*, T-493/17, not published, EU:T:2018:852, paragraph 61).

27 It follows from those factors that the administration is in principle free to choose the method which it considers most appropriate in the light of the circumstances of the case in order to notify a decision rejecting a complaint, since the Staff Regulations do not impose any order of priority between the various possible methods, such as electronic means or registered letter with acknowledgement of receipt.

28 Furthermore, it is important to recall that Article 91(3) of the Staff Regulations provides that an appeal is to be filed within three months from the date of notification of the decision taken in response to the complaint. Under Article 60 of the Rules of Procedure, 'the procedural time limits shall be extended on account of distance by a single period of 10 days'.

29 According to settled case-law, the periods for lodging complaints and bringing actions referred to in Articles 90 and 91 of the Staff Regulations are matters of public policy and cannot be left to the discretion of the parties or the Court, which must ascertain, of its own motion if need be, whether they have been complied with. Those periods meet the requirement of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (judgments of 7 July 1971, *Müllers* v *ESC*, 79/70, EU:C:1971:79, paragraph 18, and of 29 June 2000, *Politi* v *ETF*, C-154/99, EU:C:2000:354, paragraph 15).

30 It is for the party who is seeking to rely on the lateness of an application to demonstrate from which date the time limit, for the filing of that application, should run (judgment of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 70; see, to that effect, judgments of 5 June 1980, *Belfiore* v *Commission*, 108/79, EU:C:1980:146, paragraph 7, and of 29 November 2018, *WL* v *ERCEA*, T-493/17, not published, EU:T:2018:852, paragraph 59).

31 As regards actions in civil service matters brought on the basis of Article 270 TFEU, the case-law is also settled in that, for a decision to be duly notified, within the meaning of the Staff Regulations, it must not only have been communicated to its addressee, but the addressee must also have been able to have effective knowledge of its content (see, to that effect, judgments of 15 July 1976, *Jänsch* v *Commission*, 5/76, EU:C:1976:92, paragraph 10, and of 29 November 2018, *WL* v *ERCEA*, T-493/17, not published, EU:T:2018:852, paragraph 57).

32 It is also useful to recall that, under the sixth paragraph of Article 263 and the third subparagraph of Article 297(2) TFEU, the date to be taken into account for determining the starting point of the period prescribed for bringing annulment proceedings is the date of notification of the act in question where it specifies the person to whom it is addressed. A decision is properly notified if it is communicated to the person to whom it is addressed and the latter is put in a position to become acquainted with it. With regard to the latter condition, the Court considers that it is fulfilled when the person to whom a decision is addressed was in a position to become acquainted with the content of that decision and the grounds on which it is based (judgment of 21 March 2019, *Eco-Bat Technologies and Others* v *Commission*, C-312/18 P, not published, EU:C:2019:235, paragraphs 25 and 26).

33 In the present case, it is common ground that the applicant did not become aware of the content of the decision of 23 July 2018 until the Parliament communicated that decision to him by email on 28 August 2018. That date should therefore, in principle, be taken into account for the calculation of the time limit for bringing an action.

34 However, the Parliament contends that the time limit for bringing an action started to run at an earlier date. It considers that it is not the date on which the applicant actually took cognisance of the content of the decision of 23 July 2018 that must be taken into consideration, but the date on which the applicant was in a position to do so. It submits in that regard that, where notification is effected by registered letter with acknowledgement of receipt, it may be presumed that the person to whom a decision is addressed has been given the opportunity to acquaint himself or herself with its contents when the period for which the postal service keeps letters expires. In support of that assertion the Parliament refers to two decisions of the Civil Service Tribunal, the order of 16 December 2010, *AG* v *Parliament* (F-25/10, EU:F:2010:171), and the judgment of 30 January 2013, *Wahlström* v *Frontex* (F-87/11, EU:F:2013:10).

35 It is apparent from the grounds for those decisions of the Civil Service Tribunal that, where a decision is notified by registered letter, the person to whom it is addressed is deemed to have been notified of it on the basis of the signature which he or she places on the acknowledgment of receipt. However, it may be the case that the acknowledgement of receipt cannot be signed by the recipient where that person, who is not at his or her place of residence at the time when the postman calls, fails to take any action and, in particular, does not collect the letter within the period for which the postal service keeps letters. In such a case, the decision must be regarded as having been duly notified to the person to whom it is addressed on expiry of the period for which the postal service keeps the letter. If it were accepted that, by failing to take any action and, in particular, by not collecting the registered letter within that period, the recipient could prevent the proper notification of a decision by registered letter, the addressee would have a certain discretion in establishing the starting point of the period for initiating proceedings, although such a period may not be left to the discretion of the parties and must meet the requirements of legal certainty and the sound administration of justice (order of 16 December 2010, *AG* v *Parliament*, F-25/10, EU:F:2010:171, paragraphs 41 to 43, and judgment of 30 January 2013, *Wahlström* v *Frontex*, F-87/11, EU:F:2013:10, paragraphs 38 and 39).

36 It also follows from the case-law of the Civil Service Tribunal that the presumption that the person to whom a decision is addressed has received notification of that decision on expiry of the normal period for keeping registered letters by the postal services is not absolute. It is, on the contrary, rebuttable and subject to the validity of the notification. The Civil Service Tribunal held that the application of that presumption required proof by the administration of proper notification by registered letter, in particular through the leaving of a notice of attempted delivery at the last address supplied by the recipient. Moreover, the recipient may rebut this presumption by proving that he or she was prevented, in particular by reasons of illness or *force majeure* beyond his or her control, from being apprised in fact of the notice of attempted delivery (order of 16 December 2010, *AG* v *Parliament*, F-25/10, EU:F:2010:171, paragraph 44).

37 In the context of an appeal against a decision at first instance relating to an action based on Article 263 TFEU, the Court of Justice, in its judgment of 21 February 2018, *LL* v *Parliament* (C-326/16 P, EU:C:2018:83), set aside the order of 19 April 2016, *LL* v *Parliament* (T-615/15, not published, EU:T:2016:432), by which the General Court, having found that the action had been brought more than 17 months after notification of the contested measure, without the appellant having pleaded the existence of unforeseeable circumstances or *force majeure*, dismissed the action as manifestly inadmissible on the ground that it was out of time. In particular, the Court of Justice rejected the argument that the period for bringing an action after unsuccessful notification by registered letter began to run in that case from the expiry of the retention period applied by the Belgian postal service.

38 The Court of Justice stated that a decision is properly notified, within the meaning of the sixth paragraph of Article 263 and the third subparagraph of Article 297(2) TFEU, provided that it is communicated to the person to whom it is addressed and the latter is put in a position to become acquainted with it. It noted that, in particular, the third subparagraph of Article 297(2) TFEU enshrined a principle of legal certainty from which it follows that the rights and obligations arising from an individual administrative act may not be relied on against the addressee of that act until that act has been duly made known to him. Relying on that principle, the Court of Justice, having found that the letter notified had been returned to the sender without having been collected, noted that the person to whom it was addressed had received that letter as an attachment to an email from the Parliament. The Court of Justice stated that, in those circumstances, notification was not carried out solely by sending the registered letter. The Court of Justice held that, since the period of two months and ten days could not begin to run in respect of the addressee until the day on which he had full knowledge of that decision, the action brought before the General Court was admissible (judgment of 21 February 2018, *LL* v *Parliament*, C-326/16 P, EU:C:2018:83, paragraphs 46 to 56).

39 It must therefore be examined in the light of the judgment of 21 February 2018, *LL* v *Parliament* (C-326/16 P, EU:C:2018:83), whether the presumption of notification invoked by the Parliament is applicable to the present dispute. To that end, the Court invited the parties to give their views in writing on the appropriate conclusions to be drawn from that judgment and from the Opinion of the Advocate General. The parties expressed divergent views in writing and at the hearing.

40 The applicant considers, in essence, that that judgment casts doubt on the existence of a presumption of notification. He considers, in line with the view expressed, inter alia, in points 59 and 62 of the Opinion of Advocate General Szpunar in *LL* v *Parliament* (C-326/16 P, EU:C:2017:605), that that presumption is contrary to the principles of legal certainty, sound administration and the right to a judicial remedy guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

41 The Parliament maintains, on the contrary, that the application of the presumption of notification in the present case remains justified in the light of the fundamental differences between the legal and factual contexts of the present case and that which gave rise to the judgment of 21 February 2018, *LL* v *Parliament* (C-326/16 P, EU:C:2018:83). That judgment falls within the context of Article 263 TFEU, so that its effect does not extend to the present action based on Article 270 TFEU or to the Staff Regulations. The Parliament explains that, in the light of the autonomy of civil service law, a distinction must be made between those two litigation contexts. In view of the balance between the reciprocal rights and obligations that the Staff Regulations have created in relations between the appointing authority and its civil servants, the presumption of notification is justified and adapted to that particular context. In this respect, Parliament relies in particular on the mechanism of Article 20 of the Staff Regulations which allows the administration to avoid any irregularity in postal notification, since it knows the address of officials in active employment, who are obliged to communicate that address and to inform the administration immediately of any change to it. The Parliament points out that the circumstances giving rise to *LL* v *Parliament* (C-326/16 P, EU:C:2018:83) were not governed by the Staff Regulations and therefore did not offer equivalent guarantees. The Parliament rejects the

idea that the presumption of notification deprives officials of their right to a judicial remedy and considers that that presumption is favourable to them, since it delays the point from which time starts to run.

42 In order to determine whether, in the present case, the Parliament is entitled to rely on the presumption of notification laid down in the abovementioned decisions of the Civil Service Tribunal, it should first be noted that Article 91(3) of the Staff Regulations provides only that the three-month time limit for appeal runs from the day of notification of the decision taken in response to the complaint. It is, moreover, common ground that no provision in the Staff Regulations or in other EU regulatory instruments specifies that, in the event of unsuccessful notification of a registered letter, the point from which time starts to run for the calculation of the time limit for bringing proceedings is deferred until the expiry of the retention period for that letter by the postal service rather than the date on which the applicant actually became aware of the content of that letter.

43 In the absence of legislation setting out such a rule of law, reference should be made to the principle of legal certainty and the Charter, in particular the right to an effective remedy and to a fair trial, for the purposes of verifying the lawfulness of the presumption of notification at issue.

44 The first paragraph of Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. The second paragraph of Article 47 provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

45 According to the explanations relating to that article, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into account in interpreting it, the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

46 According to the case-law of the European Court of Human Rights on the interpretation of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, to which reference must be made in accordance with Article 52(3) of the Charter, the 'right to a court' is not absolute. The exercise of that right is subject to limitations, inter alia as to the conditions for the admissibility of an action. The rules on time limits for bringing actions are intended to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. While the persons concerned should expect those rules to be applied, the application of such rules should nevertheless not prevent litigants from availing themselves of an available legal remedy (see, to that effect, judgment of 28 February 2013, *Review of Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, paragraph 43; ECtHR, 13 March 2018, *Kuznetsov and Others v. Russia*, CE:ECHR:2018:0313JUD 005635409, § 40).

47 However, in accordance with the Court's settled case-law, Article 47 of the Charter is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to procedural time limits laid down by EU legislation (see order of 5 July 2018, *Müller and Others* v *QH*, C-187/18 P(I), not published, EU:C:2018:543, paragraph 24 and the case-law cited). The rights guaranteed by Article 47 of the Charter are in no way undermined by the strict application of EU rules concerning procedural time limits (see, to that effect, order of 11 June 2020, *GMPO* v *Commission*, C-575/19 P, not published, EU:C:2020:448, paragraph 40 and the case-law cited).

48 In the present case, the presumption of notification invoked by the Parliament is not based on any provision of the European Union's rules on procedural time limits. However, by its very nature, that presumption legally affects the person to whom the notified measure is addressed, since it determines the starting point of the period prescribed for instituting proceedings and, consequently, the admissibility of those proceedings. Since the objective of the rules on time limits for bringing

proceedings is to ensure the proper administration of justice by avoiding any discrimination or arbitrary treatment and to ensure, in particular, legal certainty, such a presumption of notification must, prior to its implementation, be brought to the attention of the persons concerned so that they may be informed of its modalities and reasonably foresee with sufficient precision what would be the consequences, for the purposes of calculating the time limits for bringing proceedings, of the failure to take delivery of a registered letter with acknowledgement of receipt.

49 It follows that, in the absence of legislative provisions specifically and predictably governing the determination of the point from which time starts to run for the calculation of the time limit for bringing proceedings in the event of failure to take delivery of a registered letter with acknowledgement of receipt in disputes under the Staff Regulations, the application by the institutions of Article 26 of the Staff Regulations in that context may not be sufficient to establish that the person concerned has been put in a position to acquaint himself or herself with the individual decision in question.

50 Indeed, it should be pointed out that, while communication by registered letter is provided for in Article 26 of the Staff Regulations in wording that has not changed since the adoption of that provision in 1962, the presumption of notification relied on by the Parliament is based on the application of national rules on the retention by the postal services of unclaimed registered letters. Moreover, almost sixty years have passed since the adoption of Article 26 of the Staff Regulations. The EU institutions, like the Member States' national administrations, are increasingly called upon to use electronic means of communication in their relations with citizens.

51 Where the relevant legislation currently in force is silent and, in particular, following the delivery of the judgment of 21 February 2018, *LL* v *Parliament* (C-326/16 P, EU:C:2018:83), legal certainty and the need to avoid any discrimination or arbitrary treatment in the interest of the proper administration of justice preclude the application, in the present case, of the presumption of notification asserted by the Parliament.

52 The Parliament cannot therefore maintain that the notification of the decision of 23 July 2018 is deemed to have taken place on the expiry of the retention period for the registered letter sent to the applicant's home address.

53 The Parliament also notified that decision by an email of 28 August 2018, receipt of which was immediately acknowledged by the applicant. The Parliament is therefore wrong to claim that only notification by registered letter must be taken into account for the purposes of calculating the time limit for bringing proceedings, even though that letter was not collected within the time period given by the Belgian postal services. It is not disputed that it was on 28 August 2018 that the applicant became fully aware of the decision of 23 July 2018. The period for bringing an action therefore started to run from 28 August 2018. Consequently, the present action, brought on 7 December 2018, is not out of time (see, by analogy, judgment of 21 February 2018, *LL* v *Parliament*, C-326/16 P, EU:C:2018:83, paragraphs 53 to 56). The plea of inadmissibility raised by the Parliament alleging that the appeal was brought out of time must therefore be rejected.

The application's non-compliance with Article 76(d) of the Rules of Procedure

54 The Parliament submits that the head of claim by which the applicant asks the Court to declare Article 90 of the Staff Regulations invalid and inapplicable in the present case is inadmissible. Although that head of claim can be read as a plea of illegality, the Parliament notes that it is not the subject of any further development in the application. The Parliament therefore considers that the plea of illegality should be declared inadmissible pursuant to Article 76(d) of the Rules of Procedure. The Parliament also challenges the admissibility of the fourth plea raised by the applicant, alleging infringement of the EU rules on the use of languages.

55 It must be recalled that, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to the procedure before the General Court in accordance with the first paragraph of Article 53 thereof, and Article 76(d) of the Rules of Procedure, all applications must contain 'the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law'. According to consistent case-law, in order to guarantee legal certainty and the sound administration of justice, that summary of the applicant's pleas in law must be sufficiently clear and precise to enable the defendant to prepare its defence and the competent court to rule on the action (see order of 25 September 2019, *EM Research Organisation* v *EUIPO*, C-728/18 P, not published, EU:C:2019:781, paragraph 8 and the case-law cited). A mere abstract statement of the pleas in law in the application does not satisfy those requirements.

56 In the present case, it should be noted that paragraphs 61 to 67 of the application contain a summary of the legal arguments by which the applicant challenges by his fourth plea, alleging infringement of the EU rules on the use of languages, the lawfulness of the notice of competition in the light of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 1958 L 17, p. 385), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 1) ('Regulation No 1'), and of the principle of equal treatment. That summary is sufficiently clear and precise to enable the Parliament to prepare its defence and the Court to exercise its power of review. The fourth plea must therefore be declared admissible.

57 With regard to the plea of illegality in respect of Article 90 of the Staff Regulations, it should be noted that the application, in an introductory section, defines the subject matter of the action in a sentence listing the measures the annulment of which is sought, namely, the acts of 7 December 2017 and 21 December 2017, the letters of 1 March 2018 and 22 March 2018, the decision of 23 July 2018 and the notice of competition.

58 After giving that list, the application contains the following sentence: 'as a preliminary matter, where appropriate, declare Article 90 of the Staff Regulations invalid and inapplicable in the present proceedings under Article 277 [TFEU]'.

59 That request is not supported by any arguments, in law or in fact, developed in the remainder of the application. The application therefore does not set out the essential elements of fact and law on which the request to declare Article 90 of the Staff Regulations unlawful, by way of a plea of illegality, is based.

60 In order to refute the Parliament's argument that there has been an infringement of Article 76(d) of the Rules of Procedure, the applicant sets out, in paragraphs 19 to 23 of his reply, several arguments seeking to demonstrate the unlawfulness of Article 90 of the Staff Regulations.

61 However, the applicant did not provide any justification for the late submission of such an argument.

62 In those circumstances, in the absence of any argument in the application in support of the plea of illegality in respect of Article 90 of the Staff Regulations, it must be held that the application does not satisfy the conditions laid down in Article 76(d) of the Rules of Procedure. Therefore, the application for a declaration that Article 90 of the Staff Regulations does not apply should be declared inadmissible.

Substance

63 In support of his action, the applicant relies on four pleas in law, alleging, first, infringement of the obligation to state reasons, secondly, infringement of the principles of proportionality and sound administration and of the rights of the defence, the right to be heard and Article 41 of the Charter, thirdly, infringement of the right to sound administration and, fourthly, infringement of Regulation No 1 and the principles of equal treatment and non-discrimination. The Court considers that it is appropriate to rearrange those pleas in order to examine in turn the complaints alleging, first, infringement of the obligation to state reasons, secondly, infringement of the right to be heard, of the rights of the defence and of Article 41 of the Charter, thirdly, infringement of the principles of sound administration and proportionality and, fourthly, infringement of the EU rules on the use of languages and of the principles of equal treatment and non-discrimination.

Infringement of the obligation to state reasons

64 The applicant submits that the decision of 23 July 2018 and the decisions that preceded it are vitiated by a manifestly insufficient statement of reasons. The Parliament failed to explain why it did not tell him that the list of annexes was missing from his application even though the deadline for applications had not expired. In the event that the Parliament's services had access to his evaluation grid, the applicant asks the Court to order the Parliament to produce those documents.

65 The Parliament disputes that contention.

66 The Court recalls that the obligation to state the reasons on which an act adversely affecting an individual is based, laid down, inter alia, in Article 25 of the Staff Regulations, is intended, first, to provide the person concerned with sufficient details to allow that person to assess whether the act is well founded or whether it is vitiated by an error which will allow its legality to be contested and, secondly, to enable the Court to review the legality of that act (judgments of 26 November 1981, *Michel* v *Parliament*, 195/80, EU:C:1981:284, paragraph 22, and of 28 February 2008, *Neirinck* v *Commission*, C-17/07 P, EU:C:2008:134, paragraph 50).

67 The reasons given for an act are sufficient when it is adopted in a context known to the official concerned, which enables that official to understand its scope (judgments of 1 June 1983, *Seton* v *Commission*, 36/81, 37/81 and 218/81, EU:C:1983:152, paragraph 48; of 12 November 1996, *Ojha* v *Commission*, C-294/95 P, EU:C:1996:434, paragraph 18, and order of 14 December 2006, *Meister* v *OHIM*, C-12/05 P, EU:C:2006:779, paragraph 89).

68 Moreover, the duty to state adequate reasons in decisions is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a measure consists in a formal statement of the grounds on which that decision is based. If those grounds contain errors, those errors will affect the substantive legality of the measure in question, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see judgment of 17 December 2015, *Italy* v *Commission*, T-295/13, not published, EU:T:2015:997, paragraph 122 and the case-law cited).

69 In the present case, the reasons that led to the rejection of the applicant's application were communicated to him in the act of 7 December 2017 and the reasons for the rejection of his complaints were set out in the decision of 23 July 2018. That decision expressly states that the reason for that rejection was that there was no list of annexes, as required. That decision refers, in that regard, to point 5.3 of the notice of competition and to the second part of the declaration signed by the applicant confirming that the applicant was informed that the application form had to be accompanied by that list, failing which it would be rejected. Those reasons are set out in clear, precise

and unambiguous terms, so as to enable the applicant to understand their scope, to assess whether to bring an action before the General Court and that court to review the legality of that decision. Therefore, the applicant's complaint that there had been an infringement of the obligation to state reasons must be dismissed as unfounded, without it being necessary to order measures of inquiry.

Infringement of the right to be heard

70 The applicant submits that the Parliament infringed the principles of respect for the rights of the defence and the right to be heard enshrined in the primary law of the European Union and in Article 41 of the Charter. The Parliament should have given him the right to express his views in writing before declaring his application inadmissible and allowed him to comment in writing on the grounds relied on for rejecting his complaint. The applicant could thus have attempted to convince the Parliament to review his file to ensure that it contained all the relevant documents and to point out all the inaccuracies concerning his assessment.

71 The Parliament disputes that argument.

72 Concerning the opportunity to comment in writing before the adoption of the decision of 23 July 2018, it should be recalled that the right to be heard in all proceedings, laid down in Article 41(2) of the Charter, which forms an integral part of respect for the rights of the defence, while being less extensive than those rights guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect that person's interests adversely (see, to that effect judgments of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraphs 34 and 36; of 24 April 2017, *HF* v *Parliament*, T-584/16, EU:T:2017:282, paragraphs 149 and 150, and of 14 December 2018, *UC* v *Parliament*, T-572/17, not published, EU:T:2018:975, paragraph 86).

73 The question of whether there is an infringement of the right to be heard must be examined in relation, inter alia, to the legal rules governing the matter concerned (see judgment of 9 February 2017, *M*, C-560/14, EU:C:2017:101, paragraph 33 and the case-law cited; judgment of 24 April 2017, *HF* v Parliament, T-584/16, EU:T:2017:282, paragraph 154).

74 However, a person who lodges a complaint against an act adversely affecting him or her under Article 90(2) of the Staff Regulations may not, in principle, properly claim that he or she has not been heard in the pre-litigation procedure, in so far as the very purpose of the complaint is to enable the person concerned to make observations (judgment of 14 December 2018, *UC* v *Parliament*, T-572/17, not published, EU:T:2018:975, paragraph 90; see, to that effect, order of 26 September 2019, *Barata* v *Parliament*, C-71/19 P, not published, EU:C:2019:793, paragraph 49, and judgment of 2 April 2020, *Barata* v *Parliament*, T-81/18, not published, EU:T:2020:137, paragraph 109).

75 Therefore, the argument by which the applicant criticises the Parliament for not having invited him to give his views in writing before declaring his application inadmissible and to formulate his observations on the grounds for the rejection of his complaint before the adoption of the decision of 23 July 2018 has no basis in law.

76 Furthermore, it is clear from the background to the dispute, as set out above, that the applicant requested a fresh examination of his application, lodged two complaints and lodged an appeal with COPAC. Thus, the applicant exercised his right to defend his interests at all stages of the pre-litigation procedure following the adoption of the act of 7 December 2017 rejecting his application as inadmissible. In the light of those factors, the applicant cannot reasonably claim that he did not have the opportunity to express his views in writing before his application was declared inadmissible and before the adoption of the decision of 23 July 2018 on the grounds for the rejection of his application.

77 The applicant's complaint alleging infringement of the right to be heard must therefore be rejected.

Infringement of the principles of sound administration and proportionality

78 The applicant criticises, in essence, the excessive formalism with which the Parliament rejected his application on the sole ground that there was no list of attachments. In the first place, the applicant complains that the Parliament infringed the principle of sound administration by failing to warn him and to allow him to complete his application form by providing the list of attachments before the deadline for the submission of applications and by failing to give him the opportunity to put his application form in order after that date. In the second place, the applicant complains that the Parliament infringed the principle of proportionality and committed an abuse of rights by declaring his application form inadmissible on a purely formal ground. According to the applicant, it would be absurd to consider that allowing him to put his application form in order infringes the equal treatment of candidates.

79 The Parliament disputes that argument.

80 The duty to have regard for the welfare of officials and the principle of sound administration reflect the balance of reciprocal rights and obligations established by the Staff Regulations in the relationship between the public authority and public servants and imply in particular that when the public authority takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that, when doing so, it should take into account not only the interests of the service but also those of the official concerned (judgment of 23 October 1986, *Schwiering* v *Court of Auditors*, 321/85, EU:C:1986:408, paragraph 18).

81 For competition procedures, it is, as a general rule, for the candidate in a competition to provide the selection board with all the information and documents that candidate regards as necessary for the purposes of examining his or her application in order to enable the selection board to determine whether that candidate fulfils the conditions laid down by the competition notice, all the more so if he or she has been expressly and formally requested to do so (judgment of 12 December 2018, *Colin* v *Commission* T-614/16, not published, EU:T:2018:914, paragraph 48; see, to that effect, judgment of 12 July 1989, *Belardinelli and Others* v *Court of Justice*, 225/87, EU:C:1989:309, paragraph 24).

82 The balance of the reciprocal rights and obligations between the administration and the candidate requires, first of all, that the latter should read attentively and carefully the provisions in a notice of competition which is perfectly clear, precise and unconditional (judgment of 20 June 1990, *Burban* v *Parliament*, T-133/89, EU:T:1990:36, paragraph 33).

83 As for the administration, it is settled case-law that in order to ascertain whether the conditions of admission have been satisfied, the selection board is entitled to take account only of the information provided by candidates in their application and of the documents which they are required to produce (judgments of 23 January 2002, *Gonçalves* v *Parliament*, T-386/00, EU:T:2002:12, point 74, and of 25 March 2004, *Petrich* v *Commission*, T-145/02, EU:T:2004:91, paragraph 45). Thus, a selection board is not required to make enquiries in order to ascertain whether the applicant satisfies all the conditions of the notice of competition (judgments of 21 November 2000, *Carrasco Benítez* v *Commission*, T-214/99, EU:T:2000:272, paragraph 77, and of 25 March 2004, *Petrich* v *Commission*, T-145/02, EU:T:2004:91, paragraph 49). It is not for a selection board, in the presence of incomplete or ambiguous documents, to contact the candidate for the purpose of clarifying those omissions and ambiguities (judgments of 21 May 1992, *Almeida Antunes* v *Parliament*, T-54/91, EU:T:1992:65, paragraph 36, and of 6 November 1997, *Wolf* v *Commission*, T-101/96, EU:T:1997:171, paragraph 64).

84 Thus, when clear provisions in a notice of competition unequivocally require candidates to enclose supporting documents with their application form, a candidate's failure to comply with that obligation cannot enable or, a fortiori, oblige the selection board or the appointing authority to act contrary to that notice of competition (judgments of 31 March 1992, *Burban* v *Parliament*, C-255/90 P, EU:C:1992:153, paragraph 12; of 23 January 2002, *Gonçalves* v *Parliament*, T-386/00, EU:T:2002:12, paragraph 74, and of 25 March 2004, *Petrich* v *Commission*, T-145/02, EU:T:2004:91, paragraph 49). In such a situation, failure to submit the required documents is therefore a valid ground for non-admission to the competition.

85 On the other hand, if the terms of the notice of competition are vague or ambiguous, the administration is then obliged to exercise its discretion, taking into account the candidate's interests, in accordance with the duty to have regard for the welfare of the staff and the principle of sound administration. That is the case, for example, where a competition notice does not specify the formal requirements to be met by the required supporting documents. Thus, where the instructions contained in the notice of competition merely lay down, in respect of the submission of applications, that documentary evidence of the candidates' education should be produced, but where it is also stated that candidates should provide certified true copies of diplomas or educational qualifications, the Court held that that only amounted to 'practical advice to candidates, to whom any documents produced [were] not returned'. In such circumstances, it is for the selection board to determine whether the documents produced by a candidate are such as to justify that candidate being allowed to enter for the competition to be held (judgment of 25 April 1978, *Allgayer* v *Parliament*, 74/77, EU:C:1978:89, paragraph 4).

86 The Court has, moreover, accepted that, where a notice of competition refers, without further specification, to the concept of 'supporting documents', and the selection board interprets those words strictly as meaning an 'original or certified photocopy', it cannot, without disregarding the principles referred to in paragraphs 80 and 85 above, reject an applicant on the ground that he has provided only photocopies, without giving the applicant the opportunity to produce additional documents capable of regularising his application (judgment of 23 October 1986, *Schwiering* v *Court of Auditors*, 321/85, EU:C:1986:408, paragraph 20). In such circumstances, the selection board had to allow the candidate to submit certified photocopies instead of the simple photocopies initially submitted.

87 By similar reasoning, the General Court held that, where a competition notice does not specify that the candidate must produce documents establishing sufficient knowledge of an official language of the European Union, on pain of being refused admission to the competition, the selection board could not reject an application form accompanied by a declaration on honour as to the candidate's language level on the ground that that application form was not accompanied by supporting documents (judgment of 19 July 1999, *Varas Carrión* v *Council*, T-168/97, EU:T:1999:154, paragraphs 45 to 57). The General Court has also held that the equivocal nature of a document in support of a diploma could not, on its own, allow the selection board to reject an application without taking into account the statements provided by the candidate in his or her application form and the relevant aspects of the law of the Member State in which the diploma was awarded (judgment of 12 December 2018, *Colin* v *Commission*, T-614/16, not published, EU:T:2018:914, points 44 to 66).

88 Those firmly established principles of case-law are applicable to a certification procedure such as that at issue in the present case.

89 In the present case, point 5.3 of the notice of competition required candidates to provide 'a list of documents, which numbers and briefly describes each supporting document annexed to the application' and expressly provided that failure to comply with that condition would result in the rejection of the application.

90 That condition is also reiterated in the application form, which contained the following statement:

'2. I am aware that my application will be rejected if I fail to fill in all the sections of this application form and to submit it, within the prescribed deadline, with all the supporting documents required, including a list of documents which numbers and briefly describes each supporting document annexed to the application (point 5 of the call for applications)'.

91 That text is found at the very end of the application form and immediately precedes the space reserved for the candidate's signature. It appears under the heading 'Declaration', printed in capital letters in bold, so that it cannot escape the attention of the reader. The applicant signed that declaration.

92 It follows from those considerations that the terms of the notice of competition and the application form were clear, precise and unambiguous. When signing the application form, the applicant could not have been unaware that the absence of a list of supporting documents would result in the rejection of his application.

93 In those circumstances, in accordance with the case-law referred to in paragraph 84 above, the Parliament was not required under the duty to have regard for the welfare of officials or the principle of sound administration to warn the applicant of the defect in his application form or to invite him to rectify that situation. Before the expiry of the time limit for submitting application forms, the applicant could regularise his application form by replacing his initial application form with a complete file, containing the required list of annexes. In the present case, as the applicant had submitted his application form on 27 September 2017, he still had nine days to regularise the application. By contrast, after the time limit for submitting application forms had expired on 6 October 2017, compliance with the terms of the notice of competition and the principle of equal treatment did not permit the Parliament to invite a candidate to regularise an application form that did not contain the required list of annexes.

94 In order to respond to the applicant's argument that such an interpretation of the rules governing the certification exercise at issue is disproportionate in the light of the seriousness of the consequences of the rejection of an application in relation to the purely formal nature of the missing list of annexes, it should be recalled that the principle of proportionality requires that the measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; where a choice is available between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (order of 14 December 2006, *Meister* v *OHIM*, C-12/05 P, EU:C:2006:779, paragraph 68, and judgment of 5 March 2019, *Pethke* v *EUIPO*, T-169/17, not published, EU:T:2019:135, paragraph 122).

95 Taking into account, first, the broad discretion which can be inferred from Article 45a of the Staff Regulations which establishes the certification procedure and, secondly, the broad discretion which, according to the settled case-law of the Court, is accorded to the EU institutions in organising their services and, in particular, in determining the procedure and conditions of competitions and in assessing and comparing the merits of applications in the context of any selection procedure, the General Court's review in that field must be limited to the question whether, in the light of the factors which the administration relied on to establish its assessment, the administration has remained within the bounds of its discretion and did not use its power in a manifestly erroneous manner or for purposes other than those for which it had been conferred on it (see, to that effect, judgments of 9 October 2008, *Chetcuti* v *Commission*, C-16/07 P, EU:C:2008:549, paragraph 76 and the case-law cited, and of 11 November 2003, *Faita* v *CES*, T-248/02, EU:T:2003:298, paragraph 71 and the case-law cited).

96 It is therefore for the Court to examine whether the rule set out in point 5.3 of the notice of competition, according to which all applications had to be accompanied by a list of annexes, failing which they would be rejected, and on which the rejection decision is based, meets the abovementioned criteria.

97 It is necessary to examine whether that rule pursues a legitimate objective. The Parliament, in its written submissions and during the hearing, maintained, in essence, that that rule had two objectives. The main objective was to facilitate the administrative processing of application forms. The secondary objective was to determine the candidates' ability to follow clear and unambiguous instructions.

98 In that regard, it should be recalled that the certification procedure at issue was intended to select officials in the AST function group in order to enable them to access posts as administrators, in accordance with the procedure laid down in Article 45a of the Staff Regulations. The scale of the administrative tasks to be carried out in a fairly short space of time in order to ensure the smooth running of a certification procedure may justify the administration requiring the submission of a checklist enabling all the information and documents produced in support of each application to be determined. Furthermore, given the very nature of the certification procedure, it must be acknowledged that it is not unreasonable to expect candidates who wish to become administrators to show sufficient rigour and attention in following the instructions resulting from the clear, precise and unambiguous wording of the notice of competition.

99 Therefore, the objectives invoked by the Parliament, namely to manage the applications effectively and to determine the ability of candidates to follow clear, precise and unambiguous instructions, must be regarded as legitimate objectives in the light of the purpose of the certification procedure.

100 It must also be ascertained whether, within the discretion afforded to the administration for organising a certification procedure, the means used to achieve those objectives are appropriate and necessary.

101 In that regard, a checklist of supporting documents provides the administration, in summary form, with an overview of all the documents submitted in support of each application. The Parliament has rightly insisted, in this respect, on the variety of those documents, particularly from a linguistic perspective, on account of the diverse nationalities of the candidates. It should also be noted that such a certification procedure is of interest to a large number of candidates. It is true that, because of its internal nature, that procedure concerns a number of candidates which may seem relatively modest compared with recruitment competitions which sometimes attract several thousand candidates. Nevertheless, the potential number of candidates expected in such a recruitment procedure is far from negligible. The time constraints inherent in such a selection procedure must also be noted. That selection procedure was closed 190 days after the deadline for submitting applications by the publication of the list of successful candidates.

102 Having regard to the varied contents of the files, the number of candidates and the time constraints, the obligation to provide a list of supporting documents appears to be an appropriate means of contributing to the proper management of the certification procedure. Such a requirement cannot be regarded as placing an excessive or unreasonable burden on the candidates. The notice of competition drew the candidates' attention to the importance of complying with that requirement in clear, precise and unambiguous terms, which cannot be regarded as contrary to the duty to have regard for the welfare of officials.

103 By providing that failure to provide that list would result in rejection of the application form, the rule set out in point 5.3 of the notice of competition is intended to encourage candidates to comply with that requirement. It is true that, since the list has a purely administrative function, its absence is not an obstacle to the assessment of the candidates' individual merits, as may be the case where, for example, documentary evidence of a level of qualification or training is missing. However, without such a rule, candidates would have less incentive to check carefully that their applications are in good

order. Apart from the fact that the absence of such a rule could lead in practice to an increased burden on the administration, it would, from a legal perspective, give rise to ambiguity as to whether such an omission may be rectified.

104 Consequently, in adopting the decision rejecting the applicant's application on the basis of the rule set out in point 5.3 of the notice of competition, the Parliament used its discretion within reasonable limits and did not use its power in a manifestly incorrect way or for purposes other than those for which it had been conferred on it.

105 It follows from the foregoing that the applicant's complaint alleging the infringement of the principles of sound administration and proportionality is unfounded and must therefore be rejected.

Infringement of the rules on the use of languages established by Regulation No 1

106 The applicant maintains that, by not using Portuguese in the decision of 23 July 2018 and in the notice of competition for the 2017 certification procedure, the Parliament infringed the provisions of Regulation No 1. He claims that, although the case-law allows for the use of a few specific languages in case of specific and proven need of the service, that is subject to the adoption of rules of procedure in accordance with Article 6 of Regulation No 1 (judgments of 27 November 2012, *Italy* v *Commission*, C-566/10 P, EU:C:2012:752, and of 24 September 2015, Italy and *Spain* v *Commission*, T-124/13 and T-191/13, EU:T:2015:690). In the absence of such a regulation, no derogation from the rules on the use of languages was possible.

107 The applicant was thus discriminated against in comparison with his colleagues whose mother tongue is English, German or French. The applicant states that the present plea in law must be understood as a plea of illegality in respect of the notice of competition in so far as he could not, at an earlier stage, directly contest that act in the absence of a direct and individual interest.

108 Furthermore, the applicant claims that, although his complaint was drafted in Portuguese, the Parliament replied in English without providing a translation.

109 The Parliament disputes that argument.

110 Without it being necessary to rule on whether, in the absence of special regulations applicable to officials and staff, and in the absence of provisions in this respect in the institutions' rules of procedure, relations between those institutions and their officials and staff are excluded from the scope of Regulation No 1, it should be recalled that, in accordance with Article 2 of that regulation, which corresponds in substance to the fourth paragraph of Article 24 TFEU and Article 41(4) of the Charter, documents sent to the institutions of the European Union by a person subject to the jurisdiction of a Member State may be drafted in any one of the official languages referred to in Article 1 of that regulation selected by the sender, and the institution's reply must be drafted in that language. As an essential component of respect for the linguistic diversity of the Union, the importance of which is recalled in the fourth subparagraph of Article 3(3) TEU and Article 22 of the Charter, the right for those persons to choose, from among the official languages of the Union, the language to be used in exchanges with the institutions, such as the European Parliament, is fundamental in nature (judgment of 26 March 2019, *Spain* v *Parliament*, C-377/16, EU:C:2019:249, paragraph 36).

111 However, as is apparent from the case-law of the Court, it cannot be inferred from the European Union's obligation to respect linguistic diversity that there is a general principle of law entitling each person to have everything likely to affect his or her interests drafted in his or her language in all

circumstances, and that the institutions are required, without any derogation being permissible, to use all the official languages in all situations (see judgment of 26 March 2019, *Spain* v *Parliament*, C-377/16, EU:C:2019:249, paragraph 37 and the case-law cited).

112 In particular, in the specific context of EU staff selection procedures, the Court has held that the institutions cannot be required to comply with obligations going beyond the requirements laid down in Article 1d of the Staff Regulations (see judgment of 26 March 2019, *Spain* v *Parliament*, C-377/16, EU:C:2019:249, paragraph 39 and the case-law cited).

113 It follows from Article 1d(1) and the first sentence of Article 1d(6) of the Staff Regulations that, although it is not excluded that the interests of the service may justify restricting the choice of languages of communication between candidates and the administration to a limited number of official languages which are the most widely known in the European Union, such a restriction must nevertheless be based on elements which are objectively verifiable, both by candidates and by the Courts of the European Union (see, to that effect, judgment of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraph 124 and the case-law cited).

114 In the context of a notice of competition reserved to officials and staff employed in an institution, the requirement of knowledge of certain languages may be justified in the light of the internal nature of that competition, as candidates are in a position to understand the reasons for the languages required for the tests and the Court is able to review the choice of those languages (see, to that effect, judgments of 27 November 2012, *Italy* v *Commission*, C-566/10 P, EU:C:2012:752, paragraph 92, and of 5 April 2005, *Hendrickx* v *Council*, T-376/03, EU:T:2005:116, paragraphs 33 and 34).

115 Those principles are applicable in the case of a document addressed to all candidates in a certification procedure, such as that at issue in the present case, which is reserved solely for officials who have at least six years' seniority (see, to that effect, judgment of 20 November 2008, *Italy* v *Commission*, T-185/05, EU:T:2008:519, paragraph 132).

116 It should be recalled that the certification procedure is provided for in Article 45a of the Staff Regulations which states, in paragraph 1, that an official in function group AST may, from grade 5, be appointed to a post in function group AD.

117 In the present case, it is clear from the notice of competition that, in accordance with Article 4 of the Decision of the Bureau of the Parliament of 26 September 2005 laying down general implementing provisions relating to the certification procedure, candidates had, inter alia, to have at least six years' seniority in the AST function group. It should be noted that Article 3 of that decision states that calls for applications launched pursuant to that provision must mention the importance for candidates to have an adequate command of at least one of the languages in which the training programme and tests referred to in Articles 5 and 6 of that decision are held.

118 On that basis, the notice of competition referred to the importance of such an adequate command and stressed that the training programmes and tests would be conducted in French and English. The notice of competition also stated that COPAC was to invite the candidates with the highest scores for an interview in order to evaluate their language skills in English or French, the languages used for the training programme referred to in Article 45a(1) of the Staff Regulations.

119 Furthermore, it is important to bear in mind that it is for the administration, which sends an individual decision to an official or other staff member, to word it, in accordance with its duty to have regard for the welfare of officials, in a language of which he or she has a thorough knowledge so as to be able effectively and easily to acquaint himself or herself with its content (see, to that effect, judgments of 23 March 2000, *Rudolph* v *Commission*, T-197/98, EU:T:2000:86, paragraphs 44 and 46, and of 5 October 2005, *Rasmussen* v *Commission*, T-203/03, EU:T:2005:346, paragraphs 61 and 64).

120 The fact that documents sent by the administration to one of its officials are drafted in a language other than that official's mother tongue does not constitute any infringement of that official's rights if he or she has a command of the language used by the administration which enables that official to acquaint himself or herself effectively and easily with the content of the documents in question. Thus, the notification of a decision rejecting a complaint in a language which is neither the mother tongue of the official or staff member concerned nor that in which the complaint was drafted may be regarded as lawful provided that the official concerned was able to have effective knowledge of it (see, to that effect, judgments of 23 March 2000, *Rudolph* v *Commission*, T-197/98, EU:T:2000:86, paragraphs 44 and 45; of 7 February 2001, *Bonaiti Brighina* v *Commission*, T-118/99, EU:T:2001:44, paragraph 17, and of 7 February 2019, *Duym* v *Council*, T-549/17, not published, EU:T:2019:72, paragraph 110).

121 It is apparent from the documents before the Court that the applicant indicated in his application form that he had a 'very good' level of English, which was the highest of the three classifications offered to the candidates. He also signed the declaration at the end of the application form, which was in English (see paragraph 90 above). The applicant drafted the complaint of 2 February 2018 in English, which was dealt with in the decision of 23 July 2018 together with the complaint of 13 April 2018. In addition, the applicant drafted other documents in that language concerning the certification exercise which is the subject of these proceedings, in particular his application of 27 September 2017 and the appeal of 8 March 2018 lodged with COPAC. It also appears from the file that the applicant used English in his electronic communications with the administration to request a re-examination of his application file on 13 December 2017 and to forward the complaint of 13 April 2018. In that regard, it should be pointed out that the applicant, in an email written in English and sent on 13 December 2017 to the appointing authority, expressly stated that he had committed an error by omitting to forward the list of supporting documents in respect of his application, without, however, seeking to excuse that error on account of linguistic difficulties which prevented him from understanding the terms of the notice of competition.

122 The certification procedure at issue in the present case was not an external competition which had to be published in the *Official Journal of the European Union* in all the official languages and which was open to all citizens of the European Union, but an internal competition reserved for certain officials with more than six years' service. It is therefore without infringing the abovementioned principles governing the EU rules on the use of languages that the Parliament was able to refrain from publishing the notice of competition in Portuguese. It was also without disregarding those principles that, in that notice, the Parliament requested the applicant to communicate with it in a language other than Portuguese and to have an adequate command of English or French. It follows from the foregoing considerations that the plea of illegality based on the infringement of Regulation No 1 must be rejected.

123 The applicant's arguments criticising the drafting of the decision of 23 July 2018 in English and the fact that there was no translation into Portuguese are therefore unfounded and must, therefore, be rejected.

124 Since all the complaints directed against the decision rejecting the applicant's application have been rejected on the merits in the light of the other acts and letters the annulment of which is sought in the present case, without it being necessary to rule on the admissibility of the applications for annulment directed against those acts and letters, the action is dismissed in its entirety.

Costs

125 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

126 Since the Parliament has applied for costs against the applicant and the latter has been unsuccessful, the applicant must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders João Miguel Barata to pay the costs.

Da Silva Passos Valančius Reine

Truchot Sampol Pucurull

Delivered in open court in Luxembourg on 3 March 2021.

E. Coulon
Registrar

S. Papasavvas
President