



Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 25 July 2018¹

Case C-377/16

Kingdom of Spain

v

European Parliament

(Call for expressions of interest — Contract staff — Drivers — Charter of Fundamental Rights of the European Union — Articles 21 and 22 — Regulation No 1 — Articles 1, 2 and 6 — Use of languages by the EU institutions — EU Staff Regulations — Article 1d — Conditions of Employment of Other Servants — Article 82 — Discrimination based on language)

1. By this action brought under Article 263 TFEU, Spain seeks the annulment of a call for expressions of interest by the European Parliament for candidates to be recruited as drivers ('the call for candidates'). Spain alleges in particular that the call for candidates infringed the rules governing the use of languages by the EU institutions laid down in Regulation No 1² as regards communications between candidates and the European Personnel Selection Office ('EPSO') and that its provisions governing the requirement for candidates to have English, French or German as a second language amounted to discrimination prohibited both by the Charter of Fundamental Rights of the European Union³ and by the EU Staff Regulations and Conditions of Employment of Other Servants.⁴

2. The Parliament rejects those allegations and contends that the Court should dismiss the action.⁵

¹ Original language: English.

² 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(I), p. 59), as amended.

³ OJ 2010 C 83, p. 389 ('the Charter').

⁴ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ, English Special Edition 1959-1962(I), p. 135), as amended; ('the Staff Regulations').

⁵ See also, as regards allegations of a similar nature, Case C-621/16 P, *Commission v Italy*, currently pending before the Court. A number of issues raised in that case are identical or similar to those that arise in the present one. My colleague Advocate General Bobek will be delivering his Opinion in that case on 25 July 2018.

3. In a European Union whose motto is ‘*in varietate concordia*’ and in which freedom of movement is a fundamental right, the role of languages can assume particular importance.⁶ Nonetheless, if the European project is to advance, it must recognise the practical realities of the world as it exists and that is particularly so where there are now 552 possible combinations between any two of the 24 official languages.⁷ It is with that issue that this Opinion is essentially concerned.

Legal framework

The Treaty on the European Union

4. Article 3(3) TEU provides, so far as relevant to this Opinion:

‘...

[The European Union] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.’

The Treaty on the Functioning of the European Union

5. Article 24 TFEU provides:

‘...

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union [⁸] in one of the languages mentioned in Article 55(1) of the Treaty on European Union [⁹] and have an answer in the same language.’

6. According to Article 342 TFEU:

‘The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.’

The Charter

7. Article 21(1) of the Charter states:

‘Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.’

⁶ See, in that regard, judgment of 11 July 1985, *Mutsch*, 137/84, EU:C:1985:335, paragraph 11. For an erudite and entertaining analysis of the linguistic and cultural background to languages within the European Union, see Dorren, G., *Lingo — A language spotter’s guide to Europe*, Profile Books, London, 2014.

⁷ These currently comprise 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. See Article 1 of Regulation No 1, as amended most recently 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).

⁸ These include the Parliament.

⁹ The languages in question are identical to those set out in footnote 7 above.

8. According to Article 22 of the Charter:

‘The Union shall respect cultural, religious and linguistic diversity.’

Regulation No 1

9. By Regulation No 1, the Council exercised the power given to it by what is now Article 342 TFEU to lay down rules governing, inter alia, the use of languages by and within the institutions of the European Union. In the version currently in force, that regulation states:

‘1. The official languages and the working languages of the institutions of the 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.

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

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

4. Regulations and other documents of general application shall be drafted in the official languages.

5. The *Official Journal of the European Union* shall be published in the official languages.

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

7. The languages to be used in the proceedings of the Court of Justice shall be laid down in its rules of procedure.

8. If a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law.’

The EU Staff Regulations and the Conditions of Employment of Other Servants

10. Article 1 of the Staff Regulations provides:

‘These Staff Regulations shall apply to officials of the Union.’

11. By virtue of Article 1a(1):

‘For the purposes of these Staff Regulations, “official of the Union” means any person who has been appointed, as provided for in these Staff Regulations, to an established post on the staff of one of the institutions of the Union by an instrument issued by the Appointing Authority of that institution.’

12. Article 1d provides:

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

...

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

13. Article 5(1) of the Staff Regulations states that the posts covered by those regulations are to be classified according to the nature and importance of the duties to which they relate. Article 5(4) provides that a table showing the types of posts is set out in Annex I.

14. Chapter 1 of Title III of the Staff Regulations is entitled ‘Recruitment’ and comprises Articles 27 to 34. Article 27 provides:

‘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.

...’

15. According to Article 28:

‘An official may be appointed only on condition that:

...

(f) he 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 duties.’

16. Annex III to the Staff Regulations is entitled ‘Competitions’. It contains a number of detailed provisions concerning the manner in which competitions for the recruitment of officials are to be organised.

17. Appended to the Staff Regulations is a document entitled ‘Conditions of Employment of Other Servants of the European Union’ (‘the CEOS’). Article 1 of those conditions provides that servants engaged under contract by the European Union are to include ‘contract staff’.

18. Article 3a(1) of the CEOS states:

‘For the purposes of these Conditions of Employment, “contract staff” means staff not assigned to a post included in the list of posts appended to the section of the budget relating to the institution concerned and engaged for the performance of full-time or part-time duties: (a) in an institution to carry out manual or administrative support service tasks ...’

19. According to Article 3b of the CEOS:

‘For the purposes of these Conditions of Employment, “contract staff for auxiliary tasks” means staff engaged in an institution ...:

...

(b) to replace, after the possibilities of temporary posting of officials within the institution have been examined, certain persons who are unable for the time being to perform their duties ...’

20. Article 80 of the CEOS contains a number of general provisions relating to contract staff. In particular, paragraph 1 provides for those staff to be subdivided into four function groups corresponding to the duties to be performed. By virtue of paragraph 2, the duties applying to function group I are described as being ‘manual and administrative support service tasks, performed under the supervision of officials or temporary staff’. Paragraph 4 provides that, *inter alia*, Article 1d of the Staff Regulations is to apply by analogy.

21. Chapter 3 of the CEOS is entitled ‘Conditions of Engagement’ and comprises Articles 82 to 84. So far as relevant to this case, Article 82 provides:

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

...

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

...

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

...

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

...’

22. Article 85(1) of the CEOS provides:

‘The contracts of contract staff referred to in Article 3a may be concluded for a fixed period of at least three months and not more than five years. They may be renewed not more than once for a fixed period of not more than five years. The initial contract and the first renewal must be of a total duration of not less than six months for function group I and not less than nine months for the other function groups. Any further renewal shall be for an indefinite period.

...’

23. Article 88 provides:

‘In the case of contract staff referred to in Article 3b:

- (a) contracts shall be concluded for a fixed period; they shall be renewable;
- (b) the actual period of employment within an institution, including any period under renewal, shall not exceed six years.’

Facts, procedure and form of order sought

24. On 11 April 2016, the Bureau of the Parliament resolved, having regard to recent terrorist attacks in Brussels,¹⁰ that the Members’ transport service should be provided entirely using in-house resources. It was that decision that led to the publication by the Parliament, on 14 April 2016, of a call for expressions of interest headed ‘Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016’ in the *Official Journal of the European Union*.¹¹ The purpose of the call for candidates was to establish a database of candidates for recruitment as contract staff members in function group I. Section I of the call for candidates (entitled ‘Introduction’) stated that the number of posts available was approximately 110. It added that the job description was that of ‘driver’ and that the posts were to be based mainly in Brussels.

25. Section II of the call for candidates, entitled ‘Job Description’, stated:

‘Under the supervision of an official or temporary staff member, the contract staff member will be responsible for performing duties as a driver. For guidance, those duties will include:

- providing transport services for eminent persons and officials and other staff of the European Parliament, mainly in Brussels, Luxembourg and Strasbourg, and also in other Member States and third countries,
- providing transport services for visitors (members of the diplomatic corps and other eminent persons),
- transporting goods and documents,
- transporting mail,
- ensuring that the vehicle and its equipment are used properly,
- guaranteeing the safety of persons and goods transported, in keeping with the highway code of the country in question,
- if necessary, loading and unloading vehicles,
- if necessary, carrying out administrative and logistical support work.

...’

10 On the morning of 22 March 2016, three coordinated suicide bombings had occurred in Belgium. Of these, two had taken place at Zaventem Airport, and one at Maalbeek metro station in central Brussels. 32 civilians and 3 perpetrators were killed and more than 300 people were injured.

11 OJ 2016 C 131A, p. 1. The call for candidates was published in all the official languages.

26. Section IV of the call for candidates was entitled ‘Eligibility’. Part C of that section concerned the candidates’ knowledge of languages. It required that candidates have a knowledge of two official languages of the European Union. As regards what it termed the ‘main language’, it stated that candidates should have a thorough knowledge (at least level C1) of one of the 24 official languages. In relation to the second language, it required a ‘satisfactory knowledge (level B2)’ of English, French or German.¹²

27. As regards the justification for the limitation of the choice of second language, Part C of Section IV stated as follows:

‘Following the judgment handed down by the Court of Justice of the European Union (Grand Chamber) in Case C-566/10 P, *Italy v Commission*, the European Parliament must state the reasons for limiting the choice of the second language in the context of this call for expressions of interest to a small number of official EU languages.

Candidates are thus informed that the three second-language options for this call for expressions of interest, i.e. English, French and German, have been laid down in the interests of the service, which require newly recruited staff to be immediately operational and able to communicate effectively in their daily work.

It has long been the practice to use mainly English, French, and German for internal communication in the European Parliament, and these are also the languages most often needed when communicating with the outside world and in performing day-to-day work. Furthermore, in staff reports for 2013, 92%, 84% and 56% of all staff stated that they had a satisfactory knowledge of English, French and German respectively. For no other official language did that figure exceed 50%.

Therefore, in balancing the interests of the service and the needs and abilities of candidates, and given the specific area in which this selection procedure is being held, the European Parliament is entitled to require knowledge of one of those three languages to ensure that, whatever their first official language, all candidates are proficient in at least one of them.

In addition, in the interests of equality of treatment, all candidates, even if they have one of those three languages as their first official language, are required to have a satisfactory knowledge of a *second* language, which must be one of those three languages.

The assessment of specific skills enables the European Parliament to judge whether the candidates can be immediately operational in an environment similar to that in which they will be required to work.’

28. The call for candidates contained a number of references to EPSO.¹³ In particular, Section III of the call stated that the selection procedure would be ‘administered by the European Parliament in cooperation with EPSO’ and Section VI required candidates to apply online via the EPSO website.

29. Section VIII of the call for candidates provided that the names of the 300 candidates who had obtained the highest number of points by the end of the selection procedure and who met the general and specific conditions laid down in the call for candidates were to be entered in the database of candidates for recruitment.

¹² The specified language levels are based on the Common European Reference Framework for Languages. See points 45 to 47 below.

¹³ EPSO was created by Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office (OJ 2002 L 197, p. 53).

30. Section IX of the call for candidates provided that the contract to be entered into with successful candidates was to be drawn up in accordance with, inter alia, Article 3a of the CEOS. It was to have a duration of one year and might be renewed for a further period of one year, before possibly being renewed a second time for an indefinite period.

31. Spain asks the Court to:

- annul the call for expressions of interest entitled ‘Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016’, together with the database created pursuant to Section VIII thereof, and
- order the Parliament to pay the costs.

32. The Parliament asks the Court to:

- dismiss the action as unfounded,
- reject the request for the annulment of the database relating to the call for candidates as unfounded, and
- order the applicant to pay all the costs, including those of the Parliament.

33. Written pleadings have been lodged by Spain and the Parliament. At the hearing on 25 April 2018, both of those parties presented oral argument and responded to the questions put by the Court.

Assessment

Preliminary points

Admissibility

34. By this action, Spain challenges a call for expressions of interest issued by the Parliament. It does so on the basis of Article 263 TFEU, which gives the Court of Justice of the European Union the power to review, inter alia, the acts of the EU institutions, including those of the Parliament, intended to produce legal effects vis-à-vis third parties. The expression ‘the Court of Justice of the European Union’ is defined in Article 19 TEU as ‘including the Court of Justice [and] the General Court’.

35. In the normal course, Article 256(1) TFEU provides for challenges against acts of those institutions to be brought before the General Court of the European Union at first instance, under exception of those reserved in the Statute of the Court of Justice of the European Union for this Court.

36. As regards the present case, Article 51 of the Statute provides: ‘by way of derogation from the rule laid down in Article 256(1) of the Treaty on the Functioning of the European Union, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union when they are brought by a Member State against: (a) an act of or failure to act by the European Parliament or the Council, or by those institutions acting jointly ...’ That provision then goes on to list a series of exceptions, none of which applies to these proceedings.

37. It follows in my view that Spain has correctly brought the present action before this Court.

38. As regards the time limit for bringing proceedings, the final paragraph of Article 263 TFEU, in so far as relevant to this case, provides that proceedings under that article are to be instituted within a period of two months of the publication of the measure. By virtue of Article 50 of the Rules of Procedure of the Court of Justice, that period falls to be calculated as running from the end of the 14th day after publication of the measure in the *Official Journal of the European Union* and, by virtue of Article 51 of those Rules, there falls to be added an additional period of 10 days on account of distance. In the present case, the call for candidates was published on 14 April 2016 and applying the provisions just mentioned produces a deadline for bringing the action of 8 July 2016. Since the application was lodged with the Court Registry on 7 July 2016, I consider that the action was brought in good time.

Regulation No 1 and the language policies of the EU institutions

39. Regulation No 1 was the first regulation to be adopted by the (then) European Economic Community. At the time of its enactment, there were four official languages of the Community and the same number of working languages of the institutions. Since then, the regulation has been amended at various times in order to reflect the addition of new Member States and, with it the new languages that fell to be added to the list as a result. It has not otherwise been substantively altered. The European Union currently comprises 28 Member States and has 24 official and working languages.¹⁴

40. Whilst Article 6 of Regulation No 1 contemplates that the EU institutions may adopt rules of procedure stipulating which of the languages are to be used in specific cases, the Court has observed that no institution has so far availed itself of the opportunity to do so.¹⁵ It follows that the working languages of the institutions are, for official purposes at least, the same as the official languages.

41. That does not mean, however, that certain institutions may not have adopted less formalised operating arrangements as regards the day-to-day conduct of their business. Thus, for example, the Court of Justice will receive an order for reference from a national court under Article 267 TFEU in any of the official languages of the European Union. That order will be translated into all the other languages¹⁶ so that it can in turn be notified to the Member States' Governments. Furthermore, Article 36 of the Court's Rules of Procedure provides that the language of a case may be any of the official languages. Since, however, the Members of the Court conduct their deliberations in French and draft their judgments in that language, all other documents in the form of written pleadings and written observations (apart from those already drafted in French) are translated into that language on their being lodged. They are not, as a rule, translated into the other official languages. To require that would be impossible both in terms of the translation load created and of the cost it would represent. On the one hand, therefore, the Court can be described as a truly multilingual institution in terms of the way it treats orders for reference and determines the language of the cases before it. On the other hand, its internal working practices mean that French plays a particularly important role and it may accordingly be more useful as a second language for candidates than other official languages (including both English and German) would be.

¹⁴ These are set out in footnote 7 above.

¹⁵ Judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 67. There is nothing to suggest that the position has changed since the delivery of that judgment. See, however, judgment of 6 September 2017, *Slovakia and Hungary v Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraphs 199 to 205, where the Court considered the application of Article 14 of the Council's Rules of Procedure, and see further points 53 to 57 above.

¹⁶ Other than Maltese.

42. Other institutions are not subject to the same constraints and may therefore be more flexible in terms of their internal working arrangements, having more than one language in which they regularly operate on a day-to-day basis. In the present case, the Parliament asks the Court to accept that those languages are English, French and German.¹⁷

43. It is also worth pointing out that, whatever the overriding arrangements as to language use are in a given institution, the language most commonly used on a daily basis within a particular part of it may depart from those arrangements. To take the most obvious of examples, it can be assumed that the operating language in the Danish translation unit of an institution will be Danish. But it may also be the case that a similar result will apply for historical reasons. Thus, should there be a majority of Estonian nationals in a particular unit or sub-unit of an institution, it will be likely that the language used by most, albeit perhaps not all, of the members of that unit or sub-unit will be Estonian. They cannot be prohibited from using their mother tongue by some overriding and, for them, irrelevant principle as to the use of working languages in their institution.¹⁸

EPSO

44. Recital 1 of Decision 2002/620 records that ‘in the interests of making efficient and economic use of resources, a common inter-institutional body should be entrusted with the means of selecting officials and other servants to serve the European Communities’. Article 2(1) of that decision provides for EPSO to exercise the powers of selection conferred under the first paragraph of Article 30 of the Staff Regulations¹⁹ on the appointing authorities of the institutions signing the decision. By virtue of Article 2(3) of the decision, the power to adopt decisions to appoint successful candidates is to remain with the appointing authorities concerned. Article 3(2) provides that EPSO ‘may’ assist the institutions in the selection of other servants (including contract staff).

The Common European Framework of Reference for Languages

45. The Common European Framework of Reference for Languages was developed by the Council of Europe in order to provide a transparent, coherent and comprehensive basis for, inter alia, the assessment of foreign language proficiency.²⁰ It divides users into three broad categories, each of which is subdivided into two levels. Category ‘B’ is described as an ‘independent user’ and level B2 represents what is described as ‘vantage or upper intermediate’.²¹

17 This, I note, sits somewhat curiously with a Parliament document entitled ‘Multilingualism in the European Parliament’, which states, inter alia: ‘in the European Parliament, all official languages are equally important. ... The European Parliament differs from the other EU institutions in its obligation to ensure the highest possible degree of multilingualism. ...’ See <http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00013/Multilingualism>.

18 Some commentators have noted that the language regime may differ within an institution with, for example, certain directorates general of the Commission having English as their predominant language with others using French. See Grevier, R., and Lundquist, L., ‘Getting ready for a new Tower of Babel’, in *Linguistic Diversity and European Democracy*, Ashgate, 2011, p. 80.

19 Article 30 of the Staff Regulations provides: ‘For each competition, a selection board shall be appointed by the appointing authority. This board shall draw up a list of suitable candidates.’

20 See <https://www.coe.int/en/web/common-european-framework-reference-languages/>.

21 A full description of the level and the degree of knowledge they assume is set out in the Annex. See <https://www.coe.int/en/web/common-european-framework-reference-languages/table-1-cefr-3.3-common-reference-levels-global-scale>. The specific descriptors for level B2 are as follows: ‘Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialisation. Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options’. See <https://www.coe.int/en/web/common-european-framework-reference-languages/>.

46. Although the number of hours taken to reach that level will vary from one person to another, the cumulative number of hours commonly proposed in order to prepare for the examination for level B2 appears to be between 500 and 650.²² It cannot be assumed that all potential candidates for the selection procedure in this case will have had a second language, whether it be one of English, French or German or otherwise,²³ let alone a second language at level B2.

47. By contrast, it seems that the number of hours required to reach an advanced level of skill as a professional driver, including training for security-related incidents, is of the order of 200.²⁴

Contract staff

48. Prior to the reform of the Staff Regulations in 2004,²⁵ personnel had been engaged by the institutions either as officials (comprising administrators and assistants) or as other servants (comprising temporary and auxiliary staff). That reform abolished the category of auxiliary staff²⁶ and introduced a new category of ‘contract staff’. It also amended the provisions set out in Annex I to the Staff Regulations governing the nature of the tasks to be performed by officials.

49. Previously, the relatively wide-ranging list of tasks set out in Annex I meant that drivers could be, and commonly were, engaged as officials.²⁷ They were thus entitled to the benefits afforded to officials pursuant to the Staff Regulations, including effective permanency of employment subject to their having completed the appropriate probationary period and not committing any disciplinary offence justifying dismissal from the service.

50. The reform divided contract staff into two categories. The first, governed by Article 3a of the CEOS, comprises staff engaged, *inter alia*, to perform duties in respect of ‘manual or administrative support service tasks’.²⁸ The second, covered by Article 3b, largely represents staff engaged on a short-term basis. That difference is fundamental in the present context. Article 85(1) of the CEOS states that the contracts of staff engaged pursuant to Article 3a are, following their first renewal, to be so renewed for an indefinite period. As regards staff engaged pursuant to Article 3b, by contrast, Article 88(b) of the CEOS provides that their maximum period of employment within an institution is not to exceed six years. It is clear from Section IX of the call for candidates that successful candidates were to be recruited under Article 3a of the CEOS and not Article 3b.

51. The reform also narrowed the list of tasks set out in Annex I to the Staff Regulations for which officials might be recruited. The role of driver was in effect excluded. That role was henceforth covered by the duties to be entrusted to contract staff under function group I, as set out in Article 80 of the CEOS.²⁹

22 For English, see <https://support.cambridgeenglish.org/hc/en-gb/articles/202838506-Guided-learning-hours>, which proposes 500 to 600 hours. For French, see <http://www.alliancefr.ph/en/general-information>, which proposes 560 to 650 hours. For German, see <http://www.deutschkurse-leipzig.de/schule-team/niveaustufen-des-ger/>, which proposes 640 hours.

23 According to the Commission’s Special Eurobarometer 386, *Europeans and their Languages*, of June 2012, only just over half of Europeans claim to speak at least one other language in addition to their mother tongue. For those finishing their education between 16 and 19 years of age, the average figure for those having at least one language throughout the Member States was 48% and for those finishing education at 15, the corresponding figure was 22%. As might be anticipated, the percentage of those having a university education and advancing that claim was markedly higher (at over 75%). See ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_386_en.pdf. Part B of Section IV of the call for candidates required merely that candidates should have completed compulsory education.

24 See <https://www.cefs-formation.com/>.

25 Pursuant to Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

26 By providing that no new auxiliary staff might be engaged after 31 December 2006.

27 As assistants (category D).

28 See Articles 3a(1)(a) and 80 of the CEOS.

29 See point 50 above.

52. It followed from the reform that an institution wishing to engage drivers after 1 May 2004 on a permanent, or quasi-permanent basis, had to recruit them as contract staff falling within function group I pursuant to Article 3a of the CEOS and not, as previously, as officials.

Multilingualism in the European Union: the Court's case-law

53. The Court has held that the European Union 'is committed to the preservation of multilingualism', the importance of which is stated in the fourth subparagraph of Article 3(3) TEU.³⁰ That commitment seems to me to be the starting point for any analysis of the use of languages within the Union and, as in the present case, its institutions and those communicating with them. Nevertheless, the Court has recognised that there may have to be exceptions to that overriding principle.

54. The Court was asked to consider those exceptions in its recent Grand Chamber judgment of 6 September 2017 in *Slovakia and Hungary v Council*,³¹ which concerned applications for annulment of Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.³² That decision was adopted against the background of exceptional migratory flows of refugees in the Mediterranean area, which imposed particular pressure on the southern external EU land and sea borders, especially as regards Italy and Greece. On 17 September 2015, the Parliament had adopted a resolution approving the Commission's proposal for a decision establishing provisional measures in that regard, having regard to the 'exceptional situation of urgency and the need to address the situation with no further delay'. The decision itself refers to an 'emergency situation characterised by a sudden inflow of nationals of third countries in [Italy and Greece]' and provides for the relocation of 120 000 applicants for international protection to the other Member States.³³

55. Against that background of particular urgency, whilst the initial proposal for a decision prepared by the European Commission was drafted in all the official languages, the texts setting forth the successive amendments to the proposal, including the text of the decision as adopted by the Council, were provided to the Member States only in English, although it appears that all amendments were read out aloud by the President of the Council and that simultaneous interpretation into all the official languages was provided. Hungary and the Slovak Republic complained that the latter element constituted a breach of Article 14(1) and (2) of the Council's Rules of Procedure.³⁴ The Council for its part relied on Article 14(2) of its rules, and noted that no Member State had objected to the failure to provide written details of the amendments in all the official languages.³⁵

56. In its judgment, the Court noted the situation and what it termed the 'catastrophic humanitarian situation to which [the refugee crisis] gave rise in the Member States'.³⁶ It held that the Council's interpretation of its Rules of Procedure must be accepted since that interpretation reflected 'a balanced and flexible approach conducive to efficacy and speed in the Council's work, which are especially important in the context of urgency characterising the procedure for adopting provisional measures on the basis of Article 78(3) TFEU'.³⁷

30 See, to that effect, judgments of 5 May 2015, *Spain v Council*, C-147/13, EU:C:2015:299, paragraph 42, and of 6 September 2017, *Slovakia and Hungary v Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 203.

31 C-643/15 and C-647/15, EU:C:2017:631.

32 OJ 2015 L 248, p. 80.

33 See Articles 1(1) and 4(1).

34 Article 14 of the Council's Rules of Procedure of 1 December 2009 provides: '1. Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages. 2. Any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he or she may specify.'

35 See paragraphs 3, 196, 201 and 204 of the judgment.

36 See paragraphs 114 and 115 of the judgment.

37 See paragraph 203 of the judgment.

57. That approach seems to me to summarise the essential basis on which derogations to the language rules supporting multilingualism within the European Union may be accepted. Where it is sought to establish an exception, a balancing exercise must be carried out. There must be both a justification (in that case, a situation of extreme urgency) and there must to the extent possible be safeguards (there, the right of a Member State to require translation into one or more of the official languages and the provision of interpretation facilities). Those aspects must in my view inform any analysis of the derogations on which the Parliament seeks to rely in the present case.

The first plea in law: breach of Articles 1 and 2 of Regulation No 1, Article 22 of the Charter and Article 1d of the Staff Regulations arising from the alleged requirement for candidates to use English, French or German when communicating with EPSO

58. By this plea, Spain essentially argues that the call for candidates was vitiated by several errors of law since it required candidates to communicate with EPSO in English, French or German, to the exclusion of the other official languages and to submit their applications in one of those languages.

59. Before addressing the arguments of the parties in detail, it is worth looking at the call for candidates itself. I note at the outset that the justification for the limitation of the choice of second language set out in Part C of Section IV³⁸ followed the standard pattern adopted in competition notices and calls for expressions of interest since delivery of the judgment of 27 November 2012 in *Italy v Commission*.³⁹

60. The following provisions are particularly relevant:

- whilst the call for candidates was issued by the Parliament, it provided for the selection procedure to be organised ‘with technical support’ from EPSO (Section I);
- candidates were to apply online on the EPSO website and follow the instructions given there, in particular in the EPSO online application manual (‘the online application manual’) (Section VI);⁴⁰
- the selection procedure was to be organised *solely*⁴¹ on the basis of qualifications, in the form of an assessment of the detailed answers given by candidates to the questions on the application form (Section VII);
- any false declarations made by candidates during the selection procedure would lead to disqualification (Section XI).

61. The call for candidates contained no express instructions as to the language in which the application was to be completed nor did it provide any information as to what candidates who were uncertain as to how they should proceed with their application should do.

62. Spain’s primary argument under this plea is that the call for candidates infringed Articles 1 and 2 of Regulation No 1. The communications relevant to this case cover both requests for information prior to submission of the application and the submission of the application itself. The latter is of particular importance given that the selection procedure was set up in a single phase, there being no

³⁸ See point 27 above.

³⁹ C-566/10 P, EU:C:2012:752. See, inter alia, judgments of 24 September 2015, *Italy and Spain v Commission*, T-124/13 and T-191/13, EU:T:2015:690, paragraph 6; of 17 December 2015, *Italy v Commission*, T-295/13, not published, EU:T:2015:997, paragraph 32; and of 15 September 2016, *Italy v Commission*, T-353/14 and T-17/15, EU:T:2016:495, paragraph 11.

⁴⁰ The EPSO online application manual can be consulted at https://epso.europa.eu/manuals/online-application-manual_en. At the time of writing, the available version is marked ‘last update: April 2016’. It will thus have been the version in force at the time of the call for candidates. The document is available in all the official languages.

⁴¹ Original emphasis.

subsequent assessment centre. Candidates responding to a call for expressions of interest in posts in an EU institution cannot, by virtue of that response, be deemed to be in a situation that is purely internal to that institution, with the result that the potentially more restrictive language provisions of the Staff Regulations will apply to them.⁴²

63. Spain argues that, given the manner in which the call for candidates was worded, those considering submitting an application would feel that they had no choice but to raise any questions concerning the selection procedure⁴³ and to complete the application form in English, French or German even though it was not their mother tongue. Even if there was no *de iure* breach of Regulation No 1, there was a *de facto* one.

64. In the alternative and in the event that the Court should disagree with its arguments concerning the applicability of Regulation No 1, Spain submits that there is no justification for the limitation and, even were the position to be otherwise, that it is disproportionate. There was accordingly a breach of Articles 22 of the Charter and 1d(1) and (6) of the Staff Regulations.

65. The Parliament divides its response into two parts. The first deals with communications with candidates. It emphasises that the call for candidates contained no restrictions on the choice of language to be used by candidates in communicating with either the Parliament or EPSO. At least as far as questions submitted to the Parliament were concerned, certain candidates did use their mother tongue to raise questions with it and the Parliament responded in that language.

66. The Parliament continues by referring to the principle that the acts of the EU institutions benefit from a presumption that they are lawful and to the case-law which provides that when the wording of secondary EU law is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with the Treaty rather than the interpretation which leads to its being incompatible with the Treaty.⁴⁴

67. The second part of the Parliament's response concerns the application form itself. Whilst it accepts that the application form was, 'for technical reasons', available in only English, French or German, it maintains that that did not mean that there was any obligation on candidates to use those languages. Indeed, a number of them completed the form in their own language and their application was duly processed using, where necessary, the services of language assessors.

68. Since an analysis of their application may colour the approach to be taken to Spain's arguments, I shall address the EU law questions raised by the Parliament and referred to in point 66 above before dealing with the substance of Spain's allegations. It is true, first, that the Court has held that measures of the EU institutions are presumed to be lawful and produce legal effects until such time as they are, inter alia, annulled by a ruling of the Court or declared invalid following a plea of illegality. It has described the purpose of that rule as reflecting the need to preserve the stability of legal relations.⁴⁵ But, leaving aside the question of how strongly that rule falls to be applied to purely administrative decisions adopted by those institutions, it must be noted that the point is a procedural one. It does not, in other words, operate to give any kind of substantive priority or *imprimatur* to those measures. It provides only that those measures remain in force unless and until they are the subject of a successful challenge before the EU courts. I therefore derive no useful guidance whatsoever from the principle called in aid by the Parliament. Since, in the present case, a challenge has been brought by Spain, it is necessary to consider that challenge on the merits.

⁴² See, for example, point 96 below.

⁴³ Confusingly, Spain states when setting out this plea in its application that it extends to communications between the candidates and EPSO only. It then proceeds to include the question of communications between those candidates and the Parliament in its arguments. Since, however, that is not set out in the plea which Spain has formulated and since, in any event, Spain has failed in my view to establish that communications with the Parliament were restricted in the manner suggested, I do not consider that aspect further.

⁴⁴ The Parliament cites judgment of 13 December 1983, *Commission v Council*, 218/82, EU:C:1983:369, paragraph 15, in that regard.

⁴⁵ See, to that effect, judgment of 5 October 2004, *Commission v Greece*, C-475/01, EU:C:2004:585, paragraphs 18 and 19 and the case-law cited.

69. As regards, second, issues of interpretation, the Court's case-law cited above⁴⁶ reflects the perfectly reasonable perception that institutions should be presumed to be acting in compliance with the Treaties. In cases of ambiguity or doubt, therefore, the interpretation which reflects that rule should be preferred. But the Court's dicta amount to no more than that. They do not represent, as the Parliament appears to suggest, a rule of construction according to which the interpretation put forward by one of the institutions in proceedings before the Court is in some way to be given preferential treatment over that suggested by the party seeking to challenge the measure.

70. That being so, it is necessary to address Spain's submissions and I shall now proceed to do that. I deal first with its primary argument.⁴⁷

71. Spain places much reliance in that regard on the Court's Grand Chamber judgment in *Italy v Commission*.⁴⁸ It is worth considering that judgment in some detail. There, the Court was asked to consider, inter alia, whether the publication in full of a competition notice in the *Official Journal of the European Union* in only three languages (English, French and German), coupled with summary publication in the remaining official languages, satisfied the requirements of Regulation No 1, read in conjunction with the Staff Regulations. The Commission had argued that the latter applied not only to EU officials but also to persons who aspired to that status.⁴⁹

72. The Court did not accept the argument that Regulation No 1 did not apply to officials and other servants of the institution nor, a fortiori, could it be said that it was of no application to candidates for an external competition.

73. However, the Court went on to add that it was not necessary for it to determine whether the competition notices at issue fell under Article 4(1) of Regulation No 1 (as 'documents of general application'). That was because it was clear from Article 1(2) of Annex III to the Staff Regulations that the competition notice for an open competition must be published in full in the *Official Journal of the European Union* — by necessary implication in all the official languages. It followed that the summary publication in languages other than English, French and German was insufficient. Moreover, since candidates whose mother tongue was one of those other languages had been put at a disadvantage as regards the correct understanding of the notices and the period required to prepare and send an application to take part in the competitions concerned, there had been a difference in treatment on the ground of language in breach of Article 21 of the Charter and Article 1d(6) of the Staff Regulations.⁵⁰

74. The Court thus did not make a definitive ruling in *Italy v Commission* on the question whether Regulation No 1 or the Staff Regulations applied to candidates for an external competition. Whichever legislative instrument fell to be applied, the result was the same: the competition notices at issue had to be set aside. Although the background to that case and to the present action is not identical, there are in my view sufficient similarities between them for the Court's reasoning and approach in that case to be applied to the present one.⁵¹ I shall therefore start by considering the application of Regulation No 1 to Spain's first plea in law before turning to the Staff Regulations.

⁴⁶ See point 66 and footnote 44.

⁴⁷ See points 62 and 63 above.

⁴⁸ Judgment of 27 November 2012, C-566/10 P, EU:C:2012:752.

⁴⁹ See, to that effect, paragraph 32 of the judgment.

⁵⁰ See, to that effect, paragraphs 70 to 75 of the judgment.

⁵¹ In particular, *Italy v Commission* concerned the question of how notices of an external competition for administrators and assistants (and thus officials) were to be published in the *Official Journal of the European Union*, whereas the particular point at issue in the present case involves the languages of communication between candidates for posts as contract staff under a call for expressions of interest. Nonetheless, the essential question in both cases is the application of Regulation No 1 and of the Staff Regulations to persons who are, at the relevant time, not employed by one of the EU institutions. I would observe in that regard that the publication of a notice is also a communication; it merely takes place in the context of the *Official Journal of the European Union*.

75. In that regard, Spain bases its first plea in law on the alleged infringement of Articles 1 and 2 of Regulation No 1. The second of these provisions requires, *inter alia*, that documents which a person subject to the jurisdiction of a Member State sends to the EU institutions may be drafted in any one of the official languages selected by the sender and that the reply must be drafted in the same language.

76. Were the candidates in fact precluded from communicating with the Parliament and EPSO and completing the application form in anything other than English, French or German?

77. In that context, the Parliament places considerable reliance on the fact that the call for candidates laid down no express rules governing the language of communication. That is indeed the case. However, the absence of any express instructions does not mean that nothing was implicit. I suggest that the question is what a reasonable person, in the position of a potential applicant for the selection procedure in question, might take from the call, read as a whole, and the other documents and sources of information to which it refers.

78. Let us begin with the natural starting point in the form of the call for candidates itself. A potential candidate reading the document will indeed note that it contains no instructions concerning the use of languages for communication purposes during the selection procedure. He will also, if he is considering raising a question or questions concerning the procedure, note Section X, which provides a Parliament email address which is to be used ‘for all correspondence relating to the procedure’.

79. However, the same candidate will also note the statement in the second paragraph of Section I that the selection procedure was to be organised ‘with technical support’ from EPSO and the requirement laid down by Section VI to apply online on the EPSO website and to follow the instructions given there. If he visits that website, he will find that the form required to create an EPSO account (without which he cannot proceed) is available in English, French or German only.⁵²

80. The call for candidates also refers to the instructions given ‘in particular’ in the online application manual. Let us assume that the candidate will go to that document next. Section 3 is headed ‘online application form’. Having noted the instruction that he must complete his application in the language specified in the call, he will inevitably move on, since no language was specified in the present case. The next point in the document indicates that since the ‘application environment’ is available only in English, French and German,⁵³ candidates should consult what the document calls an ‘overview’ for instructions in all official languages. That document contains a series of translations from English, French and German of terms and expressions used in the EPSO online application form. There is no indication or suggestion there that the form may be completed in any language; rather, it would not be unreasonable to conclude that the language in which the form is written should be the one used to complete it, *a fortiori* because the call for candidates has earlier indicated (in Part C of Section IV) that a ‘satisfactory’ knowledge of those languages must be demonstrated. Assuming however the candidate in question to be reasonably alert and attentive, he will, in entry No 159, find the following: ‘you must complete this application form in English, French or German’. That statement would surely leave him in little doubt as to how it was intended that he should proceed in terms of the application form.⁵⁴ Indeed, the Parliament itself confirmed that that was the position in its emailed reply of 26 April 2016 (in Greek) to a potential candidate, annexed to its rejoinder.

⁵² See https://europa.eu/epso/application/passport/index.cfm?action=create_profile.

⁵³ I do not understand what precise meaning should be to be given to the expression ‘application environment’ used in the English-language version of the online application manual. It seems to me as a native English speaker to be entirely devoid of any clear meaning and, being as kind as possible, to be no more than jargon. I think it likely that a candidate whose mother tongue was not English would read it as meaning ‘everything connected with the application’.

⁵⁴ Indeed, it is worth bearing in mind that the Court has emphasised the importance of legal certainty, in holding that rules governing the choice of languages in competitions ‘must provide for clear, objective and foreseeable criteria so that the candidates may know, sufficiently in advance, what the language requirements are and can prepare to take part in the competitions in the best possible circumstances’ (see judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 90).

81. Continuing with a perusal of the online application manual, but reverting to the question of communications generally, Section 5 of the manual includes a statement that questions not already addressed on the EPSO website may be put by candidates to EPSO using the ‘contact us’ section on their website. Clicking on the ‘contact us’ link in the manual will take candidates to a website setting out a number of frequently asked questions (‘FAQs’). They are then taken through what appears to be two sets of FAQs, before being asked to indicate at the end of the second set whether they have found an answer. Clicking on ‘no’ brings up a further screen, which states that candidates may refer specific questions to EPSO directly. That produces a form instructing candidates, inter alia, to select all languages from among the official languages in which they are willing to receive a reply. Candidates must choose a minimum of two languages.

82. On the basis of the foregoing, I would conclude that, first, a candidate might reasonably form the view that he could communicate with EPSO in the official language of his choice but could not be guaranteed of receiving a reply in that language. Second, he would, following a perusal of the call for candidates and the documents to which it refers, determine that he was required to complete the application form in English, French or German and not in any other of the official languages of the European Union. The Parliament’s argument in that regard that certain candidates did in fact submit the form in a language other than one of those three languages is in my view beside the point. As Spain rightly observes, other potential candidates may either have been deterred completely from submitting an application or may have done so to less effect, since the language in question was not one in which they could express themselves with the same degree of ease as they might have done in their native tongue.

83. I therefore conclude that the call for candidates was in breach of Articles 1 and 2 of Regulation No 1 as regards the languages in which candidates could communicate with EPSO and the language in which the application form was to be completed.

84. Can it at the same time be said that there was a breach of the Staff Regulations?

85. Spain essentially argues that there is no justification for the restriction and that those whose mother tongue is English, French or German will have been placed at an advantage. In particular, they will have been better able to describe their positive aspects and less likely to include inexact information. The restriction is, moreover, disproportionate, since (i) the single phase of the selection procedure was based on the written information provided in the application form and (ii) if incorrect information was provided this could lead to exclusion.

86. Since it considers that the restriction outlined by Spain did not in fact exist, the Parliament does not respond in detail to that Member State’s arguments.

87. Once again, some useful guidance can be drawn from *Italy v Commission*.⁵⁵ There, in addition to the matters referred to in points 71 and 72 above, the Court considered whether the failure to publish the notice of the open competition in all official languages amounted to discrimination. It held that candidates whose mother tongue was not one of the languages of full publication of the notice⁵⁶ were at a disadvantage compared to candidates whose mother tongue was one of those languages and that that disadvantage was a consequence of the difference in treatment on ground of language prohibited by Article 21 of the Charter and Article 1d(1) of the Staff Regulations.⁵⁷ It followed that any limitation required to be justified on objective and reasonable grounds and to be aimed at legitimate objectives in

⁵⁵ Judgment of 27 November 2012, C-566/10 P, EU:C:2012:752.

⁵⁶ That is to say, English, French and German.

⁵⁷ It is not entirely clear why Spain has chosen to focus on Article 22 of the Charter to the exclusion of Article 21. The two provisions have, however, been described as having ‘potentially significant overlap’ (see Craufurd Smith, R., ‘Article 22 — Cultural, Religious and Linguistic Diversity’, in *The EU Charter of Fundamental Rights*, Hart Publishing, 2014, p. 611). Since, for the purposes of this Opinion, the former can be said to represent a positive obligation (to respect linguistic diversity) and the latter a negative one (not to discriminate on the ground, inter alia, of language), I do not propose to dwell on that distinction.

the general interest in the framework of staff policy. Since the justification advanced by the Commission in that case did not appear to be supported in fact, it could not be held to be proportionate and there was accordingly discrimination on the ground of language prohibited by Article 1d of the Staff Regulations.⁵⁸

88. In the present case, the absence of any legitimate objective or justification put forward by the Parliament means that the Court has no material before it that it can work with. It is in my view clear, however, that for the reasons put forward by Spain a candidate whose mother tongue was not English, French or German would be at a disadvantage compared with candidates able to express themselves without difficulty in one of those languages. That is particularly relevant in a context where the selection procedure under the call for candidates was to be organised *solely* on the basis of the detailed answers given by candidates to the questions on the application form and where any false declaration on the form might lead to disqualification.⁵⁹ There was thus discrimination based on language — and accordingly an infringement of Article 1d(1) of the Staff Regulations — in respect of those candidates or potential candidates whose mother tongue did not fall within one of the three ‘preferred’ categories.

89. Since I have taken the view that Spain’s first plea in law must be upheld for the reasons given above, it is not strictly necessary to go forward to consider the wider question of the interrelationship between Regulation No 1 and the Staff Regulations. As indicated above, the Court sitting in Grand Chamber in the *Italy v Commission* case⁶⁰ expressly declined to give a ruling on that question.⁶¹ I shall however address the matter briefly for the sake of completeness.

90. I begin by noting that in that case the Court held that ‘in the absence of specific regulations applicable to officials or other servants or stipulations in that regard in the rules of procedure of the institutions concerned by the contested competition notices, no document exists on the basis of which it could be concluded that the relationship between those institutions and their officials and other servants is completely excluded from the scope of Regulation No 1’. It went on immediately thereafter to hold that ‘*that is all the more the case with regard to the relationship between the institutions and the candidates for an external competition who are not, in principle, either officials or servants*’.⁶²

91. I would observe, next, that a textual analysis of the Staff Regulations, which provide in Article 1 that they apply to ‘officials of the Union’ and in Article 1a that that term is to be construed as meaning ‘any person *who has been appointed* ... to an established post’ suggests on first reading that they do not apply to candidates for an official’s post. In the same way, Article 1 of the CEOS provides that those conditions apply to, inter alia, ‘contract staff’, with that expression being defined in Article 3a as meaning ‘staff ... *engaged* [by the institution concerned] for the performance of full- or part-time duties’.

92. Lastly, I note that Article 2 of Regulation No 1 gives specific embodiment to Article 24 TFEU. The latter provision is expressed in wide and unrestricted terms. It follows that Article 2 should not in my view be interpreted narrowly or constrictively.

93. Each of those points would seem to me to militate against an interpretation of Regulation No 1 that would lead to its being quickly disregarded in favour of the application of the Staff Regulations in any given case. Rather, they might suggest that the primary purpose of the Staff Regulations is *not* to govern the relations between the institutions and *candidates* for an official’s post.

⁵⁸ See paragraphs 73 to 77 of the judgment.

⁵⁹ See point 60 above.

⁶⁰ Judgment of 27 November 2012, C-566/10 P, EU:C:2012:752.

⁶¹ See point 74 above.

⁶² See paragraphs 68 and 69 of the judgment (emphasis added).

94. Nonetheless, it is also clear that the Staff Regulations do, in some respects, apply to such candidates. Thus, for example, Chapter 1 of Title III, which includes Articles 27 and 28, is entitled ‘Recruitment’ and Annex III is entitled ‘Competitions’. Each of these lays down detailed rules in respect of the matters they cover. Some very broadly equivalent, though more generally expressed, provisions concerning the manner in which contract staff are engaged are set out in Chapter 3 of the CEOS, entitled ‘Conditions of Engagement’. Whilst none of those sets of provisions extends to language requirements, it remains the case that Regulation No 1 and the Staff Regulations may thus sometimes overlap.

95. It is worth exploring that overlap in a little more detail. First of all, Regulation No 1 will not, in my view, cease to apply to a person who becomes an official or servant of the European Union in all respects on his being appointed to that post. Thus, I consider that Articles 2 and 3 will continue to apply subsequently to communications sent and received by that person *in his private capacity*. Similarly, rules of procedure adopted by an EU institution pursuant to Article 6 of the regulation may have an impact on that person following his appointment.

96. Plainly, however, Article 2 of Regulation No 1 will not apply to communications made between an individual, acting in his professional capacity, and an institution once that individual has entered into his functions as an official or servant of the institution. To the extent relevant or applicable, those communications will be subject to the Staff Regulations.

97. Can it be said, as was suggested at the hearing, that the Staff Regulations may in fact apply to the exclusion of Regulation No 1 at an earlier point, in the form of the date on which the person concerned submits his application to become an official or servant?

98. I do not believe that to be the case.

99. It is necessary to look to the objective of Article 2 of Regulation No 1. That provision applies to documents, that is to say, to written communications and not, for example, to telephone calls or other forms of oral communication. By their very nature, it must be assumed that communications in written form are to be considered as being particularly important to the person initiating them. Clarity of meaning is thus essential. Seen from that perspective, the ability to communicate in one’s own language is of paramount importance. Since a candidate may well have matters he wishes to discuss or questions he may wish to ask in written form even after he has submitted his application, I see no reason why the benefit of Article 2 should not be extended to him after that point and until his entry into service.

100. That point is a *fortiori* valid in my view if the Court accepts my conclusion that the appropriate point at which to set a ‘satisfactory’ level of knowledge of a second language for drivers is A2 and not B2, as provided for in the call for candidates.⁶³ I should make it clear, however, that I do not regard that issue as being determinative of the matter.

101. More generally, I observe that in some instances the question of overlap between Regulation No 1 and the Staff Regulations may be of little, if any, relevance. Either there will in fact be no overlap or the tenor of the relevant provisions in both regulatory instruments will be the same. In other cases, the application of both sets of rules may lead to the same result, albeit via a different route. That was the situation in *Italy v Commission*⁶⁴ and for the reasons set out above I suggest that it is the same here.⁶⁵

⁶³ See point 127 below.

⁶⁴ Judgment of 27 November 2012, C-566/10 P, EU:C:2012:752. See point 74 above.

⁶⁵ See points 75 to 83 above.

102. What if there appears to be a conflict between the two? There, I suggest that in view of the Court's clear indication in that case that Regulation No 1 *will as a general rule* apply to candidates for competitions and, by extension, selection procedures,⁶⁶ it will be necessary, first, to seek to interpret so far as possible the relevant provision(s) of the Staff Regulations in the light of the wording and the purpose of Regulation No 1 in order to achieve the result sought by that measure. Should that be impossible, however, I consider that preference should be given to the provision which has the closest and most real connection to the situation at issue. Where the Staff Regulations lay down a specific regime intended to govern a particular aspect of the relationship between the institution in question and a person who is a candidate for an official's post, the terms of that regime will prevail.⁶⁷

103. For all of the above reasons, I am of the view that Spain's first plea in law must be upheld.

The second plea in law: infringement of Article 82 of the CEOS as a result of the requirement for candidates to have a 'satisfactory' knowledge of another official language of the European Union without this being necessary for the performance of their functions or, in the alternative, without it being necessary to set that requirement at level B2

104. This plea primarily concerns the interpretation to be given to Article 82(3)(e) of the CEOS, which provides that a member of the contract staff may be engaged only on condition that he produces evidence of a thorough knowledge of one of the official languages and a 'satisfactory knowledge' of another such language, 'to the extent necessary for the performance of his duties'.

105. The plea can most conveniently be divided into two parts. By the first part, Spain argues that Article 82(3)(e) should not be construed as meaning that a second language is required in every case. By the second, Spain appears to contend that, even if that provision must be interpreted as requiring a second language in every case or if it must be read as meaning that a second language is required in the case of the selection procedure at issue, it is not necessary to set the level at B2. A lower level would be appropriate.

106. As regards the first part of the plea, Spain's position requires Article 82(3)(e) to be read so that the words 'to the extent necessary for the performance of his duties' mean that the need for a second language arises only to the extent that the post in question necessitates a knowledge of such a language. That is not the case here, it says, since the primary duties of successful candidates involve driving. It also draws attention to the reference in the call for candidates⁶⁸ to level A2 competence in a language other than the first and second languages specified by candidates in their application, which in its view renders B2 competence in English, French or German unnecessary.

107. In response, the Parliament contends that Spain misreads Article 82(3) and that knowledge of a second language is indeed required.

108. In that context, it should be noted that the wording of Article 28(f) of the Staff Regulations (which applies to the engagement of officials), Article 12(2)(e) of the CEOS (which applies to temporary staff) and Article 82(3)(e) of the CEOS (which applies to contract staff) is identical. Whilst it would have been open to the Parliament and Council to adopt a lesser or different standard in relation to either of the latter two categories, it is plain that they elected not to do so.

⁶⁶ See point 90 above.

⁶⁷ For the sake of completeness, I should add that I see this as being an application of general rules of construction and not of the *lex specialis* rule. The scope of application of Regulation No 1 is fundamentally different from that of the Staff Regulations. The former lays down rules as to the use of the official languages by and within the institutions and in respect of the way in which they communicate with EU citizens. The latter contains a series of provisions intended to govern the relationship between those institutions and their officials and servants. To describe the latter as representing a *lex specialis* to the *lex generalis* of the former does not seem to me to be appropriate. For an alternative view, please see the opinion of my colleague Advocate General Bobek in Case C-621/16 P *Commission v Italy* at paragraphs 144 to 151.

⁶⁸ At Section VII, point 10.

109. It is true that there are differences between the language requirements relating to the first category and the latter two categories, inasmuch as Article 45(2) of the Staff Regulations, which relates to officials alone, provides that ‘officials shall be required to demonstrate before their first promotion after recruitment the ability to work in a third language among those referred to in Article 55(1) [TFEU]’.

110. However, I do not see that additional provision as meaning that the provisions as to language knowledge on recruitment must be read differently as between officials and other servants. Rather, I understand it as reinforcing the rule that all those recruited by the institutions must, as a matter of policy, have a knowledge of at least two of the official languages. By definition, Article 45(2) of the Staff Regulations cannot apply to other servants, since the rules on promotion do not apply to them.

111. It follows from the above that Article 82(3)(e) of the CEOS should in my view be interpreted as meaning that all candidates for recruitment by the institutions as other servants are required to provide evidence of knowledge of at least two official languages. That provision cannot be read in such a way that the requirement for a second language applies only where it can be demonstrated that that knowledge is necessary for the performance of the candidate’s duties. Spain’s argument in that regard must therefore be rejected.

112. As regards Spain’s submissions concerning the reference in the call for candidates to level A2 knowledge of a further official language, it is difficult to understand what precisely the point is that that Member State is making. I am inclined, though, to agree with the Parliament that it is based on a misreading of the call, which merely indicates that candidates who have level A2 knowledge of one or more further official languages may be tested on that knowledge. It is not an attempt to introduce a further element in terms of language requirements that must be satisfied by each candidate.

113. For all of those reasons, I am of the view that the first part of this plea must fail.

114. As regards the second part of the plea, Spain argues that, even if knowledge of a second official language may be required, setting the level at B2 is arbitrary and cannot be justified. Having regard to the duties which drivers will be required to carry out once engaged, as evidenced by the list set out in Section II of the call for candidates, any justification in terms of the interests of the service must be objectively supported. Here, I note that the duties set out in Article 80(2) of the CEOS in relation to staff engaged in function group I are very different from those applying to the remaining function groups.

115. The Parliament argues that level B2 is the level that has traditionally been considered to represent a ‘satisfactory knowledge’ and is used as such in competitions and other forms of selection procedure. Such a level is, moreover, proportionate to the needs of the service, since the duties of successful candidates should not be seen as being limited to those set out in the call for candidates,⁶⁹ the list provided there being indicative and not exhaustive.

116. The starting point for any analysis of this part of the plea must be the proper construction to be given to the words ‘a satisfactory knowledge of another language of the Union to the extent necessary for the performance of his duties’, as used in Article 82(3)(e) of the CEOS.

117. In so far as the Parliament seeks to contend that level B2 should be accepted (in effect) without more since level B2 represents what it terms the ‘traditional’ interpretation to be given to the word ‘satisfactory’, it seems to me that that argument must fail.

⁶⁹ See point 25 above.

118. First, by placing the emphasis on one word ('satisfactory'), the Parliament fails to take account of the rest of the provision, according to which the candidate must prove that knowledge 'to the extent necessary for the performance of his duties'. By their nature, the duties successful candidates for one selection procedure will have to perform may be significantly different from those stipulated in another procedure. Thus, the requirement cannot logically be the same in every case.

119. Second, the Parliament's argument would be more persuasive if the word 'satisfactory' bore some relation to the categories used in the Common European Framework of Reference for Languages.⁷⁰ But it does not. That system classifies knowledge levels in three prime groups, namely 'basic user' (level A), 'independent user' (level B) and 'proficient user' (level C). These represent objective assessments. 'Satisfactory', by contrast, is a subjective assessment. To be given meaning, it must therefore find its roots in a measure which can be assessed. To my mind, that yardstick is represented by the needs of the post in question. A 'one-size-fits-all' test is wholly inappropriate in that context.

120. With respect to the Parliament's contention that fixing the requirement at level B2 can in any event be justified in the interests of the service, it is of course correct that the Court has accepted that those interests may justify what would otherwise amount to discrimination on the ground of language. At the same time, however, the Court has held that the interests in question must be objectively justified and the required level of knowledge of languages must be proportionate to the genuine needs of the service.⁷¹ In the latter respect, it has ruled that any difference in treatment must not go beyond what is necessary to achieve the objective pursued and that the institutions must weigh the legitimate objective justifying the limitation in question against the objective of identifying the most competent candidates.⁷²

121. As regards the question whether a legitimate objective exists, I have already concluded that candidates are required to provide evidence of their knowledge of a second official language.⁷³ It does not seem to me to be disproportionate to seek to measure that knowledge by reference to an accepted yardstick. That does not, however, mean that the required level of knowledge is, of itself, proportionate and I consider that the onus is on the Parliament to produce evidence in support of its argument that level B2 can be justified. In that context, as Spain rightly points out, the primary duties of successful candidates involve driving, that is to say, they require to be *skilled, professional drivers*. It might reasonably be observed in that context that to require of those candidates that they also should have invested a number of hours in obtaining a language qualification at level B2 which may exceed their professional driving training by a factor of over three⁷⁴ may seem, to put it mildly, extravagant. Moreover, to require a person who, on being engaged by the institution will be remunerated at the level of function group I⁷⁵ to have incurred expenditure on the language courses needed to acquire a level B2 language competence could be said to require particular justification.

122. What duties, then, are the drivers being recruited expected to carry out? The list set out in Section II of the call for candidates emphasises, not unnaturally, the aspects of the job that involve driving or tasks very closely related to driving. Some, such as transporting goods, documents and mail and loading and unloading vehicles, will involve little, if any, human contact.⁷⁶ Others, such as providing transport services for eminent persons and officials and other staff and providing transport services for visitors can be expected to require some ability to communicate. It should be noted that the former tasks are to be performed 'mainly in Brussels, Luxembourg and Strasbourg, and also in other Member States and third countries'.

⁷⁰ See point 45 et seq. above.

⁷¹ Judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 88.

⁷² See, to that effect, judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraphs 93 and 94.

⁷³ See point 110 above.

⁷⁴ See points 46 and 47 above.

⁷⁵ The current levels of remuneration for contract staff are detailed at https://epso.europa.eu/help/faq/2228_en.

⁷⁶ To the extent that those duties are in fact intended to be carried out by the drivers in question. See point 141 below.

123. The Parliament argues, however, that it is not sufficient to rely on the list of duties set out in the call for candidates alone in order to gain a full understanding of the tasks involved. That list was merely indicative. In particular, drivers may be required to welcome their passengers and answer their questions. They must also be able to understand instructions given by their line management and communicate with a series of external authorities such as police and customs officers.

124. I would make two observations in that regard. First, if the Parliament considers that a particular task is material in terms of the duties to be performed, it can reasonably be expected to say so in compiling a list such as that set out in Section II of the call for candidates. It is not open to the Parliament merely to indicate that, since the list is not exhaustive, candidates can naturally be expected to perform other duties. Candidates are legitimately entitled to expect that they can rely on the information provided in a call for expressions of interest in deciding whether to submit an application to participate in the selection procedure in question.⁷⁷

125. Equally, however, the list — which was preceded by the words ‘for guidance’ — could not be required to specify every aspect of the tasks which it set out. Candidates should be expected to understand that there may be other duties which are ancillary to those listed. In that regard, it would be normal to anticipate that, for example, when transporting passengers a driver ought to be in a position to communicate with them and that that driver should be capable of dealing with a police officer who stops the car during a journey. The question then arises what level of linguistic knowledge may reasonably be required for those purposes.

126. With respect to internal communications, the duties corresponding to function group I, as set out in Article 80 of the CEOS, give guidance as to the manner in which members of that function group are expected to carry out their role within the administration. Those duties comprise ‘manual and administrative support service tasks performed under the supervision of official or temporary staff’. That being the case, it is extremely hard to see that level B2 — ‘can understand the main ideas of complex text on both concrete and abstract topics ...’ — is objectively necessary for those activities. Level A2 — ‘can understand sentences and frequently used expressions related to areas of most immediate relevance ...’ — would be more likely to represent an appropriate yardstick.

127. As regards communications with external actors, such as the passengers described in point 122 above, and police and customs officers, it is worth bearing in mind that the issue to be decided in relation to proportionality is whether the requirement in question is both appropriate and necessary. Whilst there may be moments in the course of the drivers’ work in which level B2 — or, indeed, an even higher level if the point to be communicated is truly complex — may prove *useful* in practice, that does not mean that that level is ‘necessary’. That being the case, A2 seems to me to be likely to represent an appropriate and necessary level in that context as well.

128. In the light of all of the above, I am of the view that the second part of Spain’s second plea in law should be upheld.

⁷⁷ See, by analogy, judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 92.

The third and fourth pleas in law: infringement of Articles 1 and 6 of Regulation No 1, Article 22 of the Charter, Article 1d(1) and (6) of the Staff Regulations and Article 82 of the CEOS by reason of the limitation of the choice of second language under the selection procedure to three languages (the third plea) and by reason of the limitation of the choice of the second language to English, French and German only (the fourth plea)

129. By these two pleas in law, which are best treated together, Spain essentially argues that there is no legal basis for limiting the choice of second language under the call for candidates to three languages and that, in any event, the imposition of English, French and German is arbitrary. It claims, in particular, that there is no legitimate objective which would justify a limitation: that even if it is assumed that such an objective exists, the requirement was not proportionate and that there was a failure to take account of the need to select the candidates demonstrating the highest level of ability.

130. The Parliament, while accepting that any argument based on the interest of the service must be objectively justified and proportionate, argues that the need for candidates to be immediately operational will serve as such a justification. Since, as the call for candidates expressly records, English, French and German are the most widely used languages in the Parliament both for internal and external communication and in the handling of cases, the requirement is justified on the basis of the statistics referred to in Part C of Section IV. A balancing exercise was carried out between the interest of the service and the needs and abilities of candidates, since it was necessary to guarantee that candidates were proficient in at least one of those languages. The need for candidates to be immediately operational is particularly relevant in the case of contract staff, since they are to be engaged for a limited period only.

131. Spain bases its third and fourth pleas in law on (i) Regulation No 1, (ii) the Charter and (iii) the Staff Regulations and the CEOS. The core aspect of Spain's allegations concerns alleged discriminatory treatment on the ground of language. Such discrimination, if found to exist, would have its source in a series of requirements based on the candidates' situation as members of the contract staff following their recruitment. Thus, it seems to me that the essential point at issue under these pleas is the rules governing discrimination laid down by the Charter and, more fundamentally, their specific expression as set out in Article 80(4) of the CEOS. I shall therefore concentrate, in my analysis below, on that aspect.

– *The lack of a legitimate objective*

132. I referred above to the requirement under the Staff Regulations and the CEOS that officials and other staff should have a knowledge of two official languages as representing a policy decision.⁷⁸ There are no *travaux préparatoires* which would clarify the basis underlying that policy. However, it is in my view best understood by reference to the situation when the Staff Regulations were adopted in 1962. It is necessary to bear in mind that the official languages at that time were limited to four, with French being used either exclusively or commonly in three of the six original Member States. In that context, it is easy to understand that the draftsmen of the regulations would have wished to avoid a situation in which the institutions might become predominantly Francophone to the degree that many of its officials or servants spoke French alone. Another language should therefore be required.⁷⁹ Such an approach could therefore be said to be inclusive rather than exclusive.

⁷⁸ See point 110 above.

⁷⁹ A similar line of reasoning could be said to underlie the stipulation in Article 27 of the Staff Regulations that 'no posts shall be reserved for nationals of any specific Member State'.

133. I would also recall, as already noted,⁸⁰ the Court's observation that none of the institutions has exercised the facility provided for by Article 6 of Regulation No 1 to adopt rules of procedure specifying which of the official languages are to be used in specific cases. The Staff Regulations and the CEOS are silent: they do not, in other words, refer to any matters which are to be taken into consideration in order to limit the choice of languages. There are accordingly no explicit criteria which would allow the choice of second language to be limited, either to the three languages specified in the call or to other official languages.⁸¹

134. Nonetheless, the Court has very clearly accepted that restrictions of the kind set out in the call for candidates *may* be justified in certain cases. In particular, it has held that the interest of the service may be a legitimate objective for the purposes of Article 1d(6) of the Staff Regulations, which allows limitations to be placed on the overriding prohibition on the ground, *inter alia*, of language laid down by paragraph 1 of that article. It is necessary, however, that an objective justification be provided and that the restriction be proportionate.⁸² The question therefore is whether those limitations may be called in aid in the present case.

135. I shall address issues concerning proportionality in more detail below.⁸³ For immediate purposes, I would simply record that both as regards that point and the question whether an objective justification has been put forward, it is for the Parliament to establish that that is the case, since it is the party seeking to justify the derogation from the general principle that there should be no discrimination. It is accordingly necessary to determine whether the grounds advanced by the Parliament in Part C of Section IV of the call for candidates can be substantiated.

136. In that context, the Parliament places considerable emphasis on the need for candidates to be immediately operational once recruited. It states in its defence that this need is all the more pressing given the limited period for which contract staff such as drivers are to be engaged.

137. Such an argument seems to me to be based on a fundamental misconception. I have earlier indicated that staff such as drivers can no longer be recruited as officials, since the Staff Regulations preclude this. They must instead be engaged as contract staff — in the normal course, pursuant to Article 3a of the CEOS.⁸⁴ It is clear from Article 85(1) of the CEOS that, following the first renewal of their contract, those staff are to be engaged *for an indefinite period*. They are, in that respect, assimilated to officials, whose service may be terminated only on the grounds listed in Article 47 of the Staff Regulations, of which the principal ones comprise resignation or retirement. They are *not* in the position of contract staff engaged under Article 3b of the CEOS, whose employment is limited, by virtue of Article 88, to a maximum period of six years and may or will in many cases be for a shorter duration. It is thus entirely incorrect to speak of the staff at issue as being engaged of necessity for a short period only.⁸⁵ The Parliament's argument thus fails to meet the test of reality.

138. Even if it were to be assumed that the requirement to be immediately operational extends to all staff, of whatever nature, engaged by the institutions, it is worth pausing to consider what that expression may actually mean. It seems to me to be natural for an EU institution, in the same way as any other employer, to wish to recruit staff who are able to begin work immediately. But that need not

80 See point 40 above.

81 See judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraphs 83 and 85.

82 See, to that effect, judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraphs 87 and 88.

83 See points 144 to 150 below.

84 See point 52 above. Section IX of the call for candidates confirms that the staff in question were to be engaged under that provision.

85 Indeed, that point is reflected in Section IX of the call for candidates, which refers to the second renewal of the contract being for an indefinite period.

mean, particularly in relation to persons who may be recruited for an indefinite period, that they need to be capable of performing every aspect of the duties in full on day one. Training can be, and commonly is, provided in order to enable newly recruited persons to work at the required level in all aspects of their post.

139. As for the three languages specified in Part C of Section IV of the call for candidates, the Parliament provides statistics based on language knowledge declared by staff in their annual staff reports, which show a ‘satisfactory’ knowledge of English of 92%, French of 84% and German of 56%. Although the accompanying text does not expressly say so, those figures can be assumed to be relevant essentially for the purposes of internal communication. As regards duties specific to the post, the Parliament submits that the ‘primary duty’ of drivers following their recruitment is transporting MEPs. According to statements made by them in 2014, 97% understood English, 61% French and 37% German. From that, the Parliament argues that the choice of the three languages can be explained ‘by the need for drivers to communicate as much as possible with MEPs in a language which the latter will understand’. As regards members of the diplomatic corps and other eminent persons, the Parliament states that English is the most widely used language. It adds that French is the most commonly spoken language in each of Brussels, Luxembourg and Strasbourg, with German also playing an important role in the second of those cities.

140. The difficulty I have with the Parliament’s submissions in this regard is that they appear to lack any overall coherence. As regards the use of English in respect of internal communications, it could be observed that the figure of 92% is in practice so close to 100% as to make no significant difference in practice. The same might be said in relation to French, at 84%, although with less force. But the same cannot be true of German, at 56%. Should a candidate having German as his second language be recruited, almost half of his colleagues would risk being unable to communicate with him.⁸⁶ It cannot therefore be said that, by having one of the three languages in question, a successful candidate could be sure of being able to communicate with his colleagues.

141. As regards the actual duties to be carried out by the drivers concerned, the Parliament was clear at the hearing that, notwithstanding the list of duties set out in Section II of the call for candidates, they would not in fact be required to transport mail, since this was the responsibility of other parts of the Parliament’s services.⁸⁷ Asked whether the entry concerning ‘administrative and logistical support work’ meant that they would have to undertake clerical duties, the Parliament indicated that they would not or, if called upon to do so, that it would be only extremely rarely.⁸⁸ In response to the question why Dutch should not also be required as one of the languages in question, since it would plainly be relevant to duties carried out mainly in Brussels,⁸⁹ the Parliament could give no useful answer.

⁸⁶ Unless, of course, they can do so through his first language.

⁸⁷ The Parliament accepted at the hearing that the drafting of the list of duties for drivers had been what it termed ‘generic’.

⁸⁸ With respect to what the Parliament terms ‘the handling of cases’ in its defence, the position is linguistically curious. The expression appears to have been used in the EPSO standard form explanation for the second language requirement in certain competition notices. It could be said to make a certain sense in relation to, for example, the recruitment of administrators. In the English language version of the call for candidates, however, those words have been removed and replaced — it has to be assumed intentionally — by the words ‘day-to-day work’. Presumably, this was done on the basis that the tasks drivers were expected to undertake would not routinely (or at all) include the handling of cases. Yet the same was not done in either the French or German equivalents of the text: these each referred to the ‘handling of cases’ (‘traitement des dossiers’ and ‘Bearbeitung von Akten’, respectively). It is therefore far from clear what the Parliament had in mind. However, it seems to me that (i) the handling of cases indeed must be most unlikely to represent a normal part of a driver’s duties and (ii) the use of the reference in English to ‘day-to-day work’ in fact adds nothing in real terms, since the issues revolve around the languages that may be required of successful candidates in performing their duties and these aspects are already adequately covered by the references in the text to internal and external communications.

⁸⁹ See Section I of the call for candidates.

142. Turning next to external communications, it appears that as regards what the Parliament terms the ‘primary duty’ of drivers, that is to say, transporting MEPs, the figure for MEPs who understand English — which is also said to be the most appropriate language for communication with visitors — is extremely high, at 97%. French, at 61%, might be said to be ‘useful’ but in no sense guaranteed to ensure communication, whereas German, at 37%, would leave 63% of passengers unable to make themselves understood. The linguistic requirement imposed then becomes meaningless.

143. It follows from the above that, although the aim may have been a legitimate one, in terms of the interest of the service, it lacked in my view any objective justification. That requires that the restriction should have found some basis in reality and that element seems to me to have been clearly lacking.

– *Proportionality*

144. I have already indicated in the context of the second plea in law that in determining whether a requirement is appropriate it is necessary to have regard to the needs of the post in question.⁹⁰ In my view, the same principle applies in relation to the third plea. Since I have concluded that there was no objective justification for the language restrictions imposed by the call for candidates, it is not strictly necessary to address the question of proportionality. I shall nonetheless consider it briefly below for the sake of completeness.

145. I shall do so by reference to two paragraphs of the Court’s judgment in *Italy v Commission*.⁹¹

146. First, in paragraph 94 of that judgment, the Court, having noted the requirement laid down in Article 27 of the Staff Regulations that the institutions should recruit the services of officials ‘of the highest standard of ability, efficiency and integrity’, went on to hold that it was for those institutions to weigh the legitimate objective justifying the limitation of the number of languages of the competition against the objective of identifying the most competent candidates.

147. In that regard, the Parliament seeks to argue that, since the obligation to select persons of the highest ability applies only to officials and temporary staff,⁹² the selection of high quality candidates as contract staff is not a relevant issue.

148. In my view, that cannot be correct. If the CEOS are silent as regards contract staff that is because they must recognise that there may be instances in which those staff are needed instantly to perform contracts of short duration and where the question is ‘can this person do the job?’ and not ‘is this person among the people best able to do the job?’. A degree of flexibility must therefore be built in. That cannot mean that the requirement to look for a high level of quality is somehow to be discarded in the case of all staff of this kind. Save where circumstances otherwise dictate, the institutions should (in precisely the same way as any other employer) be seeking to recruit staff of the highest level of ability to do the job in exactly the same way as they ought to be looking for staff of the highest degree of efficiency and integrity. That seems to me to go without saying.

149. Second, in paragraphs 96 and 97 of the same judgment, the Court first noted the fact that languages are, for officials of the institutions, what it termed ‘an essential element of [their] career’ and that knowledge of a third language is relevant to their promotion. It held that it was a matter for the institutions to weigh up the legitimate objective referred to in point 146 above against the opportunities for officials, once recruited, to learn, within the institutions, the languages necessary in the interest of the service.

⁹⁰ See point 119 above.

⁹¹ Judgment of 27 November 2012, C-566/10 P, EU:C:2012:752.

⁹² See Article 27 of the Staff Regulations and Article 12(1) of the CEOS, respectively.

150. That reasoning cannot be transposed to the present case in its entirety, since contract staff are not eligible for promotion. However, that does not detract from the underlying point, namely that in considering whether it is *necessary* to impose a language requirement such as the one at issue in the present case, the institutions should at all times bear in mind that it is possible to provide the staff they recruit with language training with a view to their learning a new language or enhancing their knowledge of a language they already know. There is no suggestion in the present case that the Parliament addressed the issue from that perspective.

– Interim conclusion as regards the third and fourth pleas in law

151. The essence of the third plea in law is Spain's argument that, by restricting the choice of second language in the call for candidates, the Parliament was in breach of EU law and, in particular, infringed the rule prohibiting discrimination on ground of language. Were the limitation to be less restrictive, it would be possible — for example — to include Spanish among the list of permitted second languages.

152. That said, as I have indicated above, it is clear that an institution such as the Parliament *may* impose limitations in that regard, provided that there is an objective justification and that the proportionality principle is respected.⁹³ The requirements which those limitations represented in the present case — or, to be more precise, Spain's allegations that they were not fulfilled in the case of the call for candidates — are the subject of the fourth plea in law.

153. In so far, though, as by its third plea in law Spain seeks to introduce additional elements into the equation, it goes in my view beyond what the Court is competent to do. The action was brought under Article 263 TFEU. That provision gives the Court jurisdiction to 'review the legality of acts' of, *inter alia*, the Parliament where such acts are intended to produce legal effects *vis-à-vis* third parties. Whilst it may be the case that the call for candidates would have been valid had the choice of second language been broader (or, indeed, narrower), that is not a matter on which this Court can speculate and, accordingly, not a matter on which it can give a ruling.⁹⁴

154. For that reason, I am of the view that the third plea in law must be rejected.

155. Conversely, and for all the reasons set out in points 132 to 150 above, I consider that the fourth plea in law should be upheld.

The scope of the form of order sought

156. Spain seeks not only the annulment of the call for candidates itself but also of the database of successful candidates created pursuant to Section VIII. It observes that inclusion in the database does not constitute a guarantee of recruitment and that there would accordingly be no infringement of the principle of legitimate expectations if it were to be annulled. Should the database be maintained, the illegality underlying the call for candidates would be maintained, potentially indefinitely.

157. The Parliament argues that the rights of the candidates whose names have been entered in the database are indeed protected by that principle, a position which it claims is reflected in the case-law both of this Court and of the General Court.

⁹³ See point 134 above.

⁹⁴ See also point 169 below.

158. It is true that in its judgment in *Italy v Commission* the Court held that the legitimate expectations of the candidates for the competitions at issue in that case meant that the results of the competitions should not be called into question.⁹⁵ Thus, it annulled the notices of the competitions alone, at the same time allowing the results to stand.

159. The General Court has done the same in a series of subsequent judgments.⁹⁶

160. In one of its earlier judgments,⁹⁷ the General Court spent some time analysing the position of candidates for the competition in question. It noted in particular the fact that they had invested a degree of effort in preparing for a competition organised pursuant to a notice which they had considered to be valid. The fact that, long after the end of the competition, it appeared that following a judgment delivered in a different, although similar, case that the notice was vitiated by illegality, could not undermine their legitimate expectations.⁹⁸

161. I have some sympathy with the position adopted by the General Court there. Nevertheless, it seems to me to be fundamental that the point of view there set out was adopted less than a year after this Court's judgment in *Italy v Commission*.⁹⁹ At the time of writing in the present case, over five years have passed since that date. There can be no question of those legitimate expectations continuing indefinitely. I accordingly agree with the position put forward by Spain. The database should therefore be annulled together with the call for candidates itself.

Concluding remarks

162. I would offer the following observations before concluding.

163. First, notwithstanding the long series of judgments narrated in footnotes 95 and 96 above, it appears that certain institutions,¹⁰⁰ in close cooperation with EPSO, have continued to organise open competitions and selection procedures imposing essentially similar requirements as to candidates' second language and using essentially similar formulations as regards those requirements in the corresponding notices or calls for expressions of interest.¹⁰¹ They have done so on the basis that, even if the notice or call for candidates is annulled in a subsequent challenge before the EU courts, the results, in the form of the lists of successful candidates, will not be.

164. In a European Union governed by the rule of law, such a course of conduct on the part of certain of its institutions seems to me to be nothing short of outrageous. It should cease immediately.

⁹⁵ Judgment of 27 November 2012, C-566/10 P, EU:C:2012:752, paragraph 103.

⁹⁶ See judgments of 12 September 2013, *Italy v Commission*, T-142/08, not published, EU:T:2013:422, paragraph 51; of 12 September 2013, *Italy v Commission*, T-164/08, not published, EU:T:2013:417, paragraph 51; of 12 September 2013, *Italy v Commission*, T-126/09, not published, EU:T:2013:415, paragraph 49; of 12 September 2013, *Italy v Commission*, T-218/09, not published, EU:T:2013:416, paragraph 37; of 16 October 2013, *Italy v Commission*, T-248/10, not published, EU:T:2013:534, paragraphs 45 to 51; of 24 September 2015, *Italy and Spain v Commission*, T-124/13 and T-191/13, EU:T:2015:690, paragraph 151; of 17 December 2015, *Italy v Commission*, T-275/13, not published, EU:T:2015:1000, paragraph 133; of 17 December 2015, *Italy v Commission*, T-295/13, not published, EU:T:2015:997, paragraph 191; of 17 December 2015, *Italy v Commission*, T-510/13, not published, EU:T:2015:1001, paragraph 162; and of 15 September 2016, *Italy v Commission*, T-353/14 and T-17/15, EU:T:2016:495, paragraph 213.

⁹⁷ Judgment of 16 October 2013, *Italy v Commission*, T-248/10, not published, EU:T:2013:534, paragraphs 45 to 51.

⁹⁸ See paragraph 48 of the judgment.

⁹⁹ Judgment of 27 November 2012, C-566/10 P, EU:C:2012:752.

¹⁰⁰ With the exception, I would stress, of the Court of Justice.

¹⁰¹ See point 58 above.

165. Second, and as regards the languages selected by the Parliament to operate as the second language in the call for candidates, the choice of English, French and German was not a new one. Indeed, the same combination has been the subject of successful challenges in numerous cases before this Court and the General Court.¹⁰² However, it would appear that in at least some more recent competitions EPSO has abandoned that approach and replaced it with an arrangement whereby candidates are free to select their second language from any of the official languages (and may indeed nominate more than one). Once the relevant deadline has passed, the five languages most frequently declared by candidates will, subject to a review conducted in the needs of the service, be declared the second languages for the competition. A candidate who has not declared any of those languages will be disqualified.¹⁰³ It seems to me that such a demand-led system may have two advantages. First, it may better reflect the knowledge that candidates may actually have. Second, it avoids the (in my view quite serious) pitfall faced by the arrangement at issue in the present case which is that, by enshrining the requirement for English, French and German as second languages, the use of those languages will become fixed within the institutions, if not for perpetuity then at least for a considerable period. I would also note in passing that, for one of those competitions,¹⁰⁴ response rates were: for English 97.86%, for French 51.30%, for Spanish 27.98%, for Italian 26.73% and for German 19.33%.¹⁰⁵ That result suggests in my view that it may be unwise automatically to give German the prominence it has in the past been accorded. However, I can also perceive at least one potential disadvantage in the arrangement in so far as it fails to provide any certainty to candidates preparing for the competition and whose second language(s) may not ultimately prove to be among those selected for carrying forward. That point is not, however, at issue in the present case and I intentionally do not consider it further.

166. More generally, I suggested in point 119 above that a global ‘one-size-fits-all’ approach was inappropriate for the purposes of determining the level of language knowledge required of drivers in the present case. The same is in my view true of the manner in which language requirements as a whole are set in open competitions and calls for expressions of interest.

167. That is particularly so where there is a need for candidates once recruited to perform a specific task or series of tasks. Thus, if applications are required for temporary agents to work in a new sub-unit to be responsible for regional development in mountainous areas of Greece, justifying a stipulation that those presenting themselves should have Greek as one of their languages should normally pose little problem. The same will be true as regards, for example, competitions for translators or lawyer linguists required to translate into a particular language.

168. I appreciate that the task becomes harder in the case of general competitions. Nonetheless, it remains the case that any restriction must pursue a legitimate objective and be proportionate. I would make two observations in that context. First, the primary purpose of any competition or selection procedure is — subject to any specific requirements relating to language otherwise stated in any given case — to select the best candidates for the post, that is to say, those having the highest standard of ability.¹⁰⁶ Seen from that perspective, the language requirements the institution seeking to recruit, or EPSO acting as agent for the institutions it represents will be secondary. They must accordingly be tailored to meet that primary objective.

¹⁰² See judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752 and the cases cited in footnote 96 above.

¹⁰³ See Notice of open competition — EPSO/AD/338/17 — Administrators (AD 5) (OJ 2017 C 99A, p. 1); Notice of open competition — EPSO/AST-SC/06/17 — Secretaries/Clerks (SC 1 and SC 2) (OJ 2017 C 377A, p. 1); and Notice of open competition — EPSO/AD/356/18 — Administrators (AD 5) (OJ 2018 C 88A, p. 1).

¹⁰⁴ EPSO/AD/356/18 — Administrators (AD 5). See https://epso.europa.eu/apply/job-offers/news/3189_languages-candidates-2018-graduate-administrators-competition_en.

¹⁰⁵ For the other two competitions, the corresponding figures were: (for EPSO/AD/338/17 — Administrators (AD 5)) English 97.31%, French 52.07%, Spanish 27.29%, Italian 26.83% and German 18.69% (see https://epso.europa.eu/apply/job-offers/news/2533_languages-candidates-graduate-administrators-2017-competition_en) and (for EPSO/AST-SC/06/17 — Secretaries/Clerks (SC 1 and SC 2)) English 91.16%, French 56.82%, Italian 31.27%, Spanish 26.22% and German 9.99% (see https://epso.europa.eu/apply/job-offers/news/2893_languages-candidates-secretaries-clerks-2017-competition_en).

¹⁰⁶ See Article 27 of the Staff Regulations as regards the recruitment of officials and see generally point 148 above.

169. Second, any decision-making process involves the drawing of lines and I do not see the call for candidates as being open to criticism purely in so far as it sought to do so by requiring applicants to have one of three second languages. The more difficult question is where the barrier should be set. If it were to be desired to set only two languages, justifying that choice would not seem to me necessarily to be an impossible task in every situation but doing so would need specific analysis and explicit reasoning in every case. Conversely, it will be unrealistic to set the level at a figure that is unduly high — for example by obliging a selection to be made from at least 10 languages. What is appropriate will require careful consideration in every case and if the figure is to be proportionate it should be reasonable. Thus, to take only one example, if the statistics on which a requirement is based show that knowledge of language ‘A’ is 26.3% and that of language ‘B’ is 25.7%, it will be difficult, and probably impossible, to justify including language ‘A’ but excluding language ‘B’.

Costs

170. Under Article 138(1) of the Court’s Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since I consider that the Court should grant the form of order sought by Spain on the basis of all its pleas in law other than the third plea, the Parliament should pay the costs.

Conclusion

171. In the light of all the foregoing considerations, I am of the opinion that the Court should:

- annul the Call for Expressions of Interest Contract Staff — Function Group I — Drivers (F/M) — EP/CAST/S/16/2016EP together with the database created pursuant to Section VIII thereof, and
- order the European Parliament to pay the costs.

ANNEX

Common European Framework of Reference for Languages

Common Reference Levels

PROFICIENT USER	C2	Can understand with ease virtually everything heard or read. Can summarise information from different spoken and written sources, reconstructing arguments and accounts in a coherent presentation. Can express him/herself spontaneously, very fluently and precisely, differentiating finer shades of meaning even in more complex situations.
	C1	Can understand a wide range of demanding, longer texts, and recognise implicit meaning. Can express him/herself fluently and spontaneously without much obvious searching for expressions. Can use language flexibly and effectively for social, academic and professional purposes. Can produce clear,

		well-structured, detailed text on complex subjects, showing controlled use of organisational patterns, connectors and cohesive devices.
INDEPENDENT USER	B2	Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialisation. Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options.
	B1	Can understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc. Can deal with most situations likely to arise whilst travelling in an area where the language is spoken. Can produce simple connected text on topics which are familiar or of personal interest. Can describe experiences and events, dreams, hopes & ambitions and briefly give reasons and explanations for opinions and plans.
BASIC USER	A2	Can understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, employment). Can communicate in simple and routine tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate need.
	A1	Can understand and use familiar everyday expressions and very basic phrases aimed at the satisfaction of needs of a concrete type. Can introduce him/herself and others and can ask and answer questions about personal details such as where he/she lives, people he/she knows and things he/she has. Can interact in a simple way provided the other person talks slowly and clearly and is prepared to help.