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Judgment of the Court in Cases C-623/20 P | *Commission v Italy* and C-635/20 P | *Commission v Spain and Italy*

The Court of Justice confirms the unlawfulness of two EPSO notices of competition restricting the choice of the second language to English, French or German

It was not demonstrated that that restriction was justified by the interests of the service in recruiting staff who are immediately operational

The Commission brought two appeals before the Court of Justice seeking that it set aside the judgments delivered by the General Court on 9 September 2020.¹ By those judgments the General Court annulled two EPSO notices of open competition for:

1. the constitution of reserve lists of administrators in the field of audit
2. the constitution of reserve lists of administrators entrusted with the duties of investigators and team leaders in the fields of EU expenditure, anti-corruption, customs and trade, tobacco and counterfeit goods

The EPSO notices specified that candidates must satisfy specific language conditions: a minimum level of C1 in one of the 24 official EU languages (language 1), and a minimum level of B2 in English, French or German (language 2), described as being the main working languages of the EU institutions. In their actions, Italy and Spain challenged the legality of two aspects of the language regime established by the notices of competition limiting to English, French and German the choice, first, of the second language of the competition and second, of the language of communication between candidates and EPSO.² In upholding the complaints of Italy and Spain, the General Court noted that the restriction of the choice of second language to English, French and German constitutes, in essence, a difference in treatment based on language. It also held that that difference in treatment was not objectively justified by the main ground put forward in the notices of competition,³ namely the need for administrators recruited to be

¹ Judgments of the General Court of 9 September 2020, *Italy v Commission*, [T-437/16](#) and *Spain v Commission*, [T-401/16](#), and of 9 August 2016, *Italy v Commission*, [T-443/16](#).

² Article 1 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1) provides: 'The official languages and the working languages of the institutions of the [European] Union shall be Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish. Article 2 of that regulation provides: 'Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the [European Union] may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language.' Under Article 6 of that regulation: 'The institutions of the [European Union] may stipulate in their rules of procedure which of the languages are to be used in specific cases.'

³ Article 1d of the Staff Regulations of Officials of the European Union, established by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and

immediately operational.

By today's judgments, **the Court of Justice dismisses the Commission's appeals and thereby upholds the decisions of the General Court.**

The Court of Justice points out that the broad discretion of the institutions with regard to the organisation of their departments is framed in such a way that, where there is a limitation on the language regime of a selection procedure to a restricted number of official languages of the European Union, the institution concerned must establish that such a limitation is objectively justified by the interests of the service, that it is appropriate for the purpose of meeting actual needs, proportionate to these needs and that it is based on clear, objective and foreseeable criteria. According to the Court of Justice, **the General Court correctly examined whether the restriction of the choice of second language of the candidates to English, French or German was objectively justified and proportionate to the aim of recruiting administrators who are immediately operational, and it correctly concluded that that was not the case.** The General Court was fully entitled to conclude that the Commission had failed to establish that a satisfactory knowledge of those languages would be essential in order to achieve that objective. In particular, the General Court rightly pointed out that knowledge of French and German was no more justified than knowledge of another EU language.

The Court of Justice confirms, in particular, that the sole purpose of the evidence relating to the Commission's internal language practice is establishing the languages required in order to carry out the Commission's various decision-making procedures but it does not justify the restriction at issue with regard to the functional specificities of the posts referred to in the notices of competition. That evidence does not make it possible to establish the existence of a **necessary link between those procedures and the duties** which the successful candidates in the competition might perform, or that all three languages described as 'procedural languages' are **actually used** by the Commission services, the Court of Auditors and the European Anti-Fraud Office (OLAF) in their **daily work**.

Lastly, the Court of Justice finds that the General Court did not distort the clear sense of the evidence produced by the Commission, including the rules of procedure of that institution nor did it commit an error of law or infringe its obligation to state reasons.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The full text of the judgments ([C-623/20 P](#) and [C-635/20 P](#)) is published on the CURIA website on the day of delivery.

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instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968(I), p. 30), as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ 2013 L 287, p. 15), states: '1. In the application of these Staff Regulations, any discrimination based on ... language ... shall be prohibited. 6. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. ...'