



Press and Information

Court of Justice of the European Union

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Judgment in Cases C-377/16, Spain v Parliament,  
and C-621/16 P, Commission v Italy

## **Differences of treatment based on language are, in principle, not allowed in the procedures for selecting staff for the EU institutions.**

*However, such a difference is permissible provided that it meets the actual needs of the service, is proportionate to those needs and is motivated by clear, objective and foreseeable criteria*

In Case C-377/16, Spain asked the Court of Justice to annul, on grounds of discrimination based on language, the European Parliament's call for applications launched in 2016 for the establishment of a database of candidates to act as drivers. The application form was available only in English, French and German. In addition to a thorough knowledge of one of the 24 official EU languages as 'language 1' of the selection procedure, candidates were required to have a satisfactory knowledge of English, French or German as 'language 2'. The Parliament justified that restriction on the choice of 'language 2' by 'the interests of the service, which require newly recruited staff to be immediately operational and able to communicate effectively in their daily work' and by the fact that those three languages are the most widely used within the institution.

In Case C-621/16P, the Commission brought an appeal before the Court of Justice seeking the annulment of the judgment of the General Court<sup>1</sup> by which the General Court, as a result of actions brought by Italy, had annulled two notices of open competition of the European Personnel Selection Office (EPSO)<sup>2</sup> on the grounds that it was unlawful to restrict the choice of 'language 2' of the competition to English, French and German and to restrict to those three languages the choice of language of communication between candidates and EPSO.

By today's judgments, the Court, in Case C-377/16, **annuls the call for expressions of interest and declares the database established under that call void** and, in Case C-621/16P, **dismisses the Commission's appeal**.

The Court reiterates<sup>3</sup> that the Staff Regulations<sup>4</sup> **prohibit any discrimination, including discrimination on grounds of language**, it being understood that **differences of treatment on grounds of language may be authorised if they are justified by a legitimate objective of general interest**, such as **the interests of the service** or even the **actual needs relating to the duties that the persons recruited will be required to carry out**. In that regard, the Court notes that, in a selection procedure, the institutions enjoy a broad discretion when assessing the qualifications and merits of the candidates to be taken into consideration. However, they are required not only to ensure that any difference in treatment based on language is such as to meet **the interests of the service and is proportionate thereto**, but also to justify such a difference by **clear, objective and foreseeable criteria** enabling candidates to understand the grounds for that difference in treatment and the courts of the European Union to review its lawfulness.

<sup>1</sup> Cases [T-353/14](#) and [T-17/15](#) Italy v Commission.

<sup>2</sup> Notices of open competition EPSO/AD/276/14 to constitute a reserve list of administrators (OJ 2014 C 74 A, p. 4), and EPSO/AD/294/14 to constitute a reserve list of administrators in the field of data protection for the European Data-protection Supervisor (OJ 2014 C 391 A, p. 1).

<sup>3</sup> Case [C-566/10P](#), Italy v Commission, see Press Release No [153/12](#).

<sup>4</sup> Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of officials and the conditions of employment of other servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition II, 1968(I), p. 30), as amended by Council Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ 2013 L 287, p. 15).

In Case C-377/16, the Court observes that, in the absence of any indication that it was possible to complete the **application form, available only in English, French and German**, in any of the official EU languages, it was reasonable for the candidates to assume that it was mandatory to complete the form in one of those three languages. This results in a **difference of treatment based on language, which is in principle prohibited**. The Parliament **did not show that there was a legitimate objective** of general interest justifying such a difference in treatment.

The Court then observes that **the restriction of the choice of 'language 2' to English, French and German also constitutes a difference of treatment based on language, which is in principle prohibited**. The Parliament's call for applications does not justify that restriction in relation to the specific language needs relating to the functions that the recruited drivers will be called upon to perform. The Court observes that neither the fact that drivers must perform their duties in French-speaking or German-speaking cities, nor the fact that the persons conveyed most often use the English language, are such as to justify restricting the choice of 'language 2' to the three languages mentioned above. The Parliament did not establish how each of those languages would be particularly useful for the performance of the duties in question and why that choice could not include other official languages which may be relevant to those duties. Moreover, insofar as the Parliament has not adopted internal rules governing its language regime, it cannot be affirmed that those three languages are, necessarily, the most useful languages for all duties in that institution.

In Case C-621/16 P, the Court finds, first of all, that a competition notice sets out the normative framework for a specific competition. **Each competition notice thus has independent binding legal effects and is therefore capable of being appealed independently**. The General Court therefore correctly held that the actions brought by Italy were admissible.

The Court then notes that the General Court correctly held that **a candidate's highest standards of ability, efficiency and integrity are independent of language knowledge**, the latter being the means of demonstrating the former. Consequently, the General Court did not err in holding that the objective of recruiting officials of the highest standard of ability, efficiency and integrity does not justify a difference in treatment based on language. The Court of Justice further notes that the General Court correctly examined the question of whether there were 'concrete indications' making it possible to establish, objectively, that there was an interest of the service justifying the restriction on the choice of 'language 2' of the competition. The Court further points out that the General Court did not substitute its assessment for that of EPSO but confined itself to reviewing the merits of the justifications provided by EPSO for the restriction on the choice of 'language 2' in the competition.

Finally, the Court notes that, while competition notices must be published in full in the *Official Journal of the European Union* in all the official EU languages, **EPSO is not obliged to communicate, in the context of a competition, with a candidate in a language freely chosen by the latter**. However, the restriction on the choice of language of communication between candidates and EPSO to a limited number of official languages indicated by EPSO must be justified. In this case, **no such justification was provided by EPSO**.

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**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**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 [C-377/16](#) and [C-621/16 P](#) of the judgments are published on the CURIA website on the day of delivery.

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