

Grounds of appeal and main arguments

In support of its appeal, the Commission relies on three grounds. The **first ground of appeal** alleges an error of law in the interpretation of Article 1d(6) of the Staff Regulations and in the interpretation of the obligation to state reasons, as well as infringement of the duty to state the reasons on which judgments of the General Court are based. This ground is divided into three parts.

The first part alleges an error of law and infringement of the obligation to state reasons as regards the objective of immediate operability of candidates, and relates to paragraph 137 of the judgment under appeal.

The second part concerns the definition of a disproportionate burden of proof on the Commission and infringement of the obligation to state reasons. This part relates to the last sentence of paragraph 113, paragraphs 138 and 144, the last sentence of paragraph 147 and paragraphs 157 to 161, 193 and 197 of the judgment under appeal.

The third part alleges that the General Court erred in law in seeking a legally binding act in the internal rules provided by the Commission. This part relates to paragraphs 132 to 135 of the judgment under appeal.

The **second ground of appeal** alleges various distortions by the General Court in its assessment of the evidence and an error of law.

The first distortion relates to the assessment of the Communication of the President of the Commission and its approval, made by the General Court in paragraphs 112 to 117 and paragraph 138 of the judgment under appeal.

The second distortion concerns the assessment of the Commission's internal rules and their implementing provisions, made in paragraphs 119 and 120 of the judgment under appeal.

The third distortion concerns the assessment of the section on the linguistic requirements as regards the adoption procedure contained in the Manual of Operational Procedures and relates to paragraphs 145 to 149 of the judgment under appeal.

The fourth distortion concerns the failure to carry out an overall assessment of the documents referred to in the three preceding paragraphs and relates to paragraphs 132 to 137 and paragraph 139 of the judgment under appeal.

The fifth distortion concerns the assessment of Communication SEC(2006)1489 final and relates to paragraphs 140 to 143 of the judgment under appeal.

The sixth distortion concerns the assessment of the evidence on the languages used by Commission staff members responsible for the audit function. As regards the same paragraphs of the judgment under appeal, the Commission also alleges an error of law. Both alleged defects relate to paragraphs 152 to 163 of the judgment under appeal.

The seventh distortion concerns the internal rules of the Court of Auditors as regards languages and the languages used by members of the staff of the Court of Auditors. This relates to paragraphs 172 to 188 of the judgment under appeal.

The **third ground of appeal** concerns the allegedly unlawful nature of the General Court's analysis of the candidates' languages of communication. This ground relates to paragraphs 219 to 224 of the judgment under appeal.

Appeal brought on 20 November 2020 by the European Commission against the judgment of the General Court (Ninth Chamber) delivered on 9 September 2020 in Joined Cases T-401/16 and T-443/16, Spain and Italy v Commission

(Case C-635/20 P)

(2021/C 28/53)

Languages of the case: Spanish and Italian

Parties

Appellant: European Commission (represented by: G. Gattinara, D. Milanowska, T. Lilamand and N. Ruiz-García, acting as Agents)

Other parties to the proceedings: Italian Republic, Kingdom of Spain

Form of order sought

The Commission claims that the Court should:

- set aside the judgment under appeal;
- if the Court considers that the state of the proceedings so permits, dismiss the action at first instance as unfounded;
- order the Italian Republic and the Kingdom of Spain to pay the costs of the present proceedings and of those at first instance.

Grounds of appeal and main arguments

In support of its appeal, the Commission relies on three grounds.

The **first ground of appeal** alleges an error of law in the interpretation of Article 1d(6) of the Staff Regulations and in the interpretation of the obligation to state reasons, as well as infringement of the duty to state the reasons on which judgments of the General Court are based.

This ground is divided into three parts. By the first part, the appellant alleges an error of law and infringement of the duty to state the reasons on which judgments of the General Court are based as regards the objective of immediate operability of candidates. This first part relates to paragraphs 157 and 181 to 183 of the judgment under appeal.

The second part concerns the definition of a disproportionate burden of proof on the Commission and an alleged error of law in the definition of the obligation to state reasons for competition notices. This second part relates to the last sentence of paragraph 133, paragraphs 158 and 164, the last sentence of paragraph 167, and paragraphs 180 to 183, 201 and 205 of the judgment under appeal.

The third part alleges that the General Court erred in law in seeking a legally binding act in the internal rules provided by the Commission. This part relates to paragraphs 152 to 155 of the judgment under appeal.

By the **second ground of appeal** the appellant alleges that various distortions were made by the General Court in its assessment of the evidence and that the General Court committed an error in law.

The first distortion relates to the assessment of the Communication of the President of the Commission and the assessment of its approval made by the General Court in paragraphs 132 to 137 and paragraph 158 of the judgment under appeal.

The second distortion concerns the assessment of the Commission's internal rules and the provisions for their implementation made in paragraphs 139 and 140 of the judgment under appeal.

The third distortion concerns the assessment of the section on the linguistic requirements as regards the adoption procedure in the Manual of Operational Procedures made in paragraphs 165 to 169 of the judgment under appeal.

The fourth distortion concerns the failure to carry out an overall assessment of the documents referred to in the three preceding paragraphs and relates to paragraphs 152 to 157 and paragraph 159 of the judgment under appeal.

The fifth distortion concerns the assessment of Communication SEC(2006)1489 final made in paragraphs 160 to 163 of the judgment under appeal.

The sixth distortion concerns the assessment of the documents concerning the languages used in the services for which the candidates were intended and an error of law. This relates to paragraphs 180 to 185 and 188 to 196 of the judgment under appeal.

Lastly, the **third ground of appeal** concerns the allegedly unlawful nature of the General Court's analysis of the candidates' languages of communication. This ground relates to paragraphs 231 to 236 of the judgment under appeal.
