**Complaint under Article 90(2) of the Staff Regulations**

**Complainant: Mr/Ms XX, trainee / AC / TA / official in grade XX, staff number …**

**Subject: Call for expression of interest - pilot Junior Professionals Programme – violation of Articles 4, 27 and 29 of the EU Staff Regulations – maladministration**

**I - THE FACTS**

On 8 June 2018, the Commission issued a call for expression of interest ("CEI") for participation in a program aiming at "*retaining and developing resources from the Commission’s known talent pool with proven outstanding performance on the job*".

The objective pursued by the Commission is "*diversifying the sources of recruitment*".

Candidates must have a maximum of three years of professional experience accumulated during the 5 years preceding the publication of the CEI and must have the status of "Blue Book trainees", contract agents FG IV, temporary agents or AD officials.

The candidates shortlisted following that selection procedure will participate in a training programme (they will be assigned to two different directorates-general in the first year and will receive training at the European School of Administration) and in the second year they will, in principle, return to their initial directorate-general and have access to a "general internal competition".

As for the selection process, the Commission's Directorates-General and Services are invited to pre-select candidates (up to 5). Among them, those who have not yet succeeded computer based verbal and numerical reasoning tests will be invited to take them (these tests are being organized by EPSO).

In a second step, the applications will be examined by a selection committee whose members will be appointed exclusively by the Director General of Human Resources and Security.

It should also be noted:

- that according to the conditions of eligibility the candidates must have a level of education which corresponds to completed university studies of at least three years attested by a diploma, or, *where justified in the interest of the service, professional training of an equivalent level*;

- that the online application must be filled in English, French or German. The knowledge of at least one of these languages is among the criteria fulfilled by the target population at the time they joined the Commission. As for the interview with the selection committee, candidates may choose among these three languages only.

With the exception of the candidates who are already officials, the successful candidates will be recruited as AD5 temporary agents for the duration of the programme, i.e. for 2 years.

**II - Legal framework**

**(a) Article 27 of the Staff Regulations:**

Article 27 of the Staff Regulations 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.***

***The principle of the equality of Union's citizens shall allow each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among officials which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the appointing authority of the institution concerned shall adopt general provisions for giving effect to this paragraph in accordance with Article 110.***

***After a three-year period starting on 1 January 2014, the Commission shall report to the European Parliament and to the Council on the implementation of the second paragraph.***

***In order to facilitate recruitment on the broadest possible geographical basis, the institutions shall strive to support multilingual and multicultural education for the children of their staff."***

As regards the recruitment of temporary staff, Article 12 of the Conditions of Employment of Other Servants of the European Union ("CEOS") is drafted in similar terms (see in this respect paragraph 53 of the judgment of the Court of First Instance in the case of Chetcuti v Commission, Case T-357/04):

***"1. The engagement of temporary staff shall be directed to securing for the institution the services of persons 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.***

***Temporary staff shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.***

***No posts shall be reserved for nationals for any Member State. However, the principle of equality of the Union's citizens shall allow each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among temporary staff which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the authority referred to in the first paragraph of Article 6 shall adopt general provisions for giving effect to this paragraph in accordance with Article 110 of the Staff Regulations.***

***After a three-year period starting on 1 January 2014, the Commission shall report to the European Parliament and to the Council on the implementation of the preceding subparagraph.***

***In order to facilitate engagement on the broadest possible geographical basis, the institutions shall strive to support multilingual and multicultural education for the children of their staff."***

In its judgment Di Prospero v Commission (F-99/08), the Civil Service Tribunal clarified, with regard to the first paragraph of Article 27 of the Staff Regulations:

***"28 However, the exercise of the discretion enjoyed by the institutions with respect to the holding of competitions, in particular as regards setting the conditions of admission of candidates, is circumscribed by the requirement that they comply with the mandatory provisions of the first paragraph of Article 27 of the Staff Regulations. ‘The terms in which the first paragraph of Article 27 of the Staff Regulations defines the aim to be pursued by any recruitment are mandatory’ (see Bataille and Others v Parliament, paragraph 48, and Joined Cases T‑40/96 and T‑55/96 de Kerros and Kohn-Bergé v Commission [1997] ECR‑SC I‑A‑47 and II‑135, paragraph 40, those judgments referring also to Article 29(1) of the Staff Regulations).***

***29 Concerning, in particular, the conditions of admission to a competition, and even looking beyond the obligation incumbent on the institution, first, to make its choice in the exercise of its wide discretion in the light of the requirements attaching to the posts to be filled and, more generally, of the interests of the service and, second, to establish the existence of a sufficient link between the contested conditions and those requirements and interests (see Case T‑60/92 Noonan v Commission [1996] ECR II‑215, paragraph 43, and de Kerros and Kohn-Bergé v Commission, paragraph 42), it has been held that the first paragraph of Article 27 of the Staff Regulations continues to bind the appointing authority and that both the requirements attaching to the post to be filled and the interests of the service can be conceived of only in full compliance with that provision (de Kerros and Kohn-Bergé v Commission, paragraph 51). Thus, conditions of admission to any competition deriving from the above requirements and interests must in any event remain compatible with the provisions of the first paragraph of Article 27 of the Staff Regulations.***

***30 However, although clauses limiting the registration of candidates for a competition are liable to restrict the ability of the institutions to recruit the best candidates for the purposes of the first paragraph of Article 27 of the Staff Regulations, it does not follow that any clause containing such a restriction is contrary to that Article. The administration’s discretion in the organisation of competitions and more generally in the interests of the service, offers the institution the right to impose conditions which it considers to be appropriate and which, while restricting access of candidates to a competition, and thus, necessarily the number of candidates registered, does not, however, entail the risk of compromising the objective of ensuring the registration of candidates of the highest standard of ability, efficiency and integrity within the meaning of the first paragraph of Article 27 of the Staff Regulations.***

***31 Accordingly, and with regard to a requirement of three years’ professional experience as a member of the temporary staff, a requirement which the Commission, in treating it as ‘understood that members of the temporary staff have the highest standards required by [the first paragraph of Article 27 of the Staff Regulations]’, inserted into a notice of competition for the establishment of members of the temporary staff, the Court of First Instance has accepted that that requirement complies with the Staff Regulations, stating inter alia that the members of staff admitted to an establishment procedure ‘have demonstrated … that they merit by their work as members of the temporary staff’ the opportunity to become established officials (de Kerros and Kohn-Bergé v Commission, paragraphs 45 and 47).***

***32 On the other hand, if the requirements limiting access of candidates to a competition entail the risk referred to in paragraph 30 above, that is, the risk of compromising the objective of ensuring the registration of candidates of the highest standard, the requirements in question are to be held contrary to the first paragraph of Article 27 of the Staff Regulations.***

***33 Thus, it has been held, first and more specifically in relation to the interests of the service, that, inasmuch as the requirement mentioned in paragraph 31 above of three years’ seniority of service stipulated additionally that the period of service in the institutions was to be uninterrupted, that additional requirement was justified clearly only by the difficulties of a practical nature encountered by the institutions when organising internal competitions, in view of the high number of members of staff who satisfy the simple requirement of three years’ seniority, and that, therefore, it was incompatible with the first paragraph of Article 27 of the Staff Regulations and was not in itself capable of constituting a legitimate interest of the institution (see de Kerros and Kohn-Bergé v Commission, paragraph 48 to 51). It follows that considerations of a purely practical nature deriving from the practical difficulties of organising and conducting competitions do not come within the interests of the service.***

***34 Second, and more generally, it has been held that excluding from a competition members of the temporary staff recruited otherwise than from reserve lists drawn up following external open competitions cannot constitute an appropriate means of ensuring that the objective pursued by the first paragraph of Article 27 of the Staff Regulations is attained and might even lead to a result contrary to the purpose of the Article, that is to say, it may result in the exclusion of a candidate with the same qualifications as, or possibly better qualifications than, those of other candidates admitted to the competition (see Bataille and Others v Parliament, paragraph 48). Moreover, the interests of the service cannot justify a decision by an institution to reserve access to an internal competition merely to members of the temporary staff and not to officials. That is particularly the case in view of the fact that every recruitment procedure must lead to the appointment of officials of the highest standard of ability, efficiency and integrity, there being no indication that the excluded officials do not have abilities equal to, or indeed greater than, those of the members of the temporary staff concerned (Case T‑294/97 Carrasco Benítez v Commission [1998] ECR‑SC I‑A‑601 and II‑1819, paragraph 51).***

***35 It follows that, for it to be lawful, any clause for admission to a competition must comply with a dual requirement, first, that the clause be justified by requirements connected with the post to be filled and, more generally, by the interests of the service and, second, that it comply with the objective of the first paragraph of Article 27 of the Staff Regulations. Although, most frequently, those two parts of the dual requirement largely overlap, they are none the less distinct concepts."***

In Pachtitis v Commission (F-35/08), the General Court ruled, in respect of the selection procedures:

***"49 In order to achieve the purpose set out in by Article 27 of the Staff Regulations, the drafters of those regulations, having fixed, in Article 28, the six necessary conditions that a person must satisfy in order to be appointed as an official, first, provided, in Article 29, that the recruitment of officials is usually carried out by competition and, in Article 30, that for each competition the appointing authority appoints a selection board which draws up a list of suitable candidates, and, second, laid down detailed rules in Annex III to the Staff Regulations on the competition procedure.***

***50 It is apparent, inter alia, from Annex III to the Staff Regulations that the rules on the competition procedure are based on the principle of the sharing of powers between the appointing authority and the competition selection board. That diarchy created by the Staff Regulations, while being a demonstration of the self-limitation of administrative power, reveals the intention of the legislature, in order to ensure the protection of the transparency of the selection procedure for staff of the European Union, not to reserve that sensitive task exclusively to the administration, but also to involve, through the selection board (in which the administration is also represented), persons outside the administrative hierarchy and, in particular, staff representatives.***

***51 Under this power-sharing arrangement, it is for the appointing authority, as can be seen, in particular, from the first subparagraph of Article 1 of Annex III to the Staff Regulations and Article 4 thereof, first, to draw up the notice of competition, after consulting the Joint Committee and, second, to draw up the list of candidates who satisfy the first three conditions to be appointed as an official set out in Article 28 of the Staff Regulations.***

***52 Once that list is sent by the appointing authority to the chairman of the selection board, it is subsequently for the selection board itself, as indicated in Article 5 of Annex III to the Staff Regulations, first, to draw up a list of candidates who meet the requirements set out in the notice of competition, second, to proceed with the tests and, third, to draw up a list of suitable candidates, and to send it to the appointing authority.***

***53 In light of the crucial role conferred on competition selection boards, the drafters of the Staff Regulations provided for a number of safeguards, with regard to its establishment and composition as well as its operation.***

***54 Thus, as regards the establishment and composition of selection boards, Article 30 of the Staff Regulations and Article 3 of Annex III to the Staff Regulations provide, first, that for each competition a selection board is appointed by the appointing authority; second, that, apart from the chairman of the selection board, the other members must be designated by the appointing authority and the Staff Committee, each designating the same number; third, that the members of the selection board chosen from officials must be officials whose function group and grade is at least equal to that of the post to be filled; and, fourth, that if a selection board consists of more than four members, it must comprise at least two members of each gender.***

***55 As regards the functioning of the selection board, and apart from the obligations on the selection board arising from general principles of European Union law, for example, to respect the principle of equal treatment of the candidates and the principle of objectivity in the assessment of candidates or to respect the principle of stability in the composition of the selection board (see Gogos v Commission, and Case T-336/02 Christensen v Commission [2005] ECR-SC I-A-75 and II-341, paragraph 38 and the case-law cited), Article 6 of Annex III to the Staff Regulations expressly provides for the secrecy of the proceedings of selection boards, a requirement made precisely in order to guarantee its independence and the objectivity of its proceedings, by protecting the selection board from any form of external interference or pressure, whether from the administration itself, the candidates concerned or third parties (Case 89/79 Bonu v Council [1980] ECR 553, paragraph 5).***

***56 The allocation of powers between the appointing authority and the selection board, as described in the previous paragraphs, was not affected by the establishment in 2002 of EPSO, it being expressly provided in Article 2 of the decision setting up EPSO that the latter is to exercise the powers of selection conferred on the appointing authority with regard to competitions. Furthermore, it follows from Article 7 of Annex III to the Staff Regulations that, as regards the conduct of competitions for the recruitment of officials, the tasks of EPSO are essentially organisational. That conclusion is not contradicted by the specific provisions contained in the decision setting up EPSO and the decision on the organisation and operation of EPSO, even if those decisions sometimes contain misleading formulations, such as, for example, that EPSO is to ‘draw up reserve lists’ (which would suggest that EPSO is responsible for determining which candidates are included) because those decisions are in any event of lower rank than the provisions of the Staff Regulations.***

***57 In any event, both the choice and the assessment of the subjects of the questions set during a competition fall outside the remit of EPSO. That conclusion must be drawn from the considerations in the previous paragraph, and is confirmed by the absence in Article 7 of Annex III to the Staff Regulations of any reference to any task of EPSO related to the determination or the definition of ‘the contents of the tests’ for recruitment competitions for officials, whereas Article 7 expressly ascribes such tasks to EPSO in respect, in particular, of the certification of officials (paragraph 2(c)) and the selection of temporary staff and contract staff (paragraph 4).***

***58 In conclusion, although the tasks assigned to EPSO are such as to make this body an important actor in the determination and implementation of EU policy in the field of staff selection, its role as regards the conduct of recruitment competitions for officials, on the other hand, while significant to the extent that EPSO assists the selection board, necessarily remains subsidiary to the latter, which EPSO, moreover, may not replace."***

Lastly, as regards the languages in which the selection tests may take place, the Court held (case Italy v Commission, C-566/10 P) that:

***"93 In so far as a legitimate objective of general interest may be relied upon and be shown to be genuine, it should be noted that a difference in treatment on the grounds of language must also observe the principle of proportionality, that is to say, it must be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see, to that effect, Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 ABNA and Others [2005] ECR I-10423, paragraph 68).***

***94 In accordance with the first paragraph of Article 27 of the Staff Regulations, the recruitment of officials is to be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity. Since that objective can best be achieved when the candidates are allowed to sit the selection tests in their mother tongue or in the second language of which they think they have the best command, it is, in that regard, 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.***

***95 The Commission argued at the hearing that it was possible for the candidates to prepare themselves after the competition notice was published. However, the period between publication of each contested competition notice and the date of the written tests does not necessarily allow a candidate to acquire sufficient language skills to establish his professional competences. Regarding the possibility of learning one of those three languages with a view to future competitions, that presupposes that the languages which will be required by EPSO can be determined far in advance. The absence of rules such as those referred to in paragraph 91 above means, however, that it cannot be at all certain that the languages chosen for the competition will remain the same and makes the situation unforeseeable.***

***96 Furthermore, an official’s knowledge of languages is an essential element of his career and the appointing authorities have various methods at their disposal in order to check that knowledge and the efforts made by officials to put their knowledge into practice and, possibly, to improve that knowledge. That follows, inter alia, from Article 34(3) of the Staff Regulations, concerning the probation period and Article 45(1) thereof, concerning promotion criteria. The importance of knowledge of languages was also reinforced by the reform of 1 May 2004, introduced by Regulation No 723/2004 since, in accordance with Article 45(2) of the Staff Regulations, officials are now required to demonstrate before their first promotion after recruitment the ability to work in a third language among those referred to in Article 314 EC.***

***97 In that regard, it is therefore a matter for the institutions to weigh the legitimate objective justifying the limitation of the number of languages of the competitions against the opportunities for recruited officials of learning, within the institutions, the languages necessary in the interest of the service.***

***98 It follows from the reasoning set out in paragraphs 81 to 97 above that the information provided by the Commission to the General Court did not allow judicial review of whether the interest of the service was a legitimate objective justifying a derogation from the rule laid down in Article 1 of Regulation No 1. Consequently, the General Court erred in law."***

**b) The EU Charter of Fundamental Rights**

Article 41 of the Charter provides for the right to good administration.

**III - Arguments**

*The selection conditions significantly restrict the scope of recruitment on the basis of a consideration that is not based on merit (being young). Discrimination based on age is prohibited.*

*Moreover, the condition of having a maximum of 3 years professional experience accumulated during the 5 years preceding the publication of the CEI allows individuals who have not worked for a long period of time to be eligible, while others who have extensive professional experience are excluded, which cannot be regarded as a merit criterion, in accordance with Article 27 of the Staff Regulations or Article 12 of the CEOS.*

*In addition, a possibility of derogation from the admission requirement to have a diploma is foreseen. Indeed, a candidate may have equivalent professional experience, whereas the specific interest of service justifying such derogation should have been defined in the CEI, which is not the case.*

*As regards the exclusion of AST officials / temporary staff or contract agents in function groups other than IV, a possibility of demonstrating that the level of the tasks actually performed by them is higher than their classification is not foreseen, which is contrary to Article 27 of the Staff Regulations / Article 12 of the CEOS (see Carrasco Benitez). In fact, the tasks actually performed by those candidates may be equivalent, notwithstanding their classification, to those of the eligible candidates.*

*With regard to the composition of the selection committee the Staff Regulations only envisage the obligation to form a joint committee for open competitions. Nevertheless, taking into account Article 12 of the CEOS, which requires the recruitment of the most competent candidates, and bearing in mind that it is the first selection procedure of this type and is particular in that it is not only aimed at recruiting mainly TAs but also (and above all) at providing them training so that they can pass an internal competition and become officials, the principle of good administration should have led to the inclusion of the staff representation in the selection process.*

*Finally, no justification was provided for limiting the selection tests to three languages only (French, English and German). Consequently, the CEI disregards the obligation to state reasons and, hence, the principle of equality between languages within the meaning of Regulation No. 1/58.*

Brussels, 25 July 2018

Complainant (first name, last name, signature)