



# The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

Contact [theoofficial@daldewolf.com](mailto:theoofficial@daldewolf.com) - Web [www.daldewolf.com](http://www.daldewolf.com) - Month sept. 2015



## Edito

In the beginning of September, we had the pleasure to announce you the launch of our new partnership DALDEWOLF.

While the form of the newsletter has been slightly modified, its substance remains the same as well as our commitment to inform and assist you in the field of EU Civil Service law.

We wish you a pleasant reading.

The DALDEWOLF team

## Case law

### Clarifications on the right to be heard

On September 9<sup>th</sup> 2015, the EU Civil Service Tribunal rejected the action for annulment of a temporary agent held against a decision of the High Representative of the Union for Foreign Affairs and Security Policy, to put an end, prior to the date of termination, to its contract for breaching the relationship of trust between an institution and its agent regarding its ability to perform management and supervision functions (Case F-28/14).

The decision to terminate his contract as a member of the temporary staff was based on serious breaches in the management of the European Union Delegation in Burundi where he was in office, resulting in the Authority Empowered to Conclude Contracts (AHCC) decision to reassign him to the EEAS Headquarters. These breaches were brought about during an administrative inquiry conducted against him in 2012, as well as in the inspection report of a common mission by the support and assessment service of the EEAS and the DG International Development and Cooperation, conducted in 2013.

The applicant criticises the AHCC for infringing its right to be heard before the decision terminating its contract was adopted, in violation of article 41, § 2, a), of the Charter of Fundamental Rights of the European Union which provides for the right of every person to be heard before any individual measure which would affect him or her adversely is taken.

The Tribunal notes that, for the most part, the grounds for the termination decision are the same as the ones stated in the reassignment to the Headquarters decision. Nonetheless, the judges consider that the reassignment decision was not sufficient, in itself, to enable the applicant to fully understand that the AHCC was also contemplating to put an end to its contract, before the termination date. As a result, the Tribunal concludes that, by not giving the agent an opportunity to present its observations on the drastic consequences of its breaches as contemplated by the AHCC, the applicant's right to be heard was not formally respected in violation of article 41, § 2, a), of the Charter. However, the Tribunal notices that the agent had already had the opportunity to comment on such failings, since he presented his observations in writing as well as orally during in the administrative inquiry in 2012 and on the draft report of the evaluation mission in 2013. In this respect, and given the duties and responsibilities of the agent, its audition prior to the adoption of the termination decision would not have been likely to convince the AHCC not to put an end to its contract.

In this context, the Tribunal considers that despite the irregularity, the procedure could not have led to a different result. Therefore, the judges reject the argument of the applicant alleging a violation of the right to be heard as unsubstantiated.

## Focus

### Deontology : « The official's independence »

Articles 11 and 11a of the Staff Regulations impose on officials a general obligation of independence and integrity towards its institution. As a result, officials are bound to carry out their duties objectively and impartially throughout their careers. This obligation applies notably to the official's relationships with national authorities, organisations or persons outside his institution. Pursuant to a settled-case law, these two provisions constituted the pillars of the European Civil Service ethics.

According to article 11 of the Staff Regulations, the official is bound by a duty of loyalty to the Union and his conduct shall be exclusively dictated by the interests of the Union. In general, any behavior, whether or not it violates a specific regulation, which would show that an official intended to promote a personal interest detrimental to the interests of the Union is prohibited. In this context, the Civil Service Tribunal held that the obligation to seek the permission of the Appointing Authority in order to receive payments from sources outside the parent institution met the requirements of article 11 of the Staff Regulations (*Judgement of the 19th of May 1999, Connolly / Commission, T-34/96 and T-163/96, point 111*).

Pursuant to article 11a, the official cannot deal with a matter in which he would have, directly or indirectly, any personal interest, in particular family or financial interests, and, in any case, he has to inform the Appointing Authority. This provision has a broad scope of application and covers any situation where the official shall reasonably understand, given his duties and the circumstances, that it could appear to third parties as a potential threat to his independence. For this reason, the Civil Service Tribunal held that by failing to inform the Appointing Authority of his friendship with a tenderer, during the contract award phase, an official infringes article 11a of the Staff Regulations (*Judgement of the 9th of July 2002, Zavvos / Commission, T-21/01, points 37-40, 60*).

Officials and agents independence towards third parties also prohibits, particularly with regard to public funds management, any conduct likely to adversely affect the image of the institutions and undermine public confidence. To this end, the fact that an official did not benefit from the failure to fulfill his duties or did not cause his institution to incur a financial loss is not relevant.

## In brief...

### Modification of early retirement age conditions and transitional measures

Pursuant to article 8 of Annex VIII of the Staff Regulations in force until the 31<sup>st</sup> of December 2013, an official aspiring to retire before the normal retirement age which was set at 63 years old at that time, was entitled to benefit from his pension rights from the age of 55. Officials who enter the service before 2004 benefited from transitional measures authorizing early retirement before the age of 55.

As a result of the Staff Regulations reform which came into force on the 1<sup>st</sup> of January 2014, the minimum early retirement age is now set at 58. Article 23 of Annex XIII of the Staff Regulations stipulates new transitional measures which provide officials in post before the 1<sup>st</sup> of January 2014 with the possibility to benefit from early retirement, until the 31<sup>st</sup> of December 2015, as from the age of 55 and, until the 31<sup>st</sup> of December 2016, as from the age of 57.

## Day to day in Belgium

### Latest legal developments regarding UberPop

By judgment of the 24<sup>th</sup> of September 2015, the Flemish Commercial Court of Brussels declared illegal the services provided via the UberPop application in Brussels and ordered its withdrawal within 21 days from the date of the service of the judgment.

UberPop links users with non-professional drivers who offer to transport them, using their personal vehicle, in return for payment (part of which comes to them, the other returning to Uber).

This decision followed a complaint from the Brussels taxi company *Taxis verts* which considered that it was a victim of unfair competition as Uber's drivers are offering paid transportation services without holding the licenses required in the Region of Brussels-Capital. Failure to comply with the Brussels legislation within the timeframe can result in significant financial penalties for Uber: EUR 10,000 per established breach, with a maximum of one million euros. This decision is a major setback for the American company, all the more since the French Constitutional Court had declared illegal its services in France a few days earlier. In response, Uber has already announced its intention to appeal the decision and has launched a petition. This decision is a new phase in the struggle between defenders of a reform of the Brussels legislation on paid transportation services and defenders of traditional taxi companies.

## Our team

European Union law Thierry Bontinck, Anaïs Guillerme (avocats).  
Belgian law Camille Cornil, Csilla Haringova (avocats).

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