



The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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Editorial

Dear readers,

For this new issue of *The Offici@l*, we propose to review the rights of officials placed on secondment, on non-active status or on leave in the interests of the service. A recent judgment regarding circulation of telephone subscribers' personal data within the EU deserves attention.

We wish you a pleasant reading,

The DALDEWOLF team

Case Law

Stay tuned: The EU General Court will examine the legality of the recruitment procedures for temporary agents outside the selection process

By a judgement of 15 March 2017 (T-455/16 P), the EU General Court annulled the judgement of the EU Civil Service Tribunal ("CST") of 14 June 2016 regarding the request for annulment of the European Commission's decision rejecting the application submitted by the applicant for a vacant position as a member of the temporary staff subject to article 2 (b) of the Conditions of employment of other servants of the European Union (CEOS). The applicant was a temporary staff hired as secretary in the European Commissioners' cabinets in accordance with Article 2 (c) of the CEOS.

The Commission rejected the applicant's candidature, arguing that she did not meet the criteria laid down in an internal memorandum of 28 July 2005. Pursuant to this memorandum, in the absence of an organized selection process, a former staff member covered by Article 2 (c) of the CEOS could only be recruited on a position subject to article 2 (b) of the RAA if the staff member had not concluded a contract with the Commission for a period of at least six months.

By its judgment of 14 June 2016, the CST concluded that the memorandum of 28 July 2005 which justified the rejection of the applicant's candidature, was legal. Indeed, the CST considered that the rule for recruitment of temporary staff following an organized selection process and the rule for recruitment provided for in the memorandum of 28 July 2005 applied alternatively, depending on whether the position is specialized or not. In this context, it could not be considered that the said memorandum aimed at circumventing the rule of recruitment of temporary staff following a selection process.

By its judgement of 15 March 2017, the EU General Court states that the CST did not effectively rule on the plea of illegality of the memorandum of 28 July 2005 raised by the applicant. Pursuant to the General Court, the arguments put forward by the CST were insufficient to conclude that the said memorandum and the decision rejecting the applicant's candidature were legally founded.

Therefore, the General Court annuls the CST judgment and refers the case to another chamber of the Court in order to rule on the legality of the memorandum of 28 July 2005, notably in light of article 8, third indent, of the CEOS regarding the recruitment of temporary staff. To be continued...

Focus

Secondment, non-active status and leave in the interests of the service: your rights

In the course of their career, EU officials may be assigned on different administrative statuses which involve different rights in terms of remuneration and promotion.

• Secondment in the interests of the service

Firstly, pursuant to article 38 of the Staff regulations, an official may be seconded in the interests of the service, generally to serve temporarily in a post outside his institution, to assist the President of one of the EU institutions or to assist a person holding an office at EU level.

The official seconded in the interests of the service continues to benefit from the same level of remuneration. If the total remuneration carried by the post to which he is seconded is less than that carried by his grade and step in his parent Institution, he is entitled to a salary differential. He also continues to pay pension contributions to his parent Institution. However, depending on the place of secondment, his entitlement to the expatriation allowance and the correction coefficient may vary.

The official is shall also be entitled to reimbursement of all additional expenses entailed by his secondment. However, the cancellation of the expatriation allowance and the application of the weighting of the country of employment cannot constitute an additional expense. Only costs incurred can be described as additional expenses entailed by the secondment.

At the end of every six months, the official concerned may request that his secondment be terminated. In any circumstances, when his secondment ends an official shall at once be reinstated in the post formerly occupied by him.

An official on secondment shall retain his post, his right to advancement to a higher step and his eligibility for promotion. In this respect, his parent Institution is in charge of drawing up his annual appraisal report.

Finally, it must be underlined that the secondment in the interests of the service must not be confused with secondment at an official's own request (article 39 of the Staff regulations). In this case, the official's rights are not the same in terms of remuneration, advancement of career and promotion and reinstatement (see the next issue of *The Offici@l*).

• Non-active status and leave in the interests of the service

Pursuant to article 41 of the Staff regulations, by reason of reduction in the number of posts in his institution, an official may be assigned on non-active status. Then, he ceases to perform his professional duties. During this period, the official concerned shall have priority for reinstatement for a period of two years. He also continues, for a period not exceeding five years, to accumulate rights to retirement pension. He ceases to enjoy his rights to remuneration or advancement to a higher step, but he receives an allowance at a decreasing rate equivalent to 100% to 60% of his basic salary, during a period that varies depending on his length of service and his age.

For example, a 40 years old official with a length of service of 12 years would be entitled to an allowance for a 69 months period. This allowance would be equal to 100% of his basic salary for three months, 85 % of his basic salary from the fourth to the sixth month, 70 % of his basic salary from the seventh to the sixty-seventh month and 60% for the two remaining months.

At the end of the period of entitlement to the allowance, the official shall be required to resign.

Finally, pursuant to article 42(c) of the Staff regulations, the official may be placed by decision of the appointing authority on leave in the interests of the service. This special leave was introduced by the Staff Regulations reform in 2014, in order to face "organisational needs linked to the acquisition of new competences within the institutions". Leave in the interests of the service can be applied to an official with at least ten years of service and maximum five years before the official's pensionable age. The official is then placed on leave until he reaches pensionable age and is entitled to the same allowance than the one paid to officials on non-active status.

In brief

Circulation of telephone subscribers' personal data within the EU

According to Directive 2002/22/CE on universal service and users' rights relating to electronic communications networks and services, undertakings which assign telephone numbers to subscribers must meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, their subscribers' personal data.

In its judgement of 15 March 2017 (C-536/15), the EUJ declared that this Directive also covered all requests made by an undertaking established in a Member State other than that in which the undertakings which assign telephone numbers to subscribers are established.

In addition, the EUJ considered that the passing of the same data to another undertaking intending to publish a public directory without renewed consent having been obtained from that subscriber was not capable of substantively impairing the right to protection of personal data.

The EUJ justifies this approach based on the fact that, regardless of where they are established in the EU, undertakings which provide publicly available telephone directory enquiry services and directories operate within a highly harmonised regulatory framework making it possible to ensure throughout the EU the same respect for requirements relating to the protection of subscribers' personal data.

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