The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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RENOUVEAU DEMOCRATIE CONSEIL

Edito

On 15 September 2016, the DALDEWOLF team and Renouveau & Démocratie held a major conference called "Brexit: a practical guide" to discuss the consequences of Brexit on the career of British nationals working as EU officials and other servants, as well as the family and tax implications. The main conclusions of this conference are included in this newsletter.

As regards the recent case law, we propose a brief analysis of the EU General Court's judgment regarding substantial aspects of the 2014 reform of the Staff Regulations.

We wish you a pleasant reading.

The DALDEWOLF team

Case law

Reform of the Staff Regulations: interpretation of the obligation to consult the Staff Regulations Committee

In a judgment of 15 September 2016, the General Court of the European Union ruled on the legality of the procedure which led to the reform of the Staff Regulations of EU Officials, initiated in 2014 (TEU, 15 September 2016, case T-17/14).

The applicants (trade unions) challenged the legality of certain provisions of Article 1 of the regulation reforming the Staff Regulations.

They especially questioned the Parliament and the Council of the European Union's decision to vote said reform at the end of an irregular conciliation procedure.

According to the applicants, the Staff Regulations Committee should have been usefully convened one more time (i.e. with a period of time sufficient to render an opinion) after the reform project proposed by the Commission had subsequently changed through legislative amendments that the applicants considered as substantial.

After having recalled that the Commission shall consult the Staff Regulations Committee when it proposes substantial changes affecting the general structure of the already examined reform proposal, the General Court dismissed the applicants. According to the judges, on this occasion the Commission did not exercise its power of amendment but only its power of legislative initiative. The substantial amendments to the reform were actually made by the EU Parliament and the Council after a trilogue negotiation. In this way, there was no procedural obligation requiring the Commission to reconvene the Staff Regulations Committee.

Through this judgment, the General Court delivers a formalistic interpretation of the obligation to «reconvene» the Staff Regulations Committee, in case of changes in the general structure of a reform proposal in the field of European civil service, limiting this requirement to changes directly emanating from the Commission.

Focus

Brexit: what impact on my career and my rights?

The British Prime Minister announced that the Brexit process would be launched in the first quarter of 2017. Thus, one could imagine the Brexit to take effect at the beginning of 2019.

What does that mean for the EU officials and other servants? Being a national of one of the EU Member States is an essential requirement both to join the EU civil service and to stay in service. Unless an exception is granted on an individual basis by the EU Institutions or an interim measure is adopted during the Brexit negotiations, EU officials of British nationality may be required to resign, in accordance with Article 49 of the Staff Regulations.

The question then arises on how those wishing to continue to work within the EU Institutions could obtain a second nationality. Each official or other servant wishing to apply for a second nationality has to check beforehand whether she/he complies with the requirements provided by in the national legislation.

For example, as to the applicants for Belgian nationality who have been living on the Belgian territory for five years, the Belgian authorities ask them to prove their participation in the country's economic life through the payement of social security contributions as employees, officials or independent workers. This requirement could probably not be regarded as fulfilled, since the EU officials have been granted a status derogating from the ordinary law for the payment of social contributions.

As to the applicants for Belgian nationality who have been legally living in Belgium for more than ten years, the requirement on the participation in the country's economic life does not apply; however, the Belgian authorities carry out a strict calculation of the uninterrupted length of the legal residency. Indeed, a temporary absence of more than six months, or more than one year in case of professional activity abroad, amounts to an interruption of the stay in Belgium. The legal residency length would then be set to zero and its calculation would start from the day on which the residency is considered to be legal and continuous again. In the same vein, the proof of legal residency in Belgium through the diplomatic card instead of the E card (certificate of registration in the population register) could be problematic.

Moreover, the acquisition of a EU citizenship could impact the payment of the expatriation allowance and annual travel expenses, since the official's new situation would be reviewed by the Administration. The retention or loss of the expatriation allowance would be decided on a individual basis, pursuant to the requirements provided by in Article 4 §1 of Annex VII of the Staff Regulations (acquisition of the nationality of the Member State of employment, length of residence in or outside the Member State of employment before the recruitment, etc.).

The pensions issue is also important. It is difficult to guess what would be the outcome of the negotiations, but one could imagine the introduction of a system similar to that introduced following the closing down of the Western European Union (setup of a special pension fund managed by a institution pursuant to the organization's rules and based on contributions by of the WEU's former Member States).

Our team will keep you informed of any new development in the coming months.

Day to Day in Belgium

Brexit: Which tax implications ?

Pursuant to Article 12 of the Protocol (No 7) on the privileges and immunities of the European Union, the EU officials and other servants are exempt from national taxes on salaries, wages and emoluments paid by the Union. Additionally, if they have settled in Belgium following their recruitment by the EU Institutions, they are not considered tax residents of Belgium, but they maintain their tax residency status in their country of origin.

In case of Brexit, should the british nationals lose their jobs as EU officials and other servants, those starting a new professional activity in Belgium or in their country would logically have to pay national taxes. Should they stay in service and acquire the nationality of one of the EU Member States, they will maintain their non-tax resident status and, of course, the tax exemption on their emolument paid by the Union.

Regarding the pensions paid to former EU officials, they are also exempt from taxes. The retention of this privilege for the pensions of EU officials of British nationality could be discussed during the Brexit negotiations regarding the management of the pensions and the possible creation of a special pension fund.

Our team

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