



# The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

## DALDEWOLF

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This newsletter is published in collaboration with Renouveau & Démocratie

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Back to work! September is an excellent occasion to review some basics regarding your rights as officials and agents.

Thus, we propose to be informed of the EU General Court's judgment regarding the officials' freedom of expression.

The notion of "act adversely affecting the official's interests" will be also described and analysed through several practical examples drawn from the case law.

We wish you an excellent reading,

The DALDEWOLF team

### Case law

The freedom of expression and the duty of loyalty of officials: how to strike a balance?

### Focus

The notion of « act adversely affecting the official's interests » - some practical and recent examples.

### Day to day in Belgium

Brussels capital region: the ban on using plastic bags has entered in force.



Case law

## The freedom of expression and the duty of loyalty of officials: how to strike a balance ?

In a judgment of 15 September 2017 (T-585/16), the EU General Court rejected the appeal of an official who challenged the decision of the European External Action Service (EEAS), refusing her permission to publish an article. In accordance with article 17a of the EU Staff Regulations, the applicant informed the EEAS of her intention to publish an article which aimed at drawing attention to the issue of harassment within the European institutions. The EEAS refused to authorize such publication and requested the applicant to review two paragraphs of the article, considering that they were inconsistent with the duty of loyalty of the applicant. More particularly, she wrote in those paragraphs that the systematic strategy "of the hierarchy of the European institutions seems (...) to be to convince each individual, who has opinions on how the institutions are managed, that he or she is better off changing jobs, retiring early or accepting invalidity" and she added that "The EEAS has to set an example".

Firstly, the General Court ruled that the EEAS did not make an error of assessment. The judges underlined that the applicant's statements quoted above implied that harassment is a widespread phenomenon within the hierarchy of the European institutions and that there is no effective policy to fight harassment within the EU institutions. Moreover, harassment being an illegal practice, the General Court noted that those statements undermine the dignity of all persons who hold hierarchical positions in the European Institutions and consequently to the Institutions themselves. Thus, according to the General Court, the Applicant's statements could not be qualified as mere dissenting or conflicting opinions. Therefore, the judges concluded that those statements constitute a breach of the duty of loyalty that lies with the applicant pursuant to the EU Staff Regulations.

Secondly, the General Court rejected the plea in law alleging a breach of the right to freedom of expression. The judges reminded that, according to settled case-law, officials have a right to express themselves freely, which include the expression of dissenting or minority views, inconsistent with those held by EU institutions. However, such freedom is restricted to preserve the trust-based relationship between the institution and the officials. The authorization mechanism to publish an article, according to Article 17a of the Staff Regulations, reflects this relationship of trust. The judge must determine whether a proper balance between the freedom of expression of officials and the duty of loyalty has been respected by the administration. In this case, the General Court considered that the administration has respected this right balance by requesting the applicant to review some parts of the article.

## The notion of “act adversely affecting the official’s interests” - Some practical and recent examples

In the field of EU Civil Service law, only acts producing binding legal effects which directly and immediately affect the interests of the official or agent by significantly altering their legal situation, can be challenged by means of an administrative complaint or judicial action.

It is therefore important to understand the notion of “act adversely affecting the interests” of an official. Here are a few practical and recent examples:

- Although it is not a formal decision, the signature of an application for early retirement, with the mention “approved” affixed on this document and signed by the Director of Administration, must be regarded as an explicit decision from the Administration (TUE, 12 September 2017, T-678/16 P). Thus, the subsequent decision to withdraw the agreement constitutes a new decision affecting the official’s interests that can be challenged.
- Salary slips and pension statements which reveal clearly and for the first time the existence and the scope of a decision on financial matters, relating to the situation of the official or agent concerned, constitute acts adversely affecting their interests. In a judgment of 20 July 2017 (T-148/16 P), the General Court found that salary slips were acts adversely affecting the applicants because they revealed clearly and for the first time the existence and the scope of a decision to apply to them a correction coefficient.
- In an order of the 24 April 2017 (T-618/16), the General Court stated that a decision definitively fixing the number of pensionable years resulting from the transfer to the pension scheme of the EU institutions of the pension rights acquired by the applicant in a Member State, is an act adversely affecting her interests.
- However, when an official makes a request for assistance within the meaning of Article 24 of the Staff Regulations, the lack of reply of the Appointing Authority within the four-month time limit does not mean that there is an implied decision rejecting the request, when the Appointing Authority has decided to open an administrative inquiry in order to establish the reality of the facts and has informed the official accordingly. According to the General Court (judgement of the 24 April 2017, T-570/16), in such a situation the inquiry must be allowed to run its course so that the Administration, enlightened by the findings of the inquiry report, may adopt a definitive position in that regard. It seems, therefore, that a decision constituting an act adversely affecting the official’s interests is only adopted at the end of the inquiry.



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## Day to Day in Belgium

### Brussels capital region: the ban on using plastic bags has entered into force

From September 1<sup>st</sup> 2017, the use of plastic and disposable carrier-bags is prohibited in Brussels capital region. As from September 1<sup>st</sup> 2018, subject to certain exceptions (such as disposable bags for packaging of retail and moist food), the use of any bags for packaging of goods used in retail areas will also be prohibited.

Breach of these rules could be criminally sanctioned by eight days to two years of imprisonment and / or by a fine of 50 to 100.000 euros, in accordance with the Code on inspection, prevention, observation and suppression of the infringement of environmental law. Alternatively, an administrative fine of 50 to 62.500 euros could be imposed.



### Our team

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