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## DALDEWOLF



contact : [theofficial@daldewolf.com](mailto:theofficial@daldewolf.com) - [www.daldewolf.com](http://www.daldewolf.com)

### EDITO

Dear Readers,

This issue focuses on recent developments in EPSO competitions.

In our "Belgian Law" section, we delve into the topic of food law, specifically focusing on the newly implemented system that bestows additional powers on the national enforcement authority, known as AFSCA.

This newsletter is also yours, and we welcome any suggestions you may have for future issues. Don't hesitate to contact us by e-mail: [theofficial@daldewolf.com](mailto:theofficial@daldewolf.com).

We hope you enjoy your reading!

The DALDEWOLF team

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- European Union Law and Human Rights:  
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MARIANNE BRÉSART,  
LUCIE MARCHAL,  
LAUREN BURGUIN,  
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PERSPECTIVES law firm:

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CANDICE FASTREZ

### FOCUS

## IRREGULARITIES IN EPSO COMPETITIONS: CONSEQUENCES AND POSSIBLE REMEDIES

The European Personnel Selection Office (EPSO) is an interinstitutional body of the European Union responsible for the selection of permanent staff and contract agents.

### EPSO's Main Mission

EPSO's main mission is to meet the recruitment needs of EU institutions by selecting talented candidates through general and specialized competitions. To achieve this goal, EPSO acts as an intermediary between EU institutions and highly qualified graduates and professionals. It thus contributes to the construction of the European public service.

Three key principles should guide EPSO's actions: precision, flexibility, and speed of selection methods.

EPSO operates under the direction of an interinstitutional management board. A roadmap adopted by it sets out EPSO's objectives for a five-year period.

In execution of its Strategic Action Plan 2020-2024, EPSO has implemented its new competition model.

### Generalization of Online Procedures

Written and oral tests, as they have been conducted since 2010, no longer exist. Selection procedures are now conducted exclusively online and are remotely monitored.

It is clear that this system quickly showed its weaknesses.

Indeed, various remote selection procedures held in 2023 and 2024 had to be cancelled and postponed due to technical problems (see previous issue "The Official - February 2024, No. 91).

These decisions were made in view of the anomalies observed during the first phase of selection, particularly in the implementation of remotely supervised tests, including technical malfunctions and data protection concerns that could undermine the overall level of quality expected and the principle of equal treatment applicable to all candidates participating in the competition.

### Cancellation: An Exceptional Procedure with Heavy Consequences

The decision to cancel a competition is an exceptional measure taken by the director of EPSO in her capacity as the authority vested with the power of appointment, in agreement with EPSO's governing body, the interinstitutional management board, and in accordance with the principles of good administration, the principle of proportionality, and the legitimate trust of the competition successful candidates.

A decision to cancel a procedure relating to staff selection can have various consequences concerning:

- the interests of candidates disadvantaged by an irregularity committed during this procedure;
- the interests of other candidates ;
- the legitimate confidence of candidates already selected in the administration in question;
- the organization of institutions in that reserve lists are not provided by reserves of winners through the organization of general competitions - As a result, EPSO is not able to ensure optimal operational capacity and no longer meets its main mission of forming reserve lists;
- the favouring of internal competitions creating a privileged access route to the European public service for certain officials or agents despite all the principles of the European public service : transparency, anonymity of tests, equal opportunities, and also to the detriment of all other potential candidates excluded from these competitions.

### Appeals

Possible appeals are of three kinds:

- administrative appeal (Article 90 of the Staff Regulations): the agent or official concerned can seize the authority concerned (AIPN or AHCC) of his grievances, by way of a request and/or a formal complaint within the meaning of Article 90 of the Staff Regulations;
- the complaint to the European Ombudsman to assert his rights, in order to obtain the relatively rapid and accessible resolution of problems encountered in the context of the selection procedure framed by EPSO. This complaint must necessarily have been preceded by a request and/or a formal complaint within the meaning of Article 90 of the Staff Regulations;
- and finally, the judicial procedure before the European courts.

It should be noted that the complaint to the European Ombudsman does not suspend the deadlines for administrative or judicial appeal.

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## CASE LAW

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### JUDGMENT OF 20 MARCH 2024, EO V COMMISSION, T-623/18 - IRREGULARITIES IN EPSO COMPETITIONS - CONSEQUENCES FOR A CANDIDATE OF THE ANNULMENT OF A COMPETITION NOTICE

The final decision in the ongoing issue regarding the choice of languages in EPSO selection procedures has been made. Previously, the restriction of the second language to English, French or German in certain competitions was definitively condemned (Commission v Italy and Spain, C-635/20 P) due to the Commission's lack of reasoning.

On 13 October 2018, a participant in a competition organised by EPSO brought an action for annulment of the selection board's decision not to include her name on the reserve list, and of the decision to reject her request for that decision to be reconsidered. In support of her action, the applicant considered in particular that the limitation of the second language to German, English or French constituted unequal treatment.

In the meantime, in 2020, in the context of the parallel case Commission v Italy and Spain, the General Court annulled the notice relating to the same competition (Case T-401/16, upheld by the Court in case C-635/20 P). In the judgment of 20 March 2024, the General Court was asked to assess the implications of that annulment for the applicant's legal position.

The first implication of the competition notice's cancellation pertains to the applicant's interest in filing a lawsuit. What would be the applicant's interest in challenging a decision made following a competition whose notice has been annulled and is therefore considered non-existent?

As regards the applicant's interest in bringing proceedings, the General Court noted that while the competition notice was retroactively cancelled, the reserve list and the decision not to include the applicant's name on it remained legally valid (§ 36-40). Therefore, even if the annulment of the contested decision did not directly result in her recruitment, the applicant could still reasonably expect the Commission to allow her to retake the assessment center tests if her appeal turned out to be successful (§ 48).

Secondly, according to the General Court the annulment of the competition notice automatically leads to the annulment of the decision not to include the applicant on the reserve list.

The restriction on the choice of the second language impacted the entire procedure, including the assessment center tests, which had to be conducted in German, English, or French (§§ 57-60).

So, what should be done with the reserve list resulting from the selection procedure following the annulment of the competition notice and the decision not to include the applicant on the reserve list?

The General Court ruled out the possibility of annulling those results (§§ 68-69). To rectify the illegalities affecting the competition, the Commission had to balance the need to restore the applicant's rights, the position of third parties, and the interests of the service (§§ 64-65). In doing so, it could legitimately consider the large number of people affected by the selection procedure and the significant amount of time that had passed since the publication of the reserve list (§ 68).

Accordingly, the General Court chose not to cancel the reserve list, instead ordering the Commission to compensate the applicant for the damage she suffered (§ 75).

However, the General Court dismissed the idea of compensating the applicant for the lost opportunity, due to

the lack of evidence suggesting that a suitable position would have been available had her name been on the reserve list (§§ 76-80). Furthermore, the General Court did not find the applicant's claim of material damage, which was supposedly incurred during competition preparation, to be substantiated (§§ 81-82).

The General Court only acknowledged non-material damage, which resulted from the time spent preparing for the competition, the associated stress, and the negative impact on the applicant's health and personal life due to the legal proceedings (§§ 83-84). Given the annulment of the contested decision, the General Court set the compensation for such damage at €6,000, based on fairness and good faith.

Lastly, the annulment of the contested decision by the General Court, more than five years after the lawsuit was filed, would have resulted in minimal financial compensation for the applicant. However, the General Court's judgment implies that presenting the aforementioned evidence could have led to a larger compensation amount, especially in terms of material damage related to the lost opportunity.

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## BELGIAN LAW

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### ENFORCEMENT OF FOOD LAW IN BELGIUM: THE NEW REGIME

by Aude Mahy<sup>i</sup>

Effective since the 1st of January 2024, a stricter system of administrative sanctions grants the Belgian Federal Agency for the Safety of the Food Chain (AFSCA) greater coercive powers with regard to operators in the food and beverage sector.

The new regime introduces several significant changes in the application of food legislation in Belgium and significantly increases the amount of administrative fines that can now be imposed by the AFSCA. Previously, the ceiling for administrative fines was €40,000, and they could only be proposed by the AFSCA and not

imposed. Now they can be as high as €240,000, depending on the infringement in question. This means that a food operator who fails to comply with food safety regulations could face a much higher financial penalty than before.

Thus, the new system of penalties for breaches of European and Belgian food law has fundamentally altered the role of the AFSCA. Previously, the AFSCA's authority was mainly based on its health police role, which consisted of investigating and identifying breaches of food law and taking the necessary measures to prevent unsafe food products from being placed on the market. However, the Agency did not have the power to impose sanctions.

The AFSCA now has the power to directly impose administrative fines, the ceiling of which has been considerably

increased to bring it into line with criminal fines. The right to be heard now applies only when the AFSCA is considering imposing an administrative fine. Appeals against the AFSCA's decision must now be lodged with the civil section of the Brussels Court of First Instance.

Time will tell whether or not the AFSCA will use its new powers sparingly. This will undoubtedly influence the number and complexity of appeals lodged against these fines. However, the first decisions in this area will not see the light of day for many months, if not years, given the backlog of court cases to date. Fortunately for operators, these appeals have a suspensive effect on the payment of fines.

To find out more, consult the guide available [here](#).

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<sup>i</sup> Aude Mahy is attorney-at-law at the Brussels bar. She is a partner at the law firm DALDEWOLF and heads the food law practice of the firm.