DALDEWOLF

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EDITO

Dear Readers,

This issue is dedicated to the rights and obligations of officials and agents during their probationary period, as well as a recent ruling from the EU Court regarding the protection of whistleblowers within European institutions.

In the "Belgian Law" section, we will discuss the new Brussels Housing Code and the topic of amendments to the legislation on leases in the Brussels-Capital Region.

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

We hope you enjoy your reading!

The DALDEWOLF team

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FOCUS

PROBATIONARY PERIOD

The probationary period is essential for any successful candidate to competition before achieving permanent status as an EU official and, more broadly, for any newly recruited EU agent. It enables the Administration to assess the abilities, skills, and conduct of the official or agent in the performance of their duties. At the end of this period, the Administration determines whether to confirm the official in a permanent role and whether to retain the agent in their current position.

Duration and extension of the probationary period

According to Article 34 of the Staff Regulations, every official is required to complete a probationary period lasting nine months before becoming eligible for permanent appointment. Temporary agents are subject to the same requirement, with a probationary period of nine months (Article 14 of the Conditions of Employment of Other Servants, or "CEOS"). For contract agents, however, the duration of the probationary period depends on their function group: six months for those in Function Group I, and nine months for all other groups (Article 84 of CEOS).

An extension of the probationary period is possible only in exceptional circumstances, and the Appointing Authority (AA) has broad discretion to grant or deny this extension. It is not automatically granted.

For example, the Administration may consider an extension if the probationer cannot carry out their duties for at least one month due to illness, maternity leave, or an accident (SB v. eu-LISA, T-217/21). In such instances, the probationary period is extended for an equivalent time. However, even with an extension, the total duration of the probationary period cannot exceed a maximum of 15 months (Article 34 of the Staff Regulations). This is a strict limit that cannot be exceed, even in cases of sick leave lasting several months (B v. Commission, T-603/18).

Assessment of competence and probationary report

In general, a probationary report is prepared no later than one month before the end of the probationary period. In some institutions or agencies, a mid-probation report may also be drafted. The probationary report assesses the professional ability, efficiency and conduct of the probationer within their service. The probationer has the right to provide feedback on the report, in line with the principle of respect for defence rights. However, this principle does not oblige the Administration to issue a warning if the probationer's performance is deemed unsatisfactory during the probationary period (M / Council, F-67/14). The report is subsequently sent to the AA, who then makes a final decision, which may include permanent appointment, confirmation in post, extension of the probationary period, or dismissal.

Furthermore, at any point during the probationary period, the Administration may prepare a report if there is clear evidence of an official's or agent's inability to perform their duties. This report is then shared with the

probationer, who has the opportunity to submit comments. This process safeguards the probationer's right to respond and allows the AA to make an informed decision.

While the probationary period is not formally considered a training period, it is nonetheless essential for the probationer to demonstrate their skills and professional behaviour (case G / Commission, F-49/08). This requires that the probationer be given suitable guidance and instruction to help them meet the specific demands of the role. If a probationer is dismissed without having had the opportunity to demonstrate their abilities under normal conditions, the decision may be overturned (P/ Cedefop, F-63/07).

Dismissal and compensation

When the AA dismisses an official or agent during the probationary period, the dismissal takes effect with one month's notice. A thorough review of the grounds for dismissal is required for a permanent official or confirmed agent. Still, during the probationary period, the Administration has wide margin of appreciation in assessing the competence and performance of an official or agent (C/ GSA, F-83/15). The decision to confirm or not confirm an official probationer rest on an overall evaluation of observations made throughout the probationary period, with due regard to the interests of the service.
A dismissed probationer may be entitled to compensation if they cannot immediately secure another position. The compensation amount depends on the length of service completed: three months of basic salary for more than one year of service, two months for at least six months of service, and one month for less than six months of service. For temporary and contract agents, the dismissal compensation is equivalent to one-third of their basic salary per month of completed probationary service, without any minimum service requirement.

CASE LAW

PROTECTION OF WHISTLEBLOWERS IN THE EUROPEAN PARLIAMENT

On 11 September 2024, the EU General Court delivered its ruling in the case of TU v. European Parliament (T-793/22), on the protection afforded to an Accredited Parliamentary Assistant ("APA") as a whistleblower. The applicant, a parliamentary assistant to an MEP from August 2019 to February 2022, had filed a request for assistance and protection against harassment in July 2021, pursuant to Article 24 of the EU Staff Regulations, and reported financial irregularities to OLAF. In response, the Parliament reassigned him, temporarily placing him under the responsibility of another member within the same parliamentary group. Following alleged reprisals, he requested to be relieved of his duties within the parliamentary group and transferred to any other position within the Parliament, as well as an extension of his contract to cooperate with ongoing investigations. The Parliament relieved him of his duties until the end of his contract, but did not renew his contract. The APA filed an appeal before the Court.

The Court's ruling provides several key insights:

1. **Automatic attribution of whistleblower status**

Firstly, the Court confirmed that the Parliament was under no obligation to adopt a formal act recognizing whistleblower status under Articles 22a to 22d of the Staff Regulations. This status is "automatically" granted without formalities if a staff member or agent communicates concrete, genuine, or at least plausible information. Furthermore, the official or other agent must have acted in "good faith"—meaning they must have honestly and reasonably believed that their reports were "essentially substantiated" and that they were reasonably convinced of potential irregularities or serious wrongdoing.

2. **Obligation to inform the whistleblower of actions taken on their reports**

Secondly, the Court stated that the Parliament, as the authority responsible for protecting officials who report serious irregularities, failed to meet its obligations, namely:

- Acknowledging receipt of the whistleblower's report within five working days.
- Informing the applicant within 60 days of the time needed to undertake the necessary action.

These obligations are not negated by referring specific facts to OLAF, nor by the concurrent obligations to inform for which OLAF is also responsible.

3. **Obligation to take all necessary measures to ensure whistleblower protection**

Thirdly, the Court assessed the legality of the measures taken by the Parliament to protect the whistleblower.

The Court concluded that, given the case context, relieving the applicant of his duties did not constitute adequate protection.

The Court deemed that by limiting itself to this single measure without seeking an additional solution, such as a transfer to another department, the Parliament failed to take all "reasonable" and necessary measures to ensure balanced and effective protection for the whistleblower against any form of retaliation, including threats and attempted retaliation.

4. **Violation of confidentiality and protection of the whistleblower APA's identity**

Finally, the Court found that confidentiality and protection of a whistleblower's identity are violated when, as in this case, the institution responsible for the whistleblower's protection informs third parties about the reasons for a transfer or relief of duties, thus revealing the whistleblower status and identity of a person under whistleblower protection without the AACE (Authority authorized to conclude contracts of employment) first obtaining consent from the whistleblower, notably when such information is unnecessary.

The Court's ruling:

Given the multiple illegalities committed in handling the whistleblower's report, the Court annulled the European Parliament's decision, and €10,000 in compensation was ordered for the moral harm suffered by the APA.

BELGIAN LAW

NEW BRUSSELS HOUSING CODE: NEW RULES FOR LANDLORDS AND TENANTS FROM 1 NOVEMBER 2024

The new rules for landlords and tenants in Brussels, adopted by the Brussels Parliament, will apply from November 1st, 2024. The new rules are designed to remove obstacles to accessing decent, affordable and sustainable housing and to provide tenants in Brussels with greater security of tenure.

Rental guarantee of the lessee's choice:

Under the new Housing Code, the rental guarantee is now at the lessee's discretion and can take five different forms, including a personal guarantee.

If it takes the form of a sum of money, this guarantee can no longer exceed the equivalent of 2 months' rent (excluding charges). To avoid problems with proof of payment, the amount of the guarantee may no longer be given to the landlord in cash. The landlord must reimburse the guarantee to the lessee within two months of his departure.

Contesting incorrect charges:

The lease contract will also set out the costs to be borne by the lessee or landlord and how they are to be divided between the two parties. Errors in the calculation of charges may now be contested within two years of notification to the landlord or lessee. If the error favors the landlord, he will only be able to claim the amount for the last five years. On the other hand, there is no limit if the error favors the lessee, who can claim the amount for the entire period covered by the error.

Extension of the powers of the Regional Housing Inspectorate:

The Regional Housing Inspectorate (DIRL) is responsible for monitoring minimum standards of safety, hygiene and equipment in rented accommodation. To this end, it focuses in particular on combating discriminatory practices in access to housing.

Lessees wishing to check that their rental property meets minimum quality standards will be able to request an inspection visit by DIRL inspectors. From 1rst November 2024, the inspection powers will be extended to properties that have not yet been, or are no longer, let.

A new form of rent control:

Landlords offering short-term leases (maximum 3 years) must indicate the last rent charged for the property on the lease contract. This measure is designed to prevent Brussels landlords from arbitrarily increasing the rent between two lessees.

This possibility of increase will only be allowed for nine-year leases (long-term leases), when they are renewed. From one lease to the next, the previous rent may only be indexed. This measure does not apply to student leases, and exceptions may be made in the case of works, particularly energy works.

The new Housing Code also introduces a restriction aimed at limiting the possibility of extending short-term leases to one time only.

Energy renovations and rent adjustments:

The new rules include a framework for rent increases linked to energy renovation work. However, Brussels Housing and Brussels Environment are still discussing how to regulate these increases so that they remain proportionate. This adjustment could be based on the Energy Performance of the building (PEB) or on the energy savings generated by the work. An implementing decree will specify these procedures.

Another new rule is that, if a landlord wishes to undertake works and gives notice to his lessee, he has a maximum of two months in which to provide the tenant with either planning permission; a detailed estimate; a description of the works accompanied by a precise estimate of costs or; a contract for work. If these documents are not provided, the tenant is entitled to request that the notice period be invalidated.

The domiciliation clause in lease contracts:

The clause in the lease prohibiting you from residing at the address of the rented property is no longer valid.

Pets:

Finally, any clause in the lease prohibiting the keeping of pets will be deemed unwritten unless there are reasonable grounds for the prohibition. This does not mean that the landlord must agree, but the rejection must be based on "reasonable grounds" or keeping may be conditional.

New rules for selling a rented property:

The new Brussels Housing Code also establishes the principle that the purchaser of a rented property is obliged to take over all the obligations of the current lease contract.

What's more, in the case of short-term leases, when a landlord terminates a lease (with three months' notice), the lessee now has the option of giving one month's counter-notice if they find new accommodation more quickly.