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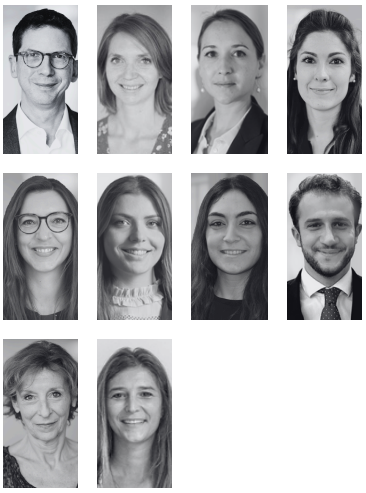

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EDITORIAL

Dear readers,

This month, our Focus section examines the assessment and promotion process.

Our case law commentary delves into a General Court ruling, which annulled the appraisal report of the agent. The Court found that the EEAS breached its duty of impartiality since the EEAS did not organise the appraisal procedure relating to the 2021 financial year in such a way as to offer the applicant sufficient guarantees as to the reporting officer's objective impartiality.

Towards the end of this issue, you will find an in-depth analysis of Belgian law concerning the new rules in the Brussels Housing Code concerning the prohibition on unfair rent for lessors/leaseholders.

This newsletter is also yours, and we welcome all your suggestions for our upcoming issues. Please feel free to contact us by email at: theofficial@daldewolf.com.

The DALDEWOLF team

Focus – The promotion process

The promotion process is not an automated one and promotion itself occurs based on a decision by the Appointing Authority (AIPN) following a comparative assessment of candidates' merits.

Eligibility Criteria for Promotion

Article 45 of the Staff Regulations stipulates that officials must meet two conditions to be eligible for promotion:

- **A minimum of two years' seniority in their grade.** The EU Courts have specified that these two years must be completed by the date on which the promotion decision takes effect (Judgment of June 9, 2015, F-65/14, point 27). Additionally, seniority accrued as a temporary agent is not considered (Judgment of July 5, 2023, T-223/21, points 112 and 113).
- **The ability to work in a third language among the EU languages.**

Promotion Proposal List

Article 45 of the Staff Regulations mandates that the AIPN conduct a comparative assessment of candidates' merits, considering at least:

1. Performance reports (since their last promotion, if applicable);
2. The use of languages other than their declared language of proficiency in their duties;
3. The level of responsibilities exercised.

The Appointing Authority has broad discretion in comparing candidates' merits (Judgment of October 23, 2024, T-34/24, point 88). However, the EU General Court requires the review of candidates' merits to be conducted carefully and impartially, based on comparable information, in the interest of service and respecting the principle of equal treatment (Judgment of November 6, 2024, T-315/23, point 31).

It should be noted that the Staff Regulations do not grant officials an automatic right to promotion, even if they meet all eligibility criteria (Judgment of June 9, 2021, T-453/20, point 47). A candidate with evident and acknowledged merits may still face competition from others with equal or superior merits.

Procedure

The Court held that the European Commission had failed to demonstrate that immediate proficiency in English was essential for the duties in question. Moreover, it had not substantiated that alternatives — such as language trainingfollowing recruitment — would be inadequate.

Nonetheless, the Court also made clear that language restrictions are not automatically unlawful. They may be upheld if they are based on objective, transparent foreseeable and strictly necessarycriteria directly linked to the requirements of the service. In a judgment delivered on 10 July 2024 (Case T-216/23), the General Court upheld a restriction to English and French for positions in the field of international cooperation and aid to third countries. The decision was supported by concrete and verifiable evidence, including usage statistics, internal communications, and job descriptions, demonstrating the predominant use of these languages in the departments concerned.

These rulings confirm that EU institutions must meet a high threshold when restricting language choices in selection procedures. A general reference to the widespread use of Englishor French is not sufficient. Institutions must provide detailed, evidence-based justification showing that knowledge of a specific language is essential from the outset to perform the role described in the competition notice.

In cases T-555/22 and T-7/23, the Court also underscored the lack of evidence demonstrating that the language restriction was proportionate, particularly given the potential for language acquisition post-recruitment. Restrictions must be directly linked to the actual responsibilities of the post and cannot be justified solely by institutional habits or internal convenience.

In conclusion, the recent case law makes it clear that limitations on language choice are not inherently incompatible with EU law. However, they must satisfy strict conditions of justification, transparency, and proportionality. Institutions bear the burden of proving that the language skills

If an official's name does not appear on the promotion list adopted by the Appointing Authority, they may file a complaint under Article 90(2) of the Staff Regulations within three months of the list's publication.

This complaint does not entail a fresh comparative assessment of merits but rather seeks to ascertain if all procedural rules were followed and that no manifest errors of assessment occurred.

Legal Action before the General Court

Where an Article 90(2) complaint is unsuccessful, officials may submit an application to the EU General Court. However, arguments raised in a legal challenge must have been previously invoked in the original Article 90(2) complaint. Pursuing this option requires legal expertise and the assistance of a lawyer.

Caselaw – The Colombani/SEAE ruling: appraisal reports and the obligation of impartiality

On 4 December 2024, the EU General Court delivered its ruling in case T-158/23 (Colombani v. EEAS), annulling the appraisal report for an official for the year 2021.

Background of the Case

In February 2021, the official submitted a request for assistance under Article 24 of the Staff Regulations, alleging psychological harassment, primarily attributed to their immediate superior. In July, the EEAS decided to launch an administrative investigation into the superior.

The official's annual appraisal procedure commenced in February 2022. Before the evaluation dialogue took place, the official raised concerns about the impartiality of the process, noting that their immediate superior—subject to both the assistance request and the resulting investigation—would be conducting the evaluation. Despite these concerns, the evaluation interview proceeded under the supervision of the immediate superior.

At the end of this process, the reporting officer identified a deficiency in the official's performance. The official contested their appraisal report, challenging the impartiality of its superior as a reporting officer. Nevertheless, the second reporting officer upheld the original assessment.

Identified Violations

The General Court annulled the official's evaluation report based on the duty of impartiality, as enshrined in Article 11 of the Staff Regulations and Article 41(1) of the Charter of Fundamental Rights of the EU.

The General Court found that, by launching an administrative investigation against the official's superior following the request for assistance, the EEAS had effectively acknowledged the existence of legitimate concerns regarding bias on the part of the superior acting as a reporting officer.

Consequently, the General Court concluded that the EEAS had failed to uphold its obligation of objective impartiality, noting that the mere existence of legitimate doubts about impartiality, if they cannot be dispelled, is sufficient to establish a violation.

By doing so, the EEAS deprived the official of the opportunity to be evaluated under conditions ensuring adequate guarantees of objective impartiality—potentially leading to a more favourable assessment.

Conclusion

The administration is obliged not only to ensure that reporting officers are impartial but also to prevent any legitimate doubts regarding their impartiality from arising.

Belgian Law – Belgian Housing Code: New rules regarding excessive rent as of 1 May 2025

The Order of 28 October 2021 amended the Brussels Housing Code. It introduced provisions that establish a joint rental commission (hereinafter "CPL") and aim to combat excessive rents, in order to curb, according to the Brussels legislator, the ongoing housing crisis in the Region. Some provisions of this order had not yet come into force, but this is now the case since the Order of 10 April 2025, set the entry into force of these provisions for 1 May 2025. Specifically, the landlord can no longer propose excessive rents and, where this is still the case, the tenant can request a rent revision. This article analyses the notion of excessive rent (I) and details the procedure for revision in case of excessive rent (II).

The notion of excessive rent

Article 224 of the Brussels Housing Code defines the notion of excessive rent through a double presumption. This double presumption is analysed with reference to a rent reference grid. The rent reference grid is an online tool provided by the Brussels authorities (About rent references – loyers.brussels) allowing anyone to estimate the reference rent value for the property based on various criteria, including the area, the number of rooms, the location of the property, its year of construction, etc. The reference rent for the property must be indicated in the lease, in addition to the actual rent charged.

A rent is presumed excessive when it exceeds the reference rent for the property by 20 percent. This presumption is, however, rebuttable, meaning that the landlord has the possibility to justify a substantial difference exceeding the reference rent by various elements not taken into account in the calculation of the reference rent and which justify this difference compared to the reference rent. For example, the calculation of the reference rent does not take into account the existence or not of a terrace or balcony for an apartment nor that of an office space; various luxurious amenities may also justify raising the rent price compared to the reference rent.

A rent is also presumed excessive if it does not exceed the reference rent by 20 percent, but the property bears substantial intrinsic quality defects in lodging and in its environment, provided that these defects are not attributable to the tenant. For example, substantial intrinsic quality defects include the absence of individual electric meters, the absence of an intercom for a property located upstairs, the absence of an elevator. These defects should not be taken into account in the calculation of the reference rent to constitute an excessive character.

The procedure for revision of excessive rent

Under Article 224/1 of the Code now in force, the landlord can no longer propose excessive rent, and where that still occurs, the tenant can request its revision. This article applies to all leases, whether concluded prior to or after 1 May 2025. This revision can take place in several ways.

However, the revision of excessive rent cannot be initiated before a certain length of time has been allowed to run under the lease. Thus, for leases concluded for a duration ranging from 1 to 3 years, the revision may not be requested during the first two months of the contract; for nine-year leases, it may not be requested during the first three months. Firstly, the revision of excessive rent can be carried out amicably by agreement between the landlord and the tenant. This agreement replaces the rent amount with the new agreed amount and can provide for a reimbursement of the "overpayment" by the landlord.

Secondly, where the parties fail to reach agreement among themselves, either one (or a person mandated by them for this purpose) can refer the matter to the CPL to obtain an opinion on the revision request. The CPL is a joint body, comprising representatives of landlords and tenants, that issues reasoned opinions on rent evaluation. Recourse to the CPL is free, and a tenant who refers a case to it has a protective stay of three months from the day after the referral against the notice to dissolve the contract given by the landlord; the notice then takes effect at the expiration of this three-month period. Reasoned

opinions given by the CPL are non-binding.

If the CPL concludes that the rent is excessive, it invites the parties to a conciliation session to try to reach an agreement between them regarding the rent revision. Where the conciliation is successful, the agreed rent replaces that provided for in the lease.

Thirdly, a party can request the revision of the rent before a court. Prior recourse to the CPL is not mandatory; however, the judge may request a non-binding opinion from the CPL on the question for the purpose of shedding light on the matter. The competent judge is the justice of the peace.

The revised rent takes effect on the first day of the month following the referral either to the CPL or to the judge, according to which procedure was initiated.

Conclusion

In conclusion, from now on the reference rent of the property being rented should be evaluated and compared to the actual rent charged, to assess the excessive nature of the actual rent. It is advisable for landlords to include in the lease contract the elements that justify the difference between the reference rent and the actual rent. This mention will allow for an objective evaluation of the excessive nature or not of the rent.

The revision of excessive rent will take place either by amicable agreement, by conciliation following an opinion by the CLP, or by decision of a judge.