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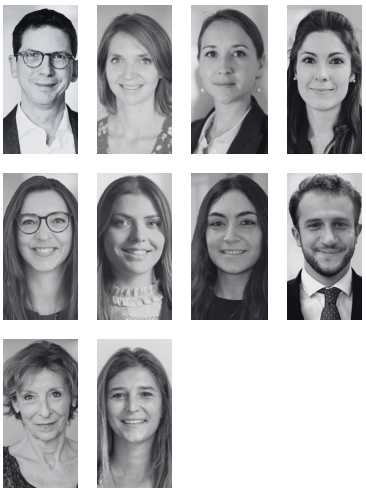

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EDITORIAL

Dear readers,

With the switch to wintertime and shorter days, this issue offers you some reading time around topics that deserve attention.

This month, we offer a focus on the freedom of expression of officials and agents.

We also analyse the judgment that annulled the decision of the Secretary-General of the European Parliament not to confirm a Head of Unit at the conclusion of the management probationary period, as well as the decision to transfer them to another unit.

In our "Belgian Law" section, our colleagues specialising in banking law will raise awareness about "cum-cum" fraud.

What topics would you like to see covered by The Official? Do not hesitate to contact us by email: theofficial@daldewolf.com.

Enjoy your reading!

The DALDEWOLF team

Focus – Freedom of expression for civil servants: a regulated fundamental right

With the increasing number of social media platforms enabling EU officials and agents to rapidly share opinions on a wide range of topics, assessing the balance between their individual freedom of expression and their obligations toward their employer—European institutions entrusted with a mission of general interest—has become increasingly delicate.

Freedom of expression is a right granted to officials and agents under Article 17a of the Staff Regulations and Article 11 of the Charter of Fundamental Rights of the European Union, including in areas covered by the activities of the institutions. This freedom includes the right to express, verbally or in writing, personal opinions that differ from or are minority views compared to those officially endorsed. Indeed, to limit freedom of expression solely because the opinion expressed diverges from the institution's position would deprive this fundamental right of its very purpose (Judgment of 14 July 2000, Cwik/Commission, T-82/99, § 58).

However, freedom of expression is not an absolute right. It entails duties and responsibilities for the official or agent exercising it and may therefore be subject to certain conditions or restrictions.

The framework governing freedom of expression for EU officials and agents is set out in Article 17a of the Staff Regulations.

General framework: balancing freedom of expression and the duty of loyalty

Article 17a(1) of the Staff Regulations provides: "an official has the right to freedom of expression, with due respect to the principles of loyalty and impartiality."

This general duty of loyalty implies that the respect owed by an official to their position is not limited to specific tasks but is expected of them under all circumstances (Judgment of 23 October 2013, F-80/11, para. 65). It therefore also applies irrespective of whether the official or agent expresses personal views orally, in writing, or on social media. The duty of loyalty limits freedom of expression when statements are likely to seriously and negatively affect the image and dignity of EU institutions (Judgment of 15 September 2017, T-585/16, § 86).

The need for a "disclaimer" often arises from this loyalty requirement, to avoid personal opinions being mistaken for official positions of EU institutions.

Nonetheless, the purpose of freedom of expression lies precisely in allowing officials and agents to express views that differ from those held at an official level. To accept that freedom of expression could be restricted merely because the opinion of the author differs from the position held by the institutions would be to negate the purpose of that fundamental right (Judgment of 14 July 2000, T-82/99, § 58).

Only when the opinions expressed compromise the interests of the European Union may an official's or agent's freedom of expression be limited. For example, publications that directly contradict or criticize the actions of EU institutions, their programs, or directorates-general using offensive language that undermines the respect owed to EU officials or their functions may be considered as compromising the Union's interests.

In a recent case (Judgment of 23 July 2025, Stanecki / Commission, T-108/24, §§ 87-91), the Court assessed a breach of Article 17a of the Staff Regulations based on the "severity" and "tone" of the statements made by an official, and the fact that the accusations were based on "a distorted presentation of reality, lacking any factual basis." The Court also reaffirmed the European Court of Human Rights case law, which states that even if the person targeted by the statements is a public figure or "senior official" subject to public scrutiny, this does not entitle officials to make statements that exceed acceptable limits of freedom of expression — such as making accusations based on a distorted version of reality devoid of any factual basis.

Publications related to EU Activity

Article 17a(2) of the Staff Regulations requires officials or agents to inform the Appointing Authority (AIPN) in advance if they intend to publish or have published any text whose subject matter relates to EU activity. This criterion is interpreted broadly by the Court of Justice (Judgment of 10 June 2020, Sammut/European Parliament, T-608/18, §§ 62–77). The notion of EU activity encompasses any topic linked to EU competences or institutional actions. For instance, a book primarily addressing the domestic politics of a Member State was deemed to fall under EU activity because it discussed facts investigated by the PANA committee of the European Parliament in the context of tax fraud. Moreover, the book made explicit references to EU institutions and symbols in its title, content, and cover.

The AIPN may, within 30 working days of receiving the notification, inform the official that the publication may harm the Union's legitimate interests. Authorisation may only be refused if the publication is likely to cause serious harm to those interests.

Sanctions

Failure to comply with the framework governing freedom of expression may result in disciplinary penalties, particularly for breaches of the duty to give advance notice of the intention to publish or for breaches of the duty of loyalty.

Regarding Article 17a(1), a breach of the duty of loyalty in the exercise of freedom of expression may be established even without proven harm to the Union or external complaints (Judgment of 23 October 2013, F-80/11, § 66). However, any disciplinary penalty must be proportionate and assessed on a case-by-case basis. Factors such as good faith, public interest, truthfulness of the information, or the availability of alternative disclosure channels may be considered when evaluating the legitimacy of the positions expressed by the official.

Moreover, even without disciplinary proceedings, failure to give advance notice of a publication may be mentioned in the annual appraisal report as a one-off incident, given that it concerns a clear rule derived from the Staff Regulations (Judgment of 10 June 2020, T-608/18, § 72).

Case-law - Judgment EP/Parliament (T-370/24)

Is an institution required to give an official the opportunity to improve in order to successfully complete the probationary period? What are the conditions? The General Court answered these questions in its judgment of 1 October 2025.

Facts

The applicant, following a selection procedure, was appointed Head of Unit, with a corresponding probationary period running from 1 January to 30 September 2023.

During this period, on 27 April, the applicant received advice from their line manager to improve managerial practices and later, on 1 August, criticisms regarding work and attitude. A formal meeting took place in early August, followed by an action plan proposed by the applicant.

On 31 August, an unfavourable evaluation report was drawn up, recommending that the applicant not be confirmed in the post and be reassigned to a position without managerial responsibilities. The applicant was not confirmed and was transferred to another unit.

The judgment

By upholding the plea alleging breach of the duty of care, the Court found that Parliament had not allowed the applicant sufficient time to adapt behaviour to the criticisms addressed to them before the evaluation report was issued. The Court recalled its settled case law that a person on probation must receive appropriate instructions and guidance to adapt to the specific requirements of the post. It also noted a breach of Parliament's internal rules on such probationary periods, which require that a period of at least four months before the end of the probationary period is respected to allow those in difficulty to benefit from feedback. In this case, criticisms were expressed on 1 August 2023 and the negative report was issued on 31 August 2023, very close to the end of the confirmation period.

The Court further considered that the advice given on 27 April did not meet the conditions set by these internal rules, as it amounted only to continuous evaluation feedback. It was only with the letter of 1 August that the applicant was informed of a risk of non-confirmation in their management post, triggering the procedure under the internal rules.

The Court therefore annulled the decision not to confirm the applicant and the transfer decision, as the latter was inseparable from the former.

However, the applicant did not obtain compensation for damages. The Court rejected the claim for compensation, finding that the cumulative conditions for Union liability were not met. The alleged career damage was hypothetical since the non-confirmation decision was annulled and deemed never to have existed, and further, there was no objective reason that prevented the applicant from applying for other head of unit posts. As for harm linked to the transfer, the applicant did not demonstrate real and certain damage, merely mentioning a feeling of isolation, which does not constitute moral damage that cannot be remedied by annulment of the decision. Finally, arguments concerning health impact, submitted late, were declared inadmissible.

Conclusion

The judgment highlights the importance of evidence before the Court.

Parliament failed to demonstrate that management had expressed, during regular meetings over the course of the probationary period, a dissatisfaction with the performance of the applicant that was likely to lead to their not being confirmed in the post as Head of Unit. The absence of such evidence resulted in annulment of both decisions.

For their part, the applicant failed to demonstrate real and certain damage, justifying rejection of the claim for financial compensation.

Belgian Law – Tax Fraud: The "Cum-Cum" scheme returns to the spotlight

With the contribution of DALDEWOLF's Banking & Financial Law department

A term you are likely to hear soon in European tax debates: the so-called "cum-cum" fraud. Behind this enigmatic name lies a tax optimisation mechanism that has already cost States billions.

As Member States tighten tax vigilance and EU institutions continue efforts on financial transparency, this controversial mechanism is resurfacing in the news.

But what exactly is it? And why are banks now in the authorities' sights?

A diverted tax mechanism

The starting point is a well-established tax principle: when an investor receives a dividend, withholding tax is applied—typically between 25% and 30%—to ensure minimum taxation, especially for non-residents.

To circumvent this withholding, some foreign investors resorted to a scheme involving temporarily lending their shares to local residents, who are less taxed. These residents received the dividends under lighter taxation, then returned the shares and shared the tax advantage with the lenders.

Although presented as optimisation, this mechanism effectively eliminates the tax that should have gone to the Treasury.

Massive tax losses and ongoing investigations

Several European States have seen significant tax revenues evaporate. Judicial and administrative investigations are underway, targeting investors, investment funds, and banks. Some banks are suspected of designing and marketing these schemes. Others, indirectly involved, must now demonstrate the robustness of their compliance systems.

An emblematic example is the case of five bankers sent before a German court in the first criminal case

linked to cum-cum fraud. This case marks an escalation in prosecutions against financial actors suspected of facilitating or benefiting from aggressive tax optimisation schemes.

The role of banks

Banks play a technical role in implementing these operations: they handle securities lending, settlement-delivery, and account management. However, their responsibility goes beyond execution. Some have been accused of actively structuring these schemes, while others must prove they were used without their knowledge.

A technical issue with broad impact

Behind tax schemes like cum-cum fraud lie very concrete issues of tax justice, financial transparency, and good governance—pillars at the heart of EU institutional concerns. Understanding these mechanisms, even complex ones, helps everyone grasp the challenges facing the Union in tax matters. This is a topic worth discussing, sharing, and integrating into strategic reflections on the future of EU taxation.