DALDEWOLF

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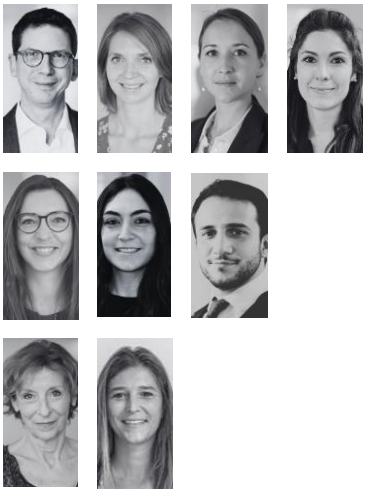

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## EDITORIAL

Dear readers,

For this issue, we are presenting a focus on the duty of independence for officials: it is dedicated to officials' outside activities and the authorisations required from the administration. In our next issue, we will focus on two other aspects of preventing conflicts of interest: the prohibition on holding interests in companies subject to oversight by one's institution and the prohibition on handling matters in which the official has a personal interest.

Psychological harassment and the consequences of Eurojust's refusal of a request for assistance is the subject of the case law commentary.

In our « Belgian Law » section, we will address the conditions for applying the reduced VAT rate of 6% on the supply of private housing that has undergone demolition and reconstruction.

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 – Duty of Independence: prior authorisations

To safeguard the independence of officials from private interests, the Staff Regulations (SR) set out —through Articles 11, 11a, 12b, 13 and 16—a series of rules based on the principle of prior authorisation. These provisions require officials and other staff to cooperate loyally with their institution: they must take the initiative to declare any relevant personal situation (including changes in the situation) or to request the necessary authorisations, without waiting for administrative checks or intervention. Being an official means not only performing one's duties impartially but also preserving that impartiality beyond the boundaries of the workplace. The rules on prior authorisations are designed precisely to maintain this balance between professional and personal life and individual ambitions.

**Outside Activities**

As per Article 12 of the SR, officials and other staff must obtain authorisation from their Appointing Authority (AA) before engaging in any outside activity, whether paid or unpaid. This obligation applies to all categories of staff, including new recruits who wish to continue activities they carried out before their appointment. Once they join the institution, such an activity becomes "external" and therefore requires prior authorisation. The AA may refuse the request if it considers that the activity would interfere with the performance of duties or be incompatible with the institution's interests.

The concept of an outside activity is interpreted broadly. It covers any activity going beyond what can reasonably be considered a simple pastime or leisure pursuit. Publishing articles, serving on a governing board, or running a small business generally fall within this definition, whether or not they are remunerated.

For example, a temporary agent received a warning for publishing unpaid articles relating to the European Union's work without prior authorisation, and later for writing paid articles as a freelance writer without his institution's approval (IDOC 2023 report). Similarly, a contract agent who presented a commercial activity as a mere hobby was found to have breached the rules (IDOC 2022 report).

Prior authorisation is therefore not a mere administrative formality: it is an essential safeguard against conflicts of interest.

This attention to potential conflicts also extends to periods of leave and to the cessation of activity. Under Article 40(1a) of the SR, an official on unpaid leave remains subject to Article 12b and must request authorisation before taking up any outside activity. Authorisation cannot be granted if the activity involves lobbying or advocacy towards the institution, or if it is likely to create even a potential conflict of interest. For example, an official on unpaid leave who carried out paid assignments for the Commission through his own company was sanctioned for breaching the rules on outside activities (IDOC 2023 report).

The General Court has repeatedly confirmed that the AA enjoys a wide margin of discretion, but that it must exercise this discretion within reasonable limits (SN v Commission, T-689/22, para. 39). A notable example concerns a DG Competition official on unpaid leave who sought to become vice-president of an economic consultancy firm. The institution refused authorisation, finding that the contacts, privileged information and public visibility associated with the post could give rise to a perceived conflict of interest. The General Court upheld this decision, finding that even the appearance of a conflict of interest is sufficient to justify refusal (SN v Commission, T-689/22, para. 41).

Most institutions also set remuneration ceilings for outside activities. For example, the Commission sets an annual cap of around EUR 10,000 net, while the Council limits it to EUR 5,000. These ceilings are intended to ensure that secondary activities do not become a significant source of income that could undermine an official's independence.

**Post Employment Activities**

The same logic applies after leaving the service. Article 16 of the SR requires former officials to respect the duties of integrity and discretion when taking up new roles within two years of leaving the institution. Any occupational activity—paid or

unpaid—must be declared. If the activity is linked to the official's last three years of service and may compromise the Union's legitimate interests, the AA may forbid it or impose some conditions. Again, the perception of a risk of conflict is sufficient.
The van de Water v Parliament judgment confirms that judicial review is limited to verifying that the AA has not committed a manifest error of assessment (F-86/13, paras 46, 48, 51). Likewise, the General Court upheld a prohibition preventing a former Head of Delegation from representing another diplomatic organisation in the country where he had previously served (Pinto Teixeira v EEAS, T-667/18).

**Gainful Activities of the Spouse**

The rules also extend, to a certain degree, to the family sphere. Article 13 of the SR requires officials to declare any gainful activity undertaken by their spouse. This obligation aims to prevent situations of indirect conflicts of interest. If the AA considers that the spouse's activity is incompatible with the official's duties, it may consider a transfer or change of post. This is a declaration requirement, not a request for authorisation, and enables the institution to assess risks proactively.

**Election or Appointment to Public Office**

Finally, an official wishing to stand for election or to hold public office must inform the AA in accordance with Article 15 of the SR. The AA will then decide whether the function may be exercised alongside the official's duties—either full-time or part-time—or whether unpaid leave or annual leave is required.

# Case-law - Cases T-295/23 and T-1176/23 (WU / Eurojust)

*What are the obligations of the administration when it receives a request for assistance under Article 24 of the Staff Regulations? Is it legitimate to split the procedure into two parts? What powers should investigators be vested with? Answers to these questions can be found in the following paragraphs!*

**Facts**

WU, a temporary agent of grade AST 4 at Eurojust, submitted on 7 May 2021 a request for assistance based on Article 24 of the Staff Regulations, alleging acts of psychological harassment within the meaning of Article 12a.

WU claimed to have suffered, during two distinct periods, repeated harassment attributable to ten staff members, which WU believed originated in the attitude of the Administrative Director. The latter, exercising the powers of the Appointing Authority (AIPN) and the Authority Empowered to Conclude Contracts (AHCC), recused themselves from handling the request.

Eurojust then split the procedure into two parts: the first concerning the allegations against the Administrative Director, entrusted to the Eurojust College (part 1), and the second concerning the nine other staff members, entrusted to its Executive Board (part 2).

A preliminary assessment carried out by an external consultant led to the opening of an administrative inquiry. The Executive Board opened the inquiry for part 2 on 15 June 2021, while the College extended the mandate to the facts of part 1 on 30 June 2021. Both parts were entrusted to external investigators, who submitted their final report on 16 December 2021. On this basis, the delegated national members (of the College) closed the inquiry relating to part 1 on 30 March 2022, and the Executive Board closed part 2 on 15 July 2022.

The applicant lodged complaints against these decisions, one of which led to annulment for lack of reasoning before the adoption of a new decision on 14 February 2023 confirming the rejection of the request. Both rejection decisions were challenged before the General Court, which joined cases T-295/23 and T-1176/23.

The Court found that splitting the request into two parts and handling it by two separate AHCCs prevented a comprehensive and contextual assessment of the facts, in breach of the duty of care and the principle of good administration.

It noted that the external investigators were not vested with the necessary decision-making powers and that the versions of the report communicated to the two bodies were partial, compromising a full

examination of the interactions between the parties involved. Considering that these irregularities could influence the outcome of the procedure, the Court annulled the contested decisions and dismissed the remainder of the claims.

**Court's assessment**

The Court recalls that Article 24 of the Staff Regulations imposes on institutions an obligation of assistance aimed at protecting officials and agents against attacks or ill-treatment, including when they come from other staff members. This obligation entails a serious, prompt, and confidential examination of requests, as well as clear information to the applicant.

The Court emphasizes that failure to comply with this obligation constitutes a breach of a rule of law conferring rights on individuals.

Regarding Article 12a, the Court stresses the cumulative and contextual nature of psychological harassment: it may result from a set of acts which, taken individually, would not necessarily constitute harassment, but which, assessed globally and in context, may amount to harassment. Therefore, the administration must examine the facts not only individually but also jointly, taking into account interactions between the protagonists and the general working environment. Splitting the request into two parts and handling it by two separate AHCCs prevented this comprehensive assessment, which constitutes a breach of the duty to exercise due care.

Finally, the Court finds that appointing external investigators without decision-making powers does not meet the requirements of Article 24. Although these investigators produced a single report, the competent bodies received partial versions, compromising a full examination of the facts. This fragmentation deprived the administration of the ability to assess the possible influence of the Administrative Director on the other persons implicated, a central element of the request. Consequently, Eurojust failed to comply with its statutory obligations.

**Conclusions and Critical Reflection**

The Court annulled the two contested decisions, finding that splitting the request and failing to assess the facts globally violated the principle of good administration and the obligation of assistance. It dismissed the claims for damages, considering that annulment constituted adequate redress for the alleged moral harm.

This judgment reaffirms that diligence and consistency in handling harassment complaints are fundamental requirements, the breach of which may lead to annulment of administrative decisions. For EU officials and agents, this ruling illustrates the importance of protection against psychological harassment and the need for the administration to act swiftly, impartially, and comprehensively. It highlights the risks of a fragmented approach to complaints and reminds that institutional recognition of harassment can have a significant impact on the health and dignity of staff.

This case-law invites Union bodies to strengthen their internal procedures to ensure a comprehensive assessment of situations and real effectiveness of statutory rights.

# Belgian Law – Value added Tax – reduced rate of 6% applicable to the supply of reconstructed private residential buildings

Since 1 July 2025, the 6% reduced VAT rate applies (once again) on the sale of reconstructed private residential buildings (Article 53 of the Programme Law of 18 July 2025).

This reduced rate had already applied under a temporary regime that ended on 31 December 2023, but its effects for ongoing projects were extended until 30 June 2025.

**Conditions of application**

The 6% reduced VAT rate applies to the supply of reconstructed private residential

buildings, provided that the purchaser(s) intend(s) to use the building for one of the three eligible purposes listed in paragraph 3 of section XXXVII of Royal Decree No. 20:

***a) Primary and sole residence of the purchaser***

The 6% reduced VAT rate applies to the sale of a residential building to one or more individuals who will use the dwelling, for a minimum period of five years, as their primary and sole residence:

- Sole residence: The purchaser(s) must not hold, at the time of acquisition, any ownership rights or other real rights over another dwelling, in Belgium or abroad. This condition must be assessed individually for each purchaser. If one of them does not meet the condition, the benefit of the reduced rate must be allocated proportionally to each party's ownership share.
- Primary residence: The purchaser(s) must personally occupy the dwelling, promptly register their domicile there, and use it as their main residence for more than 50% of its use.

This purpose is only possible if the habitable surface does not exceed 175 m².

***b) Long-term "social" rental***

The 6% reduced VAT rate applies to the sale of a private residential building to a purchaser (natural or legal person) who will rent the building for a minimum of 15 years to the benefit of, or through, a social housing agency (AIS), a recognized social housing company, or a legal entity (public or private) pursuing a social purpose.

No surface area condition applies in this case.

***c) Long-term "ordinary" rental***

The 6% reduced VAT rate applies to the sale of a private residential building to a purchaser (natural or legal person) who will rent the building for a minimum of 15 years to one or more individuals who will use the building as their primary and sole residence (see above).

This purpose is only possible if the habitable surface does not exceed 175 m².

**Formalities**

For the 6% reduced VAT rate to apply to the supply, the seller must submit a declaration No. 111/3 countersigned by the purchaser, accompanied by a series of supporting documents (building permit, construction contract(s), and preliminary or authentic deed). The countersignature is in fact an attestation signed by the purchaser and attached to the form.

This declaration must be filed before the tax becomes due, in accordance with Article 17, §1 of the VAT Code (i.e., before payment of the price or before the invoice is issued) or, in the case of an off-plan sale, before the taxable event, in accordance with Article 16, §1, first paragraph of the VAT Code (i.e., when the dwelling is made available to the purchaser).

A copy of the acknowledgment of receipt issued by the authorities must be provided to the purchaser. The invoices issued by the seller, as well as the contracts and authentic deeds relating to the relevant supply, must refer to this declaration.

By this declaration, the seller certifies that the conditions relating to joint demolition and reconstruction are met, and the purchaser certifies that the dwelling is indeed intended for one of the required purposes.