

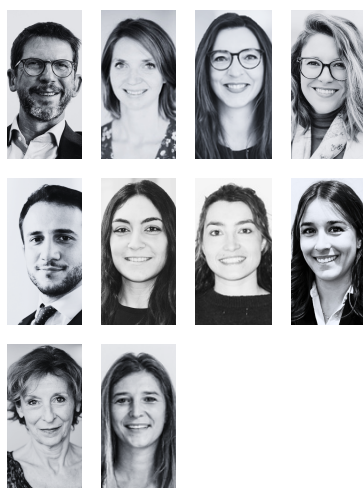


the FFICI@L

legal newsletter on European civil service law
newsletter juridique de la fonction publique européenne
April 2026 – number 110 – 13th year

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EDITORIAL

Dear readers,

For this 110th edition of our newsletter, we are pleased to offer a special focus on the sensitive issue of reasonable accommodation - a topic that extends far beyond the European civil service.

In terms of case-law, our attention has been drawn to a recent order of the General Court of the European Union concerning conflicts of interest and the disciplinary sanctions regime.

Finally, the consequences of, as well as the legal remedies available to challenge, decisions withdrawing or refusing security clearance for EU staff members will be examined in our "Belgian Law" section.

Is there a topic that interests you or raises questions? Share it with us: a future issue of The Offici@l could explore it and provide you with a unique perspective.

We look forward to receiving your suggestions at: theofficial@daldewolf.com.

The DALDEWOLF team

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Focus – Reasonable Accommodation in the European Civil Service

EU law enshrines the principle of equal treatment and prohibits all forms of discrimination, in particular on grounds of disability, in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. Article 26 of the Charter further recognises the right of persons with disabilities to benefit from measures aimed at ensuring their autonomy, social and professional integration, and participation in community life.

The commitment of the EU institutions to the inclusion of persons with disabilities has long been established, notably through the Code of Good Practice for the Employment of People with Disabilities (PE 282.903/BUR), which seeks to guarantee equal opportunities throughout the entire career, from recruitment to professional development. This commitment has been further strengthened by the EU Strategy for the Rights of Persons with Disabilities 2021–2030 (COM(2021) 101), which sets out concrete guidelines designed to sustainably improve access to and participation in employment for persons with disabilities, including within the EU institutions (see also the European Parliament resolution of 27 November 2025 on the EU Strategy for the Rights of Persons with Disabilities after 2024 (2025/2057(INI))).

In this context, Article 1d of the Staff Regulations of Officials of the European Union, as well as the rules applicable to other staff, prohibit any discrimination on grounds of disability (paragraph 1) and expressly recognise a specific right to reasonable accommodation (paragraph 4).

This framework is further clarified by the general implementing provisions adopted by the EU institutions, which set out the applicable procedures, the role of the medical service, and the practical arrangements for implementing reasonable accommodation (in particular Council Decision No 12/2019, Commission Decision C(2004) 1318, the European Parliament's Internal Rules of 2015, and the EEAS Decision PROC EEAS(2011) 013).

Reasonable accommodation is defined as

appropriate measures enabling a person with a disability to access employment, perform their job, or progress in their career, unless such measures would impose a disproportionate burden on the institution (Article 1d(4) of the Staff Regulations; Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000, L 303); General Court, judgment of 13 December 2018, *UP v Commission*, T-706/17, para. 25). This concept covers both physical adjustments and organisational measures and applies, in particular, to promotion, working conditions, training, and access to employment-related social benefits (European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *Reasonable accommodation at work – Guidance and Good Practices*, Publications Office of the European Union, 2024).

Reasonable accommodation is assessed on a case-by-case basis, taking into account the specific needs of the person concerned and the duties performed. The medical service, in cooperation with a disability employment specialist, examines the feasibility of such measures and determines their nature. By way of example, reasonable accommodation may include:

- adaptation of premises or the working environment;
- provision of technical aids or specialised equipment;
- reorganisation of certain tasks or responsibilities;
- adjustment of working hours or recourse to part-time work;
- access to adapted training or specific support;
- awareness-raising on stigmatisation, communication, and training.

EU case-law has consistently emphasised that reasonable accommodation must be effective and practical (General Court, judgment of 15 September 2011, *Esders v Commission*, F-62/10, para. 70; Court of Justice, judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, para. 55; recital 20 of Directive 2000/78), in order to

enable persons with disabilities to perform the essential functions of their job (General Court, judgment of 13 December 2018, *UP v Commission*, T-706/17, para. 24). It has also clarified that a failure to provide reasonable accommodation amounts to discriminatory treatment (Court of Justice, judgment of 18 January 2024, *Ca Na Negreta*, C-631/22, para. 42).

It should nevertheless be emphasised that the obligation to provide reasonable accommodation is not absolute. An institution may refuse a measure if it would impose a disproportionate burden beyond what it can reasonably be expected to bear, having

regard in particular to its cost, available resources, the organisation of the service, and health and safety requirements. Any such refusal must be duly reasoned and based on a concrete assessment.

For staff of the EU institutions, reasonable accommodation is not a favour but an essential tool for achieving substantive equality. It should not be limited to mere compliance with legal obligations, but should also encompass well-being, empowerment, accessibility, and recognition of the diversity of disability-related situations, for the benefit both of the individual concerned and of the proper functioning of the European public service.

Case-law - Disciplinary sanctions and unauthorised engagement in external activities: key takeaways (Order of the General Court of the European Union (Third Chamber), T-214/25, 10 February 2026).

The Order sets out the principles and criteria to be taken into account when imposing a disciplinary sanction and notes that the Tribunal may issue an order in the event of a manifestly unfounded claim.

Facts

The applicant has been a civil servant in a European Institution since 2008, graded AST 4 and assigned to a translation unit.

Following suspicions regarding the pursuit of unauthorised outside activities, both the Appointing Authority and OLAF launched investigations into possible breaches of Articles 12 and 12a of the Staff Regulations and the Institution's internal decision on outside activities.

In particular, the official concerned was accused of providing translation services for remuneration, of owning a company established in another Member State, and of actively participating, in return for remuneration, in two projects funded by the European Union on behalf of two organisations.

Following the disciplinary proceedings, on 18 July 2024 the Appointing Authority imposed a penalty of demotion by two grades within the same function group, pursuant to Article 10 of Annex IX

to the Staff Regulations.

Following the rejection of his administrative complaint (Article 90(2) of the Staff Regulations), the official concerned brought an action for annulment before the General Court. In support of his action, the applicant relied principally on a manifest error of assessment of the facts and a breach of the principle of proportionality, considering the penalty of demotion to be excessive.

1. On the assessment of manifest error

The General Court notes that, in disciplinary matters, the appointing authority enjoys a wide margin of discretion, and the review by the EU judge is limited to determining whether there has been a manifest error or a misuse of powers (General Court, judgment of 5 June 2019, *Bernaldo de Quirós v Commission*, T-273/18, paragraph 125).

In the present case, the General Court finds that the external activities were carried out without prior authorisation; the facts are established on the basis of specific evidence, in particular from the OLAF report; and the applicant has not demonstrated in what way the Appointing

Authority distorted the facts or drew manifestly erroneous conclusions.

The applicant now acknowledges the facts alleged against him, relating both to the existence of external activities and to the lack of authorisation in that regard, despite the obligation incumbent upon him.

The plea alleging a manifest error of assessment is therefore dismissed.

2. On the proportionality of the penalty

The proportionality of the penalty was also contested.

In assessing the proportionality of a disciplinary penalty in relation to the seriousness of the alleged facts, the Tribunal must take into account the fact that the determination of the penalty is based on an overall assessment by the Appointing Authority of all the specific facts and circumstances particular to each individual case. However, the Staff Regulations do not provide for a fixed relationship between the sanctions set out therein and the various categories of misconduct committed by officials, nor do they specify to what extent the existence of aggravating or mitigating circumstances must be taken into account in the choice of sanction.

As regards aggravating circumstances, the applicant argues that there is no tangible evidence to support the Appointing Authority's assertion, made in a note dated 15 April 2024, that his conduct at work was inconsistent. Furthermore, he disputes the claim that the criticisms of his professional performance were the result of his external activities, or that he carried out private translation work during working hours.

With regard to mitigating circumstances, the applicant considers that the Appointing Authority should have taken greater account of the reasons behind his misconduct. He justifies his behaviour on the grounds of his financial situation, his spouse's illness and the need to care for his children. Furthermore, the applicant cites an improvement in his performance after 2018; the Appointing Authority points out, however, that he was still engaged in external activities from 2018 to 2021, thereby precluding this factor from being taken into account as a mitigating circumstance.

The Tribunal emphasises that the Appointing Authority took into account all nine non-exhaustive criteria set out in Article 10 of Annex IX to the Staff

Regulations, as well as two additional considerations, namely the regret expressed by the applicant and the fact that he had repeatedly changed his version of events during the proceedings. More specifically, the duration and seriousness of the misconduct were taken into account, and the Appointing Authority examined the mitigating and aggravating circumstances and opted for an intermediate penalty from among those provided for in the Staff Regulations.

The Appointing Authority also took into account the reasons that led him to commit the misconduct, namely his financial and personal difficulties. However, it concluded that such a breach of the duties of an EU official could not be justified by such difficulties.

Demotion within the same function group does not appear to be punitive beyond what is necessary, nor manifestly disproportionate to the conduct in question. The Appointing Authority could have imposed a penalty with more severe financial consequences, as permitted by Annex IX to the Staff Regulations, but it sought to impose a proportionate penalty, taking into account all the facts of the case.

The Tribunal therefore concludes that the sanction complies with the principle of proportionality.

Conclusion

The application is deemed to be manifestly devoid of any legal basis and is dismissed by reasoned order, in accordance with Article 126 of the Rules of Procedure. The General Court has therefore decided to rule by reasoned order, without continuing the proceedings, on the grounds that the action was manifestly devoid of any legal basis and that the General Court considered itself sufficiently informed by the documents in the file. This procedure is provided for in Article 126 of the Rules of Procedure of the General Court. Where an action is manifestly inadmissible or manifestly devoid of any legal basis, the Court may, on a proposal from the Judge-Rapporteur, decide at any time to rule by reasoned order, without continuing the proceedings. This constitutes a procedural screening mechanism enabling the General Court to dismiss an action swiftly, without a full investigation (no detailed written procedure or hearing), by reasoned order, where the defect is evident upon reading the file. This mechanism aims to ensure the proper administration of justice and to prevent the General Court from being burdened with actions that are bound to fail.

Belgian Law – Withdrawal or refusal of security clearance for an official of the European Union: what professional consequences and what remedies?

Obtaining a security clearance is often the indispensable prerequisite for access to sensitive functions within the institutions or agencies of the European Union. But what happens when this valuable clearance is withdrawn or refused by the National Security Authority (NSA)? The official concerned is then faced with numerous questions: what are the concrete consequences of such a withdrawal or refusal? Are there any means to challenge that decision and to assert one's rights?

Let us examine the consequences of such decisions and the remedies available.

As regards the consequences of a refusal or withdrawal of a security clearance, in accordance with the internal rules of the institution or agency, where the post requires a security clearance, the withdrawal or refusal thereof may, in principle, lead to the termination of the official's contract with notice. However, where the internal rules and the needs of the service allow, the administration may consider transferring the official to a position that does not require a security clearance, provided that such a post is compatible with the profile of the person concerned.

However, EU case-law has confirmed that the administration enjoys a wide margin of discretion. Thus, where an investigation conducted by the NSA concludes that there is a risk to loyalty or integrity, the administration is entitled to terminate the employment contract of the official concerned (EU Civil Service Tribunal, judgment of 21 November 2013, *Arguelles Arias v Council*, F-122/12).

A refusal or withdrawal of a security clearance may therefore have significant consequences for the official concerned.

Various avenues of appeal are available.

Where an official seeks to challenge a decision to withdraw or refuse a security clearance adopted by the NSA, he or she must bring an action before the competent national authority or court with jurisdiction in matters of security clearance. Where the NSA that adopted the decision is Belgian, an appeal may also be lodged with the Appeals Board for Security Clearances (*Organe de recours en matière d'habilitation de sécurité*). That administrative court has exclusive jurisdiction to deal with this type of dispute. It was established by the law of 11 December 1998 establishing an appeals body in matters of security clearances, attestations and security advice.

The appeal must be lodged within a period of 30 days from notification of the decision refusing or withdrawing the security clearance. It must comply with certain formal requirements.

This procedure is free of charge and requires the presence of the applicant at each stage of the proceedings. Although representation by a lawyer is not mandatory, it is nevertheless recommended, in order to assist the official in preparing the appeal by setting out the factual and legal arguments capable of supporting the defence and effectively contesting the legality of the NSA's decision.

After the appeal has been lodged, the Appeals Board will request that the NSA transmit the administrative file relating to the official concerned, including the investigation report, the reasoned original decision, a copy of the notification of that decision to the official and, where applicable, the investigation file. The official may consult the file or investigation report at the registry of the Appeals Board five working days prior to the hearing. However, access may be restricted if the file contains confidential information, in particular information relating to an ongoing investigation, the protection of sources, the private life of third parties or the

tasks of intelligence services.

The official, accompanied by his or her lawyer, presents his or her arguments at a hearing. The Appeals Board rules by majority within sixty days of referral. It may either confirm the decision of the NSA, order a supplementary investigation and a fresh examination of the NSA's decision, or withdraw the NSA's decision and require that the security clearance be granted. Decisions of the Appeals Board must be reasoned and are notified, by registered letter, to the applicant and to the NSA.

Although the law of 11 December 1998 establishing the Appeals Board provides that its decisions are not open to appeal, it is in practice possible to lodge an appeal in cassation before the Belgian Council of State, as confirmed by the Constitutional Court and the Council of State themselves (see in particular Constitutional Court, judgment No 157/2024 of 19 December 2024, B.59.1–B.59.2). However, when ruling in cassation, the Council of State does not review the factual elements of the case and rules exclusively on points of law.

The termination of the employment contract of an official, resulting from the decision of the NSA, may be challenged by the official before his or her administration. The official has a right to lodge a complaint (Article 90(2) of the Staff Regulations), which must be exercised within a period of three months following notification of the termination of the contract. If that complaint is rejected, the official may bring an action before the EU Courts within three months of notification of the rejection decision, in accordance with Article 91 of the Staff Regulations.

However, the Belgian Constitutional Court clarified in a judgment of 27 February 2025 that the absence of a challenge by the official to the dismissal decision adopted by the administration does not appear to preclude referral to the Appeals Board for Security Clearances (Constitutional Court, judgment No 36/2025 of 27 February 2025). In other words, the official is not required to challenge the termination decision in order to establish an

interest in bringing proceedings before the Appeals Board.

Furthermore, following an analysis of the case-law of the EU Courts, it appears that the prospects of successfully challenging a termination decision following a refusal or withdrawal of security clearance by the NSA are limited.

The EU Courts have held that the termination of a contract, pursuant to Article 47(c) of the Conditions of Employment of Other Servants, falls within the broad discretion of the administration. The General Court may review the merits of such a decision only in the presence of irregularities, in particular in the case of a manifest error of assessment. That ground of annulment remains difficult to rely upon, as it is for the official to provide sufficiently convincing evidence capable of calling into question the plausibility of the assessments made by the administration. Moreover, according to internal rules, the administration is not necessarily required to follow the conclusions of a security investigation or of an appeals body and may refuse a security clearance even where the outcome is favourable to the person concerned (EU Civil Service Tribunal, judgment of 21 November 2013, *Arguelles Arias v Council*, F-122/12, paragraphs 59, 104, 122 and the case-law cited).

In conclusion, the withdrawal or refusal of a security clearance is never a mere administrative incident: it can profoundly disrupt the professional trajectory of an EU official, potentially leading to the termination of employment where the position requires access to sensitive information. Faced with this risk, the official nevertheless has concrete legal remedies available. On the one hand, the NSA's decision may be challenged before the competent national remedies — in Belgium, via the Appeals Board for Security Clearances (within the short time limit of 30 days), with the possibility of challenging the Appeals Board's negative decision through an appeal in cassation before the Council of State on points of law. On the other hand, the termination of the employment contract decided by the administration may be contested, even though the prospects of success remain limited.