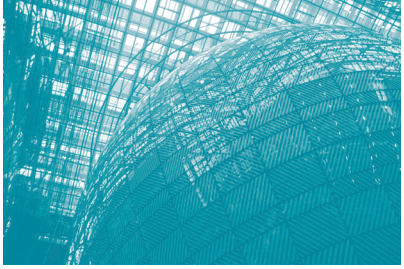

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EDITO

Dear readers,

We are very pleased to be back with this new issue.
In this month's , we take a look at the certification procedure available to AST officials who would like to become AD officials.
On the case law side, we focus on a recent judgment in which the General Court recalls several important aspects of the harassment complaint procedure.
Regarding the human rights, the right to anonymity of a minor child versus freedom of expression was the subject of a recent judgment.
Finally, our usual section on Belgian law is back, this time with some advice on how to transfer money outside the Euro zone.

We wish you an excellent reading!

The DALDEWOLF team

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FOCUS

The Certification procedure for AST officials

Are you an official at AST 5 grade or above, and do you aspire to pursue a career as an administrator? The certification procedure can be an effective way to fulfil your professional ambition within the European Union institutions.

Introduced by the 2004 reform of the Staff Regulations, the certification mechanism was designed to decompartmentalise the careers of officials. Recital 11 of the reform regulation (Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004) stated at that time the need to ensure greater recognition of officials' professional experience and to promote and implement life-long learning.

The certification procedure has since been provided for in Article 45a of the Staff Regulations. It allows any official of grade AST 5 or above to be appointed to an AD function group to pursue a career as an administrator. The procedure is as follows: you must be selected to participate in a mandatory training programme and certify that you have successfully completed the programme.

Places are limited, and each year the number of appointments after certification cannot exceed 20% of the total annual number of appointments from the lists of eligible candidates after a competition. So, here's how to proceed:

- Drawing up a shortlist

This is the first step of the procedure, which consists in being authorised by your Appointing Authority to take part in the mandatory training programme.

In order to do so, you have to respond to the annual call for applications published by the Appointing Authority. The call for application sets out the maximum number of applications that can be admissible and contains the criteria and scoring grid for the applications.

First, the Appointing Authority determines whether your application is eligible. In addition to the elements required by the call for applications, the General Implementing Provisions (GIPs) applicable to each institution specify the eligibility requirements. All officials must:

- be in function group AST with grade 5 or higher;
- be in active employment, on parental or family leave, or on secondment in the interest of the service;
- have been assessed in at least two of the last three appraisal reports as having the potential to take on the functions of an administrator in the Council and the Commission. The Parliament's GIPs require this to be stated in at least three of the last five reports;
- in the Parliament, the official must also have at least 6 years of service in the AST function group.

The GIPs also exclude certain categories of officials, notably officials who are to be automatically retired during the year in question or the following year and officials who have been granted an invalidity allowance under article 78 of the Staff Regulations.

In a second step, the Appointing Authority draws up a draft list of short-listed candidates from among the eligible candidates.

The Joint Certification Committee examines this draft list and delivers its opinion. The rules governing the composition and operation of this body are laid down in the internal rules of each Institution, bearing in mind that it is essentially composed of members appointed by the Appointing Authority and the Staff Committee. After hearing the candidates, this Committee produces and delivers to the Appointing Authority a reasoned opinion on the draft list of officials shortlisted to take part in the training programme.

Following the Appointing Authority's decision, the final list is adopted: if your name appears on it, you are authorised to take part in the training programme.

If not, we advise you to consult the respective internal rules of your Institution to examine the appeal mechanisms and requests for reconsideration in place. In any case, candidates who are not on this list may lodge a complaint (based on Article 90(2) of the Staff Regulations) and then an appeal to the General Court against the decision not to select them for the certification exercise.

However, the General Court considers that the Appointing Authority has a wide discretion to decide on the methods of selecting candidates who can meet the needs of the service and limits its control to the question of whether the aAdministration has made unreasonable use of this discretion, committed a manifest error of assessment, or misused its powers (see the judgement of the General Court of the European Union of 2 April 2020, Barata v. Parliament, T-81/18).

- Completing a training programme and passing the tests

This is the second step in the certification process. Now that you have been authorised to take part in the training, you must certify that you have successfully completed it.

The training is provided by the European School of Administration and lasts about 20 days.

Following the training, the European Personnel Selection Office (EPSO) organises the written and oral tests, in which you are assessed on what you have learned during the training. EPSO draws up a list of officials who have passed the tests and sends it to the Appointing Authority. The list is then published and attests to the successful completion of the compulsory training programme required by the certification procedure.

If you are one of the officials whose name appears on the list, you can now apply for vacant posts in the AD function group. As regards the statutory aspects of certification, Article 45a (3) specifies that appointment to an AD function group post does not change your grade or step at the time of appointment.

CASE LAW

A useful reminder from the General Court on the harassment complaint procedure

On 2 February, the General Court of the European Union ruled on the admissibility and the right to be heard in the context of a complaint of harassment (*LU v. European Investment Bank (EIB)*, T-536/20). This is a useful reminder of two important elements of the procedure applicable in this matter.

The applicant has been working for the EIB for over ten years. In 2018, he lodged a complaint with the Investigation Panel under the EIB's Dignity at Work Policy. He complained that he was the victim of psychological harassment by his hierarchical superiors.

After hearing the applicant, four witnesses and the three persons in respect of whom the complaint had been made by the applicant, the Investigation Panel concluded in its final report that there had been no harassment for lack of evidence.

The applicant brought an action before the General Court seeking the annulment of the Investigation Panel's final report and the decision to reject his complaint. According to the applicant, the Panel failed to take into account the evidence he had brought.

With regard to the report of the Investigation Panel, the General Court recalled that it only contains a recommendation to the President of the EIB (the Appointing Authority), *i.e.* an intermediate measure which does not prejudice the final position that will be adopted. Consequently, the General Courts found that the Panel's report is not an act adversely affecting the applicant and dismissed the applicant's claim as inadmissible in that respect. The applicant could only request the annulment of the Appointing Authority's final decision.

The applicant raised, inter alia, the violation of his rights of defence. He claimed that he was not heard by the Appointing Authority before it adopted the contested decision. In this case, he had been heard twice by the Investigation Panel before it made its recommendations to the Appointing Authority, but not by the latter before it took the decision. According to the EIB, it was not necessary for the applicant to be heard by the Appointing Authority because the latter merely approved the conclusions of the investigation report, on which the applicant had already been heard by the Investigation Panel.

The General Court recalled, on the one hand, that in a dispute concerning harassment, the Investigation Panel, before forwarding its recommendations to the Appointing Authority and, in any event, the latter, before taking a decision that would adversely affect the applicant, were required to respect the applicant's right to be heard as a complainant.

On the other hand, the General Court noted that, as a complainant, the applicant is entitled, in order to effectively submit his observations, to be provided, at the very least, with a summary of the statements made by the person accused of harassment and the various witnesses heard, in so far that those statements are then used as the basis of the President's decision, taken on the recommendation of the Committee. In this respect, the possibility is recalled of employing techniques of anonymisation, summary, or redacting some of the content of those statements to ensure the respect of the principle of confidentiality.

Contrary to the EIB's argument, the communication of a mere excerpt of a witness statement is not sufficient, since it does not make it possible for an applicant to be aware of all of the witness statements considered or of the context in which the incidents in respect of which those statements were made were reported.

Consequently, the General Court found that such an irregularity inevitably affected both the Investigation Panel's report and the contested decision in so far as, if he had been able to be properly heard, the applicant might have argued that a different assessment of the facts and contextual factors, which were decisive in that decision, was possible. For that reason, the Court annulled the Appointing Authority's decision rejecting the applicant's complaint of harassment.

HUMAN RIGHTS: AN INSIGHT

Right to anonymity of a minor

In a judgment of 1 March 2022, *I.V.T. v. Romania* (application no. 35582/15), the European Court of Human Rights held, having regard to the circumstances of the case, that Romania had violated Article 8 (right to respect for private and family life) of the European Convention on Human Rights (hereinafter "Convention").

The facts behind this case took place in 2012. A minor, aged 11 at the time, was interviewed by a journalist while her parents were not present and without their prior consent. Moreover, the broadcasting company did not ensure her anonymity so that she was easily recognisable. In this interview, which is intended to tell the story of the accidental death of a classmate during a school activity, we can discover the damning remarks made by the young girl against certain teachers.

A period of anguish and severe emotional suffering followed for the child, who not only faced a hostile attitude from the teaching staff and her classmates, but was also summoned, together with her mother, by the headmaster of the school to apologise and to prevent any similar event in the future.

The girl, represented by her mother, then initiated civil proceedings against the private broadcasting company for not respecting her right to privacy, including her image rights. Nevertheless, after having won the case at first instance, the outcome of the litigation at national level was unfavourable to her. The higher courts emphasised that the requirement to respect the principle of the best interests of the child and his or her right to protect his or her image and private life must be interpreted and applied in the light of the principle of freedom of expression.

Consequently, the broadcasting company was not liable for the non-material damage suffered by the applicant.

Thus, considering that the national authorities had failed to respect her right to privacy (Article 8 of the Convention), the applicant brought the case before the European Court of Human Rights.

In this case, the interests to be balanced are, on the one hand, the child's right to respect for private life (Article 8 of the Convention) and, on the other, the broadcasting company's freedom of expression (Article 10 of the Convention). To this end, the Court reiterates the criteria it laid down in *Dupate v. Latvia*.

Firstly, the Court recalls that contributing to a debate of general interest is an essential criterion. In the present case, the appeal court relied on this argument when it stated that the subject of public interest was to denounce the school's deficiencies in the organisation of the school trip. In this respect, the Court questioned whether the testimony of a child who had not attended the event could really contribute to the public debate.

Secondly, the Court stressed that, although the applicant was not a public or media figure, she was a minor at the time of the events. Consequently, the prior consent of her parents was a judicial guarantee and not merely a formal requirement. This is an important element to consider since the applicant did not have legal capacity. Therefore, as the Court has already stated in its judgment in *M.G.C. v. Romania* (application no. 61495/11), the vulnerability of the child must be considered under Article 8 of the Convention. However, in casu, the Court finds that the appeal courts did not assess whether the applicant's image had been effectively protected. If the mother had been informed of the interview, she could have objected.

Furthermore, the Court observes that, unlike the court of first instance, no higher national court took into consideration the defendant's failure to take the necessary measures to protect the applicant's identity. Indeed, apart from whether the applicant's face is masked, her voice alone is sufficient to identify her.

Lastly, as it had already stated in other earlier judgments (*MGN Limited v. the United Kingdom* (application no. 39401/04) of 18 January 2011 and *Alkaya v. Turkey* (application no. 42811/06) of 9 October 2012), the Court stated that even if a news report made it possible to contribute to the public debate, the broadcasting of private information, such as the identity of a minor, could not exceed the latitude allowed and must be justified.

The Court concludes that the higher national courts did not carry out a balancing of interests in accordance with the criteria it established *(Dupate v. Latvia)* and therefore failed to fulfil their positive obligation to guarantee the applicant's right to privacy. The Court therefore held that Romania had violated Article 8 of the Convention.

DAY-TO-DAY IN BELGIUM

Some recommendations for sending funds outside the Euro zone via money transfer service agencies

While money transfers by consumers within the Euro zone are subject to some regulation of the fees charged by intermediaries, this is not the case when the transactions involve a currency outside this zone.

In this respect and in particular, the fees charged by money transfer companies agencies for receiving and sending funds outside the Euro zone are not subject to any regulation. Therefore, it is necessary to compare the services provided by the different networks to which these agencies belong.

Under Belgian law, these agencies are subject to general consumer information obligations contained, *inter alia*, in Articles VI.2. and VI.55 (for distance contracts) of the *Code de droit économique*. In this context, they are obliged to provide consumers with the following information:

- the transaction fees applied; these may be fixed or expressed as a percentage of the amount subject to the transaction;
- the exchange rate (actual or reference);
- any information identifying the service provider;
- the legal remedies (including extra-judicial remedies).

Mention of the absence of a commission rate does not necessarily mean that the rates offered by the agency are advantageous. The agency's remuneration may be included in the exchange rate applied to the transaction.

If the transaction is carried out by a means that does not allow this information to be provided before the transaction is carried out (*e.g.* via a smartphone), this information should be provided to the consumer immediately after the transaction.

The actual exchange rates can be checked on the website of the National Bank of Belgium: *https://www.nbb.be/en/about-national-bank/eurosystem/exchange-rates.*

In the event of a dispute relating to a transaction carried out by a money transfer service agency, a possibility of amicable settlement is offered via the mediation service for financial services at the SPF Économie: *https://www.ombudsfin.be/*