DALDEWOLF

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EDITO

Dear readers,

Our first newsletter after the summer holidays will focus on the professional secrecy of officials and agents of the European Institutions. We also share with you our observations on a recent judgment of the EU General Court, regarding the possible succession of contracts of temporary agents 2(b) on different positions, which should not go unnoticed.

In our « Belgian Law» section, we take a look at the new law on consumer debts, which will help to reduce the penalty for late or forgotten payments.

This newsletter is also yours, and we welcome any suggestions you may have for future issues. Please do not hesitate to contact us at the following e-mail address: theofficial@daldewolf.com

We hope you enjoy reading our newsletter and have a great return to the office after the summer holidays!

The DALDEWOLF team

OUR TEAM

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FOCUS

THE PROFESSIONAL SECRECY OF OFFICIALS AND AGENTS

Article 17 of the Staff Regulations, as well as Article 339 of the TFEU, establish the obligation for officials and agents of the European Institutions not to disclose to the public information covered by professional secrecy. This obligation continues even after they have ceased their duties (Gill / Commission, T-90/95), or during the notice period, even when the agent is exempted from performing his duties (DD / FRA, T-703/19).

The *ratio legis* of Article 17 of the Staff Regulations aims to preserve the relationship of trust that exists between the institutions and their staff, so that the functioning and reputation of the Union are not undermined.

The prohibition on disclosure concerns non-public information of any nature, knowledge of which is linked to the exercise of one's functions (accounting documents, contracts, complaints and annexes, internal investigations, etc.).

The provision is also intended to ensure, in due course, that officials regulate their conduct with a view to the interests of the institutions and their obligations under Article 339 TFEU (Strack / Commission, F-132/07).

If an official or agent intends to disclose information received in the course of their duties, he or she must request prior authorization from their Appointing Authority, by identifying and clearly specifying the documents he or she wants to disclose (Ronchi / Commission, T-223/95). The Appointing Authority will determine whether disclosure of the information can be authorized, taking into account all the concrete circumstances and balancing the various interests involved: the public's interest in receiving information and the interests of the European Union (Strack / Commission, F-132/07). The absence of a response to a demand for prior authorization within four months does not constitute implicit authorization for disclosure (Colombani / SEAE, T-113/22).

Nor do the professional secrecy and discretionary obligation of officials and agents allow them to report in court on findings made in the course of their duties, without prior authorization from the Appointing Authority (art. 19 of the Staff Regulations). This obligation applies to any statement made by an official or agent as witness, plaintiff or applicant in the context of any proceedings before the courts of the Member States (Ferrer de Moncada / European Commission, T-74/01). Therefore, when an official or agent wants to disclose, in court, facts relating to a conflictual relationship which are not, by their nature, covered by professional secrecy, a request for prior authorization remains necessary, as these facts could affect the Institution's operations and reputation (NV / eu-LISA, T-661/20).

In accordance with article 19, paragraph 2, there is one exception to the rule of prior authorization, when the official or agent is called to testify before the Court of Justice or before the Disciplinary Board of an Institution, in a case concerning an agent or former agent of the Union. In addition, the General Court seems to accept that, in certain circumstances, and in particular in order to approach the police to report facts that have occurred in the workplace, it may be legitimate to derogate from the scheme of prior authorization, in

particular on the grounds of imminent danger to the official or agent concerned. (NV / eu-LISA, T-661/20).

When balancing interests in the context of a request for prior authorization under Article 19 of the Staff Regulations, the notion of "interests of the Union" must be interpreted restrictively. According to case law, it is only in the case of "interests of considerable importance and vital importance" for the Union that the Appointing Authority may be justified in refusing authorization (Ferrer de Moncada / European Commission, T-74/01).

In particular, it was held that the Commission could not refuse the authorisation referred to in Article 19 of the Staff Regulations, if an official was called upon to give evidence, at the request of a national court, on the interpretation of a regulation which he had provided to certain national authorities. According to the General Court this evidence is not such as to affect relations between the European Commission and national administrations (Weddel / Commission, C-54/90).

CASE LAW

THE CONCLUSION OF SUCCESSIVE CONTRACTS OF TEMPORARY AGENT 2(B) ON DIFFERENT POSITIONS IS COMPLIANT WITH THE CEOS

In a judgment of July 5, 2023 (SE / European Commission, T-223/21), the General Court of the European Union ruled that an AST temporary agent engaged under Article 2(b) of the Conditions of Employment of Other Servants of the European Union (CEOS) may conclude a new contract as an AD grade temporary agent under Article 2(b) of the CEOS, provided that the total duration of his engagement does not exceed 6 years.

In the present case, the agent took up his duties in the Commission as a temporary agent in grade AST 3 for a period of three years, which was extended for two years. Prior to the extension of his contract, the agent had applied for a post as a temporary agent AD, but his application had been rejected on the grounds that, according to the Commission, a temporary agent recruited under Article 2(b) of the CEOS could only benefit from one such contract in the course of his career.

The EU General Court contradicted the Commission's restrictive interpretation. According to the Court, the CEOS does not impose any limit on the number of temporary contracts that can be concluded by a member of staff under article 2(b) of the CEOS.

We recall that temporary staff may be engaged on the basis of article 2(b) of the CEOS to fill a permanent post in the Institution, provided that the engagement is temporary. Therefore, the initial contract may not exceed four years, and can be renewed once for a further period of two years, provided that the possibility of renewal is present in the initial contract.

The conditions set out in the CEOS and surrounding the use of contracts under article 2(b) of the CEOS are considered by the Court to comply with the rules designed to prevent abuses of law that would result from the use of successive fixed-term employment contracts. In the Court's view, there is nothing to indicate that the conclusion of a new temporary agent's contract, on the same basis, would infringe the objective of limiting the time in which temporary staff may occupy permanent posts, or would be to the detriment of the temporary staff member.

In this context, there is no reason to prevent from concluding a new temporary agent contract under article 2(b) of the CEOS, even for a different grade, if the six-year time limit is respected.

Therefore, the General Court concludes that by refusing to allow the applicant, a temporary agent AST, to sign a new AD temporary agent contract, on the basis of article 2(b) of the CEOS, the Commission committed an illegality. This illegality deprived the former agent of a real chance of being considered for the AD post. The judges awarded him, *ex aequo et bono*, a compensation of 10,000 euros for the material loss suffered.

LAW OF MAY 4, 2023 ON CONSUMER DEBTS : LIGHTER PENALTY FOR LATE OR FORGOTTEN PAYMENTS

The law of May 4, 2023 inserting Book XIX "Consumer Debts" (Dettes du consommateur) into the Belgian Code of Economic Law came into force on September 1, 2023. This law aims to strike a balance between the adverse effects suffered by businesses due to late payment and the financial impact of debt collection activities on consumers.

It applies to consumer contracts concluded on or after September 1, 2023, and from December 1, 2023 it will also apply to the collection of consumer debts arising from contracts concluded before September 1, 2023, if the late payment or amicable collection attempt occurs after September 1, 2023.

In the event of late payment of the debt on the due date, the consumer benefits from the following advantages: no fees will be added for the first reminder, and if the contract contains a penalty clause, this will only be applicable on expiry of a grace period of at least 14 calendar days from the third working day following the sending of the reminder (and provided, of course, that the non-payment persists).

If the reminder is sent electronically, the grace period begins on the calendar day following the sending of the first reminder.

In the case of contracts for the regular supply of goods or services, reminders for three due dates in a single calendar year will not incur any costs for the consumer.

Where applicable, reminder fees are capped at 7.50 euros (excluding postal charges).

If consumers fail to pay their debt in full within the 14-day grace period, it may be increased (in addition to interest) by an indemnity if it was provided by the contract. To avoid speculative clauses, the law sets the following ceilings:

- Interest must be calculated on the amount due and is capped at the rate provided for in article 5 of the Law of August 2, 2002 on combating late payment in commercial transactions. This interest rate is revised every six months.
- Compensation must be proportionate to the amount of the debt. Debts of 150 euros or less entitle the creditor to compensation of up to 20 euros. If the amount owed is between 150.01 euros and 500 euros, the maximum compensation is set at 30 euros, plus 10% of the amount owed between 150.01 euros and 500 euros. If the amount due exceeds 500 euros, compensation is capped at 65 euros, plus 5% of the amount due in excess of 500 euros, subject to an overall ceiling of 2,000 euros.