

Being a civil servant 24 hours/day?

The rights and obligations of EU officials (and Members of the institutions) outside working hours

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The views expressed in this presentation are personal and do not necessarily reflect those of the ECA.

Introduction

Reason for choice of subject: recent policy developments within the EU institutions (more specifically ECA) in particular:

- Revision of hybrid working rules
- Revision of Ethical Guidelines and anti-harassment policy
- Adoption of Social Media Guidance
- Revision of rules on outside activities

Working time

Article 55(1) Staff Regulations

Officials in active employment shall **at all times** be at the disposal of their institution.

ECA Ethical Guidelines: *“The obligation to be at the ECA’s disposal at all times does not entail the availability to work at all times, but to be reachable by the institution at any time in case of **urgent** need. This includes meeting the residence requirement set out in Article 20 of the Staff Regulations and in Decision 61-2021 [i.e. 80 km radius].”*

Working time (2)

Implementation under hybrid working arrangements - keywords:

- core hours
- connection bandwidth
- acquisition segment
- acquisition ceiling
- **right to disconnect**

Obligations applying “at all times”?

Article 11: Duty of loyalty, objectivity and impartiality

Article 12: Duty of dignity

“An official shall refrain from any action or behaviour which might reflect adversely upon his position.”

Article 12b: outside activities

Article 17a: freedom of expression ↔ principles of loyalty and impartiality

Case-law classics:

T-34/96 and T-163/96 *Connolly v Commission*

(confirmed on appeal C-274/99 P)

*“Since Article 12 of the Staff Regulations applies to all officials, without any distinction based on their status, the fact that the applicant was **on such** leave cannot release him from his obligations under that article. That is particularly so since an official's concern for the **respect due to his position is not confined to the particular time at which he carries out a specific task but is expected from him under all circumstances** (Williams II [T-146/94], paragraph 68). The same is true of the **duty of loyalty** which, according to the case-law, applies not only in the performance of specific tasks but **extends to the whole relationship between the official and the institution.**”*

F-133/15 *HI v Commission*

*“Articles 11, 12, 12b and 17a of the Staff Regulations constitute specific expressions of the fundamental **duty of loyalty** and cooperation owed by an official to the European Union and to his superiors. That duty includes, first and foremost, an obligation on the official to refrain from conduct likely to prejudice the **dignity** and **respect** due to the European Union. Amongst other things, the official must accordingly conduct himself, particularly if he is of senior grade, in a manner that is **beyond suspicion** in order that the **relationship of trust** between the European Union and himself may **at all times** be maintained. Those provisions ultimately constitute the pillars of the **professional ethics of the European civil service**.*

*Those rules, which express the duties and responsibilities incumbent on the European civil service, find their justification in the tasks of general interest for which the European Union is responsible, which require that the citizens of the European Union and the Member States can have confidence in the institutions ensuring, through the agency of their officials and other members of staff, that those tasks are properly carried out. Thus, such obligations are intended primarily to **preserve the relationship of trust** which must exist between the European Union and its officials and other members of staff.*

*Having regard to the **importance of the relationship of trust** existing between the European Union and the official, so far as concerns both the **internal operation** of the European Union and its **external image**, and given the general wording of Articles 11, 12, 12b and 17a of the Staff Regulations, those provisions cover **any circumstance or conduct** which, in the light of his grade and functions and of the specific circumstances of the case, must **reasonably be understood** by the official as being such as to appear to third parties as **liable to give rise to confusion as regards the interests pursued by the European Union** which he is supposed to serve.*

*Accordingly, in their conduct, officials and other members of staff of the European Union must present a **dignified image** which is in keeping with the particularly **correct and respectable behaviour** one is entitled to expect from members of staff of an international public organisation.”*

Joined Cases F-88/09 and F-48/10 Z v Court of Justice

*"[...] the official is required to act with the reservation and moderation dictated by the duties of **objectivity** and **impartiality**, and also to **respect the dignity of the office**, the **honour of individuals** and the **presumption of innocence**."*

T-22/22 AL v Council (April 2024)

*"Thus, by their conduct, officials and other members of staff of the European Union must present a **dignified image** which is in keeping with the **particularly correct and respectable behaviour one is entitled to expect from members of an international civil service** (judgments of 7 March 1996, Williams v Court of Auditors, T-146/94, paragraph 65, and of 10 June 2016, HI v Commission, F-133/15, paragraph 190)."*



ECA Ethical Guidelines and Policy for ensuring a respectful and harassment-free workplace

- “You must refrain from any action or behaviour which might bring the EU civil service into disrepute. This applies both at work and in the outside world”.
- “Circumspection: always maintain the dignity of your position, [...] showing a proper degree of moderation and restraint and a due sense of proportion at all times in everything you say or do”.
- “Psychological and sexual harassment can take place both on and off ECA premises [...]”



Social Media Guidance

- **Principle:** “staff have the right to express their opinions freely as per the Charter of Fundamental Rights of the European Union and the European Convention of Human Rights”. **BUT:**
- “the line between the professional and private spheres is often blurred on social media platforms”.
- “Even when you use social media in a personal capacity, you are nonetheless a member of the ECA’s staff. This means that you are bound by certain obligations arising from the Staff Regulations (Articles 11, 11a, 12, 17 and 17a)”.
- What is a “publication” in the context of social media?
 - similar in nature and lengths to texts typically published in a journal or chapter of a book
- “Even in case of a non-publication, the staff member concerned must nevertheless abide by their general obligations of prudence, discretion, objectivity, loyalty and impartiality.”

Outside activities

Article 12b

1. Subject to Article 15, an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Union, shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the activity or assignment in question is such as to **interfere with the performance of the official's duties** or is **incompatible with the interests of the institution**. [...]

Article 40

1a. Article 12b shall continue to apply during the period of **leave on personal grounds**. The permission under Article 12b shall not be granted to an official for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his institution and which could lead to the **existence or possibility of a conflict with the legitimate interests of the institution**. [...]

→ See Case T-689/22 SN v Commission

Article 3 of Annex IVa

[...] During the period of **part-time work**, the official may **not** work overtime or **engage in any gainful activity**, other than an activity in accordance with Article 15 of the Staff Regulations.



Outside activities (2)

- When is an activity an outside activity?
- The role of managers
- Activities for which permission is deemed to be granted
- Unauthorised outside activities (activities that would typically not be authorised)
- Activities subject to authorisation



Takeaways:

- General (vague?) principles v legal certainty requirements
- Balancing individual rights/freedoms and obligations as EU civil servant
- Proportionality

Comments and questions