

# PUBLIC OFFICE AND THE CIVIL SERVANT IN THE EUROPEAN UNION

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## **Abstract**

*The civil servants of the European Union represent the people who have been appointed to work in the permanent department of an institution of the European Union, according to a written document issued by an authority invested by the respective institution with such powers. Their juridic regime understood as the sum of all the rights and obligations they have in what concerns their relationship with the European Union and its institutions has been established by the **European Community Civil Service Status** adopted on February 29<sup>th</sup>, 1968<sup>3</sup>, being amended several times. Therefore, the **Regulations** adopted by the European Union Council of March 22<sup>nd</sup>, 2004, at the proposal of the European Commission set forth even a new career system for the European public servants. The provisions of the status also apply for the people appointed by the community institutions, people that have been generically called „agents”, which means that institutions such as: The European Economic and Social Committee; the European Committee of the Regions; the European Union Mediator or the European Data Protection Supervisor are assimilated, from this point of view, into the institutions of the European Union. The state forbids any sort of discrimination whatsoever, such as the discrimination based on sex, race, colour, social or ethnic origin, genetic characteristics, language, religion, political opinion or beliefs or any other opinion, affiliation to a national minority, wealth, birth, disability, age or sexual orientation. Another new aspect related to the enforcement of the status is that the non-marital partnership is regarded and treated in the same way marriage is. An extremely important significance for the activity and moral status of the European Union public servants is rendered to the **European Code of good Administrative Behaviour**. This document was proposed by the European Mediator and was approved of on September 6<sup>th</sup>, 2001, by means of a resolution of the European Parliament; it consists of a set of behaviour rules which the community institutions, the administrations as well as the public servants have to comply with, in what concerns their relationship with the public.*

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**JEL Classification:** H11, K23, K33

## **1. Public office and holding public office in the European Union**

### **1.1. Administrative positions in the European Union**

The civil servant is the main human resource in administration<sup>4</sup>. At the European Union level each institution decides upon the authorities entitled to exert their relative powers stipulated by the Status when appointing public servants or agents. The public servant's deed of appointment must stipulate the date when such an appointment comes into force, date that cannot be prior to the one when he got into public office. The object of any appointment or promotion of a European public servant may only be a vacancy that corresponds to the terms stipulated by the Status. The staff of the institution must be informed about any vacancy within the institution. If no person is entitled to fill the position by means of transfer, appointment or promotion within the same institution, the staff of another institution shall be notified about such vacancy and an internal contest shall be organized.<sup>5</sup> According to the nature and level of the public office to which they correspond, the positions are classified into two groups:

- the group of administrative positions, hereinafter referred to as „AD”;
- the group of assistant positions, hereinafter referred to as „AST”.

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<sup>3</sup> Regulations no. 259/1968 of Council no. CELEX31968R0259(01) - regarding the European Community Civil Service Status (JO L 56 of March 4th, 1968, p. 1).

<sup>4</sup> Groza, A., *The status of civil servants - between aspirations towards professional excellence and political interference*, „Juridical Tribune – Tribuna Juridica”, vol. 8, Issue 2, June 2018, p. 502.

<sup>5</sup> See Fuerea, A., *Drept comunitar European*, Actami Publishing House, Bucharest, 2015, p. 162.

This is the most significant change operated by the Status, in the Council’s amended form of 2004 in what concerns the career of European public servants.

- **The group of AD** positions includes **12 job titles** that correspond to the leadership, concept and study positions as well as the linguistic or scientific ones.
- **The group of AST** positions includes **12 job titles** that correspond to the technical and executive positions.

**The minimal conditions required for the appointment** in a position that corresponds to the two groups of positions are as follows:

**a. For the AST positions:**

- A level of higher education studies certified by means of a degree, or
- A level of secondary education studies certified by means of a degree that grants access to higher education studies as well as an appropriate professional experience of at least 3 years, or
- Professional experience or training with an equivalent level, only if required as such on job grounds;

**b. For job titles 5 and 6 of the group of AD positions:**

- A level of studies that corresponds to a full cycle of higher education studies of at least 3 years, certified by means of a degree, or
- Professional training with an equivalent level, only if required as such on job grounds;

**c. For job titles 7-16 of the group of AD positions:**

- A level of studies that corresponds to a full cycle of higher education studies, when the normal length of such studies is of 4 years or more;
- A level of studies that corresponds to a full cycle of higher education studies and professional experience of at least 1 year, when the normal length of such studies is of at least 3 years;
- Professional training with an equivalent level, if required as such on job grounds;

Below is a **descriptive table** of the different positions from the two categories of positions stipulated by the Status which can be used by each institution with the purpose of describing their own positions and the attributions thereof;

THE GROUP OF AD POSITIONS			THE GROUP OF AST POSITIONS
<b>General executive (CEO)</b>	AD16		
<b>General executive / Manager</b>	AD15		
<b>Administrator who holds for example, the position of:</b> manager/head of department/counsellor/linguistic expert/economic expert/legal expert/medical expert/veterinary expert/scientific expert/research expert/financial expert/auditor’s expert.	AD14		
<b>Administrator who holds for example, the position of:</b> manager/head of department/counsellor/linguistic expert/economic expert/legal expert/medical expert/veterinary expert/scientific expert/research expert/financial expert/auditor’s expert.	AD13		
<b>Administrator who holds for example, the position of:</b> Head of department/main translator, main interpreter, main economist, main legal adviser, main physician, main veterinary inspector, main scientific researcher, main financial manager, main auditor.	AD12		
<b>Administrator who holds for example, the position of:</b> Head of department/main translator, main interpreter, main economist, main legal adviser, main physician, main veterinary inspector, main scientific researcher, main financial manager, main auditor.	AD11	AST1 1	<b>Assistant who holds for example, the position of:</b> Personal assistant (PA), main commercial clerk, main technician, main computer expert
<b>Administrator who holds for example, the position of:</b> Head	AD10	AST1	<b>Assistant who holds for example,</b>

of department/confirmed translator, confirmed interpreter, confirmed economist, confirmed legal adviser, confirmed physician, confirmed veterinary inspector, confirmed scientific researcher, confirmed financial manager, confirmed auditor.		0	<b>the position of:</b> Personal assistant (PA), main commercial clerk, main technician, main computer expert
<b>Administrator who holds for example, the position of:</b> Head of department/confirmed translator, confirmed interpreter, confirmed economist, confirmed legal adviser, confirmed physician, confirmed veterinary inspector, confirmed scientific researcher, confirmed financial manager, confirmed auditor.	AD9	AST9	<b>Assistant who holds for example, the position of:</b> Personal assistant (PA), main commercial clerk, main technician, main computer expert
<b>Administrator who holds for example, the position of:</b> Translator, interpreter, legal adviser, physician, veterinary inspector, researcher, financial administrator, auditor.	AD8	AST8	<b>Assistant who holds for example, the position of:</b> Confirmed commercial clerk, confirmed documentarian, confirmed technician
<b>Administrator who holds for example, the position of:</b> Translator, interpreter, legal adviser, physician, veterinary inspector, researcher, financial administrator, auditor.	AD7	AST7	<b>Assistant who holds for example, the position of:</b> Confirmed commercial clerk, confirmed documentarian, confirmed technician <sup>6</sup> .
<b>Administrator who holds for example, the position of:</b> Deputy translator, deputy interpreter, deputy legal adviser, deputy physician, deputy veterinary inspector, deputy researcher, deputy financial administrator, deputy auditor.	AD6	AST6	<b>Assistant who holds for example, the position of:</b> Commercial clerk, documentarian, technician, computer expert.
<b>Administrator who holds for example, the position of:</b> Deputy translator, deputy interpreter, deputy legal adviser, deputy physician, deputy veterinary inspector, deputy researcher, deputy financial administrator, deputy auditor.	AD5	AST5	<b>Assistant who holds for example, the position of:</b> Commercial clerk, documentarian, technician, computer expert.
		AST4	<b>Assistant who holds for example, the position of:</b> Deputy commercial clerk, deputy documentarian, deputy technician, deputy computer expert.
		AST3	<b>Assistant who holds for example, the position of:</b> Deputy commercial clerk, deputy documentarian, deputy technician, deputy computer expert.
		AST2	<b>Assistant who holds for example, the position of:</b> Classification agent, technical support agent, computer expert agent, Parliamentary bailiff.
		AST1	<b>Assistant who holds for example, the position of:</b> Classification agent, technical support agent, computer expert agent, Parliamentary bailiff.

It is very important to specify the Status according to which public servants who belong to the same group of positions are subject to identical recruitment and evolution conditions in their career<sup>7</sup>.

### 1.2. Conditions necessary to comply with for holding public office in the European Union

The process of recruitment must provide the institution with the contest of the public servants that possess the highest qualities of proficiency, efficiency and integrity, recruited

<sup>6</sup> See Mazilu D., *Drept comunitar*, Lumina Lex Publishing House, Bucharest, 2005, p. 277.

<sup>7</sup> See Deaconu N., *Constituirea Uniunii Europene*, Lumina Lex Publishing House, Bucharest, 2009, p.112.

according to a geographical database, large enough to include all the nationals that belong to member states of the European Union, which means that no position can be reserved for the nationals of a determined member state.

In order to be appointed on the position of European public servant, a person must comply with the following conditions:

- to be a national of a member state of the E.U., with the exception of waivers given by the authority invested with such appointment powers;
- to benefit from his/her civil rights;
- to be in a position that corresponds to the recruitment laws enforceable in the military field;
- to provide ethical guarantees required for exerting his/her power in the respective position;
- he/she won a contest that had been carried out according to the provisions of the Status;
- complies with the physical aptitude conditions required for exerting his/her power in the respective position;
- to have good knowledge and to master one of the languages of the Communities as well as to have an intermediate level of proficiency for another language of the Communities, to the extent to which it is necessary to exert the power in such positions.

A vacancy can be filled in under the following terms: by movement, appointment, promotion or transfer, by inside contest organized by the respective institution according to the procedures set forth by the Status<sup>8</sup>. This procedure can be opened for the establishment of a recruitment reserve as well. Another recruitment procedure than the contest one, may be adopted by the authority entitled to appoint staff in senior positions (AD 14, 15 or 16) as well as, in exceptional situations, for the positions that require higher qualifications. For each contest, the authority invested with the power of appointment decides upon a jury that draws up the list with the candidates' aptitudes; then chooses from this list the candidate or the candidates that shall be appointed for the vacancies. The public servant recruited is ranked according to the first level of his/her degree. The authority invested with the power of appointment may, according to the candidate's professional experience, grant a seniority bonus of 24 months at the most.

Before being appointed to the position, the recruited candidate has to undergo a medical examination; the counselling-physician of the institution shall check whether he/she complies with the terms stipulated by the Status. If the medical opinion is negative, the candidate may request within 20 days since notification, for his/her case to be investigated by a medical board made up of three doctors appointed by the authority entitled to appoint from among the counselling physicians of the institution.

Each recruited public servant has to undergo a 9-month-training course before being tenured. In case he proves unskilled or unfit for the job, according to a specific procedure, the trainee may be made laid off by the authority invested with the power of appointment, either during the training period or at its end with a one-month notice period or they can extend this training period with six months at the most.

## **2. The European public office institution**

### **2.1. Legal regulations regarding the public office in the European Union**

According to the provisions of the Status<sup>9</sup>, each public servant finds himself/herself in one of the following positions:

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<sup>8</sup> See Mazilu D., *Integrarea europeană*, Lumina Lex Publishing House, Bucharest 2008, p.213.

<sup>9</sup> See Ținca O., *Drept comunitar*, Academia Publishing House, Bucharest 2008, p. 243.

a) **in activity**; represents the position of the public servant who exerts the attributions related to the position for which he/she was appointed or which he/she temporary holds;

b) **transferred**; represents the position of the tenured public servant who, by decision of the authority invested with the power of appointment and in the interest of the job, has been assigned to temporary hold a position outside his/her institution or, at his/her request, is made available for another institution or community organization;

c) **on leave of absence on personal grounds**; in exceptional circumstances and at his request, the public servant can be on unpaid leave, on personal grounds. The length of this leave is limited to one year but can be renewed several times, with the same duration, as long as the entire length during the career of public servant does not exceed 15 years. Such a limitation is not valid in case the public servant has to raise up a child with a mental or physical disability that needs supervision or permanent care or when the public servant follows the spouse who also works as a public servant or agent of the Community.

d) **at disposal**; represents the position of the public servant where measures have been taken in order to reduce the number of employees in an institution. The list of public servants in such position is established by the authority invested with the power of appointment, after the approval of the joint commission and after considering the proficiency, the efficiency, the conduct at the place of work, the family situation and the seniority of the public servant. The public servants found in such positions benefit however, from certain rights such as:

- the right to benefit from seniority at work for 5 years at the most since becoming available;

- the right to priority for being reintegrated on any position included in the group of positions that corresponds to his/her qualification, for two years since dismissal, on condition he/she possesses the skills required by the respective position;

- the right to indemnity according to the provisions of the Status<sup>10</sup>.

e) **leave for the military service**; represents a special position of the public servant integrated into a military formation for providing the legal service, constrained to a period of military instruction or called up. The public servant integrated into a military formation for providing the legal service shall not be remunerated anymore but shall continue to benefit from the provisions related to promotion. The public servant who must undergo a period of military training or who had to join the colours benefits from remuneration during this period but the amount of money is reduced in conformity with the military pay he gets;

f) **prenatal or family leave**; for each child, each public servant is entitled to **prenatal leave** for 1 month at least and for 6 months at the most, within a period of 20 years since the birth or adoption of the child. This leave can be doubled for the parents who have been isolated according to the decision of the institution they belong to. During the leave, the public servant benefits from the social security regime and keeps getting the pension rights, the child and school allowance. He/She also preserves his/her position and his/her rights of promotion. The leave may also be taken partially (with half workload) situation in which the maximum length may be doubled. During this entire period, the public servant is entitled to a fixed allowance per month<sup>11</sup> (or 50% of this if considering half of the workload). If a medical certificate states that an ancestor or a descendant, brother or sister of the public servant is seriously ill or severely impaired the public servant is entitled to **family leave** for a total duration of nine months in the entire career. The public servant benefits from the same rights he/she has in the prenatal leave. The activity of the public servant ceases permanently according to the following provisions stipulated in the Status:

- **resignation**; he/she can resign only by means of a written document which unequivocally sets forth the public servant's desire of permanently terminate his activity in the institution. The appointment authority must take this decision within one month since receiving the resignation letter and they may reject it if a disciplinary procedure has been initiated against the

<sup>10</sup> See Leicu C., *Drept Comunitar*, All Publishing House, Bucharest 2006, p. 244.

<sup>11</sup> According to the Status adopted in its form of March 2004, the monthly fixed allowance is of 804,36 Euro (or 1072,48 Euro for isolated parents).

public servant. If approved of, the resignation comes into force after three months at the most, as of the date suggested by an AD public servant in his/her resignation letter or one month at the most in the case of the AST public servant.

- **compulsory (*ex officio*) resignation:** the public servant may be laid off *ex officio*, in the following situations:

-he/she no longer has the citizenship of a member state of the European Union and did not receive any derogation in this respect (art 28 paragraph 1 letter a);

-at the expiry of the transfer deadline, if he/she refuses for the second time, the position being offered on reintegration (art.39);

-at the expiry of the leave on personal grounds, if he/she refuses for the second time, the position being offered on reintegration (art.40);

-because of redundancy (art.41);

-in case of disability, if he/she can be reintegrated and refuses for the second time, the position being offered on reintegration (Annex VII, art.14 paragraph 2).

- **retirement in the benefit of the job;** any member of the staff with higher education studies (AD14-16) may be withdrawn from the position in the interest of the job by decision of the appointment authority, this retirement not being regarded as a disciplinary measure. The public servant thus deprived of his/her position and who has not been appointed on another position shall benefit from an indemnity set according to the provisions of the Status (Annex IV).

- **professional failure;** each institution decides upon its own procedures which to determine, to administer and to solve, in a timely and due manner, the cases of professional failure. After running out of such procedures, the public servant that has to undergo the professional failure test may be laid off, demoted in an inferior group of positions but still preserving the job title, or in an inferior job title position;

- **retirement;** either by default, in the last day of the month when he/she turns 65 years old or, under exceptional circumstances, 67 years old; or at his/her request, at 63 at least or, in some cases less, but not earlier than 55;

- **honorific dignity;** the public servant who permanently terminates exerting the attributions of his/her position may be awarded an honorific dignity, either for his career or for his/her job title or for an immediately higher job title, by decision of the appointment authority. This measure does not involve any pecuniary advantage

## 2.2. Duration of work for the European public servants

In what concerns the **duration or the working hours**, the Status stipulates that the active public servants are permanently available for the institution they work for. However, the normal working hours cannot exceed **42 hours per week** according to a timetable set by the authority invested with the power of appointment after having discussed it over with the staff committee.

On the other hand, according to the necessities of the job and to the normal requirements of labour security, the public servant may be forced to stay available to the institution, at the place of work or at home, even outside the working hours.

Any public servant, on request and with the approval of the appointment authority, may partially perform his/her job tasks, in the following situations:

- to take care of the 9-year old child, but not older than this;

- to take care of the child between 9 and 12 years old, if the working time reduction does not exceed 20% of the normal working time frame;

- to take care of the spouse, of an ancestor or descendant, brother or sister if they are seriously ill or disabled;

- to attend complementary training studies;

- if he/she turned 55 years old, during the last five years before retirement. The public servants do not have the obligation to work extra hours unless there is an emergency; night working hours, Sunday and holiday working hours must be approved of by the

appointment authority. The total number of extra hours cannot exceed 150 hours in six months. It is interesting to mention the fact that the extra hours shall not be compensated for in what concerns the public servants belonging to the AD and AST 5-11 group positions. Those of groups AST 1-4 are entitled to benefit from a compensating resting period and even from a financial compensation.

**The annual leave** is a right of the public servants and it shall be granted annually for a period of 24 to 30 working days. Besides this, a **special leave** may be granted on request, under exceptional circumstances.

Pregnant women are entitled, according to a medical certificate, to take a **prenatal and postnatal leave** of eight weeks. This leave ranges on a period of 24 weeks in case of multiple or premature birth or in case of giving birth to a disabled child. The public servants whose ability to perform their job tasks is impaired as a result of an accident or disease, and they hold evidence in this respect, benefit from medical leave. Moreover, the public servant may be sent on leave by default, following a medical check-up carried out by the counselling-physician of the institution. The public servants actually have to undergo a preventive medical check-up carried out either by the counselling physician, or by the doctor chosen. With the exception of the situations of accident or disease, the public servant may not miss work without the approval of the hierarchical superior. Unjustified absences are deducted from the annual leave and in case it has already been used up, the public servant shall lose the benefit of his/her remuneration for an equivalent period.

**The holiday days** are set according to a list mutually agreed upon by the institutions of the European Union, after having discussed it over with the Status Committee<sup>12</sup>. The Status of the European Union public servants includes other interesting provisions related to:

- marking (assessment by means of periodical reports), promotion according to the job title steps or promotion to a higher position (art. 44-46)
- the pecuniary regime and the social advantages of public servants (remuneration, social security, pension and disability allowance) (art. 62-85);
- the disciplinary regime of public servants (art. 86);
- ways of appeal that public servants may benefit from (art. 90-91);
- special provisions applicable to public servants that are scientific or technical employees of the European Union and to the public servants affected in third countries (art. 92-101).

### 3. Rights and obligations of the European public servants

#### 3.1. Obligations of the European public servants

The Status of the European public servants stipulates their rights and obligations, using as a starting point the principle according to which they have to comply with their job tasks and to behave in the best interest of the Communities, without requesting or accepting instructions from any government, authority, organization or person that is not part of the institution they belong to. They impartially and objectively carry out the job tasks they have been entrusted, maintaining their loyalty to the Community.

It is also important to mention the fact that the public servant may not accept, from any government or any other external source that is not part of the institution he/she belongs to, without approval of the authority invested with the appointment power any sort of honorific award, medal, favour, donation, remuneration, irrespective of its nature, with the exception of those received for services performed before his/her appointment or for military or national services but only on behalf of these services. While performing his/her job tasks, the public servant may not deal with any business in which he/she has a direct or indirect personal interest, a familial or financial interest meant to compromise his/her independence, subject to the measures taken by the institution they

<sup>12</sup> See Jinga I., *Uniunea Europeană, realități și perspective*, Lumina Lex Publishing House, Bucharest, 2009, p. 344.

belong to, which shall be notified in what concerns such situations and which may especially exempt the public servant from the responsibilities of that business.

We mention some of the **obligations of the European public servants**, decided upon according to the provisions of the Status<sup>13</sup>:

- to refrain from any action or behaviour that might prejudice human dignity and his/her position;

- to refrain from any form of moral or sexual harassment;

- by **moral harassment** one should understand any abusive behaviour that manifests itself in a long, repetitive or systematic manner by: behaviour, words, actions, gestures and written things meant to prejudice the personality, dignity or physical or mental integrity of a person;

- by **sexual harassment** one should understand a behaviour with sexual connotations that is undesirable for the person that is the subject of it, having the purpose or the effect of prejudicing the dignity or creating an intimidating, hostile, offending or embarrassing environment. Moreover, sexual harassment is regarded as sexual discrimination;

- the public servant must ask for the approval of the authority invested with the appointment power if he/she is asked to perform an external activity, either paid or not, or to carry out a mandate outside the Communities;

- the approval shall be denied only if the respective activity or mandate is meant to hinder his/her from performing his/her job tasks or if it is incompatible with the interest of his/her institution;

- this obligation is also valid for the situation in which the public servant performs a lucrative activity because of a conjunctural, professional aspect or if he/she is proposed to candidate for public office;

- at termination of office, the public servant must comply with the honesty and prudence duties related to the acceptance of certain positions or advantages; if he is offered to perform a professional activity, either paid or not, within two years since termination of office, he has to inform the institution he belonged to about such events and decisions; if the activity he/she is offered is connected to the activity carried out within the institution in the last three years and risks to be incompatible with the legal interests of the institution, this can be forbidden;

- the public servant has to refrain from revealing unauthorized information acquired while in office, with the exception of that information that had already been made public, even after his/her termination of office;

- the public servant is entitled to free speech but only if he complies with the loyalty and impartiality principles; that is why, the person who intends to publish either as sole author or as coauthor, a text whose objective aims the activity of the Communities, has to inform the authority invested with the appointment power; the latter one can object in written form within 30 days; if no decision has been communicated within this deadline, it means there are no objections whatsoever;

- all the rights corresponding to the work performed by the public servants while in office are reserved by the Community related to such activities; therefore, the Communities rightfully benefit from the transfer of these work copyrights and the institution may grant bonuses to the authors;

- public servants may not cite in the Court, under any circumstances, the findings made while in office, without the approval of the authority invested with the appointment power. However, the approval may not be denied unless the interests of the Community justify it or if this denial may lead to penal consequences for the interested public servant; such an obligation remains valid even after termination of office;

- the public servant must have the domicile in the area where his job is or at a distance that shall not prevent him/her from exercising his/her job duties; this obligation also involves the immediate notification of the authority invested with the appointment power in case the home address changes;

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<sup>13</sup> See Fuerea A., *Istoricul constituirii și viitorul Uniunii Europene*, All Beck Publishing House, Bucharest 2012, p. 132.



- the public servant, irrespective of his/her position in the hierarchy has to help and advise his/her superiors; he/she is responsible for carrying out his/her duties<sup>14</sup>;

- the public servant in charge with a certain department has to report back to his superiors everything related to the authority that had been bestowed upon him/her; he/she is also responsible for all the orders given. The personal responsibility of the subordinates does not exempt him/her from his/her own responsibility;

- if the public servant considers that the performance of a certain order may lead to serious consequences, shall inform his/her direct superior who, shall reply in written form if the notification had also been written. If the order is confirmed and the public servant considers that such confirmation is not enough, he/she shall notify in written form the hierarchical superior authority. If the authority confirms the order in written form, the public servant has to execute it, on condition it does not represent an illegal manifest or one that is contrary to the security applicable norms. If the hierarchical superior considers that the order cannot be delayed, the public servant must carry it out unless it represents an illegal manifest or one that is contrary to the applicable security norms but, at the request of the direct hierarchical superior he/she must give the order in written form;

- the public servant must totally or partially fix the prejudice caused to the Communities, because of serious personal errors that he had committed while in office or while carrying out his/her job duties. The motivated decision is taken by the authority invested with the appointment power, according to the formalities decided upon from a disciplinary point of view. The Court of Justice of the European Communities is fully competent to decide upon such litigation;

- the public servant who, while in office or while carrying out his/her job duties, is in possession of important information that may presume an illegal activity, especially fraud or corruption that might prejudice the interests of the Communities or a behaviour that may represent a serious breach of the obligations of public servants of the Communities, has to immediately notify in written form the direct hierarchical superior or the general executive or even the general secretary or any person with an equivalent position or the European Anti-Fraud Office. The institution shall not prejudice in any way the public servant who conveyed such information if he/she was bona fide.

In what concerns the **rights of the European public servants**<sup>15</sup>, the Status sets as rules with a value principle, that the privileges and immunities they benefit from are granted exclusively to the best interest of the Communities.

Subject to the provisions of the **Privileges and Immunities Protocol**, the individuals concerned are neither exempt from their private obligations nor from complying with the laws and police regulations in force. The free passes stipulated by the above-mentioned protocol are given to public servants with AD12-AD16 job titles and to the assimilated ones, but also to other public servants who can get them according to a special decision taken by the authority invested with the power of appointment if they are affected in a place situated outside of the territory of the member states.

### 3.2. The rights of European public servants

Some of the **rights stipulated** by the Status are:

- the right to solidary fixing by the Communities of the prejudices caused to the public servant because of actions mentioned above, to the extent to which the public servant does not represent, either on purpose or because of serious neglect, the cause of these prejudices and could not get the author's repair;

- the Communities facilitate the professional furthering of the public servant to the extent to which he/she is compatible with the requirements of a good functioning of the services and according to their own interests;

- the public servants are entitled to association; they can be members of the labour union or professional organizations of the European public servants;

<sup>14</sup> See Deaconu N., *op. cit.*, 2009, p. 178.

<sup>15</sup> See, Fuerea A., *op. cit.*, 2015, p. 204.

- the public servants are entitled to notify the authority invested with the appointment power about a relative request related to the problems of the public servants' Status;
- any individual decision taken for enforcing the Status must be communicated in written form and without further delay to the interested public servant; the individual decisions related to appointment, tenured positions, promotion, transfer, establishment of the administrative position and termination of office are published in the respective institution and must be accessible for the entire staff as soon as possible;
- the individual file of the public servant (one file for each public servant) includes any information that might concern the administrative situation and any rapport regarding his/her competence, efficiency or behaviour as well as the observations formulated by the public servant in this respect. Each piece of information must be registered, numbered and classified without discontinuity and the institution cannot prevent the public servant from choosing against him pieces of information from the personal file if he had not been previously notified, in written form (under signature or registered letter) before their classification. There can be no specification in the file related to the activities and political, union, philosophical or religious opinions of the public servant, to his/her race, ethnicity or sexual orientation<sup>16</sup>;
- each public servant is entitled to know about all the data in his file and to have a copy of it; he/she is entitled to the same rights as far as his/her medical file is concerned;
- the personal file is confidential and may only be accessed in the administration office or on a secured IT support.

#### 4. Conclusions

The public servants of the European Union are persons appointed to a permanent position of an institution of the European Union, by means of a written document of an authority invested by the respective institution with such powers. Their legal regime regarded as a sum of the rights and obligations they have in relation to the European Union and its institutions, is decided upon by the **European Community Civil Service Status**, adopted on February 29<sup>th</sup>, 1968, with subsequent alterations<sup>17</sup>.

Therefore, the Regulations adopted by the European Union Council on March 22<sup>nd</sup>, 2004, at the proposal of the European Commission implements a new career system for the European public servants. The provisions of the Status also apply in the case of the individuals appointed by the community organizations, persons hereinafter generically referred to as „agents” which means that bodies such as: the European Economic and Social Committee; the European Committee of the Regions; the European Union Mediator or the European data Protection Supervisor represent from this point of view, part of the institutions of the European Union. The Status forbids any sort of discrimination based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion or beliefs, public opinions or any other opinions, affiliation to a national minority, wealth, birth, disability, age or sexual orientation. Another new aspect related to the enforcement of the status is that the non-marital partnership is regarded and treated in the same way marriage is. An extremely important significance for the activity and moral status of the European Union public servants is rendered to the **European Code of good Administrative Behaviour**. This document was proposed by the European Mediator and was approved of on September 6<sup>th</sup>, 2001, by means of a resolution of the European Parliament; it consists of a set of behaviour rules which the community institutions, the administrations as well as the public servants have to comply with, in what concerns their relationship with the public. Each institution decides upon the authorities entitled to exert their relative powers stipulated by the Status when appointing public servants or agents. The public servant's deed of appointment must stipulate the date when such an appointment comes into force, date that cannot be prior to the one when he got into public office. The object of any

<sup>16</sup> See Leicu C., *op. cit.*, 2006, p. 187.

<sup>17</sup> Regulation no. 259/1968 of Council no. CELEX31968R0259(01)- regarding the European Community Civil Service Status (JO L 56 of March 4<sup>th</sup> 1968, p. 1).

appointment or promotion of a European public servant may only be a vacancy that corresponds to the terms stipulated by the Status. The staff of the institution must be informed about any vacancy within the institution. If no person is entitled to fill the position by means of transfer, appointment or promotion within the same institution, the staff of another institution shall be notified about such vacancy and an internal contest shall be organized.<sup>18</sup> According to the nature and level of the public office to which they correspond, the positions are classified into two groups:

- the group of administrative positions, hereinafter referred to as „AD”;
- the group of assistant positions, hereinafter referred to as „AST”.

This is the most significant change operated by the Status, in the Council’s amended form of 2004 in what concerns the career of European public servants.

- the group of AD positions includes 12 job titles that correspond to the leadership, concept and study positions as well as the linguistic or scientific ones.
- the group of AST positions includes 12 job titles that correspond to the technical and executive positions.

The Status of the European public servants stipulates their rights and obligations according to the principle that they must comply with their job duties and to control their behaviour considering the best interests of the Communities, without requesting or accepting instructions from any government, authority, organization or person that is not part of the institution they belong to. They impartially and objectively carry out the job tasks they have been entrusted, maintaining their loyalty to the Community.

It is also important to mention the fact that the public servant may not accept, from any government or any other external source that is not part of the institution he/she belongs to, without approval of the authority invested with the appointment power any sort of honorific award, medal, favour, donation, remuneration, irrespective of its nature, with the exception of those received for services performed before his/her appointment or for military or national services but only on behalf of these services.

While performing his/her job tasks, the public servant may not deal with any business in which he/she has a direct or indirect personal interest, a familial or financial interest meant to compromise his/her independence, subject to the measures taken by the institution they belong to, which shall be notified in what concerns such situations and which may especially exempt the public servant from the responsibilities of that business.

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<sup>18</sup> See Fuerea, A., *op. cit.*, 2015, p. 162.