DALDEWOLF

the OFFICI@L

legal newsletter on European civil service law
newsletter juridique de la fonction publique européenne
April 2024 – number 93 – 11th year

contact : theofficial@daldewolf.com – www.daldewolf.com

EDITO

Dear Readers,

This issue is devoted to certain financial rights and obligations of European civil servants. On the one hand, our Focus will examine the consequences of undue payment.

On the other hand, we will comment on a recent EU General Court's ruling on the conditions for granting tax relief to civil servants with dependent children.

In our 'Belgian law' section, we look at the European and local elections in Belgium in 2024, and more specifically at voter eligibility under Belgian law.

This newsletter is also yours, and we welcome any suggestions you may have for future issues. Don't hesitate to contact us by e-mail: theofficial@daldewolf.com.

We hope you enjoy your reading!

The DALDEWOLF team

OUR TEAM

DALDEWOLF:
- European Union Law and Human Rights: THIERRY BONTINCK, ANAÏS GUILLERME, MARIANNE BRÉSART, LUCIE MARCHAL, LAUREN BURGUIN, FEDERICO PATUELLI LOUISE BOUCHET & SABRINA NAPOLITANO
- Belgian Law DOMINIQUE BOGAERT

In partnership with PERSPECTIVES law firm:
- Family Law CANDICE FASTREZ

FOCUS

THE CONSEQUENCES OF UNDUE PAYMENT: RECOVERY OF OVERPAYMENTS

It may happen that an EU official or agent receives an element of remuneration to which he was not entitled, or that he receives it for an amount greater than he should have received.

The rules applicable to the Administration when it wishes to obtain reimbursement of a sum wrongly paid to an official or agent are set out quite clearly in the Staff Regulations and case law.

It is therefore up to all civil servants to be vigilant about the amounts they receive each month and to check their pay slips.

The principle: recovery of undue payments can only go back a maximum of 5 years

In accordance with article 85 of the Staff Regulations, any sum unduly received gives rise to recovery if the beneficiary was aware of the irregularity of the payment or if the irregularity was so obvious that he could not fail to be aware of it.

Any request by the Administration for recovery of a sum wrongly received must be made at the latest at the end of a period of five years from the date on which the sum was paid.

This means that each new payment of an undue sum starts a new five-year period.

For a sum paid without justification to be repeated, it is necessary to prove that the beneficiary had actual knowledge of the irregular nature of the payment or that the irregularity was so obvious that the beneficiary could not fail to be aware of it.

These criteria are interpreted largely by the EU Courts, since officials and other agents are presumed to know the provisions of the Staff Regulations. Notably, the case law considers that it is not necessary for the interested party to be able to determine precisely the extent of the error committed by the Administration. It is sufficient, in this respect, for the interested party to have doubts about the validity of the payments in question for him to be obliged to contact the Administration so that it can carry out the necessary checks.

First exception in favour of the EU staff - Legitimate expectations

Case law has held that the beneficiary of an undue sum is not obliged to return it if he or she has a legitimate expectation that the payment was lawful.

These legitimate expectations can be developed by civil servants under certain conditions:

1. Accurate, unconditional and consistent assurances from authorised and reliable sources;
2. The assurance must give rise to a legitimate expectation on the part of the person to whom it is addressed;

3. The assurance must comply with the applicable rules.

In practice, the case law has rarely recognised the existence of a legitimate expectation preventing the recovery from an official of a sum wrongly received. Nevertheless, the Court has already recognised that a former Parliament official could have a legitimate expectation in the legality of a decision, subsequently withdrawn, which recognised his occupational illness and, consequently, awarded him a lump sum by way of compensation (judgment of the Court of 17 April 1997, *Henri de Compte v. European Parliament*, C-90/95 P, §§ 36-39).

More generally, EU judges have held that irregularities due to a lack of precision on the part of the Administration in indicating the payment (judgment of 30 May 1973, *Francois Meganck v Commission of the European Communities*, 36/72) or to incorrect information provided by the Commission concerning new parameters for calculating an official's pension (judgment of 5 February 2016, *Bulté and Krempa v Commission*, F-96/14) should not be recovered.

Second exception in favour of the EU Administration: bad faith on the part of the staff member

The five-year limitation period does not apply if the Appointing Authority is able to establish that the person concerned deliberately misled the Administration in order to obtain payment of the sum in question.

This could be the case for a civil servant who:

- has not agreed to provide with all the information concerning his personal situation;
- has not agreed to be informed of any changes in his personal situation;
- who has taken steps to make it more difficult for the Appointing Authority to detect that he has received an undue payment, including by providing incorrect or inaccurate information.

This is the case in particular of a staff member who has failed to respond to the request to update his data in the annual information form, who has failed to declare to the Administration the allowances paid for his child in a Member State and who has subsequently made false statements concerning the existence of allowances paid by a national authority (judgment of the Civil Service Tribunal of 12 March 2014, *CR v European Parliament*, F-128/12, §§69-71 and, recently, Judgment of the General Court of 10 April 2024, *AL v Commission, T-50/22, §66-67)*.

Similarly, an official is misleading the Administration if, by artificially splitting his application for an installation allowance and providing misleading information about his family's place of residence, he offers an erroneous representation of his situation (judgment of the Civil Service Tribunal of 30 April 2014, *José Manuel López Cejudo v European Commission*, F-28/13, §§59, 62).

CASE LAW

EUROPEAN UNION TAX - CONDITIONS FOR GRANTING TAX RELIEF TO CIVIL SERVANTS WITH DEPENDENT CHILDREN

In a judgment of 20 December 2023 between a European official and the Commission (T-369/22), the General Court of the European Union confirmed the Commission's decision to refuse to continue to grant the tax allowance for his two dependent children.

On this occasion, the Court clarified its case law on the conditions for granting tax relief to civil servants with dependent children.

In this case, the applicant, a European civil servant resident in Germany, challenged the Commission's decisions concerning the refusal of tax relief for his two daughters.

With regard to tax relief, the applicable regulations setting out the conditions and procedure for applying the tax levied for the benefit of the European Union stipulate that the tax is due each month. It is calculated on the basis of the wages,

salaries and other remuneration of all kinds paid by the European Union to the taxable person.

Some benefits and allowances are deducted from the tax base.

In order to calculate the amount of tax due by a civil servant on his monthly salary, family allowances, including the dependent child allowance, must be deducted from the taxable amount. An additional allowance is granted for each dependent child and for each person treated as a dependent child within the meaning of Article 2(4) of Annex VII to the Staff Regulations. The amount of this allowance, provided for in the second subparagraph of Article 3(4) of Regulation 260/68, is twice the amount of the dependent child allowance.

To qualify for the tax allowance for dependent children, the taxpayer must:

1. Have one or more dependent children, or one or more persons treated as dependent children;
2. Actually, receive family allowance. The allowance is granted:
   a. Automatically for children under the age of 18;
   b. At the reasoned request of the civil servant, for a child aged between 18 and 26 who is receiving school or vocational training.

There is no age limit on the extension of the payment if the child suffers from a serious illness or disability that prevents him or her from supporting him or herself, and for the entire duration of the disability or illness.

In the present case, the claimant received dependent child allowance for each of his two daughters until their twenty-sixth birthdays in 2019 and 2020 respectively. In addition to the payment of the dependent child allowance, and even after the allowance payments had stopped, the claimant benefited from the tax allowance for each of his children (who were still students on that date) until 31 July 2021.

Between June and August 2021, the claimant applied to the Paymaster Office (PMO) for an extension of the tax allowance for his daughters. In both cases, the administrator replied that "*on the basis of the XB / BCE judgment, T-484/18, any request for the granting or extension of the tax allowance in the absence of the dependent child allowance could no longer be granted, as the conditions for obtaining such an extension were no longer met*".

According to the applicant, the Commission, in responding in this way, misinterpreted the concept of 'dependent child' and infringed the applicable rules. In fact, according to the applicant, all dependent children, even if they do not necessarily give entitlement to a dependent child allowance, may nevertheless give entitlement to the tax relief at issue.

On this point, the General Court points out that, on the basis of the applicable rules, the tax allowance for dependent children of an official only applies where a dependent child allowance is actually paid by the institutions of the European Union.

It should also be noted that the internal guidelines and the conclusions of the Heads of Administration, which had hitherto appeared to support the applicant's interpretation, were rejected by the General Court as incompatible with the EU Staff Regulations.

Consequently, the General Court did not grant the applicant's request and dismissed the action.

BELGIAN LAW

THE EUROPEAN AND LOCAL ELECTIONS IN BELGIUM IN 2024: VOTER STATUS

In Belgium, the elections for MEPs to the European Parliament will take place on 9 June 2024 and the local elections on 13 October 2024.

The electoral base for these elections is specific to Belgian law.

Since 2022, Belgium has become the fourth country in the European Union, after Malta, Germany and Austria, to allow people to vote from the age of 16. Another unique Belgian feature is the compulsory nature of the vote. Voting is compulsory for all Belgian citizens aged 16 or over. As a result, anyone aged 16 or over who is a Belgian citizen will have to go to the polls for elections.

A recent ruling by the Belgian Constitutional Court has confirmed that 16- and 17-year-olds will also receive a summons and will therefore be obliged to vote in the European elections, and could be penalised if they do not vote.

Conditions for the elections to the European Parliament

Belgian citizens aged 16 or over, as well as citizens of the Union who have registered to vote in Belgium, are obliged to take part in the European elections.

This means that people who meet the conditions listed below will receive a letter of invitation:

- have reach voting age on election day;
- have Belgian or European citizenship with right of residence in Belgium, or be a Belgian citizen living abroad;
- be registered on the electoral register before the deadline (i.e. 31 March 2024 for European voters residing in Belgium and 29 February 2024 for Belgians residing outside Belgium);
- Not to have been deprived of their electoral rights by a court decision.

European citizens wishing to vote in Belgium in the European elections must first register on the electoral roll. This registration could be completed by 31 March 2024 at the latest. If you have not registered, you can still take part in the European elections 'in your country of origin or at a consulate in Belgium.

You can check the status of your registration with your local authority or on the MyFile application ("My details"

tab > Elections) using your electronic residence permit, your pin code and an electronic card reader.

Conditions for local elections in Belgium

European citizens residing in Belgium who do not hold Belgian nationality may take part in the municipal elections in Belgium, which will take place on 13 October 2024.

The general conditions to be met by European citizens resident in Belgium but not holding Belgian nationality are as follows in order to be registered as a voter:

- having reached voting age on 13 October 2024,
- be included in the population register or the register of foreigners of the municipality on 1er August 2024;
- enjoy their civil and political rights on 13 October 2024;
- Have submitted an application for registration on the electoral roll by 31 July 2024 at the latest.

Citizens who do not have Belgian nationality must express their wish to vote in local elections by registering on the electoral roll, which can be done until 1 August 2024 for the 2024 local elections.
Applications can be submitted in one of the following ways:

- or online, via the url www.inscription.elections.fgov.be .
- in person, at the administration of the municipality in which you live, to complete the application form,
- or by post.