DALDEWOLF

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EDITO

Dear readers,

The concluding edition of 2023 focuses on the expatriation allowance, accompanied by an analysis of a decision made by the EU General Court regarding the pension rights of parliamentary assistants.

We consider this newsletter as much yours as ours and are open to any ideas you might have for upcoming editions. Feel free to reach out to us via e-mail at theofficial@daldewolf.com.

We trust you will find this issue informative and wish you a joyous holiday season!

The DALDEWOLF team

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FOCUS

EXPATRIATION ALLOWANCE

The expatriation allowance is equal to 16% of the total of the basic salary, household allowance and dependent child allowance of the EU official or servant. It is subject to specific criteria defined in Article 69 and Article 4 of Annex VII to the EU Staff Regulations.

Conditions of Eligibility

Article 4 of Annex VII to the Staff Regulations sets out the eligibility criteria for receiving the expatriation allowance. Two main scenarios are outlined:

The first scenario pertains to civil servants who do not hold the nationality of their employment state: this group encompasses individuals who have never possessed the nationality of their employment state and have not consistently lived or worked there in the five years leading up to their service commencement (reference period).

The second scenario involves civil servants who do hold the nationality of their employment state: this category includes individuals who have held the nationality of their employment state but have lived abroad for at least ten years before starting their position, without maintaining substantial professional or social connections with that state.

Neutralisation periods

Article 4 of Annex VII introduces a "neutralisation rule", excluding from the calculation of the reference period periods during which officials worked for other States or international organisations at their place of employment. Proof of a direct legal link with an international organisation or a third country is required to exclude periods worked for these entities from the calculation of the reference period.

However, the simple condition of a direct link with the State is not always sufficient. For example, the period during which a national judge is seconded by his ministry to work in an international non-profit-making association based in Belgium and operating independently of a permanent representation, without granting privileges or immunities, is not considered to be neutralised (QB v Commission, C-88/22 P).

News: the approach of the European Court of Justice

The courts of the European Union have recently ruled on several occasions on various issues relating to expatriation allowance, illustrating the upheavals in the organisation of everyone's work.

In order to determine an official's eligibility for the expatriation allowance, the Court of the European Union adopts a rigorously factual approach to determine whether the official habitually resided or worked in or outside the territory of the State of employment throughout the reference period.

This approach is justified by the purpose of the expatriation allowance. In accordance with established case law, this allowance is intended to compensate for the particular burdens and disadvantages resulting from the performance of duties within the European Union for officials who are, as a result, obliged to transfer their residence from their country of domicile to the country of employment and to integrate into a new environment, with which

they had no lasting link before taking up their duties. Specifically, the allowance is granted to compensate for the material expenses and moral disadvantages resulting from the fact that the official is far from his place of origin and generally maintains family relations with his region of origin (PP and Others v Parliament, T-39/21).

Thus, the General Court closely examined concrete aspects to determine the habitual residence of the recruited official or servant and the intention to reside in the State concerned during the reference period. For example, in Case T-39/21, where officials teleworked from another Member State during the Covid-19 pandemic, the Court carefully assessed the period of work away from the place of employment and the continuity of the financial burdens borne by the officials at the place of employment in order to establish continued entitlement to the allowance (PP and Others v Parliament, T-39/21).

In another case, the General Court considered the fact that the official lived with his family, each of whom engaged in activities corresponding to their respective situations, had a bank account in a specific country and sought employment in that same country to be significant in determining the location of the habitual residence. This approach highlights the importance attached to concrete facts rather than links with another State (LF v Commission, T-466/20).

Similarly, in order to establish the main place of work of the person concerned during the reference period, the General Court examined the agreement between the official's employer and an international non-profit-making association under Belgian law, to which the official devoted a significant proportion of his working time and received substantial remuneration and benefits in kind (QB v Commission, C-88/22 P), and concluded that the applicant's main place of work was in the State to which he was assigned.

To sum up, the allocation of the expatriation allowance for EU officials is dependent on a meticulous evaluation of the circumstances related to regular residence and assimilation in the employment country, to guarantee an equitable implementation of the qualifying conditions.

CASE LAW

PENSION RIGHTS OF PARLIAMENTARY ASSISTANTS

In a judgment of 8 November 2023 (OA v European Parliament, T-39/22), the General Court of the EU reiterated certain principles associated to the calculation of the pension rights of a parliamentary assistant under the terms of Article 77 of the Staff Regulations.

In the present case, the applicant served as a parliamentary assistant from 2004 to 2021, under various contracts and at grades varying from level 4 to 18. In March 2021, he requested the Parliament to officially verify certain aspects of his pension, specifically:

1. His precise age of retirement;
2. The method of pension calculation;
3. The feasibility of considering his tenure as a parliamentary assistant based on an Italian law contract.

After his request was denied, the applicant filed a complaint, which resulted in the Parliament agreeing to confirm his retirement age as 63, while still rejecting the other requests.

Firstly, the General Court validated the eligibility of the annulment action initiated by the applicant. This point is noteworthy as the Parliament's decision, made under Article 90 of the Staff Regulations, pertained to pension rights, described as "virtual rights […] progressively accumulating", with retirement being "an unpredictable future occurrence".

Indeed, theoretical events are typically not subject to an annulment action. However, despite the final pension amount being determined at a future date, the General Court ruled in this instance that a decision concerning the recognition of a specific service period and the pension calculation method has an immediate effect on the official involved, thereby granting them the right to request the European Court of Justice to establish these factors.

Secondly, with regard to the merits, the General Court initially examines the reference period and subsequently the reference amount of pension rights.

To begin with, the General Court dismissed the consideration of the work period from 2004 to 2009 for a Member of the European Parliament under an Italian contract when determining pension rights. In fact, the applicant had previously sought and secured the

transfer of pension rights accumulated with his former Italian employers to the EU institutions' pension scheme.

Regarding the amounts used for pension calculation under Article 77 of the Staff Regulations, the applicant proposed that the average salary received, not the last salary (the final position held by the applicant for over 12 months was grade 4), should be considered to establish a proportional relationship between the pension amount and the social security contributions made.

The General Court rejected this proposition, emphasizing the principle that pensions are typically based on the official or civil servant's last salary and pension rights are established on the principle of solidarity, not on the actual contributions made to the pension scheme.

Lastly, the General Court dismissed the applicant's request for the Parliament to be ordered to pay damages and interests. In this case, the alleged damage suffered by the applicant was due to the violation of the applicant's legitimate expectations caused by the Parliament's dissemination of misleading information on its website about pension rights calculation, which was confirmed by the relevant Pensions Unit.

According to the General Court, although the disseminated information could be ambiguous, in this instance, the information provided by the Parliament did not constitute "precise, unconditional, and consistent assurances" that could create a legitimate expectation for the recipient.