DALDEWOLF

the OFFICI@L

legal newsletter on European civil service law
newsletter juridique de la fonction publique européenne
June 2024 – number 95 – 11th year

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EDITO

Dear Readers,

Under this new issue of THE OFFICI@L, the "Focus" section will address family allowances for EU officials and agents, with particular attention to the rules on cumulating national and EU allowances.

For our case law commentary, we have chosen to analyse a recent Court of Justice ruling on the reimbursement of travel expenses for officials whose place of origin is outside European territory.

At the end of this issue, you will find an analysis of the rules applicable to obtain a tax relief on a first home in the Brussels-Capital Region.

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 and wish you a nice summer break! THE OFFICI@L will be back in September.

The DALDEWOLF team

OUR TEAM

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FOCUS

EUROPEAN CHILD BENEFIT: UNDERSTANDING THE PRINCIPLES OF NON-CUMULATION AND COMPLEMENTARITY

Family allowances are provided for under Articles 67 and 68 and Annex VII of the Staff Regulations of Officials of the European Union (hereinafter "the Staff Regulations"). These allowances are governed by two principles: the principle of non-cumulation and the principle of complementarity. These principles guarantee an equitable distribution of benefits while avoiding double benefits and complementing existing national allowances.

Rule of non-cumulation of national and European allowances

The principle of non-cumulation means that European family allowances (paid under the Staff Regulations) cannot be combined with national allowances of the same nature. Consequently, officials must declare all other family allowances received, which will then be deducted from the European family allowances.

This obligation to declare arises from the duty of loyalty set out under Article 11 of the Staff Regulations. Officials have a duty of loyalty in performing their duties and in their dealings with the EU administration, particularly when claiming allowances (LA v Commission, T-50/22). The Union may seek recovery of sums wrongly paid to the official.

Thus, EU staff members are obliged to adopt a proactive and transparent approach if they receive allowances of a similar nature from another source. For example, the Court has ruled that civil servants cannot invoke their ignorance of their spouse's financial situation to avoid declaring national family allowances received by their spouse (EH v Commission, F-42/14).

The principle of complementarity

The principle of complementarity means that European family allowances are complementary to allowances of the same kind received in a Member State. This means that European civil servants must first apply for allowances from national administrations, and only then can the Union supplement or grant family allowances.

This rule is binding on the Member States, which cannot refuse to pay national family allowances on the ground that an individual is already receiving or could receive European family allowances (Commission v. Belgium, 186/85).

In practice, this means that EU staff members must first claim family allowances from the Member State where they reside before applying to the European Union. For example, if one of the parents works in the national system (as an employee or self-employed), and a European institution employs the other, the claim must first be made to the national administration of the Member State.

- Family Law
  CANDICE FASTREZ

Only in the event of refusal, ineligibility, if the Member State's allowances do not cover certain types of allowances, or if the amount of allowances paid at the national level is not equivalent to that provided for in the Staff Regulations, can they request to the European Union to pay or supplement these allowances.

Finally, when both parents work for the Union, they can claim child benefits directly from it.

CASE LAW

PAYMENT OF TRAVEL EXPENSES FROM THE PLACE OF EMPLOYMENT TO THE PLACE OF ORIGIN OUTSIDE A MEMBER STATE

In a judgment of 18 April 2024, the Court of Justice of the European Union (CJEU), in cases C-567/22 P and C-570/22 P, annulled several judgments of the General Court of the European Union and put an end to a dispute lasting several years involving EU officials who either held dual nationality (an EU Member State and a non-EU Member State) or were citizens of a Member State only, all of them having their place of origin outside European territory.

Travel expenses are determined according to Article 8 of Annex VII of the Staff Regulations, based on the place of origin established at the time of entry into service. The official or agent must pay close attention to this, as any change to the place of origin is exceptional and requires submission of thoroughly justified documentation by the individual.

The 2014 recast of the EU Staff Regulations introduced a significant change regarding the reimbursement of annual travel expenses. Under this scheme, if the place of origin is outside the EU, the countries and territories listed in Annex II to the TFEU, or the territory of the Member States of the European Free Trade Association, reimbursement is calculated based on the geographical distance between the official's place of employment and the capital of the Member State of which they are a national. Previously, reimbursement was based on the distance between the place of employment and the actual place of origin.

In this case, the actions brought by the EU officials before the General Court were directed against the decisions of the Commission and the European Parliament to reduce or abolish, with effect from 1 January 2014, the reimbursement of annual travel expenses.

In first instance, the General Court rejected the requests. On appeal, the CJEU had to rule on the payment of travel expenses from the place of assignment to the place of origin outside the EU.

The CJEU, ruling in favour of the applicants, held firstly that the nationality criterion for calculating the lump-sum reimbursement of travel expenses was not relevant to meet the objective of Article 8 of Annex VII to the Staff Regulations, which is to enable EU officials to maintain family, social and cultural links with their places of origin. This criterion introduces an arbitrary differentiation between officials whose place of origin is outside the EU. The CJEU, therefore, considers that the General Court erred in law in holding that budgetary, administrative or human resources management considerations justify this difference in treatment. According to the CJEU, budgetary rationalisation and administrative efficiency objectives cannot justify a difference in treatment based on a criterion that is disconnected from the objective pursued by Article 8 of Annex VII.

Secondly, the CJEU examined the issue of equal treatment of European officials according to their place of origin, whether inside or outside the EU. The CJEU ruled that the alleged distinction based on the place of origin of officials inside or outside the EU is irrelevant to the purpose of the expatriation or foreign residence allowance. As a reminder, the purpose of the allowance is to enable all officials to maintain personal links with their place of origin under comparable conditions, regardless of location.

The CJEU thus emphasised that the differentiation based on officials' place of origin is not justified by the purpose of the compensation for travel costs, thereby rendering the second subparagraph of Article 8(2) of Annex VII to the Staff Regulations discriminatory. The budgetary and administrative arguments put forward to support that differentiation was held to be insufficient, as they were not directly linked to the objective pursued by the article in question. Consequently, the CJEU concludes that the General Court also erred in law to uphold that difference in treatment.

Lastly, the CJEU held that the case could be heard without referral back to the General Court and annulled all the contested decisions.

BELGIAN LAW

TAX RELIEF ON A FIRST HOME IN THE BRUSSELS-CAPITAL REGION

At 12.5%, registration fees in the Brussels-Capital Region are among the highest in Europe.

The tax allowance is designed to help people in Brussels to buy their first home and settle in the region for the long term, particularly single people and young people.

Tax relief:

The tax relief on the purchase of a home is a tax advantage granted to buyers of property in the Brussels-Capital Region which allows buyers to benefit from a significant financial advantage when purchasing a home in the Brussels-Capital Region. The allowance also applies to the acquisition of property under construction or off-plan, provided that such acquisitions are subject to the levying of registration duties.

In principle, when the deed of purchase is registered, the purchaser must pay registration duty. In the Brussels-Capital Region, these duties are normally 12.5% of the purchase price.

Under certain conditions, the buyer can benefit from a reduction in these registration duties. This means a reduction in the taxable amount of registration duty.

- Exempt amount: On the first €200,000 of the purchase, the buyer pays no registration duty. For example, for a property worth €200,000, the buyer saves €25,000. The total amount on which registration duty is calculated may not exceed €600,000. This includes not only the purchase price of the property, but also all the charges imposed on the buyer.

Conditions:

To qualify for this allowance, the following cumulative conditions must be met:

- The property must be located in the Brussels-Capital Region (among the 19 communes);

- The purchaser is a natural person;

- The purchase must be of the entire property in full ownership;

- The property acquired must be used or intended in whole or in part for residential purposes;

- At the time of the provisional sale agreement, the purchaser may not own full ownership of another property intended in whole or in part for residential use.

  - Exception to this condition: the allowance may be granted "by way of restitution". If, at the time the agreement is signed, the purchaser owns the entire freehold of another property intended wholly or partly for residential use, and if he sells it within 2 years of the date of registration of the deed of purchase of the second property, he may apply for the allowance to be applied by way of restitution.

- The purchaser undertakes to establish his or her main residence in the property for which he or she benefits from the allowance within 3 years from the date of registration of the deed of sale.

- The purchaser must keep their main residence in the property purchased for an uninterrupted period of 5 years from the date on which the main residence was established. From 1 April 2023, the repayment of the tax advantage due in the event of non-compliance with the period for maintaining the principal residence will be prorated to the number of years that have not elapsed.