DALDEWOLF

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EDITO

Dear Readers,

Welcome to the first issue of 2025! We hope you had a fantastic holiday season. Our entire team wishes you a happy and successful year.

This issue is dedicated to the transfer of pension rights and a recent judgment from the EU General Court concerning the continuity of expatriation allowance rights for agents when they change employers within the European administration.

In our "Belgian Law" section, we will discuss the geographical separation of divorced parents and the expatriation of a child.

This newsletter is also yours, and we welcome all your suggestions for our upcoming issues. Please feel free to contact us by email at: theofficial@daldewolf.com

We wish you a joyful year!

The DALDEWOLF team

OUR TEAM

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FOCUS

PENSION RIGHTS OF EUROPEAN UNION OFFICIALS: BEST PRACTICES TO ADOPT!

According to Article 77 of the Staff Regulations and the provisions of Annex VIII, an official is entitled to a retirement pension after completing at least ten years of service within the European Institutions.

1. Calculation of Pension Rights

The maximum retirement pension is set at 70% of the official's last basic salary, based on the last grade held for at least one year. For each year of service, the official acquires 1.80% of this salary.

Additionally, the pension cannot be less than 4% of the minimum subsistence level per year of service. This minimum is equivalent to the basic salary of an official in grade AST 1, step1.

When an agent or official wishes to transfer their national pension rights into the EU pension scheme, member states determine the transferable amount. This amount is then converted into annuities by the Office for the Administration and Payment of Individual Entitlements ("PMO"). If the official accepts this calculation, the corresponding pension rights are transferred to the EU scheme.

2. Pension Transfer Verification

If you have contributed to a national pension scheme before joining the EU institutions, transferring your rights to the EU pension scheme is possible. However, in some cases, this transfer may not significantly increase the final amount of the EU pension, especially if it is set at the minimum subsistence level. In such situations, retaining a national pension alongside the EU pension may be more advantageous.

To assist officials in this process, the European Commission provides a "calculator", available via My Intracomm, to simulate the impact of pension rights transfers. This tool helps determine if transferring national pension rights improves the EU pension. In some cases, a transfer may not change the pension amount. Therefore, it is important to be well informed before making such a decision, as it cannot be undone.

3. Unjust Enrichment: Limits

In the *Barroso Truta e.a. / Court of Justice* (T-702/16 P) case, the General Court seemed to suggest that an official could invoke unjust enrichment against their employer, the European Union, if the transfer of their national pension rights did not improve their EU pension. However, in several more recent cases, *PT/Commission* (T-788/22), KY/Court of Justice of the European Union (C-100/22 P), and *OS/Commission* (T-171/22) cases, the European courts have clarified the interpretation of the Barroso Truta's case. The Courts state that to uphold a claim of unjust enrichment, it must be shown that there is no legal basis for the enrichment and that the official has suffered damage.

In these cases, the General Court ruled that the applicants' pensions were calculated in accordance with the rules of the EU pension scheme. The European jurisdiction also reminded that officials and agents are not "holders" of the sums corresponding to their financial contributions to the EU pension scheme, which is based on the principle of solidarity among officials. Consequently, it concluded that the possible enrichment of the Commission had a legal basis, making it impossible to classify it as unjust enrichment.

Thus, claims based on unjust enrichment are now considered unlikely to succeed for an official seeking to challenge the calculation of their pension.

4. Steps to Follow

Before making any pension rights transfer, it is important to:

- Use the "calculator" provided to simulate the impact of the transfer on your pension.
- Check whether the transfer of your national pension rights would result in a real improvement in the amount of your pension.
- If you have any questions, request detailed information to the administration on the rules applicable to your situation before deciding on the opportunity of a transfer.

By adopting these tips, you can optimise your pension and make informed decisions regarding your retirement rights within the EU institutions..

CASE LAW

THE GENERAL COURT ANNULS THE PMO'S REFUSAL TO GRANT THE EXPATRIATION ALLOWANCE DUE TO CONTINUITY OF CONTRACTS.

In its judgment **AH v. Commission (T-1093/23)** dated 22 January 2025, the General Court of the European Union annulled the PMO's decision to refuse the expatriation allowance to a contractual agent.

The applicant, an Italian national residing in Brussels since May 2017, was recruited as a contract agent at the Committee of the Regions in Brussels starting on 1 October 2022. On that occasion, he received the expatriation allowance provided for under Article 4(1)(a) of Annex VII to the Staff Regulations. After being offered another job opportunity by the General Secretariat of the Council (GSC), the applicant ended his duties at the CoR on 31 January 2023 and started in his new position on the following day, 1 February 2023, at the GSC, also in Brussels. When calculating the financial entitlements related to his entry into service at the GSC, the PMO reassessed all his entitlements as of 1 February 2023 and refused to grant him the expatriation allowance.

The applicant contested this decision.

The applicant argued that the reference period for determining his entitlement to the expatriation allowance should have been calculated from his initial employment at the CoR in October 2022. As there was no interruption between the two contracts and no change in the place of employment (Belgium), reassessing his entitlement upon taking up his position at the GSC was unnecessary, and the allowance should have been automatically carried over.

Conversely, the Commission (PMO) maintained that, according to case-law, even when there is no break between

contracts, every new employment within the European Union Institutions or Agencies requires a reassessment of the expatriation allowance due to the change of employer.

The General Court ruled in favour of the applicant.

Firstly, the Court highlighted that the expatriation allowance is intended to compensate for the costs of relocating from one Member State to another. In this case, although the applicant changed employers within the European Union, his place of employment remained the same, and there was no break between the contracts.

Secondly, the Court considered that, unlike other cases cited by the Commission, where an interruption in time between contracts or a change in the place of employment justified a reassessment of entitlement to the expatriation allowance, this case did not warrant such a reassessment. In this instance, there was no interruption between the two contracts, and the place of employment (Belgium) remained unchanged.

The Court further noted that other institutions and agencies of the European Union did not consistently apply the approach adopted by the PMO. In some EU institutions, when contracts with the Union succeed one another without interruption, and the place of employment remains unchanged, a change of employer does not affect entitlement to the expatriation allowance. In such cases, there is no need for a reassessment of the entitlement; instead, the rights determined by the previous employer should be carried over unless a manifest error had been made in the initial determination.

In view of these considerations, the Court concluded that, in the absence of any interruption between the applicant's contracts and the absence of any change in his place of employment, there was continuity in the applicant's contracts, justifying the continuation of his entitlement to the expatriation allowance, as determined at the time of his entry into service at the CoR. Consequently, the Court annulled the PMO's decision and, exercising its complete jurisdiction declared that the applicant is entitled to the expatriation allowance, which must be paid retroactively as of his entry into service at the GSC.

BELGIAN LAW

GEOGRAPHICAL SEPARATION OF DIVORCED PARENTS AND THE EXPATRIATION OF A CHILD

In a world where transnational couples are common, the principles of free movement and globalisation encourage—or at least make it possible—for couples to settle in different countries, whether within the European Union or beyond.

When separated parents face a situation where one intends to relocate to another country, it falls on them to decide the residence of their child(ren) and the arrangements for custody. If they cannot reach an agreement, the Family Court must resolve these issues.

These disputes are inherently complex, often requiring the intervention of a third party to decide on the "most appropriate" solution for the child—a decision that is deeply personal and subjective.

To guide this process, the law, case law, and legal doctrine have, over time, established various criteria to assist judges in their assessments, which must always be case-specific:

1. The Best Interests of the Child – A Fundamental and Guiding Principle

When deciding custody arrangements, the judge's primary focus must be the best interests of the child, in accordance with Article 22bis, paragraph 4 of the Constitution. This principle is assessed within the framework of the child's rights, in particular the right to be raised by both parents and to maintain a relationship with each of them (Articles 7.1 and 9.3 of the United Nations Convention on the Rights of the Child).

This right serves as the cornerstone of the debate surrounding a child's relocation and is often the central argument of the parent opposing such a move, particularly in situations where the geographical distance between the parents makes equal or shared custody impractical.

However, this right remains theoretical and cannot create an absolute rule or lead to a blanket refusal of relocation proposals.

Therefore, it is essential to consider all relevant aspects of the family's circumstances to determine what truly serves the child's best interests.

2. Criteria for Assessing the Child's Best Interests and the Suitability of the Relocation Proposal

In cases involving the geographical relocation of a child from their usual place of residence, legal doctrine—drawing on case law—has identified several criteria to evaluate the proposal's viability.

These criteria are merely guidelines, and it is impossible to predict in advance which factors might have the greatest weight in a particular case.

The criteria can be summarised as follows:

2.1. Criteria Related to the Relocation Proposal

- **The reasons for the relocating parent's decision**: These might include the desire to return to their home country, career opportunities, personal relationships, medical needs, or the psychological well-being of the relocating parent.
- **The quality and coherence of the relocation plan**: Case-law examines factors such as the relocating parent's professional stability, the material conditions for

accommodating the child, and the child's access to education, extracurricular activities, social networks, and/or language opportunities. The more well-structured, coherent, and high-quality the plan, the more likely it is to gain the court's approval.

- **The existence of a prior joint relocation plan**: If, before the separation, the parents had agreed on relocating with the child, the judge may be more inclined to approve the proposal.

2.2. Criteria Related to the Child's Well-Being

- **The child's ability to adapt to the relocation plan**: For instance, courts might consider the child's adaptability based on their young age or previous exposure to an international lifestyle.
- **The potential for maintaining a relationship with the non-relocating parent**: The judge will carefully evaluate whether the relocating parent can ensure that the other parent remains an active and significant presence in the child's life.
- **The emotional continuity**: This involves determining whether the relocating parent is the child's primary caregiver and emotional anchor.
- **The availability and involvement of each parent**: A parent's lack of involvement or the increased availability of the other parent may also be significant factors in the court's deliberation.

An analysis of rulings on such matters reveals that there is no dominant legal precedent, as the specifics of each case and the complex realities of family dynamics are central to the decision-making process.

While the framework for judicial reasoning and debate can be outlined, it is impossible to predict the outcome of any individual case.

For disputes of this nature, alternative conflict resolution methods are especially critical. They provide an opportunity to replace adversarial court proceedings with a calmer, more constructive discussion and, ideally, allow parents to reach a mutually agreed-upon solution.