



the FFICI@L

legal newsletter on European civil service law
newsletter juridique de la fonction publique européenne
June 2025 – number 103 – 12th year

contact : theofficial@daldewolf.com

www.daldewolf.com



OUR TEAM

DALDEWOLF:

*European Union Law and
Human Rights:*

Thierry BONTINCK
Anaïs GUILLERME
Marianne BRÉSART
Laura JAKOBS
Lucie MARCHAL
Louise BOUCHET
Sabrina NAPOLITANO
Federico PATUELLI

Belgian Law:
Dominique BOGAERT

*In partnership with
PERSPECTIVES law firm:*

Family Law:

Candice FASTREZ

EDITORIAL

Dear readers,

For this final issue before our summer break, we are offering a focus on the main privileges and immunities granted to European Union officials. We will also revisit the *K et al. v. Council* judgment, which annulled a non-promotion decision due to non-compliance with the guiding promotion rates.

In our "Belgian Law" section, we will discuss the practical application of Regulation No. 261/2004 on passenger rights in cases of denied boarding, flight cancellations, or long delays.

This newsletter is also yours, and we welcome all your suggestions for future editions. Feel free to contact us by email: theofficial@daldewolf.com.

We wish you a wonderful summer and look forward to seeing you again in September!

The DALDEWOLF team

- 01 FOCUS – OVERVIEW OF PRIVILEGES AND IMMUNITIES
- 02 CASE-LAW – *KIVISOKI ET AL. V. COUNCIL*: ANNULMENT OF A NON-PROMOTION DECISION DUE TO FAILURE TO APPLY THE REFERENCE PROMOTION RATE
- 03 BELGIAN LAW – SUMMER IS COMING! KNOW YOUR RIGHTS IN CASE OF A DISRUPTED FLIGHT

Focus – Overview of Privileges and Immunities

The privileges and immunities granted to officials and other agents of the European Union, governed by Protocol No. 7 on Privileges and Immunities (PPI) annexed to the Treaties, as well as Article 23 of the Staff Regulations, are intended to ensure the independence of staff members and the proper functioning of the European Union. These provisions apply exclusively in the interest of the Union and in no way exempt officials from their private obligations or from complying with applicable laws and regulations.

Jurisdictional Immunity

Article 11 of the PPI grants EU staff immunity from legal proceedings for acts performed and for words or writings spoken or written in the exercise of their official duties, regardless of their nationality. This immunity aims to guarantee the independence necessary for fulfilling their duties and continues even after their service has ceased.

However, this immunity is not absolute. Article 17 of the PPI provides that the relevant institution may waive immunity if doing so does not prejudice the interests of the Union. For example, in case C-3/20 (LR Generalprokuratūra), the Court of Justice of the EU clarified that the immunity provided under Article 11 of the PPI is not an absolute bar to criminal proceedings, provided national authorities request the lifting of immunity beforehand.

Tax Exemption

Tax exemption for salaries, wages, and emoluments paid by the EU is provided under Article 12 of the PPI. These incomes are subject to a specific internal EU tax and are separate from national taxation systems.

In case C-558/10 (Bourges-Maunoury and Heintz), the Court ruled that Member States may not include such remuneration when calculating national tax thresholds (e.g., wealth tax), as this would amount to indirect taxation of EU-exclusive income.

However, this exemption does not apply to other income from national sources—such as rental income, inheritance, or self-employment—which

remains subject to the tax laws of the Member State concerned. In case C-349/14 (Pazdziej), the Court ruled that EU salaries may be considered for calculating housing tax in France since that tax is based on household composition rather than directly on income.

The exemption also extends to certain aspects of social security. In case C-415/22 (Acerta – Social Insurance Fund), a retired EU official who began a self-employed activity in Belgium was required to contribute to the national social security system. The CJEU ruled this affiliation incompatible with the PPI, as the person remained covered by the EU's social security system (JSIS). However, income from the self-employed activity remains taxable at national level.

Mobility and Administrative Facilities

To promote mobility within the EU, officials and agents enjoy reduced administrative burdens. Article 11(b) of the PPI exempts them from immigration and registration formalities in the host Member State.

For example, the Court sanctioned Belgium for imposing a tax related to non-registration in population registers (Commission v. Belgium, Case 85/85).

Some material benefits are also provided. Upon arrival, officials may import their personal vehicle into their country of assignment without additional costs, in accordance with internal market rules. In some institutions, officials may also benefit from a VAT exemption on purchases made during their first year.

Limits of Privileges and Immunities

However, EU officials are not exempt from national law in their private lives. According to Article 23 of the Staff Regulations, these protections serve only the Union's interest and do not exempt officials from compliance with national laws or personal obligations.

National courts retain jurisdiction in matters such as family or civil law. In case Kallianos v. Commission

(T-93/04), a Belgian court ordered an official to pay monthly maintenance to an ex-spouse. The institution was authorised to deduct the amount from the official's pension, acting in this case as a regular employer.

The same principle applies to civil debts, unpaid rent, or other contractual obligations. In such cases,

officials are fully subject to national laws. If the institution is involved as a third party to execute a court decision, it can only invoke immunity if enforcement would impair the functioning of the Union. In the absence of such risk, the institution must allow the judgment's enforcement, as any employer would.

Case-law - *Kivisoki et al. v. Council*: Annulment of a Non-Promotion Decision Due to Failure to Apply the Reference Promotion Rate

On 30 April 2025, the EU General Court issued its judgment in case T-202/23 (*Kivikoski et al./Council*), annulling the decision of non-promotion to grade AST 8 for three Council officials during the 2022 promotion exercise.

Background

The applicants were included in the list of 81 officials eligible for promotion to grade AST 8, published by the Council's appointing authority on 20 June 2022. However, Staff Note 30/22 announced the opening of only 18 promotion opportunities at this grade. Yet, the number of promotions to AST 8 in 2022 should have been calculated by applying the statutory multiplication rate of 25%, as provided for in Annex I, section B, of the Staff Regulations, to the number of AST 7 officials in active service on 1 January 2021 (145 officials), which equals approximately 37 promotions.

On 13 July 2022, the list of officials proposed for promotion was published, excluding the names of the applicants. They then filed a complaint against this act, followed by an action before the EU General Court.

Standing to Act/Admissibility of the Case

The General Court ruled that the applicants had standing to act against the list of promoted officials for two reasons. First, the list of promoted officials also causes harm to those whose names do not appear on the list, as it constitutes an implicit refusal to promote them.

Second, the three applicant officials, who had at

least two years of seniority in grade AST 7 and presented satisfactory evaluation reports with comparable scores to other eligible officials, could demonstrate a reasonable prospect of being promoted if the number of promotions granted had adhered to the statutory multiplication rate.

Misapplication of the Multiplication Rate of 25%

On the merits, the General Court recalls that the multiplication rates used during the promotion exercise must be applied to staff "in active employment on 1 January" as per Article 6(2) of the Staff Regulations, read together with Article 35. The Council argued that it was necessary to adopt corrective measures concerning the promotion rate applicable to AST 7 officials, as there was a constant accumulation of officials in this grade who were not eligible for promotion to higher grades, given they were limited to AST 7 as part of the "career path AST 1-AST 7."

In this regard, the General Court identifies two distinct purposes of the multiplication rates: the first aims to calculate the positions open for promotion (quinquennial application), and the second pertains to determining the average career duration in a grade (not linked to the quinquennial base). Considerations related to the average career duration in grade AST 7 did not permit the Council to apply a promotion multiplication rate different from the one provided for in Annex I, section B, of the Staff Regulations, nor to deviate from the actual number of AST 7 officials in active employment on 1 January 2021, to define the number of promotable AST 7 officials.

The General Court concludes that the principle of

merit cannot be used to derogate from clear statutory rules regarding the opening of promotion positions. Thus, the Council has not demonstrated that it could deviate from the 25% rate or the number of officials in post.

No Violation of the Principle of Non-Automatic Promotion

The General Court also rejected the Council's

argument that adherence to statutory rates would have led to automatic promotion in this instance, contrary to the principle of merit-based promotion.

Conclusion

Consequently, the General Court concludes that the Council misapplied the statutory rules related to the multiplication rate and annulled the Council's non-promotion decision.

Belgian Law – Summer is Coming! Know Your Rights in Case of a Disrupted Flight

Your rights as an air passenger within the European Union are protected under Regulation (EC) No. 261/2004. This Regulation provides, in certain circumstances, for compensation, assistance and/or care in case of a cancelled flight, delay or denied boarding.

The provisions of the Regulation apply to any flight departing from an airport located within the European Union, regardless of the airline flown. They also apply to flights arriving in the European Union from a third country, provided they are operated by an airline established in the EU. Finally, these rules are only valid if the passenger has not already received compensation or assistance under the legislation of a non-EU country for the same flight.

If your flight is cancelled

If the flight is cancelled less than 14 days before departure, the passenger may choose between three options: reimbursement of the ticket, with a return flight if a connection was missed; re-routing to the final destination at the earliest opportunity; or re-routing at a later date, at the passenger's convenience, subject to availability.

It is important to note that as soon as one of these options is chosen, the other two may no longer be claimed.

In the event of reimbursement, the amount of compensation depends on the distance of the flight and may range between €250 and €600.

The passenger is also entitled to assistance during

the entire waiting period. This assistance includes the provision of meals, drinks, accommodation if one or more nights are necessary, as well as transport between the airport and the place of accommodation. If no assistance was provided and the passenger covered the expenses, the airline is required to reimburse them, provided that the expenses are justified, reasonable and appropriate. It is therefore essential to keep all proofs of payment.

Finally, no compensation is due in the event of extraordinary circumstances. This includes extreme weather conditions, medical emergencies or strikes beyond the airline's control.

If your flight is delayed

When your flight is delayed at departure, you are entitled to assistance proportionate to the waiting time (meals, drinks, accommodation if necessary).

If the flight is delayed by more than 5 hours, you may request a refund, provided you forgo the trip. If you arrive at your destination with a delay of at least 3 hours, you may be entitled to compensation (between €250 and €600, depending on the distance), unless the airline proves that the delay was due to exceptional circumstances. Moreover, if the airline offers you re-routing and you reach your destination with a delay, the compensation may be reduced by 50%.

If you miss a connection due to a delay, you may also be compensated if your delay on arrival exceeds 3 hours.

Denied boarding

If you are denied boarding against your will, for example due to overbooking, you are entitled under EU regulations to fixed compensation of up to €600 depending on the flight distance, the choice between a refund or re-routing to your final destination, and on-site assistance such as meals, refreshments, and accommodation if necessary. These rights do not apply if you arrive late for check-in or do not have the required travel documents.

How to assert your rights

The first step is to submit a complaint to the airline.

Each carrier provides a specific form or procedure on its website. You should keep all travel documents: ticket, boarding pass, written correspondence, etc.

If the airline does not respond within two months or if the response is deemed unsatisfactory, the passenger may file a complaint with the national competent authority. In Belgium, this is the **Denied Boarding Authority**.

It is also possible to take legal action, via the *European Small Claims Procedure*, if the conditions for doing so are met.