

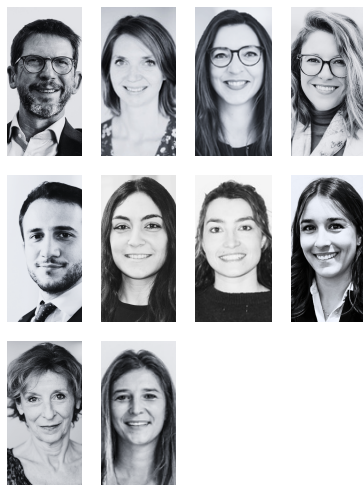


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contact : theofficial@daldewolf.com

www.daldewolf.com



OUR TEAM

DALDEWOLF:

European Union Law and Human Rights:

Thierry BONTINCK
Anaïs GUILLERME
Lucie MARCHAL
Celia ANDRÉ
Pauline BAUDOUX
Telma BONNENFANT
Sabrina NAPOLITANO
Federico PATUELLI

Belgian Law:
Dominique BOGAERT

*In partnership with
PERSPECTIVES law firm:*

Family Law:

Candice FASTREZ

EDITORIAL

Dear readers,

This month, we are pleased to present an article exploring the distinctions between the “recovery of undue payments” and the “financial liability” of officials and other staff members.

We will then comment on a recent judgment of the General Court of the European Union concerning the liability of the European Union as an employer and the related claims for compensation.

Finally, our “Belgian Law” section will address Belgian tax obligations and remedies against municipal surcharges applicable to non-resident income tax.

And you — what topic matters most to you?

A forthcoming issue of The Official may take a closer look at it for you!

We look forward to receiving your suggestions at: theofficial@daldewolf.com.

The DALDEWOLF team

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Focus – When the Institution Seeks to Recover Money from You: Undue Payment Recovery or Financial Liability?

Many officials and agents have questions about the difference between “recovery of undue payments” and “financial liability”, as these two mechanisms may appear to overlap. However, these two legal mechanisms are in fact clearly distinct.

This article therefore aims to present, in a structured manner, the differences between these two legal concepts.

With regard to the recovery of undue payments, this concept is governed by Article 85 of the Staff Regulations (also applicable to other staff members pursuant to Article 116 of the Conditions of Employment of Other Servants – CEOS), which provides that “Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.” This provision thus establishes a system for the recovery of undue payments based on the existence of an irregular payment of sums deemed to be due to the official under Title V of the Staff Regulations, which concerns the official’s remuneration and social benefits (General Court, judgment of 11 November 2020, *AV and AW v Parliament*, T-173/19, paragraph 84).

According to the case-law, recovery of undue payments by the administration requires proof that a sum or financial advantage was irregularly paid to the official or staff member concerned and that the latter had actual knowledge of that irregularity, or that it was so obvious that he or she could not have been unaware of it.

In this regard, the EU judge has clarified that the expression “so obvious”, characterising the irregularity of the payment, does not mean that the official or agent who benefited from the undue payment is relieved of any effort of reflection or verification. Rather, it means that repayment is required where the error is one that would not

escape a normally attentive and diligent official or agent, who is deemed to know the rules governing his or her salary and the rules generally applicable to him or her. In the absence of proof of such knowledge in the context of a dispute, it is necessary to examine the circumstances in order to determine whether the irregularity was manifest (General Court, judgment of 15 December 2021, *HG v Commission*, T-693/16 P-RENV-RX, paragraph 112; General Court, judgment of 8 September 2017, *Gillet v Commission*, T-578/16, paragraphs 96–97).

By way of illustration, where an official receives remuneration higher than that to which he or she is normally entitled, without any change in his or her administrative situation, this constitutes an error attributable to the administration. Nevertheless, the official remains obliged to repay the overpaid amount, since he or she is deemed to know the exact amount of his or her remuneration.

As regards time limits, Article 85 of the Staff Regulations provides that the administration may request repayment of sums wrongly paid within a period of five years from the date of payment. However, this limitation period does not apply where the person concerned has deliberately misled the appointing authority, in particular by omitting important personal information or by providing incorrect information (General Court, judgment of 11 November 2020, *AV and AW v Parliament*, T-173/19, paragraph 106).

The decision relating to the recovery of undue payments may be adopted, where appropriate, after the appointing authority has enabled the official or staff member to exercise his or her right to be heard, and once the conditions laid down in Article 85 are met (General Court, judgment of 15 December 2021, *HG v Commission*, T-693/16 P-RENV-RX, paragraph 112).

As regards the financial liability of the official or

agent, it is governed by Article 22 of the Staff Regulations and Article 11 of the CEOS. This provision establishes a liability regime aimed at obtaining compensation for the damage suffered by the European Union in the event of serious personal misconduct committed by an official in the performance of his or her duties or in connection therewith. Its scope is broader than that of Article 85 of the Staff Regulations, since the financial liability of the official may relate not only to payments received in error, but also to amounts unlawfully incurred by the Union as a result of the official's fault (General Court, judgment of 26 June 2024, *UA v AUEA*, T-3/23).

In this context, the appointing authority may adopt a decision relating to financial liability under Article 22 of the Staff Regulations only after strict compliance with the required disciplinary procedures. This notably entails establishing the existence of serious misconduct, generally following a preliminary investigation, disciplinary proceedings before the Disciplinary Board, and a final adversarial phase with the appointing authority, in accordance with the provisions of Annex IX to the Staff Regulations (General Court, judgment of 15 December 2021, *HG v Commission*, T-693/16 P-RENV-RX, paragraph 112).

In this regard, the EU judge has specified that, in

order to characterise "serious personal misconduct", the appointing authority must examine the circumstances and may not merely find that the official or staff member concerned has breached rules or obligations (General Court, judgment of 15 December 2021, *HG v Commission*, T-693/16 P-RENV-RX, paragraph 99).

As regards the limitation period for initiating financial liability proceedings against an official or staff member, Article 22 of the Staff Regulations does not contain any explicit indication. However, reference should be made to Regulation (EU) financial Regulation No 2024/2509 of 23 September 2024. Article 105(2) thereof provides for a limitation period of five years from the date on which the official's or staff member's debt becomes due.

In summary, the conditions for the application of Articles 85 and 22 of the Staff Regulations differ significantly. Article 85 merely requires proof that an irregular advantage was granted and that the official was aware of it or should have been aware of it. By contrast, Article 22 requires the establishment of serious personal misconduct giving rise to damage, and its conditions of application are more stringent, as the administration must comply with the procedural formalities laid down in disciplinary matters.

Case-law - Liability of the EU Employer and Claims for Compensation: Key Takeaways from the Judgment *FA v EIB* (T 465/24, 25 February 2026)

Limitation Periods, Admissibility and Proof of Fault: What You Need to Know

The judgment illustrates the rigor with which the EU judge reviews both the admissibility and the merits of staff members' claims for compensation.

Facts

Following an incident within the secretariat of the European Investment Bank (EIB), the staff members placed under the applicant's supervision were placed on sick leave or required medical treatment.

The EIB's Human Resources Department subsequently decided to open an internal investigation concerning the applicant. In the

meantime, a decision relieving her entirely from duties was adopted, without any specified time limit.

The final investigation report concluded that there had been a lasting deterioration of the working climate linked to the applicant's management style, while at the same time acknowledging her professional competence. The doctors consulted recommended that the staff members concerned should no longer work with her. The report therefore recommended her reassignment to another department, specifying that this measure did not constitute a disciplinary sanction.

The applicant was reassigned and subsequently placed on sick leave. Her condition was recognised

as an occupational disease. A compensation offer, based on a 20% invalidity rate, was made by the EIB's insurer and accepted by the applicant (€134,977.47, 20% invalidity rate and an 8x multiplier coefficient).

The applicant later submitted a claim for additional compensation, seeking €20,000 for non-material damage and €787,000 for material damage. She argued that the alleged faults committed by the EIB prior to her invalidity had caused damage that was not covered by the compensation already received from the insurer.

These elements formed the basis of an action for damages brought before the General Court of the EU against the EIB in its capacity as employer.

Subject of the action and issues of admissibility

The General Court states at the outset that the action seeks exclusively additional compensation over and above that granted in respect of the occupational disease.

A. Limitation period and reasonable time

The EIB argued that the claim was time-barred, since the applicant had failed to challenge the compensation offer within a reasonable time. The Court noted that twenty-one months had elapsed between the definitive offer and the request for additional compensation, but held that this period was not unreasonable, in particular in view of the applicant's psychological vulnerability.

B. Possibility of seeking compensation without challenging the acts at issue

The Court recalled settled case-law according to which a staff member who has failed to challenge, in due time, an act adversely affecting him or her cannot circumvent that omission by bringing an action for damages. However, it found that, in the present case, the applicant was not seeking to challenge the legality of the accepted compensation offer, but rather to obtain reparation for damage resulting from earlier decisions and facts that had allegedly been insufficiently compensated. The action was therefore declared admissible on this point.

Acts adversely affecting the applicant and admissibility of heads of damage

The second issue examined by the Court concerned the possibility of seeking compensation in respect of acts that had not been the subject of an action for annulment.

As regards the decision relieving the applicant from duties without any time limit, the Court declared the related claims for compensation inadmissible, since the applicant had not sought annulment of that decision in due time.

With regard to the reassignment decision, the Court recalled that reassignment measures are, in principle, internal organisational measures not open to an action for annulment, unless they adversely affect the staff member's moral interests or career prospects. In the present case, having regard to the applicant's psychological vulnerability and to the substantially different nature of the duties assigned to her without adequate preparation, the decision had to be classified as an act adversely affecting her. However, such classification also required the introduction of an action for annulment against the reassignment decision. In the absence of such an action, the damages claim based on that decision was likewise inadmissible.

Consequently, only the claims for compensation relating to facts prior to the opening of the internal investigation and to the conduct of that investigation were admissible.

Examination of the merits: absence of fault on the part of the EIB

With respect to the admissible heads of damage, the Court examined whether the alleged facts and decisions constituted a fault directly linked to the damage claimed.

It found that the time taken by the administration to intervene between the emergence of difficulties within the department and the adoption of management measures was not unreasonable, given the complexity of the situation. It also noted that the applicant had adduced no probative evidence showing that unverified accusations had been included in her personal file.

Lastly, the Court held that the applicable rules did not require the EIB to open an assistance procedure of its own motion in the absence of allegations of harassment by the persons concerned, which were lacking in the present case. It further observed that the applicant had failed to establish that the damage alleged had not already been sufficiently compensated by the overall indemnification received in respect of the occupational disease.

Since no fault on the part of the EIB was

established, the action was dismissed in its entirety, without the need to examine the other two constituent conditions of non-contractual liability.

Conclusion

The judgment *FA v EIB* clarifies the framework applicable to compensation claims based on multiple factual situations and reiterates that such claims cannot make up for the failure to challenge

adverse decisions within the prescribed time limits. The judgment also constitutes an important illustration of circumstances in which a reassignment decision may constitute an act adversely affecting a staff member and thus be open to challenge. Finally, it highlights the importance, in cases involving allegations of harassment, of submitting a request for assistance where required and of assembling solid evidence at an early stage.

Belgian Law – Belgian tax obligations and legal remedies against the additional tax levied on non-resident income taxpayers

in cooperation with Lida ACHTARI, Avocate, Counsel

As a rule, a person is regarded as a Belgian tax resident if they have established their domicile or the center of their economic interests in Belgium.

By way of exception, officials and other servants of the European Union who have settled in Belgium solely for the purpose of exercising their functions are deemed to have remained tax residents of the Member State in which they were resident at the time of taking up their duties. This so-called “residence exception” applies only for the purposes of income and wealth taxes, inheritance taxes and the application of double taxation conventions. It remains applicable for as long as the official is in active service.

This residence exception also applies to the spouse, provided that the spouse does not pursue an independent professional activity, as well as to dependent children under the care of the EU official.

An EU official benefiting from this residence exception and therefore considered to be tax resident in another Member State may wonder whether they are nevertheless required to file a tax return in Belgium.

If the official has no income of Belgian source (other than their remuneration from the European Union) and does not own any immovable property in Belgium, no tax return needs to be filed in Belgium.

By contrast, a non-resident tax return may be required in other cases, depending on the provisions of the double taxation conventions concluded between Belgium and the Member State of residence of the EU official.

As a general rule, tax treaties provide that income from immovable property is taxable in the State where the property is located.

In principle, a non-resident tax return must therefore be filed where immovable property is located in Belgium. However, Belgian legislation exempts non-residents from filing such a return, in particular in the following cases: (i) where the immovable property is not rented out and is not used for professional purposes, or (ii) where the property is rented out, but the real estate income does not exceed EUR 2,500 and the non-resident has not received any professional income of Belgian source.

For the purpose of applying the EUR 2,500 threshold, real estate income is determined according to the type of lease:

- Where the property is leased to individuals who do not use it for professional purposes, the relevant amount is the indexed cadastral income increased by 40% (and not the actual rent received);
- Where the property is leased to persons who use it for professional purposes, the relevant amount is the actual rent and rental benefits received, reduced by a flat-rate allowance for expenses of 40% (this allowance being capped at two-thirds of the revalued cadastral income, calculated

- using an annual coefficient, which amounted to 5.63 for the 2025 income year).

Furthermore, where such real estate income must be declared and taxed in Belgium, the non-resident is required, in addition to the income tax, to pay an additional tax of 7%, intended to be equivalent to the municipal surcharges applicable to Belgian residents.

Municipal surcharges constitute an additional tax to personal income tax (applicable to Belgian tax residents), levied for the benefit of the municipalities and their rate varies depending on the municipality in which the taxpayer resides (ranging from 0% in Knokke-Heist to 9% in Messines), whereas the additional tax applicable to non-residents accrues to the federal State and is fixed at 7%.

The Court of Justice has recently pointed out that the additional tax levied on non-residents may, in certain cases, be higher than the municipal surcharges applicable to Belgian residents (CJEU, judgment of 12 March 2026, *Chefquet*, C-119/24). It

held that such a difference in treatment infringes the Treaty on the Functioning of the European Union (CJEU, judgment of 12 March 2026, *Chefquet*, C-119/24, paragraphs 59 and 68–69).

The Court held that such a difference in treatment infringes the Treaty on the Functioning of the European Union.

The question referred to the Court by the Belgian judge concerned a potential breach of the free movement of workers, but the Court specified that its reasoning would be identical if examined in light of the freedom of establishment or the free movement of capital.

This significant judgment constitutes a new development enabling non-residents who have paid the 7% additional tax to seek reimbursement thereof.

It is therefore possible to go back up to five years and recover the additional taxes paid on income received since 2021, by means of a request for ex officio tax relief.