Reports of Cases

JUDGMENT OF THE GENERAL COURT (Tenth Chamber)

12 February 2025 *

(Civil service – EEAS staff – Remuneration – Family allowances – Education allowance – Article 15 of Annex X to the Staff Regulations – Application for reimbursement of nursery and school fees – Decision to refuse)

In Case T-17/24,

UL, and the other applicants whose names are set out in the annex, [1] represented by A. Guillerme, T. Bontinck and F. Patuelli, lawyers,

applicants,

v

European External Action Service (EEAS), represented by R. Coesme, S. Falek and T. Payan, acting as Agents,

defendant,

THE GENERAL COURT (Tenth Chamber),

composed of O. Porchia, President, M. Jaeger and L. Madise (Rapporteur), Judges,

Registrar: H. Eriksson, Administrator,

having regard to the written part of the procedure,

further to the hearing on 15 October 2024,

gives the following

Judgment [2]

1 By their action based on Article 270 TFEU, the applicants, UL and the six other natural persons whose names are listed in the annex, seek, first, annulment of the decisions of the European External Action Service (EEAS) contained in the emails of 15 February, 23 March, 27 April and 2,

* Language of the case: French.

[1] The list of the other applicants is annexed only to the version sent to the parties and to the addressees referred to in Article 55 of the Statute of the Court of Justice of the European Union.

[2] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

5 and 8 May 2023 ('the contested decisions') which were sent to them in response to their requests concerning the amount of the allowance provided for in Article 3(2) of Annex VII to the Staff Regulations of Officials of the European Union ('the Staff Regulations') in respect of dependent children under the age of five ('Allowance A') and, secondly, recognition of their right to benefit, in respect of their children under the age of five, from that allowance in an amount calculated in accordance with the detailed rules laid down in Article 15 of Annex X to the Staff Regulations and taking account of the exceptional circumstances characterising their situation.

Background to the dispute

2 The applicants are officials and staff of the EEAS based in the United States and the United Kingdom. They submitted requests relating to the amount of Allowance A to which they were entitled for their children aged under five. By the contested decisions, the EEAS responded to those requests.

3 The applicants submitted complaints under Article 90(2) of the Staff Regulations, arguing, in essence, that the amount of Allowance A should be calculated in accordance with the detailed rules laid down in Article 15 of Annex X to the Staff Regulations. Those complaints were rejected by decisions of 29 September 2023.

4 In the decisions rejecting the complaints, the EEAS explained in particular that Article 15 of Annex X to the Staff Regulations establishes, for the benefit of officials and other members of staff serving in a third country, a special scheme concerning exclusively the amount of the education allowance provided for in Article 3(1) of Annex VII to the Staff Regulations for dependent children aged five or over ('Allowance B'), and not the amount of Allowance A. Thus, according to the EEAS, in the case of officials and other members of staff whose children are under the age of five, the institutions are only legally obliged to pay Allowance A under the conditions set out in Article 3(2) of Annex VII to the Staff Regulations.

5 The decisions rejecting the complaints state that the EEAS, making use of its institutional autonomy, has nevertheless decided to apply Article 15 of Annex X to the Staff Regulations 'by analogy' to officials and other members of staff serving in a third country whose children are aged between three and five. Thus, according to that approach, which has been described as 'very generous', the officials and other members of staff concerned receive, in addition to Allowance A, a benefit referred to by the EEAS as the 'institutional reimbursement supplement' ('the institutional supplement'). Under that scheme, officials and other members of staff serving in a third country may be reimbursed for expenses incurred for the education of their children aged between three and five, up to a ceiling defined 'in the spirit' of Article 15 of Annex X to the Staff Regulations, in accordance with the procedures defined by the EEAS in the internal document entitled 'EU Delegations' Guide – Education allowances' ('the Delegations' Guide').

6 In the decisions rejecting the complaints, the EEAS argues that it has thus enabled its officials and other members of staff to benefit from an advantage which goes beyond what is provided for by the strict application of the Staff Regulations. However, the EEAS states that it has a wide margin of discretion to determine how it uses the budgetary envelope allocated to non-compulsory expenditure. The EEAS therefore considers that, given that wide margin of discretion, it was free to apply only part of Article 15 of Annex X to the Staff Regulations when setting the ceiling for the institutional supplement.

Forms of order sought

7 The applicants claim that the Court should:

– annul the contested decisions;

– uphold their entitlement to Allowance A for their children under five years of age, calculated in accordance with the detailed rules laid down in Article 15 of Annex X to the Staff Regulations and taking into account the exceptional circumstances affecting them;

– order the EEAS to pay the costs.

8 The EEAS contends, in essence, that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

Law

The claims for annulment

…

The first plea in law

10 By their first plea in law, the applicants contest the interpretation adopted by the EEAS, according to which Allowance A is excluded from the application of Article 15 of Annex X to the Staff Regulations.

…

15 Annex VII to the Staff Regulations sets out the rules on remuneration and reimbursement of expenses. Section 1, Articles 1 to 3, contains provisions relating to family allowances.

16 Article 3 of Annex VII to the Staff Regulations, in the version applicable to the dispute, provides as follows:

‘1. Subject to the conditions laid down in the general implementing provisions, an official shall receive an education allowance equal to the actual education costs incurred by him up to a maximum of EUR 311[.]65 per month for each dependent child, within the meaning of Article 2(2) of this Annex, who is at least five years old and in regular full-time attendance at a primary or secondary school which charges fees or at an establishment of higher education. …

2. For each dependent child within the meaning of Article 2(2) of this Annex who is less than five years old or is not yet in regular full-time attendance at a primary or secondary school, the amount of this allowance is fixed at EUR 112[.]21 a month.’

…

19 Under Article 15 of Annex X to the Staff Regulations:

'On the conditions laid down by the appointing authority, the official shall receive an education allowance to cover the actual education costs incurred, payment of the allowance being made on the production of supporting documents. Except in cases deemed exceptional by the appointing authority, this allowance shall not exceed three times the doubled maximum education allowance.'

…

21 As a preliminary point, it must be borne in mind that the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of its context, and of the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EU law may also reveal elements that are relevant to its interpretation (see judgment of 25 June 2020, *A and Others (Wind Turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 37 and the case-law cited).

22 It should also be borne in mind that provisions of EU law which give entitlement to financial benefits must be interpreted strictly (see, to that effect, judgment of 18 July 2017, *Commission* v *RN*, T-695/16 P, not published, EU:T:2017:520, paragraph 54 and the case-law cited).

23 With regard to the wording of Article 15 of Annex X to the Staff Regulations, that provision states that the allowance it designates is intended to cover the 'actual education costs', that it is paid 'on production of supporting documents' and that, save in exceptional cases, that allowance may not exceed a certain ceiling. Thus, it follows from the actual wording of Article 15 of Annex X to the Staff Regulations that that provision cannot apply to Allowance A, which is a flat-rate allowance, the amount of which is fixed for all recipients and does not depend on the costs incurred by them in bringing up their children. Consequently, when Article 15 of Annex X to the Staff Regulations states that 'this allowance shall not exceed three times the doubled maximum education allowance', it is necessarily referring to Allowance B, which covers the schooling costs incurred by the beneficiaries of that allowance up to a monthly ceiling.

24 In support of their interpretation, the applicants claim that the lump sum referred to in Article 3(2) of Annex VII to the Staff Regulations 'constitutes the "ceiling" within the meaning of Article 15 of Annex X to the Staff Regulations'. However, that interpretation is not compatible with the wording of those provisions. Having regard to the usual meaning, in everyday language, of those concepts, the term 'amount', which refers here to a sum of money at a precisely defined level, cannot be regarded as synonymous or equivalent to the term 'ceiling', which refers to an upper limit, a maximum which may not be exceeded.

25 The applicants also claim that the concept of 'tuition fees' must be interpreted as also including crèche and nursery fees. However, that argument, which relates exclusively to the concept of 'school fees', is not, in any event, such as to invalidate the analysis that Article 15 of Annex X to the Staff Regulations, which refers to an allowance intended to reimburse actual school fees on production of supporting documents and subject to a ceiling which may be exceeded only in exceptional cases, cannot concern Allowance A, which is paid on the basis of a lump sum.

26 It follows from the foregoing that an analysis of the wording of Article 15 of Annex X to the Staff Regulations favours an interpretation according to which only Allowance B falls within the scope of that provision.

27 As regards the contextual interpretation, the applicants submit that Article 15 of Annex X to the Staff Regulations must be analysed in conjunction with Article 3 of Annex VII to the Staff Regulations. They point out in that regard that, in the judgment of 14 December 2017, *Trautmann* v *EEAS* (T-611/16, not published, EU:T:2017:917, paragraph 53), the Court emphasised that Article 15 of Annex X to the Staff Regulations contains special provisions derogating from Article 3 of Annex VII to the Staff Regulations in respect of officials serving in a third country.

28 The Court finds that, in analysing the context of Article 15 of Annex X to the Staff Regulations, account must be taken of Article 3 of Annex VII to the Staff Regulations, since the former provision introduces, for officials and other members of staff serving in a third country, rules which derogate in part from those laid down by the latter. In that respect, it should be noted that Article 15 of Annex X to the Staff Regulations provides that officials are to receive an 'education allowance to cover the actual education costs incurred'. The wording of that provision thus echoes the terms of Article 3(1) of Annex VII to the Staff Regulations, which provides that 'an official shall receive an education allowance equal to the actual education costs incurred by him [or her]'. The fact that the EU legislature uses similar terms to designate the allowance referred to in Article 3(1) of Annex VII to the Staff Regulations and that referred to in Article 15 of Annex X to the Staff Regulations supports the interpretation that the latter provision applies only to the allowance referred to in Article 3(1) of Annex VII to the Staff Regulations, that is to say, Allowance B. Conversely, Article 3(2) of Annex VII to the Staff Regulations, which deals with Allowance A, is drafted in terms that differ both from those used in paragraph 1 of that article and from those used in Article 15 of Annex X to the Staff Regulations. Article 3(2) of Annex VII to the Staff Regulations refers to an 'allowance', which is not expressly described as an 'education allowance', and provides that that allowance is paid on the basis of a monthly lump sum. The fact that that allowance is paid on a flat-rate basis means that, unlike Allowance B, it is not intended to cover the actual costs incurred by the official or other member of staff concerned in bringing up his or her child.

29 As regards the legislative history of Article 15 of Annex X to the Staff Regulations, the applicants state that that annex was created by Council Regulation (Euratom, ECSC, EEC) No 3019/87 of 5 October 1987 laying down special and exceptional provisions applicable to officials of the European Communities serving in a third country (OJ 1987 L 286, p. 3). The applicants state that, at that date, the Staff Regulations provided only for the payment of Allowance B. The provisions relating to Allowance A were introduced into the Staff Regulations by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the [Staff Regulations] and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1). The applicants point out that that text did not retain the expression 'pre-school allowance', which initially appeared in the proposal for a Council regulation amending the Staff Regulations and the Conditions of Employment of other servants of the European Communities (COM(2002) 213 final). They conclude that the EU legislature chose not to draw a distinction between an 'education allowance' and a 'pre-school allowance' and that Allowance A therefore constitutes an education allowance in the same way as Allowance B.

30 However, that argument is insufficient to conclude that the EU legislature, by adding the provisions contained in Article 3(2) of Annex VII to the Staff Regulations, considered that the allowance thus created fell within the scope of Article 15 of Annex X to the Staff Regulations. In the first place, the fact that Allowance A was not classified as a pre-school allowance in the text ultimately adopted is not sufficient to hold that the EU legislature intended, as regards that allowance, to apply the derogating rules laid down in Article 15 of Annex X to the Staff Regulations to officials and other members of staff serving in a third country. In the second place, as the EEAS points out, the adoption in 2004 of the provisions set out in Article 3(2) of Annex VII to the Staff Regulations was not accompanied by an amendment to Article 15 of Annex X to the Staff Regulations. As the EEAS points out, the fact that Article 15 of Annex X to the Staff Regulations was not amended may be interpreted as meaning that, unlike in the case of Allowance B, the EU legislature did not intend to lay down special and exceptional conditions for granting the newly created flat-rate allowance to officials and other members of staff serving in a third country.

31 Lastly, as regards the objectives of Article 15 of Annex X to the Staff Regulations, the applicants refer to the preamble to Regulation No 723/2004 and, in particular, to recitals 26 and 27 thereof, which state, respectively, that the education allowance should be aligned more closely with the actual level of expenditure and that it is necessary to reform the system of family allowances in order to improve the situation of families and, in particular, to address the problems of parents of young children.

32 It should be borne in mind at the outset that Article 15 of Annex X to the Staff Regulations does not derive from Regulation No 723/2004, nor has it been amended by that regulation. Consequently, that article cannot be interpreted in the light of the recitals of that regulation.

33 Moreover, the objectives set out in paragraph 31 above are not such as to support the interpretation of Article 15 of Annex X to the Staff Regulations put forward by the applicants. First, the objective of aligning the education allowance more closely with the level of expenditure concerns only Allowance B, since the latter, unlike Allowance A, is intended to cover the schooling costs incurred by officials and other members of staff up to a ceiling. Secondly, while the EU legislature intended to pursue the objective of improving the situation of families, and in particular of parents of young children, it is clear from recital 27 of Regulation No 723/2004 that that objective concerns the family allowance system as a whole and does not relate specifically to allowances A and B. In any event, that objective, expressed in general terms, cannot suffice to lead to the conclusion that the EU legislature intended to provide that officials and other members of staff serving in a third country should be entitled to Allowance A under conditions different from those which apply in respect of officials and other members of staff serving within the European Union.

34 The applicants also refer to the preamble to Regulation No 3019/87, which states that ‘there should be special provisions for officials serving in third countries, on account of special living conditions there’. However, while it is clear from that preamble that the aim of the EU legislature was to adapt on certain points the provisions of the Staff Regulations applicable to officials serving in third countries, no conclusion can be drawn from the formulation of such a general objective as to the scope of Article 15 of Annex X to the Staff Regulations.

35 The applicants also rely on the judgment of 25 October 2018, *PO and Others* v *EEAS* (T-729/16, EU:T:2018:721). However, in that case, the Court interpreted the second sentence of Article 15 of Annex X to the Staff Regulations and, in particular, the concept of ‘exceptional cases’ used therein.

By contrast, the Court did not rule on the question whether Allowance A fell within the scope of Article 15 of Annex X to the Staff Regulations. In that respect, it should be noted that the dispute submitted to the Court in this case related exclusively to entitlement to Allowance B. That judgment does not therefore allow any conclusion to be drawn as regards the application of Article 15 of Annex X to the Staff Regulations to officials and other members of staff serving in a third country who are in receipt of Allowance A.

36 In addition, as the applicants maintain, the Court has noted that one of the objectives pursued by Article 15 of Annex X to the Staff Regulations is that officials serving in a third country should be treated in a non-discriminatory manner compared with officials serving within the European Union as regards free education for their children (see, to that effect, judgment of 25 October 2018, *PO and Others* v *EEAS*, T-729/16, EU:T:2018:721, paragraphs 68 and 97). However, the objective of avoiding discrimination against officials serving outside the European Union does not, in itself, justify interpreting Article 15 of Annex X to the Staff Regulations as meaning that that provision applies to both Allowance A and Allowance B. Furthermore, it should be noted that the Court has held that, in interpreting Article 15 of Annex X to the Staff Regulations, account must also be taken of the objective of the EU legislature to prevent excessive expenditure from burdening the budget of the EEAS, from which the Court has deduced that, in applying the second sentence of that article, the EEAS is entitled to take budgetary constraints into account (see, to that effect, judgment of 25 October 2018, *PO and Others* v *EEAS*, T-729/16, EU:T:2018:721, paragraphs 70 and 72). Taking account of such an objective is not capable of supporting the interpretation put forward by the applicants, which leads to a broad scope of application of the provision at issue.

37 It follows from the foregoing that an analysis of the wording, context and legislative history of Article 15 of Annex X to the Staff Regulations supports the interpretation defended by the EEAS that only Allowance B falls within the scope of that provision. Furthermore, an analysis of the objectives pursued by the EU legislature does not support the contrary interpretation put forward by the applicants. Lastly, it should be noted that the latter interpretation leads to a broad scope of application of the provision at issue, in contradiction to the principle noted in paragraph 22 above that provisions of EU law giving entitlement to financial benefits must be interpreted strictly.

38 In the light of all those factors, Article 15 of Annex X to the Staff Regulations must be interpreted as meaning that the specific rules which it lays down for the benefit of officials and other members of staff serving in a third country apply only to Allowance B and not to Allowance A.

39 Consequently, contrary to what the applicants maintain, no obligation on the EEAS to grant its officials and other members of staff the benefit of Allowance A by applying the detailed rules laid down in Article 15 of Annex X to the Staff Regulations follows from that article.

…

41 It follows that the first plea in law must be rejected.

…

On those grounds,

THE GENERAL COURT (Tenth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders UL and the other applicants listed in the annex to bear their own costs and to pay those incurred by the European External Action Service (EEAS).**

Porchia Jaeger Madise

Delivered in open court in Luxembourg on 12 February 2025.

[Signatures]