



GUIDELINES FOR THE APPLICATION OF ARTICLE 85 OF THE STAFF REGULATIONS

The purpose of these guidelines¹ is to clarify the implementation by the PMO of Article 85 of the Staff Regulations of Officials, which applies to temporary agents and to contract agents pursuant to Articles 45 and 116 of the Conditions of Employment of Other Servants of the European Union². The guidelines apply to officials and other servants in active employment as well as to former officials or other servants (in the interests of clarity the term ‘staff member’ shall be used hereafter).

Article 85 constitutes a specific provision of the Staff Regulations with regard to the provisions of the Financial Regulation on the recovery of overpayments. Amounts overpaid are thus recovered in principle by means of a deduction at source, insofar as the staff member concerned is rightfully entitled to payments that are certain, of a fixed amount and due under the staff regulation rules. Nevertheless, the principle of recovery by a deduction at source does not rule out the possibility, in certain cases, for the responsible authorising officer by delegation to recover the amount on the basis of a recovery order under the terms of the Financial Regulation³ and the Rules of Application⁴.

These guidelines do not concern the recovery of sums overpaid following a negative retroactive update carried out under Article 3(6) or Article 11(2) of Annex XI to the Staff Regulations. Those articles will govern the execution of updates provided for in Articles 64, 65 and 83 of the Staff Regulations.

The guidelines do not apply to advances granted for social reasons in application of Article 76 of the Staff Regulations. These are recovered in accordance with the conditions laid down by the competent authority⁵.

Competent bodies

1. The decision to apply Article 85 of the Staff Regulations is taken by the competent authority with which the undue payment originated.
2. PMO shall execute the recovery in accordance with these guidelines⁶.

¹ These guidelines were adopted following agreement from the PMO Management Committee and the Legal Service.

² OJ L 56, 4.3.1968, p. 1, as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013.

³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

⁴ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

⁵ The competent authority is the social support service of DG HR. Cf. Commission Decision C(2013)3288 of 4 June 2013 on the exercise of powers conferred on the appointing authority (AIPN) and on the authority empowered to conclude contracts of employment (AHCC), as amended.

Recovery by deduction at source

Recovery by deduction at source is applied to remuneration within the meaning of Article 62 of the Staff Regulations (i.e. basic salary, family allowances and other allowances), and to payments in lieu of remuneration (especially unemployment allowance or invalidity allowance) and deferred remuneration (especially pensions)⁷ (referred to hereafter as ‘remuneration’).

Implementation by deduction at source of advance payments

1. Advances on remuneration granted by PMO are deducted directly from remuneration or from the part of the remuneration they were intended to replace.
2. An undue payment in respect of an advance granted in connection with the sickness insurance scheme may be deducted from remuneration in accordance with these guidelines, without prejudice to the application of Article 30 of the Joint Rules on sickness insurance for officials of the European Union.
3. An advance payment for a mission that was cancelled, or an outstanding amount owed following completion of the mission, is deducted directly from remuneration following formal notification of the cancellation or the validation or closure of the mission in MiPS. If the remuneration is insufficient, the amount is recovered by recovery order.

Deduction of overpayments made to a third party

The overpayment of family allowances which were paid to a third party in the name and on behalf of a staff member or former staff member are deducted from the allowances that are still being paid to the third party. Information concerning the recovery is sent to the third party as well as to the staff member.

If it is not possible to deduct the overpaid allowances from the family allowances still to be paid to the third party, the overpaid family allowances shall be deducted from the remuneration of the staff member or former staff member where he or she could not have been unaware of the change in circumstances of the child(ren) in respect of whom the family allowances were paid.

Notification to the staff member

1. Where a decision under Article 85 of the Staff Regulations is taken by the competent authority with which the undue payment originated⁸, PMO informs the staff member or former staff member, by means of a formal notification, of the proposed modalities for the recovery of the overpayment, drawn up in accordance with the present guidelines.
2. The formal notification indicates that the staff member or former staff member can transmit his or her comments on the proposed recovery modalities within 15 days from the formal notification's receipt, in the absence of which the formal notification will be considered as final decision. The formal notification holds a reference to the possibility to lodge an appeal under Article 90(2) of the Staff Regulations against this final decision.

⁶ These guidelines apply only if there is an amount to be recovered from the total monthly remuneration (or payment in lieu of remuneration), and not from one of the individual headings making up that remuneration. By way of exception, sums of less than EUR 200 are recovered without the possibility of payment by instalment.

⁷ On the basis of Article 85 of the Staff Regulations and Article 46 of Annex VIII thereto.

⁸ This authority can also be the PMO when it was delegated the power as appointing authority or authority empowered to conclude contracts..

3. PMO informs the staff member or former staff member of the final decision that is taken on the basis of the comments transmitted within 15 days following the formal notification. The final decision holds a reference to the possibility to lodge an appeal under Article 90(2) of the Staff Regulations.

Implementation by deduction at source

The deduction at source is implemented as of the second month following the formal notification, without prejudice to the special arrangements foreseen for advance payments. The lodging of an appeal will not have the effect of suspending the implementation.

Establishment of an instalment plan

1. PMO establishes an instalment plan which will serve as a basis for the implementation of the deduction at source. The instalment plan is included in the formal notification.
2. The instalment plan shall foresee the deduction of monthly amounts corresponding to 15 % of the basic salary for the remuneration or of the basic amount for the pension or allowance of the staff member or former staff member (the 'reference amount') or corresponding to a higher percentage if this is required in order to limit the duration of the instalment plan to 24 months.

Modification of the instalment plan

1. The instalment plan may be modified at the reasoned and duly substantiated request of the staff member or former staff member, in particular when such reasons are based on financial or family circumstances, subject to the following restrictions:
 - a. the deduction may be made by means of monthly amounts corresponding to 10 % of the reference amount on condition that the total duration of the instalment plan does not exceed 24 months;
 - b. where the percentage laid down in the original instalment plan is greater than 15 % of the reference amount, the instalment plan may be modified provided that the monthly amount to be repaid is not less than 15 % of the reference amount and the total duration of the instalment plan does not exceed 36 months;
 - c. in exceptional circumstances, the reimbursement over a period that is longer than the maximum of 36 months or by amounts lower than 10 % of the reference amount can be accepted.
2. Irrespective of any request from the staff member or former staff member, PMO may modify the instalment plan on its own initiative if a change in the (former) staff member's circumstances has a significant impact on the reference amount, for instance in case of a change in work pattern. The staff member or former staff member will be informed of the modification of the instalment plan and the reasons for this change by means of a formal notification. The modification will come into effect from the second month following that notification.
3. The deduction may be suspended if the staff member takes leave on personal grounds (CCP), parental leave or family leave for a period not exceeding six months.
4. Any change in the instalment plan requested later than 15 days after the formal notification of the modalities for the recovery will take effect at the latest from the second month following confirmation of the change.

Recovery order

1. Notwithstanding the foregoing, under the conditions provided for in the next paragraph the responsible authorising officer by delegation can decide at any time to recover an overpayment on the basis of a recovery order. The recovery order is executed in accordance with the principles laid down in the Financial Regulation and the Rules of Application. Default interest may then be payable under the conditions laid down in these regulations.
2. As a general rule, PMO resorts to recovery on the basis of a recovery order when it is not appropriate to implement recovery by means of a deduction at source under these guidelines, in particular in the following cases:
 - a. where the staff member has left the service of the institution, or is about to do so, and it will no longer be possible for PMO to deduct the amount from the payments it makes on the basis of the provisions of the Staff Regulations,
 - b. where the staff member is not receiving a remuneration in view of his or her administrative status,
 - c. where it is not possible to lay down an instalment plan to proceed with the recovery of overpayments,
 - d. where recovery follows a recommendation from OLAF or a disciplinary decision,
 - e. in other specific cases, such as when the overpayment is the result of a technical error which led to a payment being made without legal basis under the Staff Regulations.

Implementation following the death of the staff member or former staff member

Following the death of a staff member or former staff member, any sums that are still owed to the Union are deducted from the benefits provided under the pension scheme pursuant to Article 46 of Annex VIII to the Staff Regulations. PMO will follow these guidelines as much as possible when determining an instalment plan.

If the staff member or former staff member died without leaving any descendants entitled to payments under the staff regulation rules, the responsible authorising officer by delegation will execute the recovery against the deceased's estate in accordance with the principles laid down in the Financial Regulation, as specified in the Rules of Application.

Entry into force of the guidelines

These guidelines will enter into force on the day following that of their publication. Instalment plans that are being executed shall only be modified at the request of the staff member concerned.

Brussels, 4 July 2018

Signed
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Director PMO