



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-328/20  
Commission v Austria (Indexation of family benefits)

**According to Advocate General Richard de la Tour, the indexation of the family allocation and tax advantages granted by Austria to workers whose children permanently reside in another Member State is contrary to EU law**

*In Austria, workers from other Member States must be able to access the same allocations and tax advantages as Austrian workers, irrespective of the place of residence of their children, since they contribute to the financing of the Austrian social security and tax system in the same way as Austrian workers*

Since 1 January 2019, Austria has adjusted, as regards workers whose children permanently reside in another Member State, <sup>1</sup> the flat-rate amount of the family allocation and that of various tax advantages, <sup>2</sup> upwards or downwards, <sup>3</sup> in line with the general price level in the Member State concerned.

Considering that that adjustment and the resulting difference in treatment, primarily as regards migrant workers by comparison with nationals, are contrary to EU law, the Commission <sup>4</sup> brought an action for failure to fulfil obligations against Austria <sup>5</sup> before the Court of Justice.

In his Opinion delivered today, **Advocate General Jean Richard de La Tour proposes that the Court of Justice should uphold the Commission's action and find that the adjustment of the family allowance, the child tax credit, the 'Family Bonus Plus' tax credit, the sole earner's allowance, the single parent's allowance and the tax credit for maintenance payments for migrant workers whose children reside permanently in another Member State is contrary to EU law.**

**EU law <sup>6</sup> expressly provides that family benefits, such as the Austrian family allocation and the child tax credit, are not to be subject to any reduction or amendment on account of the fact that the members of the beneficiary's family reside in another Member State.** To fix the amount of those benefits on the basis of the residence of family members therefore constitutes an infringement of the right of free movement conferred on EU citizens.

According to the Advocate General, it is therefore not permissible for a Member State to introduce into its legislation an exception to the principle of strict equivalence of the amount of family benefits by considering that that requirement can be satisfied solely in terms of value, in accordance with the objective pursued by the national legislature, namely that of meeting family expenses.

<sup>1</sup> Or in another State party to the European Economic Agreement (EEA) or in Switzerland.

<sup>2</sup> Namely, the child tax credit, the 'Family Bonus Plus' tax credit, the sole earner's allowance, the single parent's allowance and the tax credit for maintenance payments.

<sup>3</sup> According to the information provided by the Commission, the adjustment coefficient is 0.619 for the Czech Republic, 0.974 for Germany, 0.948 for Italy, 0.562 for Hungary, 0.79 for Slovenia and 0.641 for Slovakia. It is only in respect of Switzerland and Liechtenstein that the adjustment results in a higher amount or the same flat-rate amount as in Austria.

<sup>4</sup> Supported by the Czech Republic, Croatia, Poland, Romania, Slovenia, the Slovak Republic and the EFTA Surveillance Authority.

<sup>5</sup> Supported by Denmark and Norway.

<sup>6</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1).

In that context, he notes that **the system established at the EU level concerning the coordination of social security systems is based on the general idea that, if a migrant worker pays social contributions and taxes in a Member State, he or she must be able to benefit from the same allowances as nationals of that State.**

He also notes that the amounts in question are uniform throughout Austria and do not take into consideration the variation in price levels in Austria <sup>7</sup> and that the actual expenditure linked to specific needs of the child are not taken into consideration.

In addition, the Advocate General considers, **as regards all of the advantages and allocations in question, that the distinction in the Austrian legislation which makes the amount of exportable benefits dependent on a child's place of residence in the Member States affects migrant workers to a greater extent and constitutes indirect discrimination on the ground of nationality which is permissible only if it is objectively justified.**

**Austria has not put forward any ground capable of justifying that indirect discrimination, with the result that it is incompatible with EU law.** <sup>8</sup>

The Advocate General notes, inter alia, that, according to a report of the Austrian Court of Auditors, the reason which could jeopardise the financial equilibrium of the social security system is not the payment of benefits to workers whose children reside outside the Republic of Austria, which accounts for **approximately 6% of the expenditure** in respect of family benefits, but the lack of appropriate checks with regard to the grant of those benefits.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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*Unofficial document for media use, not binding on the Court of Justice.*

*The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*

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<sup>7</sup> According to the information provided by the Commission.

<sup>8</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011, L 141, p. 1).