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Judgment of the Court in Case C-328/20 | *Commission v Austria (Indexation of family benefits)*

The adjustment of family allowances and of various tax advantages granted by Austria to workers according to their children's State of residence is contrary to EU law

Such a mechanism constitutes unjustified indirect discrimination based on the nationality of migrant workers

On 1 January 2019, Austria put in place an adjustment mechanism for calculating the flat-rate amount of family allowances and of various tax advantages which it grants to workers whose children reside permanently in another Member State. Those tax advantages include the child tax credit, the Family Bonus Plus, the sole earner's allowance, the single parent's allowance and the tax credit for maintenance payments. The adjustment may be made upwards or downwards depending on the general price level in the Member State concerned.

Taking the view that that adjustment mechanism and the resulting difference in treatment, which affects mainly migrant workers as opposed to Austrian nationals, are contrary to EU law, the Commission brought an action against Austria before the Court of Justice for failure to fulfil obligations. In the present case, the Commission is supported by the Czech Republic, Croatia, Poland, Romania, Slovenia, Slovakia and the EFTA Surveillance Authority, while Denmark and Norway have intervened in support of Austria.

By its judgment delivered today, the Court holds, first of all, that the family allowances and the child tax credit at issue constitute family benefits falling within the scope of the Regulation on the coordination of social security systems, which may not be reduced or amended on account of the fact that the beneficiary or the members of his or her family reside in a Member State other than the one granting those benefits.

Thus, that regulation requires strict equivalence between the amounts of the family benefits provided by a Member State to workers whose family members reside in that Member State and the amounts provided to those whose family members reside in another Member State. In that regard, the Court states that, in the absence of any consideration of differences in price levels within the Member State providing the benefit, the differences in purchasing power between Member States do not justify a Member State being able to provide that second category of persons with benefits of an amount different from that granted to persons falling within the first category.

In those circumstances, the Court finds that **the Austrian legislation at issue**, in so far as it carries out an adjustment of family benefits according to the State of residence of the beneficiary's children, **constitutes an infringement of the Regulation on the coordination of social security systems**.

As regards, next, the family allowances and all of the tax advantages referred to in the Commission's action, the Court points out that EU law prohibits all discrimination in matters of social security based on the nationality of migrant workers. **The adjustment mechanism at issue**, since it is applied only in cases where the child resides outside Austria, **essentially affects migrant workers** given that their children are more likely to reside in another Member State.

Moreover, **since the great majority of migrant workers affected by that mechanism come from Member States where the cost of living is lower than in Austria**, those workers receive family benefits and social and tax

advantages of an amount lower than that granted to Austrian workers.

Consequently, that adjustment mechanism **constitutes indirect discrimination on grounds of nationality which, in any event, is not justified**. In that regard, the Court points out that migrant workers participate in the same way as a national worker in the determination and financing of the contributions underlying the family allowances and tax advantages in question, without consideration being taken in this respect of their children's place of residence. It follows, according to the Court, that the Austrian legislation at issue **also constitutes an infringement of the Regulation on freedom of movement for workers within the European Union**.

Accordingly, the Court **upholds in its entirety the action for failure to fulfil obligations** brought by the Commission.

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

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