



The Luxembourg legislation on recruitment subsidies appears to be contrary to the free movement of workers

The grant to employers of a subsidy for the recruitment of an unemployed person aged over 45 cannot be made subject to the condition that the unemployed person is registered with the Luxembourg employment placement office in the case where such registration is restricted to persons who are resident in Luxembourg

EU law on the free movement of workers is intended to facilitate the pursuit, by nationals of the Member States, of occupational activities of all kinds throughout the EU. In that regard, EU law precludes national measures which might place those nationals at a disadvantage when they seek to pursue an economic activity in the territory of another Member State.

Under Luxembourg legislation, the employment fund reimburses to private-sector employers the social security contributions paid for unemployed persons whom they recruit on condition that they are 45 years of age and that they have been registered, in Luxembourg, as job seekers with the placement office of the Employment Administration ('ADEM') for at least one month. All job seekers are obliged to register with ADEM.

Ms Schmidt-Krier is a Luxembourg national who lives in Germany, close to the border with Luxembourg. She has spent her entire working life in Luxembourg. In 2008, Ms Schmidt-Krier, who was then aged 52, was recruited by a Luxembourg company, Caves Krier, on an employment contract for an indefinite period.

In September 2008, Caves Krier submitted to ADEM an application for a recruitment subsidy following that company's decision to recruit Ms Schmidt-Krier. By decision of 4 September 2008, ADEM rejected that application on the ground that Ms Schmidt-Krier was not registered with it as a job seeker, as required by Luxembourg legislation.

The action brought by Caves Krier before the Tribunal administratif seeking the annulment of that decision was dismissed. On appeal, the Cour administrative (Luxembourg) took the view that the conditions governing the grant of the recruitment subsidy and, more particularly, the registration condition raised a question of EU law. According to the Cour administrative, it was common ground that Luxembourg residents alone could register with ADEM, with the result that the subsidy was, as a matter of fact, reserved for employers who recruit unemployed persons resident within the territory of Luxembourg. That provision might for that reason constitute an obstacle to the free movement of citizens of the EU, the potential employer of an unemployed person aged over 45 being led to prefer to recruit a person resident in Luxembourg since the recruitment of such a person alone will enable the employer to benefit from the subsidy in question. In those circumstances, the Cour administrative decided to refer the matter to the Court of Justice.

The Court points out, first of all, that the provisions relating to freedom of movement for workers apply to any national of a Member State who, irrespective of his place of residence and of his nationality, has exercised the right to freedom of movement for workers and has worked in a Member State other than that of his residence.

The Court finds, firstly, that the situation of Ms Schmidt-Krier, as a frontier worker seeking employment, falls within the scope of the provisions governing freedom of movement for workers¹. The Court explains that, even though the rights of free movement benefit workers, an employer, in this case Caves Krier, may also rely on the rules applicable to workers.

Secondly, the Court observes that Luxembourg law is silent as regards the existence of a residence condition for purposes of registration with ADEM. However, the Court notes that the courts in Luxembourg have interpreted their national law on the basis that a residence condition of this type was indeed applicable. Basing itself on the premise that registration with ADEM is subject to a condition of residence in Luxembourg – a matter which it is for the national court to verify – the Court accordingly finds that **the Luxembourg legislation introduces a difference in treatment** between, on the one hand, Member-State nationals seeking work and residing in Luxembourg and, on the other hand, those same nationals who reside in another Member State. That national legislation thus places certain workers at a disadvantage by reason merely of the fact that they have established their place of residence in another Member State.

As a result, such legislation is liable to deter an employer established in Luxembourg from recruiting a job seeker who is not resident in that Member State, since such recruitment does not make it possible for that employer to obtain the recruitment subsidy. For that reason, that legislation is liable to make access to employment in Luxembourg more difficult for a frontier worker. Therefore, **such national legislation which places non-residents at a disadvantage restricts the free movement of workers within the EU.**

According to EU law, a national measure which restricts the free movement of workers **may be justified if it pursues a legitimate aim compatible with the Treaty**. In the present case, however, no such justification was put forward by the Luxembourg Government. In any event, the Court points out that a residence condition is, as a rule, inappropriate with regard to migrant and frontier workers. Having participated in the employment market of a Member State, such workers have, in principle, established a sufficient link of integration with the society of that State, allowing them to benefit there from the principle of equal treatment. This link of integration arises in particular from the fact that migrant and frontier workers pay taxes in the host Member State.

Accordingly, the Court's answer to the question referred is that EU law **precludes legislation of a Member State which makes the grant to employers of a subsidy for the recruitment of unemployed persons aged over 45 subject to the condition that the unemployed person who is recruited has been registered as a job seeker in that same Member State, in the case where such registration is subject to a condition of residence in the national territory, this being a matter for the referring court to verify.**

NOTE: A reference for a preliminary ruling allows the Courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national Court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national Courts or tribunals before which a similar issue is raised.

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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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¹ According to the case-law of the Court, the status of worker may produce certain effects after the employment relationship has ended and a person who is genuinely seeking work must also be classified as a worker.