



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-308/14  
Commission v United Kingdom

## The UK can require recipients of child benefit and child tax credit to have a right to reside in the UK

*Although that condition is considered to amount to indirect discrimination, it is justified by the need to protect the finances of the host Member State*

The regulation on the coordination of social security systems<sup>1</sup> lays down a series of common principles to be observed by the legislation of the Member States in that sphere so that the various national systems do not place at a disadvantage persons who exercise their right of freedom of movement and of residence within the EU. One of the common principles that the Member States must observe is the principle of equality. In the specific field of social security, the principle of equality takes the form of prohibiting any discrimination on grounds of nationality.

The Commission received numerous complaints from non-British EU citizens resident in the UK. They complained that the competent UK authorities had refused to grant them certain social benefits on the ground that they did not have a right to reside in the UK. Since the Commission took the view that the UK legislation does not comply with the regulation, it brought an action for failure to fulfil obligations against the UK. The Commission stated that under UK legislation it must be verified that persons claiming certain social benefits – including family benefits such as child benefit and child tax credit,<sup>2</sup> which the present case concerns – are lawfully resident in the UK. According to the Commission, that condition is discriminatory and contrary to the spirit of the regulation since the regulation has regard only to the claimant's habitual residence.

In response to those arguments, the UK, which relies on the judgment in *Brey*,<sup>3</sup> maintains that the host State may lawfully require that social benefits be granted only to Union citizens who fulfil the conditions for possessing a right to reside in its territory, conditions which are, essentially, laid down in an EU directive.<sup>4</sup> Furthermore, while acknowledging that the conditions conferring entitlement to the social benefits at issue are more easily satisfied by its own nationals (as they have, by definition, a right of residence), the UK maintains that in each case the condition requiring a right of residence is a proportionate measure for ensuring that the benefits are paid to persons sufficiently integrated in the UK.

In today's judgment, the Court dismisses the Commission's action.

The Court finds, first of all, that the benefits at issue are social security benefits and therefore fall within the regulation's scope.

<sup>1</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 166, p. 1).

<sup>2</sup> Child benefit and child tax credit are cash benefits funded from taxation and not from recipients' contributions. They share the objective of helping to cover family expenses. Under the United Kingdom legislation, the claimant must be in the United Kingdom in order to be eligible for those benefits. That condition is met only if the claimant (a) is physically in the UK, (b) is ordinarily resident in the UK and (c) has a right to reside in that country.

<sup>3</sup> Case: [C-140/12 Brey](#).

<sup>4</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

**Next, the Court rejects the Commission's principal argument, that the UK legislation imposes a condition supplementing that of habitual residence contained in the regulation.**

In this connection, the Court points out that the criterion of habitual residence, within the meaning of the regulation, is not a condition that must be met to qualify for benefits, but a 'conflict rule' which is intended to prevent the concurrent application of a number of national legislative systems and to ensure that persons who have exercised their right of freedom of movement are not left without cover. According to the Court, the regulation does not set up a common scheme of social security, but allows different national social security schemes to exist. It thus does not lay down the conditions creating the right to benefits, because it is in principle for the legislation of each Member State to lay down those conditions. In this context, the Court states that **there is nothing to prevent the grant of social benefits to EU citizens who are not economically active being made subject to the requirement that those citizens fulfil the conditions for possessing a right to reside lawfully in the host Member State.**

As to the argument put forward by the Commission in the alternative, that checking of the right to reside amounts to discrimination, the Court holds that **the condition requiring a right to reside in the UK gives rise to unequal treatment** because UK nationals can satisfy it more easily than nationals of the other Member States.

However, the Court considers that **this difference in treatment can be justified by** a legitimate objective such as **the need to protect the finances of the host Member State**, provided that it does not go beyond what is necessary to attain that objective.

In this regard, the Court finds that the UK authorities verify whether residence is lawful in accordance with the conditions laid down in the directive on the free movement of citizens. Thus, this verification is not carried out systematically by the UK authorities for each claim, but only in the event of doubt. It follows that the **condition does not go beyond what is necessary to attain the legitimate objective pursued by the UK, namely the need to protect its finances.**

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**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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