



Press and Information

Court of Justice of the European Union

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Judgment in Case C-566/15  
Konrad Erzberger v TUI AG

## **The German Law on employee participation is compatible with EU law**

*The exclusion of employees of a group, employed outside of Germany, from the right to vote and stand as a candidate in elections of employees' representatives on the supervisory board of the German parent company is not contrary to the free movement of workers*

TUI AG, a German public limited company, is the parent company of the tourism group TUI which is a global operator. The group employs more than 10 000 people in Germany and almost 40 000 people in the other Member States of the EU.

Mr Konrad Erzberger, one of the shareholders of TUI AG, challenges before the German courts the composition of the supervisory board of that company, whose task is to supervise the management board which manages the company. In accordance with the German Law on employee participation, half of the members of TUI AG's supervisory board are appointed by the shareholders and the other half by the employees.

Mr Erzberger claims that the German Law on employee participation is contrary to EU law, in so far as it provides<sup>1</sup> that only the employees of the group employed in Germany may elect the employees' representatives on a company's supervisory board and be elected to that board. Therefore, preventing workers employed by a subsidiary of the TUI group located in another Member State, who it can be assumed are in general not German citizens, from participating in the composition of TUI's supervisory board, infringes the general prohibition on discrimination on grounds of nationality. Moreover, the loss of membership on the supervisory board, in the case of a transfer to another Member State, is likely to dissuade employees from exercising their right to free movement.

In that context, the Kammergericht (Berlin Higher Regional Court, Germany) decided to refer a question to the Court of Justice on the compatibility of the German Law on employee participation with EU law.

In today's judgment, the Court distinguishes two situations.

**As regards the employees of the TUI group employed in a subsidiary established in a Member State other than Germany**, the Court notes that their situation must be analysed not on the basis of the general prohibition on discrimination on grounds of nationality, but on the basis of the free movement of workers which is a specific rule against discrimination on the basis of nationality in respect of employment conditions.

**The Court notes next that the situation of the employees at issue does not fall within the scope of the free movement of workers.** The rules relating to the free movement of workers are not applicable to workers who have never exercised their freedom to move within the EU and who do not intend to do so. The fact that the subsidiary which employs the employees at issue is controlled by a parent company established in another Member State (Germany in this instance) is not relevant in that regard.

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<sup>1</sup> The Kammergericht points out that the majority opinion among German legal writers and in the case-law interprets the Law on employee participation in that way.

**As regards the employees of the TUI group who are employed in Germany and who leave that employment in order to be employed in a subsidiary belonging to the same group established in another Member State**, the Court notes that their situation falls, in principle, within the scope of the free movement of workers. Therefore, it is not necessary to analyse their situation on the basis of the general prohibition on discrimination on grounds of nationality.

However, **the loss of the right to vote and to stand as a candidate in elections of workers' representatives to the supervisory board of the German parent company and, as the case may be, the loss of the right to act or to continue to act as a representative on that board do not constitute an impediment to the free movement of workers.**

The free movement of workers does not guarantee to an employee that moving to a Member State other than his Member State of origin will be neutral in terms of social security. Such a move may be more or less advantageous for the person concerned in that regard. Therefore, the free movement of workers does not grant to that worker the right to rely, in the host Member State, on the conditions of employment which he enjoyed in the Member State of origin under the national legislation of the latter State.

EU law does not, in the field of representation and collective defence of the interests of employees in the management or supervisory bodies of a company established under national law, a field which, to date, has not been harmonised or even coordinated at EU level, prevent a Member State from providing that the legislation it has adopted be applicable only to workers employed by establishments located in its national territory.

In the present case, the participation mechanism established by the German Law on employee participation, which seeks to involve employees, by means of elected representatives, in the decision-making and strategic bodies of the company, is subject, in this respect, both to German company law and to German labour relations law, the scope of application of which Germany is entitled to limit to workers employed by establishments located in its territory, since such a delimitation is based on an objective and non-discriminatory criterion.

As regards in particular the loss of membership on the supervisory board following a transfer to another Member State, the Court holds that such a loss is merely the consequence of Germany's legitimate choice to limit the application of its national legislation in the field of participation to workers employed by an establishment located in German territory.

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**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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