



PRESS RELEASE No 56/26

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Judgment of the Court in Case C-642/24 | Commission v Germany (Bavarian family allowance)

Indexation of Bavarian family allowance on the basis of the Member State where the children reside is contrary to EU law

In the Free State of Bavaria (Germany) parents of children aged 13 to 36 months are, under certain conditions, ¹ entitled to the Bavarian family allowance in addition to the Bavarian education allowance. The family allowance, as a rule, amounts ² to € 250 per month for the first and second child respectively, and € 300 from the third child. That allowance does not serve the purpose of securing livelihoods, but is intended to give parents the necessary flexibility to make the choices they deem appropriate for the upbringing and education of their children.

However, workers whose children permanently reside in certain Member States receive a lower amount than workers whose children live in Germany or other Member States. Thus, for children living in Estonia, Greece, Croatia, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, the Czech Republic, Hungary or Cyprus, the allowance amounted to only € 187.50 (or € 225). For those living in Bulgaria or Romania, the allowance amounted to only € 125 (or € 150).

Taking the view that that indexation is contrary to EU law, ³ the European Commission ⁴ brought an action against Germany before the Court for failure to fulfil obligations.

By its judgment delivered today, **the Court upholds the Commission's action.**

As the Court has already held, ⁵ the EU rules on coordination of social security do not permit ⁶ making the entitlement to or the amount of flat-rate family benefits, the amount of which is independent from any individual assessment of needs, dependent on the child's place of residence.

Migrant workers must be able to benefit from the social policies of the host Member State under the same conditions as national workers. Indeed, migrant workers contribute to the financing of those policies through the tax and social security contributions which they pay.

Furthermore, the indexation at issue constitutes indirect discrimination on grounds of nationality, in that it affects essentially migrant workers whose children are more likely to reside in another Member State. ⁷ As payment of the Bavarian family allowance is not linked to the economic and social environment of the children, that difference in treatment cannot be justified by the objective of ensuring equal treatment of the recipients by taking into account differences in living costs between Member States.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its

obligations under EU 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.

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

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on ['Europe by Satellite'](#) ☎ (+32) 2 2964106.

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¹ The parent concerned or the parents must in particular have their principal residence or habitual residence in Bavaria.

² In accordance with Bavarian legislation in the version applicable to the facts in the present case.

³ Articles 7 and 67 of [Regulation \(EC\) No 883/2004](#) of the European Parliament and the Council of 29 April 2004 on the coordination of social security systems, and Articles 4 and 7(2) of [Regulation \(EU\) No 492/2011](#) of the European Parliament and the Council of 5 April 2011 on freedom of movement of workers within the Union.

⁴ Supported before the Court by Poland and the Czech Republic.

⁵ See, most recently, judgment of 16 June 2022, *Commission v Austria (Indexation of family benefits)*, [C-328/20](#) (see also Press Release [No 102/22](#)).

⁶ However, those rules allow the benefits provided by another Member State to be taken into account.

⁷ The Court observes in that regard that migrant workers, as regards entitlement to the allowance at issue, are not in a situation that is different to that of the other workers. In fact, the allowance is a flat-rate allowance and it is not calculated in such a way as to cover the actual costs incurred by parents for the upbringing and education of their young children. Moreover, migrant workers are subject, in that regard, to the same contribution scheme as the other workers.