

GMS Flash Alert

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European Union – Germany, Italy Before CJEU for Discriminating Against Mobile EU Workers

In July 2024, the European Commission announced that it had referred Germany and Italy to the Court of Justice of the European Union (CJEU) due to the unequal treatment of mobile workers concerning their family benefits rights. The view of the Commission is that national legislation in Italy and in Bavaria, Germany, as it is being implemented, constitutes discrimination of mobile workers and is in breach of EU law.¹

The cases are in the early stages of the CJEU proceedings, but considering that the question of mobile workers' diminished rights to family benefits has already been dealt with by the Court,² the outcome of the cases is predictable, and Germany and Italy may well be deemed to be violating EU law.

WHY THIS MATTERS

Mobile EU workers who work in either the German region of Bavaria or in Italy and whose families reside in another EU country are potentially receiving reduced family benefits or they are being denied family benefits completely because their families live in another EU country.

It is reasonable to expect that the laws on family benefits could be deemed to infringe EU law and might therefore be rolled back. This means that “corrections” would have to be made retroactively, and it is advisable for mobile workers affected by these rules to keep an eye on these proceedings and initiate any necessary corrections once the rulings are delivered.

Case About Family Benefits/Allowances in Bavaria, Germany

It is important to note that the law in question concerns the German region of Bavaria.

In 2018, Bavaria introduced a new scheme of family allowances for residents of Bavaria with children up to three years of age.³ However, EU nationals who are covered by social security in Germany (Bavaria), and whose children reside in another EU country would be awarded this family allowance according to the cost of living in that country.

This means that EU nationals who contribute to social security in Germany the same way as the local population, would not be treated equally when their family resides in another EU country.

The European Commission finds that this Bavarian law discriminates against EU mobile workers because of their nationality and is therefore in breach of EU law.

Since the EU Commission could not compel the local government to comply with EU law, the Commission referred Germany to the CJEU.

Case About Family Benefits/Allowances in Italy

In March 2022, Italy introduced a new scheme of family allowances for dependent children.⁴ Under this scheme, workers who do not reside in Italy for at least two years, or whose children do not reside in Italy, are not eligible to receive the benefit.

The European Commission finds, among other things, that EU mobile workers who work in Italy without living there, those who have moved only recently to Italy, or those whose children reside in another EU country, should receive the same family benefits as other workers in Italy. The requirement about residence in Italy is in breach of EU law.

Since the EU Commission could not compel the government to comply with EU law, the Commission referred Italy to the CJEU.

KPMG INSIGHTS

Mobile workers who are affected by local laws on family benefits in either Italy or in Bavaria, Germany may have not been receiving these benefits (correctly) for years.

Should Italy and Bavaria, Germany be found in violation of EU law, as it is expected, they will have to make corrections retroactively. By that time, some of the affected EU mobile workers might have stopped working there, so it is important for them to consider steps to claim these rights once the cases have been settled. It is equally important for those EU mobile workers who still work in Italy or in Bavaria, Germany, and who are affected by these local rules, to monitor these cases being considered by the CJEU and consider planning to claim their rights once the cases have been settled.

Generally, these cases indicate that there are local governments in some EU countries that are willing to pursue cases concerning discrimination of EU mobile workers, even though the CJEU has clearly stated that conditions of EU nationality and/or residence in another EU country in order to be eligible for social security benefits is illegal.

It is important that all relevant stakeholders, including employers, monitor these developments and support their mobile workers when their rights are being infringed.

KPMG has a global network of social security experts who can explain these developments, track relevant employees and, if needed, support their claims to correct social security benefits.

FOOTNOTES:

1 European Commission: [The Commission decides to refer Germany to the Court of Justice of the European Union as regards the rights of mobile EU workers to receive family benefits](#), Brussels, 24 July 2024; European Commission: [The Commission decides to refer Germany to the Court of Justice of the European Union as regards the rights of mobile EU workers to receive family benefits](#), Brussels, 24 July 2024.

2 Court of Justice of European Union: [Case C-328/20 European Commission v Republic of Austria](#), 16 June 2022.

In this case, Austria implemented a national law for family benefits that allowed Austria's administration to index family benefits according to the cost of living in the country where the mobile worker's family resided. The outcome of this law resulted in lower family benefits to mobile workers whose families resided in countries with generally lower standards of living. This law was deemed in breach of EU law as equal treatment of EU mobile workers is enshrined in EU law.

3 For more information, see *Zentrum Bayern Familie und Soziales*, [Elterngeld](#) webpage (in German).

4 For more information, see the webpage of the *Istituto Nazionale Previdenza Sociale (INPS)*, (in English) "[Single and Universal Allowance for dependent children](#)." The webpage is also available in English and German.

Legge 1 aprile 2021, n. 46 Delega al Governo per riordinare, semplificare e potenziare le misure a sostegno dei figli a carico attraverso l'assegno unico e universale. (21G00057) (GU Serie Generale n.82 del 06-04-2021). For more information on the relevant statute, see the INPS webpage (in Italian) by clicking [here](#) and the webpage of the *Ministero dell'Economia e delle Finanze* (in Italian) by clicking [here](#).

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