



InfoCuria

Giurisprudenza



[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > **Documenti**



[Avvia la stampa](#)

Lingua del documento :

ECLI:EU:C:2024:404

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

16 May 2024 [\(\\*\)](#)

(Reference for a preliminary ruling – Article 45 TFEU – Freedom of movement for workers – Equal treatment – Social advantages – Regulation (EU) No 492/2011 – Article 7(2) – Family allowance – Worker having custody of a child placed with that worker by a court order – Resident worker and non-resident worker – Difference in treatment – No justification)

In Case C-27/23 [Hocinx], [\(i\)](#)

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Luxembourg), made by decision of 19 January 2023, received at the Court on 23 January 2023, in the proceedings

**FV**

v

**Caisse pour l'avenir des enfants,**

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Piçarra, N. Jääskinen (Rapporteur) and M. Gavalec, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- FV, by J.-M. Bauler, avocat,
- Caisse pour l’avenir des enfants, by A. Rodesch and B. Rodesch, avocats,
- the European Commission, by F. Clotuche-Duvieusart and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2024,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU, Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1), Article 67 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), and Article 60 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

2 The request has been made in proceedings between FV, a frontier worker, and the Caisse pour l’avenir des enfants (Children’s Future Fund, Luxembourg) (‘the CAE’) concerning the latter’s refusal to grant a family allowance to a child placed in FV’s household by a court order.

## **Legal context**

### ***European Union law***

#### *Regulation (EU) 2019/1111*

3 In accordance with Article 1(2)(d) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ 2019 L 178, p. 1), that regulation applies to ‘the placement of a child in institutional or foster care’.

4 As set out in Article 30(1) of Regulation 2019/1111:

‘A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.’

#### *Regulation No 492/2011*

5 Article 7 of Regulation No 492/2011 provides:

‘1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

...’

*Regulation No 883/2004*

6 Recital 8 of Regulation No 883/2004 is worded as follows:

‘The general principle of equal treatment is of particular importance for workers who do not reside in the Member State of their employment, including frontier workers.’

7 Article 1 of that regulation provides:

‘For the purposes of this Regulation:

...

(f) “frontier worker” means any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he/she returns as a rule daily or at least once a week;

...

(z) “family benefit” means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.’

8 Article 2(1) of that regulation states:

‘This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.’

9 Article 3(1) of that regulation provides:

‘This Regulation shall apply to all legislation concerning the following branches of social security:

...

(j) family benefits.’

10 Article 4 of Regulation No 883/2004, which is headed ‘Equality of treatment’, provides:

‘Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.’

*Directive 2004/38/EC*

11 Article 2 of 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, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34) is worded as follows:

‘For the purposes of this Directive:

- (1) “Union citizen” means any person having the nationality of a Member State;
- (2) “family member” means:
  - (a) the spouse;
  - (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
  - (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
  - (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

...’

### ***Luxembourg law***

12 The relevant provisions of Luxembourg law are Articles 269 and 270 of the code de la sécurité sociale (Social Security Code), in the version applicable from 1 August 2016, the date of entry into force of the loi du 23 juillet 2016, portant modification du code de la sécurité sociale, de la loi modifiée du 4 décembre 1967 concernant l’impôt sur le revenu, et abrogeant la loi modifiée du 21 décembre 2007 concernant le boni pour enfant (Law of 23 July 2016 amending the Social Security Code and the Law of 4 December 1967 on income tax, as amended, and repealing the Law of 21 December 2007 on the ‘boni pour enfant’ (child bonus), as amended) (*Mémorial* A 2016, p. 2348; ‘the Code’).

13 Article 269(1) of the Code, headed ‘Conditions for award’, provides:

‘An allowance for children’s future, “the family allowance”, is hereby established.

The following persons shall give rise to entitlement to the family allowance:

- (a) any child actually living in Luxembourg on a continuous basis and officially resident there;
- (b) the members of the family, as defined in Article 270, of any person subject to Luxembourg law and covered by EU regulations or any other bilateral or multilateral instrument relating to social security concluded by Luxembourg providing for the payment of family allowances in accordance with the legislation of the country of employment. The family members referred to in this provision must reside in one of the countries to which the regulations or instruments in question apply.’

14 Article 270 of the Code states:

‘For the purposes of Article 269(1)(b), the following shall be regarded as members of a person’s family and give rise to entitlement to family allowances: children born within marriage, children born outside marriage and adopted children of the person.’

15 Article 273(4) of the Code states, with regard to resident children:

‘Where a child is placed in custody by a court order, family allowance shall be paid to the natural or legal person who has custody of the child and with whom the child is officially resident and actually lives on a continuous basis.’

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

16 FV, who works in Luxembourg and resides in Belgium, has frontier worker status and therefore depends on the Luxembourg system for family allowances. The child FW has been placed in FV’s household since 26 December 2005 pursuant to an order made by a Belgian court.

17 By decision of 7 February 2017, the Governing Board of the CAE withdrew from FV, with retroactive effect from 1 August 2016, the family allowances received for the child FW on the ground that that child, who has no child-parent relationship with FV, is not a ‘member of the family’ for the purposes of Article 270 of the Code.

18 The conseil arbitral de la sécurité sociale (Social Security Arbitration Board, Luxembourg) varied that decision and referred the case back to the CAE.

19 However, by a further variation, on 27 January 2022, the conseil supérieur de la sécurité sociale (Higher Social Security Board, Luxembourg) upheld the decision of the CAE of 7 February 2017. FV lodged an appeal on a point of law before the Cour de cassation (Court of Cassation, Luxembourg), which is the referring court.

20 The referring court explains that, according to the applicable national legislation, a resident child has a direct right to payment of family benefits. However, in the case of non-resident children, the only such right is by virtue of the entitlement of ‘members of the family’ of a frontier worker, a definition that does not include children placed in the household of such a worker by a court order.

21 Referring to the judgment of 2 April 2020, *Caisse pour l’avenir des enfants (Child of the spouse of a non-resident worker)* (C-802/18, EU:C:2020:269), that court queries whether that difference in treatment is consistent with EU law. According to that judgment, a ‘child of a frontier worker’ who is able to benefit indirectly from social advantages must also be understood to mean a child who has a child-parent relationship with the spouse or registered partner of the worker concerned, where that worker provides for the upkeep of that child.

22 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do the principle of equal treatment guaranteed by Article 45 TFEU and by Article 7(2) of [Regulation No 492/2011] and the provisions of Article 67 of [Regulation No 883/2004] and Article 60 of [Regulation No 987/2009] preclude provisions enacted by a Member State under which frontier workers may not receive a family allowance associated with their employment in that Member State for children placed in care with them under a court order, whereas any child placed in

care under a court order and living in that Member State is entitled to receive that allowance which is paid to the natural or legal person who has custody of the child and with whom the child is officially resident and actually lives on a continuous basis? Does the answer to that question depend on whether the frontier worker provides for the upkeep of that child?’

### **Consideration of the question referred**

23 By its single question, the referring court asks, in essence, whether Article 45 TFEU and Article 7(2) of Regulation No 492/2011 must be interpreted as precluding legislation of a Member State under which a non-resident worker may not receive a family allowance associated with his or her employment in that Member State for a child who has been placed with that worker by a court order and of whom he or she has custody, whereas a child placed in care by a court order and residing in that Member State is entitled to receive that allowance, which is paid to the natural or legal person who has custody of that child; and whether the fact that the non-resident worker provides for the upkeep of the child placed with him or her has a bearing on the answer to that question.

24 As a preliminary point, it must be observed that the present case concerns only the question whether a Member State may apply different award conditions to a resident worker and a non-resident worker, as regards the grant of an allowance such as the family allowance at issue in the main proceedings.

25 In those circumstances, the question referred for a preliminary ruling cannot be viewed in the light of Article 67 of Regulation No 883/2004 and Article 60 of Regulation No 987/2009, since those provisions relate not to the situation of the worker himself or herself but to the situation of the members of the worker’s family residing in another Member State.

26 However, it should be noted first of all that, as regards Article 45(2) TFEU, that provision states that freedom of movement for workers is to entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. Article 7(2) of Regulation No 492/2011 constitutes the particular expression, in the specific area of the grant of social advantages, of the rule of equal treatment that is thereby laid down, since that provision states that a worker who is a national of a Member State is to enjoy, in the territory of other Member States of which he or she is not a national, the same social and tax advantages as national workers (see, to that effect, judgments of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraphs 44 and 78, and of 21 December 2023, *Chief Appeals Officer and Others*, C-488/21, EU:C:2023:1013, paragraph 49).

27 Next, the Court has previously had occasion to rule, first, that since the family allowance at issue in the main proceedings is associated with a frontier worker’s pursuit of an activity as an employed person, it is a social advantage within the meaning of Article 7(2) of Regulation No 492/2011. Secondly, that allowance is also a social security benefit that is among the family benefits covered by Article 3(1)(j) of Regulation No 883/2004 (see, to that effect, judgment of 2 April 2020, *Caisse pour l’avenir des enfants (Child of the spouse of a non-resident worker)*, C-802/18, EU:C:2020:269, paragraphs 31 and 40).

28 As it is, the Court has repeatedly held that the principle of equal treatment laid down in Article 45(2) TFEU and Article 7(2) of Regulation No 492/2011 prohibits not only direct discrimination on grounds of nationality but also all indirect forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (judgment of 2 April

2020, *Caisse pour l'avenir des enfants (Child of the spouse of a non-resident worker)*, C-802/18, EU:C:2020:269, paragraph 54 and the case-law cited).

29 With regard to that principle, on which the freedom of movement for workers is based, the Court has previously ruled that it is particularly with a view to guaranteeing the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible that, according to Article 4 of Regulation No 883/2004 read in the light of recital 8 thereof, a person who is, inter alia, employed in a Member State is subject, as a general rule, to the legislation of that Member State and, in accordance with that article, is to enjoy the same benefits there as the nationals of that Member State (see, to that effect, judgment of 16 June 2022, *Commission v Austria (Indexation of family benefits)*, C-328/20, EU:C:2022:468, paragraph 108 and the case-law cited).

30 As noted in paragraph 26 of the present judgment, Article 7(2) of Regulation No 492/2011 gives expression to that same principle of equal treatment by providing that a worker of another Member State is to enjoy the same social advantages as resident workers.

31 In so far as frontier workers contribute to the financing of the social policies of the host Member State, in view of the tax and social security contributions which they pay in that State by virtue of their employment there, they must be able to enjoy family benefits and social and tax advantages under the same conditions as national workers (see, to that effect, judgments of 14 June 2012, *Commission v Netherlands*, C-542/09, EU:C:2012:346, paragraph 66; of 16 June 2022, *Commission v Austria (Indexation of family benefits)*, C-328/20, EU:C:2022:468, paragraph 109; and of 21 December 2023, *Chief Appeals Officer and Others*, C-488/21, EU:C:2023:1013, paragraph 71).

32 In the present case, under the applicable national legislation, non-resident workers do not benefit under the same conditions as resident workers from the family allowance at issue in the main proceedings as regards children placed in the household of such workers since, unlike a resident worker, a frontier worker does not receive that allowance for a child who is placed in his or her household and of whom he or she has custody.

33 It is apparent from the order for reference that, under Article 269(1)(a) of the Code, any children actually living in Luxembourg on a continuous basis and officially resident there give rise to an entitlement to the family allowance. As regards children placed by a court order, Article 273(4) of the Code makes clear that that allowance is to be paid, in the case of such placements, to the natural or legal person who has custody of the child and with whom that child is officially resident and actually lives on a continuous basis.

34 By contrast, in accordance with Article 269(1)(b) and Article 270 of the Code, for a frontier worker, entitlement to the family allowance arises only in respect of children deemed, under the latter provision, to be members of that worker's family, that is to say, children born within marriage, children born outside marriage and adopted children of that person.

35 In those circumstances, a child who is placed in the household of a worker who has exercised his or her right to free movement and with whom that child is officially resident and actually lives on a continuous basis cannot be granted a family benefit that constitutes a 'social advantage' for the frontier worker, whereas children in care who are officially resident and actually live on a continuous basis with workers who are nationals of the host Member State are, by contrast, entitled to claim such a benefit. Such a difference in treatment – which is liable to operate mainly to the detriment of nationals of other Member States, as non-residents are in the majority of cases foreign nationals – constitutes indirect discrimination on the ground of nationality.

36 The fact that the placement decision is issued by a court of a Member State other than the host Member State of the worker concerned cannot have any bearing on that conclusion.

37 The competent Luxembourg authorities are obliged to recognise a placement decision of another Member State and to accord it the same legal value as an equivalent national decision. That follows from Article 1(2)(d), read in conjunction with Article 30(1), of Regulation 2019/1111. Those provisions correspond to the essentially identical provisions contained in Article 1(2)(d) and Article 21(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1), which was applicable on the date of the entry into force of the Law of 23 July 2016 amending the Code, and which was repealed by Regulation 2019/1111.

38 In order to be justified, the indirect discrimination referred to in paragraph 35 of the present judgment must be appropriate for securing the attainment of a legitimate objective and must not go beyond what is necessary to attain that objective (see, to that effect, judgments of 14 June 2012, *Commission v Netherlands*, C-542/09, EU:C:2012:346, paragraphs 55 and 73, and of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a non-resident worker)*, C-802/18, EU:C:2020:269, paragraphs 56 and 58). The referring court has not, however, set out any legitimate objective that might justify such indirect discrimination.

39 Accordingly, it must be held that Article 45 TFEU and Article 7(2) of Regulation No 492/2011 preclude provisions enacted by a Member State under which, unlike resident workers, non-resident workers are not entitled to receive a social advantage, such as the family allowance at issue in the main proceedings, in respect of children placed in their household, of whom they have custody, who are officially resident with them and who actually live with them on a continuous basis.

40 Lastly, as to whether the fact that a non-resident worker provides for the upkeep of the child placed in his or her household and of whom he or she has custody has a bearing on the answer to the question raised, it is sufficient to observe that that fact can be taken into account in the context of the grant of a family allowance to a frontier worker only if the applicable national legislation provides for such a condition to be attached to the grant of that allowance to a resident worker who has custody of a child placed with that resident worker, as the equal treatment of frontier workers would otherwise be undermined.

41 In the light of the foregoing considerations, the answer to the question raised is that Article 45 TFEU and Article 7(2) of Regulation No 492/2011 must be interpreted as precluding legislation of a Member State under which a non-resident worker may not receive a family allowance associated with his or her employment in that Member State for a child placed with that worker by a court order and of whom he or she has custody, whereas a child placed in care by a court order and residing in that Member State is entitled to receive that allowance, which is paid to the natural or legal person who has custody of that child. The fact that the non-resident worker provides for the upkeep of the child placed with him or her can be taken into account in the context of the grant of a family allowance to such a worker in respect of a child placed in his or her household only if the applicable national legislation provides for such a condition to be attached to the grant of that allowance to a resident worker who has custody of a child placed in his or her household.

## Costs



42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union**

**must be interpreted as precluding legislation of a Member State under which a non-resident worker may not receive a family allowance associated with his or her employment in that Member State for a child placed with that worker by a court order and of whom he or she has custody, whereas a child placed in care by a court order and residing in that Member State is entitled to receive that allowance, which is paid to the natural or legal person who has custody of that child. The fact that the non-resident worker provides for the upkeep of the child placed with him or her can be taken into account in the context of the grant of a family allowance to such a worker in respect of a child placed in his or her household only if the applicable national legislation provides for such a condition to be attached to the grant of that allowance to a resident worker who has custody of a child placed in his or her household.**

[Signatures]

---

\* Language of the case: French.

---

**i** The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.