

(English version)

**Question for written answer E-002135/26
to the Commission
Christine Anderson (ESN)
(26 May 2026)**

Subject: Minimum residence requirements for family-related social benefits

Several Member States impose residence-related conditions on social support and family-related social benefits.

1. To what extent can Member States make access to certain family-related social benefits conditional on a minimum period of legal residence?
2. Does the Commission consider that such residence requirements can be justified by objectives such as effective integration, administrative control interests or the protection of national social benefits systems?
3. In that regard, what limits under EU law follow, in particular, from the judgments of the Court of Justice in cases *Brey* (C-140/12) and *CG* (C-709/20)?

Submitted: 26.5.2026

**Answer given by Mr McGrath on behalf of the European Commission
(9 July 2026)**

The principle of non-discrimination on grounds of nationality enshrined in Article 18 of the Treaty on the Functioning of the European Union and laid down specifically in respect of EU citizens within the scope of Directive 2004/38/EC in Article 24 thereof, prohibits not only direct discrimination but also all indirect forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result ⁽¹⁾.

A distinction based on residence, which is liable to operate mainly to the detriment of nationals of other Member States, constitutes indirect discrimination on the ground of nationality which is permissible only if it is objectively justified ⁽²⁾.

In this context, a justification put forward by a Member State must be assessed considering the specific situation and measure at hand. For this reason, the Commission cannot take a general position on the suitability of such justifications.

According to the case-law of the Court of Justice, mobile EU citizens covered by Regulation (EC) No 883/2004 are entitled to family benefits provided under the legislation of the competent Member States under the same conditions as nationals thereof ⁽³⁾.

Family benefits granted independently of individual needs and not intended to cover means of subsistence but to meet family expenses do not fall under the concept of ‘social assistance’ within the meaning of Article 24(2) of Directive 2004/38/EC ⁽⁴⁾.

As the judgments in *Brey* ⁽⁵⁾ and *CG* ⁽⁶⁾ primarily concern questions regarding access to social assistance, they do not appear relevant to the question of non-discrimination as regards family benefits.

However, as noted by the Court in *Dano*, EU citizens who do not meet conditions for legal residence in the host Member State cannot benefit from Article 24 of Directive 2004/38/EC ⁽⁷⁾.

⁽¹⁾ Judgment of the Court of Justice of 4 October 2012, C-75/11, *Commission v Austria*, ECLI:EU:C:2012:605, paragraph 49.

⁽²⁾ Judgment of the Court of Justice of 16 June 2022, *Commission v Austria*, C-328/20, ECLI:EU:C:2022:468, paragraph 99.

⁽³⁾ Judgment of the Court of Justice of 1 August 2022, *S v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit*, C-411/20, ECLI:EU:C:2022:602 and Judgment of the Court of Justice of 16 June 2022, *Commission v Austria*, C-328/20, ECLI:EU:C:2022:468

⁽⁴⁾ Judgment of the Court of Justice of 1 August 2022, *S v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit*, C-411/20, ECLI:EU:C:2022:602, paragraphs 47 and 48.

⁽⁵⁾ Judgment of the Court of Justice of 19 September 2013, *Brey*, C-140/12, ECLI:EU:C:2013:565, paragraphs 60-62.

⁽⁶⁾ Judgment of the Court of Justice of 15 July 2021, *CG*, C-709/20, ECLI:EU:C:2021:602, paragraphs 68-71.

⁽⁷⁾ See, to that effect, judgment of the Court of Justice of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 82.