ECLI:EU:C:2021:659

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

2 September 2021 (*)

(Reference for a preliminary ruling – Directive 2011/98/EU – Rights for third-country workers who hold single permits – Article 12 – Right to equal treatment – Social security – Regulation (EC) No 883/2004 – Coordination of social security systems – Article 3 – Maternity and paternity benefits – Family benefits – Legislation of a Member State excluding third-country nationals holding a single permit from entitlement to a childbirth allowance and a maternity allowance)

In Case C-350/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte costituzionale (Constitutional Court, Italy), made by decision of 8 July 2020, received at the Court on 30 July 2020, in the proceedings

**O.D.,**

**R.I.H.V.,**

**B.O.,**

**F.G.,**

**M.K.F.B.,**

**E.S.,**

**N.P,**

**S.E.A.**

v

**Istituto nazionale della previdenza sociale (INPS),**

intervener:

**Presidenza dei Consiglio dei Ministri,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Prechal, M. Vilaras, E. Regan, A. Kumin and N. Wahl, Presidents of Chambers, T. von Danwitz, C. Toader, M. Safjan, D. Šváby, S. Rodin, L.S. Rossi, I. Jarukaitis (Rapporteur) and N. Jääskinen, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– O.D., R.I.H.V., B.O., F.G., M.K.F.B., E.S. and S.E.A., by A. Guariso, L. Neri, R. Randellini, E. Fiorini and M. Nappi, avvocati,

– N.P., by A. Andreoni and V. Angiolini, avvocati,

– the Istituto nazionale della previdenza sociale (INPS), by M. Sferrazza and V. Stumpo, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato,

– the European Commission, by C. Cattabriga and D. Martin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

**Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 34 of the Charter of Fundamental Rights of the European Union ('the Charter'), of Article 3(1)(b) and (j) 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 of Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ 2011 L 343, p. 1).

2 The request has been made in proceedings between, on the one hand, O.D., R.I.H.V., B.O., F.G., M.K.F.B., E.S., N.P. and S.E.A., third-country nationals who are holders of single permits, and, on the other hand, the Istituto Nazionale della Previdenza Sociale (INPS) (the Italian National Social Welfare Institution) concerning the refusal to grant them entitlement to childbirth and maternity allowances.

**Legal context**

*__European Union law__*

*Directive 2011/98*

3 Recitals 20, 24 and 31 of Directive 2011/98 state:

‘(20) All third-country nationals who are legally residing and working in Member States should enjoy at least a common set of rights based on equal treatment with the nationals of their respective host Member State, irrespective of the initial purpose of or basis for admission. The right to equal treatment in the fields specified by this Directive should be granted not only to those third-country nationals who have been admitted to a Member State to work but also to those who have been admitted for other purposes and have been given access to the labour market of that Member State in accordance with other provisions of Union or national law, including family members of a third-country worker who are admitted to the Member State in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [(OJ 2003 L 251, p. 12)]; third-country nationals who are admitted to the territory of a Member State in accordance with Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service [(OJ 2004 L 375, p. 12)]; and researchers admitted in accordance with Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research [(OJ 2005 L 289, p. 15)].

…

(24) Third-country workers should enjoy equal treatment as regards social security. Branches of social security are defined in [Regulation No 883/2004]. The provisions on equal treatment concerning social security in this Directive should also apply to workers admitted to a Member State directly from a third country. …

…

(31) This Directive respects the fundamental rights and observes the principles recognised by the [Charter], in accordance with Article 6(1) of the TEU.’

4 Article 2 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions apply:

(a) “third-country national” means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;

(b) “third-country worker” means a third-country national who has been admitted to the territory of a Member State and who is legally residing and is allowed to work in the context of a paid relationship in that Member State in accordance with national law or practice;

(c) “single permit” means a residence permit issued by the authorities of a Member State allowing a third-country national to reside legally in its territory for the purpose of work;

…’

5 Article 3 of that directive, entitled ‘Scope’, provides, in paragraphs 1 and 2 thereof:

‘1. This Directive shall apply to:

…

(b) third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with [Council] Regulation (EC) No 1030/2002 [of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ 2002 L 157, p. 1)]; and

(c) third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law.

2. This Directive shall not apply to third-country nationals:

…

(i) who are long-term residents in accordance with [Council] Directive 2003/109/EC [of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44)];

…’

6 In accordance with Article 12 of Directive 2011/98, entitled, ‘Right to equal treatment’:

‘1. Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:

…

(e) branches of social security, as defined in Regulation [No 883/2004];

…

2. Member States may restrict equal treatment:

…

(b) by limiting the rights conferred on third-country workers under point (e) of paragraph 1, but shall not restrict such rights for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed.

In addition, Member States may decide that point (e) of paragraph 1 with regard to family benefits shall not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study, or to third-country nationals who are allowed to work on the basis of a visa.

…’

7 Article 16(1) of that directive provides:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 December 2013. They shall forthwith communicate to the Commission the text of those provisions.’

*Regulation No 883/2004*

8 Under Article 1(z) of Regulation No 883/2004, for the purposes of that regulation, the term ‘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 to the regulation.

9 Article 3(1) of that regulation provides:

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

…

(b) maternity and equivalent paternity benefits;

…

(j) family benefits.’

10 Annex I to Regulation No 883/2004, entitled ‘Advances of maintenance payments and special childbirth and adoption allowances’, contains, in Part II thereof, a list of special childbirth and adoption allowances set out by Member State. The Italian Republic has never been included in Part II of Annex I to that regulation.

***Italian law***

11 Article 1(125) of legge n. 190 – Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge di stabilità 2015) (Law No 190 laying down provisions for drawing up the annual and multiannual State budget (2015 budget law)), of 23 December 2014 (GURI No 300 of 29 December 2014, Ordinary Supplement to the GURI No 99) (‘Law No 190/2014’), introduces a childbirth allowance (‘the childbirth allowance’) in respect of each child born or adopted, paid monthly, to encourage the birth rate and ‘to contribute to the costs of supporting it’.

12 That provision stipulates that, in respect of each child born or adopted between 1 January 2015 and 31 December 2017, an allowance of EUR 960 per annum is to be granted, paid monthly from the month of birth or adoption until the third birthday of the child or the third anniversary of the child’s entry into the household following his or her adoption. That allowance is paid by the INPS provided that the household to which the parent applying for it belongs is in an economic situation corresponding to a minimal value of the equivalent economic situation indicator (ISEE), established by the regulation provided for in the decreto del Presidente del Consiglio dei Ministri n. 159 – Regolamento concernente la revisione delle modalità di determinazione e i campi di applicazione dell’Indicatore della situazione economica equivalente (ISEE) (Decree of the President of the Council of Ministers No 159 on the revision of the methods for determining and the fields of application of the equivalent economic situation indicator (ISEE)), of 5 December 2013 (GURI No 19 of 24 January 2014).

13 Article 1(248) of legge n. 205 – Bilancio di previsione dello Stato per l'anno finanziario 2018 e bilancio pluriennale per il triennio 2018-2020 (Law No 205 on the estimated State budget for the financial year 2018 and the multiannual budget for the three-year period 2018-2020), of 27 December 2017 (GURI No 302 of 29 December 2017, Ordinary Supplement to the GURI No 62), provides that the childbirth allowance is granted in respect of each child born or adopted between 1 January 2018 and 31 December 2018 for a period of one year until the child's first birthday or the first anniversary of the child's entry into the household following his or her adoption.

14 Article 23c(1) of decreto legge n. 119 – Disposizioni urgenti in materia fiscale e finanziaria (Decree-Law No 119 laying down urgent provisions on tax and financial matters), of 23 October 2018 (GURI No 247, of 23 October 2018), converted into a Law, with amendments, by Law No 136 of 17 December 2018, extends entitlement to the childbirth allowance to any child born or adopted between 1 January and 31 December 2019, until the first birthday of the child or the first anniversary of the child's entry into the household following his or her adoption, and provides for an increase of 20% in respect of each child subsequent to the first.

15 Article 1(340) of legge n. 160 – Bilancio di previsione dello Stato per l'anno finanziario 2020 e bilancio pluriennale per il triennio 2020-2022 (Law No 160 on the estimated State budget for the financial year 2020 and the multiannual budget for the three-year period 2020-2022), of 27 December 2019 (GURI No 304 of 30 December 2019, Ordinary Supplement to the GURI No 45), further extended entitlement to the childbirth allowance in respect of any child born or adopted between 1 January and 31 December 2020, until the first birthday of the child or the first anniversary of the child's entry into the household following his or her adoption, although the amount of that benefit varied depending on the economic situation of the household, as defined by the indicator mentioned in paragraph 12 above. It was increased by 20% in respect of each child subsequent to the first.

16 In accordance with Article 1(125) of Law No 190/2014, Italian nationals, nationals of other Member States and third-country nationals who hold a long-term residence permit as provided for in Article 9 of decreto legislativo n. 286 – Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero (Legislative Decree No 286 consolidating the provisions regulating immigration and the rules relating to the status of foreign nationals), of 25 July 1998 (GURI No 191 of 18 August 1998, Ordinary Supplement to the GURI No 139), are entitled to receive that allowance provided they reside in Italy.

17 Article 74 of decreto legislativo n. 151 – Testo unico delle disposizioni legislative in materia di tutela e sostegno della maternità e della paternità, a norma dell'articolo 15 della legge 8 marzo 2000, n. 53 (Legislative Decree No 151 consolidating the provisions concerning the protection and support of maternity and paternity, pursuant to Article 15 of Law No 53 of 8 March 2000), of 26 March 2001 (GURI No 96 of 26 April 2001, Ordinary Supplement to the GURI No 93), grants entitlement to a maternity allowance ('the maternity allowance') in respect of every child born since 1 January 2001 or in respect of any minor in pre-adoption foster care or adopted without foster care to women residing in Italy, who are nationals of that Member State or of another EU Member State or who are holders of a long-term residence permit. That allowance is granted to women who are not entitled to maternity benefit in connection with employment, self-employment or professional practice and provided that the household does not have resources greater than a certain amount calculated on the basis of the economic situation indicator (ISE) referred to in decreto legislativo n. 109 – Definizioni di criteri unificati di valutazione della situazione economica dei soggetti che richiedono prestazioni sociali agevolate, a norma dell'articolo 59, comma 51, della legge 27 dicembre 1997, n. 449 (Legislative Decree No 109 defining standard criteria for evaluating the

economic situation of applicants for subsidised social benefits, in accordance with Article 59(51) of Law No 449 of 27 December 1997), of 31 March 1998 (GURI No 90 of 18 April 1998).

18 Directive 2011/98 was transposed into national law by decreto legislativo n. 40 – Attuazione della direttiva 2011/98/UE relativa a una procedura unica di domanda per il rilascio di un permesso unico che consente ai cittadini di Paesi terzi di soggiornare e lavorare nel territorio di uno Stato membro e a un insieme comune di diritti per i lavoratori di Paesi terzi che soggiornano regolarmente in uno Stato membro (Legislative Decree No 40 transposing Directive 2011/98), of 4 March 2014 (GURI No 68 of 22 March 2014), which introduced a 'single work permit'.

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

19 Third-country nationals residing legally in Italy and who hold only the single work permit provided for by Legislative Decree No 40 transposing Directive 2011/98 were refused the childbirth allowance by the INPS on the ground that they did not have long-term resident status. The courts adjudicating on the substance before which they challenged that refusal upheld their claims, applying the principle of equal treatment laid down in Article 12(1)(e) of Directive 2011/98.

20 The Corte suprema di cassazione (Supreme Court of Cassation, Italy), which was called upon to rule on the appeals on points of law brought against decisions of several courts of appeal, held that the childbirth allowance regime infringed several provisions of the Italian Constitution, read in conjunction with Articles 20, 21, 24, 33 and 34 of the Charter, and referred questions on the constitutionality of Article 1(125) of Law No 190/2014 to the Corte costituzionale (Constitutional Court, Italy), in so far as that provision makes the grant of the childbirth allowance to third-country nationals subject to the condition that they have long-term resident status.

21 The applicants in the previous proceedings claim before the Corte costituzionale (Constitutional Court) that the provision at issue is unconstitutional and furthermore contrary to Article 12 of Directive 2011/98. The INPS, as the defendant in the previous proceedings, contends that the questions as to constitutionality should be dismissed, submitting that the childbirth allowance is a premium payment which falls outside the field of social security and that it is not intended to meet primary and urgent personal needs. It adds that that directive confers on Member States discretion to exclude from the benefits at issue third-country nationals who do not have long-term resident status, having regard to the limits on the financial resources available. The Presidente del Consiglio dei Ministri (President of the Council of Ministers, Italy), acting as intervener in the previous proceedings, contends that the questions as to constitutionality should be dismissed as inadmissible or, in the alternative, manifestly unfounded. He submits that the childbirth allowance is not intended to meet people's basic needs and that, under EU law too, only long-term resident status allows the full assimilation of third-country nationals with Union citizens as regards social benefits.

22 For the same reasons as those concerning the childbirth allowance, the Corte suprema di cassazione (Supreme Court of Cassation) also referred a question as to constitutionality to the referring court concerning Article 74 of Legislative Decree No 151, of 26 March 2001, on the maternity allowance. Before the referring court, the applicants in the previous proceedings claim that that provision is unconstitutional, while the President of the Council of Ministers contends that the question as to constitutionality should be dismissed as inadmissible or, in the alternative, manifestly unfounded.

23 In support of its request for a preliminary ruling, the referring court states, inter alia, that it has jurisdiction to rule on the possible incompatibility of national provisions with the rights and

principles enshrined in the Charter. It states that, when a question as to constitutionality is referred to it for a preliminary ruling concerning those rights and principles, it cannot refrain from ascertaining whether the provision at issue infringes both constitutional rights and principles and those enshrined in the Charter, the guarantees provided for by the Italian Constitution being supplemented by the guarantees enshrined in the Charter. As a national court or tribunal within the meaning of Article 267 TFEU, it makes a reference to the Court of Justice for a preliminary ruling in all cases where that is necessary in order to clarify the meaning and effects of the provisions of the Charter and it may, at the end of that assessment, declare the provision at issue unconstitutional, thus removing it from the national legal order with *erga omnes* effects.

24 The referring court considers that the constitutional rights and principles mentioned by the Corte suprema di cassazione (Supreme Court of Cassation) and those enshrined in the Charter, supplemented by secondary legislation, are inextricably linked, complement each other and are harmonised with one another, and that the prohibition on arbitrary discrimination and the protection of motherhood and children guaranteed by the Italian Constitution must be interpreted in the light of the binding indications given by EU law.

25 Referring to Article 12 of Directive 2011/98 and to the Court's case-law, the referring court states that it must examine the right to equal treatment with regard to the branches of social security as defined by Regulation No 883/2004 and states that, in establishing the single permit system, the Italian Republic did not expressly exercise the option of introducing the derogations provided for by that directive. It considers it necessary, before ruling on the questions as to constitutionality raised by the Corte suprema di cassazione (Supreme Court of Cassation), to ask the Court about the interpretation of provisions of EU law which affect the answer to be given to those questions.

26 It observes, in that regard, that the childbirth allowance, owing in particular to the significant changes which it has undergone in recent years, has novel aspects compared with family benefits already examined by the Court. In that regard, it observes that, although that allowance is linked to objective criteria defined by law and falls within the category of social security benefits, it nevertheless has a number of functions which might make its classification as a family benefit uncertain.

27 First, the childbirth allowance has the function of a premium payment intended to encourage the birth rate, that objective being confirmed by the changes made to the scheme establishing a universal benefit with an increase for children subsequent to the first. Secondly, Article 1(125) of Law No 190/2014, in its original version, by rendering the grant of that allowance subject to an income requirement, appears to recognise as relevant the fact that the recipient family is in a weak situation. The purpose of that allowance is thus also to support households in difficult economic circumstances and to ensure essential care for minors. That latter purpose is confirmed by recent legislative amendments which, while making the childbirth allowance a universal welfare measure, adjusted its amount in accordance with different income thresholds and, therefore, various levels of need.

28 Furthermore, the referring court asks whether the maternity allowance must be included in the benefits guaranteed in Article 34 of the Charter, in the light of the secondary legislation which seeks to provide a common set of rights based on equal treatment with the nationals of the host member State for all third-country nationals who are legally residing and working in a Member State.

29 In those circumstances, the Corte costituzionale (Constitutional Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 34 of the [Charter] to be interpreted as applying to childbirth and maternity allowances under Article 3(1)(b) and (j) of Regulation [No 883/2004], referred to in Article 12(1)(e) of Directive [2011/98], and is EU law therefore to be interpreted as precluding national legislation which fails to extend the abovementioned benefits, which are already granted to foreign nationals holding a long-term resident’s EU residence permit, to foreign nationals who hold a single permit under that directive?’

**Procedure before the Court**

30 The referring court requested that the present case be dealt with in accordance with the expedited procedure pursuant to Article 105(1) of the Rules of Procedure of the Court of Justice.

31 In support of its request, it submits that the question referred in this reference is subject to extensive debate before the Italian courts, which could give rise to numerous references for a preliminary ruling before the Court. The scale of the multiple proceedings relating to that question has given rise to uncertainty in the interpretation of EU law between, on the one hand, the administrative authorities responsible for granting the allowances at issue and, on the other hand, the Italian courts, inasmuch as only the latter treat Article 12 of Directive 2011/98 as having direct effect.

32 It follows from Article 105(1) of the Rules of Procedure that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules of procedure.

33 In the present case, on 17 September 2020, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to reject the referring court’s request referred to in paragraph 30 above since the conditions for granting that request, and in particular the presence of exceptional circumstances, were not satisfied.

34 First, it is clear from the Court’s settled case-law that the large number of persons or legal situations which may be affected by the decision that a referring court must give after making a request to the Court for a preliminary ruling does not, as such, constitute an exceptional circumstance justifying the application of the expedited procedure (judgment of 8 December 2020, *Staatsanwaltschaft Wien (Falsified transfer orders)*, C-584/19, EU:C:2020:1002, paragraph 36).

35 Secondly, the Court has held that the need to unify divergent national case-law, although legitimate, cannot in itself justify the use of an expedited procedure (see, to that effect, order of the President of the Court of 30 April 2018, *Oro Efectivo*, C-185/18, not published, EU:C:2018:298, paragraph 17).

36 In accordance with the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, the Italian Republic requested that the Court assign the case to the Grand Chamber.

**Consideration of the question referred**

***Admissibility of the question referred for a preliminary ruling in so far as it relates to the maternity allowance***

37 The Commission raises doubts as to the admissibility of the question in so far as it concerns the maternity allowance, since the Corte suprema di cassazione (Supreme Court of Cassation) stated, when referring the matter to the Corte costituzionale (Constitutional Court), the referring court, that the facts in the main proceedings date from before the deadline for the implementation of Directive 2011/98 as provided for in Article 16(1) thereof, namely 25 December 2013. The Italian Government, for its part, has doubts as to the fact that the applicants in the main proceedings are holders of a single work permit, observing that they appear to be holders of a residence permit on another basis. It points out, in particular, that the allowance concerned is reserved for persons who cannot be classified as 'workers'. However, Article 12(1) of Directive 2011/98 is applicable only to third-country nationals having worker status.

38 It must be recalled that in that connection, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 13 November 2018, *Čepelnik*, C-33/17, EU:C:2018:896, paragraph 20).

39 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 13 November 2018, *Čepelnik*, C-33/17, EU:C:2018:896, paragraph 21).

40 In the present case, it is true that a directive cannot be relied on by individuals in respect of facts prior to its transposition in order to have disapplied pre-existing national provisions which would be contrary to that directive (see, to that effect, judgment of 5 February 2004, *Rieser Internationale Transporte*, C-157/02, EU:C:2004:76, paragraphs 67 and 68 and the case-law cited). It should be noted, however, that the referring court itself is not the court called upon to rule directly in the disputes in the main proceedings, but rather a constitutional court to which a question of pure law has been referred, independent of the facts raised before the court adjudicating on the substance of the case. It must answer that question in the light both of the rules of national law and of the rules of EU law, in order to provide not only to its own referring court but also to all the Italian courts a decision having *erga omnes* effect, which those courts must apply in any relevant dispute upon which they may be called to adjudicate. In those circumstances, the interpretation of EU law sought by the referring court bears a relation to the object of the dispute before it, which concerns exclusively the constitutionality of national provisions having regard to national constitutional law read in the light of EU law.

41 Furthermore, the question whether Article 12(1) of Directive 2011/98 applies only to third-country nationals who have a residence permit in the host Member State for the purposes of working there or whether, on the other hand, that provision also covers third-country nationals who have a residence permit for purposes other than to work and who are allowed to work in that Member State, concerns the interpretation of that directive and, therefore, the substance of the present case.

42 It follows that that question is admissible, including in so far as it relates to the maternity allowance.

***Substance***

43 The referring court has asked the Court of Justice about the interpretation of Article 34 of the Charter in order to ascertain whether the childbirth allowance and the maternity allowance fall within the scope of that article and whether Article 12(1)(e) of Directive 2011/98 precludes national legislation which excludes third-country nationals who hold a single permit, within the meaning of Article 2(c) of that directive, from entitlement to those allowances.

44 It should be noted that, under Article 34(1) of the Charter, the European Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by EU law and national laws and practices. In addition, under Article 34(2) of the Charter, everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with EU law and national laws and practices.

45 Furthermore, Article 12(1)(e) of Directive 2011/98, which, as stated in recital 31 thereof, respects the fundamental rights and observes the principles recognised by the Charter, provides that third-country workers as referred to in points (b) and (c) of Article 3(1) of that directive are to enjoy equal treatment with nationals of the Member State where they reside with regard to branches of social security, as defined in Regulation No 883/2004.

46 Therefore, by that reference to Regulation No 883/2004, it must be held that Article 12(1)(e) of Directive 2011/98 gives specific expression to the entitlement to social security benefits provided for in Article 34(1) and (2) of the Charter.

47 It is apparent from the Court's case-law that, where they adopt measures which come within the scope of application of a directive which gives specific expression to a fundamental right provided for by the Charter, the Member States must comply with that directive (see, to that effect, judgment of 11 November 2014, *Schmitzer*, C-530/13, EU:C:2014:2359, paragraph 23 and the case-law cited). It follows that the question referred must be examined in the light of Directive 2011/98. The scope of Article 12(1)(e) of that directive is determined by Regulation No 883/2004.

48 It should also be noted that Article 12(1) of Directive 2011/98 applies both to third-country nationals who have been admitted to a Member State for the purpose of work in accordance with EU or national law and to third-country nationals who have been admitted to a Member State for purposes other than work in accordance with EU or national law, who are entitled to work and who hold a residence permit in accordance with Regulation No 1030/2002.

49 As is apparent from recital 20 of that directive, that provision is not limited to ensuring equal treatment for holders of a single work permit but also applies to holders of a residence permit for purposes other than to work, who have been given access to the labour market in the host Member State.

50 In those circumstances, it must be held that, by its question, the referring court asks, in essence, whether Article 12(1)(e) of Directive 2011/98 must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that

directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.

51 Having regard to the fact that, as set out in paragraph 45 above and as is apparent from recital 24 of Directive 2011/98, for the purposes of eligibility for the equal treatment provided for in Article 12(1)(e) of that directive, it is necessary that the benefits at issue fall within the branches of social security as defined in Regulation No 883/2004, the Court, in order to answer that question, must examine whether the childbirth allowance and the maternity allowance constitute benefits falling within the branches of social security listed in Article 3(1) of that regulation.

52 In that regard, it should be borne in mind that, according to the settled case-law of the Court, the distinction between benefits coming within the scope of Regulation No 883/2004 and those which fall outside that scope is based essentially on the constituent elements of each benefit, in particular its purpose and the conditions for its grant, and not on whether it is classified as a social security benefit by national legislation (judgments of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 20 and the case-law cited, and of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a frontier worker)*, C-802/18, EU:C:2020:269, paragraph 35 and the case-law cited).

53 The Court has repeatedly held that a benefit may be regarded as a social security benefit in so far as it is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and provided that it relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 (judgments of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 20 and the case-law cited, and of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a frontier worker)*, C-802/18, EU:C:2020:269, paragraph 36 and the case-law cited).

54 Thus, as regards the first condition referred to in the previous paragraph, the Court has declared that benefits that are granted automatically to families meeting objective criteria relating in particular to their size, income and capital resources, without any individual and discretionary assessment of personal needs, and that are intended to meet family expenses, must be regarded as social security benefits (judgments of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 22 and the case-law cited, and of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a frontier worker)*, C-802/18, EU:C:2020:269, paragraph 37).

55 Furthermore, so far as that condition is concerned, the Court has held, in relation to benefits which are granted, refused or the amount of which is calculated by taking into account the recipient's resources, that the grant of such benefits does not depend on an individual assessment of the applicant's personal needs, provided that an objective, legally defined criterion gives entitlement to the benefit without the competent authority's being able to take other personal circumstances into consideration (judgment of 12 March 2020, *Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle*, C-769/18, EU:C:2020:203, paragraph 28 and the case-law cited).

56 The Court has also stated that, in order for it to be considered that the first condition has not been satisfied, the discretionary nature of the assessment, by the competent authority, of the personal needs of a recipient of a benefit must, above all, relate to eligibility for that benefit. Those considerations apply, *mutatis mutandis*, in respect of the individual character of the assessment by the competent authority of the personal needs of a recipient of a benefit (judgment of 12 March 2020, *Caisse d'assurance maladie et de la santé au travail d'Alsace-Moselle*, C-769/18, EU:C:2020:203, paragraph 29 and the case-law cited).

57 With regard to whether a particular benefit is one of the family benefits referred to in Article 3(1)(j) of Regulation No 883/2004, it must be noted that, in accordance with Article 1(z) of that regulation, the term '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 to that regulation. The Court has held that the phrase 'to meet family expenses' is to be interpreted as referring in particular to a public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children (judgment of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a frontier worker)*, C-802/18, EU:C:2020:269, paragraph 38 and the case-law cited).

58 In the present case, as regards the birth allowance, it is apparent from the information provided by the referring court, set out in paragraphs 11 to 16 and in paragraphs 26 and 27 above, that, first, it is granted in respect of any child born or adopted whose parents reside in Italy and are Italian nationals or are citizens of a Member State of the European Union or, further, have long-term resident status. Initially granted to households whose resources did not exceed a certain statutory ceiling, that allowance was then extended to all households without any income requirement, its amount varying according to household resources and being increased by 20% in respect of each child subsequent to the first. Thus, it appears that that benefit is granted automatically to households satisfying certain legally defined, objective criteria, without any individual and discretionary assessment of the applicant's personal needs. In particular, it is apparent from the order for reference that, initially, the childbirth allowance was granted or refused taking into account the resources of the household of which the applicant parent was a member on the basis of an objective and legally defined criterion, namely the equivalent economic situation indicator, without the competent authority's being able to take account of other personal circumstances. Subsequently, the childbirth allowance was granted irrespective of the level of household income, although the actual amount of that allowance is calculated, in essence, on the basis of that indicator.

59 Secondly, the childbirth allowance consists of a sum of money paid monthly by the INPS to its recipients and is intended in particular to contribute to the costs arising from the birth or adoption of a child. It is, therefore, a cash benefit intended in particular, by means of a public contribution to the family's budget, to alleviate the financial burdens involved in the maintenance of a newly born or adopted child, within the meaning of the case-law referred to in paragraph 57 above. Furthermore, since the Italian Republic has never been included, as stated in paragraph 10 above, in Part II of Annex I to Regulation No 883/2004 concerning special childbirth and adoption allowances, the childbirth allowance at issue in the main proceedings does not fall within the scope of that annex and cannot therefore, in the light of that annex, be excluded from the concept of 'family benefits' within the meaning of the case-law referred to in paragraph 57 above.

60 It follows that childbirth allowance is a family benefit within the meaning of Article 3(1)(j) of Regulation No 883/2004. It is of little importance, in that regard, whether that allowance has a dual function, namely, as the referring court states, both that of a contribution to the costs resulting from the birth or adoption of a child and that of a premium intended to encourage the birth rate, since one of those functions relates to the branch of social security referred to in that provision (see, to that effect, judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraphs 19 and 20, and of 15 March 2001, *Offermanns*, C-85/99, EU:C:2001:166, paragraph 45).

61 As regards the maternity allowance, it is apparent from the information provided by the referring court and set out in paragraph 17 above that it is granted in respect of every child born or adopted or in respect of any minor in pre-adoption foster care, to women residing in Italy who are nationals of the Italian Republic or of another Member State or who have long-term resident status,

provided that they are not entitled to maternity benefit in connection with employment, self-employment or professional practice and provided that the household of which the mother is a member does not have resources greater than a certain amount.

62 Thus, it appears, first, that the maternity allowance is automatically granted to mothers meeting certain legally defined, objective criteria, without any individual and discretionary assessment of the personal needs of the person concerned. In particular, the maternity allowance is granted or refused taking into account, in addition to the absence of maternity benefit in connection with employment, self-employment or professional practice, the resources of the household of which the mother is a member on the basis of an objective and legally defined criterion, namely the economic situation indicator, without the competent authority's being able to take account of other personal circumstances. Secondly, it relates to the branch of social security referred to in Article 3(1)(b) of Regulation No 883/2004.

63 It follows that the childbirth allowance and the maternity allowance fall within the branches of social security in respect of which the third-country nationals referred to in Article 3(1)(b) and (c) of Directive 2011/98 enjoy the right to equal treatment provided for in Article 12(1)(e) of that directive.

64 It should also be noted that, as stated by the referring court, the Italian Republic has not availed itself of the option available to Member States of restricting equal treatment, as provided for in Article 12(2)(b) of Directive 2011/98.

65 Therefore, it must be held that national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of Directive 2011/98 from entitlement to a childbirth allowance and a maternity allowance does not comply with Article 12(1)(e) of that directive.

66 In the light of all the foregoing considerations, the answer to the question referred is that Article 12(1)(e) of Directive 2011/98 must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.

**Costs**

67 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 (Grand Chamber) hereby rules:

**Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.**

[Signatures]

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* Language of the case: Italian.