



Reports of Cases

Case C-496/15

Alphonse Eschenbrenner
v
Bundesagentur für Arbeit

(Request for a preliminary ruling
from the Landessozialgericht Rheinland-Pfalz, Mainz)

(Reference for a preliminary ruling — Freedom of movement for workers — Article 45 TFEU — Regulation (EU) No 492/2011 — Article 7 — Equal treatment — Frontier worker subject to income tax in the Member State of residence — Benefit paid by the Member State of employment in the event of the employer's insolvency — Detailed rules for the calculation of the insolvency benefit — Notional taking into account of the income tax of the Member State of employment — Insolvency benefit lower than the previous net remuneration — Bilateral convention for the avoidance of double taxation)

Summary — Judgment of the Court (Second Chamber), 2 March 2017

Freedom of movement for persons — Workers — Equal treatment — Frontier worker subject to income tax in the Member State of residence — Benefit paid by the Member State of employment in the event of the employer's insolvency — Detailed rules for the calculation of the insolvency benefit — Notional taking into account of the income tax of the Member State of employment — Lawfulness

(Art. 45 TFEU; European Parliament and Council Regulation No 492/2011, Art. 7)

Article 45 TFEU and Article 7 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 not precluding, in circumstances such as those at issue in the main proceedings, the amount of the insolvency benefit awarded by a Member State to a frontier worker who is not subject to income tax in that State, and for whom that benefit, under the provisions applicable to him, is not taxable, from being determined by deducting income tax, as it applies in that State, from the remuneration used to calculate that benefit, with the consequence that that frontier worker, unlike persons working and residing in that State, does not receive a benefit corresponding to his previous net remuneration. The fact that that worker does not have a claim against his employer corresponding to the part of his previous gross salary which he has not received because of that deduction has no effect in that regard.

(see para. 59, operative part)