

WRITTEN QUESTION E-2017/02

by Ieke van den Burg (PSE) and Anne Van Lancker (PSE)  
to the Commission

Subject: Application of Regulation 1612/68 in the case of top-up payments to an unemployed cross-border worker

Is the Commission aware of the judgment of 21 March 2002 delivered by the court in *s' Hertogenbosch* in the case of *Rita Lemmens-Lenaerts* (Case 197850)? Ms Lemmens-Lenaerts lives in Belgium and was employed as a cross-border worker in the Netherlands. She lost her job and, under Regulation (EEC) 1408/71,<sup>1</sup> is entitled to Belgian unemployment benefit. On the basis of a collective employment agreement (CEA) arrangement whereby the unemployment benefit is topped up to a percentage of the last gross salary payment, her former employer makes a supplementary payment, but bases it on a notional benefit paid in the Netherlands. Since the Belgian benefit is lower than the Netherlands one, there is a difference between her income and that of unemployed colleagues living in the Netherlands.

Does the Commission also take the view that the question here is whether the CEA entitlement formulated as a percentage of gross salary (being a social benefit pursuant to Article 7(2) and (4) of Regulation (EEC) 1612/68<sup>2</sup>) must result in the same level of (gross) income for an unemployed border worker receiving a benefit that must be paid in the country of residence (pursuant to Article 71(1)(a)(ii) of Regulation (EEC) 1408/71) as for colleagues resident in the country of employment?

Does the Commission not take the view that the Netherlands judge should also have referred to the case-law relating to Regulations 1408/71 and 1612/68, namely the *Meints* judgment (C-57/96) and the 'pension rights' judgment (Commission/France C-35/97)?

What is the Commission's view on the possibility of finding a solution, when the planned revision of Regulation (EEC) 1408/71 takes place, to the above problem of unemployment benefit paid compulsorily in the country of residence and top-up payments related to benefits in the country of employment when cross-border workers are made redundant?

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<sup>1</sup> OJ L 149, 5.7.1971, p. 2.

<sup>2</sup> OJ L 257, 19.10.1968, p. 2.