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ADDENDUM TO THE PROGRESS REPORT

from: Presidency
to: Permanent Representatives Committee (Part I) / COUNCIL (EPSCO)
No. Cion prop.: 8040/12 + COR 1 - COM(2012) 131 final
Subject: Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
- Progress Report

Delegations will find attached the text of Chapters I, II, III, VI and VII of the draft Directive, as it results from the work of the Social Questions Working Party under the Cyprus Presidency.

The Progress Report can be found in doc. 16540/12.

Draft

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework
of the provision of services¹**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

...

Whereas:

...

- (13) Administrative cooperation and mutual assistance between the Member States should comply with the rules on the protection of personal data laid down in Directive 95/46/EC, and in accordance with Member States' national data protection rules implementing EU legislation. With regard to administrative cooperation through the Internal Market Information System (IMI), it should also comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data² and Regulation (EU) No 1024/2012 (IMI Regulation) on administrative cooperation through the Internal Market Information System (IMI).

¹ AT, CZ, DE, EE, IE, LT, LV, MT, PL, PT, SI, SK and UK maintain general scrutiny reservations on the text of the draft Directive and IT a reservation on the legal basis. In addition, DK, FR, IE, MT, SI and UK have entered parliamentary scrutiny reservations. All delegations maintain linguistic scrutiny reservations pending availability of the text in their own languages.

² OJ L 8, 12.1.2001, p. 1.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive establishes a general common framework of appropriate provisions, measures and control mechanisms necessary for better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules, and without prejudice to the scope of Directive 96/71/EC.

This Directive aims to guarantee respect for an appropriate level of minimum protection of the rights of posted workers for the cross-border provision of services, while facilitating the exercise of the freedom to provide services for service providers and promoting fair competition between service providers.

2. This Directive shall not affect in any way the exercise of fundamental rights as recognised in Member States and by Union law, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and practices. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and practices.

Article 2
Definitions

For the purposes of this Directive,

- (a) ‘competent authority’ means any authority or body³ designated by a Member State to perform functions under this Directive;
- (b) ‘requesting authority’ means the competent authority of a Member State which makes a request for assistance, information, notification or recovery concerning a penalty or fine as referred to in Chapter VI;
- (c) ‘requested authority’ means the competent authority of a Member State to which a request for assistance, information, notification or recovery is made.

Article 3 (moved from Article 4)
Competent authorities and liaison offices

For the purposes of this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more competent authorities, which may include the liaison office(s) referred to in Article 4 of Directive 96/71/EC. When designating their competent authorities Member States shall have due regard for the need to ensure the data protection of exchanged information and the legal rights of natural and legal persons that may be affected. Member States shall remain ultimately responsible for safeguarding data protection and the legal rights of affected persons and shall put in place appropriate mechanisms in this respect.

³ LT, MT, PL, PT, SI, SK and UK maintain reservations in relation to the removal of the reference to public authorities. LV and EE can be flexible. BE and IE maintain scrutiny reservations. CION stressed that all necessary guarantees with regard to the protection of personal data were provided under this Directive as well as under the IMI Regulation and recalled the importance of the role of the social partners in the area of posting.

Contact details of the competent authorities shall be communicated to the Commission and the other Member States. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Other Member States and EU institutions shall respect each Member State's choice(s) of competent authorities.⁴

Article 4⁵

Preventing abuse and circumvention

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements may include:
 - (a) the place where the undertaking has its registered office and administration, uses office space, pays taxes, has a professional licence or is registered with the chambers of commerce or professional bodies,
 - (b) the place where posted workers are recruited,⁶

⁴ Scrutiny reservations by PL, PT and UK on this last sentence.

⁵ CZ, DE, DK, FI, LT, LU, LV, NL, PL, RO, SI and UK entered scrutiny reservations on this Article. DK, ES, FR and IT while basically in agreement, stressed that their position will ultimately depend on the content of recital 5. DK indicated furthermore that its position in this respect would depend on the Opinion to be given by the Council Legal Service. SE's agreement on this Article is conditional on adopting the wording of Article 1(1) as it currently stands.

IT, LU and PT stated that SE's proposal (doc. 11065/12) should be examined further. ES also considered that a new paragraph should be added.

CZ and RO stated that other criteria, as suggested previously by UK, might possibly be added, subject to the introduction of a review clause.

⁶ Scrutiny reservation by SI.

- (c) the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other hand,
- (d) the place where the undertaking performs its substantial business activity and where it employs administrative staff,
- (e) the number⁷ of contracts performed and/or turnover⁸ realised in the Member State of establishment,⁹

2. In order to assess whether a posted worker temporarily carries out his or her work in a Member State other than the one in which he or she normally works, all factual elements characterising such work and the situation of the worker shall be examined.

Such elements may include:

- (a) the work is carried out for a limited period of time in another Member State;
- (b) the posting takes place to a Member State other than the one in or from which the posted worker habitually carries out his or her work according to Regulation (EC) No 593/2008 and/or the Rome Convention;
- (c) the posted worker returns or is expected to resume working to the Member State from which he/she is posted after completion of the work or the provision of services for which he or she was posted;

⁷ BE, DE and SK were in favour of the Commission's proposal (*"the abnormally limited number of contracts"*).

⁸ DE was in favour of the Commission proposal ("size of turnover") as it was of the view that only an exceptionally low size of turnover could point to a possible abuse or circumvention.

⁹ EE, PL and UK considered that item (e) should be removed.

- (d) travel, board and lodging/accommodation¹⁰ is provided or reimbursed by the employer who posts the worker, and if so, how this is done; as well as
 - (e) any previous periods during which the post was filled by the same or another (posted) worker.
3. All the factual elements enumerated in paragraphs 1 and 2 above are indicative factors in the overall assessment to be made in case of doubt, and may not therefore be considered in isolation. The assessment of these elements shall be adapted to each specific case and take account of the specificities of the situation.

CHAPTER II

ACCESS TO INFORMATION

(Article 4 moved above and renumbered as Article 3)

Article 5

Improved access to information

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers are made generally available in a clear, comprehensive and easily accessible way at a distance and by electronic means, in formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

¹⁰ LU felt that the following should be added after "accommodation": "*paid in addition to the minimum wage where existing in the host Member State*". CION was against this addition on grounds that there is no relationship between Article 3 (7) of Directive 96/71/EC (which relates to the notion of minimum rates of pay) and the element referred to here.

2. In order to bring about further improvements with respect to access to information, Member States shall:
- (a) indicate clearly, in a detailed and user friendly manner and accessible format on national websites which terms and conditions of employment and/or which parts of their (national and/or regional) legislation have to be applied to workers posted to their territory;
 - (b) take the necessary measures to make generally available on internet sites information on which collective agreements are applicable (and to whom), and which terms and conditions of employment have to be applied by service providers from other Member States in accordance with Directive 96/71/EC, whereby, where possible, links to existing internet sites and other contact points, in particular the relevant social partners, shall be provided;
 - (c) make the information available to workers and service providers in the most relevant languages, the choice being left to the host Member State, if possible in summarised leaflet form indicating the main labour conditions applicable and upon requests in formats accessible to persons with disabilities¹¹;
 - (d) improve the accessibility of the information and clarity of the information provided on national websites;
 - (e) indicate, if possible, a contact person at the liaison office in charge of dealing with requests for information;
 - (f) keep the information provided for in the country fiches up to date.
3. The Commission shall continue to support the Member States in this area.

¹¹ FI considered that this provision might be too detailed especially the last part “formats accessible to persons with disabilities”.

4. Where, in accordance with national law, traditions and practices, the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in accordance with Article 3 paragraphs 1 and 8 of that Directive, Member States shall ensure that these terms and conditions are made available in an accessible and transparent way to service providers from other Member States and to posted workers, and may involve the social partners in this respect. The relevant information should, in particular, cover the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration due and, where relevant, the qualifying criteria for classification in the different wage categories.

CHAPTER III

ADMINISTRATIVE COOPERATION

Article 6¹²

Mutual assistance — general principles

1. Member States shall work in close cooperation and provide each other mutual assistance in order to facilitate the implementation, application and enforcement in practice of this Directive.
2. The cooperation of the Member States shall in particular consist in replying to reasoned requests for information and to carry out checks, inspections and investigations from competent authorities with respect to the situations of posting referred to in Article 1(3) of Directive 96/71/EC, including investigation of any non compliance or abuses, of applicable rules on the posting of workers. Requests for information include information with respect to a possible recovery of an administrative penalty/fine, or notification of a decision imposing such a penalty/fine referred to in Chapter VI. ¹³

¹² SI maintained a scrutiny reservation

¹³ SE maintained a scrutiny reservation on this paragraph in relation to the links with Chapter VI.

- 2a. The cooperation of the Member States may¹⁴ also include the sending and service of documents of the requesting authority.¹⁵
3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.
4. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall without delay inform the requesting Member State with a view to finding a solution.
5. Member States shall supply the information requested by other Member States or the Commission by electronic means within the following time limits:¹⁶
1. Urgent cases requiring the consultation of registers for the purpose of checking an establishment in another Member State: up to a maximum of two working days¹⁷ from the receipt of the request.

The reason for the urgency shall be clearly indicated in the request with some details to substantiate its existence.

¹⁴ AT, BG, CZ, DE, FI, LU and SE stated that the text should read "shall" instead of "may". CION objects to such an amendment.

¹⁵ Scrutiny reservations by CZ, EE, FI, FR, IE, HU, LV, LT, NL, PL, RO, SK and UK and positive scrutiny reservations by DE, DK and LU. CION, questioning the need for including this provision, entered a negative scrutiny reservation, indicating that it would in any case be necessary to exclude explicitly the service of documents part from implementation through IMI in Article 19.

¹⁶ CION maintains a scrutiny reservation on the whole paragraph which, in its views, lacks the necessary level of ambition. IT and NL also maintain scrutiny reservations. DK stated that the Presidency's text could be accepted as a compromise and that the deadlines should not in any case be longer than indicated in the text.

¹⁷ EE, HU, LU, MT, SK and UK would prefer that the 2 working days be extended to 5. PT agreed that the deadline was too ambitious.

2. All other requests for information: up to a maximum of 25 working days¹⁸ from the receipt of the request, unless a shorter time limit is agreed by common accord between the Member States.

6. Member States shall ensure that registers in which service providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States, for the purposes of implementing this Directive and Directive 96/71/EC, insofar as these registers are listed by the Member States in the IMI.¹⁹

7. Member States shall ensure the confidentiality of the information which they exchange. Information exchanged shall be used only in respect of the matter(s) for which it was requested.²⁰

8. Mutual administrative cooperation and assistance shall be provided free of charge.

9. The Commission and the competent authorities shall cooperate closely in order to examine any difficulties which might arise in the application of Article 3(10) of Directive 96/71/EC.

¹⁸ PL considered that this deadline should be extended in certain exceptional circumstances.

¹⁹ AT maintained a scrutiny reservation and ES still had doubts in particular with the types of registers listed in the IMI system.

²⁰ SE maintained a reservation relating to the issue of confidentiality. It suggested replacing this paragraph with wording from IMI, otherwise to delete it as SE considered the IMI Regulation to be applicable. Positive reservation by FI which considered that this Article should be discussed together with Articles 6(6), 18 and 19.

Article 7²¹

Role of the Member State of establishment

1. The Member State of establishment of the service provider shall continue to control, monitor and take the necessary supervisory or enforcement measures, in accordance with its national law, practice and administrative procedures, with respect to workers posted to another Member State.
2. The Member State of establishment of the service provider shall assist the Member State to which the posting takes place to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive. This responsibility shall not in any way reduce the possibilities of the Member State to which the posting takes place to monitor, control and take any necessary supervisory or enforcement measures in accordance with this Directive and Directive 96/71/EC.
3. Where there are facts indicating possible irregularities, the Member State of establishment of the service provider shall, on its own initiative, communicate to the Member State to which the posting takes place any relevant information.
4. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information as to the legality of the service provider's establishment, the service provider's good conduct, and the absence of any infringement of the applicable rules. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

²¹ DE with the support of BE and LU pointed out that recital 16 and Article 10 should be adapted in accordance with the changes made in Article 7(2) and (5).

5. The obligation laid down in previous paragraphs shall not entail a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the host Member State in which the service is provided. Such checks and controls may, if need be, be carried out by the authorities of the host Member State on their own initiative or at the request of the competent authorities of the Member State of establishment, in accordance with Article 10 and in conformity with the powers of supervision provided for in the host Member State's national law, practice and administrative procedures and which respect Union law.

Article 8

Accompanying measures

1. Member States shall, with the assistance of the Commission, take accompanying measures to develop, facilitate and promote the exchange between officials in charge of the implementation of administrative cooperation and mutual assistance as well as monitoring the compliance with and enforcement of the applicable rules.
2. The Commission shall assess the necessity for financial support in order to further improve administrative cooperation and increase mutual trust through projects, including promoting exchanges of relevant officials and training, as well as developing, facilitating and promoting best practice initiatives, including those of social partners at Union level, such as the development and updating of databases or joint websites containing general or sector-specific information concerning terms and conditions of employment to be respected.

CHAPTER VI²²

CROSS-BORDER ENFORCEMENT OF ADMINISTRATIVE FINES AND PENALTIES

Article 13

*Scope*²³

1. Without prejudice to the means which are or may be provided for in other Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this Chapter shall apply to the cross-border enforcement of financial²⁴ administrative penalties/fines imposed on a service provider established in a Member State, for failure to comply with the applicable rules on posting of workers in another Member State.

²² General scrutiny reservations maintained by CZ, DK, EE, HU, LU, LT, LV, MT, PL, PT, RO, SE, SI, SK and UK on this Chapter. DE raised a number of general and fundamental questions on this Chapter (doc. 16098/12). A number of delegations expressed their interest in discussing these questions.

CZ, EE, LV, PL, SK and UK considered that the Council Legal Service should provide a written Opinion with regard to the situation where one Member State would provide for administrative sanctions and the other one for criminal ones.

SE, with the support of CZ, DK, SI and UK, suggested that provisions should be added regarding periods of limitation, languages and exchange rates, on the basis of Directive 2010/24/EU on taxation. With the exception of prescription deadlines, CION was against such addition as they would not be necessary taking into consideration the suggested system of distribution of costs (Article 16) and the implementation through IMI for the relevant provisions of this Chapter. IE requested written clarification by CION on systems which don't foresee administrative penalties.

²³ PT suggested adding to the scope a reference to "notification" taking into account the new wording of Article 13b.

²⁴ BE, LU and NL entered reservations on the limitation to the scope to financial administrative penalties/fines. CION expressed doubts for the need of such a limitation.

2. This Chapter shall apply to financial administrative penalties/fines²⁵, including fees and surcharges, imposed by competent authorities or confirmed by administrative or judicial bodies, relating to the non-respect of the terms and conditions of employment as laid down in Article 3 of Directive 96/71/EC, as well as the non-respect of administrative requirements and control measures referred to in Article 9, paragraph 1 of this Directive.²⁶

This Chapter shall not apply to the enforcement of penalties which fall under the scope of application of Council framework decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the enforcement of judgments in civil and commercial matters ('Brussels I')²⁷ or Council Decision 2006/325/EC of 27 April 2006 on the conclusion of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.²⁸

Article 13a²⁹

Determination of the competent authorities

Each Member State shall inform the Commission which authority or authorities, under its national law, are competent for the purpose of this Chapter, through IMI. Member States may designate, if it is necessary as a result of the organisation of their internal systems, one or more central authorities responsible for the administrative transmission and reception of requests and to assist other relevant authorities.

²⁵ BE, CZ, EE, LU, LV, NL, PL and UK felt that the text should be clarified further with regard to the type of sanctions falling within the scope of this Chapter.

²⁶ FR, concerned about the scope of this provision being too restrictive, made a text suggestion (doc. 16476/12); AT, CZ, DE, EE, FI, PL and UK and CION entered scrutiny reservations. FI considered that the reference to Article 9(1) should be removed.

²⁷ OJ L 12, 16.1.2001, p. 1.

²⁸ MT entered a scrutiny reservation.

²⁹ BG maintains a positive scrutiny reservation. CZ, EE, LU, MT, PL, PT and UK maintain scrutiny reservations regarding the wording of this provision with respect to central authorities and relevant authorities. LU prefers the initial wording and considers that the text should read "competent authorities" instead of "other relevant authorities".

Article 13b³⁰

General principles - mutual assistance and recognition

1. At the request of the requesting authority, the requested authority shall recover an administrative penalty/fine, or³¹ notify a decision imposing such a penalty/fine or any other document related to the recovery of such a penalty/fine.³²
2. The competent authority in the requesting Member State shall ensure that the request for recovery of a penalty/fine or notification of a decision imposing a penalty/fine is made in accordance with the laws, regulations and administrative practices in force in that Member State.

Such a request shall only be made when the requesting authority is unable to recover or to notify in accordance with its laws, regulations and administrative practices.³³

The requesting authority shall not make a request for recovery of a penalty/fine or notification of a decision imposing a penalty/fine if and as long as the penalty/fine, as well as the underlying claim and/or the instrument permitting its enforcement in the requesting Member State, are contested³⁴ in that Member State.³⁵

³⁰ BG and DE entered positive scrutiny reservations. CZ, IT, SE, PT and UK felt that the text could be improved further in relation to the distinction made between rules for recovery and rules for notification. HU submitted a proposal for discussion at a later stage (doc. 16769/12).

³¹ FR suggested using “and/or”

³² PL suggested adding at the end of the paragraph “subject to Article 14a”.

³³ FI and SE suggested an amendment based on the IT, FI and SE joint proposal (doc. 16073/12).

³⁴ ES suggested replacing “contested” with “subject to appeal”.

³⁵ DE maintained concerns on how the paragraph should be read in conjunction with the discussions on enforceable and final decisions. NL entered a scrutiny reservation.

3. The competent authorities in the Member State requested to recover an administrative penalty/fine or to notify a decision imposing such a penalty/fine which has been transmitted in accordance with the provisions of this Chapter and Article 18, shall recognise it without any further formality being required and shall forthwith take all the necessary measures for its execution, unless they decide to invoke one of the grounds for refusal provided for in Article 14a.
4. For the purpose of recovery of an administrative penalty/fine or notification of a decision imposing a penalty/fine, the competent requested authority shall act in accordance with the national laws, regulations and administrative practices in force in the requested Member State applying to the same or, in the absence of the same, a similar infringement or decision^{36, 37}.

Article 14³⁸

Request for recovery or notification

1. The request of the requesting authority for recovery of an administrative penalty/fine as well as the notification of a decision concerning an administrative penalty/fine shall be carried out by means of a uniform instrument through IMI and shall at least indicate:
 - (a) the name and known address of the addressee, as well as any other relevant data or information for the identification of the addressee,

³⁶ LU and PT suggested that the phrase "applying to the same or, in the absence of the same, a similar infringement or decision" should be deleted.

³⁷ IT maintained a scrutiny reservation in view of their proposal for adding a 5th paragraph, on the basis of the IT, FI and SE joint proposal (doc. 16073/12). SE supported this addition. Alternatively, IT could accept this Article if the following sentence would be added at the end of this paragraph: "*The notification of a decision imposing a penalty/fine made by the competent requested authority shall have the same effect as if it had been made by the requesting Member State itself.*" DE, FR, PL, NL and UK entered scrutiny reservations on this proposal. IE entered a negative scrutiny reservation.

³⁸ DE entered a positive scrutiny reservation on this Article. SE suggested that there was further room for improvement on the text, on the basis of the IT, FI and SE joint proposal.

- (b) a summary of the facts and description of circumstances of the infringement of the relevant applicable rules;³⁹
- (c) all other relevant information or documents, including those of a judicial nature, concerning the underlying claim, administrative penalty/fine; and
- (d) the name, address and other contact details regarding the competent authority responsible for the assessment of the penalty/fine, and, if different, the competent body where further information can be obtained concerning the penalty/fine or the possibilities for contesting the payment obligation or decision imposing it.

In addition, the request shall indicate:

- (i) in the case of a request for notification, the purpose of the notification and the period within which it shall be effected;⁴⁰
 - (ii) in the case of a request for recovery⁴¹, a description of the nature and amount of the penalty/fine, any dates of relevance to the enforcement process as well as the underlying claim in respect of which the request is made, and its different components;
2. The requested authority shall promptly inform the requesting authority of the action taken on its request for notification or recovery and, more specifically, of the date on which the instrument or decision was forwarded or notified to the addressee.

The requested authority shall likewise inform the requesting authority of the grounds for refusing a request for recovery or notification.

³⁹ SE did not consider this item relevant and argued that it should be deleted. UK was against such deletion.

⁴⁰ FI suggested an amendment and referred to its text proposal (doc. 16073/12).

⁴¹ MT suggested extending this to requests for notification also.

*Article 14a*⁴²
Grounds for refusal

The competent authorities in the requested Member State may refuse a request for recovery or notification of a decision if the request does not contain the information referred to in Article 14(1), or is incomplete or manifestly does not correspond to the underlying decision.

In addition, the competent authorities in the requested Member State may refuse a request for recovery if:

- (a) it is obvious that there are no or not sufficient assets for recovery in the requested Member State;⁴³
- (b) the envisaged costs or resources required to recover the penalty/fine are disproportionate in relation to the amount to be recovered or would give rise to disproportionate⁴⁴ difficulties;⁴⁵
- (c) the financial penalty/fine is below EUR [350] or the equivalent to that amount.⁴⁶

⁴² BG, DE, MT, PL and UK entered positive scrutiny reservations on the text of this Article. DE suggested additional elements (e) – (g) (doc. 16098/12). AT, CZ and ES expressing support for that proposal, FI, HU, LV, and UK entering positive scrutiny reservations and FR, LU, PL and PT agreeing with parts of the proposal.

LU with the support of LV and PT suggested adding as grounds for refusal « requests not corresponding to the legislation in force in the requested Member State», CI being strongly against this addition which would be in contradiction with Article 13b(3).

MT stated that the text in the Article does not clearly indicate that there is one ground for refusal of a request to notify a decision and that there are four separate and independent grounds for refusal of a request to recover administrative fines and/or penalties.

⁴³ IT, NL and SE were in favour of removing this item. SE alternatively suggested deleting the phrase "*or not sufficient*". NL feels that in case there are no assets this should not be a ground for refusal.

⁴⁴ IE suggested replacing “disproportionate” with “significant”.

⁴⁵ IT expressed doubts on this item, especially with regard to the level of discretion. NL felt that the content of this item was covered in item (c).

⁴⁶ IT suggested saying "*overall financial fine/penalty*" otherwise delete this item. SE supported reference to a "total" amount. CZ, MT and UK would prefer a higher threshold.

Article 15⁴⁷

Suspension of the procedure

1. If, in the course of the recovery or notification procedure, the administrative penalty/fine and/or underlying claim is contested by the service provider concerned or an interested party, the cross-border enforcement procedure of the penalty/fine imposed shall be suspended pending the decision of the appropriate national authority in the matter.

The requesting authority shall without delay notify the requested authority of the contestation.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body or judicial authority of that Member State in accordance with its laws and regulations.

Article 16⁴⁸

Costs

1. Amounts recovered with respect to the penalties/fines referred to in this Chapter shall accrue to the requested authority.

The requested authority shall recover the amounts due in its own currency, in accordance with its laws, regulations and administrative procedures or practices which apply to similar claims.

2. Member States shall not claim from each other the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Directive or resulting from its application.

⁴⁷ Scrutiny reservation by DE on this Article.

⁴⁸ IT maintained a scrutiny reservation, while SE maintained a reservation, both being in favour of the CION proposal.

Article 16a
Review clause

Within [three years]⁴⁹ after the date referred to in Article 20, the Commission shall, in consultation with the Member States, review the application of this Chapter in particular in light of the experiences with and effectiveness of the system of cross-border enforcement of administrative penalties/fines with a view to proposing, where appropriate, any necessary amendments or modifications.

CHAPTER VII
FINAL PROVISIONS

Article 17⁵⁰
Penalties

Member States shall lay down rules on penalties applicable in the event of infringements of national provisions adopted pursuant to this Directive and shall take all the necessary measures to ensure that they are implemented and complied with. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by [..... date of transposition] at the latest. They shall notify without delay any subsequent amendments to them.

⁴⁹ EE and IE felt that 3 years would be too short and MT suggested 5 years. UK stressed that the duration of review clauses should be harmonised.

⁵⁰ Scrutiny reservation by DE. SE suggested a clarification regarding contestation.

Article 18⁵¹

Internal Market Information System

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6, 7, 10(3), 13a, 14, and 15 shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC of 12 December 2007 concerning the implementation of the Internal Market Informations System as regards the protection of data⁵².
2. Member States may continue to apply bilateral arrangements concerning administrative cooperation between their competent authorities as regards the application and monitoring of the terms and conditions of employment applicable to posted workers referred to in Article 3 of Directive 96/71/EC.⁵³
3. In the context of bilateral agreements referred to in paragraph 2, competent authorities of the Member States shall use IMI as much as possible. In any event, where a competent authority in one of the Member States concerned has used IMI, it shall be used for any follow-up required.⁵⁴

⁵¹ BE, DE, NL, and SE maintained scrutiny reservations, SE's reservation being in relation to the links with Chapter VI. In addition, BE also had a reservation in relation to recital (12). BG, ES, FR, HU, LU and PT were in favour of the joint proposal by DE and BE (doc. 16084/12) relating to paragraphs (2) and (3). NL and RO entered positive scrutiny reservations. PL and CION strongly disagreed with the underlying thrust (to continue to use bilateral agreements in parallel which risks undermining the use and effectiveness of IMI) of the proposal relating to paragraph 3.

⁵² OJ L 316, 14.11.2012, p. 1.

⁵³ UK raised a query in relation to the text deleted.

⁵⁴ PL was in favour of the Commission proposal. LU prefers the wording "may use" instead of "shall use".

Article 19⁵⁵
Amendment to [IMI Regulation]

The following point shall be added to the Annex of Regulation (EU) No 1024/2012 of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC of 12 December 2007 concerning the implementation of the Internal Market Informations System as regards the protection of data (the IMI Regulation):

1. Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services⁵⁶: Article 4;
2. Directive xxxx/xx/EC of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services⁵⁷: Articles 6, 7, 10(3), 13a, 14, 14a and 15.

Article 20
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 2 years after its entry into force. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

⁵⁵ SE maintained a scrutiny reservation on this Article in relation to the links with Chapter VI.

⁵⁶ OJ L 18, 21.01.1997.

⁵⁷ OJ reference.

Article 21
Report

No later than 5 years after the expiry of the deadline for transposition, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

Article 22
Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 23
Addressees

This Directive is addressed to the Member States.

Done at Brussels, 21.3.2012

For the European Parliament
The President

For the Council
The President