



# DISCUSSION ON CONCLUSIONS AND PROPOSALS OF THE CIBELES PROJECT

Manuel Velázquez

Project Leader

Head of the Labour and Social Security

Inspectorate of Biscay (Spain)

Warsaw, December 7<sup>th</sup>, 2011

# Convergence of Inspectorates Building a European Level Enforcement System (CIBELES)

*A PROJECT FOR SETTING UP EUROSH  
(A European Network for Enforcement)*

# THE PROJECT CIBELES ACTIVITIES

- The Project Cibeles has been approved by the Senior Labour Inspectors Committee (SLIC) in 2009.
- The kick-off meeting was in April 2010 and the Final Conference has taken place on 10<sup>th</sup> and 11<sup>th</sup> November 2011 in Madrid.
- 9 SLIC MEMBERS ARE INVOLVED:
  - The Labour Inspectorates from BELGIUM , MALTA, HUNGARY, FRANCE, AUSTRIA, GERMANY, ITALY, PORTUGAL AND SPAIN
- MAIN ACTIVITIES
  - Technical Visits to the countries involved –National Reports
  - A Conference of Experts in Mallorca (October 2010)
  - Meetings with experts of the European Commission in Brussels and Luxembourg
  - A survey about declarations of posting in Spain
  - A meeting of Cibeles Team Experts in Mallorca (June 2011) to elaborate conclusions and proposals

# AIMS OF THE PROJECT CIBELES

- **Objective 1.**

**HOW TO IMPROVE COOPERATION AND MUTUAL ASSISTANCE IN LABOUR INSPECTORS' ENFORCEMENT ACTIVITIES:**

- **Objective 2.**

**Making proposals to the SLIC and the Commission toward further initiatives, programmes and regulations about this issues**

# THE SIGNIFICANCE OF OCCUPATIONAL SAFETY AND HEALTH (OSH)

- OSH IS THE COMMON COMPETENCE OF ALL THE EUROPEAN LABOUR INSPECTORATES
- CONSEQUENTLY, OUR ANALYSIS AND PROPOSALS ARE OSH - ORIENTED WITHOUT PREJUDICE OF THE GENERAL SCOPE OF SOME OF THEM
- OSH IS ALSO LINKED TO OTHER PROBLEMS

# WHY IS IT NECESSARY COOPERATION AND MUTUAL ASSISTANCE?

- **EUROPEAN LABOUR INSPECTORS SHOULD ENFORCE OSH LEGAL RULES IN EQUIVALENT MANNER**
  
- **EUROPEAN LABOUR INSPECTORS SHOULD CONTRIBUTE TO THE PROPER FUNCTIONING OF THE EUROPEAN INTERNAL MARKET**
  - With regard to the **FREE MOVEMENT OF GOODS** which can affect OSH, such as machinery or dangerous agents,
  - Also with regard to the **FREE PROVISION OF SERVICES** and particularly the **posting** of companies and workers:
    - **Posting can involve a certain worsening of working conditions**

# CIBELES CONCLUSIONS

**THE NEED TO ADOPT A LEGAL  
REGULATION BECAUSE OF THE  
RIGHT TO PERSONAL DATA  
PROTECTION**

**THE CONVENIENCE  
OF AN INTEGRATED  
EUROPEAN  
INFORMATION  
SYSTEM ON POSTING**

**BEFORE THE  
INSPECTION**

**REGULATION OF ALL  
TYPES OF MUTUAL  
ASSISTANCE IN THE  
INVESTIGATION OF  
BREACHES**

**DURING THE  
INSPECTION**

**THE NEED TO ENSURE  
CROSS-BORDER  
EXECUTION FOR  
FINANCIAL PENALTIES  
OF ANY KIND**

**AFTER THE  
INSPECTION**

# PERSONAL DATA PROTECTION

*“the protection of personal data is recognised as a **fundamental right** in the Charter of Fundamental Rights of the Union and in the European Convention on Human Rights (‘ECHR’)”*

- **There should be no doubt about the legal status of provisions restricting fundamental rights.**
- **Those provisions must be laid down in a legal instrument**, on the basis of the EC Treaty, which can be invoked before a judge.

## **IF NOT:**

- The consequences would be the **uncertainty** for for the data subject and for the monitoring authorities in their acts of mutual assistance.
- It would also provoke potential problems of the **legality of the proof**



# AN INTEGRATED INFORMATION SYSTEM ON POSTING

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FIRST GROUP OF PROPOSALS

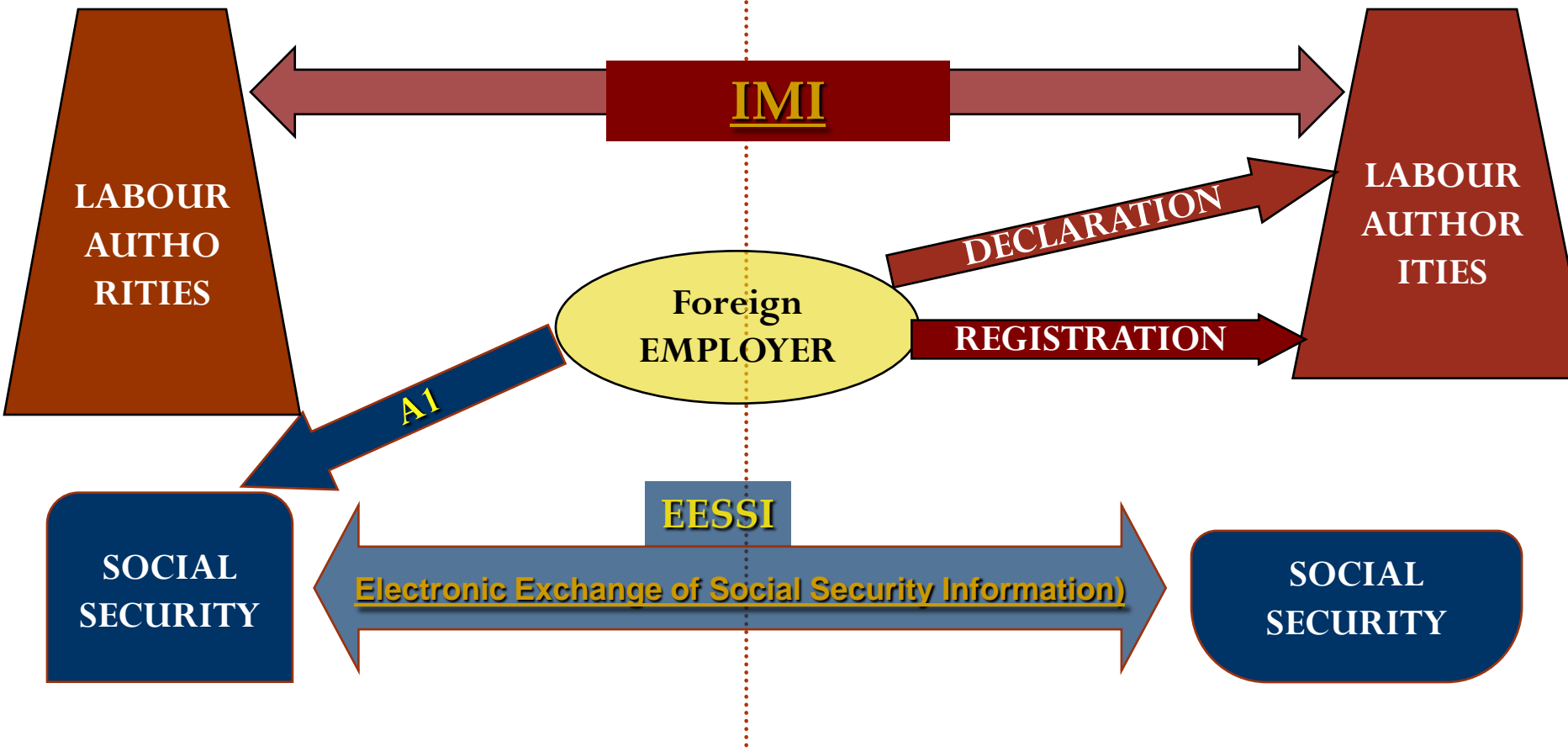
# CURRENT SOURCES OF INFORMATION FOR LABOUR INSPECTORS ON POSTED WORKERS

- **COMMUNICATIONS RELATING TO POSTING AND POSTED WORKERS**
  - **Communications of posting (“how to identify posting situations?”):**
    - **Pre-notification or declaration of posting** to the host MS: in 18 of the 27 MS (7 of 9 Cibeles MS)
    - 13 MS require providing **information about posting by the service recipient** (client in host state)
    - **Registration** of posted companies: in some MS
    - **A1 Social Security form** for posted workers: in all MS
  - **Communications on work-related accidents and occupational diseases of posted workers**
    - To the Social Security bodies (home MS)
    - To the host country authorities
  
- **IDENTIFICATION OF POSTED WORKERS**

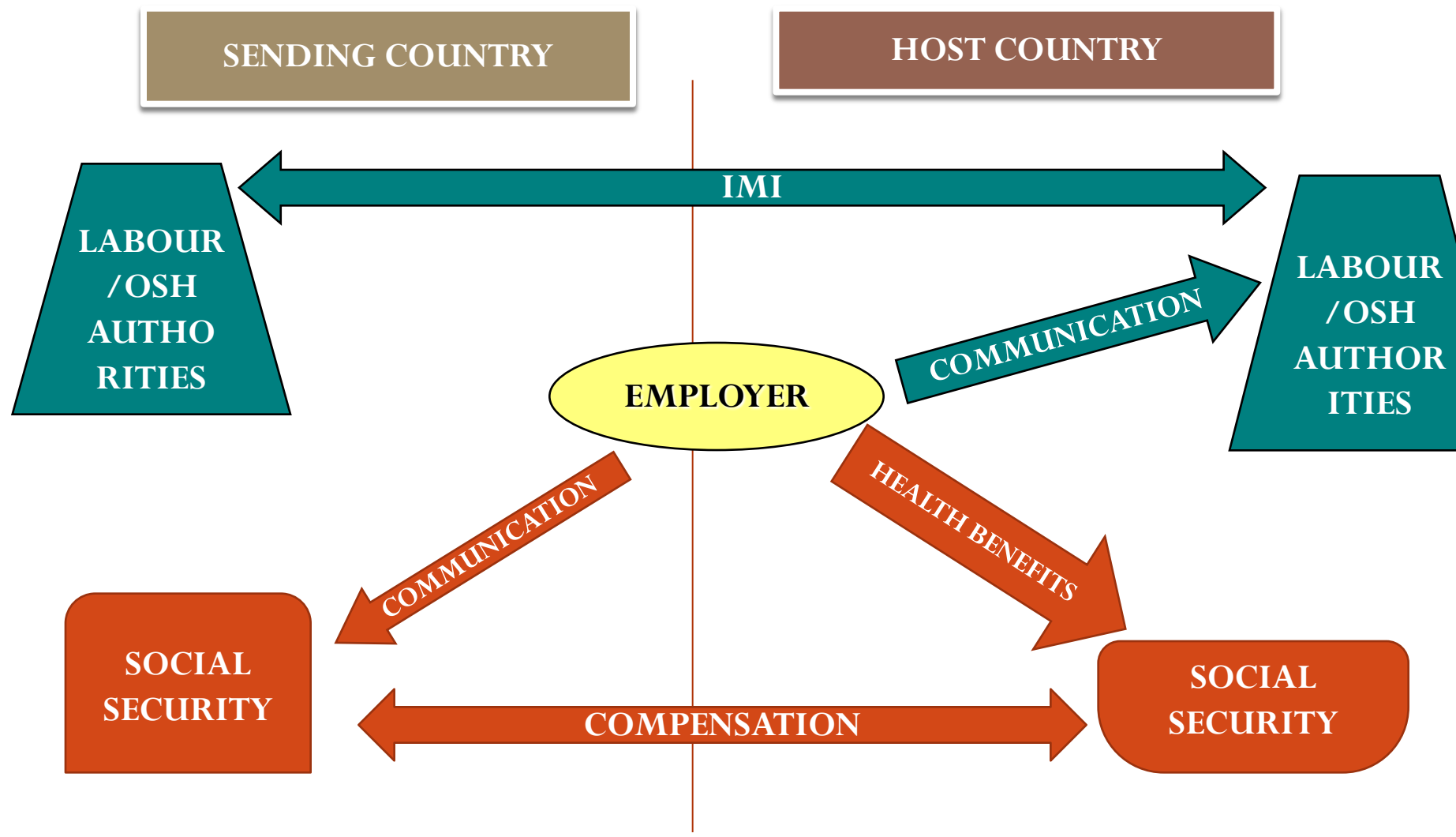
# Current communications on posting

SENDING COUNTRY

HOST COUNTRY



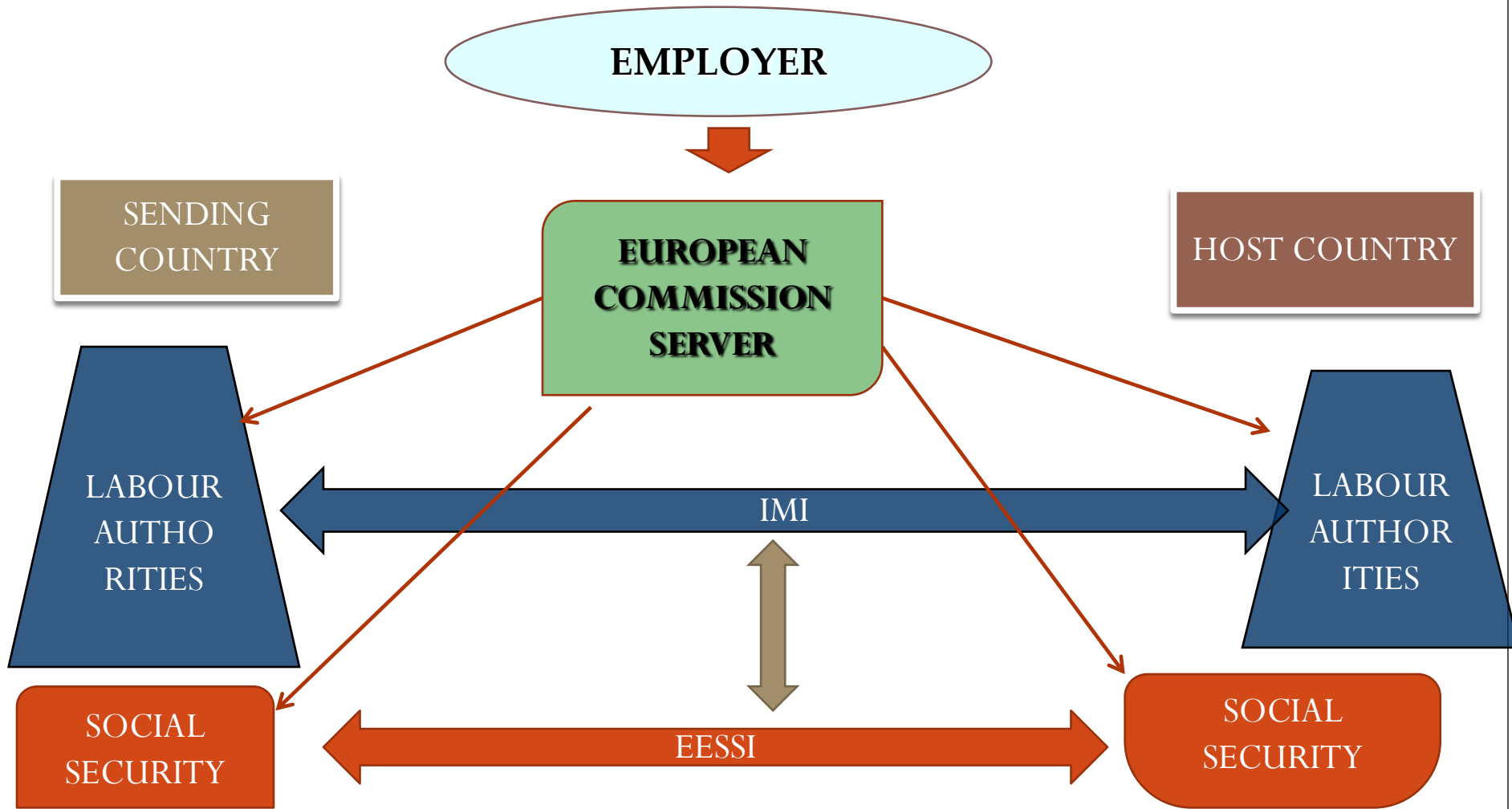
# CURRENT COMMUNICATIONS ON WORK-RELATED ACCIDENTS AND DISEASES



# 1st Cibeles proposal: “COORDINATION” of all current posting notifications in 1 integrated PROCEDURE on EU level and making all networks “interconnected” (“light” version)

- **ALL THE EXISTING COMMUNICATIONS** (A1, posting registrations and declarations, work-related accidents communications) should be submitted by electronic means (web service) in 1 integrated procedure at EU level
  - = **streamlining** of the communications flow via a EU server
  - = without adding “new” obligations for MS – no harmonization)
- **AVOIDING DOUBLE BUREAUCRACY AND ADMINISTRATIVE BURDENS**
  - All authorities in Soc. Sec. & Labour should **have access** to this platform – Employers = **access** to their own files
  - **Avoids double use** of data & information in A1 forms & posting declarations
  - Labour Inspectors would **not have to request** companies for this information (simplification and less administrative hindering)

# Cibeles proposal



## 2nd Cibeles proposal: EU LEGISLATIVE HARMONIZATION & INTEGRATION OF all COMMUNICATIONS

- The proposal of harmonization is to establish a uniform European **MANDATORY PRIOR DECLARATION OF POSTING** to the enforcement authorities of the Host countries
- The obligation to notify posting is not actually foreseen in the Directive 96/71 but it is considered by all the Cibeles team members **necessary to carry out inspection and enforcement activities on posting companies and workers** in order to monitor their rights (who's working where on behalf of whom?).
- **3th Cibeles proposal: ensuring the effectiveness of the legal duties concerning posting declarations**
  - The EU enforcement legislative instrument should compel Member states to provide **SANCTIONS** of a serious level in their legislation for non-declarations, late and false declarations or incomplete on

# Cibeles proposal: a common instrument to identify posted workers

- Other need for Labour Inspectors is to **identify workers in the workplace**. The instruments we usually use are **national identity cards, passports and the form A 1**. No verification of their authenticity is allowed!

## POSSIBLE SOLUTIONS:

1. **Using the European Health Insurance Card (EHIC)** This card could be used for other utilities such as the identification of posted workers before Labour inspectors
2. To follow up the **STORK project** to establish a European **e-ID Interoperability** Platform
3. A “**Posting identification card**” with a personnel photo, delivered by the Authority of the sending state (E.g. the body who delivers the A1 form)
4. A **mandatory list of presences** on the workplace with the names and social security numbers of the posted workers ,



# REGULATION OF ALL TYPES OF MUTUAL ASSISTANCE FORMS FOR THE INVESTIGATION OF BREACHES

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Second group of proposals

# The administrative nature of the labour inspection procedures for investigating breaches on OSH

	Investigation of breaches	Decisions on Financial Fines	Court to which they can be appealed	Execution of fines
<b>Belgium</b>	Administrative	Administrative or Judicial (1)	Criminal or Labour affairs (2)	Judicial or Administrative (3)
<b>Malta</b>	Administrative	Judicial	Criminal affairs	Judicial
<b>Hungary</b>	Administrative	Administrative	Labour affairs	Administrative
<b>France</b>	Administrative	Judicial	Criminal affairs	Judicial
<b>Austria</b>	Administrative	Administrative	Administrative affairs	Administrative
<b>Germany</b>	Administrative	Administrative	Criminal affairs	Administrative
<b>Italy</b>	Administrative (4)	Administrative or Judicial	Criminal or Administrative affairs	Judicial or Administrative
<b>Portugal</b>	Administrative	Administrative	Labour affairs	Judicial (5)
<b>Spain</b>	Administrative	Administrative	Administrative affairs	Administrative

<sup>[1]</sup> It depends on the discretionary decision of the Public Prosecutor

<sup>[2]</sup> It depends on the nature of the punishment procedure

<sup>[3]</sup> It depends on the nature of the punishment procedure

<sup>[4]</sup> Italian Labour Inspectors are legally considered Judicial Police Agents but they only report to the Public Prosecutor whether they have found criminal offences in their investigation.

<sup>[5]</sup> Portugal is the only country where administrative fines should be executed by judicial bodies

# CURRENT MUTUAL ASSISTANCE FORMS AND REGULATIONS

## APPLICABLE

- **Internal Market Information System (IMI)**
  - Regulated in Article 4 Directive 96/71. It has started in 2011
  - Replying to reasoned requests (Request for information)
- **KKS (Knowledge Sharing System)**
  - No regulation: designed for sharing information on OSH without using personal data
- **Bilateral Agreements**
  - Different legal nature of each Agreement
  - Their content varies considerably

## NOT ALWAYS APPLICABLE

- **Convention (2000) for Mutual Assistance on Criminal Matters**
  - It regulates all forms of mutual assistance
  - No real experience and it can not be used by LI in some countries: at least in BE, HU, IT, ES
- **Some national legislations regulate Mutual Assistance:**
  - Belgium and Spain
- **European Convention on the Service Abroad of Documents relating to Administrative Matters. Strasbourg, 24.XI.1977**
  - No real experience and it can not be used by LI in some countries

# Cibeles proposal: Regulating all forms of Mutual Assistance

## Exchanging information

- **Request for information** (already provided in Article 4 PWD)
  - It also should be required to carry out the necessary investigation to get it and then transmit it to the applicant.
- **Spontaneous information** (not regulated)
  - Related to offences and the infringements of the sending country legislations and alerts on OSH matters.
- **Technical cooperation** (not regulated)
  - This is relating to exchange of information on National legislation, on products, etc.
  - It would be a matter of legal certainty because in many MS protection data also involves legal persons

## Active Cooperation

- **Hearing of witnesses** (not regulated)
  - In the investigation of work-related accident.
- **Joint teams** (not regulated)
  - The Directive should provide the right for Authorities competent for posting directive, to participate to simultaneous trans-border actions on a mutual basis, to assist to hearings, or setting up joint teams in European campaigns or other matters.
- **Support in procedures** (not regulated)
  - For support in the notification of administrative acts and support in judicial procedures.

# Other Cibeles proposals in Mutual Assistance

- **REGULATING THE LEGAL VALUE OF EVIDENCES OBTAINED BY MUTUAL ASSISTANCE**
- **PROVIDING A EUROPEAN LEGAL BASIS FOR BILATERAL AGREEMENTS ON MUTUAL ASSISTANCE**
  - A future legal framework should be flexible and provide all these issues **adapting Mutual Assistance** to different situations for allowing it whenever is feasible through multilateral or bilateral agreements which complete the legislation.
- **CLARIFYING THE NATIONAL LEGISLATIONS SCOPE ON OSH SERVICES FOR POSTED WORKERS**
  - Training, Medical Surveillance and OSH services

# Another Cibeles proposal: a European Network for inspection experts on OSH

- It is necessary a **network of experts in the Inspectorates on Occupational Safety and Health (that it could be called EUROSH)** in order to
  - Facilitate proactive technical assistance to Labour Inspectors in these matters
  - Organise training and information actions at European level
  - Collect data or evidences between Labour Inspectors on enforcement matters
  - Without jeopardizing/endangering other networks on labour inspections matters.

# THE NEED TO ENSURE CROSS-BORDER EXECUTION FOR FINANCIAL PENALTIES OF ANY KIND

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Third group of proposals

# INFRINGEMENT PROCEDURES OF LABOUR INSPECTORATES

	BE	MT	HU	FR	AT	DE	IT	PT	ES
Penal Sanction	X (30%)	x		x			X		
Administrative Sanction	X (70%) They can be appealed to Labour Courts	X Can be appealed to Civil Court	X They can be appealed to Labour Courts	X (in a few cases)	X They can be appealed to Courts for Adm. Affaires	X They can be appealed to Penal Courts	X They can be appealed to Adm. / Civil Court	X They can be appealed to Labour Court	X They can be appealed to Courts for Adm. Affaires



# FWD 2005/214/JHA

- Execution of fines can be clearly carried out by FWD 2005/214 rules when the fines are imposed **by judicial authorities and when they are imposed by administrative authorities and can be appealed before penal courts** as in France, Malta, Germany and Italy.
- **It is more dubious**, and this could depend on the nature of the national legislation, **when the fines are imposed by administrative authorities and they can be appealed before other courts than penal courts** (in particular for administrative or labour affairs as AT, PT, BE and ES).
- This aspect concerns not only the countries which deliver administrative fines but also the countries which should execute them. This is to say that all countries are eventually concerned.

# EXECUTION OF FINANCIAL FINES WHEREBY LABOUR INSPECTORATE IS INVOLVED

	BE	MT	HU	FR	AT	DE	IT	PT	ES
FWD 2005/214	Not transposed	X No real exper	Not applicable	X No real exper.	X No real exper.	X No real exper.	Not transposed	X No real exper.	Not applicable
No mechanisms for administrative fines	x		x	x			X		X

# Directive 2010/24/EU on tax matters (in force in January 1<sup>st</sup>, 2012)

- Foresees the execution of **ADMINISTRATIVE PENALTIES** (Article 2.2.) imposed by the administrative authorities that are competent to levy the taxes **or duties concerned or carry out administrative enquiries with regard to them, or confirmed by administrative or judicial bodies at the request of those administrative authority.**
- These penalties can be based **on public duties of any kind** levied by or on behalf of a Member State or its territorial or administrative subdivisions, including the local authorities, or on behalf of the Union (Article 2.1).
- Some countries have expressed doubts about the implementation of this Directive to penalties from administrative bodies other than tax administrations or **about other legal duties not related to public incomes.**

# Cibeles proposal: A NEW REGULATION ON EXECUTION OF FINES IN LABOUR INSPECTION MATTERS

- The best solution would be regulating in a legal instrument the mutual recognition and execution of all the financial fines (be it of criminal or administrative nature, no matter what kind of tribunals or courts are competent for an appeal against administrative fines).
- **Our proposal is to approve a new instrument for the cross-border execution of administrative fines which can be appealed to other courts than penal**
  - In the domain of posting (the scope of Article 3 of the Directive 96/71/EU)
  - Or at least of occupational safety and health pursuant to Article 153 TFEU.
- **Harmonization of infringements on OSH and/or Posting**
  - Because **double criminality** is a usual precondition for mutual assistance and mutual recognition in the execution of financial fines.
  - It would be necessary a **previous comparative study** about infringements in MS

# CIBELES PROPOSALS

## LEGISLATIVE

- **The first group of proposals** on coordination and harmonization of communications on posting and posted workers and instruments to identify posted workers (personal data protection is affected)
- **In the second group of proposals** on regulating mutual assistance in the investigation of breaches, the legal value of evidences obtained and bilateral agreements (personal data protection is affected)
- Clarifying the National legislations scope on OSH services
- A new regulation on cross-border execution of administrative fines and harmonization of infringements

## NON LEGISLATIVE

- **EUROSH**, a European network of Inspectors on OSH matters
- A comparative study on legislation on OSH services in MS
- A comparative study on OSH infringements in MS