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# **CONSENSUS PAPER ON CROSS- BORDER ENFORCEMENT (CIBELES Project)**

*SLIC  
Senior Labour Inspector's Committee*

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*Employment,  
Social Affairs  
and Inclusion*

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## **INTRODUCTION**

### **1. The Cibeles Project**

The SLIC has received the report and proposals of the Project CIBELES, whose main aim was *to assist the SLIC and the Commission on how to improve and enhance the co-operation between Labour Inspectorates setting ground rules in order to establish a network for exchanging information in the framework of mutual assistance and recognition requests in the inspection and sanctioning proceedings.*

The project was approved by the SLIC in 2009 and was developed with the participation of nine SLIC Members and technical visits to all the countries involved

### **2. Improvement of mutual assistance is in tune with the SLIC aims**

Mutual assistance and cooperation among Labour Inspectors in enforcement proceedings lie within the objectives of the SLIC activities pursuant to the Decision 95/319/EC and its enhancement is one of its main concerns.

Neither Mutual assistance nor cooperation among labour inspectors do not currently relies on a complete and common legal basis and the SLIC members agree on the need for improvement.

### **3. Mutual assistance encourages internal market**

Mutual assistance among Labour Inspectors minimizes the need to require information and data from posted companies and workers. For that reason, mutual assistance can lead to a reduction of administrative burdens and the simplification of legal requirements.

Our proposals, both legislative and non-legislative, are conceived to bring the least burdensome effect and no way hinder growth, free movement of services or jobs creation in the EU.

We all agree that the administrative burdens on the private sector will be kept to a minimum and the burden for Labour Inspectors should be as low as possible.

### **4. The proposal of a new Directive on enforcement of posting workers**

We welcome the presentation of a proposal of enforcement directive on posting of workers by the Commission that explicitly guarantees mutual recognition and cooperation between supervising authorities.

## **ABOUT THE LEGISLATIVE PROPOSALS OF THE PROJECT CIBELES**

### **5. Personal data protection**

Mutual assistance and cooperation in enforcement procedures entails—the processing and/or the transmission of personal data. For that reason, a prior legal regulation about this matter is necessary in all MS.

Pursuant to the reports of the European Supervisor on 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') and therefore there must **be no doubt about the legal status of provisions restricting fundamental rights.**

**Those provisions laid down in a legal instrument**, on the basis of the EC Treaty, could be invoked before a judge in order to provide legal certainty in proceedings and avoid potential problems for the **legality of the proof.**

## 6. The need of a European regulation on mutual assistance

A legal regulation on mutual assistance should be approved **at European level** in order to ensure the mutual and reciprocal exchange of information and the active cooperation among the regulatory authorities from all the MS in OSH matters.

## 7. Basic contents of a European regulation on mutual assistance

With regard to the basic content of this regulation and taking into account the above mentioned principles of data protection and reciprocity, the SLIC members agree:

- a. That it should allow MS to share information on posted companies and workers through **cross-border information systems** which can be accessible to all the inspection authorities.

As far as possible and on a voluntary basis, Labour inspectors should be informed about the location of posting companies in those activities which entail the exposure of workers to high risk as regards their safety and health.

Thus, the administrative burdens on posting companies and workers could be reduced or simplified.

- b. That it should recognize and promote **all existing forms of mutual assistance** and cooperation among Labour Inspectors at the same level as other sectors (e.g. tax), including not only the request for information but also other proactive forms such as spontaneous information and joint teams for investigation. It should also stimulate the creation of new types of cooperation by laying the basis for a common and shared reference frame in knowledge and information.

It should guarantee that the findings resulting from such cooperation have legal value according to the legislation of each MS. It should also recognise the added value of bilateral agreements and promote its development.

- c. In consideration of the fact that the Framework Decision 2005/214/JHA does not cover all kinds of penalties, similar arrangements should be

established for **administrative fines** of any kind on OSH matters without the complexity of an exequatur proceeding.

## **ACTIONS TO BE CARRIED OUT BY THE SLIC ON MUTUAL ASSISTANCE**

### **8. The need of SLIC actions in mutual assistance**

A legal framework is not sufficient to ensure an effective mutual assistance among Labour Inspectors. Mutual assistance among Labour Inspectors needs to be encouraged and made substantial by providing them with tools and an active support.

### **9. Actions to be carried out by the SLIC members**

- d. Studying the way of setting up a **network of experts competent in the issues relating to enforcement proceedings** which could be integrated within or take advantage of other existing networks such as KSS or IMI. One of the Cibeles Project proposals was the creation of a new European network to be named "EUROSH".
- e. In order to assess the impact of mutual assistance needs stemming from enforcement proceedings, it is necessary **to collect information** from all MS on the following aspects:
  - i. European information and declaration systems on posted workers
  - ii. Existing mechanisms and forms of cooperation between inspectorates
  - iii. A comparative study of infringements on OSH in order to analyse double criminality
  - iv. Real problems to determine the applicable law on OSH issues relating to posted workers
  - v. Issues relating to proceedings on cross-border execution of fines
- f. We think it advisable for the mechanisms of mutual assistance to be pilot tested in some MS

### **10. Implementing a SLIC Working Group to carry out these actions**

To carry out the above mentioned activities it is proposed that the working group on Cross-border enforcement meets regularly once or twice a year.