



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 February 2008

**Interinstitutional File:
2007/0094 (COD)**

6136/08

LIMITE

**MIGR 8
SOC 76
DROIPEN 9
CODEC 155**

DOCUMENT PARTIALLY

ACCESSIBLE TO THE PUBLIC

OUTCOME OF PROCEEDINGS

of: Working Party on Migration and Expulsion
on: on 31 January 2008
No prev. doc. 16568/07 MIGR 139 SOC 535 DROIPEN 122 CODEC 1458
Subject: Proposal for a Directive of the European Parliament and of the Council
 providing for sanctions against employers of illegally staying third-country
 nationals

1. At its meeting of 31 January 2008, the Working Party examined, on the basis of Presidency compromise suggestions certain provisions of the draft Directive [Articles 2, 3(partly), 7, 9 and 15] focusing on outstanding issues in these provisions.
2. Further compromise suggestions related to other Articles, which were presented by the Presidency and a delegation, were not dealt with in the above meeting of the Working Party and are not included in this document.
3. The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

providing for sanctions against employers of illegally staying third-country nationals¹

Article 1

Subject matter and scope

This Directive lays down common sanctions and measures to be applied in the Member States against employers of third-country nationals who are illegally staying on the territory of the Member States, in order to take action against illegal immigration.²

Article 2

Definitions³

For the purposes of this Directive, the following definitions shall apply:

¹ **DELETED** entered scrutiny reservations on the proposal as a whole. **DELETED** entered Parliamentary reservations on the proposal. **DELETED** entered linguistic reservations on certain provisions of the proposal.

DELETED suggested clarifying in the title, as well as in Article 1, that this proposal aims at fighting against illegal immigration.

² **DELETED** entered scrutiny reservations on the Presidency compromise suggestions.

² **DELETED** maintained its scrutiny reservation on the legal obstacles to expanding the scope of the proposal to cover third-country nationals who had entered the territory of a Member State (MS) legally but are illegally employed.

³ **DELETED** maintained scrutiny reservations on Article 2.

DELETED suggested adding a definition for the term "business activities" [referred to in Articles 4(2) and (8)] which could read as follows: "activities conducted by a legal entity, which has been established by registering into a company registry for the purposes of a profit making economic activity".

DELETED also considered that the above term needs to be defined.

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) "illegally staying" means the presence on the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State;⁴
- (c) "employment" means exercise⁵ of activities remunerated or not⁶ for or under the direction⁷ of **an employer**, legal persons included⁸;

4 **DELETED** pointed out that the third-country nationals under the "illegal tolerated residence" who might be given access to labour market should be clearly outside the scope of the proposal. **DELETED** expressed concern about this suggestion. **Cion** considered that this issue might be accommodated in a recital.

5 **DELETED** suggested adding "uninterrupted".

6 **DELETED** entered reservations and **DELETED** entered a scrutiny reservation on the relevance to a "non- remunerated" activity. **DELETED** (referring to point (e) too) recalled that the main element of the definition is the "subordinated element", whereas, remuneration in kind or non-remunerated activities might be envisaged to be included. **Cion** also considered that a wider notion of "remuneration" should be taken on board. **Pres** felt that a wider definition might be more efficient in the fight against illegal immigration. In this context, **DELETED** stressed that in certain cases (especially among immigrants where exploiting de facto employment often takes place) it would be very difficult for the authorities to prove work relationships and therefore a more flexible definition could be advisable.

DELETED pointed out that irrespective of whether remuneration is actually paid the activity should be remunerable, also for the purposes of this draft Directive (such as imposing monetary sanctions). In the same vein, **DELETED** suggested amending the wording to "activities that **should be** remunerated in accordance with national law". **DELETED**, **Pres** and **Cion** supported this approach. **DELETED** suggested providing explicitly for pseudo self-employers third-country nationals who are in fact employees.

7 **DELETED** suggested adding "or co-ordination".

8 **DELETED** entered reservations and **DELETED** entered scrutiny reservations on this point. **DELETED** suggested defining "employment" in accordance with national legislation. **DELETED** queried about the difference between subordinate and independent employment. **DELETED** stressed that the definition should include all forms of employment. In the same sense, **DELETED** suggested proving that all legal persons (including those without legal personality) are included in the scope of the definition.

DELETED suggested the following alternative wording for this definition: "Employment means the employment of any person who, in the Member State concerned, is protected under national employment law and/or in accordance with national practice." **DELETED** (see alternative suggestions on **Pres** compromise), **DELETED** were inclined towards the **DELETED** suggestion vis-à-vis the **Pres** current suggestion. **DELETED** suggested deleting the adjective "employment" before "law". **DELETED** suggested replacing it by "labour". It also suggested replacing "protected" by "defined". **DELETED** suggested avoiding use twice the word "employment". **DELETED** felt that the suggestion by **DELETED** did not have much added value and preferred the Presidency compromise. In

- (d) "illegal employment" means employment of a third-country national who is illegally staying on the territory of a Member State;⁹
- (e) "employer" means **any person including legal persons**¹⁰, for or under the direction¹¹ of whom a third-country national exercises¹² activities remunerated or not;¹³
- (f) "subcontractor" means a natural or legal person¹⁴ to whom the execution of all or part of the obligations of a prior contract is assigned.¹⁵

the same vein, **Cion** pointed out that the Directive 2002/14/EC establishing a general framework for informing and consulting employees on which **DELETED** was based for its compromise has different purposes.

⁹ **DELETED** entered a scrutiny reservation on this point. **DELETED** expressed concerns about the added value of this definition, taking into account that Article 3 should be titled in a more precise way (see footnote 13). **Cion** pointed out that this definition for the purposes of this proposal is used of a longer wording (employment of illegally staying third-country nationals) and could live with its deletion.

¹⁰ **DELETED** (see also footnote 8) suggested deleting the reference to "legal persons" in both points (e) and (f) and opting instead for a more general wording. **Cion** did not agree with this suggestion. **DELETED** was also opposed to the inclusion of legal persons in the scope of Article 11 in regard to criminal sanctions (see Article 11). **DELETED** felt that a definition of legal persons could draw on Article 12(4).

¹¹ **DELETED** suggested adding "or co-ordination".

¹² **DELETED** suggested adding "uninterruptedly".

¹³ **DELETED** entered reservations and **DELETED** entered scrutiny reservations to this point. **DELETED** entered reservations on the possibility to be a "non- remunerated" activity. **DELETED** suggested defining "employer" in accordance with national legislation and practice. **DELETED** expressed concern regarding the difficulties of providing evidence that a third-country national works under the instructions of a given employer. It also suggested including in the definition a reference to temporary work agencies.

DELETED suggested the following alternative wording for this definition: "Employer means the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and / or practice."

DELETED (which suggested alternatively to delete "or not" after "remunerated") were inclined towards the **DELETED** suggestion vis-à-vis the **Pres** current suggestion, whereas **DELETED** (with the addition of the **DELETED** suggestion) and **DELETED** preferred the latter.

DELETED suggested referring to "activities that **should be remunerated**" (see also footnote 6). **DELETED** supported this suggestion

DELETED suggested providing explicitly for pseudo self-employers third-country nationals who are in fact employees.

¹⁴ **DELETED** suggested deleting the wording "natural or legal", especially because in some cases a subcontractor may not be either natural or legal person. (see also footnote 10).

¹⁵ **DELETED** suggested defining the term "main contractor" as well, as it is used in Article 9.

Article 3

Prohibition of illegal employment¹⁶

Member States shall prohibit the employment of illegally staying third-country nationals.¹⁷

This shall apply without prejudice to national law prohibiting¹⁸ illegal¹⁹ employment of third-country nationals staying legally but not allowed to work in their territory.²⁰

Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive.

DELETED asked whether this definition covers all persons down the chain of employment relations related to employment of illegally staying third-country nationals. **Cion** acknowledged that this issue merits further consideration.

¹⁶ **DELETED** suggested reformulating the paragraph so as that the first and the last current sentences form one paragraph and the sentence in the middle form a second one.

DELETED suggested amending the title of this Article so as it reflects more precisely its scope: “Prohibition of illegal stay”, as well as paragraph 2, accordingly. **DELETED** expressed concern about the accuracy of this suggestion.

¹⁷ In replying to a question from **DELETED**, **Cion** confirmed that Member States could take other measures, in addition to those provided for in this proposal, without taking away the usefulness and the spirit of the draft proposal.

¹⁸ **DELETED** suggested referring clearly to national law in relation to fight against illegal immigration.

¹⁹ **DELETED** suggested deleting the word “illegal” and moving this subparagraph to Article 1. **Cion** agreed with the suggested deletion but proposed to maintain the point in Article 3.

²⁰ **Cion** pointed out that it would prefer expressing this clarification in the form of a recital.

DELETED thought that the whole Article 3 might be converted into a recital.

Article 4

*Employers' obligations*²¹

1. Member States shall oblige employers to:
 - (a) require the production by third-country nationals of a valid residence permit or other authorisation for stay;²²
 - (b) keep for at least the duration of the employment²³ a copy or²⁴ record of the residence permit or other authorisation to stay available for possible inspection by the competent authorities of the Member States.²⁵

²¹ **DELETED** expressed concern regarding the additional administrative burden, which would be created for the employer under this Article. In particular, **DELETED**, supported by **DELETED**, pointed out that, in order to relieve the employer from the need to observe various notification deadlines, it would be advisable either to have no specific parallel deadlines in this proposal and in other instruments, or provide for a flexible wording (in paragraph 2) such as “report without delay” or “to notify as soon as possible”. **DELETED**, supported by **DELETED**, suggested envisaging an electronic notification system in order to alleviate the administrative burden for the employer. **Cion** clarified that if there is already a national notification system in place, the obligation arising from this proposal could be included. As regards the suggestion by **DELETED** it stressed that this proposal does not cover legal migration work permits, (without prejudice to the adoption of a single residence/work permit by national systems).

In replying to a question by **DELETED**, **Cion** pointed out that all the obligations described in this Article have to be fulfilled by the employer in order to fall under Article 5 but however, the principle of proportionality would apply when evaluating minor infractions.

²² **DELETED** suggested rephrasing the beginning of point (a) as follows: “require that the third-country national hold a valid residence permit...” **DELETED**, supported by **DELETED** (which entered a scrutiny reservation to this point) suggested communicating the dates of beginning and expiry of the work permit, which the third-country national is supposed to hold. In this vein, **DELETED** suggested obliging the third-country national to produce his/her work permit too.

DELETED suggested that the employer could check the ID or passport of the third-country national job seeker. **Cion** pointed out that it would cause an additional burden, without much added value, taking into account that the essential information is in the residence permit.

DELETED, entering a scrutiny reservation on this provision, suggested clarifying that cases where a residence permit is not required to work (such as work for three months within a twelve-month period) shall be excluded from the scope of this Article.

²³ **DELETED** suggested providing that the obligation to keep the documents would last at least for five years.

²⁴ **DELETED** indicated that keeping just a copy would be enough for the purpose of this proposal. **DELETED** suggested clarifying that, within a context where details are regulated by national law, the employer would have the discretion between the copy or record of the document at issue.

2. Member States shall oblige employers to notify the competent authorities designated by Member States of both the start and the termination²⁶ of employment of third-country nationals at the latest within ten days.²⁷

25 **DELETED** maintained a reservation on the paragraph due to its considerations for possible excessive administrative burden for employers.

26 **DELETED** pointed out that notifying the termination of employment might be too burdensome for the employer.

27 **DELETED** (see footnote 17) and **DELETED** entered reservations on this point. **DELETED** expressed their concerns on how the mechanism of notification would work in practice. Furthermore, **DELETED** suggested deleting this paragraph and stressed that the tax authorities of the MS should be also made competent to receive the notifications by the employers. **Cion** underlined that the designation of the competent authorities should be up to the MS. **DELETED**, supported by **DELETED**, suggested converting paragraph (2) to point (c) of paragraph 1, which would read as follows: “to notify the competent authorities, ..., immediately/without delay/ at the latest within 10 days (the latter would be the last option). **DELETED** asked for clarification as to when the 10-day period begins. **DELETED** asked **Cion** if MS could consider an application for work permit as the notification required under para. 2 for the start of the employment, in which case it could live with para 2.

DELETED suggested merging paragraphs 2 and 3 and providing that the authenticity of the residence permit is examined by the authorities described in current paragraph 2.

DELETED suggested that if the employers are to be obliged to assess validity of a residence document, they should be given, by national authorities, specific residence permits templates used by the third-country nationals. **Cion** thought that it would be disproportionate to provide for such a measure. Also, **DELETED** observed that it would be useful if the prospect employer could, by asking specific authorities, be informed whether the employee stays legally in the territory of a Member State or not.

Furthermore, **DELETED** (which suggested setting in this proposal just a maximum time for the notification) and **DELETED** supported referring the notification deadline to the national legislation. **DELETED** suggested replacing it with the wording "in due course", providing for a term of 15 days, or to leave it to national legislation. **Cion** thought that it would give added value to have a single EU-wide single notification period.

DELETED suggested providing for an obligation for the employers to notify if the third-country national has started working outside the work permit validity period or if he/she starts working after its validity was terminated.

3. Member States shall ensure that employers are considered to have fulfilled their obligation under paragraph 1 unless the document presented as a valid residence permit or another authorisation for stay is manifestly incorrect.²⁸

Article 5

Consequence of fulfilling the employers' obligations

Member States shall ensure that employers are not held liable for infringing Article 3 where they can show that they fulfilled the obligations set out in Article 4.²⁹

²⁸ **DELETED** entered a reservation on this paragraph, indicating that there might be problems in proving that an employer lacks good faith (knows that the document in question is falsified), if the document is of good quality. In this sense, **DELETED** suggested rewording the relevant part of the sentence as follows: "... unless if the residence permit is manifestly incorrect, **or the employer has knowledge of this forgery**" **DELETED** entered a reservation on paragraph 3 pointing out that it would be too difficult to define the criteria for assessing the "manifestly incorrect" and that the employer (and the authorities) would only have a copy of a document to conclude this information. **DELETED** underscored that the relevant case law would clarify any doubts about the concept. **DELETED** entered a scrutiny reservation on the provision. **DELETED** suggested deleting this paragraph pointing out that it would be too burdensome for the employers to prove that the relevant documentation was not "manifestly incorrect" and suggested maintaining the same standards with already existing Acquis (Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data). **DELETED** wondered if an obligation for repeated checks throughout the duration of the work contract is imposed on the employer. As a general remark, **Cion** stressed that the purpose of this paragraph is to reduce and define the limits of responsibility for the employer.

²⁹ **DELETED** (which suggested in particular making the Article an additional para in Article 4) and **DELETED** suggested deleting Article 5. **Cion** did not agree with the deletion, arguing for the need of a clear statement, in a highlighted way, on the consequences of complying with Article 4.

DELETED suggested reversing the order of the text ("Employers who have fulfilled the obligations ... shall not be held liable for infringing Article 3") in order to shift the burden of proof contained in the provision.

Article 6

*Financial sanctions*³⁰

1. Member States shall take the necessary measures to ensure that any infringement of Article 3 is subject to effective, proportionate and dissuasive sanctions against the employer.
- 2³¹. Sanctions in respect of each infringement of Article 3 shall³² include:
 - (a) financial penalties in relation to each illegally employed third-country national,³³
 - (b) payments of the costs of return of each illegally employed third-country national in those cases where return procedures are carried out.³⁴

³⁰ **DELETED** maintained a scrutiny reservation on this Article, pointing out that the sanctions as described in paragraph 2 could lead to abuse if more than one employer who could be held jointly and severally liable is involved. **DELETED** entered a scrutiny reservation on this Article.

DELETED suggested providing that Article's 6 scope includes financial sanctioning only for cases of negligence.

³¹ **DELETED** entered a scrutiny reservation on this paragraph.

DELETED expressed its concerns on how feasible the implementation of this paragraph could be. It further suggested drawing inspiration from the aforementioned Council Directive 2004/82/EC, on the carrier's obligations to communicate passenger data.

DELETED expressed concern about this provision on grounds of lack of proportionality be created (same sanction irrespective of the length of illegal stay or the distance of the return operation) and suggested giving the MS the discretion to cover the relevant costs themselves. **Cion** felt that the issue needs further consideration. Furthermore, **DELETED** suggested distinguishing between sanctions and debts (such as social security contributions), which ought to be included in Article 7.

³² **DELETED** suggested replacing "shall" with "may" so as the imposition of severe sanctions such as that in point (b) becomes optional. **DELETED**, **Pres** and **Cion** advocated for the maintenance of "shall" in order to obtain approximation of sanctions.

³³ **DELETED** pointed out that it should be up to the national administration to decide whether each case deserves a sanction.

³⁴ **DELETED** wondered whether the cost of detention would also be included as is the case in its national law. **Pres** indicated that this would be an issue up to MS. **DELETED** stressed that all costs related to return should be included.

DELETED expressed its concern about the proportionality of this sanction.

- (c) payment of any outstanding taxes and social security contributions, including relevant administrative fines.³⁵
3. In order to apply paragraph 2(b) in cases where more than one employer has infringed Article 3 by employing the same person, Member States shall provide that the employers shall be liable jointly and severally without prejudice to the provisions of national law concerning the rights and contributions or recourse.³⁶

³⁵ **DELETED** in the same line with **DELETED** (see also footnote 27) suggested not regarding this provision as a sanction and adopting a more general wording covering all payments e.g. health insurance. **DELETED** suggested putting this provision in accordance with national legislation. **DELETED** entered a scrutiny reservation on this point. **Cion** considered that a separate Article covering “other financial obligations to be paid by the employer” might be a clarifying option. It also felt that reference to national law needs further consideration.

³⁶ **DELETED** (these delegations entered scrutiny reservations on this paragraph), **DELETED** (which suggested deleting the para) **DELETED** expressed concern on how in practice liability could be applied jointly and severally. **DELETED** suggested that the cost of return should be borne by the last employer.

Article 7³⁷

Back payments to be made by employers

1³⁸. In respect of each infringement of Article 3 Member States shall³⁹ enact mechanisms to ensure that illegally employed third-country nationals:

- (a) can introduce a claim against the employer for any outstanding remuneration⁴⁰ including in cases in which they have or have been returned;⁴¹

37 **DELETED** entered reservations and **DELETED** entered scrutiny reservations on the Article. **DELETED** expressed concern on how the principle of burden of proof for the employer could work in practice. **DELETED** (the last two delegations referred in particular to the evidence difficulties once the return is carried out) expressed concern on how feasible the implementation of this Article could be and pointed out that the intervention of the national authorities goes too far in a private-law-related issue. In this sense, it was pointed out by **certain delegations** mentioned in this footnote that this mechanism for the collection of back payments, as implemented in paragraph 2, may create a discrimination against other creditors. **DELETED** stressed that the provision of legal aid for the illegally staying third-country nationals to recover the back payments would suffice.

Cion emphasized that creating a divergence of interests between the employer (who will act illegally knowing the consequences in this Article) and the third-country national (who will benefit from these provisions by breaking the silence on the illegality), would contribute towards the fight against illegal migration and therefore justifies the State intervention. It also stressed that Member States should ensure that the evidence procedure, in the context of this Article, is not affected by the return of the employee.

Cion also regretted the lower level of ambition that, according to it, the current compromise wording on the Article represents, in particular as regards the deletion of paragraph 4.

DELETED suggested establishing a mechanism whereby an agency in the Member State in question would pay the back payments to the third-country national and then collect them from the employer in order to expedite the whole procedure. **Cion** felt that this suggestion needs further consideration.

38 **DELETED** entered scrutiny reservations on paragraph 1.

FR suggested including in the obligations of the employer any unpaid entitlements / all sorts of allowances to the third-country national (e.g. for holiday leave). **Certain delegations** thought that this suggestion merits further consideration.

39 **DELETED** suggested replacing “shall” in both paragraphs 1 and 2 with “may”.

40 **DELETED** suggested providing for a wider term in order to cover all the outstanding debts to the employee such as indemnities for holidays, etc.

41 **DELETED** entered a reservation on the practical problems which might arise from its implementation.

(b) are **systematically**⁴² informed about the possibility to introduce such a claim, before the enforcement of any return decision.⁴³

2. In respect of the claims referred to paragraph 1, Member States shall provide that:

(a) a work relationship of at least 6 months⁴⁴ duration be presumed unless the employer **or the employee** can prove differently and.

⁴² **DELETED** suggested deleting the term “systematically”. **DELETED**, which entered scrutiny reservations on the point, wondered how often the third-country national should be informed. **DELETED** pointed out that it is an acceptable wording to describe standard practice, during the return procedure.

⁴³ **DELETED** pointed out that the illegally employed third-country nationals should be granted enough time to possibly introduce the back-payment claim before the enforcement/conclusion of the return operation. It suggested to this effect adding “where the return procedure begins”. **DELETED** suggested providing for an obligation to grant this information “as soon as possible”. **Cion**, endorsing the above comments, highlighted that the full effectiveness of this Directive should be ensured.

⁴⁴ **DELETED** entered scrutiny reservations on this point. **DELETED** (which considers six months as too long of a term but maintains that a term is needed any way), **DELETED** entered reservations on the presumption of a 6-month work relationship. **DELETED** expressed its concern that this provision might be abused by third-country nationals. **DELETED**, (which expressed its concerns that such a provision could create problems related to pension claims) suggested as an alternative to replace the six-month presumption with “the duration of actual employment” or “one-month duration”. **DELETED** expressed its doubts whether the six-month principle could work for cases such as seasonal workers. **DELETED**, supported by the **Cion**, stressed that the 6-month period could work as a strong deterrence towards employers hiring illegally staying third-country nationals. **DELETED** could live with the current figure but in the spirit of compromise could accept a shorter period such as 3-4 months. In the same sense, **DELETED** suggested 3 months (which, for this delegation, seemed sufficiently long to cover most cases of seasonal workers).

(b) the agreed level of remuneration be presumed to have been the minimum wage⁴⁵ as set by national law unless one of the employer⁴⁶ or the employee can prove differently. **Member States where minimum wages are not defined shall set the presumed level of remuneration to be the minimum income under which citizens of the Member State concerned are entitled to social assistance in that Member State or to be in line with applicable collective agreements or practices in the relevant occupation branches.**⁴⁷

3. Member States shall take the necessary measures to ensure that illegally employed third-country nationals receive any back payment of remuneration that is recovered under the claims referred to in paragraph 1, including in cases in which they have or have been returned.⁴⁸

⁴⁵ **DELETED** entered a reservation on the notion of “minimum wage” as provided for in this draft Directive. **Pres.** recalled that Member States which cannot use this concept to calculate the relevant level of remuneration may use as reference the collective agreements or practices, etc.

DELETED entered a scrutiny reservation on this point and suggested as alternative wording: “usual remuneration for the activity in question”.

⁴⁶ **DELETED** wondered if the employer would have the interest to prove against the minimum wage presumption. **DELETED** recalled that an employer could demonstrate that the employee was working for e.g. two days a week only, therefore he/she would not be entitled to minimum wages for a full month.

⁴⁷ **DELETED** entered scrutiny reservations on this point.

DELETED suggested the following wording for this point, underscoring that it leaves discretion to Member States regarding the criterion they would choose to apply: “the agreed level of remuneration be presumed to have been the **wage according to the applicable laws on minimum wages, collective agreements or practices in the relevant occupational branches**, unless the employer or the employee can prove differently.”, **DELETED** underlined that, pursuant to the Presidency suggestion, an employer would have to pay only the minimum wage even if a higher wage through a collective agreement would be applicable in the concrete case. **DELETED** added that it could also consider a reference to social assistance for the purposes of this provision.

DELETED considered this wording clearer than the current compromise suggestion. **Cion** could live with the **DELETED** suggestion. **DELETED** entered a reservation on this suggestion.

⁴⁸ **DELETED** entered a reservation and **DELETED** entering scrutiny reservations on the paragraph, expressed their concern on how the payment would be ensured once the return has taken place. **Cion** stressed that as this provision contains an obligation for results, Member States should Consular or other networks ensure the payment. In the same context, **DELETED** wondered how the payment would be ensured if the employer becomes bankrupt. **Cion Pres** and **DELETED** stressed that only back payments recovered from the employers would have to be forwarded to the third-country national and that the Member State will not incur any financial obligation to this effect. **DELETED** pointed out that additional heavy administrative burden as a result from establishing this mechanism should be avoided.

4. In respect of each infringement of Article 3, Member States shall ensure that the employer pays any outstanding taxes⁴⁹ and social security contributions, including relevant administrative fines.⁵⁰

Article 8

*Other measures*⁵¹

Where appropriate⁵², Member States shall⁵³ take the necessary measures to ensure that employers infringing Article 3 while acting in the course of business activities⁵⁴ are subject to the following measures:

In addition, **DELETED**, supported by **DELETED**, pointed out that a prescription time should be provided for claims of the back payments.

DELETED (supported by **DELETED**) indicated that under its national system any back payment is placed in an account and therefore, the return can be enforced without any delay. **Cion** considered this suggestion close to its approach.

49 **DELETED**, entering a reservation on this paragraph – with regard to its implementation, suggested deleting the reference to “taxes”. **DELETED** suggested clarifying that the outstanding taxes should be related exclusively to the illegal employment.

50 **DELETED** entered a reservation on this point, wondering about is added value and suggested putting it with reference to national legislation. **DELETED** (which wondered about what the Member States have to ensure) **DELETED** entered scrutiny reservations on this point. **DELETED** suggested adding at the end of the provision “as defined by national legislation”, because issues related to national legal system such as taxes, administrative fines, etc are included in this provision. **Cion** recalled that an employer of illegally staying third-country nationals should not benefit in any sense from the illegality and pointed out that it could be clarified that the outstanding taxes, contributions, etc are to be in accordance with national law.

51 **DELETED** entered scrutiny reservations on the Article as a whole. **DELETED** underlined that the text of the introductory para. has become overtly binding. **DELETED** entered a scrutiny reservation to points (a) to (c). In reply to **DELETED**, **Cion** clarified that all the sanctions described in this Article should be available in national legislation, irrespective of how many among them and which (as more appropriate) are to be applied in each case.

52 **DELETED** wondered whether "where appropriate"(seemingly referring to "necessary measures") has the same meaning with the previous version where apparently it was related to "the following measures".

53 **DELETED** (supporting returning to the original **Cion** proposal), **DELETED** suggested replacing "shall" with "may". **DELETED** entered scrutiny reservations to points (a)-(c).

54 **DELETED** entered a linguistic reservation on the concept "employer acting in the course of business activities" and wondered which employers are excluded from the scope of this provision..

- (a) exclusion from entitlement to public benefits, aid or subsidies for up to five years;⁵⁵
- (b) exclusion from participation in a public contract for up to five years;⁵⁶
- (c) recovery of public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer during the 12 months⁵⁷ preceding the detection of illegal employment;⁵⁸
- (d) temporary or permanent closure of the establishments that have been used to commit the infringement, if justified in particular by the gravity of the situation or the percentage of illegally employed third-country nationals.⁵⁹

⁵⁵ **DELETED** entered a reservation on the point, considering it unnecessary for the purposes of the proposal. **DELETED** also considered the provision problematical, recalling the additional burden it will create to the national administration. **DELETED**, entering a scrutiny reservation, indicated that this point would be too difficult to implement, because it would be too cumbersome to locate all these benefits, etc. **Cion** indicated that drawing a list at local level of the wrongdoers might be a solution. **DELETED** indicated that the sanctions provided in this point as well as in point (c) are disproportional with regard to their objective.

⁵⁶ **DELETED** entered a reservation on the point, considering it complicating and increasing the workload of the national administrations. **DELETED** queried about the relation of this point with the Directive 2004/18/EC on the co-ordination of the procedures for the award of public works contracts, public supply contracts and public service contracts. **DELETED** suggested referring to this Directive in the preamble of this proposal. **Cion** thought that this suggestion merits further consideration. **DELETED** (both delegations considered it as too long) questioned the five-year exclusion from participation in a public contract.

⁵⁷ **DELETED** maintained a scrutiny reservation on the length of the term (12 months) considering it too long. In the same vein, **DELETED** suggested replacing it by 6 months.

⁵⁸ **DELETED** entered a reservation on the point considering it unnecessary for the purposes of the proposal.

⁵⁹ **DELETED** maintained reservations on the point, in particular about the consequences of the closure, such as loss of jobs of the legally employed staff, or the VAT ramifications (the latter for **DELETED**). **DELETED** suggested qualifying the infringements in this point as *serious* in order to maintain proportionality with the gravity of the sanction. **Cion** pointed out that in the introductory sentence of the Article, as well as in point (d) it is clearly provided that the sanctions should be applied only *if appropriate*.

DELETED suggested providing alternatively for the temporary/permanent withdrawal of the license to conduct business. **DELETED** wondered if revocation of license could also be included in the sanctions and if it could, whether the employment would be allowed to set up a new enterprise.

Article 9
*Subcontracting*⁶⁰

1. Where the employer is a subcontractor **and without prejudice to the provisions of national law concerning the rights of contribution or recourse**, Member States shall ensure that the main contractor **is jointly**⁶¹ liable to pay:
- (a) any sanction imposed under Article 6, and

⁶⁰ **DELETED** (which suggested adding a definition of the main contractor in the relevant Article), **DELETED** entered reservations and **DELETED** (which suggested deleting the whole Article, because it would prefer dividing liability separately to each link of the contractors chain and because the Presidency compromise would oblige the legitimate main contractor to increase overtly the administrative cost of his business), **DELETED** entered scrutiny reservations on the Article. **DELETED** wondered how the main contractor could verify possible infringements by the subcontractors in the framework of this proposal.

DELETED supported by **DELETED**, suggested providing for liability only of the immediate subcontractor. ("... Member States shall ensure that the main contractor and the next subcontractor or a subcontractor and his next subcontractor..."). **DELETED** pointed out that the **DELETED** idea merited consideration. **Cion** pointed out that such a system could be abused by the main contractor who, despite his responsibility in the unlawful employment, could ensure artificially distance from the subcontractor who actually did the employment.

DELETED suggested providing for an *exit clause* whereby a main contractor who has done all possible to ensure lawful labour relations for the subcontractors should not be held liable. In the same vein, **DELETED** suggested exempting the main contractor from his/her liability if he/she has contractually stipulated with the sub-contractor that the latter should not employ illegally staying third-country nationals. Also, **DELETED** pointed out that a bona fide main contractor should not be held liable.

DELETED, supported by **DELETED**, also suggested that the liability of the main contractor kicks in only where the subcontractor is unable to pay the imposed sanctions.

DELETED, **DELETED** suggested, in order to avoid the added bureaucracy, that the subcontractor who has directly employed the illegally staying third-country nationals should be primarily held liable (**DELETED**) or held liable under the condition that the main contractor is not liable at all (**DELETED**). **DELETED** wondered whether the main contractor may contractually hold exclusively responsible the subcontractor(s).

Cion stressed that the principle of holding all the contractors jointly and severally liable should be maintained and then it would be up to national legislation to provide for the compensation of the contractor who incurred the sanctions. As for the **DELETED** suggestion, **Cion** felt that it needed further consideration.

DELETED expressed its concern about the provision pointing out that such type of liability is reserved, under its national law, only for serious State interests and particular kinds of labour relations.

⁶¹ **DELETED** expressed its concern on the difficulty to implement the joint liability in issues such as the payment of social contributions.

- (b) any back payments due under Article 7.

Article 10

*Criminal offence*⁶²

1. Each Member State shall ensure that the infringement referred to in Article 3 constitutes a criminal offence when committed intentionally⁶³, in the following circumstances:
- (a) the infringement continues or is repeated after competent national authorities or courts have within a period of two years⁶⁴ made a previous finding⁶⁵ that the employer has infringed Article 3;
- (b)⁶⁶ the infringement is in respect of a significant number of illegally employed third-country nationals. This shall be the case if at least four⁶⁷ third-country nationals who

⁶² **DELETED** (which did not support having criminal sanctions in this proposal) and **DELETED** maintained reservations and **DELETED** entered scrutiny reservations on Articles 10-13 related to criminal law-related provisions of this proposal. **DELETED**, which queried the necessity of having criminal sanctions in this proposal, suggested making the application of these Articles optional. **DELETED** maintained scrutiny reservations on Article 10.

DELETED, supported by **DELETED**, maintained reservations until the DROIPEN Working Party delivers its opinion on the above Articles.

⁶³ **DELETED** entered a scrutiny reservation on the meaning and degree of "intention" which is required under this provision, expressing concern about the difficulties to prove this intention.

⁶⁴ **DELETED** entered a scrutiny reservation on the two-year term. **DELETED** suggested expressing this concept as "committing the same offence if already penalized under national law" **DELETED** preferred providing for two previous findings instead of one.

⁶⁵ **DELETED** entered a scrutiny reservation on the term "previous finding". **Cion** felt that a that the suggestion by **DELETED** to define it as a "decision made by competent authorities" needed further consideration.

⁶⁶ **DELETED** entered a scrutiny reservation on the point. **DELETED** wondered about the length of the period during which the percentage of illegal employment provided for in this provision should be valid. **Pres** indicated that it has to be valid at the moment it is ascertained by the authorities.

⁶⁷ **DELETED** entered a scrutiny reservation on this point. **DELETED** pointed out that reference to decent working conditions should be deleted because it does not constitute a criminal law infringement. **DELETED** suggested abolishing any minimum number of third country nationals for the application of this provision. In reply to **DELETED**, **Cion** clarified that it would be compatible with the spirit of the Directive to maintain stricter provisions (a minimum of less than four third-country nationals) in the national legislation.

constitute at least 50%⁶⁸ of the employees of the employer in question are illegally employed;

- (c) the infringement is accompanied by particularly exploitative working conditions⁶⁹, such as a significant difference in working conditions from those enjoyed by legally employed workers;⁷⁰ or
- (d) the infringement is committed by an employer who uses work or services exacted from a person, with the knowledge that that person is a victim of trafficking in human beings.⁷¹

- 2. Member States shall ensure that participation in or instigation of the conducts referred to in paragraph 1 constitutes a criminal offences.

Article 11⁷²

Sanctions for the criminal offence

- 1. Member States shall ensure that the commission of the criminal offence referred to in Article 10 is punishable by effective, proportionate and dissuasive criminal sanctions.
- 2. The criminal sanctions provided for in this article may be accompanied⁷³ by other sanctions or measures, in particular those provided for in Articles 6, 7 and 8, and by the publication of the judicial decision relating to the conviction or any sanctions or measures applied.

⁶⁸ **DELETED** did not agree with the 50% threshold considering it inflexible.

⁶⁹ **DELETED** considered that the term "particularly exploitative working conditions" is too difficult to implement properly. **DELETED** suggested referring instead to "conditions of lodging or work against the human dignity"

⁷⁰ **DELETED** suggested including reference to particularly exploitative conditions of recruitment. **Cion** clarified that "working conditions" is a broad term, which may include material conditions such as health and safety but also pay. **DELETED** suggested making this point optional.

⁷¹ **DELETED** suggested deleting this point because it overlaps with other instruments. **DELETED** suggested making this point optional.

⁷² **DELETED** entered a scrutiny reservation on the Article. **DELETED** pointed out that parallel administrative and criminal procedures, which could entail two sanctions should be avoided. **DELETED** reiterated that criminal sanctions have to be limited to natural persons.

⁷³ **DELETED** suggested delinking the imposition of the criminal sanctions described in this Article with the sanctions provided for in Articles 6-8.

Article 12⁷⁴

Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for the criminal⁷⁵ offence referred to in Article 10 where such offence has been committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on
 - (a) a power of representation of the legal person, or
 - (b) an authority to take decisions on behalf of the legal person, or
 - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that a legal person may be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the criminal offence referred to in Article 10 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offence referred to in Article 10.
4. For the purposes of this Article, "legal person" shall mean any entity⁷⁶ having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.⁷⁷

⁷⁴ **DELETED** entered reservations on Articles 12 and 13. **DELETED** suggested making optional the imposition of criminal sanctions to legal persons. **DELETED** suggested excluding from the scope of Articles 12 and 13 legal persons under public law. **DELETED** entered scrutiny reservations on the Article. **DELETED** suggested inserting a general reference to national law for the liability of legal persons. **Cion** clarified that this provision does not envisage to change the national law on how to define the liability of legal persons.

⁷⁵ **DELETED** suggested deleting the word "criminal".

⁷⁶ **DELETED** suggested adding before "entity" the word "legal". **Cion** remarked that it may narrow the definition too much.

⁷⁷ **DELETED** suggested expanding the application of this provision to Article 13.

Article 13⁷⁸

Sanctions against legal persons

Member States shall ensure that a legal person held liable for a criminal⁷⁹ offence pursuant to Article 10 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid⁸⁰;
- (b) exclusion from participation in a public contract for up to five years;
- (c) temporary or permanent disqualification from the practice of⁸¹ agricultural, industrial or commercial activities;
- (d) placing under judicial supervision;
- (e) a judicial winding-up order.

Article 14

Facilitation of complaints⁸²

1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment can lodge complaints⁸³ against their employers, directly or through designated third parties.

⁷⁸ **DELETED** entered a scrutiny reservation on the Article, asking: what "complaints" may include; who should be responsible to cover subsistence for these third-country nationals during the procedure (perhaps MS, possibly by giving access to labour market); whether time limitation for lodging a complain should be included and if yes, whether this time should be harmonised at EU level or left to national legislation. **Cion** indicated that the time limitation and contents of complaints should be defined by national law.

⁷⁹ **DELETED** suggested deleting the word "criminal".

⁸⁰ **DELETED** suggested providing explicitly for the exclusion of the legal persons from EU aids/funding managed by MS, aligning this Article with the relevant provisions of Article 8.

⁸¹ **DELETED** suggested adding *in particular* thus expanding the scope of the provision.

⁸² **DELETED** underlined that an in-depth analysis of the consequences of this Article and an alternative drafting might be needed.

⁸³ **DELETED** wondered if under Article 14 a third-country national could lodge a complaint on other issues apart from the back payments. Furthermore, **DELETED** queried whether a time-limit to lodge a complaint should be provided in order to eliminate the threat of abuses; whether the complaint should be lodged against the most recent employer or against previous ones and what happens if the third-country national works simultaneously for more than one employer. **DELETED** suggested defining the term "complaints"

2. Member States shall not impose sanctions against designated⁸⁴ third parties providing assistance to the third-country national to lodge complaints, on the grounds of facilitation of unauthorised residence.⁸⁵
- 3.⁸⁶ In respect of criminal offences covered by Article 10(1)(c)⁸⁷, Member States may in specific cases⁸⁸ under the conditions of Articles 4⁸⁹ to 15 of Directive 2004/81/EC grant residence permits of limited duration, linked to the length of the relevant national proceedings⁹⁰, to third-country nationals who are or have been subjected to exploitative working conditions⁹¹ and cooperate in proceedings against the employer.⁹²

84 **DELETED** suggested replacing "designated" with "authorised". **DELETED** referred to recital 18 of the proposal for the meaning of the term "designated third parties such as trade unions or other associations". **Cion** suggested putting "designated by a MS".

85 **DELETED** entered reservations (asking for its deletion) and **DELETED** entered scrutiny reservations on this paragraph. These delegations questioned the rationale and the message conveyed from it as regards the third parties aiding illegally staying third-country nationals. **Cion** pointed out that the provision refers only to "designated third parties", which allows Member States to filter them, through inspection of their activities. In addition **Cion** acknowledged that exempting from sanctions these third parties has been deemed necessary in the impact assessment for this proposal, along the lines of other instruments where this principle exists.

DELETED suggested providing for an indicative list of such *designated third parties*. **Cion** considered it as an issue which could be addressed in the Preamble.

86 **DELETED** raised the issue of the maintenance of the third-country national and his/her family during the term of the residence permit and asked if he/she may be granted a residence permit. **Cion** pointed out that pursuant Articles 7-11 of the 2004/81/EC Directive Member States may give access to the holders of the residence permit under this paragraph.

87 **DELETED** entered a reservation on this paragraph, pointing out that it should refer to Article 10(1)(d) instead of 10(1)(c). Alternatively, **DELETED** suggested deleting the paragraph. **Several delegations** thought that this suggestion needed further consideration.

88 **DELETED** and **Cion** expressed disappointment at the replacement of "shall" with "may" in this provision. **DELETED** wondered about the meaning and scope of the term "specific cases" and suggested replacing it with reference to national legislation or, (**DELETED**) alternatively deleting it. **Cion** suggested that this notion should be implemented in accordance with national law and opted for its deletion for reasons of clarity.

89 **DELETED** suggested referring to Article 3(2) of the 2004/81 Directive where there is reference to other kind of victims. **Cion** indicated that due to the change from "shall" to "may" in paragraph 3 of this Article the current reference is correct.

90 **DELETED** suggested providing explicitly for the opportunity to renew the residence permit, especially if the third-country national has been granted access to the labour market.

91 **DELETED** considered the wording "exploitative working conditions" too vague to implement. **Cion** invoked Article 10(1)(c) as source of clarification.

92 **DELETED** entered a reservation on the paragraph due to the extra administrative burden which could be created by the assessment mechanism established by it. Also, **DELETED**, (suggesting deleting reference to the 2004/81/EC Directive) **DELETED** (both suggesting leaving the issue to national legislation) and **DELETED** entered reservations and **DELETED** entered scrutiny reservations on this paragraph.

4. In respect of criminal offences covered by Article 10(1)(d), Member States shall⁹³ under the conditions of Articles 4⁹⁴ to 15 of Directive 2004/81/EC⁹⁵ grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who are victims of trafficking in human beings and who cooperate in proceedings against the employer.⁹⁶

DELETED commented that this paragraph is in line with the UN Treaty on Transnational Organized Crime and its Protocol on Trafficking in Human Beings.

93 **DELETED** suggested replacing "shall" with "may".

94 **DELETED** suggested putting Articles 3 to 15 in order to cover the contents of this provision.

95 **DELETED** suggested adding "or equivalent national legislation".

96 **DELETED** expressed concerns about the added value of this provision. **DELETED** suggested making it clearer and **DELETED** suggested putting it to the Preamble with a reference to the 2004/81 Directive. **Cion** indicated that this provision is meant to cover cases where the procedures against the employer continue after the end of the procedure related to trafficking and promised to come back to the issue.

Article 15
*Inspections*⁹⁷

1. Member States shall conduct inspections to control employment of illegally staying third-country nationals.⁹⁸

⁹⁷ **Pres** suggested a recital stating that the inspections under Article 15(1) could also be used to control matters other than the employment of illegally staying third-country nationals could be inserted in the Preamble. **DELETED** supported this approach.

⁹⁸ **DELETED** suggested the following wording for paragraphs 1 and 2 of this Article:
"1. Member States shall ensure that effective and adequate inspections are carried out on their territory to control employment of illegally staying third-country nationals.
2. The selections of places of employment to be inspected shall be based on a risk assessment to be drawn up by the competent authorities in the Member States taking into account factors such as the sector in which the employer operates and any past record of infringement."

DELETED (which entered a reservation on the Presidency text and stressed that Member States shall have the responsibility themselves to reach through risk assessments sufficient level of inspections as regards quality and quantity), **DELETED** (which entered a reservation on the Presidency text), **DELETED** (which suggested inserting a wording ensuring that the qualitative inspections fulfil their objectives), **DELETED** (which entered a reservation on Article 15), **DELETED** (which felt that a gradual approach towards inspections corresponding to a minimum of 5% of the employers might be feasible), **DELETED** (which entered a scrutiny reservation on the Presidency text), **DELETED** (which felt that a minimum number of inspections corresponding to a minimum of 5% of the employers might be feasible) **DELETED** (which entered a reservation on Article 15) and **DELETED** expressed their support to the **DELETED** suggestion vis-à-vis the Presidency compromise.

DELETED also suggested clarifying in a recital that the competence to carry out risk assessments lies with Member States. **Cion** considered this idea positively.

Cion (without prejudice to the necessary quality of the inspections) supported a clear quantitative framework, which would pass a stronger message to the prospect employers and expressed its concerns on the above wording highlighting that it would be too complicated for the Member States to define the obligations and for the **Cion** to assess their compliance with it.

In the same line, **DELETED** (which entered a scrutiny reservation on Article 15) thought that the **DELETED** suggestion is not sufficiently ambitious and that a common minimum quantifiable target, adjusted to gradual approach would be of added value for the Directive. Alternatively and in order to enhance the credibility of the inspections, **DELETED** suggested adding in the **DELETED** text a wording whereby in sectors which have been identified as more risky to have high numbers of illegally staying third-country nationals as employees Members States should undertake to carry out a minimum number of inspections.

DELETED also supported the **Cion** views, pointing out that the current text gives enough discretion to Member States to define those sectors for which inspections should be prioritized.

- ⁹⁹2. As from the second calendar year following the [the date referred to in Article 17] Member States shall carry out annually at least 20% more inspections¹⁰⁰ that the average of the three calendar years preceding [the date referred to in Article 17].¹⁰¹
3. The selection of **places of employment** to be inspected shall be based on a risk assessment to be drawn up by the competent authorities in the Member States taking into account factors such as the sector **of activity** in which a company¹⁰² operates and any past record of infringement.

⁹⁹ **DELETED** (supported by **DELETED**) suggested reading together paragraphs 2 and 3 in order to have on the basis of risk assessments the necessary data for the most affected sectors in each Member State's economies for which inspections should be carried out. **DELETED** felt that on the risk assessment basis Member States could decide the number of inspections necessary for each sector. In the same line with the above delegations, **DELETED** suggested providing clearly for risk assessments per sector

¹⁰⁰ **DELETED** suggested adding "to the legality of inspections of third-country nationals".

¹⁰¹ **Cion** pointed out that it considers the suggested compromise (in particular as regards the target number of inspections) as inadequate to work as deterrence against the employment of illegally staying third-country nationals. Furthermore **Cion** stressed that the suggested wording, as it does not provide for an absolute upper threshold to be achieved, may be unfair for those Member States which have already been doing a good effort in terms of number of inspections as against those which will have to increase by 20% a very low number of inspections that they are currently conducting. In conclusion, **Cion** felt that a gradual approach with a minimum percentage (higher than 20%) to be achieved by all Member States might set the basis of discussions.

¹⁰² **DELETED** entered a reservation on the term "companies". **DELETED** suggested including private individuals in the category of employers who should be inspected. **DELETED** opposed this suggestion preferring to exclude private individual employers from the scope of this Article. **Cion** pointed out that the objective of the proposal was to put under the inspection obligation only business employers (taking into account that Member States could go further and inspect also private individual employers).

Article 16

Reporting

1. By [six months after the date referred to in Article 17] at the latest Member States shall transmit to the Commission the figures for the average number of inspections in the previous three calendar years as referred to in Article 15(2).¹⁰³
2. By [*Three years after the date referred to in Article 17*] at the latest, and every three years thereafter, Member States shall transmit information to the Commission on the implementation of this Directive in the form of a report which shall include the numbers and results of inspections carried out pursuant to Article 15 and details of measures applied under Article 8.¹⁰⁴

On the basis of those reports, the Commission shall submit a report to the European Parliament and the Council.¹⁰⁵

Article 17

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*24 months from the date of publication in the Official Journal of the European Union*] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table¹⁰⁶ between those provisions and this Directive.

¹⁰³ **DELETED** entered a reservation suggested deleting this paragraph.

¹⁰⁴ **DELETED** entered a reservation and **DELETED** entered scrutiny reservations on this point, wondering why the focus is exclusively on Article 8. **Cion** pointed out that due to the divergent applications that this provision may have by Member States, it would be useful to have an overview. This would not be necessary for other issues, e.g. for the criminal-law sanctions' application, in order to avoid excessive administrative burden.

¹⁰⁵ **DELETED** entered a reservation on Article 16, underlining that it would add up the administrative burden, created by this proposal. In reply to **DELETED**, **Cion** clarified that the reports expected by Member States on the basis of this Article should not go into much detail.

¹⁰⁶ **DELETED** entered scrutiny reservations on the obligation to draw a correlation table on this draft Directive.

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.

Article 18

Entry into force

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

Article 19

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President