

## **Legislative decree No 136 of 17 July 2016<sup>(1)</sup>.**

Implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

<sup>(1)</sup> Published in Official Journal No 169 of 21 July 2016.

### **THE PRESIDENT OF THE REPUBLIC**

Having regard to Articles 76 and 87, fifth paragraph, of the Constitution;

Having regard to Article 1 of Law No 114 of 9 July 2015, containing the mandate to the Government for the transposition of European Directives and the implementation of other EU acts – European Delegation Bill 2014 and more specifically annex B;

Having regard to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996, concerning the posting of workers in the framework of the provision of services;

Having regard to Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation');

Having regard to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I);

Having regard to Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market and Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services and amending Regulation (EC) No 561/2006;

Having regard to Regulation (EC) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation');

Having regard to Legislative decree No 72 of 25 February 2000, implementing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services;

Having regard to Legislative decree No 276 of 10 September 2003 implementing powers concerning employment and the labour market, provided for by Law No 30 of 14 February 2003;

Having regard to Legislative decree No 81 of 15 June 2015 which introduces mobility within and between staff levels as well as changes to the rules on job tasks, in accordance with Article 1, paragraph 7 of Law No 183 of 10 December 2014;

Having regard to Legislative decree No 149 of 14 September 2015 on the rationalisation and simplification of inspection activities in the field of labour legislation and social law, implementing Law No 183 of 10 December 2014;

Having regard to the preliminary resolution of the Council of Ministers adopted in the meeting of 15 April 2016;

Having listened to the opinions of the competent committees of the Chamber of Deputies and of the Senate of the Republic;

Having regard to the decision of the Cabinet, adopted at its meeting of 14 July 2016;

After proposals made by the Presidency of the Council of Ministers, the Minister for Labour and Social Policies and the Justice Minister, in agreement with the Minister for Foreign Affairs and International Cooperation, the Finance Minister, the Minister for Infrastructure and Transport and the Minister for Economic Development;

## **EMANATES**

the following Legislative decree:

### **Chapter I**

## **General provisions**

### **Article 1 Implementation**

1. This Decree shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with Article 2, paragraph 1, letter d), to an establishment or to an undertaking in Italy, also one owned by the same group, provided that there is an employment relationship between the undertaking making the posting and the worker during the period of posting.
2. This Decree shall apply to temporary employment undertakings or placement agencies in the territory of another Member State, hiring out a worker to a user undertaking established or operating in Italy.
3. The authorization referred to in Article 4 of Legislative decree No 276 of 2003 shall not be required if the temporary employment undertaking or placement agency, referred to in paragraph 2, operates pursuant to an equivalent administrative measure, where provided for, issued by the competent authority of another Member State.
4. As far as concerns International road haulage, this Decree shall also apply to cabotage operations provided for in chapter III of Regulation (EC) No 1072/2009 of 21 October 2009 and in chapter V of Regulation (EC) No 1073/2009 of 21 October 2009.
5. The provisions referred to in Articles 3, 4, 5, 10 and 11 of this Decree shall also apply to undertakings established in a non-member State that post workers to Italy, in accordance with paragraph 1.
6. This Decree shall not apply to merchant navy undertakings as regards seagoing personnel.

### **Article 2 Definitions**

1. For the purposes of this Decree:
  - a) 'requesting authority' means the competent authority of a Member State which makes a request for assistance, information, notification or recovery of a penalty

- and/or fine, as provided for in this Decree;
- b) 'requested authority' means the competent authority of a Member State to which a request for assistance, information, notification or recovery of a penalty and/or fine is made, as provided for in this Decree.
  - c) 'competent authority' is the Italian Ministry of Labour and Social Policies and the Italian National Labour Inspectorate (INL) as well as, but solely for purposes regarding provisions on the recovery of a penalty and/or fine, as provided for in Article 21, the Italian judicial authorities;
  - d) 'posted worker' is a worker who normally works in another Member State and who is sent by his employer to carry out his work in Italy for a limited period of time;
  - e) 'conditions of work and employment' are those conditions laid down by law and by collective agreements as provided for in Article 51 of Legislative decree No 81 of 2015 covering the following matters:
    - 1) maximum work periods and minimum rest periods;
    - 2) minimum paid annual holidays;
    - 3) the minimum rates of pay, including overtime rates;
    - 4) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
    - 5) health, safety and hygiene at work;
    - 6) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
    - 7) equality of treatment between men and women and other provisions on non-discrimination.

### **Article 3** Identification of a genuine posting

1. In order to ensure that a worker qualifies as a posted worker, the inspection authorities shall carry out an overall assessment of all the required elements.
2. In order to determine whether the sending company genuinely performs substantial activities, other than purely management or administrative activities, the following elements shall be taken into account:
  - a) the place where the undertaking has its registered office and administration, uses office space or has its production units;
  - b) the place where the undertaking is registered with the chamber of commerce or, where applicable, with a professional body;
  - c) the place where posted workers are recruited and from which they are posted;

- d) the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other;
- e) the place where the undertaking performs its substantial business activity and where it employs administrative staff;
- f) the number of contracts performed and/or the size of the turnover realised in the Member State of establishment, taking into account the specific situation of newly established undertakings and of small and medium enterprises;
- g) any other elements that may be useful for the overall assessment.

3. In addition to all the elements listed in paragraph 2, in order to assess whether a worker is posted in accordance with this Decree, also the following elements shall be examined:

- a) the subject and the nature of the activities, as well as the worker's remuneration;
- b) the fact that the posted worker habitually carries out his or her work, in accordance with Regulation (EC) No 593/2008 (Roma I), in the Member State from which he or she has been posted;
- c) the fact that the work is carried out for a limited period of time in Italy;
- d) the envisaged beginning date of the posting;
- e) the fact that the posted worker has resumed or is expected to resume working in the Member State from which he or she was/has been posted;
- f) if travel, board and lodging or accommodation is provided or reimbursed by the employer who posts the worker, how is this provided or reimbursed?;
- g) any previous periods during which the post was filled by the same or by another posted worker;
- h) certification concerning the applicable social security legislation;
- i) any other elements that may be useful for the overall assessment.

4. If a posting to an undertaking in Italy should not qualify as a genuine posting, the posted worker shall be considered for all intents and purposes as an employee of the 'user' company.

5. If the posting should not qualify as a genuine posting, the sending company as well as the 'user' company shall pay an administrative penalty and/or fine of EUR 50 for each employed worker for each day of work. The total amount of the fine cannot be less than EUR 5,000 nor greater than EUR 50,000. If the non genuine posting concerns a minor, the applicable punishment for the sending company and the 'user' company shall be detention of up to 18 months as well as an administrative fine of up to six times the amount mentioned above for an adult worker.

#### **Article 4** Conditions of work and employment

1. As regards the employment relationship between the undertaking, as referred to in Article 1, paragraphs 1 and 4, and the posted worker, the same work and employment conditions shall apply, for the entire duration of the posting, as those for workers employed by the 'user' company doing similar work in the posting location.

2. The legislative provisions and the provisions provided for in the collective agreements concerning minimum duration of paid annual holiday, minimum rates of pay, including overtime rates, shall not apply in the case of initial assembly or first installation of goods where this is an integral part of a contract for the supply of goods necessary for taking the goods supplied into use and carried out by the skilled and/or specialist workers of the supplying undertaking, if the period of posting does not exceed 8 days, with the exception of activities in the field of building work, as listed in Annex A of this Decree.

3. For temporary agency work, the provisions provided for in Article 35, paragraph 1 of Legislative decree No 81 2015 shall apply.

4. In the case of posting as referred to in Article 1, paragraph 1, the regulatory framework applicable to joint liability shall apply, as provided for by Article 1676 of the civil procedure code and Article 29, paragraph 2 of Legislative decree No 276/2003 and, for temporary agency work, Article 35, paragraph 2 of Legislative decree No 81/2015.

5. If the posting concerns workers in the transport sector, Article 83bis, paragraphs 4-bis to 4-sexies of Decree-Law No 112 of 25 June 2008, converted and amended by Law No 133 of 6 August 2008, shall apply.

## **Article 5** Defence of rights

1. Without prejudice to Article 3, paragraph 4, posted workers that are working or that worked in Italy can enforce their rights as provided for in Article 4 through administrative or judicial proceedings.

## **Article 6** Observatory

1. At the Ministry of Labour and Social Policies an Observatory has been established to monitor the posting of workers with the purpose of enhancing access to information on the conditions of work and employment for service providers and workers. The Ministry of Labour and Social Policies and the Italian Agency for Active Labour Policies (Agenzia Nazionale delle Politiche Attive del Lavoro – ANPAL) guarantee, by means of a special agreement, that the Observatory shall have access to data concerning, among other things, the number, duration and location of the postings in Italy, the operating framework of the posted workers and the nature of the services justifying the posting. The Observatory shall make proposals concerning information on the conditions of work and employment to publish on the official website of the Ministry of Labour and Social Policies, as provided for in Article 7, and shall undertake any other initiatives necessary to improve access to information on the conditions of work and employment of posted workers for service providers and workers.

2. The Observatory is composed of three delegates designated by the most representative trade union organizations at national level, three delegates designated by the most representative employers' organisations at national level, two delegates from the Italian Ministry of Labour and Social Policies, one of which shall act as Chairperson, and a delegate from the Italian Agency for Active Labour Policies (ANPAL), a delegate from the Italian Social Security Institute (Istituto Nazionale di Previdenza Sociale – INPS), a delegate from the Institute referred to in Article 10 of Legislative decree No 150 of 14 September 2015 and a delegate designated by the Presidency of the Council of Ministers. The members of the Observatory shall not be entitled to any remuneration, benefits, attendance allowance, reimbursement or any other kind of emolument.

## **Chapter II**

### **Access to information and administrative cooperation**

#### **Article 7** Access to information

1. The Ministry of Labour and Social Policies shall make available all information concerning conditions of work and employment of posted workers and all updates thereof on the official website. In particular the information shall regard:

- a) conditions of work and employment applicable to workers posted to Italy;
- b) collective agreements applicable to workers posted to Italy, particularly with regard to minimum rates of pay and their constituent elements, the method used to calculate the remuneration due and the qualifying criteria for classification in the different wage categories;
- c) mechanisms to lodge complaints, as well as legislation regarding health and safety in the workplace for posted workers;
- d) bodies and authorities to which workers and undertakings can turn for information on national legislation and practice applicable to them concerning their rights and obligations.

2. All the information referred to in paragraph 1 shall be made available in Italian and in English, free of charge in a clear, transparent, comprehensive and easily accessible way, in accordance with accessibility standards that ensure access to persons with disabilities.

#### **Article 8** Administrative cooperation

1. To facilitate administrative cooperation, the Italian National Labour Inspectorate (INL) shall respond in a timely manner to requests for information coming from requesting authorities and shall carry out checks and inspections including the investigation of any non-compliance or abuse of applicable rules on the posting of workers.

2. Requests also concern information regarding the possible recovery of an administrative penalty and/or fine, or the notification of a decision imposing such a penalty and/or fine and may include the sending of documents and information as to the legality of the establishment and the service provider's good conduct.

3. To enable the competent authorities to respond to a request for assistance from another Member State, as referred to in paragraphs 1 and 2, the 'user' companies established in Italy shall provide the Italian National Labour Inspectorate with all the required information.

4. Member States shall provide the information requested by other Member States by means of the Internal Market Information System (IMI) or by electronic means within the following time limits:

- a) as soon as possible and up to a maximum of two working days from the receipt of the request in urgent cases requiring the consultation of registers. The reasons for

the urgency shall be clearly indicated in the request, including some details to substantiate that urgency;

b) up to a maximum of 25 working days from the receipt of the request in all other cases.

5. For the purpose of verifying and monitoring the conditions applicable to posted workers, the Italian National Labour Inspectorate can apply the bilateral agreements and understandings concerning administrative cooperation and mutual assistance, exchanging information, whenever possible, by means of IMI.

6. In the event of difficulty in meeting a request for information or in carrying out checks or inspections within the established time limits, the Italian National Labour Inspectorate shall without delay inform the requesting authority with a view to finding a solution.

7. Where there are facts that indicate possible irregularities, the competent authority shall without undue delay communicate, by means of IMI, all the relevant information to the Member State concerned.

8. A request for information shall not preclude the competent authorities from taking measures to prevent alleged breaches of this Decree.

9. Mutual administrative cooperation and assistance with the competent authorities of other Member States shall be provided free of charge. The information exchanged shall be used only in respect of the matter for which it was requested.

## **Article 9** Accompanying measures

1. Within the framework of the initiatives adopted by the European Commission, Italy shall take the necessary measures to develop, facilitate and promote the exchange of officials responsible for administrative cooperation and mutual assistance, as well as the monitoring of compliance with and enforcement of the applicable rules, with the other Member States.

## **Chapter III**

### **Administrative requirements and control measures**

## **Article 10** Administrative requirements

1. Undertakings in other Member States that post workers to Italy shall make a declaration of posting to the Ministry of Labour and Social Policies at the latest by midnight of the day preceding the start of the posting and shall notify of any variations in the information within five days of those changes being made. The advance declaration of posting must include the following information:

- a) the identity of the sending company;
- b) the anticipated number of clearly identifiable posted workers;
- c) the envisaged beginning and end date of the posting and the anticipated duration;
- d) the address of the workplace;
- e) the identity of the receiving company;
- f) the nature of the services justifying the posting;
- g) personal details and chosen address of the liaison officer referred to in paragraph 3, letter b);
- h) personal details of the contact person referred to in paragraph 4;
- i) the number of the authorization to operate as a temporary employment undertaking or placement agency in the case of cross-border temporary staffing where such authorization is required by the law of the State in which the undertaking is established.

1.2. For road haulage operations, as referred to in Article 1, paragraph 4, the advance declaration of posting:

- a) is valid for three months and during this period covers all transport operations carried out in Italy by the posted driver on behalf of the transport undertaking referred to in the afore-mentioned declaration;
- b) in addition to the required information listed in paragraph 1, must also specify, in Italian, the posted driver's gross hourly rate of pay in euro, as well as how travel and accommodation expenses are to be reimbursed. <sup>(2)</sup>

1.3. A copy of the advance declaration of posting sent to the Ministry of Labour and Social Policies, in compliance with paragraph 1, must be kept on board the vehicle and, in the case of a roadside check, shown to the police, as specified in Article 12 of the Italian Highway code and pursuant to Legislative decree No 285 of 30 April 1992; another copy of the same declaration must be kept by the liaison officer designated by the foreign posting company, as defined in paragraph 3, letter b). <sup>(2)</sup>

1.4 In the case of a roadside check, the police, as specified in Article 12 of the Italian Highway code and pursuant to Legislative decree No 285 of 30 April 1992, shall verify that the following documents, in Italian, are kept on board the vehicle:

- a) work agreement or other document containing the information referred to in Articles 1 and 2 of Legislative decree No 152 of 26 May 1997;
- b) payslips. <sup>(2)</sup>

2. Notification procedures shall be defined in the Ministerial decree of the Ministry of Labour and Social Policies that shall be emanated within thirty days of the entry into force of this Decree. <sup>(3)</sup>

3. During the posting period and up to two years from the end of the posting period the sending company shall:

- a) make available and/or retain copies in Italian, of the employment contract or an equivalent document containing the information referred to in Articles 1 and 2 of Legislative decree No 152 of 26 May 1997, payslips, time-sheets indicating the beginning, end and duration of the daily working time, proof of payment of wages or copies of equivalent documents, public registration of the establishment of the working relationship or equivalent documents and certification regarding legislation on applicable social security;
- b) designate a person domiciled in Italy to liaise with the competent authorities to send out and receive documents and/or notices. Failing this, the registered office or company premises of the Italian employer shall be considered the liaison office of the foreign posting company.

4. The undertaking that posts workers as provided for in this Decree has the obligation to designate a contact person, for the entire duration of the posting, who shall act as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining and who shall make his/her services available whenever the social partners make a motivated request.

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(2) Paragraph taken from Article 47-bis, paragraph 1, letter a) of Legislative decree No 50 of 24 April 2017, converted, with amendments, into Law No 96 of 21 June 2017.

(3) For the implementation of the provisions in this paragraph, see the Ministerial decree of the Ministry of Labour and Social Policies of 10 August 2016.

## **Article 11** Inspections

1. The Italian National Labour Inspectorate shall plan and carry out inspections to control and monitor compliance with the provisions laid down in this Decree, ensuring that such controls are neither discriminatory nor disproportionate and that they are in accordance with the regulations in force concerning administrative cooperation with the other Member States.

## **Article 12** Penalties and/or fines

1. The breach of notification requirements as provided for in Article 10, paragraph 1 shall be sanctioned with a fine in the amount of EUR 150 to EUR 500, for each worker concerned.
2. The breach of requirements as provided for in Article 10, paragraph 3, letter a), shall be sanctioned with a fine in the amount of EUR 500 to EUR 3,000 for each worker concerned.
3. The breach of requirements as provided for in Article 10, paragraph 3, letter b), and paragraph 4 shall be sanctioned with a fine in the amount of EUR 2,000 to EUR 6,000.
4. In any case, the fines referred to in paragraphs 1 and 2 shall not exceed EUR 150,000.

## **Chapter IV**

### **Enforcement of financial administrative penalties and /or fines**

#### **Section I**

#### **General provisions**

## **Article 13** Scope

1. The principles of mutual assistance and mutual recognition as well as the measures and procedures provided for in this Chapter shall apply to the cross-border enforcement of financial administrative penalties and/or fines imposed on service providers that post workers as provided for in Article 1.
2. The provisions in this Chapter shall apply to financial administrative penalties and/or fines, including interest, fees and surcharges, imposed by competent authorities or confirmed by administrative or judicial bodies relating to non-compliance with this Decree.
3. For the purposes set out in paragraph 1, the provisions in this Chapter shall apply and not the regulations provided for in Law No 149 of 21 March 1983 concerning the notification and recovery of documents, information and administrative evidence abroad.

## **Section II**

### **Request for recovery or notification to other Member States**

#### **Article 14** Responsibility

1. The Italian National Labour Inspectorate is responsible for making the request for the recovery of an administrative penalty and/or fine or the request for the notification of a decision concerning such a penalty and/or fine.
2. The request shall be transmitted to the competent authority in the Member State in which the person lives or in which the legal entity is registered. In the case of a request for recovery, if the person or the legal entity concerned has no assets in that Member State, then the request shall be sent to the competent authority of the State in which the person or legal entity has property or an income.

#### **Article 15** Conditions for transmission

1. The request for notification of the decision imposing an administrative penalty and/or fine and of the relevant documents, as well as the request for recovery, shall be carried out whenever:

- a) the requesting authority is unable to notify or recover in accordance with its own laws, regulations and administrative practices;
- b) when the administrative or judicial decision is not subject to further appeal.

2. The request referred to in paragraph 1 shall be transmitted in accordance with Article 16 and must include the following elements:

- a) the name and known address of the addressee, and any other data or information for the identification of the addressee;
- b) a summary of the facts and circumstances of the infringement, the nature of the offence and the relevant applicable rules;
- c) the instrument permitting enforcement in the requesting Member State and all other relevant information or documents, including those of a judicial nature, concerning the underlying claim, administrative penalty and/or fine and any challenges of the payment obligation or decision imposing it;
- d) identification of the competent authority responsible for the assessment of the administrative penalty and/or fine, and, if different, the competent body where further information can be obtained concerning the penalty and/or fine or the possibilities for contesting the payment obligation or decision imposing it.

3. The request as referred to in paragraph 1 shall also indicate:

- a) in the case of notification of a decision or other relevant documents, the purpose of the notification and the period within which it shall be effected;
- b) in the case of a request for recovery, the date when the judgment or decision became enforceable or final, also following a decision that is not subject to any further appeal, a description of the nature and amount of the administrative penalty and/or fine, any dates relevant to the enforcement process, including whether, and if so, how the judgment or decision has been served on the defendant and those jointly liable.

## **Article 16** Transmission to other States

1. The Italian National Labour Inspectorate shall transmit the administrative or judicial decision, with the relevant documentation as referred to in Article 7, paragraph 2 of Regulation (EU) 1024/2012 of 25 October 2012, by means of IMI, to the competent authority of the other Member State.

2. When the responsibility for the recovery from the defendant and those jointly liable lies with different States, the decision imposing the penalty shall be transmitted for enforcement to the authority of only one State at a time.

3. If the decision is challenged by the recipient undertaking, the Italian National Labour Inspectorate shall, without hesitation, inform the authority of the other Member State.

#### **Article 17** Effects of recognition

1. The Italian National Labour Inspectorate shall not be required to adopt the necessary enforcement measures if the requested authority has already taken action concerning the request for recovery of the administrative penalty and/or fine.

2. The Italian National Labour Inspectorate shall proceed with enforcement if:

- a) the requested authority fails, totally or partially, to execute a request;
- b) the requested authority refuses to execute a request on the grounds referred to in Article 20.

3. If the defendant produces proof of payment, totally or partially, the Italian National Labour Inspectorate shall inform the requested authority, also for the purposes of deducting the sum from the total amount to be paid.

### **Section III**

#### **Request for notification and recovery from other Member States**

#### **Article 18** Request for notification of a measure or decision

1. The Italian National Labour Inspectorate that receives from another Member State, by means of IMI, a request for notification of an administrative or judicial decision imposing or confirming an administrative penalty and/or fine, as well as any other relevant documentation, after having evaluated any possible grounds for refusal as referred to in Article 20, paragraph 1, shall take action within the time limit of thirty days.

2. The Italian National Labour Inspectorate shall transmit any grounds for refusal, by means of IMI, to the requesting authority.

3. The notification of a decision, carried out in accordance with the national laws, regulations and administrative practices of the requested Member State, shall be deemed to have the same effect as if it had been made by the requesting Member State.

#### **Article 19** Request for recovery of the penalty and/or fine

1. The responsibility for making the decision about the request for recovery of an administrative penalty and/or fine lies with the Appeal Court in the district in which the defendant on whom the fine has been imposed lives, has property or an income, or, if a legal entity, is registered at the time of transmission by the Member State who must enforce the decision.

2. If the Appeal Court decides that it does not have jurisdiction, it shall by order transmit the documents to the competent Appeal Court and shall promptly notify the requesting authority through the Italian National Labour Inspectorate.

3. The recovery of the administrative penalty and/or fine, carried out in accordance with the national laws, regulations and administrative practices of the requested Member State, shall be deemed to have the same effect as if it had been made by the requesting Member State.

#### **Article 20.** Grounds for refusal

1. The Court of Appeal shall not be obliged to execute a request for notification or recovery if the request does not contain the information referred to in Article 15, paragraphs 1 and 2, is incomplete or manifestly does not correspond to the underlying decision.

2. The Appeal Court may refuse to execute a request for recovery in the following circumstances:

- a) following inquiries by the requested authority it is obvious that the envisaged costs or resources required to recover the administrative penalty and/or fine are disproportionate in relation to the amount to be recovered;
- b) the overall financial penalty and/or fine is less than EUR 350 or the equivalent to that amount;

c) fundamental rights and freedoms of defendants and legal principles that apply to them as laid down in the Constitution of the requested Member State are not respected.

## **Article 21** Procedure and decision for recognition

1. When a request for recovery, together with the decision that imposes the administrative penalty and/or fine and the information referred to in Article 15, arrives from another Member State, via the Italian National Labour Inspectorate, at the Public Prosecutor's Office of the Appeal Court concerned, the Prosecutor's Office, in accordance with Article 19, shall make a request for recognition to the Appeal Court that shall notify the service provider of the request within the thirty day time limit.

2. Legal proceedings before the Appeal Court take place in the council chamber, as provided for by Article 127 of the criminal procedure code. The Chief Judge shall fix the date of the hearing and shall notify the service provider and any other parties concerned at least ten days prior to the date of the hearing, in which also the prosecutor shall be heard. The Appeal Court shall make a decision within the time limit of twenty days from receiving the request as provided for in paragraph 1. If the Chief Justice of the Appeal Court decides that, due to exceptional circumstances, it is impossible to respect such a time limit, the requesting authority shall be informed of this decision within the following fifteen days in order to obtain an extension of a further thirty days to execute the proceedings.

3. Once the decision for recognition has been declared, the Appeal Court shall transmit it to the Public Prosecutor's office for it to be executed.

4. The head of the Public Prosecutors' office (*procuratore generale*), the person upon whom the administrative penalty and/or fine has been imposed and his/her defence lawyer can file appeal against the decision, for violation of the law, to the Court of Cassation within ten days of the decision being filed. The requesting authority shall be promptly informed of the appeal, that cannot be made on the grounds for which the decision concerning the administrative penalty and/or fine was based.

5. The appeal shall not suspend the execution of the decision.

6. The Court of Cassation shall decide within thirty days of receiving the documents, in accordance with Article 127 of the criminal procedure code. A copy of the decision shall be sent to the requesting authority.

7. In the case of an appeal to the Court of Cassation, the time limit for recognition shall be extended by thirty days.

8. Once the decision is final it shall be immediately transmitted to the requesting authority.

9. The requested judiciary authority shall notify of any grounds for refusal to the requesting authority as provided for in Article 7, paragraph 2 of Regulation (EU) No 1024/2012 of 25 October 2012, by means of IMI.

10. If recognition is refused because the request for recovery of an administrative penalty and/or fine must be executed in another State, the requested judiciary authority shall take action as indicated in paragraph 9.

## **Article 22** Suspension of the procedure

1. If the recovery or notification procedure is challenged or appealed, the cross-border enforcement procedure of the penalty and/or fine shall be suspended pending the decision of the appropriate competent body or authority in the requesting Member State in the matter.

## Article 23 Effects of recognition

1. The execution of the decision for recovery of a penalty and/or fine, following recognition by the Appeal Court, shall be governed by Italian law.

2. The head of the Public Prosecutor's office (*procuratore generale*) of the Appeal Court that approved recognition shall execute the request.

3. If the defendant should provide proof of partial payment then the amounts collected shall be deducted from the total amount to be recovered in Italy. If the defendant can provide evidence of total payment of the penalty and/or fine, the

judiciary authority shall suspend enforcement and shall duly notify the requesting authority.

4. Amounts recovered following execution of the decision shall accrue to the Italian State and shall be recovered in Euro in accordance with the applicable procedures. The penalties and/or fines expressed in a different currency shall be converted into Euro at the rate of exchange applying on the date when the penalty and/or fine was imposed.

#### **Article 24** Amounts recovered

1. Amounts recovered with respect to the penalties and/or fines referred to in this Chapter shall accrue to the Ministry of Justice.

2. The requested authority shall recover the amounts due in the currency of its Member State, in accordance with the applicable laws, regulations and administrative procedures.

## **Chapter V**

### **Final provisions**

#### **Article 25** Clause on financial invariance.

1. As a consequence of the enforcement of this Decree no further or higher charges on public finance may arise. The activities provided for by this Decree shall be carried out by the administrations concerned in the framework of their human, financial and physical resources already made available with existing legislation.

#### **Article 26** Statute repeals

1. On the entry into force of this Decree, Legislative decree No 72 of 25 February 2000 shall be repealed.

## **Article 27** Entry into force

1. This Decree shall enter into force on the day following that of its publication in the Official Journal of the Italian Republic.

This Decree, which bears the official state seal, is to be inserted into the Official Deposit of Italian Laws. Everyone must obey it and have others obey it also.

## Annex A

(as referred to in Article 4, paragraph 2)

The activities mentioned in Article 4, paragraph 2 include all building work relating to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:

- 1) excavation;
- 2) earthmoving;
- 3) actual building work;
- 4) assembly and dismantling of prefabricated elements;
- 5) fitting out or installation;
- 6) alterations;
- 7) renovation;
- 8) repairs;
- 9) dismantling;
- 10) demolition;
- 11) maintenance;
- 12) upkeep, painting and cleaning work;
- 13) improvements.