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# FEMS Policy statement on the procedure of revision of ED 2003/88 (EWTD) concerning certain aspects of the organisation of working time and the Commission's consultation on "Modernizing labour law to meet the challenges of the 21st century – the Green Paper"

## The current situation

Concerning the EWTD revision procedure, the European Parliament (EP) adopted in 1st reading on May 11, 2005 at a plenary session the document proposed by the Committee on Employment and Social Affairs of the EP (Cercas report).

The procedure of revision of the Directive is since this date in the course of 2nd reading. The Council of the Union, in spite of 3 meetings devoted to this subject, could not reach a qualified majority on the new proposal of the text of the European Commission, which takes into consideration the decisions of the EP, while wishing more flexibility in management of the working time to increase competitiveness in the Union.

The European Commission launched in January 2007 a large consultation on "Modernizing labour law to meet the challenges of the 21st century – the Green Paper", inviting European stakeholders to express their views on a number of questions in the light of the "flexicurity" approach to the European labour market. This consultation was launched by the Commission in a blocked political context of the revision process of ED 2003/88. This consultation, first phase of a longer process, will be closed on March 31, 2007.

At the beginning of March, 2007, the Standing Committee of European Doctors (CPME) produced a statement (CPME 2007/031 EN/FR), the Permanent Working Group of European Junior Doctors (PWG) and the European Medical Students Association (EMSA) drafted the document (CPME 2007/015 EN).

The European Medical Organisations (EMO) Presidents' Committee held in Warsaw, March 15, 2007 considered necessary to prepare a common document. The document CPME 2007/054 EN was adopted March 17, 2007 **(CPME/AD/Brd/170307/054/EN)** and will be used as background document for future work on this matter.

At the same European Medical Organisations (EMO) Presidents' Committee held in Warsaw, it was decided that each EMO draws up a list of the divergent points, which are necessary to discuss "internally". Dr. HUERTA, who ensures the coordination of this file in the CPME, will collect the various remarks, which have to be addressed to him by email for the end of March 2007. In the final document, with footnotes quoting the points to be specified, the list of EMOs which took part in its development will be mentioned in the preamble.

Once again it is necessary that the medical profession expresses with one voice, by taking into account the specific interests of all its components

## FEMS policy adopted in respect of the last General Assembly (Ljubljana, October 12 & 14, 2006) decisions and of the results of F 07-008 FR/EN survey

1. **The definition of the working time and concept of "inactive periods"**

The ED established a weekly duration of 48h working time, calculated over a reference period. Certain governments of the European Union wish the introduction of the concept of inactive periods of work during the medical resident on-call duties, not counted as working time. For the non-resident on-call duty, only the effective working time at the hospital is counted as working time.
The European Court of Justice (CJCE) of Luxembourg expressed on several occasions on the subject (*SiMAP, Jaeger, Pfeiffer, Dellas rulings*), estimating that the Directive applies to the Health professionals, trainees included, and that all the resident on-call time (active or inactive) at the hospital must be regarded as working time.
The EP introduces the possibility of national agreements (sectoral or collectives) for the taking into account totally or partially of the inactive periods into the working time.

***For the FEMS delegations, all the time of resident at the hospital on-call duty must be regarded as working time.***

2. **The duration limits for "compensatory" rest**

The Commission envisages an extension of the duration until 72h after the working time carried out. The CJCE has expressed on the subject (*Jaeger ruling*). It estimates, like the EP, that compensatory leave must follow the working time immediately.

***For the FEMS delegations, the compensatory rest must follow the working period immediately.***

3. **The possibility of individual renouncement (“opt-out”): it is the keystone of the file.**

Currently, it is possible to give up the rule of the 48h of weekly working time. The EP, estimating that this measurement is likely to involve an unfair competition and a social dumping, envisages to put an end to this possibility 3 years after the adoption of the modified Directive.

Certain governments of the European Union wish the final maintenance of this possibility of renouncement, others (minority of blocking to the Council of the Union) support the position of the EP estimating that this maintenance calls into question the base of the Directive, threatening health and safety of the workers. For the doctors, this additional work is also a threat to the safety of the patients.

***Most of the FEMS delegations ask for the possibility of individual opt-out to be abolished as quickly as possible and the weekly working time limited to 48h, doctors in training included.***

In certain European countries, whose delegations are members of the FEMS, additional work represents a considerable share of the incomes of the doctors (from 15% to 40% according to countries'). Because of a weak basic remuneration, this overtime is currently the only mean to obtain decent incomes, justified by a high level of qualification.
Certain Central and Eastern European FEMS delegations request for the maintenance of the possibility of individual renouncement ("opt-out") for a few years, time to improve the basic medical incomes and to recruit doctors.

***The EP proposal to put an end to the "opt-out" possibility 3 years after the adoption of the new EWTD Directive seems to be the consensual solution for the FEMS delegations. In this transitional period, the overtime with 60 hours weekly a maximum limit, has to be negotiated at collective level (not individual), with a voluntary individual employee/employer contract, renewed each year.***

4. **The reference period**

The reference period for the calculation of the average weekly duration of 48h is currently 4 months (one four-monthly period). It is proposed, under certain conditions, to be able to extend it to 1 year. The EP accepted this proposal to improve the flexibility of management of the working time.

***For the most FEMS delegations, the reference period must be maintained at the four-monthly period.***
***But for some FEMS delegations, the reference can be extended beyond the four-monthly period, if necessary, to allow a flexibility of management of the working time (periods of holidays). But the unilateral extension of the reference period from 6 months to 12 months should not be possible and the reference period should not be longer than the length of the work contract.***

## Conclusion (F 06-027 FIN EN)

The European Federation of Salaried Doctors (FEMS) acknowledges the existence of a difficult situation in the health sector in Central and Eastern European countries which are members of the European Union, due to:

- the large number of medical students who plan to work abroad,
- the inadequate appreciation of labour force,
- the emigration of doctors from these countries, which significantly negatively impacts on the quality of health care of the population,
- the working conditions: hospital doctors often exceed 150-200 hours of overtime per month,
- the inadequate remuneration: in the aforementioned countries the basic salary of doctors is lower than the average salary in the country.

This situation, threatens the health of medical workforces and the patient's safety in this countries. Correct working conditions for the healthcare professionals, with the same rules all over the continent, is the necessary condition to establish a safe healthcare system in the European Union.

***People always prefer to receive their care on their premises, close to their family. The ideal would be that any citizen has access to the best treatment in his country. But it is unfortunately not the situation (Markos Kyprianou 05/02/07).***

Strasbourg, March 30, 2007