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NATIONAL REPORT AUSTRIA

**FEMS MEETING PULA
MAY 18th & 19th, 2007**

1. Green Paper: “Modernising labour law to meet the challenges of the 21st century” – Position of the Austrian Medical Chamber

The Austrian Federal Body of Employed Doctors has decided the following issues for the purpose of improving the working situation at European level:

1. the private and public sector comply with the same rules – no different rating
2. effective controls and sanctions in case of violations, also in the public sector
3. the aim is to maintain the Austrian working time act for hospitals in its present form, as well as to guarantee the observance of maximum limits of working time, in order to protect patients and hospital employees,
4. the current definition of working time shall be maintained,
5. all periods of working time accomplished by doctors at their workplace, including stand-by duty, have to be considered as working time and have to be remunerated accordingly.
6. hours of stand-by duty (also inactive) can never be regarded as rest periods, and therefore have to remain unconsidered within daily, weekly and compensatory rest time,
7. the “op-out regulation” should be completely withdrawn from the Directive (see also Art. II.91) Draft EU constitution, as well as European Parliament draft document on considerations 14, according to which each employee has the “right to a limitation of maximum working hours, to daily and weekly rest periods, as well as to an annual period of paid leave”).

The best solution, however, would be to raise the 48 hours limitation, as set out in Article 6 of the EU Working Time Directive 2003/88, to an average of up to 60 hours by means of works agreements and the consent of employee representatives, i.e. at collective and not at individual level. The European Working Time Directive 2003/88 should be amended accordingly.

2. Medical Speciality: General Medical Practice

At present, general medical practice is not a medical speciality in Austria. However, in June 2004, the Austrian Medical Chamber decided to initiate a campaign to establish it as a new medical speciality. The training leading to the award of the diploma is not meant to be a mere prolongation of the current training model with its problematic aspects. Therefore, the Austrian Medical Chamber has defined certain issues that, according to its point of view, necessarily have to be considered in the specialist training (e.g. structured training, restructuring and proper financing of medical training in practices of self-employed doctors, visitation of training sites, revision of the logbook, establishment of general practice at the medical universities etc.)

An intense debate with the Ministry of Health, Family and Youth started in September, 2006. Until now, the discussion has developed in a very constructive way. We are optimistic that the legislation necessary for the establishment of general medical practice as a medical speciality will be adopted until the end of 2007.

In the course of this reform, Austria plans to establish one year of basic medical training which will be common to all kinds of doctors, regardless of whether they specialize in general practice or any other medical speciality. Upon completion of this basic training, the license to practise shall be granted to each doctor. This will mean a major change to the Austrian system, which at present links the license to practise to the diploma of a general medical practitioner or a medical specialist. The new license will also facilitate the migration of Austrian doctors to other EU Member States with similar systems.

3. Infringement procedure: Medical studies in Austria – Access to university

On January 24, 2007, the European Commission decided to send a "letter of formal notice" to Austria (and Belgium) regarding restrictions of access to the higher-education system for holders of secondary education diplomas from other Member States. Austria has now time to reply to the European Commission.

In the case of Austria, this is a follow-up to the judgement of the European Court of Justice of July 2005. Up to then, the Austrian legislation had restricted the access to Austrian universities to those holders of secondary education diplomas from other EU Member States who could prove that they met the conditions governing access to the higher education system in their respective home country (e.g. by passing the entrance exams there). The Court had held that Austria's legislation discriminated against holders of secondary education diplomas awarded in other Member States, since they could not gain access to Austrian higher education under the same conditions as holders of the equivalent

Austrian diplomas (Article 12, 149, 150 of the EC Treaty). As regards a possible justification of such discrimination, the ECJ stated in particular that Austria "failed to demonstrate that ... the existence of the Austrian education system in general and the safeguarding of the homogeneity of higher education in particular would be jeopardized" in the absence of restrictive measures, by the number of students coming from other countries, mainly Germany.

Following the Court's decision, Austria provisionally amended the relevant Universities Act twice, firstly in July 2005 to abide by the Court's decision, and once more in June 2006, to re-establish restrictions to the access to Austrian universities. The latter amendment specified that, for some courses of studies, 75 % of the study places could be reserved to applicants with a secondary education diploma acquired in Austria, while further 20 % would be reserved for other EU students, and the remaining 5% to third-countries students. A subsequent decree stipulated that these quotas were to be introduced for medical and dental studies until the end of 2007.

In its letter of formal notice to Austria – based on Article 228 of the Treaty, i.e. non-application of an ECJ ruling – the Commission indicates that, having analysed the justifications put forward so far by the Austrian authorities, it considers at this stage that Austria has still not complied with the ECJ's ruling, and invites Austria to submit its observations.

4. Migration of Austrian doctors

Currently Austrian medical graduates face quite long waiting periods until they are able to start their postgraduate medical training. Especially specialist training posts are scarce. The International Department of the Austrian Medical Chamber is quite active in finding training opportunities for medical graduates abroad. In March 2007, a large job fair "Working in Germany" took place at all three Austrian universities. Opportunities were offered not only for medical graduates, but also for specialists and general medical practitioners.

The International Department, apart from other tasks, offers advice to Austrian doctors on employment opportunities in foreign countries, as well as advice on the legal requirements for migration. This service is very well received, as Austrian doctors, not only graduates, are quite interested in working abroad for some time in order to gain further experience.

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