



FÉDÉRATION EUROPÉENNE DES MÉDECINS SALARIÉS  
EUROPEAN FEDERATION OF SALARIED DOCTORS

*Dr Enrico Reginato, President*

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<b>Authors:</b>	<b>Enrico Reginato, Constantino Troise, ANAAO</b>		



EUROPEAN COMMISSION

Cabinet of Commissioner László Andor  
Head of Cabinet

Brussels, 03. 12. 2012  
ET/hc Ares(2012)

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Dear Dr Troise,

Dear Dr Reginato,

On behalf of Commissioner Andor, I would like to thank you for your recent letter, on behalf of ANAAO –ASSOMED and FEMS, regarding your complaint (reference CHAP 2012/02947) that Italian law (particularly Decreto Legge 112/2008 and Law 31/2008) does not comply with the Working Time Directive (Directive 2003/88/EC) regarding the working time of hospital doctors in Italy. The Commission services also received another similar complaint on the same issues.

The Commission has considered carefully the issues raised by both complaints and by the further clarifications which you supplied, and wrote to the national authorities in May 2011 to ask for their detailed explanations. As their queries were not discharged by the national authorities' reply, the Commission then sent a letter of formal notice to the Italian authorities in April 2012 setting out the points of concern. The national authorities replied in August 2012.

It would be helpful to receive your further observations on a couple of detailed aspects regarding the current practice of public sector employers and aspects of the relevant national collective labour agreements.

**Constantino Troise MD**  
**Secretary General of Anaaao Assomed**  
**Rue Guimard 15**  
**1040 Brussels**  
**Belgium**

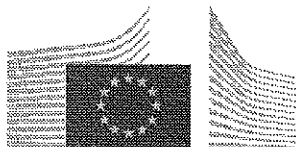
**Enrico Reginato MD**  
**Vicepresident of FEMS**  
**Rue Guimard 15**  
**1040 Brussels**  
**Belgium**

You will shortly receive a detailed letter in this regard from the responsible Commission services (Ms Muriel Guin, head of unit, Labour Law unit, DG Employment, Social Affairs and Inclusion, e-mail: [EMPL-LABOUR-LAW@ec.europa.eu](mailto:EMPL-LABOUR-LAW@ec.europa.eu)).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Anabela GAGO', with a long horizontal stroke extending to the left.

Anabela GAGO



**EUROPEAN COMMISSION**  
Employment, Social Affairs and Inclusion DG

**Labour Law**

Brussels, 28/01/13  
DG EMPL/B2/TW –ynf (2013)

**M. Constantino Troise MD**  
**Secretary General of Anaa Assomed**

**M. Enrico Reginato MD**  
**Vicepresident of FEMS**  
Rue Guimard 15  
1040 Brussels  
Belgium

**Subject: Your complaint registered under CHAP(2012)2947**

Dear Dr Troise,

Dear Dr Reginato,

Following our previous correspondence about your above complaint, I write to inform you about the developments of the case and to ask you for certain further observations.

As you are aware, after exchanges of correspondence with Italian national authorities, the Commission sent a letter of formal notice to Italy regarding the conformity of the situation in the public health services with Directive 2003/88/EC on Working Time. National authorities replied in August 2012.

The Commission is in particular concerned about the exclusion of doctors in the National Health Service from the 48-hour limit to average weekly working time and the exclusion of doctors and other health personnel in the National Health Service from 11 consecutive hours of daily rest. The exclusions are laid down in Article 41(13) of Decree-Law of 25 June 2008 No 112 (this decree-law was later converted into Act No 133/2008) and Article 3(85) of Law No 244/2007. The Directive itself provides for the possibility to derogate from the average limits to weekly working time and from the minimum limits to daily rest but only in limited specific situations and provided that certain conditions are met.

Before finalising the analysis of the Italian reply to the letter of formal notice the services of the Commission wish to ask for your comments as regards the following issues:

1) The Commission understands that all the doctors are treated as managers however it is not clear whether they enjoy such autonomy with regard to their working time

Could you please explain whether in practice doctors in the Italian National Health Service have genuine and effective autonomy over the total amount as well as the organisation of their working time?.

2) What is in practice the average (that is during the applicable reference period) weekly working time of a doctor in the National Health Service?

3) Article 41(13) of Decree-Law of 25 June 2008 No 112 states that instead of 11 consecutive hours of daily rest, 'appropriate protection' against health and safety risks will be provided for doctors by collective bargaining. The question is how this provision on 'appropriate protection' is applied in practice and eventually what is in practice a daily rest period of a doctor? If the doctors do not enjoy a daily rest period of 11 consecutive hours in practice, is there a guarantee that they are afforded periods of compensatory rest, equivalent to the missed daily rest period, which follow on immediately from the working time which it is supposed to counteract?

4) Article 3(85) of Law No 244/2007 introduced paragraph 6-bis into Article 17 of Legislative Decree No 66 of 8 April 2003. This paragraph excludes health personnel in the National Health Service from the right to eleven consecutive hours of daily rest, as enshrined in Article 7 of Legislative Decree No 66 of 8 April 2003, referring at the same time to applicable contractual provisions on working time matters. The question is how is this paragraph applied in practice and eventually what is in practice a daily rest period of health personnel in the National Health Service and whether the protection is appropriate? If the personnel do not enjoy a daily rest period of 11 consecutive hours in practice, is there a guarantee that they are afforded periods of compensatory rest, equivalent to the missed daily rest period, which follow on immediately from the working time which it is supposed to counteract?

5) Could you please explain what is the protection as regards average weekly working time and daily rest periods afforded by applicable sectoral collective agreements and whether they actually ensure compliance with the minimum requirements laid down in the Working Time Directive?

6) Could you please explain how the system of availability duties (*regime di reperibilità*) or standby (*pronta disponibilità*) operates in practice and where the worker must stay during such duties (is the worker obliged to remain physically present in the workplace or any other place determined by the employer; or can the worker remain at home or other place which he or she chooses, provided that they remain contactable in order to reach the hospital promptly if called)?

Thanking you in advance for your prompt reply, I remain

Yours sincerely,



Muriel Guin  
Head of Unit



Ms. Muriel Guin  
Head of Unit  
European Commission  
Employment, Social Affairs and Inclusion DG

Brussels February 21<sup>th</sup> 2013

**Subject: Complaint registered under CHAP(2012)2947**

We thank you for the letter you sent us on Jan. 28<sup>th</sup> 2013 concerning the subject.

Enclosed please find the answers to your questions:

- 1) There are two levels of Italian Public Managers. In the particular situation of Italian Hospitals, the Managing Staff of the Hospitals and Sanitary Units (General Manager, Sanitary Manager and Administrative Manager) are managers/executives of the second level. They have autonomous decision-taking powers and their work is not measured and/or predetermined. The Hospital doctors are in the first level of executives.

Within this first level, the heads of Departments (about 8000 out of 110.000 Italian hospital doctors) have no predetermined working time and are evaluated by results (unless their personal contract with the hospital includes a predetermined working time for them too).

All the other 102.000 doctors:

- don't perform any real managing and organizative function;
- have no autonomy over the amount of working time, that is predetermined by the National Contract, (38 hour/week) and measured with electronic devices;
- have no autonomy over the internal organization of the Department: daily and night duties, on-call duties, vacations, Continuous medical Education.

Therefore, none of this great majority of doctors can be considered in the derogation of EWTD for "*managing executives or other persons with autonomous decision-taking powers*" (art. 17)

- 2) The weekly working times for doctors of the National Health Service, according to the National Contract, is 38 hour per week. Often the working time is over that limit, even beyond 48 hours/week, due to restriction of staff tied to projects of reorganization of the NHS after shortage of national resources in the last financial laws and spending review.
- 3) Protection for shiftwork, beyond the maximum daily work expected in the EWTD, was demanded to decentralized contracts (see the following question). Abrogation of the right to 11 hours of rest in



one day allowed the plans of morning/night work, where the rest could be reduced to 6 hours (working hours from 8.00 a.m. >2.00 p.m. plus 8:00 pm>8:00 a.m. next day).

Due to staff restrictions, immediate compensatory rests are not granted, after duties exceeding EWTD limits.

- 4) Art. 3(85) of Law N° 244/2007, abrogating the right to continuative rest of at least 11 hours/day for doctors of NHS, demanded to the National Contract the identification of protection and safety mechanisms for workers.

Art. 7 of the national Contract 2006/2009 sets the general frame for the decentrated contracts (Regional and Local) but doesn't confirm the 11 hours of daily rest. This implies that single regional and local agreements created quite diversified conditions.

E.g. in Tuscany and Puglia Regions the agreements decided for 11 hours of daily rest, but in Lombardia Region this limit is lowered to 8 hours.

Therefore, in spite of the EWTD, the goal of a uniform and adequate health protection is not reached.

The directive is not respected, still worse, because, from its disapplication, a considerable economical advantage is obtained by the sanitary structures.

- 5) The expected protections in many decentrated contracts are the immediate rest, usually 24 hours long, after a night duty, and the recovery of the shiftwork done beyond 38 hours/week, is done in the following months, in case there is no request for shiftwork pay. Anyway everything is conditioned by an adequate number of staff. In many Italian health structures these protections remain on the paper where they are written and the exigence of delivering the service prevales over the EWTD 88/2003, putting at risk the health of doctors as well as the patient's one.

- 6) In most cases, on call services don't need the continuous presence inside the hospital, provided the doctor can assure to quickly reach the hospital within the expected times (in some cases immediate, in other cases within 30 minutes).

Other situations are represented by the so called active on-call presence, where the doctor can remain outside the hospital but compulsory on line to be able to give his/her performance (e.g. neurosurgeons and neuroradiologists for CT brain imaging).

Hoping these answers can help you to manage the Italian Government reply, we remain.

Yours sincerely

Enrico Reginato  
FEMS President

Costantino Troise  
ANAAO Assomed General Secretary