

FEMS POSITION PAPER. Ensuring Compliance with the European Working Time Directive for Medical Doctors in the Context of Workforce Shortages

Preliminary remarks

Most of the problems hindering the proper implementation of the European Working Time Directive stem from a shortage of healthcare personnel that has worsened in recent years.

This shortage, caused by multiple factors, is mainly the result of reduced investment in the health sector. The Directive 2003/88/EC makes clear in its introductory section that improving worker safety, hygiene, and health is an objective that should not be subordinated to purely economic considerations. At the same time, the Directive calls for necessary flexibility in the application of certain provisions—particularly in an essential context such as the delivery of healthcare.

However, it remains difficult but necessary to define the limits of acceptable flexibility in view of documented negative effects on healthcare professionals' health and on the declining attractiveness of the medical profession, in particular, which is also driven by the rigid and demanding time commitments that medical job requires.

IMPLEMENTATION CHALLENGES OF THE FOLLOWING PROVISIONS IN THE MEDICAL PROFESSION

Chapter 2

- **Article 3 – Daily rest:** the characteristics of medical work, together with the specificity and uniqueness of physicians' skills, may prevent compliance with the 11-hour daily rest requirement. For example, a surgeon operating cannot interrupt the procedure, both because of the unique nature of their expertise and due to legal responsibilities. At the same time, the shortage of personnel with such highly specialized skills does not allow for adequate rest, whether daily or weekly, at the end of the service.

- **Article 4 – Breaks:** For organizational efficiency reasons, physicians' shifts are longer than six hours—typically 12 hours, especially for on-call duties, and due to a (more) pronounced shortage of doctors in some EU countries, 24-hour shifts are not uncommon.

As reported in the **Document 2023/C 143/06 - Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time-** a break granted to a worker during the daily working time, in which a worker must be ready to respond within a time limit of two minutes constitutes 'working time' within the meaning of Article 2, as '*the limitations imposed on that worker during that break are such as to affect objectively and very significantly that worker's ability to manage freely the time during which his or her professional services are not required and to devote that time to his or her own interests.*

Physicians cannot take or schedule breaks, as this would require interrupting their service, particularly in the most demanding care settings such as emergency departments, intensive care units, and operating theatres, where assistance must be guaranteed 24 hours a day. According to Article 17, derogations may be adopted but, so far, no equivalent periods of

compensation rest or appropriate protections are guaranteed or planned on a national level. The duty to transpose the Directive resides with the Member States.

- **Article 6 – Maximum weekly working time** The shortage of medical staff, combined with the need to ensure continuity of care for the population, makes it impossible to guarantee compliance with the 48-hour weekly limit. In some countries, attempts are made to avoid compliance with the 48-hour limit by asking salaried physicians to provide healthcare services on a self-employed basis (in addition to their regular hours) or through other forms of overtime. Many Member States have NOT implemented or transposed the requirement that when workers have concluded several contracts of employment with the same employer, the minimum daily rest period and maximum weekly working time applies to those contracts taken as a whole, and not to each of them separately.
- **Article 7 – Annual Leave:** Also, because of staffing shortages, in many countries—even though physicians are entitled to at least four weeks’ annual leave—they are unable to take it, or cannot take it at the times they need to for work–life balance. This results in a large accumulation of unused annual leave, which, if quantified, can provide an indicator of the staffing shortfall. Member States should take the necessary measures to ensure that every worker effectively benefits from a minimum period of four weeks of paid annual leave, given that the Directive does not permit any derogation from Article 7.

Chapter 3

- **Article 8 – Length of night work:** Physicians perform night work both through on-call shifts carried out on site and through stand by duties. It is necessary to establish limits on the use of stand by duties availability. Although the European Commission has recently clarified that stand by duty time may qualify as working time depending on the intensity of **constraints** imposed on the worker, this interpretation has not yet been properly implemented or uniformly applied at national level. Moreover, it is a vague definition that leaves workers alone in having to claim or demonstrate that the degree of constraint imposed on them is excessively restrictive.

Several judgements - including cases Matzak (C-518/15), CCOO (ECJ C-55/18), Academia de Studii Economice din Bucureşti (C-585/19), SIMAP, Jaeger, Dellas and the most recent case C-373/24, have already highlighted the critical issues and offered interpretative solutions.

However, the limits remain the **lack of proper transposition at national level** and the need for clearer monitoring and enforcement arrangements. Including with regard to infringement procedures

The fact that certain medical activities must, by definition, deal with unforeseeable events does not exclude the possibility of preventive organization for activities carried out under normal conditions. Member States cannot invoke the ordinary need to ensure healthcare for the population as a general justification.

WHICH SOLUTIONS?

- To provide for a minimum number of mandatory rest days to compensate for the failure to ensure compliance with the rest break
- To introduce the principle that working time must be tied to appropriate staffing levels, with staffing calculations based on the real Full time Equivalent (FTE) of physicians, reflecting an ageing and increasingly female medical workforce
- To consider measures to enhance the attractiveness of the medical profession, including appropriate financial compensation for particularly demanding or antisocial working hours
- To enhance monitoring of Member States and support mechanisms for reporting breaches of the Directive, with the provision of adequate sanctions on Countries that do not implement the Directive
- To implement health safeguards to offset the gaps resulting from the Directive's non-application
- To set a maximum number of overtime hours, taking into account evidence that:
 - An increase in working time not only has harmful effects on health but could also undermine physicians' ability to dedicate time to continuous medical education -essential to maintain an adequate standard of care.
 - Due to the uncontrolled accumulation of overtime hours, physicians reaching the end of their careers may effectively have worked the equivalent of many additional years. This results not only in a negative impact on their health, but also in a weakening of the principle of healthy ageing in the workplace, which is essential to ensuring the long-term sustainability of healthcare systems in Europe.
- GPs and Family Physicians should be explicitly covered by EWTD compliance and monitoring to protect their health and ensure the sustainability of primary care

FEMS would be glad to serve as a reference partner for the Commission in studying the practical challenges and gaps in the implementation of the EWTD in selected Member States. In particular, FEMS can act as an operational point of contact in the countries it represents, providing both qualitative data (testimonies) and quantitative data (working hours, leave, on-call shifts) to support a comprehensive understanding and the identification of possible short- and medium-term solutions.