



09.10.2023

NOTICE TO MEMBERS

Subject: Petition No 0032/2018 by Pierpaolo Volpe (Italian) on the failure to bring Italian legislation on working time into line with European legislation

1. Summary of petition

The petitioner complains that Italian legislation on working time has not been brought into line with European legislation. Directive 2003/88/EC requires Member States to take the necessary measures to ensure that night workers whose work involves special hazards or heavy physical or mental strain cannot work more than eight hours in any 24 hour period. According to the petitioner, these provisions are not practicable in Italy, where adequate protection for workers is not provided. The petitioner refers in particular to night work by doctors and nurses employed in health care organisations. The petitioner therefore asks the European Parliament to ensure that Italy complies with European legislation on working time.

2. Admissibility

Declared admissible on 9 April 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 21 May 2019

The Working Time Directive¹ governs certain aspects of the organisation of working time. It sets out a number of provisions with a view to protect the health and safety of workers, including the maximum to average weekly working time (48 hours, in accordance with Article 6 of the Directive) and minimum daily (at least 11 consecutive hours, in accordance with Article 3 of the Directive) and weekly rest periods (at least 24 hours of uninterrupted rest plus the 11 hours daily rest, in accordance with Article 5 of the Directive). It sets specific protection for night workers. Under Articles 17 and 18 of the Working Time Directive, derogations may be made in various circumstances including in the case of activities

¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19.

involving the need for continuity of service or production or in all circumstances if decided by collective agreement, while remaining within the boundaries set by the Directive itself.

Following complaints arguing that the rights contained in the Working Time Directive were not guaranteed to staff in the Italian national health service, the Commission decided on 21 October 2014 to refer Italy to the Court of Justice of the European Union (CJEU), case C-124/14 - infringement 2011/4185. The Italian legislator then adopted new legislation abrogating the previous legislative rules incompatible with the Working Time Directive, bringing the national legal framework in line with EU law. On 23 January 2015 the CJEU ordered the deletion of the case C-124/14 from the register. The provisions non-compliant with EU law were repealed 12 months after the date on which the law entered into force, i.e. in November 2015.

The Commission subsequently received complaints that Italy had not yet fully implemented the Working Time Directive, following the previous case C-124/14 and the new legislation abrogating the previous legislative rules incompatible with the Working Time Directive (law of 30 October 2014 n. 161). The complainants specifically pointed to the regional law of Basilicata n.53 of 26 November 2015.

A first assessment of the regional law indeed pointed to non-compliance. The Commission therefore again contacted the Italian authorities.

The Italian authorities informed the Commission that they had instituted proceedings before the Constitutional Court to invalidate the regional law on grounds of its non-compliance with the Directive. On 26 April 2017 the Italian authorities informed the Commission that the Constitutional Court had judged the regional legal framework of Basilicata non-compliant with the Constitution, thereby resolving the non-compliance.

The petitioner refers to the alleged non-compliance of the provisions protecting night workers whose work involves special hazards or heavy physical or mental strain. The petitioner refers furthermore to staffing issues.

Conclusions

The Commission recalls that, with regard to staffing issues, the Commission has no competence, in the absence of legal norms of general application in clear violation of EU law, to comment on the organisation of medical services, since the issue falls outside the organisation of working time regulated by the Working Time Directive.

Concerning the alleged non-compliance of the provisions protecting night workers whose work involves special hazards or heavy physical or mental strain, exchanges with the Italian authorities are ongoing concerning the compliance of the Italian legal framework with the Working Time Directive. While it is national competence to ensure the proper application of legal frameworks transposing EU law in the Member States, the Commission will nonetheless consult the Italian authorities to inquire on the protection provided to night workers whose

work involves special hazards or heavy physical or mental strain.

4. Commission reply revised, received on 09 October 2023

The Working Time Directive² governs certain aspects of the organisation of working time. It sets out a number of provisions with a view to protect the health and safety of workers, including the maximum to average weekly working time (48 hours, in accordance with Article 6 of the Directive) and minimum daily (at least 11 consecutive hours, in accordance with Article 3 of the Directive) and weekly rest periods (at least 24 hours of uninterrupted rest plus the 11 hours' daily rest, in accordance with Article 5 of the Directive). It sets specific protection for night workers. Under Articles 17 and 18 of the Working Time Directive, derogations may be made in various circumstances including in the case of activities involving the need for continuity of service or production or in all circumstances if decided by collective agreements, while remaining within the boundaries set by the Directive itself.

Article 8(b) of the Working Time Directive provides that night workers whose work involves special hazards or heavy physical or mental strain should not work more than eight hours in any period of 24 hours during which they perform night work. In accordance with Article 8(2) of the Directive, work involving special hazards or heavy physical or mental strain shall be defined by national legislation and/or practice or by collective agreements or agreements concluded between the two sides of industry, taking account of the specific effects and hazards of night work.

Italy transposed Article 8(b) of the Working Time Directive through Article 4(2) of Legislative Decree of 26 November 1999 No. 532³ and through Article 13(3) of Legislative Decree of 8 April 2003 No. 66⁴. Both provisions refer to ministerial decrees to be issued to establish a list of works that involve special hazards or heavy physical or mental strain, after consulting the comparatively most representative national trade union organisations and the national employers' organisations. However, these decrees have never been issued.

In November 2019, the Italian authorities forwarded information according to which the definition of 'work involving special hazards or heavy physical or mental strain' is to be found either in national social security legislation for all work sectors, including health, or in sector-wide collective agreements. In particular, workers assigned to particularly heavy and arduous jobs are defined by Legislative Decree of 21 April 2011 No. 67⁵, as subsequently amended with regard to arduous jobs.

Conclusion

² Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9-19.

³ <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2000-01-21&atto.codiceRedazionale=000G0030&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=&tabID=0.5605921465289356&title=lbl.dettaglioAtto>

⁴ <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2003-04-14&atto.codiceRedazionale=003G0091&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=&tabID=0.9686662224729359&title=lbl.dettaglioAtto>

⁵ <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2011-05-11&atto.codiceRedazionale=011G0111&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=&tabID=0.005612435946880323&title=lbl.dettaglioAtto>

In the light of the information received from the Italian authorities, the Commission reviewed the national provisions in force to protect night workers whose work involves special hazards or heavy physical or mental strain. Night workers exposed to such risks are granted the rights enshrined in the Working Time Directive. The Commission considers the definition contained in Legislative Decree of 21 April 2011 No. 67, as subsequently amended regarding arduous jobs, to cover the list of works referred to in Legislative Decree of 26 November 1999 No. 532 and in Legislative Decree of 8 April 2003 No. 66.

It is a national competence to ensure the proper application of legal frameworks transposing EU law in the Member States.