

## **Annex to the WTD note: Inventory<sup>1</sup> of legal proceedings against Member States**

- In November 2012, the European Commission has requested Belgium to take measures to correctly apply the working time Directive to teachers in Belgian residential schools. In Belgium, overnight on-call time at the workplace worked by teachers in residential schools is not counted 100% as working time e.g. an overnight duty of 8 hours is counted as 3 hours' actual working time. The teachers can be obliged to perform up to four such overnight duties per week. The overnight duty can be further combined with a daily shift. This could result in breaches of the provisions of Directive 2003/88/EC which sets a maximum limit to weekly working time (48 hours on average) and requires minimum rest periods, in particular a minimum daily rest of 11 consecutive hours per 24-hour period. Derogations from the rules on rest periods are possible in some cases provided that an equivalent period of compensatory rest follows on immediately from the working time which it is supposed to compensate. The Commission's request takes the form of a reasoned opinion under EU infringement procedures. Belgium now has two months to notify the Commission of measures taken to correctly implement the Directive. Otherwise, the Commission may decide to refer Belgium to the EU's Court of Justice.
- In October 2013, the European Commission has requested Spain to respect Civil Guards' rights to minimum rest periods and the 48-hour limit on average weekly working time, as required by the Working Time Directive. Under the current Spanish national law, certain categories of Civil Guard workers are not entitled to these rights, particularly those with command, managing, teaching and investigative functions. Under the Directive, Member States may exclude managing executives or other persons with autonomous decision-taking powers from the 48-hour limit to average weekly working time and minimum rest periods. However, this derogation only applies to persons with genuine and effective autonomy over both the amount and the organisation of their working time, which is not the case for at least the majority of the Civil Guard workers concerned. The Directive also permits Member States to exclude from the provisions on minimum rest periods activities involving the need for continuity of service or requiring a permanent presence in order to protect property and persons, but this is on condition that the workers concerned are afforded equivalent periods of compensatory rest, which Spanish national law does not guarantee. As a result, the Spanish Civil Guards workers affected are vulnerable to working excessive hours without adequate rest periods. The Commission received several complaints about this situation. The request takes the form of a 'reasoned opinion' under EU infringement procedures. Spain now has two months to notify the Commission of the measures taken to bring national legislation in line with EU law. Otherwise, the Commission may decide to refer Spain to the EU's Court of Justice. The Commission previously decided to refer Spain to the Court concerning the application of EU health and safety legislation to Civil Guards ([IP/13/963](#))

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<sup>1</sup> Investigation under way whether there is a progress report on any of the cases listed.

- In November 2013, the European Commission refers Greece to the European Court. Greece fails to ensure that doctors work no more than 48 hours per week on average including overtime. In practice doctors in hospitals and health centres often work a minimum of 64 hours and over 90 hours in some cases, with no legal maximum limit. The Commission considers this as a serious infringement of the Working time Directive, endangering not only doctors health and safety but also their patients as over-tired doctors risk making mistakes ([IP/13/1108](#))
- Also in November 2013, the European Commission refers Ireland to Court for not complying with EU rules on limits to working time for doctors in public health services. Ireland fails to ensure that doctors work no more than 48 hours on average, including any overtime. Irish national law respects the requirements of the working time directive by providing limits to doctors working time. In practice hospitals often do not apply rules to doctors in training or other non-consultant doctors. There are still numerous cases where junior doctors are regularly required to work continuous 36-hours-shifts, over 100 hours per week in some cases and 70 – 75 hours per week on average This is considered as a serious infringement, putting doctors health at risk but also the patients. ([IP/13/1109](#)).
- In February 2014, the European Commission has decided to refer Italy to the EU's Court of Justice for failing to apply correctly the working time directive to doctors in public health services. Currently, Italian law deprives these doctors of their right to a limit on weekly working hours and to minimum daily rest periods. Under Italian law, several key rights contained in the Working Time Directive, such as the 48-hour limit to average weekly working time and minimum daily rest periods of 11 consecutive hours, do not apply to "managers" operating within the National Health Service. The Directive does allow Member States to exclude "managing executives or other persons with autonomous decision-taking powers" from these rights. However, doctors working in the Italian public health services are formally classified as "managers", without necessarily enjoying managerial prerogatives or autonomy over their own working time. Italian legislation does not apply the 48-hour limit to doctors in training. ([IP/14/159](#))
- The Commission has further sent a reasoned opinion to the Spanish government to respect forensic doctors rights to maximum working hours and minimum rest periods. Under Spanish law, several key rights contained in this Directive, such as a 48-hour limit to average weekly working time calculated over a 4-month reference period and minimum rest after working extra hours, are not guaranteed to forensic doctors. They are regularly required to perform weekly on-call duty in addition to their normal working time and national law does not guarantee that these extra hours are limited to 48 hours a week on average, calculated over the appropriate reference period. Neither does national law ensure that the forensic doctors receive their minimum daily rest during these periods on duty. Under the Directive, Member States are

permitted to exclude from the provisions on minimum daily rest activities involving the need for continuity of service, but this is on the condition that the workers concerned are afforded equivalent periods of compensatory rest immediately after the extended working hours, which Spanish national law does not guarantee. The Commission received a complaint about this situation, and sent a letter of formal notice to Spain in September 2012 to express its concerns. The request takes the form of a 'reasoned opinion' under EU infringement procedures. Spain has two months to notify the Commission of measures taken to bring national legislation into line with EU law. Otherwise, the Commission may decide to refer Spain to the EU's Court of Justice.

- In March 2014, the European Commission has requested France to respect the rights of doctors in training to minimum rest periods and limits to their working hours as required by the Working Time Directive.. Currently French law fails to guarantee several key rights contained in this Directive, such as the 48-hour limit to average weekly working time, to doctors in training. French law does not take into account all the hours actually worked by doctors in training when applying the 48-hour limit set by the Working Time Directive. Supplementary on-call periods and training hours at university are not covered whereas the Directive requires them to be considered as working time. In addition, French law does not ensure proper monitoring of working hours and makes it difficult to verify whether hospitals abide by the rules as provided for in the Directive. As a result, doctors in training often work excessive hours in public hospitals in France. The request to France takes the form of a 'reasoned opinion' under EU infringement procedures. France now has two months to notify the Commission of the measures taken to bring national legislation in line with EU law. Otherwise, the Commission may decide to refer France to the EU's Court.