PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

COMMISSION

Planned closure of complaint 2009/4209

(2009/C 236/07)

The Commission services have completed their investigation of complaint 2009/4209 regarding the remuneration of doctors who were undergoing specialised training in Italy between 1982 and 1991.

Following examination of the complaint and of the documentation submitted by the complainants from the point of view of the applicable Community law, the Commission services have concluded that it is not possible, at this stage, to identify an infringement of Council Directive 93/16/EEC (1) in the case in question.

Directive 93/16/EEC on facilitating mutual recognition of doctors’ diplomas and coordination of their training states that trainee specialist doctors must receive appropriate remuneration during the training period. This obligation arises specifically from Council Directive 82/76/EEC (2) which amended Directive 75/363/EEC; both directives were consolidated by Directive 93/16/EEC, which was in turn repealed by Directive 2005/36/EC of the European Parliament and of the Council (3).

The deadline for transposing Directive 82/76/EEC was 1 January 1983. In its judgment of 7 July 1987, the Court of Justice of the EC acknowledged that Italy had failed to comply with its obligations by not transposing Directive 82/76/EEC within the deadline laid down. By legislative decree No 257/1991 adopted in 1991 (entry into force: 1 September 1991), Italy had indeed transposed the Directive but had limited the right to remuneration to the academic years 1991/92 and after. In the judgments handed down in preliminary rulings C-131/97 Carbonari and C-371/97 Gozza, the Court considered that the damage suffered by specialist doctors (registered between academic years 1983/84 and 1990/91) could be compensated by retrospectively applying national rules on remuneration, with the national court refraining from applying national rules that ran counter to the Directive (the rules limiting the right to remuneration to 1991/92 and after).

Since several specialist doctors had registered before the academic year 1991/92, proceedings were brought before civil and administrative courts in Italy to obtain damages. In the judgments of 25 February 1994 by the regional court of Lazio, Section 1a, the court admitted the appeals: legislative decree No 257 of 8 August must not be applied by the national courts since this decree reserves application of Community law to those doctors accepted for specialist training in the 1991/92 academic year, leaving the previous training programme for specialist doctors in place.

Notwithstanding this judgment, Italy refused to provide appropriate payment to trainee specialist doctors before the 1990/91 academic year, opting instead to adopt a law, Law No 370 of 19 October 1999, Article 11 of which states that a grant of LIT 13 000 000 should be paid to each doctor who followed specialist training during the period 1983-1991 provided that they were personally covered by the judgment. A ministerial decree had specified the procedures for applying for these grants. Some doctors

had appealed this ministerial decree, which led to a ruling recognising that doctors who had followed specialist training and had been registered before the 1991/92 academic year were entitled to damages.

According to the complainants, doctors who have followed specialised training since the deadline for transposition of the Directive in question (31 December 1982) and who were registered in the training programme prior to the 1991/92 academic year are currently being deprived of their entitlement to damages because of the late and incomplete transposition of the Directive by Italy. The Commission services understand why the current complainants are criticising Italy for not having amended the relevant Italian regulations.

Having received other similar complaints from Italian doctors concerning this matter, the Commission services examined Italian case law and found that the principles laid down by the Court of Justice of the EC in its rulings in cases C-131/97 Carbonari and C-371/97 Gozza had been fully respected by the national court. The national court had accepted the principle of the retrospective application of entitlement to remuneration by not applying the national rules that were contrary to Directive 82/76/EEC (Article 8 of legislative decree No 257/1991 which limits entitlement to remuneration to the 1991/92 academic years and after) and had recognised entitlement to remuneration and, therefore, to reparation for the damage suffered. Notwithstanding this, in some cases the national court had refused reparation for the damage suffered because of the time limit for bringing a case based on the national law applicable. This decision does not appear to infringe Community law as interpreted by the Court of Justice of the EC, in particular in the judgment of 5 March 1996 in cases C-46/93 Brasserie du pêcheur and C-48/93 Factortame, which states that in the absence of relevant Community provisions on the reparation of damage suffered by private individuals, it is for the domestic legal system of each Member State to set the criteria for determining the extent of reparation. However, those criteria must not be less favourable than those applying to similar claims based on domestic law (point 83 of the above-mentioned judgment of 5 March 1996). The application of domestic law in this case complies with this principle.

Consequently, the Commission services will propose to the Commission that the corresponding complaint case be closed.

This does not preclude the case being reopened and proceedings being re-initiated should the Commission come into possession — even after closure — of new facts that could justify opening such a new procedure regarding the same subject.