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Postgraduate medical education, continuous professional development and conflicting Member State laws: The Italian peculiarity.

On the 3rd of September 1998, the Commission for European Communities adopted the directive 98/63/EC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications.

The directive 98/63/EC amended previous directives adopted in years 1993 and 1998.

A subsequent directive (2001/19/CE) was adopted by the European Parliament and the Council Of The European Union, concerning the same subject.

According to the Court of Justice of the European Communities, "Member States should take into account professional experience gained by the person concerned in another Member State".

The same directive 2001/19/CE says that *"...the structure and level of the professional training, professional traineeship or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose."*

This is an important feature, as the rules in a Member State can be conflicting with the general principle of reaching, on one side, an effective free movement of doctors across Europe, on the other side an harmonized standard training.

We'll be back on this issue further on.

On the 22/09/2001 the Board of CPME approved the Response of the consultation from the European Commission on the future regimen for professional recognition. (MARKT/D/8131/3/2001, Brussels 21/5/2001.

It is a very important document, as CPME confirmed its commitment in supporting the concept of mutual recognition of diplomas and free movement of doctors in Europe, both fully trained and still in training .

The problems emerge when we consider that the general system is not enough developed to reach the equivalence in medical education.

We know that, due to local policies on medical studies and postgraduate working conditions, in some Member States there is lack of doctors, in other Member States, there is a surplus of medical graduates.

Labour conditions, salaries, working time, perspectives of doing high level research or training make the rest: at present there is a certain extent of border crossing, but, we expect that such a phenomenon will be growing.

Therefore the need of harmonization is becoming more and more important, in the interest of doctors, who can go abroad to enrich their training, and for patients, who can expect, from free movement of doctors, a higher level of quality and safety.

All these good proposals find an obstacle in the Italian organization for postgraduate training.

In Italy a young doctor can become a specialist only if he succeeds to enter a University School, after passing a specific examination and under a *"numerus clausus"* rule. Hospitals are not entitled to postgraduate training, with few exceptions, only if University agrees to distribute the doctors in training in some hospital ward; anyway the control of the entire training is under the University authority.

Only after being a University-certified specialist, you can apply for a post in a public or private hospital.

It is therefore clear that such a national rule, not only creates problems to the Italian doctors, but is also an obstacle to free movement of doctors coming from other Member States: a young european doctor is not allowed to enter an Italian Hospital, unless he is a specialist, and the period of training, performed in

his or other European Countries has no value. The possibility of entering the University postgraduate school being precluded.

As we saw, the European Parliament wrote, "*...the structure and level of the professional training, professional traineeship or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State...*," but, if the law of the Member State conflicts with the general European rule, the Member State must comply the Directive.

A sentence of the European Court of Justice¹, concerning the case of a French national living in Italy, who held a "maîtrise en droit" and was not allowed to practice in Italy to become a lawyer, can be applied to any other professional:

*"...since the period of practice entails – with a view to access to a regulated profession – the pursuit of activities which are remunerated (by the clients in the form of fees or by the law firm in the form of salary), **the principles laid down in the treaty on freedom of establishment or freedom of movement for workers apply.***

The Court therefore draws attention to the principles established by its own case-law: if the national rules do not take account of learning, skills and qualifications already acquired by a national of another Member State outside the host State, the exercise of the freedoms of establishment and movement is thereby hindered.

We stimulate AEMH to adopt any possible action to remove this obstacle to free movement of European doctors.

Enrico Reginato
Italian delegate

March 8th 2005

¹ Judgment of the Court of Justice in Case C-313/01:
Christine Morgenbesser v. Consiglio dell'Ordine degli avvocati di Genova