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**Comments by the *Marburger Bund*
concerning the
European Commission's Green Paper on the EU Workforce for Health**

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Comments by the *Marburger Bund*, an association and trade union representing German doctors, concerning the European Commission's Green Paper on the EU Workforce for Health — COM(2008) 725/3

There are huge challenges facing the labour market for workers in the healthcare sector. On the one hand, the average age of doctors and nursing staff is rising while too few young people are entering the profession. On the other, too few places are available for those wishing to study or undergo further training in medical sciences in order to meet the demand for medical and nursing staff and to promote professional mobility within the European Union in any meaningful way.

The healthcare system is without doubt one of the most important branches of the EU economy and around one in ten workers is employed in this sector. It is therefore highly likely that the current global economic crisis will have a significant impact on developments in the healthcare systems of the Member States.

We therefore welcome the opportunity to participate in the EU-wide discussion on the future of the healthcare workforce. It supports the Green Paper on the EU Workforce for Health, which aims to increase the visibility of the issues facing the EU health workforce and to jointly provide a better basis for considering what can be done at EU level to address these problems effectively.

We consider working conditions and the consolidation of the workforce to be of particular importance. It also sets out its position on reconciling work and family life and on the question of migration.

We have already commented in sufficient detail on its opposition to the Commission's proposed amendments to the Working Time Directive (2003/88/EC). However, Section 3 "Legal Framework and basis for action at EU Level" contains a number of contradictory elements which we would like to address.

Consolidation of the workforce

In view of the economic importance of the healthcare system in most EU Member States, and given the enormous challenges which healthcare systems will have to tackle, the efficiency of healthcare provision and the qualifications of those employed in this sector are of considerable importance.

The main task of the decision-makers in this area is to attract a sufficient number of highly qualified individuals to the various areas of the healthcare sector, to motivate them to work there, to foster their loyalty to the healthcare system and to ensure that they are able to develop their skills and receive further training on an ongoing and lasting basis.

As far as doctors are concerned, this has clearly not been achieved in all EU Member States in recent years, as a significant number of Member States are reporting that they are already suffering from a shortage of doctors or that such a shortage is imminent and that the age structure of the medical profession is becoming increasingly top-heavy. In Germany, we are already seeing the first signs of a shortage of GPs and of doctors who provided out-patient treatment, and there are already clear signs of a shortage of doctors in hospitals. The *Krankenhaus-Barometer* statistical survey of hospitals carried out in 2008 showed that 4 000 doctors' posts were waiting to be filled.

In our view, these shortages are mainly due to the fact that, for many years, doctors' working conditions have not been attractive: extremely long working hours, huge amounts of unpaid overtime and salaries which are significantly below average and therefore not internationally competitive. Thousands of doctors have therefore been seeking jobs in other EU Member States, have taken jobs outside the medical field or have, at least, switched to areas of medicine which are non-clinical and do not involve the treatment of patients.

We agree with the point made in the Green Paper that there is an urgent need for action to improve working conditions in the healthcare sector and to improve motivation and job satisfaction. Because of the rules on the division of responsibilities regarding the organisation of the healthcare sector, this problem can ultimately be resolved only at national level and with the involvement of the social partners. Only the highest standards achieved in this area should be used as a yardstick for the EU Member States.

Compatibility of work and family life — medicine is becoming a female discipline

Consideration must be given not only to working conditions but also to the fact that medical services are increasingly being provided by women.

The Green Paper rightly points out that, in some countries, more than 50% of first-year medical students are women. The proportion of female medical students in Germany stood at 60% at the end of 2008, while the proportion of female students embarking on degrees in human medicine rose to 67% during the 2008/2009 winter semester. Around 40% of doctors in practice are women, although the proportion of women in senior medical positions is only 11%.

In view of these developments, we urge that lasting measures to be taken to make it easier to reconcile working life, family life and private life. The goals set out in the EU's "Roadmap for equality between women and men 2006-2010" of creating "flexible working arrangements for both women and men" and "increasing care services" must be given more substance and put into practice quickly.

Furthermore, campaigns should be launched and measures taken to encourage people to return to the workplace (such as those who have taken parental leave) in order to offset the shortage of doctors.

The *Marburger Bund* very much welcomes the possibility, referred to in the Green Paper, of making greater use of the Structural Funds in the aforementioned areas to improve working conditions and develop the workforce in the health sector.

Migration within the EU

The freedom of movement of EU citizens is a basic right guaranteed in Community law. All citizens of the EU can benefit from this basic right. We firmly reject any attempt to restrict the freedom of movement of certain professions. It is not acceptable that doctors, for example, should have to meet special conditions and/or conditions different from those which must be met by members of other professions if they wish to enjoy their basic rights. Any discrimination of this kind would further exacerbate the existing shortage of doctors in many countries and would ensure that the failure to resolve the problems faced by the health professions would become ingrained.

Every Member State should ensure that it trains enough doctors for its own needs and offers them attractive working conditions and career opportunities, such as regulated and family-friendly working hours, appropriate salary levels and good opportunities for ongoing and further training.

In order not to exacerbate the shortage of doctors in EU Member States whose economic performance is still significantly below the EU average, EU Member States whose economic strength matches or exceeds the EU average should refrain from active recruitment measures until the necessary balance has been achieved in terms of economic performance.

Bilateral cooperation schemes should be used to derive greater benefit from migration based on the exchange of practice, knowledge and experience. The regulation of mobility will enhance staff loyalty and bring added value in terms of expertise. By seeking joint solutions to problems in this area, it will be easier to adopt a more efficient approach to complex problems at national and international level.

Migration from non-EU countries

In this area too, we take the view that every Member State should ensure that it trains enough doctors for its own needs and offers them attractive working conditions and career opportunities, such as regulated and family-friendly working hours, appropriate salary levels and good opportunities for ongoing and further training.

The recruitment of doctors from developing countries should be avoided for ethical reasons, as there is an urgent need for them to provide medical care to the population in their home countries. Exceptions could be considered where doctors receive further training, then return to their home countries immediately after obtaining the qualifications in question. Steps should be taken to ensure sure that the qualifications concerned can actually be used in the home country.

The recruitment of doctors from industrialised countries with comparable economic strength can help to alleviate the shortage of doctors in the short term. However, national governments should ensure that the qualifications of foreign doctors meet or exceed the minimum standards laid down in Directive 2005/36/EC and that the doctors concerned have adequate language skills.

With regard to the recruitment of foreign doctors, we endorse the comments of EGÖD-HOSPEEM of 7 April 2008.

Legal framework and basis for measures at EU level

The European Commission has proposed amending the Working Time Directive (2003/88/EC) in such a way as to separate on-call time into "active time" and "inactive time". We totally oppose any separation of this kind, as we pointed out in our comments of 17 January 2008 on the European Commission's Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time. We would refer you to these comments. The separation of on-call time into active and inactive time would inevitably result in doctors again having to work excessively long ours and often having to provide care to patients when in a state of extreme physical and mental exhaustion. The kind of work and the level of responsibility which doctors are required to perform during on-call time place them under a more than average level of pressure, as they usually have to deal

with emergencies and there are fewer specialists available for problem cases than during normal working hours. On top of this, on-call duty is performed at night, at weekends and on national holidays. If on-call time were to be reorganised in this way, it is impossible to imagine — given the kind of situations which could conceivably arise in practice — how "health and safety" (footnote 3) could be safeguarded more effectively than under the Directive which is currently in place.

In Section 3 (fifth paragraph) of the Green Paper, the Commission puts forward the following argument:

“The Court’s decisions about on-call time and compensatory rest raise important questions for health and care services.”

This reference to the case law of the Court of Justice concerns the judgment in Case C-303/98 (*SIMAP*) of 3 October 2000 and in Case C-151/02 (*Dr Norbert Jäger*) of 9 September 2003. In both of these judgments, the Court of Justice interpreted Directive 2003/88/EC to mean that on-call duty performed by doctors in healthcare institutions should be considered to constitute working time.

The Commission makes the following comment about this in the Green Paper (footnote 3): *“By stating that the time that health professionals spent on call had to be counted as working time, even if they are resting and provided that they need to remain at their work place, the Court **acknowledged** that doctors, for instance, work more than 48 hours a week in most Member States.”*

This statement does not reflect the case law of the Court of Justice and, in our view, cannot be upheld. The Court of Justice did not “acknowledge that doctors work more than 48 hours a week” but took the view that the previous assessment of on-call time as being equivalent to a rest period ran counter to Directive 93/104/EEC (now 2003/88/EC) and was therefore in violation of Community law. Even though the Commission maintains that the Court of Justice *states* that the actual hours worked by many doctors in hospitals across Europe significantly exceed 48 hours, its assertion that the Court has “acknowledged” this mixes up factual and legal circumstances in such a way as to give anyone reading the Green Paper a false impression of what the legal situation actually is.

The Commission goes on to state the following: *“To conform themselves to this ruling, some Member States would need major recruitment efforts, which is not always possible. [Consideration should therefore be given in the short term to reorganising the working hours of healthcare workers and nursing staff in such a way as to safeguard their health and safety]¹.”* (footnote 3)

These arguments are contradictory and therefore illogical. The Commission begins by stating that recruitment is not always possible (which may be true). If new staff cannot be recruited, the increasing burden of work must be borne by existing staff. However, this would not bring about any change in the situation with which the Court of Justice finds fault.

The Commission goes on to argue that the working hours of healthcare workers and staff should be reorganised in such a way as to safeguard their health and safety. In using the

¹ Translator’s note: This sentence has been translated freely. It does not appear in either the German or the English version of the Green Paper, so it is not clear why the German authors include it.

term “reorganise”, the Commission can only be referring to its own proposal for the Directive to be amended so that provision is made for active and inactive time. The Commission fails to explain in what way this can safeguard health and safety.

The Green Paper also states: [*“This reorganisation should enable the authorities in all the Member States to ensure the necessary quality and continuity of care (in particular as regards emergency services, accident and emergency departments, intensive care departments and in-patient care units which require 24-hour staff presence.”*²]

This “reorganisation” is not explained in any further detail by the Commission. We can only assume that it is a reference to the separation of on-call time into active time and inactive time, as desired by the Commission. As pointed out above, the inevitable and logical consequence of this will be to increase even further the amount of work which doctors have to do within the time available and to increase even further the health risks which they face. There is certainly no “equilibrium” between employers and employees in hospitals. Doctors in hospitals are in a highly dependent position. Employers often misuse the reorganisation of working hours, going beyond what is legally permitted. A reorganisation of working hours is therefore likely to entail an increased workload for doctors, which would not only put their health at risk but leave them in a state of extreme exhaustion. Pushing doctors to the limit physically and mentally poses a considerable risk to the quality of medical care they can provide. The Commission should make clear to what extent it wishes to “ensure the necessary quality and continuity of care”. Otherwise, the Commission’s comments in footnote 3 directly contradict its proposed amendments and are therefore untenable.

² Translator’s note: This sentence has been translated freely from the German. It does not appear in either the German or the English version of the Green Paper, so it is not clear why the German authors include it.

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