FLC CGIL
federazione lavoratori della conoscenza
Il Segretario Generale

Roma, 27 June 2023
Prot. n. 142/2023 GF/JG-stm

To the attention of Commissioner Nicolas Schmit,
Commissioner for Jobs and Social Rights
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European Commission
Directorate-General for Employment, Social Affairs and Inclusion
Labour Mobility: Free Movement of Workers, EURES
Rue de la Loi / Wetstraat 200
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Subject: Infringement Proceedings No. 2021.4055 against Italy opened by the European Commission for non-implementation of the Ruling in CJEU Case C-119/04

Dear Commissioner Schmit,

As your services are most probably aware, a press release of 26 May published on the web site of the Ministry of Universities and Research announced that an interministerial decree, provided for under Article 38 of Decree-Law No. 48 of 4 May 2023, and co-signed by Minister for Universities and Research, Anna Maria Bernini, and Minister for Economy and Finance, Giancarlo Giorgetti, had put a definitive end to the decades-long discrimination against the *Lettori* in Italian universities by conforming to the pertinent case law of the Court of Justice of the European Union.

The Interministerial Decree was sent by the Ministry to university administrations across Italy and was finally officially published only on 26 June as Interministerial Decree No. 688. The Decree is widely considered by the administrations to be so riven with internal contradictions and lack of clarity as to be unworkable, and some Director Generals have already sent the Ministry requests for an "authentic interpretation" as to how the Decree should be implemented. Numerous Director Generals have voiced the concern that instead of ending the legal disputes in Courts across Italy, the Decree will only bring about a further proliferation of litigation. We attach a copy of Interministerial Decree No. 688 for reference in case you have not already received it.

In that Interministerial Decree No. 688 constitutes Italy's reply to the Commission's reasoned opinion of 26 January, the FLC CGIL has carefully studied its provisions. It is our view that they in no way constitute a correct implementation of the CJEU ruling in Case C-119/04. In these circumstances the FLC CGIL and the UIL RUA, respectively the largest and third largest trade unions in Italy, have decided to proclaim a national strike of all *Lettori* in Italian universities on 30 June to protest against the provisions of the Interministerial Decree and against Italy's continuing refusal to implement the Court of Justice ruling in Case C-119/04.

Under Italian labour law, before a national strike can be officially proclaimed, the Ministry of Labour is obliged to hold an advance meeting to attempt to arrive at a conciliation between the contending parties. On 19 June an official online conciliation meeting was held between the FLC CGIL, UIL RUA, and the Ministry of Universities, with the Ministry of Labour mediating.

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The FLC CGIL and UIL RUA welcomed this opportunity to finally meet with Ministry representatives and question them about the provisions of the Interministerial Decree and the Ministry's intentions with regard to the application of the ruling in Case C-119/04. The trade union representatives asked the Ministry to clarify specifically whether the Interministerial Decree was to be interpreted in the sense that it provided for the uninterrupted reconstruction of *Lettori* careers from the date of their first employment until the present (or date of retirement) in implementation of the ruling in Case C-119/04, or if the Decree instead prescribes the application of Art. 26 of Law 240 of 2010, a provision of the so-called "Gelmini Law", which limits the reconstruction of career due to the *Lettori* to the years up to 1995 on the basis of a retrospective interpretation of Law 63 of 2004, a law, it should be pointed out, which clearly does not legislate for any such cut-off point in the entitlement to reconstruction of career, and which in 2006 had been considered by the CJEU as an adequate measure to end the discrimination against *Lettori.*

The Ministerial representatives at first refused to answer the question, simply affirming that the Decree respected all pertinent national and European jurisprudence. The union representatives were forced to remind the Ministry that, in terms of legal precedence, rulings of the CJEU prevail over national legislation. In the end, all that the Ministerial representatives would state was that the Decree respects all national and European jurisprudence, and that for the Ministry the "Gelmini Law" is still *"vigente"* (in force, applicable). At this point, it was decided by all that no conciliation was possible and so the proclamation of the national *Lettori* strike for 30 June has been confirmed.

What clearly emerges then from the official meeting of 19 June at the Ministry of Labour is that the Italian authorities are once again attempting to evade the implementation of the ruling in Case C-119/04, through the "interpretation" under the Gelmini Law which seeks to block the recognition of the reconstruction of *Lettori* careers at 1995.

It is worth remembering that Law 167 of 2017 itself, which was intended to finally resolve the ongoing discrimination against *Lettori* and close EU Pilot Case 2079/2011/EMPL, expressly refers to Law 63 of 2004 without making any reference to Law 240 of 2010, and, finally, even Interministerial Decree No. 765 of 2019 had recognized the reconstruction of careers *ab origine* up to the present.

In its depositions in Case C-119/04, Italy assured the Court that it had correctly implemented Law 63 of March 2004, which the Court was later to approve. Following "firm assurances" from Italy to the then Commissioner Vladimir Špidla that Law 63 of 2004 would continue to be applied, the Commission decided to drop its infringement proceedings against Italy. Now in the summer of 2023, with new infringement proceedings against Italy for non-implementation of the ruling in Case C-119/04 having advanced to the reasoned opinion stage, the actual worth of these assurances is now only all too apparent.

Indeed, the retrospective Gelmini Law of 2010 represents the most blatant of all Italy's attempts to evade the case law of the Court of Justice and to place national legislation above EU law as well as above earlier rulings of the Italian judiciary itself. In the interval between the ruling in Case C-199/04 and the enactment of the 2010 Gelmini Law, Italian courts routinely awarded plaintiff *Lettori* uninterrupted reconstructions of career.

In the position taken in the Interministerial Decree, Italy is in effect asking the Commission, guardian of the Treaty, to overrule the Court of Justice and the findings of its own national courts and give interpretative precedence to the Gelmini Law.

In September 2021 the European Commission opened the infringements proceedings, giving Italy 60 days to resolve the question of the ongoing discrimination against the *Lettori*, be they

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retired or still in service in the Italian universities. On 26 January 2023 the Commission advanced the proceedings to the reasoned opinion stage, giving Italy a further 60 days to resolve the question. It is now almost July 2023 and not only have the Italian authorities failed to act in a timely manner to resolve the question, but they are now attempting to evade the application of the CJEU rulings with the application of the Gelmini Law.

Accordingly, as in our letter of 16 May, we would respectfully ask the Commission to refer the infringement proceedings to the Court of Justice and thereby permit the Court itself to rule on Italy's continuing non-implementation of the Court of Justice ruling in Case C-119/04 and, in particular, on the retrospective interpretation of the *Lettori* case law prescribed in the Gelmini Law.

Yours faithfully,

The General Secretary FLC CGIL
Gianna Fracassi

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