

Rome, 16 May 2023
Prot. N. 91/2023 GF/JG-ab

To the attention of Commissioner Nicolas Schmit,
Commissioner for Jobs and Social Rights
CAB-SCHMIT-ARCHIVES@ec.europa.eu
European Commission
Directorate-General for Employment, Social Affairs and Inclusion
Labour Mobility: Free Movement of Workers, EURES
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and c.c.

To Prof. Anna Maria Bernini,
Minister for University and Research
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Ministry of University and Research
Largo Antonio Ruberti 1 - 00153 Rome
Italy

To President Ursula von der Leyen
of the European Commission
ec-president-vdl@ec.europa.eu
European Commission
Rue de la Loi / Wetstraat 200 - 1049 Bruxelles
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Subject: Infringement proceedings No. 2021.4055 opened by the European Commission against Italy for non-implementation of the Ruling in CJEU Case C-119/04.

Dear Commissioner Schmit,

My name is Gianna Fracassi and I am the new Secretary General of the *Federazione dei Lavoratori della Conoscenza* (FLC), a category of the CGIL, the major Italian trade union, elected

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on 9 May to succeed the preceding Secretary Francesco Sinopoli. I am writing you in regard to the well-known issue of the ongoing decades-long discrimination against the *Lettori* foreign-language lecturers in the Italian Universities.

As you know, Art. 11 of Law 167 in 2017 should have finally closed the *Lettori* legal dispute with the application of the Ruling of the Court of Justice in Case C-119/04. That law had provided for the issuing of an Interministerial Decree within 90 days to implement the reconstruction of *Lettori* careers *ab origine* from the date of first employment to the present or to the date of termination of service, on the basis of the economic parameter of a tenured researcher on a part-time contract or more favourable conditions won. The aforementioned Decree was only issued on 16.08.19 and inconceivably it stipulated that as a precondition to receiving the aforementioned economic treatment the individual *Lettori* had to sign away any claim to their past careers deriving from their previous years of service. As a consequence, it was considered inapplicable by all the trade unions as well as by the *Lettori* themselves.

On 23.09.21 the European Commission sent a letter of formal notice to Italy announcing the opening of the infringement proceedings, giving the Italian Government 60 days to resolve the question. In response, the Italian Parliament approved a law which abrogated the obligation placed on the *Lettori* to sign away their right to the reconstruction of career in order to allow for the application of Law 167.

Nevertheless, despite numerous requests by the trade union and several demonstrations, the latest being on 20 April 2023 in front of the Ministry of University and Research, the Italian authorities have continued to fail to undertake any initiative to apply the Ruling of the CJEU in Case C-119/04 with the implementation of Laws 63 of 2004 and 167 of 2017. On the 26.01.23 the European Commission announced the decision to advance infringement proceedings no. 2021/4055 to the stage of the reasoned opinion, giving Italy a further 60 days to resolve the question. This latest deadline has also passed without any solution being put forward by the Italian Government and the situation is still identical to that illustrated by the new national census conducted by the FLC CGIL together with the association Assoc.CEL.L and sent to the Commission on 23.03.23.

In reality, even though belatedly with respect to the 60 days allotted, there has been a new development. Indeed, Law Decree n. 48 of 4.05.23 was issued, which in Art. 38 again provides for further modifications to Art. 11 of Law 167 of 2017 and assigns to a subsequent Interministerial Decree, which is to be issued within 90 days of the date of the Law Decree, the indication for the modalities of how to determine the calculations for the reconstruction of the careers of the *Lettori*.

At this point it seems evident that the Italian authorities intend to continue to postpone *ad infinitum* their obligation to apply the Court of Justice case law and to close the decades-long litigation, which probably by now is the longest in the history of the European Union.

It is not only this further postponement which alarms us, but there is also great concern over the possible contents of this new Interministerial Decree which is supposed to indicate to the universities the modalities for the reconstruction of the *Lettori* careers, in so far as, according to the information we have received, there still remains the hypothesis of applying Art. 26 of Law 240 of 2010 and thereby limiting the *Lettori's* reconstruction of career only to the years before 1995!

Such a provision would not only be in clear contrast with the Ruling of the CJEU in Case C-119/04, but also with Law 63 of 2004 (deemed adequate by the CJUE), which does not provide for any temporal limitation for the reconstruction of the *Lettori* careers. Moreover Law 167 of

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2017 itself expressly refers to Law 63 of 2004 without making any reference to Law 240 of 2010, and finally, even the aforementioned Interministerial Decree n. 765 of 2019 had recognized the reconstruction of careers *ab origine* up to the present. In addition, numerous sentences of the national courts, on the basis of Law 63 of 2004, even after 2010, have recognized the reconstruction of careers after 1995. It is quite evident, as already written in an Open Letter sent to Minister Bernini on 11.03.23, that now a possible attempt to apply a limit to the reconstruction of *Lettori* careers by interrupting them at 1995 would have the effect of annulling the case law of the CJEU and, instead of resolving the *Lettori* question, would certainly lead to the prolonging of the litigation, also in consideration of the variety of situations in which the *Lettori* would find themselves, with those who have had a complete recognition through legal channels, those who have had it through the individual universities, and those who would have it only partially, in consideration of a possible restrictive interpretation of the rights of the *Lettori*, as expected with the Interministerial Decree yet to be issued.

And yet, in order to close the ongoing litigation and prevent more in the future, which was the objective expressly stated in Art. 11 of Law 167 of 2017, it would be enough to simply apply the Ruling of the CJUE in Case C-119/04, providing for the reconstruction *ab origine* of the careers of the *Lettori* according to the parameter of the tenured researcher on a part-time contract, or more favourable conditions won, recognizing the corresponding social security benefits with the full recognition of the right to payment of arrears from the date of first employment to the present, for those who are still in service, or to the date of termination of service. The simplicity of the solution makes the duration of the violation of the Treaty of Rome all the more shocking!

In conclusion, the FLC CGIL would like to reiterate its request that the European Commission refer Italy without delay to the Court of Justice for continued non-application of the Ruling of the CJEU in Case C-119/04 with regard to the discriminatory treatment of the mother-tongue *Lettori* lecturers in the Italian universities, and that every attempt to avoid the full application of that Ruling, including *in primis* any possible illegitimate application of the "Gelmini Law", be decisively rejected by the European Commission.

We are sending this letter also to Minister Bernini, with the hope that she will act with determination to resolve this question.

As always, we remain available for any necessary clarification, and we would like to thank you and all of the Commission for your continued attention to this problem which has now been going on for several decades.

Yours faithfully,

The Secretary General FLC CGIL
Gianna Fracassi

