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Employment, Social Affairs and Inclusion DG

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Subject: Your request for information of 30 March 2018, registered under reference number Ares(2018)1830197.

Dear Mr Silipo,

Thank you very much for your request for information per email of 30 March 2018, addressed to Commissioner Ms Marianne Thyssen. I was asked to reply on her behalf.

You have asked what initiatives the European Commission has undertaken in order to solve the problems related to the status of the Italian "Occasional" firefighters and you indicate that you believe that their situation is contrary to Clause 5 (1) of the Framework Agreement on fixed term work concluded by ETUC, UNICE and CEEP annexed to Directive 1999/70/EC ("the Framework Agreement").

Clause 5 (1) of the Framework Agreement provides that in order to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, in the absence of existing equivalent legal measures, shall introduce one or more of the following measures:

- (a) objective reasons justifying the renewal of such contracts or relationships;
- (b) the maximum total duration of successive fixed-term employment contracts or relationships;
- (c) the number of renewals of such contracts or relationships.

According to settled case-law of the Court of Justice of the EU, employment situations may be qualified as "abuse" for the purpose of Clause 5 (1) of the Framework Agreement, if fixed term contracts are deployed in this sector to meet a staffing need of the employer which is fixed and permanent¹.

¹ See, to that effect, judgments of 26 January 2012, *Küçük*, C-586/10, EU:C:2012:39, paragraph 39 and the case-law cited, and of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13, C-63/13 and C-418/13, EU:C:2014:2401, paragraph 101.

The Commission is assessing the conformity of the Italian legislation governing the situation of public sector employees, including Italian occasional firefighters, with clause 5 of the framework agreement on fixed-term work, which obliges Member States to adopt measures to prevent the abuse of successive fixed-term contracts.

Article 19 (1) and (2) of Legislative Decree No 81 of 15 June 2015, applicable to both public and private sector employees, setting the maximum duration of fixed term contracts, provides that

"1. the employment contract may be endorsed with a duration not exceeding thirty-six months.
2. without prejudice to the various provisions in collective agreements, and with the exception of the seasonal activities referred to in Article 21, subparagraph 2, the duration of fixed-term employment relationships between the same employer and the same worker resulting from a succession of contracts concluded for the performance of tasks of the same level and legal category, and regardless of the periods of interruption between one contract and the next, may not exceed thirty-six months. For the purposes of the calculation of that period, account is also taken of periods of mission covering tasks of equal level and legal category between the same parties, in the context of temporary agency work. If the limit of thirty six months is exceeded, as a result of a single contract or a succession of contracts, the contract shall be converted into an open-ended contract (...)."

However, Article 29 of Legislative Decree No 81 of 15 June 2015 provides that the certain categories are excluded from the scope of application of this Decree. Article 29 (1) (c) excludes "call-ups of the voluntary staff of the national fire brigade" from the scope of application of the Legislative Decree.

The question arises whether applicable Italian national legislation contains other equivalent legal measures to prevent abuse, if the provisions of Legislative Decree No 81 of 15 June 2015 do not apply.

The Commission is still assessing the conformity of the Italian legislation governing the situation of Italian "Occasional" firefighters with clause 5 of the framework agreement on fixed-term work.

In any case, the recent ruling in case C-494/16 Santoro has clarified questions concerning compensation for abuse of successive fixed-term contracts under Clause 5 of the Framework Agreement and will make it easier in the future for Italian "Occasional" firefighters who have been on such contracts to obtain compensation for the loss of opportunity they have faced due to this fact.

We will keep you informed about any developments on this case.

Yours sincerely,

[e-signed]

Adam Pokorny
Head of Unit