NOTICE TO MEMBERS

Subject: Petition No 0646/2018 by Pierpaolo Volpe (Italian) on the abuse of seafarers in Italy

Petition No 0755/2018 by Maria Grazia Belfiore (Italian) on the lack of effective protection against the abuse of fixed-term contracts for workers employed as seafarers

1. Summary of petition 646/2018

The petitioner denounces the situation of seafarers in Italy, namely the crews working on inland, coastal and island navigation and employed by the Italian railway network. The petitioner refers to the fact that since 1995 *Rete ferroviaria italiana* has recruited 18% more workers on fixed-term employment contracts than permanent contracts. The petitioner states that the regulations governing employment relations in the maritime sector are set out by the navigation code and Directive No 1999/70/EC on fixed-term contracts. The petitioner believes that Italian legislation on the matter does not provide adequate and effective protection against abuse, in breach of the European regulations. The petitioner therefore requests the intervention of the European Parliament to end the abuse of seafarers in Italy, who do not currently have adequate protection.

Summary of petition 0755/2018

The petitioner complains about the situation of workers employed as seafarers in Italy, who are subject to the abuse of fixed-term contracts in violation of the provisions of Directive 1999/70/EC and the European Framework Agreement on fixed-term contracts. In particular, the petitioner complains about the practices of the Capitanerie di porto (port authorities), which manage the public employment offices for seafarers. These authorities systematically circumvent the provisions of Article 326 of the Navigation Code, which provides for a maximum duration of one year for fixed-term contracts. In particular, the petitioner criticises the actions of Rete Ferroviaria Italiana (RFI – the company that operates, among other things, ferry services connecting Sicily and Sardinia), which has been using successive 78-day fixed-
term contracts since 1995 to deal with its chronic staff shortages. This is an illegal practice that has fuelled a lengthy and extensive dispute between seafarers and RFI. In view of the uncertainty and the risk of unequal treatment resulting from the differing rulings of the competent Italian courts, the petitioner calls on the European Parliament to take action to ensure genuine protection of maritime labour in Italy.

2. **Admissibility**

Petition 0646/2018 declared admissible on 8 November 2018.
Petition 0755/2018 declared admissible on 29 November 2018.
Information requested from Commission under Rule 227(6).

3. **Commission reply**, received on 30 July 2019

**Petitions 0646/2018 and 0755/2018**

The Petitioner

The petitioner complains about the abuse, by *Rete Ferroviaria Italiana*, of successive fixed-term employment contracts with seafarers. *Rete Ferroviaria Italiana* is said to employ seafarers under successive contracts with a maximum duration of 78 days, without a fixed end date, as allowed by Article 332 of the Navigation Code. The petitioner claims that Article 326 of the Navigation Code, which is supposed to prevent and sanction abuse of successive fixed-term contracts with seafarers, is, on the contrary, the source of the abuse.

According to Article 326 of the Navigation Code, if, under a number of contracts for several voyages or a number of fixed-term contracts, or under a number of contracts of both types, the engaged seafarer is employed by the same ship-owner continuously for more than one year, the employment contract is converted into one of indefinite duration. The employment is considered to be continuous when the period between the ending of one contract and the conclusion of the subsequent contract is no more than 60 days.

**The Commission’s observations**

The Court of Justice of the European Union (CJEU) has already delivered a preliminary ruling in a case where the parties to the main proceedings were, respectively, a group of seafarers and *Rete Ferroviaria Italiana*. In that case, the CJEU stated that the Framework Agreement annexed to Council Directive 1999/70/EC on fixed-term work does not preclude a national legislation, such as the one contained in the Navigation Code, which provides that fixed-term employment contracts have to indicate their duration but not their termination date.

1 Royal Decree of 30 March 1942, No. 327.
The CJEU further held that the Framework Agreement does not preclude, in principle, a national legislation which provides for the conversion of fixed-term employment contracts into employment contracts of indefinite duration only when the worker concerned has been employed “continuously” under such contracts by the same employer for a period longer than one year, the employment relationship being considered “continuous” where the fixed-term employment contracts are separated by time lapses of maximum 60 days. According to the CJEU, a provision such as Article 326 of the Navigation Code is likely to comprise both a measure equivalent to the measure preventing the misuse of successive fixed-term contracts set out in Clause 5(1)(b) of the Framework Agreement (maximum total duration of those contracts) and a measure that punishes that misuse. Moreover, unlike shorter lapses of time, a lapse of time of 60 days was considered by the CJEU to be sufficient to interrupt an employment relationship and to have the effect that any contract signed after that time is not considered “successive”, especially where the duration of those fixed-term contracts cannot exceed 78 days. The CJEU then referred to the national court to satisfy itself that the conditions of application and the effective implementation of that legislation result in a measure that is adequate to prevent and punish the misuse of successive fixed-term employment contracts or relationships.

Conclusion

The Commission, in its role of guardian of the EU Treaties, is in charge of monitoring the correct implementation of EU directives by the Member States. It may launch infringement proceedings in the event that national law does not comply with EU law.

However, as regards the circumstances of the present case, the CJEU has already stated that the national provisions in question are, in principle, not precluded by the Framework Agreement. As regards the effective implementation of that legislation, the Court ruled that it is a matter for the national courts to satisfy themselves that the conditions of application and the effective implementation of that legislation result in a measure that is adequate to prevent and punish the misuse of successive fixed-term employment contracts. The national courts are under an obligation to interpret national law in compliance with EU law and can, if needed, seek further guidance from the CJEU through preliminary questions.

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4 See CJEU, Judgment of 4 July 2006 in Case C-212/04, Konstantinos Adeneler and Others v Ellinikos Organismos Galaktos (ELOG), where a lapse of 20 days was considered to be precluded by the Framework Agreement.