



15.10.2019

## NOTICE TO MEMBERS

**Subject: Petition No 0128/2018 by Pierpaolo Volpe (Italian) on the abolition of the accidents at work register**

**Petition No 0129/2018 by Pasqualino Ludovico (Italian) on the abolition of the accidents at work register**

**Petition No 0130/2018 by Michele Chimienti (Italian) on the abolition of the accidents at work register**

### 1. Summary of petition 0128/2018

The petitioner complains about the abolition of the accidents at work register, resulting from the labour market reform law (No 183/14) and a Decree implementing the law (No 151/2015), containing simplification measures. In particular, the legislator has amended the obligations on employers, by requiring them to send medical certificates electronically to the social security institution INAIL, including the factual circumstances and any other information that may assist the investigations. The petitioner believes that this innovation, in addition to undermining workers' protection, conflicts with the provisions of Directive 89/391/EEC on improving the health and safety of workers at work, which expressly requires a list of accidents to be kept, where such accidents give rise to incapacity for work exceeding three days (Article 9.1, letter C). He also believes that this amendment adversely affects the compulsory consultation of trade union representatives on safety matters (Article 12). Moreover, eliminating the register would result in the loss of documentation produced before the reform. Therefore, the petitioner claims that, to encourage simplification, the Italian legislator has sacrificed transparency and completeness of data transmission on accidents at work, but has failed to introduce equivalent measures, thereby jeopardising any effective investigation into the circumstances of the accidents, which would distinguish cases of force majeure from avoidable accidents, with adequate protection measures. In this regard, the petitioner reconstructs the background to the reform, which should have been based on a digital system managing all data, as recommended by the legislator in 2008, but never implemented. As for the remedies adopted by INAIL (set out in a circular following the

Decree), these are convoluted and discriminatory, as users outside the administration only have access to general information through a freephone service. The petitioner invokes Article 27 (the right to information and consultation of employees), Article 31 (fair and just working conditions) and Article 35 (preventive health care) of the Charter of Fundamental Rights of the European Union, and calls for robust action by the institutions to protect workers.

### **Summary of petition 0129/2018**

The petitioner complains about the violation by Italy of Directive 89/391/EC on improving the safety and health of workers at work, following the abolition of the accidents at work register. Invoking the ‘explanations’ of the Charter of Fundamental Rights of the European Union, he makes particular reference to Article 31 (fair and just working conditions) which states that ‘Paragraph 1 of this Article is based on Directive 89/391/EEC on introducing measures to encourage improvements in the safety and health of workers at work’. He also quotes Article 27 on the right to information and consultation of employees in undertakings, and Article 35 on preventive health care, which he claims are not respected by the Italian legislator in the approval of the labour market reform law (No 183/14) and Legislative Decree (No 151/2015), which contains simplification measures and eliminates the employer’s requirement to keep an accident register. In particular, the legislator has amended the obligations on employers, by requiring them to send medical certificates electronically to the social security institution INAIL, including the factual circumstances and any other information that may assist the investigations. On this matter the petitioner also mentions that an EU Pilot investigation (8847/16/EMPL) was initiated in 2016, but nothing has been heard of it, therefore he calls for action by the Parliament in support of this investigation

### **Summary of petition 0130/2018**

Following the complaint by the CGIL to the Commission on the unlawful abolition of the accidents at work register by the Italian legislator (Article 21 of Legislative Decree 151/2015), the petitioner reiterates all the references in the above Decree that conflict with certain Articles in the Charter of Fundamental Rights of the European Union, which is applicable in this case as Italy is required to enforce EU law relating to such provisions, namely Directive 89/391/EEC. In this regard, he quotes Article 31 on fair and just working conditions, Article 27 on information and consultation of employees in undertakings, and Article 35 on preventive health care, which is indirectly affected by the elimination of the accidents at work register. The petitioner takes the opportunity to criticise the inefficacy of the EU Pilot system, which was introduced in 2008 to speed up the processing of complaints and provide greater transparency with regard to the pre-litigation stage of the infringement procedure under Article 258 TFEU; the criticism is based on almost two years of silence from the Commission about the progress of the procedure, despite the petitioner having chased up the Commission in 2017. This lengthy period of inaction, according to the petitioner, is an example of poor management, and a complaint should be forwarded to the European Ombudsman.

## **2. Admissibility**

Declared admissible on 4 June 2018. Information requested from Commission under Rule

216(6); (new Rule 227(6)).

### **3. Commission reply**, received on 31 October 2018

Petitions 0128/2018, 0129/2018 and 0130/2018

#### The petitions

The petitioners complain about the abolition of the accidents at work register, resulting from the labour market reform law (No 183/14) and a Decree implementing the law (No 151/2015), containing simplification measures. In particular, according to them, by Article 21(4) of Legislative Decree No. 151/2015, the legislator has abolished the employer's obligation of keeping a register of occupational accidents, in violation of Article 9(1)(c) of Directive 89/391/EEC, by requiring the employer to send medical certificates electronically to the social security institution INAIL, including the factual circumstances and any other information that may assist the investigations.

The petitioners believe that, in addition to undermining workers' protection, the abolition of the employer's obligation of keeping a register of occupational accidents, introduced by Article 21(4) of Legislative Decree No. 151/2015, would constitute a violation of Article 9(1)(c) of Directive 89/391/EEC, which expressly requires a list of accidents to be kept, where such accidents give rise to incapacity for work exceeding three days. They also believe that this amendment adversely affects the compulsory consultation of trade union representatives on safety matters (Article 11). Moreover, eliminating the register would result in the loss of documentation produced before the legislative reform. Therefore, the petitioners claim that, to encourage simplification, the Italian legislator has sacrificed transparency and completeness of data transmission on accidents at work, but also has failed to introduce equivalent measures, thereby jeopardising any effective investigation into the circumstances of the accidents, which would distinguish cases of force majeure from avoidable accidents, with adequate protection measures.

The petitioners also invoke Article 27 (the right to information and consultation of employees), Article 31 (fair and just working conditions) and Article 35 (preventive health care) of the Charter of Fundamental Rights of the European Union, and call for robust action by the institutions to protect workers.

#### The Commission's comments

The issue of the abolition of the employer's obligation of keeping a register of occupational accidents, introduced by Article 21(4) of Legislative Decree No. 151/2015 has already been raised in the frame of two complaints lodged with the Commission in 2015 and 2016 which were further investigated through dialogue with the national competent authorities within the frame of EU Pilot.

According to the Italian authorities, the obligations on the employers foreseen by the provisions of Articles 9(1)(c) of Directive 89/391/EEC remained valid in the Italian legal order based on legal provisions (Articles 18(1)(r) of Legislative decree 81/2008 and Articles 53 and 54 of Presidential decree No 1124/1965, as amended).

The competent national authorities pointed out that, despite the abolition of the obligation to keep an accident register introduced by Legislative Decree 151/2015, the employer remains obliged to report the accidents occurred to his/her employees to INAIL (National Institute for the Prevention of Accidents at Work) in accordance with Article 53 of Presidential Decree No 1124/1965, as established by Article 18(1)(r) of Legislative Decree 81/2008 .

The national authorities also underlined that on the basis of Article 18(2)(d) of Legislative Decree 81/ 2008 the employer has the obligation to enable the preventive and protective services, as well as the competent doctor, to have access to the data concerning accidents at work, which have been transmitted to INAIL (through reference to Article 18(1)(r), concerning the obligation to report to the national workers' compensation authority).

Furthermore, workers' safety representatives are entitled to receive by the employer the information concerning occupational accidents and diseases at the workplace.

Following the assessment of the elements of information gathered in the above mentioned case, the relevance of the complaints as regards the correct implementation of Articles 9(1)(c) of Directive 89/391/EEC could not be established to the requisite legal standard. Accordingly, the complaints related to this issue have been closed.

However, this does not prevent the Commission from reconsidering its position in case new developments arise or new elements are brought to its attention.

The petitions are putting forward a number of related elements in this regard, such as the issues of data recording, data storage and period of storage of the details pertaining to the list of accidents referred to in Article 9(1)(c) of Directive 89/391/EEC, which would need to be assessed further. The petitions also refer to violations of rights enshrined in the EU Charter of Fundamental Rights.

Once the assessment of the above mentioned related elements is finalized, the Commission will decide whether the case should be further pursued, including by reopening the dialogue with the Member State concerned.

#### **4. Commission reply (REV I), received on 15 October 2019**

As indicated in the first Commission communication, the issue of abolition of the employer's obligation to keep a register of occupational accidents, introduced by Article 21(4) of Legislative Decree No 151/2015 has already been raised in the context of two complaints lodged with the Commission in 2015 and 2016 which were further investigated through dialogue with the national competent authorities within the context of EU Pilot.

Following assessment of the elements of information gathered at that time, the relevance of the complaints as regards correct implementation of Article 9(1)(c) of Council Directive 89/391/EEC<sup>1</sup> could not be established to the requisite legal standard. Accordingly, the complaints related to this issue have been closed.

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<sup>1</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, *OJ L 183, 29.6.1989, p. 1–8*.

However, this does not prevent the Commission from reconsidering its position in case new developments arise or new elements are brought to its attention.

The Commission completed the examination of the elements of information provided by the petitioners, who lodged also complaints on the same issue with the Commission.

The assessment of the elements put forward by the petitioners and gathered by the Commission did not allow to establish to the requisite legal standard that the provisions at stake of Council Directive 89/391/EEC were not correctly transposed in Italy.

As established by Article 18(1), lett. r) of Legislative Decree 81/2008, the employer has the obligation to report accidents that have occurred to his/her employees to INAIL (National Institute for the Prevention of Accidents at Work) in accordance with Article 53 of Presidential Decree No 1124/1965.

In addition, under Articles 18(1)(o) and 50(1)(e) and (2) of Legislative Decree No 81/2008, workers' safety representatives are entitled to receive from the employer the information concerning occupational accidents and diseases at the workplace.

It is on the basis of the above-mentioned provisions that the employers are required to ensure access to and usability of the electronically transmitted data - contained in an online application of INAIL which displays data relating to the occupational accidents that have occurred to workers (the 'accident dashboard') - to workers' safety representatives (e.g. by displaying or printing copies of the application screens).

It should also be added that under Article 35(2)(b) of the above-mentioned Legislative Decree, the employer shall submit trends concerning occupational accidents and diseases to the participants in the so-called 'regular meeting' (Riunione Periodica) (including the workers' safety representative).

Thus, the combined provisions of Articles 18(1), lett. o) and r), 35(2)(b), 50(1)(e) and (2) of Legislative Decree 81/2008, demonstrate that as in respect of the employer's reporting obligations the Italian legal order is in line with Article 9(1)(c), Article 10(3)(b) and Article 11(2)(c) of Directive 89/391/EEC.

### Conclusion

Therefore, on 9 July 2019 the Commission informed the petitioners of their intention to close the complaints, lodged by them, unless further substantiated evidence was brought to their attention. In view of the above, in particular the obligation of the employer to disclose information concerning occupational accidents and diseases at the workplace, the Commission is also of the view that there are no elements which may disclose a violation of Articles 27, 31 and 35 of the Charter of Fundamental Rights of the European Union.

Due to no further substantiating elements having come to light, the complaints lodged by the petitioners were closed on 29 August 2019.