ECJ rulings on compulsory membership of a statutory work accident insurance body

Insurance against occupational risks is compulsory in all EU countries (apart from the Netherlands where it forms part of the more general sickness and invalidity insurance system). Historically, it was the first branch of social security to be made compulsory. Depending on the country, it may be provided by the general social security system (e.g., the United Kingdom and France), by semi-public bodies overseen by the social security system (e.g., Spain and Germany) or by private insurance companies (e.g., Belgium for work accidents, Denmark and Finland).

That administered by the social security system or semi-public organizations tends to be run along non-competitive lines (Spain is an exception) which avoids price distortions and ensures more internal consistency of services generally. Broadly-speaking, these public or semi-public agencies are more proactive in prevention and have significantly lower administration costs than private insurance companies.

In recent years, employers in some EU countries have been campaigning for partial privatization of this branch of social security. What that generally means is allowing private insurers to compete with the social security system. That partly reflects pressure from insurance companies for access to a substantial market. But it would doubtless also give the employers a tighter grip on how these organizations are run. In France, the main employers' confederation, MEDEF, is running what amounts to a shakedown campaign: employers would be ready to grant better conditions for compensating occupational diseases and work accidents if private insurance companies are allowed into the market.

In Italy, compulsory insurance against work accidents dates back to the Act of 17 March 1898. It was extended to occupational diseases in 1929 under a single framework covering all occupational risks. In 1926, private insurers were excluded from the

sector. At present, most private sector workers are covered by the National Institute for Insurance against Accidents at Work (INAIL), which also has responsibilities for prevention and rehabilitation of work accident victims.

The principle of compulsory membership of INAIL has challenged in some political and employers' circles. In May 2000, a series of referendums aiming to unpick social gains were organized by a small group of market economy hardliners headed by former European Commissioner Emma Bonino and Mr Pannela. The idea, among other things, was to scrap article 18 of the Employment Act and Regulations (provided for the reinstatement of unfairly dismissed workers), increase insecure employment (by doing away with limitations on fixed-term contracts), etc. One referendum proposed scrapping compulsory insurance with INAIL. The Italian employers' confederation, Confindustria, campaigned for some of the referendums to promote "labour market flexibility". Political groups on the Italian right were split by the "Thatcherite" radicalism of the idea. After much soul-searching, the party of the current Prime Minister, Mr Berlusconi, finally decided to abstain. In the end, the worker-bashing referendum campaign fizzled out. Some of the referendums were declared unconstitutional by the Constitutional Court (in particular, that on the INAIL), while those which were put to the vote were defeated by wholesale abstentions.

The Cisal di Battistello Venanzio v INAIL case concerned a craft worker who had not paid his INAIL contributions but had insured himself against work accidents with a private insurer. The question referred for a preliminary ruling by an Italian court was whether the Italian rules on compulsory membership of INAIL were compatible with Community competition law.

The ECJ gave its ruling on 22 January 2002. It concurred with the Opinion of Advocate General Jacobs given on 13 September 2001, which set out a detailed analysis of the Italian occupational risks insurance scheme and its relation to Community competition law. In its judgement, the Court reaffirms that Community law does not affect the power of the Member States to organise their social security systems. It stresses the social aims of work accident insurance and the principle of solidarity applied by the Italian scheme. The Court itself says that one result of the principle of solidarity is that: "The absence of any direct link between the contributions paid and the benefits granted (...) entails solidarity between better paid workers and those who, given their low earnings, would be deprived of proper social cover if such a link existed" (point 42 of the judgement). Compulsory affiliation, therefore, is essential for the financial balance of the scheme. Consequently, the INAIL fulfils an exclusively social function and does not therefore constitute an undertaking within the meaning of Community competition law.

This ruling has real political significance, inasmuch as the present Italian government is pursuing a clear free enterprise social agenda. The ECJ's ruling on the INAIL's social function pulls the rug from under the Italian employers' feet in its attempts to create a private insurance-based market for occupational risk compensation.

In an earlier judgement in non-compliance proceedings against Belgium, the Court ruled that in countries which have a free market in work accident insurance, that market should be open to insurance companies established in others Community countries. The Belgian government had argued that the special supervision which it exercises in respect of insurance undertakings can be exercised only vis-à-vis those which are established in Belgium, relying on the need for particularly strict rules, in particular as regards the financial equilibrium of the undertakings, the exclusion of cooperative societies from that insurance, separate management, the intervention of employers and employees as regards approval and withdrawal of approval, the requirement of a guarantee and the control of tariffs and terms of contracts. The Court dismissed these arguments in favour of a liberal interpretation of the Community directive of 18 June 1992 which coordinated the rules on direct insurance other than life assurance. ■

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References : Judgement of 22 January 2002, Case C-218/00, Cisal di Battistello Venanzio & C. Sas v INAIL. Judgement of 18 May 2000, case C-206/98, Commission v Belgium.