



Employer representation and Art. 51 of Italian Decree 81 of 2015: some food for thought

SUMMARY: 1. Preamble. – 2. Art. 51 of Legislative Decree 81 of 2015 and the silence of the legislator. – 3. Criticality of a "deregulated" system. – 4. Conclusions: the need for a shared itinerary and a possible "heteronymous" intervention.

1. Preamble

The overbearing presence of the globalised economy and the overt crisis of collective relations have brought the question of the representativeness of employer organisations to the attention of scholars. As is known, employer representativeness has not assumed the same visibility and importance as that of trade unions over the course of time. And it is equally known that there can be no perfect symmetry between them, considering that unlike the collective interest, the interest of employers' organisations is divisible and not legally required.

However, it is important to consider the significant tensions produced by the growth of wage dumping and the worrying proliferation of national collective bargaining agreements - one fact above all: from the CNEL [Italian National Council for Economics and Labour] archive it appears that, if there were 398 CCNLs [Italian collective bargaining agreements] in 2008, counting those in force and those pending renewal, in 2018 they numbered 890 - have made it obligatory in the most recent phase to address the problem of the increasingly pronounced tendency to

organisational fragmentation on the employer side.

The same national multi-industry agreement of 9 March 2018 highlights the need for effective intervention regarding the representativeness of the employer organisations in order to stem the aforementioned phenomenon of disintegration of the contractual system.

As is known, with this agreement the social partners for the first time envisage a system of certification of employer representativeness in order to obtain "*the generalised effectiveness of collective labour contracts*".

The need to identify and circumscribe the "*perimeters*" of the effectiveness of such bargaining is also underlined precisely in order to guarantee a closer correlation between the CCNL and the real activity of the company and thus rehabilitate the Italian Civil Code Art. 2070 requirement.

The parties acknowledge the unsustainability of a de facto system developed in complete anomie and invoke the need for legislative intervention, even if with a view to the implementation of what has been defined and shared by the social partners themselves.

This concrete need for order and homogeneity is even more pressing in the current economic and financial context. A profound revision of the traditional contractual system is required in the scenario of our industrial relations today, and the social partners, with the agreement of 9 March 2018, intend to underline this necessity.