

News and Views



De Jure and De Facto: An Overview on the Italian Measures on Compulsory Vaccination

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Abstract

The outbreak of the Covid-19 pandemic has forced States to take restrictive measures to contain the growing number of infections. Among these measures, after the approval of vaccines by the EMA, the possibility of introducing a compulsory vaccination has become a plausible and attractive prospect. In Italy, Covid-19 compulsory vaccination is implemented by a succession of Decrees concerning specific categories of workers and, only recently, a section of the population with the recent Decree of 7 January, 2022, no. 1. However, if we look back at the most critical restrictions implemented in the country, we realise that a *de facto* obligation was already in place before establishing a *de jure* obligation. The following article traces the most important profiles of the vaccination obligation implemented *de jure* and *de facto* by the Italian government.

Keywords

compulsory vaccination – Italy – Covid-19 – Green Certificate – Covid-19 restriction

1 Introduction

Since the World Health Organisation (WHO) declared the outbreak of the COVID-19 emergency,¹ the pandemic has impacted almost every corner of life, causing global economies to grinding to a halt, changing the way we work and pushing national health systems to their limits. Governments worldwide have been forced to apply harsher and harsher restrictions to stem the spread of the virus. These measures have affected the enjoyment of fundamental rights, sometimes compressing them in a constant balancing act between individual rights and collective interests.

Since December 2020, when national and international drug regulatory agencies approved the first vaccines,² the option of imposing a compulsory vaccination has been placed on the desk of many European governments. In recent months some countries have opted for the introduction *de jure* of partial compulsory vaccination, choosing to protect the collective interest in health.³

Like most European countries, Italy has long pondered the option of introducing compulsory vaccination. This decision saw officially the light of day in the recent Decree of 7 January 2022.⁴ However, although the choice for a general *de jure* compulsory vaccination is recent, the Italian government had adopted a series of increasingly stringent decrees, creating a compulsory vaccination, both *de jure* and *de facto*. Firstly, the Italian government had introduced, as of November 2021,⁵ harsh restrictive measures imposing increasingly onerous requirements making a strong push towards vaccination. Although not expressly imposing compulsory vaccination, the regulatory framework has precluded or reduced the exercise of rights and access to services by individuals

1 WHO Director-General's opening remarks at the media briefing on COVID-19, 11 March 2020.

2 EMA/702084/2021, released on 23 December 2020.

3 This is, for example, the case of Austria, see <https://www.theguardian.com/world/2021/nov/19/austria-plans-compulsory-covid-vaccination-for-all>.

4 D. Lgs. 1/2022, "Misure urgenti per fronteggiare l'emergenza COVID-19, in particolare nei luoghi di lavoro, nelle scuole e negli istituti della formazione superiore", available online at <https://www.gazzettaufficiale.it/eli/id/2022/01/07/22G00002/sg>.

5 D. Lgs. 172/2021, "Misure urgenti per il contenimento dell'epidemia da COVID-19 e per lo svolgimento in sicurezza delle attività economiche e sociali", available online at <https://www.gazzettaufficiale.it/eli/id/2021/11/26/21G00211/sg>.

who chose not to get vaccinated. Secondly, well before the recent imposition of compulsory vaccination *tout cour*, the government had already implemented an implicit compulsory vaccination. Through a series of Decrees, a complex and comprehensive obligation was already in place for many workers before January 2022.

This article traces the most significant measures in force on Italian territory. Firstly, we will offer a preliminary illustration of the constitutional basis for the introduction of compulsory vaccination in Italy. Secondly, we will focus on the measures implementing a *de facto* obligation to vaccinate for participation in social life. Thirdly, we will trace the introduction of the obligation for various workers created by a series of decrees issued before January 2022. Finally, we will analyse the recent changes made by Decree 1/2022. In this regard, we will highlight the recent *de jure* obligation imposed on the over-50s and the additional *de facto* obligation implemented by the Decree.

2 Article 32 of the Constitution: Origin and Limitation of Health Freedom

Article 32: The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent.

No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person.

The constitutional provision in Article 32 configures both a classic social right (legitimising the request for services from the public authorities), and “a right of liberty (i.e. the claim to abstain from any illegitimate interference in the sphere of self-determination of the individual)”, and a joint “duty [...] to contribute, also through limitations of [...] liberty, to preserve public health”.⁶

The first paragraph of Article 32 of the Constitution defines the right to health as a “fundamental” right, making “immediately perceptible the basic character of the right in question,⁷ as a prerequisite for the full and free exercise

6 Article 32 of the Constitution as a “complex case” is discussed by, *ex multis*, D. Morana, *La salute nella Costituzione Italiana* (Milan: A. Giuffrè, 2002), p. 36.

7 G. Scaccia, ‘Article 32’, in: F. Clementi, L. Cuocolo, F. Rosa and G.E. Vigevari (eds.), *La Costituzione Italiana. Commento articolo per articolo* (Bologna: Il Mulino, 2018), p. 214.

of every other freedom". The same principle is better expressed in the second paragraph of Article 32, where the nature and the "fundamental" character of the right to health are reaffirmed. The second paragraph states that "no one may be obliged to undergo a specific health treatment", guaranteeing the individual freedom at the highest possible level to any external power.⁸ However, the same paragraph also identifies the exception to the expression of such freedom: the always possible (when justified) introduction of compulsory health treatment by legislation.⁹

The concept of "medical treatment" (that can be made compulsory) is interpreted in the broadest sense, including preventive, diagnostic, treatment and rehabilitation treatments.¹⁰ In the final analysis, what matters is the health purpose "in the broad sense" of the practice under scrutiny.¹¹

It can be said that these compulsory medical treatments constitute the only areas within which it is conceivable a constitutional duty to treat oneself. These treatments (limits to the freedom of health) derive their legitimacy from the mandatory duties of solidarity expressly mentioned in Article 2 of the Constitution¹² and then referred to by the expression "collective interest" in Article 32, paragraph 2. With this expression Article 32 does not cut off the freedom of self-determination in its entirety but imposes to model this freedom in "forms that are socially compatible and empathetic with the destiny of others and the community".¹³

Thus, the further aim of health as a collective interest justifies the compression of an individual's self-determination, which is inherent in the right

8 S. Rossi, *La salute mentale tra libertà e dignità. Un dialogo costituzionale* (Milan: Angeli, 2015), p. 254.

9 C. Caretti, *I diritti fondamentali. Libertà e diritti sociali* (Turin: Giappichelli, 2011), p. 525.

10 This broad interpretation is also evident from Articles 33 and 34 of Law no. 833/1978, where no distinction is made between 'treatments' and 'investigations', also evoking (in Article 34, paragraph 1) the performance of 'preventive, curative, rehabilitative functions'.

11 A.A. Negroni, 'Sul concetto di "trattamento sanitario obbligatorio"', *Rivista AIC* 4 (2017) 1–30, p. 13 ss.

12 Article 2: *The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.*

13 The reference to solidarity, for such contexts, appears at least since sentence no. 307/1990, point 2 of the Consideration in law, and then constantly reiterated (see, for example, sentence no. 118/1996, point 5 of the Consideration in direct). Recently, on the subject of compulsory vaccinations, the centrality of this principle has been reaffirmed in the judgment of the Edu Court, Vavricka and al. v. Czech Republic, 8 April 2021, no. 47621/13 and others. In the doctrine, its reference is a constant: see, ex multis, L. Carlassarre, *L'art 32 Cost. and its sanitary meaning*, in R. Alessi, *L'ordinamento sanitario, 1, L'amministrazione sanitaria* (Milan: Neri Pozza, 1967), p. 107.

of everyone to health as a fundamental right. In this sense, in the context of the Covid-19 pandemic, it is not only the need to protect against the spread of the virus itself that comes to the fore but also the ‘social costs’ and the damage caused by the large-scale occupation of intensive care units or hospital wards, causing considerable harm to other patients and delaying treatments of other severe diseases.

Ultimately, the balance between the opposing needs (individual and collective) referred to above must be supported by ‘rigorous and unequivocal scientific evidence’ proving that compulsory treatment is not the result of a blind authoritarian move and that it is the proportionate means to achieve the aim.¹⁴ In this sense, the decreasing numbers of beds occupied in intensive care and the absence of alternative preventive measures of equally proven effectiveness make compulsory vaccination at least a legitimate measure.

2.1 *Lessons Learnt: The Rulings of the Constitutional Court*

Over the years, various rulings by both the Constitutional Court and the Regional Courts have dealt with the legitimacy of compulsory vaccination.¹⁵ Among these, the Constitutional Court’s ruling No. 5/2018 on compulsory vaccination is of surprising relevance today. With this ruling, the Court declared partly inadmissible and partly unfounded the constitutional legitimacy of Decree-Law no. 73/2017.¹⁶ This Decree, later converted into law No. 119/2017, made 12 vaccines mandatory (later reduced to 10, including 4 “historical” ones) for minors under 16 years of age. The ground for the Decree was the progressive decline in vaccinations begun in 2013 that led to a vaccination coverage lower than 95%, the threshold recommended by the WHO to ensure the so-called “herd immunity” for the ten diseases in question.¹⁷ Given the necessity and urgency, the form chosen by the government to impose this obligation was that of a decree-law. A different situation indeed, but some aspects echo in our ears.

At the time, the Veneto Region complained to the Constitutional Court that the Decree was unlawful. The reasons for the appeal are now of particular

14 A. Vallini, ‘Un dilemma medico-giuridico’, *Rivista Italiana di Medicina Legale* 40 (2018) 187–215, p. 191 ff.

15 *Ex multis*, F. Passanti, ‘La Corte costituzionale torna sul riparto di competenze fra Stato e Regione in materia di vaccinazioni obbligatorie: osservazioni a margine della sentenza n. 137 del 2019’, *Nuove Autonomie* 38(3) (2019) 681–700; S. Crenna, A. Osculati and S.D. Visonà, ‘Vaccination policy in Italy: An update’, *Journal of Public Health Research* 7(3) (2018) 1523.

16 D.L. 73/2017, “Disposizioni urgenti in materia di prevenzione vaccinale”, available online at <https://www.gazzettaufficiale.it/eli/id/2017/06/7/17G00095/sg>.

17 For more information, see <https://www.salute.gov.it/portale/vaccinazioni/dettaglioContenutiVaccinazioni.jsp?lingua=italiano&id=4824&area=vaccinazioni&menu=vuoto>.

relevance to further explore the constitutionality of the recently imposed vaccination requirement. The grounds of appeal were: the imposition of a compulsory vaccination by Decree-law (issued by the executive) and not by law (approved by the Parliament); the violation of concurrent competencies rules ex-art 117 and 118 of the Constitution, which divides the powers between State and Region; and the violation of the right to self-determination ensured in the field of health by national and international standards.

Although starting from a context that is significantly different from the one we are experiencing today, the Constitutional Court has established the principles according to which the interest of public health may prevail over the self-determination of individuals. In particular, among those addressed by the Court, three points are extremely topical.¹⁸

Firstly, the Court declared legitimate the use of the decree-law to introduce compulsory vaccination. The Court approved the use of the emergency decree because, “faced with unsatisfactory vaccination coverage in the present and prone to critical issues in the future, this Court believes that it is within the discretion, and the political responsibility of the government bodies to appreciate the urgency to intervene, in the light of new data and epidemiological phenomena emerged in the meantime, even in the name of the precautionary principle that must guard an area as sensitive to the health of every citizen as prevention”. Furthermore, according to the Court, “vaccination coverage is a tool of prevention and must be implemented independently of an ongoing epidemic crisis”. It seems even more legitimate if the epidemic crisis is ongoing, as it is today.

Secondly, the Court had to express its opinion on the doubtful competence of the State in the matter of sanitary measures. According to paragraph 3 of article 117 of the Constitution, the competence in health protection is a concurrent competence, where the Regions have legislative powers and the State can intervene only to dictate fundamental principles. The Court held that it is within the legislative power of the State to introduce the obligation for certain vaccinations, as “the prophylaxis for the prevention and spread of infectious diseases necessarily requires the adoption of homogeneous measures throughout the national territory,” with the aim to achieve the so-called herd immunity. Therefore, the State intervention to protect health “can be translated into a series of provisions aimed not only at limiting or prohibiting certain medical treatments but also imposing others when necessary”.

Finally, the Court recalled that the obligation of vaccinations does not conflict with Article 32 of the Constitution. The Court recalled that “the

18 The judgment is available online at <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2018&numero=5>.

jurisprudence of this Court on the subject of vaccinations is firm in stating that Article 32 of the Constitution postulates the necessary balance of the right to health of the individual with the coexisting and reciprocal right of others and with the interest of the community". The Constitutional Court has specified that a law imposing medical treatment is not incompatible with Article 32 of the Constitution if (a) the treatment is intended not only to improve or preserve the State of the health of the person subject to it, but also to preserve the state of health of others; (b) it is provided that it does not adversely affect the state of health of the person who is obliged to undergo it, except only for those consequences that appear normal and, therefore, tolerable; or (c) if, in the event of further damage, provision is made for the payment of fair compensation to the injured party (see Judgments nn. 258 /1994 e 307/1990).

Now that we have outlined a brief overview of the constitutional basis for implementing the compulsory vaccine, we can now move to the enforcement of this obligation in recent months on Italian territory. We will first explore the measures implementing a *de facto* vaccination obligation for participation in social life and the implementation of this obligation for workers' categories created by the various decrees issued before January 2022. Finally, we will analyse the recent amendments made by Decree 1/2022.

3 *De facto* Compulsory Vaccination

In order to fully understand the package of restrictions in place on Italian territory, it is worth offering some initial explanations. These restrictions and infection control policies extend beyond the vaccination obligation recently introduced by the Decree of 7 January 2022. In August 2021, the Covid-19 green certification system¹⁹ was implemented in Italy as proof of vaccination, recovery or negative test result. However, since this first provision, the framework of measures in force today has evolved considerably, demonstrating an attempt to implement a growing policy of control over the spread of infection. Of the various changes made to date, the most noteworthy is the amendment made by the Decree No. 172 of November 2021.²⁰ This Decree marked the implementation of a second Covid Certification, called the Green Pass *Rafforzato* ("Enhanced") (or super green pass), along with the existence of the Basic Green Pass.

19 D.L. 105/2021, "Misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19 e per l'esercizio in sicurezza di attività sociali ed economiche", available online at <https://www.gazzettaufficiale.it/eli/id/2021/07/23/21G00117/sg>.

20 *Supra* note 5.

The Super Green Pass is available to those who have received the vaccination or have recovered from Covid-19 and, to date, has a fixed duration of 6 months.²¹ In contrast, the Basic Green Pass is awarded to those who have tested negative in a molecular test within the last 72 hours or a rapid antigen test within the previous 48 hours. The possession of the Super Green Pass allows avoiding most of the restrictions that have been progressively imposed with the increase in cases number. At the same time, the Super Green Pass is a condition of access to various social and public activities. As a result of the new measures,²² the two green passes will continue to coexist, but the proscriptions for Basic Green Pass holders will increase in amount and severity. With effect from 10 January 2022, the Super Green Pass will be a condition of access to all public transport,²³ catering services, swimming pools, gyms and spas, museums and amusement parks, without distinction between open-air and indoor. A Super Green Pass will also be required to stay in hotels and accommodation facilities, participate in fairs and congresses, and participate in team sports, including outdoor sports or other cultural, social, and recreational indoor-outdoor activities. Therefore, the increasing restrictions leave little room for the Basic Green Pass. Possession of the Basic certificate is required for access to workplaces for workers not subject to the obligations of Decree 44/2021²⁴ (hereafter, for the sake of clarity, the Vaccine Decree), as amended by subsequent decrees. Following the new Decree of 7 January 2022,²⁵ the Basic Green Pass will be a condition of access to enter public offices, post offices, banks or financial offices and commercial activities (i.e., shops), with the exception of those necessary to ensure the satisfaction of essential and basic needs of the person (such as pharmacies and supermarkets), as well as to use the services offered by barbershops, beauty centres and hairdressers.

The demand for the Basic Green Pass for access to workplaces, which has come into force from October 2021, has led to a massive increase in the demand for Covid-19 tests,²⁶ which can be carried out at a government-subsidised price.

21 As recently modified by the D.L. 221/2021, "Proroga dello stato di emergenza nazionale e ulteriori misure per il contenimento della diffusione dell'epidemia da COVID-19", available online at <https://www.gazzettaufficiale.it/eli/id/2021/12/24/21G00244/sg>.

22 Some of them implemented by the D.Lgs. 1/2021, while the majority are in force following D.Lgs. 172/2021.

23 Public transportations such as trains, planes, buses, coaches, ships, subways, trams.

24 D.L. 44/2021, "Misure urgenti per il contenimento dell'epidemia da COVID-19, in materia di vaccinazioni anti SARS-CoV-2, di giustizia e di concorsi pubblici", available online at <https://www.gazzettaufficiale.it/eli/id/2021/04/01/21G00056/sg>.

25 *Supra* note 5.

26 See https://www.repubblica.it/cronaca/2021/12/28/news/boom_di_contagi_e_contatti_con_i_positivi_allarme_tamponi_troppo_richiesta_mancano_i_reagenti_-331946479/.

The reduced validity of the test results²⁷ in conjunction with the Green Pass requirement means that workers have to take several tests a week to access their workplace. The pressure and presence of the State are clearly high. With the increase in the number of activities for which a Super green pass is required, the government has taken an even stronger stance on Covid-19 vaccination, imposing a sort of *de facto* compulsory vaccination for access to social life.

4 *De Jure* Compulsory Vaccination

Compulsory vaccination in Italy was achieved by a series of provisions that gradually involved an increasing number of workers in the obligation framework. The pioneer of this succession of provisions was Decree 44/2021. The Decree, issued in April 2021, contained in Article 4 “Urgent provisions on the prevention of SARS-Cov-2 infection by means of vaccination requirements for health professionals and health care workers”. The Decree 44/2021, thus imposed compulsory vaccination against Covid-19 on health professionals and health care workers employed in public and private health, social and health care and social assistance structures, pharmacies, para pharmacies and professional practices. With this Decree, vaccination has been made an “essential requirement for the exercise of the profession and for the performance of the work services rendered by the obliged parties”.²⁸

The autumn brought significant changes to the provisions of this first Decree with the enactment of two Decrees: Decrees 122/2021 and 172/2021. Still following the logic of public health protection and the maintenance of adequate safety conditions in the provision of care and assistance, the Decree 122/2021 added to the Vaccines Decree Article 4-bis, providing for compulsory vaccination for workers employed in residential facilities, social care and social-health facilities or facilities that for any reason host people in a state of fragility. Even for these workers, vaccination becomes an “essential requirement for the exercise of the profession”.²⁹

Just two months later, in November 2021, Decree 172/2021³⁰ provided for a further amendment of the Vaccines Decree. It was arranged with it the addition of Article 4-ter, entitled “Vaccination requirements for school staff,

27 Validity established for the 72 pre for molecular testing and 48 pre for antigenic testing, as established by D.Lgs 172/2021.

28 As expressed in Article 4, para. 1, D.L. 44/2021.

29 Ex Article 4-bis para. 1, D.L 44/2021 as modified by D.Lgs. 122/2021.

30 *Supra* note 7.

the defence sector, security and public aid, local police, the bodies of the law No. 124 of 2007, the structures referred to in Article 8-ter of Legislative Decree 30 December 1992, No. 502 and penitentiary institutions”.³¹ In doing so, the government forced to compulsory vaccination teachers who practice the profession in national institutes, kindergartens and adult education, armed forces workers, and certain government agencies’ staff.

The obligations included in the Vaccine Decree through provisions 4, 4-bis and 4-ter, have a common deadline coinciding with the end of the State of emergency. This deadline has been postponed several times and is now set for 31 March 2022.³²

4.1 *The Changes of January 2022: A Tout Court Mandatory Vaccination*

The recent Decree of 7 January 2022³³ added further provisions on compulsory vaccination to this already complex regulatory framework.

The Decree provides the addition of Article 4-ter to the Vaccine Decree, including other categories of workers, obliging them to undergo compulsory vaccination as of 1 February 2022. The Decree adds to the burdened subjects “the staff of universities, the institutions of higher education artistic, musical and *corèutica*, to which apply the same obligations and penalties as those provided for other obliged categories”.³⁴

However, the heart of this Decree appears to be Article 1, which provides for the addition of Article 4-quater to the Decree 44/2021, imposing the compulsory vaccination to the entire population aged 50 years or older.³⁵ Article 4-quater states, “In order to protect public health and maintain adequate safety conditions in the provision of care and assistance, the vaccination requirement for the prevention of infection with SARS-CoV-2, referred to in Article 3-ter, applies to Italian citizens and other EU Member States and foreign citizens residing in the territory of the State, who have reached the age of 50, without prejudice to the provisions of Articles 4, 4-bis and 4-ter”.³⁶ Whether a political compromise or a careful risk analysis, the obligation thus imposed

31 Ex L. 124/2007 are subjected to the vaccination the The Italian intelligence staff; Ex Article 8-ter of D.Lgs 502/1992 also public health administrators are subjected to the compulsory vaccination.

32 As lastly modified by the D.L. 221/2021.

33 *Supra* note 5.

34 Article 4-ter, D.L. 44/2021, as modified by D.Lgs. 1/2021.

35 For the sake of clarity: to the population aged 50 or over, or to those who will turn 50 by 15 June 2022, the date of the end of compulsory vaccination, as expressed by Article 4-quater paragraph 3.

36 Article 4-quater, D.L. 44/2021, as modified by D.Lgs 1/2022.

represents a significant step towards compulsory vaccination for the entire population. However, this general obligation has a relatively short duration. In contrast to the obligations imposed on workers that follow the emergency state's end, this has a fixed deadline of 15 June 2021.

4.2 *Enforcement and Sanctions*

In general, the system of enforcement revolves around the world of work. Employers are required to verify the compliance with the vaccination requirement of workers in their employ or under their organisation.³⁷ The sanctions imposed by the Decree on vaccines for workers for non-compliance with the obligation are common for almost all categories of workers subject to compulsory vaccination. In the case of healthcare workers, if the local health authority establishes that they have not complied with the requirement, they will be banned from performing tasks involving interpersonal contact or involving, in any other form, the risk of spreading the virus. According to the legislation, the employer may assign the worker to other tasks that do not involve spreading the infection.³⁸ However, if the assignment to different duties is impossible, the worker is suspended, with the consequent withholding of salary or other compensation. Similarly, but perhaps slightly more onerous is the sanction for workers obliged under Article 4-bis.³⁹ For these workers, the sanction established is the suspension from work, with the consequent cutting of salary or other compensation, without having the possibility of being assigned to other tasks. For workers identified by Article 4-ter is imposed the immediate suspension with the right to preserve their working relationship, without prejudice, to the disciplinary consequences according to the respective regulations to which they belong. No pay or other remuneration or emolument is due for the suspension period.

In addition, Decree 172/2021 makes it clear that the exercise of the profession or the performance of work activities in violation of the obligation to vaccinate ex art. 4, 4-bis and 4-ter, involves an administrative penalty established

37 Article 4 paragraphs 3 e 4 entrusts the employers of healthcare and related workers and the local health authorities with the monitoring and enforcement of the sanction; Article 4-bis indicates as responsible for the controls the heads of the structures referred to in Article 1-bis and the employers; Article 4-ter mentions as being responsible for controls the school managers and the heads of the institutions whose employees are covered by the vaccination obligation.

38 Article 4 para. 8, D.L. 44/2021.

39 Article 4-bis enforce the compulsory vaccination for workers employed in residential facilities, social care and social-health facilities or facilities that for any reason host people in a state of fragility.

in the payment of a sum of 600 to 1500 euro.⁴⁰ The same sum must be paid as administrative sanction by employers or persons equivalent to them for failure to fulfil their duty of control.

With regard to the vaccination requirement for the general public over 50 years of age, the Decree of January 2022 has provided for the inclusion of Article 4-sexies stipulating the penalties to be applied as a result of non-compliance with the obligation. This sanction applies to those who, on 1 February 2022, have not started the primary vaccination cycle or have not carried out the vaccination according to the deadlines established by the national vaccination plan.⁴¹ The same sanction shall also apply to the workers listed in Article 4, 4-bis and 4-ter, who have not complied with the obligations, in addition to the sanctions already applicable to them.⁴²

The sanction prescribed by Article 4-sexies is defined in imposed by the Revenue Agency⁴³ based on lists of obliged citizens who fail to comply with compulsory vaccination by acquiring data made available by the Health Card System on those assisted by the National Health Service. The Revenue Agency, informs defaulting parties of the start of the sanctioning procedure and requires them to communicate to the local health authority any certification relating to the deferment or exemption from compulsory vaccination. The local health authority transmits to the Revenue Agency or the ascertained failure to comply with the obligation or certification of deferment of vaccination or impossibility to comply. Once the failure to comply with the obligation is established, the Revenue Agency shall serve a notice of charge. The revenue thus derived by way of sanction is periodically paid by the Revenue Agency into the State budget to be reallocated to the National Emergency Fund. A procedure designed ad hoc for a lump sum penalty: just 100 euros, to be paid *una tantum*.

5 Another *De Facto* Obligation?

Although in the shadow of the compulsory vaccination for the over 50, the Decree of 7 January 2022 provides for the possession of the Super Green Pass (attesting, *repetita iuvant*, vaccination or recovery) for some workers

40 Ex Article 4-ter para. 6.

41 Article 4-sexies para. 1.

42 Article 4-sexies para. 2.

43 "L'Agenzia delle entrate" or the Italian Revenue Agency, is the Italian governmental agency that enforces the financial code of Italy and collects taxes and revenue.

categories. The new Article 4-quinquies of the Vaccines Decree, provides that public administrations staff and employees of public economic bodies and constitutional bodies are obliged to be vaccinated (unless they have a certificate of recovery). Ordinary, administrative and military magistrates, honorary and popular judges, and members of tax commissions are also subject to the same obligation.⁴⁴ Moreover, Article 4-quinquies turns its gaze to the private sector, imposing the possession of the Super Green Pass also on “anyone who carries out an activity in the private sector”.⁴⁵ Article 4-quinquies is an obligation that differs from the vaccination obligation in Articles 4, 4-bis and 4-ter. This decision imposes the possession of the Super Green Pass for access to workplaces rather than a compulsory vaccination *tout court*. A different legal choice, but with the same effects *de facto* imposing compulsory vaccination even to the category of workers identified in the article.

In general terms, the system of controls organised for this category is similar to the one already in place for other workers.⁴⁶ In fact, public or private employers, safety managers of the facilities where the judicial activity is carried out, headteachers or other persons designated to manage the work activity are obliged to verify compliance with the vaccination obligation by those persons who carry out their work activity in their respective workplaces.⁴⁷ Workers who do not have the Super Green Pass are not allowed to enter the workplace unless they can justify their non-vaccination status. Workers subject to this *de facto* compulsory vaccination under Article 4-quinquies, if they communicate that they do not own a Super Green Pass are considered unjustified absentees, without disciplinary consequences and with the right to preservation of employment, until the presentation of such certification, and in any case no later than 15 June 2022. No pay or other remuneration or emolument, however, named, shall be due for the days of unjustified absence referred to in the first period. Furthermore, the same article establishes a sanction for workers who enter the workplace in violation of the provisions and for employers who fail their obligation of control. The administrative sanction consist in the payment of a sum from 600 to 1500 euro and the disciplinary consequences according to the respective regulations of the sector.⁴⁸

44 By reference to Article 9-sexies, paras 1–4 of D.L. 52/2021.

45 By reference to Article 9-septies, paras 1–4 of D.L. 52/2021.

46 Article 4-quinquies, para. 2, D.L. 44/2021 as amended by decree of 5 January 2021.

47 Article 4-quinquies, para. 2.

48 Article 4-quinquies, para. 6, D.L. 44/2021.

6 Conclusion

Driven by the desire to stem the contagion, the Italian government has been one of the most prolific states in the production of ad hoc regulations on the subject of Covid-19. Among the measures that have attracted the most attention at a supranational level is undoubtedly the recent decision to impose compulsory vaccination for the over-50s. At a closer look, however, it is possible to note that the Italian government had already introduced compulsory vaccination, both *de jure* and *de facto*.

The vaccination made compulsory for the over-50s is the result of the last of many decrees issued by the government implementing very stringent control policies. First and foremost, these measures have resulted in an increasing *de facto* obligation to access social life and public services, excluding essential services. Secondly, well before the imposition of compulsory vaccination for the over-50s, the government had already implemented compulsory vaccination for many categories of workers.

With the January decree, the government has laid just one more stone in its already complex legislative architecture. This is not only because of the compulsory vaccination for the over-50s, but also because of the provision of a super green pass for certain work activities. A *de facto* obligation that seems to lock the world of work into the compulsory vaccination.

In conclusion, although placing the word compulsory vaccination on a few categories of citizens, the Italian government has created a comprehensive architecture in which very few citizens can live their lives without fulfilling the, *de jure* or *de facto*, compulsory vaccination.