



28.8.2013

NOTICE TO MEMBERS

Subject: **Petition 0701/2012 by Adelina Chernaeva (Bulgarian), on new certification requirements for translation agencies in Bulgaria**

1. Summary of petition

The petitioner indicates that the Bulgarian Foreign Minister intends to introduce a number of obligatory requirements for translation agencies, including possession of DIN EN 15038-2006-08 certification. She points out that, under EU legislation, this is only compulsory for companies paying VAT and working on EU projects or with various ministries. She accordingly regards this requirement as unjustified.

2. Admissibility

Declared admissible on 2 October 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 30 January 2013

DIN EN 15038-2006-08 is a European Standard whose main requirements are as follows:

- a translator should translate into his/her native language, and
- all written translations must be verified by another translator/editor (principle of "four eyes").

Firstly, it should be recalled that the compliance with a European Standard (EN) is always voluntary.

Secondly, it should be noted that the petitioner protests against the intention of the Bulgarian

Foreign Minister to introduce a number of obligatory requirements for translation agencies. At this stage, the measure is not formally adopted and, therefore, it creates no legal obligations for translation agencies in Bulgaria.

Therefore, at this stage, the Commission cannot take any further action in the framework of this petition.

4. Commission reply (REV), received on 28 August 2013

In response to the additional information from the petitioner dated 11 December 2012, the European Commission would like to submit the following observations.

The petitioner notified contracts between the Bulgarian Ministry of Foreign Affairs and undertakings offering translation services. These contracts stipulate that the contractor shall implement a quality control system to monitor the quality of the services provided under European Standard EN 15038, which requires the employment of an editor and two philologists. The petitioner considers that this requirement is incompatible with Article 15 (2) (f) of Directive 2006/123/EC on services in the internal market.

Public procurement aspects of the petition

Concerning public procurement, the petitioner indicates that on 24 April 2012, the Consular Relations Directorate of the Foreign Affairs Ministry (MVnR) launched a call for new contracts with companies providing translation services. The petitioner alleges that a standard contract, containing requirements that are not included in the only normative act covering this field (implementing rules on the legislation, certification and translation of documents and other papers), was drafted. According to the petitioner, Article 10 of the contract, published on the MVnR website, requires the contractor to employ at least two persons with a university degree in languages on a permanent employment contract and to present supporting evidence for this (a requirement which will enter into force on 1 July 2013). According to the petitioner, this requirement is questionable and should be challenged.

The definition of the technical specifications and the tendering requirements is in principle a prerogative of the contracting authorities, as they are best placed to determine their needs. This is valid, provided that the requirements are proportionate and non-discriminatory. When defining the tendering specifications, the contracting authorities are allowed to determine the particular conditions with respect to each individual need, as long as they comply with the applicable legislation, and in particular with public procurement rules. The Commission services are not aware of the content of the specific call for contracts mentioned by the petitioner. However, a requirement obliging a translation agency to have at least two employees with a university degree in order to be eligible to participate in a tendering procedure for substantial contracts for translation services does not seem, *per se*, to be contrary to Article 48 of Directive 2004/18/EC or to impose an unjustified or disproportionate burden on translation agencies. On the basis of the information available, the Commission services do not consider that EU public procurement rules have been infringed.

Article 15 (2) (f) of the Services Directive

According to Article 15 (2) (f) of the Services Directive, Member States shall examine whether their respective legal systems make access to a service activity or the exercise of it

subject to compliance with requirements fixing a minimum number of employees. Article 15(3) of the same directive provides that Member States shall verify that the requirements satisfy the conditions of non-discrimination, necessity and proportionality.

It follows that the Services Directive does not prohibit all requirements fixing a minimum number of employees but imposes on Member States an obligation to examine whether the minimum number of employees is non-discriminatory, necessary and proportionate to the objective pursued.

The requirement of employing a minimum number of persons, as in the call for contracts of the Bulgarian Ministry of Foreign Affairs and European Standard EN 15038 is, as such, not discriminatory. Moreover, the petitioner does not provide any evidence showing that the fixed number of employees is either unnecessary or disproportionate to the objective pursued (i.e. that to ensure high quality of the translations of important documents).

Conclusion

In view of the foregoing, the Commission does not share the view of the petitioner that the call for tenders by the Bulgarian Ministry of Foreign Affairs relating to translation services is incompatible with EU law.