



26.3.2024

NOTICE TO MEMBERS

Subject: Petition No 0976/2023 by S. M. (Italian) on authorisation for the training and certification of lifeguards in Italy

1. Summary of petition

The petitioner represents a training agency producing teaching content for workplace first aid, rescue and safety and complains of a breach of European legislation in Italy concerning competition and the implementation of directives. The training agency, which wishes to train people to pass the official qualification (*brevetto*) for professional lifeguards, has made multiple applications to the Ministry of Infrastructure and Transport (General Commanding Body of the Port Authority) for accreditation for its training for the aforementioned *brevetto* since 2014. The authority has, however, argued each time that it could not process applications until such time as a specific rule was brought in. In the absence of rules governing new applications, the petitioner points out that there were and continue to be only three authorised training providers: the National Rescue Society, the Italian Swimming Federation and the Italian Aquatic Rescue Federation (authorised in 1929, 1960 and 2010 respectively). In 2015, the petitioner's agency complained to the Italian Competition and Markets Authority that the Italian regulatory framework was unfair. The authority confirmed (in opinion AS 1191) that competition was being distorted. The following year, the long-awaited rules finally appeared, brought in under Ministerial Decree No 206/2016, but the latter's entry into force was constantly postponed. Following a second opinion from the Competition and Markets Authority (opinion AS 1789, reiterating what had been stated in 2015), Decree-Law No 228/2021 was passed. The latter did not provide for any further delays to implementation of Ministerial Decree No 206/2016, but Conversion Law No 15/2022 subsequently did, postponing enforcement until 30 November 2023 (Article 8 of Decree-Law No 51/2023). Before this second extension, the agency sent its fourth application for authorisation to the Ministry but was again rebuffed. The agency then lodged an appeal against this decision with the Regional Administrative Court of Lazio, claiming that Law 15/2022 was in breach of Articles 2, 43, 49, 56 and 18 of the TEU and Article 12 of

Legislative Decree 59/2010 transposing Directive 2006/123/EC and ran counter to the principles of EU law concerning the relationship between national and European sources of law and the obligation to implement directives, as affirmed by the CJEU (C-348/22). The court's ruling (No 14713/2022) confirmed the alleged breaches, but the Italian Swimming Federation appealed against the decision before the Council of State, which suspended this first instance judgment as a precautionary measure. Pending the final judgment, the petitioner also criticises the most recent provisions, imposed by Legislative Decree No 51/2023, under which authorisation may only be granted to not-for-profit training providers, on the grounds that they are discriminatory, anti-competitive and contrary to the principle of neutrality of economic operators advocated by the CJEU (C-219/19 and C-305/08) with reference to Directive 2014/24/EU on public procurement. He therefore calls on the EU institutions to ensure compliance with the Directive 2014/24/EU in Italy.

2. Admissibility

Declared admissible on 12 January 2024. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 26 March 2024

1) As regards the limited number of authorisations, the Commission notes that the Italian authorities have brought their legislation into line with European rules but that its implementation is constantly postponed. Therefore, in practice the situation remains non-compliant with European rules.

2) The Commission notes that Directive 2014/24/EU is not applicable in the present case since the issue raised by the petitioner does not concern a public procurement procedure. In accordance with Article 165 TFEU, Member States are responsible for the content of education and the organisation of their education systems. However, this petition could raise a problem of access to the market for private operators if the training in question were economic activities within the meaning of the Treaty.

Conclusion

The Commission will contact the Italian authorities to clarify why the implementation of the new legislation is constantly postponed.