



## IAPTI's position on the Hungarian Translation Industry Cooperation Agreement

In July 2014, the Hungarian associations Proford (representing translation companies) and AHTI (translators) asked the International Association of Professional Translators and Interpreters (IAPTI) to express its opinion on their proposed Hungarian Translation Industry Cooperation Agreement (hereinafter, the Agreement; available at [www.proford.hu/en/professional-materials/3/](http://www.proford.hu/en/professional-materials/3/)). Subsequently, Proford's president, Miklós Bán, has presented the Agreement at several international conferences organized for translation companies, and recommended the establishment of a similar agreement to other associations as well.

Firstly, in the present analysis we will refer to the instrument in question as the 'Agreement', as denominated by its drafters, purely for convenience and without this necessarily signifying our endorsement of the term. Our examination centred on how the interests of translators are represented in the said Agreement, regardless of what its technical category might be. In doing so we took into consideration the relevant international standards (e.g., EN 15038 cited in the Agreement), the recommendations and surveys of other professional organizations (ATA, FIT, ITI, SFT, etc.), and also conducted a short survey among Hungarian translators.

Based on this, our conclusion is that the interests of translators **are overall not properly represented** in the Agreement, **and are significantly harmed by some items**.

(In passing, we welcome the listing on page 1 of the names of those who participated in creating the document; however, one could expect that professional translator organizations would credit the translators of the English version as well).

We now turn to what the Agreement proposes to achieve. According to the preamble, "**This document is intended to regulate translation and revision activities only.**" To IAPTI's knowledge, neither AHTI nor Proford is constituted as a regulator, in which case the Agreement would simply embody a private understanding between the two associations. As such, it might be viewed by other parties as a form of model which they might use in

preparing their own private law agreements; however, several such models are already available, such as those prepared by the ATA, SFT etc.

Indeed, where the Agreement's proposed regulatory function is concerned, we note that it lacks several of the features that are normally required for a contract or agreement to be complete or enforceable, such as: formal identification of the parties entering into the Agreement; confirmation that each party has the requisite legal capacity, and that the signatories are entitled to represent the parties; object and scope; applicable jurisdiction; dispute resolution mechanisms, and so forth.

Nevertheless, the clauses themselves, if agreed upon, could foreseeably set some precedent, and are thus deserving of scrutiny. Since the Agreement seemingly seeks to impose definitions and obligate its parties, particularly the AHTI, we strongly recommend a general process of consultation and approval between the AHTI board and membership, if this has not already occurred. From our reading there are several issues that could be further explored.

For example, the basic concepts listed in Section 1 have already been defined in the international standards; deviations from those definitions do not seem justified in an Agreement that proposes to stand as a regulatory template. Furthermore, certain definitions of the Agreement are not purely descriptive but also prescriptive (e.g., items about the ways to use CAT tools or about quality). It is useful to separate descriptive definitions from prescriptive recommendations.

For example, the term "Translation Service Provider" is defined in the Agreement as "[a]n [organisation providing translation services](#)". This restricts the definition of translation/language service providers (TSPs/LSPs) used in the standard EN 15038 in a way that is unfavorable for translators by excluding professional translators and interpreters from the definition. Note that professional translator associations made enormous efforts to have this term included in the European standard, with the specific aim of explicitly naming translators and revisers, not only translation companies. Since the Agreement is expected to be cited by law makers if and when relevant regulations are modified (e.g., to abolish the monopoly of the Hungarian Office for Translation and Attestation Ltd.), the restrictive definition of the concept may eventually exclude translators and revisers from newly opened market segments. This can be avoided by using the definition in the European standard. Therefore we shall use the term "translation companies" in this document to refer to the concept that covered by the term "translation service providers" in the Agreement.

Already in its title, the Agreement apparently reduces the entire translation market to the relationship between translation companies and translators – whereas translation buyers often sign contracts directly with the translator (or a group of translators working in partnership with one another), without an intermediary translation company. We believe professional translator associations (e.g., AHTI) should emphasize both to their members and to translation buyers that qualified translators can often provide comprehensive services

by themselves, and do not only play a role in the translation market as subcontractors to translation companies. (Cf.: “The objective of this document ... is to set out the core principles of business cooperation between Translation Service Providers and their subcontractors (Translators and Revisers).”)

The Agreement also lacks some important items that are found in the recommendations of other professional organizations, such as: what occurs if a translation company cancels a purchase order once work has started; how dispute resolution operates in case of quality complaints; what the consequences of late payment are. In general, its conditions and onus apply to translators, not translation companies.

Thus, several points appear much more unfavorable to translators than the recommendations of other professional associations, or typical contracts in international practice. For example, the section on Non-Competition states: “It may be stipulated as a minimum requirement that the Translator/Reviser **may not undertake any direct assignments from the client** without the Translation Service Provider’s knowledge and consent, and may not contact the client with any business propositions for translation/revision services.” The part in bold (our emphasis) definitely goes against the business interests and autonomy of translators who work as independent entrepreneurs, and in several countries may violate the ban on restricting competition. Furthermore, the Agreement does not mention any time limitation on the non-competition clause – again, this does not follow the recommendations of most professional associations (typically, the non-competition clause survives for 6 to 12 months after the termination of the contract).

The detailed description of the use of translation tools in Section 3.2 not only undermines the professional autonomy of the translator, but also privileges convenience over translation quality: “If the Translation Service Provider requests the Translator to translate the document in question using a CAT tool and provides the TMs and TBs, the Translator will not be liable for the mistakes deriving from the errors of the TMs and TBs thus received. Nevertheless, the Translator shall inform the Translation Service Provider of any errors found in the Translation Memories and Terminology Databases received.” Notably too, while the TSP requires the Translator to accept responsibility for the quality of his/her work, the TSP accepts none in turn for the quality of its materials and any resulting inconvenience caused to the Translator, who must advise of any defects he/she discovers, apparently without remuneration.

This approach extends to Section 3.5, on handling quality issues, where passing on financial losses (usually covered by indemnity insurance available to translation companies) to the translator is at the unilateral and exclusive discretion of the translation company: “and it causes financial loss to the Translation Service Provider, the latter is entitled to pass on the loss, in part or in full, to the Translator/Reviser”.. There is no assessment procedure described to equitably determine quality issues and whether a financial penalty is indeed warranted. Normally, a commercial agreement would also provide for some dispute

resolution body or arbitration committee (chosen mutually or with the help of professional associations) in the event the parties cannot reach a mutual solution.

In the section discussing technical background, there is no compelling reason to privilege the tool used by the **translation company**: “If the Translation Service Provider and the Translator/Reviser have agreed on payment based on weighted word/character count, the payment shall be based on the calculations performed by the Translation Service Provider's tool.” (Our emphasis.)

Section 4.4 on Copyright contains an incorrect statement: “Unless otherwise agreed upon in a separate agreement, the work of the Translator/Reviser shall not be subject to copyright.” The work of a translator/reviser is automatically subject to copyright not only for literary translation but for scientific, technical etc. translations as well. This copyright can be transferred (partially or entirely), but a prerequisite of this transfer is that the translation has been paid in full. AHTI itself has done much to disseminate information about copyright in translation and interpreting, e.g., by organizing Dr. Péter Tarr’s presentation in April 2013 (<http://slideplayer.hu/slide/2312006/>). It is therefore puzzling that AHTI could approve this section of the Agreement, which runs contrary to the interests of translators and its own prior efforts.

Section 5 on remuneration contains most of the items that clearly subordinate the interests of translators to those of translation companies. In 2011, one of Proford’s leading companies, *espell* (in partnership with *fordit.hu*) conducted a survey on the Hungarian translation market (“*Panorama of the Hungarian translation market*”). This afforded Proford an advantage in the form of a market analysis which AHTI itself had been unable to perform. In many respects, AHTI had to rely on the conclusions of the survey conducted, analyzed and published by *espell*. Even so, it is surprising that a minimum translation fee of HUF 8/word (= EUR 0.026/word) and a minimum hourly fee of HUF 1800/hour (EUR 5.8/hour) could be included in the first version of the Agreement figures that are incompatible with *espell* survey findings (see <http://prezi.com/97ftqn3yg4wr/forditopiaci-korkep-2011/>, slide 35). Several AHTI members confirmed in private communication that the translators they knew all charged higher minimum fees. Although these figures were removed in the amended version of the Agreement, the HUF 8 minimum price became an important reference point for the Hungarian translation market.

Apart from the specific minimum price, several other items of the Agreement are not in translators’ interest. “If a CAT tool is used, the Translation Service Provider is entitled to apply the same so-called weighted discount in the fees of the Translator/Reviser that is granted to the Client.” The details of the agreement between the client and the translation company are not verifiable by the translator, hence reference to them lacks any basis.

“The Translator/Reviser may only charge minimum fees based on specific agreements” – Most professional associations expressly recommend that minimum translation and revision

fees be applied (these usually correspond to one hour's work), and this is also a widely used practice in the Hungarian market.

“(The global industry standard [for the relative weight of 100% and 101% matches] is usually 5 to 20%).” These figures do not reflect market reality; the 5% weight does not provide a proportional time frame even for the most superficial checks (here we recall the obligation placed on translators to notify of any defects they discover).

“Downward adjustment (discount) may be warranted by a volume discount (determined by the full volume of a project) or by applying a so-called “training rate”. The purpose of such a training rate is to aid beginner translators in gaining professional experience, but it may also be applied during the probationary period of new Translators.” A price that is lower than a recommended minimum is entirely at odds with the recommendations of any other professional organizations we know. It is not clear how qualified early-career translators will derive more long-term benefit by “gaining professional experience” at marginal rates, instead of by learning to achieve equitable and sustainable terms of business (an aspect of professional development in which professional associations typically play a key role).

“Due to the high number of incoming invoices, the Translation Service Provider may regulate the frequency of invoicing and invoice verification.” In a relationship between equals, the frequency of invoicing is set by the invoicing party, taking into account its own and the client's needs. Furthermore, we recommend specific inclusion of the provisions of the Late Payments Directive 2011/7/EU of the European Union (interest rates charged on late payments, with a fixed minimum of € 40) in such an agreement, as 25% of SMB bankruptcies in Europe are due to late payment.

To summarize, in our view the foregoing examples indicate a largely subordinate relationship, rather than a relationship between equals (as asserted in the preamble). The Agreement as it stands bears more similarity to an employer-employee contract, with little regard to the professional autonomy of the subordinate party.

In summary, IAPTI considers that the Agreement as it currently stands is disadvantageous to AHTI members, and furthermore contradicts some of the organisation's own prior efforts in furthering its members' interests. It appears to have been drafted as a vertical relationship, and is therefore unlikely to be susceptible to amendment into a more balanced form. If AHTI and Proford wish to commit some mutual understanding in writing, they already have acceptable model contracts and standing agreements at their disposal for adaptation (e.g. ATA, SFT). IAPTI and its partner organizations are happy to provide support to AHTI to this end. Instead of blanket application, such models would provide contracting templates to individual parties for their particular needs. AHTI could provide pertinent revisions and advice when necessary, for the benefit of its members and the standing of the translation profession. In IAPTI's view, it is this kind of flexible, consultative and optional instrument that Proford and AHTI could more usefully recommend for consideration by other

associations, rather than the proposed Hungarian Translation Industry Cooperation Agreement in its current or any other foreseeable form.

Bordeaux, Buenos Aires

January 15, 2016



Attila Piróth

Vice President, IAPTI Ethics Committee



Aurora Humarán

IAPTI President