

Mutual evaluation of regulated professions

Overview of the regulatory framework in the tourism sector by using the professions of tourist guides and of travel agents as example

*Report based on information transmitted by Member States
and on the meeting of 4 June 2015*

1. CONTEXT AND AIM OF MUTUAL EVALUATION EXERCISE

The seventh mutual evaluation discussion on regulated professions brought together Member States, Iceland, Liechtenstein, Norway and Switzerland in order to discuss the review and modernization of their regulations on professional qualifications governing access to professions or professional titles in the tourism sector.

For more background to this exercise, reference is made to previous discussion papers prepared for the mutual evaluation exercise (driving instructor and real estate agent, architect and engineer, electrician and optician, physiotherapist and psychologist, hairdresser and beautician as well as dental hygienist)¹; the Communication of the Commission of June 2012 on the implementation of the Services Directive which stressed the importance that the framework for professional services needs to remain fit for purpose; the Professional Qualifications Directive, amended in November 2013² and; the work plan presented by the Commission in its Communication of 2 October 2013 on the mutual evaluation process³.

In this context the Commission would once again like to recall that in order to improve access to professions and to facilitate the mobility of qualified professionals within the internal market, as well as the cross-border provision of professional services, a more flexible and transparent regulatory environment must be promoted. In addition to this, a positive impact may be felt upon the employment situation, in particular for young people, in turn enhancing economic growth.

To note that the proceeding is based on information submitted by participating countries to the Commission. This report presents an overview of the information communicated by Member States, Iceland, Liechtenstein, Norway and Switzerland⁴ either through specific reports⁵ or through entries in the professional regulations database⁶ as well as of the discussions that took place during the meeting on 4 June 2015 on mutual evaluation

¹ Published on http://ec.europa.eu/growth/single-market/services/qualifications/mutual-evaluation/index_en.htm

² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') OJ L 354, 28.12.2013.

³ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Evaluating national regulations on access to professions COM(2013)676 final, 2.10.2013.

⁴ Collectively referred to as "Member States" in this document.

⁵ No reports have been transmitted by Croatia, Greece, Ireland, Latvia and Liechtenstein.

⁶ However, not all entries in the database were up-to-date when this report was established.

dedicated to this sector⁷. This report is established with the aim to facilitate the mutual evaluation exercise and is therefore not a comprehensive report on the sector nor on the specific profession.

Based on their conclusions of the review exercise, by 18 January 2016, Member States had to submit a report to the Commission in accordance with Article 59(6) of Directive 2005/36/EC.

2. ECONOMIC AND STATISTICAL INFORMATION ABOUT THE TOURISM SECTOR

2.1. ILO

The International Labour Organisation manages the International Standard Classification of Occupations (ISCO). In this classification the profession of 'travel guides' is classified under Major Group 51 'Services and Sales Workers', minor group 511 'Travel attendants, Conductors and guides'; unit group 5113 "Travel Guides'.

According to ISCO, Travel guides accompany individuals or groups on trips, sightseeing tours and excursions and on tours of places of interest such as historical sites, industrial establishments and theme parks. They describe points of interest and provide background information on interesting features. Examples of the occupations classified under 5113 include art gallery guide, tour escort and tourist guide.

Tasks include -

- (a) escorting and guiding tourists on cruises and sightseeing tours;
- (b) escorting visitors through places of interest such as museums, exhibitions, theme parks, factories and other industrial establishments;
- (c) describing and providing information on points of interest and exhibits and responding to questions;
- (d) conducting educational activities for school children;
- (e) monitoring visitors' activities to ensure compliance with establishment or tour regulations and safety practices;
- (f) greeting and registering visitors and tour participants, and issuing any required identification badges or safety devices;
- (g) distributing brochures, showing audiovisual presentations, and explaining procedures and operations at tour sites;
- (h) providing for physical safety of groups, and performing activities such as providing first aid and directing emergency evacuations;
- (i) resolving any problems with tour itineraries, service, or accommodation.

⁷ For the purpose of this meeting Member States were organised in 4 different groups of 8 Member States (+ Iceland, Liechtenstein, Norway and Switzerland). Groups were organised as follow:
Group 1: Estonia, Finland, France, Greece, Luxembourg, Netherlands, Slovenia, Liechtenstein;
Group 2: Austria, Belgium, Czech Republic, Denmark, Malta, Romania, United Kingdom, Norway;
Group 3: Bulgaria, Cyprus, Germany Italy, Latvia, Portugal, Slovakia, Iceland;
Group 4: Croatia, Hungary, Ireland, Lithuania, Poland, Spain, Sweden, Switzerland,

2.2. Eurostat

In the NACE classification of economic activities, travel agencies and tour operators are grouped together and classified under Section N, 'Administration and Support Service Activities', division 79 'Travel agency, tour operator and other reservation service and related activities'. They are included in the class of 'Travel agency and tour operator activities in class N79.1, which is subdivided into group 79.11 'travel agency activities' and 79.12 'tour operator activities'.

79.11 This class includes: activities of agencies primarily engaged in selling travel, tour, transportations and accommodation services to the general public and commercial clients

79.12 includes the activity of arranging and assembling tours that are sold through travel agencies or directly by agents such as tour operators. The tours may include any or all of the following:

- transportation,
- accommodation,
- food,
- visits to museums, historical or cultural sites, theatrical, musical or sporting events.

2.3. Economic data and statistics

Travel agency, tour operators are classified under Eurostat divisions 79.11 and 79.12. For the purposes of gathering data, the two activities are collected and presented together by Eurostat.

Eurostat regularly publishes economic analysis of the tourism industry. The data below was published in March 2016, with a full set of data for all Member States for 2013⁸. Eurostat examines four key indicators; the number of enterprises, number of persons employed, turnover and value-added at factor cost; firstly at EU level and secondly at country level.

For the purposes of comparison, the tourist industry as a whole, of which travel agency and tour operators are a part, comprises 2.2 million enterprises, employs around 12 million persons, has a turnover in the EU of €941 bn and value added of €344 bn.

The data for travel agencies and tour operators is collected together for EU 28; there is no breakdown between these two activities. Together the two activities have 70 144 enterprises, which is 3.2% of the total number of enterprises involved in tourism in the EU-28. They have a turnover of €161 bn, which is 16.3% of the total for tourism, have value added at factor cost of €26 bn which is 7.6% of the total for tourism and employ 427 400 people which is 3.6% of the total of the tourist industry.

2.4. Geographical distribution

Of the 2.2 million enterprises in tourism as a whole in the EU-28, 46% of these are based in **Italy, Spain and France**. However **Germany** and the **United Kingdom** also have a very substantial tourism industry, with high turnover and value added .

⁸ http://ec.europa.eu/eurostat/statistics-explained/index.php/Tourism_industries_-_economic_analysis
Eurostat, Statistics Explained, March 2016

The table below shows the geographical distribution of travel agencies, tour operators and other reservations services in the EU 28. The table overestimates the key indicators very slightly by 1.1%, 0.9%, 0.8% and 0.5% due to the addition of 'other reservation and related activities', but gives an overall picture of the geographic spread of activities and the broad trends.

As can be seen from the table below, the highest number of enterprises is to be found in **Italy** (15 380), **Spain** and **Germany**. The highest number of people employed is in Germany with 97 611 employees followed by the **United Kingdom** with 93 292 engaged in these two activities. Turnover and value-added, however, are highest in the **United Kingdom** for these activities with total values of respectively 47.5 bn € and 10 bn €.

Country	<u>Number of enterprises:</u> Travel agency, tour operators and other reservation services (total)	<u>Persons employed:</u> Travel agency, tour operators and other reservation services (total)	<u>Turnover:</u> Travel agency, tour operators and other reservation services (total) (mio €)	<u>Value-added at factor cost:</u> Travel agency, tour operators and other reservation services (total) (mio €)
EU-28	95 917	493 400	161 338	28 516
Belgium	1 635	8 773	5 512	579
Bulgaria	1 704	5 946	462	50
Czech Republic	5 991	11 885	1 950	201
Denmark	565	6 304	2 915	322
Germany	10 476	97 611	27 932	6 521
Estonia	365	1 766	188	36
Ireland	477	4 602	1 427	252
Greece	2 615	11 604	1 593	278
Spain	10 859	50 277	16 841	1 817
France	8 122	41 172	13 673	1 876
Croatia	1 708	5 751	551	81
Italy	15 380	45 692	10 588	1 312
Cyprus	437	1 565	68	44
Latvia	775	2 120	297	24
Lithuania	1 023	2 904	286	30
Luxemburg	88	:	:	:
Hungary	1 785	5 668	782	73
Malta	423	1 596	321	48
Netherlands	4 949	22 356	8 264	2 538
Austria	1 581	11 780	4 877	495
Poland	5 527	17 770	2 189	252
Portugal	2 775	9 675	1 929	222
Romania	2 674	9 855	813	98
Slovenia	767	1 944	401	43
Slovakia	1 191	3 146	569	84
Finland	1468	4 880	1 617	205
Sweden	3 553	12 550	7 078	735
United Kingdom	6 983	93 292	47 543	10 382
Norway	1 972	5 962	5 194	445
Switzerland	995	15 957	6 078	1 048

2.5. Information from national reports

The information below is taken from national reports and shows the number of reported travel agents and tourist guides in the Member States for which there is data. There is no data reported for **Belgium, Denmark, Estonia, Finland, Iceland** or **Luxemburg**,

Country	Travel agents	Tourist Guides
Austria	2600	1834
Bulgaria	3000	2500
Czech Republic	Not available	3969
Cyprus	330	300 licensed
France	7000 enterprises and around 40000 employees	11028 (licensed)
Germany	9880	
Hungary	1270	12870
Lithuania		2744
Netherlands		At least 120
Portugal	1576	380 (licensed)
Poland (Mountain guides)		6266
Romania		245
Slovakia	4110	950
Sweden	Combined 5902	Combined 5902
Switzerland	1622	Not available

There is a general downward trend in the number of travel agents in parts of the EU. This is evident in **Cyprus** where the number is down by 30% over the last decade, in **Bulgaria** the numbers decreased from 7165 to 3000 from 2011 to 2014. In addition there was a reduction of the number of travel agents in **Switzerland** from 2000 to 2014 from 2887 to 1622. This is most probably due to the growth of internet and online booking. The only country which provided information in relation to gender of employees was **Switzerland**, in which 10.000 employees are women, making up 80% of the workforce.

3. REGULATION IN MEMBER STATES

Tourist guides and travel agent are two different professions but in within the same sector, as such for the purposes of this exercise, general concepts will be treated together in this report. Where necessary and for clarity, a distinction will be made between each profession under consideration on matters of detail or in contrast.

According to the regulated professions database and the reports submitted by Member States the professions are regulated as follows:

Tourist guide is regulated in 13 Member States, namely **Austria, Croatia, Cyprus, France, Greece⁹, Hungary, Italy, Lithuania, Malta, Romania, Slovakia, Slovenia** and **Spain**. In **Italy** and **Slovenia** the profession of tour manager is also regulated.

Travel agent is regulated in 8 Member States, namely **Austria, Belgium, Cyprus, France, Italy, Luxemburg¹⁰, Slovakia** and **Slovenia**. The **Czech Republic** and **Slovenia** also regulate tour operators and have indicated this profession as a separate profession in the database.

⁹ Last update of database from 2006.

¹⁰ Not notified in the database, but information based on report submitted.

It should be noted that only 6 Member States regulate both professions (**Austria, Cyprus, France, Italy, Slovakia and Slovenia**).

The following Member States have submitted reports describing why they do not regulate either of the professions and how the system is organised in their country: **Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, the Netherlands, Poland, Portugal, Sweden, United Kingdom, Iceland, Norway and Switzerland**.

No reports concerning the tourism sector have been sent by **Croatia, Greece, Ireland, Latvia, and Liechtenstein**.

3.1. Activities covered and scope of reserved activities

Most of the Member States which have submitted information on their regulation indicate that they regulate by *reserving specific activities* to certain professionals for tourist guides as well as for travel agents.

Italy reported *title protection* without reserve of activities for a travel agency manager.

A *reservation of activities together with a title protection* has only been reported by **Malta** for the profession of tourist guide.

<i>Reserve of activities</i>	
<u>Tourist guide</u>	<u>Travel agent</u>
Austria, Croatia, France, Hungary, Italy, Lithuania, Malta, Romania, Slovakia and Spain.	Austria, Belgium, France, Italy, Slovakia and Slovenia.

According to the CEN standard EN 13809, to which certain Member States refer, a tourist guide is “*a person who guides visitors in the language of their choice and interprets the cultural and natural heritage of an area, which person normally possesses an area-specific qualification usually issued and/or recognized by the appropriate authority*”.

Tourist guide activities include in general showing visitors around places of interest (such as towns, cities, religious sites or museums). However the scope and the reserved activities differ between Member States.

Reserved activities concern e.g. in **France** commented visits for groups of people to national museums (“*musées de France*”) or historic monuments as part of a trip organized by a tour-operator. In **Italy** the reserved activities are broadly defined as the ‘illustration of historical, artistic and cultural heritage’. **Hungary** also reserves the activities of tour guiding but defines it more precisely as providing detailed interpretation at tourist sites and other venues of significant interest to visitors as well as guiding visitors and providing assistance and information with a view to helping their orientation in an unfamiliar place. The reservation goes even further in **Austria** where the activities of tourist guides cover the guidance of persons to show and explain to them 1) the historic treasures and the artistic and cultural heritage of Austria, 2) the social and political situation in national and international contexts and 3) sporting and social events. In **Cyprus** the activities of a tourist guide cover “*generally any matter that may promote tourism in Cyprus*”.

Concerning *similar professions* **Poland** refers to mountain guides.

The scope of activities differs quite substantially between Member States. Those Member States which apply very broad concepts might consider introducing a more precise definition of the scope, in particular if activities are reserved to holders of a professional qualification.

Concerning mountain guides, there is currently no uniform approach how to classify this profession in the regulated professions database. In order to provide for more transparency and to facilitate the cross-border mobility of such providers, it should be considered whether mountain guides should be notified as separate profession.

Coming to travel agent services, these generally cover the organisation and booking of business and leisure travel for consumers.

Germany, for instance, explained that travel agents mainly work for companies in the tourism sector, such as within travel agencies and tour operators or business travel management. Their tasks may include advising and acting as an agent for tour organisers, arranging individual or group tours and using their knowledge of destinations and tourism providers. For **Belgium** a travel agent is a legal or natural person engaged in a business consisting in the organising and selling of travel or package tours including, in particular, accommodation, and may include selling, as an intermediary, such trips or stays, transportation tickets, housing or meals vouchers. For **France**, a travel agent deals with the arrangement or sale of individual or group travel or stay, services provided during travel or stay (booking of hotel rooms, issuing of travel documents) and/or services related to tourism hospitality (organisation of visits in museums or historical monuments).

In **Italy** a travel agency manager is the person responsible for the management of a travel agency and performs tasks of a technical and specialized nature, concerning the production, organization or brokerage of travel and other touristic products.

Cyprus has notified travel agent manager and tourist office manager under the same profession which might explain why the scope of activities also includes managing the office and ensuring (a) the perfect maintenance of the spaces, furniture and equipment of the office; (b) the immaculate state of all spaces of the office from the point of cleanliness; (c) the rendering of quick and high quality service in all departments of the office; (d) the supply of the services offered and advertised by the office; (e) the placement of a tourist guide in every organised sightseeing tour.

A *profession linked to travel agent* is that of *tour operator*. This profession has been notified by some Member States together with the profession of travel agent either as a separate profession among travel agents or as a completely separate category of profession. Other Member States have not mentioned tour operators at all.

Slovakia has notified two professions under the category of travel agent, namely tour operator and travel agent with the basic difference being that a tour operator may offer a combination of services (accommodation, boarding, transportation, tourist guide, etc.), whereas a travel agent offers only one service (e.g. accommodation) and sells products of other tour operators. **Hungary** has notified those two activities under one profession, but applies in principle a similar distinction, i.e. tour operator activities consist of the arrangement - on a commercial scale - of passenger transport, accommodation and other tourist services (such as in particular meals, guided tours, entertainment, leisure and

cultural programmes), providing at least two at the same time (hereinafter referred to as travel services) in a package; whereas travel agency activities consist of the conclusion of contracts - within the framework of gainful business activities - in the name and on behalf of a tour operator for the supply of travel services. On the other hand, the **Czech Republic**, which has notified the activity of tour operator as a different category of profession in the regulated professions database, describes the activities of a tour operator as organizing, offering and selling tours, whereas a tour means the combination of tourism services. The activity also covers the sale of items related to tourism, in particular, tickets, maps, plans, timetables, guidebooks and souvenirs.

Without having to go into further detail on the profession of tour operator, it seems that most Member States base their definition and description of tasks on the Package Travel Directive.¹¹

Austria reports that certain reserved activities of tourist guides are *shared with other professionals*, such as the commentary given inside vehicles (tour bus or taxis and in Viennese Fiaker) or tours conducted by authorized persons or their representatives in buildings. Those activities are not regulated. In **Slovenia** there is also the activity of 'tourist companion' in addition to 'tourist guide' with part of their activities being similar.

3.2. Professional qualification required

Required training hours, type of education required, mandatory traineeship, type of exam, possible annual mandatory training required

Professional qualifications required or offered also differ between Member States ranging from training courses, vocational training, post-secondary vocational training to university education.

For example concerning tourist guides, in **Austria**, the qualification consists of two stages, namely an obligatory training course and an examination. In **Greece**, a diploma from the school of tourist guides is required and in **Italy** the qualifying examination seems to include a written test, which covers the historic and artistic heritage of a specific area of a region and an interview. In **Italy** as well as in **Spain**, several different regulations exist depending on the (autonomous) region regulating the profession and requirements concerning the level of qualification vary from vocational training to academic qualification. It is also interesting to note that **Austria** reported that minors having the necessary qualification may also conduct guided tours as employees of tourist guides.

Most Member States indicated the need for very specific knowledge linked to the country such as knowledge of the history and its art (e.g. **Cyprus**), knowledge about monuments and events is also required for pursuing the activity of tourist guide (e.g. **Slovakia**), but little information is given about specific training requirements.

Concerning travel agents in **Austria** the professional qualification is required by law only for the pursuit of the profession as a self-employed person or as manager. In **Belgium**, travel agents in the Brussels-Capital Region and in the Walloon Region must obtain a

¹¹ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. A new Package Travel Directive (2015/2302/EU) was adopted on 25 November 2015 and will be applicable as of 1 July 2018.

licence from the competent authority, whereas in the Flemish region the profession has been deregulated as of 1 January 2014.

Concerning the *level of education* that is required, the following information has been communicated:

	<u>Tourist guide</u>	<u>Travel agent</u>
Vocational secondary training	Italy, Lithuania, Romania, Slovakia	
Vocational post-secondary training	Austria, Croatia, Cyprus, France, Hungary, Spain	Cyprus, France, Italy
Different ways to obtain professional qualification	France	Austria, Belgium, France, Slovakia

Different *length of required education* has been reported as follows:

	<u>Tourist guide</u>	<u>Travel agent</u>
6 months		Austria
1 year	Cyprus,	
2 years	Austria, Spain, Hungary, Malta	France
3 years	France, Lithuania	Belgium, Slovakia*)
4 years		Slovakia*)
5 years	Italy	Italy, Slovakia*)
6 years		Cyprus

Slovakia 300 hrs, Romania 1080 hrs, *) different ways to obtain profession

Croatia and **Slovakia** reported to organise *state exams* for the profession of tourist guides. Such exams seem to exist in **Spain** as well.

Mandatory traineeship for the tourist guide profession is required in **France, Lithuania** and **Slovakia** and for travel agents in **Belgium, France** and **Slovakia**.

Different ways of obtaining professional qualifications

Several Member States, i.e. **Austria, Belgium** and **Slovakia**, mention that there are different ways of obtaining professional qualifications which is very often linked with proof of professional experience as an alternative to formal training.

Different ways of obtaining professional qualifications might be considered less transparent but could effectively be a means to open up access to a profession, in particular for providers having obtained professional experience rather than formal training.

3.3. Additional requirements to perform the profession of either tourist guide or travel agent

Additional requirements need to be examined and analysed in order to be able to assess whether there is any duplication of rules and whether the cumulative effect of different rules which a professional has to comply with is going beyond what is necessary in order to achieve the objective pursued.

a) Mandatory registration in professional bodies

For tourist guides mandatory registration in professional bodies has been reported by **Austria** and for travel agents by **Austria, France, Italy** and **Luxemburg**.

To be noted that **Austria** as well as **Luxemburg** explain that the registration with a professional body is not linked to the regulation of the profession as any professional setting up a business has to become member of the professional body and adhere to professional standards.

b) Insurance

Member States that reported asking for professional indemnity insurance for travel agents are **Belgium, France** and **Italy**.

It should be noted that the currently applicable *Package Travel Directive* (Directive 90/314/EEC) contains rules on the liability of package travel organizers and retailers who must accept responsibility for the performance of services offered¹². The Directive is a minimum harmonisation directive which allows Member States to adopt more stringent provisions for providers established in their territory for the protection of consumers. As many of these provisions, including the ones on liability leave a large margin of discretion to national legislators, approaches taken by Member States differ. The Directive does however not oblige Member States to impose insurance obligations on service providers to cover contractual liability.¹³

c) Territorial restrictions

It has been observed that the creation of reserves of activities for holders of specific professional qualifications, when regulated at regional level in federal or regional states, deserves particular attention as the scope of their activities can be geographically restricted within one Member State. As a consequence, professionals might have to obtain different qualifications in one Member State if they want to exercise their activities in more than one region. Such differences might render the access to and the exercise of the profession more complicated and highlights the need to simplify and ensure the transparency of the applicable rules.¹⁴

For instance, in **Spain**, the profession of tourist guide is regulated in some of the autonomous communities, but not in others. In **Belgium**, travel agents in the Brussels-Capital Region and in the Walloon Region must obtain a licence from the competent authority, whereas in the Flemish region the profession has been deregulated as of 1 January 2014.

¹² Article 5 of the Directive provides that Member States take the necessary steps to ensure that the organizer of a package travel is liable to the consumer for the proper performance of the obligations arising from the contract.

¹³ No insurance seems to be required in **Denmark, Estonia, Germany, Finland, Latvia, Hungary, Malta, the Netherlands, Poland, Romania, Spain, Sweden, the United Kingdom, Liechtenstein** or **Norway**. It seems that insurance is compulsory in **Belgium, Bulgaria, Cyprus, Czech Republic, France, Greece, Italy, Lithuania, Luxemburg, Malta, Slovenia, Sweden** and **Iceland** (info based on Commission SWD(2012)147 – performance checks of the internal market for services - tourism).

¹⁴ see also Commission Staff Working Document on the result of the performance checks of the internal market for services SWD(2012)147 accompanying the Communication from the Commission on the implementation of the Services Directive COM(2012)261.

In **Croatia** tourist guides currently take the professional exam for tourist localities in a specific county (there are 21 of them) and have the right to provide tourist guide services only in localities for which they have passed the exam.

Similar restrictions were observed in the past in **Portugal** and in **Poland** for tourist guides, but in both Member States the professions have been deregulated since then. It seems also that there was legal uncertainty about the validity of regional authorisations in **Italy** but since 2013 such authorisations are valid throughout the national territory.

d) Prohibition on joint practices

Cyprus has reported this additional requirement for travel agency managers.

e) Special identification card

Last but not least a particular requirement needs to be mentioned, namely the obligation for tourist guides in **Austria** to carry an official photo identification (“*tourist guide identification*”) which has to mention 'possible territorial or other restrictions concerning the exercise of the activity as well as the languages spoken by the tourist guide'. A similar card seems to exist also in **Italy**, e.g. in the region of Puglia where a special identification card must be visible during the professional activity and which must be renewed every three years. An obligation to wear a photo ID, which includes the name and registration number as well as the term of the validity of the licence, exists in **Malta**. Such licences are only valid for two years and renewal depends on the individual conforming to CPD requirements.

Romania also mentions a badge for authorized tourist guides, but it is not clear whether carrying this badge is obligatory.

Other Member States like the **United Kingdom** have reported about particular badges, but those are part of a voluntary certification system aiming to identify those who are part of this system (e.g. ‘blue badge’ guides).

No legal form or shareholding restriction has been reported for either profession.

4. RESULTS OF TRANSPARENCY / SCREENING EXERCISE BY MEMBER STATES

Article 59 of the revised Directive foresees that “*Member States shall examine whether requirements under their legal system restricting the access to a profession or its pursuit to the holders of a specific professional qualification, including the use of professional titles and the professional activities allowed under such title, referred to in this Article as ‘requirements’ are compatible with the following principles:*

- (a) requirements must be neither directly nor indirectly discriminatory on the basis of nationality or residence;*
- (b) requirements must be justified by overriding reasons of general interest;*
- (c) requirements must be suitable for securing the attainment of the objective pursued and must not go beyond what is necessary to attain that objective.”*

4.1. Non discrimination

Member States should ensure that professionals can access regulated professions without being a national or without having to reside in their national territory. This means that it

should be examined whether the requirements under the national legal system are directly or indirectly discriminatory on the basis of nationality or residence.

Those Member States which communicated information to the Commission on this aspect confirmed that there is no discrimination based on nationality or residence.

4.2. Justification

Most of the Member States which regulate consider that the profession of tourist guide and travel agent needs to be regulated due to the nature of the activity presenting potential dangers for the consumer.

When asked to identify the specific overriding specific reason(s) of general interest, which justify(ies) the regulatory framework, Member States have reported the following reasons:

- *Protection of consumers and/or of recipients of services* has been identified by **Austria, Croatia, Cyprus, France, Hungary** (travel agent), **Lithuania, Romania, Slovakia and Spain**,
- *Preservation of cultural, historical, archaeological and artistic heritage* (for tourist guides): **Austria, Cyprus, France, Hungary** (tourist guide), **Italy and Spain**,
- *Prevention of fraud*: **Austria** (travel agent),
- *Ensuring dual vocational education*: **Austria** (travel agent),
- *Security of recipients of services*: **Luxemburg**,
- *Security of trade activities and in particular of loyal transactions*: **Luxemburg**.

Main arguments used to justify regulation in order to provide for consumer protection

Concerning tourist guides Member States referring to this public interest objective aim to protect consumers from poor quality of services and want to ensure that tourist get high-quality and correct information about their history, cultural and artistic history (e.g. **Lithuania**).

For instance, **Cyprus** considers that the knowledge of the history and art of Cyprus, of the archaeological and historical sights and of the natural environment and the modern life of the Republic by a tourist guide safeguards the accuracy and transparency of the information provided. That is why tourist guides provide services exclusively in the specified area for which they are qualified according to their training and this particular qualification of area specific knowledge ensures a high level of quality of the service provided. Similarly **Spain** argues that reserving some activities to qualified professionals guarantees proven expertise on the matter, which serves to preserve the intangible heritage values and guarantees a high quality service to consumers. In addition, the current rules can reduce the number of claims and complaints of consumers regarding inadequate performance of service due to lack of knowledge on visited places.

While **Romania** considers that the professional certification of touristic guides increases the professional skills and the knowledge of personnel involved in touristic activities and by this, the tourism safety and environmental protection, **Slovakia** brings forward that tourist guides are promoting the country of their birth/adoption and are therefore an important factor influencing the decision of tourists to return to the country visited.

Austria explains that the disadvantages of a deregulation would clearly outweigh the advantages because the standards of quality tourism and consumer protection would be heavily undermined (e.g. no security training and no basic legal knowledge of the people concerned). Tourist guides who spent a lot of time and money on the quality of their service would be pressured by the price policy of other providers which could lead to a drastic levelling of quality in the market segment, which would be a disadvantage for consumers. In tourist agglomerations, uncontrolled providers could literally step on each other's toes, with all the negative implications (e.g. aggressive business and advertising practices, initial business contacts on public ground, uncontrolled further illegal additional offers like ticket sales, provision of accommodation, transport services, travel services and the like). In a country as tourism-oriented as Austria, where tourism forms an high share of gross domestic product (approx. 14%), it is in the public interest to provide high-quality care for guests by trained service providers who can guarantee a certified level of quality. Finally, Austria points out that training of tourist guides also covers security on the bus which is to the consumers' advantage as well as in the interest of transport policy (e.g. fixed bus routes, bus parking spaces and bus access points).

Concerning travel agents, reference has to be made to the Package Travel Directive when bringing forward arguments relating to the protection of consumers. This Directive provides for minimum harmonisation meaning that the same legal conditions have to be implemented by all Member States as to their minimum requirements and only a few of them have considered it necessary to add professional qualification requirements in order to protect the consumer. On 25 November 2015 the new Package Travel Directive (2015/2302/EU) was adopted, bringing it up to date with the developments in the travel market and providing for further reaching consumer protection.¹⁵

In this context it is worth noting that **Austria** considers that the framework of regulations for running a travel agent business are very complex, including the complex legal conditions stemming from the Package Travel Directive. The knowledge of this legal framework, which can be ensured via training and regulation of the profession, is one of the preconditions for the proper practising of the business and ensures that the consumer is protected against damage and fraud.

Main arguments used for general public interest of *preservation of cultural, historical, archaeological and artistic heritage*

It has been observed that arguments brought forward focus more on concerns about consumers not getting the right information about such specific sights and less about measures how to protect and preserve these sights.

Italy for instance underlines that it is home to the greatest number of UNESCO World Heritage Sites and the Italian culture heritage requires area-specific expertise and knowledge. A fair and correct communication is not only fundamental for the

¹⁵ The new Directive entered into force on 31 December 2015. Member States have to transpose it by 1 January 2018 and it will be applicable from 1 July 2018.

preservation of Italian culture heritage but also for the benefit of the EU identity as Italy was the cradle of EU culture.

Austria mentions the importance of training for tourist guides which also includes training on safety measures like parking busses at dedicated places and guiding groups in an orderly way through sites, which they consider as measures which directly contribute to the preservation of such sights. In a similar way **Romania** mentions environmental protection training of tourist guides without however giving more explanation whether and how such training is necessary to protect the specific general interest of preservation of cultural, historical, archaeological and artistic heritage.

While the preservation of cultural, historical, archaeological and artistic heritage is without any doubt a general public interest which can justify a restriction, Member States invoking this general public interest should consider which (training) measures imposed on tourist guides actually contribute to the preservation of cultural, historical, archaeological and artistic heritage.

Main arguments used for general public interest of *prevention of fraud*

Austria brings forward for the profession of travel agent that it is important to regulate the profession despite all the consumer protection rules foreseen in the Package Travel Directive as this Directive only covers part of the risks to which a consumer is exposed.

In addition, Austria considers that qualified professionals will have a lesser tendency to commit fraud, because they risk their professional reputation and consequently the investments in their education and training.

Main arguments used for general public interest of *ensuring dual vocational education*

Another argument brought forward by **Austria** to justify the regulation of travel agents relates to dual vocational education because the qualified travel agent has the right to and the abilities to train apprentices. This inclusion of elements in the professional training on how to train others is an important factor in the dual education system, which applies also to travel agents in Austria.

Is regulation applied in a systematic and consistent manner?

Other examples for comparable professions where a similar approach has been adopted to address a similar risk

According to **Austria** the public interest is protected by comparable qualifications and access requirements for comparable professions in the tourist industry (e.g. hotels, gastronomy) as all those professions are regulated by the same act setting out the same main principles.

Romania refers to the application of EU acquis, which guarantees a systematic and consistent application of rules in the tourism sector by requiring qualification and specialisation without however specifying the EU legislation it refers to.

Examination of less restrictive or alternative means

Austria considers that the current system for tourist guides does not need to be changed as the number of licensed guides has been continuously increasing for many years, which

demonstrates that regulation on the access to the profession does not hinder new market entries.

While **Lithuania** has not carried out any studies to measure the effects of the regulation, it confirms that no complaints about the quality of tourist guide services have been received, which leads to the conclusion that the regulation is satisfactory. Similar arguments are being brought forward by **Cyprus**.

No other means to obtain the same results and to satisfy the overriding reasons were identified by **Romania**, which, however, informs at the same time that there is an intention to improve the current system.

In **Spain** reflexions are on-going in order to harmonize the different regulations that apply in different regions.

Cumulative effect of rules?

Whilst half of Member States regulate these professions in one way or another, almost all Member States seem to have rules tourist guides and travel agents have to observe when exercising their profession. However, no or very little explanations are given as to the cumulative effect of such rules.

Spain informs that rules are not cumulative but alternative and that the qualification obtained by any of these means is equivalent and mutually recognised by the tourism authorities of each region.

And **Austria** recalls that the requirement of membership with the chamber of commerce applies to self-employed persons in all trade profession, regardless of whether the profession is regulated or not.

5. RULES APPLYING IN MEMBER STATES NOT REGULATING THE PROFESSION

A number of Member States, i.e. **Belgium** (for tourist guides), **Bulgaria**, **the Czech Republic**, **Germany**, **Denmark**, **Estonia**, **Finland**, **the Netherlands**, **Poland**, **Portugal**, **Sweden**, **the United Kingdom**, **Iceland** and **Switzerland** have indicated that they do not regulate the professions of tourist guide and travel agent. However it has already been observed in previous discussions between Member States, in particular the one concerning the profession of electrician, that some kind of rules and regulations, not necessarily linked to access to the profession and/or established by private voluntary bodies applies in those Member States as well.

Overview and reasons for not regulating the profession

While among those not regulating the profession of tourist guides certain Member States have never regulated this profession, others have abolished rules requiring professional qualifications in a more recent past. For instance, **Poland** has changed its legislation in 2013 with the result that the only profession regulated in the tourism sector is the mountain guide because of the potential risks and dangers in the mountains. Based on the assessment that regulations were only justified if in line with the constitution providing that restrictions might only be imposed in order to protect fundamental rights, it was decided that access to the profession of tourist guide was mainly restricted to verify the knowledge of the professionals which was no longer considered justified, whereas access to the profession of mountain guide was restricted in order to protect live and health of

service recipients which was considered justified. Similarly in **Portugal**, the profession of tourist guide was regulated until 2011 when following a major reform on regulated professions all professions related with tourism were deregulated, namely: tour driver, regional and national tourist guide, tour manager, tour receptionist, head of reception, hotel receptionist, concierge, head housekeeper, laundry housekeeper, laundry employee, head table, waiter, cook, pastry chef, sommelier and bartender. The only professions still regulated in the tourism sector in Portugal are gambling and betting professions.

The profession of tourist guide has also been deregulated in the **Czech Republic** in 2008 albeit against strong protest of the professional organisations. An educational programme, including a bachelor at university level is available. The latter is based on the requirements of the European standard EN 15565 *"Tourism services – requirements for the provision of professional tourist guide training and qualification programmes"* which sets our common standards within the EU for training and qualification for tourist guides.

In the **Czech Republic, Denmark and Norway** education to become a tourist guide is available at university level. In **Finland**, the education to become a tourist guide is offered at upper secondary level. In higher education institutions there are programs which offer education in tourism research and hospitality management. In **Norway** education also exists at secondary and tertiary vocational level.

In **the Netherlands** the profession of tourist guide is not and has never been regulated and there is no regulatory framework for the profession of tourist guide. As the market and professionals seemed to be organising and regulating themselves there was no need for any government intervention. Given that **the Netherlands** aim at imposing as few requirements as possible on professionals in order to avoid setting up unnecessary entry barriers a *"framework for determining the proportionality of professional regulations"* has recently been developed. On the basis of this new framework, the decision to not regulate the profession of tourist guide is substantiated as follows: The first thing to be taken into consideration when assessing the need for professional regulations concerns the contractibility. This involves determining the degree to which it is possible for a consumer to enter into complete contracts, which is rather straight forward for the services of a tourist guide where the desired results can be described in advance and be subsequently checked after the service has been delivered. Given that the consumer is thus able to enter into a contract or make agreements with the service provider there is no reason to regulate the profession, because the interests can be protected by the customer him- or herself.

Estonia does not regulate any professions in the tourism sector; professionals are generally trained at vocational school level.

Switzerland considers it is more beneficial to encourage tourism by letting groups bring their own guides, even if the historical, cultural or geographical information they provide might not always be entirely correct. Concerning the profession of travel agents, Switzerland notes that travel agent work in large corporations or travel companies and that the profession of independent travel agent is disappearing. The very theoretical risk of a badly organised trip is not considered sufficient to necessitate introducing regulations.

Protection of general public interest

Member States not regulating a profession still want and need to protect general public interests, which in the case of the professions of tourist guide and travel agent mainly is the protection of the consumer. In general it is considered that other legislation on consumer protection either at national or at EU level is sufficient to ensure adequate protection of consumers. Other legislation intending to protect consumers might concern specific requirements linked to the premises where the service is provided.

The **United Kingdom** considers that there are three main ways in which the general interest objective is protected in the tourism sector without regulating the professions which primarily stem from EU consumer protection regulation. First of all there is the *Package Travel Directive* (Directive 90/314/EEC) aiming at the protection of consumers buying package holidays from travel agents and tour operators. In practice this protects the consumer by an obligation to provide a minimum of important pre-contractual information, by rules on liability for the entirety of the package, by an obligation to have financial protection in place against insolvency. Secondly there is the EU consumer protection law on *Unfair Commercial Practices* (Directive 2005/29/EC) and the *Consumers Rights Directive* (2011/83/EU) ensuring that basic requirements are met concerning the behaviour of service providers and consumer contracts. Similarly, **the Netherlands** consider that the legislative system in place to ensure consumer protection is sufficient.

For the profession of travel agent **Sweden** also refers to national legal acts deriving from EU legislation aiming at the protection of the consumer, in particular the Package Travel Directive 90/314/EEC. According to the Swedish law implementing this Directive the consumer is entitled to receive correct prior information and to a proper performance of the travel. There are also rules on the liability for damages resulting from an improper performance of package travel and rules on guarantees covering reimbursement and repatriation of travellers. Similarly **Portugal** explains that travel agents are subject to a specific legal regime, which requires them to be registered in the national register of travel agencies and tour organisers and to subscribe the travel guarantee fund and to have liability insurance.

In **Denmark** and **Finland**, consumer complaints can be considered by the Consumer Complaints/Disputes Board, which seems to be sufficient to protect general interest objectives. The situation is comparable in **Estonia**, where complaints by customers are being dealt with by the consumer protection authority. In addition, the popularity of social media ensures that bad quality and services are not ignored and are reflected in how well the service provider survives in the competitive market. In **Poland** there is an inspection mechanism for tourist guides aiming to ensure that minimum requirements are met.

In **Switzerland**, there is no particular system to protect the public interests as far as the profession of tourist guide is concerned. The *travel agency* industry on the other hand has organised itself internally on a private basis to compensate the risks associated with bankruptcy or insolvency of travel operators.

Voluntary certification systems

Such systems are in general operated by private bodies and aim to serve as a mark of good quality, indicating to the potential customer that a professional has followed a particular training, has a certain working experience and follows professional rules of good conduct.

For instance, in **Belgium** (Flanders), where the profession of tourist guide is not regulated, there is an official training programme for tourist guides. Officially trained guides receive a badge that certifies the acquisition of a basic set of tourist guiding competences. This certificate is nonetheless not a prerequisite for official guiding as tourist guides can operate in Flanders without any qualification. A different voluntary system is operated in the Walloon Region of Belgium where an administrative recognition procedure is offered on a voluntary basis. However, according to the data transmitted by Belgium only 10% of the guides currently active in this region have obtained this recognition.

In **Norway**, a voluntary certification system exists for the city of Oslo which includes written and oral examination as well as a practical test. Certification is organised by the official marketing organisation for Oslo, but there is no need to obtain this voluntary certification in order to provide services.

A number of widely recognised voluntary professional organisations in the **United Kingdom** aim to ensure the quality of services of tourist guides with several of them providing a 'blue badge' to their members as a sign of qualification and professionalism. Some of those organisations also include continuous professional development requirements. All 'blue badge' guides must study for up to two years at university level taking comprehensive series of written and oral exams and have to pass an exam. In certain places, such as Westminster Abbey or the Tower of London, 'blue badge' guides are the only external guides allowed.

Voluntary certification for tourist guides according to DIN EN 15565 is offered in **Germany** by the National Tourist Guide Association in cooperation with regional and municipal training providers. Courses offered include at least 600 hrs of training which can be designed for the needs of a specific region or depend on the occupational situation. Courses are subject to a fee and the certificate obtained is valid for three years and can be extended if preconditions are met. Concerning travel agents rules on initial and further vocational training according to the dual education system are drawn up in consensus between employers and employees.

In **the Netherlands**, following the spectacular growth of tourism in the second half of the 20th century, there was an explosive increase in the number of tourist guides leading to a self-organisation by the professionals in an initiative organising courses and an exam as a way of voluntary certification for tourist guides.

Professionals in **Estonia** can apply for professional certificates, seen as a mark of quality, through the voluntary certification system run by the Estonian Qualification Authority as they gain work experience. Further training is available through courses organized through professional associations and private vocational schools.

Member States that do not regulate the profession generally report about the existence of voluntary certification systems and about the market setting the rules in order to guarantee a good quality of services.

While voluntary certification and private certification schemes may reflect the functioning of a particular market, a multiplication of private schemes or an unclear situation as to what is actually needed in practical terms to exercise the profession could be equally burdensome for professionals wishing to access the profession as state regulation of the profession. For mobility purposes such schemes may prove to be barriers similar in effect to regulatory measures.

In this respect those Member States are invited to verify whether information made available via official websites of public authorities correctly reflect the legal as well as the practical situation or requirements concerning the access to a profession and where possible to assess the market impact on professionals.

6. CONCLUSION BY MEMBER STATES ON THEIR SCREENING EXERCISE

The following Member States have communicated their intention to maintain the current system either because it has been considered satisfactory or because it has been recently changed: **Austria, Cyprus, Czech Republic, Italy** and **Slovakia**.

Concerning tourist guides, **Austria** considers that the measures taken, namely regulation and voluntary certification system by the standard CEN 15565 have proved effective. In addition, **Austria** brings forward that regulation of the tourist guide profession is necessary 1) because it is a service usually exercised in a mobile manner without using resources or facilities and with extremely simple access to the profession as it does not involve any financial or organizational investment, which would mean that in case of de-regulation, new market entrants working on a part-time and seasonal basis, would be difficult to control with consequences concerning levies and social insurance contributions which might be evaded; and 2) because it is a typical one-person-business and therefore a de-regulation would not have a positive effect on employment policy.

Concerning travel agents and the need to preserve the dual education system, **Austria** refers to the fact that the mastership exam has proved to be very effective since its very beginning; moreover, it ensures that craftsmanship tradition continues to be upheld.

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Other Member States have announced that the current system is under review.

Spain informs that the requirement of a specific qualification to access the activity of tourist guides, which differs between autonomous regions, could be subject to further discussion between the central government and the regions as the central government aims at encouraging the harmonization of regulations on a collaborative basis since the central government has no competencies to legislate in this area.

In **Croatia** tourist guides are currently limited by territorial restrictions as they are only allowed to provide services in the county where they have passed the professional exams. Given that national tourist guides are disadvantaged in relation to providers from other Member States who can provide tourist guide services occasionally or temporarily anywhere in the territory of Croatia, it has been decided to amend the relevant act and abolish territorial restrictions.

France is considering reviewing the reforms introduced in 2011 in order to respond to a need for more service provider in the sector and in order to further simplify the administrative procedures. Discussion with professional associations opposing the reforms are on-going, but reform could consist in either introducing a simple declaration procedure on a central national register allowing professionals to provide services on behalf of a tourist operator or by maintaining present reserved activities while allowing a greater number of graduate people to get the professional card of “guide-conférencier”. In addition, reforms should include the development of electronic procedures facilitating access and exercise of the profession.

Italy is in the process of drafting a law proposal on the reorganisation of the tourism-related professions. This is considered necessary, in particular, due to the fact that since a national law (*'Bersani Law'*) was repealed in 2011, the requirements for access to the profession remained defined in an inconsistent way by diverging regional regulations. As a consequence and in order to ensure equal treatment between Italian service providers and those of other Member States providing temporary services, a special provision had to be adopted in order to make sure that (regional) authorisations to practice the profession of tourist guide are valid throughout the national territory.

Romania has announced its intention to improve the current system without however giving more information.

In **Belgium**, the badge system operated in Flanders will be changed.

In **Hungary** as a result of a reform aiming at the deregulation of the profession of travel agent the requirements of professional qualifications for tour operator and travel agency activity have been abolished.

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In the past years, a number of Member States have undertaken reforms either deregulating the profession of tourist guide or facilitating the access to those two professions or to one of them.

Deregulation of the profession

In the **Czech Republic**, the profession of tourist guide was deregulated in 2008 against strong protest of professional organisations. It seems that this reform had consequences on the labour market with the number of issued licences decreasing by 45% between 2008 and 2010. This is explained by the fact that qualified guides were replaced by unqualified ones and unauthorised business. In addition it is argued that the provision of services through unqualified guides constitutes a damage to the image of the country and therefore affects all tourism in the Czech Republic.

The profession of tourist guide has also been deregulated in **Portugal** as well as in some regions of **Spain** which eliminated the reserve of activity for tourist guides in the context of the implementation of the Services Directive.

In **Poland** the profession of tourist guide was deregulated in order to reduce costs of getting access to the profession and in order to open up the profession to a larger group of potential service providers which should also lead to an increase in supply of service. The intention of changes was to cause an increase in the share of young persons, students and graduates in the market and a related increase in the sector's innovation level. Poland emphasises in this context that the reform was introduced despite a strong non-acceptance by some social partners.

However, **Poland** also reports about some adverse effects of deregulation like a decrease in demand for local tourist guides because foreign groups bring their own guides, increase of the grey economy and restrictions for non-licensed tourist guides at certain sights allowing the entrance only with certified guides and thus obliging tourists to hire a guide of the specific sight.

In **Slovenia**, reform has been under discussion since 2012 with a view to deregulating the profession of 'tourist companion' and to partially deregulate the profession of 'tourist guide'.

Reducing administrative barriers - Reducing (practical) training requirements

In **France** a simplification of the qualification requirements that existed in the sector for guiding professions was initiated whereby several professions ("conférencier national", "guide interprète national", "guide interprète régional" and "guide conférencier des villes et pays d'art et d'histoire") were merged into the one profession of "guide-conférencier".

Similarly for travel agents, the authorisation scheme has been simplified from four different to one authorisation. In addition requirements concerning professional experience have been reduced. Recently, **France** has removed professional qualification requirements considering that professional liability insurance and financial guarantee requirements were sufficient to protect consumers.