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DEVELOPMENTS IN ITALY CONCERNING THE REGULATION OF TOUR GUIDES: AN ENDLESS DISPUTE

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Abstract

Tourism is complex and tour guides regulation is not an exception. Italian legislation historically protected local authorized and qualified tour guides that were entitled of a territorial exclusive, while tour guides coming from other regions of Italy different from the place of their qualification or from third Member-states were prevented to provide their services. Italy always considered a tour guide as an intellectual profession rather than a mere provider of services and resisted to the liberalization process processed by the European Union. By virtue of the necessity to save the national historic and artistic heritage, Italy created the “specialized tour guide” with territorial exclusivity which was later dismissed by the internal jurisprudence as it is contrary to the freedom to provide services principle established by the European Union. Consequently, the scope of this essay is to propose a solution able to balance the aspiration of Italy in protecting the national historic and artistic heritage and working rights of this category of service's providers.

Key Words: tour guides, freedom to provide services, cultural heritage, consumer protection, principle of proportionality

JEL classification: K39

Introduction

This article outlines of the conflict between Italian and European Union (EU) regulation and also focuses the recent internal law and jurisprudence which apparently should have removed any conflict. On the other hand, it also notes some new problems created by the recent legal developments. In this regard, it has to be pointed out that tourism is very strategic to the

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economies of southern European countries. In fact, protecting key elements of the tourism economy is naturally seen important (Fosman, 2008). Therefore, safeguarding the profession of tour guide has historically been seen sensitive in Italy both because tour guides are familiar with local circumstances and also because it is considered that the conservation of national historic and artistic heritage requires a local intellectual profession as it is tour guide profession (Rossoni, 2008).

The consequence is that Italy - but also Spain (Pérez, 2007) and Greece - has tried to use this crucial role of tour guide to justify labour market restriction on EU freedoms by interposing a public interest justification, also based on a EU unclear jurisprudence which did not define, beyond the reasonable doubt, the limit of internal public interest that allowed to derogate the common market freedoms.

In fact, the regulation of tour guides under Italian legislation and its compatibility with freedoms under European Union (EU) *acquis* has been a long running problem for tourism sector in Italy. The problem has not been resolved yet at EU level mainly because of the opposing views on the regulation of tour guides in northern and eastern Member-states with “out-going” tourists and southern Member-states with a high level of “incoming” tourists. In fact, the incoming states have periodically sought to protect their labour markets and especially the relevance of this intellectual profession in the protection of their cultural heritage and of a consequent territorial exclusive, while the first countries stated their interest in reducing the cost of production by using a tour guide of the same nationality as the tour organiser and tour party instead of paying a local tour guide, thereby achieving a liberalization of tour guides profession.

As to the Southern countries, they aim to defend the tourist sector as one of the most important of their economy that includes the profession of tour guide which is renowned as one of the most connected with local reality. They point out that the conservation of national historic and artistic heritage requires a local tour guide. In other words, “incoming” EU member States use to justify labour market restrictions by claiming a public interest argumentation.

The public interest in question is to ensure the correct diffusion of knowledge of the historical and artistic heritage in Italy, safeguard Italian national culture by the mediation of professional personnel and protect

consumers by delivering a high standard of tourist services (Tesauro, 2010).

The Italian context

The legal position in Italy regarding tour guides has been ruled on by the decision of the European Court of Justice (ECJ) in 1991 (*Commission v Italy*, C-180/89, 26.02.1991).

In this case the Court decided that a local Italian law which prevented workers from other third Member-states from temporarily providing guide services of a general guiding nature unless they had a local qualification, disproportionately restricted their common market freedom. Therefore, while the ECJ accepted that national laws could impose labour market restrictions based on the natural and national interest of conserving and promoting cultural heritage, it held that the specific ways adopted by Italian law went further than was necessary to achieve this higher interest and that less restrictive means were available in order not to jeopardize the self-interest of the tour operator in choosing a tour guide of its own nationality because the tour guide, being of the same mother-tongue as the tour party, is *per se* more aware of the specific needs and interest of a co-patriot customer.

The ECJ also stated, and this has become especially crucial in the Italian context, that Member-states remain free to set up restrictions on tour guides of other Member-states in cases where the visit include museum and historic monuments. This was perceived in Italy to mean that laws which prohibit guiding in such places unless with a specialized, professional tour guide authorized under Italian law, were compatible with Community law.

This decision of the ECJ in *Commission v Italy* did not solve the dispute of regulating tour guides in Italy. Actually, the uncertainty of this ruling caused new ones.

Firstly, by allowing state control over tour guides in museums and historic monuments, it effectively required the establishment of a new control system over the authorization of specialized tour guides in such places, with the effect of creating a new type of tour guides instead of rolling-back the full extent of regulated professions. But there was no specific legal base in Italian law for issuing this. In Italy there was no

definition of a “specialized tour guide”, but only of a tour guide which main task is to explain to tourists the cultural and artistic sites.

Unfortunately, as above mentioned, the 1991 ECJ ruling did not distinguish clearly the difference between tour guides and specialized tour guides. Furthermore, it did not even clearly stress the definition of “museums or historic monuments” and this has had a significant impact on what has happened in Italy since. This lack of guidance meant that it was up to Italy, the “offender party”, with one of the largest and most diverse cultural and historic heritage in the world (present in almost every town and village), to define what is a “museum or historic monument”. And Italy was slow to do this commitment also because it already had various internal legal classification systems of monuments, churches, buildings, artistic units and historical city-centres. Therefore in 1995 Italy provided that Regions, in collaboration with local Monuments and Fine Arts State Departments, had the task of identifying and classifying the historic sites that have to be interpreted by specialized tour guides who possessed legal qualifications, particularly in regard to the completion of a an examination. The Presidential Decree (13.12.1995) also stated that all the sites qualified by UNESCO as mankind's world cultural heritage could only be visited by parties employing specialized tour guides. This meant 2450 cultural sites around all Italy (including historical centres of Rome, Florence, Siena, Perugia, etc.) were of exclusive competence of local authorized tour guides.

This situation increased because of constitutional changes since 2001 (Constitutional Law 3/2001) that stated the devolution of tourism subject to each Italy's Region with exclusive competence on this sector by the latter. In fact, when Italy reformed its constitutional structures at that time this also contributed to the difficulties and procrastination of creating the legal definitions of specialized tour guides and museum or historical monument. Still remained a competence within the State, being considered that the subject-matter “professions” (which includes tour guides) pertained to the central government, while the subject-matter “tourism” was definitely delivered to local governments.

The result was a large expansion of the list of places falling particularly within the definition of historic monuments, even wider than the UNESCO criteria adopted by the internal Decree of 1995, with the effect of including all city centres, the medieval or baroque part of the city or

the complete area around the main square, but without specifying particular museums, monuments or churches.

At the end, there was little doubt that behind all this preservation's attitude, there was an “economic war” in which tour guides trade bodies used political pressure to preserve their labour market monopolies in order to exclude tour guides coming from other parts of Italy or from third Member-states, even occasionally.

This led the European Commission to threaten legal proceedings against Italy which sourced out with a default letter² in which it started an infraction's procedure against Italy under Art. 226 of the European Community Treaty (ECT) for violation of Art. 49 (ECT) by having kept disproportionate restrictions against the freedom of services in labour market.

The core of the Commission's complaint was that a correct interpretation of ECJ ruling above mentioned, required the following: “museum or historic monuments” must be understood as referring to a single site and not a whole city or an extended area (as happens for instance with the cities of Verona and Venice, in Veneto region); when classifying historic sites Member-states must act according to the proportionality principle which obliged to base internal legislation only on the conservation of national historic heritage and on general interest of consumers and nothing else; finally, specialized tour guides must be limited to specific sites and with effective access control by local authorities.

Therefore, in order to avoid the possibility of a new legal proceedings in front of the ECJ, each Italian Region started to prepare a new list of specific sites to be visited only by local guides. But Italian Government at State level this time was unexpectedly radical on this issue. In fact, Italian Parliament discussed a measure which was intended to completely liberalize the activity (not defined this time in the draft law as “profession”) of the tour guide. Initially this proposal was strongly criticized by the Regions because it appeared to infringe the allocation of competence between State and Regions, but the Italian Government rushed into by enacting a Law Decree³ in 2007 which introduced the following changes: a) it abolished the State examination required to achieve the tour guide legal qualification; b) tour guides were permitted to

2 Dated 19.11.2003, SG(2003)D/233683

3 Dated 31.01.2007, n. 7

carry out their activities when they obtained a degree in Archeology and Art's history; c) tour guides could operate anywhere in Italy without any area limitations. Some amendments were issued in the subsequent Law 40/2007 which provided to adjust some measures, considered too radical by stakeholders, particularly the tour guides associations. Firstly, each Region was acknowledged as having the exclusive power to rule on the requirements of the professional qualification of tour guides, apart from compliance with the general principles of the legal system and of this last piece of legislation. Secondly, each Region was permitted to grant the qualification of tour guide by means of a specific examination or by means of the applicant's career. In both cases, the qualification was restricted to the regional (even of the single province) and was not suitable for the whole State. Thirdly, in case the Region decided to require the examination as a compulsory step for qualifying tour guides, the exam had to include the knowledge of a foreign language (one between English, French, German or Spanish) and also a deep knowledge of the culture of the territory. On the other hand, any reference in the internal legal framework related to a prior administrative authorization from the local police was cancelled.

Unfortunately, another occasion was lost in relation to define the “specialized tour guide”, being considered the latter only in relation to a faculty that each Region had to set no-binding courses in order to increase the skills of each tour guide especially in new sectors like rural or nature tourism, but without any common path among the Regions on how to achieve this upper qualification.

On the other hand, not only those rules had to be applied in regard to tour guide regulation. While tour guides became to be considered a fully-fledged economic activity, any derogatory criteria should be supported only by “imperative reasons of general interest” as set out in Art. 4.1.8 of Directive 2006/123/EC on service in the internal market⁴ as including, among other required standard, “the conservation of historic and natural national heritage”. Particularly, Recital (33) of this Directive explicitly states that “Consumer services are also covered, such as those in the field of tourism, including tour guides”. The break-in of this corner-stone piece of legislation in EU acquis definitively has changed the scenario. It is worth apparently nothing the Recital (31) of this Directive that does not affect Directive 2005/36/EC on the recognition of professional

4 OJ L 376/36, 27.12.2006

qualifications⁵ which established that with regard to temporary cross-border service provision, a derogation from the provision on the freedom to provide services in this Directive ensures that Title II on the free provision of services of Directive 2005/36/EC is not affected. In other words, tour guides cannot derogate to the liberalization scheme provided by Directive 2006/123/EC. This means that any territorial monopoly will not be tolerated by EU Commission being tour guides as any other service providers and consequently none of the measures applicable under this Directive in Italy, where the service is provided, is affected by the provision on the freedom to provide services. Therefore there are not public safety or general health reasons to derogate to the EU *acquis* in regulating the tour guides discipline in the internal legal framework, while still has remained a general interest to protect the national cultural and artistic heritage, but in the limits established by the ECJ ruling above mentioned. In the same way, the Expert Group Meeting named by the EU Commission stated that “it follows from Title II of the Directive on Professional Qualifications that a Member State can provide for a prior recognition of professional qualifications only for professions having public health and safety implications, tourist guides do not fall under that category”⁶.

In line with these interpretations, two Italian Constitutional Court rulings⁷ on this regard reasserted the supremacy of Art. 56 of Treaty of Functioning of European Union (TFEU) by which restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. While Italy had apparently and temporarily resolved its problems in complying to the EU free movement rules for workers and service providers, the particular way it has done so caused a new difficulty this time for Italian tour guides. Arguably, the new liberalization had in fact created a “reverse discrimination” (Righi, 2013) against Italian tour guides. In fact, EU tour guides were free to work without any restrictions, in consideration that the only requirement was the authorization or qualification obtained in their own State of origin, while Italian institutions still not resolved the main issue related to their tour guides.

5 OJ L 281, 23.11.1995

6 EU Commission Expert Group, State of play of the internal market in the tourism sector, 19.02.2011, 12

7 Rulings 222/2008 and 271/2009 of Italian Constitutional Court

The next step would be that territorial restrictions among Italian tour guides would not be tolerated and consequently each qualified tour guide would operate in the whole territory of Italy, regardless of the place (and the regional legal framework) where the qualification was obtained.

Those principles were finally transposed in the internal legal framework by two pieces of legislation⁸ which explicitly stated the principles of no discrimination and equal treatment between Italian tour guide and third Member-states tour guide who occasionally operates in Italy accompanying a group of tourists from the state of origin to visit Italy and for this scope intends to provide to them the required professional service.

Tour guides from third Member-states EU and from outside EU

Until the adoption of the previously mentioned laws, the paradox was that Italian tour guides were still bound by each Region's own legal provisions to work only in the Region (or even single province) where they had been granted a tour guide authorization or qualification, regardless of whether they are resident in this Region or not. Each qualification applied only to that Region and so they could not work in other Regions (or even provinces) without having obtained a tour guide authorization or qualification in each Region. In other words, the situation was that whereas an Hungarian tour guide from Budapest could describe and explain the beauties of Venice while accompanying occasionally a group of tourists departed together from Hungary, a tour guide from Milan would be prevented to doing so.

It was clear that this situation could jeopardize the Italian constitutional framework, particularly the principle of equality of treatment which is not allowing any differentiation to be made between Italian and other EU Member-states tour guides. The achieved result was that there are no longer any restrictions in Italy on tour guides working in other Regions without a qualification from that Region.

On the other side, in the case of a tour guide from outside the EU who is lawfully resident in Italy with a permit to stay and is established in Italy, each Region creates a legislation which provides a specific application form, called "SCIA" (Certified reporting of beginning of activity) which must be filled and submitted to a local municipality. In the application

⁸ Law 234/2012 and Legislative decree 79/2011

form the applicant must disclose personal data such as: name, place and date of birth, residence, tax code and moreover the details of high school or university certificates, as well as details regarding the working permit as non-EU citizen. The applicant must also declare that has no criminal records. The second step would be to pass an evaluation/examination according to the legal framework of the selected Region by the applicant. In case the non-EU tour guide could not pass the previous examination in Italy, this activity could not be developed in the territory, neither occasionally as occurred to third Member-states tour guide and the first could not operate in Italy accompanying a group of tourists without the presence of an Italian local guide, especially when the latter is required to explain to tourists and to interpret for them the cultural and artistic sites according to each Regional law, while the non-EU tour guides would function as the person in charge to satisfy the tourist's requirements and to solve any problems that may arise during their stay and travel in Italy.

Further developments

On the other hand, the full transposition of Art. 56 TFEU and of Directive 2006/123/EC was not concluded because of the shared competence between State and Regions. Their constitutional mechanism in enacting the related discipline delayed the functioning of freedom to provide services by the tour guides. The consequence was a new infringement proceeding activated by the EU Commission⁹ related to the failure by Italy in fully transposing that EU discipline. Consequently, it was only with a new piece of legislation¹⁰ that was granted to all EU tour guides, irrespectively the state of origin, the freedom to provide service and, for Italian qualified tour guides, the freedom to provide service in the whole Italian territory, without any local authorization.

Nevertheless the dispute was not solved, because of two administrative decrees of Italian Ministry of Tourism issued in 2015,¹¹ which established and created the “specialized tour guide” by virtue of ECJ ruling of 1991 *Commission v Italy*, as explained above, which explicitly recognized a derogation to the freedom of providing services while the protection of general interest is at stake. The core issue is the correct and qualified activity which allegedly only local tour guides could deliver in the

9 EU pilot 4277/12/MARK

10 Law 97/2013, art. 3.

11 Mibact Decrees 07.04.2015/11.12.2015

interpretation and explanation to the tourists of the national cultural and historic heritage. A misleading and poor providing of this service could affect the same Italian national heritage and consequently infringe the consumer protection. To comply with EU acquis and at the same time to protect those general interests, those administrative decrees issued a new list of 3176 Italian cultural sites which are subject to local “specialized guides”, with the exclusion of tour guides coming from different regions (or provinces). In other words, the notion of “specialized tour guides” was again utilized by Italian Government as a *passé-partout* to restrict illegally the market and to favor local providers, while apparently the freedom to provide services of third Member-states tour guides was guaranteed.

The landfall in front of the Council of State (the highest jurisdictional body which is competent for administrative disputes in Italy) was therefore unavoidable. The ruling¹² declared void the above mentioned Decrees of Ministry of Tourism, because they were limiting the EU freedom of services principle. Particularly, the Council of State admitted the power of Italian Ministry of Tourism to limit the freedom of providing services and to restrict a fair competition, only when this limit is related to upper reasons of national cultural heritage protection. Furthermore, this power could be utilized exclusively when the internal legal framework has no other measures more proportionate to achieve the same goal. That is, under the principle of proportionality, the content and form of internal legislation should not exceed what is necessary to achieve the objectives of the TFEU. Furthermore, this principle of proportionality should be based in an objective general interest which is not regulated by other rules yet. In other words, the Council of State stated that an exaggerated segmentation of the market could infringe the principle of proportionality. A list of more than 3000 cultural sites of exclusive competence for local tour guides seemed a measure disproportionate aimed only to protect local workers by creating a false “specialized tour guide” which services in reality would cover the whole Italian territory, relegating the other tour guides to play only a marginal role (Vipiana, 2017).

Tour Guide Profession *de lege lata* and *de lege ferenda*

It cannot be denied that EU law and its basic principles regarding the ban on nationality as well as the place of establishment discrimination, the freedom of movement for service providers and the freedom of

12 Judgement 2017/3859

establishment apply as much in the tourism sector as any other. Tourism, by definition, is a transnational and international subject-matter. It cannot be limited by national or regional boundaries. Tour guides play a key role in introducing the host state's culture to visiting tour groups and in facilitating the freedom of tourists to benefit from their experience, thereby increasing tourist satisfaction and consumer protection.

In this perspective, Italy has at last begun to put in place a draft of framework law governing tour guides which conforms with EU principles, particularly Italian Ministry of Tourism is drafting a new piece of legislation to be submitted to the Italian Parliament. This new act would regulate, from one side, the admitted derogation against the principle of freedom of services, but strictly limited to protect national cultural heritage, under reasonableness, proportionality and impartiality criteria. Therefore it is expected a new list of special sites under exclusivity of local tour guides. The number of special sites would probably not exceed more than 20 sites, particularly those that are really part of the collective consciousness of Italy (i.e. the Coliseum), in which case even tour guides from third State-members would be excluded. On the other side, Italian Government would reassert the principle of “national qualification or authorization” which means that any qualified tour guide would provide the services in the whole territory of Italy with no boundaries or other territorial limitation.

Nevertheless, the scenario is not completely cleared up; in fact, at national level tour guides associations are currently divided in two parties: the conservative one which aim is to roll-back the legislation at the time of the territorial exclusive, that is before the issue of the above mentioned law 97/2013 and another part which is more focused in elevating the quality of services to be delivered to the tourists and demands more liberalization in the sector, without prejudice in any case of a prior examination as the imperative legal requirement to become a tour guide. At this stage, it is of important to make some considerations *de jure condendo*. The coming legislation should issue a common definition of the tour guide to be shared between State and Regions. In fact, a tour guide is a person who not only guides visitors in the language of their choice and interprets the cultural and natural heritage of an area but also usually has qualifications in a specific area which has been issued and/or recognized by the appropriate authority. In other words, tour guides not only play an important role in communicating the cultural and natural heritage of Italy to visitors but also help to ensure the sustainability of that

heritage by making visitors aware of its importance. Tour guides are very often the first and sometimes even the only contact persons that visitors have. As such, they add considerably to the destination's reputation. As key personalities between guests and hosts, and, at the same time also serve as a marketing tool for domestic advertising.

Tour guides substantially contribute to the understanding of a country, a region, and its self-perception. Their technical expertise; their special knowledge of local and their personal, individually adapted tours enhance the guest's experience. For this reason, the strict application of EU principles in regard to the freedom to provide services should not mean an uncontrolled deregulation of this intellectual profession. On one hand, tour guide activity is mostly regionally specific and dependent on location with comparatively little European mobility. Thus, professional qualification in this field also has far fewer points of contact with freedom of establishment and services as compared to qualifications for other professions. In other words, it is the same tourist that requires a local tour guide.

From the perspective of consumer protection it is a matter of fact that only an appropriately trained tourist guide can give the client authentic and correct information and, thus, render reliable service in return for a fee. On this regard, it seems valuable to oblige tour guides to subscribe an insurance for civil liability to cover damages occurred in case of contract's infringement. While tourist guide's only resource is the knowledge and the quality of the communication of that knowledge – both require technical competency, it seems desirable to establish a fair fee in line with the importance and propriety of the service provided, without prejudice of the EU competition law which prohibits any cartel aimed to false the market and the fair competition of the providers. Furthermore, the tour guide framework law should contain also a clear provision aimed to delimitate the role of museums/church/etc. guides employed by these bodies or even more carrying out their services for free as volunteers. That is to recognize the role of tour guide as an intellectual profession that deserved to be fully regulated (and not just authorized or qualified) like other professions as lawyers, doctors, etc. On the other hand, being a tour guide a fully-fledged profession, it is undoubtable that there is even an increasing trend towards further training to be qualified as a tourist guide, better towards a continuous educational training of this profession. That is another objective that the coming law should address: to foster lifelong learning.

On the contrary, a mere abolition of the legal regulation of the tour guide profession would lead to devalue the profession in general and be a hardship that could hardly be communicated to all those hundreds of micro-entrepreneurs who invested up years in their studying and training and whose professional qualifications would thereby be devalued. In fact, tour guides in Italy are for most exclusively sole proprietors who do not run a physically existing business but whose entrepreneurship consists exclusively of their personal, qualified service. If this service is deprived of its legal basis by deregulating it, the profession will be completely cleared out, and the market will be swamped with unqualified providers such as the so-called “free tours”. Consequently the quality of service will suffer. Additionally, training providers, publishing companies and editors/distributors of technical literature, etc. would also experience negative effects on employment.

With regard to safety issues, thanks to their professional and, more importantly, regional knowledge of Italy, tour guides know immediately what measures to take in case of health or security problems. Well-trained, professional behavior in emergencies; precise knowledge of local conditions (emergency numbers, etc.); first aid; knowledge of the on-site traffic regulations and traffic organizations as well as the national language are integrated components of regulated training and, therefore, naturally part of tour guides’ knowledge. Contrary to what an unqualified guide would not be able to react appropriately quickly in emergencies. Finally it has to be analyzed if the EU, in accordance to Art. 195¹³ of TFEU, has a direct competence in complement the internal tourism legislation of Member States in relation to the tour guides. On this regard, it has to point out that Art. 195 TFEU is a norm that specifies a

13 The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector. To that end, Union action shall be aimed at: (a) encouraging the creation of a favourable environment for the development of undertakings in this sector; (b) promoting cooperation between the Member States, particularly by the exchange of good practice. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish specific measures to complement actions within the Member States to achieve the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States.

competence which is categorized in the Article 6¹⁴ of TFEU. While Article 195 of TFEU seems sufficient to represent a legal basis to found EU tourism law as an autonomous area, notwithstanding, the clear aim to guarantee legislative space to the Member States drives EU to define expressly the complementary competences and the sectors invested by, which external limit is based on the assumption of the prohibition of harmonisation of any internal laws and related administrative implementing measures of the Member States.

In other words, while it seems clear that Article 195 of TFEU does not allow to establish harmonization of tour guides discipline among the Member-states, on the other side EU maintain the faculty to complement tourism national policies in the key of Europe throughout this complementary competence. This mean that it would be advisable, in regard to tour guides, to formulate and implement actions with economic impact aimed to boost this profession, as well as occurs usually in the development of tourism industry. This necessarily implies the conclusion that, on one hand, legally binding measures may be adopted as supporting measures of tour guides profession according to the EU complementary competence under Article 195 of TFEU, while on the other hand EU binding legislation (namely regulations and directives) could reach indirect effect of harmonizing the national tourism framework in this sector.

This is exactly the case of Directive 2006/123/EC which objective is to realize the full potential of services markets in Europe by removing legal and administrative barriers to trade. Could this aim of simplification measures introduced by the Directive be relevant for tour guides and consumers to provide or use these intellectual services in the Single Market? There is no consensus to this question in Italy. Italian Government always has considered the profession of tour guide as governed only by Directive 2005/36/EC on the recognition of professional qualifications and Italy applied that directive by protecting the right to free movement of tourist guides, in keeping with the principle of subsidiarity in force in relation to professions and cultural assets and not as regulated by the Services Directive which instead provided for

14 The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health; (b) industry; (c) culture; (d) tourism; (e) education, vocational training, youth and sport; (f) civil protection; (g) administrative cooperation.

exemptions from the authorization schemes and from the rule stipulating that it must be possible to exercise the activity throughout the national territory of a country for overriding reasons relating to the public interest, such as the conservation of national historical and artistic heritage.

Notwithstanding the recent judgement stated by the Council of State, Italy stresses that has a particularly rich cultural heritage, including almost 200 000 listed properties from different historical and artistic periods, and to work properly, therefore, a tour guide requires a deep knowledge of that heritage in a limited geographical area (regional). Therefore tour guides thus normally specialize in the interpretation of a specific aspect of cultural heritage, and their profession is not to be confused with that of a tour manager who accompanies a group throughout their trip. The consequence is that the rules governing the profession of tour guide, being a matter closely linked to the promotion and conservation of national heritage, should be fully exempted by Art. 10 of the Services Directive in the application of the latter Directive.

In other words, beside the solution temporarily proposed to create a proportionate, reasonable and impartial list of special sites in order to accomplish with the local jurisprudence and the EU acquis, there is a clear target by the Italian Government to reach a clarification, once and for all, if the exemption provided for in Art. 10 of the Services Directive should fully apply (this could mean to reinstate the territorial exclusivity for reason of general interest represented by imperative reasons of cultural heritage protection) or the maximum limit achievable could be to create the above mentioned list of special sites, to be disclosed only by local Italian guides. It is no small matter, being considered that the performance of tour guides services in non-regulating third State-members is high and de-regulation elsewhere is overdue. The consequence is that tour guides accompanying incoming groups in Italy have an uncertain status and they can explain the national cultural heritage of Italy without having obtained any qualification in their origin's country. Consequently, Italy is more focusing in amending the Professional Qualifications Directive instead of the Services Directive which regulation Italy does not consider tour guides falling in, claiming for awareness of market abuse and commensurate action and trying to extend a proposal of skills certificate of tour guides in all EU. In line with this view, Italy stresses that, for all the reasons above stated, that the organisation of trade fairs, the services of car rental as well as the services delivered by a travel agency, a leisure service delivered by sports centres

and amusement parks, all have nothing to compare with the tour guide services which is performed by virtue of a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications aimed to protect an objective general interest: that is the cultural national heritage.

On this regard, it is fundamental to analyse also the definition of cultural heritage as a universal value for individuals, communities and societies, to be preserved and passed on to future generations (Ferretti, 2013).

Particularly cultural heritage comes in many shapes and forms: tangible (buildings, monuments, artefacts, clothing, artwork, books, machines, historic towns, archaeological sites), intangible (practices, representations, expressions, knowledge, skills, language and oral traditions, performing arts, social practices and traditional craftsmanship), natural (landscapes, flora and fauna) and digital (such as resources that were created in digital form or that have been digitalised as a way to preserve them including text, images, video, records) (European Commission, 2018).

Being the tour guide the interpreter of all of this for the tourists, Italy considers that this activity is something completely different from a mere economic activity to be disciplined under the Services Directive. Neither a derogation could be sufficient. The real target is the fully no application of this piece of legislation for tour guides.

Conclusion

It cannot be denied that EU *acquis* regarding the suppress on nationality discrimination and the freedom of movement for service providers probably apply as much in the tourism sector as any other. The identity of a territory which the tour guide seems to be the first advocate as well as the the main promoter in introducing the state's culture to tourists (Tavernese, Nicotera L., Nicotera R., 2014), it suggests that is difficult to issue a governing law actually capable to strike the balance between the freedom of movement for workers and the prerogatives of which local authorities are very reluctant to cease to EU; not to mention the undeniable effect on local employment, especially those tour guides which have invested time and efforts to reach high skills at University

level in studying local cultural heritage and consider essential a deep knowledge of the territory to appropriately perform the related services to the tourists. The scenario could be solved by delivering to EU a stronger competence on tourism sector rather than the current complementary competence in accordance with Article 195 TFEU, with the aim to harmonise at least the basic principles of tourism, included the tour guides law (Cavallari, 2016). The undesirable alternative is to expect further litigation before the European Union Court of Justice in the near future to definitively solve this dispute, which seems endless.

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