



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.05.1997
SEC(97) 837 final

**COMMISSION WORKING PAPER
ON TOURIST GUIDES**

1. Introduction

The Commission has recently received several complaints about exercising the activity of tourist guide. They have come from nationals of some Member States who complain about obstacles encountered in other Member States.

Apparently, guides from some Member States accompanying "tours" in other Member States have been prevented from "guiding" their groups of tourists. The national authorities insist that they have a tourist guide "licence". If they cannot produce such a "licence", they are accused of working illegally as a guide and fined.

The guides who have been fined in another Member State, on the grounds that they have been working as a tourist guide without having the professional qualifications required in that country, have informed the Commission of the circumstances, which they consider infringe the freedom to provide services established by Article 59 of the Treaty. Petitions along these lines have also been submitted to the European Parliament's Committee on Petitions.

The Member States mentioned in the complaints believe that it is right to restrict the job of tourist guide to those who possess certain professional qualifications and to bar those who do not have such qualifications. Those found working illegally are prosecuted and punished, regardless of the nationality of the person concerned. Indeed, in these countries the only persons allowed to work as tourist guides are those who have undergone training and passed the proper examinations to qualify as a "tourist guide", the idea being that the information given to tourists should be provided by qualified professionals with the proper knowledge of the history, culture and so on of the country in question.

2. Applicable Community legislation

2.1 *Council Directive 75/368/EEC of 16 June 1975 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of various activities (ex ISIC Division 01 to 85) and, in particular, transitional measures in respect of those activities¹*

In the 1960s the European Community took a sectoral and vertical approach to the recognition of professional qualifications and adopted a series of directives based on Articles 49, 54, 57, 63 and 66 of the Treaty. Several directives of this kind were adopted initially to facilitate access to specific professions by guaranteeing, subject to certain conditions, that experience acquired in the country of origin would be recognised in the host country. These "transitional measures" were introduced pending the mutual recognition of diplomas.

In the absence of any mutual recognition of diplomas, Directive 75/368 lays down transitional measures allowing as sufficient qualification for taking up the activities in question in host Member States which have rules governing the taking up of such activities, the fact that the activity has been pursued in the Member State whence the foreign national comes for a reasonable and sufficiently recent period of time to ensure

¹ OJ L 167 of 30 June 1975, p.22.

that the person concerned possesses professional knowledge equivalent to that required of the host Member State's own nationals.

This directive applies to "couriers" but not to "tourist guides". Indeed, the latter are expressly excluded from the scope of the directive.

In accordance with this directive, the host Member State is required to allow any Community citizen to work as a "courier" if he can show, by means of a certificate from a competent authority, that he has at least two years' experience in his country of origin.

A migrant who does not have the experience required by this directive but who possesses the diploma or qualification needed to exercise the profession in question in the country of origin can invoke the decisions of the Court (cf. in particular the Vlassopoulou and Aguirre Borrell cases²) to secure recognition of diplomas and qualifications. In accordance with this case law, the host Member State is required to consider the diplomas obtained by Community citizens in other Member States and to carry out a comparative examination of the qualifications obtained by the migrant and those required in the host country. If this examination shows that the training is equivalent, the migrant's qualifications must be accepted as they are. On the other hand, in cases where there is only partial correspondence, the national authorities are entitled to require that the person concerned show that he has acquired the missing knowledge and qualifications.

In theory, the provisions of Directive 75/368 apply both to establishment (Article 52 of the Treaty) and to the provision of services (Article 59 of the Treaty). This being so, it is routinely accepted that Article 59 of the Treaty requires not only the elimination of all discrimination against a person providing services on the grounds of his nationality but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services. The Court has considered that a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is to guarantee the freedom to provide services³.

Consequently, in the event of a temporary provision of services, the provisions of the directive (especially the requirement to produce a certificate of experience) must be interpreted with due flexibility, with regard to the temporary nature of the service and without forgetting that the aim of the directive, as explicitly indicated, is to facilitate the effective exercise of freedom to provide services. Indeed, in the case of the temporary provision of services, excessively strict application of the provisions of the directive could produce effects contrary to the stated aim.

The Commission recently adopted a proposal for a directive establishing a mechanism for the recognition of diplomas for the activities covered by directives laying down transitional measures (such as Directive 75/368/EEC). This mechanism will allow migrants to apply for the recognition of their diplomas, if they lack the professional

² Judgments of 7 May 1991, Vlassopoulou C-340/89, Reports p. I-2357, and 7 May 1992, Aguirre Borrell C-104/91, Reports p. I-3003.

³ Judgment of 25 July 1991, Dennemeyer C760/90, Reports p. I-4221.

experience required to invoke the directive on transitional measures relevant to their activity. With regard to the temporary provision of services, the criteria of the Dennemeyer judgment are still applicable.

2.2 *General system of recognition of professional qualifications* (Directives 89/48/EEC and 92/51/EEC)

The general system for the recognition of professional qualifications (known as the “general system”) which was introduced with Directives 89/48/EEC and 92/51/EEC is based on the assumption that if someone possesses the professional qualifications needed to pursue a specific profession in a Member State, this should entitle him to pursue the same profession in another Member State.

Depending on the level of studies recognised by the diploma, the applicable provision is either Directive 89/48/EEC⁴ on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years’ duration (for those with secondary diplomas and three years’ training) or Directive 92/51/EEC⁵ on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (for those with secondary diplomas and one or two years’ training, certificates and other professional qualifications).

These directives apply to the professions that are not covered by a special directive (health professions, architects) or by a directive introducing transitional measures (such as Directive 75/368/EEC applicable to couriers). They apply solely to regulated professions, i.e. professions for which the possession of a diploma is an essential requirement. with the result that anyone exercising the activity in question without possessing the necessary diploma is liable to legal proceedings (administrative or penal) for unlawful exercise of the profession. The general system is therefore supposed to apply to the profession of tourist guide in countries where that profession is regulated.

Each Member State is free to regulate or not a profession in its territory and to decide the level and content of the training required to exercise the profession in question. The “general system” directives introduced a system whereby the authorities in the host country are obliged to recognise the diploma held by a migrant if: a) the diploma was issued by a competent authority in the migrant’s country of origin and the migrant, by virtue of the diploma, is fully qualified to exercise a regulated profession in the country in which it was issued; b) he applies for recognition in order to exercise the same profession in the host country; c) the profession in question is regulated in the host country.

When the profession in question is not regulated in the country of origin, the authorities in the host country can ask the migrant to prove that he has acquired two years’ professional experience in the previous ten years.

If the profession of tourist guide is not regulated in the host country, i.e. a diploma is not required to exercise the profession, the migrant does not even need to apply for recognition of his qualifications.

⁴ OJ L 19 of 24 January 1989, p.16.

⁵ OJ L 209 of 24 July 1992, p.25.

The recognition system introduced by the “general system” directives does not represent an automatic system of diploma equivalence but a system of recognition for the exercise of specific professions. Each application is considered individually on the basis of the professional activity for which the migrant is qualified by virtue of his diploma in the country that issued it and on the basis of the professional activity he wants to exercise in the host country.

Consequently, the tourist guide who wants to exercise his profession in a Member State other than the one in which he was trained is subject to the recognition procedures introduced by the “general system” directives, provided it is a country that regulates the profession. There is provision in the system for “conversion”, when the migrant possesses a diploma at the level referred to in Directive 92/51/EEC and when in the host country a diploma at the level referred to in Directive 89/48/EEC is required. In the event of “substantial” differences between the training undergone by the migrant and the training required in the host country, there is also provision for the host country authorities to impose compensatory measures in the form of an adaptation period or aptitude test, either of which may be chosen by the migrant.

The authorities in the host country have four months to deal with applications for recognition. Once recognition has been granted, the migrant is entitled to exercise the profession under the same conditions as the holders of national diplomas. Any rejection of an application must be justified and subject to appeal using procedures laid down in national legislation.

3. European Court case law

The Court of Justice has given rulings against four countries: Italy⁶, France⁷ and Greece⁸ (judgments of 26 February 1991) and Spain⁹ (judgment of 22 March 1994). The judgments concerning Italy, France and Greece were delivered before the deadline laid down in the first “general system” directive for transposition into national law expired and before the second “general system” directive was adopted. They refer to what at the time was the proposed second directive. The judgment against Spain was delivered after both “general system” directives had been adopted but before the deadline for the transposition of the second directive.

In the first set of cases, the Court took the view that the countries in question had failed to fulfil their obligations under Article 59 of the Treaty *by making the provision of services by tourist guides travelling with a group of tourists from another Member State, where those services consist in guiding such tourists in places...other than museums or historical monuments which may be visited only with a specialised professional guide, subject to possession of a licence which requires the acquisition of a specific qualification normally obtained by success in an examination.*

⁶ Judgment of 26 February 1991, Case C-180/89, Reports 1991, p. I-709.

⁷ Judgment of 26 February 1991, Case C-154/89, Reports 1991, p. I-659.

⁸ Judgment of 26 February 1991, Case C-198/89, Reports 1991, p. I-735.

⁹ Judgment of 22 March 1994, Case C-375/92.

In the last case the Court ruled that Spain had also failed to fulfil its obligations under Articles 48 and 52 of the Treaty *by failing to establish a procedure examining qualifications acquired by a Community national who holds a diploma as tourist guide..... issued in another Member State and comparing them with those required by Spain.*

3.1 "Tourist guides"

The judgments on "tourist guides" concern conducted tours and commentary in relation to virtually all attractions likely to be of interest to tourists, irrespective of whether such interest is artistic, architectural, historical or otherwise cultural, so that only visits to places having merely entertainment value probably do not fall within the definitions of "tourist guide"¹⁰.

It was pointed out in the same context that "tourist guide" and "courier" were two different occupations. Even though the tourist guide accompanying a tour group may perform the two functions, this overlapping in no way implies that one function is the same as the other.

3.2 "Travelling with a group of tourists from another Member State"

A Member State may make the exercise of the occupation of tourist guide in its territory subject to the possession of a licence or permit issued after the acquisition of specific training for which a diploma is awarded. However, in accordance with the "general system" directives it must introduce procedures for the examination and comparison of "tourist guide" qualifications acquired in another Member State. The lack of such procedures for the recognition of qualifications constitutes, as the Court has indicated, an infringement of the right of establishment laid down in Article 52 of the Treaty.

In its judgments on "tourist guides" the Court of Justice stated that a Member State cannot make the performance of the services in its territory subject to observance of all the conditions required for establishment; were it to do so the provisions securing freedom to provide services would be deprived of all practical effect. Consequently, with regard to the provision of services by tourist guides, a Member State may not require that guides from another Member State follow "national" training with a view to securing a "national" licence or permit. Similarly, there is normally no justification for requiring them to obtain recognition of their qualifications in accordance with the "general system" (application for recognition to the competent body; option of an aptitude test or adaptation period; option of demanding two years' experience if the profession of tourist guide is not regulated in the country of origin; deadline of four months for dealing with the case).

These criteria apply to the provision of services by tourist guides *travelling with a group of tourists from another Member State*. The Court judgments refer to a situation in which *the independent or employed tourist guide travels with the tourists and accompanies them in a closed group; in that group they move temporarily from the Member State of establishment to the Member State to be visited.*

¹⁰ Opinion of Mr Advocate General Lenz, delivered on 5 December 1990, Case C-154/89, Reports 1991, p. I-667.

3.3 *“Museums of historical monuments which may be visited only with a specialised professional guide”*

The Court ruled that making the provision of services of tourist guides subject to the possession of a professional licence infringed the freedom to provide services enshrined in Article 59 of the Treaty. As indicated earlier, this refers to the provision of services (the guide is not established in the State to be visited) by tourist guides (the person in question is a “tourist guide” and not a “courier”) travelling with tourists in a group (the tourist guide accompanies the group during the tour and makes the return trip with the group). But this service also needs to consist of guiding tourists in *places other than museums or historical monuments which may be visited only with a specialised professional guide*.

The Court ruled that as one of the fundamental principles of the Treaty the freedom to provide services may be restricted only by rules which are justified in the general interest in so far as that interest is not safeguarded by the rules to which the provider of such a service is subject in the Member State where he is established. In addition, such requirements must be objectively justified by the need to ensure that the interests which such rules are designed to safeguard are protected.

With reference to the provision of services by tourist guides, the Court viewed that *the general interest in the proper appreciation of places and things of historical interest and the widest possible dissemination of knowledge of the artistic and cultural heritage of a country can constitute an overriding reason justifying a restriction on the freedom to provide services*. The requirement of a professional qualification or licence issued after the acquisition of specific training thus constitutes a restriction on the freedom to provide services only when it is required in places other than museums or historical monuments which may be visited only with a specialised professional guide.

It follows that the tourist guide from another Member State who wishes either to establish himself in the host country in order to exercise his profession or to accompany tours from his country of origin and to guide groups in museums and monuments which may be visited only with a specialised professional guide can be subject to the requirements of the host country with regard to professional qualifications.

4. Sources of difficulties concerning the application of the principle of the freedom to provide services as interpreted by the Court in its case law on “tourist guides”

In its contacts with national authorities and professional associations, also following complaints, the Commission was able to identify a number of points which prompt difficulties for the practical application of the criteria laid down by the case law on “tourist guides”.

These difficulties are linked to the interpretation of the concepts used by the Court in its judgments, i.e. 1) the definition of the activity of “tourist guide”; 2) the distinction between provision of services and establishment; 3) the scope of the exception “museums or historical monuments which may be visited only with a specialised professional guide”.

It also seems difficult to get away from the fact that in some countries the occupation of tourist guide is subject to professional rules, whereas in other Member States there are no such rules. Moreover, the level and content of the knowledge required vary from country to country.

4.1 *Delimitation of the range of activity of the two occupations: "tourist guides" (guides touristiques, Reiseführer) and "tour managers" (accompagnateurs, Reiseleiter)*

From the outset the main problems proved to stem from the confusion between two different but complementary occupations: "tourist guide" (*guide touristique, Reiseführer*) and "tour manager" (*accompagnateur, Reiseleiter*).

In noting the agreement between the IATM (International Association of Tour Managers) and the FEG (Fédération Européenne des Associations de Guides Touristiques) with regard to the respective tasks of their members, the Commission asked the tour operators - represented by the ETOA (European Tour Operators Association) - to clarify to what extent they could endorse the agreement. This point is particularly important because, on the one hand, of the professional links between tour operators and tour managers and, on the other, of the little practical use of an agreement between tourist guides and tour managers to which the tour operators are not a party.

The Commission recently learned of the definition of "tourist guide" which was devised by the WFTGL (World Federation of Tourist Guide Lecturers) and which has been endorsed by the FEG. According to this definition, a person shall be considered a tourist guide if: a) he possesses a licence issued or recognised by a competent body; or b) where there is no provision for such a licence in national legislation, he has followed tourist guide training leading to the acquisition of a qualification recognised by the local, regional or national authority and who guides visitors to the country in order to provide them with information and explanations on the history, archaeology, monuments and works of art, cultural development, natural beauty, places of interest and in general on any other topic relating to the promotion of tourism.

In order to clarify this point, the Commission consulted the relevant professional associations. Their views are contained in the annexes to this document.

4.2 *Distinction between provision of services and establishment; question of regular or periodic services*

We saw earlier that the guide who wants to establish himself in a Member State other than the one in which he underwent training is subject to the requirements of the host country with regard to professional qualifications and, therefore, to the recognition procedures introduced by the "general system" directives.

Now, according to the case law on "tourist guides", in the case of provision of services by tourist guides accompanying groups from their Member State of establishment to the Member State to be visited, the latter country cannot impose its requirements in connection with professional qualifications. The Court has in fact stated the exercise of the activity of tourist guide cannot be made subject to the possession of a licence in the case of a guide accompanying tourists in a "closed group" who returns to his country of origin at the end of the tour (provided that the service consists of guiding the tourists in places other than museums or historical monuments which may be visited only with a specialised professional guide).

The question has arisen as to whether this case law applies to those in the profession who are established in the Member State being visited and who regularly meet tourists when

they arrive in order to guide them during their tour and who stay in the host country after the tourists have gone back to their country of departure.

The Commission thinks that a tourist guide established in a Member State who receives groups of tourists from another Member State must be subject to the requirements of the host country with regard to professional qualifications, in accordance with the "general system" of recognition introduced by Directives 89/48/EEC and 92/51/EEC. The case law on "tourist guides" would thus not apply. This case law in fact refers to a professional activity which is performed in *special conditions*: the tourist guide *travels with the tourists he accompanies in a closed group*.

Another question that has arisen is whether this case law applies to tourist guides who make the return trip with the tourists but who repeat the trip with some regularity. In this instance, the tourist guide exercises his professional activity in the host country for short but repeated periods.

For the Court, it is clear that the activity of a tourist guide travelling with a group of tourists from another country constitutes a provision of services under Article 59 of the Treaty. The matter of whether the repeated exercise of these temporary visits qualifies such a finding has not however been raised in the judgments on tourist guides.

The Commission takes the *a priori* view that the case law on "tourist guides" should be applied in such instances. The Court has indicated¹¹ that the concept of establishment in the sense of the Treaty implies the possibility for a Community citizen to participate, in a continuous and stable manner, in the economic life of a Member State other than his country of origin. But the tourist guides referred to here are not integrated in the economic life of the host country. Their activity must therefore be considered a provision of services under Article 59 of the Treaty, as interpreted by the case law on "tourist guides". At any rate, the exception acknowledged by the Court for places which may be visited only with a specialised professional guide is still valid.

4.3 Scope of the exception "museums or historical monuments which may be visited only with a specialised professional guide"

The Member States against which the Court ruled have informed the Commission of the practical difficulties that exist in taking the necessary measures to comply with the judgments on tourist guides. According to these judgments, with regard to visits to "museums or historical monuments which may be visited only with a specialised professional guide", the Member States may require that the guides accompanying the tour groups satisfy the legal professional requirements of the country being visited.

Consequently, the possibility of requiring that a visit be undertaken together with a specialised professional guide does not apply to "all" monuments or historical monuments. This implies an obligation, on the part of the Member States ruled against, to identify those museums and historical monuments that may be visited only with a specialised professional guide.

Some Member States have informed the Commission of the difficulty, in view of the lack of any definition of the concept of "museum" or "historical monument" at European or

¹¹ Cf. judgment of 30 November 1995, Case C-55/94 "Gebhard".

international level, in interpreting correctly the Court's criterion in order to draw up lists or catalogues of sites for which professional tourist guide qualifications may be needed. This point was raised by several delegations at the seminar organised in September 1994 by the FEAGT (Fédération Européenne des Associations de Guides Touristiques) with financial support from the Commission.

Since this is an exception to the fundamental principle of the freedom to provide services, the Commission thinks that it should be interpreted in a restrictive manner. Indeed, as the Court has indicated in its judgments on tourist guides, it is an exceptional situation in which a restriction on the freedom to provide services is deemed compatible with Community law, inasmuch as it is justified by an overriding reason of general interest.

In order to clarify this point, the Commission consulted the relevant professional associations. Their views are contained in the annexes to this document.

4.4 Disparities in the regulations on the occupation of tourist guide in the various Member States

Each Member State is free to decide the level of qualification required to exercise a profession in its territory. The "general system" directives are not designed to "harmonise" training but to introduce recognition procedures so that a person trained in a Member State may exercise his profession in another Member State. However, disparities in the level and content of training to qualify as a "tourist guide" result in difficulties when it comes to the free movement of those concerned.

The occupation of tourist guide is regulated in the following countries: Austria, France, Greece, Italy, Luxembourg (city), Portugal and Spain. It is not regulated in Denmark, Finland, Germany, Ireland, the Netherlands, Sweden or the United Kingdom, nor in Iceland and Norway.

In most of the countries where the profession is not regulated, there are training courses for tourist guides. However, since the profession is not regulated, this training is voluntary and is not a prerequisite for exercising the profession. For example, Germany has a tourist guide certificate issued by the chambers of commerce, while in the United Kingdom there are associations which issue a member's card following training at the level indicated in Directive 92/51/EEC.

In the countries where the profession is regulated, only those who have followed a set course of training and obtained the necessary qualification are allowed to exercise the profession.

In Greece, this is training at post-secondary (non-university) level lasting three years and is thus covered by Directive 89/48/EEC. In Austria, Italy, Luxembourg (city) and Portugal, the exercise of the profession of tourist guide is subject to the possession of qualifications at the level indicated in Directive 92/51/EEC. In Spain, some autonomous communities require those wishing to exercise the profession to have qualifications at the level indicated in Directive 92/51/EEC, whereas others require a diploma at the level indicated in Directive 89/48/EEC. In France, the training of tourist guides is structured in three tiers: regional interpreter-guide (diploma at Directive 92/51/EEC level), national interpreter-guide and national lecturer-guide (diploma at Directive 89/48/EEC level). In Portugal, the training is organised at two levels: regional interpreter-guide (certificate

according to Directive 92/51/EEC) and national interpreter-guide (diploma at Directive 89/48/EEC level).

It can be seen that the profession is regulated in the countries that tend to be tourist destinations, while it is not in the countries from which tourists generally come. This circumstance explains to some extent the problems in interpreting the principle of the free movement of the tourism professionals in question (in view of the differing interests that may exist) and the difficulties in applying the principle consistently (given that the "likelihood" of infringing the relevant Community law is higher in the case of the countries where there are relevant professional regulations).

5. Action by the Commission

5.1 Contacts with professional associations

The Commission is regularly in contact with the relevant professional associations. Several technical meetings have been arranged between officials from DG XXIII and DG XV and representatives of the professional associations of tourist guides, tour managers and tour operators. Discussion during these meetings focused on the problems in connection with the implementation of the judgments on tourist guides that were analysed in part 4 of this document.

The professional associations were also informed of how the recognition system introduced by the "general system" directives worked and of the Commission view on the distinction between provision of services and establishment (see part 4.2 of this document).

During these talks the representatives of the professional associations raised the question of the disparities that existed between Member States in connection with the training of tourist guides and asked for information on the matter. In response to this request, DG XV decided to discuss the matter in the group of national coordinators for the application of the "general system" directives.

5.2 Meeting of national coordinators for the application of the "general system" directives - other contacts with the Member States

The topic of tourist guides was placed on the agenda for the meeting of national coordinators for the application of the "general system" directives on 25 July 1995. All the national coordinators (apart from Belgium) were present, some of them (especially Germany and Italy) bringing an "expert" for the discussion.

Each national representative outlined the conditions of entry and exercise for the occupation of tourist guide in his country. Significant differences emerged (see part 4.4 of this document). It turned out that the profession was not regulated in seven countries (Denmark, Finland, Germany, Ireland, the Netherlands, Sweden and the United Kingdom,) and regulated in seven others (Austria, France, Greece, Italy, Luxembourg, Portugal and Spain). Among the latter, four countries (France, Greece, Italy and Spain) had been ruled against by the Court of Justice. The Commission sees that the judgments of the Court are implemented and adopts and undertakes every suitable measure in relation to the changing provisions that are adopted or applied by the Member States.

In order to secure more detailed information, a questionnaire was sent to all the Member States asking for clarification concerning: current regulations (restricted activity, statutory qualifications), the different categories of tourist guide (national or regional), the professional organisations, the authority responsible for the profession, the conditions of entry to the profession, the length of training, the structure of courses, and the type of establishment providing such training (university, higher, non-university or other). So far, the Commission has received replies from Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

5.3 Infringement procedures

Several infringement procedures are pending. However, in view of the rules governing these procedures and the confidential nature of much of the related information, they are not described in this document.

6. Conclusions

First of all, it should be stated again that requiring professional qualifications is considered incompatible with Community law in one specific situation: that of tourist guides travelling with a group of tourists in a closed group and guiding them in places other than museums or historical monuments which may be visited only with a specialised professional guide. A "national" qualification cannot be demanded in such cases. However, the Commission is not against the idea of demanding a document proving that the person in question is a "tourist guide" in his country of origin.

The restrictive nature of the exception "museums or historical monuments which may be visited only with a specialised professional guide" must also be emphasised. In this case, anyone who does not possess the professional qualifications required by national legislation must, in such places, seek a qualified guide or apply for his qualifications obtained in another Member State to be recognised in accordance with the "general system" directives. In this regard, the Commission would like to point out to those concerned in the tourism profession that their right to provide their services freely is restricted by this exception. As for the type of museums or monuments, they have to comply with national legislation.

The Member States also need to be reminded that the principle of freedom to provide services as interpreted by the case law on "tourist guides" must be properly applied. In spite of legislative efforts to comply with the Court's judgments, the fact is that the Commission continues to receive complaints about obstacles to the exercise of this activity. In this context, reference should be made to Article 59 of the Treaty which confers rights on Community citizens that the Member States must respect ahead of any new national provisions that may be adopted in the relevant area. Consequently, tourist guides travelling with a group of tourists from another Member State who are subject to unwarranted sanctions may, by virtue of the direct effect of Article 59 of the Treaty, use the appeal procedures that are available in the host country.

In some instances which have been reported to the Commission, guides from other Member States have encountered difficulties because of action, not by the authorities, but by local members of the profession. The Commission deplores such incidents and thinks that the professional associations as well as the members of the profession concerned should endeavour to avoid such behaviour, which is likely to foster a climate detrimental to a proper solution to the problems.

Lastly, the Commission has noted the proposal by the FEG (Fédération Européenne des Associations de Guides Touristiques) to introduce in the various Member States training programmes lasting two or three years leading to the acquisition of a kind of "European tourist guide qualification". The Member States are entirely responsible for the structure and organisation of their teaching system; the Commission is not entitled to impose unilaterally "harmonised" training on the Member States. The encouragement of this kind of project is therefore the responsibility of the bodies which suggested the idea. It goes without saying that the Commission encourages progress in this direction, inasmuch as it helps to facilitate freedom of movement for the professionals in question and, as a result, to solve the problems described

The Commission is aware of the practical problems relating to the adoption of legislative provisions reconciling the principle of freedom to provide services by tourist guides with the Member States' right to restrict the exercise of this activity to those with certain professional qualifications.

It notes the current favourable legislative developments in the countries that the Court of Justice ruled against, in the form of new provisions concerning entry to and/or exercise of the activity of tourist guide.

It calls on the competent national authorities to complete without delay the legislative procedures that have started in response to the judgments on tourist guides.

The existence and application of provisions complying with current Community law are vital to allow citizens to exercise fully their rights in this regard.



COMMISSION EUROPÉENNE

DIRECTION GÉNÉRALE XXIII

Politique d'entreprise, Commerce, Tourisme et Economie sociale

Direction C: Actions concertées en matière de politique d'entreprises et de tourisme

Le Directeur

Bruxelles, le 25-06-1996 00:08:20
Ref: JCE/jcc - u:\touceud\9608p009
XXIII/C/3

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Madame, Messieurs,

Comme vous le savez sans doute, la question des obstacles à la prestation de services des guides touristiques a été évoquée, à la demande d'une délégation, lors du Conseil "Tourisme" du 13 mai 1996.

A cette occasion, le Commissaire Papoutsis s'est engagé à soumettre un rapport à ce sujet à la session du prochain Conseil "Tourisme", prévu pour le 5 novembre 1996, sous présidence irlandaise.

Ce rapport, préparé par les services de la DG XV, en étroite collaboration avec ceux de la DG XXIII, est en cours de réalisation.

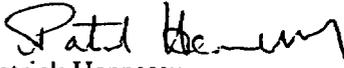
Considérant votre intérêt pour les questions abordées dans ce document, nous vous invitons, dans le cadre de la consultation de l'industrie du tourisme, à nous fournir votre avis sur 3 des points identifiés comme sources de difficultés ou de problèmes, à savoir :

1. la délimitation des champs d'activité des deux professions de guide touristique et d'accompagnateur ;
2. la notion de "circuit fermé" à laquelle fait référence la jurisprudence de la Cour ;
3. la portée à donner à l'exception "musées ou monuments historiques susceptibles de n'être visités qu'avec un guide professionnel spécialisé".

Nous vous serions reconnaissants de bien vouloir nous faire parvenir vos avis respectifs avant le 16 septembre 1996.

Compte tenu que l'hypothèse que ces derniers puissent être versés au rapport n'est pas exclue, nous nous permettons d'attirer votre attention sur la nécessité de contributions de votre part aussi précises que concises relativement aux 3 points ci-dessus.

Vous en remerciant par avance, je vous prie d'agréer, Madame, Messieurs, l'expression de ma considération distinguée.


Patrick Hennessy

Copie: Mme Jacqueline Minor, DG XV
M. Nassos Christoyannopoulos, DG XXIII



Association sans but lucratif (loi du 7 juillet 1901)

Fédération Européenne des Associations de Guides Touristiques
European Federation of Tourist Guide Associations

Mr. J.C. EUDE
Mr. P. HENNESSY

Assisi, 24 September 1996

European Commission
DG 23 - Tourism Unit

BRUSSELS

Dear Mr. Eude/Hennessy,

further to my verbal communication, I send you here attached the observations that you requested to FEG with your letter of 26 August 1996.

I apologise for the small delay due mainly to our high guiding season.

I also send you three annexed documents:

1. Extract of the Austrian Law of 1973 (art. 143, 145, 146, 177) concerning the profession of the Tourist Guide and of the Tour Manager.
2. Text of the "verbalnote" of the Austrian Ministry for the Foreign Affairs of 16 November 1990.
3. Copy of a report on Las Vegas IATM Convention 1996 printed on the magazine "On the road" (June 1996).

I do hope that our document (and annexed) fits your aim which we find crucial to progress on the matter of our profession.

As always, yours sincerely.

Eduardo d'Amico
Eduardo d'Amico
FEG CHAIRMAN



European Federation of Tourist Guide Associations
Fédération Européenne des Associations de Guides Touristiques

FEG OBSERVATIONS AS REQUESTED BY THE EUROPEAN COMMISSION ON THREE POINTS SET OUT IN IN A FAX LETTER DATED 28/8/96 FROM DG 23

As a premise to its observations this federation would like to reiterate the following:

In the years 1987-1991 FEG wrote to the Commission to correct several misconceptions regarding the Tourist Guide profession manifest in a number of written questions to the European Parliament;

In the years 1991-92 there followed considerable correspondence with DG23 regarding the above mentioned misconceptions and various matters concerning the Tourist Guide profession backed up by a number of meetings;

Following the sentence handed down by the European Court of Justice on the 26th February 1991, FEG requested clarification from DG23 on the points raised again in your recent fax since they were further complicated by the stance taken by the Court in support of the sentence and caused further disorientation in the European tourism market;

A specific Seminar on the Tourist Guide profession was held on the initiative of this federation and with the support of DG23 in Brussels on the 1st and 2nd September 1994 with the vast majority of the interested parties in attendance (see FEG report to the Commission of October 1994) successfully identifying and clarifying various questions relating to the profession;

With DG23 support further joint meetings were held in the presence of officials from DGs 23 & 15 to discuss the mutual recognition of diplomas granted by the relevant tourism authorities in the EU member states;

FEG has been an active participant along with experts representing UNESCO and the Council of Europe at various meetings and conferences on cultural tourism initiated by the Commission;

The problems relating to the Tourist Guide profession are still very much in need of further examination and, hopefully, agreements at EU level which guarantee the tourist/consumer an acceptable minimum standard of professional guiding services across Europe through an agreed professional profile with mutual recognition of equivalent qualifications.

1) DELINEATION OF THE SPHERES OF PROFESSIONAL ACTIVITY OF THE TWO PROFESSIONS OF TOURIST GUIDE AND TOUR MANAGER

The relevant spheres of activity diverge in relation to the various professional duties and functions carried out. In some areas the two professions are quite close and in others they remain quite separate and distinct.

The area where the professions are closest is that of provision of information to the public.

In the case of the tour manager the information is perforce of a general nature relating to areas of transit and given either on various forms of transport or sometimes on foot during brief walks to restaurants, hotels etc. The information is of an introductory or background nature and is supplied just prior to arrival at places indicated in the organiser's itinerary.

In the case of the Tourist Guide the information is in-depth and supplied in the context of guided tours in various forms of transport or on foot and guided visits to museums, art galleries, churches, archaeological sites etc. The information is therefore of a cultural (historical, artistic, archaeological, folkloric, ethnological, gastronomic etc) or environmental nature (geological, natural, climatic, agricultural etc) relating to localities (historic/industrial town/city centres etc.), particular places (c.f. sites, museums, churches etc. as above) or areas (e.g tourist regions or countries or transnational) for which the Tourist Guide is qualified.

Other spheres of activity are so distinct that they require no further clarification here. Indeed that other functions of the tour manager may be summarised as assistance to tourists and management of a tour package as set out in the organiser's brochure which are quite different from those of the Tourist Guide.

FEG maintains that the evident differences of spheres of activity between the two professions is important and real, requiring specific and different training as manifest in the syllabus for Tourist Guide or tour manager courses.

Together with IATM, FEG was aware of the important differences and the need for clarification led to our joint declaration (version 2) which was issued in 1991 and then presented to the Commission, widely circulated across the tourism industry and handed to representatives at various meetings. This joint declaration hitherto has never been challenged. This summer (July 1996) the Commission was also presented with a copy of the definition of the World Federation of Tourist Guide Lecturers Associations with which FEG concurs. The above documents should be consulted for a specific examination of the spheres of activity of the two professions.

2. THE NOTION OF "CLOSED CIRCUIT" TOUR REFERED TO IN THE JUDGEMENT OF THE COURT

The term in question is virtually unknown across the European tourism market. In the vast majority of EU countries the expression is unknown and one is unable to comprehend how the Court came to refer to it in judging the important matter of the freedom to provide Tourist Guide services.

Only in one circumstance is the concept (not the definition) of "tour fermé" used to indicate a type of tour whose tour manager and group leave together from a locality in a EU country travelling together to a third country as per itinerary and return together to the original departure point. This is the case cited in Austrian law "Auszug aus der Osterreichischen Gewerbeordnung" of 1973 whose article 177, sections 1 & 2, in regulating the profession of tour manager, states that tour organisers must provide tourists travelling abroad with the services of a "suitable" person referred to as tour manager (in Austrian German 'Reisebetreuer') whose duty is to ensure that the promised number of meals and hotel nights are indeed supplied. Article 177 also states that the tour manager may provide brief indications relating to the places passed through on a foreign itinerary.

FEG suggests that the only possible written source that might justify the "circuit fermé" concept is article 177 of the said Austrian law which, in any case, whilst examining the "closed circuit" notion explicitly refers to the tour manager and not to the Tourist Guide. Article 143 of the same law defines the Tourist Guide in much the same way as most other European countries and as summarised in the above mentioned FEG-IATM joint declaration of 1991.

In conclusion, the Austrian law only allows the tour manager accompanying a group abroad on a "closed circuit" tour to and from Austria (principle of reciprocity) to provide basic indications ("hinweise") if not in possession of a guide licence. c.f. also notes drawn up by the Federal Ministry of Foreign Affairs in Vienna on the 16th November 1990 of which copy herewith.

We would also recall here that this principle, of a tour manager from any European Country being allowed to give simple indications 'en route' throughout a pan-European tour where there is no recognition of his own experience or of the qualification awarded him in his country, is incorporated into Council of Ministers Directive EEC 16.6.1975.

The status quo thus remains that the Tourist Guide profession is quite distinct from that of tour manager, with the former requiring recognition of the qualification obtained in the country of origin or the country which granted such on the basis of training courses and examinations and the latter still not currently requiring particular recognition to work in a country other than that where the tour manager may have trained or been examined.

FEG therefore maintains that the concept of "closed circuit" tour taken on by the Court has no bearing on the freedom of circulation and provision of Tourist Guide services.

Since the normal activity of the Tourist Guide is carried out in the context of an area of professional qualification, if a Tourist Guide were to accompany a group on a "tour fermé" from one member state to another he/she would still have to obtain a guiding qualification to guide in various "museums and monuments" according to the court sentence (even if the tour were not "fermé"). Naturally, if the "closed circuit" concept is to be taken on there must also be an "open circuit" possibility - this appears to be unknown in the European tourism market.

In conclusion, whether the tour is "fermé" ("closed") or "ouvert" ("open") should have no bearing on the freedom to provide Tourist Guide services and we can find no basis for making such a distinction or linking it with provision of Tourist Guide services.

3. THE EXTENT TO BE GIVEN TO THE EXCEPTION OF "MUSEUMS AND HISTORIC MONUMENTS TO BE VISITED ONLY WITH SPECIALISED PROFESSIONAL GUIDES"

In that the vast majority of tourists travelling around Europe visit various places and not just a few museums and historic monuments, FEG feels that the very definition is outdated and cannot cover the extraordinary multiplicity of cultural manifestations and memories that express European civilisation. It was clarified in the above-mentioned Brussels Seminar that it was very much in the past that cultural heritage was limited to ill-defined "museums and historic monuments". Then we were not seeing the level of cultural tourism we know today which has indeed increased as a result of the efforts of UNESCO, the Council of Europe and the Commission.

This of course has meant that so much more than certain museum exhibits and monuments is covered in Tourist Guide training programmes - particularly the artistic, historic and cultural heritage as expressed in the architecture, sculpture, decoration of buildings, churches, fountains, palaces of a city, region or area as well as many other fields as set out in the FEG/IATM joint declaration. A museum contains only limited number of memories and a "historic monument" is but a single, restricted exemplar.

The Tourist Guide, in any EU country, is a specialised professional and the recognised spokesperson in tourism for the cultural heritage of his/her area of qualification interpreting it in the language of the visitor's choice. The Tourist Guide has a vital role in maximising and transmitting European cultural notions.

Very few of Europe's museums have employees or staff whose role is to provide guided tours for the ever larger numbers of visitors. Their staff have full time curatorial and research responsibilities and also would not have the linguistic competence for guided tours. Other lower level staff are simply present for safety and security reasons and are not in any way qualified for the provision of guiding services. We therefore presume that the Court could only have meant freelance Tourist Guides when quoting "specialised professional guides".

Modern texts which furnish the basic notions of natural and cultural heritage are the Venice Charter of 1964, the Paris International Convention of 1972, the Amsterdam Declaration for Architectural and Cultural Heritage of 1975, the Granada Convention of 1985 and the Malta Convention of 1992 in which the work of international experts is acknowledged by all participating countries. These texts no longer deal in narrow expressions such as "museums and monuments" and cultural heritage is seen as more than just representative memories of a nation's identity. Heritage is the manifestation of an inalienable part of human civilisation and thus comprises historic cities, archaeological sites, urban and rural areas etc with a claim to universality as defined by competent authorities in each member state.

This federation concludes with its belief that as Europe progresses towards further integration of its peoples through tourism, heritage interpretation must not be left in the hands of amateurs. As the tour managers stated at their last convention in Las Vegas with its pivotal theme 'The eternal triangle - Tourist Guide - Tour Manger - Tour Operator' " There may be the situation where insufficient and inaccurate information is given if a Tourist Guides is not used when financial restraints dictate the programme content" (printed in "On the Road" June 1996).

Eduardo d'Amico

Eduardo D'Amico, President

Assisi, 20.9.1996

AUSZUG AUS DER ÖSTERREICHISCHEN GEWERBEORDNUNG

§ 143. Fremdenführer. (1) Einer Gewerbeberechtigung für die Ausübung des gebundenen Gewerbes der Fremdenführer (§ 126 Z 9) bedarf es für die Führung von Personen, um ihnen die Sehenswürdigkeiten von Stadt u. Land (öffentl. Gebäude, Sammlungen, Museen, Kirchen, Theater und Vergnügungsstätten, Ausstellungen, Besonderheiten der Landschaft, Industrieanlagen usw.) sowie sportliche und gesellschaftliche Veranstaltungen zu zeigen und zu erläutern.

((?) Dies gilt nicht für)

3. die vom Reisebetreuer (§ 177) bei der Betreuung von Reisenden gegebenen Hinweise auf Sehenswürdigkeiten.

§ 145. Legitimation. (1) ¹Gewerbetreibende, die zur Ausübung des gebundenen Gewerbes der Fremdenführer berechtigt sind, und deren Mitarbeiter haben bei der Ausübung der im § 143 Abs 1 genannten Tätigkeiten eine von der Bezirksverwaltungsbehörde ausgestellte Legitimation mit ²Identbild mitzuführen und diese auf Verlangen der behördlichen Organe vorzuweisen. ³In die Legitimation sind allfällige örtliche und sachliche Beschränkungen der Berechtigung sowie die Fremdsprachen, die der Gewerbetreibende oder der Mitarbeiter beherrscht, einzutragen; weiters können Sachgebiete, in denen der Gewerbetreibende oder der Mitarbeiter der Bezirksverwaltungsbehörde besondere Kenntnisse in geeigneter Weise nachweist, eingetragen werden.

§ 146. Bezeichnung. Gewerbetreibende, die zur Ausübung des gebundenen Gewerbes der Fremdenführer berechtigt sind, dürfen eine international gebräuchliche Berufsbezeichnung führen.

§ 177. Reisebetreuer. (1) ¹Gewerbetreibende, die Gesellschaftsfahrten veranstalten oder Reisende gemäß § 175 Abs 4 Z 1 betreuen, haben bei den von ihnen veranstalteten Gesellschaftsfahrten und bei der Betreuung der Reisenden gemäß § 175 Abs 4 Z 1 dafür zu sorgen, daß eine geeignete Person die Reisenden betreut (Reisebetreuer). ²Der Reisebetreuer hat insbesondere für die Verpflegung der Reisenden und für die entsprechende Unterbringung in den Quartieren Sorge zu tragen. ³Er ist nach Maßgabe des § 143 Abs 2 Z 3 auch berechtigt, Hinweise auf Sehenswürdigkeiten zu geben.

(2) Wird eine ausländische Reisegesellschaft von einem Reisebetreuer aus dem Ausland dauernd begleitet, so ist auf dessen Tätigkeit dieses Bundesgesetz nicht anzuwenden.

VORGANG ZUM ERWERB DER BERECHTIGUNG:

- Reifeprüfung (18 oder 19 Jahre)
- Kursbesuch (Minimum 300, meist 1.400 Stunden)
- Prüfung (schriftlich und mündlich)
- Gewerbeanmeldung (begründet Kammermitgliedschaft und Pflichtversicherung in der Kranken-, Unfall- und Pensionsversicherung)
- Ausstellung des Ausweises

AUSTRIAN CODE OF TRADES AND INDUSTRIES (EXTRACT)

Art. 143 Tourist Guide. (1) A license for exercising the qualified profession of Tourist Guide is required when people are to be guided in order to show and explain the sites of town and country (public buildings, collections, museums, churches, theatres and places of entertainment, exhibitions, features of the countryside, industrial plants etc), as well as sporting or social events.

[(2) A license is not required]

3. by Tour Managers (Art. 177) giving, within their activity, indications with reference to sites.

Art. 145 Piece of identification. When exercising their profession, Authorised Guides and their staff are required to be able to produce their piece of identification released to them by the authority, should representatives of the local authority require them to do so. Special entries shall show any restrictions - both local and of other nature - language capabilities, as well as any specific knowledge proven to the authority.

Art. 146 Denomination. Individuals entitled to exercise the activity of Tourist Guide may use an internationally recognised denomination of their profession.

Art. 177 Tour Manager. (1) Organisers of outings, or travel agents are obliged to provide, within the itinerary, the service of a suitable person (Tour Manager) who, especially, has to see to it that travellers are provided with appropriate food and accommodation. He is entitled, considering the terms of Art 143 (2) 3., to give indications with reference to sites.

(2) This Law is not applicable to Tour Managers from abroad when they travel with their group from origin to destination.

HOW TO GET A LICENSE

Qualifying exam entitling to begin university studies
(18 or 19 years, resp.)

Training course (minimum 300, mostly 1 400 hrs.)

Examination (written and oral)

Application for license [entails membership with the Chamber of Commerce and obligatory social insurance (illness, accident, old-age pension)]

Piece of identification issued

BUNDESMINISTERIUM
FÜR
AUSWÄRTIGE ANGELEGENHEITEN
DVR: 0006660

Zl. 89.710/4-III.3/90

Verbalnote

ARRIVO
4086 am 20.11.90
3/4-4

Das Bundesministerium für auswärtige Angelegenheiten erachtet der Italienischen Botschaft seine Empfehlungen und beehrt sich, zu der Verbalnote Zl. 2577 vom 24. September 1990 betreffend Ausübung des Fremdenführergewerbes bzw. der Tätigkeit eines Reisebetreuers durch einen italienischen Staatsbürger in Österreich, ex Einlaufstück des Bundesministeriums für wirtschaftliche Angelegenheiten, GZ 30.564/4-III/1/90, folgendes mitzuteilen:

Ausübung des Fremdenführergewerbes bzw. der Tätigkeit eines Reisebetreuers durch einen italienischen Staatsbürger in Österreich:

Gemäß § 14 Abs. 1 der Österreichischen Gewerbeordnung 1973 dürfen ausländische natürliche Personen grundsätzlich Gewerbe wie Inländer ausüben, wenn dies in Staatsverträgen festgelegt worden ist oder wenn der Bezirksverwaltungsbehörde, bei konzessionierten Gewerben der für die Erteilung der Konzession zuständigen Behörde, nachgewiesen wurde, daß österreichische natürliche Personen in dem Heimatstaat des Ausländers bei der Ausübung des betreffenden Gewerbes keinen anderen, wie immer gearteten, Beschränkungen unterliegen als die Angehörigen dieses Staates (Gegenseitigkeit). Das Vorliegen der Gegenseitigkeit im Sinne des § 14 Abs. 1 der Österreichischen Gewerbeordnung 1973 ist gegenüber Italien grundsätzlich als gegeben anzunehmen. Von diesem Grundsatz sind allerdings die im italienischen Rahmengesetz über den Tourismus (Gesetz vom 17. Mai 1983, Nr. 217) im Art. II vorletzter Absatz angeführten Berufe ausgenommen, da Italien als Voraussetzung für die Ausübung dieser Berufe die italienische Staatsbürgerschaft verlangt. Zu diesen Berufen gehören u.a. auch der Fremdenführer und der Reisebegleiter. Hinsichtlich dieser Berufe besteht daher zwischen Italien

An die
Italienische Botschaft
W i e n

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und Österreich nicht die gemäß § 14 Abs. 1 der Österreichischen Gewerbeordnung 1973 vorgesehene Gegenseitigkeit. Ein italienischer Staatsbürger, der in Österreich das Fremdenführergewerbe ausüben beabsichtigt, benötigt daher eine Gleichstellung mit Inländern durch den Landeshauptmann gemäß § 14 Abs. 2 der Österreichischen Gewerbeordnung 1973.

Für die Ausübung des Fremdenführergewerbes in Österreich ist eine Konzession erforderlich. Die Erteilung der Konzession für das Fremdenführergewerbe erfordert u.a. die Erbringung des Befähigungsnachweises, der in der Fremdenführergewerbe-Befähigungsnachweisverordnung, BGBl.Nr. 64/1987, geregelt wird. Die in einem anderen Staat erworbene Befähigung wird grundsätzlich nicht automatisch in Österreich anerkannt. In diesem Zusammenhang ist auf das Rechtsinstitut der Nachsicht vom Befähigungsnachweis hinzuweisen. Es kann allerdings nur bei genauerer Kenntnis der Umstände des einzelnen Falles, insbesondere der vom betreffenden Nachsichtswerber absolvierten Ausbildungsgänge und der zurückgelegten Zeiten einschlägiger Tätigkeiten, beurteilt werden, ob die Voraussetzungen für die Erteilung einer Nachsicht vom Befähigungsnachweis erfüllt sind.

Die zuständigen österreichischen Stellen gehen von der Annahme aus, daß der Tätigkeitsbereich des "accompagnatori turistico" mit dem Berufsbild des Reisebetreuers im wesentlichen übereinstimmt.

Die gewerbsmäßig ausgeübte Tätigkeit des Reisebetreuers bildet den Gegenstand eines freien Gewerbes, d.h., es ist kein Befähigungsnachweis vorgeschrieben. Der Reisebetreuer trägt insbesondere für die Verpflegung der Reisenden und für eine entsprechende Unterbringung in den Quartieren Sorge. Er ist auch berechtigt, im Rahmen der Betreuung von Reisenden Hinweise auf Sehenswürdigkeiten zu geben. Der Reisebetreuer darf daher den von ihm betreuten Reisenden im wesentlichen nur Bezeichnung und Lage einer Sehenswürdigkeit, allenfalls auch noch deren wesentliche Bedeutung, bekanntgeben. Es ist ihm aber verwehrt, an Ort und Stelle den Reisenden die Sehenswürdigkeit wie ein Fremdenführer zu zeigen und zu erläutern; vielmehr muß er die Besichtigung der Sehenswürdigkeit entweder den einzelnen Reisenden überlassen oder die Reisenden einem befugten Fremdenführer übergeben.

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- 3 -

Hinsichtlich der gewerbsmäßig ausgeübten Tätigkeit des Reisebetreuers gehen die zuständigen österreichischen Stellen im Hinblick auf die genannten italienischen Rechtsvorschriften ebenfalls davon aus, daß die Gegenseitigkeit gemäß § 14 Abs. 1 der österreichischen Gewerbeordnung 1973 zwischen Österreich und Italien nicht vorliegt.

Wird allerdings eine ausländische Reisegesellschaft von einem Reisebetreuer aus dem Ausland dauernd begleitet, so ist auf dessen Tätigkeit die Gewerbeordnung 1973 nicht anzuwenden (§ 211 Abs. 2 österreichische Gewerbeordnung 1973). In diesem Fall ist daher weder der Nachweis der Gegenseitigkeit gemäß § 14 Abs. 1 Gewerbeordnung 1973 noch eine Gleichstellung mit Inländern gemäß § 14 Abs. 2 Gewerbeordnung 1973 erforderlich. Diese Ausnahme gilt jedoch nur dann, wenn der Reisebetreuer die ausländische Reisegesellschaft vom Ausgangs- und Endpunkt der Reise, die im Ausland liegen müssen, ständig begleitet. Ein Reisebetreuer, der erst unterwegs (z.B. vor dem Grenzübertritt nach Österreich oder erst in Österreich) zur ausländischen Reisegesellschaft stößt oder die ausländische Reisegesellschaft unterwegs (z.B. unmittelbar nach der Ausreise aus Österreich oder schon in Österreich) wieder verläßt, fällt daher nicht unter diese Regelung.

Das Bundesministerium für auswärtige Angelegenheiten benützt diese Gelegenheit, der Italienischen Botschaft die Versicherung seiner ausgezeichneten Hochachtung zu erneuern.

Wien, am 16. November 1990



The Tour Manager and the Tourist Guide

... this second of two position statements, the demarcation between the two roles of Tour Manager and Tourist Guide is exercised by IATM the Federation of European Guides.

This paper reflects the relationship between the tour manager and the tourist guide (sometimes referred to as the "Local Guide") within the context of the package tour. The tourist guide is contracted either by the tour operator in advance, or by the tour manager before or during the package tour. The tour manager has a knowledge of the tour group gained during the tour, and any specific requirements or idiosyncrasies can be imparted to the tourist guide. The tourist guide will only normally be known to the group for a short period - that is morning, afternoon or evening tours, or a combination of these.

IATM recognises the essential nature of the tourist guide, where time, depth of information requirement, the tour content permits, for giving more detailed information about a particular city or area. It would

be impossible for the tour manager to have an in-depth knowledge of each area as required of the tourist guide. Although the tour manager is required to have certain specific knowledge and information about a particular city or area so as to give their passengers information for leisure time activities, detailed input by the tourist guide will be required by passengers so as to be able to understand better the nature of the area they are visiting, the character of their host city or area, and the life, background and culture of the inhabitants.



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Requirements: The tourist or local guide is the person selected to give the tourist group a specialist intensive and deep insight into a particular city. They meet the group after hotel check-in and impart to them more specific information about a defined geographical area. They will complement the tour manager's output and familiarity with the tourist group with up-to-date local events and occurrences.

Duties: The tourist guide may be required to conduct specialist visits to monuments, churches and historical sites as sold to clients by the operator. The tourist guide bridges the gap between the general background information given by the tour manager and the in-depth knowledge of their own specialist area.

The tourist guide also has an important role in minimising any environmental or ecological effect of mass tourism.

Overview: There may be the situation where insufficient or inaccurate information is given if a tourist guide is not used when financial restraints dictate the programme content.

JUNE 1996

On The Road

IATM

INTERNATIONAL ASSOCIATION
OF TOUR MANAGERS LTD.

Mr Patrick Hennessey
Director, European Commission, DGXXIII
80 Rue d'Arlon
1049 Brussels
Belgium.

13 September 1996

Dear Mr Hennessey,

Thank you for your letter of August 20 requesting our advice on matters which greatly concern the members of our Association.

1. To clarify the distinctions between the two separate professions of Tour Manager and Tourist Guides we enclose:

- Joint IATM/FEG Press Release defining the differences;
- Official IATM Position Papers on the Tour Manager and the Tourist Guide.

Recently, our Tour Managers have been regularly obstructed in their work, especially in Italy, which suddenly requested a "Certificate of Experience" from Tour Managers. As this Certificate is only obtainable by E.U. Nationals, or by Tour Managers working for an E.U.-based Tour Operator, non-E.U. Tour Managers, or Tour Managers working for a non-E.U. Tour Operator are excluded.

The experience needed for such a Certificate is less than that required for membership of our Association. Additionally, membership of the IATM requires references and an interview. In view of this, we cannot see the Certificate of Experience as a guarantee of a good Tour Manager.

Most of our member Tour Managers are freelance and are contracted for a specific length of time or for a specific tour.

A Tour Manager should have the right to accompany a group through a city, or to sights which do not require the services of a Tourist Guide.

The Tour Manager is the 'Ambassador' for the area or country being visited by the group, and loses the necessary trust and confidence of the group when constantly stopped or obstructed when carrying out his/her work.

IATM recognises the importance of a professional Tourist Guide for specific historical monuments or museums, but is greatly concerned about the growing restrictions imposed by countries such as Italy.



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Every Tour Manager, and every escort assigned to accompany a special group - e.g. a group of handicapped persons - NEEDS both freedom of movement, and freedom to provide the services he/she has been contracted to provide (please see point 3).

2. Closed Door Tours. IATM considers these to be tours booked by a particular group of persons, or individuals joining a group prior to departure for the area they have chosen to visit. These tours are mostly booked through a Travel Agent in their home country, or through a Tour Operator. The Tour Manager normally travels with the group from the moment they arrive, e.g. in London until the end of the tour, e.g. in Paris. The group cannot be joined part-way for just a few days. The Tour Manager can, at any time during the Tour, produce an itinerary and an accurate list of passengers.

3. The ruling of the European Court of Justice (case C.180/89) clearly states that there should be freedom of movement for the Tour Manager, provided that, at certain historical monuments and museums, the services of a professional Tourist Guide are used.

Problems are constantly caused by use of the wrong terminology: Tour Manager for Tourist Guide, and vice versa. The Court ruling actually describes the work of the Tour Manager, though this term is never used.

If however, as seems to be the case, entire cities will be declared to be historical centres to be visited only by groups accompanied by a professional Tourist Guide, then IATM needs to be involved in defining which monuments and historical sites should be considered as such in order to protect our profession - that of the Tour Manager. All Tour Managers require the necessary freedom to do their job, without restricting this to only E.U. Nationals or those who work for E.U.-based Tour Operators.

IATM fears that, if countries within the E.U. continue to put restrictions on this field, there will certainly be repercussions in non-E.U. countries, thus obstructing E.U. Tour Managers in bringing European groups to those countries.

We thank you for the opportunity to present our opinions and ideas on these matters to you and would appreciate receiving a copy of your final report.

With kind regards,
Yours sincerely,

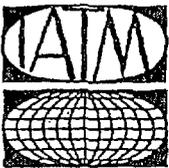


Marieke Waayer, IATM Chief Executive
Simon Ackroyd, European Affairs

Encl.

PRESS RELEASE FROM THE INTERNATIONAL ASSOCIATION OF TOUR MANAGERS AND THE EUROPEAN FEDERATION OF TOURIST GUIDE ASSOCIATIONS

As a result of frequent confusion between our two professions, IATM and FEG have found it necessary to issue the following mutually agreed and widely accepted professional definitions as requested by the relevant European Community institutions.



A tour operator will organise, package and sell a tour, which may last from 2 days, and may exceed 40 days in duration. In order to have a company "representative" physically present throughout this package they usually contract persons to travel with the group, referred to as "Professional Tour Managers" in their brochures. This title derives from the services for which an experienced person is required, and whose main source of income is from tour managing.

Responsibilities and duties of the Professional Tour Manager:

1. To manage and supervise the pre-established itinerary, ensuring the programme is carried out in its entirety as described in the company's literature and sold to the consumer.
2. To ensure that the standards and quality of all services included in the price of the package are maintained and that they are rendered efficiently and punctually.
3. To care for the well-being, comfort and safety of each individual on the tour.
4. To give all necessary help to any group in difficulty or in an emergency.
5. To furnish the group with background information "en route" covering general ethnic, geographic, historic and socio-economic aspects of each country visited and customs and local practical information.
6. To be aware of the procedures regarding passports, visas, banking, hospitalisation, visitor's rights, insurance reports, as well as customs, local and police regulations as applicable in each country visited.

Duties include: Administration and accounts; confirmation and co-ordination of all package services such as transport, accommodation, restaurants, entertainments, and liaison with Tourist Guides for local sight-seeing; check-in and luggage control; provision of bulletins detailing timetables for activities.

Qualification and skills required include, in addition to the knowledge required for the above: ability to communicate with both clients and suppliers; a knowledge and understanding of personalities and needs of the traveller in a foreign country; and a responsible attitude to both people and the environment.

The Professional Tour Manager is the on-the-spot, responsible contact between Consumer, Supplier and Tour Operator.



In order to ensure that visitors are provided with knowledgeable and welcoming Tourist Guides, all EEC countries have made educational provision and/or legislation - some as long ago as the 19th century and others in the post war years. Since the 1950s the major European heritage sites and monuments have been interpreted by Tourist Guides qualified by examinations organised/recognised by the relevant regional or national Tourist Authority.

Responsibilities and duties of Tourist Guides:

1. To carry out guided tours as requested by clients or specified in clients' brochures paying careful attention to schedules and itineraries.
2. To create a friendly rapport, meeting particular client requirements, whether for the large package tour group or the smaller special interest parties.
3. To observe current agreed codes of professional conduct.

The Tourist Guide's main role is to guide groups or individual visitors from abroad or from the home country around the monuments, sites and museums of a city or region; to interpret in an inspiring and entertaining manner, in the language of the visitor's choice, the cultural and natural heritage and environment.

The Tourist Guide Qualification requires:

Wide general knowledge with specific reference to the history, geography, art & architecture, economics, politics, religion and sociology of the area of qualification.

Specialised linguistic knowledge with all languages spoken fluently including the specialist terminology in many fields.

Interpersonal skills, selection of knowledge and communication techniques which comprise The Art of Guiding.

The Tourist Guide's job description is as follows:

In-depth environmental interpretation. The Tourist Guide is the well-informed intermediary between the latest research in many subject areas and the various levels of tourist demand and interest.

Operation in a clearly defined cultural/geographical area is necessitated by the breadth and depth of knowledge required along with the associated practical skills and itinerary planning. Developments in many fields are so rapid as to require frequent update study and ongoing professional training at a level that can at most encompass an area equivalent to one of the smaller EEC member states.

Both Associations are sure that for Europe to maintain and increase its share of world tourism, emphasis must be placed on Quality of Service and Professionalism. Therefore it would be clearly advantageous for all visitors, particularly package tour groups, to benefit from the services of Tourist Guides who are unofficial ambassadors for their specific areas as are Tour Managers for all the countries that may be visited. We hope that moves to enhance Consumer Protection in the European Community will ensure that visitors are not provided with the services of incompetent, unqualified persons to the detriment of the future development of Tourism. Owing to the very diverse provision in various member states, I. A. T. M. and F. E. G. have formulated proposals for new Community standards governing our professions with suitable homogenous criteria for all states. Entrance to our professions based upon standardised selection processes and uniform levels of final qualification provides quantifiable service for tourist (consumer) protection.

I.A.T.M. - POSITION PAPER

THE TOUR MANAGER

DEFINITION

The Tour Manager is a professional person, contracted by a Tour Operator to conduct package tours through one or more countries.

DUTIES

The Tour Manager is responsible for *managing* the day-to-day running of the tour as sold by the tour operator. As well as giving information to passengers about the geographic, historic, economic, and social background of the places to be visited, they must impart practical information about local conditions to ensure that passengers are able to gain the maximum enjoyment from their visit.

Administration of the pre-arranged package as below is also involved (but not exclusively) as follows:

1. Reconfirmation of contracted hotels,
2. Hotel reception,
3. Baggage control,
4. Meal confirmation and control,
5. Bookings and visits to venues and sites of historical and cultural interest,
6. Liaison with tourist guides,
7. Arranging stops for meals en-route,
8. Contact with customs and immigration officials,
9. Setting-up and arranging a programme of optional excursions, and any day-to-day events.

With special interest groups, such as handicapped passengers, pilgrims or farmers groups, local contact is especially important regarding opening times, specific visits, and traffic regulations. These have to be co-ordinated with a view to the limitations and requirements of the group.

RESPONSIBILITIES

TO THE TOUR OPERATOR: As the Tour Operator entrusts the care of clients to the Tour Manager as an individual they must be able to be *confident* that the Tour Manager will cater to the needs of those clients in such a way that they will generate the expansion of Tourism. The Tour Operator is responsible under Consumer Protection Laws, and the Tour Manager will form part of this responsibility.

TO THE CONSUMER: It is essential that tourists receive an understanding of local peoples, their traditions, customs and culture with an aim to breaking down barriers between peoples of the World. The Tour Manager is responsible for ensuring that the client receives all the services for which he has paid as a consumer.

When passengers are undertaking a tour which may continue for many weeks they may find themselves in an alien environment where many foreign languages are spoken, where cultures, customs, food and traditions are different. During a tour the Tour Manager, apart from controlling the smooth passage through many border posts, may be involved in negotiating for visas, aiding passengers requiring medical or police help, counselling passengers that may be homesick, culture-shocked or suffering any form of trauma.

TO THE ENVIRONMENT: The fragile nature of the environment has to be respected and protected from all forms of detrimental influence. The Tour Manager is aware of the effects of the impact of mass movement of people and as coach groups can be better controlled they have considerably less environmental impact than an equivalent number of individuals. The Tour Manager is in a position to help minimise any damage and to spread an understanding of the environment amongst travellers.

I.A.T.M. POSITION PAPER

THE TOUR MANAGER AND THE TOURIST GUIDE

INTRODUCTION

This paper reflects the relationship between the Tour Manager and the Tourist Guide (sometimes referred to as the "Local Guide") within the context of the Package Tour. The Tourist Guide is contracted either by the Tour Operator in advance, or by the Tour Manager before or during the package tour. The Tour Manager has a knowledge of the tour group gained during the tour, and any specific requirements or idiosyncracies can be imparted to the Tourist Guide. The Tourist Guide will only normally be known to the group for a short period - that is morning, afternoon or evening tours, or a combination of these.

I.A.T.M. recognises the essential nature of the Tourist Guide, where time, depth of information requirement, and tour content permits, for giving more detailed information about a particular city or area. It would be impossible for the Tour Manager to have an in-depth knowledge of each area as required of the Tourist Guide. Although the Tour Manager is required to have certain specific knowledge and information about a particular city or area so as to give their passengers information for leisure time activities, detailed input by the Tourist Guide will be required by passengers so as to be able to understand better the nature of the area they are visiting, the character of their host city or area, and the life, background and culture of the inhabitants.

REQUIREMENTS

The Tourist or Local Guide is the person selected to give the tourist group a specialist intensive and deep insight into a particular city. They meet the group after hotel check-in and impart to them specific information about a defined geographical area. They will complement the Tour Manager's output and familiarity with the tourist group with up-to-date local events and occurrences.

DUTIES

The Tourist Guide may be required to conduct specialist visits to monuments, churches, and historical sites as sold to clients by the operator. The Tourist Guide bridges the gap between the general background information given by the Tour Manager and the in-depth knowledge of their own specialist area.

The Tourist Guide also has an important role in minimising any environmental or ecological effect of mass tourism.

NET

Network of European private entrepreneurs
in the Tourism sector

ECTAA

*Group of National Travel Agents
and Tour Operators' Associations
within the EU*

ETOA

*European Tour Operators
Association*

HOTREC

*Confederation of the National Associations
of Hotels, Restaurants, Cafes and Similar
Establishments in the EU and the EEA*

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Ref. 961211/953/96

17th September 1996

Dear Mr Hennessy,

Thank you for your letter of August 28th, requesting a response to certain questions relating to tour managers and tourist guides. We would like to take this opportunity of thanking you for offering us the possibility of presenting our views on these issues, which are of considerable importance to our organisations.

The members of NET use thousands of tour managers and tourist guides every year. We feel that we are uniquely well positioned to define what is in the interests of our customers, whose welfare has to be the main purpose of any legislation in this area.

With regard to the specific questions asked in your letter, we would like to make the following comments :

I. a) Tourist Guides

Tourist guides have qualifications issued by ostensibly competent bodies (usually local guiding associations, sometimes working in conjunction with local authorities) that declare them capable of conducting a tour around a specific site or city. They are often referred to as local guides.

b) Tour Manager

A tour manager is the person to which the clients entrust the delivery of a tour.

If he/she is working for a tour operator, he/she is a professional tour manager, who's responsibilities are determined by the requirements of the client. Within the boundaries of the law (and package travel directive 90/314/EC), the tour manager has to be free to do what his clients require. This may involve leading city excursions, lecturing in ancient cities or hill walking, etc...

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If a tour is organised by an occasional organiser (see definition of article 2 of the package travel directive) a tour manager could be a teacher (tour organised by a school), an academic (University tour) or just a member of the group (club tour).

c) Interactivity of Tour Manager and Tourist Guides

When a tourist guide is on a coach and a tour manager is present, the tourist guide is acting under the directions of the tour manager who acts on behalf of the organiser.

If no tour manager is present, the tourist guide is acting as a tour manager during the performance of his service.

There is no limit to the reasonable needs of the clients, therefore there can be no limits to what the tour manager can or cannot do. E.g. : some package tours include in their programme a general city tour (called within the trade an "orientation tour").

For this purpose, a tour manager must be allowed to provide his clients with the expected services.

We take issue with local restrictions which place artificial barriers on the activities of a tour manager. It is patently wrong to prevent a teacher from showing his class a building on the basis that someone else has a "permit" to do so. It is equally unjust to prevent a tour manager from discussing a sculpture because a local authority has declared exclusive possession of such knowledge. We maintain that it is the natural right of the visitor to choose whoever they wish to lead them : that person is the tour manager.

2. NEI considers a "closed door tour" to be a tour involving a group which has been assembled prior to departure. In many cases this involves the same group of clients, who have purchased pre-booked places to participate in a certain itinerary. These tours are usually sold through tour operator brochures, either directly by the tour operator or through a travel agent.

"Closed door tours" can also involve groups of individuals who are doing a tour as part of a club or social activity (church groups, school study groups, etc.) or as a work-related incentive. One of the most important points, in relation to the mention of "closed door tours" in the context of the Court Ruling, is that these tours are not open to be joined by the general public on a freely marketed "ad hoc" basis.

3. The ruling by the European Court of Justice against the Italian Republic in February 1991 (Case C-180/89) stated that Italy had failed to fulfil its obligations under Article 59 of the EEC Treaty by requiring "*persons who provide services as a tourist guide accompanying a group of tourists from another Member State, when the services consist in guiding tourists in places other than museums and historical monuments where a specialist guide is required, to hold a license which is issued to persons in possession of a specific qualification awarded on the passing of an examination*".

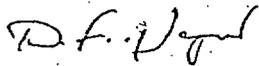
This ruling was the cause of considerable controversy, not least since the terminology used by the Court makes reference to "tourist guides" but actually describes the activities of "tour managers".

irrespective of the terminology used, the Court Ruling provides a clear message, namely that individuals who are escorting groups are free to lead them into all areas other than specific sites or monuments which are only accessible to the general public in the company of a guide who has obtained specific qualifications required by the custodians of that site. Examples of such sites include the Catacombs in Rome and the Ducal Palace in Mantua.

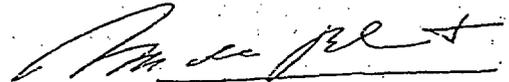
NET agrees with the interpretation presented by the Court and would not support a broadening of this definition, even though many ETOA and ECTAA members regularly employ the services of tourist guides for cities and regional tours which could, according to the ruling, technically be carried out by tour managers. We cannot support moves made by certain destinations to declare the entire city centre as a historic site. This contravenes the Court Ruling, since the city centre will inevitably remain open to the general public. Furthermore, we cannot accept, in principle, moves made by national authorities to introduce additional legislation which will result in unfair or restrictive practices with regard to tour managers, and protectionist measures for tourist guides. It is essential to maintain the principle of freedom of movement and the freedom to provide services for both EU nationals and (where applicable) for nationals from third countries.

We sincerely hope that this information is of assistance to you, and would be most grateful to receive a copy of the final report in due course.

Yours sincerely,



Daniela HESSE-WAGNER,
Executive Director
ETOA



Michel de BLUST,
Secretary General
ECTAA