

Professions in Tourism: Regulation vs. Deregulation

Elizabeta Zirnstein

University of Primorska, Faculty of Management, Slovenia
elizabeta.zirnstein@fm-kp.si

Valentina Franca

University of Primorska, Faculty of Management, Slovenia
valentina.franca@fm-kp.si

Abstract. With the aim to ensure free movement of labour and to increase the competitiveness of the European economy, the question of (de)regulation of professions has been an ongoing issue in the EU for years. Regulation of a profession means setting conditions for the pursuit of that profession. Typically, these conditions refer to education and work experience, frequently stipulating mandatory courses and knowledge tests as a condition to obtain a permission (licence) to pursue that profession. The regulation of professions is justified by the public interest theory of regulation with the arguments of safety of users or quality of products/services. However, the regulation of professions has its costs: it may affect the competitiveness of the European economy and the free movement of workers. This is the main reason, why the trend in the EU has been very much towards the state-enforced deregulation of professions, meaning liberalising or eliminating the conditions for the pursuit of an individual profession. The aim of deregulation of professions is therefor to open the labour market so that the access to a desired profession is free.

Slovenia is known for a relatively high regulation of professions. In this paper, we focus on tourism and on its regulated professions: tourist guide, regional tourist guide, accompanying assistant, mountain guide, caving guide and canyoning guide. We analyse the reasons for such regulation and its effects. We also analyse the possibilities for deregulation of those professions. We conclude that the deregulation of profession of mountain guide, potholing guide and canyoning guide is not recommendable, as it would effect the safety of tourists. However, the government should consider the possibilities for administrative simplification of the procedure for obtaining the corresponding licenses. On the other hand, the profession of accompanying assistant could be deregulated.

Keywords: regulated professions, professions in tourism, deregulation of professions.

1 Introduction

With the aim to ensure the free movement of labor in the EU and to increase the competitiveness of the European economy, the question of deregulation of professions is an ongoing subject in the EU. Regulation of professions means setting the conditions for the pursuit of a particular profession. The EU, in general, does not object the regulation of professions, acknowledging the existence of legitimate arguments for restrictions in certain professions. The problem is, however, that the regulation affects the free movement of workers and freedom of establishment, and thus has a negative effect on the competitiveness of the European economy.

The regulation of professions is also present in the field of tourism. In Slovenia, the conditions for pursuit of a certain professions in tourism are prescribed for a number of jobs: tourist guide, tourist guide of a tourist area, accompanying assistant, mountain guide, potholing guide, canyoning guide. The question that arises is, whether we really need so much regulation of professions in tourism.

The purpose of this article is to present the reasons for and against the deregulation of professions in the field of tourism in Slovenia. To this end, we first highlight the concept of regulation and present the reasons therefor. Then we try to define the meaning of deregulation of professions and present its reasons and objectives. We will continue with the analysis of regulated professions in tourism in Slovenia and argue the pros and cons for deregulation. Finally, we present recommendations on how to approach to deregulation - both substantively and procedurally.

2 Regulation and deregulation of professions

When talking about (de)regulation of professions, the first question that arises is, what does the term “deregulation of professions” or “regulation of professions” really mean. Based on literature review and the analysis of legal sources we can conclude that there is no simple answer to this question, as there are many definitions and different opinions of (de)regulation of professions. But one thing is certain: deregulation of professions is a reverse procedure of the regulation of professions. Therefore, when defining the notion of deregulation of professions it is appropriate to start from the basic concept of a regulated profession. However, even in this respect, in theory there is no consensus regarding its definition.

Den Hertog (1999, 223) suggests a definition of "regulation" to be "the application of legal instruments in order to implement social-economic goals". The author further differentiates two fundamental forms of regulation – economic regulation and social regulation. According to Den Hertog, economic regulation incorporates two sub-types of regulation, i.e. structural regulation and regulation of behaviour (similar Kay and Vickers, 1990). Structural regulation applies to regulation of the market structure. Examples of structural regulation are restrictions regarding the access to the market or exit from it. According to Den Hertog this also includes the regulation of professions. On the other hand, regulation of behaviour establishes rules of behaviour in the market, such as price control, marketing prohibitions and standards of quality. According to Den Hertog, social regulation can be found in the fields of environmental protection, working conditions, user protection and similar areas. Overall, the author understands general interest, i.e. the best possible allocation of limited resources for individual and collective goods, as one of the best reasons and goals of regulation.

Similar arguments can be found also by other authors. For example Garoupe (2006, 6) stresses that the purpose of the regulation of professions is not necessarily only the pursuit of economic, but also wider societal goals. Although not presenting a definition, Fells (2011) also deals with the regulation of professions basically by dividing it into two basic forms: the regulation of entry conditions for the pursuit of the profession and the regulation of the practice of the profession (after entering it).

A legal definition of a "regulated profession" can be found in the Directive 2005/36/EC on the recognition of professional qualifications (EU Official Journal no. L 255/05). Its Article 3 says that a regulated profession is *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; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit*. However, it has to be stressed that this definition is meant only for the purpose of Directive 2005/36/EC. Thus, it can be neither applied as a generally valid nor be referred to from the legal perspective in other cases, i.e. outside of the regulative scope of Directive 2005/36/EC.

Regulation of professions, therefore, means that individual countries set conditions for entry and / or to perform a certain profession, such as proper education, various certificates (for example training etc.), a certain number of years of professional experience, knowledge of (local) language and similar.

The basic argument that justifies the regulation of professions is usually the protection of public interest. This is seen primarily as ensuring the health and safety of users of services and quality of products provided by a regulated profession. Some professions require regulation as a rule due to its high complexity, such as doctors, lawyers etc. Besides all the stated reasons, countries regulate profession for a variety of other different reasons, thus it is difficult to set a common denominator. Often the reasons lies also in state protectionism. In practice, this means that the state impedes or rejects the recognition of professional qualifications, obtained in other country. By doing so, the country protects the domestic labor market. Furthermore, some countries distrust foreign educational systems and consequently do not recognize skills and qualifications, obtained abroad. There are also many cases where the regulation of professions is a result of a strong professional organization. Consequently those who perform those professions (usually they are organized in some legal entities, such us chambers etc.), exercise control on the market in order to safeguard their own interests.

Regulation of professions itself is not problematic and can be justified if it achieves the goals of ensuring public health and safety. The problem, however, occurs when the regulation of a certain profession is so strong (severe) that it is almost impossible to access the labor market. In this case, the regulation of that profession presents a major obstacle (problem) for foreigners who want to work or to be self-employed in another country. This is a particular problem in case of the single European labor market as such barriers can restrict the free movement, which is one of the fundamental freedoms of the European Union. From the national perspective, the regulation of professions can be problematic when the number of regulated profession is extremely high and/or the requirements for performing professions are numerous. That hinders the competitiveness of the economy, access to the labor market etc. Moreover, in such cases, it seems that the state instead of taking care of their citizens imposes on them more and more obstacles. In this respect Garoupe (2004) states that the regulation of a certain profession is only justified when there is a public interest in the regulation, which may be in the safety of the users (consumers) or the correction of asymmetries in the market. From this perspective, it would be recommendable to deregulate all those professions, where there are no arguments for regulation.

2 Regulated professions in tourism in Slovenia and other EU member states

In Slovenia there are six regulated professions in the field of tourism. The professions of a tourist guide, tourist guide of a tourist area and accompanying assistant are regulated in the Law on Promotion of Tourism Development (Official Journal of Republic of Slovenia, no. 2/2004, 57/2012, 17/2015, 52/2016). The act sets the conditions to be met by tourist agents, tourist guides and accompanying assistants (regulated professions), but also by tour operators or organisers of sport events (regulated services).

The profession of a mountain guide is regulated in the Law on mountain guides (Official journal of Republic of Slovenia, no 99/2004, 59/2010). The profession of a canyoning guide is regulated in the Law on sports (Official journal of Republic of Slovenia, no.22/1998, 97/2001, 15/2003). The profession of a potholing guide is regulated in the Law on protection of caves (Official journal of Republic of Slovenia, no.2/2004, 61/2006, 46/2014).

2.1. The profession of tourist guide, tourist guide of a tourist area and accompanying assistant

In Slovenia there are over 1100 licensed tourist guides and over 850 accompanying assistants. There are practically no travel agents or tour operators that employ unlicensed guides, since the controls are strict and high fines are imposed for violations.

The Act on Promotion of Tourism Development stipulates that the tour operator has to provide a tour guide or an accompanying assistant for any organized group of tourists (article 38). Only persons who

pass a test of knowledge and obtain a licence for a tourist guide can carry out tourist guidance. Similar stands for accompanying assistants. The program of the exam is set by the Slovenian Chamber of Commerce, in agreement with the Minister of Labour, Family and Social Affairs, the Minister of Culture and Minister responsible for Tourism (article 39, paragraph 3). The conditions to apply for the examination in order to obtain a licence for a tourist guide or an accompanying assistant (companion) are at least 18 years, at least secondary education and good knowledge of a foreign language (Article 39, paragraph 4).

In addition to the professions of tourist guide and accompanying assistant, the Law provides that a municipality in a given tourist area can prescribe a special exam programme for guides who wish to obtain a licence of a tourist guide of a tourist area, which comprises specific knowledge. Tourist guides for tourist areas may begin with guided tours when they meet the said municipal conditions (Article 42).

Individuals who have passed the examination for a tourist guide are entered in the register of tourist guides maintained by the Tourism and Hospitality Chamber of Slovenia. Applications to take the exam must be lodged with the Tourism and Hospitality Chamber of Slovenia on the correct form. After successful completion of the exam, tourist guides or accompanying assistants receive:

- a certificate showing the applicant successfully completed an examination,
- a certificate showing the entry in the register of tourist guides and accompanying assistants,
- a plastic identity card with a colour photograph.

A tourist guide or accompanying assistants must wear the identity card when performing services.

Once a year tourist guides must apply to renew their annual registration. The renewal of their registration depends on the number of performed guided days in the previous year.

2.2. The profession of mountain guide, canyoning guide, potholing guide

Guiding in the Slovenian mountains can only be provided by qualified mountain guides licensed by the Association of Mountain Guides of Slovenia. Acquiring a license is extremely difficult and takes several years. The conditions to obtain a licence for a mountain guide are prescribed in the Law on mountain guides.

Anyone who wishes to qualify for a mountain guide must meet the following initial conditions: age 18 years, at least secondary education, a medical certificate of proven physical and mental abilities, professional experience and personal suitability. The first step is the successful completion of the training program for mountain guides, which is followed by the mandatory one-year internship. After the internship, a candidate must pass a proficiency examination and obtain a liability insurance, in order to perform a profession of a mountain guide (article 3). Upon successful completion of training and professional examination, a mountain guide is entered in the directory of Mountain Guides of Slovenia (article 4).

When pursuing their profession, mountain guides must wear a special sign of a mountain guide in a visible place and have an identity card with them. The Slovenian Mountain Guide Association issues the card and sign of mountain guides.

2.3. The profession of canyoning guide and potholing guide

The profession of a canyoning guide is regulated within professions in sport. The Law on sports stipulates that a performer of a profession in sport must have an appropriate professional education

and relevant qualifications (article 26). A special expert council (article 27) determines the qualifications for different professions in sport. Upon successful completion of professional training (it can be delivered only by certified organisations, clubs and associations), a certificate of competence is issued, which is the basis for obtaining a license to perform professional work. The Olympic Committee of Slovenia issues the licence.

The Law on the protection of underground caves provides that only licenced guides can perform guided tours of the (open) caves (article 42). The training for potholing guides (cave guides) is carried out by organizations which are specifically authorized by the Ministry of Environment and Spatial Planning. In addition, the same ministry (article 42, second paragraph) must confirm the training program in advance. Upon successful completion of the training and the exam, a guide is entered in the register of licensed potholing guides, managed by the Ministry of Environment and Spatial Planning (article 43).

2.4. Comparison with the EU member states

The EU Regulated Professions Database shows that the regulation of professions in tourism varies from country to country. In Scandinavian countries, the professions in this sector are not regulated at all, while countries like Slovenia, Italy, Austria have the highest number of regulated profession in tourism. The profession that is regulated repeatedly is the profession of a tourist guide (Regulated Professions Database 2016).

According to the Regulated Professions Database, the profession of **tourist guide** is regulated 13 EU states: Austria (fremdenfuhrer), Croatia (turistički vodič), Cyprus (Ξεναγός), France (guide-conférencier), Greece (Ξεναγός), Hungary (idegenvezető), Italy (guida turistica), Lithuania (gidas), Malta (tourist guide), Romania (ghid de turism), Slovakia (Sprievodca cestovného ruchu), Spain (Guía de turismo) and in Slovenia (turistični vodnik). In Slovenia, Italy and Croatia, tourist guides can be empowered to guide all over the country or they can be specialised for a certain region (local area) of the country (**tourist guide of tourist area**). The conditions to obtain a licence (permission) for a tourist guide are very similar in all the mentioned countries: at least 18 years, secondary education, the exam, language knowledge.

The profession of an **accompanying assistant** is regulated only in Croatia (turistički pratitelj) and Slovenia (turistični spremljevalec).

The profession of a **mountain guide** is regulated in 7 EU member states: Austria (Berg- und Schiführer), Czech Republic (Průvodcovská činnost horská), Germany (Berg- und Schiführer), Italy (guida alpina), Poland (Przewodnik górski), Slovakia (Horská vodcovská činnosť) and Slovenia (gorski vodnik). The conditions to obtain a licence (permission) for a mountain guide are very similar in all the mentioned countries: the exam, adequate mental and physical conditions, language knowledge, at least 18 years, responsibility insurance, impunity. The obtained licence has to be renewed every couple of years (three to five).

The profession of a **canyoning guide** is regulated in only 3 EU member states: Austria (Schluchtenführer), Italy (guida alpina) and Slovenia (vodič po soteskah). In Italy, a profession of a canyoning guide is regulated as a specialisation within the profession of a mountain guide. In Austria and Italy, the conditions to perform the profession of a canyoning guide are set by regions.

The profession of a **potholing guide** is regulated only in Slovenia (jamski vodnik) and Austria (Höhlenführer).

3 Which professions in tourism could be deregulated and why

Starting from the principle that the quality of service and security of tourists should not be sacrificed for the sake of greater competitiveness, we believe that the deregulation of professions in tourism is allowed only to remove the barriers that are not justified by the protection of those two interests. If we analyze the possibilities for deregulation from this perspective, we find that the main reason for the regulation of a mountain guide, canyoning guide and potholing guide is the safety of tourists. Deregulation of the mentioned three professions is therefore not recommendable. However the procedure for obtaining the corresponding licences are complicated and take a lot of time. In this respect, there is some room for a better regulation: the administrative simplification of the procedures for obtaining those licenses should be considered.

By contrast, the main reason for the regulation of tourist guide is not the safety of tourists, but the quality of service. We believe that the deregulation of the profession of tourist guide in Slovenia would not bring any positive impact. Groups of tourists from abroad can already be lead by foreign guides, so the supposed pressure on greater quality of services or on prices would not bring a significant effect. In addition, the deregulation would mean a lower quality of services. This applies even more to the profession of tourist guide of tourist area, which we also do not seem suitable for deregulation (with the exception of administrative simplification). The situation is different in the case of accompanying assistant, who only monitors a group of tourists and provides technical and organizational support. The legitimacy of regulating this profession is therefore questionable. We believe that for this profession, a possibilities for the deregulation should be explored.

4 Important steps of the path to deregulation

Regardless how we define it, the deregulation of professions is a political decision, especially in choosing the manner, purpose and goals of deregulation. The decision whether or not to deregulate a profession significantly depends on the appropriate balance between the benefits of regulation and benefits of deregulation. Starting from this point of view, superfluous rules should either be changed or omitted. The rules justified by the general interest should be kept, provided that they are proportional and necessary for the proper performance of the regulated profession. The rules justified by the general interest, but not achieving the desired effect, should be changed accordingly. Thus, it should be clear for every requirement aimed to restrict access to or pursuit of the profession, (i) what exactly such a requirement ensures, and (ii) in what way the requirement ensures it. If there are no arguments for the regulation of the profession from the point of view of general interest (thus, there are no justified reasons for the regulation) or even if such arguments exist, but the regulation does not operate in the desired (planned) direction, a *different model of regulation should be considered*, meaning better or more efficient regulation, and in certain cases even deregulation.

Reform in the field of regulation of professions must also necessarily be economically evaluated, so that the costs of deregulation are compared to its benefits. It logically follows that every cost of regulation may also be presented as a benefit of deregulation and *vice-versa* – a positive effect of deregulation means that on the other side there is some negative effect related to the regulation. Weighing between one and the other should be done in a manner so that consideration is given to the *net effect of deregulation* compared to the net effect of regulation, whereby it comprises the effects in their broadest sense.

Finally, in the process of deregulation it is important to include all crucial stakeholders. In the case of tourism professional associations, those associations come in the first place, followed by the chamber of commerce. Beside that, the debate should also take place by the social partners on the national and sectoral level. Countries have different models of social dialogue, which should be respected and the

rules followed accordingly. It is generally of a great importance that all changes in the labour market are accepted by the social partners, which is even more important for such sensitive topic as deregulation.

5 Conclusion

Deregulation of professions is a complex process that can have far-reaching and very different effects. Therefore it has to be carried out with a thorough consideration. The aim of the change is, of course, a better regulation. The fulfillment of this aim does not necessarily mean a deregulation, it can also mean a partial deregulation or even a different regulation. In any case, it is very important that the aim of possible deregulation is clear and precise. The strengths and weaknesses of the new rules must be strictly evaluated from legal and economic point of view.

For professions in tourism, our opinion is that their deregulation may have a negative impact on the quality of services (tourist guides), and in particular on the safety of tourists (mountain guide, canyoning guide and potholing guide), so their full deregulation does not seem appropriate. The exception in this regard is the profession of the accompanying assistant, which we believe could be deregulated. However, representatives of this profession and professional associations should be included in the creation of the content of a possible deregulation of this profession. The deregulation should be conducted through interactive and in particular constructive dialogue of all the stakeholders. Of course, this also applies in the case of a possible deregulation of professions in other industries, not only in tourism.

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