

Law 190 of 13 December 2023 on Tourist Guides

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1. Introduction.

Italy, with its rich history, culture, and scenic beauty, is one of the most sought-after tourist destinations in the world. The profession of tourist guides plays a crucial role in facilitating and enhancing visitors' experiences. To ensure high-quality service and preserve the integrity of information provided to tourists, Italy has established over time a rigorous discipline for guides. However, this discipline has become increasingly complex and disorganized. After years of crisis and challenges in the industry, it has become necessary to enact a new national law that should finally put an end to the convoluted disciplinary system that has been in place until now.

Tourist guides are among the first professions in the tourism sector, as evidenced by the presence of an ancient discipline, the law of December 23, 1888, no. 5888, which regulated "itinerant trades," subjecting them to police supervision and registration in a particular registry after passing a judgment of moral reliability and technical suitability, subject to the former¹.

Until now, however, tourist professions, and consequently guides, have been subjected to a poorly coordinated and sometimes laconic regulation, further complicated by the reform of Title V of the Italian Constitution in October 2001².

The long-awaited reform law³ therefore, fits into a very complex context that cannot be ignored to understand its value. It is considered necessary, therefore, to briefly review some points of legislation regarding guides and tourist professions.

2. The internal regulatory framework before law 190/2023

Until 2001, the year of the constitutional reform, tourism fell under the jurisdiction of concurrent legislative authority between the State and Regions, with regional administrative competence. The system in place until 2001 facilitated the legislative relationship between the State and Regions since

¹ On the regulation of tourist guides, see, among others: M. La Torre, *The Role of the Tourist Guide in Understanding the Territory: Civil Law Aspects* (Il ruolo della guida turistica per la conoscenza del territorio. Profili civilistici), in *Riv. it. dir. tur.*, 2011, n. 3, p. 8 and seq., L. Righi, *Tourism Professions* (Professioni turistiche), in *Dig., disc. pubbl.*, vol. XII, p. 12 ss.; M. Malo, *Tourism and professions* (Turismo e professioni), in *Le reg.*, 2006, p. 555 ss.

² Constitutional law 18 October 2001, n. 3. About it, see among others L. Grimaldi, *Regional legislative power regarding tourism in the Constitution (before and after 2001)*, in *constitutional jurisprudence and in the "Renzi-Boschi" reform project* (La potestà legislativa regionale in materia di turismo nella Costituzione (prima e dopo il 2001), nella giurisprudenza costituzionale e nel progetto di riforma "Renzi-Boschi"), in *www.dirittifondamentali.it*, n.1/2015; E. Bindi-M. Mancini, *Constitutional principles regarding professions and possible contents of state and regional legislative competence in light of the Title V reform* (Principi costituzionali in materia di professioni e possibili contenuti della competenza legislativa statale e regionale alla luce della riforma del Titolo V), in *Le Regioni*, 2005, 1317 and seq.

³ Valeria Gerli, president of Confguide, the National Federation of tourist guides of Confcommercio: "A long process that lasted ten years is finally coming to an end... an absolutely necessary law to combat illegal activity, guarantee work for the category, give access to the profession to new, legitimate tourist guides".

See also Council of State on the lack of regulation at state level: "The result is an overall structure that excludes regional legislative competence in matters of qualification for the profession of tourist guide, without the condition of inertia of the state legislator being able to validly oppose it, which, as underlined by the same appealed sentence, "it does not appear possible to remedy this at a regional (and provincial) level, also due to the interference with the matter of "competition", which falls under exclusive state competence". (Council of State, Section V, Sentence no. 5213/2020 of 26-8-2020).

their establishment⁴, allowing the State, through framework laws, to provide guidance for regional efforts.

The longstanding reference for state regulation was the framework law on tourism, Law No. 217/1983⁵. With the aim of organizing the tourism sector, which was previously governed by regional laws without the necessary guidance from the state, this law provided a useful general framework. Article 11 of Law 217/1983 identified a list of tourist professions (some already existing in regional laws, others introduced anew), delegating to the Regions the task of determining the requirements for carrying out the specified professional roles and "any other profession related to tourism." Based on this provision, the Regions introduced and regulated additional professional roles beyond those outlined in the state law.

Article 11 of Law 217/83 defined a guide as someone who, by profession, accompanies individuals or groups to visits and works of art, museums, galleries, archaeological sites, providing explanations about historical, artistic, monumental, landscape, and natural attractions. As the constitutional distribution of competencies was relatively clear until then, there were no particular disciplinary difficulties, except regarding coordination with emerging European Union regulations.

Starting from 2001, despite article 117 of the Constitution granted full legislative competence to the Regions for all matters, including tourism, not explicitly listed in paragraphs 2 and 3, and which are exclusively or concurrently state matters. But, considering the cross-cutting nature of tourism regulation that pertains to both public and private law (solely under state jurisdiction), numerous issues have been submitted to the Constitutional Court for violations of the competence distribution outlined in the amended article 117.

Like tourism in general, the field of tourist professions has not been able to escape this confusion either. First of all, in fact, it was necessary to clarify whether the object of the regulation was "tourism" or "professions", since the prevalence of one or the other would have significantly changed the outcome regarding competencies. The Constitutional Court addressed this issue in judgment 222 of 2008, regarding the constitutionality of article 10, paragraph 4, of Legislative Decree 7/2007 (Law 40/2007)⁶, which was later repealed by the tourism Code. The Court ruled that regardless of the sector in which a particular profession operates, the determination of the fundamental principles of its discipline always falls within the competence of the State, exercising its concurrent powers under Article 117, third paragraph of the Constitution⁷. The Court further established that the challenged provision was consistent with the principles outlined in Legislative Decree of February 2, 2006, n. 30⁸, which delineates the respective roles of the State and Regions regarding the regulation of a professional activity. These principles affirm that regional legislative authority is exercised over the professions identified and defined by state law. In a subsequent ruling, n. 271 of 2009, the Court further affirmed that in matters of professions, it is the responsibility of the State to identify

⁴ The institution of Regions was established with the delegated decrees of 1972 and with the Presidential Decree no. 616/1977. See, F. Gabriele, *Regionalism between crisis and constitutional reforms* (Il regionalismo tra crisi e riforme costituzionali), in *Rivista AIC*, n. 4/2014.

⁵ Framework law on tourism of 17 March 1983, n. 217.

⁶ Legislative Decree 31 January 2007, n. 7, Urgent measures for the protection of consumers, the promotion of competition, the development of economic activities.

⁷ The court states "that, regardless of the sector in which a specific profession operates, the determination of the fundamental principles of its discipline always falls within the competence of the State, exercising its concurrent powers, pursuant to Article 117, third paragraph, of the Constitution".

The attribution of the matter of "professions" to the concurrent competence of the State, provided for by the aforementioned constitutional provision, is independent of the sector in which the professional activity is carried out and corresponds to the need for uniform regulations on a national level that are coherent also with the principles of community law.

In the case in question, the contested provision regulates aspects that are specific to the exercise of a specific professional activity, the impact of which in the tourism field is irrelevant for the purposes of the division of responsibilities outlined by the art. 117 of the Constitution".

⁸ Legislative decree 2 February 2006, n. 30, Recognition of the fundamental principles regarding professions, pursuant to article 1 of law 5 June 2003, n. 131.

professional profiles and establish the necessary requirements for their practice⁹. Therefore, it is a concurrent matter between the State and Regions, with the broader category of professions prevailing over the specific category of tourism¹⁰. As a result, all regional laws that envisaged the introduction of new professional figures (e.g., nature guide) were annulled¹¹. The paradoxical situation has led to a significant reduction in the legislative powers of the Regions in the field of professions. Their authority was now largely confined to the peripheral tasks of verifying the competencies of professionals, organizing training courses, and maintaining professional lists, with a mere recognitive, communicative or updating¹². Simultaneously, this has created a legislative gap due to the challenges of interaction with European Union regulations¹³.

It was, in fact, necessary for the State to intervene to define the various professions, including tourist guides, through a central provision. As is known, there was already an initial attempt at central coordination in 2001 through the reform of Law 217/83 with Law 135/01. However, it was a considerable failure, precisely because it coincided temporally with the constitutional reform¹⁴.

Even the second attempt at reorganization, which occurred a decade later with Legislative Decree on September 23, 2011, the Tourism Code, did not allow for significant progress in the field of professions. This was not so much due to constitutional issues¹⁵, but rather because the various tourism professions were not clearly identified in Article 6. This provision, by adopting the definition of Article 7, fifth paragraph of Law 135/2001, has indeed confined itself to defining tourist professions in general: activities "aimed at providing services for the promotion of tourist activities,

⁹ See Corte Cost. dec. 29/10/2009 n.271, regarding the law of Emilia-Romagna, it states that "the allocation of the subject of 'professions' to the competence of the State [...] disregards the sector in which the professional activity operates and corresponds to the need for uniform regulation at the national level that is also consistent with the principles of the European legal system."

¹⁰ See: M. Malo, *Tourism without Professions* (Turismo senza professioni), in *Le Regioni*, n. 3/2010, 654 ss., and of the same Author, *Tourism and professions* (Turismo e professioni), in *Le Regioni*, n. 2-3/2006, 555 ss.

¹¹ The Law of the Puglia Region, dated December 19, 2008, No. 37 (Provisions on tourist professional activities), which introduced new professional figures such as tourist interpreter, congress operator, and sports tourist guide, was annulled with Judgment No. 132 of April 21, 2010. In this judgment, the Court asserts that "tourist professions fall within the subject of 'professions,' attributed to the concurrent legislative competence of the State and Regions".

The Legal Counsel then criticizes Articles 7 and 8 of the mentioned regional law, which establish "the creation and maintenance of professional registers and lists," as well as the identification of the necessary conditions for registration in them. Both provisions would be in contrast with the aforementioned Article 117, third paragraph of the Constitution since the identification of requirements for the exercise of professions and the subsequent issuance of relevant authorizations fall under the competence of the State, "which must be valid for the entire national territory and not just for the regional one".

Finally, according to the petitioner, all the contested rules would violate the principle of the free provision of services, as well as that of competition protection, both falling within the exclusive legislative competence of the State, according to Article 117, second paragraph, letter e), of the Constitution.

¹² Thus, admitted by the Constitutional Court, sentence number 355 of 2005. In the same ruling, the Court reiterates that the regional legislator cannot establish a limitation on the territorial areas for which authorization exists, nor can it prescribe the territorial areas within which the profession can be practiced. Such limitations would constitute a violation of the principle of the free provision of services, as outlined in Article 40 of the EC Treaty. For a commentary on the judgment, refer to E.Bindi – M. Mancini, *The Court, in search of a precise delineation of the boundaries of the subject of professions* (La Corte alla ricerca di una precisa delimitazione di confini della materia professioni), in *federalismi.it*, 24/2005.

¹³ For a reconstruction refer to S. Cavaliere, *The uncertain boundaries of the legal regulation of the tourist guide profession between European Union law and national law*, (Gli incerti confini della disciplina giuridica della professione di guida turistica tra diritto dell'unione europea e ordinamento nazionale), in *Dir. pubb. eu.*, 1/2017.

¹⁴ The state law of March 29, 2001, number 135, reforming the framework law 217/83, was enacted shortly before the reform of Title V of the Constitution, when the State still had concurrent competence. The implementing decree for the same law, the DPCM of December 13, 2002 (later partially annulled by the DPR of April 27, 2004), was instead issued in 2002, when the State had already lost some of its competencies. The implementation process has thus become so complicated that it has resulted in a deadlock. On the topic refer to M. Malo, *The annulment of the presidential decree (rectius dpcm) 13 September 2002 for the part relating to tourist guides* (L'annullamento del dpr (rectius dpcm) 13 settembre 2002 per la parte relativa alle guide turistiche), in *Dir. Tur.*, 3/2004, p. 273 and seq.

¹⁵ The censorship of sentence 80/2012 of the Constitutional Court affected most of the provisions of the Decree, but not article 6 of the Tourism Code, as the matter of professions falls under state competence, although concurrent.

as well as hospitality, assistance, accompaniment, and guidance services, aimed at enabling tourists to make the best use of their journey and vacation, also in terms of knowledge of the visited places”.

From 2011 to the present, Article 6 of the Tourism Code has been the sole state legislative reference to professions, as both Law 135 of 2001 and Article 10, fourth paragraph, of Legislative Decree No. 7 of 2007, which outlined certain principles regarding the regulation of guides and tourist escorts in relation to European regulations, were simultaneously repealed with the Tourism Code¹⁶.

And that is why, as we have observed, in the absence of an effective state regulation that defined and regulated various tourist professional figures, the Regions felt free to legislate in areas where they had no authority. In their renewed regulations, they gave rise to new tourism professions and established professional registers, violating the principles of the freedom to provide services, the principle of free competition, and legislative competence¹⁷. As a result, they have been repeatedly subjected to scrutiny by the Constitutional Court¹⁸.

Therefore, in the more recent past, the Regions have begun to act much more cautiously.

The context of uncertainty has weighed particularly on professionals, who have experienced a prolonged period of interruption in the procedures for obtaining authorization, awaiting intervention from the State.

3. The challenging coordination with European legislation

If from an internal perspective the regulation of tourist guides has already faced complexity, the framework has been further complicated by its coordination with European legislation, especially concerning the territorial connection of guides¹⁹. In Italy, given the uniqueness of our country, extremely rich in cultural and landscape assets, the principle of territorial linkage for the authorization of tourist guides has always been in force²⁰. Therefore, the obtained authorization had a regional (or provincial) scope. The detailed regulations outlined by the Regional laws in force under Law 217/83, in fact, involved the completion of a biennial authorization exam. After passing this exam, the guide could operate only within the territory where they had obtained the authorization²¹. The Italian system in force at that time repeatedly elicited reactions from the Court of Justice of the European Community and eventually led to the initiation of an infringement procedure (No. 87/0071 of July 5, 1995) by the European Commission²². The Commission believed that the complex Italian system

¹⁶ If some limited reference to tourist professions had survived in the State-Regions Agreement incorporated into the DPCM of September 13, 2002 (the implementing decree of Law 135 of 2001, not repealed by the Tourism Code), with the DPR of April 27, 2004, letters g and n of Article 1 of the aforementioned Agreement, which concerned the modalities of exercise and the authorization exams for tourist professions, were annulled.

¹⁷ C. Bertolino, *New spaces for intervention for the Regions regarding «professions» and «professional training»* (Nuovi spazi di intervento per le Regioni in materia di «professioni» e «formazione professionale?»), comment on Corte cost. n. 108/2012, in *Le Regioni*, 2012, 1044 ss

¹⁸ See Cost. Court. 178/2014 and 117/2015.

¹⁹ Often due to conflicting interests between Northern and Southern countries. See L. Righi, *Tourism professions* (Le professioni turistiche), in *Diritto del turismo* (edited by) V. Franceschelli – F. Morandi, Torino, 2021, p. 246.

²⁰ And it is still invoked by some trade associations, even after the new law came into force. See, www.guideroma.federagit.org.

²¹ The law 217 of 1983 initially also provided for obtaining a public safety license under the Public Safety Consolidation Act of 1931. The acquisition of this license was repealed by Legislative Decree 112/1998.

²² See: Court of Justice CEE, the judgment of 26/2/1991, Case C-180/89, Case C-154/89, Case C-189/89, and the judgment of 22/3/1994, Case C-375/92, in particular, highlighted that the regulation of tourist guides—not only in Italy—imposed an unjustified limitation on the movement of people and professions. The judgments of the former Court of Justice of the European Communities criticized—because they represented an illegitimate restriction of the freedom to provide services—the regulations of Spain, Greece, and Italy, which required authorization and registration in professional registers or lists for the practice of the profession of tourist guide. The European Court allows authorization only for the preservation of the historical and artistic heritage of the State and concerning the "particular characteristics of certain places." It states that "specialized guides" can be provided for museums or specific monuments. Regarding such judgements see: M. P. Chiti, L. Righi, *Tourism in the European and national dimension* (Il turismo nella dimensione

violated what had been established by Europe regarding the freedom of movement of services and professions, as well as the principles of free competition. At the European level, restrictions on the movement of people and/or professions are only allowed within the scope of protecting an interest of a public nature²³. The Court of Justice allowed for the conditioning of the practice of the profession of guide on passing a qualification exam but did not accept that this could in any way constitute a possible limitation on the number of operators. The Court, in fact, recognized the right to assess competence to the extent that individual states could identify sites of particular interest for which professional guides were necessary, but always and only within the scope of protecting an interest of a public nature.

Italy, convinced of the need to protect its heritage, entrusted the task of identifying sites requiring the presence of a specialized guide to the Regions with the Presidential Decree of December 13, 1995²⁴. Unfortunately, the number of sites then identified by the Italian Regions was deemed excessive by the European Commission, to the extent that in 2003, it sent a letter of formal notice and immediately thereafter, in 2004, initiated a new infringement procedure with a reasoned opinion²⁵. According to the Commission, the abundance of sites hindered the movement of professions disproportionately to the objective to be protected, violating Article 49 of the EC Treaty.

To resolve the infringement procedure, the Italian State enacted Legislative Decree No. 7/2007 (converted into Law No. 40/2007), known as *Bersani bis*. This decree aimed at liberalizing the sector, prescribing that individuals authorized in another Member State could operate in the Italian territory without the need for additional authorizations or qualifications. However, the same decree simultaneously preserved the "prior verification of linguistic knowledge and knowledge of the territory".

These provisions generated several problems: on one hand, it proved quite challenging for the Regions to devise systems for verifying linguistic knowledge and territorial understanding that did not result in excessively restrictive measures; on the other hand, as Italian guides still retained the previous territorial-based authorization, a kind of "reverse discrimination" emerged, to the detriment of Italian operators²⁶.

Once again, the European Commission raised concerns with the EU Pilot case 4277/12/Mark, alleging a breach of the provisions outlined in the Services Directive, 2006/123/EC, specifically Article 10, paragraph 4. This was because Italian national legislation stipulated that the authorization for the practice of the profession of tour guide was valid only at a regional or provincial level. To prevent the initiation of a new infringement procedure, the Commission requested that internal tour guides be allowed to operate throughout the national territory, ensuring they are not subject to unequal treatment compared to professionals from other Member States.

comunitaria e nazionale), in *Quinto Rapporto sul Turismo Italiano* (edited by Ministero del Turismo e dello Spettacolo), Milano, 1993, 391, ss.

²³ Refer to the Court of Justice of the European Communities judgment of February 26, 1991, Case C-180/89, "The general interest related to the enhancement of historical heritage and the best possible dissemination of knowledge about the artistic and cultural heritage of a country can constitute an overriding requirement justifying a restriction on the free provision of services".

²⁴ The judgment of February 26, 1991, has been incorporated into the Decree of the President of the Republic of December 13, 1995 (Act of guidance and coordination on tourist guides), which establishes, in Article 2: "for the purpose of better enjoying the cultural value of the national historical and artistic heritage," tourist guides must obtain specific authorization. The "sites that can only be explained to visitors by specialized guides" were then defined, based on this decree, by the Regions through Regional Resolutions (1996).

²⁵ The sites identified in 1995 were around 2,540, many of which corresponded to those declared UNESCO World Heritage Sites, and, above all, included entire urban areas, thus encompassing an equally high number of truly specific sites.

²⁶ Words are from L. Righi, *Tourism professions* (Le professioni turistiche), cit., 248-249. Refer extensively to the Author.

Thus with art.3 paragraph 1 of the European law of 2013, L 97/2013²⁷, *Provisions relating to the freedom to provide and stable exercise of the tourist guide activity by citizens of the European Union* (EU Pilot Case 4277/12/MARK), is established the principle according to which the qualification for the profession of tourist guide is valid throughout the national territory. At the same time, paragraph 2 of the same article authorizes, notwithstanding what is provided for by Legislative Decree 206/2007, citizens of the European Union, enabled in another Member State, to operate under the regime of free provision of services without the need for any authorization or approval.

While the question relating to sites of particular interest, previously identified and considered too high in number, remained open, in paragraph 3²⁸ the then Minister of Cultural Heritage and Activities and Tourism was instructed to identify with his own decree, after consulting the Unified Conference State-Regions, by 31 October 2014, the sites of particular historical, artistic or archaeological interest for which a specific qualification is necessary, and also the requirements for issuing.

Deeming it necessary to safeguard certain sites in Italy due to their unique characteristics, as also highlighted by European bodies, the Ministerial Decree of April 7, 2015, was issued, *Identification of sites of particular historical, artistic, or archaeological interest for which specific authorization is required to practice the profession of tourist guide. It outlines 3,187 sites, mostly museums, archaeological sites, churches, art galleries, and palaces in cities and smaller centres throughout Italy*. Shortly thereafter, the Ministerial Decree of December 11, 2015, specified the requirements for obtaining authorization to practice the profession of tourist guide and outlined the procedure for issuing such authorization. The reaction of the Competition and Market Authority²⁹ was immediate, according to which, given the numerous sites identified, with these decrees the provision of authorizations valid at local level was effectively re-established, in contrast with the current competition regulations. Indeed, the two decrees did not meet the requirement of a general interest connected to the protection of historical and artistic heritage, given the significantly large number of identified sites of particular interest.

This time, it was not necessary to await a new infringement procedure due to the large number of identified sites, as the Administrative Court of Lazio (Tar del Lazio) and shortly thereafter the Council of State intervened, annulling both decrees³⁰. So once again the Regions, although they have adopted new laws on tourism, have rightly not felt like taking action to start the qualification procedure, as the state guidance regulation is missing, leaving all the aspiring guides in doubt and waiting.

It is therefore inevitable to state that law 190 of 2023 is part of an extremely complex internal and European legislative context influenced by the very difficult balance between conflicting interests³¹.

²⁷ Law No. 97 of August 6, 2013: *Provisions for fulfilling obligations arising from Italy's membership in the European Union - (European Law 2013). Art. 3 : Provisions regarding the free provision and stable exercise of the tourist guide activity by citizens of the European Union - EU Pilot Case 4277/12/Mark. 1. Authorization for the profession of tourist guide is valid throughout the national territory. For the stable exercise of the tourist guide activity in Italy, the recognition, under Legislative Decree No. 206 of November 9, 2007, of the professional qualification obtained by a citizen of the European Union in another Member State is effective throughout the national territory. 2. Without prejudice to what is provided for by Legislative Decree No. 206 of November 9, 2007, European Union citizens authorized to carry out the tourist guide activity within the legal system of another Member State operate under the regime of free provision of services without the need for any authorization or approval, whether general or specific. 3. By Decree of the Minister for Cultural Heritage and Activities, heard by the Unified Conference, to be adopted within ninety days from the entry into force of this law, sites of particular historical, artistic, or archaeological interest requiring specific authorization are identified".*

²⁸ Paragraph later amended by article 11, paragraph 4, of the Legislative Decree. 83/2014, (converted into Law 106/2014).

²⁹ Report AS, 1339 – obstacles to the practice of the profession of tourist guides in Italy, dated 21 December 2016.

³⁰ Tar Lazio section II, judgments no. 2817 and no. 2831 of February 24, 2017, and Council of State VI, judgment no. 3859 of August 1, 2017. This time the administrative judge deems that the high number of identified sites disproportionately restricts the market. To conduct their activity throughout the national territory, individual guides would have had to obtain authorizations for all specific sites.

³¹ The European interest in the freedom of movement of professions in light of the protection of the user of such professions. In general, on the subject see G. Caggiano, *The balancing act between the freedom of movement of factors of production and the imperative needs of the Member States within the internal market* (Il bilanciamento tra libertà di

4. The Law n. 190 of December 13, 2023

Various voices rightfully call for a reform of the entire field of tourist professions, not just for guides, to "restore minimum conditions of certainty for operators and for the administrations themselves"³².

Currently, the reform has been implemented, but it has only affected the field of tourist guides, which undoubtedly represents the professional sector that urgently needed intervention, given the stagnation that occurred in recent years. Law no. 190 of December 13, 2023, which regulates the profession of tourist guide, was published in the Official Gazette No. 293 on December 16, 2023³³.

Probably susceptible to improvements, the text addresses and resolves some long-standing issues.

The topics addressed, among others, mainly concern the definition of the profession, the definition of qualifying procedures, therefore the effective and concrete nationalization of guides, the fight against illegal practices, the elimination of limitations imposed by both private and public managers on certain sites, the guarantee of quality and knowledge by professionals, and the equivalence of national guides to their European counterparts.

In Article 2, the law defines a professional only as someone who has obtained the title of guide, as prescribed by the law in Articles 4 and 6. The novelty introduced is in paragraph 2, where it specifies the activities inherent to the profession of a tourist guide, expanding upon the legal definitions previously established. This, in fact, illustrates and interprets the material and intangible assets³⁴ that constitute the Italian historical, cultural, museum, religious, architectural, artistic, archaeological, and monumental heritage, also in correlation with the demo-ethno-anthropological, landscape, production and food and wine contexts that characterize territorial. The legislator has, therefore, included, as the subject of illustration and interpretation by guides, both tangible and intangible assets, consistently with what has also been done regarding the protection of heritage in the Code of cultural heritage. Guides are not limited to illustrating objects; they must contextualize them at the demo-ethno-anthropological, landscape, productive, and gastronomic levels. Therefore, it seems that within the category of guides, other professional figures may be encompassed, including some that had been identified and regulated by the Regions without having the authority, and thus have been repealed (for example, environmental guides).

circolazione dei fattori produttivi ed esigenze imperative degli Stati membri nel mercato interno), in *Studi sull'integr. Eur.*, 2011, 295 ss

³² The words are by L.Righi, *cit.*, p. 253.

³³ At the time of writing, necessary implementing decrees have not yet been issued.

³⁴ The UNESCO Conventions for the safeguarding of intangible cultural heritage and for the protection and promotion of cultural diversity, adopted in Paris on November 3, 2003, and October 20, 2005, respectively, introduce and recognize the concept of intangible cultural heritage. Article 2 of the Convention provides the definition of intangible cultural heritage: "The term "intangible cultural heritage" refers to practices, representations, expressions, knowledge, and skills – as well as the instruments, objects, artifacts, and cultural spaces associated with them – that communities, groups, and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by the communities and groups involved in accordance with their environment, their interaction with nature, and their history. It provides them with a sense of identity and continuity, promoting respect for cultural diversity and human creativity".

Following the introduction of Article 7bis of the Cultural Heritage Code, "expressions of collective cultural identity covered by the UNESCO Conventions for the safeguarding of intangible cultural heritage and for the protection and promotion of cultural diversity, adopted in Paris on November 3, 2003, and October 20, 2005, are subject to the provisions of this code if they are represented by material evidence, and the prerequisites and conditions for the applicability of Article 10 are met. Intangible assets can be attributed to the cultural heritage under certain conditions".

See about it: L. Tarasco, *Diversity and immateriality of cultural heritage in international and comparative law: analysis of an (increasingly only) Italian gap* (Diversità e immaterialità del patrimonio culturale nel diritto internazionale e comparato: analisi di una lacuna (sempre più solo) italiana), in *Foro amministrativo – Consiglio di Stato*, n. 7-8, 2008, pp. 2261-2287; L. Casini, *Beyond the legal mythology of cultural heritage* (Oltre la mitologia giuridica dei beni culturali), in *Aedon, rivista di arti e diritto on line*, n. 1-2, 2012 (<http://www.aedon.mulino.it>).

Indeed, paragraph 3 letter a) states that the guided tour aims to highlight the characteristics, aspects, and values, historical, artistic, archaeological, monumental, religious, demo-ethno-anthropological, and landscape-related, of the national heritage. This is achieved through experiential multisensory paths that enable a deeper understanding of traditions, heritage, and other elements of local identity: a comprehensive experience.

It further adds in letter b) that the guide also aims to enhance, protect, and transmit the correct and updated knowledge of the heritage, recognizing its fragility that needs to be preserved. This preservation is achieved through the awareness of visitors, who need to be educated to respect and conservation of the heritage.

Letter b) attributes to the guide, in addition to an informative role an educational one, aiming to teach to respect the heritage and recognize its fragility, in order to contribute to its conservation so that posterity can also enjoy it. The new nationalized guide is, therefore, considered as such when possessing a comprehensive expertise and, consistently, when also assuming an additional educational-protective role. This includes ensuring accessibility to sites for everyone, particularly for individuals with disabilities. In this perspective of professionalizing the service³⁵, it is essential to have the stipulation of an insurance contract. Article 3, paragraph 4, indeed mandates the compulsory stipulation of an insurance coverage to ensure professional liability protection³⁶ for the customer using the service. The insurance policy was already specified in some regional laws, but there was no uniformity across the entire national territory.

Once the professional is defined, Article 3 establishes the rule that the practice of the profession is always subject to passing the national qualification examination, except in some limited cases.

The first exemption case concerns citizens of the European Union, or of a state belonging to the European Economic Area or Switzerland, who are qualified in their own country. They can temporarily and occasionally perform the guiding activity under a regime of free provision, as provided by Article 9 of Legislative Decree No. 206 of November 9, 2007³⁷. The concept, which is quite relative, of temporariness and occasional nature, will be clarified and defined in the implementing decrees of the law, to avoid leaving room for freedom or uncertainties that could lead to evading the regulation. However, the responsibility for determining the temporary and occasional nature of the service remains with the Ministry of Tourism. (art. 6, paragraph 9).

The second exemption case concerns those who accompany visitors during extraordinary openings organized by legal entities and third-sector organizations for sites that do not qualify as cultural institutes or places for visits conducted without the assistance of tourist guides. This exemption applies to visits for which any form of payment or registration is excluded. In essence, it refers to all cases where there are extraordinary visits not at cultural institutes or places, organized by associations that are strictly prohibited from receiving any amounts, even just as registration fees. This provision aims to curb a practice that is not uncommon today and is potentially evasive of the principles contained in this law.

But the real innovation introduced in this article, which will have significant practical impacts, is established in paragraph 3, It stipulates that in institutes and places of culture defined by Article 101

³⁵ As further evidence of the identification of a new professional figure, Article 8 of Law 190/23 establishes that ISTAT (Italian National Institute of Statistics) defines a specific classification of activities related to the profession of tourist guide and assigns a specific ATECO code. ATECO is the classification of economic activities adopted by ISTAT for statistical purposes, namely for the production and dissemination of official statistical data.

³⁶ Regarding professional liability see among others: M. Gazzarra, *Professional indemnity insurance (L'assicurazione di responsabilità civile professionale)*, Napoli, 2016.

³⁷ Art. 3 second paragraph, l.190/23. For an in-depth exploration of the topic of the recognition of foreign guides, please refer to S. Cavaliere, *The uncertain boundaries of the legal regulation of the tourist guide profession between European Union law and national legal systems* (Gli incerti confini della disciplina giuridica della professione di guida turistica tra diritto dell'unione europea e ordinamento nazionale), in *Dir. pubb. Eu.*, 1/2017, p. 22 and seq.

There is much criticism from trade associations regarding the possibility for European guides to operate occasionally and temporarily. See www.guid روما.ferderagit.com. An assessment of the risks in this regard can only be made in light of the criteria identified in the implementing decrees, which have not yet been issued.

of the Code of Cultural and Landscape Heritage, Legislative Decree of January 22, 2004, no. 42, even if they belong to private entities and are open to the public, the entry and performance of tourist guide activities cannot be prohibited or hindered. On several occasions, guide associations have requested that the practice of prohibiting entry to qualified guides in favour of in-house guides, often without proper credentials, be stopped³⁸. The potential closures by managers of cultural venues, in fact, create clear distortions to the free movement of professionals, often in favour of individuals without specific expertise, to the detriment of the service user and in clear contrast to the requirements of European regulations³⁹. With this rationale, and also with the intention of facilitating the continuous training of guides on the field, Article 9 has also included the right for tourist guides with an identification card, thus immediately recognizable, not only to access sites for free while performing illustrative activities but also to access them for study and training purposes, regardless of the ownership of the site. Access for educational purposes, since it was not previously provided for by law, was in the past possible only on a discretionary basis.

Regarding qualification, in response to the regional-level procedural delays and the associated uncertainty for aspiring guides regarding the content, timing, and verification methods of their competencies, Article 5 provides clear answers. It stipulates that the national examination should be held at least annually and identifies the subjects to be tested (history of art, geography, history, archaeology, tourism law, and accessibility and inclusivity of tourism services), as well as the examination methods (a written test, an oral test, and a practical technical test) and requirements (legal age, Italian or EU citizenship, completion of at least a three-year degree, possession of civil and political rights, certification in at least two languages, one at a level not lower than C1 and the other not lower than B2, and for citizens of another EU member state, knowledge of the Italian language at least at the C1 level)⁴⁰.

Centralizing the examination and establishing an annual schedule should ensure that all potential professionals no longer face uncertainty about when and how to take the exam. However, some concerns have already been raised regarding the practical feasibility of a national-level exam and its geographical accessibility throughout Italy, especially if the examination venue is in-person and centralized in a single city⁴¹. Other criticisms have been raised regarding the requirement of a three-year degree without specifying or limiting it to a particular degree class. In response, it should be noted that, considering the broad range of activities introduced as the subject of the profession, as indicated in Article 2, this makes various degree classes compatible, if not necessary, although not all of them are necessarily preparatory for the profession. The qualification examination will, however, ensure the competencies of the guides, regardless of how they have been acquired. Concerning the criticism regarding the knowledge of at least two languages, the elevation of the level of professionalism must be associated with linguistic proficiency, which is essential for offering a quality

³⁸ “Finally, it is necessary to facilitate the performance of licensed tourist guides within institutes and cultural sites, removing obstacles that too often prevent them from conducting guided tours for their clients due to the 'monopoly' effectively exercised by service providers. Often, tourist guides are not allowed to operate in certain sites due to the presence of in-house guides or exclusive agreements with local guides. This creates a paradoxical situation: clients brought by external guides can enter, while the professional must remain outside”. Federazione nazionale guide turistiche, in www.parlamento.it

³⁹ As evidence of the apparent recurrence of this practice, Article 12 (prohibitions and sanctions), paragraph 4, reaffirms what is already stipulated in Article 3, paragraph 3. It reiterates the prohibition against prohibiting or hindering the entry of the tourist guide and the performance of related activities in all institutes and places of culture as defined in Article 101 of the Code of Cultural Heritage and Landscape.

⁴⁰ Further details are expected from the implementing decrees of the law, which have not yet been issued at the time of writing. Unfortunately at the moment, the implementing decree of Law 190/2023 has been rejected by the State Council. “The State Council, with decision No. 53-2024 dated 22.01.24, has suspended the issuance of its opinion on the draft implementing decree of Law 190-2023, pending the Ministry of Economy and Finance and the Ministry for European Affairs, the South, cohesion policies, and the National Recovery and Resilience Plan (PNRR) to provide a reasoned opinion on the draft decree. The State Council deemed the process of forming the implementing decree inadequate precisely due to the lack of or insufficient activities carried out by the Ministries”. www.assoguide.org

⁴¹ See Federagit Confesercenti

service and ensuring competitiveness. A tourist guide who does not speak at least one or more languages, in addition to their mother tongue, is certainly not competitive in a country with a high income of foreign tourists like Italy.

Once the qualification has been obtained, Article 5 provides for the establishment of a national list of tourist guides, to which they can register⁴²: those qualified according to the new procedures, foreigners who have obtained recognition of their qualification obtained abroad, according to the procedure provided for in article 6 of the law itself, and those who at the time of the entry into force of law 190/23 were already in possession of the qualification for the profession of tourist guide, who will have a period of 6 months from the entry into force of the law to be able to regularize their positions, not in terms of knowledge and skills, but with regards, for example, to stipulation of the insurance contract, which until now has not been required by all regional laws. The innovation is that the national list will be divided into specific sections based on the specializations obtained and the origin of the guides. Thus, foreign guides qualified under the procedure of Article 7 will have to register in a specific section of the national list (Article 7, paragraph 8), different from that of internal guides. Internal guides, in turn, can register in special sections of the list. If they participate in theoretical and practical courses authorized by the Ministry of Tourism, they can acquire, under certain conditions, additional thematic and/or territorial specializations (including accessible and inclusive tourism), which can be cumulated, and thus register in special sections of the list.

The solution proposed by article 7 seems to resolve the issue of the balance between liberalization of professions and protection of historical and cultural heritage⁴³, shifting the choice between a generalist guide and a specialized guide to the market and the customer. In essence, it will be the users, tour operators, and organizers in general who will decide whether, for a given territory or a specific theme to be presented to the public, a specialized guide or a licensed but not specialized guide is preferable. Specialization becomes an added value that will have commercial significance, as well as providing greater protection for the illustrated heritage. Enrolling in special sections of the list will certainly give guides an initial competitive advantage, but their performance will be truly judged in the field. It is in the field, in fact, that they will consolidate or nullify the initial competency advantage. It is a solution that attempts to reconcile the difficulty of illustrating a country as rich as ours, whose heritage is difficult to know in its entirety, and the need to allow guides to circulate. A homogeneous minimum level of competencies is established through national qualification, and operators are free to deepen their knowledge through specializations. The law thus puts an end to the issue of identifying special sites, solving it not only legally, with the repeal of paragraph 3 of Article 3 of Law No. 97 of August 6, 2013, but also practically, making the choice for both the professional to specialize and for the user to opt for a specialized subject⁴⁴.

Article 6 of Law 190/23 also addresses the issue of foreign guides, whether European or non-European. In paragraph 1, it establishes that citizens of the European Union, of a state belonging to the European Economic Area or Switzerland, qualified to practice the profession of tourist guide in accordance with the regulations of another Member State of the Union, or the European Economic Area or Switzerland, are entitled to carry out their activity in Italy: on a temporary and occasional basis, in the framework of the free provision of services, or permanently following the recognition of the professional qualification obtained in another EU Member State, or the EEA or Switzerland,

⁴² The law refers to a list of professionals and not to a register. On profession orders see M. Bonanni, *The useless order? Professional orders in Italy* (L'ordine inutile? Gli ordini professionali in Italia), Milano, 1998.

⁴³ D. Diverio, *The delicate balance of values in the European regulation of 'commercial communications*. (Il delicato bilanciamento di valori nella disciplina europea delle "comunicazioni commerciali"), in *Studi sull'integr. Eur.*, 2014, 279 ss.; G. Caggiano, *The balance between the free movement of production factors and the imperative needs of Member States in the internal market* (Il bilanciamento tra libertà di circolazione dei fattori produttivi ed esigenze imperative degli Stati membri nel mercato interno), in *Studi sull'integr. Eur.*, 2011, 295 ss.

⁴⁴ The choice has recently been criticized by some professional associations. Michela Mura, president of ARGTS (Professional Association of Tourist Guides of Sardinia), stated: "The situation is quite complicated, from several points of view. We need new guides specialized in the regional territory, who know foreign languages other than English, and Law 190/2023 is not an answer in this sense", www.nemesismagazine.it

subject to the integration of training through a compensatory measure under articles 22 and 23 of Legislative Decree No. 206 of November 9, 2007, consisting of completing an adaptation internship (exercising the profession for a duration of 24 months under the responsibility of a qualified professional, accompanied by additional training, subject to evaluation by the Ministry of Tourism) or passing an aptitude test in Italian. In addition to the tests, knowledge of two foreign languages, one with a level of C1 and the second with a level of B2, is required, as for internal guides.

The recognition of qualifications and freedom of movement for 'European' guides is not automatic; the need for competence and professionalism guides the entire framework of the law, in compliance with and according to the principles of the European Union⁴⁵. As with many other provisions of this law, in this case too, its practical application will be crucial for an assessment of the effectiveness and success of the law. In this specific case, for example, much will depend on the manner and seriousness with which the internship is conducted, as well as the quality of supervision by the qualified professional.

All foreign citizens not included in those listed in Article 6(1) obtain the recognition as guides only after passing an aptitude test in the Italian language. The aptitude test consists of a written test, an oral test to assess the applicant's knowledge, as well as proficiency in two foreign languages at levels C2 and B1, exactly like internal and European guides. Compared to the qualification test for the title in Italy, only the third practical test is missing. According to paragraph 9, the Ministry of Tourism is the competent authority to rule, under Article 5 of Legislative Decree No. 206 of November 9, 2007, on applications for recognition of the professional qualification of tourist guide obtained abroad; thus, it can exercise an action of verification and supervision of the actual competence of foreign guides.

Obtaining the qualification, thus registration in the lists of qualified guides, whether internal, European, or foreign, certainly represents a good point of arrival, but it does not guarantee the professional the right to operate indefinitely. With the aim of protecting and ensuring the user of the provided service, Article 7, paragraph 3 of the law provides that once registered in the national list in general or special sections, at least every three years tourist guides are obliged to attend courses authorized by the Ministry of Tourism, with theoretical and practical content, to update their skills and knowledge. The required attendance of refresher courses is designed to ensure clients receive a quality service. From a practical point of view, however, it remains to be understood how the courses will be conducted, who will bear the costs, and above all, how effective they will be, so they do not become, as with other professions, mere bureaucratic obligations that are very costly in terms of money and time spent, without a real return in terms of quality⁴⁶.

The obligations arising on the part of professionals following qualification are not limited to continuous training. In fact, in order to operate, the guides must always display their identification card in a clearly visible manner, and its presentation can be requested by local police, security authorities, or any other authorized entity (who have a monitoring function). They must also provide the user with transparent information on the costs of the professional service⁴⁷, always remembering that fees for professional services must be proportional to the duration, content, and characteristics of the service. Regarding the display of the identification card, while it is true that local police are primarily responsible for checks (encouraged by the retention of amounts from any fines, Article 13 paragraph 9), it is also true that, once becoming specialized guides and obtaining the identification

⁴⁵ On freedom of movement see, B. Nascimbene, F. Rossi, Dal Pozzo (a cura di), *Citizenship rights and freedom of movement in the European Union* (Diritti di cittadinanza e libertà di circolazione nell'Unione europea), Padova, 2012; S. Spinaci, *Freedom of movement, European citizenship, principle of equality* (Libertà di circolazione, cittadinanza europea, principio di eguaglianza), Napoli, 2011.

⁴⁶ *The professional updating is a choice, driven by the desire to always stay abreast of innovations in one's profession, or a mere bureaucratic necessity? Among Italian professionals, the debate is lively, especially after the 2012 reform of the professions (Dpr 137/2012) launched by the Monti government, which introduced the obligation for all members of professional orders to attend continuing education courses as one of the conditions to maintain their registration.* See www.larepubblicadeglistagisti.it

⁴⁷ This is established by Article 11, paragraph 1, letters a) and b). The principle of price transparency complies with the relevant European Union provisions.

card, it is in the individual's best interest to keep it prominently displayed. This helps differentiate them from other professional figures and from those who operate illegally.

To combat illegal practises, specific rules are introduced in Article 12 (prohibitions and penalties), which sometimes present certain critical points that, in the opinion of the writer, will need clarification. Paragraph 1 states that it is prohibited for anyone to carry out and offer activities specific to the profession of tourist guide, as listed in the law, in violation of the law and without the corresponding registration in the national list. With this law, having considerably expanded the operational scope reserved for guides, it now seems that some professions, even those already provided for in Law 217/83 and therefore recognized at the national level in the past, may be prevented from operating in the future if they do not qualify as guides or if the State does not intervene with specific regulations for them. This refers, for example, to tour leaders who, according to article 11 of law 217/83, are individuals professionally accompanying single persons or groups in travels within the national or foreign territory; they provide significant elements and information of tourist interest on transit areas outside the scope of the guides' competence. The complementary nature of tour leaders, who can operate outside the scope reserved for tour guides, is very clear in the text; and since law 190/23 never talks about tour leaders, the doubt remains about their operational role in the future which is not exclusively relegated to the completion of simple bureaucratic and logistical procedures, as specified by the Ministry of Tourism and, as, to be honest, often already happens today⁴⁸. An additional state intervention would be necessary for the potential classification of other new or existing tourism professions still in the regulatory limbo.

The additional prohibitions listed in paragraphs 2 and 3 of Article 12 are directed first at those who do not obtain the title; therefore, they cannot make any use of cards or other distinctive signs that may confuse users about qualifications; secondly, these prohibitions are aimed at other operators in the tourism industry. In fact travel agencies, tour operators, and any other intermediaries are prohibited from using, even through the use of digital platforms, individuals who are not registered in the national list for the performance of activities typical of tourist guides. This makes it mandatory to indicate the registration number in the national list of the tourist guide providing the service. This requirement will, therefore, enhance the list of informational obligations to be provided to the traveler purchasing an all-inclusive package, as established by Article 34, pre-contractual information obligations, of the Tourism Code.

5. Conclusions

The recent law on tour guides must be evaluated positively not only for having clarified an unclear and complex discipline but especially for having created it. The normative vacuum that arose

⁴⁸*The tour leader is someone who, as a profession, welcomes and accompanies individuals or groups of people during the journey, ensuring assistance primarily for the completion of bureaucratic, administrative, and logistical tasks, such as hospitality. The tour leader performs a coordinating and supporting role in implementing the travel program, providing general information about the journey and the visited locations, outside the scope of the tourist guide's competence..* Source: www.ministerodelturismo.gov.it. Even in the definition of tour leader provided by the Ministry of Tourism, although some tasks not mentioned in the law 217/83 are detailed, it is specified that the tour leader provides general information about the journey and the visited locations outside the scope of competence of tourist guides.

On the distinction between the profession of tourist guide and tour leader, there hasn't always been agreement. In a fairly recent past, the Regional Administrative Court of Sicily, Section IV, expressed a positive opinion regarding the assimilation of the two figures with judgment no. 1925 of 2014.

More recently, the Council of Administrative Justice for the Sicilian Region, on January 31, 2018, with judgment no. 38, reiterated the clear difference between the two professions: *Article 6 of the Tourism Code does not eliminate the distinction between a tourist guide and a tour leader. Therefore, it does not create a single qualification but confirms the list of tourism professions already provided in our legal system. As a result, sicilian regional law no. 8 of 2004 cannot be considered illegitimate for an alleged violation of Article 6 of the Tourism Code, insofar as it considers the two activities of guiding and tour leading as distinct.* For an analysis of the pronouncements see C. Tincani, *Recent judicial interventions on the regulation of the professions of tourist guide and tour escort* (Recenti interventi giurisprudenziali sulla regolamentazione delle professioni di guida e di accompagnatore turistici), in *Riv. it. dir. tur.*, 2018, 24, p. 434 and seq-

following the reform of Title V of the Constitution, with the attribution of legislative competencies in the field of tourist professions to the State, together with the complex relationship with European legislation, had created a stalemate to the disadvantage of aspiring guides, who for years could not access the qualification procedures.

Indeed, thanks also to community regulations, we found ourselves facing a nationalized guide, regulated by regional laws.

The provision in question, therefore, intervened with the aim of defining a uniform professional system and a homogeneous standard of performance levels, as well as a tool to combat illegal practices. It is the result of collaboration between the legislator and various representatives of the profession, whose requests have been duly taken into account.

The result is an expansion of the operational scope of guides, with strengthened competencies and knowledge (extended at the national level), including linguistic skills that are now indispensable. Simultaneously, they are assigned a role in guaranteeing and educating the public about the preservation of cultural heritage. Thus, the guide seems to officially become the ultimate tourism profession, actively ensuring the protection of the heritage it illustrates. However, the levelling of competencies among national guides, which would place them all on the same level, is immediately undermined by the introduction of specializations.

It is with these specializations that guides can hope to have a competitive advantage, at least within their specific expertise. However, the risk is evident. Considering the history of these professionals, who were never truly free in the past to work throughout the national territory, it is crucial that specializations are not perceived by the market (the real decision maker) as necessary for the presentation of certain places or areas. Instead, they should be regarded in their true essence, as additional elements.

Moreover, it should not be forgotten that the choice of a guide will also be determined by factors that the law in general, therefore also the one just enacted, cannot take into account. In addition to skills, knowledge, language abilities, and professionalism (which must be guaranteed by the qualification), what makes a guide a good one are empathy, presentation skills, and the ability to keep a high level of attention, thus effectively conveying knowledge. In practice, this represents the real lever with which one can effectively illustrate heritage and educate a listener. It will once again be the market to decide who is good and who is not, not only based on the number of specializations acquired.

If, in theory, the general framework of the law can be considered more than positive, the absence of implementing decrees at the time of writing does not allow us to judge its practical implementation.

This refers, in particular, to the methods of carrying out qualifying tests, the holding of professionalization courses, the checks on illegal operators, as well as those that will be carried out against site managers, and the effective parameterization of compensation...

In short, only time will tell us whether the objectives set will be effectively achieved.