

GORAN PETKOVIĆ

## **ASSESSMENT OF DOMESTIC REGULATORY FRAMEWORKS IN TOURISM IN CEFTA TO SUPPORT FACILITATION OF TRADE IN TOURISM SERVICES**

*CEFTA members formulated the Additional Protocol VI (AP6) in order to promote trade in services. This act entered into force in January 2021 and is part of an initiative aimed at establishing a common regional market (CRM). As a pilot project, the area of trade in tourist services was chosen for at least two reasons: first, tourism is an important and growing activity in all CEFTA members, and second, during the preparation of AP6, no member proposed any exemption from the application of any part of this document.*

Key words: *CEFTA, trade, services, tourism, regulation*

### **INTRODUCTION – BENEFITS OF FREE TRADE**

Liberalization of the trade and integration of single economies in global economy appeared to be a strong driver of economic growth, development, and new business opportunities.<sup>1</sup> Among the many benefits that may be expected from free trade movements, the price fall caused by the reduction or lack of tariffs, increased offer and boost of competition are the most prominent. Decrease of prices should increase the consumer purchasing power, improving the standard of living, and consequently

---

Prof. Dr. Goran Petković, Full Professor, Faculty of Economics, University of Belgrade, e-mail: [goran.petkovic@ekof.bg.ac.rs](mailto:goran.petkovic@ekof.bg.ac.rs).

<sup>1</sup> IMF Staff, Global Trade Liberalization and the Developing Countries, <https://www.imf.org/external/np/exr/ib/2001/110801.htm>, 28. 2. 2021.

opening new business opportunities and job positions.<sup>2</sup> Key enablers of the strong globalization trend were not only the progress in technology (communication, air transport, etc.), but also the strong development of regional free trade agreements in different parts of the world.<sup>3</sup> Free trade agreements are particularly important for small economies that need to be open, depending on foreign trade, like Norway which has twice neglected to become a part of EU on referendum, but is a very committed part of EEA through a multilateral agreement, but also through list of bilateral agreements in two exempted areas, i.e. seafood and agriculture.<sup>4</sup>

Although not as visible as goods, services represent a large and significant part of the global economy. They account for around 70% of the global GDP and contribute with 60% to the world employment. However, services are less present in international trade (around 23.4% of global trade in goods and services) and fewer indicators are available to monitor this area.<sup>5</sup>

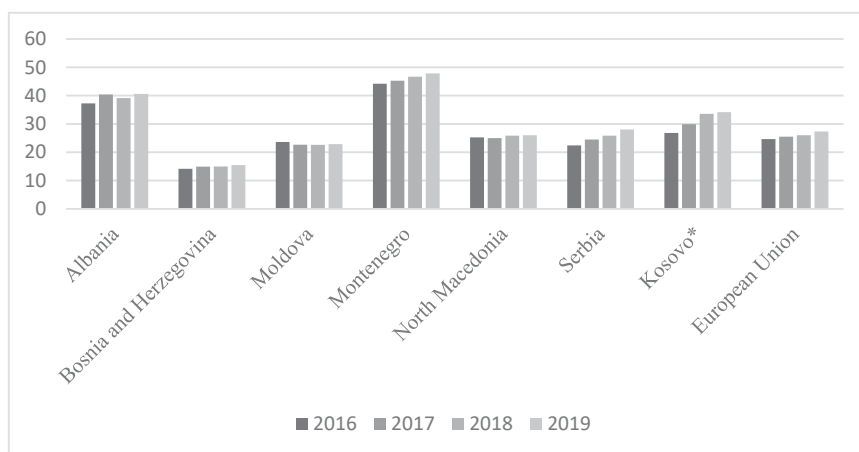


Figure 1. Trade by markets and years – CEFTA<sup>6</sup>

<sup>2</sup> WTO, Trade, the Location of Production and Industrial Organization of Firms, [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/wtr08-2d\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr08-2d_e.pdf), 1. 3. 2021.

<sup>3</sup> UNDP, Human Development Report, [http://hdr.undp.org/sites/default/files/reports/260/hdr\\_1999\\_en\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/260/hdr_1999_en_nostats.pdf), 28. 2. 2021.

<sup>4</sup> Hege Medin, “Free trade agreements in a small, open country: The case of Norway”, *World Economy*, Issue 12, Vol. 42, 2019, 3438–3446.

<sup>5</sup> Fernando Cantú-Bazaldúa, “Nowcasting global trade in goods and services”, *Statistical Journal of the IAOS* 37, No. 1, Vol. 37, 2021, 259–277.

<sup>6</sup> Source: World Bank, *World Development Indicators* (database), <http://data.worldbank.org/datacatalog/world-development-indicators>

Trade in services (TiS) still does not outperform the trade in goods. The theories explaining international trade are evolving and ranging from ones describing it by comparative advantages and specialization of nations to ones describing it by comparative advantages defined by Porter and liberalization and stimulation of trade on multinational level, but most of these theories are basically connected with the trade in goods.<sup>7</sup> TiS represent a quarter of total world trade. However, trade in services has expanded faster than trade in goods between 2005 and 2017, at 5.4 % per year on average, according to the WTO World Trade Report.<sup>8</sup> The same report confirms that services trade improves firms' competitiveness in both the services and manufacturing sectors. A pattern shows that developed economies achieve a higher share of TiS in their exports compared to the developing economies. On the other hand, the latter do have a constant and higher increase of TiS exports in recent years. However, in theory evolution it is noted that CEFTA economies are no different, as services contribute to almost two-thirds of their GDP.<sup>9</sup> The level of TiS in GDP varies between 15% in Bosnia and Herzegovina to 47% in Montenegro.

The adoption of Additional Protocol 6 and its entry into force on January 11, 2021 shall unlock the potential of the CEFTA services market until 2024 along with the activities envisaged in the Common Regional Market (CRM) Action Plan. This is important since moderate growth or even stagnation in TiS participation in GDP can be observed. However, this improvement in international regulatory framework must be followed by strong institutional quality-enhancing reforms within economies, since free trade agreements themselves cannot improve trade among regional economies if there is no adequate mix of services to offer.<sup>10</sup>

In 2020, CEFTA has reached a consensus to launch an intra-regional regulatory cooperation in tourism. Additionally, it has been agreed to further integrate CEFTA markets by addressing the key barriers in this sector, including licenses for tourism agencies and tour operators, based on EU rules and practices. This should facilitate doing business in tourism sector across the CEFTA markets, allowing tour operators to independently plan and implement complex arrangements in several CEFTA member countries.

---

<sup>7</sup> Alexander Daniltsev, Olga Biryukova, "Beyond the GATS: Implicit Engines in Services RTAs", *Panoeconomicus*, Issue 3, Vol. 62, 2015, 321–337.

<sup>8</sup> WTO, *World Trade Report 2019*, [https://www.wto.org/english/res\\_e/booksp\\_e/00\\_wtr19\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/00_wtr19_e.pdf)

<sup>9</sup> OECD, "Trade policy and facilitation in South East Europe", *Competitiveness in South East Europe: A Policy Outlook 2018*, OECD Publishing, Paris, 2018.

<sup>10</sup> Richard Grieveson, Mario Holzner, Goran Vukšić, "Regional Economic Cooperation in the Western Balkans: The Role of Stabilization and Association Agreements, Bilateral Investment Treaties and Free Trade Agreements in Regional Investment and Trade Flows", *Eastern European Economics*, No. 1, Vol. 59, 2020, 3–24.

All these efforts go in the direction of removing regulatory barriers to trade in services in CEFTA. Indeed, an OECD analysis reveals that services trade restrictions significantly affect trade by raising the costs for firms to operate in the host economy.<sup>11</sup> According to this analysis, trade costs arise both from policies that explicitly target foreign suppliers, and more generally from domestic regulation that falls short of best practice in the area of competition and rule-making. Some deeper analysis indicates that trade in services within free trade agreements is increasing faster within more developed economies and from more developed to other economies within the agreement, but slower from less developed economies to others. However, overall results are positive.<sup>12</sup>

In particular, Additional Protocol 6<sup>13</sup> has identified tourism services as the ones for which commitments on market access and national treatment have been made, as defined by Articles 4 and 5 respectively. For services provided by travel agencies and tour operators (*UN Classifications on Economic Statistics CPC Provisional – Code 7471*), all CEFTA Parties have made market access and national treatment commitments without exceptions for any of the four modes of supply. Additionally, the commitments on domestic regulation are also relevant in the context of this analysis. These provisions guarantee that all measures with an impact on trade in services are administered in a reasonable, objective and impartial manner, as well as that administrative decisions, such as the ones granting or rejecting an application for a license, are reviewed objectively and impartially. Furthermore, it states that licencing should be: (1) based on the transparent and objective criteria, (2) not burdensome more than necessary to ensure the quality of service and (3) granted in the procedure which should not in itself be a barrier. This is basically relying on WTO rules on licensing.<sup>14</sup>

In addition to these commitments, the leaders of the Western Balkans have set an ambitious agenda to establish the Common Regional Market in a four-year period (2021–2024). Regional Trade Area, based on CEFTA and four freedoms of movement: goods, services, people and capital, based on the EU rules, are at the heart of this initiative. In services, three sectors are identified as particularly important,

<sup>11</sup> Dorothee Rouzet, Francesca Spinelli, “Services Trade Restrictiveness, Mark-Ups and Competition”, *OECD Trade Policy Papers*, No. 194, OECD Publishing, Paris, 2016.

<sup>12</sup> Bianka Dettmer, “Trade Effects of the European Union’s Service Directive: Contrasting *ex ante* Estimates with Empirical Evidence”, *The World Economy*, Issue 3, Vol. 38, 2015, 445–478.

<sup>13</sup> Available documents on CEFTA portal: <https://cefta.int/legal-documents/#1463498231136-8f9d234f-15f9>

<sup>14</sup> WTO, Disciplines on domestic regulation pursuant to GATS article VI.4, Trade in Services Division, 2011, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiV1oufgLL5AhVJhw0HHd5LBeMQFnoECAUQAQ&url=https%3A%2F%2Fwww.wto.org%2Fenglish%2Ftrato\\_p\\_e%2Fserv\\_e%2Fdom\\_reg\\_negs\\_bckgddoc\\_e.doc&usg=AOvVaw2VuHlH9xpN4YltwJK5eKo8](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiV1oufgLL5AhVJhw0HHd5LBeMQFnoECAUQAQ&url=https%3A%2F%2Fwww.wto.org%2Fenglish%2Ftrato_p_e%2Fserv_e%2Fdom_reg_negs_bckgddoc_e.doc&usg=AOvVaw2VuHlH9xpN4YltwJK5eKo8), 6. 8. 2022.

amongst which tourism takes the lead. Regional action 3.2.1 calls for adoption of CEFTA framework for trade in tourism services addressing key barriers, amongst which licences are identified as key, by the end of 2021. The previously set goal was obviously not achieved, but the negotiations between the parties reached some common points in the proposal of a new Decision that should be adopted with the aim of operationalizing the business of travel agencies in the CEFTA economic area.

This paper analyses the authorisation schemes (licenses) for businesses in tourism in CEFTA, as a small part of total trade in services. The analysis is done through the lenses of the selection of important principles from Directive 2006/123/EC on services in the internal market<sup>15</sup> (hereinafter: Services Directive) with cross-references to the provisions of local law. Local legislation on tourism activities in CEFTA is analysed across the principles important for each kind of a service, and tourism particularly: freedom of establishment, freedom of providing services, insurance of liabilities and other important issues in tourism. Even though this fourth, miscellaneous group is a sensitive group of issues rather than a single principle like the former three, it is too important to be simply skipped.

In the following text, some narrative explanations should provide an overview of these legal provisions. Following abbreviations are used: AL – Albania, BA – Bosnia and Herzegovina, BA (RS) – Republic Srpska, Bosnia and Herzegovina, BA (F) – Federation of Bosnia and Herzegovina, BA (DB) – District Brčko, Bosnia and Herzegovina, BA(HB) – Hercegbosna Canton, Bosnia Herzegovina, BA (US) Una-Sana Canton Bosnia and Herzegovina, BA (G) – Bosnian-Podrinje Canton of Goražde, Bosnia Herzegovina, BA(HN) – Herzegovina-Neretva Canton, Bosnia Herzegovina, BA (TK) – Tuzla Canton – Bosnia Herzegovina, MK – North Macedonia, MD – Moldova, ME – Montenegro, SR – Serbia, KS\* – Kosovo\*.

## LOCAL LEGISLATION ANALYSIS

### *Establishment and registration*

Four key economic freedoms in European Union, free movement of people, goods, services and from 1993, free movement of capital,<sup>16</sup> are essential enablers

---

\* This designation is without prejudice to positions on status and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

<sup>15</sup> DS Directive 2006/123/EC of the European Parliament and of the Council, of 12 December 2006, on Services in the Internal Market.

<sup>16</sup> Risto Neiminen, “Free movement of capital within the European Union”, *European Added Value Unit*, European Parliamentary Research Service, 2018.

of boosting jobs and economic growth in common economic space.<sup>17</sup> Free trade of services is supported by the basic freedom of establishment in another market, which is in accordance with Article 43 of the Treaty (DS, (1), 2006). In the EU context, *the right of establishment includes the right to take up and pursue activities as a self-employed person and to set up and manage undertakings, for a permanent activity of a stable and continuous nature, under the same conditions as those laid down by the law of the Member State concerned regarding establishment for its own nationals.*<sup>18</sup>

Freedom of establishment enables tourism agencies from one market to set up a commercial presence to offer their tourism packages to the consumers in another market, enriching the supply on the market and consequently providing consumers with a better choice and the opportunity to compare different offers. On the other hand, businesses get the opportunity to expand their market, create new jobs and achieve economies of scale.

The establishment of a travel agency is largely governed by the law on tourism which is the case everywhere in CEFTA. Typically, in CEFTA, doing the work of travel agencies involves establishing a business entity and obtaining a license to operate. Most often, the laws define two forms of travel agencies: tour operators (travel organizers) and intermediaries who resell services and packages of other service providers and tour operators. Licensing generally involves the entry into an appropriate register under the control of a competent authority (often, a ministry). The conditions of establishment are prescribed by the law on tourism, but there are often provisions that leave the regulation of certain detailed conditions for the bylaws. Occasionally there are provisions that are characterized as prohibited requirements by the Services Directive such as the ones regarding the origin of natural or legal persons, or provisions that strictly determine the type of business entity. Also, provisions specifying the minimum or maximum number of employees appear from time to time. The following overview will show the specifics of local regulations in different markets in CEFTA.

*Albania.* – The establishment of a travel agency in Albania is regulated by mutually complementary regulations, regulating tourism and regulating licenses:<sup>19</sup>

<sup>17</sup> Elodie Thirion, “EU single market: Boosting growth and jobs in the EU”, *European Added Value Unit*, European Parliamentary Research Service, 2017.

<sup>18</sup> Christina Ratcliff, Barbara Martinello, Kevin Paul Kaiser, “Freedom of establishment and freedom to provide services”, *Fact Sheets on the European Union*, European Parliament, 2020, <https://www.europarl.europa.eu/factsheets/en/sheet/40/freedom-of-establishment-and-freedom-to-provide-services#:~:text=The%20right%20of%20establishment%20includes,State%20concerned%20regarding%20establishment%20for,8.3.2021>.

<sup>19</sup> Law No. 10 081 dated 23. 2. 2009. on Licences, Authorisations and Permits in Albania; Law No. 9902, of 17. 4. 2008 on Consumer Protection; Law 93/2015 on Tourism; Decision No. 709,

Law on Tourism and Law on Licenses, Authorization and Permits in AL. In order to supply its services, the travel agency needs to be registered in Albania and obtain a licence. Conditions for obtaining a licence are regulated in the Law on Tourism 93/2015, but also in the Decision of the Council of Ministers (D CoM) No. 709/2016 on the Regulation of Travel Agencies, as well as the Joint Instruction No. 179/2017 on documents for applying as travel agency and tour operator. The foreseen procedure is efficient (self-declaration, decision in four days, tacit authorization), but does not recognize already performed procedures by other authorities. There is no provision enabling, or restricting the territorial provision of services. Licensing is usually performed at a central level and is regulated by the competent Ministry. Licenses are not limited in time and there are no prohibitive clauses regarding the origin, the location of registered office or the residency. Based on the Decision of CoM No. 709, of 12. 10. 2016, a requirement to operate a travel agency is a minimum number of two employees. The Law allows natural or juridical persons to deliver tourism services.

*Bosnia and Herzegovina.* - Regulations in Bosnia and Herzegovina is decentralised and includes the laws and regulation at the level of BA, but also at the level of the two entities i.e. BA (F), BA (RS) and District BA (DB), and in BA (F) also at the level of the cantons. Laws on tourism were taken into account at all levels, as well as Law on Services in BA (RS).<sup>20</sup> Everywhere in Bosnia and Herzegovina, suppliers need to be registered and obtain a licence in order to provide a service. Laws in general are clear, unambiguous, and transparent with the note that minimal technical conditions on office space are regulated out of the main text of the laws. The same is true for the procedure of licensing in detail, which is left out of principal law text, to be elaborated in by-law act in BA (F), as well as the manner

---

12. 10. 2016 on Requirements and Criteria to Operate as a Travel Agency, Official Bulletin No. 195, dated 21. 10. 2016; Decision of CoM No. 65, of 21. 1. 2009. on the Travel Package Contract; Joint Instruction No. 179/2017 on Documents for Applying as Travel Agency and Tour Operator. The same regulations were considered in following chapters of this text.

<sup>20</sup> Law on Services of the Republic Srpska (*Official Gazette of RS*, No. 89/13; Law on Tourism, (*Official Gazette of the Republic of Srpska*, No. 45/17 from 18. 5. 2017); Law on Tourism Activity, (*Official Gazette of FBiH*, No. 32/09); Law on Tourism, (*Official Gazette of Sarajevo Canton*, No. 19 – Page 220, 12. 5. 2016); Law on Tourism Activity of Brčko District Bosnia Herzegovina, (*Official Gazette of Brčko District*, No. 3, 30. 1. 2006); Law on Tourism Activity, (*Official Gazette of Hercegbosna Canton*, No. 5, 14. 4. 2016); Law on Tourism, *Official Gazette of Una-Sana Canton*, Year 24, No. 25, 2. 10. 2020; Law on Tourism, *Official Gazette of the Bosnian-Podrinje Canton of Goražde*, Year 23, No. 9, 24. 7. 2020; Law on Tourism Activity, *Official Gazette of Herzegovina-Neretva Canton* No. 3, 8. 5. 2011; Law on Tourism Activity, *Official Gazette of Tuzla Canton*, No. 08/14. The same regulations were considered in following chapters of this text.

of keeping a Register of Travel Agencies, although it is unclear whether it affects the business of agencies. In BA (RS), the form and content of the identification code (which may not affect business) are also left for the by-law act. In BA (RS)'s currently applicable Law on services, explicit duplication of procedures is avoided, recognizing the control procedure already performed somewhere else. However, this is not reflected in its Law on Tourism and therefore remains unclear whether such practice is enforced. On the other side, laws on tourism in entities require local licensing of all travel agencies, except in BA (DB), where it is not clearly demanded, while in BA (HB) it is called "permission" (odobrenje). Two of the most frequent types of travel agencies are recognized in BA, travel agency – travel organizer and travel agency – intermediary, but additionally, in BA (RS), organizers are differentiated as organizers of a) international travels, b) domestic travels; c) excursions (where additional insurance is needed). In BA (RS) also, there is an explicit provision enabling the providing of services on the whole market territory including opening branches, offices, etc. which in the case of BA (RS) refers to territory of the entity. When analysing the allocation of competences for licensing, the rules are prescribed at the level of ministries in both entities). In doing so, in BA (RS) the licensing procedure is performed entirely at the entity level while in BA (F), the Minister prescribes the conditions, the verification of the fulfilment of the conditions is performed at the municipal or city administrative body responsible for tourism and the Register of Travel Agencies is again kept at the entity level (which needs to be clarified), which is confirmed in cantons' laws. In BA (F) licenses are not limited in time (however, in the law of Canton Sarajevo, the license shall be subject to revision after the expiration of 3 years *ex officio* procedure is triggered, with no explanation if it means automatic extension). In BA (RS), the period of license validity is 4 years. To be noted, in BA, in different entities license validity differs in number of years or/and in the time limitation clause. A different period for deciding upon application is foreseen: 30 days in BA (RS) and 15 days in BA (F). Regarding the location of the registered office and residency, no prohibitive clauses were identified in BA (RS). In BA (F), in different cantons, an office manager must be BA citizen or, if he/she is foreigner, he/she must have a work permit. Furthermore, an office manager must have a certificate which is obtained upon passing an exam. The exam is authorized by the Ministry and is organized by a local commission. It remains unclear whether this exam is possible to take in languages other than local. Regarding restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary, in BA (RS), both self-employed (natural) persons and companies (legal entities) are allowed to perform tourism activities; In BA (F) it remains unclear whether specific form of business entity is required, although in cantons (for example BA (HB)), it is explicitly required to have the legal entity registered as the company organizing

tourist activities. However, in BA (DB), a natural person may provide services of an intermediary agency. When analysing requirements fixing a number of employees, there are specific requirements in BA (RS), where law requires at least 2 employees or at least 1 employee if they offer packages in receptive or domestic tourism but also requires having a maximum of 1+1 employee in eAgency selling on Internet. In BA (F) and its cantons, there is a requirement to have at least 1 employed person as a branch manager (in BA (G) minimum 3 employees are obligatory).

*North Macedonia.* – Law on Tourism Activity was taken into account in this analysis as well as provisions that have entered into force of the Law on Services, since the application of some provisions is postponed.<sup>21</sup> Law is generally clear, unambiguous and transparent with the note regarding minimal technical conditions on office space which are out of the main text of the law. The same applies to the details on the application form, form of the license and details in the Register. Law requires local licensing of two types of agencies: license “A” travel agency – travel organizer and license “B” travel agency – intermediary. A foreign travel agency is also recognized, but it is obliged to hire a domestic tourist guide within 24 hours (while domestic agency is obliged to have a companion for a group of 10+ and a guide when sightseeing). There is no provision enabling, or restricting the territorial provision of services after licensing. In the case of MK, the Minister prescribes conditions, forms and procedures, but local authorities collect and check applications and issue decisions and Ministry or authorized institution runs the Register and issues licenses. Licenses are not limited in time. A period of up to 15 days for deciding upon application is prescribed. Office manager of “A” tourism agency must have a certificate which is obtained through an exam authorized by Ministry and organized by a local commission from a high education institution. It remains unclear whether it is possible to take this exam in languages other than local. Legal entities and not physical persons may engage in performing tourism activities. In MK, it is required to have four persons in a travel organizer agency with license “A” and at least 1 employee in an intermediary (travel agency with license “B”).

*Moldova.* – Analysis of conditions to establish a travel agency in Moldova is focused on the Law on Tourism, which was updated in 2017 and 2020.<sup>22</sup> No regulation on services was identified, but instead, regulations on enterprises

---

<sup>21</sup> Law on Services, No. 08-2585/2, 17. 5.2019; Law on Tourism Activity, *Official Gazette of MK*, No. 62/2004, 16. 9. 2004. The same regulations were considered in following chapters of this text.

<sup>22</sup> Law on the Organization and Practicing of Tourism Activities in Moldova, No. 352-XVI from 24. 11. 2006, *Monitorul Oficial* (The Official Gazette), No. 14-17/40 from 2. 2. 2007; Modified: LP91 of 11. 6. 2020, MO153-158 / 26. 6. 2020 Art. 284; in force from 26. 7. 2020, and before that: LP 185 of 21. 9. 2017, MO 371-382 / 632 of 27. 10. 2017. Art. LVI.

were consulted in some instances.<sup>23</sup> Update of the Law on Tourism brought significant change since Article 15 on Licensing of tourism activity that existed in Law from 2006, was omitted in the version from 2017, which simplified the procedures. In this way, MD does not require licensing of travel agencies, which significantly simplifies access to the tourist services' market. Since MD allows natural or juridical persons to deliver tourism services, there are no specific requirements on the establishment concerning authorization, registration or territorial and temporal restrictions on the validity of the license since licensing is not requested. Also, there are no requests concerning the minimum or maximum number of employees, as well as no specific requirements regarding staff or the office manager.

The Tourism Law recognizes both the tour operator and the travel agency, the only difference being the provision that the travel agency does not create tourist packages, but only takes them from the tour operator. In accordance with Law No. 845/1992 on Entrepreneurship and Enterprises, the person who wants to start a business, including a business of a travel agency, is obliged to register the enterprise, its subsidiaries and representative offices, established on the territory of MD until the beginning of their economic activity. The enterprise must register at the State Fiscal Service in order to be assigned the fiscal code in accordance with the legislation in force (Art. 27 of State Fiscal Code No. 1163/1997).

Moreover, the activity of tour operators and travel agencies is regulated by Law No. 231/2010 on Internal Trade. Thus, prior to or simultaneously with launching the activity, entrepreneurs are obliged to notify the local public administration authority on whose territory they are to carry out their activity.

*Montenegro.* – A rather new Law on Tourism and Hospitality from 2018 in Montenegro was in the focus of this analysis.<sup>24</sup> When considering the conditions for granting the authorisation, the Law is transparent and clear in general, with note that minimal technical conditions on office space are left out of the main text of the law, to be regulated in the by-law act. Law on Tourism and Hospitality requires local licensing of all travel agencies, whether they act as tour operator or a sub-agent recognizing that a tour operator may act as high street or online agency. Licenses are not limited in time, and no territorial restrictions are assumed. Licensing procedure is regulated and implemented at a central level, by the Ministry. Upon application, time frame for deciding upon the application in ME

---

<sup>23</sup> Law No. 845/1992 on entrepreneurship and enterprises; Law No. 231/2010 on internal trade.

<sup>24</sup> Law on Services, *Official Gazette of Montenegro*, No. 71/2017 and 67/2019 – other law; Law on Tourism and Hospitality, *Official Gazette of Montenegro*, No. 02/18, 04/18 and 13/18.

is not specified (but it needs to be clarified if there is a general rule on time limits in procedures). No requirements regarding the origin, the location of the registered office or residency were identified. Law regulated that entrepreneurs or companies perform tourism activities and explicitly says that a natural person may not provide those services. Also, there is a requirement to have at least 1 person employed as a branch manager.

*Serbia.* – In the analysis of the conditions of establishment of tourism service providers, the Regulation on Tourism from 2019 is taken into account, along with the Regulation on Registration of Business Entities.<sup>25</sup> Regulation is transparent and clear in general with the notes that procedure of licensing in detail is left out of principal law text, to be elaborated in the by-law act. The same goes for detailed procedures concerning guarantees to cover the liability of agencies as well as the arrangement and equipment of the office. Two types of agencies are recognized: travel organizers that need to be licensed and intermediary agencies which need to be evidenced in Register. No territorial restrictions are assumed, but time of license validity is prescribed to be three years. Licensing is regulated by the Ministry and performed by the Agency for the Business Register, i.e. at a central level. The decision on the request for the issuance of a license is made within five days or is considered positive if the business entity is not otherwise informed. Law allows that self-employed persons or companies may perform tourism activities. Regarding the office manager, there is a requirement to have at least 1 person employed as a branch manager. Also, there is a specific requirement that the office manager must speak the Serbian language.

*Kosovo\**. – Kosovo\* has a law from 2013 regulating tourism. This Law does not regulate tour operators and their licensing, so consequently there are no licenses for tour operators. However, it is to be noted that the Draft Law on Tourism is in the enacting procedure, and the proposal provides for a licensing procedure. Additionally, the Law on Services was adopted in 2017 with some of the provisions postponed.<sup>26</sup> Procedure of licensing in detail is left out of the principal Draft Law text, to be elaborated in the by-law act. This draft law also contains

---

<sup>25</sup> Law on Registration Procedure in the Business Registers Agency, *Official Gazette RS*, 99/2011, 83/2014 and 31/2019); Law on Services (Draft); Law on Tourism (*Official Gazette RS*, No. 17/2019); Rulebook on the type, amount and conditions of the travel guarantee, the amount of the deposit depending on the license category, method of activation, purpose of funds, as well as other conditions that must be met by the travel organizer, *Official Gazette RS*, No. 81/2019, from 15. 11. 2019).

<sup>26</sup> Law on Services, DL-013-2017, 23. 3. 201; Law No. 04/l-176 on Tourism, *Official Gazette*, No. 14, 10. 5. 2013; Draft Law on Tourism.

provision on local licensing by the Ministry of all travel agencies: tour operators and agents. According to this proposal, a travel agency may sell services online and in the separate paragraph, it is recognized that it can be selling travel packages designed by a tour operator not registered in Kosovo\*, when this agency will be considered to act as tour operator. Validity of licenses according to the Draft Law would be limited to four years, and a significant period of 30 days is foreseen for the decision on the application to get a license. The Draft Law recognizes only companies to be actors in the tourism activities. There is no identified requirement on the number of employees.

### *Freedom of providing of services*

Free of movement of services is a basic element of free trade having in mind that services account for about two thirds of the output of developed economies while one fifth of these services is provided in other markets. This percentage is expected to increase.<sup>27</sup> Free movement of services can be hampered by the less noticeable non-tariff barriers, which have been the subject of numerous discussions and analyses during Brexit due to their importance.<sup>28</sup> Service trade in GATT and AP6 terms may take at least four modes: Mode 1. From one territory of another territory; Mode 2. Consumption of services abroad; Mode 3. Commercial presence and Mode 4. The presence of natural persons. Freedom to provide services should enable providers to freely provide their services temporarily on other markets, even without permanent presence assumed by the freedom of establishment.<sup>29</sup>

In the EU context, *freedom to provide services applies to all of those services normally provided for remuneration, insofar as they are not governed by the provisions relating to the freedom of movement of goods, capital and persons. The person providing a “service” may, in order to do so, temporarily pursue her or his activity in the Member State where the service is provided, under the same conditions as are imposed by that Member State on its own nationals.*<sup>30</sup>

---

<sup>27</sup> Gavin Barrett, “Free Movement of Services and Brexit”, *UCD Working Papers in Law, Criminology & Socio-Legal Studies*, Research Paper No. 5/2019, University College Dublin, 2019.

<sup>28</sup> House of Lords, *Brexit: Trade in Non-Financial Services*, HL Paper 135, 2017, <https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/135/135.pdf>, 8. 3. 2021.

<sup>29</sup> Wouter Gekiere, Rita Baeten, Willy Palm, W., “Free movement of services in the EU and health care”, *Health Systems Governance in Europe: The Role of European Union Law and Policy*, (Eds. Elias Mossialos, Govin Permanand, Rita Baeten, Tamara Hervey), Cambridge University Press, 2010, 461–508.

<sup>30</sup> C. Ratcliff, op. cit.

When analysing the freedom to provide services in the regional context, the focus has been put on whether foreign entities can provide services in CEFTA markets. General impression is that laws in tourism do not expressly regulate this situation, i.e. it is not foreseen that an agency from one market may offer services without previously establishing itself in the local market. The following presents the local legal framework relevant to the free movement of services in the CEFTA markets.

*Albania.* – Any kind of traveling service to tourists, individuals or organized groups is offered by a travel agency, be it a natural or a juridical person. In this context, the tour operator is a service packer but also a wholesaler of packaged tourism services with an important role. The travel agency must be registered in the competent Register having the business activity – travel agency. Practising without a license is not allowed. Foreign companies and foreign self-employed persons can enter a local market by opening a branch and applying for a license or in cooperation with local intermediaries. In order to open an office, no pre-conditions were identified. Also, no special obligation on the identity documents were identified except the professional qualifications of the legal representative (administrator), like a university degree or a vocational certificate.

*Bosnia and Herzegovina.* – Tourist activity is defined, *inter alia*, as the provision of services of tourist agencies which are specifically listed in the Law. It is not allowed to provide travel agency services if the business in question is not a travel agency in terms of the applicable regulations in BA, including the necessity to open an office in BA (HB), BA (HN) or in BA (G). The activities of the travel agency may be performed by a company registered in an appropriate register, with the note that in BA (RS) it is allowed that a self-employed person, registered in an appropriate business register, and in BA (DB) a natural person as a travel agent intermediary, may perform these activities as well. Providers of tourist agency services are obliged to display the license for performing the activities of a travel agency prominently (in BA(F) the identification number of the travel agency as well). Branch office managers in BA (F) and its cantons (BA (HB), BA (G), BA (HN) and Sarajevo), according to the law regulating tourism activity, need to be citizens of Bosnia and Herzegovina who meet the requirements for a branch manager prescribed by this Law. The Law also requires a professional exam for the position of an office manager, based on the procedure prescribed by the Minister.

*North Macedonia.* – Tourist activity is defined as the organization and implementation of tourist trips to tourist places, mediation in providing accommodation, transport and other services. This activity is performed by trade companies

and sole proprietors registered in the trade register (performers of tourist activity) under conditions and manner determined by the Law on Tourism Activity. High fines are prescribed for performing tourism activities without being registered in a trade register or having a license. Travel agencies may be licensed for a license “A” or “B” and must display the license or a notarized copy in a visible place in the travel agency. A provider of services is enabled to perform the activities throughout the territory of the MK, including through subsidiaries, branches or offices, except in cases when the restriction regarding the establishment or the territory is justified by extremely important reasons of public interest. Travel agencies must have a license to perform the tourist activity issued by the competent authority. Managers of type “A” of travel agencies must obtain certificates for managing said travel agency. This certificate is local, based on a professional exam and an educational program adopted by a higher education institution for tourism and catering, with the consent of the Ministry in charge of education.

*Moldova.* – Moldova, in its Law on Tourism, does not require the granting of licenses, but Law No. 845/1992 on Entrepreneurship and Enterprises requires the establishment of a commercial entity.

As mentioned before, the activity of tour operators and travel agencies is regulated also by Law No. 231/2010 on Internal Trade. Thus, prior to or simultaneously with launching the activity, entrepreneurs are obliged to notify the local public administration authority on whose territory they are to carry out their activity since, according to the legislation, natural and legal persons who carry out entrepreneurial activity in the Republic of Moldova, pay local taxes and duties. No bans regarding the opening of offices or special requirements concerning employees were identified.

*Montenegro.* – The definition of tourist activities starts with the services of tourist agencies which are listed in detail later in the Law. A tourist agency may be a company, another legal entity or entrepreneur that provides services of travel organization, mediation and realization of travel and tourist services. The activities of a travel agency may not be performed by a natural person. A tourist agency must have a license to perform that activity. Also, it must have a license for advertising. A tourist agency must have an office. In that office, it must visibly display a license for performing the activities of a travel agency. It is also obliged to visibly indicate the name of the agency, seat, license number and the QR code in all its advertising. The license of a tourist agency, the office and each branch must be registered in the Central Tourism Register. A tourist agency must have an office manager. In order to become an office manager, one must possess a required degree of qualification and working experience.

*Serbia.* – A scope of activities of tourist agencies is precisely set out in Serbian Law on Tourism. Some of those activities (organization of travel trips) are not allowed to be performed without an appropriate license (i.e. licensed tourist agency) that must be registered in the Tourism Register. A tourist agency that acts as an intermediary selling packages prepared by other travel organizers does not need a license, but it must be evidenced in the Tourism Register. Tourist agencies must be legal persons and may be in the form of a company, other legal entity or a self-employed person. That legal person must be registered in the Business Register, while the self-employed person must be active when starting to perform the tourist activities. The office of a tourist agency must be adequately labelled: at the entrance to the registered office, it must visibly display the business name and registration number. At the entrance to the tourist agency, it must visibly display the mark of the travel organizer with the license category. As already mentioned, the office manager must have a knowledge of the Serbian language.

*Kosovo\**. – According to the current Law on Tourism, licences are not a barrier to the free movement in service providing since no licensing procedure is prescribed. A proposal of the new Law on Tourism, which is not yet adopted, includes services of travel agencies listed in detail. In order to perform these services, a travel agency needs to be licensed. However, there is no fine prescribed if an unlicensed provider performs the services of a travel agency, except if a provider of tour-operator services does not provide for the financial coverage of liability. This is the only fine prescribed. A tourist agency is established as a company. There is no condition prescribed to the travel agency to open and operate an office. No special conditions exist regarding the selection of employees in travel agencies either.

### *Insurance of liabilities*

Insurance of liability in the process of organizing and realizing travel for individuals and particularly for groups is a rather important issue. Everywhere in CEFTA except in MD,<sup>31</sup> travel agencies are required to provide some kind of a financial coverage for the possible problems caused either by insolvency or in fulfilment of contracted services. Risk arises when the agency receives payment from a traveller in advance in order to finance the preparation of the travel (booking, etc.) and later absence of proper service delivery. Private travel insurance is very present in developed economies, recording 83 million issued insurance policies in Europe

---

<sup>31</sup> And currently, in Kosovo\*.

during 2017, showing an increase of 13,2% in comparison to 2016.<sup>32</sup> However, in developing economies, the basic liability coverage instrument is obligatory insurance by law. The insurance of the tour operator against business liability as an additional cost makes the trip more expensive, but even more dilemmas are caused by frequent cases of the impossibility of activating the risk coverage instrument because all the conditions have not been met. This is known as the illusory coverage doctrine (ICD).<sup>33</sup> Still, there are doubts about the efficiency of insurance if all the conditions are not met (e.g. long-term orientation).<sup>34</sup>

*Albania.* – Regarding the scope of the guarantee, law provides for a mandatory guarantee based on the inability to cover the costs of the contracted service (insolvency). Also, the coverage of costs based on non-fulfilment or partial fulfilment of obligations is mandatory. Regarding the type of agency, obligatory guarantee is provided for the travel organizers, while only an insurance policy is eligible as the guarantee instrument. The fixed amount of insurance policy is not set by the law, which indicates that it is a matter of business negotiation on the market. Method of guarantee activation is not regulated by the tourism regulation but through consumer protection regulations: in force are the Law No. 9902, of 17. 4. 2008. “On consumer protection” and the Decision of CoM No. 65, of 21. 1. 2009. “On the travel package contract”. The restrictions regarding the origin of the insurer are not observed in the law regulating tourism, but they may exist in some other regulations such as the one on insurance and financial services.

*Bosnia and Herzegovina.* – The previously elaborated guarantee instruments are obligatory in BA. When it comes to the types of agencies that obligation applies to, the guarantee is required specifically for travel organizers. However, an agency that deals with sale of its own tourist packages and excursions within the BA is a special case: the BA (RS) regulation envisages its guarantee to be in a lower amount. Regarding the risk covering instrument, a bank guarantee or insurance policy are required in BA while in BA (F), it is also possible to choose cash deposit as a risk covering instrument. In BA (RS), in addition to the general guarantee for the organization of group school trips and student excursions,

---

<sup>32</sup> EIOPA, *Consumer protection issues in travel insurance: A thematic review*, 13, [https://register.eiopa.europa.eu/Publications/EIOPA\\_Thematic%20review%20travel%20insurance\\_Oct2019.pdf](https://register.eiopa.europa.eu/Publications/EIOPA_Thematic%20review%20travel%20insurance_Oct2019.pdf), 25. 1. 2020.

<sup>33</sup> Ian Weiss, “The Illusory Coverage Doctrine: A Critical Review”, *University of Pennsylvania Law Review*, Issue 6, Vol. 166, 2018, 1545–1570.

<sup>34</sup> Tyler Beck Goodspeed, “Liability Insurance, Extended Liability, Branching, and Financial Stability”, *CATO Journal*, Issue 2, Vol. 37, 2017, 329–360.

the agency is obliged to provide a special bank guarantee of at least half of the total cost of the excursion. The amount of the general risk coverage instrument varies. In BA (RS), the amount of risk coverage is set for the travel organizers with a liability limit of up to 50.000 KM (around 25.000 EUR, *note of the author*) is set in general, and up to 10.000 KM (around 5.000 EUR, *note of the author*) for travel organizers working only in BA. The amount of the bank guarantee, insurance policy or deposit is not indicated by law on the level of either BA (F) or Cantons (BA (HB), BA (HN), BA (TK) Sarajevo), *so it remains unclear how this amount is determined*. In BA (DB), 10.000 KM (5.000 EUR, *note of the author*), must be presented as cash deposit or a bank guarantee and in BA (G), apart from the two mentioned instruments, insurance policy in the amount of 15.000 EUR is also accepted. Direct activation of the travel guarantee is provided in all BA (F) laws through certificates issued to the traveller by the agencies when concluding the contract. The restrictions regarding the origin of the insurer are not observed either in BA (RS) law, or in BA (F) and Canton Sarajevo laws regulating tourism, but they may exist in some other regulations such as the one on insurance and financial services.

*North Macedonia.* – A guarantee is obligatory for agencies with the license type “A” – travel organizers. In order to obtain a license, the travel organizer must present the annual liability insurance contract with an insurance company for performing its activities or provide a bank guarantee. The amount of the risk covered is fixed to 100.000 EURs. Direct activation of the risk coverage instrument is provided by the issuance of a certificate for insurance to the traveller in the process of sale of the tourist arrangement. Although no direct restrictions regarding the origin of the insurer have been observed, there is a clause stating that the amount of insurance is 100.000 EUR in local currency (denar), which suggests a local insurance company.

*Moldova.* – No guarantee or other risk covering instrument is requested from travel agencies. The protection and security of tourists in MD are guaranteed by the government and its specialized institutions. Also, in case of exceptional circumstances, the government undertakes certain measures to protect the tourists, Moldovan citizens abroad, including their evacuation from the place of temporary stay.

*Montenegro.* – An obligatory guarantee is requested both for travel organizers and for intermediary agencies. As for the financial instrument, it is possible to choose between an irrevocable bank guarantee for good performance of services payable on the first call and without objection, insurance policy or a cash deposit.

The amounts are set to be at least 15.000 euros for a travel organizer and at least 7.000 euros for an intermediary for its first year of activity. However, after the expiration of the first guarantee, the amount shall be determined as a percentage of the total income from the official balance sheet and income statement for the previous year. The exact percentage is not specified in the text of the law. The restrictions regarding the origin of the insurer are not observed in the law regulating tourism, but they may exist in some other regulations such as the one on insurance and financial services.

*Serbia.* – The possession of a travel guarantee is a condition that only travel organizers must fulfil in the process of obtaining a license. The travel guarantee covers the risk of insolvency and damages caused to the passenger according to law. According to the valid rulebook, the financial instruments may be a bank guarantee or an insurance contract. The amount of a travel guarantee depends on the category of the license. They range from EUR 200.000 to EUR 400.000. In addition to a travel guarantee, during the process of obtaining a licence, travel organizers must provide a deposit ranging from EUR 2.500 to EUR 10.000. The travel agency is also obliged to hand over a certificate of travel guarantee to the passenger, with all the data necessary for its activation. The restrictions regarding the origin of the insurer are not observed in the Law on Tourism, although they may exist in some other regulations such as one on insurance and financial services. Although the Law on Tourism does not regulate the origin of the liability coverage, the by-law act has a specific provision: “A.9 Tour-operator from SR does not cover liability if the re-sale is done by agent registered abroad”, which may make a difference among agents in different markets.

*Kosovo\**. - Liability insurance is mentioned in the existing Law on Tourism, only in case a consumer cancels a trip without explanation. Furthermore, liability insurance of travel agencies is analysed with the understanding that Draft Law on Tourism was used as regulatory framework. A travel agency which organizes the travel package arrangements, tours or excursions shall ensure that its contractual obligations to third parties are respected through a valid insurance bank guarantee or a valid insurance policy. This insurance should cover damages caused to the travellers by non-compliance, partial compliance or inappropriate irregular compliance of the obligations, as well as the risk due to bankruptcy of the travel agency. The amount of insurance is not regulated. The travel organizer shall recognize the traveller's right to directly address insurance claims and, as evidence of such a right. The restrictions regarding the origin of the insurer are not observed in the Draft Law on Tourism, but they may exist in some other regulations such as the one on insurance and financial services.

*Other issues important for trade of services  
(simplification, communication...)*

When striving to enable the free trade of services, apart from the ones discussed, there are various other important issues to consider. In that respect, some other provisions of local regulations that cannot be grouped under a coherent title easily were analysed together in order to get a better impression of the local environment for trade in services.

One of the most frequent requests in the local tourism laws in the process of establishment is prescribing a list of activities that travel agencies perform. This is not in compliance with the Article 25 of the EU Directive on Services which is, according to the Court of Justice of the European Union (the CJEU) one of the most violated articles even among EU members.<sup>35</sup> The same analysis quotes a similarly frequent violation of Article 24 of the EU Directive on Services regulating commercial communication, even though the instructions for the implementation of the Directive recognize the need to abolish numerous frequent advertising restrictions of service providers in national regulations.<sup>36</sup>

Finally, simplification, which is one of the cornerstones of EU legislation,<sup>37</sup> was also considered below regarding the procedures of establishment and providing of services of travel agencies in CEFTA economies. While the digitization of administration bolsters efficiency in most developed economies,<sup>38</sup> legal frameworks of CEFTA members still mainly rely on paperwork, verified translation and other traditional procedures.

*Albania.* – There are no special requirements or prohibitions on communication concerning tourism services. Regarding the obligation or restriction to exercise certain activities, services that travel agencies provide to travellers are listed, while the end of the article containing said list, houses the provision: “Travel agency services include but are not limited to: ...” meaning that typical services

---

<sup>35</sup> Wojciech Lewandowski, “Removing Barriers to Trade in Services in the Single Market with the Help of the Services Directive – Assessment of the Recent Case Law of the Court of Justice”, *Utrecht Law Review*, Issue 1, Vol. 18, 57–75.

<sup>36</sup> European Commission, *Handbook on implementation of the Services Directive*, Office for Official Publications of the European Communities, Luxembourg, 2008, 49.

<sup>37</sup> Lenaerts Koen, Desomer Marlies, “Towards a Hierarchy of Legal Acts in the European Union? Simplification of Legal Instruments and Procedures”, *European Law Journal*, No. 6, Vol. 11, November 2005, 744–765.

<sup>38</sup> Emily M. Weitzenboeck, “Simplification of Administrative Procedures through Fully Automated Decision-Making: The Case of Norway”, *Administrative Sciences*, No. 4, Vol. 11, 2021.

are indeed numbered, but other services are possible as well. The simplification of authorization procedures is regulated partially indicating an integrated exchange of information and documents between public bodies, as well as the release of the applicant from the obligation to submit documents that are already entered in the electronic register. However, there is no indication that these provisions are applicable to foreign businesses, including the ones from CEFTA markets. By the same token, no special mechanism for dealing with documents issued by foreign authorities has been observed.

*Bosnia and Herzegovina.* – The communication in the area of tourism services is in a way regulated through the request imposed to travel agencies to visibly display their name, as well as details on their licensing through their advertisement. In some cantons (BA (US), BA (TK), Sarajevo), this is specified by the fact that no advertising of tourist services is allowed through the media, the Internet, or promotional materials if the legal requirements prescribed are not met (licenses). Regarding the possible obligations or restrictions to exercise certain activities, the law lists the tourism services in detail, while the closing paragraph of said law limits additional services of tourism agencies to similar ones, leaving other possible activities out of the list. Provisions that can support the simplification of procedures are not identified in BA (F) where the law on services does not exist, while in BA (RS) it does exist, but it is not clear how this simplification is applied on procedures concerning agencies from foreign markets, CEFTA included.

*North Macedonia.* – Promoting services of travel agencies is partly regulated by the provision that agencies are required to emphasize the business name and seat on all their promotional materials. There is no penal provision that provides sanction for not having a license, so this should not affect business from any other CEFTA market. The law regulates the activities that the travel agency may provide. This list is long, containing three articles aiming to gather very different, but still precisely defined activities like selling betting tickets, etc. All the other possible activities of a travel agency are left out of the list. In the law regulating services, there is an intention to simplify the procedures, but the application of these law is postponed until accession to the EU.

*Moldova.* – No special requirements for the promotion of tourism services were identified. The list of services that travel agencies may provide is short and precise. Simplification of authorization is not regulated by the local tourism law.

*Montenegro.* – Advertising of tourist services may be performed only for tourist facilities that have a license. That advertisement needs to emphasize specific licensing details (QR code, license number etc.). The law regulating tourism

enumerates the activities that a travel agency may provide in an exhaustive list. All other possible activities of travel agencies are left out of the list. In the law regulating services, there is an intention to simplify procedures, but the application of this law is postponed until accession to the EU.

*Serbia.* – No special requirements or limitations regarding the advertising of the tourist agencies' services were identified. Law on Tourism offers a list of different, but precisely defined activities while leaving any other possible business activities out of it. Its last sub-paragraph contains a provision "other jobs common in tourist traffic" which allows other services to be offered, but also restricts them in a not so transparent way. There is an intention to simplify the procedures of authorization in the Draft Law on Services, but this law has not yet been adopted.

*Kosovo\**. – No special requirements or prohibitions regarding communication and promotional activities were identified in the existing Law on Tourism or the new Draft Law. In the Draft, services of travel agencies are set out precisely. There is also a possibility for the travel agency to perform additional services "in accordance with this law" which allows other services but with a possibly ambiguous interpretations of which services are allowed. In the Law on Services there is intention to simplify the procedure, but it is not clear how this can be applied on procedures concerning agencies from foreign markets, including CEFTA.

## CONCLUSION AND RECOMMENDATIONS

Providing tourism services and more specifically travel agencies' services is regulated by the sector-specific laws in all CEFTA economies.<sup>39</sup> These laws, and laws on services (if any) have been under scrutiny for their potentially profound impact on trade in tourism service. The central place in this analysis was occupied by the *ex-ante* models of regulation where services cannot be provided before a supplier receives an approval from the competent body. Such regulatory practices are known as authorisation or licencing schemes. Although not prohibited per se by the trade frameworks, such as GATS or European Union *acquis*, and CEFTA alike, such practices may as well pose a barrier to trade in services. This is why the Additional Protocol 6 expressly stipulates that licencing requirements and procedures should not in and of themselves be a restriction on the supply of service (Article 10).

Licences in tourism are known to all economies in CEFTA. They exist in the current legislations of Albania, Bosnia and Herzegovina, North Macedonia,

---

<sup>39</sup> The only exception is Kosovo\* but given the draft law on tourism seeks to establish sector specific regulatory framework comparable to others in CEFTA, this exception can be disregarded.

Montenegro and Serbia with a varying scope, conditions and procedures. In Moldova, the latest tourism legal reform has dropped licences completely and therefore significantly facilitated the supply of service. In contrast, Kosovo\* has expressed a clear intention to introduce licencing with its Draft Law on tourism.

From the perspective of suppliers who seek permanent establishment from one CEFTA market to another, these licencing arrangements have significant impact. Firstly, it should be noted that no conditions which overtly restrict foreign suppliers in seeking establishment and licences have been observed. By the same token, there are no mechanisms which would facilitate the access to licences for suppliers which are already license holders in another one of the CEFTA markets. The exceptions to this rule are: (1) provisions of the Law on Services in BA (RS), which do not seem to be reflected in the tourism related regulations and (2) Law on Services in MK and ME, whose application is postponed until EU accession, as well as Serbia where it is still in the proposal stage. Requirements related to legal form of establishment and minimum number of employees could be considered as potentially going beyond what is necessary to guarantee the quality of service and should be re-evaluated. In particular, the requirement for an employee to have another authorisation, i.e. professional qualification (office manager) is also an example of a possibly burdensome requirement which should be addressed by replacing it with an *ex-post* control measure or with an efficient system of recognition.

The laws across CEFTA economies define the service suppliers differently. They also assign them with different licencing conditions and procedures. The range goes from no licencing requirement in MD, over those split into categories for tour operators and intermediaries, where the latter only requires the registration in SR (in MK, ME, and draft KS\* law, licencing is obligatory for both) to BA, where innovative forms such e-agencies are also part of the nomenclature and which impose special requirements. In this context it is also worth noting that in some economies restrictions for self-employed exist.

In the context of transparency of the legal framework setting out the licencing regime, some issues have been observed. All important elements of the regime should be prescribed by law, in a clear and predictive way, enabling a clear business environment for all businesses in this sector. Only procedural and auxiliary aspects should be left for the by-laws to regulate. However, this is not the practice in all CEFTA economies. For example, there are regulations that stipulate all conditions for obtaining licences in the order of the by-laws, while as well as there are ones that are considered transparent and unambiguous.

Efficiency of authorisation procedures also varies significantly. Not all economies have electronic procedures, tacit approval or specified timeframes. AL and SR

seem to perform well in this regard with a 4 and 5-day deadlines for the competent authority to decide on licence application respectively.

In the context of the *movement of services between CEFTA markets*, it is important to note that none of the laws has overt restrictions. In general, we can conclude that companies are not prevented from providing the service without direct engagement on the local market (for example, through online services). However, if only licenced suppliers are allowed to set up local offices and promote their activities in the local market, this can be considered as a hidden barrier. Foreign suppliers are, in general, required to register a branch or a new legal entity locally and under the same conditions as local businesses. Professional qualifications for an office manager prove to be particularly burdensome for companies providing services temporarily.

Almost all CEFTA countries require obligatory insurance. There is no evidence that this insurance has to be provided by a local provider. However, in some cases, the obligation for the policy to be in local currency can be considered as an obstacle. There are differences in determining the guarantee of travel agencies in several dimensions which may cause complications in the procedure of mutual recognition: 1) different types of agencies obliged to be insured; 2) different instruments of liability insurance available; 3) different amount covered; 4) different methods of determining the amount of the guarantee (fixed or negotiated); 5) different methods of guarantee activation (direct or in formal procedure).

Prof. dr GORAN PETKOVIĆ  
Redovni profesor, Ekonomski fakultet  
Univerzitet u Beogradu

PROCENA DOMAĆEG REGULATORNOG OKVIRA TURISTIČKE  
DELATNOSTI U CEFTA ČLANICAMA U CILJU OLAKŠAVANJA  
TRGOVINE TURISTIČKIM USLUGAMA

Rezime

Članice CEFTA su formulisale Dodatni protokol VI (AP6) u cilju unapređenja trgovine uslugama. Ovaj akt je stupio na snagu januara 2021 i deo je inicijative usmerene ka uspostavljanju zajedničkog regionalnog tržišta (CRM). Kao pilot projekat, izabrana je oblast trgovine turističkim uslugama iz najmanje dva razloga: prvo, turizam je važna i rastuća delatnost u svim članicama CEFTA i drugo, prilikom izrade AP6 nijedna članica nije predložila bilo kakvo izuzeće od primene bilo kog dela ovog dokumenta.

*Ključne reči:* CEFTA, trgovina, usluge, turizam, regulativa

*Bibliography*

- Barett G., “Free Movement of Services and Brexit”, *UCD Working Papers in Law, Criminology & Socio-Legal Studies*, Research Paper No. 5/2019, University College Dublin, 2019.
- Cantú-Bazaldúa F., “Nowcasting global trade in goods and services”, *Statistical Journal of the IAOS*, No. 1, Vol. 37, 2021.
- CEFTA Portal, <https://cefta.int/legal-documents/#1463498231136-8f9d234f-15f9>.
- Daniltsev A., Biryukova O., “Beyond the GATS: Implicit Engines in Services RTAs”, *Panoeconomicus*, No. 3, Vol. 62, 2015.
- Dettmer B., “Trade Effects of the European Union’s Service Directive: Contrasting ex ante Estimates with Empirical Evidence”, *The World Economy*, No. 3, Vol. 38, 2015.
- EIOPA, Consumer protection issues in travel insurance: A thematic review, [https://register.eiopa.europa.eu/Publications/EIOPA\\_Thematic%20review%20travel%20insurance\\_Oct2019.pdf](https://register.eiopa.europa.eu/Publications/EIOPA_Thematic%20review%20travel%20insurance_Oct2019.pdf).
- European Commission, *Handbook on implementation of the Services Directive*, Office for Official Publications of the European Communities, Luxembourg, 2008.
- Gekiere W., Baeten R., Palm W., “Free movement of services in the EU and health care”, *Health Systems Governance in Europe: The Role of European Union Law and Policy*, (Eds. E. Mossialos, G. Permanand, R. Baeten, T. Hervey), Cambridge, Cambridge University Press, 2010.
- Goodspeed T. B., “Liability Insurance, Extended Liability, Branching, and Financial Stability”, *CATO Journal*, Issue 2, Vol. 37, 2017.
- Grievesson R., Holzner M., Vukšić G., “Regional Economic Cooperation in the Western Balkans: The Role of Stabilization and Association Agreements, Bilateral Investment Treaties and Free Trade Agreements in Regional Investment and Trade Flows”, *Eastern European Economics*, No. 1, Vol. 59, 2021.
- House of Lords, *Brexit: Trade in Non-Financial Services*, HL Paper 135, 2017, <https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/135/135.pdf>.
- IMF Staff, *Global Trade Liberalization and the Developing Countries*, <https://www.imf.org/external/np/exr/ib/2001/110801.htm>.
- Koen, L., Marlies, D., “Towards a Hierarchy of Legal Acts in the European Union? Simplification of Legal Instruments and Procedures”, *European Law Journal*, No. 6, Vol. 11, November 2005.
- Lewandowski, W., “Removing Barriers to Trade in Services in the Single Market with the Help of the Services Directive – Assessment of the Recent Case Law of the Court of Justice”, *Utrecht Law Review*, Issue 1, Vol. 11, 2022.
- Medin H., “Free Trade Agreements in a Small, Open Country: The case of Norway”, *World Economy*, Issue 12, Vol. 42, 2019.

- Neiminen R., "Free Movement of Capital within the European Union", *European Added Value Unit*, European Parliamentary Research Service, 2018.
- OECD, "Trade policy and facilitation in South East Europe", *Competitiveness in South East Europe: A Policy Outlook 2018*, OECD Publishing, Paris, 2018.
- Ratcliff C., Martinello B., Kaiser K. P., "Freedom of Establishment and Freedom to Provide Services", *Fact Sheets on the European Union*, European Parliament, 2020.
- Rouzet D., Spinelli F., "Services Trade Restrictiveness, Mark-Ups and Competition", *OECD Trade Policy Papers*, No. 194, OECD Publishing, Paris, 2016.
- Thirion E., "EU single market: Boosting growth and jobs in the EU", *European Added Value Unit*, European Parliamentary Research Service, 2017.
- UNDP, Human Development Report, [http://hdr.undp.org/sites/default/files/reports/260/hdr\\_1999\\_en\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/260/hdr_1999_en_nostats.pdf).
- Weiss, I., "The Illusory Coverage Doctrine: A Critical Review", *University of Pennsylvania Law Review*, Issue 6, Vol. 166, 2018.
- Weitzenboeck E. M., "Simplification of Administrative Procedures through Fully Automated Decision-Making: The Case of Norway", *Administrative Sciences*, No. 4, Vol. 11, 2021.
- World Bank, *World Development Indicators* (database), <http://data.worldbank.org/datacatalog/world-development-indicators>.
- WTO, *World Trade Report 2019*, [https://www.wto.org/english/res\\_e/booksp\\_e/00\\_wtr19\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/00_wtr19_e.pdf).
- WTO, *Trade, the Location of Production and Industrial Organization of Firms*, [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/wtr08-2d\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr08-2d_e.pdf).
- WTO, *Disciplines on Domestic Regulation Pursuant to GATS Article VI.4*, Trade in Services Division, 2011, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiV1oufgLL5AhVJhv0HHd5LBeMQFnoECAUQAQ&url=https%3A%2F%2Fwww.wto.org%2Fenglish%2Ftratop\\_e%2Fserv\\_e%2Fdom\\_reg\\_negs\\_bckgddoc\\_e.doc&usg=AOvVaw2VuHIH9xpn4YLtwJK5eKo8](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiV1oufgLL5AhVJhv0HHd5LBeMQFnoECAUQAQ&url=https%3A%2F%2Fwww.wto.org%2Fenglish%2Ftratop_e%2Fserv_e%2Fdom_reg_negs_bckgddoc_e.doc&usg=AOvVaw2VuHIH9xpn4YLtwJK5eKo8).

Article history

Received: 23.08.2022.

Accepted: 14.09.2022.

ORIGINAL SCIENTIFIC PAPER