

**THE ASSISTANCE TO TOURISTS IN EMERGENCY SITUATIONS:
COMMITMENT OF STATES, ROLE OF SERVICE PROVIDERS
AND TRAVELLER PROTECTION ***

*Francesco Morandi ***

SOMMARIO: 1. Introduction – 2. The first EU reaction to the effect of the pandemic affecting the travel and tourism sector globally – 3. The UNWTO Recommendations for the assistance to international tourists in emergency situations – 4. Some technical issues concerning definitions, principles, and recommendations – 5. Conclusions.

1. – As the former President of the European Central Bank Mario Draghi wrote on the Financial Times on 25 March 2020, «the coronavirus pandemic is a human tragedy of potentially biblical proportions. Many today are living in fear of their lives. Faced with unforeseen circumstances, a change of mind-set is necessary in this crisis. The shock we are facing is not cyclical. The loss of income is not the fault of any of those who suffer from it. The cost of hesitation may be irreversible».

The outbreak of Covid-19, beyond the dramatic aspects that accompanied the pandemic and that still afflict our lives, is a major opportunity for the international community and for each and every country to develop a new awareness and finally commit to adopt the necessary measures to guarantee assistance to travellers and tourists in emergency situation at a global level.

2. – During the emergency phase, travellers and tourists have experienced critical conditions: the concern for health, safety, and security; the need for assistance and repatriation, exacerbated by the lack of information and accommodation for overstays; the effect on travel, transport, and accommoda-

* This contribution reproduces, with some amendments and additions, the speech given at the Second meeting of the UNWTO Committee for the development of an International Code on the Protection of Tourists, held in Madrid, 26 November 2020.

** Full Professor of Tourism and Transport Law, University of Sassari (Italy).



tion contracts, including the struggle to comply with contract obligations and obtain reimbursement for forced cancellations.

The pandemic has affected all social and economic sectors: companies and professionals threatened by insolvency and bankruptcy; service providers facing complaints and legal proceedings; and workers have been affected too, with thousands of jobs being lost.

The actions being taken by Member States to deal with such a difficult situation and to prevent tourist systems from being overwhelmed were brave and timely. Countries seem to have capitalized the experience gained after September 11, on the occasion of the SARS outbreak and during the global economic and financial crisis that affected the markets and banking systems between the mid-2007 and the early 2009.

The emergency situation has required the adoption of extraordinary and urgent measures by Governments. The reaction of the European Union Governments was not long in coming. Some key measures were taken almost immediately and some of them had an international echo.

Nevertheless, also the European Union had to face major problems and many critical issues, such as the lack of cooperation among Member States, with some Countries unilaterally deciding to close their borders.

As a matter of fact, greater collaboration and sharing of information, know-how, experience, expertise, logistics, equipment, and a better coordination of actions would have been necessary, also to facilitate border-crossing, the transit of medical staff and equipment, the repatriation of travellers and assistance to tourists in an emergency situation.

Concerning the reimbursement of costs for tourists and the refund of economic losses for operators, the legal system should ensure the necessary flexibility and solidarity.

In particular, several EU Member States have relaxed the refund rules in their national legislation and allowed operators to offer a voucher instead of a cash refund in case of cancellation. It is worth noting that, for instance, the total amount of refund requests in Italy exceeded 500 million Euro, not to mention the air transport sector; the German Government has allocated over 850 million Euro to refund travellers.

We also have to take into account the effectiveness and the scope of the insolvency protection rules provided by Directive (EU) 2015/2302 of the

European Parliament and of the Council of 25 November 2015, on package travel and linked travel arrangements.

The Covid-19 emergency has been considered a case of supervening impossibility of performance and, as such, the consequence should be the termination of the contract and the user should have the right to receive a cash refund.

That is why the European Commission intervened with some non-legally binding measures, among others, the 'Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19 (2020/C 89 I/01) of 18 March 2020; the non-legally binding 'Information on the Package Travel Directive in connection with the COVID-19' set of guidelines of 19 March 2020 (revised version, replacing the version of 5 March 2020); the 'Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic'.

In the end, according to the European Union experience, for interventions to be effective, at least the following is needed: a strong cooperation among States, and among States and international organisations and private operators (especially in the transport, travel and tourism sectors); the adoption of standards and models for prevention, information, assistance, and repatriation; the introduction of compensatory systems for the reimbursement of consumers, the refund of operators, and the recovery of economic and social losses.

As a matter of fact, European Union has been able to face the crisis thanks to the efficient organization of its Member States, especially in operations and through the adoption of some measures amending EU regulations and making EU rules more flexible. For instance, in air transport policymakers have taken action on slot allocation, financial requirements for airlines to maintain their licence, Countries to maintain flight restrictions, and so on.

However, the return to normal urges us to reflect on the need to strengthen our institutions and improve the quality of our legal systems.

3. – In this context, at a global level, the UNWTO Secretariat recently issued the 'Recommendations for the assistance to international tourists in emergency situations', in the framework of Decision CE/DEC/4(CXII), ad-

opted by the Executive Council (EC) at its one hundred twelfth session held in Tbilisi (Georgia) on 15-17 September 2020.

These Recommendations aim to provide guidance to Member States regarding the assistance to tourists in emergency situations and are intended to receive further impulse from the UNWTO Intergovernmental Committee for the development of an International Code on the Protection of Tourists (ICPT).

The regulatory initiative was adopted according to the programme priority established by the UNWTO Secretariat for 2020-2021, aimed at facilitating safety, security, and seamless travel. A series of recommendations have been set out to support Member State governments and the private sector in their efforts to resume international tourism in the context of the Covid-19 pandemic.

The UNWTO is making a very significant effort in attempting to ensure an adequate level of protection for international travellers in the event of emergency due to unavoidable and extraordinary circumstances. Nevertheless, the text already prepared is not to be considered exhaustive, nor is it intended to be definitive, but it will be subject to review and subsequent approval by the governing bodies of the UNWTO and endorsed by Member States.

The intervention is underpinned by the 'UNWTO Framework Convention in Tourism Ethics', the first UNWTO international convention, adopted by the General Assembly at its 23rd session held in St. Petersburg, Russian Federation, in 2019, through Resolution A/RES/722(XXIII) and yet to enter into force. According to its Article 9, Responsibilities of stakeholders in tourism development, *inter alia*, public authorities, in cooperation with the professionals, should focus on security and safety, ensure suitable systems of insurance and assistance, inform about difficult circumstances, formulate recommendations and guarantee the repatriation of tourists in any event.

The Secretariat also acts on the basis of Article 6 of the 'UNWTO Global Code of Ethics for Tourism', which sets out obligations for States in relation to travel advisory information in emergency situations and repatriation mechanisms.

Last but not least, the text properly took into account the outcome of the extensive work carried out to draft a preliminary text of the Convention on the Protection of Tourists and on the Rights and Obligations of Tourism Ser-

vice Providers, welcomed by the UNWTO General Assembly at its 22nd session held in Chengdu, China (2017), through Resolution A/RES/686(XXII), and in particular its Annex I (“Assistance in emergency situations”).

Concerning the Recommendations, the current version is divided into three parts, Introduction, Principles and Recommendations.

As far as the Introduction, the draft contains a presentation of the purposes, the general framework and the circumstances that generated the initiative, as well as some definitions in the footnotes (tourist, extraordinary situations, unavoidable and extraordinary circumstances, tourism service provider) that orient the interpreter’s attention and guide the application of recommendations.

The Principles on which they can be based are attributable to ‘Uniformity’, as the need to find a common and global approach and harmonize the policies and practices; ‘Balance’, as the need to find a fair and equitable equilibrium between what is desirable and what is achievable, and also to distribute responsibilities among stakeholders; ‘Cooperation’, as the need to improve and strengthen international collaboration among the public and private sectors as well as among countries; ‘Responsibility’, as the duty of public authorities to protect tourists in trouble and to ensure that professionals provide assistance, as well as information; ‘Accessibility’, according to which travellers with disabilities, specific access requirements and seniors wish to travel just as any other citizen.

With reference to Recommendations – I. Prevention, II. Information, III. Assistance, IV. Repatriation – which certainly are the most relevant part of the document, the attention is focused both on States (host country, country of origin and third countries) and operators (tourism service providers, their local representative or local agency).

It is worth noting that the first concerns ‘Prevention’ and refers primarily to the set-up of a crisis management service, as well as the establishment of protocols for emergency situations, the designation of responsible authorities, the provision of information, the fostering of travel insurance schemes for the protection of tourists and financial schemes to support tourism service providers.

The experience has also revealed the importance of real-time ‘Information’ (on border procedures, means of transport, travel restrictions, public health and safety measures, contact tracing apps), to be disseminated on

emergencies in accordance with the 'Recommendations on the Use of Georeferences, Date and Time in Travel Advice and Event Information', adopted by the UNWTO General Assembly with Resolution A/RES/592 (XIX), in Gyeongju, Republic of Korea, 10-13 October 2011.

The core of the document is the 'Assistance' in emergency situations, which in a humanitarian perspective commits States to adopt measures to guarantee the safety of tourists. In particular, among others, the host country is expected to make immediate contact with the tourist service provider, ensure that the latter provides appropriate assistance and cooperate with the relevant authorities to offer information, travel arrangements, accommodation (displaying fair and ethical behaviour, not increasing the room rates and not requesting for cancellation fees). It is also specified that tourist contracts provide insurance schemes and guarantee systems which cover the risks resulting from emergency situations, including pandemic events, both with reference to assistance and repatriation, and with reference to cancellations and reimbursements. In such conditions, the host country shall also provide communication services, basic medicines and emergency health care, temporary shelters, necessary meals and transportation, visa (overstays should not be taken into account during the processing of future visa applications), and waive administrative sanctions or penalties in specific conditions.

'Repatriation' implies for both the host country and the country of origin to transmit information and cooperate in facilitating operational measures. The recommendation envisage for the host country to ensure the repatriation of tourists, facilitate the necessary visa requirements, including for compelled stays exceeding the maximum established days and cross-border procedures, but also assist and facilitate the entry, stay and freedom of movement in its territory of any official, medical and technical staff and their equipment on a need basis. For the country of origin, above all, the need to cooperate in facilitating the repatriation of the tourist and onward transit of nationals and their family members is also specified. Lastly, third countries are requested to provide all necessary information, cooperate in facilitating the transit and repatriation of tourist, allow the transit of any official, medical, and technical staff, and equipment.

A great amount of work has already been completed, but our commitment now is to reflect on how the text may be improved, create the condi-

tions for worldwide buy-in, and finally implement the contents in all the Member States' legal systems.

4. – Indeed, I wish to highlight some technical issues concerning the three main sections of the document: Definitions, Principles and Recommendations.

The first issue regards the “Definitions”.

It has to do with the scope of application of the Recommendations and, in particular, the identification of the main subject of protection rules.

One of the definitions that we find in a footnote for the term “tourist” is ‘a person taking a trip which includes an overnight stay to a main destination outside his/her usual environment, for less than a year, for any main purpose (business, leisure or other personal purpose) other than to be employed by a resident entity in the country or place visited’.

The definition has been acquired from the notion originally given in the UN International Recommendations for Tourism Statistics 2008 (IRTS 2008) and it is fully consistent with Art. 1, lett. *c*, of the UNWTO Framework Convention on Tourism Ethics, adopted by the Resolution A/RES/722(XXIII) of the General Assembly in 2019).

However, in international laws and according to national rules and regulations, we often find different terms used, as well as different levels of protection depending on whether we are dealing with or taking into consideration consumers, passengers, travellers, voyagers, guests, and visitors, among others.

It is therefore necessary to consider whether to maintain the current expression “tourist” and its definition, or whether to accept the partially different – or perhaps broader – notion of “traveller”, or even to introduce specific references to the other subjects indicated.

In any case the definitions reported in the footnotes need to be transposed and incorporated into the body of the document.

The second issue concerns “Principles”.

Concerning Principle II.3, “Cooperation”, the document states and only refers to ‘the need to improve and strengthen international cooperation among the public and private sectors, as well as among countries to assist international tourists in emergency situations’.

However, we must not forget the experience gained in recent months during the tackling of the Covid-19 pandemic, as well as what happened in 2001, following the terrorist attacks of September 11, or in 2003 during the SARS pandemic, and again in 2009 in view of the global economic and financial crisis.

In short, the provisions must be completed and extended, at least, by fostering cooperation among international organisations (i.e., WTO and the World Health Organisation, as it already happens, ICAO, IMO, ILO, ACU, CLIA, IATA, WTTC, etc.) and cooperation among countries and international organisations (including NGOs - Non-Governmental Organizations).

The third issue is about “Recommendations”.

One of the main problems is related to the compensation of tourists following the interruption of a trip due to the early return to the country of origin, or the cancellation of travel and tourist services, especially those of air transport and hospitality.

States should be required to commit and bear the costs and economic losses suffered by all the actors in the supply chain, including tourists, providers and all those who have incurred expenses in order to support countries in providing assistance to travellers and in repatriating tourists.

That is why it might be appropriate to introduce a new recommendation for the country of origin or the host country concerning the adoption of the necessary measures for refund in case of cancellation and other prejudices borne by tourists; reimbursement of costs and economic losses borne by operators (carriers, hotel keepers, tour operators, travel agents, hospitals, etc.); compensation of the expenses incurred for operations relating to assistance and repatriation operations.

The development and use of travel insurance schemes and guarantee systems – which aim to provide adequate coverage for tourists, cover the extra costs resulting from specific emergency situations, including cancellation fees, the costs of treatment and quarantine for tourists, and the costs of repatriation – must clearly be fostered.

5. – In the end, at a time when travel and tourism law is taking on new meanings, everything seems to change in tourism: the disruptive innovation of the digital era, Covid-19 in these days and the other challenges that the new world of travel must face.

But one thing has not changed at all: our duty to implement the best legal instruments for the protection of tourists; our duty to guarantee operators fair conditions and equal opportunities on the market; our duty to strengthen our institutions and improve the quality of our legal systems.

However, the real question is whether this can become the ultimate long-term solution or not. The emergency situation required the adoption of extraordinary and urgent measures. The return to normal urges us to reflect on the structure of relations between travellers, on the one hand, and providers, on the other, taking into account all the components of the market and the different types of tourist services.

The global travel and tourism industry has been ravaged by COVID-19, a typical example of a black swan event. While many are looking backwards to compare the current market environment with the post-9/11 or other periods of the past, I prefer to look forward – trying to address the tough questions weighing on our collective minds.

If it is true what we often hear repeat – that nothing will be the same as before – then we must think of new rules that are fairer for tourists (travellers, hosts, passengers, consumers) and equally sustainable for the States and for the market.

This is a crucial time for all of us. That is the reason why the commitment and contribution of all relevant stakeholders will be crucial to implement new rules that can offer effective solutions to the problems affecting travel and tourism sector at a global level.

Anyway, going back to the words of Mario Draghi, «speed is absolutely essential for effectiveness. The speed of the deterioration of private balance sheets must be dealt by equal speed in supporting each other in the pursuit of what is clearly a common cause».

It is not only an opportunity. It is not only a duty. It is an absolute necessity.

Abstract

Il saggio si concentra su alcune delle questioni giuridiche più significative riguardanti l'assistenza ai turisti in situazioni di emergenza, con particolare riferimento alla prima reazione dell'UE alla pandemia di Covid-19 ed alle Raccomandazioni della UNWTO che comportano l'impegno degli Stati e dei fornitori di servizi a garantire la protezione dei viaggiatori ed affrontare i gravi problemi che affliggono l'industria dei viaggi e il settore del turismo a livello globale.

The essay focuses on some of the most significant legal problems concerning the assistance offered to tourists in emergency situations, with particular reference to the first EU reaction to the Covid-19 pandemic and to the UNWTO Recommendations which involve the commitment of both countries and service providers to ensure the protection of travellers and address the serious problems affecting the travel industry and tourism sector globally.