

THE UN TOURISM INTERNATIONAL CODE FOR THE PROTECTION OF TOURISTS: A MILESTONE AND A NEW STARTING POINT

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SUMMARY: 1. A milestone for the protection of tourists. – 2. From the “Recommendations” for assisting international tourists to the new “Code”. – 3. The meaning, structure, and contents of the Code. – 4. A new starting point.

1. – In a period when tourism law is taking on new meanings, everything seems to change in the tourism sector and the travel market. The disruptive innovation of the digital era, the consequences of the COVID-19 pandemic at a global level, and the new conflicts between States that afflict humanity are only some of the huge challenges that the new world of travel and tourism must face.

Different from what happened with the air, maritime and rail transport sectors, which have a long tradition of international rules and are now fully regulated, tourist activities do not benefit from a legislative framework at a global level. Over time, there have been some attempts to establish a legal basis for relations between tourists and operators, but they have yet to reach a sufficient consensus to transform them into international conventions or even generally adopted as a soft law instrument.

Nevertheless, it is crucial for the States to strengthen their institutions and improve the quality of their legal systems to offer effective answers to the relevant problems that still affect the tourism sector. Governments today have the responsibility to implement the best regulatory instruments for the protection of tourists and guarantee operators fair conditions and opportunities on the market.

Therefore, the tourist sector continues evolving and describes a substantially new scenario where the system of rules still appears inadequate to deal with it in a complete and efficient manner. The international dimension in-

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creasingly characterises the development of the travel sector in the new millennium and is strongly affected by the capacity of States to guarantee the conditions for sustainable growth from an environmental, economic and social perspective¹. By its nature, tourism – and therefore also tourism law – has always had a solid supranational vocation, and this structural character is today enhanced by the dimensions of the phenomenon, to the point that even the law is intended to be strongly influenced by it.

The General Assembly of the UNWTO (now “UN Tourism”, with a new name and brand to mark a new era for the global sector), during the 24th session held in Madrid from November 30 to December 3, 2021, approved Resolution A/RES/732(XXIV) and officially adopted the “International Code for the Protection of Tourists” (ICTP)².

The Code provides principles and recommendations for the protection of tourists in emergency situations and the safeguarding of the rights of travellers, with the aim to harmonise minimum protection standards globally and provide sufficient guarantees to international tourists in the post-COVID-19 world.

As stated in the introduction, addressed to governments, public and private stakeholders, and tourists, the Code provides practical and operational guidelines for those with obligations and responsibilities or who hold rights and duties in the tourism sector.

It is structured into five chapters: definitions and clarifications; assistance to international tourists in emergency situations; tourists’ protection in contracts; international settlement of travel and tourism disputes via alternative means of dispute resolution; mechanisms for the adherence to and application of the recommendations.

Uniting the minimum standards for the protection of tourists in emergencies and the rights of travellers at the international level, the Code aims to restore trust and create a sense of security among consumers, including

¹ UN Tourism is responsible for the promotion of responsible, sustainable and universally accessible tourism geared towards the achievement of the universal United Nations 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDG). The reference to the need to guarantee the protection of international tourists through a system of rules shared at a global level appears several times in the UN Tourism document “Achieving the Sustainable Development Goals through Tourism – Toolkit of Indicators for Projects (TIPs)” adopted in 2023.

² The full text of the UN Tourism “International Code for the Protection of Tourists”, UNWTO, Madrid, 2022, is available in English, French, Spanish, Russian, Chinese, and Arab at <https://www.unwto.org/international-code-for-the-protection-of-tourists>.

through the improvement of contractual relationships between providers and users of different tourist services.

As a *soft-law* instrument of a non-legally binding nature, it does not create direct obligations or impose specific burdens on states. Instead, it seeks to support the efforts undertaken at the national level by each of the Member Countries of UN Tourism and the United Nations to rebuild a conducive environment for travel and expedite tourism recovery. Thus, the Code essentially provides guidance to governments to adopt appropriate legislative policies and regulatory practices.

Similarly, other stakeholders in tourism are encouraged, as far as possible, to promote the Code, support its principles, and apply relevant recommendations. They are also encouraged to integrate or specifically refer to them in their respective contractual instruments to increase travellers' awareness of their rights and obligations and to enhance consumer confidence when booking a trip or tourist service.

The process of drafting the Code is primarily attributed to the Committee for the development of an International Code for the Protection of Tourists, established by Decision CE/DEC/4(CXII) adopted by the Executive Council of UNWTO at its 112th session held in Tbilisi, Georgia, from September 15 to 17, 2020. In carrying out the mandate, the Committee was supported by a group of independent experts with recognised legal expertise at the international level in travel and tourism law, as well as consumer protection³.

The text of the Code was developed in just over a year – a short period considering the significant complexity of the content – thanks also to the direct participation of over 100 Member States, major international organisations, and leading entities in the travel and tourism sector, along with some of the significant private entrepreneurial groups operating in the market.

A certainly decisive impetus was provided by the crisis generated by the COVID-19 pandemic, which highlighted the fragility of the international framework of rules, the substantial absence of a system of legal instru-

³ The Consultative Group of Experts was composed of Diego Augusto Benitez (National University of Río Negro, Argentina), Francesco Morandi (University of Sassari), Charlotte Wezi Mesikano Malonda (Commercial Court, High Court Judge, Malawi), as well as John J. Downes (international tourism law consultant), Julio Facal (tourism law expert); Claudia Lima Marques (Federal University of Rio Grande do Sul, Brazil), Sarah Prager, Barrister (Bar of England and Wales), Christine Riefa (University of Reading School of Law, United Kingdom), Haien Shen (China University of Political Science and Law, China).

ments capable of assisting international tourists in emergencies, and the absolute lack of global uniformity about the protection of travellers' rights⁴.

2. – The approval of the Code by the UNWTO was preceded by the issuance, by the General Secretariat, of the “Recommendations for the Assistance to International Tourists in Emergency Situations”, adopted within the framework of the mentioned Executive Council Decision CE/DEC/4(CXII)⁵.

The regulatory initiative, aimed at facilitating travel safety and continuity, was adopted according to the priorities set by the UNWTO Secretariat for the 2020-2021 period⁶.

It has to do with a series of recommendations aimed at sustaining the actions of governments of Member States and the private sector in the efforts to enable the recovery of international tourism in the context of the COVID-19 pandemic⁷.

The Secretariat acted, first and foremost, based on Article 6 of the UN-

⁴ As the Secretary-General of the UN Tourism emphasised, «the COVID-19 crisis has revealed the absence of an international legal framework to assist international tourists in emergency situations and the lack of uniformity at the international level regarding tourism consumer protection rights. During the crisis, the closure of borders with little notice left hundreds of thousands of tourists stranded abroad, millions of flights were cancelled and the situation soon deteriorated, impacting negatively on the confidence of tourists regarding their rights to assistance in emergency situations and consumer rights in general. In order to support the efforts taken by Member States in the recovery of the tourism sector, the “International Code for the Protection of Tourists” (ICPT) aims at restoring consumers' confidence by developing and harmonizing minimum international standards for the protection of tourists in emergency situations, including but not limited to pandemics, and consumer rights of tourists in the post-COVID-19 world».

⁵ The World Tourism Organization, *Recommendations for the assistance to international tourists in emergency situations*, UNWTO, Madrid, 2020, are available online: www.unwto.org/recommendations-for-the-assistance-to-international-tourists-in-emergency-situations.

⁶ In developing Recommendations, the Secretariat was assisted by some independent experts with internationally recognised legal expertise in the fields of travel and tourism law: Diego Augusto Benitez (National University of Río Negro, Argentina), Francesco Morandi (University of Sassari) and Charlotte Wezi Mesikano Malonda (Commercial Court, High Court Judge, Malawi).

⁷ For a preliminary analysis of the recommendations, see F. Morandi, *The assistance to tourists in emergency situation: Commitment of States, role of service providers and traveller protection*, in *Giureta - Rivista di Diritto dell'Economia, dei Trasporti e dell'Ambiente*, vol. XVIII, 2020, p. 287.

WTO “Global Code of Ethics for Tourism”, adopted with resolution A/RES/406(XII) from the 13th UNWTO General Assembly in Santiago (27th of September-October 1st 1999), which establishes obligations for countries regarding travel information in emergency situations and repatriation mechanisms⁸.

The intervention was also based on the UNWTO “Framework Convention on Tourism Ethics”, the first international convention developed within the UN Tourism organisation, adopted with resolution A/RES/722(XXIII) by the General Assembly at its 23rd session in St. Petersburg in 2019, not yet in force⁹. According to Article 9 (Responsibilities of stakeholders in tourism development), among other things, public authorities, in collaboration with professionals, should focus on safety, ensure adequate insurance and assistance systems, provide information on difficult circumstances, make recommendations, and ensure the repatriation of tourists in any eventuality.

The text has adequately taken into account, finally, the outcome of the extensive work carried out to draft the preliminary text of the “Convention on the Protection of Tourists and the Rights and Obligations of Tourist Service Providers”, favourably welcomed by the UN Tourism General Assembly during its 22nd session in Chengdu in 2017, through Resolution A/RES/686(XXII), and specifically its Annex I (“Assistance in Emergency Situations”).

Regarding what is now of greater interest, the “Recommendations for the Assistance to International Tourists in Emergency Situations” now constitute Chapter II, “Assistance to International Tourists in Emergency Situations”, of the ICPT.

The current version is subdivided into “Principles” and “Recommendations”¹⁰.

⁸ The fundamental goal of the Code is to promote responsible, sustainable, and accessible tourism, following the Manila Declarations of 1980 on world tourism and those of 1997 on the social impact of tourism, as well as the Tourism Charter and Tourism Code adopted in Sofia in 1985 under the auspices of UNWTO. The text is available online at www.unwto.org/global-code-of-ethics-for-tourism.

⁹ The *UNWTO Framework Convention on Tourism Ethics* is available in the official languages – English, French, Spanish, Russian and Arab – at www.unwto.org/ethics-convention#:~:text=in%20the%20Convention.,UNWTO%20Framework%20Convention%20on%20Tourism%20Ethics,several%20provisions%20have%20been%20adapted.

¹⁰ The original text also includes an Introduction, a presentation of the purposes, the overall framework, and the circumstances that led to the initiative, as well as some definitions in the foot-

Regarding the first section, the “Principles” are individuated as follows:

- i) “Harmonization”, the need to find a common global approach and standardise policies and practices;
- ii) “Balance”, the need to find a fair equilibrium between what is desirable and what is achievable, as well as the requirement to distribute responsibilities among stakeholders;
- iii) “Cooperation and coordination”, in order to improve and reinforce the international collaboration between the private and public sectors, as well as among countries and international organisations;
- iv) “Responsibility”, the liability of the authorities to protect tourists in trouble and ensure that professionals provide assistance other than information; at the same time, international tourists must know and follow the information provided to them by the tourism service provider, as well as to be aware of health, safety, and security risks associated with travel and behave in a manner that minimises these risks;
- v) “Accessibility”, the right of vulnerable and disadvantaged tourists to travel like any other person on an equal basis and without discrimination of any kind;
- vi) “Clarity and certainty”, a necessity for international tourists and tourism service providers to clearly understand their rights and have sufficient time to meet their demands;
- vii) “Risk-targeted approach”, the need to have a regulatory approach focused on risk and specific and well-defined objectives that directly address emergencies while respecting the principles of equality, non-discrimination, and proportionality.

As for the second profile, the “Recommendations” are articulated in I. Prevention, II. Information, III. Assistance, IV. Repatriation and represent the most relevant part of the document.

Attention is directed to both states (host country, country of origin, and third countries) and operators (tourism service providers, their local representatives, or local agencies).

It is worth noting that the first one significantly relates to “Prevention” and primarily involves the establishment of a crisis management service, as well as the establishment of protocols for emergency situations, the designa-

notes (tourist, extraordinary situations, unavoidable and extraordinary circumstances, tourist service provider) to guide the interpreter’s attention and facilitate the application of the Recommendations.

tion of responsible authorities, the provision of information, the promotion of travel insurance plans for tourist protection, and financial schemes to support tourism service providers.

Experience has also highlighted the importance of “Information” – on border procedures, means of transportation, travel restrictions, health and public safety measures, through tracking apps – to be disseminated in case of emergencies according to 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) on October 10-13, 2011 ¹¹.

The focal point of the document is “Assistance” in emergencies, which, from a humanitarian perspective, commits states to adopt measures to ensure the safety of tourists. In the event of unavoidable and extraordinary circumstances or emergency situations, among other things, the host country should:

a) ensure, through coordinated systems, procedures, or agreements, that the tourist service provider is able to promptly and without undue delay provide adequate care and assistance to international tourists within the limits established by applicable laws;

b) ensure that accommodation service providers are adequately equipped with necessary information and communication channels, cooperate with the competent authorities of the host country in case of unavoidable and extraordinary circumstances or emergencies, maintain ethical behaviour, do not increase rates for extra nights, and do not impose cancellation fees in case the tourist is unable to receive the service.

c) provide, to the extent possible, rescue services, communication services, temporary shelters, necessary meals and provisions, visas or permits, transportation, essential medicines, and emergency healthcare.

d) waive administrative sanctions or penalties against citizens of other countries without compromising the host country's national security when tourists are forced to stay beyond and cannot leave the territory due to travel restrictions.

e) adopt, as reasonably possible, additional necessary operational measures, such as coordinated evacuation, provision of emergency and security personnel, and provision of health and medical services when the international tourist's life, health, or personal integrity is exposed to direct danger.

¹¹. See UN Tourism, *Resolution 593(XIX) of October 13 2011*, available online at www.unwto.org/archive/global/event/general-assembly-nineteenth-session.

Tourist service providers, on the other hand, are required to immediately contact the host country's authorities, who should activate a direct and specific communication channel with the operators themselves or their local representatives to coordinate assistance to tourists.

Finally, a detailed regulation of "Repatriation" is envisaged, involving specific commitments for both the host country and the country of origin – including, first and foremost, the transmission of information and cooperation to facilitate operational measures – as well as for third countries.

The recommendation stipulates that the host country ensures the repatriation of tourists, facilitates the necessary visa requirements, even for forced stays exceeding the maximum established days and cross-border procedures, but also assists and facilitates the entry, stay, and freedom of movement of official, medical, and technical personnel, and their related equipment, within its territory based on the needs. The country of origin, in particular, must cooperate to facilitate the repatriation of tourists and the transit of citizens and their family members.

In the end, the third countries must provide all necessary information, cooperate to facilitate the transit and repatriation of tourists, and allow the transit of any official, medical, and technical personnel and equipment.

In conclusion, the "Recommendations" constitute the fundamental basis upon which other provisions of the International Code for the Protection of Tourists are built, whose main objectives are well-defined.

Firstly, uniform rules should be established to ensure and promote adequate protection for tourists, especially in emergencies, providing them with primary and essential assistance and strengthening cooperation between states in exceptional circumstances.

Secondly, to clarify the rights and obligations of tourist service providers, ensuring a fair balance between the responsibilities of countries, the private sector, and tourists.

The overall goal of improving travellers' trust in operators, states, and the tourism sector remains evident in the background, especially at a time characterised by the need to face new challenges.

3. – The encouraging results that emerged with the adoption of the "Recommendations" and the needs repeatedly expressed by the Member States have led the UN Tourism to take a further decisive step forward to address the persistent lack of uniform discipline at the international level re-

garding the protection of tourists' rights.

As was highlighted in the beginning, the International Code for the Protection of Tourists (ICPT) provides a comprehensive series of principles and recommendations for protecting tourists in emergencies and, above all, establishes a uniform model for protecting the rights of international travellers.

Adopted to unify minimum protection standards globally, guide the actions of national governments towards adopting appropriate legislative policies, and propose a balance of various interests at stake, it is, nevertheless, a *soft-law* instrument of a non-legally binding nature.

Looking the contents, the Code consists of five chapters focusing on "Definition and clarification" (Chapter One), "Assistance to international tourists in emergency situations" (Chapter Two), "Tourists' protection in contracts" (Chapter Three), "International settlement of travel and tourism disputes via alternative means of dispute resolution" (Chapter Four), and "Mechanisms for adherence to and the application of the recommendations of the International Code for the Protection of Tourists" (Chapter Five).

Alternatively, by conducting a cross-cutting reading of the text for overarching thematic objectives, three main areas of intervention emerge.

The first, already discussed in the previous paragraph, deals with emergencies and takes up the content of the "Recommendations", broadening its scope and meaning.

The focus is primarily on the indications contained in the second chapter ("Assistance to International Tourists in Emergency Situations"), with particular reference to the development of minimum international standards for the protection of tourists. These standards are organised around four central themes: prevention, information, assistance, and repatriation.

The third Chapter, Part II, focuses on "Contractual Issues relating to Emergency Situations", with particular emphasis on contractual protection and the tourist's rights as a consumer. The themes confronted are those that emerged in the context of the COVID-19 pandemic¹², namely issues related to prevention, contract resolution, the right of withdrawal, the issuance of vouchers as an alternative to cash refunds and the financial support

¹² Concerning the complex legal issues arising from the effects of the COVID-19 pandemic on the tourism system and the travel market, see the relevant contributions published in C. Torres and F.J. Melgosa Arcos, (Eds.): *Legal Impacts of Covid-19 in the Travel Tourism and Hospitality Industry*, Eshte, Estoril, 2022.

offered by national governments to tourism service providers.

The fourth Chapter, Part III, finally pertains to the “International Settlement of Travel and Tourism Disputes via Alternative Means of Dispute Resolution” and presents a series of recommendations regarding the alternative resolution of disputes, taking into consideration the particular vulnerability of tourists in such circumstances and the significant increase in litigation that generally follows the occurrence of emergency situations.

A second macro area refers to the perspective of strengthening the protection of tourist rights and creating a framework of uniform rules accepted globally, assuming a central role in the structure of the new Code.

In this sense, the third Chapter, Part I, identifies minimum standards for protecting tourists, focusing primarily on contractual protection. The proposed text departs from the challenging experience of the previous UNWTO “draft Convention on the Protection of Tourists and on the Rights and Obligations of Tourism Service Providers”, presenting itself in an entirely innovative manner, both in form and content, with the prospect of offering practical and shared solutions to the complex issues addressed¹³.

In particular, a detailed and comprehensive set of Recommendations is formulated for states, urging them to adopt all necessary and appropriate measures concerning various tourist services, provided individually or as part of a travel package, to ensure adequate safeguarding of the interests involved.

In this regard, it is helpful to highlight the choice made during the drafting of the text to make a general reference and adopt standards and recommendations related to contracts that concern “Tourism service”¹⁴, individual or aggregated in the form of travel packages, without specifically dwelling on the individual regulation of each of them but prioritising the search for common principles.

As is known, at the international level, there is a persistent absence of a

¹³ See the analysis proposed by F. Morandi, *The UNWTO draft Convention on the Protection of Tourists and on the Rights and Obligations of Tourism Service Provider*, in V. Franceschelli, F. Morandi and C. Torres (Eds.): *Sustainable Tourism Law*, Lisbon, 2018, p. 203.

¹⁴ According to the definition offered in Chapter I, «“Tourism service” means the provision of any of the following services provided for tourists, in a single or combined manner: i. Accommodation services other than for residential purpose; ii. Transport services; iii. Package travel organization and retail, intermediation and other reservation services; iv. Tours, activities, attractions, excursions and events; v. Other services principally provided to tourists in her/his capacity as tourist».

uniform discipline concerning the individual relationships between the “Tourism service provider” and the “Tourist”¹⁵, given that it is a need increasingly felt in the global market.

The rare exceptions, represented by the Paris Convention of December 17, 1962, of the Council of Europe on the “Liability of Hotel-keepers concerning the Property of their Guests” and the International Convention on the Travel Contract (CCV) signed in Brussels on April 23, 1970¹⁶, have had little luck and have recorded a truly marginal number of memberships.

Only the European Union has decisively embarked on the path of introducing, at the European level, specific regulations for the protection of the traveller in the package travel contract with the adoption of Directive (EU) 2015/2302¹⁷ on package travel and linked travel arrangements, an interest-

¹⁵ Unlike a simple excursionist, «“Tourist” means 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».

¹⁶ The International Convention of Brussels dated April 23, 1970, concerning travel contracts, is currently in force in a very limited number of States: Benin, Cameroon, People’s Republic of China, Italy (intended to be denounced according to Article 3, paragraph 2, Legislative Decree No. 79/2011), San Marino, and Togo.

¹⁷ Directive (UE) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC. For a first analysis of the implications relating to the transposition of Directive (EU) 2015/2302 in the Member States of the European Union, see the studies published in the volume edited by V. Franceschelli, F. Morandi and C. Torres (Eds.), *The New Package Travel Directive*, ESHTE-INATEL, Estoril, 2017; in *Journal of European Consumer and Market Law*, n. 3/2016 (A. DE VRIES, B.M. LOOS, J. LUZAK); in *Juris tourisme*, 213/2018 (V. Augros, C. Torres, F. Morandi, F.J. Melgosa Arcos); and, in particular, in C. Torres, F.J. Melgosa Arcos, L. Jégouzo, V. Franceschelli, F. Morandi, and F. Torchia, (Eds.): *Collective Commentary about The New Package Travel Directive*, ESHTE, Estoril, 2020, and further references there. See also, among others, A. Asensi Meras, *Contratación on line de servicios turísticos y paquetes dinámicos de turismo*, in *Investigaciones Turísticas*, 12/2016, p. 163; A. Batuecas Caletrió, *La contratación de viajes vinculados*, in *Aranzadi civil -mercantil*, 6/2016, p. 29; J.M. Bech Serrat, *Consumer travel law*, in C. Twigg-Flesner(Ed.), *Research Handbook on EU Consumer and Contract Law*, Edward Elgar Publishing, Cheltenham, 2016, p. 360; C. Berenguer-Albaladejo, *Luces y sombras de la nueva Directiva (UE) 2015/2302*, in *International Journal of Scientific Management and Tourism*, 2/2016, p. 33; S. Bergmann, *Die EU-Richtlinie: über Pauschalreisen und verbundene Reiseleistungen – eine lange Reise zum neuen Recht*, in *Verbraucher und Recht*, 2016, p. 43; E. Führich, *Die neue Pauschalreis-*

ing reference model for the potential evolution of the general regulatory framework.

In short, following the suggestions provided by the Code, it is necessary, first and foremost, to ensure compliance with specific information obligations. These obligations are related both to the pre-contractual phase (before the service provider comes into contact with the customer and during the negotiation phase of the discussions) and to the content of the contract entered into between the parties. This solution aligns with the increasing importance that has long been attributed at the national and European Union levels to information in tourist contracts.

erichtlinie. Inhalt und erste Überlegungen zur Umsetzung, in *Neue Juristische Wochenschrift*, 2016, p. 1204; I. González Cabrera, *Estamos ante el mismo producto si se adquiere en línea un viaje combinado o distintos servicios de viaje vinculados?*, in *Revista de Derecho Civil*, 3/2016, p. 139; P. Hienicke, *Pauschalreise – Richtlinie – Neuer Wein in guten Schläuchen?*, in *Zeitschrift für Rechtspolitik*, 2016, p. 226; K. TONNER, *Die neue Pauschalreiserrichtlinie*, in *Europäische Zeitschrift für Wirtschaftsrecht*, 2016, p. 95; A. Finessi, *La nuova disciplina europea dei contratti di viaggio*, Jovene, Napoli, 2017; E. Führich, *Das neue Pauschalreiserecht. Umsetzung der Pauschalreiserrichtlinie (EU) 2015/2302 in Deutsches Recht*, in *Neue Juristische Wochenschrift*, 2017, p. 2945; I. González Cabrera, *Una nueva configuración legal del viaje turístico. Del viaje combinado al paquete dinámico*, in *Aranzadi civil-mercantil*, 7/2017, p. 29; F. Morandi, *The new european regulation of package travel and linked travel arrangements*, in *Diritto dei trasporti*, 2017, p. 99; A. Paniza Fullana, *Viajes combinados y servicios de viaje vinculados: replanteamiento de conceptos y sus consecuencias sobre la responsabilidad*, Dykinson, Madrid, 2017; S. Bergmann, *Das neue Reiserecht: Die Umsetzung der EU*, C.H.Beck, 2018; E. Führich, *Basiswissen Reiserecht: Grundriss des Pauschal- und Individualreiserechts*, 4th edn., Vahlen, 2018; L. Jégouzo and C. Lachièze (Eds.), *La directive “travel” made in France*, in *Juris tourisme*, 2018, vol. 212, p. 16, and vol. 213, p. 15; S. Keiler, *Bundesgesetz über Pauschalreisen und verbundene Reiseleistungen (Pauschalreisegesetz – PRG)*, in S. Keiler and A. Klauser, *Österreichisches und Europäisches Verbraucherrecht. Kommentar*, 2018; A. Staudinger, and R. Ruks, *Das neue Pauschalreiserecht – Auswirkungen für Veranstalter und Vertrieb*, in *ReiseRecht aktuell*, 2018, p. 2; K. Tonner, S. Bergmann and D. Blankenburg, *Reiserecht: Beförderungrecht, Hotelrecht, Reiseversicherungsrecht, Lauterkeitsrecht, Internationales Privatrecht*, Nomos, 2018; A. Zampone, *Riflessioni sulla dir. (UE) 2015/2302 relativa ai pacchetti turistici ed ai servizi turistici collegati*, in *Diritto dei trasporti*, 2018, p. 1; E. Führich and A. Staudinger, *Reiserecht: Handbuch des Pauschalreise-, Reisevermittlungs-, Reiseversicherungs- und Individualreiserechts*, 12 edn., C.H.Beck, 2019; F. Morandi, *The New Italian Regulation on Package Travel and Linked Travel Arrangements According to Directive 2015/2302/EU*, in *EuCML - Journal of European Consumer and Market Law*, 2020, p. 93; F. Morandi, *Package travel contract and linked travel arrangements*, in *Online Encyclopedia of EU Law (OEEUL)*, edited by S. Garben and L. Gormley, Oxford University Press, Oxford, 2022; M. Brignardello *I contratti del «turismo organizzato» e di crociera*, Cacucci, Bari, 2023.

The contractual regulation is then supplemented by rules regarding the termination of the tourist service before it starts and the failure of performance or improper performance by the service provider¹⁸, in addition to indications for the protection of the tourist in the event of the supplier's insolvency¹⁹ and in terms of access to justice.

One of the most innovative parts of the Code is represented by the provisions of the third Chapter, Part III, concerning the principles proposed for the protection of tourists in the provision of digital tourism services.

Taking note of how new technologies and digital transition have radically changed the travel experience and the profound transformations in contractual relationships, a set of principles has been identified to safeguard tourists in relation to new digital tourist services, ensure a secure approach using on-line platforms, and prevent possible abuses.

The new discipline appears to be inspired by Regulation (EU) 2022/2065 of the European Parliament and of the Council of October 19 2022, regarding the creation of a single market for digital services in the European Union (Digital Service Act). However, at the time of the adoption of the Code, this regulation had yet to be formally implemented by the European Parliament and the Council²⁰.

¹⁸ According to the Code, «Unavoidable and extraordinary circumstances» means a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken» (Definition 8), while «For the purposes of this Code, any reference to “unavoidable and extraordinary circumstances” may include, but is not limited to, civil unrest, other serious security problems such as terrorism, significant risks to human health such as the unforeseen outbreak of a serious disease at the travel destination or its immediate vicinity, natural disasters such as floods, earthquakes or weather conditions, beyond the control of the party, which makes it impossible to travel safely to the destination as agreed in the tourism service contract, as well as any other situations described in relevant international agreements in force to which the country is a party» (Clarification 15).

¹⁹ The issue concerning the protection of tourists in the event of insolvency of the organiser is always at the centre of the attention of the European Union legislator, especially considering the recent events that, even before the COVID-19 pandemic, involved some of the major European tour operators. In this regard, the Court of Justice of the European Union has had the opportunity to intervene on several occasions, starting with the well-known judgement of 8 October 1996, in joined cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94, *Dillenkofer*, widely commented, and the judgement 14 May 1998, in case C-364/96, *Verein für Konsumenteninformation*.

²⁰ Entered into force on 16 November 2022, together with Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in

In particular, recognising the critical role of digital platforms and online services in the tourism sector, the Code sets forth a series of principles to create a fairer, safer, more reliable, easily accessible, transparent, and responsible market. At the same time, in awareness of the risks associated with using digital tourism services, effective actions are introduced to counter illegal content (goods, services, information, or activities) and ensure access to justice. In essence, the proposed rules aim to promote the creation of an “online tourism environment” that respects and safeguards human rights, the ethics of tourism, fundamental freedoms, and consumer rights.

In this sense, the fundamental “Principles” which inspire the intervention of the states are clearly identified in the creation of a safe environment for online tourism, in equality and non-discrimination, in transparency and correctness, in protection from abuse, in the identification of responsibilities, risk prevention and management, data protection, coordination and co-operation, dispute resolution and compensation.

In line with the pursued objectives, the new rules are addressed to the “digital tourism services”²¹ in general and the “online tourism platforms”²² in particular, regardless of where they are established and whether they are privately or publicly owned, operating in relation to tourist services in the digital market.

The tools aimed to ensure adequate and actual protection of tourists’ rights are complemented by identifying a set of global rules for alternative dispute resolution.

the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), forms a package of new rules (the so-called “Digital Services Package”) aimed at creating a more secure and open digital space. On this topic, with specific reference to the tourism sector, see Amore, G., *Digital Service Act e turismo online*, in *Rivista italiana di Diritto del turismo - Italian Journal of Tourism Law*, 2023, p. 54. More in general, see E. Poddighe, P. Sammarco and V. Zeno-Zencovich, *European media and communication law*, RomaTre-Press, 2023, available online at <https://romatrepress.uniroma3.it/libro/european-media-communication-law/>.

²¹ The notion of “digital tourism service” means any tourism service provided remotely, through electronic means, and upon the request of a recipient of services, including information society services and intermediation related to tourism services».

²² According to the predictions of the Code, «“online tourism platform” refers to any hosting service – including collaborative economy websites, content sharing websites, social networks, app stores, online marketplaces, online travel, and accommodation websites – which, at the request of a tourist or a business user, stores and/or disseminates information related to tourism services».

The fourth chapter aims to provide tourists with flexible and efficient mechanisms for resolving disputes related to travel and tourism quickly and fairly, following Alternative Dispute Resolution (ADR)²³ procedures or On-line Dispute Resolution (ODR)²⁴ inspired by the United Nations Guidelines for Consumer Protection (UNGCP)²⁵.

The absence of an international framework for judicial cooperation in managing disputes and existing disparities in access to justice highlights the significant opportunity for tourists to solve conflicts fairly, efficiently, and quickly through such mechanisms. These measures also allow obtaining compensation, if necessary, without unnecessary costs, exhausting delays, and undue burdens.

With the declared aim of promoting the development and implementation of ADR/ODR systems (such as conciliation, mediation, and the intervention of the ombudsman), the Code identifies a series of principles and recommendations primarily directed at the Member States, applicable to consumer relations, excluding disputes between professionals or related to international commercial contracts.

Next to the recommendations related to emergency situations in the

²³ According to the definition contained in the first chapter, «“Alternative dispute resolution” (also referred to as “ADR”) means the settlement of travel or tourist complaints out of court with the assistance of an impartial dispute resolution body, whether public or private. ADR may include, but is not limited to, ombudsmen, complaints boards of self or assisted negotiation, conciliation, mediation and binding/nonbinding consumer arbitration».

²⁴ In particular, «any reference to “online dispute resolution” (also referred to as “ODR”) means a form of alternative dispute resolution as specified under paragraph 1 above which utilizes ICT and the Internet to simplify and expedite the settlement of travel or tourist complaints. ODR may include, but is not limited to, self-negotiation, assisted negotiation, online mediation and on-line arbitration».

²⁵ This is a set of principles for the protection of consumer rights intended to assist the Member States in formulating and implementing laws, norms, and national and regional regulations suitable for their economic, social, and environmental needs. Additionally, these principles aim to promote international cooperation by encouraging the sharing of experiences in consumer protection. The guidelines were initially adopted by the General Assembly through resolution 39/248 on April 16, 1985, later expanded by the Economic and Social Council through resolution E/1999/INF/2/Add.2 on July 26, 1999, and recently revised by the General Assembly in resolution 70/186 on December 22, 2015. The text and further information are available online at the UNCTAD website <https://unctad.org/topic/competition-and-consumer-protection/un-guidelines-for-consumer-protection>. See, in particular, guidelines 37 to 41 on “Dispute Resolution and Appeals” and 78 on “Tourism”.

concluding section, which are also prompted by the particularly vulnerable condition of tourists in such circumstances and the significant increase in litigation that arises from it, the text stands out mainly for the indications presented in the other two sections.

The first concerns the “Principles” that form the basis of the procedures, with specific reference to impartiality, transparency (with the consequent implications regarding information duties), effectiveness (taking into account the specific needs of disadvantaged or vulnerable tourists who may encounter particular difficulties), fairness and informed consent, as well as the methods of accessing such mechanisms.

The second section includes a series of “Recommendations” addressed to states, asking them to provide an effective dispute resolution system, ensure the voluntary participation of individuals in proceedings, promote the development of fair and transparent procedures, provide specific information to tourists, promote fundamental freedoms and consumer rights, ensure equality and non-discrimination of international travellers, promote the development of global standards for disputes in travel and tourism, facilitate coordination, and support international cooperation.

3.6. The last part is reserved for the mechanisms provided for adherence to the Code and the implementation of principles and recommendations (Chapter Five), which are in line with its non-binding nature for countries.

In short, UN Tourism Member States and United Nations Member States are called upon to voluntarily join by submitting a written notification to the Secretary-General²⁶. Subsequently, they are required to periodically report on the implementation status of the Code in their respective countries, with the aim to develop and share knowledge and best practices²⁷.

²⁶ As of today, the following Member states of the UN Tourism have confirmed their adherence: Ecuador, Guinea-Bissau, Moldova, Myanmar, Paraguay, Portugal, and Uruguay (in 2022). Additionally, Guatemala, Cambodia, Maldives, and Indonesia have joined (following the adoption of the “Phnom Penh Declaration on the UNWTO International Code for the Protection of Tourists” on June 16, 2023), committing to promote its dissemination and implementation in the Asia-Pacific region as a crucial tool for ensuring a clear, transparent, and effective framework for the protection of tourists as consumers and to foster confidence in travel, as well as Costa Rica, Honduras, Chile (partial), Haiti, Argentina, Brazil, Lebanon (partial), Lithuania (partial), Senegal, Thailand (partial), Venezuela (in 2023). Finally, Cuba and United Arab Emirates have recently joined (in 2024).

²⁷ A Technical Sub-Committee to the Executive Board will be established to assist the Secre-

Considering that States have complete freedom regarding the methods of implementing the recommendations proposed in the text, the adherence procedure involves a minimum level of harmonisation achieved through the definition of a common standard from which Members can still deviate.

From a strictly procedural standpoint, it is required, among other things, to make every effort to integrate the principles and recommendations into one's policies, laws, and regulations and to designate one or more national authorities to ensure coordination of interventions and actively contribute to the implementation of the Code.

4. – In conclusion, through the development and harmonisation of international minimum standards, the Code will provide greater legal certainty to the world of tourism and ensure Member States a secure framework when introducing new rules regarding the protection of international tourists.

The principles and recommendations constitute a sort of practical guide for achieving a proper balance of the complex interests at stake and represent an essential reference point for empowering, improving, or supplementing national regulations.

Indeed, it is a flexible tool made available to the international community, allowing different countries to freely adopt any measures they consider appropriate in relation to the peculiarities of their respective legal contexts and to adapt the proposed solutions according to specific needs.

At the same time, the Code offers several advantages for various interested stakeholders. Specifically in the private sector, tourism service providers are encouraged to promote its principles and directly apply the recommendations without needing to adhere to them, regardless of whether a State has adhered to them.

In addition to providing specific guidelines for the voluntary integration of general conditions in contracts with tourists, the Code presents a more precise distribution of responsibilities among different actors in the system. It provides greater legal certainty to the parties involved and clarifies the rights and obligations of private parties and public institutions regarding traveller protection and assistance in emergency situations.

The main challenges to address involve overcoming the fragmentation of sources, disparities between different countries' legislations on tourist rights,

tary-General in promoting the Code and monitoring the application of Principles and Recommendations.

and differences in minimum global protection standards.

From this perspective, the Code also serves as a dynamic tool, subject to interpretation by the Technical Committee in light of evolving conditions and susceptible to modification based on the Technical Committee's proposal in response to continuous market changes.

In a moment when international tourism is experiencing a strong recovery and taking on new meanings, the world of travel is called upon to face ever-new challenges²⁸. It is therefore necessary to implement the best legal tools to protect tourists, ensure fair conditions and equal opportunities for operators in the market, and strengthen institutions by improving the quality of legal systems.

If the emergency has required the adoption of extraordinary and urgent measures, the return to normality prompts reflection on the structure of relationships between travellers on one side and service providers on the other, taking into account all components of the market and different types of tourist services.

At the same time, by adhering to the International Code for the Protection of Tourists and incorporating the set of principles and recommendations into their respective legal systems, States have the concrete opportunity to finally elevate the threshold of tourist protection to a new level. A new starting point for Member Countries, guided by the awareness that only effective and common rules can guarantee the "universal right" to "tourism for all" and create the tourism of the future for a better world²⁹.

Currently, the hypothesis of converting the current soft-law instrument into a genuine international convention with binding character remains in the background. The commitment and contribution of all stakeholders will be crucial to implementing new rules capable of providing definitive solutions to the issues still affecting the global travel and tourism sector.

²⁸ See F. Morandi, *The assistance to tourists in emergency situations. Commitment of States, role of service providers and traveller protection*, cit., pp. 294-295.

²⁹ According to Article 10, paragraph 1, of the "UNWTO Framework Convention on Tourism Ethics", in particular, the term "right to tourism" refers to «the prospect of direct and personal access to the discovery and enjoyment of the planet's resources constitutes a right equally open to all the world's inhabitants». See F. Morandi, *The UNWTO draft Convention on the Protection of Tourists and on the Rights and Obligations of Tourism Service Provider*, cit., p. 207.

Abstract

Il Codice Internazionale per la Protezione dei Turisti (ICPT), adottato con la Risoluzione A/RES/732(XXIV) dall'Assemblea Generale del UN Tourism (già Organizzazione Mondiale del Turismo, UNWTO) nella sua 24^a sessione tenutasi a Madrid dal 30 novembre al 3 dicembre 2021, rappresenta un punto di riferimento fondamentale per migliorare e rafforzare il livello di protezione dei turisti in situazioni di emergenza e i diritti dei viaggiatori a livello internazionale.

The International Code for the Protection of Tourists (ICPT), adopted by the Resolution A/RES/732(XXIV) of the General Assembly of the UN Tourism (former UN World Tourism Organization, UNWTO) at its 24th session held in Madrid from the 30th of November to the 3rd December 2021, represents a fundamental frame of reference to improve and strengthen the level of protection of tourists in emergency situations and travellers rights at the international level