

Tourism In European Union Law

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ABSTRACT

Tourism is a very important economic sector within the European Union, while also playing a key role in political, social and cultural integration. Nevertheless, the EU took a late interest in this sector, beginning only in the 1980s. Starting then, EU intervention in matters of tourism began to pass through a series of phases, during which EU performance was alternately more or less intense. A study of these phases reveals the consequences of a certain inefficiency as a result of the lack of sufficient legal support in the European Constitution for the development of a real EU policy in this sector. With the arrival of the 21st century, and as new EU powers in matters of tourism have been incorporated into the Lisbon Treaty, performance by the European Union in the tourism sector has changed its perspective, putting quality and competitiveness within reach through sustainability in the sector, a basic element of performance in matters of tourism.

Keywords: Tourism; environment; sustainability; European Union

1. INTRODUCTION

The interest displayed by the European Union (hereinafter referred to as the EU) in the tourism sector is relatively recent. In fact, it is not until the early 1980s that the first signs of EU intervention in the sector can be found. And this fact is extremely interesting given that the EU continues to be the world's leading tourism destination, with 473 million international tourists. Asia and the Pacific occupy a distant second place, with 204 million arrivals (2010 data, supplied by the World Tourism Organization). Therefore, the importance of this sector for the EU economy is of great significance: "with about 1.8 million businesses, especially small to medium in size, occupying approximately 5.2% of total manpower (which is to say, about 9.7 million jobs, with a significant number of young people), the European tourism industry generates more than 5% of the EU's GDP, a constantly growing figure. As such, tourism constitutes the third most important socio-economic activity in the EU, following the sectors of trade and distribution, and construction. If we keep related sectors in mind, the contribution made by tourism to the GDP is even more significant; it is estimated that tourism produces more than 10% of the EU's GDP and generates 12% of all employment. In this respect, if we observe the tendency shown in the last 10 years, employment growth in the tourism sector has nearly always proven to be more significant than in the rest of the economy" (Communication from the Commission to the European Parliament, to the Council, to the European Economic and Social Committee and to the Regional Committee, "Europe, the world's leading tourist destination: a new political framework for European tourism", Brussels, 30.6.2010, COM(2010) 352 final, pg. 3). All of these facts have led to a statement by the European Parliament that tourism is "the single most extensive industry in the European economy" (European Parliament, Resolution on EU tourism policy, DOCE 183/1991, from 15-07-1991, series C, pg. 4).

In addition, tourism is an essential tool for achieving greater economic cohesion among the Member States, to the extent that countries with a GDP below the EU average receive the highest number of tourists—Spain, Greece and Ireland, for example (Silvestro, pg. 447). This leads to a drop in inequality between Member States and a greater cultural and social awareness among their citizens.

Nevertheless, the important roles played by tourism in the various Member States is extremely diverse: while some countries receive a much greater number of arrivals than departures (Spain, Portugal and Greece), others have a clear deficit (Sweden, Finland and The Netherlands), and a third group has an equal number of tourist arrivals and departures (France and Great Britain). This situation has lead to Member States taking an interest in the tourist sector in truly divergent ways, which is one of the causes of the lack of a real common policy in the EU on this

matter. These Member States have understood that original powers in the tourism sector have corresponded to the States themselves, and that the intervention of the EU in these matters must be undertaken with absolute respect for the principle of subsidiarity.

Currently, and with respect to the new challenges faced by European tourism in order to maintain its leading position (competition with emerging destinations, the entrance of new members into the EU, the introduction of the Euro, a lack of qualified manpower, etc.), Member States have come to understand that they must reinforce EU powers in the tourism sector, and have amended the Lisbon Treaty by adding greater legal support from the EU in this sector, always respecting the principle of subsidiarity that governs this matter. But before getting to this point, which could mean a key step forward in EU intervention in tourism matters, we must analyze how EU intervention in these matters has evolved.

2. THE NEED FOR EU INTERVENTION IN COORDINATION WITH OTHER EU POLICIES

No sooner did the EU decide to intervene in the tourism sector than the Commission began to highlight the great number of EU policies that directly or indirectly influence this sector, from the free circulation of people and the free lending of services to environmental protection, regional development, the transport of travelers, the protection of consumers and users, etc. For this reason, focus has been placed on the need to recognize a “tourist dimension” with regard to past EU policies so that tourist concerns are taken into consideration when decisions are made or when EU actions are articulated in those policies, with the goal of fostering and protecting EU tourism (Communication from the Commission to the European Parliament, to the Council, to the European Economic and Social Committee and to the Regional Committee, EU tourism policy, First positions, DOCE 115/1984, from 30-04-1984, series C, pg. 1.)

As such, in 1984, two characteristics would be highlighted to single out tourism, which would become a constant in EU intervention in these matters: firstly, for its multi-disciplinary nature, as tourism has connections of varying strengths with other matters, which are affected when decisions are made in the field of tourism, but which also influence tourism when those matters are regulated in a specific manner; and secondly, for its level nature, as a characteristic that must identify the regulation of tourism, insofar as EU intervention in this sector cannot be undertaken only in a direct and individualized manner, but rather in coordination with other EU policies in order to avoid, for example, coordination problems.

Additionally, these characteristics we have just alluded to will determine a change in perspective in EU intervention in matters of tourism, which was originally based in consumer protection, and which was therefore clearly partial and limited. Later, tourism was considered more globally, moving toward a greater intensity and with a priority that was extremely high within the political interests of the EU (European Parliament, “Resolution on EU tourism policy, DOCE 183/1991, from 15-07-1991, series C, pg. 4). This change in perspective led to, to name one example, the drawing up of the EU action plan in favor of tourism for the 1993-1995 term, which was the first structured and coherent EU action plan specifically for matters of tourism, and which included such objectives as the consolidation of a level treatment for tourism in EU and national policy.

Still, the need for level treatment in tourism requires an even deeper study. In 2001, the Commission highlighted the need for a new form of EU action in matters of tourism in order to achieve greater coherence and integration. This is the ultimate goal the EU wishes to achieve through intervention in the tourism sector, and for this reason, as an adopted measure, it includes the integration of tourism in other EU policies and activities (Communication from the Commission to the Council, to the European Parliament, to the Economic and Social Committee and to the Regional Committee, A framework of cooperation for the future of European tourism, COM(2001) 665 final). But in June of 2010, the Commission itself outlined one of the pillars upon which the new EU policy on matters of tourism would be based, which would justify the duty of the EU in the Lisbon Treaty for a higher level of powers in this matter. This would be the need to take advantage of the potential of other EU policies that affect the tourism sector to increase the competitiveness of EU tourism through, for example, transport policies, interior market, taxation, consumer protection, environment, etc. To this end, the integration of tourism in these policies is an essential condition, as is the correct application of the adopted measures in the field of these policies in order to favor the development of EU tourism (Communication from the Commission to the European Parliament, to

the Council, to the European Economic and Social Committee and to the Regional Committee, Europe, the world's leading tourist destination: a new political framework for European tourism", Brussels, 30.6.2010, COM(2010) 352 final).

It is clear that for the EU, tourism is a unique sector, which is based in the private delivery of some of its services, but which also depends on public resources, goods and infrastructures. For this reason, it is necessary to coordinate the application of various EU policies, which are not related to tourism, but which affect this sector, in such a way that difficulties in the development of tourist activities can be overcome. This is essential for moving toward a greater level of competitiveness in the EU tourism sector.

3. TOURISM AS A NECESSARY FACTOR FOR ACHIEVING POLITICAL AND ECONOMIC MEANING IN THE EUROPEAN UNION

Tourism has been considered by the EU to be a key tool for achieving economic cohesion among all of the Member States, which, as an economic activity that is extremely relevant for the EU, contributes decisively to increasing levels of employment, wealth and quality of life for citizens. And in this sense, it is also essential for achieving social and cultural cohesion among the various territories that make up the EU, because it contributes to the achievement of shrinking inequalities among these territories, a greater solidarity among them, and a deeper knowledge of the cultural peculiarities of each territory within the scope of a relationship which is stable and is, by definition, less tense than relations of a political or economic nature.

To this end, the new EU policy on matters of tourism that is to be enacted following the Lisbon Treaty has the objective, certainly, of economic development in this sector, but also of achieving a greater level of cohesion on all levels within the EU. This will favor the feeling of European nationality, limiting the effects that can result from cultural or language differences (Communication from the Commission,...,Europe, the world's leading tourist destination, pg.7).

This characteristic of tourism, however, has been highlighted from the beginning of EU intervention in this matter. While references had already been made with respect to previous documents, the Council's Decision on December 21st, 1988, which declared 1990 as "European Tourism Year", touted the importance of tourism for the interior market and for fostering a broad understanding of the cultures and peculiarities of the different Member States. It went on to encourage EU citizens, especially young people, to travel abroad in order to become more familiar with the realities of the EU.

But it would be the Commission's Green Book on tourism matters (European Commission, The EU paper on tourism matters, Commission Green Book, DOCE 97/1995, from 4-04-1995, series C), considered a document that reflects on the role of the EU in these matters, which would highlight the fact that support for and the promotion of tourism in less-developed regions can more effectively distribute economic activities. This increases the balance between the EU's different territories, as well as improving employment, recognizing that the emergence of new forms of tourism (rural, cultural, etc.), together with other techniques for the promotion of tourism (themed routes: Camino de Santiago, wine tours, etc) has meant that this activity has become a solid alternative and even, a prevailing economic activity in areas with less-developed economies. In addition, tourism has become a mechanism for bringing together the different cultures, environments, languages, etc., that exist in the EU's various regions. Those differences constitute precisely the element that generates an interest in citizens for learning more about others, which leads to a decrease in differences within a stable environment, in such a way that tourists become an essential part of the political and economic framework of the EU (Commission,..., Green Book, section 4, pg. 18).

For this reason, tourism has become a basic mechanism in the EU for achieving European integration on all levels, thus reaching one of the goals it had hoped to achieve through the creation of the EU itself and the establishment of a market and a common economic and monetary policy, as stated in article 1, section 3 of the EU Treaty, saying that "the EU will encourage economic, social and territorial cohesion and solidarity among its Member States" (Consolidated version, DOCE 83/2010, from 30-03-2010, series C).

4. GUIDELINES FOR EU ACTION IN MATTERS OF TOURISM

EU intervention in the tourism sector has followed two action guidelines that have been clearly defined from beginning: firstly, the EU has wanted to play an active role in the development of tourism in its Member States, and secondly, it has concentrated on developing well-defined actions that it considers of importance. These are normally focused on solving specific problems which are detected in European tourism. Let's have a look at each of these lines of action.

a. The creation of a favorable context for tourism in the Member States.

The European Commission has underlined an appropriate role for the Member States, and public and private agents from each area have focused on the development of European tourism. But it has also wanted to highlight the work the EU has been carrying out, through the creation of a favorable context for this development, with the understanding that this context was susceptible to improvement through adopting a common set of norms and the coordination of tourism activities that have been developed.

As such, since the 1980s, the EU has been clear that one of its goals has been to facilitate European tourism by removing any obstacles that could get in the way of the free, easy and safe movement of citizens throughout the EU (European Parliament, Resolution on the facilitation, promotion and consolidation of tourism in the European Community, DOCE 49/1988, from 22-02-88, series C, pg. 3.). In this sense, the actions of EU institutions are an added value with respect to conduct adopted by the Member States, since EU powers in these matters are primarily restricted to the coordination of national, regional and local actions. These are normally focused on solving specific problems, and sometimes lead to dysfunction and discord between the diverse local actions that have been adopted, which are better solved using a broader perspective.

In fact, the importance of the creation of a favorable context for the development of tourism has been underlined by the Treaty on the Functioning of the EU, whose article 195 indicates that one of the objectives of EU actions in these matters is “to encourage the creation of an environment which is favorable for the development of businesses in the sector”, and while it does allude specifically to tourism firms, this makes it possible to highlight the EU’s role in the facilitation of EU tourism (Consolidated Version of the TFUE, DOCE 83, from 30-03-2010).

In this sense, the specific actions adopted by the EU have been varied, generally directed at facilitating free movement throughout EU territories, and the recognition of the rights of citizens when they are travelling for matters of, for example, social security, medical assistance and health issues, etc., or to request a waiver of the VAT when moving personal items across borders, or even with the drawing up of a project like the List of Tourists’ Rights and Responsibilities (European Parliament, Annex to the Resolution on a policy for EU tourism, cited above). Further, there is an underlining of adopted decisions in various areas which are not related to tourism, but which have influenced the sector by facilitating movement and stays outside the home (elimination of interior borders, the introduction of the Euro, consumer protection measures, etc.).

In any case, European institutions also deserve a mention, as they have also indicated the limits of EU intervention, and of coordination efforts, by stating that this coordination cannot be too marked and must be carried out with complete respect for the principle of subsidiarity. The primary powers in matters of tourism fall to the Member States, since their policies can be more easily adapted to the many diverse unique situations in each territory and to the specific problems that may arise.

b. Spheres and actions which are priorities for the EU.

The second line of EU action in matters of tourism is characterized by the development of diverse actions which are considered priorities. These actions are meant to provide answers to a series of specific problems in the tourism sector, which have been issues for many years. This shows that EU action has not been as efficient as it might have been, basically because of the nonexistence of a true common policy in the EU on these matters.

In any case, an evolution can be detected in EU action in this sector, which justifies the differentiation of these actions into three phases, as long as this differentiation is not categorical and there are logical connections between them. These phases would be: an initial phase, that would cover the first years of EU action in matters of tourism, and that would span the decade of the 1980s; a second phase, in which EU intervention would intensify, and that would cover almost the entire decade of the 1990s; and the current phase, in which new criteria for action in this sector are emerging, that would begin in the early years of the 21st century and continue up to present day. Let's have a closer look at each of these phases.

b.1) The limited initial actions of the European Union in matters of tourism.

It is an indisputable fact that EU intervention in this sector came late, as discussed above. In fact, it was not until the early 1980s that the need for EU intervention in these matters became a reality. The moment coincided with the entrance of new Member States into the EU (Spain, Greece and Portugal), that had a significant interest in tourism.

Nevertheless, this initial phase would be characterized by the lack or limited nature of said EU intervention. There are very few EU documents which are dedicated to the subject of tourism, and many of these, especially the earliest, are more a declaration of intention than real outlines of measures to be taken. Thus, for the first few years, the EU perspective on matters of tourism were quite frankly limited and were focused on protecting tourists as consumers (Economic and Social Committee, Report on tourism and regional development, DOCE 332/1990, from 31-12-1990, series C, point 1). Additionally, there are also measures which focus on encouraging the staggering of the tourist season, the protection of historical-artistic and natural heritage, and the promotion of social, cultural and rural tourism (European Commission,..., EU policy on tourism,..., pg. 7).

As this phase unfolded, the EU tried to see that the handling of tourism was carried out in a more global way, and to this end, it moved toward measures that were directed at improving the promotion of EU tourism; a better use of EU financial instruments for financing the sector; the protection of businesses and labor conditions for employees in the sector; and the protection of natural, social and cultural surroundings in the face of mass tourism. But the most serious problem detected in this phase was the overcrowding of tourists during high season, and the corresponding saturation of services and destruction of natural and artificial surroundings. For this reason, an improved seasonal and geographical distribution was called for, as well as the staggering of vacation dates and the development of new destinations and new forms of tourism, as alternatives to mass tourism.

In this initial phase, then, we can see the beginnings of EU interest in the tourism sector and the adoption of the first measures for resolving several problems that would be repeated throughout the period of EU intervention in this sector. Nevertheless, these measures suffered from a lack of efficacy, above all because they did not constitute a coherent and structured whole. Rather, they had an isolated and extremely specific character, which already began to point to the need for moving toward global and coordinated EU intervention in these matters.

b.2) The intensification of EU action in matters of tourism.

The point at which the initial phase concluded and this second phase began can be found in the declaration of 1999 as the “European Year of Tourism”, which meant the beginning of a more intense intervention in this sector and its conversion into an important realm of EU action. This was reflected in a considerable increase in EU documents making reference to tourism as well as an improvement in the quality of these documents.

Generally speaking, the most important characteristic of EU intervention in matters of tourism that came to be during this period was the articulation of a series of schedules with measures to be taken in these matters with a more structured and coherent content, leaving behind the isolated and indirect character of the intervention undertaken in the previous phase.

Thus, of note in the first half of the 1990s was the adoption of the first EU Action Plan favoring tourism for the 1993-1995 period (Council of European Communities, Decision from July 13th, 1992, in which an EU action plan favoring tourism was approved, DOCE 231/1992, from 13-08-92, series L). The plan had full respect for the

principle of subsidiarity and its execution would have to take place through common agreement among national, regional or local authorities. It enumerated a set of actions that covered such issues as an improved awareness of the tourism sector; the articulation of transnational tourism development actions; the encouragement of specific tourism sectors including cultural, rural, social and youth tourism; and the consolidation of previously adopted measures, including staggering vacation time, protecting the environment, looking at tourists as consumers, improving training for professionals in the field and promoting tourism abroad.

Although this plan was able to boast that it was the first one to be coordinated and coherent, and that it was the only set of measures focused on the promotion and improvement of European tourism, criticism from European institutions abounded. Above all, they claimed the plan did not respond to the needs of the sector, nor did it significantly solve its own problems, and was therefore inefficient and insufficient (European Parliament, Resolution on the Report from the Commission to the Council, to the European Parliament, to the Economic and Social Committee and to the Committee of the Regions on EU measures that have affected tourism in 1994 (Decision by the Council 92/421/CEE), DOCE 347/1996, from 18-11-1996, series C).

During the second half of the decade, we must highlight the failed schedule of measures in favor of European tourism, known as “PHILOXENIA”, for the 1997-2000 period (EU Council, Modified Proposal of the Council Decision on an initial multi-year schedule favoring European tourism—Philoxenia—(1997-2000), DOCE 13/1997, from 14-01-97, series C), which was blocked by the Council and was finally withdrawn in April of 2000. This schedule was meant to provide continuity for the actions adopted under the 1993-1995 Plan, but its real claim is that it was the first document in which the competitiveness and quality of European tourism are constituted as the identifying characteristics of EU intervention in the sector, evolving toward a new form of action for the EU, which was much more coherent and coordinated than the Member States, and where quality is precisely what makes it possible for European tourism to compete with emerging destinations.

Like its predecessor, this schedule brought together a number of measures that aimed to achieve several objectives: a heightened awareness of the European tourism sector; an improvement in the EU legislative and financial branches in matters of tourism; an increase in EU tourism as a whole, especially sustainable tourism, where obstacles to development would be removed; and an increase in the number of foreign tourists through the promotion of Europe as a tourist destination.

This Schedule was also the object of criticism. It was considered too general and lacking in several areas, although its withdrawal made clear the real problem of EU intervention in matters of tourism: the lack of sufficient legal support that would allow the EU to articulate a new framework of action in these matters. The rigid application of the principle of subsidiarity in matters of tourism, which stipulates that primary powers are held by each Member States insofar as they (together with private partners) have done an appropriate job in the sector, adapting to the new needs that came up, and with an understanding that the problems surrounding tourism had a solution that was more appropriate from a governmental point of view, led to the ongoing refusal to incorporate powers in the Treaties of the European Union that were sufficient to allow the EU to act in a way that was more global and coherent in these matters. This situation, which began with the failure of the aforementioned plans and programs, concluded with the fact that up to this time, the most effective intervention in matters of tourism was carried out in an indirect way through the use of other EU policies—transport, consumption, the interior market, etc. However, as we are about to see, the situation was about to change.

b.3) EU intervention in matters of tourism in the 21st century: quality as a necessary, identifying element.

In the final years of the 20th century and the first few years of the 21st, EU intervention in matters of tourism would undergo a change in strategy that would mean a step forward with respect to the path traditionally followed by the EU, described above. The confirmation by European institutions that there had been a slowdown in EU growth as a tourist destination, especially with regard to emerging destinations, together with the need to respond to new challenges faced by the tourism sector (new EU destinations, the introduction of the Euro, the need to open up to new markets, a lack of qualified manpower, sustainable development, the deregulation of transport, etc.) would make it clear that the actions taken by the EU to date in matters of tourism, along with a lack of coordination, and of interest, by implicit partners, were not enough to offer effective solutions.

For these reasons, beginning in 1999, diverse movements began to take shape in the heart of the EU to adopt a new strategy in this sector. Based on greater coordination, it would create the conditions for the articulation of a new framework of action in matters of tourism. These movements would lead to the introduction in the Lisbon Treaty of sufficient legal support for this new form of action. Even if it would not permit the articulation of a real common policy in these matters, and with full respect for the principle of subsidiarity in which EU intervention is managed by the EU itself, it would allow for the adoption of a system that was much more coherent, global and coordinated, through the attribution of the EU to clear powers in this sector, highlighting tourism as a basic socioeconomic activity and allowing the EU to complete actions begun by the Member States. There was even a possibility of utilizing ordinary legislative methods, although no coordination of legal provisions or the regulation of these was included (article 195 of the TFUE, consolidated version from the Treaty on the Functioning of the UE, DOC 83, from March 30th, 2010).

The debate on the need for these new EU powers would mean a slowdown in the number of EU documents dedicated to tourism, but in all existing documents quality, based in the sustainability of the model, would play a leading role as the element that would set European tourism apart from other destinations. Still, it is worth mentioning that following the Lisbon Treaty, the European Commission was already planning to give shape to these new powers by drawing up a broad set of actions that had an undeniably European dimension, continuing to respect the principle of subsidiarity and governmental powers in these matters, but with the truly interesting and novel element being precisely this European scale or dimension (Communication from the Commission,...,Europe, the world's leading tourist destination,...,cited above).

In this sense, the Commission establishes four lines of action which it would use to consider EU intervention in the tourism sector, and with respect to which it anticipates the diversity of specific measures. These lines are: encouraging competition in the European tourism sector; promoting the development of a tourism which is sustainable, responsible and of high-quality; consolidating the image and visibility of Europe as a collection of quality, sustainable destinations; and maximizing the potential of EU policies and financial tools for the development of tourism. As you can see, these lines of action are simply the confirmation of the fields of action that had already been predicted at the beginning of the 21st century, and even as early as the late 20th century, but they would be the first steps in a new phase of EU intervention in the tourism sector.

Of these four lines of action, and as a conclusion to the current EU tourism situation, it is worth taking a closer look at Europe as a collection of quality, sustainable destinations. In this sense, environmental protection in tourism is a goal with a long tradition in the EU, but it would be in the early 21st century that sustainability would become widespread as a standard for basic actions in these matters. Sustainability was also widely understood to apply not only to the conservation of the environment in activities related to tourism, but also to the protection of historical heritage, the cultural integrity of destinations, the quality of welcome offered at these sites and the stability and quality of work positions in the sector. In order to achieve this objective, the specific anticipated measures are numerous, especially the drawing up of the European Agenda 21 for Tourism. But in our opinion, the most important aspect is that for the EU, sustainability is not merely a goal to be met or just another action. Rather, the EU identifies sustainability with competitiveness, quality and development in the tourism sector, with an understanding that European tourism must be closely linked to the quality of the tourism experience, which helps us to see that for the EU, we can no longer speak only of European tourism, but of sustainable European tourism.

ACKNOWLEDGEMENTS

This paper is included in the research project “New Perspectives in Environmental Law”, financed by the Ministry of Science and Technology, in the Spanish Government, Ref. DER 2010-21571.

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Research Interest: environment, tourism, urbanism, European Union Law.

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