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**Quality of performance and standardisation of the tourist services:
recent issues in European private law**

This position paper outlines the topic of the standardization of tourism products and services in the light of the recent legislative issues in the European Union.

Key Words: Tourism law; service quality; standardization

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Introduction

The growth of online sales and the liberalisation of the air transport sector have changed the way consumers organize their holidays, given the variety of interests that travel intends to meet (Coles & Halls, 2010). Tourist flows, indeed, are related to specific interests, which may be religious, sporting, educational, cultural, or enogastronomic and are very often combined with business reasons. As a matter of fact, the factors that influence a tourist's destination choice and/or the purpose of the travel include: age, sex, income, education, weather, health, employment, as well as geopolitical variables (Santagata, 2012). As a consequence, requests for services have become more and more diversified (Notarstefano, 2003) along with a variety of expectations that are submitted to market players, organizers, sellers, intermediary sellers, transportation companies, hoteliers, restaurateurs, all those in charge of providing tourism services.

The European Union could only acknowledge such an evolution, even though belatedly and not exhaustively. As known the Consolidated Version of the Treaty on European Union after Lisbon, finally, includes tourism within the field of EU institutions' competence having determined to adopt - among the policies of the European Union - effective measures to support tourism within the Community area (Panik & Anastasiadou, 2013; Cafaggi, 2014), in particular, the European Book on the Review of the Consumer Acquis had in fact envisaged the revision of some of the most important directives in the matter; in this respect the Proposal COM (2013)0512 for a directive of the European Parliament and for the Council on package travel and assisted travel arrangements, was approved.

The main goal is the reconciliation of EU Member States' legislations together with the proper functioning of the competitive market (Amato, 2013; Luminoso, 2012). Anyway, it is important to note that the Community legislator failed to give a complete answer to the need of rules standardization regarding quality tourism services. The criteria for the assessment of damages, in order to verify the proper performance of the tourism contract are still uncertain.

Discussion: Lack of conformity of package tours contracts

Since different types of products are placed online to be available for the public by various categories of operators, such as, tour operators, travel agencies, airlines and shipping companies, greater clarity about definitions has become increasingly necessary, because up to now, it is not yet certain whether the current Directive is being applied to any other types of tourism contracts especially if made by the tourists themselves. In the light of market condition changes, in which the tourist consumer and operators interact, such a proposal reveals its obsolete and lacking trait of some of its rules currently in force, as, for example, not to envisage the purchaser's right to cancel the travel before departure.

These uncertainties have led to a need to significantly revise the discipline of tourism contract in order to have a more incisive regime of information disclosure and liability. In order to regulate the liability, the Community legislation considered it necessary to reformulate the rules on the exact performance of the service, by introducing (into the art. 11) the concept of *lack of conformity* to contracts, as described by art. 35 of the Vienna convention on the international sale of goods (1980), and then incorporated by Directive 1999/44/CE on *the sale of consumer goods*. The text of art. 11, as it is, does not provide useful data to establish what is meant by lack of conformity or by "*disproportionate*", which is not the case for the current regulation on *the sale of consumer goods*. It is to be noted however, that the application of the rule of conformity to what, for the Community legislator is still (but maybe only with regard to the *nomen iuris*) a sale of package tours involves quite a few obstacles to overcome.

Indeed the conformity assessment in the sale of consumer goods is based on two types of parameters ([Girolami, 2010](#); [Frino, 2011](#)): on the one hand, the parameters related to the objective features of the good, identified by taking into account a **standard** level of qualitative and functional characteristics; on the other hand, the parameters relating to the features established concretely by the parties in the specific agreement.

Is there a conceptual difference between conformity of the goods and conformity of the service? In this respect, *-de iure condendo-* it must be observed ([Amadio, 2001](#)) that currently, the distinction between goods and services is becoming blurred, as the market is becoming increasingly complex, and it is not

easy to differentiate a good from the service that makes it possible to use such good, and standardized services are offered in a package as a single product. The trend is clearly confirmed by the evolution and by the opening exhibited by the Community legislation, with the Directive on general product safety in the first place, and then with that on unfair operations of sale, Directive 2005/29/EC, which explicitly equates the product with the service (Bellisario, 2005). Given that goods and services are increasingly susceptible of being assimilated together as consumer products, the object of the tourism contract can also be considered a consumer product (Cimmino, 2012) for the purpose of applying the quality criteria, as already applied to the sale of consumer goods, in assessing the lack of conformity. As a matter of fact, in the field of tourism services, (art. 13 (*Withdrawal by consumer pursuant to regulation 12 and cancellation by organizer*) of The Package Travel, Package Holidays and Package Tours Regulations 1992) the rule governing consumer's rights in the event of withdrawal or cancellation of the service, include the tourist's right to receive "a package of equivalent or higher quality".

Results: quality as conformity to a standard

Only recently, however, has the Union made some progress on the relevance of quality of tourist services performances, given that, after the proposal for the Directive, it has issued *The Proposal for a Council Recommendation on European Tourism Quality Principles*, still in its earliest stages so far. Such quality tourism principles will be applicable to tourism services offered directly to consumers in the European Union. This means that the Commission has chosen a path that could encourage operators to adopt said principles quickly. It will, however, be necessary to check how many business are going to adopt and meet these standards.

The Community legislator, in his turn, seems to have incorporated a new concept of quality closer to the business meaning of the term; as a matter of fact according to business literature, the quality is measured in terms of conformity to standards, that concern, besides things, also services and production processes (Kenyon & Sen, 2015). As can be noted, there is a physiological link between standards, quality and conformity which the Community legislator should acknowledge also in matters of tourism contracts (Cimmino, 2012). And yet, even

though the quality of the service has been taken into account, the Community legislator has not done enough, has not likewise determined what the most suitable criteria are to assess both quality of service and failure to perform the contract or improper performance.

However, the tourism sector is becoming subject to voluntary standardization, as an expression of the so-called standardization aimed at developing rules and techniques in the interests of producers and at providing suppliers and end-customers a quality product. It is well known that harmonized rules are the technical rules adopted by European standardization bodies. Two voluntary standards have been drawn up, one is the UNI EN 13809 2004, with a defining value, specifying the meaning of some basic concepts, and the other is UNI EN ISO 18513: 2005, that defines the types of services that the tourism enterprises must provide.

The latest initiative by the voluntary standardisation bodies is the setting up of the ISO/TC Committee 228 “*Tourism and related services*” within the ISO. This has set itself a large, highly ambitious goal, i.e. to standardise tourism services, with special attention paid to the issues of hygiene, safety and accessibility, establishing technical regulations to offer tourism services transparently and be able to make informed decisions.

Conclusions

From the regulatory point of view, it is desirable to include in the contract an express provision on the legal relevance of quality standards as a basically clear and objective instrument to assess the quality level offered and also promised as per the contract.

The Italian legislator chose an interesting solution, through the issue of the Code of Tourism ([Santagata, 2012](#)) on the matter of *the failure to perform the contract or the improper performance and lack of conformity*, defining a definite link between *contract of package travel, performance, liability and quality tourism standard* in art. 43 of the Code, that expressly provides: *Departure from the promised or offered quality standards of service is to be considered improper performance.*

The Italian legislator has expressly acknowledged that the principle of conformity to quality standards is the criterion for checking the exactness of the performance; the usefulness of such a solution lies in the fact that the quality taken into account by the standard is not intended as a value or virtue of the good, but as conformity to certain parameters determined by the rules which establish the standard itself, and in this sense it is an objective quality.

In this perspective, the standard is meant to predetermine the qualitative characteristics (within this context) of a product in an equally objective way, also it is set as a uniformity criterion for the assessment of the level of quality promised by the company, known and expected by the tourist. When a failure determines the termination of a contract, it must be considered wilful, which means that there is no breach of contract when the debtor was acting in good faith or his behaviour was due to a legitimate cause: it must be, in short, a breach" without lawful excuse".

From the above said emerges the opportunity to promote the unification of quality service assessment systems of tourism businesses and, also, the adoption of instruments that in a comprehensive manner ensure a certain level of the quality of the tourism offer and a combination of services offered by parties in their turn certified (Garcia, Fraiz Brera, & de la Cruz del Rio Rama, 2013).

From the normative point of view the contract's express provision on legal relevance of quality standard as a basically clear and objective instrument to assess the quality level offered and also promised as per the contract is desirable (Cimmino, 2012). The utility of such a solution lies in the fact that the quality taken into account by the standard is not intended as a value or virtue of the good, but conforming certain parameters laid down just by the rules which raise the same standard, and in this sense it is an objective quality. In this perspective, the standard is intended to predetermine in an objective way the qualitative features (as far as this contest is concerned) of a product; in particular, it is set as a uniformness criterion of quality assessment promised by the company, it has to be recognizable by the tourist who also expects this (Cordato, 2008). Such innovative attitudes consider the interests of the tourist as an integral part of the contract even if related to additional services other than transportation and accommodation, such as equipped beach, children's mini-club, animation staff, swimming pool, tennis courts, etc. strictly functional to the tourism purpose, as consequence the non-fruition of even just one

of such services can configure a failure of contract. It can be said that with this solution, in view of the lack of rules, the impropriety of fulfilment may be identified with the qualitative inadequacy of the performance where there is a discrepancy between promise and performance.

The express provision on the legal relevance of quality standards in the tourist contract could have favorable effects increasing customer satisfaction, in particular with respect to service quality; but the above solution would seem useful also to the businesses, who are stressed to improve their services (Rajesh, 2013); as consequence in this way, the interest in the quality of tourist services could promote a proper competitive market, reducing the disputes between professionals and consumers, according to the Communication from the Commission to the European Parliament, the Council, and the European economic and social committee “A strategic vision for European standards: Moving forward to enhance and accelerate the sustainable growth of the European economy by 2020”.

References

- Amadio, G. (2001). Difetto di conformità e tutele sinallagmatiche, (“Lack of conformity and synallagmatic protections). (2001). *Rivista di diritto civile* . (2001), I, 871
- Amato, C. (2013). “The Europeanisation of Contract Law and the Role of Comparative Law: The Case of the Directive on Consumer Rights”, in *Aa. Vv., The transformation of european private law: harmonisation, consolidation, codification or chaos*, (edited by) J Devenney and M. Kenny (Cambridge)
- Bellisario, E. (2005). Lo stralcio delle disposizioni sulle certificazioni di qualità dal codice del consumo: un’occasione perduta, in *Eur. dir. priv.*, 1068 ss.
- Cafaggi, F. (2014). Does private regulation foster european legal integration? *AA. VV. Varieties of European Economic Law and Regulation. Liber Amicorum for Hans Micklitz*, a cura di K.Purnaghen, P. Rott, 259
- Cimmino, M. (2012). Mancato o inesatto adempimento del contratto di turismo organizzato. La rilevanza giuridica dello standard di qualità, (“The failure to perform the contract or the improper performance of tourism contract: the conformity to quality standard.). *AA. VV., L’ordinamento del mercato turistico*, Turin, 195
- Coles T. & Halls M.C (2010). Rights and Regulation of Travel and Tourism Mobility. *Journal of Policy Research in Tourism, Leisure and Events*, 3, 209
- Cordato, A. (2008). Luxury Holidays. Is Luxury a Standard, Actionable at Law? *International Travel Law Journal*, 3, 107
- Frino, C. (2011) Garanzia nella vendita dei beni di consumo: proposte di diritto europeo,(Guarantee in the sale of consumer goods: proposals for European law). *Danno e resp.*, 5, 461
- Garcia, .J.A., Fraiz Brera, M. & de la Cruz del Rio Rama, Q. (2013). De calidad turística. Barreras a la implantación y certificación. *Cuadernos de turismo*, 11
- Girolami, M. (2010). “Art. 129, Conformità al contratto”, (“Conformity to contract”) in *AA. VV., “Commentario breve al diritto dei consumatori”, (“Brief commentary on consumer law”)*, edited by A. Zaccaria and G. De Cristofaro, Padova, 825.
- Kenyon, G. N. & Sen, K. C. (2015), *The perception of quality*, London.
- Luminoso, A. (2012). Dall’America latina un messaggio per l’Unione europea sul diritto dei contratti, (From Latin America a message to the European Union on the law of contracts), *Contratto impresa Europa*, 2, 577

- Notarstefano, C. (2003). Lineamenti giuridici delle attività turistiche, (“Legal aspect of tourism activities”), Bari.
- Panik, E. & Anastasiadou. C. (2013). Mapping the EU’s evolving role in Tourism: Implication of the new EU tourism competence. Aa.Vv., (2013), Trends in european tourism planning and organisations, a cura di C. Costa, E. Panyk, D. Buhalis, Bristol, 189
- Rajesh, R. (2013). Impact of tourist perceptions, destination image and tourist satisfaction on destination loyalty: a conceptual model. *Pasos* 3, 67
- Santagata, R. (2012). I contratti del turismo organizzato, in AA. VV.. L’ordinamento del mercato turistico”, (Regulation of tourism market). Turin, edited by Cogliani, Gola, Sandulli, Santagata