

# New Perspectives For Tourism In European Union Law

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## ABSTRACT

*Tourism is the largest industry in the European Union. Its importance as an economically, socially and culturally cohesive element for the entire continent is indisputable. Still, attention from the European Union was late in coming, and has been based on measures that have been adapted from other local policies that are indirect influences on tourism. This has meant that the intervention of the EU in this sector has been partial, limited and at times, ineffective. The reason can be traced to the lack of a sufficient number of legal powers that were able to outline a common European policy in the Constituent Treaties. The Treaty of Lisbon has managed to fill in this void by providing legal support to a new set of European Union actions on this matter, whose development depends on whether or not Europe is capable of responding to the challenges faced by the tourism sector.*

**Keywords:** tourism; tourist; European Union; principle of subsidiarity

## INTRODUCTION

The handling of the tourism sector by the European Union (henceforth EU) is a relatively recent phenomenon in the industry's overall history. In fact, it was not until the 1980s that the EU first demonstrated a budding interest in the sector for its economic and social activity, an interest that would develop throughout the following decade. The incorporation in the Treaty of Lisbon of those legal instruments that would make possible the adoption of a new policy by the EU on this subject marked a significant turning point.

Nevertheless, it is undeniably curious that the EU took such a late interest in the tourism sector, as the tourism industry was born in Europe, the continent which continues to be the world's leading tourist destination. This, despite the economic crisis we have been experiencing since 2008, when 370 million international tourists came to visit—40% of the world's arrivals. As such, the importance of tourism to the EU as an economic sector cannot be debated. Some 1.8 million businesses, especially SMBs, are dedicated to tourist activity, making up 5.2% of the total labor force (about 9.7 million positions, with a significant proportion of young people) and generating about 5% of the GDP in the EU. And if we analyze those sectors related to tourism, the contribution is even greater, bringing in 10% of the GDP, with 12% of all jobs in the EU.

In addition, tourism is an important factor in economic and social cohesion between the EU's Member States. The four countries with a GDP below 90% of the EU average—Spain, Greece, Ireland and Portugal—attract 25% of tourists entering the EU. The trend also contributes to bringing down the cultural barriers that exist between the citizens of each Member State, making this an essential instrument for increasing solidarity and promoting European citizens (SILVESTRO, 1996).

So why was the EU so late in turning its attention to the tourism sector, especially since the EU itself was created as an economic organization? The reasons are varied. It was precisely that moment in the early 1980s when countries with a significant interest in tourism (like Spain and Greece) entered the EU that seems to justify the

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moment in time when this sector began to receive institutional attention. Nevertheless, one fact that would mark not only the late nature of the EU's attention and would influence decisively the way in which the EU would develop its intervention in tourism is the extremely diverse importance that tourism has for its different Member States. While some of these have a number of arrivals that is much higher than the number of departures (Spain, Portugal and Greece), others have a tourist balance that is clearly negative. These are countries that produce tourists (Germany and the Netherlands). There is also a third group of Member States (France and Denmark) where there is a notable balance between tourist arrivals and departures (SILVESTRO, 1996).

This situation causes the key actions of Member States surrounding these matters to be truly contrary. Countries with arrivals are interested in protecting the environment and their historical heritage, and in the improvement of services, trusting more in qualitative criteria than quantitative. Meanwhile, those countries with departures are interested in quantitatively promoting the arrival of tourists in their area in addition to, for example, the protection of their citizens when they travel outside national borders.

The differing positions taken by Member States throughout the period of EU intervention in the tourism sector will limit the existence of a true common policy on this matter for many years, meaning that the efficacy of the adopted measures has been relative, as we will see a bit further on. The approval of the Treaty of Lisbon will mean an indisputably relevant advance toward a new framework of action in tourism matters, and is the reason that we can allow ourselves to consider the existence of a renewed common policy in this sector.

#### **TOURISM IN THE CONSTITUENT TREATIES OF THE EUROPEAN UNION**

Together with the European Union's belated interest in the tourism sector, we must also consider its deficient treatment of the Constituent Treaties of the EU in various writings, until this problem was corrected in the Treaty of Lisbon.

In the Constituent Treaty of the European Union, signed on March 25<sup>th</sup>, 1957, there is not a single mention of tourism, although the exclusion is not notable considering that this sector was hardly developed at the time. Still, in the Single European Act, signed on February 17<sup>th</sup>, 1987, there is still no exclusive reference to tourism, at a time when the importance of this sector for the EU was already quite relevant. Even though at a later date, the reforms established in Maastricht and Amsterdam introduced several pointed references to tourism, their weakness must be acknowledged. The qualitative jump would come with the insertion in the current Treaty of Lisbon of a specific precept that provides legal backing for EU intervention and that serves as a basis for the articulation of a new framework of action in matters of tourism.

Nevertheless, the lack of pointed references to tourism in the Constituent Treaties has not prevented several precepts from being used to justify the indirect actions of the EU in the tourism sector. Article 2 of the Treaty of Rome was utilized to highlight the contributions tourism could provide, and in 1984, both the Council and the Commission were already underlining the fact that the precept indicates that one of the EU's objectives is to achieve closer relationships between the States that make up the EU. They went on to define tourism as one of the most important instruments for achieving this goal, saying that the sector could provide a way for the people of Europe to discover that cultural differences, rather than being opposing forces, are complementary and worth learning more about.

But in spite of the importance placed on tourism by various institutions in the European Union, it was not until late 1990 that the European Economic and Social Committee would ask that a specific reference be made to tourism in the upcoming reform of the Constituent Treaties, indicating that adequate action by the EU in this matter would require a special mention. Starting then, a striking number of EU documents from diverse European institutions would be produced, requesting the inclusion in those Treaties of a specific chapter devoted to tourism. All of these institutions understood that actions developed by the EU in this matter were undertaken in the context of other policies or in favor of other sectors, and that this translated indirectly into a benefit for the tourism sector. Focusing on the importance acquired by the sector, they demanded a more autonomous treatment, giving it a common political status on the same level as, for example, the environment, culture or transportation.

The great leap forward that supposedly occurred through the reform of the Constituent Treaties in Maastricht was actually insufficient. It was only the Treaty's letter t) of Article 3 that recognized for the first time the possibility of adopting measures in favor of tourism, but it postponed the decision regarding the inclusion of a specific title related to tourism.

### **THE DISPUTE AMONG EUROPEAN INSTITUTIONS AS TO THE ROLE TOURISM MUST PLAY IN THE EUROPEAN UNION**

After Maastricht, the petitions to include a specific mention of tourism began to increase in numerous documents written by diverse European institutions (European Parliament—Resolution of February 14<sup>th</sup>, 1994; Resolution of January 23<sup>rd</sup>, 1995; Resolution of November 18<sup>th</sup>, 1996, etc. European Economic and Social Committee—Report from December 31<sup>st</sup>, 1994). But there is no doubt that the problem is most clearly addressed in the Commission's so-called Green Book, which considers the role of the EU in matters of tourism. The document indicates that the problem comes down to determining the legitimacy of the Commission when intervening in matters of tourism, considering the lack of necessary backing in the Constituent Treaties.

And the solution to the problem made the future role of the EU in matters of tourism dependent on four options: the reduction or elimination of specific EU actions, the maintenance of the framework and level of intervention that would develop, the reinforcement of EU action working from the basis of the existing Treaty at that moment (Maastricht) and the articulation of a common policy that, without replacing national or relational actions on the matter, would allow for the definition on the level of the EU of common guidelines that would unite objectives and actions. In the opinion of the Commission, only this final option, that would be carried out through the reform of the Treaty and the inclusion of a chapter dedicated exclusively to tourism, would give the sector the necessary legitimacy for a more profound intervention in the decisions adapted in the framework of other EU policies that affect tourism and for undertaking actions on a European level, not only for necessary coordination measures, but for responding to the specific needs of the tourism sector.

The Commission's Green Book opened a lively debate amongst European institutions as to the stance the EU should take when addressing tourism. For the Parliament and the European Economic and Social Committee, the choice was simple, as they had already recognized the need to incorporate a chapter dedicated solely to tourism in the Constituent Treaties. And in its Report on the Commission's Green Book (November 13<sup>th</sup>, 1995), the second EU body cited even drew up the terms of a new title dedicated expressly to tourism.

Nevertheless, there was an EU body that opted for a different solution—specifically, the Committee of the Regions. In accordance with its institutional function and although its opinion would later become favorable with regard to modification of the Constituent Treaties, the Committee considered that even if a more active and more highly coordinated intervention were necessary between the Member States on this matter, it would be enough to simply maintain the framework for carrying out EU policies in existence at the moment, meaning that the third option listed above was the most appropriate for this body. The reasons it gave stated that all attempts to create a common European image would only serve to conceal the cultural and individual identities that the Member States and regional and local authorities were promoting at the time.

What is clear is that the lack of a unanimous opinion meant that the next amendment to the Constituent Treaties, through the Treaty of Amsterdam (signed on October 2<sup>nd</sup>, 1997) would once again leave out a specific title dedicated to tourism. This did not keep European institutions from continuing to request the title. In fact, the Committee of the Regions would even change its position and would also ask for the inclusion of the title, stating that it had come to understand that tourism was coming to be considered a specific entity, together with other EU policies. Tourism would therefore have to adapt to said policies, which was inadequate not only because of its needs, but because of its potential, and because of the collective adoption of its objectives and the means of action that should be achieved through intervention in this sector.

## **REASONS FOR THE JUSTIFICATION OF THE EXCLUSION OF SPECIFIC JUDICIAL GROUNDS REFERENCING TOURISM IN THE CONSTITUENT TREATIES OF THE EUROPEAN UNION**

It is interesting, to say the least, that faced with repeated calls from European institutions to add a specific chapter on tourism to the Constituent Treaties, Member States did not heed the call. And we have to wonder what reason led Member States to maintain their position.

The reason can be found in the position held by the EU up to that time, and which is still held today, in matters of tourism. The direct consequence is seen in the manner of action that the EU has developed in this sector. Starting with the first manifestations of EU intervention in tourism, the community has concentrated on determined actions that it considered top priorities: staggering vacation time, the promotion of social tourism, the protection of historical and environmental heritage, etc. In the eyes of the EU, these are questions that might have been better considered from a global, national and communal perspective. But at the same time, it was thought that tourism should be placed first and foremost within the policies and responsibilities of each Member State, and that representative public and private agents have developed acceptable actions in this sector.

This line of argument has resulted in a generally held opinion in the EU that, if the community must contribute to the creation of a favorable context for the development of tourist activity, that might even be improved upon with adequate coordination and the adoption of common measures, the EU shouldn't get too involved in the coordination of national and regional politics. Each of the Member States will do a better job of adapting to its own individual situation in matters of tourism, so the EU should not attempt to resolve problems when a better solution can be found on a national or even regional level.

This original notion, which is still held today, regarding EU intervention in matters of tourism, is nothing more than the specification in this sector of the principle of subsidiarity. This principle holds that decisions affecting a citizen ought to be made by the authority closest to his own level, meaning that except in matters related to exclusive responsibilities of the whole community, the EU must intervene only when its actions would be more effective than state, regional or local intervention. In addition, and in relation to the principles of necessity and proportionality, this principle keeps EU intervention to levels that are necessary for achieving the goals of the Treaty, without exceeding the limit.

This line of argument was endorsed by numerous documents from EU institutions throughout the 1990s and continues to be supported even today. But perhaps the most striking of these is the Commission's Green Book, which recognizes that fundamental actions in matters of tourism correspond above all with Member States and regions, in such a way that EU actions must be carried out throughout the coordination of EU activity with interventions that take place on a national and regional scale with respect to the principle of subsidiarity. In this way, EU actions would have an added value in national and regional proceedings.

The problem in the Green Book did not focus on the priority of state and regional actions, or on the coordination of EU intervention with interventions resulting from Member States and regions. Rather, it was limited to determining whether a reform of the Treaties was necessary in order to articulate a real EU policy in matters of tourism, or whether it was enough to choose other options indicated by the Green Book itself, and to which it had already made reference. These included the performance of tourism through other policies, but without a specific plan of action, maintaining the context and level of intervention held at the time of writing, and reinforcing EU action, but keeping the framework of the existing Treaty.

There is no doubt that an analysis of all EU documentation from the 1990s leads us to the conclusion, which is still held today, that the original responsibility in matters of tourism falls to state, regional and local authorities, in such a way that EU actions must be carried out with scrupulous respect for the principle of subsidiarity. This idea, together with the diverse interests held by each Member State in matters of tourism, led to the negative reiteration that a specific title dedicated to tourism be included in the Constituent Treaties. This caused EU intervention on this matter to be sector specific or indirect, through other EU policies that influence tourism, but are not notably effective. Unresolved problems that EU tourism should have faced up to over the years were brought

up over and over again, as was the lack of agreement between Member States, bringing an end to the long-term program “PHILOXENIA” in April of 2000, which had provided measures favoring tourism from 1997 to 2000.

In any event, this unwillingness to accept a deeper level of EU intervention in these matters cannot be considered illogical. When analyzed from a global perspective, it is clear that the behavior of state, regional and local powers, and even of private agents, has been entirely appropriate, as confirmed by economic results obtained during the 1990s. What’s more, the EU has contributed decisively to this, creating a favorable context for the development of the tourism industry. Nevertheless, maintaining this situation also had its disadvantages: the limited possibility of EU performance, lower budgetary approval, a shortage of human resources in the sector, a certain lack of coordination between actions carried out by Member States, and more. These problems had the possibility of being solved through genuine EU policy in matters of tourism.

### **MOVING TOWARD REAL EU POLICY IN THE TOURISM SECTOR: FACTORS DETERMINING ITS IMPLEMENTATION**

Reserving judgment on whether the principle of subsidiarity in the tourism sector is currently being respected, what is certain is that during the final years of the 20<sup>th</sup> century and the beginning of the 21<sup>st</sup> century, various factors would come to light that would contribute to a change in EU strategy in matters of tourism. First, European institutions confirmed a slowdown in EU growth as a tourism destination which, while it was continuing to expand, was doing so at a lower rate than the world average, specifically when compared to several emerging destinations. Secondly, there was a need to respond to new challenges facing the tourism sector (new internal destinations, outside competition, a need to open up to new markets, lack of qualified labor, sustainable development, the introduction of the Euro, the deregulation of transport and more). The dynamics at play in the EU up to that point, which included lack of coordination and sometimes of interest by participating parties, would not make for an effective response to these problems.

Starting in 1999, in response to this situation, different movements began to develop in the heart of the EU, which seemed to move toward the implementation of a new strategy in this sector. A period of greater coordination began and more specifically, a framework was established for the implementation of new activity in matters of tourism. The starting point would be the European Commission Communication “Enhancing tourism’s potential for employment” (COM 1999, 205 final DOC 178-03, from June 23<sup>rd</sup>, 1999). More importantly, in 2001, the Commission acknowledged the existence of a new dynamic among all participating parties in the sector, started by European institutions and continued by the Member States, private parties and civil society. Based in coordination and association, the goal was to define priorities and actions that would be met by all participants, and that would be based in three main blocks of action: the integration of tourism in EU policies and measures, the consolidation of a new framework for cooperation between parties in the sector through the open method of coordination, and the reinforcement of interaction with destinations and their representatives (European Commission Communication, Working together for the future of European tourism, COM 2001 665 final).

Starting at this moment, the process of moving toward the articulation of a new policy in matters of tourism became unstoppable. In its Communication “A renewed EU Tourism Policy: Towards a stronger partnership for European Tourism” (Brussels, COM 2006, 134 final, March 17<sup>th</sup>, 2006), the Commission would explore this new dynamic more thoroughly, insisting that the globalization of tourism and its problems makes it necessary for EU authorities and Member States to create a cohesive policy response on the EU level, in keeping with the principle of subsidiarity and state responsibilities in these matters. At least materially, as this was still not legally possible, the EU would begin to establish a new framework for actions in matters of tourism, working together to articulate different measures related to tourism. On its own, each measure already had a precedent, but now it was clear that there was interest in creating a coherent and coordinated policy that covered all aspects related to this matter, from legislative measures, the coordination of economic policies and financial measures to specific aspects of management and patronage. In addition, all affected and interested agents in the tourism sector, from the EU itself to local citizens were involved. Still, we mustn’t forget that this line of thinking was limited by legal realities, marked by the Treaty of Amsterdam and its inability to provide sufficient legal backing.

## **THE INCLUSION IN THE TREATY OF LISBON OF LEGAL GROUNDS FOR THE IMPLEMENTATION OF A RENEWED POLICY IN THE TOURISM SECTOR**

The high point in this new dynamic would be the acceptance in the Treaty of Lisbon of necessary powers to justify this new form of action for the EU in matters of tourism. Thus, art. 195 of the TFUE (the consolidated version of the Treaty of the Functioning of the European Union, DOC 83, from March 30<sup>th</sup>, 2010) indicates that the EU will complement the actions of Member States in the tourism sector with a purpose that is two-fold—to foment the creation of an environment favoring the development of business within the sector and to encourage cooperation between Member States, particularly through the exchange of good practice. This assumes that the European Parliament and Council, through the arrangement of ordinary legislative procedures, is able to adopt the specific measures aimed at complementing actions carried out by the Member States, with the exception of all coordination of legal and regulatory provisions by the same entities.

According to European institutions, the inclusion of this express reference to tourism in the Treaty of Lisbon supposes the responsibility of the EU to honor its duties in these matters, as they constitute the basis for the articulation of the long-awaited common policy with respect to the tourism sector. It is worth noting that tourism is a basic socio-economic activity, completing and coordinating the actions of the Member States and moving toward clearer, more coherent actions. The possibility of implementing legislative measures in this respect through ordinary legislative proceedings must also be highlighted.

Further, as an expression of this renewed common policy, in June of 2010 the Commission would present a Communication entitled “Europe, the world’s number one tourist destination: a new political framework for tourism in Europe” (Brussels, 30.6.2010, COM 2010, 352 final). The report is based in the new powers indicated above and describes a set of EU-based measures that aim to foment European tourism and its evolution and implementation at a time when the economic crisis we are facing could influence this sector decisively.

This new framework for action that the Commission attempts to establish is arranged around four central points, which must be implemented in close collaboration and coordination with all involved parties, in both the public and private sectors and in accordance with the principle of subsidiarity, which we must remember constitutes the highest level of EU action in this matter. Following are the four points:

1. Stimulate competitiveness in the European tourism sector.
2. Promote the development of sustainable, responsible and high-quality tourism.
3. Consolidate the image and profile of Europe as a collection of sustainable and high-quality destinations.
4. Maximize the potential of EU financial policies and instruments for developing tourism.

Obviously, in order to achieve these objectives, the Commission proposes a large set of well-aimed measures, but in our opinion, the truly novel point has nothing to do with these points or the measures or even respect for the principle of subsidiarity. What is really important is the trans-national or European dimension or scale which embraces this new action framework, and the fact that because of the Commission’s own wishes, the EU assumes new responsibilities in these matters.

## **CONCLUSION**

As you have seen, the intervention of the EU in matters of tourism has not been simple. There have been many different stages, from showing a late interest to taking limited, indirect and ineffective action, and finally coming to the current possibility of articulating a more intense, coherent and coordinated plan of action, backed by newly recognized powers in the Treaty of Lisbon.

This is the beginning of new perspectives for the development of tourism in the EU with clear legal instruments, which appear to be more effective, making it possible for the community to respond to the challenges it faces in the tourism sector. Nevertheless, we mustn’t forget that we are still at the beginning of a new phase in the EU’s intervention in matters of tourism. Without a doubt, it will depend on how the EU uses its new powers—

whether it increases them or limits them, a decision in which Member States will continue to have the most responsibility—which will determine whether or not Europe will continue to be the world's number one tourist destination, focusing on the characteristic wealth and diversity of its territories, culture, environment and heritage.

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**APPENDIX****DOCUMENTATION (IN CHRONOLOGICAL ORDER)**

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