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**UNWTO**  
World Tourism Organization

# INTERNATIONAL CODE FOR THE PROTECTION OF TOURISTS

Adopted by the Resolution A/RES/732(XXIV) of the General Assembly of UNWTO at its twenty-fourth session

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### **International Code for the Protection of Tourists**

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In fulfilling its mandate, the Committee has been supported by a group of independent experts of internationally recognized legal expertise in the fields of travel and tourism law, and consumer protection law, and has received regular input from the affiliate membership of UNWTO, as well as from a number observers from a diverse range of international organizations and private stakeholders<sup>1</sup>

UNWTO thanks the following members of the consultative group of experts for contributing with their valuable technical inputs and expertise:

Mr. Diego Augusto Benitez, Full Professor of Tourism Law, National University of Río Negro (Argentina); Mr. John J. Downes, International Tourism Law Consultant; Mr. Julio Facal, Full Professor of Tourism Law, Republic University (Uruguay), Tourism Law Expert, Adviser of the Legal Observatory of Tourism; Ms. Claudia Lima Marques, Dean and Full Professor of Private International Law, Federal University of Rio Grande do Sul (Brazil); Mr. Francesco Morandi, Full Professor of Tourism and Transport Law, University of Sassari (Italy), Attorney at Law; Miss Sarah Prager, Barrister, Bar of England and Wales; Ms. Christine Riefa, Professor of Law, University of Reading School

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<sup>1</sup> Observers of the Committee for the development of an International Code for the Protection of Tourists were: Allianz Partners; the Association of the Caribbean States (ACS); the Commonwealth, the Expedia Group; the European Commission (DG Grow and DG Justice respectively); the European Guarantee Funds Association for Travel and Tourism (EGFATT); the European Travel Agents and Tour Operators Associations (ECTAA); the Hague Conference on Private International Law (HCCH); HOTREC; the International Air Transport Association (IATA); the International Civil Aviation Organization (ICAO); the International Forum of Travel and Tourism Advocates (IFTTA); the International Hotel and Restaurant Association (IH&RA); the International Law Association (ILA); the International Organization for Standardization (ISO); the International Social Tourism Organisation (ISTO); the United Nations Conference on Trade and Development (UNCTAD); and the World Committee on Tourism Ethics (WCTE).

# FOREWORD

BY ZURAB POLOLIKASHVILI  
SECRETARY-GENERAL,  
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Uncertainty and a lack of trust in travel are among the biggest challenges we face as we work to restart tourism. The COVID-19 crisis has revealed the absence of an international legal framework to assist international tourists in emergency situations. It has also made clear the lack of any uniformity at the international level regarding tourism consumer protection rights.

During the crisis, the closure of borders, often with little notice, left hundreds of thousands of tourists stranded. Millions of flights were cancelled and the situation soon deteriorated, further harming the confidence of tourists, particularly with regards to their rights to assistance in emergency situations and their consumer rights in general.

To this end, UNWTO is working to support the efforts undertaken by our Member States to restore trust and accelerate tourism recovery by providing a common and harmonized framework for the protection of tourists in emergency situations and for the consumer rights of tourists in the post-COVID-19 world. We can only restart tourism if we restore trust in travel; people want to feel safe and looked after when they travel.

The participation of more than 100 Member States, alongside international organizations and leading business groups, within the Committee for the development of an International Code for the Protection of Tourists provided UNWTO with unprecedented levels

of support to guide the joint efforts of both public and private sectors in dealing with the significant challenges posed by the crisis.

We trust that the International Code for the Protection of Tourists will provide all tourism stakeholders, both in the public and the private sector, with practical guidance on how to assist tourists affected by emergencies, including but not limited to health emergencies, and help develop and harmonize consumer protection standards through a more transparent and efficient framework. Undoubtedly, the *International Code for the Protection of Tourists* will provide greater legal protection to tourists as consumers and help make people feel safer and more confident in international travel.

I would like to encourage all Member States to adhere to the *International Code for the Protection of Tourists*, uphold its principles and use its recommendations as a frame of reference to restore consumers' confidence and achieve a more fair and balanced share of responsibilities among tourism stakeholders.

I am fully convinced that establishing a standard set of minimum consumer protection standards for tourists will contribute to restoring confidence in international travel and to effectively and resolutely addressing all the challenges that the sector is facing in the post COVID-19 world, placing the wellbeing and protection of the tourists at its core.

# INTRODUCTION

Adopted by Resolution 732 (XXIV) of the General Assembly at its 24th session held in Madrid, Spain, from 30 November to 3 December 2021, the *International Code for the Protection of Tourists* (ICPT) provides a comprehensive set of principles and recommendations for the protection of tourists in emergency situations and consumer rights of tourists aiming at harmonizing minimum international standards and providing sufficient guarantees to international tourists in the post COVID-19 scenario.

Addressed to governments, public and private stakeholders, and tourists themselves, the ICPT intends to provide practical guidance for all those, in the public and private sector, who have obligations, responsibilities, duties and rights regarding the matters dealt with in the Code.

It comprises five chapters relating respectively and including recommendations on: (I) Definitions and clarifications; (II) Assistance to international tourists in emergency situations; (III) Tourist protection in contracts; (IV) International settlement of travel and tourism disputes via alternative means of dispute resolution; and (V) Mechanisms for adherence to and the application of the recommendations of the International Code for the Protection of Tourists.

By harmonizing minimum standards for the protection of tourists in emergency situations and consumer rights

of tourists at the international level, the ICPT aims at restoring consumers' confidence and making the travel environment more attractive with a view to creating a feeling of safety for tourists/travellers and improving the contractual relationships between providers and recipients of the various tourism services.

As a soft-law instrument of non-legally binding nature, the ICPT does not create obligations for states nor imposes additional burdens on them. To the contrary, it intends to support the efforts taken by Member States in restoring tourists' trust and assist them in accelerating tourism recovery by providing guidance to governments as to proposed policy, legislation and regulatory practice at the national level.

Hence, Member States of both UNWTO and the United Nations are encouraged to adhere to the ICPT and to inform the UNWTO Secretary-General of their intention to adhere thereto and subsequently of any specific activities undertaken in this respect.

Likewise, tourism stakeholders are invited to promote the ICPT, uphold its principles and apply its relevant recommendations, so far as possible, by integrating them or make specific reference to them in their contractual instruments signed with tourists, with a view to increasing tourists trust and confidence when booking a trip or tourism service.

# CHAPTER ONE

## Definitions and clarifications





## A. Definitions

For the purposes of this Code, and unless otherwise provided in particular provisions, the following definitions apply:

1. **“Country of origin”** means the Member State of which the tourist has nationality or where at the time of the unavoidable and extraordinary circumstance or the emergency situation the tourist has his/her principal and permanent residence.
2. **“Emergency situation”** means unusual, extraordinary or unforeseeable circumstances, whether natural or man-made, beyond the control of the host country, that have resulted in the need for assistance on a large scale.
3. **“Excursionist”** means a person taking a trip which does not include an overnight stay to a main destination outside of his/her usual environment.
4. **“Host country”** means the Member State on the territory of which an unavoidable and extraordinary circumstance, or an emergency situation has occurred or has its consequences.
5. **“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.
6. **“Tourism service provider”** means any natural person or legal person (irrespective of whether privately or publicly owned) that principally sells, offers to sell, supplies, or undertakes to supply a tourism service to the tourist, single or combined in a package, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to their trade, business, craft or profession in relation to the supply of tourism services.
7. **“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.
8. **“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.

## B. Clarifications

For the purposes of this Code, and unless otherwise provided in particular provisions, the following clarifications apply:

1. For the purposes of this Code, any reference to **“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/non-binding consumer arbitration.
2. For the purposes of this Code, any reference to **“business user”** means any tourism service provider using online tourism platforms for the purpose of or in the course of providing a tourism service to the tourists.
3. For the purposes of this Code, any reference to **“digital tourism service”** means any tourism service provided at a distance, by electronic means and at the request of a recipient of services, including information society services and intermediation related to tourism services.
4. For the purposes of this Code, any reference to **“digital tourism service provider”** means any natural or legal person that sells, offers to sell, supplies, or undertakes to supply a tourism service to the tourist through digital means.
5. For the purposes of this Code, any reference to **“intermediary”** means any natural or legal person other than the organizer, who sells or offers for

sale tourism services supplied by third parties or packages combined by an organizer.

6. For the purposes of this Code, any reference to **“non-discrimination”** is to be interpreted in accordance with the general principles of equality and non-discrimination as recognized under the international legal instruments of the United Nations and its Specialized Agencies, including but not limited to Article 7 of the *Universal Declaration of Human Rights*<sup>1</sup> and Article 1(1) of the *ILO Discrimination Convention No. 111*<sup>2</sup>.
7. For the purposes of this Code, 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 online arbitration.
8. For the purposes of this Code, any reference to **“online tourism platform”** means 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.
9. For the purposes of this Code, any reference to **“organizer”** means any natural or legal person that organizes packages and sells or offers them for sale, whether directly or through another person or with another person, other than on an occasional basis and not for profit.

1 United Nations (1948), ‘Article 7’, *Universal Declaration of Human Rights*, adopted at the 3rd session of the United Nations General Assembly, Paris, 10 December 1948, online available at: [www.un.org](http://www.un.org) [16-12-2021].

Article 7: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”

2 International Labour Organization (1958), ‘Article 1(1)(a)’, C111 – *Discrimination (Employment and Occupation) Convention*, 1958 (No. 111), adopted at the 42nd ILC session, Geneva, 25 June 1958, online available at: [www.ilo.org](http://www.ilo.org) [16-12-2021].

Article 1(1)(a): “For the purpose of this Convention the term discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation [...]”



10. For the purposes of this Code, any reference to **“operator”** means any natural or legal person that operates an online tourism platform for the purpose of or in the course of providing a tourism service to the tourists.
11. For the purposes of this Code, any reference to **“rental services”** may include, but is not limited to, rental of cars, motor vehicles, bicycles or equipment for tourist entertainment.
12. For the purposes of this Code, any reference to **“tourism service provider”** as defined under Section A of this Chapter is to be interpreted as any natural person or legal person who is legally registered as tourism service provider or otherwise recognized as such by the competent authorities in accordance with the legal framework governing the respective tourism services in each country.
13. For the purposes of this Code any reference to **“tourist”** as defined under Section A of this Chapter constitutes at the same time a reference to “excursionist”.
14. For the purposes of this Code, any reference to **“transport services”** may include, but is not limited to, railway, road, water, air or space passenger transport services, as well as any other passenger transport services described in relevant international agreements in force to which the country is a party.
15. 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 make 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.
16. For the purposes of this Code, any reference to **“vouchers”** that the tourism service provider offers to the tourist as alternative to monetary reimbursement (cash refund) may include, but is not limited to, pre-paid coupons, gift cards, traveller’s cheques or free tickets.
17. For the purposes of this Code, any reference to **“vulnerable or disadvantaged tourists”** may include, but is not limited to, tourists with reduced mobility, disabilities, specific access requirements, minors or seniors.

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# CHAPTER TWO

## Assistance to international tourists in emergency situations

# PART I

## PRINCIPLES

### 1. Harmonization:

The need to establish a common global approach and harmonize the policies and practices regarding the assistance to international tourists in emergency situations so that all international tourists enjoy an appropriate degree of protection on an equal basis regardless of their nationality, country of origin, destination, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, or the nationality of the tourism service provider.

### 2. Balance:

The need to find a fair and equitable balance between what is desirable and what is achievable. There should be special regard to the position and capabilities of all tourism stakeholders, including international tourists themselves, the country of origin, and the country of destination of the international tourist in the distribution of responsibilities, before, during, and after an emergency situation, with due consideration to the specific needs of vulnerable and disadvantaged tourists.

### 3. Cooperation and coordination:

The need to improve and strengthen international cooperation and coordination among the public and private sectors at national and international level as well as among countries and international organizations, both governmental and non-governmental, to assist international tourists in emergency situations.

### 4. Responsibility:

- i. The duty of public authorities and tourism service providers to provide assistance to international tourists in emergency situations, including but not limited to easily accessible, timely, objective, honest, and relevant information in a clear, prominent and comprehensible manner, as well as security and safety measures, accident prevention, health protection, and food safety. The content and methods of providing information should be subject to consultation with the authorities of the host countries and shall respect the privacy of individuals and be aligned with personal data protection and other applicable laws. Such information should be strictly proportionate to the gravity of the situation and confined to the geographical areas where the emergency situation has arisen.
- ii. The responsibility of international tourists to either acquaint themselves or to follow the information provided by the tourism service provider regarding the characteristics of the countries they are preparing



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to visit. International tourists should be aware of the health, safety and security risks inherent in any travel outside their usual environment and behave in such a way as to minimize those risks, particularly by following the health and security protocols established by public authorities in times of crisis and by taking out adequate travel insurance.

## 5. Accessibility:

The right of vulnerable and disadvantaged tourists to travel just like any other person on an equal basis and without discrimination of any kind. Some tourists with specific needs may be disadvantaged or more vulnerable in emergency situations and will likely seek additional reassurance from public authorities and tourism service providers. In emergency situations, they should not be excluded from communication regarding public health, safety measures and travel updates, decision-making, and information on the availability and accessibility of basic services. Lack of accessible communication associated with their conditions might expose them to additional risks. The tourism service providers and local authorities should consider eliminating obstacles and barriers by taking into due consideration the safety of all international tourists.

## 6. Clarity and certainty:

The need of international tourists and tourism service providers to clearly know their rights, what is expected of them and have sufficient time to be able to comply with requirements.

## 7. Risk-targeted approach:

The need to have regulatory approaches targeted at risk and to have specific and well-defined objectives that respond directly to emergency situations, respecting the principles of equality, non-discrimination and proportionality.

## PART II

# RECOMMENDATIONS

Member States, pursuant to the Principles established in Part I, should take all necessary measures to:

### A. Prevention

1. Establish permanent, professional, efficient, and effective crisis management services in order to facilitate operational measures in emergency situations;
2. Establish specific programmes, contingency plans and protocols for emergency situations that include coordination mechanisms with due consideration to the particular situation and needs of tourism service providers, diplomatic, consular and consumer authorities, and international tourists;
3. Designate authorities or bodies at the local or national level, as appropriate, responsible for monitoring, advising on, and coordinating the application of the programmes, contingency plans and protocols mentioned in paragraph 2 of this Section, and providing assistance to international tourists in emergency situations. Establish a point of contact and information hub for tourism service providers, diplomatic, consular and consumer authorities, and international tourists;
4. Support the regular development and updating of information, training and communication materials addressed to tourism service providers providing guidance on assistance to international tourists in emergency situations, especially to vulnerable and disadvantaged tourists. Such information and communication materials should be made available in accessible, easy-to-read, clear language through alternative formats and other accessible physical or electronic medium (e.g., Braille, subtitles, videos, etc.) in as many languages as possible, thus enabling any international tourist to receive adequate instructions and understand them properly;
5. Foster the development and use of accessible, affordable, and fair travel insurance schemes or guarantee systems under tourists contracts that aim to provide adequate coverage for international tourists in emergency situations, including pandemic events, both with reference to the cost of termination by the tourist and any cancellation fees, and the cost of assistance, including but not limited to treatment, quarantine and repatriation;
6. Foster the development of financial schemes to provide support to tourism service providers in financial difficulty established in their territory during emergency situations; and
7. Take appropriate measures to simplify procedures and reduce, so far as possible, the administrative burden for international tourists in dealing with tourism service providers in emergency situations.

## B. Information

1. Taking into account the telecommunication facilities of each individual country, provide up-to-date available information, including but not limited to, border procedures, available means of transport to or from the destination, travel restrictions, public health, safety and security measures, as well as other practical information for international tourists. Such information should be made available through competent authorities on official websites and other social media platforms in as many languages as possible. Further provide this information through tourism, travel and transport professionals, consumer agencies, and service providers at the main transport, hospitality and public health infrastructures;
2. Promote the use of fully functional cross-border voluntary approved and interoperable contact tracing apps, if available and in accordance with personal data protection and other applicable laws, to warn international tourists in the event of a potential risk that may lead to an emergency situation; and
3. Disseminate information on emergency situations in accordance with the "Recommendations on the Use of Georeferences, Date and Time in Travel Advice and Event Information"<sup>3</sup>

## C. Assistance

### For the host country:

1. Ensure through coordinated systems, procedures, or arrangements that the tourism service provider is in the position to provide, within the limits established by applicable laws, adequate care and appropriate assistance to international tourists in the event of unavoidable and extraordinary circumstances or emergency situations, without undue delay, including but not limited to:
  - i. Providing available information on security and safety, health services, local authorities, and consular assistance;
  - ii. Assisting the international tourist to make distance communications, if required, and helping the international tourist to find alternative arrangements;
  - iii. Providing and bearing the cost of necessary meals and refreshments, transport to the place of accommodation, and accommodation for a number of nights to be established by the host country in case it is impossible to ensure the international tourist's return as contractually agreed, without prejudice to seeking redress according to the applicable regulations; and
  - iv. Assisting the international tourist to contact the consumer agencies and authorities available in the host country and their international networks to help clarify the legal situation and rights of the international tourist;

3 World Tourism Organization (2011), 'Resolution 593(XIX) of 13 October 2011', *Resolutions Adopted By The General Assembly At Its Nineteenth Session*, online available at: <https://www.unwto.org/archive/global/event/general-assembly-nineteenth-session> [16-12-2021].



2. Ensure that the accommodation service providers are appropriately equipped with the necessary information and communication channels, provided in advance, and cooperate with the relevant authorities of the host country in the event of unavoidable and extraordinary circumstances or emergency situations, to facilitate whenever possible:
    - i. Available information concerning the identity, health condition and location of international tourists, in accordance with personal data protection and other applicable laws;
    - ii. Information on how the emergency situation affects the provision of accommodation services by the provider;
    - iii. Available information of how aid might be provided;
    - iv. Available information on the state of health and well-being of the international tourists, as relevant; and
    - v. Available information on how international tourists might be contacted and removed from difficulty, emergency or danger and repatriated;
  3. Ensure that in the event of unavoidable and extraordinary circumstances or emergency situations, the accommodation service provider displays ethical behaviour and does not increase the room rates for the extra nights spent by the international tourist;
  4. Ensure that, in the event of unavoidable and extraordinary circumstances or emergency situations preventing the international tourist from physically reaching the place where the accommodation service is to be provided or preventing the accommodation service provider from fulfilling its contractual obligations, the accommodation service provider does not request cancellation fees;
  5. In emergency situations, provide, so far as possible, rescue services, communication services, temporary shelters for accommodation, necessary meals and refreshments, visa or any other appropriate permission, transportation, basic medicines and emergency health care;
  6. In emergency situations, waive administrative sanctions or penalties on other countries' nationals, without compromising the host country's national security, insofar as they overstay and are unable to leave their territory due to travel restrictions. Overstays during such emergency situations should not be taken into account during the processing of future visa applications; and
  7. In emergency situations, when the life, health or personal integrity of the international tourist is exposed to direct danger, carry out, so far as is reasonably possible, additional necessary operational measures such as coordinated evacuation, provision of emergency and security staff, provision of health and medical services.
- For the tourism service providers:**
8. In the event of unavoidable and extraordinary circumstances or emergency situations, communicate immediately with the host country authorities which should activate a direct and specific communication channel with tourism service providers, their local representatives or local agency, in order to coordinate the assistance to international tourists, as appropriate.



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## D. Repatriation

### For both the host country and the country of origin:

1. Transmit or make available, as soon as practicable and feasible, to the respective diplomatic and consular authorities the following information:
  - i. General circumstances of the emergency situation;
  - ii. Affected geographical areas;
  - iii. Number and nationalities of international tourists in the affected area;
  - iv. Identity and personal data of the international tourist required for assistance purposes;
  - v. Health condition, location of international tourists and general situation;
  - vi. Data of any casualties;
  - vii. Operational measures taken, planned and to be taken; and
  - viii. Other related data as necessary, in accordance with personal data protection and other applicable laws;

2. Cooperate in good faith with third countries in facilitating necessary operational measures, including transit and repatriation of the international tourist to the country of origin.

### For the host country:

3. Take necessary measures to ensure the repatriation of international tourists, in the same way as the citizens of the country, even if included in the tourist contract with the tourism service provider or travel insurance, without prejudice to seeking redress, in accordance with applicable laws;
4. Facilitate the necessary visa requirements or any other appropriate permission, including for compelled stays exceeding the maximum established and cross-border procedures; and
5. In emergency situations, make their best efforts to operationally assist and facilitate the necessary entry, stay and movement in its territory of any official, medical and technical staff, and their equipment sent by the tourist's country of origin on a need basis. Such assistance includes issuing, as rapidly as possible, any prior authorization (including the granting of temporary visas and/or work permits and the facilitation of entry requirements) that may be required in order to provide the necessary assistance to international tourists and subject to the application of the national laws and practices of the country in which it operates.



### For the country of origin:

6. Cooperate in facilitating necessary operational measures including repatriation of the international tourist; and
7. Facilitate onward transit of nationals and their family members from the host country or a third country back to the country of origin, subject to the provision of onward transit proof if necessary, as well as third country nationals holding a residence permit and their dependents who are returning to their State of nationality.

### For third countries:

8. Provide to the host country and the country of origin, as soon as practicable, information on local security and safety measures, local authorities and consular assistance, as well as on the international tourist's identity, health condition and location, in accordance with personal data protection and other applicable laws;
9. Cooperate in good faith in facilitating the necessary operational measures, including onward transit and repatriation of international tourists; and
10. Make best efforts to operationally assist and facilitate the transit and movement within its territory of any official, medical and technical staff, and equipment sent by the international tourist's country of origin.

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# CHAPTER THREE

## Tourists' protection in contracts

# PART I

## MINIMUM STANDARDS ON TOURISTS' PROTECTION

### RECOMMENDATIONS

Insofar as appropriate in relation to the tourism service(s) supplied by the tourism service provider, Member States should take all necessary measures to:

#### A. Pre-contractual information

1. Ensure that the tourism service provider informs the tourist, before entering into a contract by and between them, on the main features of the service to be supplied:

- i. Arrangements for performance, travel destination(s) and, where applicable, itinerary and periods of stay, with dates and the number of nights included;
- ii. Geographical location, main features and, where applicable, category of the service provided in accordance with the rules of the country of destination;
- iii. Means, characteristics and conditions applicable for different fares and categories of transport, the points, dates and, where applicable, time of departure and return, the duration and places of intermediate stops and transport connections;
- iv. Where applicable and where the tourism service provider has been informed of the specific needs of the tourist, information on accessibility,

suitability of the trip, access conditions and other specific conditions for assistance of vulnerable or disadvantaged tourists;

- v. Where applicable, availability of on-board services and baggage allowance;
  - vi. Where applicable, whether a minimum number of tourists are required for the tourism service to take place and the time-limit before the start of the service for the possible termination of the contract if such number is not reached;
  - vii. Where applicable, visits, excursion(s) or other services included in the package travel, including whether any of the tourism services in the package will be provided to the tourist as part of a group and, if so, where possible, the approximate size of the group; and
  - viii. Information on any known or scheduled impairments or any other circumstance which may substantially affect the performance of the service, as well as alternative arrangements offered to cover such circumstances.
2. Ensure that the tourism service provider informs the tourist, before entering into a contract by and between them, on the following additional elements:
- i. Applicable laws and jurisdictions for dispute settlement, insofar as there is a choice of law or jurisdiction, and access to the significant terms and conditions of the contract;

- ii. The identity, place of incorporation, principal place of business of the tourism service provider and, where applicable, the geographical address and the identity of the service provider on whose behalf it is acting;
  - iii. Final price of the services inclusive of taxes and, where applicable, all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance of the conclusion of the contract, an indication of the type of additional costs which the tourist may still have to incur and, where applicable, the right to withdraw from the contract in case those additional costs are substantial or unreasonable;
  - iv. Arrangements for payment, including the currency denomination and the effects of fluctuations in exchange rates, as well as any advance payment to be made at the time of entering into the contract and the schedule and conditions of deposits or other financial guarantees to be paid or provided by the tourist;
  - v. General information on passport and applicable travel requirements at the time of the booking, including health regulations of the country of destination;
  - vi. Where applicable, optional or compulsory insurance to cover the cost of termination by the tourist and any cancellation fees, as well as the cost of assistance, including but not limited to treatment, quarantine and repatriation in the event of accident, illness or emergency situations;
  - vii. Where applicable, name and contact details of the insolvency protection entity;
  - viii. Where applicable, information on the tourist's right to transfer the contract to another tourist and conditions for transferring the contract;
  - ix. The complaint handling policy and the contact details and procedure for addressing any complaints and the availability of voluntary alternative dispute resolution mechanisms; and
  - x. In the case of distance contracts, where applicable, contact details of the competent ADR/ODR body, to which the tourism service provider is subject, the methods for having access to it and an indication of the timeline applicable to the procedure and resolution of the dispute.
3. Further ensure that the tourism service provider informs the tourist, before entering into a contract by and between them, on the additional elements related to emergency situations referred to in paragraph 1, Section A of Part II of this Chapter.
  4. The information referred to in paragraphs 1, 2 and 3 of this Section should be made available to the tourist in a clear, comprehensible, and prominent manner. Where the contract is concluded through a means of distance communication which allows limited space or time to display the information, the tourism service provider should provide the information on that particular means prior to the conclusion of the contract in an appropriate way, such as via hyperlinks or any other tool available in the future.

## B. Contractual information

1. Ensure that tourism service contracts are written in a clear and comprehensible manner. Further ensure that, at the conclusion of the contract or without undue delay thereafter, the tourism service provider makes available to the tourist a copy or confirmation of the contract in writing or on a durable medium, and that the tourist is entitled to request a paper copy if the tourism service contract has been concluded in the simultaneous physical presence of the parties.
2. Ensure that the information referred to in paragraphs 1, 2 and 3 of Section A above and any modifications thereof forms an integral part of the contract and that it is not altered unless the contracting parties expressly agree otherwise. Further ensure that the tourism service provider communicates without undue delay any changes to the pre-contractual information to the tourist in a clear, prominent and comprehensible manner in writing or on a durable medium before the conclusion of the contract.

3. Ensure that if the tourism service provider has not complied with the information requirements on additional fees, charges or other foreseeable costs before the conclusion of the contract, the tourist does not bear those fees, charges or other costs.
4. Ensure that the tourism service contract includes, in addition to elements referred to in paragraph 2 of this Section, the following additional elements:
  - i. Information that the tourism service provider is responsible for the proper performance of all tourism services included in the contract, including the provision of assistance to tourists in emergency situations, in accordance with paragraphs 6, 6bis and 6ter of Section B, Part II of this Chapter;
  - ii. Information that the tourist is required to communicate to the tourism service provider any lack of conformity with the contract which he/she perceives during the performance of the service; and
  - iii. Special requirements which the tourist has communicated to the tourism service provider at the time of the booking and which the tourism service provider has accepted.
5. Ensure that the contract includes, in addition to the elements referred to in paragraph 4 of this Section, the following additional elements:
  - i. Indication of the place(s) of performance of the contract;
  - ii. Identification of the tourist (name, address both physical and postal, telephone number and, where applicable, e-mail address), insofar as necessary for the performance of the contract. Such information should not be retained or disclosed by the tourism service provider after the provision of the services contracted for and be treated in accordance with personal data protection and other applicable laws;
  - iii. Information on the current operating license or permit for the tourism service provider, if relevant;
  - iv. Information on the tourism service provider's insurance coverage, if required under national law or if any;
  - v. Contact details of the tourism service provider and, where applicable, contact details of its local representative or local agencies that enable the tourist to make contact promptly and communicate with him/her, and where such local representatives do not exist, other facilities available to contact the tourism service provider quickly and efficiently;
  - vi. In the case of minors, unaccompanied by a parent or another authorized person, contact details enabling direct contact between the minor and the parent or the person responsible for the minor at the minor's place of stay;
  - vii. In the case of package travel contracts, specific arrangements applying to the package such as conditions for modifying the package travel contract, in accordance with applicable laws; and
  - viii. Other provisions agreed between the parties.
6. The information referred to in Sections A and B should be provided in the language of the contract and, as much as possible, in additional languages, insofar as these may facilitate effective communication with the specifically targeted tourists. Where the tourist has expressly communicated to the tourism service provider a particular communication requirement (e.g., a language requirement or adjustment due to specific needs of vulnerable or disadvantaged tourists), the tourism service provider should provide the information in accordance with that requirement, insofar as it is reasonably practicable to do so.

### C. Termination of the tourism service contract before the start of the service

1. Ensure that the tourist has the right to terminate the tourism service contract at any time before the start of the service. Where applicable and without prejudice to Section B of Part II of this Chapter, the tourist may be required to pay an appropriate, reasonable and justifiable termination fee to the tourism service provider, taking into account the savings incurred by the tourism service provider from the termination, within the limits established by applicable laws. In such a case, ensure that any applicable standardized termination fees are specified in the contract in a clear, prominent and comprehensible manner. In the absence of standardized termination fees, ensure that the principles for the calculation of non-standardized termination fees are set out in the contract in accordance with the applicable law. At the tourist's request, the tourism service provider should provide a justification for the amount of the termination fees.
2. Ensure that, when the tourism service provider intends to terminate the contract on the tourism service before the start of the service in accordance with applicable laws, it notifies the tourist without undue delay and within a reasonable deadline as specified in the contract. If the contract is terminated, the tourist is entitled to a full refund of any payments made for the tourism service contract, including the refund of any compulsory insurance premium by the insurance provider.
3. The full refund does not affect the right of the tourist to be entitled to receive appropriate, reasonable and justifiable compensation from the tourism service provider, within the conditions and limits established by applicable laws, for any damage which the tourist sustains as a result of the termination of the contract.
4. Where applicable, ensure that the tourism service provider is not liable for appropriate compensation if the number of persons enrolled for the service is smaller than the minimum number required and stated in the contract and the tourism service provider notifies the tourist of the termination of the

contract within the period fixed in the contract or within periods laid down by law.

5. Make their best efforts to ensure, so far as possible, that tourism service providers along the value chain respect their contractual obligations vis-à-vis their business partners, in particular with regards to refunds.

### D. Failure of performance or improper performance

1. Ensure that the tourism service provider is liable to the tourist within the limits established by applicable laws for the proper performance of the obligations under the contract.
2. Ensure that, where prior to the start of the performance of the contract the tourism service provider is aware that it will be unable to fulfil part or all of its obligations under the contract, the tourist is notified thereof without undue delay and of possible solutions and the rights he/she is entitled to under applicable laws.
3. Ensure that, if any of the tourism services are not performed in accordance with the contract, the tourism service provider offers to provide the tourist with appropriate remedies for the lack of conformity, including alternative arrangements within the limits established by the applicable law, unless this:
  - i. Is impossible; or
  - ii. Entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the tourism services affected.
4. Where at the time of performing the contract the tourism service provider is not able to provide the services as contracted, ensure that the financial consequences of such failure or improper performance of the contract, in particular on possible compensations, are determined in accordance with the national contract law and the relevant international conventions to which the country is a party applicable in each case.



5. When a lack of conformity affects the performance of the contract, ensure that:

i. If the tourism service provider does not remedy the lack of conformity without undue delay, the tourist may do so himself/herself and request reimbursement of the related expenses provided they were necessary, reasonable and appropriate to the services contracted;

ii. If the tourism service provider has failed to remedy the lack of conformity within a reasonable period, the tourist is entitled to:

a. Terminate the contract without paying any termination fee or any other penalty, where the lack of conformity substantially affects the performance of the contract;

b. An adequate and fair price reduction for the part of services not performed, unless the tourism service provider proves that the lack of conformity is attributable to the tourist; and/or

(1) Compensation for damages, within the limits established by applicable laws, for any period during which there was lack of conformity, unless the tourism service provider proves that the lack of conformity is:

(2) Attributable to the tourist or a third party who has no connection with the provision of the services contracted, and is unforeseeable or unavoidable; or

(3) Due to unavoidable and extraordinary circumstances or emergency situations which could not have been foreseen or forestalled.

6. In case of damages other than personal injury or damage caused intentionally or, where applicable, with negligence arising from the non-performance or improper performance of the services contracted,

countries may allow compensation within the limits established by applicable law and, where applicable, to the relevant international conventions to which the country is a party. In case of contractual limitations, such limitations should not be unreasonable and should be notified to the tourist prior to the conclusion of the contract.

7. Ensure that the tourist may address messages, requests or complaints in relation to any lack of conformity of the contract through appropriate and direct means and that these are handled without undue delay.

## E. Protection in the event of insolvency of the tourism service provider

1. Ensure that the tourism service provider provides sufficient evidence of financial security for the refund of all payments made by or on behalf of tourists insofar as the relevant services are not performed as a consequence of the tourism service provider's insolvency, as may be required by the law of the country in which the tourism service provider is established. The tourism service provider should be deemed insolvent only if it has been legally declared insolvent in accordance with the law of the country in which the tourism service provider is established.

1<sup>bis</sup>. Notwithstanding paragraph 1, and unless paragraph 2 of this Section applies, where the country in which the tourism service provider is established does not have a system of financial security for prepayments and/or repatriations, ensure that the tourist is expressly made aware of this prior to booking.

2. Ensure that tourism service providers not established in a country which sell or offer for sale tourism services in that said country, or which by any means direct such activities to that country, provide any financial security in accordance with the law of that country in which the services are sold or offered for sale.



3. Ensure that, when the performance of the tourism services is affected by the tourism service provider's insolvency, the financial security covers, if necessary and where relevant for the services in question, the costs of repatriation to the point of departure or to another contractually agreed place and the costs of accommodation prior to the repatriation, and, possibly, all other uninsured losses arising from the insolvency of the tourism service provider.
4. Ensure that insolvency protection mechanisms do not differentiate between tourists regardless of their nationality, place of residence, the place of departure or where the contract is concluded and irrespective of the country where the entity in charge of the insolvency protection is located.
2. Ensure that tourists have clear, simple and accessible information about the relevant consumer protection body/authority/regulators, including any independent representative consumer protection association and/or, where applicable, the contact details of the body responsible for the ADR/ODR mechanisms and other services and platforms for the amicable resolution of disputes, if any, in the country where the service provider is established and has its economic activity and/or in the jurisdictions where the contract is to be performed.
3. Ensure that tourists can benefit from the existing regional/international legal framework for the settlement of disputes across borders.

## F. Right of access to justice

1. Ensure that tourists are provided with the right of access to justice. Where applicable, ensure that information is made available to tourists on the conditions under which access to free legal advice and/or legal aid may be granted in the country where the service provider is established and has its economic activity, in accordance with the applicable law or, where applicable, with the relevant international convention to which the country is a party.

## PART II

# CONTRACTUAL ISSUES RELATING TO EMERGENCY SITUATIONS

## RECOMMENDATIONS

Insofar as appropriate in relation to the tourism service(s) supplied by the tourism service provider, Member States, pursuant to the Principles established under Chapter Two, should take all necessary measures to:

### A. Prevention

1. In addition to the elements referred to in Section A of Part I of this Chapter, ensure that the tourism service provider informs the tourist, before entering into a contract by and between them, on the following elements:

- i. Cancellation rights, including withdrawal conditions, penalties, if applicable, and the right to terminate the contract without paying any termination fee in the event of unavoidable and extraordinary circumstances or an emergency situation that renders the delivery of the services impossible or substantially different to those provided for in the contract;
- ii. Alternative options to monetary reimbursement (cash refund) in emergency situations, such as vouchers, rebooking, and rerouting, and applicable conditions (e.g., period of validity, insolvency protection);
- iii. The tourist's right to care and assistance from the tourism service provider in emergency situations, in particular in the event of disruption, delay or

cancellation of the services (e.g., accommodation for a number of nights, information on health services and consular assistance);

- iv. Where applicable, the name and contact details of the competent authorities or bodies designated by the Member State responsible for providing assistance to tourists in emergency situations, in accordance with paragraph 3, Section A, "Prevention" of Chapter Two; and
- v. Where applicable, the possibility to offer to the tourist, after the start of the service, suitable alternative solutions without additional costs to the tourist in case significant and substantial elements of the service cannot be provided as agreed.

In all cases, at the latest, before departure, the tourist is provided with emergency details for a point of contact so that in the event of an emergency the tourist is able to seek timely assistance from the tourism service provider or its local agent, if any.

2. Promote, so far as possible, the use of flexible and alternative options to monetary reimbursement (cash refund) in the event of termination of the tourism service contract by the tourism service provider in emergency situations such as in the form of voucher, rebooking, rescheduling, and rerouting.
3. Urge that, in emergency situations, tourism service providers undertake to always act in accordance with good faith and fair dealing, and to fulfil its obligations

arising from the contract to the extent possible in the extraordinary circumstances without recourse to unfair and unreasonable limitation or exclusion of liability.

## B. Termination of the tourism service contract

This Section applies in addition to Section C of Part I of this Chapter when the tourism service contract is terminated either by the tourism service provider or by the tourist in the event of unavoidable and extraordinary circumstances or emergency situations, that could not have been foreseen or forestalled, occurring at the place of departure, place of destination or its immediate vicinity, and significantly affecting the performance of the contract, before or during the performance of the service.

1. Ensure that the tourist has the right to terminate the tourism service contract at any time before or during the performance of the service without paying any termination fee or any other penalty.
2. Ensure that, when the tourism service contract is terminated either by the tourist or by the tourism service provider before or during the performance of the service, the tourist is provided with a full refund of any payments made for the contract, with the exclusion of the part of services which have already been delivered and are not refundable, without undue delay and within a reasonable deadline, unless he/she expressly accepts an alternative option such as in the form of a voucher, rescheduling, rebooking, and rerouting.
3. Ensure that the tourism service provider may be liable for any damage occasioned by the termination or any lack of conformity in the performance of the tourism service contract, beyond the refund of advance payments, within the limits established by applicable laws, unless it proves that:
  - i. the damage is attributable to the tourist;
  - ii. the damage is attributable to a third party who has no connection with the provision of the tourism service, and is unforeseeable or unavoidable;

- iii. it is prevented from performing the contract in the event of unavoidable and extraordinary circumstances or an emergency situation which could not have been foreseen or forestalled;
- iv. an official supervening or unforeseeable warning of national authorities in the place of departure, place of destination or in its vicinity (emergency situation) was issued;
- v. prohibitions or restrictions were imposed by public authorities;
- vi. there were reasonable grounds preventing the performance of the tourism service (e.g., denied boarding or access refusal to accommodation services) due to general, public, unavoidable and extraordinary circumstances or an emergency situation, as well as reasons of health, safety or security, or inadequate travel documentation, not attributable to the tourism service provider, and that these had been previously communicated to the tourist by the tourism service provider.

### Right to information:

4. Ensure that, at the time the unavoidable and extraordinary circumstances or emergency situations occur, the tourism service provider provides the tourist with a notice in writing or on another durable medium setting out his/her rights and rules for compensation and assistance, and informing the tourist of the ways to contact the service provider or its local representative, in case of need. This information should be provided in the language of the contract and, as much as possible, in additional languages, insofar as these may facilitate effective communication with the specifically targeted tourists. Where the tourist has expressly communicated to the tourism service provider a particular communication requirement (a language requirement or adjustment due to specific needs of vulnerable or disadvantaged tourists), the tourism service provider should provide the information in accordance with that requirement, insofar as it is reasonably practicable to do so.



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### Right to refund or alternative option:

5. Ensure that the tourism service provider offers the tourist a choice between a cash refund, and other flexible and alternative options (voucher, rebooking, rescheduling, and rerouting) under comparable conditions and, in relation to vouchers, fully compliant with paragraph 2 of Section C, below.

### Right to care and assistance:

6. As long as is necessary, and where it is impossible to ensure the tourist's return due to unavoidable and extraordinary circumstances or emergency situation, ensure that the tourism service provider provides, within the limits established by applicable laws, adequate care and appropriate assistance to the tourist in difficulty, without undue delay, having due regard to the principle of proportionality, including but not limited to assisting to make distance communications, providing information on health services, local authorities and consular assistance; helping to find alternative arrangements, and actively providing, within reasonable limits, meals and refreshments; accommodation, if necessary, and transport to the place of accommodation; with special consideration for the specific needs of assistance of vulnerable or disadvantaged tourists.

- 6<sup>bis</sup>. In case of more than one tourism service provider being responsible for the performance of the tourism service contract, ensure that the tourism service provider who is in the best position to assist the tourist in the emergency situation is responsible for

providing adequate care and appropriate assistance, pursuant to Section C, "Assistance", Part II of Chapter Two, and in accordance with applicable laws. In such cases, although the tourism service provider may not be ultimately responsible for the contract, ensure that the person acting in that capacity makes its best efforts to assist the tourist without undue delay.

- 6<sup>ter</sup>. In case of more than one tourism service provider being responsible for the performance of the tourism service contract, ensure that the tourism service provider who has provided adequate care and appropriate assistance to the tourist in an emergency situation has the right to seek redress from the other tourism service providers or third parties responsible for the performance of the tourism service contract in accordance with applicable laws. If the tourism service provider does not provide adequate care and appropriate assistance without undue delay, the tourist may do so herself/himself and request reimbursement of the expenses incurred provided they were necessary, reasonable, and appropriate to the services contracted.
7. Ensure that any fee charged by the tourism service provider for such care and assistance, if the difficulty is caused intentionally by the tourist or through the tourist's negligence, is reasonable and does not in any event exceed the actual costs incurred by the tourism service provider.



### C. Vouchers

This Section concerns vouchers that the tourism service provider may offer to the tourists as an alternative to monetary reimbursement (cash refund) in the event of termination of the contract either by the tourism service provider or by the tourist in the event of unavoidable and extraordinary circumstances or an emergency situation occurring at the place of departure, place of destination or its immediate vicinity, which significantly affect the performance of the contract, before or during the performance of the service.

**1.** Provide the option for the use of vouchers to the tourist as an alternative to monetary reimbursement (cash refund). Vouchers should be subject to voluntary acceptance by the tourist and should have the following minimum characteristics:

- i.** Refundable:
  - a.** Have a minimum validity period of 12 months from the date of departure and be automatically refunded upon expiration without additional cost.
  - b.** Be redeemable at any time from the date of its issuance.

**ii.** Flexible:

- a.** Where applicable, be usable on all entities that form part of the same group of companies.
- b.** Be usable for all new bookings made before its expiration.
- c.** Be usable for the same service or route and/or any services or routes operated by the company.
- d.** Be transferable to another person who satisfies all the conditions applicable to that contract provided that no additional cost is borne by the tourist or tourism service provider.

**iii.** Covered by protection against insolvency:

Be guaranteed against the insolvency of the tourism service provider, either by the public or by the private sector.

**2.** Vouchers should be made available within a reasonable period of time not later than the deadline agreed by the parties to the contract following its acceptance by the tourist or the termination of the tourism contract. They should be provided in writing or on another durable medium. They should clearly indicate their validity period and specify in detail all the terms attached to them, including the right to a full refund upon expiration.



**3.** Vouchers should be made available through all channels, direct and indirect distribution. If the tourist has booked the tourism service through an intermediary, the tourism service provider should immediately inform the intermediary that the tourist opts for a voucher.

**3.bis.** When the tourist addresses his/her choice to the tourism service provider through to the intermediary, the intermediary should immediately inform the tourism service provider. For the purposes of compliance with time-limits or limitation periods, the receipt of the information referred to in this subparagraph by the intermediary should be considered as receipt by the tourism service provider. In no event should the general terms and conditions of the intermediary or the indirect distribution channel prevail over the terms and conditions of the tourism service contract.

#### **D. Government financial support to tourist service providers**

- 1.** Promote the introduction of financial schemes to provide support at the national (or international) level to tourism service providers in financial difficulty during emergency situations.
- 2.** Take the necessary measures to ensure that the tourist is refunded in case of insolvency of the tourism service provider or in case of an emergency situation which prevents travelling for a duration longer than the validity of vouchers.
- 3.** Make their best efforts to provide, so far as possible, liquidity support to tourism service providers in financial difficulty and/or at risk of insolvency.
- 4.** Make their best efforts to identify and fulfil other financial, technical, and capacity needs of tourism service providers to better fulfil their obligations under Section B above.

## PART III

# PRINCIPLES ON TOURISTS' PROTECTION IN DIGITAL TOURISM SERVICES

## INTRODUCTION

Recognizing the important role of digital platforms and online services in the tourism industry, as well as the risks stemming from the use of digital tourism services by tourists, Part III comprises a set of Principles calling for a fairer, safer, reliable, easily accessible, transparent and accountable online tourism environment which respects and protects the human rights, tourism ethics, fundamental freedoms and consumer rights of tourists and guarantees independent recourse to judicial redress.

They are intended for digital tourism services in general, and for online tourism platforms in particular, (regardless of where they are established and irrespective of whether private or public) operating in relation to tourism services in the digital market.

Their purpose is to help Member States deal with the new challenges posed by the dynamic growth of digital tourism services and foster the development of a fair, safe, accessible and transparent online tourism environment without discrimination of any kind, whilst promoting effective actions to tackle illegal content online, including goods, services, information, or activities.

## PRINCIPLES

### 1. Safe online tourism environment:

The need to foster the development of a fair, safe, verifiable, easily accessible, transparent, impartial and non-discriminatory online tourism environment which respects the human rights, fundamental freedoms, tourism ethics and consumer rights of tourists and protects them against abuse when accessing and using online tourism platforms and other digital tourism services, whilst ensuring accountability for operators and digital tourism service providers and promoting effective actions to tackle illegal content online.

### 2. Equality and non-discrimination:

The need to ensure that online tourism platforms and other digital tourism services are easy-to-access, user-friendly and allow tourists to participate on an equal basis and without discrimination, having due consideration of the specific needs of vulnerable tourists who may be disadvantaged in accessing those platforms or services and may meet particular difficulties in their use.





### 3. Transparency and fairness:

The need to ensure that online tourism platforms and other digital tourism services display in a clear, transparent, prominent and comprehensible manner all necessary information for a safe, verifiable and responsible use of digital tourism services (e.g., applicable fees and final costs of the goods or services, complaint handling policies) and that terms and conditions of such platforms or services are not unfair, misleading or abusive towards the tourist. Upon request, the tourist should be able to verify the accuracy of the information displayed through fixed or mobile applications. Where online tourism platforms and other digital tourism services display advertising, the tourist should be able to identify in a clear and unambiguous manner that the information displayed is an advertisement and the natural or legal person on whose behalf the advertisement is displayed.

### 4. Protection from abuse:

The need to ensure protection of tourists against unfair practices and abuse, having due consideration of the specific needs of vulnerable or disadvantaged tourists who may be more exposed. Member States should take all necessary measures to prevent and counter illegal content in online tourism platforms and other digital tourism services, including but not limited to mechanisms that allow the traceability of business users or recipients of the service and enable the tourist to notify the operator or the digital tourism service provider of the presence of specific content that he or she considers to be illegal.

### 5. Liability:

The need to ensure that the operators and digital tourism service providers are not liable for the information stored on the online tourism platform and on other digital tourism services at the request of the business user or recipient of the service provided that it does not have actual knowledge of illegal content or, upon obtaining such knowledge, acts expeditiously to remove or disable access to such illegal content. This exemption should not apply when the online tourism platform and the other digital tourism services have taken an active role in editing, presenting or validating the content prior to its publication or presents the information in a way that leads the tourist to believe that such information is provided by the platform or services themselves, as well as when the information is published without consent of the business user or the recipient of the service.

### 6. Risk prevention and management:

The need to develop and strengthen cybersecurity systems and risk management strategies at the national, regional and international levels, and ensure that online tourism platforms and other digital tourism services, as well as operators and digital tourism service providers, conduct periodic risk assessment and put in place reasonable, proportionate and effective mitigation measures tailored to the specific systemic risks identified in order to prevent the storage and dissemination of illegal content through their platforms or services.



## 7. Data protection:

The need to prohibit any fraudulent, false, misleading or inappropriate data storage or dissemination and guarantee the lawful, fair and transparent processing and protection of the personal data and privacy of tourists, in accordance with applicable data protection laws. The terms and conditions of online tourism platforms and other digital tourism services should include the rights of the data subject and set out in a clear, prominent and comprehensible manner how, on which basis, and by whom personal data of tourists are processed.

## 8. Coordination and cooperation:

The need to designate one or more competent national authorities responsible for all matters related to digital tourism markets and services and ensure cooperation and coordination among the public and private sectors at the national and international levels to facilitate direct communication between digital tourism service providers, competent national authorities and tourists, including through rapid response services such as hotlines.

## 9. Dispute resolution and redress:

The need to guarantee that tourists have the right to seek the necessary protection of their rights and interests through relevant legal systems, including judicial redress or the available out-of-court and free-of-charge dispute resolution mechanisms. Tourists should be informed about relevant consumer protection agencies and should be free to access mechanisms for the protection of consumers' rights acting collectively that provide for the collective resolution of disputes arising from the use of online tourism platforms and other digital tourism services.



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## CHAPTER FOUR

# International settlement of travel and tourism disputes via alternative means of dispute resolution



## INTRODUCTION

Noting the absence of an international framework of judicial cooperation for the settlement of travel and tourism disputes and the existing disparities regarding access to justice from country to country, alternative (“ADR”) and online (“ODR”) dispute resolution mechanisms represent a significant opportunity for international tourists to resolve disputes in a fair, efficient and expeditious manner, and where appropriate, obtain redress, without unnecessary costs, delays and undue burden.

Recalling the *United Nations Guidelines for Consumer Protection* (UNGCP),<sup>4</sup> in particular, Guidelines 37 to 41 on “Dispute Resolution and Redress” and 78 on “Tourism”, the availability of such ADR/ODR mechanisms, particularly those of self and amicable resolution, can increase international tourists’ confidence, prevent timely and costly international disputes, and mitigate the increase in legal claims resulting from the crisis of the tourism sector in the post COVID-19 era.

The purpose of this Chapter is to foster the development and application of such ADR/ODR mechanisms (e.g., conciliation, mediation, ombudsman), as well as other services or platforms, for the amicable resolution of disputes through formal and informal procedures that are expeditious, impartial, fair, transparent, inexpensive and accessible, and enable them to seek redress without

the need of physical presence of the parties and without discrimination of nationality or domicile. Priority should be given to direct negotiations between tourists and tourism service providers and amicable resolution of conflicts.

It comprises a set of principles and recommendations intended for ADR/ODR mechanisms and other services and platforms for the amicable resolution of disputes, that may help Member States in dealing with international disputes arising from tourism activities between tourists acting as consumers and tourism service providers. These recommendations do not apply to business-to-business disputes or International Commercial Contracts. Section A encompasses the principles that underpin ADR/ODR procedures.

Section B comprises a set of recommendations for ADR/ODR and amicable mechanisms addressed to countries with a view to guiding them in dealing with consumers’ cases involving international tourists and assisting the parties to such procedures, having due consideration of the existing language barriers and the specific needs of disadvantaged or vulnerable tourists who may meet particular difficulties in accessing such mechanisms.

Section C deals specifically with emergency situations, bearing in mind the vulnerability of tourists in those circumstances and the massive increase of litigation resulting from emergency situations.

<sup>4</sup> United Nations (2016), *Resolution adopted by the General Assembly on 22 December 2015, 70/186, Consumer Protection*, online available at: [www.un.org](http://www.un.org) [16-12-2021].

## A. Principles

### 1. Impartiality:

The need to ensure that the natural or legal person acting as a facilitator, ombudsman, conciliator, mediator or other responsible for the ADR/ODR procedure (e.g., rules, preliminary requirements, costs, average length, contact information), whether an individual or a collegiate body, possesses the necessary expertise, is independent and has no perceived or actual conflict of interest with either party, in order to guarantee the impartiality of its actions.

### 2. Transparency:

The need to ensure that international tourists are provided, in a clear and comprehensible manner, with all relevant and publicly available information about the procedure and are informed about the legal nature of the decision, notably the applicable law, and whether such a decision is binding and enforceable. Any agreed solution or decision taken to resolve the dispute by the parties should be recorded in writing or on another durable medium, and state in a clear and comprehensive manner the terms and grounds on which it is based.

### 3. Effectiveness:

The need to ensure that the procedure is easily accessible and available to both parties (e.g., by electronic means or through the use of multilingual standard forms) irrespective of where they are situated and without need for legal representation, having due consideration of language barriers and the specific needs of vulnerable or disadvantaged tourists. The dispute should be dealt with in the shortest possible time, in an appropriate timeframe, provide fair results and should not impose on the parties costs, delays and burdens that are disproportionate to the nature and amount in dispute and significantly impair the consumer's access to complaint handling. So far as possible, the procedure should be free of charges for international tourists.

### 4. Fairness and consent:

The need to ensure that international tourists have the rights to be heard and are informed in a clear and comprehensive manner of their rights prior to agreeing to a suggested solution and that, when the dispute is referred to a competent decision-making entity, the final decision taken is binding on the parties and enforceable only if they were informed in advance and explicitly accepted this. This decision may not result in the tourist being deprived of the protection afforded by applicable laws, particularly consumer laws.

### 5. Access to redress:

The need to ensure that mechanisms of self or amicable resolution of travel and tourism disputes are without prejudice to the right of international tourists to refer such disputes to another dispute resolution mechanism or to seek an effective remedy to their consumer issues through the relevant legal system, in particular, relevant judicial or administrative mechanisms. International tourists should be free to access voluntarily dispute resolution and redress mechanisms, as well as judicial or administrative redress mechanisms, for consumers acting collectively, and to benefit from the positive resolution of such procedures.

## B. Recommendations

Member States, pursuant to the Principles established in Section A, should take all necessary measures to:

### 1. *Make available effective dispute resolution and redress:*

Foster and promote the ability of international tourists to submit, on a voluntary basis and after the damage occurs, complaints against tourism service providers through entities offering fair, impartial, transparent, effective, and accessible ADR/ODR procedures as well as fast and inexpensive methods of redress and amicable resolution. Encourage tourism service providers to establish voluntary mechanisms,

including advisory services and informal complaints procedures, to provide assistance and information to international tourists in order to resolve travel and tourism disputes in a fair, inexpensive, accessible, and informal manner.

**2. Guarantee the option to voluntary participate in ADR/ODR proceedings:**

Ensure that international tourists have the option to voluntarily participate in public or private ADR/ODR schemes, advisory or direct negotiation services, as far as possible, and to withdraw from such procedures at any stage. Such ADR/ODR mechanisms and processes should be based on the explicit, specific and informed consent of the parties.

**3. Foster the development of fair, transparent and expeditious solutions:**

Ensure that international tourists are provided with options for the fair, amicable, transparent, and expeditious resolution of travel and tourism disputes and that such solutions are accessible and easy-to-use (e.g., by electronic means or through the use of multilingual standard forms). So far as possible, ADR/ODR schemes, private or public, should do not impose costs, delays, or undue burden that are disproportionate to the nature and amount in dispute and significantly impair the consumer's access to complaint handling.

**4. Provide specific information to international tourists as consumers:**

Ensure that international tourists receive adequate information in a timely manner about the availability of such advisory or direct negotiation services, self and amicable resolution schemes, ADR/ODR mechanisms, and judicial and administrative mechanisms, as well as all necessary information needed to make an informed choice about the kind of redress and dispute resolution system to use.

**5. Foster and promote the protection of human rights, fundamental freedoms and consumer rights:**

Promote fair and effective mechanisms to address international tourists' complaints which protect the human rights and fundamental freedoms of international tourists on an equal manner, without distinctions of any kind. Ensure that consumer rights granted to international tourists are considered and respected in the dispute resolution processes employed.

**6. Ensure the equality and non-discrimination of international tourists:**

Ensure that international tourists have equal access to ADR/ODR schemes, advisory or direct negotiation services, having due consideration of the existing language barriers and the specific needs of vulnerable or disadvantaged tourists, without discrimination of domicile or nationality and/or distinctions of any kind. The protection afforded to international tourists should be equivalent to that afforded in national cases and should not impose, so far as possible, the physical presence of the parties at the hearings and in the proceedings.

**7. Promote consensual solutions:**

Ensure that States, the parties and in particular the public or private ADR/ODR entities responsible for addressing complaints and claims from international tourists, always give priority to direct negotiation, platforms and services for amicable resolution of travel and tourism disputes.

**8. Promote the development of special standards for international travel and tourism disputes:**

Promote consumer policies that are adequate to address the challenges raised by international tourism and emergency situations affecting international tourists. The use of ADR/ODR mechanisms shall not result in the tourist being deprived of the protection afforded by applicable laws.



### 9. *Ensure compliance with international standards:*

Take all necessary measures to ensure compliance with the standards of the United Nations Guidelines on Consumer Protection, in particular with respect to restoring tourists' confidence as consumers and helping international tourists to achieve consensual and amicable resolution of travel and tourism disputes.

### 10. *Foster international cooperation and coordination:*

Foster international enforcement, cooperation, and information sharing among Member States through the development of extrajudicial enforcement networks and the designation of one or more competent national authorities responsible for the cooperation between the public and private sector and the coordination among enforcement agencies to prevent harmful practices and drive improvements which help international tourists in travel and tourism disputes.

### C. Recommendations related to emergency situations

Member States, pursuant to the Principles and Recommendations established in Chapter Two and, respectively, in Section A and Section B of this Chapter, should take all necessary measures to:

1. Foster the development and application of ADR/ODR mechanisms for the settlement of international travel and tourism disputes related to emergency situations through the promotion of consent-based resolution schemes to receive complaints. Ensure that such ADR/ODR mechanisms can settle disputes individually or collectively (when related to the same circumstances) in order to prevent or settle conflicts arising from tourism consumer complaints.
2. Ensure that information and communication materials regarding existing ADR/ODR mechanisms are developed and provided to international tourists during emergency situations through tourism service providers at the main transport and hospitality infrastructures and/or through competent national authorities. Such information and communication materials should be made available through brochures, apps, or any other accessible physical or electronic medium, in as many languages as possible.
3. Ensure that information regarding legal aid or assistance during an emergency situation is also made available, especially through competent national authorities, to enable international tourists to receive efficient and expeditious access to such assistance.





4. Facilitate mechanisms that allow international tourists to access available ADR/ODR procedures and initiate efforts towards the resolution of a travel and tourism dispute before the responsible entity in the host country during the emergency situation, and to participate online or otherwise from a distance in the procedure from their country of origin or from any other country of their choice.
5. Facilitate mechanisms that allow international tourists to access amicable redress and ADR/ODR schemes through services or platforms available in the host country or in the country of origin of the tourist during emergency situations, or by any channels of international cooperation between authorities and/or the responsible entities of both countries.
6. Designate one or more competent national authorities responsible for the promotion and support of international cooperation and coordination between administrative authorities to ensure simple, efficient and expeditious access to ADR/ODR mechanisms during emergency situations and to amicable redress mechanisms.

## CHAPTER FIVE

# Mechanisms for adherence to and the application of the recommendations of the *International Code for the Protection of Tourists*

## A. Voluntary adherence to the Code

1. Member States of the World Tourism Organization and Member States of the United Nations are encouraged to adhere to this Code fully or partially and apply its principles and recommendations on a voluntary basis.
2. States willing to adhere to the Code fully or partially will inform the Secretary-General of the UNWTO. There are no specific requirements as to the form of the notification. The notification of adherence will nevertheless meet the following minimum requirements:
  - i. Be a notification in writing, whether in paper or electronic form;
  - ii. Proceed from a person with the authority to engage the State; and
  - iii. Clearly convey the Government's intention to adhere to the Code fully or partially and to submit its principles and recommendations to its competent authorities for consideration within a period of one year from the notification of adherence.
3. By adhering to the Code fully or partially, States will undertake to:
  - i. Submit the Code, within the period of one year after the notification of adherence, to the attention of the relevant authorities within whose competence its matters lie for the application of its recommendations and principles or other appropriate action;
  - ii. Make their best efforts to integrate its principles and recommendations into their relevant policies, legislation and regulations, and use the Code as a point of reference for enhancing, improving or supplementing their national laws and regulations, to the extent that this is considered appropriate with regard to specific tourism services;
  - iii. Designate one or more national authorities responsible for ensuring coordination at national level in respect of the matters dealt with in the Code and for contributing to the effective application of its recommendations;
  - iv. Assess the costs and benefits of the application of the recommendations of the Code in order to ensure that it supports and does not hinder the sustainable development of tourism or the provision of tourism services; and
  - v. Consult with relevant tourism stakeholders who have obligations, responsibilities, duties and rights regarding the matters dealt with in the Code to ensure that the application of its recommendations does not impose disproportionate burdens in relation to specific tourism services or lead to unfair and distortive practices in the tourism sector.
4. All tourism stakeholders are encouraged to uphold and promote the principles of the Code. In particular, tourism service providers are encouraged to commit to the Code and to apply its relevant recommendations, so far as possible, by integrating them or make specific reference to them in their contractual instruments signed with tourists.

## B. Relationship with national law and international agreements

1. The Code is a non-legally binding instrument intended to provide guidance to Governments as to proposed policy, legislation and regulatory practice at the national level. Additionally, the Code may provide practical guidance for all those, in the public and private sector, who have obligations, responsibilities, duties and rights regarding the matters dealt with in the Code.
2. Adherence to the Code will not create legally binding obligations for States. Its recommendations may be applied by States on a voluntary basis fully or partially and in accordance with applicable national laws and regulations, as well as supranational laws and international agreements in force to which they are parties.

3. The recommendations of the Code are not intended to replace applicable national laws, regulations, supranational laws or international agreements in force to which States are parties. In case of inconsistency between the recommendations contained in the Code and applicable national laws, regulations, supranational laws or international agreements in force to which they are parties, the latter shall prevail. In no case, may the application of the recommendations of the Code be deemed to affect any national law, regulations, supranational law or international agreements in force for States which ensures more favourable conditions than those provided for in the Code.
4. In the absence of national laws, regulations, supranational laws or international agreements on a particular matter dealt with in the Code, or where these are not up to date, guidance may be drawn from this Code, as well as from relevant nationally and internationally recognized instruments.
5. The modalities for the application of the recommendations of the Code by those States that voluntarily adhered to it will depend on the position and capabilities of each country and may take into account the particular qualities, size, financial resources and characteristics of different types of tourism service providers, including as between organizers and providers of single or standalone tourism services, in order to modulate the required actions according to their effective organizational capacities and avoid the imposition of undue burdens that are disproportionate in relation to specific tourism services.

### C. Monitoring and reporting

1. States adhering to the Code fully or partially undertake to report to the Secretary General of UNWTO, one year after the notification of adherence, on the status of application of the Code. Such Report will include the status of integration of the recommendations of the Code in the national law and regulatory practice in their country in regard to the matters dealt with in the Code, showing the extent to which effect has been given or is proposed to be given, to the recommendations of the Code, or parts thereof, and such modifications of these recommendations, or parts thereof, as it has been found or may be found necessary to make.
2. Subsequently, States adhering to the Code will be requested, in an appropriate timeframe, to report on the measures they have taken to give effect to specific chapters or sections of the Code, or on any other alternative approaches they have taken, as requested by the Secretariat.
3. States may request the assistance and advice of the World Tourism Organization. Technical assistance available from the UNWTO will comprise various kinds of services designed to provide guidance to States and tourism service providers with respect to the recommendations of the Code. The Secretary-General of the UNWTO will determine the contribution to be paid by States to cover the necessary expenses for the provision of technical assistance by UNWTO, subject to the Rules and Regulations of the Organization for the management of projects through voluntary contributions and after consultation with the country requesting the technical assistance.
4. The Secretary-General of the UNWTO will report to the General Assembly on the adherence and application of the Code.
5. The reporting mechanisms foreseen in this Chapter are aimed at gathering and compiling relevant information on the practice and experience of countries in implementing the recommendations of the Code and its effectiveness and to develop and share knowledge, best practices and lessons learnt.

## D. Evaluation and interpretation

1. A technical Committee subsidiary to the Executive Council will be established to assist the Secretary-General to promote and monitor the application of the Code. Only countries having adhered to the Code may be eligible to participate in said Committee as a Full Member.
2. The technical Committee will be assisted by the Secretariat and by a consultative Group of Experts selected by the Secretary-General of the UNWTO in consultation with the country of nationality of the Expert, giving due consideration to geographical and gender balance distribution. Relevant stakeholders, including Member States of UNWTO, non-member countries, Affiliate Members, private sector and international organizations, both governmental and non-governmental, may also participate in said Committee in an Observer capacity.
3. The technical Committee will meet in ordinary session every year. It will adopt, in an appropriate timeframe, the General Report on the adherence and application the Code that will be transmitted by the Secretary-General of the UNWTO to the General Assembly.
4. The technical Committee will perform, *inter alia*, the following functions:
  - i. Considering and recommending potential amendments to the Code as a non-legally binding document for approval by the General Assembly;
  - ii. Adopting good practices and recommendations for the application of the Code and taking any measures it may consider necessary to further the objectives of the Code; and
  - iii. Considering difficulties and issues arising from the application and interpretation of the Code, in consultation with the consultative Group of Experts.

## E. Public communication

1. By adhering to the Code fully or partially, States are urged to promote and make the Code known as widely as possible, in particular by disseminating it among all tourism stakeholders.
2. The Secretary-General of the UNWTO will propose the modalities by which States that adhered to the Code and tourism service providers may publicize and promote their adherence and commitment to the Code pursuant to paragraph 1 of this Section. To this end, the Secretariat will provide support in particular by facilitating the collection and dissemination of information relative to the application of the Code and to the efforts made by each State to promote and apply its recommendations, and the problems encountered in doing so.



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## Recommended reading:

White Paper: Safety and Security in the Tourism Sector:  
**World Tourism Organization, Agence de développement de l'Union africaine (AUDA-NEPAD) and Union économique et monétaire ouest africaine (UEMOA)** (2021), *Livre blanc : Sécurité et sûreté dans le secteur du tourisme*.

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