This course presents the law relevant to tourism emanating from the European Union. We examine the competence of the European Union in the field of tourism policy and the role of the European Union in defining national tourism law.

More specifically, the following areas are covered in the course:

- An introduction to law
- Part 1: An introduction to EU law and law-making
- Part 2: EU specific competence on tourism
- Part 3: Tourism and EU consumer law policy:
  - Specific Tourism Legislation
    - The Package Travel Directive
    - Air, ship and train and coach travel
    - Time-share regulations
  - Other Consumer Protection measures non-specific to tourism
    - Consumer sales directive
    - E-commerce directive
    - Unfair contract terms directive
    - Consumer rights directive
- Part 4: Freedom of Movement and Tourism
  - Freedom of movement of tourist
    - EU citizens
    - Non EU citizens
  - Providing Tourism Services
    - Freedom of movement of workers
    - Freedom of establishment
    - Freedom of movement of services

Assessment for non-attending students

Non-attending students will be assessed by a two hour written exam. This exam may be comprised of a case study, commentary on a European Court of Justice judgment, or dissertation, or any two of these three.

Preparing for the exam

Students will need to understand the European Union’s role in creating tourism law, and to demonstrate specific knowledge of some of the principal European directives and regulations in this area.

1. The European Union’s role in creating tourism law.
It is important to understand the roles of the EU Member States and of the EU institutions in defining EU tourism competence. This involves understanding the different types of EU law concerned: treaties, regulations, directives; the roles of the Member States and the EU institutions in adopting these different types of legal instrument and, most importantly, the effect of these different instruments on national law. Treaties and regulations are directly applicable in national law, which means that individual citizens can rely on rights created by these laws in their national courts, whereas directives have to be transposed in national law by national legislation. Therefore, with respect to directives, individuals will most often rely on the national transposing legislation rather than on the directive itself. It is also vital to understand the role played by the European Court of Justice in developing European law. This role is principally through interpreting the meaning of European Union legislation. These interpretations then become binding on national courts.

For a presentation of the working of the European union, see the EU official website:

www.Europa.eu

You can download a useful guide on how the EU works from the EU bookshop. The guide is free:


Also, the European Union in twelve lessons:


2. The specific EU competence on tourism

The specific EU competence on tourism is set out in article 195 of the Treaty on the Functioning of the European Union. You need to study the content of this article to understand the limited powers attributed to the European Union here. Tourism is principally seen as a competence for the Member States and not as an EU competence. However, the EU has powers to assist cooperation between Member States, principally by making funds available to finance joint projects.

For European tourism policy, with an overview of the policy issues raised, examples of specific tourism actions and policy reports and consultations, see, on the European Commission website:

europa.eu/growth/sectors/tourism/policy-overview_en

3. Consumer protection and tourism

Even though the EU’s specific competence on tourism is relatively limited, the EU has significant influence on tourism law through its role in promoting consumer protection.
Whereas for specific tourism policy the EU can only produce “soft law” (guidelines, recommendations, action plans), in the area of consumer protection the European Union produces “hard law”: regulations and directives which give consumers rights which they can enforce, whether directly (regulations) or indirectly (directives) in the national courts. The European Union has competence to legislate in this area under its single market competence (arts 26 and 114 Treaty on the Functioning of the European Union), its consumer protection competence (article 169 TFEU) and its travel competence (arts 90-91 TFEU). The European Court of Justice has also played a very important role in defining European law in this area, through its role in interpreting European Union legislation.

(a) **The Package Travel Directive.** The 1990 directive was recently replaced by the 2015 Package Travel Directive in order to bring the law up to date to reflect changes in the way that holidays are booked following the development of on-line booking. The directive must now be transposed by national legislation in each Member State.

For the directive, see:


You should read the directive carefully and study the background information produced by the Commission together with the factsheet which provides a summary of the main terms.

For another useful summary and brief analysis of some of the new features of the new directive, see the following video from the Association of British Travel Agents (ABTA):

https://abta.com/working-with-the-industry/industry-issues/package-travel-directive

Also pay attention to the decisions of the European Court of Justice in this area mentioned in the course outline and the extracts contained in the course documents.

(b) **Air, ship, train and coach travel**

The European Union has adopted separate regulations on air, ship, train and coach travel. Since these rules are contained in regulations, they are directly applicable which means that they do not have to be transposed by national parliaments. They can be relied on directly by citizens in the national courts.

You can find the principal terms of the different regulations in the course outline. The course concentrates on the 2004 regulations on air travel.

And the link from that page to the text of the regulations. These cover passenger rights in the event of denied boarding, cancellation and delay.

It is also important to be aware of the European Court of Justice decisions on the interpretation of the regulations, in particular the Easyjet and Ryanair rulings which you can find in the course documents.

You will also need to be aware of the Montreal Convention for *The Unification Of Certain Rules For International Carriage By Air* 1999. This provides protection for passengers where they are injured during a flight or where their luggage is lost or damaged. This convention is incorporated into EU law by regulation 889/2002.

(c) Timeshares

See the definition and the rules relating to timeshares contained in the course outline.

(d) Other Consumer Protection measures

For a general overview, see the EU booklet on consumer protection:


We briefly consider the:

- The Unfair Terms in Consumer Contracts Directive 1993
- The Consumer Sales Directive 1999
- The E-Commerce Directive 2000
- Consumer Rights Directive 2011

We also look at the ways of enforcing consumer rights. For this, see the course outline and the EU booklet on consumer protection.

4. Freedom of movement of tourists and of tourism services

This is the final major topic covered in the course. We briefly consider the freedom of movement of tourists, which includes looking at citizenship rights to residence and rules on border controls, in particular the Schengen convention.

However, we concentrate more on the free movement provisions of the Treaty on the Functioning of the European Union as applicable to the movement of tourism services. This involves examining the application of articles 45 (free movement of workers), article 49 (freedom of establishment: businesses), and free movement of service providers (article 56 and 2006 directive). We consider how these provisions specifically apply to tourism services. You should also be careful to read the Commission v Italy case in the course documents.
Answering exam questions

The following document is an example of a previous exam paper, together with brief guidance on how to answer the questions. Don't forget that there could also be a question in the form of a dissertation in the exam.

**European Tourism Law October 2016**

**Answer questions 1 (15 marks) and 2 (15 marks)**

**No Documents allowed**

**Time allowed: 2 hours**

1) John, who lives in the UK, books his holiday through a website run by Travelco, a company registered in Ireland. John is interested in two weeks holiday in a hotel proposing organized activities. Travelco proposes five alternative hotels, and a separate list of five activities. Clients make their own choices from the list of hotels and activities by clicking on the appropriate boxes. John opts for a hotel in Tunisia at a cost of 200 euros per night with tennis classes for 3 hours every afternoon with a professional coach. The cost of tennis lessons is additional to the cost of the hotel. He places his selection in a "basket" and pays for them together. He then follows a link from the site to the British airways website. There he books a scheduled BA flight and pays directly on the BA site.

Once on holiday, John gets severe food poisoning in the hotel, which results in him having to receive hospital treatment for two days at a cost of 1,000 euros, not covered by his travel insurance.

At the end of the holiday, a strike by baggage handlers at UK airports means that John's flight home is cancelled. As a result he is obliged to find new hotel accommodation for an addition four nights stay. The only hotel he can find is a five star luxury hotel at a cost of 300 euros per night. He also incurs additional costs for restaurants and taxi transfers to and from the airport.

He is finally flown home on a BA replacement flight four days later. During the flight, he bangs his knee against a seat during turbulence, which damages ligaments and necessitates physiotherapy on his return home to the UK. One of his suitcases is dropped by one of the baggage handlers at the airport, resulting in his expensive camera being broken.

Advise John on any rights he may have under European / international law, or under national law deriving from European Union law.

2) Read the extract from the European Court of Justice ruling in *Air France v Heinz-Gerke Folkerts* (2013) and answer the following questions:

(a) Explain the nature and purpose of the legal procedure used in the application to the European Court of Justice in this case. (3)

(b) What was the legal question considered by the court in this case? (3)

(c) Explain the reasoning of the court. (5)

(d) Explain the practical significance of the ruling for airline passengers. (4)

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**Air France SA v Heinz-Gerke Folkerts**, 26 February 2013

This request for a preliminary ruling concerns the interpretation of Articles 6 and 7 of Regulation (EC) No 261/2004 of the European Parliament and of the
Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

The request has been made in proceedings between, on the one hand, the company Air France SA (‘Air France’) and, on the other, Mr and Mrs Folkerts, concerning compensation for damage that Mrs Folkerts claims to have suffered as a result of her delayed arrival at her final destination, having held a reservation to fly from Bremen (Germany) to Asunción (Paraguay) via Paris (France) and São Paolo (Brazil).

In accordance with the original planning, Mrs Folkerts’ flight was scheduled to depart from Bremen on 16 May 2006 at 6.30 am and arrive in Asunción, her final destination, the same day at 11.30 pm. The departure of the flight from Bremen to Paris, operated by the company Air France, was delayed and the aircraft took off only shortly before 9.00 am, that is a delay of approximately two and a half hours beyond the scheduled departure time. Mrs Folkerts, who already had her boarding cards for the entire journey on departure from Bremen, did not reach Paris until after Air France’s aircraft scheduled for the connecting flight to São Paulo had already departed. Mrs Folkerts was re-booked by Air France on to a later flight to São Paulo. Because of her late arrival in São Paulo, Mrs Folkerts missed the connecting flight to Asunción originally scheduled. She therefore did not arrive in Asunción until 17 May 2006 at 10.30 am, that is 11 hours after the arrival time originally scheduled.

At first instance and then on appeal, Air France was ordered to pay Mrs Folkerts damages, including, in particular, a sum of EUR 600 under Article 7(1)(c) of Regulation No 261/2004. Air France then brought an appeal on a point of law before the Bundesgerichtshof (German Federal Court of Justice).

The Bundesgerichtshof takes the view that it is not clear from the grounds of the judgment in Sturgeon and Others whether, for the purpose of entitlement to compensation under Article 7(1) of Regulation No 261/2004, the length of the delay in reaching the final destination alone is determinant or whether entitlement to compensation for such a delay additionally requires … that the departure of the flight in question was already delayed beyond the limits set out in Article 6(1) [that is delay in departure of at least 3 hours].

In those circumstances the Bundesgerichtshof decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling….

It must be noted that the Court has held that when their flights are subject to long delay, that is delay equal to or in excess of three hours, passengers of such flights are entitled to compensation on the basis of Article 7 of Regulation No 261/2004, like those passengers whose original flights have been cancelled and whom an air carrier is not able to offer re-routing in accordance with the conditions laid down in Article 5(1)(c)(iii) of Regulation No 261/2004, given that they suffer an irreversible loss of time and, hence, a comparable inconvenience (see Sturgeon and Others, paragraphs 60 and 61, and Joined Cases C-581/10 and C-629/10 Easyjet and Others [2012] ECR I-00000, paragraphs 34 and 40).

Since that inconvenience materialises, with regard to delayed flights, on arrival at the final destination, the Court has held that a delay must be assessed, for the purposes of the compensation provided for in Article 7 of Regulation No 261/2004, in relation to the scheduled arrival time at that destination (see Sturgeon and Others, paragraph 61, and Easyjet and Others, paragraph 40).

It follows that, in the case of directly connecting flights, it is only the delay beyond the scheduled time of arrival at the final destination, understood as the destination of the last flight taken by the passenger concerned, which is relevant for the purposes of the fixed compensation under Article 7 of Regulation No 261/2004.
Certain statistical data were referred to, in particular by the European Commission, concerning, first, the substantial volume of connecting fights transporting passengers through European airspace and, second, the recurrent nature of delays of at least three hours in arriving at the final destination affecting such flights, attributable to the connections missed by the passengers concerned. In that regard, it is true that the obligation to pay compensation to the passengers of the flights in question in the fixed amounts laid down in Article 7 of Regulation No 261/2004 entails certain financial consequences for air carriers. However, it must be emphasized that those financial consequences cannot be considered disproportionate to the aim of ensuring a high level of protection for air passengers.

Guidelines for October 2016 exam paper, European Tourism Law.

Candidates should bear in mind that this is a law subject. It is therefore vital that students demonstrate a knowledge and understanding of the relevant legal rules and the legal issues raised. It is therefore necessary to prepare for the exam by studying the material covered in the course.

Question 1.

In order to answer this type of question, it is important to structure answers appropriately. The legal question(s) raised need to be identified. Then the relevant legal rule needs to be described. The law must then be applied to the facts in the question.

This particular question requires anaysis of whether John’s holiday booked with Travelco is covered by the 2015 European Package Travel Directive. In particular, whether the arrangements fit within the directive’s definition of a « package » (especially therefore analysis of article 3 of the Directive).

Applying the definition of « package » contained in the directive to the facts, the question then requires a discussion of whether the directive rules would provide John with any rights with respect to his food poisoning in the hotel and to the problems with his flight.

The 2004 EU regulations on air passenger travel also need to be considered with respect to the problems resulting from the flight. Do the regulations apply in this case ? If so, what rights do they give John here ?

With respect to the injury to John’s knee, consideration needs to be given to the application of the Montreal Convention and the 2002 EU regulations.

Question 2

(1) Explanation of the preliminary reference procedure
(2) Legal question : how « delay » is assessed for the application of the 2004 Air passenger regulations.
(3) Explain, making reference to the 2004 regulations, how the court reaches its decision in this case (i.e. How are the legal principles applied and interpreted here?)

(4) Analyse the extent to which the ruling in this case improves passenger rights (therefore this requires you to consider the pre-existing law developed by European Court of Justice decisions to see to what extent this is changed by the present decision).