

SUSTAINABLE TOURISM LAW IN ITALY? YET TO COME¹

Giacomo Menegus *

Abstract (It): l'articolo affronta il tema dei rapporti tra turismo sostenibile e diritto. Dopo aver definito il concetto di turismo sostenibile e averne delineato i principi di rilievo internazionale (prevalentemente di *soft law*) e le pertinenti politiche europee, si concentra l'esame sul contesto italiano. Al netto di pochi significativi interventi, episodici e slegati tra loro, dall'analisi emerge non solo l'assenza di un quadro normativo sistematico, ma pure la scarsa capacità dei decisori pubblici di superare una retorica generica della sostenibilità, per realizzare davvero i principi del turismo sostenibile con gli strumenti del diritto. Il che conduce a concludere che il diritto del turismo italiano al momento non può ancora dirsi "sostenibile".

Abstract (En): *The paper addresses the issue of the relationship between sustainable tourism and law. After defining the concept of sustainable tourism and outlining its principles of international law (mainly soft law) and the relevant European policies, the examination focuses on the Italian context. Apart from a few significant interventions, episodic and disconnected from each other, the analysis highlights not only the lack of a systematic regulatory framework, but also the poor ability of public decision-makers to overcome the rhetoric of sustainability, to truly implement the principles of sustainable tourism with the tools of law. This leads to the conclusion that Italian tourism law cannot yet be regarded as 'sustainable'.*

SOMMARIO: 1. Introduction. - 2. Sustainable Tourism. - 3. Sustainable Tourism Law: International Principles and Objectives. - 4. The European Union Law and Sustainable Tourism: a drop in the bucket. - 5. The (Un)sustainability of the Current Italian Tourism Legislation. - 6. Sustainable Tourism and Law in Italy: an underrated relationship.

1. Introduction

One of the most authoritative Italian scholars in Tourism Law, Vincenzo Franceschelli, recently traced the history of Tourism Law in a captivating little book named *'Le Stagioni del*

¹ * Research fellow in Constitutional Law, University of Macerata

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Turismo' (The Ages of Tourism)². In this book, Franceschelli describes the evolution of tourism and its legislation, with a focus on the Italian context, starting with *Le Grand Tour* of Goethe and the scions of the European noble families, touching upon the first pieces of legislation adopted in Italy, specifically addressing tourism (that dates back to 1910), then the rise of the tourism industry, and finally the advent of the European Union law concerning consumer protection. This time-journey ends in contemporary times, with the emergence of mass tourism and its adverse consequences on cities, host communities, and the environment.

In the very last part of the small booklet, Franceschelli focuses on the challenges of Tourism and Tourism Law in our contemporary world. The book was published shortly after the pandemic and reflects that dramatic event which threatened the survival of the tourism industry as a whole. However, despite the pandemic, the first challenge addressed is that of Sustainability and Sustainable Development in Tourism. In this respect, Franceschelli explicitly advocates the emergence of a Sustainable Tourism Law, elaborating on some considerations he has already expressed in previous works on the role of law in relation to Sustainable Tourism.³

This intriguing perspective, however, should be carefully examined, above all to verify whether tourism law, and in particular that of Italy, is actually evolving in the direction of sustainability, or, on the contrary, Franceschelli's thoughts were limited to paving the way for a future course of action.

As Beate Sjøfjell observed, albeit with specific reference to the areas of business and related to business, after the adoption of the United Nations Sustainable Development Goals (SDGs) in 2015, there is much sustainability talk,⁴ but, at the same time, "[t]here is much 'sustainability washing' (using references to sustainability to cover over continued unsustainable business) and 'sustainability wishing' (for example, business goals related to sustainability without clear plans on how to achieve them)."⁵

This is possibly even more true in the tourism sector, where many public and private actors intend sustainability above all in terms of pure marketing. Sustainability is conceived not as a goal towards which tourism as a whole and all tourism-related activities (such as transport, land use and waste management) should converge, but as a particular kind of tourism, an alternative to conventional mass tourism. Making reference to the framework of approaches to sustainable tourism proposed by Clarke, the current dominant understanding in the tourism industry can be deemed that of 'continuum.'⁶ According to Clarke, this position implies actors are persuaded of the impossibility of replacing the entire gamut of mass tourism with sustainable tourism, as both are based on the simultaneous utilisation of the resources of the destinations. Sustainable tourism is therefore considered a form of tourism among others. In this context, sustainability is employed in the promotion of

² V. FRANCESCHELLI, *Le stagioni del turismo. Il viaggio, il diritto, la vacanza*, Key editore, Milano 2021.

³ V. FRANCESCHELLI, *From Tourism to Sustainable Tourism: An Italian Approach*, in V. FRANCESCHELLI, F. MORANDI, C. TORRES (eds.), *Sustainable Tourism Law*, ESHTE, Estoril 2019.

⁴ B. SJÅFJELL, *Sustainability and Law in the Anthropocene*, in *University of Oslo Faculty of Law Research Paper*, Vol. 46, 2022.

⁵ *ibid.*

⁶ J. CLARKE, *A Framework of Approaches to Sustainable Tourism*, in *Journal of Sustainable Tourism*, Vol. 5, 1997, 224.

alternative tourist activities, generally with greater attention to the environmental footprint (as is the case, for example, of the ‘slow tourism’ of paths, cycling routes, and horse riding or ‘ecotourism’) and in the tourist destination marketing, with the aim of gaining a (rather narrow) market niche sensitive to environmental and social impacts. Within the broader offer of tourist products, Destination Management Organisations (DMOs) and tourism operators tend to add and develop products that respond to the growing environmentally sensitive demand of a part of the travellers but do not change the whole tourism ecosystem.⁷ Furthermore, the plans for the transformation of tourist destinations in terms of sustainability, even the most ambitious ones, tend to show a very limited level of implementation.⁸ This unsatisfactory transformation depends on many factors, but among others, a crucial role is played by the vagueness of the commitments and the flawed and weak processes to achieve the planned objectives.

Against this gloomy background, this chapter seeks to critically examine the capacity and effectiveness of the main legal instruments that can be deemed as ‘Sustainable Tourism Law’ to implement genuine sustainability in the tourism sector. The aim is to assess the current inconsistency and poor effectiveness of what is defined as the ‘Sustainable Tourism Law’ (especially at the Italian level) and, thus, the need to promote further legal studies on sustainability as well as coherent normative reforms in this area in order to achieve a ‘strong’ sustainable transformation of the tourism sector.

Of course, in order to verify how effective the sustainable tourism law is, it is necessary to explain what the concept of sustainability entails when applied to the tourism sector. In Section 2, I therefore briefly analyse the concept of ‘sustainable tourism’, referring to the most relevant international declarations and charters. Afterwards, in Sections 3 and 4, sustainable tourism tools at the international and European levels will be investigated, stressing how alongside the great proclamations and objectives, for a number of reasons, the effectiveness of the principles and objectives enshrined in charters and pursued through public policies are still very evanescent. On the basis of these instruments, some key principles of sustainable tourism will be emphasised, the implementation of which will then be verified at the Italian level. Finally, in Section 5, the analysis focuses on the Italian context to highlight how the few (but increasing) references to sustainable tourism in national legislation and policies are disappointingly weak and flimsy. At the same time, through a series of paradigmatic examples, the failure of tourism law and related legal instruments to implement the most basic principles of sustainable tourism will be substantiated. The concluding reflections advocate a new season of legal studies on sustainability in tourism legislation in order to enhance and promote the central role of the law for the transformation of the sector and, more generally, of the social culture of the players of the tourism industry.

⁷ According to a Eurobarometer survey from October 2021, 82% of Europeans are willing to change their travel habits for more sustainable practices, including consuming locally sourced products, reducing waste and water consumption, travelling off-season or to less visited destinations and choosing transport options based on their ecological impact. COMMISSION, *Flash Eurobarometer 499 - Attitudes of Europeans towards tourism* - Report, October 2021.

⁸ W. JAMIESON, M. JAMIESON, *Managing overtourism at the municipal/destination level*, in R. DODDS, R.W. BUTLER (eds.), *Overtourism: Issues, Realities and Solutions*, De Gruyter, Berlin/Boston 2019).

2. Sustainable Tourism

First, as anticipated, it is necessary to define 'Sustainable Tourism'.

In order to do so, it may be helpful to trace, albeit briefly, the path which, after the emergence of the first concerns on the negative consequences of tourism activity from an environmental, social and cultural perspective, then led - with the affirmation of the more general concept of sustainable development in 1972 - to the elaboration of the notion of sustainable tourism through a series of international conferences.

Relying on the overall picture offered by Fennell and Cooper,⁹ the ideal starting point of this path can be placed at the beginning of the 1950s when the Commission for Travel Development within the International Union for Travel Development (forerunner of the United Nations World Tourism Organisation, UNWTO) started to examine how to minimize the adverse impacts on destinations. In the same period, awareness of a darker side of tourism began to emerge in popular culture.¹⁰ Some seminal studies, such as those by Budowski,¹¹ Krippendorf,¹² and Cohen,¹³ in the 1970s, ushered in new tourism studies on the subject, critically analysing the negative impacts of tourism.

In this first phase, the main problem was usually considered not the tourism industry in general but the rising mass tourism and its adverse environmental, social and cultural effects. This idea led to the theorization and emergence of alternative tourism practices - expressly conceived as opposed to mass tourism - and also to responsible tourism. The latter - although it is challenging to offer a distinct and unambiguous definition - can be described as a form of tourism that requires an ethical approach ('responsible' is considered here as a synonym of 'ethical'),¹⁴ built on the basis of the imperative to respond in terms of duty to the needs expressed by others. One of the best-known explanations of this kind of tourism dates back to the *Cape Town Declaration of 2002*,¹⁵ organized by the Responsible Tourism Partnership and Western Cape Tourism as a side event preceding the World Summit on Sustainable Development in Johannesburg (South Africa) and attended by 280 delegates from 20 countries. According to the final declaration issued by the Conference, Responsible Tourism is intended to be that which:

minimizes negative economic, environmental, and social impacts;

⁹ D.A. FANNELL, C. COOPER, *Sustainable Tourism: Principles, Contexts and Practices*, Channel View Publications 2020.

¹⁰ D.A. Fannell and C. Cooper make references to the works of James Cerruti and Thomas Nebbia on Acapulco (*The Two Acapulcos*, in *National Geographic*, 1964), Huw Jones on Gozo (Gozo: the living showpiece, in *Geographic Magazine*, no. 45, 1972, 53) and J Naylon on the Balearic Islands (*Tourism-Spain's Most Important Industry*, in *Geography*, no. 52, 1967 23).

¹¹ G. BUDOWSKI, *Tourism and Environmental Conservation: Conflict, Coexistence, or Symbiosis?*, in *Environmental Conservation*, no. 3, 1976, 27.

¹² J. KRIPPENDORF, *Les dévoreurs de paysages: Le tourisme doit-il détruire les sites qui le font vivre?*, Editions 24 Heures, Lausanne 1977.

¹³ E. COHEN, *The impact of tourism on the physical environment*, in *Annals of Tourism Research*, no. 5, 1978, 215.

¹⁴ C. DEL BÒ, *Etica del turismo: Responsabilità, sostenibilità, equità*, Carocci editore, Bari 2021.

¹⁵ RESPONSIBLE TOURISM PARTNERSHIP and WESTERN CAPE TOURISM, *Cape Town Declaration on Responsible Tourism in Destinations*, South Africa, 2002.

generates greater economic benefits for local people and enhances the well-being of host communities, improves working conditions and access to the industry;
 involves local people in decisions that affect their lives and life chances;
 makes positive contributions to the conservation of natural and cultural heritage, to the maintenance of the world's diversity;
 provides more enjoyable experiences for tourists through more meaningful connections with local people, and a greater understanding of local cultural, social and environmental issues;
 provides access for physically challenged people;
 and is culturally sensitive, engenders respect between tourists and hosts, and builds local pride and confidence.¹⁶

Despite a greater emphasis on the ethical aspects of tourism activities, it is evident that many claims have a solid bond to sustainability and sustainable development, starting from the first statement, which encompasses the three famous pillars of sustainability (environmental, social and economic). This connection/overlapping of the two concepts emerges even more clearly from the *Global Code of Ethics for Tourism*, adopted in 1999 by the General Assembly of the World Tourism Organization and two years later acknowledged by the United Nations.¹⁷ Under Article 3, tourism is expressly considered 'a factor of sustainable development'. And in the *Preamble*, it is also stated that the goal of the World Tourism Organization is "to promote responsible, sustainable and universally accessible tourism in the framework of the right of all persons to use their free time for leisure pursuits or travel with respect for the choices of society of all peoples", combining the two terms of 'responsibility' and 'sustainability', that seem thus to form a hendiadys.

In the 1980s, in parallel with the rising consciousness that tourism is not the 'green' or 'smokeless' industry believed up to then, the idea of sustainable development in tourism also emerged.

The fact that tourism is not even mentioned in the landmark *Brundtland Report* (1987) may highlight the lack of widespread awareness, in the late 1980s, of the harmful potential of tourist activities on the environment (or, according to Wall,¹⁸ reflect the "frequent ignoring or ignorance of tourism by policy makers").

Yet already, in 1980, with the *Manila Declaration*,¹⁹ the foundations had been laid for the inclusion of the concept of sustainable development in the tourism sector. The terms sustainability and sustainable development were actually not mentioned in the document, but many of the principles around which sustainable tourism was later built, were nonetheless clearly enucleated. While focusing above all on the economic and social contribution that can derive from tourism, with particular attention to developing countries, the Declaration highlights how "The satisfaction of tourism requirements must not be prejudicial to the social and economic interests of the population in tourist areas, to the environment or, above all, to natural resources, which are the fundamental attraction of tourism, and historical and cultural sites." And it also emphasizes the need to promote

¹⁶ *ibid.*

¹⁷ WORLD TOURISM ORGANISATION (UNWTO), *Global Code of Ethics for Tourism*, Santiago, Chile, 1999.

¹⁸ G. WALL, *Is ecotourism sustainable?*, in *Environmental Management*, no. 2, 1996, 207.

¹⁹ WORLD TOURISM ORGANISATION, *Manila Declaration on World Tourism*, Manila, Philippines, 1980.

“improved conditions of employment for workers engaged in tourism and confirm and protect their right to establish professional trade unions and collective bargaining.”

Other international conferences followed, including the *Bad Bull Conference* (1986) and the *Globe '90*. In the latter, according to a still famous definition, “sustainable tourism development is envisaged as leading to management of all resources in such a way that can fulfil economic, social and aesthetic needs while maintaining cultural integrity, essential ecological process, biological diversity and life support systems.” The overall purpose is “of meeting the needs of present tourists and host regions while protecting and enhancing opportunity for the future.” The influence exerted by the contemporary debate on sustainable development is here clear, even from the wording.

Since the beginning of the 1990s, there has been a significant rise in tourism studies devoted to sustainable tourism.

If one of the core principles is precisely that of the proficient management of all the resources the tourism sector relies on, a deeper understanding of what sustainable tourism entails was developed thanks to cutting-edge studies. For instance, Linda Cronin underlined the crucial need for successful sustainable tourism planning to involve local populations and maximize their benefits.²⁰ Along this line, Vincent May highlighted how development has often ignored the values of local people and, as a result, has failed to consider naturally occurring changes in the natural resource itself.²¹ Richard Butler, one of the most influential authors in the field of tourism studies, critically examined the very concept of sustainable tourism, noting that it has often been used without properly defining it or giving it confusing and conflicting definitions. While on the basis of the verb ‘to sustain’, an appropriate definition of sustainable tourism may be that of “tourism which is in a form which can maintain its viability in an area for an indefinite period of time”,²² Butler observed, based on literature, that what was normally meant by the term ‘sustainable tourism’ was as follows:

Tourism which is developed and maintained in an area (community, environment) in such a manner and at such a scale that it remains viable over an infinite period and does not degrade or alter the environment (human and physical) in which it exists to such a degree that it prohibits the successful development and well-being of other activities and processes.²³

On the basis of this definition and the critical review of the literature of the time, Butler pointed out and addressed some major issues in sustainable tourism, which are still crucial in the contemporary debate, such as the concept of carrying capacity, the control of tourism

²⁰ L. CRONIN, *A Strategy for Tourism and Sustainable Developments*, in *World Leisure & Recreation*, Vol. 32, 1990, 12.

²¹ V. MAY, *Tourism, environment and development: Values, sustainability and stewardship*, in *Tourism Management*, Vol. 12, 1991, 112.

²² R.W. BUTLER, *Tourism - an evolutionary perspective*, in J G Nelson, R W Butler and G Wall (eds), *Tourism and Sustainable Development: Monitoring, Planning, Managing* (Department of Geography Publication 1993).

²³ *ibid.*

development (including monitoring and measurement), the need to apply sustainability also to mass or conventional tourism.²⁴

Thanks to scientific research in this realm, the concept of sustainable tourism was further refined and - despite the still ongoing wide debate and controversies on its exact conceptualization - gained specific and distinctive features.

Meanwhile, in 1993, the first issue of the *Journal of Sustainable Tourism* was published.

In 1995, under the auspices of UNESCO, the World Tourism Organization (UNWTO) and several other leading international organizations, a first World Conference on Sustainable Tourism, held on the Spanish island of Lanzarote, laid down the founding principles of sustainable tourism in the *Charter for Sustainable Tourism* (also known as the '*Charter of Lanzarote*'). The Charter expressly states that "Tourism development shall be based on criteria of sustainability, which means that it must be ecologically bearable in the long term, as well as economically viable, and ethically and socially equitable for local communities.' And it recognizes 'that tourism is ambivalent, since it can contribute positively to socio-economic and cultural achievement, while at the same time, it can contribute to the degradation of the environment and the loss of local identity.'"

As is clear from this brief (and necessarily incomplete) review of the evolution of the concept of sustainable tourism, it is hard to offer an unquestioned and perfectly unambiguous definition of it.

However, in order to undertake the review of sustainable tourism law, reference can be made to the widely used definition of sustainable tourism provided in '*Making Tourism More Sustainable: a Guide for Policy Makers*',²⁵ a set of guidelines built on UNEP and WTO's previous work on different aspects of sustainability, issued in 2005.

According to the UNEP/WTO definition, sustainable tourism is:

Tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities.²⁶

More precisely, it states that the sustainable tourism development guidelines and management practices laid down in the document 'are applicable to all forms of tourism in all types of destinations, including mass tourism and the various niche tourism segments. Sustainability principles refer to the environmental, economic and socio-cultural aspects of tourism development, and a suitable balance must be established between these three dimensions to guarantee its long-term sustainability'.

In addition, according to UNEP/WTO, sustainable tourism should:

- 1) Make optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural resources and biodiversity.
- 2) Respect the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional

²⁴ R.W. BUTLER, *Sustainable tourism: A state-of-the-art review*, in *Tourism Geographies*, Vol. 1, 1999, 7.

²⁵ UN ENVIRONMENTAL PROGRAMME and UN WORLD TOURISM ORGANISATION (UNEP & UNWTO), *Making Tourism More Sustainable - A Guide for Policy Makers*, 2005.

²⁶ *ibid.* 11-12.

values, and contribute to inter-cultural understanding and tolerance. 3) Ensure viable, long-term economic operations, providing socio-economic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation. Sustainable tourism development requires the informed participation of all relevant stakeholders, as well as strong political leadership to ensure wide participation and consensus building. Achieving sustainable tourism is a continuous process and it requires constant monitoring of impacts, introducing the necessary preventive and/or corrective measures whenever necessary. Sustainable tourism should also maintain a high level of tourist satisfaction and ensure a meaningful experience to the tourists, raising their awareness about sustainability issues and promoting sustainable tourism practices amongst them.²⁷

Relying on this definition, it is now possible to examine the international framework concerning Sustainable Tourism. However, given the strong connection outlined above between responsible tourism and sustainability, the review of the international law framework is not limited only to charters and tools expressly devoted to sustainable tourism but takes also into account instruments concerning ethics in tourism.

3. Sustainable Tourism Law: International Principles and Objectives

If we search for sustainable tourism law, it follows that we must refer to those instruments - irrespective of whether they go or not under the label 'sustainable tourism' - that establish general rules, objectives and principles conceived to attain sustainability in the tourism sector, as broadly described in the previous Section.

At the international level, an array of charters is expressly devoted to Sustainable Tourism.

Just to mention the most significant, the first remarkable commitments can be found in the already cited *Charter for Sustainable Tourism*, signed in Lanzarote in 1995, which appealed to the international community and, in particular, to governments, other public authorities, decision-makers and professionals in the field of tourism, public and private associations and institutions whose activities are related to tourism, and tourists themselves, to adopt the principles and objectives set out therein.

In view of the later analysis of the national framework, it is worth mentioning among others, Principle 9: "Governments and the competent authorities, with the participation of NGOs and local communities, shall undertake actions aimed at integrating the planning of tourism as a contribution to sustainable development" which highlights the importance of tourism planning.

And Principles 3 and 6 as well, on the role and significance of host communities, that state respectively: "Tourism must consider its effects on the cultural heritage and traditional elements, activities and dynamics of each local community. Recognition of these local factors and support for the identity, culture and interests of the local community must at all times play a central role in the formulation of tourism strategies, particularly in developing countries" and: "Quality criteria both for the preservation of the tourist destination and for

²⁷ *ibid.* 11-12.

the capacity to satisfy tourists, determined jointly with local communities and informed by the principles of sustainable development, should represent priority objectives in the formulation of tourism strategies and projects.”

Twenty years later, in the city of Vitoria-Gasteiz, the Basque Country, Spain, the same principles of this first declaration were fully reiterated during the World Summit on Sustainable Tourism (ST+20), which adopted the new *World Charter of Sustainable Tourism +20*. In the document, after setting sustainable tourism in the wider context of sustainable development, a series of actions are listed, ranging from the need for governments and international organisations to “integrate sustainability in national and international tourism policies, strategic plans and operations for meeting national sustainable development objectives, and the UN Sustainable Development Goals (SDGs)”²⁸ to the demand to “empower local communities and indigenous peoples and facilitate their involvement in planning and developing tourism”²⁹ and “to consider the carrying capacity of destinations, not only in the case of natural sites but also urban areas, especially when the quality of life of the residents is compromised.”³⁰

The Charter recognises that Sustainable Development Goals (SDGs), adopted in the UN 2030 Agenda for Sustainable Development (2015), represent a significant opportunity to further guide tourism along an inclusive and sustainable course.

The *Sustainable Development Goals (SDGs)* are indeed another key reference for Sustainable tourism in the international context. Tourism is precisely targeted in SDGs 8, 12, and 14. According to Target 8.9, the 2030 Agenda aims to “devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products.” The importance of sustainable tourism is also highlighted in Target 12.8.b., which aims to “develop and implement tools to monitor sustainable development impacts for sustainable tourism that creates jobs and promotes local culture and products.” Lastly, sustainable tourism is also identified as one of the tools to ‘increase the economic benefits to Small Island developing States and least developed countries’ as comprised in SDG target 14.7.

Nevertheless, all the 2030 Agenda SDGs, even those that do not report a precise reference to tourism, may be relevant for sustainable tourism. The UNWTO stated that “tourism has the potential to contribute, directly or indirectly, to all of the goals”³¹ and, with the support of the State Secretariat for Economic Affairs of Switzerland (SECO), launched the *Tourism 4 SDGS platform*,³² an interactive online tool that shows the connection between tourism and the different SDGs, while monitoring the relevant initiatives adopted all over the world within the tourism sector.

Good examples of sustainable tourism-related SDGs are the ‘SDG 11 - Sustainable Cities and Communities’, since sustainable tourism can not only be a driver for the promotion of urban regeneration and the preservation of cultural heritage, but it can also counteract the deleterious effects, especially on an environmental and social level, that mass tourism produces on the most fragile destinations. Or also the ‘SDG 5 - Gender Equality’, as the UNWTO observes, “Tourism can empower women, particularly through the provision of

²⁸ *World Charter for Sustainable Tourism +20*, Vitoria-Gasteiz, the Basque Country, Spain, 10.

²⁹ *ibid.* 11.

³⁰ *ibid.*

³¹ WORLD TOURISM ORGANIZATION (UNWTO), *Tourism and the Sustainable Development Goals*, 2015.

³² WORLD TOURISM ORGANIZATION (UNWTO), *Tourism for SDGs (T4SDG)*.

direct jobs and income-generation from SMEs in tourism and hospitality-related enterprises. Tourism can be a tool for women to become fully engaged and lead in every aspect of society.”³³

In the field of responsible tourism, the most relevant document is the *Global Code of Ethics for Tourism*, adopted in 1999 by the General Assembly of the World Tourism Organization.

The Code sets out a list of principles designed to guide key-players in tourism development, addressing governments, the travel industry and stakeholders, host communities and tourists alike. Even if it does not mention the Charter of Sustainable Tourism - arguably because the latter puts too many constraints on governments and the tourism industry, as according to Canestrini³⁴ - the Code, as already stated, comprises even key principles for sustainable tourism. The Code is structured in 10 Articles, amply covering the economic, social, and environmental components of sustainable tourism: Article 1: Tourism’s contribution to mutual understanding and respect between peoples and societies; Article 2: Tourism as a vehicle for individual and collective fulfilment; Article 3: Tourism, a factor of sustainable development; Article 4: Tourism, a user of the cultural heritage of mankind and contributor to its enhancement; Article 5: Tourism, a beneficial activity for host countries and communities; Article 6: Obligations of stakeholders in tourism development; Article 7: Right to tourism; Article 8: Liberty of tourist movements; Article 9: Rights of the workers and entrepreneurs in the tourism industry; Article 10: Implementation of the principles of the Global Code of Ethics for Tourism.

Apart from Article 3, explicitly devoted to sustainable development, a significant principle is enshrined under Article 5. In line with the more refined wording of the Charter of Lanzarote, the Global Code states, under Article 5, paragraph 1, that: “Local populations should be associated with tourism activities and share equitably in the economic, social and cultural benefits they generate, and particularly in the creation of direct and indirect jobs resulting from them,” thus emphasising the central role of host communities.

Although not legally binding, the Code also features a voluntary implementation mechanism through its recognition of the World Committee on Tourism Ethics (WCTE), to which stakeholders may refer, pursuant to Article 10, matters concerning the application and interpretation of the document.

A non-binding or voluntary set of principles and objectives is a common feature of sustainable/responsible tourism law at the international level. All the declarations and charters mentioned above can be regarded as *soft law* or, at least, *policy instruments*.³⁵ They do not establish any legal obligation either for public authorities or for private stakeholders in tourism and display a limited capacity to influence and directly guide tourism activities towards sustainability.

However, positioning the aforementioned Charters within the vast and multifaceted realm of soft law does not necessarily mean that they have no legal value at all. It must be acknowledged that some commitments, especially in declarations expressly devoted to sustainable tourism, do not seem to reach a minimum degree of ‘formal legality’ or

³³ *ibid.*

³⁴ D. CANESTRINI, *Andare a quel paese. Vademecum del turista responsabile*, Feltrinelli 2003.

³⁵ V. FRANCESCHELLI, *From Tourism to Sustainable Tourism: An Italian Approach*, cit., 429.

apparently do not adopt a normative wording, being vague, unspecific and not precise, leaving ample room for discretion in application and interpretation.

Nonetheless, most of the sustainable tourism principles retain a certain legal value.

The same conclusions drawn by many international law scholars³⁶ within the debate on the legal value of SDGs and the 2030 Agenda may apply *mutatis mutandis* to the case of sustainable/responsible charters and declarations.³⁷ As for the SDGs, the principles and objectives enshrined in the charters mentioned, in particular when expressly referred to therein, can play a crucial role in interpreting and clarifying the meaning of legally binding instruments. Hence, the focus ought to shift from the soft law instruments *per se* to the potential interactions that can emerge between the principles of sustainable and responsible tourism ('soft law') and more binding legal frameworks ('hard law').

As noted with regard to SDGs and the EU legal order,³⁸ there could also be room for 'substantive borrowing' from sustainable tourism (soft) law, which may be a source of inspiration for legislation at the European and national level.³⁹

However, this potential still remains largely unexpressed.

An attempt to go beyond this minimal approach, intended to reinforce the effectiveness of the Global Code of Tourism Ethics, was made with the drafting and approval of the *Framework Convention on Tourism Ethics* (2019), the first international treaty under the United Nations World Tourism Organisation. The Convention upheld the nine core principles of the Global Code of Ethics for Tourism, which were already accepted by the UNWTO General Assembly and widely known by the international tourism community. Nevertheless, at the same time, the Convention is a legally binding instrument under international law: every UNWTO and United Nations member state is currently called on to consider ratifying the Convention, should they choose to do so in alignment with their constitutional protocols and practices. By doing this, they commit to crafting policies that align with the Ethical Principles in Tourism outlined within the Convention.

Unfortunately, for now, accessions to the Convention are still extremely limited since only four States ratified the treaty (Albania, Lebanon, Nigeria, and Seychelles), preventing it from entering into force, since under its Article 20(1), the Convention shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

³⁶ A. PERSSON, N. WEITZ, M. NILSSON, *Follow-up and Review of the Sustainable Development Goals: Alignment vs. Internalization*, in *RECIEL*, no. 25, 2016, 59; R.E. KIM, *The Nexus between International Law and the Sustainable Development Goals*, in *RECIEL*, no. 25, 2016, 15; W. SCHOLTZ, M. BARNARD, *The Environment and the Sustainable Development Goals: 'We are on a Road to Nowhere'*, in D. FRENCH, L.J. KOTZÉ (eds.), *Sustainable Development Goals: Law, Theory and Implementation*, Edward Elgar Publishing 2018.

³⁷ D. FRENCH, L.J. KOTZÉ (eds.), *Sustainable Development Goals: Law, Theory and Implementation*, Edward Elgar Publishing 2018; R. PAVONI, D. PISELLI, *The Sustainable Development Goals and International Environmental Law: Normative Value and Challenges for Implementation*, in *Veredas Do Direito*, no. 13, 2016, 13; M. MONTINI, *L'interazione tra gli SDGs ed il principio dello sviluppo sostenibile per l'attuazione del diritto internazionale dell'ambiente*, in *Federalismi.it*, no. 9, 2019.

³⁸ M. RABINOVYCH, *Legal Status and Effects of the Agenda 2030 within the EU Legal Order*, in *Journal of Contemporary European Research*, no. 16, 2020, 182.

³⁹ For the term 'substantive borrowing' reference is made to K. ZIEGLER, *The Relationship between EU Law and International Law*, in *University of Leicester School of Law Research Paper*, no. 17, 2013, 2023.

4. The European Union Law and Sustainable Tourism: a drop in the bucket

For a long time, even if crucial for the very economic, social and cultural integration of Europe, tourism was not included among the matters expressly conferred on the European Union. Only in 1992, with the Treaty of Maastricht, establishing the European Union, did the Community's action also extend to the adoption of 'measures in the field of energy, civil protection and tourism.' The Community was thus authorized to adopt, within the framework of other policies, orientation and development 'measures' in the tourism sector. The interventions have been indirect, through legislative acts and policies in other sectors, such as culture, research, transport, free movement of people, goods and services, small and medium-sized enterprises (SMEs), regional and cohesion policies.

The introduction of the principle of sustainability into initiatives related to tourism at the European level took place through a series of communications issued by the Commission.

The first prominent moment is marked by the Communication '*Basic orientations for the sustainability of European tourism*' of 2003,⁴⁰ in which the European Commission announced "a series of measures to give concrete form to further Community contributions for the implementation of sustainability in the tourism sector."

The same communication anticipated the formation, in 2004, of the '*Group for the Sustainability of Tourism*' (GST), made up of various experts representing in a balanced way the industrial associations, some tourist destinations and the union associations of civil society, aimed at promoting synergies between stakeholders and provide useful inputs to the process of an Agenda 21 for the sustainability of European tourism.⁴¹

In the following communication of June 2006, '*A renewed EU tourism policy: towards a stronger partnership for European tourism*',⁴² the Commission reaffirmed the extreme relevance of the objective outlined in 2003, both as a contribution to sustainable development in Europe and in the world and for its lasting growth, and informed that it had started the elaboration of Agenda 21 for tourism.

The role of the Union with respect to the tourism industry further changed with the Treaty of Lisbon (2007).

According to Article 6(d) and Article 195 of the Treaty of Functioning of the European Union (TFEU), the Union gained a supporting and complementary competence in relation to tourism, which implies that the European Union can only intervene to support, coordinate or complement the action of its Member States in this field.

In particular, Article 195 TFEU states that "The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector." This aim is pursued by: "(a) encouraging the creation of a favourable environment for the development of undertakings in this sector; (b) promoting cooperation between the Member States, particularly by the exchange of good practice."

The year 2007 marked a decisive turning point also with respect to another key communication by the European Commission.

⁴⁰ COMMISSION, *Basic orientations for the sustainability of European tourism*, COM(2003) 716 final.

⁴¹ C. NOTARSTEFANO, *Turismo e Unione Europea: Profili giuridici e istituzionali*, Hoepli, Milano 2011.

⁴² COMMISSION, *A renewed EU Tourism Policy: Towards a stronger partnership for European Tourism*, COM(2006) 134 final.

On 19 October 2007, the Commission officially presented the '*Agenda for a sustainable and competitive European tourism*',⁴³ based on the results of the work of the GST presented in the report '*Action for a more sustainable European tourism*',⁴⁴ published in February 2007.

In brief, the Agenda represents a further contribution to the implementation of the renewed Lisbon strategy for growth and jobs and the renewed strategy for sustainable development with specific reference to tourism.⁴⁵

While representing eminently a policy tool, the Communication substantiates the principles on which the European sustainable development of the tourism industry must be based:

- *Take a holistic and integrated approach* - All the various impacts of tourism should be taken into account in its planning and development. Furthermore, tourism should be well balanced and integrated with a whole range of activities that affect society and the environment.

- *Plan for the long term* - Sustainable development is about taking care of the needs of future generations as well as our own. Long term planning requires the ability to sustain actions over time.

- *Achieve an appropriate pace and rhythm of development* - The level, pace and shape of development should reflect and respect the character, resources and needs of host communities and destinations.

- *Involve all stakeholders* - A sustainable approach requires widespread and committed participation in decision making and practical implementation by all those implicated in the outcome.

- *Use best available knowledge* - Policies and actions should be informed by the latest and best available knowledge. Information on tourism trends and impacts, and skills and experience, should be shared across Europe.

- *Minimise and manage risk (the precautionary principle)* - Where there is uncertainty about outcomes, there should be full evaluation and preventive action should be taken to avoid damage to the environment or society.

- *Reflect impacts in costs (user and polluter pays)* - Prices should reflect the real costs to society of consumption and production activities. This has implications not simply for pollution but for charging for the use of facilities that have significant management costs attached to them.

- *Set and respect limits, where appropriate* - The carrying capacity of individual sites and wider areas should be recognised, with a readiness and ability to limit, where and when appropriate, the amount of tourism development and volume of tourist flows.

- *Undertake continuous monitoring* - Sustainability is all about understanding impacts and being alert to them all the time, so that the necessary changes and improvements can be made.

⁴³ COMMISSION, *Agenda for a sustainable and competitive European tourism*, COM(2007) 621 final.

⁴⁴ *Action for More Sustainable European Tourism*, Report of the Tourism Sustainability Group, February 2007.

⁴⁵ C. NOTARSTEFANO, *op. cit.*, 78.

Even without mentioning any of the international legal instruments listed in Section 3, the 2007 Agenda is clearly imbued with the principles of sustainable tourism.

In alignment with these guiding principles, the Commission has taken on the responsibility of coordinating efforts to generate and disseminate knowledge regarding sustainable tourism. This includes championing outstanding travel destinations and harnessing the potential of EU financial instruments, for instance, by facilitating the funding of sustainable tourism initiatives through the European Regional Development Funds (ERDF) during the period of 2007-2013. Additionally, the Commission is actively integrating sustainability and competitiveness into every facet of its policy framework.

The Commission actively advanced several significant initiatives. Notably, the ‘*European Destinations of Excellence*’ (EDEN) pilot project stood out. This endeavour concentrated on promoting exceptional European tourist destinations—emerging locales that were both recognizable and aligned with sustainability principles. While the funding for this project was depleted by 2011, the Commission remained committed to its execution through the framework of the programme for enterprise and SME competitiveness (COSME). Among the myriad of European funding programmes dedicated to bolstering sustainable tourism, COSME emerged as a particularly advantageous platform. Over time, it has consistently provided a favourable arena for financing endeavours related to sustainable cross-border tourism products.⁴⁶

Furthermore, despite the limited legal basis, over the years the European Union has been able to promote and develop other interesting policy instruments.

It is worth mentioning the following:

- The *European Tourism Indicators System* (ETIS) for sustainable destination management is a system of indicators suitable for all tourist destinations, encouraging them to adopt a more intelligent approach to tourism planning. As detailed on the Commission's website, ETIS serves as a multifaceted instrument. It aids destinations in embracing a sustainable approach to managing their locales, functioning as both a managerial resource and a monitoring system. This system is designed for effortless data collection and comprehensive information gathering, enabling destinations to track their performance seamlessly across successive years. It is important to note that ETIS operates as an informative resource rather than a certification programme. This attribute renders it valuable for policymakers, tourism enterprises, and a range of stakeholders.

- The *EU Ecolabel*, the official European environmental label, is available also to tourism accommodation and campsite services willing to prove and promote their environmental excellence.

- The *EU Eco-Management and Audit Scheme* (EMAS), a voluntary tool (environmental certification) developed for companies and organizations in all sectors to evaluate, report, and continuously improve their environmental performance; the most recent EMAS campaign was launched in summer 2023.

As a response to the pandemic crisis, there has been an acceleration of the transition toward sustainability within the European tourism-related policies and initiatives.

In March 2021, for example, although with a focus on the aim of fully restoring the freedom of movement between European countries after the COVID-19 limitations, the

⁴⁶ COMMISSION, *Sustainable transnational tourism products*.

European Parliament approved a resolution entitled ‘Defining an EU strategy for sustainable tourism.’⁴⁷

In February 2022, the Commission adopted a plan entitled ‘*Transition Pathway for Tourism*’,⁴⁸ an updated EU industrial strategy, which highlights the need to strengthen the resilience of the tourism sector and accelerate the digital and green transitions after the COVID-19 pandemic. The transition pathway identifies 27 areas of measures for the green and digital transitions, and for making the EU’s tourism industry more robust.

Focusing on the Section devoted to ‘Regulation and Public Governance’, among other things, the Plan calls for: fair measures for short-term rentals (STRs); regulatory support for multimodal travelling; improvement in statistics and indicators for tourism; comprehensive tourism strategies development or update; collaborative governance of tourist destinations.

In response to this plan, the Council adopted the ‘EU agenda for tourism 2030’ in December 2022.⁴⁹ The Agenda focuses on five priorities: the green and digital transitions; resilience and inclusion; skills and support; and the governance and policy-enabling framework, with several actions included under each priority.

Finally, in November 2022, the Commission proposed a revision of Regulation (EU) 2018/1724 on the collection and sharing of data on short-term accommodation rental services (COM(2022)0571). Paying special attention to SMEs, this proposal - probably one of the most significant regulatory initiatives on sustainable tourism to date - aims to develop a responsible, transparent and fair growth of short-term rentals within a balanced tourism ecosystem. In April 2024, the regulation was definitively approved., as part of the ongoing efforts to promote a balanced tourism ecosystem within the EU.⁵⁰

Taking a holistic view of the European journey, significant strides have been taken by the Union in bolstering initiatives for sustainable tourism. This progress has been evident through focused policies and substantial financial support. Nevertheless, given its restricted jurisdiction, the Union’s impact on regulatory dimensions, particularly in the domain of ‘sustainable tourism law,’ has been comparatively restrained. Notably, recent initiatives related to short-term rentals, though pending final approval, stand as an exception to this trend.

In essence, while the European Union has proactively championed sustainable tourism via policy directives and public strategies, its legislative framework concerning sustainable tourism remains somewhat confined.

5. The (Un)sustainability of the Current Italian Tourism Legislation

Attempting to identify ‘true’ sustainable tourism law at the Italian level proves to be a daunting task. On the surface, the term ‘sustainable tourism’ appears frequently in various tourism planning documents, policies, and advertisements, giving the impression that the

⁴⁷ EUROPEAN PARLIAMENT, *European Parliament resolution of 25 March 2021 on establishing an EU strategy for sustainable tourism* (2020/2038(INI)).

⁴⁸ COMMISSION, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, *Transition pathway for tourism*, Publications Office of the European Union, 2022.

⁴⁹ COUNCIL OF THE EUROPEAN UNION, *New European agenda for tourism*, Press release, 1 December 2022.

⁵⁰ Regulation (EU) 2024/1028 of the European Parliament and of the Council of 11 April 2024 on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724.

Italian tourism system has embraced sustainability and shifted away from traditional mass tourism.

However, beneath this veneer of ‘sustainability,’ the reality is quite different. The Italian legislation concerning tourism remains largely unchanged, as does the majority of the tourism industry.

For example, the ‘*Strategic Plan for Tourism Development*’, a significant policy instrument in Italy covering the years 2017-2020 and adopted by the Minister of Cultural Heritage and Tourism, prominently features sustainability throughout its policies.⁵¹ Similarly, the new Strategic Plan for the years 2023-2027, adopted in June 2023, follows a similar approach, with the words ‘sustainability’ and ‘sustainable’ mentioned extensively.⁵² However, upon closer examination, it becomes evident that the initiatives and actions labelled as ‘sustainable’ are often ambiguous or limited to ecological transitions in specific, narrow segments of the Italian tourism industry.

In essence, while there is a prevailing appearance of sustainability in official documents, the concrete implementation of genuinely sustainable practices within the broader tourism sector remains lacking. A good example of these kinds of initiatives is the so-called ‘*Fund for sustainable tourism*’,⁵³ with a budget of 25 million euros, which funds accommodation facilities and tourism businesses for the three-year period 2023-2025 to: 1. carry out interventions useful for the conception, creation, promotion and enhancement of projects that encourage more sustainable tourism; 2. carry out interventions aimed at obtaining sustainability certification; 3. create a list of official bodies to issue the aforementioned certifications.

Similar public policies are planned in regional legislation (see, for instance, those of Veneto⁵⁴ and Lombardy⁵⁵) and almost all the recent regional laws on tourism comprise a number of ‘decorative’ references to sustainable tourism.⁵⁶

The most significant references to ‘true sustainability’ can be found in policies that aim to promote alternative forms of tourism, such as walking, sustainable mobility, and exploring alternative routes, products, and destinations. However, these policies suffer from the same limitation mentioned earlier, as they often consider sustainable tourism only as a niche market rather than a comprehensive goal for the entire tourism industry (see Section 1).

One of the most noteworthy initiatives in this regard is outlined in the Italian National Resilience and Recovery Plan (NRRP), which places a strong emphasis on sustainable tourism by allocating substantial resources to projects promoting sustainable destinations. Notably, the ‘Attractiveness of villages’ initiative,⁵⁷ commonly known as ‘Bando Borghi,’ has received 420 million in funding. The underlying philosophy behind this investment is to move away from concentrating tourist flows and investments in the so-called ‘big attractors,’

⁵¹ MINISTERO DEI BENI E DELLE ATTIVITÀ CULTURALI E DEL TURISMO, *Strategic Plan for Tourism Development 2017-2022*.

⁵² MINISTERO DEL TURISMO, *Strategic Plan for Tourism Development 2023-2027*.

⁵³ MINISTERO DEL TURISMO, Ministerial decree 22 March 2023.

⁵⁴ Article 44 (*Interventions for sustainable tourism*), Regional Law 14 June 2013, no. 11.

⁵⁵ Article 75 (*Interventions for sustainable tourism*), Regional Law 1 October 2015, no. 27.

⁵⁶ See, for example, Veneto Regional Law 14 June 2013, no. 11 ‘*Development and sustainability of the tourism in Veneto*.’

⁵⁷ G. MENEGUS, *Bando Borghi e autonomie territoriali*, in *Le Regioni*, no. 5, 2022, 931.

such as major cities of art and popular seaside and mountain destinations. Instead, the focus is on promoting smaller sites, challenging the conventional approach to alternative sustainable tourism. The allocated funds are intended for projects that encompass the urban regeneration of small villages, restoration and conservation of cultural heritage, and the development of comprehensive management and tourism promotion strategies.

However, even with this investment, several issues have surfaced during implementation.⁵⁸ The main limitation of this policy is that it addresses only a few specific territorial contexts, failing to stimulate an overall transition toward sustainability in the entire national tourism system.

In essence, while there is a prevailing appearance of sustainability in official documents, the concrete implementation of genuine sustainable practices within the broader tourism sector remains lacking.

A prominent example of the failure of tourism law to implement the principle of sustainability is offered by the Italian (non)regulation of short-term rentals.⁵⁹

It is widely recognized that the rise of home-sharing platforms, particularly Airbnb, has led to several negative externalities, especially in cities facing overtourism as popular international tourist destinations.⁶⁰

The proliferation of short-term rentals has resulted in a reduced availability of residential properties for long-term rentals, leading to increased rents as property owners opt for the more lucrative and flexible tourist market. Moreover, local authorities and researchers have reported challenges in managing certain services, such as waste collection and public transport, due to the fluctuating 'temporary population' of tourists that varies significantly in a short period. Gentrification and touristification phenomena have also emerged, negatively affecting businesses not directly related to the tourism sector. Additionally, issues have arisen concerning disturbances for neighbours and local residents.

The fiscal aspect is another critical consideration. It involves not only addressing tax evasion related to income from short-term rentals but also managing the collection of tourist taxes.

From a social perspective, the impacts of short-term rentals on host communities are clearly at odds with the principles of sustainable tourism.

However, unlike most European cities and states, such as Paris, Berlin, or Barcelona,⁶¹ Italy has yet to establish a comprehensive regulatory framework aimed at promoting sustainable development in the tourist accommodation sector while considering the housing needs of local communities.

The initial legislation addressing the matter was Article 4 of decree-law no. 50/2017 (converted into law no. 96/2017), entitled 'Tax regime for short-term rentals.' Primarily focused on fiscal matters, this regulation faced partial implementation due to disputes between Airbnb and the Revenue Agency, even leading to legal proceedings. Subsequently,

⁵⁸ *ibid.* 934 ff.

⁵⁹ G. MENEGUS, *Processi di regolazione della sharing economy: oltre la self-regulation*, in *Osservatorio sulle fonti*, no. 3, 2021, 1436-37.

⁶⁰ F. CELATA, A. ROMANO, *Overtourism and online short-term rental platforms in Italian cities*, in *Journal of Sustainable Tourism*, Vol. 30, 2022.

⁶¹ G. BEI, F. CELATA, *Challenges and effects of short-term rentals regulation: A counterfactual assessment of European cities*, in *Annals of Tourism Research*, Vol. 101, 2023.

Article 13-quater of decree-law no. 34/2019 introduced ‘Provisions on short-term rentals and accommodation businesses,’ amending decree-law no. 50/2017. This led to the creation of the ‘Database of accommodation facilities and properties intended for short-term rentals’ by the Ministry of Tourism (Ministerial Decree no. 1782 of 29 September 2021).

At the regional level, many Regions have adopted regulations to introduce a registration code, aiming to facilitate control and monitoring of tourist accommodation by local authorities.⁶²

Having limited jurisdiction in this field, certain cities have implemented innovative approaches to address the excessive proliferation of short-term rentals. For example, in Venice, the Urban Construction Regulation (RUE) was reformed to require all houses used for tourist rentals to have a ‘septic tank.’ While initially intended for all private homes to protect the Venice Lagoon environment, the requirement was indefinitely suspended due to implementation challenges in the historic city. However, it still applies to hotels and tourist accommodation, leading the municipality to treat short-term rentals and B&Bs as regular accommodation facilities.⁶³ Similarly, starting from June 2023, the Municipality of Florence, based on Tuscany’s land use legislation (Regional Law no. 65/2014), decided to ban any new openings of short-term rentals, B&Bs, and similar accommodation in the UNESCO historic city centre.⁶⁴ Following a temporary suspension of the initiative in 2024 due to formal reasons, the new city administration reinstated the restriction during the summer of the same year. Meanwhile, the Tuscany Region also took action toward the end of 2024 with a comprehensive reform of its tourism legislation (Regional Law No. 61 of 2024, the so-called *Unified Tourism Act*), allowing around 90 Tuscan municipalities with the highest tourist density to introduce limitations on short-term rentals⁶⁵. However, the legislation is still awaiting implementation by municipal administrations.

During the Draghi Government, Article 37-bis Decree-Law no. 50/2022 was introduced, offering ‘Measures to encourage the increase in the supply of rental accommodation for long-term residential use in the historic city of Venice.’ This regulatory intervention, although limited to Venice, stands out as the first example of ‘hard regulation’ in this field in the Italian context. It grants the Municipality the authority to integrate urban planning tools with specific regulations to define maximum limits and conditions for the use of residential properties for short-term rentals, particularly in the historic centre and the islands of the Venetian Lagoon.

However, the municipal regulation necessary for its implementation has not yet been approved; a debate is currently underway in the city council over a draft that merely introduces a few behavioural obligations for hosts and guests and is unlikely to have any effect on reducing STRs.

⁶² G. MENEGUS, *Recenti interventi delle regioni ordinarie in materia di locazioni per finalità turistiche*, in *Osservatorio sulle fonti*, no. 1, 2020.

⁶³ The Regulation was challenged before the Regional Administrative Court, which upheld it twice: TAR Veneto, judgment 27 December 2022, no. 1961 and judgment 8 July 2023, no. 1022.

⁶⁴ E. FERRARA, *Firenze, Nardella annuncia lo stop a nuovi Airbnb nel centro storico*, in *la Repubblica*, 1 June 2023.

⁶⁵ See Article 59 (*Criteria and limits for the operation of short-term tourist rental activities*), Regional Law No. 61 of 2024.

Only in the summer of 2023 did the Ministry of Tourism begin studying some form of limitation on short-term rentals. Unfortunately, partly due to some internal disagreements within the governing majority, the outcome of the debate and study process has been disappointing. Article 13-ter of Decree-Law no. 145/2023 (converted into law no. 91/2023) merely introduces a national registration code for accommodation facilities (including STRs) and some safety obligations. These are measures aimed at combating irregular activities and improving the quality of hospitality, but they have nothing to do with the sustainability of the short-term rental sector.

Another critical issue largely unaddressed by Italian legislation is overtourism. The term ‘overtourism’ refers to situations in which the impact of tourism exceeds the physical, ecological, social, economic, psychological, and political capacity thresholds in certain locations and at specific times (according to the ‘*Research for TRAN Committee - Overtourism: impact and possible policy responses*’⁶⁶).

Several renowned Italian tourist destinations, such as Florence and Venice,⁶⁷ are widely recognized examples of overtourism on a global scale. Venice, in particular, has become synonymous with the ‘Venice syndrome,’⁶⁸ which signifies the detrimental effects of unsustainable tourism development on the city. The Cinque Terre in Liguria is also facing similar challenges.

While innovative approaches and tools to mitigate overtourism are being studied worldwide, Italy, despite being one of the countries most affected by this phenomenon, lacks a regulatory framework and specific initiatives to tackle the issue effectively. The current promotion of lesser-known and less-visited destinations and itineraries, while a step in the right direction, has yielded uncertain results.

The absence of clear legislation and a defined toolbox leaves few local administrations that are willing to regulate or limit tourist flows with inadequate and questionable tools that offer limited effectiveness. However, as outlined in Sections 2, 3, and 4, one of the fundamental principles of sustainable tourism is to ensure destinations operate within their proper carrying capacity by implementing limits and regulations through laws.

In relation to the cities of art, the Municipality of Venice has the option to implement a tourist tax, commonly referred to as an ‘entry ticket,’ specifically targeting day-visitors to the city.⁶⁹ The primary objective behind this measure is to effectively manage tourist influx during peak periods and alleviate overcrowding.⁷⁰

Implemented by the Italian Government to safeguard the city from potential UNESCO ‘blacklisting’ as a World Heritage Site in Danger, the tourist fee has sparked numerous concerns about its validity. The fee, designed for day-trippers, has raised doubts due to its

⁶⁶ P. PEETERS ET AL. (2018) *Research for TRAN Committee - Overtourism: impact and possible policy responses*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.

⁶⁷ E. NOLAN, S. HUGUES, *Venice: capacity and tourism*, in R. DODDS, R.W. BUTLER (eds.) *Overtourism: Issues, Realities and Solutions*, De Gruyter, Berlin/Boston 2019.

⁶⁸ C. MILANO, *Overtourism and tourismphobia: Global trends and local context*, Ostelea School of Tourism & Hospitality, Barcelona 2017.

⁶⁹ Article 1, paragraph 1129, Law no. 145/2018 (Budget Law 2019).

⁷⁰ L. TOSI, E.M. BAGAROTTO, *La tassazione delle città d’arte ed il contributo di accesso alla città di Venezia*, in *Rivista trimestrale di diritto tributario*, no. 1, 2021, 97; L. TOSI, *Le possibili alternative: l’esperimento della tassa di sbarco a Venezia e la prospettiva della city tax*, in R. CORDEIRO GUERRA (ed.), *Città d’arte e fisco: Verso un Turismo sostenibile?*, Pacini Giuridica 2021.

extensive list of exemptions and its relatively low cost, leading to doubts about its actual effectiveness. Moreover, the Municipality is now encountering mounting opposition from a segment of the local population who fears the city's transformation into a mere museum-like destination. Simultaneously, the administration itself was uncertain about the appropriate timing and implementation methods for the tax. As a result, the enforcement of the tax was continuously postponed and remained stalled until last year.

In light of the new UNESCO recommendation to 'blacklist' the city, disclosed in Summer 2023, a brief experimental phase was conducted in 2024, limiting the application of the entry fee to a few days. Although it generated significant revenue, the tax does not appear to have had any impact on the influx of tourists, which—according to available data—actually increased compared to those who visited the city during the same period the previous year.⁷¹

The picturesque villages of Cinque Terre in Liguria attract millions of tourists each year, especially day-trippers, who wander through the charming alleys and narrow streets of their historic centres. However, in Spring 2023, the situation escalated to severe overcrowding, raising safety concerns during the Easter weekend. This has reignited discussions about implementing restrictions on the number of tourist entries to these small villages.⁷² So far, concrete measures have been limited to controlling access to the renowned 'Via dell'Amore,' a scenic pedestrian route connecting Riomaggiore and Manarola. To walk this path, visitors must now book in advance and pay a fee.⁷³

Similarly, in Liguria's Portofino, the Mayor issued an order in April 2023 to establish 'no-waiting zones' in an attempt to deter tourists from stopping to take selfies and congesting the area.⁷⁴

In Sardinia, faced with similar overcrowding issues, efforts are being made to preserve the marine ecosystem by setting sustainable limits on some particularly fragile beaches. The Municipality of Baunei, for instance, has decided to maintain access restrictions to certain beaches in 2023, a measure already enforced in previous years. Another well-known beach, 'La Pelosa' in Stintino, will also have limited access between June 1 and October 31, 2023.⁷⁵

Notably, other destinations have also implemented restrictions. The Lake of Braies, popularized by the TV drama 'One step from heaven' ('*A un passo dal cielo*'), has experienced a surge in mass tourism. Consequently, access limitations have been introduced to maintain the site's integrity.⁷⁶

The preceding overview of significant cases demonstrates that local authorities typically respond to overtourism using ad hoc measures, which may have questionable effectiveness (evident in the case of Venice), or emergency orders which, while useful for urgent situations, are not suitable for managing the recurring issue of overtourism.

⁷¹ R.A. HUGHES, *Evasion, confusion and protests: How effective is Venice's new tourist tax?*, in *Euronews*, 21 May 2023. See also E. VIANELLO, *Aspettando l'ultima onda: Venezia e la gestione dell'overtourism*, in *DiTe - Rivista di studio delle dinamiche territoriali*, 9 January 2025.

⁷² *Cinque Terre invase dai turisti: i sindaci chiedono una legge speciale*, in *IlSole24Ore*, 10 April 2023.

⁷³ M. BOMPANI, *Cinque Terre, Via dell'Amore a pagamento: 5 euro per 160 metri*, in *la Repubblica*, 6 July 2023.

⁷⁴ A. SYMONS, *Portofino introduce il divieto di sosta pedonale*, in *Euronews*, 10 May 2023.

⁷⁵ V. IORIO, *Turisti, in Italia ed Europa è boom: sono troppi? Perché l'«overtourism» è un problema*, in *Il Corriere della Sera*, 26 July 2023.

⁷⁶ G. PICCOLI, *Turismo al lago di Braies, auto a numero chiuso nella perla dell'Alto Adige*, in *la Repubblica*, 12 July 2022.

An innovative and sustainable approach has been adopted by the Autonomous Province of Bolzano/Südtirol, where a complex system of maximum overnight stays, varying by municipality, has been implemented.⁷⁷ This exemplifies, however, an almost unique nationwide effort to address overtourism. Likewise, in the Trentino-Alto Adige Region, the Provinces of Trento and Bolzano have undertaken initiatives (#Dolomitesvives) to regulate motorized traffic flows on Alpine Pass Roads, specifically to promote sustainable tourism and mobility.⁷⁸

Nonetheless, such examples of excellence remain limited in number. Some cases, often cited in international literature as instances of sustainable tourism, may, upon closer examination, reveal a narrower scope of actual impact.

This concerns the two decree-laws (no. 45 of 2021 and no. 103 of 2021) implemented by the Draghi Government, aiming to restrict the passage of cruise ships in the San Marco Basin and eventually exclude them from the Venice Lagoon after a transition period.⁷⁹ This decision garnered significant attention globally. Despite receiving positive international recognition, the restrictions outlined in the decrees do not fully align with the principles of sustainable tourism.

Regrettably, cruise ships are still allowed to dock in the environmentally delicate Venice Lagoon, specifically at the Port of Marghera, which is part of the UNESCO World Heritage site along with the city of Venice. The current decree-laws have primarily achieved a form of 'aesthetic' sustainability, as the large cruise ships (so-called 'Grandi Navi') are prohibited from passing before San Marco Square. However, true environmental sustainability has not been fully realized as these ships still impact the lagoon's fragile ecosystem.

Another critical aspect that deserves attention is the potential impact of climate change on the Italian tourism industry. In line with the principles of sustainable tourism, which emphasize long-term planning and preserving tourist resources for future generations, it is essential for the government and public authorities to conduct studies and develop adaptation and conservation strategies.

However, there is a notable absence of fully reliable monitoring and up-to-date data reflecting the latest scientific predictions on climate change. The most significant effort in this direction can be traced back to 2014, when the Ministry of the Environment adopted the '*Report on the state of scientific knowledge on impacts, vulnerability, and adaptation to climate change in Italy.*'⁸⁰

And yet, already in the 2014 Italian Report it was stated that:

a growing share of foreign tourists will tend to leave Italy for less warm destinations, while a growing share of Italian tourists will tend to choose Italy instead of warmer destinations. The balance is generally negative, but at the regional and provincial level

⁷⁷ PROVINCIA AUTONOMA DI BOLZANO/SÜDTIROL, *Programma provinciale per lo sviluppo del turismo 2030+ (PPST 2030+)*.

⁷⁸ G. ERSCHBAMER, E. INNERHOFER, H. PECHLANER, *Dossier - Overtourism. Ovvero quando il turismo supera i limiti*, Eurac, October 2018. The order laid down by the Province was challenged before the Local Administrative Court, which upheld it; see TAR Bozen, 9 May 2018, no. 157.

⁷⁹ L. CASINI, *La salvaguardia di Venezia "città acquatica": dall'utopia alla realtà*, in *Aedon*, no. 2, 2021, 145.

⁸⁰ MINISTERO DELL'AMBIENTE, *Rapporto sullo stato delle conoscenze scientifiche su impatti, vulnerabilità ed adattamento ai cambiamenti climatici in Italia*.

these two effects are distributed according to the respective share of international and domestic tourists on the national total.⁸¹

The estimated decline in tourist numbers varies significantly across different regions, with some experiencing slight drops and others facing more pronounced declines. However, the overall picture, drawn in 2014 and spanning three decades (2020, 2030, 2050), remains alarming.⁸²

The lack of proper monitoring is closely linked with weak adaptation planning, as highlighted during Summer 2023. The Italian press covered the upset reactions of Italian politicians to statements made by the German Minister of Health, Karl Lauterbach, during his vacation in Italy.⁸³ He expressed concerns about Italy's future as a tourist destination in the face of exceptional heat waves related to climate change.⁸⁴ In response, the Minister of Tourism, Daniela Santanchè, made vague references to the principle of sustainability in the Strategic Tourism Plan,⁸⁵ giving the impression that Italy lacks a concrete and clear strategy to address climate change impacts on tourism.

Back in 2015, the '*National Strategy for Adaptation to Climate Change*,'⁸⁶ based on the work of the Euro-Mediterranean Centre on Climate Change (CMCC), already highlighted the severe effects expected on the tourism industry, particularly regarding the number of incoming visitors. The strategy was implemented through the '*National Plan for Adaptation to Climate Change*' (PNACC),⁸⁷ a tool guiding the most effective adaptation actions in Italy and integrating adaptation criteria into existing planning tools. The plan, finally released only in December 2023⁸⁸, outlined several critical effects of climate change on tourism. It predicted both direct and indirect negative impacts, including shifts in travel destinations towards higher latitudes and altitudes, seasonal changes in tourist flows, and a shift in preferences for foreign and Italian tourists.

The ski tourism sector would be significantly affected, with the potential loss of natural snow cover in many ski resorts due to rising temperatures. Alarmingly, even a moderate temperature increase of 1°C could render several ski resorts in Friuli Venezia Giulia and other regions incapable of maintaining a winter season. The lack of structured adaptation strategies at the national level is concerning, especially considering that many areas still plan to build ski facilities despite the projected loss of natural snow.

⁸¹ *ibid.* 94.

⁸² *ibid.* 94-95.

⁸³ Il ministro della Sanità tedesco in visita in Italia: "Qui il turismo non ha futuro. Usare le chiese come celle frigorifere", in *La Repubblica*, 23 July 2023.

⁸⁴ The original tweet in German said the following: "Heute in Bologna Italien eingetroffen, jetzt geht es in die Toskana. Die Hitzewelle ist spektakulär hier. Wenn es so weiter geht werden diese Urlaubsziele langfristig keine Zukunft haben. Der Klimawandel zerstört den Süden Europas. Eine Ära geht zu Ende.", in X/Twitter, 13 July 2023.

⁸⁵ Il ministro della Sanità tedesco e l'Italia: "Il turismo senza futuro". L'altolà di Santanchè, in *La Stampa*, 23 July 2023.

⁸⁶ Ministro dell'Ambiente e della Tutela del Territorio e del Mare, *Strategia nazionale di adattamento ai cambiamenti climatici (SNAC)*, Decree no. 86 of 16 June 2015.

⁸⁷ Ministero dell'Ambiente e della Sicurezza Energetica, *Piano Nazionale di Adattamento ai Cambiamenti Climatici*, December 2023.

⁸⁸ See Decree no. 434 of 21 December 2023.

Concluding our examination of sustainable tourism law in Italy, let us now delve into the regulation of tourist taxes, known as *'imposte di soggiorno'* and *'tasse di sbarco.'* These taxes, with their Pigouvian nature,⁸⁹ hold the potential, from an economic theory perspective, to counteract the negative externalities caused by high tourist flows on host communities and the ecosystem. They align with the concept of sustainable tourism, aiming to address the impacts of tourism in a balanced manner.

However, despite their potential, tourism law faces challenges in achieving true sustainability with these taxes.⁹⁰ Firstly, the revenue generated from these taxes is legally allocated to *'interventions in the field of tourism.'* Unfortunately, in destinations experiencing significant tourist inflows, this allocation might inadvertently exacerbate rather than alleviate the spiral of touristification, intensifying the pressures on host communities. Secondly, the involvement of stakeholders in the decision-making process is a crucial principle of sustainable tourism, as discussed in Sections 2 and 3. However, the current obligation for municipalities to engage only the *'most representative associations of the owners of accommodation facilities'* excludes the participation of host communities. This exclusion undermines the fundamental concept of sustainable tourism, which emphasizes the inclusion of local communities in decision-making to ensure tourism benefits are distributed equitably.

6. Sustainable Tourism and Law in Italy: an underrated relationship

In conclusion, the concept of sustainable tourism in Italy is yet to be fully embraced and translated into a comprehensive legal framework. Despite the frequent mention of *'sustainability'* in various tourism planning documents and policies, the existing legislation related to tourism remains largely unchanged. The absence of a clear and robust regulatory framework presents challenges in ensuring the proper management and development of the tourism industry while safeguarding the environment, communities, and visitors.

For sustainable tourism to become a reality, regulation is imperative.

Already in 2005, UNEP and UNWTO highlighted the central role in the development of sustainable tourism of what is defined as *'command and control instruments.'* In particular, the aforementioned document *'Making Tourism More Sustainable - A Guide for Policy Makers'* provides a comprehensive and convincing overview of various command and control instruments that can be used to promote sustainable tourism.⁹¹ These instruments include legislation, regulation, licensing, land use planning, development control, and Environmental Impact Assessment (EIA).

Legislation, regulation, and licensing play a critical role in strengthening sustainability by establishing compulsory and enforceable requirements with associated penalties for non-compliance. Specific aspects, such as location and nature of development, employee rights,

⁸⁹ A.C. PIGOU, *The Economics of Welfare*, Macmillan & Co., London 1920.

⁹⁰ G. MENEGUS, *Le imposte turistiche locali: per un ripensamento nel segno della sostenibilità*, in *IV Convegno di contabilità pubblica. Atti Convegno Nazionale di Contabilità Pubblica Venezia, 16-18 dicembre 2021*, Editoriale scientifica, Napoli 2023, 831-840.

⁹¹ UN ENVIRONMENTAL PROGRAMME and UN WORLD TOURISM ORGANISATION (UNEP & UNWTO), *Making Tourism More Sustainable - A Guide for Policy Makers*, 2005, 78 ff.

visitor safety, environmental damage, and resource use, should be covered by a basic legal framework applicable to all types of tourism.⁹²

According to UNEP and UNWTO, to support tourism sustainability, existing legislation should be reviewed and strengthened, considering factors like positive encouragement for sustainable tourism, powers of relevant bodies, and stakeholders' ability to engage in sustainable tourism. A national tourism law, coordinated with other relevant laws, can provide the basis for underpinning sustainability and controlling tourism-related activities.⁹³

A particular emphasis is put on land use planning and development control, which are deemed essential for sustainable tourism, influencing tourism development and other forms of development that may impact tourism. Planning should be strategic, flexible, and participatory, integrating tourism strategies with spatial planning at the national, regional, and local levels. Zoning and regulations should be utilized as well to control tourism development, and development control processes should ensure compliance with regulations and prevent illegal development.⁹⁴

Finally, the relevance of Environmental Impact Assessment (EIA) is stressed: EIA can enhance sustainability by evaluating the potential impacts of tourism development on the environment and communities and, according to the guidelines, should be used more extensively and effectively as a requirement for developers, and its application to tourism should be clarified and extended in appropriate cases.⁹⁵

Overall, the document emphasizes the need for strong command and control instruments to achieve sustainable tourism, protect the environment, and promote responsible tourism practices.

In Italy, the lack of such a comprehensive regulatory framework for sustainable tourism, or even the limited implementation of some of the tools mentioned in the document, raises considerable concern, especially given the rapid expansion of the tourism industry in the post-pandemic era. Without adequate legal mechanisms, competing rights and interests beyond the tourism sector may be jeopardized.

It is imperative for constitutional law and public law scholars to play a more active role in facilitating the transition of the tourism industry towards sustainability. Historically, the attention of constitutional scholars on tourism primarily revolved around the division of legislative powers between the State and the Regions, with minimal focus on the general issues of regulating tourist activities. However, recent developments, particularly the emergence of sustainable tourism as a response to the adverse impacts of conventional mass tourism, have revealed the constitutional significance of the industry.

The concept of sustainability applied to tourism has shed light on imbalances and injustices stemming from unsustainable practices, paving the way for new avenues of research. Foremost among these is the exploration of the rights and freedoms of host communities and other vulnerable actors in the tourism sector. Thus far, legal scholarship has predominantly centred on safeguarding the rights of tourist businesses and visitors, overlooking the negative repercussions on host communities, urban environments, and other non-tourism-related economic activities. These concerns underscore the necessity for further

⁹² *ibid.*

⁹³ *ibid.* 79.

⁹⁴ *ibid.* 82-86.

⁹⁵ *ibid.* 88-89.

studies and understanding of both established rights (e.g., housing, property, economic enterprise) and emerging interests (e.g., the right to the city, the right to a stable climate, the rights of future generations) in the face of tourism impacts.

The challenges posed by the imperative to regulate and manage tourism sustainably have exposed the inadequacy of existing legal and policy tools. Addressing this requires a comprehensive evaluation of the current legal framework and the distribution of powers among different levels of government, as well as careful consideration of conflicting rights, experimentation, impact analysis, and many other factors.

The required active involvement of all stakeholders, particularly host communities, in the planning and regulation of tourism activities necessitates reforming existing governance structures and processes, such as those related to tourism taxes. This requires renewed research in participatory tools and public-private partnership frameworks, which challenge principles of horizontal subsidiarity and local participation and democracy.

Lastly, the concept of long-term planning, especially in the face of climate change, and the holistic approach to sustainability in the tourism industry call for extensive reform of tourism legislation. This reform should encompass governance reforms, an innovative and proactive role of public authorities, and the revision of existing instruments and policies.

However, it is crucial to acknowledge that this research endeavour is still in its nascent stages. The complexity of the issues at hand demands collaborative efforts from scholars, policymakers, and stakeholders to create an effective and comprehensive regulatory framework for sustainable tourism.

In conclusion, although the notion of sustainable tourism has been acknowledged to some extent in policy documents, its full realization in Italy remains pending. The country must progress beyond mere rhetoric and take concrete legal actions that genuinely prioritize sustainability within the tourism industry. Achieving this goal necessitates proactive regulation and harmonization of existing laws to safeguard the environment, communities, and visitors while simultaneously promoting responsible and sustainable tourism practices. A comprehensive legal framework is indispensable for Italy to embark on a genuine journey towards sustainable tourism.

As pointed out by Franceschelli in his book, we may envision the age of sustainable tourism as a hopeful prospect, but it is yet to be effectively embraced. The development of sustainable tourism law is a journey yet to unfold, and significant efforts lie ahead.