



## **UNWTO Commission for Africa**

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### **Item 3 of the provisional agenda: Report of the Secretary-General**

#### **Item 3.4**

### **UPDATE ON THE DRAFT UNWTO CONVENTION ON PROTECTION OF TOURISTS AND TOURISM SERVICE PROVIDERS**

#### **Note by the Secretary-General**

The Secretary-General submits to the Members of the Commission information on the update on the draft UNWTO Convention on the Protection of tourists and tourism providers.

## **Protection of Tourists/Consumers and Travel Organizers**

### **I. Introduction**

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1. The present document follows the previous reports made to the 90<sup>th</sup>, 93<sup>rd</sup> and 94<sup>th</sup> sessions of the Executive Council and to the 19<sup>th</sup> session of the General Assembly on the same issue, recalling the insufficiency of existing binding rules at the global level governing the rights and obligations of tourists/consumers and tourism enterprises. It further refers to the corresponding decision, requesting that the UNWTO Secretary-General establishes an ad hoc working group able “to define the scope and level of the proposed legal instrument”.

2. UNWTO Executive Council during its 94<sup>th</sup> session (Campeche, Mexico, 23-25 October 2012) decided to further broaden the scope of discussions and consultations with all Member States, particularly, through the Regional Commissions’ meetings. The working group was requested to continue the elaboration of the text of the convention and to send a report on its progress to the ninety-fifth session. The present report summarizes the activities of the working group towards the elaboration of the draft text of the international convention and focuses on the main content elements of the draft text. The last version of the draft convention is enclosed to this report as Annex for further comments and consideration by the Regional Commissions in line with the request of the Executive Council.

### **II. Activities towards the adoption of an international convention on the protection of tourists and tourism service providers**

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3. The main aim of the “UNWTO working group on the protection of tourists/consumers and travel organizers” is to draft an international convention dealing with the main scope elements identified by the group. The working group consists of official expert delegates from Member States of every region, representation of the tourism private sector such as IATA, AMFORT, IH&RA, UFTAA, WTAAA, ECTAA, EGFATT, HOTREC, WTTC, FIA, international organizations such as ICAO, and representatives of the European Commission.

4. It had already convened five meetings. During the first meeting of the working group in April 2011 a consensus was reached a) on the need to elaborate a legal document which can provide both guidelines and binding norms and b) on its scope elements. When defining the scope, the working group agreed on addressing the following key issues, listed in order of their priority:

- i. Providing assistance to, and ensuring the repatriation of, consumers, particularly in cases of force majeure;
- ii. Supplying accurate and timely information to tourists including in terms of the handling of bankruptcy situations of travel organizers; and
- iii. Focussing on issues related to accommodation.

5. At its 90<sup>th</sup> session, the Executive Council agreed with the proposed approach and invited the Secretary-General to move forward the project towards an international convention. During the second meeting held in September 2011 the working group started a detailed debate on the scope elements in order to draft the first version of the convention for its upcoming meeting.

6. At its 19<sup>th</sup> session the General Assembly reaffirmed the initiative and took note of the preliminary work conducted leading to an international convention.

7. The third meeting of the working group was held in February 2012 on the occasion of BIT International Tourism Exchange Fair in Milan. The participants discussed the first draft text which was elaborated in accordance with the decisions of the second meeting on scope element Issue 1 and began a detailed debate on Issue 2 concerning information obligations.

8. On 9 March 2012 ITB hosted “UNWTO Session on the protection of Tourists/Consumers – accommodation related issues”. This event gave a unique opportunity for representatives of governments, private accommodation sectors and NGOs to trigger debate on accommodation scope elements of a future international convention including the rights and obligations of the accommodation providers as well as requirements of adequate information to tourists about the facilities and conditions of the accommodation.

9. During its fourth meeting held in June 2012 in Madrid the working group continued the detailed debate on the second draft text of the convention. According to the request of the working group, information obligation provisions, travel organizer’s liability and the assistance obligations of the States Parties in case of force majeure should be revised for the next meeting. With the consent of the related stakeholders’ organizations the accommodation related provisions will mainly focus on information obligations in accordance with the existing regional and global regulatory frameworks.

10. The fifth meeting was held on the occasion of the World Travel Market in November 2012 in London. The working group continued the debate on the third draft text of the convention and agreed on some amendments. However, due to time constraints and the significant number of interventions the working group was not able to discuss every proposal and remark. Therefore, the UNWTO Secretariat is in the process to collect and compile all the comments of the Members of the working group for presenting and debating them during its next meeting. The last version of the draft text - including the adopted modifications of the last meeting - is enclosed to this report for the further consideration and comments by the Regional Commission (see Annex).

11. Besides the draft of the convention, the UNWTO Secretariat elaborated the following related working documents which had been debated during the meetings of the working group:

- a) Working document of assistance and repatriation of tourists/consumers in case of force majeure
- b) Survey by questionnaire on tourists/consumers protection
- c) Working document on information obligations
- d) Preliminary results of the survey on on tourists/consumers protection
- e) Working document on ranking information elements
- f) Working document on accommodation issues
- g) Working document on the evaluation of assistance obligations and responsibilities in case of force majeure

### III. Content elements of the draft convention

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12. The General part of the draft convention on the protection of tourists and tourism service providers introduces the general principles, the scope elements, the main definitions (such as tourist, tourism service provider) and the necessary international law related provisions (amendment rules, entry into force, reservations, signature, ratification rules, deposit etc.). Following the legal structure of the existing ICAO conventions the Annexes of the convention will include standards as binding rules and recommended practices as non-binding rules. UNWTO reiterates its intention of not infringing on existing legal structures, either at the global or regional levels. On the subject of air transport, ICAO, IATA and ACI expressed their willingness to cooperate closely with UNWTO.

13. Annex I of the draft convention contains the assistance obligations of States Parties in force majeure situations indicating clear distinction from private sector's obligations (Annex II). It introduces definitions for force majeure, host country and country of origin. It sets out the cooperation obligation between the host country and the country of origin of the tourist in case of force majeure and identifies the main important assistance elements which are required in such cases. Furthermore, certain provisions on providing available information on related national bodies responsible for such cases, on the facilitation of incoming staff's entrance, on set-up professional crisis management teams and on airport helpdesk services are added as best practices which should be followed by the States Parties.

14. Annex II deals with package travel issues in detail. It includes force majeure situations, when tourists need care and assistance but tourism service providers are neither liable for such cases (assistance obligation). In accordance with the existing regulatory frameworks minimum liability rules for non-performance and improper performance are inserted. Separate chapter deals with the minimum information which should be provided to the tourists before the conclusion of the package travel contract and the minimum content elements of the contract as well. Finally, in case of the insolvency of the service providers minimum rules are established for the protection of tourists (financial security).

15. With the consent of the related stakeholders' organizations Annex III on accommodation related provisions focuses on mainly information obligations in accordance with the existing regional and global regulatory frameworks.

### IV. Others

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16. During its second meeting the working group agreed on the proposal of the UNWTO Secretariat on a survey by questionnaire on tourists/consumers protection. The main aims of this survey are to collect updated information on the existing tourist protection measures and practices among Member States, as well as to compile national legislation in this field. The first outcomes of the questionnaire were already introduced to the working group. In accordance with the decision of the UNWTO Executive Council the UNWTO Secretariat aims to produce and disseminate on the basis of the outcomes of the questionnaire an international Practical Guide addressed to tourists and tourism service providers with the most relevant information for their protection.

17. The World Committee on Tourism Ethics as the body responsible for promoting and monitoring the implementation of the UNWTO Global Code of Ethics for Tourism during its eleventh meeting in July 2012 in Rome reiterated its support for UNWTO's preparation of an international legal instrument on the protection of tourists/consumers and tourism enterprises. The Committee will also debate the draft text of the convention during its upcoming meeting in March.

18. UNWTO continues to cooperate with ICAO and other international organizations (e.g. European Union) in order to avoid inconsistencies and possible duplication of efforts, as well as to minimize conflict in related rules and regulations. In this framework, UNWTO was represented at the latest Member States' meeting and stakeholder's conference in June 2012 on the revision of the EU Package Travel Directive (90/314/EEC) which was organized by the European Commission. Furthermore, a bilateral consultation was taken place on 5 February 2013 between the European Commission and the UNWTO Secretariat aimed at discussing certain provisions of the draft text in order to ensure consistency with the upcoming proposal for the revised Directive. Consumer protection item is on the agenda of the Sixth Worldwide Air Transport Conference organized by ICAO in March 2013 where UNWTO will be represented in order to introduce the latest activities in this field and discuss the common key issues.

## Annex I

### **Draft Convention on the Protection of Tourists and Tourism Service Providers**

1. The present document follows on previous reports made to the Committee concerning the status of the *Draft Convention on the Protection of Tourists and Tourism Service Providers*, under preparation by a UNWTO Working Group established by the Secretary-General pursuant to a decision of the Executive Council (October 2010).
2. At its fifth and last meeting, held at the World Travel Market (WTM) in London on the 7<sup>th</sup> of November 2012, the *Working Group on the Protection of Tourists/Consumers and Travel Organizers* examined a third draft text of the Convention and agreed on a number of amendments proposed by the members of the Working Group. Due to time constraints, however, not all proposals could be discussed in London, and consultation between the members continued after the meeting by means of electronic communication.
3. The present document, therefore, contains the following papers:
  - i. The 3<sup>rd</sup> draft of the Convention on the Protection of Tourists and Tourism Service Providers (Annex 1);
  - ii. A summary document of the official comments to the 3<sup>rd</sup> draft (Annex 2), consisting of five columns which provide the following information:
    - The first comprises the text of the 3<sup>rd</sup> draft convention, provision by provision;
    - The second introduces the amended text in track changes based on the unanimous decisions of the Working Group's fifth meeting;
    - The third and fourth indicate all comments and remarks; and
    - The final column includes additional observations and proposals.
  - iii. The Report of the fifth meeting of the Working Group (7 November 2012, WTM London) (Annex 3).
4. The coordinator of the Working Group would welcome any comments and remarks from the Members of the Committee on the 3<sup>rd</sup> draft Convention, or on the summary table of official comments.

## Annex II

### DRAFT<sup>1</sup> UNWTO CONVENTION On the protection of tourists and tourism service providers

#### Preamble

The States Parties to this Convention,

**Noting** the development of tourism and its economic and social role,

**Having assessed** the insufficiency of existing rules at the global level governing the rights and obligations of tourists and of tourism service providers, particularly in a context of increasing diversification of destinations and generating countries;

**Recognizing** the need to establish uniform provisions relating to the protection of tourists and tourism service providers,

**Desiring** the achievement a high level of protection of tourists and tourism service providers and to increase the confidence of tourists as consumers in tourism service providers,

**Having examined** existing tourist protection measures and practices of the Member States of the World Tourism Organization and in other circles,

**Reasserting** the aims set out in Article 3 of the Statutes of the World Tourism Organization, and aware of the “*decisive and central*” role of this Organization, as recognized by the General Assembly of the United Nations, in promoting and developing tourism with a view to contributing to economic development, international understanding, peace, prosperity and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

**Acknowledging** the World Tourism Organization’s competence as stated on Article 12 of its Statutes regarding the preparation and recommendation of international agreements on any question that falls within the competence of the World Tourism Organization,

**Recalling** Articles 1, 6 and 8 of the Global Code of Ethics for Tourism,

**Recalling** Decisions CE/DEC/11(LXXXIX) and CE/DEC/12(XC) adopted by the Executive Council of the World Tourism Organization and Resolution A/RES/593(XIX) adopted by the General Assembly of the World Tourism Organization concerning the preparations towards an international convention on tourist/consumer protection and its scope elements,

Have agreed as follows:

#### **Article 1** **Scope**

1. This Convention applies to the rights and obligations of tourists and tourism service providers.

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<sup>1</sup> *Important note: This is a draft text (working document) for further comments and consideration by the UNWTO Working Group on the protection of tourists/consumers and travel organizers. It cannot be considered as an official UNWTO proposal or document.*

2. This Convention determines the obligations of the States Parties in order to ensure the highest practicable degree of protection of tourists and tourism service providers.

3. This Convention does not apply to standalone transport services such as air, rail, road and maritime services.

## **Article 2** **General principles**

1. States Parties shall ensure that tourism service providers respect and ensure the general rights and interests of tourists.

2. The States Parties shall cooperate, in accordance with the provisions of this Convention, in the formulation and application of necessary measures for the protection of tourists and tourism service providers.

3. The provisions of this Convention shall not prejudice the tourists' and the tourism service providers' rights and actions against third parties.

## **Article 3** **Definitions**

For the purposes of this Convention and its Annexes, the following definitions shall apply:

**"Tourist"** means a person who takes or agrees to take the tourism service or any person on whose behalf the tourism service has been agreed to be purchased (beneficiaries) or any person to whom the tourism service has been transferred (transferees);

**"Tourism service provider"** means any natural person or any legal person, irrespective of whether privately or publicly owned, who supplies or undertakes to supply a tourism service to the tourist (such as accommodation service provider, organizer, retailer/vendor etc.);

**"Standards"** mean those measures the uniform application of which by States Parties in accordance with this Convention is mandatory and practicable;

**"Recommended practices"** mean those measures the application of which by States Parties is desirable.

## **Article 4** **Annexes**

The Annexes to this Convention including standards and recommended practices shall form an integral part of this Convention, and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any Annexes thereto.

## **Article 5** **Standards**

1. States Parties shall take the necessary measures in order to implement standards in compliance with their national laws and practices.

2. The adoption, amendment and entry into force of standards shall be subject to the same procedures as that for the adoption, amendment and entry into force of this Convention.

### **Article 6** ***Recommended practices***

1. The Assembly of the States Parties may adopt and amend recommended practices to this Convention by a simple majority vote of the States Parties which are represented at the session of the Assembly of the States Parties.

2. The recommended practices shall be notified by the Secretary-General of the World Tourism Organization to all States Parties by the thirtieth day after its adoption or amendment.

3. State Parties shall notify the Secretary-General of the World Tourism Organization about the implementation of a recommended practice in compliance with their national laws and practices.

### **Article 7** ***Amendment of the Convention***

1. Any State Party may propose amendments to this Convention.

2. The text of any proposed amendment shall be communicated by the Secretary-General of the World Tourism Organization to all States Parties at least ninety days before the opening of the session of the Assembly of the States Parties.

3. Amendments shall be adopted by a two-third majority vote of the Assembly of the States Parties and shall be transmitted by the Secretary-General of the World Tourism Organization to the States Parties for ratification, acceptance, approval or accession.

4. Instruments of ratification, acceptance, approval or accession to the amendments shall be deposited with the Secretary-General of the World Tourism Organization.

5. Amendments adopted in accordance with paragraph 3 shall enter into force between States Parties having ratified, accepted, approved or acceded to such amendments on the thirtieth day following the date of receipt by the Secretary-General of the World Tourism Organization of the instruments of ratification, acceptance, approval or accession of at least two-third of the States Parties to this Convention. Thereafter the amendments shall enter into force for any other State Party on the thirtieth day after the date on which that State Party deposits its instrument.

6. After entry into force of an amendment to this Convention, any new State Party to the Convention shall become a State Party to the Convention as amended.

### **Article 8** ***Dispute settlement***

Any dispute that may arise between States Parties as to the application or interpretation of this Convention shall be resolved through diplomatic channels or, failing which, by any other means of peaceful settlement decided upon by the States Parties involved.

### **Article 9**

### **Signature**

This Convention shall be open for signature by all Member States of the World Tourism Organization and all Member States of the United Nations or of any of the Specialized Agencies or Parties to the Statute of the International Court of Justice during the twentieth session of the General Assembly of the World Tourism Organization which adopted this Convention in VENUE, from DATE to, and thereafter at the Headquarters of the World Tourism Organization in Madrid.

### **Article 10** **Ratification, acceptance, approval or accession**

1. This Convention is subject to ratification, acceptance or approval. This Convention shall remain open for accession by States mentioned in Article 9 above. Instruments of ratification, acceptance, approval and accession shall be deposited with the Secretary-General of the World Tourism Organization.
2. Recommended practices are not subject to ratification, acceptance, approval or accession.

### **Article 11** **Entry into force**

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession. For each State Party ratifying, accepting, approving or accessing to the Convention after the deposit of the twentieth instrument of ratification acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following deposit by such State Party of its instrument of ratification, acceptance, approval or accession.
2. Recommended practice shall enter into force on the thirtieth day following the date of its adoption.

### **Article 12** **Reservations**

1. When ratifying, accepting, approving or acceding to this Convention or any amendment hereto, a State Party may make reservations to one or several Annexes to the Convention or parts of them.  
*Comment: the provision should be reviewed after the fifth meeting in accordance with the outcomes of the debate on introducing "a la carte" or "unblock system" for ratification.*
2. A State Party may at any time withdraw its prior reservation by written notification to the depositary. Such withdrawal of a reservation becomes effective immediately upon notification to the depositary.

### **Article 13** **Report**

The Secretary-General of the World Tourism Organization shall report to each session of the General Assembly of the World Tourism Organization on the operation and implementation of this Convention. A copy of this report shall be communicated to States Parties to this Convention which are not Member States of the World Tourism Organization.

### **Article 14** **Denunciation**

1. This Convention shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the Secretary-General of the World Tourism Organization. After six

months from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State Party, but shall remain in force for the other States Parties.

2. The denunciation shall not affect any requests for information or assistance made, or procedure for the peaceful settlement of disputes commenced during the time the Convention is in force for the denouncing State Party.

**Article 15**  
***Other agreements and practices***

1. No provision in this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other existing or future international, bilateral, or multilateral agreements, or of any other applicable arrangements or practices.

2. The provisions of the present Convention shall not affect other international agreements in force as between the States Parties to them.

**Article 16**  
***Authentic texts and deposit***

1. The original of this Convention, of which the Arabic, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the World Tourism Organization.

2. The Secretary-General of the World Tourism Organization shall transmit certified copies to each of the signatory States Parties.

3. The Secretary-General of the World Tourism Organization shall notify the States Parties of the signatures, of the deposits of instruments of ratification, acceptance, approval and accession, amendments and denunciation.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

**DONE at VENUE, on DATE**

**Annexes to the UNWTO Convention**

|           |   |
|-----------|---|
| Annex I   | Assistance obligation of the States Parties in case of force majeure  |
| Annex II  | Package travel issues - Information obligation, failure of performance or improper performance, assistance obligation in case of force majeure, protection for insolvency |
| Annex III | Accommodation issues  |
| Annex IV  | Other issues  |

**Annex I**  
***Assistance obligation of the States Parties in case of force majeure***

## **Chapter 1** **Definitions**

For the purposes of this Annex, the following definitions shall apply:

**“Force majeure”** means unusual, extraordinary and unforeseeable circumstances beyond the control of the host country, that have resulted in the need of assistance on a large scale, when the consequences of those circumstances could not be avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled;

**“Host country”** means the State Party on the territory of which the event of force majeure has occurred;

**“Country of origin”** means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her principal and permanent residence.

## **Chapter 2** **Assistance obligation in case of force majeure**

2.1. In case of force majeure the host country shall assist the tourists and facilitate the satisfaction of their primary and basic needs. The assistance shall cover – if materially and technically possible:

- a) Communication service;
- b) Temporary shelters for accommodation;
- c) Necessary food service;
- d) Facilitating visa requirements, procedures including the necessary staff; and
- e) Facilitating transportation and repatriation.

2.2. In case of force majeure the tourist’s country of origin shall cooperate with the host country especially in facilitating necessary operational measures and in the repatriation of the tourist.

2.3. The host country shall inform the country of origin of the tourist involved in the force majeure situation about the followings:

- a) General circumstances;
- b) Affected geographical areas;
- c) Data of the tourist;
- d) Localization of the tourist;
- e) Data of casualties;
- f) Operational measures taken; and
- g) Other related data.

2.4. The host country shall provide the official, medical and technical staff coming from the tourist’s country of origin with operational assistance ensuring the facilitation of their entry and stay in the territory of the host country in order to cooperate with the host country’s staff and to give assistance to the tourist. The incoming official, medical and technical staff shall respect the national laws and practices of the host country which may require prior authorization before the entry to the territory of host country.

2.5. In case of force majeure the host country shall inform the World Tourism Organization about the available information - without any implications of personal data - as detailed in point 2.3.

2.6. Upon the ratification, acceptance, approval or accession to the Convention States Parties shall communicate to the Secretariat of the World Tourism Organization the contact details of the related authorities, bodies or organizations at the national level which are responsible and designated for force majeure situations. States Parties shall update the contact details annually and inform the Secretariat of the World Tourism Organization about any modification intervening in the meantime.

2.7. In case of force majeure when the life, health or the personal integrity of the tourists is exposed to direct danger, the host country shall carry out additional necessary operational measures in addition to the measures indicated in points 2.1.-2.6. The operational measures shall include – if materially and technically possible:

- a) Coordination of evacuation;
- b) Emergency staff;
- c) Health and medical service; and
- d) Security staff.

2.8. This Convention shall not prejudice the application of general consular laws and practices by the States Parties.

**2.9. Recommended Practice** - The “*Recommendations on the Use of Georeferences, Date and Time in Travel Advice and Event Information*” adopted by the General Assembly of the World Tourism Organization (A/RES/593(XIX)) should be taken into consideration in the dissemination of the information indicated in point 2.3.

**2.10. Recommended Practice** - States Parties should set up permanent professional crisis management service in order to facilitate operational measures in case of force majeure.

**2.11. Recommended Practice** – States Parties should provide the official, medical and technical staff coming from the tourist’s country of origin with temporary visa in case of force majeure in order to facilitate their entry to the host country.

**2.12. Recommended Practice** – States Parties should carry out local contingency planning which includes tourists to ensure comprehensive preparedness for cases of force majeure.

**2.13. Recommended Practice** - States Parties should take necessary measures to ensure that at airports helpdesk service should be set up for assisting tourists in case of force majeure. – further consultation with ICAO, IATA, Airports Council International

**2.14. Recommended Practice** - Procedural rules for the dissemination of the related information in accordance with point 2.3. – to be elaborated.

## Annex II Package travel issues

### Chapter 1 Definitions

1. For the purposes of this Annex, the following definitions shall apply:

**“Other party to the package travel contract”** means the party, other than the tourist, to the package travel contract, who, in accordance with the national legislation of the State Party, may be the organizer or the retailer/vendor or both;

**“Organizer”** means a person who, otherwise than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer;

**“Retailer, vendor”** means a person who sells or offers for sale a package in the capacity of a disclosed agent of the organizer;

**“Package”** means the pre-arranged combination of not fewer than two of the following services when sold or offered for sale at an inclusive price and when the package covers a period of more than twenty-four hours or includes overnight accommodation:

- transport;
- accommodation;
- other tourism services not ancillary to transport or accommodation and accounting for a significant proportion of the package.

The separate billing of various components of the same package shall not absolve the other party to the package travel contract from respecting the obligations under this Convention;

**“Package travel contract”** means the agreement linking the tourist and the organizer or the retailer/vendor or both in accordance with the national legislation of the State Party;

**“Force majeure”** means unusual, extraordinary and unforeseeable circumstances beyond the control of the other party to the package travel contract, when the consequences of those circumstances could not be avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled;

**“Host country”** means the State Party on the territory of which the event of force majeure has occurred;

**“Country of origin”** means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her principal and permanent residence.

2. For the purposes of this Annex a person travelling for purposes related to his trade, craft, business or profession (business traveller) is not considered as a tourist.

## **Chapter 2** **Information obligation**

2.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract provides the tourist before the conclusion of the package travel contract in any appropriate form with adequate information on:

- a) Travel destination;
- b) Type, quality, main features of accommodation and its location;
- c) Means, characteristics and categories of transport to be used;
- d) General information on passport and visa requirements and health formalities required;
- e) Services included in the package;
- f) Total price of the package;
- g) The advance payment to be made at the time of booking and the schedule for paying the balance; and

- h) Whether a minimum number of tourists is required for package travel to take place and the deadline for informing the tourist of cancellation if such number is not achieved or is exceeded.

**2.2. Recommended practices** – States Parties should take the necessary measures to ensure that the other party to the package travel contract provides the tourist before the conclusion of the package travel contract in any appropriate form with additional information on:

- a) Meal plan;
- b) The optional conclusion of an insurance policy to cover the cost of cancellation by the tourist or the cost of assistance, including repatriation, in the event of accident or illness;
- c) Conditions for transferring the package travel contract; and
- d) General terms and conditions applying to the package travel contract.

**2.3.** States Parties shall take the necessary measures to ensure that the package travel contract includes the following elements if relevant and applicable to the particular package:

- a) Identification of the tourist and the other party to the package travel contract (contracting parties);
- b) Services ordered and included in the package;
- c) Information on the type, quality, location and main features of accommodation included in the package;
- d) Information on the means, characteristics and categories of transport to be used;
- e) Travel destination, relevant periods of stay, dates, times and points of departure and return, itinerary;
- f) Total price of the package, indication of any dues, taxes or fees chargeable for certain services where such costs are not included in the package, price alteration policy, payment scheduled and the method of payment; and
- g) Special requirements which the tourist has communicated to the other party to the contract when making the booking and which both contracting parties have accepted.

**2.4. Recommended practices** – States Parties should take the necessary measures to ensure that the package travel contract includes the following additional elements:

- a) Information on the operating permit for the other party to the package travel contract, if it is relevant;
- b) Financial security information in case of insolvency of the other party to the package travel contract;
- c) General terms and conditions applying to the package travel contract such as conditions for modifying the package travel contract, information on cancellation policy indicating deadlines;
- d) Information on available complaint procedures;
- e) Contact details of the local representative of the other party to the package travel contract or local agencies, and where such local representatives do not exist, other facilities available to contact the other party to the contract;
- f) Applicable law of the package travel contract; and
- g) Other provisions provided for under mutual agreement.

### **Chapter 3**

#### ***Failure of performance or improper performance***

**3.1.** States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable to the tourist for the proper performance of the obligations under the package travel contract.

3.2. Where after departure a significant proportion of the services contracted is not provided, States Parties shall take the necessary measures to ensure that the other party to the package travel contract makes suitable alternative arrangements for the continuation of the package, and where appropriate compensates the tourist for the difference between the services contracted and those supplied.

3.3. If it is impossible to make such arrangements, States Parties shall take the necessary measures to ensure that the other party to the package travel contract, where appropriate, provides the tourist, at no extra cost, with equivalent transport back to the place of departure (repatriation), or to another return-point within the package to which the tourist has agreed.

3.4. States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable for any loss or damage to the tourist resulting from the failure or the improper performance of the package travel contract, unless such failure or improper performance is neither attributable to a fault of the other party to the package travel contract nor to any supplier of services of such other party to the package travel contract, because:

- a) the failure or improper performance of the package travel contract is attributable to the tourist,
- b) such failure or improper performance is attributable to a third party unconnected with the services contracted, and where unforeseeable or unavoidable,
- c) such failure or improper performance is due to a case of force majeure.

3.5. States Parties shall take the necessary measures to ensure that in the cases referred to in points 3.4. b) and c) the other party to the package travel contract gives prompt assistance to the tourist.

3.6. States Parties shall take the necessary measures to ensure that the tourist communicates any failure in the performance of the package travel contract which is perceived on the spot to the supplier of the services concerned and to the other party to the package travel contract in writing or any other appropriate form at the earliest opportunity. States Parties shall take the necessary measures to ensure that this obligation is stated clearly and explicitly in the package travel contract.

3.7. States Parties shall take the necessary measures to ensure that the tourist is liable to the other party to the package travel contract for any loss or damage caused by his wrongful acts or default as a consequence of non-compliance with the obligations incumbent upon him under this Convention or under the package travel contract.

**3.8. Recommended Practice** – In case of damages arising from the non-performance or improper performance of the services included in the package, States Parties should allow compensation to be limited in accordance with the international conventions governing such services.

**3.9. Recommended Practice** – In case of damages other than personal injury resulting from the non-performance or improper performance of the services included in the package, States Parties should allow compensation to be limited under the package travel contract. Such limitation shall not be unreasonable.

#### **Chapter 4**

#### ***Assistance obligation in case of force majeure***

4.1. States Parties shall take the necessary measures to ensure that when a force majeure event affects the proper performance of the services included in the package travel contract, the other party to the package travel contract provides prompt assistance to the tourist.

4.2. States Parties shall take the necessary measures to ensure that the assistance covers – if materially and technically possible:

- a) Information and communication facilities;
- b) For the duration of the package travel contract, suitable alternative arrangements to the meal plan that has been agreed in the package travel contract, if a significant proportion of the agreed meal plan cannot be provided due to the case of force majeure;
- c) For the duration of the package travel contract, suitable alternative arrangements to the accommodation that has been agreed in the package travel contract, if a significant proportion of the agreed accommodation cannot be provided due to the case of force majeure;
- d) Equivalent transport back to the point of departure or to another return-point to which the tourist has agreed, if transport has been agreed in the package travel contract and is affected by the force majeure situation; and
- e) Upon the request of the tourist providing information on alternative reservations and other or additional services which shall be purchased by the tourist if such services had not been agreed in the package travel contract.

4.3. States Parties shall take the necessary measures to ensure that in case of force majeure the other party to the package travel contract cooperates with the related authorities of the tourists' country of origin and of the host country.

**4.4. Recommended Practice** – The host country should make immediate contact with the local representative or local agency of the other party to the package travel contract or where such local representatives do not exist, directly with the other party to the contract involved in the force majeure situation in order to provide support to them.

**4.5. Recommended Practice** – States Parties should take the necessary measures to ensure, in case of force majeure, that, if the costs of the equivalent transport provided in point 4.2. d) exceed the costs of the transport originally agreed in the package travel contract, these extra costs are equally shared by the tourist and the other party to the package travel contract.

**4.6. Recommended Practice** – States Parties should promote insurance schemes and guarantee systems which aim to cover the extra costs resulting from the force majeure situation.

**4.7. Recommended Practice** – States Parties should take the necessary measures to ensure that in case of force majeure neither the tourist nor the other party to the package travel contract are entitled to claim any compensation for the damage resulting from the failure to perform or the improper performance of the package travel contract.

## Chapter 5

### ***Protection for the event of the insolvency of other party to the package travel contract***

5.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract provides at all times sufficient evidence of financial security for the tourists in the event of insolvency.

5.2. States Parties shall take the necessary measures to ensure that in the event of insolvency of the other party to the package travel contract the financial security covers the costs of repatriation and also the refund of money paid over by the tourist to the other party to the package travel contract in accordance with the package travel contract.

**5.3. Recommended Practice** – States Parties should share the related information on the different financial security forms subscribed by the other party to the package travel contract with the Secretariat of the World Tourism Organization in order to build-up a common global database on insolvency protection.

## **Annex III Accommodation issues**

### **Chapter 1 Definitions**

For the purposes of this Annex, the following definitions shall apply:

**“Accommodation service provider”** means tourism service provider who supplies accommodation service by operating accommodation establishment;

**“Contract”** means the agreement linking the tourist to the accommodation service provider;

**“Force majeure”** means unusual, extraordinary and unforeseeable circumstances beyond the control of the accommodation service provider, that have resulted in the need of assistance on a large scale, when the consequences of those circumstances could not be avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled;

**“Host country”** means the State Party on the territory of which the event of force majeure has occurred;

**“Country of origin”** means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her principal and permanent residence.

### **Chapter 2 Information obligation**

2.1. States Parties shall take the necessary measures to ensure that the accommodation service provider provides the tourist before the conclusion of the contract in any appropriate form with adequate information on:

- a) Data of identification;
- b) Type, quality, main features of the accommodation and its location;
- c) Price of the services, indication of any dues, taxes or fees chargeable for certain services where such costs are not included; and
- d) The advance payment to be made at the time of booking and the schedule for paying the balance.

2.2. **Recommended practice** – States Parties should take the necessary measures to ensure that the accommodation service provider provides the tourist before the conclusion of contract in any appropriate form with additional information on:

- a) Ancillary services;
- b) Cancellation policy;
- c) Check-in and check-out time;
- d) Possibility of complaints; and
- e) General terms and conditions applying to the contract.

### **Chapter 3 Force majeure event**

3.1. States Parties shall take the necessary measures to ensure that in case of force majeure the accommodation service provider cooperates with the related authorities of the tourists' country of origin and of the host country.

**3.2. Recommended Practice** – States Parties should take the necessary measures to ensure that in case of force majeure the accommodation service provider displays fair and ethical behavior and should not increase the room rates especially for the extra nights spent by the tourists till their repatriation without any justified reason and does not request cancellation fees neither from the tourists nor from its contracted other tourism service providers.

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**Annex IV**  
**Other issues**

## Annex II

### SUMMARY OF COMMENTS

#### ON THE THIRD DRAFT TEXT OF THE UNWTO CONVENTION ON THE PROTECTION OF THE TOURISTS AND TOURISM SERVICE PROVIDERS

Important note: This is a draft text (working document) and compilation of comments for further consideration by the UNWTO Working Group on the protection of tourists/consumers and travel organizers. It should not be considered as an official UNWTO proposal or document.

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals   | Who    | Other comments, questions  |
|--|---|---|--------|--|
| <b>UNWTO convention on the protection of tourist sand tourism service providers</b>  |   |   |        |  |
|  |   | <p><b><u>1. UNWTO convention on the protection of tourists</u></b></p> <p><b><u>2. UNWTO convention on the rights and obligations of tourists and tourism service providers</u></b></p> | France | The provisions of the Convention are aimed at the protection of tourists, not of tourism service providers. See the proposal for the modification of the very title of the Convention (with preference for the 1 <sup>st</sup> proposal as the 2 <sup>nd</sup> does not cover the Annex I on assistance obligation of the States). |
| <b>Preamble</b>  |   |   |        |  |
| The States Parties to this Convention,<br><br><b>Noting</b> the development of tourism and its economic and social role,   | The States Parties to this Convention,<br><br><b>Noting</b> the development of tourism and its economic and social role,  |   |        |  |
| <b>Having assessed</b> the insufficiency of existing rules at the global level governing the rights and obligations of tourists and of tourism service providers, particularly in a context of increasing diversification of | <b>Having assessed</b> the insufficiency of existing rules at the global level governing the rights and obligations of tourists and of tourism service providers, particularly in a context of increasing diversification of destinations |   |        |  |

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| destinations and generating countries;   | and generating countries;  |  |        |   |
| <b>Recognizing</b> the need to establish uniform provisions relating to the protection of tourists and tourism service providers,  | <b>Recognizing</b> the need to establish uniform provisions relating to the protection of tourists and tourism service providers,  | <b>Recognizing</b> the need to establish uniform provisions relating to the protection of tourists <del>and tourism service providers,</del>   | France | The provisions of the Convention are aimed at the protection of tourists, not of tourism service providers. |
| <b>Desiring</b> the achievement a high level of protection of tourists and tourism service providers and to increase the confidence of tourists as consumers in tourism service providers,   | <b>Desiring</b> the achievement of a high level of protection of tourists and tourism service providers and to increase the confidence of tourists as consumers in tourism service providers,  | <b>Desiring</b> the achievement of a high level of protection of tourists <del>and tourism service providers</del> and to increase the confidence of tourists as consumers in tourism service providers, | France | The provisions of the Convention are aimed at the protection of tourists, not of tourism service providers. |
| <b>Having examined</b> existing tourist protection measures and practices of the Member States of the World Tourism Organization and in other circles,   | <b>Having examined</b> existing tourist protection measures and practices of the Member States of the World Tourism Organization and in other circles,   |  |        |   |
| <b>Reasserting</b> the aims set out in Article 3 of the Statutes of the World Tourism Organization, and aware of the “ <i>decisive and central</i> ” role of this Organization, as recognized by the General Assembly of the United Nations, in promoting and developing tourism with a view to contributing to economic development, international understanding, peace, prosperity | <b>Reasserting</b> the aims set out in Article 3 of the Statutes of the World Tourism Organization, and aware of the “ <i>decisive and central</i> ” role of this Organization, as recognized by the General Assembly of the United Nations, in promoting and developing tourism with a view to contributing to economic development, international understanding, peace, prosperity and universal respect for, and observance |  |        |   |

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|---|--|-----------|-----|---------------------------|
| and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,  | of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,   |           |     |                           |
| <b>Acknowledging</b> the World Tourism Organization's competence as stated on Article 12 of its Statutes regarding the preparation and recommendation of international agreements on any question that falls within the competence of the World Tourism Organization,   | <b>Acknowledging</b> the World Tourism Organization's competence as stated on Article 12 of its Statutes regarding the preparation and recommendation of international agreements on any question that falls within the competence of the World Tourism Organization,  |           |     |                           |
| <b>Recalling</b> Articles 1, 6 and 8 of the Global Code of Ethics for Tourism,  | <b>Recalling</b> Articles 1, 6 and 8 of the Global Code of Ethics for Tourism,   |           |     |                           |
| <b>Recalling</b> Decisions CE/DEC/11(LXXXIX) and CE/DEC/12(XC) adopted by the Executive Council of the World Tourism Organization and Resolution A/RES/593(XIX) adopted by the General Assembly of the World Tourism Organization concerning the preparations towards an international convention on tourist/consumer protection and its scope elements,<br><br>have agreed as follows: | <b>Recalling</b> Decisions CE/DEC/11(LXXXIX) and CE/DEC/12(XC) adopted by the Executive Council of the World Tourism Organization and Resolution A/RES/593(XIX) adopted by the General Assembly of the World Tourism Organization concerning the preparations towards an international convention on tourist/consumer protection and its scope,<br><br>have agreed as follows: |           |     |                           |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals   | Who    | Other comments, questions   |
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| <b>Article 1<br/>Scope</b>   |  |   |        |   |
| 1. This Convention applies to the rights and obligations of tourists and tourism service providers.  | 1. This Convention applies to the rights and obligations of tourists and tourism service providers.  | 1. This Convention <del>applies to</del> states the rights and obligations of tourists and tourism service providers <b>regardless of the nature of the contract between them.</b>        | France | Wording not understandable. The Convention cannot "apply" to rights and obligations. It applies to persons or situations, or "states" rights and obligations.<br><br>Furthermore, it should specify <u>tourism</u> service providers in the French translation.<br><br>In addition, if there is to be an agreement on the definition of tourist, it should to encompass all types of contractual relationships (see also observation on Article 3 - definition of tourists) |
| 2. This Convention determines the obligations of the States Parties in order to ensure the highest practicable degree of protection of tourists and tourism service providers. | 2. This Convention determines the obligations of the States Parties in order to ensure the highest practicable degree of protection of tourists and tourism service providers. | 2. This Convention determines the obligations of the States Parties in order to ensure the highest practicable degree of protection of tourists <del>and tourism service providers.</del> | France | The provisions of the Convention are aimed at the protection of tourists, not of tourism service providers.   |
| 3. This Convention does not apply to standalone transport services such as air, rail, road and maritime services.  | 3. This Convention does not apply to standalone transport services such as air, rail, road and maritime services.  | 3. This Convention does not apply to <b><u>contracts exclusively for the provision of</u></b> transport services such as air, rail, road and maritime services.                           | France | Would not such an exclusion of bare "flights" risk rendering the provisions of the Convention inapplicable to tourists arriving in the host country through a "standalone" transport ticket?  |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals  | Who    | Other comments, questions  |
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|   |   | (or "to standalone transport services")  |        | <p>Would it not be better to provide for this <b>exclusion only in Annex II</b> on package travel? And thus move this point into Annex II with the modified wording shown here.</p> <p>To address the concerns of ICAO, possibly introduce a clause establishing the primacy of its rules.</p> <p>As it is drafted, this Article, which excludes transport services, conflicts with Annex II Chapter 1 Sections 3.3 and 4.5, which includes transport in the package tour.</p> |
| <b>Article 2</b><br><b>General principles</b>   |   |  |        |  |
| 1. States Parties shall ensure that tourism service providers respect and ensure the general rights and interests of tourists.  | 1. States Parties shall ensure that tourism service providers respect and ensure the general rights and interests of tourists.  |  | France | It would be advisable to specify the meaning of "general rights and interests"   |
| 2. The States Parties shall cooperate, in accordance with the provisions of this Convention, in the formulation and application of necessary measures for the protection of tourists and tourism service providers. | 2. The States Parties shall cooperate, in accordance with the provisions of this Convention, in the formulation and application of necessary measures for the protection of tourists and tourism service providers. | 2. The States Parties shall cooperate, in accordance with the provisions of this Convention, in the formulation and application of necessary measures for the protection of tourists <b>and tourism service providers.</b> | France | The provisions of the Convention are aimed at the protection of tourists, not of tourism service providers.  |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals   | Who           | Other comments, questions   |
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| 3. The provisions of this Convention shall not prejudice the tourists' and the tourism service providers' rights and actions against third parties.  | 3. The provisions of this Convention shall not prejudice the tourists' and the tourism service providers' rights and actions against third parties.  |   |               |   |
| <b>Article 3<br/>Definitions</b>   |  |   |               |   |
| For the purposes of this Convention and its Annexes, the following definitions shall apply:  | For the purposes of this Convention and its Annexes, the following definitions shall apply:  |   |               |   |
| <p><b>"Tourist"</b> means a person who takes or agrees to take the tourism service or any person on whose behalf the tourism service has been agreed to be purchased (beneficiaries) or any person to whom the tourism service has been transferred (transferees);</p> | <p><b>"Tourist"</b> means a person who takes or agrees to take the tourism service or any person on whose behalf the tourism service has been agreed to be purchased (beneficiaries) or any person to whom the tourism service has been transferred (transferees);</p> | <p><b>"Tourist"</b> means a person who <del>takes</del> purchases or <del>agrees to take</del> undertakes to purchase a tourism service, any person on whose behalf the tourism service has been agreed to be purchased (beneficiaries) or any person to whom the tourism service has been transferred (transferees);</p> | <p>France</p> | <p>Inadequate definition of tourist. Is a tourist a consumer that has entered into a contract with a tourism service provider or a person who is simply in a country other than his own without having contracted tourist service? – French authorities are favourable to the 1<sup>st</sup> option, only to exclude "visiting friends and family" tourism.</p> <p>Furthermore, these definitions of tourists and tourism service providers are circular: whoever sells or buys a tourism service without defining the latter.</p> <p>See in next column the proposed</p> |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals  | Who                       | Other comments, questions   |
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|  |  | <p><b>"Tourism service"</b>: service enabling a person to travel or stay away from his usual place of residence for more than 24 hours but less than four months, including for recreational purposes, professional purposes (business tourism) or health purposes (health tourism).</p>   |                           | <p>definition of "tourism service"(possibly only provide for the application of this definition for Annex I to avoid altering the definition of package travel in Annex II.)</p> <p>Possible add in this definition the concepts of travel, overnight, visit and of cultural, religious or sports activities.</p> |
| <p><b>"Tourism service provider"</b> means any natural person or any legal person, irrespective of whether privately or publicly owned, who supplies or undertakes to supply a tourism service to the tourist (such as accommodation service provider, organizer, retailer/vendor etc.);</p> | <p><b>"Tourism service provider"</b> means any natural person or any legal person, irrespective of whether privately or publicly owned, who supplies or undertakes to supply a tourism service to the tourist (such as accommodation service provider, organizer, retailer/vendor etc.);</p> | <p><b>"Tourism service provider"</b> means any natural person or any legal person, irrespective of whether privately or publicly owned, who supplies or undertakes to supply a tourism service to the tourist (<del>such as accommodation service provider, organizer, retailer/vendor etc.</del>);</p> <p><b>"Tourism service provider"</b> means any natural person or any legal person, irrespective of whether privately or publicly owned, who <del>supplies</del> <b>sells</b> or undertakes to <del>supply</del> <b>sell</b> a tourism service to the tourist (such</p> | <p>ICAO</p> <p>France</p> | <p>Consider to define "tourism service"</p> <p>The concept of sale is preferable to that of supply and corresponds closer to the concepts of the PTD and of French law.</p>   |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals   | Who                       | Other comments, questions  |
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|  |   | as accommodation service provider, organizer, retailer/vendor etc.);  |                           |  |
| <p><b>"Standards"</b> mean those measures the uniform application of which by States Parties in accordance with this Convention is mandatory and practicable;</p>  | <p><b>"Standards"</b> mean those measures the uniform application of which, by States Parties in accordance with this Convention, is mandatory and practicable;</p>   | <p><b>"Standards"</b> mean those measures the uniform application of which, by States Parties in accordance with this Convention, is mandatory <del>and practicable</del>;</p> <p><b>"Standards"</b> mean those measures the uniform application of which by States Parties in accordance with this Convention is mandatory and <del>practicable</del> <b>[or specify]</b>;</p> | <p>ICAO</p> <p>France</p> | <p>To delete <b>practicable</b></p> <p>The expression establishing that the application of the standards is mandatory whenever it is "practicable" should be made more precise as it contradicts the mandatory quality attributed to such standards.</p> |
| <p><b>"Recommended practices"</b> mean those measures the application of which by States Parties is desirable.</p>   | <p><b>"Recommended practices"</b> mean those measures the application of which, by States Parties, is desirable.</p>  |   |                           |  |
| <b>Article 4 Annexes</b>   |   |   |                           |  |
| <p>The Annexes to this Convention including standards and recommended practices shall form an integral part of this Convention, and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any Annexes</p> | <p>The Annexes to this Convention including standards and recommended practices shall form an integral part of this Convention, and, unless expressly stated otherwise, a reference to this Convention constitutes at the same time a reference to any Annexes thereto.</p> |   |                           |  |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals   | Who                | Other comments, questions   |
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| thereto.  |   |   |                    |   |
| <b>Article 5<br/>Standards</b>  |   |   |                    |   |
| 1. States Parties shall take the necessary measures in order to implement standards in compliance with their national laws and practices.   | 1. States Parties shall take the necessary measures in order to implement standards in compliance with their national laws and practices.   | <p><b><u>1. States Parties shall take such measures as are necessary in compliance with their national laws and practices to implement standards.</u></b></p> <p><b><u>1. States Parties shall take the necessary measures in order to implement standards.</u></b></p> | ICAO               | Given the definition of Standards and their presumably mandatory nature, it would appear that current text needs to be adjusted. Apart from this, we reiterate our earlier comment.   |
| 2. The adoption, amendment and entry into force of standards shall be subject to the same procedures as that for the adoption, amendment and entry into force of this Convention. | 2. The adoption, amendment and entry into force of standards shall be subject to the same procedures as that for the adoption, amendment and entry into force of this Convention. |   | ICAO<br><br>France | Is this practical?<br><br>This article is in contradiction with Art. 4 which stipulates that "the Annexes to this Convention including standards and recommended practices shall form an integral part of this Convention". Either the standards come into force at the same time as the Convention (Art. 4), or they enter into force under a regime of their own (Art 5). |
| <b>Article 6</b>  |   |   |                    |   |

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| <b>Recommended practices</b>   |  |  |        |  |
| 1. The Assembly of the States Parties may adopt and amend recommended practices to this Convention by a simple majority vote of the States Parties which are represented at the session of the Assembly of the States Parties. | 1. The Assembly of the States Parties may adopt and amend recommended practices to this Convention by a simple majority vote of the States Parties which are represented at the session of the Assembly of the States Parties. |  |        |  |
| 2. The recommended practices shall be notified by the Secretary-General of the World Tourism Organization to all States Parties by the thirtieth day after its adoption or amendment.  | 2. The recommended practices shall be notified by the Secretary-General of the World Tourism Organization to all States Parties by the thirtieth day after its adoption or amendment.  | 2. The recommended practices shall be notified by the Secretary-General of the World Tourism Organization to all States Parties by the thirtieth day after <b>their</b> adoption or amendment. | ICAO   |  |
| 3. State Parties shall notify the Secretary-General of the World Tourism Organization about the implementation of a recommended practice in compliance with their national laws and practices.                                 | 3. State Parties shall notify the Secretary-General of the World Tourism Organization about the implementation of a recommended practice in compliance with their national laws and practices.                                 | 3. State Parties shall notify the Secretary-General of the World Tourism Organization about the implementation of a recommended practice.  | ICAO   | Reference to national laws appears not necessary.                                      |
| <b>Article 7<br/>Amendment of the Convention</b>   |  |  |        |  |
| 1. Any State Party may propose amendments to this Convention.  | 1. Any State Party may propose amendments to this Convention.  |  |        |  |
| 2. The text of any proposed amendment shall be communicated by the Secretary-General of the World Tourism Organization to all States Parties at least ninety days  | 2. The text of any proposed amendment shall be communicated by the Secretary-General of the World Tourism Organization to all States Parties at least ninety days before the   |  | France | Is it advisable to create a distinct Assembly called "Assembly of the States Parties"? |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals  | Who  | Other comments, questions |
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| before the opening of the session of the Assembly of the States Parties.   | opening of the session of the Assembly of the States Parties.   |  |      |                           |
| 3. Amendments shall be adopted by a two-third majority vote of the Assembly of the States Parties and shall be transmitted by the Secretary-General of the World Tourism Organization to the States Parties for ratification, acceptance, approval or accession.   | 3. Amendments shall be adopted by a two-third majority vote of the Assembly of the States Parties and shall be transmitted by the Secretary-General of the World Tourism Organization to the States Parties for ratification, acceptance, approval or accession.  |  |      |                           |
| 4. Instruments of ratification, acceptance, approval or accession to the amendments shall be deposited with the Secretary-General of the World Tourism Organization.   | 4. Instruments of ratification, acceptance, approval or accession to the amendments shall be deposited with the Secretary-General of the World Tourism Organization.  |  |      |                           |
| 5. Amendments adopted in accordance with paragraph 3 shall enter into force between States Parties having ratified, accepted, approved or acceded to such amendments on the thirtieth day following the date of receipt by the Secretary-General of the World Tourism Organization of the instruments of ratification, acceptance, approval or accession of at least two-third of the States Parties to this Convention. | 5. Amendments adopted in accordance with paragraph 3 shall enter into force for those States Parties having ratified, accepted, approved or acceded to such amendments on the thirtieth day following the date of receipt by the Secretary-General of the World Tourism Organization of the instruments of ratification, acceptance, approval or accession of at least two-third of the States Parties to this Convention. Thereafter the amendments shall enter into force for | 5. Amendments adopted in accordance with paragraph 3 shall enter into force for those States Parties having ratified, accepted, approved or acceded to such amendments on the thirtieth day following the date of receipt by the Secretary-General of the World Tourism Organization of the instruments of ratification, acceptance, approval or accession. <del>of at least two-third of the States Parties to this</del> | ICAO |                           |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals  | Who    | Other comments, questions  |
|--|--|--|--------|--|
| Thereafter the amendments shall enter into force for any other State Party on the thirtieth day after the date on which that State Party deposits its instrument.  | any other State Party on the thirtieth day after the date on which that State Party deposits its instrument.   | <del>Convention.</del> Thereafter the amendments shall enter into force for any other State Party on the thirtieth day after the date on which that State Party deposits its instrument. |        |  |
| 6. After entry into force of an amendment to this Convention, any new State Party to the Convention shall become a State Party to the Convention as amended.   | 6. After entry into force of an amendment to this Convention, any new State Party to the Convention shall become a State Party to the Convention as amended.   |  |        |  |
| <b>Article 8</b><br><i>Dispute settlement</i>  |  |  |        |  |
| Any dispute that may arise between States Parties as to the application or interpretation of this Convention shall be resolved through diplomatic channels or, failing which, by any other means of peaceful settlement decided upon by the States Parties involved. | Any dispute that may arise between States Parties as to the application or interpretation of this Convention shall be resolved through diplomatic channels or, failing which, by any other means of peaceful settlement decided upon by the States Parties involved. |  |        |  |
| <b>Article 9</b><br><i>Signature</i>   |  |  |        |  |
| This Convention shall be open for signature by all Member States of the World Tourism Organization and all Member States of the United Nations or of any of the Specialized  | This Convention shall be open for signature by all Member States of the World Tourism Organization and all Member States of the United Nations or of any of the Specialized Agencies or  |  | France | The Convention is open only to the signature of the States. Regional economic integration organizations, such as the EU, are excluded from it. However, under Article 3 TFEU |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals | Who | Other comments, questions  |
|--|--|-----------|-----|--|
| <p>Agencies or Parties to the Statute of the International Court of Justice during the twentieth session of the General Assembly of the World Tourism Organization which adopted this Convention in VENUE, from DATE to, and thereafter at the Headquarters of the World Tourism Organization in Madrid.</p> | <p>Parties to the Statute of the International Court of Justice during the twentieth session of the General Assembly of the World Tourism Organization which adopted this Convention in VENUE, from DATE to, and thereafter at the Headquarters of the World Tourism Organization in Madrid.</p> |           |     | <p>(Treaty on the functioning of the European Union), the EU must take part in the Convention with regard to Annex II on package tours (see general comments on Annex II).<br/>It is therefore necessary to have a so-called "REIO clause" (Regional Economic Integration Organization), allowing the EU to join this project, that is, to be included in the draft Convention.</p> <p>If such inclusion is not possible, Member States will have to be authorized by a decision of the Council to conclude, in the interest of the Union, the draft Convention.</p> <p><b>Proposed REIO clause:</b> provision identical to that of Article 53 of the <b>Montreal Convention</b> of 28 May 1999 (Unification of Certain Rules for International Carriage by Air) wording:<br/>This Convention shall similarly be open for signature by Regional Economic Integration Organizations. For the purpose of this Convention, a "Regional Economic Integration Organisation"</p> |

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|                                    |   |           |     | <p>means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention.</p> <p>A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organization. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organization.</p> <p>3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organizations which have signed it. A reference to a "State Party" or "States Parties" in this Convention applies equally to a "Regional Economic Integration Organization."</p> |

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|  |  |  |                           | <p><b>Verify if applicable for all articles.</b></p> <p><b>WG agreement:</b><br/>Special provision to be inserted: other organizations could sign the convention, e.g. EU. Further consultation with the European Commission.</p> |
| <p><b>Article 10</b><br/><b><i>Ratification, acceptance, approval or accession</i></b></p>   |  |  |                           |   |
| <p>1. This Convention is subject to ratification, acceptance or approval. This Convention shall remain open for accession by States mentioned in Article 9 above. Instruments of ratification, acceptance, approval and accession shall be deposited with the Secretary-General of the World Tourism Organization.</p> | <p>1. This Convention is subject to ratification, acceptance or approval. This Convention shall remain open for accession by States mentioned in Article 9 above. Instruments of ratification, acceptance, approval and accession shall be deposited with the Secretary-General of the World Tourism Organization.</p> | <p>1. This Convention is subject to ratification, acceptance or approval. This Convention shall remain open for accession by States mentioned in Article 9 above. Instruments of ratification, acceptance, approval and accession shall be deposited with the Secretary-General of the World Tourism Organization, <b><u>who is hereby designated as the Depository.</u></b></p> <p>1. This Convention is subject to ratification, acceptance or approval. This Convention shall remain open for accession by States mentioned in Article 9 <b>above.</b> Instruments of ratification,</p> | <p>ICAO</p> <p>France</p> |   |

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|  |  | acceptance, approval and accession shall be deposited with the Secretary-General of the World Tourism Organization. |                    |                           |
| 2. Recommended practices are not subject to ratification, acceptance, approval or accession.   | 2. Recommended practices are not subject to ratification, acceptance, approval or accession.   |   |                    |                           |
| <b>Article 11</b><br><b>Entry into force</b>   |  |   |                    |                           |
| 1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession. For each State Party ratifying, accepting, approving or accessing to the Convention after the deposit of the twentieth instrument of ratification acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following deposit by such State Party of its instrument of ratification, acceptance, approval or accession. | 1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession. For each State Party ratifying, accepting, approving or accessing to the Convention after the deposit of the twentieth instrument of ratification acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following deposit by such State Party of its instrument of ratification, acceptance, approval or accession. |   |                    |                           |
| 2. Recommended practice shall enter into force on the thirtieth day following the date of its adoption.  | 2. Recommended practices shall enter into force on the thirtieth day following the date of their adoption.   | 2. A <b>[Recommended practice]</b> shall become operative on the thirtieth day following the date of its adoption.  | ICAO<br><br>France |                           |

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|   |  | 2. Recommended practice shall <del>enter into force</del> <b>form part of</b> the Convention on the thirtieth day following the date of its adoption. |     |   |
| <b>Article 12<br/>Reservations</b>  |  |   |     |   |
| 1. When ratifying, accepting, approving or acceding to this Convention or any amendment hereto, a State Party may make reservations to one or several Annexes to the Convention or parts of them.<br><i>Comment: the provision should be reviewed after the fifth meeting in accordance with the outcomes of the debate on introducing “a la carte” or “unblock system” for ratification.</i> | 1. When ratifying, accepting, approving or acceding to this Convention or any amendment hereto, a State Party may make reservations to one or several Annexes to the Convention or parts of them.              |   |     | Further evaluation: to introduce an opt-in system with minimum adoption of one Annex. |
| 2. A State Party may at any time withdraw its prior reservation by written notification to the depositary. Such withdrawal of a reservation becomes effective immediately upon notification to the depositary.  | 2. A State Party may at any time withdraw its prior reservation by written notification to the depositary. Such withdrawal of a reservation becomes effective immediately upon notification to the depositary. |   |     |   |
| <b>Article 13<br/>Report</b>  |  |   |     |   |
| The Secretary-General of the World Tourism Organization shall report to   | The Secretary-General of the World Tourism Organization shall report to  |   |     |   |

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| <p>each session of the General Assembly of the World Tourism Organization on the operation and implementation of this Convention. A copy of this report shall be communicated to States Parties to this Convention which are not Member States of the World Tourism Organization.</p>  | <p>each Session of the General Assembly of the World Tourism Organization on the operation and implementation of this Convention. A copy of this report shall be communicated to the States Parties to this Convention which are not Member States of the World Tourism Organization.</p>  |           |     |                           |
| <b>Article 14<br/>Denunciation</b>   |  |           |     |                           |
| <p>1. This Convention shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the Secretary-General of the World Tourism Organization. After six months from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State Party, but shall remain in force for the other States Parties.</p> | <p>1. This Convention shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the Secretary-General of the World Tourism Organization. After six months from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State Party, but shall remain in force for the other States Parties.</p> |           |     |                           |
| <p>2. The denunciation shall not affect any requests for information or assistance made, or procedure for the peaceful settlement of disputes commenced during the time the Convention is in force for the</p>   | <p>2. The denunciation shall not affect any requests for information or assistance made, or procedure for the peaceful settlement of disputes commenced during the time the Convention is in force for the denouncing State Party.</p>   |           |     |                           |

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| denouncing State Party.   |   |   |        |   |
| <b>Article 15</b><br><b>Other agreements and practices</b>  |   |   |        |   |
| 1. No provision in this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other existing or future international, bilateral, or multilateral agreements, or of any other applicable arrangements or practices. | 1. No provision in this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other existing or future international, bilateral, or multilateral agreements, or of any other applicable arrangements or practices. |   |        | <b>WG agreement:</b><br>To clarify explicitly the nature of standards as minimum rules. |
| 2. The provisions of the present Convention shall not affect other international agreements in force as between the States Parties to them.   | 2. The provisions of the present Convention shall not affect other international obligations in force between the States Parties.   | 2. The provisions of the present Convention <b><del>shall not affect</del> shall <u>not prevail over</u></b> other international agreements in force as between the States Parties to them. | France |   |
| <b>Article 16</b><br><b>Authentic texts and deposit</b>   |   |   |        |   |
| 1. The original of this Convention, of which the Arabic, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the World Tourism Organization.   | 1. The original of this Convention, of which the Arabic, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the World Tourism Organization.   |   |        |   |
| 2. The Secretary-General of the World Tourism Organization shall  | 2. The Secretary-General of the World Tourism Organization shall transmit   | 2. The Secretary-General of the World Tourism Organization shall  | ICAO   |   |

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| transmit certified copies to each of the signatory States Parties.   | certified copies to each of the signatory States Parties.  | transmit certified copies <u>to all States Parties.</u> |     |                           |
| 3. The Secretary-General of the World Tourism Organization shall notify the States Parties of the signatures, of the deposits of instruments of ratification, acceptance, approval and accession, amendments and denunciation. | 3. The Secretary-General of the World Tourism Organization shall notify the States Parties of the signatures, of the deposits of instruments of ratification, acceptance, approval and accession, amendments and denunciation. |   |     |                           |
| IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.   | IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.   |   |     |                           |
| <b>DONE at VENUE, on DATE</b>  | <b>DONE at VENUE, on DATE</b>  |   |     |                           |
| <b>Annexes to the UNWTO Convention</b>   |  |   |     |                           |
| <b>Annex I</b>   | <b>Annex I</b>   |   |     |                           |
| Assistance obligation of the States Parties in case of force majeure   | Assistance obligation of the States Parties in case of force majeure   |   |     |                           |
| <b>Annex II</b>  | <b>Annex II</b>  |   |     |                           |
| Package travel issues - Information obligation, failure of performance or improper performance, assistance obligation in case of force majeure, protection for insolvency  | Package travel issues - Information obligation, failure of performance or improper performance, assistance obligation in case of force majeure, protection for insolvency  |   |     |                           |
| <b>Annex III</b>   | <b>Annex III</b>   |   |     |                           |
| Accommodation issues   | Accommodation issues   |   |     |                           |
| <b>Annex IV</b>  | <b>Annex IV</b>  |   |     |                           |

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|--|---|--|--------|---|
| Other issues   | Other issues  |  |        |   |
| <b>Annex I</b><br><b>Assistance obligation of the States Parties in case of force majeure</b>  |   |  |        |   |
|  |   | Assistance obligation of the States Parties in case of <b>emergency situation</b>  | France |   |
| <b>Chapter 1</b><br><b>Definitions</b>   |   |  |        |   |
| For the purposes of this Annex, the following definitions shall apply:   | For the purposes of this Annex, the following definitions shall apply:  |  |        |   |
| <b>"Force majeure"</b> means unusual, extraordinary and unforeseeable circumstances beyond the control of the host country, that have resulted in the need of assistance on a large scale, when the consequences of those circumstances could not be avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled; | <b>"Force majeure"</b> means unusual, extraordinary and unforeseeable circumstances beyond the control of the host country, that have resulted in the need of assistance on a large scale, when the consequences of those circumstances could not have been avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled; | <b>"Emergency situation"</b> means unusual and extraordinary circumstances <b><u>if necessary, beyond the control of the host country], whose consequences could not be avoided if all due care had been exercised, and resulting in the need of prompt assistance on a large scale for tourists present in the territory of the host country.</u></b> | France | Under French law, force majeure, beyond the control of the country, is grounds for exoneration from liability. Annex I would effectively release the host State from its responsibility in case of force majeure. This seems paradoxical for an annex that is meant precisely to specify the obligations of the host State of the tourists in the event of emergencies and exceptional serious situations. Annex I confuses the concept of force majeure as a cause of non-liability and a typical emergency situation that requires the assistance of the host State vis-à-vis the tourists. |

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|  |   |  |                | <p>On the contrary, the invocation of force majeure means that the host State is under no obligation with regard to tourists if unusual, extraordinary and unforeseeable circumstances resulted from the willful action of the host country itself.</p> <p>The terms "<u>emergency situation</u>" or "<u>disaster</u>" are the ones that should be used to determine the deployment of the assistance action of the host State.</p> <p>See <b>proposed definition of emergency situation</b>: care should be taken to clearly distinguish between emergency and peril.</p> |
| <p><b>"Host country"</b> means the State Party on the territory of which the event of force majeure has occurred;</p>                                  | <p><b>"Host country"</b> means the State Party on the territory of which the event of force majeure has occurred;</p>   | <p><b>"Host country"</b> means the State Party <b>on the territory of which the event of force majeure the emergency situation has occurred or <u>caused its consequences</u>.</b></p> | <p>France</p>  | <p>Such a definition excludes cases such as that which resulted from the eruption of the Icelandic volcano, due to which tourists were stranded on the territory of a State even though the emergency situation/force majeure had not occurred in that territory.</p>  |
| <p><b>"Country of origin"</b> means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the</p> | <p><b>"Country of origin"</b> means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her</p> |  | <p>Austria</p> | <p>Persons who are ordinarily resident in the country of origin should therefore not be included</p>   |

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| tourist has his or her principal and permanent residence.   | principal and permanent residence.   | <b>Country of origin</b> ” means the State Party of which the tourist has nationality or in which at the time of the event of <del>force majeure</del> <b>the emergency situation</b> , the tourist has his or her principal and permanent residence.  | France                          |  |
| <b>Chapter 2</b><br><b>Assistance obligation in case of force majeure</b>   |  |  |                                 |  |
| 2.1. In case of force majeure the host country shall assist the tourists and facilitate the satisfaction of their primary and basic needs. The assistance shall cover – if materially and technically possible: | 2.1. In case of force majeure, the host country shall assist the tourists and facilitate the satisfaction of their primary and basic needs. The assistance shall cover – if materially and technically possible: | 2.1. In case of force majeure, the host country shall assist the <b>tourists</b> and facilitate the satisfaction of their primary and basic needs. The assistance shall cover – if materially and technically possible:<br><br>2.1. In case of <del>force majeure emergency situation, the host country shall assist the tourists and facilitate the satisfaction of their primary and basic needs.</del> the assistance shall cover – if materially and technically possible: | ICAO<br><br>France<br><br>Spain | To review the use of tourist and tourism service provider (plural or single form). It is suggested to review the use of the term in the plural form.<br><br>It is necessary to further clarify the expression facilitation of "procedures".<br><br>To insert as Recommended practice |

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|   |  |  |         | The text of the Convention raises a number of difficulties which tangentially affect other matters beyond the scope of "tourism" and belong to the responsibility of other ministerial departments that might express reservations by the ratification; therefore, we reiterate that it would be preferable if the text only introduces non-binding recommendations. |
| f) Communication service;   | a) Communication services;   |  |         |  |
| g) Temporary shelters for accommodation;  | b) Temporary shelters for accommodation;   |  |         |  |
| h) Necessary food service;  | c) Necessary food services;  | <b>Satisfying basic food needs</b>   | France  |  |
| i) Facilitating visa requirements, procedures including the necessary staff; and  | d) Facilitating visa requirements, procedures including the necessary staff; and   | Facilitating visa requirements and <b>other administrative procedures such as those for border-crossing</b> , and including the necessary staff; and | France  |  |
| j) Facilitating transportation and repatriation.  | e) Facilitating transportation and repatriation.   |  |         |  |
| 2.2. In case of force majeure the tourist's country of origin shall cooperate with the host country especially in facilitating necessary operational measures and in the repatriation of the tourist. | 2.2. In case of force majeure, the tourist's country of origin shall cooperate with the host country especially in facilitating necessary operational measures and in the repatriation of the tourist. |  | Germany | Not clear what cooperation covers. Similar:<br>See Annex II Point 4.3.<br>See Annex III Point 3.1.<br><br><b>WG conclusion:</b> to insert as recommended practice until more   |

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|                                    |   | <p>2.2. In case of force majeure, the tourist's country of origin shall cooperate with the host country especially in facilitating necessary operational measures <del>and in the repatriation of the tourist.</del></p> <p>2.2. In case of <del>force majeure</del> <b>emergency situation</b>, the tourist's country of origin shall cooperate with the host country especially in facilitating necessary operational measures and in the repatriation of the tourist.</p> | <p>Austria</p> <p>France</p> | <p>clarification.</p> <p>Repatriation should not be mentioned explicitly here.</p> <p>To add consular services and channels</p> <p>These assistance obligations of a State would apply only to tourists as defined by the Convention and not to other foreigners on its territory for other reasons. However, this type of obligations incumbent upon States goes far beyond the rights and obligations of tourists and tourism service providers, and more generally comes under cooperation and civil defence and safety. As worded, these provisions do not appear contrary to those of bilateral agreements concluded by France with regard to civil safety.</p> <p>To insert as Recommended</p> |

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|   |   |   | Spain                | Practice  |
| 2.3. The host country shall inform the country of origin of the tourist involved in the force majeure situation about the followings: | 2.3. The host country shall inform the diplomatic and consular authorities of the country of origin of the tourist involved in the force majeure situation about the following: | 2.3. The host country shall inform the <b><u>diplomatic and consular authorities of the country of origin</u></b> of the tourist involved in the force majeure situation about the following: | Austria<br><br>Spain | To insert as Recommended Practice   |
| h) General circumstances;   | a) General circumstances;   |   |                      |   |
| i) Affected geographical areas;   | b) Affected geographical areas;   |   |                      |   |
| j) Data of the tourist;   | c) Data of the tourist;   | Data of the tourist <b><i>[only those necessary for assistance operations and to the exclusion of any other personal data]</i></b> ;  | France<br><br>ICAO   | "Data on the tourist" and "data on the casualties" are redundant. It should be ensured that the data of casualties do not incur in disclosures of personal information.<br><br>What is meant by data? |
| k) Localization of the tourist;   | d) Localization of the tourist;   | <b><u>Location of the tourist</u></b>   | ICAO                 |   |
| l) Data of casualties;  | e) Data of casualties   | <b><u>Data of casualties</u></b>  | France               | To be deleted – redundant with c)   |
| m) Operational measures taken; and  | f) Operational measures taken; and  |   |                      |   |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals   | Who                                     | Other comments, questions   |
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| n) Other related data.  | g) Other related data.  |   |   |   |
| 2.4. The host country shall provide the official, medical and technical staff coming from the tourist's country of origin with operational assistance ensuring the facilitation of their entry and stay in the territory of the host country in order to cooperate with the host country's staff and to give assistance to the tourist. The incoming official, medical and technical staff shall respect the national laws and practices of the host country which may require prior authorization before the entry to the territory of host country. | 2.4. The host country shall provide the official, medical and technical staff coming from the tourist's country of origin with operational assistance ensuring the facilitation of their entry and stay in the territory of the host country in order to cooperate with the host country's staff and to give assistance to the tourist. The incoming official, medical and technical staff shall respect the national laws and practices of the host country which may require prior authorization before the entry to the territory of host country. | <p>The incoming official, medical and technical staff shall respect the national laws and practices of the host country, <b><u>which shall make it best endeavors to facilitate authorization to enter its territory.</u></b></p> <p>The host country facilitate missions that, as the case might be incumbent upon the official representative of the country of origin and the private operators concerned.</p> | <p>ECTAA</p> <p>Spain</p> <p>France</p> | <p><b>WG agreement:</b><br/>More options to be elaborated for further debates in the Regional Commissions.</p> <p>To insert as Recommended Practice</p> <p>To be changed to a recommended practice or adopt a less restrictive wording.</p> |
| 2.5. In case of force majeure the host country shall inform the World Tourism Organization about the available information - without any implications of personal data - as detailed in point 2.3.  | 2.5. In case of force majeure, the host country shall inform the World Tourism Organization about the available information - without any implications of personal data - as detailed in point 2.3.   | In case of <del>force majeure</del> <b><u>emergency situation</u></b> , the host country shall inform the World Tourism Organization about the available information - without any implications of personal data - as detailed in point 2.3.  | <p>France</p> <p>ICAO</p>               | <p>To use the notion of <b>paragraph</b> instead of <b>point</b> in the whole text</p>  |



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|   |  | measures shall include – if materially and technically possible: | ICAO<br><br>Spain | “Personal integrity”:<br>Is the WG satisfied that this term is clear? It may invite an element of subjectivity.<br><br>To insert as Recommended Practice |
| e) Coordination of evacuation;<br>f) Emergency staff;<br>g) Health and medical service; and<br>h) Security staff.   | a) Coordination of evacuation;<br>b) Emergency staff;<br>c) Health and medical services; and<br>d) Security staff.   |  |                   |  |
| 2.8. This Convention shall not prejudice the application of general consular laws and practices by the States Parties.  | 2.8. This Convention shall not prejudice the application of general consular laws and practices by the States Parties.   |  |                   |  |
| 2.9. Recommended Practice - The “Recommendations on the Use of Georeferences, Date and Time in Travel Advice and Event Information” adopted by the General Assembly of the World Tourism Organization | 2.9. Recommended Practice - The “Recommendations on the Use of Georeferences, Date and Time in Travel Advice and Event Information” adopted by the General Assembly of the World Tourism Organization (A/RES/593(XIX) should |  |                   |  |



| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals  | Who                       | Other comments, questions  |
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| <p><b>2.12. Recommended Practice –</b> States Parties should carry out local contingency planning which includes tourists to ensure comprehensive preparedness for cases of force majeure.</p>  | <p><b>2.12. Recommended Practice –</b> States Parties should carry out local contingency planning which includes tourists to ensure comprehensive preparedness for cases of force majeure.</p>   | <p><b>2.12. Recommended Practice –</b> States Parties should carry out local contingency planning <del>which includes tourists</del> to ensure comprehensive preparedness for cases of force majeure.</p> <p><b>2.12. Recommended practice –</b> States Parties should carry out local contingency planning which includes tourists to ensure comprehensive preparedness for cases of <del>force majeure</del> <b>emergency situation.</b></p> | <p>ICAO</p> <p>France</p> |  |
| <p><b>2.13. Recommended Practice -</b> States Parties should take necessary measures to ensure that at airports helpdesk service should be set up for assisting tourists in case of force majeure. – further consultation with ICAO, IATA, Airports Council International</p> | <p><b>2.13. Recommended Practice -</b> States Parties should take necessary measures to ensure that airport helpdesk services are set up for assisting tourists in case of force majeure. – further consultation with ICAO, IATA, Airports Council International</p> | <p><b>2.13. Recommended Practice –</b> States parties should take necessary measures to ensure <u>that tourists have access to updated information related to travel arrangements and assistance in case of force majeure.</u></p> <p><b>2.13. Recommended practice –</b></p>  | <p>ACI</p> <p>France</p>  | <p>Reminder: regional airports are already required to have a contingency plan in the event of</p> |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals  | Who | Other comments, questions   |
|---|---|--|-----|---|
|   |   | States Parties should take necessary measures to ensure that at airports helpdesk service <b>(suited to the size of the airport)</b> should be set up for assisting tourists in case of <del>force majeure</del> <b>emergency situation.</b> |     | significant disruption of traffic. However, these plans apply equally to all passengers and it is not possible to envisage organizing a structure devoted exclusively to tourists.<br><br>Moreover, it is not advisable to impose on smaller airports undue constraints that would create additional costs disproportionate to the occurrence of such exceptional situations. |
| 2.14. Recommended Practice - Procedural rules for the dissemination of the related information in accordance with point 2.3. – <b>to be elaborated.</b> | 2.14. Recommended Practice - Procedural rules for the dissemination of the related information in accordance with point 2.3. – <b>to be elaborated.</b> |  |     |   |
|   |   |  |     | <b>WG agreement:</b> to elaborate a special provision in order to exclude excessive claims from States Parties in force majeure situation.  |
| <b>Annex II</b>   |   |  |     |   |
| <b>Package travel issues</b>  |   |  |     |   |
| <b>Chapter 1</b>  |   |  |     |   |
| <b>Definitions</b>  |   |  |     |   |
| 1. For the purposes of this Annex, the following definitions shall apply:   | 1. For the purposes of this Annex, the following definitions shall apply:   |  |     |   |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals   | Who                        | Other comments, questions  |
|---|---|---|----------------------------|--|
| <p><b>“Other party to the package travel contract”</b> means the party, other than the tourist, to the package travel contract, who, in accordance with the national legislation of the State Party, may be the organizer or the retailer/vendor or both;</p> | <p><b>“Other party to the package travel contract”</b> means the party, other than the tourist, to the package travel contract, who, in accordance with the national legislation of the State Party, may be the organizer or the retailer/vendor or both;</p> |   |                            |  |
| <p><b>“Organizer”</b> means a person who, otherwise than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer;</p>  | <p><b>“Organizer”</b> means a person who, otherwise than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer/vendor;</p>   |   |                            |  |
| <p><b>“Retailer, vendor”</b> means a person who sells or offers for sale a package in the capacity of a disclosed agent of the organizer;</p>   | <p><b>“Retailer, vendor”</b> means a person who sells or offers for sale a package <b>in the capacity of a disclosed agent</b> of the organizer;</p>  | <p><b>“Retailer, vendor”</b> means a person who sells or offers for sale a package <b>put together</b> by the organizer;</p> <p><b>“Retailer, vendor”</b> means a person who sells or offers for sale a package <b>in the capacity of a disclosed agent</b> of the organizer;</p> | <p>Spain</p> <p>France</p> | <p>Spanish translation and definition shall be corrected – introducing the PTD definition.</p> <p><b>PTD wording:</b><br/> <i>“Retailer’ means the person who sells or offers for sale the package put together by the organizer;”</i></p> <p>The concept of vendor corresponds more closely to the terminology used by French tourism statutes.</p> |
| <p><b>“Package”</b> means the pre-</p>  | <p><b>“Package”</b> means the pre-arranged</p>  |   | <p>France</p>              | <p>The definition of a package should</p>  |

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|---|--|---|----------------------------|--|
| <p>arranged combination of not fewer than two of the following services when sold or offered for sale at an inclusive price and when the package covers a period of more than twenty-four hours or includes overnight accommodation:</p> <ul style="list-style-type: none"> <li>- transport;</li> <li>- accommodation;</li> <li>- other tourism services not ancillary to transport or accommodation and accounting for a significant proportion of the package.</li> </ul> <p>The separate billing of various components of the same package shall not absolve the other party to the package travel contract from respecting the obligations under this Convention;</p> | <p>combination of not fewer than two of the following services when sold or offered for sale at an inclusive price and when the package covers a period of more than twenty-four hours or includes overnight accommodation:</p> <ul style="list-style-type: none"> <li>- transport;</li> <li>- accommodation;</li> <li>- other tourism services not ancillary to transport or accommodation and accounting for a significant proportion of the package.</li> </ul> <p>The separate billing of various components of the same package shall not absolve the other party to the package travel contract from respecting the obligations under this Convention;</p> |   | <p>European Commission</p> | <p>be given at the start of the list of definitions.</p> <p>To delete “pre-arranged” and “inclusive price”. The definition is subject to further amendment in line with the wording of the new proposal by the European Commission on the revised Package Travel Directive after its official publication (upcoming months).</p> |
| <p><b>“Package travel contract”</b> means the agreement linking the tourist and the organizer or the retailer/vendor or both in accordance with the national legislation of the State Party;</p>  | <p><b>“Package travel contract”</b> means the agreement linking the tourist and the organizer or the retailer/vendor or both in accordance with the national legislation of the State Party;</p>   | <p><b>“Package travel contract”</b> means the agreement linking the tourist and the organizer or the retailer/vendor or both in accordance with the national legislation of the State Party. <b><u>For the purposes of this Annex a person travelling for purposes related to his trade, craft,</u></b></p> | <p>ICAO</p>                | <p>An earlier version of this clause seemed more adequate. Second part was moved as it is contextually connected.</p> <p><b>“Package travel contract”</b> means the agreement linking the tourist to the organiser under which the tourist takes or agrees to take the</p>   |

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|  |   | <u>business or profession (business traveller) is not considered as a tourist;</u>   |        | package and purchases the price thereof and the travel organizer supplies or undertakes to supply the service.  |
| <p><i>“Force majeure” means unusual, extraordinary and unforeseeable circumstances beyond the control of the other party to the package travel contract, when the consequences of those circumstances could not be avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled;</i></p> | <p><i>“Force majeure” means unusual, extraordinary and unforeseeable circumstances beyond the control of the other party to the package travel contract, when the consequences of those circumstances could not have been avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled;</i></p> | <p><i>“Force majeure” means unusual, extraordinary and unforeseeable circumstances beyond the control of the other party to the package travel contract, when the consequences of those circumstances could not have been avoided if all due care had been exercised, <del>or events which even with all due care could not have been foreseen or forestalled;</del></i></p> | France | <p>This definition of force majeure is not very different from the definition given by the Court of Cassation in contractual matters (Plen. Sess. 14 Apr. 2006: <i>“But given that there is no grounds for damages when, as a result of force majeure or fortuitous event, the debtor was prevented from giving or doing what he was obliged, or did what was forbidden; it is the case when the debtor was prevented from performing infirmity, since this event with an unforeseeable nature at the conclusion of the contract and unstoppable in its execution, constitutes a case of force majeure”</i>), and does not seem to pose any particular difficulty, although it is more detailed.</p> <p>This involves matters relating to contract, in which the criterion of unforeseeability is essential: if the event was foreseeable at the time</p> |

| Third draft text of the Convention | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals  | Who         | Other comments, questions  |
|------------------------------------|---|--|-------------|--|
|                                    |   | <p><b>“Force majeure”</b> means unusual, extraordinary and unforeseeable circumstances beyond the control of <u>either</u> party to the package travel contract, when the consequences of those circumstances could not be avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled;</p> | <p>ICAO</p> | <p>formation of the contract, the debtor has agreed to bear the risk of not being able to perform his obligation. In contrast, in matters relating to tort, the criterion of foreseeability makes less sense if no action is possible to prevent or to evade the effects.</p> <p>However, the notion of "events" without further specification is too broad. This attempt to define fortuitous event in any case strikes us as inadequate. It is proposed to eliminate it.</p> |

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| <p><b>“Host country”</b> means the State Party on the territory of which the event of force majeure has occurred;</p>  | <p><b>“Host country”</b> means the State Party on the territory of which the event of force majeure has occurred;</p>  | <p><b>“Host country”</b> means the State Party <b>on the territory of which the event of force majeure the emergency situation has occurred or <u>caused its consequences</u>.</b></p> | France  | Such a definition excludes cases such as that which resulted from the eruption of the Icelandic volcano, due to which tourists were stranded on the territory of a State even though the emergency situation/force majeure had not occurred in that territory.  |
| <p><b>“Country of origin”</b> means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her principal and permanent residence.</p> | <p><b>“Country of origin”</b> means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her principal and permanent residence.</p> |  | European Commission                           | To be deleted as there is no reference in Annex II  |
| <p>2. For the purposes of this Annex a person travelling for purposes related to his trade, craft, business or profession (business traveller) is not considered as a tourist.</p>                               | <p>2. For the purposes of this Annex a person travelling for purposes related to his trade, craft, business or profession (business traveller) is not considered as a tourist.</p>                               | <p>2. For the purposes <b>of Chapters 2 and 3 of this Annex</b>, a person travelling for professional purposes (business traveller) is not considered as a tourist.</p>                | France<br><br>ICAO<br><br>European Commission | <p>This exclusion of B2B, which initially the French authorities did not support, should be limited to disclosure or performance of contract. It should be possible for support obligations to be applicable regardless of the nature of the trip.</p> <p>To replace this provision into package travel contract definition.</p> <p>The provision is subject to further amendment in line with the wording of the new proposal by the European Commission on the revised Package Travel Directive</p> |

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|   |   |           |       | <p>after its official publication (upcoming months).</p> <p><b>WG agreement</b><br/>Further consultation on including business traveller in Chapter 4 at least.</p> <p>France, WTTC, AMFORT, EGFATT, OITS opposed exemption rule and distinction between leisure and business travellers.</p> |
| <b>Chapter 2</b><br><b>Information obligation</b>   |   |           |       |   |
| 2.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract provides the tourist before the conclusion of the package travel contract in any appropriate form with adequate information on: | 2.1. States Parties shall take the necessary measures to ensure that, before the conclusion of the package travel contract, the other party to the package travel contract provides the tourist in any appropriate form with adequate information on: |           | WG    | Order of standards and Recommended Practices shall be revised.  |
| i) Travel destination;  | a) Travel destination;  |           | Spain | To insert as Recommended Practice   |
| j) Type, quality, main features of accommodation and its location;  | b) Type, quality, main features of accommodation and its location;  |           |       |   |
| k) Means, characteristics and categories of transport to be used;   | c) Means, characteristics and categories of transport to be used;   |           |       |   |
| l) General information on   | d) General information on   |           |       |   |

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|---|---|-----------|---------------------|--|
| passport and visa requirements and health formalities required; | passport and visa requirements and health formalities required;         |           |                     |  |
| m) Services included in the package;                            | e) Services included in the package;                                    |           |                     |  |
| n) Total price of the package;                                  | f) Total price of the package;  |           | European Commission | <p>To add taxes and fees</p> <p><b>PTD wording</b></p> <p><i>“2. When a brochure is made available to the consumer, it shall indicate in a legible, comprehensible and accurate manner both the price and adequate information concerning:</i></p> <p><i>(f) either the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance;</i></p> <p><i>Elements to be included in the contract if relevant to the particular package;</i></p> <p><i>(h) the price of the package, an indication of the possibility of price revisions under Article 4 (4) and an indication of any dues, taxes or fees chargeable for certain services (landing,</i></p> |

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|   |  |   |          | <i>embarkation or disembarkation fees at ports and airports, tourist taxes) where such costs are not included in the package;”</i> |
| o) The advance payment to be made at the time of booking and the schedule for paying the balance; and   | g) The advance payment to be made at the time of booking and the schedule for paying the balance; and  |   |          |  |
| p) Whether a minimum number of tourists is required for package travel to take place and the deadline for informing the tourist of cancellation if such number is not achieved or is exceeded.  | h) Whether a minimum number of tourists is required for package travel to take place and the deadline for informing the tourist of cancellation if such number is not achieved or is exceeded.   |   |          |  |
|   |  | i) <u>General terms and conditions applying to the package travel contract.</u> | France   | To be replaced from 2.2. g)  |
| <b>2.2. Recommended practices</b> – States Parties should take the necessary measures to ensure that the other party to the package travel contract provides the tourist before the conclusion of the package travel contract in any appropriate form with additional information on: | <b>2.2. Recommended Practice</b> – States Parties should take the necessary measures to ensure that, before the conclusion of the package travel contract, the other party to the package travel contract provides the tourist in any appropriate form with additional information on: |   | France   |  |
| a) Meal plan;   | a) Meal plan;  |   | European | To insert as a standard  |

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|   |   |   | Commission | <p><b>PTD wording</b><br/> <i>"2. When a brochure is made available to the consumer, it shall indicate in a legible, comprehensible and accurate manner both the price and adequate information concerning:<br/> (c) the meal plan;"</i></p> |
| <p>b) The optional conclusion of an insurance policy to cover the cost of cancellation by the tourist or the cost of assistance, including repatriation, in the event of accident or illness;</p> | <p>b) The optional conclusion of an insurance policy to cover the cost of cancellation by the tourist or the cost of assistance, including repatriation, in the event of accident or illness;</p> |   | China      | <p>To insert as a standard</p> <p><b>WG decision:</b> to keep as Recommended Practice, States Parties could adopt stricter rule.</p>   |
| <p>c) Conditions for transferring the package travel contract; and</p>  | <p>c) Conditions for transferring the package travel contract; and</p>  |   |            |  |
| <p>d) General terms and conditions applying to the package travel contract.</p>   | <p>d) General terms and conditions applying to the package travel contract.</p>   | <p><del>General terms and conditions applying to the package travel contract.</del></p> | France     | <p>Should be included as a mandatory rule to be replaced to 2.1. i)</p>  |
| <p>2.3. States Parties shall take the necessary measures to ensure that the package travel contract includes the following elements if relevant and applicable to the particular</p>              | <p>2.3. States Parties shall take the necessary measures to ensure that the package travel contract includes the following elements if relevant and applicable to the particular package:</p>     |   | Spain      | <p>To insert as Recommended Practice</p>   |

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| package:  |  |           |     |                           |
| a) Identification of the tourist and the other party to the package travel contract (contracting parties);  | a) Identification of the tourist and the other party to the package travel contract (contracting parties);   |           |     |                           |
| b) Services ordered and included in the package;  | b) Services ordered and included in the package;   |           |     |                           |
| c) Information on the type, quality, location and main features of accommodation included in the package;   | c) Information on the type, quality, location and main features of accommodation included in the package;  |           |     |                           |
| d) Information on the means, characteristics and categories of transport to be used;  | d) Information on the means, characteristics and categories of transport to be used;   |           |     |                           |
| e) Travel destination, relevant periods of stay, dates, times and points of departure and return, itinerary;  | e) Travel destination, relevant periods of stay, dates, times and points of departure and return, itinerary;   |           |     |                           |
| f) Total price of the package, indication of any dues, taxes or fees chargeable for certain services where such costs are not included in the package, price alteration policy, payment scheduled and | f) Total price of the package, indication of any dues, taxes or fees chargeable for certain services where such costs are not included in the package, price alteration policy, payment scheduled and the method of payment; and |           |     |                           |

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| the method of payment;<br>and   |  |  |        |   |
| g) Special requirements which the tourist has communicated to the other party to the contract when making the booking and which both contracting parties have accepted.             | g) Special requirements which the tourist has communicated to the other party to the package travel contract when making the booking and which both contracting parties have accepted. |  |        |   |
|   |  | <p>Information on the operating permit for the other party to the package travel contract, if it is relevant;</p> <p>General terms and conditions applying to the package travel contract such as conditions for modifying the package travel contract, information on cancellation policy indicating deadlines;</p> <p>Information on available complaint procedures;</p> | France | <p>Elements to be replaced from 2.4. PTD does not explicitly contain.</p> <p>PTD does not explicitly contain.</p> <p><b>PTD wording</b><br/> <i>“k) periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract.”</i></p> |
| <p><b>2.4. Recommended practices</b> – States Parties should take the necessary measures to ensure that the package travel contract includes the following additional elements:</p> | <p><b>2.4. Recommended Practice</b> – States Parties should take the necessary measures to ensure that the package travel contract includes the following additional elements:</p>     |  |        |   |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals              | Who    | Other comments, questions  |
|--|--|------------------------|--------|--|
| a) Information on the operating permit for the other party to the package travel contract, if it is relevant;  | a) Information on the operating permit for the other party to the package travel contract, if relevant;  | To be replaced in 2.3. | France | PTD does not explicitly contain.   |
| b) Financial security information in case of insolvency of the other party to the package travel contract;   | b) Financial security information in case of insolvency of the other party to the package travel contract;   |                        |        |  |
| c) General terms and conditions applying to the package travel contract such as conditions for modifying the package travel contract, information on cancellation policy indicating deadlines; | c) General terms and conditions applying to the package travel contract such as conditions for modifying the package travel contract, information on cancellation policy indicating deadlines; | To be replaced in 2.3. | France | PTD does not explicitly contain.   |
| d) Information on available complaint procedures;  | d) Information on available complaint procedures;  | To be replaced in 2.3. | France | <b>PTD wording</b><br><i>"k) periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract."</i> |
| e) Contact details of the local representative of the other party to the package travel contract or local agencies, and where such local   | e) Contact details of the local representative of the other party to the package travel contract or local agencies, and where such local   |                        |        |  |

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| representatives do not exist, other facilities available to contact the other party to the contract;   | representatives do not exist, other facilities available to contact the other party to the contract;   |   |        |  |
| f) Applicable law of the package travel contract; and  | f) Applicable law of the package travel contract; and  |   |        |  |
| g) Other provisions provided for under mutual agreement  | g) Other provisions provided for under mutual agreement.   |   | France | Overly vague provision, not acceptable as drafted  |
|  |  | h) The optional contracting of an insurance policy to cover the cost of cancellation by the tourist or the cost of assistance, including repatriation, in the event of accident or illness; | France | Additional element   |
| <b>Chapter 3</b><br><b><i>Failure of performance or improper performance</i></b>   |  |   |        |  |
|  |  | <b><i>Failure of performance or improper performance of the package travel contract</i></b>   | France |  |
| 3.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable to the tourist for the proper performance of the | 3.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable to the tourist for the proper performance of the obligations |   | ICAO   | ICAO withholds its final position regarding this Chapter. ICAO's main interest is to ensure that there will be no overlap with existing international air law instruments. |

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|--|---|---|--------|---|
| obligations under the package travel contract. | under the package travel contract.                                      | <p>3.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable to the tourist for the proper performance of the obligations under the package travel contract, <b><u>whether these obligations are to be discharged in person or by other agents providing a service, without prejudice to the tourist's right to make claims against such other tourism service providers.</u></b></p> <p><b>Or as agreed in WG</b></p> <p>3.1. States Parties shall take the necessary measures to ensure</p> | France | <p>Liability, delay or non-performance needs to be carefully assessed before the scope of the convention can be finally established.</p> <p>Care must be taken not to fail to address the chain of responsibility of providers, as provided for in the PTD. Recall that the French judicial system already provides for real contractual responsibility.</p> <p>No provision is made in case of modification of an essential element of the contract before departure. This possibility must absolutely be taken into account. See for example, Art. 4.5 and 4.6 of the PTD.</p> <p><b>PTD wording</b><br/> <i>"Article 4.1</i><br/> <i>(b) The organizer and/or retailer shall also provide the consumer, in writing or any other appropriate form, with the following information <b><u>in good time before the start of the journey:</u></b></i><br/> <i>(i) the times and places of</i></p> |

| Third draft text of the Convention | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals  | Who | Other comments, questions   |
|------------------------------------|---|--|-----|---|
|                                    |   | <p>that the other party to the package travel contract is liable to the tourist for the proper performance of the obligations under the package travel contract, <b><u>irrespective of whether such obligations are to be performed by that other party to the package travel contract or by other tourism service providers without prejudice to the right of the other party to the package travel contract to pursue those other tourism service providers.</u></b></p> <p>3.1.bis. In the event that, before departure,...</p> |     | <p><i>intermediate stops and transport connections as well as details of the place to be occupied by the traveller, e.g. cabin or berth on ship, sleeper compartment on train;</i></p> <p><i>(ii) the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call.</i></p> <p><i>Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contract the organizer and/or the retailer;</i></p> <p><i>(iii) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay;</i></p> <p><i>(iv) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.</i></p> |

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|------------------------------------|---|-----------|-----|---|
|                                    |   |           |     | <p>Article 4.5-4.6.</p> <p>5. If the organizer finds that before the departure he is constrained to alter significantly any of the essential terms, such as the price, he shall notify the consumer as quickly as possible in order to enable him to take appropriate decisions and in particular:</p> <ul style="list-style-type: none"> <li>- either to withdraw from the contract without penalty,</li> <li>- or to accept a rider to the contract specifying the alterations made and their impact on the price.</li> </ul> <p>The consumer shall inform the organizer or the retailer of his decision as soon as possible.</p> <p>6. If the consumer withdraws from the contract pursuant to paragraph 5, or if, for whatever cause, other than the fault of the consumer, the organizer cancels the package before the agreed date of departure, the consumer shall be entitled:</p> <p>(a) either to take a substitute package of equivalent or higher quality where the organizer and/or retailer is able to offer him such a</p> |

| Third draft text of the Convention | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals | Who | Other comments, questions  |
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|                                    |   |           |     | <p>substitute. If the replacement package offered is of lower quality, the organizer shall refund the difference in price to the consumer; (b) or to be repaid as soon as possible all sums paid by him under the contract.</p> <p>In such a case, he shall be entitled, if appropriate, to be compensated by either the organizer or the retailer, whichever the relevant Member State's law requires, for non-performance of the contract, except where:</p> <p>(i) cancellation is on the grounds that the number of persons enrolled for the package is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period indicated in the package description; or</p> <p>(ii) cancellation, excluding overbooking, is for reasons of force majeure, i.e. unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due</p> |

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|   |   |           | Spain               | <p><i>care had been exercised.</i>"</p> <p><b>WG agreement</b><br/>To insert in a separate Chapter as not all of them, related to information obligations.</p> <p>To insert as Recommended Practice</p>   |
| <p>3.2. Where after departure a significant proportion of the services contracted is not provided, States Parties shall take the necessary measures to ensure that the other party to the package travel contract makes suitable alternative arrangements for the continuation of the package, and where appropriate compensates the tourist for the difference between the services contracted and those supplied.</p> | <p>3.2. Where after departure a significant proportion of the services contracted is not provided, States Parties shall take the necessary measures to ensure that the other party to the package travel contract makes suitable alternative arrangements for the continuation of the package, and where appropriate compensates the tourist for the difference between the services contracted and those supplied.</p> |           | Spain<br><br>France | <p>To insert as Recommended Practice</p> <p>This provision presents no difficulty. For the record, judges in France may order compensation in kind (or forced performance of the contract - doctrinal debates on this point should be avoided), or damages plus interest.</p> |
| <p>3.3. If it is impossible to make such arrangements, States Parties shall take the necessary measures to ensure that the other party to the package travel contract, where</p>  | <p>3.3. If it is impossible to make such arrangements, States Parties shall take the necessary measures to ensure that the other party to the package travel contract, where appropriate, provides</p>  |           | Spain               | <p>To insert as Recommended Practice</p>  |

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|--|--|---|--|--|
| appropriate, provides the tourist, at no extra cost, with equivalent transport back to the place of departure (repatriation), or to another return-point within the package to which the tourist has agreed.   | the tourist, at no extra cost, with equivalent transport back to the place of departure (repatriation), or to another return-point within the package to which the tourist has agreed.   |   |  |  |
| <p>3.4. States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable for any loss or damage to the tourist resulting from the failure or the improper performance of the package travel contract, unless such failure or improper performance is neither attributable to a fault of the other party to the package travel contract nor to any supplier of services of such other party to the package travel contract, because:</p> <p>d) the failure or improper performance of the package travel contract is attributable to the tourist,</p> <p>e) such failure or improper performance is attributable to a third party unconnected with the services contracted, and</p> | <p>3.4. States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable for any loss or damage to the tourist resulting from the failure or the improper performance of the package travel contract, unless such failure or improper performance is neither attributable to a fault of the other party to the package travel contract nor to any supplier of services of such other party to the package travel contract, because:</p> <p>a) the failure or improper performance of the package travel contract is attributable to the tourist,</p> <p>b) such failure or improper performance is attributable to a third party unconnected with the services contracted, and is unforeseeable or unavoidable,</p> <p>c) such failure or improper</p> | <p>3.4. States Parties shall take the necessary measures to ensure that the other party to the package travel contract is liable for any loss or damage to the tourist resulting from the failure or the improper performance of the package travel contract, unless such failure or improper performance is neither attributable to a fault of the other party to the package travel contract nor to any other supplier of tourism services <del>of such other party to the package travel</del></p> | <p>European Commission</p> <p>France</p> | <p>The provision is subject to further amendment in line with the wording of the new proposal by the European Commission on the revised Package Travel Directive after its official publication (upcoming months).</p> <p>The style is a bit heavy, but the text is broadly in line with French positive law:</p> <ul style="list-style-type: none"> <li>- breach of contract even if not at fault may cause contractual liability of the debtor;</li> <li>- exception to the contractual liability:</li> <li>- when the failure results from the fault of the victim (the tourist in this case); it might be useful to specify that such fault may cause partial relief, or total exoneration if it constitutes a case of force majeure;</li> </ul> |

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| <p>where unforeseeable or unavoidable,</p> <p>f) such failure or improper performance is due to a case of force majeure.</p>  | <p>performance is due to a case of force majeure.</p>   | <p><del>contract</del> because:<br/>the failure or improper performance of the package travel contract is attributable to the tourist,<br/><del>such failure or improper performance is attributable to a third party unconnected with the services contracted, and where unforeseeable or unavoidable,</del><br/>such failure or improper performance is due to a case of force majeure.</p> | <p>Spain</p>  | <p>(amendment to this effect could be proposed later)<br/>- why provide for b) and not just the force majeure provider for in c) insofar as the criteria for exoneration due to b) are less restrictive than the general definition of force majeure; this addition is less favorable to the tourist.</p> <p>To insert as Recommended Practice</p>   |
| <p>3.5. States Parties shall take the necessary measures to ensure that in the cases referred to in points 3.4. b) and c) the other party to the package travel contract gives prompt assistance to the tourist.</p>  | <p>3.5. States Parties shall take the necessary measures to ensure that in the cases referred to in points 3.4. b) and c) above the other party to the package travel contract gives prompt assistance to the tourist.</p>  |   | <p>Spain</p>  | <p>To insert as Recommended Practice</p>   |
| <p>3.6. States Parties shall take the necessary measures to ensure that the tourist communicates any failure in the performance of the package travel contract which is perceived on the spot to the supplier of the services concerned and to the other party to the package travel contract in writing or any other appropriate form at the earliest opportunity. States Parties shall take the</p> | <p>3.6. States Parties shall take the necessary measures to ensure that the tourist communicates any failure in the performance of the package travel contract which is perceived on the spot to the provider of the services concerned and to the other party to the package travel contract in writing or any other appropriate form at the earliest opportunity. States Parties shall take the necessary measures to ensure that</p> | <p>3.6. States Parties shall take the necessary measures to ensure that <del>the tourist communicates</del> any failure in the performance of the package travel contract which is perceived on the spot and communicated by the tourist <del>to the supplier of the services concerned and to the other party to the package travel contract</del> in writing or any other</p>               | <p>France</p> | <p>While similar to Art. 5.4 of PTD, this provision requires the creditor, in this case the tourist, to provide notice "at the earliest opportunity" (furthermore, this wording is lacking in precision) in order to remedy the consequences of the failure to perform. It raises the question of providing notice in case of breach of contract. <b>Such a measure seems rather unfavorable to the tourist,</b></p> |

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| <p>necessary measures to ensure that this obligation is stated clearly and explicitly in the package travel contract.</p> | <p>this obligation is stated clearly and explicitly in the package travel contract.</p> | <p>appropriate form be rapidly noted for the purpose of being remedied, by the supplier of tourism service concerned and/or by the other party to the package travel contract. States Parties shall take the necessary measures to ensure that this obligation is stated clearly and explicitly in the package travel contract.</p> |     | <p>who would ultimately be responsible for limiting his own loss, unless the object of the text is any other. In addition, the text speaks of notification in writing or any other appropriate form, without providing for a specific form, which makes it difficult to demonstrate compliance with this requirement. In practice, this can cause problems. Let us take, for example, the case of a traveller who travels to the Comoros Islands, and whose airline at the last moment turns out to be insolvent: is it reasonable to require that he immediately send a registered letter with acknowledgement of receipt? Moreover, what would be the penalty for failure to comply? Can we reasonably limit the right to compensation?</p> <p>In any event, if such a requirement should be retained, it should indeed be mentioned conspicuously in the contract.</p> <p>See 2.4(d) above, which is only a</p> |



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|   |   | package travel contract.   | Spain   | paragraph).<br><br>To insert as Recommended Practice  |
| <p><b>3.8. Recommended Practice</b> – In case of damages arising from the non-performance or improper performance of the services included in the package, States Parties should allow compensation to be limited in accordance with the international conventions governing such services.</p> | <p><b>3.8. Recommended Practice</b> – In case of damages arising from the non-performance or improper performance of the services included in the package, States Parties should allow compensation to be limited in accordance with the international conventions governing such services.</p> | <p><b>3.8. Recommended Practice</b> – In case of damages arising from the non-performance or improper performance of the services included in the package, States Parties <del>should</del> <u>may</u> allow compensation to be limited in accordance with the international conventions governing such services.</p> <p><b>3.8. Recommended Practice</b> – In case of damages arising from the non-performance or improper performance of the <del>services included in the package,</del> <u>package travel contract,</u> States Parties should allow compensation to be limited in accordance with the international conventions governing <u>such contracts.</u></p> | ECTAA<br>France<br><br><br><br><br><br><br><br><br><br>ICAO | <p>To replace should with may/could<br/>Limitation of compensation is provided for as a possibility within the framework of PTD.</p> <p>The term services included in the package would encompass air transport. The remedies for addressing improper performance with regard to international air transport is already regulated in an exclusive fashion by virtue of the Montreal Convention, and presumably for other transport modes in relevant instruments.</p> |
| <p><b>3.9. Recommended Practice</b> – In case of damages other than personal injury resulting from the</p>  | <p><b>3.9. Recommended Practice</b> – In case of damages other than personal injury resulting from the non-performance or</p>   | <p><b>3.9. Recommended Practice</b> – In case of damages other than personal injury resulting from the</p>   | ECTAA<br>France   | <p>To replace should with may/could<br/>Limitation of compensation is provided for as a possibility within</p>  |

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| <p>non-performance or improper performance of the services included in the package, States Parties should allow compensation to be limited under the package travel contract. Such limitation shall not be unreasonable.</p> | <p>improper performance of the services included in the package, States Parties should allow compensation to be limited under the package travel contract. Such limitation shall not be unreasonable.</p> | <p>non-performance or improper performance of the services included in the package, States Parties <del>should</del> <u>may</u> allow compensation to be limited under the package travel contract. Such limitation shall not be <b><u>unreasonable.</u></b></p> <p><b>3.9. Recommended Practice</b> – In case of damages other than personal injury resulting from the non-performance or improper performance <del>included in the package of the package travel contract,</del> States Parties should allow compensation to be limited under the package travel contract. Such limitation shall not be unreasonable.</p> | <p>ICAO</p> | <p>the framework of PTD.</p> <p>The qualifier "unreasonable" is too imprecise even if it is identical to the wording in the PTD.</p> <p>What exactly is the difference between 3.8 and 3.9 other than the type of damage suffered?</p> |
|  |   | <p><b><u>3.10. Notwithstanding anything to the contrary contained in this Chapter, in case of conflict between any of the provisions in this Chapter and international instruments governing services included in</u></b></p>   | <p>ICAO</p> | <p>Additional provision "conflict of law".</p> <p>If liability provisions are retained and maintained as Recommended practice, conflict rules become necessary.</p>  |

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|   |   | <u>the package travel contract, the latter shall prevail.</u>   |       |  |
| <b>Chapter 4</b><br><b><i>Assistance obligation in case of force majeure</i></b>  |   |   |       |  |
| 4.1. States Parties shall take the necessary measures to ensure that when a force majeure event affects the proper performance of the services included in the package travel contract, the other party to the package travel contract provides prompt assistance to the tourist. | 4.1. States Parties shall take the necessary measures to ensure that when, after departure a force majeure event affects the proper performance of package travel contract, the other party to the package travel contract provides prompt assistance to the tourist. | 4.1. State Parties shall take the necessary measures to ensure that when, after departure, a force majeure event affects the proper performance of the services included in the package travel contract, the other party to the package travel contract provides prompt assistance to the tourist <u>whose life or health is in danger.</u> | ECTAA | It should be specified that prompt assistance should only be provided <b>to the tourist whose life or health is in danger.</b> This would put the wording in line with Article 5 (2), 2 <sup>nd</sup> paragraph of the package travel Directive.<br><br><b>PTD wording:</b><br><i>“With regard to the damage resulting for the consumer from the failure to perform or the improper performance of the contract, Member States shall take the necessary steps to ensure that the organizer and/or retailer is/are liable unless such failure to perform or improper performance is attributable neither to any fault of theirs nor to that of another supplier of services, because:</i> |

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|                                    |   |           |     | <p>- the failures which occur in the performance of the contract are attributable to the consumer,</p> <p>- such failures are attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable,</p> <p>- such failures are due to a case of force majeure such as that defined in Article 4 (6), second subparagraph (ii), or to an event which the organizer and/or retailer or the supplier of services, even with all due care, could not foresee or forestall.</p> <p><i>In the cases referred to in the second and third indents, the organizer and/or retailer party to the contract shall be required to give prompt assistance to a consumer in difficulty.</i></p> <p>PTD neither specifies danger situations as specific cases of force majeure.</p> |



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| communication facilities;  | communication facilities;  |           |     |                           |
| b) For the duration of the package travel contract, suitable alternative arrangements to the meal plan that has been agreed in the package travel contract, if a significant proportion of the agreed meal plan cannot be provided due to the case of force majeure;         | b) For the duration of the package travel contract, suitable alternative arrangements to the meal plan that has been agreed in the package travel contract, if a significant proportion of the agreed meal plan cannot be provided due to the case of force majeure;         |           |     |                           |
| c) For the duration of the package travel contract, suitable alternative arrangements to the accommodation that has been agreed in the package travel contract, if a significant proportion of the agreed accommodation cannot be provided due to the case of force majeure; | c) For the duration of the package travel contract, suitable alternative arrangements to the accommodation that has been agreed in the package travel contract, if a significant proportion of the agreed accommodation cannot be provided due to the case of force majeure; |           |     |                           |
| d) Equivalent transport back to the point of departure or to another return-point to which the tourist has agreed, if transport has  | d) Equivalent transport back to the point of departure or to another return-point to which the tourist has agreed, if transport has been agreed in   |           |     |                           |

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| been agreed in the package travel contract and is affected by the force majeure situation; and   | the package travel contract and is affected by the force majeure situation; and   |  |                                    |   |
| e) Upon the request of the tourist providing information on alternative reservations and other or additional services which shall be purchased by the tourist if such services had not been agreed in the package travel contract.               | e) Upon the request of the tourist providing information on alternative reservations and other or additional services which shall be purchased by the tourist if such services had not been agreed in the package travel contract.                | Upon the request of the tourist providing information on alternative reservations and other or additional services which <b>may</b> be purchased by the tourist if such services had not been agreed in the package travel contract. | ECTAA                              | As it is upon the request of the tourist, not obligatory.   |
| 4.3. States Parties shall take the necessary measures to ensure that in case of force majeure the other party to the package travel contract cooperates with the related authorities of the tourists' country of origin and of the host country. | 4.3. States Parties shall take the necessary measures to ensure that in case of force majeure the other party to the package travel contract cooperates with the relevant authorities of the tourists' country of origin and of the host country. |  | Austria<br><br>Germany<br><br>ICAO | To add consular services and channels.<br><br>Not clear what cooperation covers. Similar:<br>See Annex I Point 2.2.<br>See Annex III Point 3.1.<br><br>Is it sufficiently clear who these entities are beyond say the consulate/embassy?<br><br><b>WG conclusion:</b> to insert as recommended practice until more clarification. |

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|   |   |   | Spain  | To insert as Recommended Practice  |
| <p><b>4.4. Recommended Practice</b> – The host country should make immediate contact with the local representative or local agency of the other party to the package travel contract or where such local representatives do not exist, directly with the other party to the contract involved in the force majeure situation in order to provide support to them.</p>                                 | <p><b>4.4. Recommended Practice</b> – The host country should make immediate contact with the local representative or local agency of the other party to the package travel contract or where such local representatives do not exist, directly with the other party to the contract involved in the force majeure situation in order to provide support to them.</p>                                       |   |        |  |
| <p><b>4.5. Recommended Practice</b> – States Parties should take the necessary measures to ensure, in case of force majeure, that, if the costs of the equivalent transport provided in point 4.2. d) exceed the costs of the transport originally agreed in the package travel contract, these extra costs are equally shared by the tourist and the other party to the package travel contract.</p> | <p><b>4.5. Recommended Practice</b> – States Parties should take the necessary measures to ensure, in case of force majeure, that, if the costs of the equivalent transport provided in point 4.2. d) above exceed the costs of the transport originally agreed in the package travel contract, these extra costs are equally shared by the tourist and the other party to the package travel contract.</p> | <p><b>4.5. Recommended Practice</b> – States Parties should take the necessary measures to ensure, in case of force majeure, that, if the costs of the equivalent transport <u>or accommodation</u> provided in point 4.2. d) exceed the costs of the transport originally agreed in the package travel contract, these extra costs are equally shared by the tourist and the other party to the package travel contract.</p> | France |  |
| <p><b>4.6. Recommended Practice</b> – States Parties should promote insurance schemes and guarantee</p>   | <p><b>4.6. Recommended Practice</b> – States Parties should promote insurance schemes and guarantee systems which</p>   |   | France | Comment reserved pending consultation with the DG of the Ministry of Finance, which is |

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| systems which aim to cover the extra costs resulting from the force majeure situation.   | aim to cover the extra costs resulting from the force majeure situation.   |  |       | competent on this point.   |
| <p><b>4.7. Recommended Practice</b> – States Parties should take the necessary measures to ensure that in case of force majeure neither the tourist nor the other party to the package travel contract are entitled to claim any compensation for the damage resulting from the failure to perform or the improper performance of the package travel contract.</p> | <p><b>4.7. Recommended Practice</b> – States Parties should take the necessary measures to ensure that in case of force majeure neither the tourist nor the other party to the package travel contract are entitled to claim any compensation for the damage resulting from the failure to perform or the improper performance of the package travel contract.</p> | <p><b>4.7. Recommended Practice</b> – States Parties should take the necessary measures to ensure that in case of force majeure, the tourist <del>nor the other party to the package travel contract</del> shall not be entitled to claim any compensation from the other party to the package travel contract for the damage resulting from the failure to perform or the improper performance of the package travel contract”.</p> | ECTAA | It must be examined cautiously because it could foreclose the right of both the tourist and the organizer to claim damages from third parties, such as insurance undertakings or actual service providers.   |
| <p><b>Chapter 5</b><br/><b><i>Protection in the event of the insolvency of the other party to the package travel contract</i></b></p>  |  |  |       |  |
| 5.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract provides at all times sufficient evidence of financial security for the tourists in the event of insolvency.   | 5.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract provides at all times sufficient evidence of financial security for the tourists in the event of insolvency.   | 5.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract <b>carries</b> at all times sufficient evidence of financial security <del>for the tourists</del> in the event of insolvency   | ICAO  | <p>ICAO reserves its position regarding this Chapter as it relates to the insolvency of airlines.</p> <p>May need to be redrafted as presumably intention is to provide evidence to the State authority that entity carries evidence of financial security in order to fulfil its obligations under the package travel contract.</p> |

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|  |  | <p>5.1. States Parties shall take the necessary measures to ensure that the other party to the package travel contract provides at all times sufficient evidence of financial security for the tourists <b><u>and/or their repatriation</u></b> tourists in the event of insolvency.</p> | <p>France</p> <p>Spain</p> | <p><b>PTD wording:</b><br/> <i>“The organizer and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.”</i></p> <p>To insert as Recommended Practice</p> |
| <p>5.2. States Parties shall take the necessary measures to ensure that in the event of insolvency of the other party to the package travel contract the financial security covers the costs of repatriation and also the refund of money paid over by the tourist to the other party to</p> | <p>5.2. States Parties shall take the necessary measures to ensure that in the event of insolvency of the other party to the package travel contract, the financial security covers the costs of repatriation and also the refund of money paid over by the tourist to the other party to the package travel</p> | <p>5.2. States Parties shall take the necessary measures to ensure that in the event of insolvency of the other party to the package travel contract, the financial security <b><u>covers the cost of repatriation, if transport has been agreed in the package</u></b></p>              | <p>HOTREC</p>              | <p>HOTREC considers that the financial securities shall cover the potential costs of repatriation only when the package travel contract includes a transport element. Without a transport included, the consumer will obviously not have to be repatriated to his home country</p>         |

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| the package travel contract in accordance with the package travel contract.  | contract in accordance with the package travel contract.  | <u>travel contract</u> , and also the refund of money paid over by the tourist to the other party to the package travel contract in accordance with the package travel contract.   | Spain  | by the package organiser. Therefore, evidences of financial security shall not be provided to cover costs that will simply not materialise. For this reason, HOTREC suggests a slightly different wording, which is actually similar to the wording of Article 4.2 point d) dealing with the obligation of assistance in case of force majeure.<br><br>To insert as Recommended Practice |
| <b>5.3. Recommended Practice</b> – States Parties should share the related information on the different financial security forms subscribed by the other party to the package travel contract with the Secretariat of the World Tourism Organization in order to build-up a common global database on insolvency protection. | <b>5.3. Recommended Practice</b> – States Parties should share the related information on the different forms of financial security subscribed by the other party to the package travel contract with the Secretariat of the World Tourism Organization in order to build-up a common global database on insolvency protection. | <b>5.3. Recommended Practice</b> – States Parties should share the related information on the different financial security forms <u>subscribed by the other party to the package travel contract</u> that exist at the national level with the Secretariat of the World Tourism Organization in order to build-up a common global database on insolvency protection. | France |  |
| <b>Annex III<br/>Accommodation issues</b>  |   |  |        |  |

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| <b>Chapter 1<br/>Definitions</b>   |   |  |        |   |
| For the purposes of this Annex, the following definitions shall apply:   | For the purposes of this Annex, the following definitions shall apply:  |  |        |   |
| <b>“Accommodation service provider”</b> means tourism service provider who supplies accommodation service by operating accommodation establishment;  | <b>“Accommodation service provider”</b> means the tourism service provider who supplies accommodation services by operating accommodation establishments;   |  |        |   |
| <b>“Contract”</b> means the agreement linking the tourist to the accommodation service provider;   | <b>“Contract”</b> means the agreement linking the tourist to the accommodation service provider;  |  |        |   |
| <b>“Force majeure”</b> means unusual, extraordinary and unforeseeable circumstances beyond the control of the accommodation service provider, that have resulted in the need of assistance on a large scale, when the consequences of those circumstances could not be avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled; | <b>“Force majeure”</b> means unusual, extraordinary and unforeseeable circumstances beyond the control of the accommodation service provider, that have resulted in the need of assistance on a large scale, when the consequences of those circumstances could not have been avoided if all due care had been exercised, or events which even with all due care could not have been foreseen or forestalled; | <b>“Force majeure”</b> means unusual, extraordinary and unforeseeable circumstances beyond the control of the accommodation service provider, <del>that have resulted in the need of assistance on a large scale,</del> when the consequences of those circumstances could not be avoided if all due care had been exercised, <del>or events which even with all due care could not have been foreseen or forestalled;</del> | France | This definition of force majeure is not very different from the definition given by the Court of Cassation in contractual matters (Plen. Sess. 14 Apr. 2006: <i>“But given that there is no grounds for damages when, as a result of force majeure or fortuitous event, the debtor was prevented from giving or doing what he was obliged, or did what was forbidden; it is the case when the debtor was prevented from performing infirmity, since this event with an unforeseeable nature at the conclusion of the contract and</i> |

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|                                    |   | <p><b>“Force majeure”</b> means unusual, extraordinary and unforeseeable</p> | HOTREC | <p><i>unstoppable in its execution, constitutes a case of force majeure”), and does not seem to pose any particular difficulty, although it is more detailed.</i></p> <p>This involves matters relating to contract, in which the criterion of unforeseeability is essential: if the event was foreseeable at the time formation of the contract, the debtor has agreed to bear the risk of not being able to perform his obligation. In contrast, in matters relating to tort, the criterion of foreseeability makes less sense if no action is possible to prevent or to evade the effects. However, the notion of "events" without further specification is too broad. This attempt to define fortuitous event in any case strikes us as inadequate. It is proposed to eliminate it.</p> <p>HOTREC considers that the definition is much too broad and ambiguous given the impact it may have on contractual relations of accommodation provider.</p> |

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|                                    |   | <p>circumstances beyond the control of <b><u>either party to the accommodation contract</u></b>, that have resulted in the need of assistance on a large scale, when the consequences of those circumstances could not be avoided if all due care had been exercised, <b><u>and which prevents the contract from being actually performed under any circumstances.</u></b></p> |     | <p>Thus, under the given definition, many hotel contracts could be unilaterally cancelled even in the absence of any force majeure event actually preventing the consumers from reaching the hotel. This is best illustrated by the following scenario: an earthquake occur in one region of country “A”, necessitating large scale assistance. A consumer from country “B” is having an accommodation contract in a hotel located in another region of country “A” completely unaffected by the earthquake. Under the current definition, this would nonetheless be qualified as a force majeure event under annex III and would generate specific rights for the consumer, despite the fact that neither the consumer nor the accommodation provider would suffer from any consequences of this earthquake. As one can see, the definition should be further narrowed and adapted to the scope of annex III: force majeure events that concretely prevent the contract from being performed. Moreover, it should be made clear</p> |

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|  |  |   |        | in the definition that it is up to the party that invoke the force majeure events to demonstrate the existence of such events (the burden of proof should lie on the party invoking it). Finally, it should also be made clear that in case of disagreement over the existence of the force majeure event, State parties should ensure that a judge may decide on the matter. |
| <p><b>“Host country”</b> means the State Party on the territory of which the event of force majeure has occurred;</p>  | <p><b>“Host country”</b> means the State Party on the territory of which the event of force majeure has occurred;</p>  | <p><b>“Host country”</b> means the State Party <b>on the territory of which the event of force majeure</b> the emergency situation has occurred or <b><u>caused its consequences</u></b>.</p> | France | Such a definition excludes cases such as that which resulted from the eruption of the Icelandic volcano, due to which tourists were stranded on the territory of a State even though the emergency situation/force majeure had not occurred in that territory.  |
| <p><b>“Country of origin”</b> means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her principal and permanent residence.</p> | <p><b>“Country of origin”</b> means the State Party of which the tourist has nationality or in which at the time of the event of force majeure the tourist has his or her principal and permanent residence.</p> |   |        |   |
| <p><b>Chapter 2</b><br/><b>Information obligation</b></p>  |  |   |        |   |
| 2.1. States Parties shall take the necessary measures to ensure that   | 2.1. States Parties shall take the necessary measures to ensure that,  |   | Spain  | To insert as Recommended Practice   |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals   | Who    | Other comments, questions   |
|---|--|---|--------|---|
| the accommodation service provider provides the tourist before the conclusion of the contract in any appropriate form with adequate information on: | before the conclusion of the contract, the accommodation service provider provides the tourist in any appropriate form with adequate information on: |   |        |   |
| a) Data of identification;  | a) The identity of the accommodation service provider;   |   | France | It seems unfortunate not to provide for the mandatory provision of information regarding cancellations, possible claims and the general terms and conditions that are applicable. |
| b) Type, quality, main features of the accommodation and its location;  | b) Type, quality, main features of the accommodation and its location;   |   |        |   |
| c) Price of the services, indication of any dues, taxes or fees chargeable for certain services where such costs are not included; and              | c) Price of the services, indication of any dues, taxes or fees chargeable for certain services where such costs are not included; and               | Price of the services, indication of any dues, taxes or fees chargeable for certain services where such costs are not included <b><u>in the main accommodation service;</u></b> | France |   |
| d) The advance payment to be made at the time of booking and the schedule   | d) The advance payment, if any, to be made at the time of booking and the schedule for   | The advance payment, <b><u>if any,</u></b> to be made at the time of booking and the schedule for paying the  | HOTREC | This provision describes the obligation for the accommodation provider to provide information on  |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections   | Proposals | Who | Other comments, questions   |
|---|---|-----------|-----|---|
| for paying the balance.   | paying the balance.   | balance.  |     | the advance payments that may have to be made by the consumer. The wording, however, gives the impression that such advance payments will always have to take place, something that does not reflect the practice of the industry. To be more accurate, HOTREC suggests to add the word "if any" to this provision.<br>WG agreed on the proposal. |
| <b>2.2. Recommended practice</b> – States Parties should take the necessary measures to ensure that the accommodation service provider provides the tourist before the conclusion of contract in any appropriate form with additional information on: | <b>2.2. Recommended Practice</b> – States Parties should take the necessary measures to ensure that, before the conclusion of contract, the accommodation service provider provides the tourist in any appropriate form with additional information on: |           |     |   |
| f) Ancillary services;  | a) Ancillary services;  |           |     |   |
| g) Cancellation policy;   | b) Cancellation policy;   |           |     |   |
| h) Check-in and check-out time;   | c) Check-in and check-out time;   |           |     |   |
| i) Possibility of complaints; and   | d) Possibility of complaints; and   |           |     |   |
| j) General terms and conditions applying to the contract.   | e) General terms and conditions applying to the contract.   |           |     |   |
| <b>Chapter 3</b>  |   |           |     |   |

| Third draft text of the Convention  | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals  | Who  | Other comments, questions  |
|---|--|--|--|--|
| <b>Force majeure event</b>  |  |  |  |  |
| <p>3.1. States Parties shall take the necessary measures to ensure that in case of force majeure the accommodation service provider cooperates with the related authorities of the tourists' country of origin and of the host country.</p> | <p>3.1. States Parties shall take the necessary measures to ensure that in case of force majeure the accommodation service provider cooperates with the relevant authorities of the tourists' country of origin and of the host country.</p> | <p><b>3.1. States Parties shall take the necessary measures to ensure that in case of force majeure the accommodation service provider cooperates with the relevant authorities <del>of the tourists' country of origin and of the host country, which shall contact the competent authorities of the country of origin.</del></b></p> | <p>France</p> <p>Austria</p> <p>Germany</p> <p>Spain</p> | <p>To add consular services and channels</p> <p>Not clear what cooperation covers. Similar:<br/>See Annex I Point 2.2.<br/>See Annex III Point 3.1.</p> <p><b>WG conclusion:</b> to insert as Recommended Practice until further clarification.</p> <p>To insert as Recommended Practice</p> |
| <p><b>3.2. Recommended Practice</b> – States Parties should take the necessary measures to ensure that</p>  | <p><b>3.2. Recommended Practice</b> – States Parties should take the necessary measures to ensure that in case of</p>  | <p><b>3.2. Recommended Practice</b> – States Parties should take the necessary measures to ensure</p>  | <p>HOTREC</p>  | <p>HOTREC considers that there are two different issues that should be clearly differentiated in this chapter</p>  |

| Third draft text of the Convention   | Decisions of the WG during the fifth meeting and linguistic corrections  | Proposals   | Who | Other comments, questions  |
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| <p>in case of force majeure the accommodation service provider displays fair and ethical behaviour and should not increase the room rates especially for the extra nights spent by the tourists till their repatriation without any justified reason and does not request cancellation fees neither from the tourists nor from its contracted other tourism service providers.</p> | <p>force majeure the accommodation service provider displays fair and ethical behaviour and should not increase the room rates especially for the extra nights spent by the tourists until their repatriation without any justified reason and does not request cancellation fees neither from the tourists nor from other contracted tourism service providers.</p> | <p>that in case of force majeure the accommodation service provider displays fair and ethical behaviour and should not increase the room rates <u>for the sole reason of force majeure event for the extra nights spent by the tourists till their repatriation, without any justified reason and does not request cancellation fees neither from the tourists nor from other contracted tourism service providers.</u></p> |     | <p>through two different sentences: the <b>“ethical” issue of possible price increases during force majeure events, and the consequence of a force majeure event on the contractual obligations.</b></p> <p><b>Non- “ethical” behaviours and price increases:</b><br/>The word “<i>especially</i>” is not appropriate, as room rates for nights that are not extra cannot be charged at a higher rate since they are subject to a pre-existing contract that stipulates the applicable rate. This word “<i>especially</i>” should therefore be deleted.</p> <p>Moreover, concerning the rates for the extra nights, the rate might be different independently of the force majeure event, as it is frequent that rates might defer according to the day in the week, to the period in the year, to the occupancy of the hotel (it is rather common that the rate for the last available room be much higher than when the hotel is half-empty). The wording would make</p> |

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|                                    |   |           |     | <p>difficult these normal adjustments, while the intention is to target rooms that are sky-rocketing for the sole reason of the force majeure event.</p> <p><b>The legal consequence of a force majeure event on the contractual obligations</b><br/> Article 3.2 also provides that in case of force majeure, the accommodation provider “...does not request cancellation fees neither from the tourists nor from its contracted other tourism service providers.” This sentence is addressing two different legal situations: the effect of the force majeure situation on a B2C contract, and on a B2B contract.</p> <p><b>Concerning B2C contracts:</b><br/> In Europe it is common that in case of a hotel contract, when there is a real case of force majeure that prevents the consumer from enjoying the accommodation service, the contract is declared void (either by mutual agreement or following a judgement) and</p> |

| Third draft text of the Convention | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals                               | Who | Other comments, questions   |
|------------------------------------|---|---|-----|---|
|                                    |   | New point - Option 1 (first preference) |     | <p>therefore the hotelier would not be legally entitled to claim cancellation fees.</p> <p>However, in a country like Germany, the hotelier would be entitled to charge a cancellation fee that would represent the price of the room minus the spared expenses (water, electricity, heating, breakfast) and the amount of money gained from re-selling the room (this means that if the hotelier manage to re-sell the room, it is likely that the consumer would be fully or almost fully reimbursed). Moreover, in some cases, consumers may have already pre-paid the room, either fully or partially. This practice (which is not the dominant practice but which is nevertheless not uncommon) would not be adequately taken into consideration by this wording.</p> <p>For these reasons, <b>HOTREC considers that the Convention should rather encourage States Parties to introduce in their legislation provisions dealing with the consequences of a force</b></p> |

| Third draft text of the Convention | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals   | Who | Other comments, questions  |
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|                                    |   | <p><b><u>3.3. Recommended Practice - The possible consequences of a force majeure event on the contract with the tourist should be determined the national contract law applicable in each case.</u></b></p> <p><b>New point - Option 2 (second preference)</b></p> <p><b><u>3.3. Recommended Practice - States Parties should take the necessary measures to ensure that in case of force majeure:</u></b></p> <p><b><u>- the accommodation service provider does not request cancellation fee from the tourist; or</u></b></p> <p><b><u>- the spared expenses and the money gained by reselling the</u></b></p> |     | <p><b>majeure event on the contractual obligations of the hoteliers and of the consumer</b>, rather than describing in details the possible consequences that are highly dependent on the philosophy behind the contract law in each State.</p> <p>However, <b>if the Convention is to anyway recommend a practice, it should mention at least two alternative options:</b></p> <ul style="list-style-type: none"> <li>- Either cancellation fees should not be charged;</li> <li>- Or spared expenses and the money gained by reselling the room are deducted from the amount due by the consumer. In such cases, the consumer should also be entitled to claim damages if the accommodation provider cannot provide the room because of the force majeure event (this ensure a balance of rights and obligations, as under German law).</li> </ul> |

| Third draft text of the Convention | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals   | Who | Other comments, questions  |
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|                                    |   | <p><u>room are deducted from the amount due by the tourist.</u></p> |     | <p>In any case, as stated concerning the definition of “force majeure” (see above), the <b>burden of proof should lie on the contractual party that invokes the force majeure.</b> Moreover, the Convention should recommend that <b>in case of disagreement over the existence of force majeure, State Parties should ensure that a judge may decide on the matter.</b></p> <p><b>Concerning B2B contracts:</b><br/>In Europe, the legal situation is different than in the case of B2C contracts. Indeed, in case of a force majeure event preventing the contract from being performed, it is not unusual that this situation be partly covered by some specific provisions inserted in the contract between the hotel and the tour operator. Such provisions may say that no-cancellation fees may be applied, it may say that the economic losses should be split, or it may say that the hotelier is entitled to charge some form of cancellation fee or some damages for not sending the clients to the</p> |

| Third draft text of the Convention | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals | Who | Other comments, questions  |
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|                                    |   |           |     | <p>hotel (as there would be a loss of profit). In any case, tour operators are often the major client of hotels, and it is in both side's interests to maintain good commercial relations (e.g. for many hotels, losing a contract with an import tour operator can put their survival at stake). Moreover, there is no reason why accommodation providers should be put at a disadvantage by the convention, by comparison with other tourism services providers. For this reason, <b>HOTREC considers that the Convention should not address the matter and leave it to ordinary B2B contractual relations and ordinary contract law. The last part of the sentence “nor from its contracted other tourism service providers” should therefore be fully deleted.</b></p> <p>ECTAA is of the opinion that point 3.2. <b>should be a standard</b> rather than a recommended practice as it would reinforce its usefulness.</p> |



| Third draft text of the Convention     | Decisions of the WG during the fifth meeting and linguistic corrections | Proposals   | Who | Other comments, questions |
|--|---|---|-----|---------------------------|
|  |   | that in case of force majeure the accommodation service provider displays fair, <b>transparent</b> and ethical behaviour and should not increase the room rates especially for the extra nights spent by the tourists until their repatriation without any justified reason and does not request cancellation fees neither from the tourists nor from other contracted tourism service providers. |     |                           |
| <b>Annex IV</b><br><b>Other issues</b> |   |   |     |                           |
|  |   |   |     |                           |

**General comments**

**ICAO**

Technical drafting suggestions/comments or the absence thereof do not constitute an official endorsement by ICAO.

**Austria**

Austria agrees that the issue of protection of tourists and tourism service providers needs a closer look on a global level. However, as you know, the member states of the European Union have to implement EU directives and regulations. As we have already pointed out on several occasions, important directives and regulations in this context (Directive 90/314 /EEC on package travel, package holidays and package tours, Regulation 261/2004 establishing common rules on compensation and assistance to airline passengers) are at the moment under revision and the adoption of these texts is not to be expected before 2013. Other regulations have to be taken into consideration as well, e.g. the Directive on Consumer Rights 2011/83/EU. Having this in mind, we feel that discussions on the UNWTO Convention take place at a too early stage, as the EU countries will be bound by the outcome of negotiations on EU level, and the outcome is not clear yet.

Unfortunately, due to many open questions, Austria therefore has to enter a scrutiny reservation against this draft convention.

With regard to the intended progress of discussions and future adoption of the convention we would be very interested to learn how UNWTO member states not represented in the Working Group could participate in the negotiations in a formal way. If I remember correctly, at the time when we were negotiating the "Budapest Convention" there was an established Committee for drafting the text which was open to all members

Nevertheless, we have already consulted Austrian stakeholders (The Austrian Foreign Ministry, Federal Ministry for the Interior, Federal Ministry for Transport, Innovation and Technology, Federal Ministry of Labour, Social Affairs and Consumer Protection, Federal Ministry of Justice, the Austrian Federal States "*Länder*", Industry Association - Federal Chamber of Commerce/Travel Agents Association) and would like to add to the ongoing discussion the following first comments (Draft September 2012, Annex I):

- Chapter 1: Definition of 'country of origin': Persons who are ordinarily resident in the country of origin should therefore not be included.
- Chapter 2: 2.2: Repatriation should not be mentioned explicitly here.
- Chapter 2: 2.3. The following text should be included (bold): "The host country shall inform **the diplomatic and consular authorities of** the country of origin of the tourist involved in the emergency situation about the following:".

Please find attached the two completed tables.

#### Comments:

The responsibility of force majeure in the case of travel packages is determined by the general civil law in accordance with specific provisions to the EU Directive 90/314 /EEC on package travel, package holidays and package tours. This directive has been implemented in Austria via §§ 31 b-f Konsumentenschutzgesetz (Consumer Protection Act).

In table 1 'Country of origin' should not be an option of responsibility as there is no legal obligation.

- 1) The repatriation of tourist has to be done by the travel organizer without any additional costs for the customer (cf. § 31 e 1 KchG; OGH 10 Ob 2/07b [Tsunami]).
- 2) Bearing the costs of accommodation by the travel organizer may be derived from § 31 e Abs 1 KSchG (duty of care).
- 3) "Other tourism services", as far as part of the travel package, are omitted. The travel organizer has to inform and refund the value of the service abolished (cf. General Warranty Law § 922 ff ABGB - Austrian civil code).
- 4) In general, due to the absence of fault of the travel organizer, no compensation for immaterial damages has to be done. However, there has been an OGH (Austrian supreme court) judgment where compensation was granted following Hurricane Wilma (OGH 4 Ob 130/09k).

#### France

In general, the draft Convention is far from the usual standards regarding multilateral conventions. The scope of this text is not clearly set forth (set of guidelines or real mandatory standards?) and its wording does not always make it possible to determine with precision its scope of application, to understand the definitions or to assess the impact of the legal concepts.

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- The drafting of a French version that eliminates the formal imperfections and that is authentic is imperative.
- The Convention should not be written in the future tense but the present indicative, which is the tense used in international treaties and agreements reflecting the permanence of the commitment of the parties.
- The structure of the Convention is not very legible and the legal force of the Annexes varies between "standards", which are mandatory, and "recommended practices", which are optional.
- All the definitions should be grouped together in the body of the Convention and not scattered among various Annexes and the body of the Convention.

With regard to Annex II, it basically repeats the provisions of Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. Under the principle established by the Court in its ERTA case (judgment of 31 March 1971, Commission / Council, 22/70), enshrined by Article 3, paragraph 2 of TFEU (Treaty on the functioning of the European Union), when the EU has taken steps to establish common rules for the implementation of a policy laid down by the Treaty, the Member States no longer have the right, individually or collectively, to undertake obligations covered by such rules with third countries. Pursuant to Article 3 TFEU, the EU is therefore the competent body as regards Annex II of the draft Convention. The draft Convention is therefore a mixed agreement that must be concluded jointly by the Member States and the Union. The Commission must be involved in the negotiations.

Furthermore, the Convention is submitted only for signature by the States. Regional economic integration organizations, such as the EU, are excluded from it. However, under Article 3 TFEU, the EU must take part in the Convention with regard to Annex II on package tours. It is therefore necessary to have a so-called "REIO clause" (regional economic integration organization), allowing the EU to join this project, that is, to be included in the draft Convention. (see proposal under Art. 9 – Convention)

If such inclusion is not possible, Member States will have to be authorized by a decision of the Council to conclude, in the interest of the Union, the draft Convention.

In addition, the Commission may require the introduction of a disconnection clause in favour of EU law applicable to the provisions of the draft Convention that reprise the provisions of Directive 90/314/EEC. Such a clause would provide that, for the area covered by Directive 90/314/EEC, the provisions of the Directive would apply and not those of the Convention.

### **Spain**

We welcome the initiative taken by UNWTO to protect tourists/consumers and the work that has been already done, however, we still consider that it is not the most adequate way to regulate such issues in a binding legal instrument. Main part of the convention is already widely regulated by EU laws and by our national legislation in general through extensive consumer protection rules and in particular tourist protection. Therefore, we believe that the draft convention shall contain only non-binding recommendations. Similarly some chapters are almost impossible to be implemented by Spain.

The text of the Convention raises a number of difficulties which tangentially affect other matters beyond the scope of "tourism" and belong to the responsibility of further ministerial departments that might express reservations by the ratification; therefore, we reiterate that it would be preferable if the text only introduces non-binding recommendations.



## FINAL REPORT

### FIFTH MEETING OF THE UNWTO WORKING GROUP ON THE PROTECTION OF TOURISTS/CONSUMERS AND TRAVEL ORGANIZERS 7 November 2012, London, United Kingdom

The fifth meeting of the *UNWTO Working Group on the Protection of Tourists/Consumers and Travel Organizers* was held on the occasion of the World Travel Market in **London, United Kingdom, on 7 November 2012**. The Delegates had a detailed debate on the **third draft text of the convention**, which had been elaborated in accordance with the decisions of the last meetings of the Working Group (WG).

#### Morning session

#### **I. OPENING REMARKS**

**Mr. Frédéric Pierret**, UNWTO Executive Director for Programme and Coordination, welcomed the attendants and thanked for their efforts to participate at the fifth meeting of the WG.

**Mr. Frédéric Pierret** gave the floor to **Mr. Taleb Rifai, UNWTO Secretary-General**, to open the meeting.

**Mr. Taleb Rifai** thanked the Delegates for their participation, cooperation and hard work which had been done since April 2011. He talked about the following very important issues:

- UNWTO has embarked on this work with the sense of responsibility of its mandate which has been given by the UNWTO Executive Council and the General Assembly.
- The WG was requested by the UNWTO Executive Council during its last session (Campeche, Mexico, 23-25 October 2012) to continue the elaboration of the convention and to inform the Executive Council on its progress during its next session (28-29 May 2013). The Executive Council also decided to further broaden the scope of discussions and consultations in order to engage all UNWTO Member States, in particular through the UNWTO Regional Commissions' meetings.
- UNWTO endeavors to reach a maximum level of consensus by the elaboration of the convention which may require more time and consideration as it has been ascertained by the Executive Council.
- UNWTO has no intention to duplicate, substitute or create contradictions with existing international or regional legislation practices - especially with the Package Travel Directive (Council Directive of 13 June 1990 on package travel, package holidays and package tours - 90/314/EEC) - rather the contrary; the common aim is to expand provisions and practices which already work effectively in practice. The convention will be complementary to other instruments that are being adopted by regional institutions, such as the European Union, as it was underlined and requested by the Executive Council. For that reason, the UNWTO Secretariat carefully collected and examined existing international and regional legal instruments, which may have an influence on tourist protection.

- He reiterated the importance of the convention referring to nowadays trends in the tourism sector. In 2011, a record 990 million international tourists traveled the world, generating over US\$ 1 trillion in international tourism revenue. Despite the continuing economic crisis, UNWTO recorded a growth of 4% in international tourist arrivals in the first 8 months of 2012. At this rate, we are well on track to reaching the historical one billion tourists by the December this year. The sector will continue to grow - UNWTO's long term forecast, Tourism Towards 2030, shows that by 2030, there will be 1.8 billion people crossing international borders for leisure, business or other tourism purposes. This means the next 20 years will see 43 million new tourists coming to the market place every year, creating immense opportunities yet also many challenges for all players.
- Hence, the common aim is to protect tourists and tourism service providers equally taking into consideration rights and obligations at the same time. Besides, States Parties' responsibilities should be calculated very carefully which issue was particularly raised by UNWTO Member States during the last sessions of the Executive Council. Therefore, all three parties' interests (States Parties, tourists and tourism service providers) shall be reckoned. The guidelines shall be applicable, logical, acceptable and clear for all actors.
- In accordance with the decisions of the Executive Council after the necessary preliminary consultation process in the framework of the WG, the draft text will be submitted to the Executive Council and to the UNWTO General Assembly, at a time considered appropriate without any time pressure on the WG. He reassured the WG that quality would be not sacrificed if more time or consultation is needed for the elaboration process and to reach a consensus on the draft text.

Finally, he asked the WG Members for their further contribution and support towards the elaboration and adoption of the convention. He apologized that he would leave the WG shortly due to his other official commitments at WTM.

### **General comments**

**Mr. Reinhard Fink**, Deputy Head of Tourism Policy Unit, Federal Ministry of Economics and Technology, Germany, fully supported preliminary discussions with the Members States before presenting the draft to the UNWTO General Assembly.

**Mr. Taleb Rifai** reacted that in accordance with the guidelines of the Executive Council from March 2013 special consultations would be taken place on the occasion of the different UNWTO Regional Commissions' meetings in order to gain more reactions and remarks from the UNWTO Member States. Based on the outcomes of those regional meetings the WG could assess if the draft text would require further revision or negotiations.

**Mr. Jens Thommensen**, Legal Officer for Consumer Issues at the Consumer and Marketing Law Department of the European Commission's Directorate General Justice, recalled the current revision process of the Package Travel Directive and informed the WG that despite of certain delay in the agenda the new draft proposal would be launched during the following spring. He added that the coherence between the two texts should be ensured.

**Mrs. Olena Shapovalova**, Chairman, State Agency of Ukraine for Tourism and Resorts, Ukraine, paid the attention that the different regional and national legislation practices should be taken into consideration. She welcomed the initiative to involve more Member States in the debate through the UNWTO Regional Commissions.

**Mr. Michel de Blust**, Secretary-General of ECTAA (European Travel Agents' and Tour Operators

Association) and representing World Travel Agents Associations Allianz (WTAAA), appreciated the decision of the Executive Council in regard to ensuring sufficient time for the process and the adoption of a new legal instrument which was more preferable by the private sector in order to ensure that the convention would neither cause overlaps nor produce problems in the functioning of the travel market.

**Ms. Christel Leys**, Policy officer Tourism, Flemish Department of Foreign Affairs, Flemish Community of Belgium, supported the former Delegates' comments. She continued with a procedural question whether the European Union would also sign the convention. Finally, she asked when and how the UNWTO Member States officially would receive the draft text.

**Mr. Taleb Rifai** clarified that the Executive Council would prefer to submit the draft text to the next session of the General Assembly in August 2013 - if possible - but if further consultation was needed, there would be absolutely no time forcing or pressure on the WG which might put a stake on the quality and success of the adoption of the convention. He was pleased to hear positive and relieved comments concerning that decision of the Executive Council. He stated that the consistency with existing legal instruments was the most important requirement. After having expressed their concerns the Members of the Executive Council were reassured that the convention would not impose further burden on the private enterprises by introducing more restrictive rules or obligations because international legal documents should seek for the lowest common, basic and global guidelines. He underlined that regional and other organizations would be welcomed as signatory Parties of the convention but that could not be an obligation. The European Union as a sole regional body could not be asked by UNWTO to be part of the convention but if the majority of the EU Member States sign the convention, the European Union could consider being associated as well. He also talked about the future procedure highlighting that UNWTO has not yet adopted any convention which had been signed by any Member State or entered into force. If the Executive Council agrees, the convention will be submitted to the General Assembly and will be open to every State for signature. He reminded that the main aim was to gain more signatory States Parties although in many cases other international conventions were not signed by every UN Member State. Finally, he added that the convention would be obligatory and binding only for those Member States who would sign it.

**Mrs. Sandrine Jaumier**, Deputy Head of Competitiveness and Tourism Activity Development, Ministry of Economy, Finances and Industry, France, thanked the French translation of the draft text and the interpretation service during the meeting. She supported the proposal of the **Flemish Community of Belgium** that the European Union could sign the convention as it was the case with the Montreal Convention. She reminded that France had already sent by email official comments on the third draft text to UNWTO Secretariat.

**Mr. Arie Jakob**, Legal Officer, ICAO Headquarters (International Civil Aviation Organization), Montreal, Canada, welcomed that sufficient time would be left for proper coordination and consultations for the elaboration of the convention, particularly involving national authorities and other regional and international organizations. Regarding the point raised by **Mr. Taleb Rifai**, he indicated that the Montreal Convention of 1999 had a special provision which accommodated the possibility for the signature of the instrument by Regional Economic Integration Organizations, such as the European Union. He considered this however a rather legal technical matter. **Mr. Jens Thommensen** reacted that the European Commission should examine more in details that proposal and come back to WG with an official position.

**Mr. Arturo García-Alonso**, Assistant Director, Facilitation and Airport IT, Airports Council International World (ACI), Montreal, Canada, thanked that ACI was invited to participate in the WG and in that very significant project. He supported the consensus on ensuring enough time and more discussions for the process. He said that ACI would introduce comments during the debate on specific provisions.

**Mr. Frédéric Pierret** thanked **Mr. Taleb Rifai** for his presence and for his introductory comments.

**Agenda item 1: Adoption of the agenda**

As **Agenda item 1 Mr. Frédéric Pierret** asked the Delegates to adopt the Revised Agenda.

The **Revised Agenda** was adopted unanimously by the WG (see Annex).

**II. DISCUSSIONS OF THE WORKING GROUP****Agenda item 2: Introductory report of the UNWTO Secretariat (follow-up on recent activities)**

**Mr. Frédéric Pierret** reviewed the latest activities by the UNWTO Secretariat in the field of tourist protection as follows:

1. **During the 93<sup>rd</sup> session of the Executive Council** (Madrid, Spain, 11-13 June) a **short report** was presented about the outcomes of the WG's last meetings including **the mandate request for travel organizers' liability issues** which are in accordance with the EU regulations in force. The **UNWTO Executive Council** thanked the WG members and the UNWTO Secretary-General for their valuable work towards an international convention. The Executive Council supported the further drafting of the text **by assuring that the convention will be consistent with the existing related EU Directives.**
2. The **World Committee on Tourism Ethics** as the body responsible for promoting and monitoring the implementation of the UNWTO Global Code of Ethics for Tourism during its eleventh meeting (Rome, Italy, 12-13 July 2012) **reiterated its support for UNWTO's preparation** of an international legal instrument on the protection of tourists/consumers and tourism enterprises.
3. The **UNWTO Executive Council during its ninety-fourth session** (Campeche, Mexico, 23-25 October 2012) decided to further broaden the scope of discussions and consultations with all Member States, particularly, through the Regional Commissions' meetings. The WG was requested to continue the elaboration of the text of the convention and to send a report on its progress to the ninety-fifth session. After proper consultation, a draft at the appropriate time shall be submitted to the Executive Council and the General Assembly.
4. He welcomed and introduced **new members** in the WG including Austria, Flemish Community of Belgium, South Africa, Ukraine, and organizations, such as the International Automobile Federation (FIA), Airports Council International (ACI) and WTTC.
5. He reminded that in September the UNWTO Secretariat circulated the third draft text. Some preliminary comments had already been received from Costa Rica, Austria, Spain, France, ECTAA, and ICAO which would be introduced during the meeting. Costa Rica was generally in favour with the revised third draft. Austria made remarks on Annex I emphasizing the consular law issues and the consistency with the related EU legal acts. Besides, the revision of the Package Travel Directive is still on-going and for that reason generally Austria would be not in favour with any further process till the adoption of the new Directive.

**The UNWTO presentation is attached (see Annex).**

**Mr. Michel de Blust** looked for the certain specific decision of the Executive Council concerning the mandate request on liability issues. **Mr. Frédéric Pierret** read out the related Executive Council's decision part (see whole decision under CE/DEC/5(XCIII) in Annex):

*"The Executive Council takes note of the assurance by the Secretary-General that the Convention will be*

*consistent with existing European Directives;”*

He added that in accordance with that decision the WG could deal with all current scope elements but those should be in line with the existing EU rules.

**Ms. Anémé Malan**, Deputy Director-General, International Tourism Management, South Africa, asked whether there was a difference between the observer and member status of the WG. She also raised the question when Member States would be able to receive the draft text in order to begin further consultations with the different authorities at the national level. **Mr. Frédéric Pierret** clarified that there was no difference and he added that the WG had been open to any UNWTO Member States from the beginning of the project. Furthermore, the WG did not adopt restrictive procedural rules for its constitution or functioning. He recalled that on the occasion of the UNWTO Regional Commissions’ meetings Member States would be able to receive the draft text.

**Mr. Jens Thommensen** raised a general question concerning the legal nature of the standards (binding rules) whether those would be considered as minimum rules (similar to the existing minimum harmonized EU Directives) or not. In that latter case inconsistency would be more possible with the current Package Travel Directive and with the future new proposal. He stressed that if standards were minimum rules in that case States Parties could adopt stricter rules in favor of the consumers or could make deviations in the national legislation. **Mr. Frédéric Pierret** strengthened that the standards were minimum rules but that should be explicitly stated in the General part of the convention.

**Dr. H. Jochen Martin**, Member of the Steering Committee, ECTAA (European Travel Agents’ and Tour Operators Association), shared the same concern of **Mr. Jens Thommensen** and he preferred to leave the possibility of adopting higher standards by the States Parties at national level. **Mr. Reinhard Fink** also supported that approach which would give flexibility to national legislators including later future developments as well.

**Ms. Anémé Malan** added that developing countries’ interests shall be especially taken into account by the benchmarking of the minimum guidelines.

**Mrs. Sandrine Jaumier** introduced France’s general remarks. The application of standards should be clarified precisely. The relation between the Annexes and General part should be still revised, particularly which provisions apply in which cases. The notion of *“tourism service provider”* should be reviewed in accordance with the final scope of the convention and should be complemented with the definition of *“tourism service”*. **Dr. H. Jochen Martin** replied that it had been already debated and agreed by the WG during the last meetings that every Annex would include the related definitions taking into consideration their specific aspects and topic. He mentioned as an example the abstract definition of *“force majeure”*. **Mr. Frédéric Pierret** concluded that general definitions which would be applicable to all Annexes could be inserted in a separate chapter for better understanding and reading.

**Mr. Arturo García-Alonso** commented on **Point 2.13. of Annex I** whereas it should be more general and he introduced a modification proposal for including general access to up-to-dated information related to all travel arrangements. He provided the UNWTO Secretariat with concrete wording proposal.

**Mr. Arie Jakob** reiterated that ICAO’s main interest was to ensure that there would be no overlap with existing international air law instruments. In this context, certain elements in the draft Annexes, such as liability, delay or non-performance needed to be carefully assessed before the scope of the convention, which currently excluded standalone air transport services, could be finally established. He stressed that any kind of inconsistency with existing air law regulatory frameworks should be avoided.

### **Agenda item 3: Discussion of the third draft text of the international convention**

Upon requests of some Delegates the WG started the debate on Annex II and Annex III of the draft

convention. Finally, it was followed by the discussion on the General part and Annex I.

## **Annex II**

**Ms. Dorottya Gyenizse**, UNWTO Secretariat, introduced briefly the revised provisions of **Annex II**. She recalled the bilateral consultations which had been taken place with Costa Rica on emergency cases (Annex I) and ECTAA (revision of Annex II). She introduced the modifications of the text in **Chapter 2** (information elements) and **Chapter 4** (assistance obligations). By the re-drafting of **Chapter 4** the outcomes of the assistance obligations' evaluation were taken into consideration. Additional research and compilation clarified that other international conventions introducing similar standards and recommended practices generally use the term "*shall*" for standards (binding rules) and "*should*" for recommended practice (non-binding).

**Mr. Frédéric Pierret** opened the debate and asked the Delegates to start with their general remarks.

## **General comments**

**Dr. H. Jochen Martin** proposed amendments in **Chapter 4**:

- In **Point 4.1.** to add "*after departure*";
- In **Point 4.2.** to add "*if the health, personal integrity of the tourist is in danger*";
- In **Point 4.2. e)** to replace "*shall*" with "*may*" because providing additional travel arrangement is not an obligation, it depends on the request and need of the tourist;
- In **Point 4.7.** to redraft current wording because in some cases tour operators/travel agencies are entitled to claims from insurance companies, for instance.

**Mr. Frédéric Pierret** reminded of some recent force majeure cases when there was not a direct danger and notwithstanding tourists needed basic assistance, e.g., information or communication services. **Dr. H. Jochen Martin** replied that according to ECTAA's interpretation those cases were covered by **Point 3.5 of Chapter 3** by the "***prompt assistance***" obligation. He emphasized that as it was agreed distinction should be made between contractual and non-contractual obligations and responsibilities.

**Mr. Jens Thommensen** supported adding in **Point 4.1.** "***after departure***". Concerning alternative arrangements he emphasized that according to current rules of the Package Travel Directive and the interpretation of the European Commission a duty on behalf of the travel organizer towards the tourists to provide alternative arrangements for the continuation of the package exists also in force majeure situations.

**Mr. Arie Jakob** recommended to review **Chapter 4** concerning the coherent use of the term "***package travel contract***".

**Mr. Alain Verwilghen**, Secretary-General, EGFATT (European Guarantee Funds' Association for Travel and Tourism) expressed his appreciation for the revised definitions and the general consensus which was achieved. He added that the definition of "***package***" should also include "*online and offline*" forms.

**Mr. Frédéric Pierret** outlined the former debate concerning the term of "***the other party to the contract***". Although the definition seems a little bit long but covers all actors and **Prof. Alain Pellet**, UNWTO Legal Advisor, reaffirmed that it could be kept as drafted.

**Ms. Beatriz Moral Del Valle**, Head of Service for International Relations, Department for Cooperation and Tourism Competitiveness, Spanish Institute of Tourism (TURESPAÑA), firstly thanked the simultaneous interpretation service in Spanish. Secondly, she underlined that the current draft text touched upon issues other than tourism and therefore consultations should be made with other authorities. She raised a translation issue: in the definition of **“retailer, vendor”** she recommended to delete from the Spanish translation **“public agent”** term and to add a reference to the tour operator who combines the package. She agreed with all former interventions with regard to avoiding any contradictions with the related EU rules in force. Therefore Spain preferred to introduce recommended practices in the Annexes and not standards as binding rules. **Mr. Frédéric Pierret** strengthened that at that stage the Spanish and French translations should be considered only as draft versions and they would be improved and finalized later.

## Chapter 1

### Force majeure definition

**Mrs. Sandrine Jaumier** suggested deleting the second part of the definition of **“force majeure”** which did not add additional meaning comparing the first part. She continued that the current definition did not cover entirely the ash cloud case or similar events because the ash cloud had an effect on certain zones or parts of other States Parties, not only of the host country. She opposed the exemption rule of business travellers from the whole **Annex II** because **Chapter 4** (assistance obligations) should cover both leisure and business tourists. **Mr. Jens Thommensen** supported France’s proposal on deleting the second part of current force majeure definition (*“or events which even with all due care could not have been foreseen or forestalled”*). **Mr. Frédéric Pierret** reminded that there was a large consensus on force majeure definition during the last meetings. **Dr. H. Jochen Martin** cautioned including additional reference to effected territories of other countries other than of the host country because its impact should be calculated more carefully. **Mr. Reinhard Fink** joined to ECTAA’s opinion and emphasized the serious consequences especially the responsibilities of the States that would be certainly increased in that case.

**Mr. Frédéric Pierret** added that it was a very important debate especially because the ash cloud case was in such aspect exceptional and a new situation. On the other hand he acknowledged the former interventions on being more cautious and assessing possible impacts by expanding its scope. **Mrs. Sandrine Jaumier** proposed as a compromise that the notion *“direct”* could be added to the consequences. **Mr. Michel de Blust** stressed that from the private sector’s point of view those situations could be likely unmanageable. It is impossible to cover every situation in an international convention. He considered that the current definition was a good compromise and covered reasonably what such situations would be anticipated. **Dr. H. Jochen Martin** added that if the effects of force majeure were extended to other countries, those States probably could be reluctant as they are far away from the original force majeure situation.

**Mr. Frédéric Pierret** concluded that the original definition compromised definition should be kept but WG should consider France’s proposal.

### Exemption rule of business travellers

**Mr. Alain Verwilghen** started with a general remark that a limit should be considered in the aspect of private companies’ responsibilities for assistance obligations in force majeure situations. According to their experiences private enterprises had to face and deal with different level and types of compensation claims of the tourists. He recalled the important role of existing calamity and other guarantee funds which could cover business-to-business (B2B) relations as well. EGFATT strives to expand calamity funds’ best practices in more EU countries which refer to catastrophes and disasters and are not limited to insolvency cases. Furthermore, EGFATT fully supported **Point 4.6.** recommended practice on promoting and providing guarantee funds and insurance schemes as alternative protection forms.

**Ms. Eva Aimable-Kolosko**, Policy and Research Manager, World Travel & Tourism Council, asked for the backgrounds why B2B relations were exempted from those rules. She pointed out that business tourists also enjoy leisure facilities and usually the family members also accompany them on those trips, accordingly they need also adequate protection and repatriation in force majeure situations.

**Mr. Alain Verwilghen** shared the concern of WTTC, since if there was a problem all tourists should be repatriated. Therefore, calamity funds could operate effectively. He added that an airline ticket included the name of the passenger (as physical person) and not the company's name. At the spot in case of force majeure it is difficult to make distinction between tourists.

**Mr. Michel de Blust** contended with the former comments and outlined the reasons why the contractual context of B2B was completely different from package travel contractual context and why business travel fundamentally differed from private travel forms (package tours). The reason of providing protection in case of business-to-consumer (B2C) contracts is that the consumer/tourist is normally in a weaker bargaining position than the travel organizer providing the service which is not applicable to B2B-contracts. The entire business travel is decided by the employer (corporate customer) and the business traveller (employee) has no impact on the destination, transportation forms or accommodation. A commercial type of contract is concluded between the corporate customer and the travel agents (usually professional travel management companies). Corporate customers usually conclude long term contracts with their travel agencies and not single contracts for each travel. The business traveller has no private financial risk as his employer is party to the contract. The employer has a duty of care towards his employee as well which is an additional protection in B2B relations. The service level provided by the travel agency can be negotiated individually and the corporate customers can decide by themselves what services the travel agency shall provide at an according price. **Dr. H. Jochen Martin** complemented that business travel was fully recognizable in the booking because the contract needed to state VAT so that the corporate customers could deduct it. Therefore, there is no problem in differentiating business travel bookings from private package travel bookings. Besides, if standards are considered as minimum rules the national legislators can decide on the further protection of B2B relations by adopting additional rules.

**Mr. Jens Thommensen** observed that a new wider definition for "**package**" would be more likely to be introduced in the revised Package Travel Directive. He suggested deleting "**pre-arrange**" notion from the current definition or giving an additional clarification what "**pre-arrange**" meant by quoting to the related practice and case law of the European Court of Justice. He made the same remark on "**inclusive price**". He continued that "**country of origin**" was not mentioned in **Annex II** so it should be deleted from Chapter 1. In case of the definition of "**host country**" it seemed that the second part overruled the first part (nationality and residence conditions).

**Mr. Frédéric Pierret** affirmed that the draft should follow the current text of the Package Travel Directive. **Ms. Dorottya Gyenizse** reminded of the former meetings' debate on package issues. The WG is well aware of European Court of Justice's case law and agreed that the text would not include the wider package definitions (considering the complication of dynamic packages) till the new proposal of the European Commission.

**Mr. Shen Haien**, Lecturer, Member of the Drafting Team of China Tourism Law, China, addressed a question to **Mr. Jens Thommensen** when a tour operator combined travel services together as a package upon the request of the tourist and not strictly pre-arranged in the European Union whether it was considered as a pre-arranged package or not, and consequently Package Travel Directive should apply in such case or not. **Mr. Jens Thommensen** clarified that according to the interpretation of the European Court of Justice it was considered as a package and the Package Travel Directive applied.

**Mr. Frédéric Pierret** avoided restarting the debate on the definition of "**package**" until the new proposal

of the Package Travel Directive. He recalled the previous debate and conclusions of the fourth meeting when the WG discussed in details the three existing types of packages regarding national and international practices:

1. Traditional packages (pre-arranged combination of tourist services as unique and common forms when the Package Travel Directive was adopted in 1990);
2. Dynamic packages (bundling packages by tourists through internet websites operated by the same travel agent or tour operator);
3. Click-through packages (commercially linked websites through the consumers can put together and customize a package tour).

He suggested that the draft text could not deal with all the existing forms of packages considering that the European Commission was still in the process to find possible and adequate legal frameworks for those cases.

**Mr. Joan Passolas**, Secretary-General, AMFORT-WAPTT (World Association for Professional Training in Tourism) commented on the B2B debate and coincided with EGFATT's position that air tickets indicate the passengers' names. He argued that low cost companies' usually do not provide their clients with invoices and every tourist needs protection, especially by the rapid spread of internet and online booking. Business travellers also enjoy leisure facilities hence strict and clear distinction could not be made. **Mr. Michel de Blust** paid the attention that different legislation aspects were involved in the debate as **Annex II** dealt with package travel issues. In case of air transport services airlines (including also nowadays low cost companies) conclude commercial contracts or agreements and provide specific air fares. Air regulations cover all these cases and lay down assistance obligations.

**Mr. Reinhard Fink** observed that this was a core problem that the revision was on-going in the European Union and he suggested to keep the current definition of the Package Travel Directive and ensure the opportunity to adjust it later to the new proposal. According to his opinion the B2B exemption rule was reasonable in case of Annex II but Annex I should include every tourist.

### **Conclusions (Chapter 1)**

- The definition of "*force majeure*" shall be corrected.
- Further evaluation shall be made on France's proposal to extend host country's scope to all effected zones and territories in "*force majeure*" definition.
- "*Country of origin*" inclusion shall be reviewed.
- Further assessment and consultation shall be taken place concerning B2B exemption rule.
- The definition of "*retailer, vendor*" in the Spanish translation shall be corrected.
- The definition of "*package*" shall be revised in accordance with the preliminary proposals of the European Commission concerning the proper references of "*pre-arranged*" and "*inclusive price*".

### **Chapter 2**

**Mr. Arie Jakob** recommended to insert in Annex II, Chapter 2, paragraph **2.3. g)** the expression "**package travel**" before "**contract**".

**Mr. Jens Thommensen** recommended that "**taxes and fees**" should be indicated in the total price under **Point 2.1. f)** as pre-contractual elements.

**Mrs. Olena Shapovalova** intervened that generally all those requirements should be reviewed very carefully as there were different existing regional and national systems outside of the European Union.

**Mr. Frédéric Pierret** acknowledged Ukraine's concern and request. He assured that during the former last

meetings lots of inputs were taken into consideration from different countries such as Costa Rica, India, Russia, Brazil, Morocco, Kenya or China. As it was decided by the Executive Council at its last session the draft would be debated by the Regional Commissions during next spring which would give a good opportunity to gain further reactions and remarks from different legislation systems.

**Mr. Shen Haien** suggested that **Point 2.2. b)** on insurance policy information should be a standard instead of a recommended practice. He mentioned that the cancellation policies of the tour operators could vary which might cause problems, for instance, considering existing different practices and levels of cancellation fees. **The WG debated on China's proposal.** In the current Package Travel Directive providing information on possible insurance schemes is a pre-contractual obligation which could not cause inconsistency with the existing legislations as a standard. However, **Mr. Jens Thommensen** commented that the related rule would likely to be changed in the future and it would be preferable not to shift it to a mandatory rule. **Mr. Michel de Blust** explained more in details the existing cancellation policies of tour operators how usually fees are calculated. If the tourist wants to cancel the package travel contract before the departure, there are alternative cancellation insurance schemes which specify conditions under them the insurance company would reimburse the cancellation fees (e.g. sickness, serious unforeseeable family events etc.). **Mr. Frédéric Pierret** concluded that **Point 2.2. b)** should be included as a recommended practice because national legislators are not prevented to adopt stricter rules as it had been clarified before.

**Mr. Jens Thommensen** asked to insert "*meal plan*" element from **Point 2.2. to Point 2.1.** as a standard in accordance with the current Package Travel Directive.

#### **Conclusions (Chapter 2)**

- Modifications shall be included.
- Order of the standards and recommended practices shall be revised for better reading.

#### **Chapter 3 (first part)**

**Mr. Reinhard Fink** raised the question of the specific mandate in relation to **Chapter 3** if liability issues could be part of the scope or not. **Mr. Frédéric Pierret** recalled the related decision of the Executive Council (see Annex) emphasizing that the unique requirement was the consistency with the Package Travel Directive. **Mr. Arie Jakob** endorsed Germany's observation and reiterated that any kind of inconsistency with existing air law instruments should be avoided, not only taking into account EU related rules. He noted that the WG should be deliberate and cautious in the drafting of the provisions on proper performance and liability. He recommended to add a special "*conflict rule*" in **Chapter 3** in order to evade any kind of impingement. **Mr. Frédéric Pierret** suggested that **Chapter 3** could be discussed in a special working paper during the **Sixth Worldwide Air Transport Conference** (16-22 March 2013, Montreal, Canada).

**Mrs. Sandrine Jaumier** requested to include "*other tourism service providers*" in **Point 3.1.** by determining the liability which would be more in line with the current Package Travel Directive. **WG agreed on this proposal.** Furthermore, **Mrs. Sandrine Jaumier** recommended additional rules to be included which are parts of the current Package Travel Directive (Article 4 Subparagraphs 4-6) as special obligations before the departure, e.g. cancellation related issues, modification of the terms or the contract and its consequences.

The **WG discussed France's proposal** and concluded that those existing provisions could be included but in a separate Chapter or in Chapter 2 (information obligations) because Chapter 3 is related to failure of performance and liability issues.

As the Delegates of HOTREC had to leave the meeting **Mr. Frédéric Pierret** proposed to the WG to continue the debate with Annex III on accommodation related issues before closing the morning session.

**Annex III**

**Mrs. Anna Torres**, Chief Executive Director (CEO) of HOTREC (European Trade Association of Hotels, Restaurants and Cafés) stated that basically HOTREC was in favour with **Annex III**. She introduced HOTREC's official comments:

- In **Point 2.1. d)** to add "*if any*".  
**WG agreed.**
- **Point 3.2.** should be divided to two parts and to include an additional condition "*for the sole reason of the force majeure event*".  
**WG agreed.**
- In **Point 3.2.** the term of "*reimbursement*" should be taken into consideration and included next to cancellation fees. Besides, HOTREC preferred to refer to the applicable national contract law.

**Prof. Alain Pellet**, UNWTO Legal Adviser, observed that from a legal point of view the reference to national contract laws in a recommended practice would not create additional substance.

**Mr. Jens Thommensen** wondered what the objective of **Point 3.2.** was and how it could be enforced by the Member States, e.g., which reason could be considered as a "*justified reason*" under that rule. **Dr. H. Jochen Martin** explained that during recent disasters and major force majeure events tour operators faced with increase in hotel prices which they considered unfair practice. **Mrs. Anna Torres** disagreed with ECTAA's comment and asked ECTAA to provide them with such practices or evidence for further investigation as HOTREC had not experienced the same behaviour. **Mr. Reinhard Fink** noted that if that rule was kept as a recommended practice, national legislators would be more flexible and free to adopt rules in order to ensure that consumers/tourists could not be exploited in such cases especially when the increase in the price would be disproportionate to the original contracted services. He also commented on **Point 3.1.** considering it was very general what should be exactly expected under that rule from the States Parties in order to carry out that cooperation obligation (similar problematic wording in **Point 2.2. of Annex I**). It should be specified and meanwhile it should be inserted in the text as recommended practice. **Mrs. Sandrine Jaumier** suggested that cooperation obligation should be kept as standard but should be taken place firstly between the accommodation service provider and the host country's authorities and afterwards the host country should make contact with the designated authorities of the country of origin. She also asked for the revision of force majeure definition as agreed before in **Annex III Chapter 1**.

**Mr. Frédéric Pierret** finally concluded that **cooperation obligations related provisions** should be maintained as recommended practices and should be implemented by the national laws.

**Conclusions (Annex III)**

- Amendments shall be indicated.
- Point 3.1. and Point 3.2. shall be redrafted. Point 3.1. shall be inserted as recommended practice.
- Point 3.2. shall be further consulted with HOTREC.

**Afternoon session****Continuation of the debate on Annex II****Chapter 3 (second part)**

**Mr. Arie Jakob** reminded that ICAO had previously communicated some technical and editorial amendments to UNWO Secretariat. He referred back to his former suggestion on including an explicit

“conflict rule” which would prevent the possible collisions with existing air law instruments. ICAO will provide UNWTO Secretariat with wording proposal.

**Mr. Jens Thommensen** remarked that the current wording of **Point 3.4.** could be interpreted as a “*fault-based*” liability while the Package Travel Directive and the European Commission would avoid a situation where the traveller would have to prove negligence in addition to proving a breach of contract by the tour operator. He made further reservation on **Point 3.6.** concerning the notification obligation of the tourist towards both the tourism service provider and the other party to the package travel contract.

**Mr. Frédéric Pierret** asked **Mr. Jens Thommensen** for sending concrete proposal. **Mr. Jens Thommensen** reacted that he could strengthen only that a breach of contract could be considered enough, but that the final decision would depend on the outcomes of the later debate on the new draft of the Package Travel Directive. **Mr. Frédéric Pierret** concluded that the European Commission could draft preliminary general comments and proposals on **Chapter 3** which would be not considered as official statements especially till the new draft would be officially launched. Further bilateral consultations should be taken place. **Mr. Michel de Blust** supported that solution because the upcoming EU Parliament election next year might cause further delay in the adoption. **Mr. Jens Thommensen** agreed and added that if standards were minimum rules there would be less inconsistency.

#### **WG agreed on the proposal.**

**Mr. Jens Thommensen** continued by raising the question why **Point 3.7.** had been taken in as mandatory rule on behalf of the tourists towards the tourism service providers. Tourists are normally considered as the vulnerable parties comparing with tour operators or other tourism service providers. He suggested that the provision should be redrafted for better understanding, particularly to clarify what other obligations of the tourists are laid down in the convention, since the article refers to such obligations. **Ms. Dorottya Gyenizse** replied that the convention aimed at protecting both tourists and tourism service providers. **Dr. H. Jochen Martin** agreed and complemented that at least under the package travel contract the tourist had certain obligations not only rights and it was included in **Point 3.7.** as well.

By recalling the former debates during the last meetings **Mrs. Sandrine Jaumier** commented on **Point 3.6.** in relation to the burden of proof. **Mr. Michel de Blust** explained the reason why tourists should notify the travel organizer if any kind of shortcomings or problems might be experienced at the spot. **Mrs. Sandrine Jaumier** stressed that the provision should be more accurate.

The current wording would cause too much burden on behalf of the tourist as it seemed to be very vague. She added that the French Ministry of Justice insisted on the reversing the burden of proof.

**Ms. Dorottya Gyenizse** recalled that the wording strictly followed the current Package Travel Directive. **Prof. Alain Pellet** raised the question whether the Package Travel Directive should be stuck word by word or the draft convention should try to follow the future aspects without making inconsistency. **Mr. Michel de Blust** intervened that the provision took into consideration the fact that not every tour operator disposed with local representatives. He illustrated with certain examples if the notification obligation was deleted or amended, tourists would ask for compensation for improper performance when they already come back home and after unreasonable time period. If tour operators are unable to receive information they could not rectify the situation in accordance with the needs of the tourists.

#### **WG had further debate France’s proposal.**

**Mr. Olivier Lenz**, Global Public Policy Manager, International Automobile Federation (FIA), observed if those obligations were extended to both parties, it would be a solution. **Mr. Reinhard Fink** supported the current text and stressed that **Point 3.6.** referred to the equality and balance of rights and obligations. It is the interest of the tourist as well to communicate the complaints in order to keep the contract intact for

proper performance.

**Mrs. Sandrine Jaumier** agreed with **Mr. Jens Thommensen's** comment on **Point 3.7.** and added that it should be clarified what kind of other obligations would be imposed on the tourist. Besides, she said that in **Point 3.8.** the term "**must**" should be used instead of "**should**".

**Mr. Arie Jakob** commented that the notion of "**package travel contract**" should be used consistently in entire **Chapter 3.**

**Dr. H. Jochen Martin** remarked that in **Points 3.8.-3.9.** in accordance with the current Package Travel Directive the term of "**should**" could be replaced with "**may**".

**Mr. Frédéric Pierret** emphasized that in accordance with the decision of the Executive Council the draft text of the convention could not lay down any rules which could cause any inconsistency with the related EU rules in force, since those are the strictest rules currently in the world with regard to tourist/consumer protection and they need to be extended to developing countries for ensuring equal treatment. Due to time constrains he suggested further consultation to be taken place with France on **Points 3.6-3.9.**

### **Conclusions (Chapter 3)**

- Use of "**package travel contract**" shall be reviewed.
- Point 3.1. shall be completed with the reference to "**tourism service provider**".
- Article 4 Subparagraphs 4-6 of the Package Travel Directive shall be included in a separate Chapter.
- Further consultation shall be taken place with France on Points 3.6.-3.9.
- Collision rule shall be inserted in accordance with the wording proposal which will be sent by ICAO.

### **Chapter 4**

**Dr. H. Jochen Martin** recalled the agreement on including "**after department**" in **Point 4.1.**, ECTAA's remarks on **Point 4.2.** He asked in **Point 4.2. e)** to replace "**shall**" with "**may**" because ordering additional travel arrangements is not an obligation, it depends on the decision of the tourist. In **Point 4.7.** the wording should be revised because in some cases tour operators are entitled to claims from insurance companies.

**Mr. Jens Thommensen** explained that the European Commission had already considered during the revision of the Package Travel Directive that a certain limitation in days or monetary threshold could be introduced in case of force majeure similar to the practices of other existing EU passengers' rights regulations. Consequently additional or alternative travel arrangements would be provided under those new terms by the tour operator. **Dr. H. Jochen Martin** welcomed the European Commission's future endeavor. The WG had a short debate if **Point 4.2.** was going beyond the future rules or not. **Mr. Jens Thommensen** pointed out that if standards were considered as minimum rules there would be less problem. Otherwise he retained reservation concerning the rule which restricted the assistance obligations till the scope of the original contracted services, especially if the new Directive introduces full harmonization in the future. **Prof. Alain Pellet** made a general remark concerning the conflict of laws and he mentioned that **Article 15** of the convention explicitly said that the "**convention shall not affect other international agreements in force between the States Parties**". He resumed that "**agreement**" should be replaced with "**obligations**" and according to that general rule the Package Travel Directive would apply as "**lex specialis**" because it was considered as a regional agreement among certain Member States.

**Mr. Arie Jakob** recommended that in **Point 4.3.** the term "**related**" should be replaced with "**relevant authorities**". **Ms. Dorottya Gyenezse** recalled the same remark of HOTREC on **Point 3.1. of Annex III.** **Mr. Frédéric Pierret** agreed with ICAO's comment. He introduced the **proposal of Austria** which had

been sent to UNWTO Secretariat. Consular authorities should be included in the text because relevant authorities could be informed through the consular networks of the host country and the country of origin.

#### **Conclusions (Chapter 4)**

- Use of **“package travel contract”** shall be reviewed.
- Point 4.1. and Point 4.2. shall be amended.
- Point 4.3. shall be revised and inserted as a recommended practice.
- Point 4.7. shall be bilaterally consulted with ECTAA.

#### **Chapter 5 - conclusion**

The WG considered the draft text acceptable in principle on the understanding that comments which had been communicated to the UNWTO Secretariat (e.g. comments received from ICAO) shall be taken into account in the establishment of the final draft text.

#### **General Part (Preamble and Articles 1-16)**

**Prof. Alain Pellet made some introductory remarks:**

- The revised text followed the common standardized rules of other international conventions in its form and content.
- **Adoption procedure:** the convention will be a formal multilateral treaty which shall be firstly adopted by the General Assembly of the UNWTO. Afterwards the convention will be open for signature to the States Parties. Signature is usually the first step in the process of becoming party to a treaty. **Simple signature indicates the State’s intention** to undertake positive action to express its consent to be bound by the treaty at a later date. In order to become a party to a multilateral treaty, a **State must express its consent to be bound by the treaty** (undertaking the legal rights and obligations contained in the treaty) **through a concrete act**, for instance, ratification by its own national rules which could be a long process. UNWTO will be the depositary
- He agreed with the former proposals of **France and the Flemish Community of Belgium** that a special formal provision should be elaborated in order to ensure that the **European Union or other organizations could become member of the convention.**
- **Article 12 reservations:** considering the issue of introducing an **“a la carte or unblock” ratification system** in that case an **“a la carte”** system would be preferable because the convention will introduce at least three Annexes which could be extended later. Member States can ratify the convention by adopting minimum one Annex. A special clause should be drafted setting up an **“opt-in system”** rather than allowing **“reservations”**. He illustrated examples which follow the same ratification system, for example, the EU Social Charter.
- **Article 15 relation with other legal instruments:** as it was agreed before the term **“agreement”** shall be replaced with **“obligations”** that would cover more cases such as the Package Travel Directive was certainly not an agreement in that context. A flexible and general rule should be taken in that could let the existing regional and other national obligations to be applied and fully effect. On the other hand the possibility should be preserved that existing obligations could be changed (e.g. in line with the new EU rules).

**Mr. Jens Thommensen** commented that the wider interpretation of **Article 15** was still unclear or uncertain, for instance, if a binding standard of the convention went beyond and established stricter obligation than the new Package Travel Directive as fully harmonized legal instrument how the possible collisions would be handled. **Prof. Alain Pellet** replied that it could be easier to avoid deviations if the WG could have a draft proposal of the new Directive. He proposed that if the European Commission could provide UNWTO Secretariat with preliminary comments in line with the future changes, the existing rules

would be preserved and in addition a special provision could be drafted enabling future modifications.

**Mr. Frédéric Pierret** intervened that besides the legal theoretical approaches UNWTO is working together with the European Commission in practice as well such as through active participation in the EU debates. He summarized the core points which might cause problems:

- **Definition of the package:** the current definition of the draft text is wide enough to be interpreted in accordance with the regional instruments;
- **Liabile party:** the draft text refers to “*other party to the package travel contract*” which solved that problem and national and regional legislators can specify who is liable – tour operator or/and travel agent/vendor, or other tourism service provider;
- **Inclusion of the standalone flight tickets:** the draft text does not relate to standalone air transport services because at the global level ICAO has mandate for these regulatory issues.

He concluded that according to his opinion the current draft text was not contradictory and **Article 15** would be an additional general guarantee. **Prof. Alain Pellet** made concrete wording proposal for **Article 15** and he added that a more accurate model clause should be inserted. He asked the European Commissions to provide the WG with preliminary proposals.

**Mr. Jens Thommensen** clarified that the European Commission could try to send preliminary concrete proposals in order to evade potential deviations with the future lines. He still hesitated whether **Article 15** as drafted would solve all the possible contradictions and he suggested again that the nature of standards (minimum rules) should be clarified and stated expressly. He reminded that **Annex II** was based on the current Package Travel Directive which will be amended in the close future.

**Mr. Reinhard Fink** expressed a little hesitation at that point concerning what kind of consequences could be taken place against the States Parties when such a contradiction or collision would occur. **Prof. Alain Pellet** replied that those cases shall be governed by the general rules of international law.

**Mr. Anand Kumar**, Joint Secretary, Ministry of Tourism, India, apologized for his absence from the morning session of the meeting due to official commitments. He generally noted that India was still in favor with recommended practices and preferred a non-binding legal instrument as it had been already stated during the last meetings. Furthermore, force majeure clause should be restricted to disaster cases, such as earthquake, floods. **Mr. Frédéric Pierret** told that UNWTO General Assembly and Executive Council already affirmed that the legal instrument would be an international convention, which had a binding nature basically, but it would include recommended practices and it would be binding for only those Member States who would sign it. He asked **Mr. Anand Kumar** to provide the UNWTO Secretariat with their concrete proposals regarding which current standards should be shifted to recommended practices. Concerning the definition of “*force majeure*” he mentioned that as it had been already agreed by the WG it would be very dangerous to define precisely every possible event.

#### **Conclusions (General part)**

- Article 12 and Article 15 shall be redrafted and complemented.
- The nature of standards (minimum binding rules) shall be clarified in a separate provision.
- Further consultation with European Commission shall be taken place. The European Commission will provide UNWTO Secretariat with preliminary proposals in line with the future developments of the new Package Travel Directive without any future commitment.

#### **Annex I**

**Mr. Michel de Blust** gave a modification proposal on **Point 2.4.** (incoming staff rules) which would state that “*the host country shall make it best endeavors to facilitate authorization to enter its territory*”. **Mr.**

**Frédéric Pierret** wondered if that proposal was not contradictory with the preauthorization condition which was a request on behalf of the Member States because it was a very sensitive issue. **Dr. H. Jochen Martin** pointed out that incoming staff in general needed faster authorization and procedure to reach the effected zones.

**Mr. Arie Jakob** recalled that the amended Chapter 3 of **Annex 9 to the Chicago Convention** contained provisions addressing inter alia the issue of visa assistance. He mentioned as an example a recommended practice which read: “*Contracting States should establish measures to permit the departure from, or the transit through, their territories of passengers holding valid air travel reservations even if their visas have expired due to flight delays resulting from force majeure.*” He reminded that UNWTO Secretariat had already circulated the document among the WG Members.

To reach a compromise **Mr. Frédéric Pierret** suggested including a similar rule based on the ICAO’s recommended practice in that field. **Dr. H. Jochen Martin** reacted that all these assistance tasks went beyond the air transport related issues and ECTAA would oppose that solution. **Dr. H. Jochen Martin** recommended that **Point 2.11.** could be merged with **Point 2.4.** **Ms. Dorottya Gyenize** commented that visa related issues should be retained as recommendation due to its sensitive nature. **Mrs. Sandrine Jaumier** expressed that France also sent modification proposal **on Point 2.4.**

**Ms. Stella Amadi**, Principal Tourism Officer, Ministry of Tourism, Kenya, remarked that **Point 2.4.** could cause problems in certain countries taking into consideration the different existing relations or special agreements between the States Parties (e.g. Kenya has an agreement with the United Kingdom for such cases and assistance staff can easily entry in emergency cases to Kenya). Therefore, she proposed that the text should be drafted as general as possible.

**Mr. Frédéric Pierret** made a conclusion that more wording options should be elaborated and the Regional Commissions could discuss them more in details.

**Mr. Reinhard Fink** reminded that **Annex I** should be debated more in details with national authorities responsible for foreign affairs because consular law and issues were involved. Furthermore, he added that repatriation and facilitation assistance obligations as currently drafted did not seem to be very practical and further clarification were needed. He warned that expectation of the tourists could be raised for additional compensation from States Parties. Consequently he proposed to draft a special rule on exemption for excessive claims in force majeure situations when States Parties intend to make their best efforts. **Mr. Frédéric Pierret** shared Germany’s concern. Tourists could not have unreasonable expectation in force majeure cases for excessive compensation. **Dr. H. Jochen Martin** reminded that exactly for that reason “*if physically and materially possible*” was included in **Point 2.1.**

**WG agreed on** including an additional provision clarifying that possible failures could not establish additional claims for indemnification.

**Mrs. Sandrine Jaumier** expressed again France’s former position **on Annex I** that its scope should be restricted to emergency cases or disasters and not including all force majeure cases because it dealt with States Parties’ assistance obligations. **Mr. Frédéric Pierret** understood the reason of that request which was raised by France from the beginning of the discussions. Force majeure is a question of contractual law relations. France’s wording proposal should be further assessed.

**Mr. Frédéric Pierret** presented **Austria’s** proposal **on Point 2.2.** not to include repatriation as mandatory assistance obligation in order to avoid any further unrealistic expectation on behalf of the tourists. He supported **Austria’s** amendment proposal **on Point 2.3.** by adding that the cooperation and exchange of information should be taken place through the diplomatic and consular channels of the States Parties in

line with the Vienna Convention.

### **Conclusions (Annex I)**

- Definition of “*force majeure*” shall be corrected.
- Point 2.1. and Point 2.2. shall be revised.
- Point 2.3. shall be amended.
- For Point 2.4. and Point 2.11. additional wording options shall be elaborated and presented to the Regional Commissions for further debate.
- Point 2.13. shall be amended in accordance with the proposal of ACI.
- Special rule shall be elaborated in order to exclude excessive claims for compensation in force majeure situations.

### **Agenda Item 4: Date and place of the sixth meeting, closing**

**Mr. Frédéric Pierret** raised the matter of the time and place of the WG’s next meeting. He suggested that it would be very useful holding a meeting at UNWTO Headquarters in Madrid, Spain, before the Regional Commissions’ meetings will be scheduled in March-May 2013.

**Mrs. Sandrine Jaumier** demanded simultaneous interpretation service for the next meeting as well in Madrid.

**Save-the-date information and technical details will be sent to the WG Members later.**

### **Final conclusions**

1. UNWTO Secretariat will provide the WG Members with the compilation of all comments for further consideration in order to elaborate the reviewed new text.
2. The draft text of the convention will be corrected and revised in accordance with the decisions and agreements on the modifications and proposals of the WG meanwhile during the sixth meeting the debate will continue.

**Mr. Frédéric Pierret** thanked the representatives for their contributions and interventions.

### **Annex**

- Revised agenda of the fifth meeting
- Final list of participants of the fifth meeting
- Presentation of the fifth meeting
- Comments by the WG Members on the third draft text of the convention
- Decisions of the UNWTO Executive Council during its 93rd and 94th sessions (CE/DEC/5(XCIII) and CE/DEC/5(XCIV))