Ms. Andrea Lennon  
Tourism Development Division  
Department of Transport, Tourism and Sport  
Transport House  
44 Kildare Street  
Dublin 2

7 March 2014

Dear Ms. Lennon,

In response to the Department of Transport, Tourism and Sport’s request for submissions on proposals to reform and extend package travel legislation, the Commission for Aviation Regulation (CAR) offers the following preliminary and high-level observations on COM(2013) 512 final.

A number of offices with experience as practitioners in the area of travel protection recently met to review the proposed Directive. The CAR attended that meeting and we are sympathetic to the views expressed. The conclusions are available as a note on the website of the UK Civil Aviation Authority.¹ Practitioners envisaged difficulties with the text of the proposed Directive in regard to a legislative gap with travel services provided from outside the EEA, with the practicalities of cross-border repatriation, and with the adequacy of information that would be provided to customers.

Directive 90/314/EEC (the package travel Directive) is administered in Ireland by the National Consumer Agency under the terms of the Package Holidays Act, 1995 (‘the 1995 Act’). The CAR is not aware of any plan to changes this responsibility.

Accordingly, our submission is primarily a discussion of the potential interaction between the proposed Directive and existing travel industry legislation, in particular the Transport (Tour Operators and Travel Agents) Act, 1982 (‘the 1982 Act’) which is administered by the CAR.

As a general guide to our views, we refer to our 2008 report to the Minister for Transport on reform of travel trade legislation in Ireland. In regard to the impact of online booking on the 1982 Act, the report stated:

http://www.caa.co.uk/application.aspx?catid=33&pagemtype=65&appid=11&mode=detail&id=6023

¹
“The [CAR] ... agrees with the sentiment expressed by the majority of the respondents [to the CAR’s draft report] that some reform of the system is necessary. The current regulatory requirements can and are increasingly being by-passed by newer business models, including online vendors. The share of travellers enjoying the financial protection that the scheme is intended to provide is falling, as the share of travel purchased from travel agents and tour operators falls. In this context, the regulatory framework’s internal coherence is questionable in requiring tour operators and travel agents to be bonded and licensed, but not other firms potentially competing for the same customers such as airlines and dynamic packagers. The current arrangements may also leave customers unaware of the level of financial protection associated with a given purchase.” (para 1.4)

It is sensible to update the 1990 Directive for important subsequent developments, especially online trading and ‘dynamic packaging’ provided it is done in a proportionate way. Provided also that it is clear to the public and to the enforcement bodies exactly which bundles of travel services are specifically protected under EU travel law and which are not.

Inevitably, the transition from the current to the new law would also take some time and effort and some learning by the industry and the relevant public agencies. In that regard, the key issue would seem to be providing clarity as to who is considered to be the ‘organiser’ of a non-package ‘assisted travel arrangement’.

Concerning the interaction of the 1982 and 1995 Acts, the CAR’s 2008 report stated:

“... the [CAR] notes that the Package Holidays Directive requires that Ireland has a scheme in place providing financial protection for customers purchasing package holidays. The Commission would recommend Ireland uses the opportunity afforded by any review of the Directive to seek changes that might allow the State to amend its own travel-trade regime in a manner that better targets financial protection of the travelling public.” (para 1.6)

The CAR’s report is available in full on the website of the Department of Transport, Tourism and Sport, so we will not further summarise its analysis here other than to say that we remain supportive of its conclusions and that we are available to work with the Department on such matters, allowing for any updating of views required by developments since the report’s publication.

Arguably the main issue for the Department of Transport, Tourism and Sport is to decide on the future relationship between a new Directive and the provisions of the existing national legislation. In that context there is a balance to be struck between providing consumer protection and minimising regulatory burdens while preserving innovation in the industry to allow the development of new business models.
Currently, the 1995 Act allows package organisers to meet the insolvency protection requirement of the Package Directive by providing a bond to the CAR under the 1982 Act. Is it proposed that that would continue?

The 1982 Act is already set to be modified because its obligation on organisers from other Member States was found by the European Commission to act as a barrier to cross-Community trade and thus to infringe the Services Directive. The proposed Directive (Article 15.2) would clarify this issue, by requiring that organisers and retailers have security for all customers, regardless of the latter’s place of residence. Everything would of course turn on the practical arrangements to make such provisions effective and consistent across the EU.

Likewise, the mutual recognition provisions of the proposed Directive (Article 16) are sensible. However, to work as foreseen, the ‘central contact points’ proposal would need to be implemented in a way that would go well beyond the brief words in the Directive, in order to allow both the travelling public and national enforcement bodies to confirm the existence and scope of insolvency protection organised from other Member States, and the firms to which such protection applied. Conceivably, central organisation of such sharing of information would be superior to leaving responsibility at the Member State level alone.

We are also supportive of improving the targeting of policy by such measures as excluding both occasional organisers of travel services and business-to-business travel provision.

We have sought in this brief submission to draw the Department’s attention to some relevant materials and to highlight at this stage a limited number of high-level policy-related considerations. In particular, that there would be practical measures taken to allow appropriate consumer protection to be extended hand-in-hand with extensions of cross-border trade, all the while keeping regulatory burdens to a minimum. We are available to engage further should the Department wish to do so.

Yours sincerely

Alan Richardson
Head of Licensing and Administration