Proposed European Directive concerning Package Travel and Assisted Travel Arrangements

The Car Rental Council of Ireland is the representative trade association for the car rental industry in Ireland and is a constituent member of the Irish Tourist Industry Confederation. We submit the following observations on the proposed Directive and request that the text is revised.

General
- The definitions of "Package" and "Assisted Travel Arrangement" are clearly intended to be mutually exclusive.
- The major focus of the directive and key obligations are on Package providers.
- It is thus necessary to ensure that the difference between a Package and an ATA is clear and workable, and each individual definition is clear.

Difference between Packages and ATAs
The distinction is at present unclear. The confusion arises in cases where separate contracts are concluded with additional travel service providers (as opposed to one contract, which is clearly a Package). There are two comparison points between the definitions:

- **First comparison point:**
  There are two scenarios, one in each definition, which are conceptually very similar (see the shared wording in italics):
  - Package (b)(v):
    purchased from separate traders *through linked online booking processes* where the traveller's name or particulars needed to conclude a booking transaction are transferred between the traders *at the latest when the booking of the first service is confirmed*
  - ATA (b):
    through the procurement of additional travel services from another trader in a targeted manner *through linked online booking processes at the latest when the booking of the first service is confirmed*

  It seems that provision of the customer’s name or particulars by the first service provider to another or others is regarded as a Package, whereas provision only of a link from the first service provider to another or others through which the customer can provide their own details is regarded as an ATA. If this is right, it seems reasonably clear.

- **Second comparison point:**
  There are two more sections in the definitions that seem to be saying something very similar:
  - Package (b)(i): *purchased from a single point of sale within the same booking process*,
  - ATA (a): *separate bookings on the occasion of a single visit or contact with the point of sale*

Overall, the Car Rental Council of Ireland believes that the definitions of Package and ATA need to be worked on and clarified such that there is no doubt what falls within each (or outside of both).
Requirements of an ATA

- Article 15 -17 – insolvency protection

(15) Member States shall ensure that organisers and retailers facilitating the procurement of assisted travel arrangements established in their territory obtain a security for the effective and prompt refund of all payments made by travellers and, insofar as carriage of passengers is included, for the travellers' effective and prompt repatriation in the event of insolvency.

It is uncertain in the draft exactly what is meant by "carriage of passengers". Probably it refers to carriage by airline or potentially by coach, but not by rental vehicle (which is a means for customers to transport themselves rather than transport for carriage of passengers). We request that this point be clarified.

As for the requirement to ‘obtain a security for the effective and prompt refund’ of payments made by customers to other providers in the ATA (such as hotels, this obligation is not fully clear as stated here. A clearer expression of the intention is contained at Article 17(b) i.e. that the customer will be entitled to “a refund of prepayments ... in case the retailer itself or any of the service providers becomes insolvent”.

The Car Rental Council of Ireland fails to see why the company facilitating the ATA by providing links to other providers of services to enable the customer to book separately with those other providers should have any responsibility at all for the service provided by the other service provider including for their insolvency. The facilitator is merely enabling the customer to book with certain service providers if it wishes to do so. There is no obligation to do so and a completely separate contract results if the customer decides to make a booking with them.

It should be enough to require the facilitator to make it clear to the customer, as required at A17(a) that “each service provider will be solely responsible for the correct contractual performance of its service”. If this is done (and the Council agrees that this will avoid any confusion about responsibility for the service being linked to) the obligation on the facilitator should be regarded as discharged. It could perhaps be argued that failure by the facilitator to make this declaration should open them up to liability for the services of those providers they provided a link to on the grounds that it had not been made clear to the customer that no actual connection existed between the primary booking and the service booked through the link.

- Article 19 – liability for booking errors

(19) Member States shall ensure that a retailer who has agreed to arrange the booking of a package or assisted travel arrangements or who facilitates the booking of such services shall be liable for any errors occurring in the booking process, unless such errors are attributable to the traveller or to unavoidable and extraordinary circumstances.

If the Council understands this correctly, the facilitator of an ATA would be held to be responsible (liable) for errors in the booking process on the web sites of service providers they provide links to. This seems completely wrong. Again, a facilitator has no control over the content of the web sites of service providers it provides links to and should not have any liability for them.

Paul Redmond
Chief Executive
6th March 2014