Response of ECC Ireland to the Department of Transport, Tourism and Sport’s consultation on the European Commission’s proposal for a Directive on Package Travel and Assisted Travel Arrangements.

The European Consumer Centre in Ireland (ECC Ireland) offers information and advice on both domestic and European consumer law and assistance in the resolution of cross-border consumer complaints through ECC-Net, a network present in 30 European countries funded by the European Commission and the Member States.

General Comments

Overall ECC Ireland welcomes the proposal of the European Commission to substantially revise the existing package holiday legislation, and looks forward to next week’s vote in the European Parliament. This revision is long overdue and we are encouraged by the recent developments in the legislative process, in particular with the adoption by the IMCO committee of Rapporteur Mr Hans-Peter Mayer’s report.¹

The consumer travel landscape is unrecognisable from that existing at the time the Package Travel Directive was introduced almost 25 years ago. The proliferation of travel agencies, intermediaries and platforms online has revolutionised how consumers book their holidays and the current legislation no longer reflects the market reality, with ever increasing numbers of travellers falling outside the scope of its protection.

The wide range of new travel products and business models on offer make it very difficult for consumers to determine whether the travel combinations purchased are protected by European legislation and so it is important that the new Directive addresses these shortcomings and confusion. The European Study on Consumer Detriment in the area of Dynamic Packages carried out in 2009 highlighted this lack of appreciation and understanding amongst consumers of the distinction between the different varieties of travel products on offer.²

The travel industry has been characterised by the dramatic pace of change and innovation. It is essential that the revised legislation is flexible enough to adapt to new developments, potentially aimed at circumventing the scope of the Directive, in order to ensure that it is not prematurely rendered obsolete.

² http://ec.europa.eu/consumers/rights/docs/study_consumer_detriment_dyna_packages_en.pdf
1. Definition of Package Holiday

ECC Ireland strongly supports the extension of consumer protection to travel combinations not currently covered by the current Directive. The proposed definitions provide greater legal clarity for both consumers and businesses in comparison with the current definitions.

The Commission proposal regulates two categories of travel combinations; “packages” and “assisted travel arrangements”. We share the concern of ABTA\(^3\) that the term ‘Assisted Travel Arrangement’ is potentially problematic. Given that consumers do not receive any assistance in respect of an Assisted Travel Arrangement, the term could create confusion as to the applicable level of protection. We therefore welcome the amendments proposed by the IMCO and TRAN committees to refer instead to ‘linked travel arrangements’ which better reflect the formation of such contracts.

The European consumer organisation BEUC has raised concern that the distinction between the two types of supplier may lead to traders, who currently sell dynamic packages or even traditional packages, to change their business model to avoid the liabilities for the performance of the services sold. It is impossible to predict with any certainty whether that is a likely outcome but what is important is that consumers are clearly made aware of the distinction and the resulting reduction in protection. Due to the widespread consumer confusion as to the extent of the protection applicable to dynamic package we particularly welcome the clarification in Article 3.2(b)(iii) that all combinations advertised or sold as packages, will fall within the definition of ‘package’.

2. Information Requirements

In the original Commission proposal, both the organiser and retailer are bound by the obligation to provide the information required by the Directive. The amendments proposed by IMCO delete the reference to the retailer and proposes that only the organiser is required to provide the indicated information, with the retailer liable only for any errors arising in the transfer of the information. The justification for this position is that if both were required to provide information, it would be unclear who was liable if differing information was accidentally provided. We would submit that the original proposal should be maintained as the retailer is the party with whom the consumer has direct contact and imposing an obligation on the retailer to provide information to the consumer does not alter the latter’s contractual relationship with the organiser.

We support the amendment proposed by the IMCO committee that the official classification of the accommodation assigned by the relevant local competent body should be included as

this is an essential feature of the holiday contract and is often a problematic issue for consumers.

3. Changes to Package or Price

The Commission’s proposal places a cap of 10% on any price increases, caused by a rise in the cost of fuel, taxes or exchange rates, imposed following the conclusion of the holiday contract. ECC Ireland submits that this limit is too high and places a disproportionate burden on the traveller, particularly for families.

IMCO committee proposes amendments to the effect that only cost increases of more than 3% should be passed on and, where the price increase exceeds 8% per cent, holidaymakers should have the right to terminate the contract. We welcome these amendments in part but submit that any increases should be capped at 8%. Obliging consumers to meet higher payments than originally agreed may otherwise be too onerous even if these increases are due to fuel, taxes or currency fluctuations. In an increasingly online environment, price increases are arguably less justified given the prevalence of dynamic pricing and of flexible online offers which fluctuate daily.

The proposal further provides that if the organiser is constrained to significantly alter a main component of the package, the traveller should have the right to withdraw from the contract without suffering any financial loss. As the right of withdrawal is frequently of little benefit to a consumer who may be unable to book an alternative holiday at short notice, we submit that travellers should also have the entitlement to be offered an equivalent package by the organiser both in cases of price increase and of significant alternation to the package. An amendment to this effect has been proposed by the Parliament and we fully support its inclusion.

5. Right of Cancellation

The Commission’s proposal provides for a general right of cancellation for travellers once appropriate compensation is paid to the organiser.

We fully support the amendments proposed by IMCO requiring that the organiser must provide justification for the cancellation fees imposed and bears the burden of demonstrating that any such fees are appropriate and proportionate. Given that standardised termination fees, as proposed by the Commission, do not usually correspond to the real costs borne by the organiser, particularly when the holiday can often be resold, the IMCO amendments represent a fairer outcome.

The IMCO committee further proposes that passengers should have the right to cancel their holiday contract without penalty in cases of force majeure, an amendment which we fully support.
We further welcome the introduction in the proposal of the right of cancellation, without penalty, if extraordinary circumstances arise at the point of destination before the departure. The political instability in popular tourist destinations in recent years has underlined the importance of such an entitlement for travellers.

6. Limitations on the Right to Care

The Commission’s proposal includes a new limitation on the general obligation of care of organisers which is not present in the current Directive. If the organiser is constrained from carrying out the contract as agreed due to extraordinary circumstances, the proposal allows the organiser to limit his obligation of care to 3 nights of accommodation capped at €100 per night.

Whilst appreciating that a balance must be found on this issue, and that the proposal is in line with recent regulations regarding differing modes of transport, we submit that the limitations on the organiser’s obligation to care proposed by the Commission are too restrictive as organisers, in principle, should be better place to cater and provide for holidaymakers needs in such circumstances.

The IMCO committee has proposed that the organiser should always arrange the accommodation, with the traveller only required to do so if the organiser explicitly states that they will not provide it. We fully support this amendment as travellers may find it very difficult to access affordable accommodation in circumstances of high demand as they lack the networks and influence of an organiser. If the traveller is required to book accommodation, IMCO proposes that the relevant reimbursement should “cover up to three nights’ accommodation with no ceiling applied or up to five nights' subject to a ceiling of EUR 100 per night”\(^4\). We propose that travellers who are compelled to access their own accommodation should be entitled to reimbursement of up to 5 nights with a ceiling of €125 per night.

7. Prescription Period

We believe that the prescription period of 1 year specified by the Commission in their proposal is not sufficient. Considering the general limitation period in Ireland on actions based on contract, this period is far too short particularly taking account of the delays that frequently ensue in the resolution of consumer complaints. The IMCO committee has proposed a prescription period of 3 years and we believe that this is the minimum period which should be considered in order to endure that consumers’ rights are enforceable.

We hope that these comments will help the Department to formulate Ireland’s position in relation to the proposed Directive.

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