Iarnród Éireann Irish Rail  
Submission to Package Travel and Assisted Travel Arrangements Directive  
7th March 2014

We welcome the opportunity to contribute to the public consultation on the Package Travel and Assisted Travel Arrangements Directive proposed by the European Commission. While we recognise the need for a revision in order to bring the existing rules into the digital age, we have certain concerns regarding specific aspects of the proposal.

Our main concerns relate to the proposed scope of the new Directive, and in particular, the definition of package travel, and the new concept of ‘assisted travel arrangements’.

I. New definition of package travel

The proposal would extend the scope of the Directive significantly, covering dynamic packages, but also click-through options (products bought for one trip but sold by different providers on different websites and related through web links). This is particularly relevant for railway operators who provide links to third party providers’ websites offering related services, such as hotel booking or car rental, for instance.

In our view, the first four criterions for definition of a package within Article 3.2.b correspond to what consumers and travel service providers alike would reasonably consider to be a package. However, this is not the case with linked online booking processes, where two services, which are only interrelated through web links, are purchased separately on different websites and from different providers. Indeed, in this case, consumers would not expect more protection than when booking two services separately. Including these services within the definition of a package will therefore create confusion amongst consumers, which goes counter to the objective of this revision.

Aside from its confusing aspect for customers, the inclusion of click-through in the definition of ‘package’ has consequences in terms of legal obligations surrounding these services, and will inevitably impact negatively on their price, and potentially, on their very existence. These links allow service providers to provide useful information to their clients. They can be particularly attractive for certain categories of customers, as a cheaper and more flexible alternative to traditional or tailor-made packages, in return for less integration and protection. These links can also have a high promotional value, therefore reinforcing the overall touristic attractiveness of European regions. It is therefore essential to ensure that obligations imposed on providers of these links are not disproportionate.

Proposal: Our preferred option would be deletion of point v in Article 3.2.b., to avoid creating confusion amongst customers. This would allow service providers to continue offering cheaper and more flexible alternatives to traditional or tailor-made packages, in return for less integration and protection.
II. New concept of assisted travel arrangements

a. Definition

The scope of the Package Travel Directive should be limited to combinations of travel services which constitute a package. The introduction of the new concept of ‘assisted travel arrangement’ in this Directive could have detrimental effects on consumers and businesses.

The lack of certainty about the practical difference between the concepts of ‘package’ and ‘travel assisted arrangement’ will create confusion amongst consumers. It will also create legal uncertainty for travel service providers and will significantly reduce their incentive to display links to related services and cheaper offers. Moreover, the cost of greater protection will inevitably have to be reflected in prices, to the detriment of customers.

The reference to ‘assisted travel arrangements’ should therefore be removed from the Directive in order to allow consumers to fully benefit from travel service providers’ initiatives aimed at improving travellers’ experience. This would be in line with the EU objective of seamless mobility.

b. Insolvency protection

Insolvency protection can be very costly for service providers. Obligations in terms of insolvency protection placed on the trader are disproportionate in the case of assisted travel arrangements, where the only element linking two services is a web link, and where the trader acts as a mere facilitator. This new obligation would significantly reduce traders’ incentive to offer attractive solutions to their customers, and will inevitably favour the strongest, well-established service providers (ie. hotel chains, large car rental providers, etc…) rather than smaller service providers.

It is also important to note that in many cases, the insolvency protection clause will not be enforceable: indeed, if the customer cannot be clearly identified, it will be very difficult for retailers to identify those consumers who have purchased services using links provided on their website, rather than another website.

c. Liability for booking errors

A ‘facilitator’ who merely provides a link to another provider’s website should not be held responsible for the booking process on this second website, over which he will most likely not have any control. Service providers who facilitate the purchase of additional travel services by providing links to third party’s websites should therefore not be held liable for booking errors, since they merely act as facilitators, and not organisers or retailers.

Proposal: We would recommend the removal of the concept of ‘assisted travel arrangement’ from the Directive. Obligations related to this category should be limited to a very clear disclaimer for customers, stating that they will not benefit from any of the rights conferred to them by the Package Travel Directive.
III. Other important elements to consider

a. Scope of category d) of transport services, Article 3.1.d and Recital 17

The Commission stated in its proposal that ‘other tourist services’ (category d in Article 3.1) are services that, in combination with either carriage of passengers, accommodation and/or car rental, should be considered as capable of constituting a package or an assisted travel arrangement, provided that the relevant tourist service accounts for a significant proportion of the package. Certain ancillary services are clearly excluded from the scope of the Directive, such as travel insurance, transport of luggage, meals and cleaning provided as part of accommodation, and would not qualify as tourist services in their own right. It would be beneficial to make it clear that last mile transportation, such as urban public transports or taxi, does not constitute a tourist service in its own right either, for instance through an amendment to recital 17. The status of tram and metro tickets, for instance, is currently unclear, and it would be useful to clarify that rail and urban transport do not constitute a package or assisted travel arrangement.

Proposal: We propose an amendment to Recital 17, clearly excluding last mile transportation from the scope of Article 3.1.d

b. Interaction with the Rail Passenger Rights Regulation and the Consumers Rights Directive:

It will be important to ensure that this Directive is not in contradiction with the Rail Passenger Rights Regulation, or the Consumer Rights Directive. Concerning the Consumer Rights Directive, the right of withdrawal (ie. the right for customers to change their mind and decide to return a product free of charge within a certain time period) does not apply to transport products such as rail tickets in Directive 2011/83/EC. Such products should continue to benefit from such an exemption, which is crucial for the purpose of yield management and in order to allow customers to purchase cheaper, albeit non-refundable tickets. It is therefore important that no attempt is made to introduce a right of withdrawal for customers purchasing packages and assisted travel arrangements that include a transport element.

c. Exclusion of short packages/assisted travel arrangements (24h rule), Article 2.2.a:

The Commission proposes to exclude trips lasting less than 24 hours when no accommodation is booked, as well as occasionally organised packages, from the scope of the Directive. Since publication of the proposal, there have however been some attempts in the European Parliament to remove this exemption. This exclusion by the Commission was meant to reflect the fact that the risk for customers is much lower with a short package/assisted travel arrangement, and that the obligations in place for both categories would be disproportionate in the case of trips lasting less than 24 hours when no accommodation is booked. It would indeed be disproportionate to put on an equal footing the sale of a local rail ticket and a museum or zoo entrance ticket, and an all-inclusive package holiday of several days. It is therefore important to preserve this exemption in Article 2.