THE REGULATION OF PACKAGE TRAVEL AND ASSISTED TRAVEL ARRANGEMENTS

RESPONSE OF THE IRISH TRAVEL AGENTS ASSOCIATION TO

THE DEPARTMENT OF TRANSPORT, TOURISM AND SPORT’S CONSULTATION PAPER ON PACKAGE TRAVEL AND ASSISTED TRAVEL ARRANGEMENTS DIRECTIVE PROPOSED BY THE EUROPEAN COMMISSION [2013/0246]

March 2014
Introduction

EU Directive 90/314 on Package Travel, Package Holidays and Package Tours, was the first initiative on the part of the EU to achieve a harmonised consumer protection regime for holidaymakers throughout the European Union.

The Directive had a profound impact and far reaching influence on the package holiday industry.

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ITAA Welcomes Revision

The Irish Travel Agents Association (“ITAA”) was founded in 1971 and, since then, has represented Ireland’s Travel Agents and Tour Operators. The Association brings together approximately 100 member companies covering 140 branches in different towns and cities throughout the Republic of Ireland [Note 1].

For some time, the ITAA has been advocating a review of the regulatory framework under which the travel trade industry operates in Ireland [*Note 2].

The incomplete and inequitable* nature of the regulatory regime has, in the view of the ITAA, yielded negative outcomes for both consumers and travel agents and tour operators licensed by the Commission for Aviation Regulation (“CAR”).

From the perspective of consumers, there are gaps in the protection which they are afforded.

From the trade’s perspective, “brick and mortar” travel companies have been left to carry the lion’s share of the costs, obligations and liabilities inherent in the current regime, with other intermediaries and service suppliers (such as airlines) completely avoiding such burdens.

Accordingly, the ITAA welcomes the revision of the Package Travel Directive; all the while urging “the maintenance of a high level of consumer protection while ensuring a level-playing field among all actors in the travel market” [Note 3].

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ITAA Consensus with European Colleagues

The ITAA is a member of ECTAA (the European Travel Agents and Tour Operators Association) [Note 4], which represents the national associations of travel agents and tour operators of 26 EU Member States, of 2 EU accession countries as well as Switzerland and Norway.

ECTAA and its members have positively and proactively engaged with the EU Commission in the revision process.

The various working committees of ECTAA, including, in particular, the Legal Committees, the Tour Operators Committee and the Air Matters Committee, have contributed to the formulation of the common position as enunciated in the ECTAA Position Paper, which is attached hereto as Appendix 1.

The ECTAA Position Paper as the product of the considered consensus arrived at amongst the members of ECTAA; thus sets out the position of the ITAA.

Set out below are a number of submissions which the ITAA considers are appropriate to make in the context of the DTTAS Consultation.

In so far as the subject matter of the following submissions is addressed in the ECTAA Position Paper, the ITAA submissions are in made in addition and supplemental to the ECTAA position.
Introduction of System of Universal Protection for European Travellers

In 2008*, the ITAA stated that it believed:

“that the time has come for the development of a more comprehensive or “universal” protection scheme for those travelling out of Ireland. An efficient scheme could be put in place that would protect consumers regardless of the manner in which they book their trip..”

The above sentiments resonate just as much in 2014.

The revision of the Package Travel Directive affords the optimum opportunity for the introduction of an EU wide protection scheme for travellers.

Proportionality of Insolvency Protection Arrangements

The financial burden on travel agents and tour operators to have insolvency protection arrangements in place, so as to meet the requirements of both the Transport (Tour Operators and Travel Agents) Act, 1982 and the Package Holidays and Travel Trade Act, 1995 ("the 1995 Act") is considerable.

The ITAA welcomes the principle contained, in Article 15(2) of the Commission’s Proposal that, in the case of assisted travel arrangements, the security arrangements for travellers’ monies “should take into account the actual financial risk of the relevant trader’s activities”.

The situation whereby travel agents and tour operators are effectively having to “double-bond” credit card turnover, serves as a perfect illustration of a failure to have proper regard to the actual financial risk of a trader’s activities.

The ITAA has been involved in tripartite discussions with CAR and various credit card acquiring banks to eradicate the unsustainable (and unnecessary) cost borne by travel agents and tour operators of “double bonding” credit card turnover.

The ITAA earnestly hopes that in the implementation of the new directive, the purpose and intent behind Article 15(2) is embraced in a meaningful manner so as to arrive at a rationalised, efficient and sustainable system for the protection of consumer monies.
Occasional Organisers - Why?

The ITAA’s position in relation to the term “Occasional Organisers” is very clear – such a term should be removed from the package travel regulatory “landscape”.

The position of the ECTAA in this regard [Note 5] reflects that of the ITAA, namely that recital 19 of the Commission’s Proposal should be deleted.

There is no cogent argument to support the exclusion of such consumers from the protections provided by the directive.

Further, the ITAA strongly opposes the position adopted by IMCO Committee [Note 6] in relation to the exclusion of packages arranged by non profit organisations.

Business Travel - Exclude

It would appear that it is the intention of the Commission’s Proposal to exclude business travel from the scope of the directive, however, the wording in the Proposal is unclear.

The ITAA strongly endorses the call for “for a clearer exclusion of business travel” as set out in the ECTAA Position Paper [Note 7].

Assisted Travel Arrangements – a place for retail travel agents

*The value of independent travel companies.*

The vast majority of businesses in the travel trade sector are small indigenous enterprises which provide employment in areas the length and breadth of Ireland.*

Travel professionals make a significant contribution to ensuring competition in the travel market in Ireland, facilitating the distribution of many travel services that would not be able to gain a foothold and compete against the extremely dominant travel brands without the support of independent retailers.*

The ITAA welcomes the comments contained in recital 13 of the Commission’s Proposal in relation to both the role of retail travel agents and the recognition that assisted travel arrangements constitute an alternative business model.
Increases in limits of liability – cost

The liability regime imposed on organisers of packages under the current directive is extremely onerous.

Comprehensive insurance cover for claims brought by consumers under Section 20 of the 1995 Act is difficult to obtain and costly.

Further, in circumstances where insurance cover is available to meet such claims, the organiser is required, in the first instance, to absorb significant excesses.

Section 20(4) of the 1995 Act permits an organiser to contractually limit its liability for damages arising from the non-performance or improper performance of the services involved in the package (other than death, personal injury or damage caused to the consumer by the wilful misconduct or gross negligence of the organiser) to not less than:

- In the case of an adult, an amount equal to double the inclusive price of the package to the adult concerned,
- In the case of the minor, an amount equal to the inclusive price of the package to the minor concerned.

Article 12(4) of the Commission’s Proposal increases the minimum ceiling at which an organiser can limit its liability for damages, in such circumstances, to three times the total price of the package.

Such a change can only result in an increase in the already costly insurance premiums borne by organisers of packages.

As set out in the ECTAA Position Paper [Note 8]:-

“contractual liability is the cornerstone of national contract law and should be applied in accordance with the national practices”

It is submitted that in implementing Council Directive 90/314, the Irish legislators considered the ceiling set out in Section 20(4) to be “not unreasonable” [Article (5)2 Dir 90/314].

The ITAA would see no basis for increasing the ceiling.
**Force Majeure – Unavoidable and Extraordinary Circumstances**

The aftermath of the 2010 eruptions of Eyjafjallajökull remain vivid in the minds of organisers of packages.

It is without question that the phenomenon brought into sharp focus the entitlements of consumers and the obligations of the various players in the travel industry.

There is no obligation on organisers to provide assistance under the current directive.

Organisers are obliged under Article 5(2) of EU Directive 90/314 to provide *prompt assistance*.

The Commission’s Proposal seeks to extend an organiser’s obligations in such cases of “unavoidable and extraordinary circumstances” [Article 11(5) (6)] to providing assistance to travellers of €100 per person per day for a maximum of 3 days.

There is no insurance cover available to organisers to meet the cost of such assistance measures.

Similar to most members of ECTAA, the majority of the members of the ITAA comprise small indigenous enterprises....

“*putting a non-fault based liability in cases of force majeure on these companies will significantly affect the economic and competitive position...*” [Note 8].

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NOTES

1. Note 1: www.itaa.ie

2. Note 2:


4. Note 4: www.ectaa.org

5. Note 5: Appendix 1: ECTAA Position Paper page 6

6. Note 6:


7. Note 7: Appendix 1: ECTAA Position Paper page 5

8. Note 8: Appendix 1: ECTAA Position Paper page 15

Appendix 1

The Revision of the package travel Directive: 
ECTAA’s Position Paper

Established in 1961, ECTAA is the European Federation of Travel Agents and Tour Operators Associations. All together the Travel trade in Europe counts some 70 000 enterprises in 31 EU and EEA Member states, employing nearly 500 000 people. The majority of European Travel agents and Tour operators are SMEs.

The Package Travel Directive was adopted in 1990 and was covering most of the holiday market at the time of its adoption.

However, Consumer patterns have changed over the last 23 years, and new distribution channels have emerged thanks technological developments and the widespread usage of internet. Today, the European Consumer has access to multiple distribution channels from the classical paper brochure to mobile applications.

Taking into consideration these market changes, the European Commission has published a proposal for revision of the Package Travel Directive.

ECTAA welcomes the initiative of the European Commission to modernize the legislation, in order to offer a good level of consumer protection across the Internal Market, while ensuring a level playing field among all market actors.

ECTAA considers that the revision of the Package Travel Directive should be driven by the following core principles:

- Ensuring an indispensable level playing field among all market stakeholders.
- Ensure that any consumer across the EU and the EEA benefits from the same level of protection when purchasing a combination of travel services, irrespective of the distribution channel.
- Preserve and foster the competitiveness of the European Tourism industry, through an equitable balance between rights and obligations of both enterprises and consumers.
ECTAA’s executive summary of the position:

- A targeted harmonisation approach
- A clear and consistent definition of Package. This definition of package should be extended in order to include all “Click through” combinations – Article 3
- The exclusion of travel arrangements purchased for business purposes, under commercial agreements - Article 2
- Pre-contractual information shall be limited to what is essential. Some provisions are difficult to comply with (visa requirement), some others are irrelevant (languages of activities at the hotel). - Articles 4 and 6
- In the event of a price change – Article 8
  o The 10% maximum price increase should be a threshold allowing the consumer to cancel a package without penalty.
  o All the elements justifying a price increase should be included (electricity for example).
  o The price decrease should be actionable only if the amount excesses the reasonable administrative costs.
- A single regime for organisers
- Non-material damages should be dealt at Member state level - Article 12.2
- The amount of damages should be capped up to one time the price of the package purchased – Article 12
- The refund of a cancelled trip shall be in line with the consumer right directive (without undue delay). A 14 days period is not compatible with international transactions in the travel industry - Articles 9(4) and 10 (4)
- Unavoidable and Extraordinary Circumstances should be assessed on the basis of objective criteria such as Member State’s travel advices - Article 10 (2)
- The assistance costs in case of unavoidable and extraordinary circumstances should be proportional and in line with Bus ad Coach or Maritime transportation regulations (80€/night) - Article 11 (5)
- The deletion of the reference of “place of residence” of the organiser with respect to the mutual recognition of national insolvency Scheme. This will oblige any organiser established outside the EEA and directly selling to the European consumer to provide a financial guarantee - Articles 15 and 16
**Scope and definitions:**

**General comments:**

ECTAA welcomes widening of the scope of the directive proposed by the Commission. However, ECTAA believes that the scope lacks of clarity and wishes to propose some amendments in order to clarify the text: (business travel, occasional organiser, definition of package and Assisted travel arrangements...).

ECTAA is of the opinion that the directive in its general fashion focusses on the traders where it would be simpler and more consistent to focus on the product sold. Such modification would avoid any loophole in the legislation.

Considering that the definitions of package and assisted travel arrangement are the keys to strengthen the internal market of travel services, such definitions should be of maximum harmonisation. A maximum harmonisation approach will ensure a consistent level of consumer protection and a level playing field between all market actors. Based on article 4 on the Directive on Consumer Rights (2011/83/EC), ECTAA proposes the following amendment.

**Article 3 (new paragraph)**

*Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in article 3 paragraphs 2 and 5, including more or less stringent provisions to ensure a different level of consumer protection.*

**Scope: Packages and assisted travel arrangements**

ECTAA welcomes the extension of the scope of the Directive and the clarification concerning some combinations of travel services, whether the consumer buys online, offline, through a single point of sale or multiple linked websites;

In order to insure a level playing field between all market actors, it is important to have a “future proof” scope covering new forms of travel combinations:

- Traditional packages
- Dynamic packages
- **Most importantly, click-through packages.** We must indeed avoid that new distribution channels are used to escape the legislation and deprive consumer from any protection when travelling. It is of paramount importance to correct the wording of this article. In order to provide for a future proof solution and to avoid loopholes in the Directive, this provision should refer to any kind of booking data that is transferred between websites in order to complete travel bookings.
**Definition – package - Article 3 (2) (b)**

ECTAA welcomes the broadening of the scope of what is considered as a package and the intention of the Commission to include a part of the click through combinations. The data to be transferred between two websites (indent v) are the “names, credit card details or other information necessary to obtain a payment” (recital 18 of the proposal). Those data are very specific and nearly no types of combinations, in particular those sold by low cost carriers, will fall under this definition.

ECTAA recalls that the provision defining “click-through” should refer to any kind of booking data that is transferred between websites in order to complete travel bookings:

- names,
- destination,
- Time of departure and arrival.

The part of the sentence referring to “particulars needed to conclude a booking transaction” should therefore be replaced by “any booking data”. Furthermore, the reference to the point in time when the data is transferred should be deleted. Corresponding changes shall be reflected in Recital 18.

ECTAA proposes the following amendment:

<table>
<thead>
<tr>
<th>Article 3 (2) (b)</th>
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<tbody>
<tr>
<td>(i) purchased from a single point of sale where the traveller selects all travel services before agreeing to pay, within the same booking process, or</td>
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<tr>
<td>(ii) offered or charged at an inclusive price or total price, or</td>
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<tr>
<td>(iii) advertised or sold under the term ‘package’ or under a similar term, or</td>
</tr>
<tr>
<td>(iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or</td>
</tr>
<tr>
<td>(v) purchased from separate traders through linked online booking processes where the traveller’s name or booking particulars needed to conclude a booking transaction are transferred between the traders at the latest when the booking of the first service is confirmed;</td>
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</tbody>
</table>

**Definitions – assisted travel arrangement - Article 3 (5)**

ECTAA believes that broadening the definition of “package” is absolutely necessary and should cover most of the combinations of travel services sold to consumers. However, ECTAA recognises the value of “Assisted Travel Arrangement” as a solution to make the directive future proof and provides an appropriate level of protection for the consumer in case of bankruptcy of one of the services’ supplier.

ECTAA would welcome some clarifications of the definition and suggests the following amendment.

<table>
<thead>
<tr>
<th>Article 3 (5)</th>
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<tr>
<td>‘assisted travel arrangement’ means a combination of at least two different types of travel services for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if one of the traders concerned or a retailer facilitates the combination:</td>
</tr>
</tbody>
</table>
(a) where the traveller selects and agrees to pay for each travel service separately on the basis of separate bookings on the occasion of a single visit or contact with the point of sale

Exclusion of business travel - Article 2 (2) (c):

ECTAA welcomes the fact that business travels concluded under a framework contract are excluded from the scope of the Directive. However, such reference to the term “employer” narrows the definition and excludes professions where the traveller is not an employee (self-employed traveller) even under a framework contract.

Moreover, the exclusion only concerns traders specialized in the sale of managed business travel, creating an uneven level playing field among travel agents selling both leisure and business travel services. ECTAA calls for a clearer exclusion of business travel by targeting services that are provided to a legal person, where that person and not the business traveller, is invoiced:

<table>
<thead>
<tr>
<th>Article 2 Paragraph 2. c)</th>
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<tbody>
<tr>
<td>packages and assisted travel arrangements purchased on the basis of a framework contract between the traveller's employer by a business on whose behalf the traveller is travelling and a trader specializing in the arrangement of business travel;</td>
</tr>
</tbody>
</table>

Definition of traveller/consumer:

As a business traveller should be distinguished from a consumer and for a better consistency with the Consumer acquis, ECTAA proposes to refer to the “consumer” instead of the “traveller” defined in Article 3 (6). Changes should to be made throughout the entire text.

<table>
<thead>
<tr>
<th>Article 3(6)</th>
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<tbody>
<tr>
<td>“consumer” means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession</td>
</tr>
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</table>

Single regime for organiser

Compared with the current directive, the reference to occasional organizer, previously in article 2.2, has been deleted. However, the recital 19 of the proposal suggests the exclusion of this category without giving a precise definition (such as the sale of packages not more than twice a year). This wording is not satisfactory as it could allow Member States to exempt occasional organizers with important room for interpretation. Such provision will lead to a situations and abuses similar to the current legislation.

Therefore ECTAA calls for the deletion of recital 19

Following the same logic ECTAA proposes a series of changes focusing on the products sold rather than the selling entity, thus limiting loopholes due to the trader’s activity

Scope: (Article 2 (1))

<table>
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<th>Article 2</th>
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<tr>
<td>This Directive shall apply to packages offered for sale or sold by traders that traders sell, offer for sale or where they facilitate the sale of the package to travellers, with the exception of(....)</td>
</tr>
</tbody>
</table>
**Definition of organizer: Article 3 (8)**

In order to ensure that all relevant traders fall within the scope of the Directive, it is proposed that the definition of the organizer should refer to traders that sell, offer for sale or that facilitate the sale of the package to travellers.

**Definition of trader: Article 3 (7):**

ECTAA proposes the following amendment to the definition of trader:

<table>
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<th>Article 3 (7)</th>
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<tr>
<td>(7) ‘trader’ means any person who sells or offers for sale travel services or facilitates the procurement of travel services whether in their own name, as an intermediary or otherwise; who is acting for purposes relating to his trade, business, craft or profession;</td>
</tr>
</tbody>
</table>

**Information requirements—Articles 4 and 6**

**General comments:**

ECTAA expresses its concerns regarding the increase of the information to be provided to the consumer. The proposed requirements are irrelevant with respect to the main contractual information and should be deleted. Moreover an excess of information will confuse consumers more than helping them.

**ECTAA is of the opinion that the following information should be deleted:**

- Spoken language for activities: Article 4 (1) (a) vi

**ECTAA calls for the amendment of the following information:**

Rather than making a requirement to provide information on accessibility on a general basis, such information should preferably be made available upon request (e.g. by reference to article 20 of regulation EC 1371/2007 on rail passenger rights).

<table>
<thead>
<tr>
<th>Article 4 (1) (a) vii</th>
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<tr>
<td>(vii) Upon request, whether access for persons with reduced mobility is guaranteed throughout the trip or holiday</td>
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</tbody>
</table>

**Information on the approximate time for obtaining visa (article 4 (f)):**

The obligation to provide information on the approximate periods for obtaining visa should be deleted from the proposal. Such information is often very difficult to get, or can change without prior notice. Therefore, ECTAA calls for keeping the wording of the current directive:

**General information on passport and visa requirements for nationals of the Member State or States concerned and health formalities required for the journey and the stay;**

**Contact details article 6 (2) (c):**

Article 12 (3) (b) places the onus on the traveller to inform the organizer without undue delay of any lack of conformity. The obligation of the organizer to provide information about the action to
take in the event of lack of conformity should be consistent with that obligation of the traveller, with a reasonable process outlined in the contract. Therefore ECTAA suggests the following amendment, which would be consistent with Article 12(3):

Article 6 (2) (c)
(c) the details of the process the traveller should follow and any relevant contact details in the event that the traveller perceives any lack of conformity at a contact point where the traveller can complain about any lack of conformity which he perceives on the spot;

Specific information for minor travellers (Article 6 (2) (f)):
ECTAA suggests clarifying that the information shall be given if the minor is unaccompanied. Otherwise, tour operators would have to provide such information in cases where the minor is traveling together with his parents or family. Therefore ECTAA would therefore propose the following amendments:

Article 6 (2) (f)
where unaccompanied minors travel on a package that includes accommodation, information enabling direct contact with the minor or the person responsible at the minor’s place of stay

The following information should be added:

Possibility to subscribe to a travel insurance
The currently applicable Directive 90/314/ECC provides for the obligation to inform the traveller about the possibility to conclude an insurance policy to cover the costs of cancellation or the costs of assistance including repatriation in the event of an accident or illness (Article 4 (b) (1) (iv) of the current Directive). This information is helpful for travellers not subscribing already to an insurance or if they are inadequately insured in the event of a specific trip. ECTAA believes that the provision in Article 4 (1) (b) (iv) of Directive 90/314/ECC should be Maintained in the revised Directive:

Article 4 (new paragraph)
(h) 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.

Alteration of the price - Article 8
The price of a package can be increased by a maximum of 10% for the following reasons:
• Fuel surcharges,
• Taxes and fees from third parties unrelated to the performance of the package,
• Exchange rate changes.
Tour operators who decide to increase prices also have an obligation to lower prices when the situation is favourable for consumers.
While ECTAA welcomes the possibility for organiser to increase the price of the package, some clarifications are needed:
- The 10% threshold should be the trigger point allowing the consumer to cancel his contract due to changes in the contract term.
Some elements justifying a price increase should be included (transportation costs other than fuel, for example, electricity).

- The price decrease should be triggered “after the deduction of a reasonable amount due to administrative costs”.

- Justification shall be provided to the consumer upon request

- Those measures should be of maximum harmonisation.

ECTAA proposes the following amendments:

<table>
<thead>
<tr>
<th>Article 8</th>
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<tbody>
<tr>
<td><strong>Member States shall ensure that prices are not subject to revision, unless the contract expressly reserves the possibility of an increase and obliges the organiser to reduce prices to the same extent as a direct consequence of changes:</strong></td>
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<tr>
<td><strong>(a) in the cost of transportation costs, including the cost of fuel for the carriage of passengers,</strong></td>
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<tr>
<td><strong>(b) in the level of taxes or fees on the included travel services imposed by third parties not directly involved in the performance of the package, dues, taxes or fees chargeable for certain services, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports,</strong></td>
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<tr>
<td><strong>(c) in the exchange rates relevant to the package.</strong></td>
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<tr>
<td><strong>2. The price increase referred to in paragraph 1 shall not exceed 10% of the price of the package or shall entitle the consumer to cancel the contract under the conditions provided in Article 9.</strong></td>
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<tr>
<td><strong>3. The price increase referred to in paragraph 1 shall be valid only if the organiser notifies the traveller of it with a justification and calculation on a durable medium at the latest 20 days prior to the start of the package. A justification and calculation on a durable medium shall be provided upon request.</strong></td>
</tr>
<tr>
<td><strong>4. A price decrease shall be due after the deduction of a reasonable amount due to administrative costs by the organiser.</strong></td>
</tr>
<tr>
<td><strong>5. Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this article, including more or less stringent provisions to ensure a different level of consumer protection.</strong></td>
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**Termination of the contract before the start of the package – Article 9 and 10**

Cancellation by the traveller due to important changes in the package contract - Article 9(2):

Article 9 (2) ensures the right for the traveller to cancel the package if the organiser alters significantly any of the main characteristics of the travel services. Such a change should only arise where the change results in a significant change to the package as a whole. A significant change to the meal plan or to excursions may not themselves result in a significant change to the package as a whole. The provision of article 9 shall reflect such changes:

ECTAA would welcome the following amendments:

<table>
<thead>
<tr>
<th>Article 9(2)</th>
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<tbody>
<tr>
<td><strong>1. if, before the start of the package, the organiser is constrained to alter significantly any of the main characteristics of the travel services as defined in point (a) of Article 4 or special requirements as referred to in point (a) of Article 6(2), the organiser shall without undue delay inform the traveller in a clear and prominent manner on a durable medium of:</strong></td>
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<tr>
<td><strong>(a) the proposed changes and</strong></td>
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<tr>
<td><strong>(b) where the proposed changes will significantly change the performance of the package, the fact that the traveller may terminate the contract without penalty within a specified</strong></td>
</tr>
</tbody>
</table>
reasonable time-limit and that otherwise the proposed alteration will be considered as accepted.

Impossibility to perform a package due to unavoidable and extraordinary circumstances (UEC) article 10(2)

**Before departure:**

ECTAA calls for a clear delimitation of the right of the consumer to cancel a package due to UEC. UEC should not be based on the consumer own assessment but on the basis of objective criteria (Member State’s travel advices).

Such goal can be achieved by including the last sentence of Recital 26 in Article 10 (2):
Article 10 (2)
The traveller shall have the right to terminate the contract before the start of the package without compensation in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the package. **Unavoidable and extraordinary circumstances shall be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities, advise against travelling place of destination.**

**Assistance to the traveler in case of unavoidable and extraordinary circumstances - Article 11 (5) and (6)**

According to the proposal, the organizer shall provide assistance to travellers in case of unavoidable and extraordinary circumstances of 100€/person/day for a maximum of 3 days. This provision is similar to the proposal revising the Air Passenger Rights regulation (APR).

Regarding this provision, inspired by the current proposal for a Regulation on Air Passenger rights, ECTAA would like to express concerns for the following reasons:

- ECTAA disagrees with the additional burden of the obligation to provide assistance lying exclusively with the organizer. This obligation is even more stringent than the one in the air passenger rights Regulation proposal, as the APR proposal provides an exemption for trips of less than 250km by small aircraft (80 seats).
- ECTAA disapproves the alignment of the capping with the air passenger rights Regulation proposal, rather than passenger rights legislation in other modes of transport, with a capping of 80€/person for a maximum of 2 days (Article 17 and Article 20 of Regulation EC No. 1177/2010 as well as Article 21 and 23 of Regulation EC No. 181/2011).

ECTAA calls for amending article11 paragraph 5:

**Article11 (5)**
*As long as it is impossible to ensure the traveller’s timely return because of unavoidable and extraordinary circumstances, the organiser shall not bear the cost for the continued stay exceeding EUR 100 80 per night and three two nights per traveller.*

Moreover, according to article 10(6) the organizer may not invoke unavoidable and extraordinary circumstances to limit the costs if the relevant transport provider cannot rely on such circumstances under applicable Union legislation. ECTAA has concerns about the fact that the organizer may not invoke the costs capping if the relevant transport provider cannot rely on such circumstances under applicable Union legislation. There may be a number of reasons that prevent an organizer from ensuring a traveller’s timely return and those reasons may be unrelated to the actual transport service. The organizer should be able to rely on the fact of unavoidable and extraordinary circumstances even if they do not affect the relevant transport provider.

ECTAA calls for the deletion of article 10(6)
Reimbursement – articles 9 (4) and 10 (4) (a):

The Commission’s proposal states that the organizer shall reimburse within fourteen days all payments received if the traveller terminates the contract in the event of significant changes to any of the main characteristics of the travel services or in case of a cancellation due to unavoidable and extraordinary circumstances.
ECTAA considers that the 14 days is way too short and does not take into account the specificities of the travel industry. The general rules established by the Consumer Right Directive stipulate that, after the termination of a contract, a refund has to be made “without undue delay” (art 18.3). In particular, Travel industry involves cross border and international transactions, making it more complex to retrieve advanced payments made to service providers. In such context, a reimbursement within 14 days becomes a requirement impossible to fulfil.
For those reasons, ECTAA call for an alignment with the Consumer Rights Directive (Article 18 (3)) and the replacement of the 14 days threshold by the expression “without undue delay”.
Article 9(4)

If the contract is terminated pursuant to point (b) of paragraph 2, the organiser shall refund all payments received from the traveller within fourteen days without undue delay after the contract is terminated. The traveller shall, where appropriate, be entitled to compensation in accordance with Article 12.

Article 10 (4) (a)

In cases of termination under paragraphs 1, 2 and 3, the organiser shall reimburse any undue payment made by the traveller within fourteen days without undue delay.

Minimum number of participants not reached (Article 10 (3) (a)):

The organiser may terminate the contract without paying compensation to the traveller, if the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination within the period fixed in the contract and not later than 20 days before the start of the package. Such long time period can prevent the organiser to reach the minimum number of participants through last minute sales, to the detriment of both travellers and tour operators.

Therefore ECTAA proposes to maintain the wording from the current Directive 90/314 and calls for the deletion of the 20 days time limit:

Article 10 paragraph 3 (a):

(a) the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination within the period fixed in the contract and not later than 20 days before the start of the package; or
Price reduction and compensation for damages - Article 12 (2):

Non-material damage:

ECTAA strongly disagree with the inclusion of non-material damages as it will become a massive additional burden on the organizer, and is not in line with national legislations. ECTAA advocates that the recognition of non-material damages shall be dealt at Member State level. Moreover, in order to allow organisers to be insured about this kind of loss, compensations shall be capped up to a certain amount which shall not exceed one time the price of the package. ECTAA recalls that contractual liability is a cornerstone of national contract law and should be applied in accordance with the national practices. Therefore ECTAA would advices as follows: Non-material damage such as moral damage is a concept not in place in all Member States. Taking into account such damages shall be left at the discretion of the Member state. ECTAA therefore calls for the deletion of the term “non-material damage”

<table>
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<tr>
<th>Article 12 (2)</th>
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<tr>
<td>The traveller shall be entitled to receive compensation from the organiser for any damage, including non-material damage, which the traveller sustains as a result of any lack of conformity.</td>
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</table>

Obligation to provide assistance (Article 14):

According to article 14 of the proposal: an organizer shall give prompt assistance to a consumer in difficulty, in particular regarding:

- Providing information on health services, local authorities, consular assistance and
- Assisting the traveller in making necessary distance communication and alternative travel arrangements.

The costs arising from the assistance will be borne by the organizer, except in situations where requiring assistance is caused by the consumer’s gross negligence or intent. As the proposal does not specify what the duty of assistance covers, the organizer could be required to assist the traveller in unreasonable situations, this might lead to abuses.

ECTAA proposes an amendment to clarify that the organizer can only assist a consumer in so far as the difficulties of the traveller are directly relating to the travel services contracted.

The following amendment is proposed:
Article 14

Member States shall ensure that the organiser gives prompt assistance to the traveller in difficulty, in particular by:

- providing appropriate information on health services, local authorities and consular assistance, and
- assisting the traveller in making distance communications and assisting in sourcing alternative travel arrangements.

The organizer shall be able to charge a reasonable fee for such assistance in order to reimburse the cost of the assistance if the situation is caused by the traveller's negligence or intent. The assistance shall be provided in so far as the difficulties of the traveller are directly related to the travel services contracted.

Mutual recognition of insolvency protection:

Articles 15 and 16 require organizers established in the EU and retailers selling ATAs to provide a financial protection for travellers in case of insolvency. ECTAA welcomes that the text proposes a principle of mutual recognition of insolvency protection, allowing organizers and retailers to sell their products in another Member State without complying with the local insolvency regime. Article 18 requires from organizers based outside the European Economic Area to comply, either themselves or through a retailer, with the rules regarding the liability for the proper performance of the package and insolvency protection. While ECTAA welcomes the principle of mutual recognition of insolvency systems within Europe, the reference to the place of establishment of the organizer in article 15 creates a loophole that some organizers might use to avoid the additional costs the financial protection requirement. According to the proposal, an organiser established outside of the EEA and directly selling to consumer is not obliged to provide any proof of insolvency protection. For those reasons ECTAA proposes that the reference to the place of establishment of the organizer or retailer in the territory of one of the EU-Member States should be deleted from Article 15 (1) and Article 16 (4).

Moreover, the reference to a prompt reimbursement in article 15 (1) might jeopardize the relation between organizer and their insurance company in some Member State. ECTAA proposes to replace the expression “prompt” by “as soon as possible”.

Article 15 (1)

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 as soon as possible, 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.

Article 16(4):
If a Member State has doubts about the insolvency protection of an organiser or of a retailer facilitating the procurement of assisted travel arrangements which is established in a different Member State and is operating on its territory, it shall seek clarification from the Member State of establishment. Member States shall respond to requests from other Member States at the latest within 15 working days of receiving them.

**Repeals and Transposition (Articles 26 and 27)**

The proposal foresees a period of 18 months for the repeal of Directive 90/314/EEC and the transposition of the new Directive into national law instead of the usual 24 months. Due to the complexity and the broad changes which will result from the proposal, a significant number of members advised that a minimum 24 months transposition period should apply.

ECTAA calls for a transposition period of 24 months:

<table>
<thead>
<tr>
<th>Article 26</th>
<th>Repeals</th>
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<tr>
<td>Directive 90/314/EC is repealed as of [18 24 months after the entry into force of this Directive]. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the table in Annex I to this Directive.</td>
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<tr>
<th>Article 27</th>
<th>Transposition</th>
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<td>1. Member States shall adopt and publish, by [18 24 months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. 2. They shall apply those provisions from [18 24 months after the entry into force of this Directive] (....)</td>
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For further information about the document, please do not hesitate to contact ECTAA secretariat at secretariat@ectaa.eu, Tel: +32 2 644 34 50