

Brussels, 26.07.2007

**WORKING DOCUMENT**

**on the Council Directive 90/314/EEC of 13 June 1990 on  
package travel, package holidays and package tours**

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## I. INTRODUCTION

The aim of this document is to set out the main regulatory problems posed by the regulation of package travel and consult industry stakeholders, consumers' organisations and Member States on issues related to the Directive. The consultation takes into account the findings set out in the report on the implementation of the Directive<sup>1</sup>, the opinions of the European Parliament<sup>2</sup> and the Council<sup>3</sup>, and the views of a number of stakeholders.

The Commission is also going to present a proposal for a Regulation on the rights of international bus and coach passengers that would cover the issue of liability of bus and coach undertakings. Its adoption by the Commission is scheduled for October 2007. Another proposal for a Regulation on the rights of passengers with reduced mobility in the maritime sector may be adopted by the Commission in autumn.

Furthermore, beyond the passenger rights foreseen in various regulations, there is an on-going revision of the "third air package"<sup>4</sup>, which foresees new obligations in terms of information on the price and non-discrimination on the basis of the residence or the nationality.

The questions raised in this document focus on specific issues relating to package travel, including cruises. Issues which cut across the acquis, such as definitions, are not dealt with in this document unless they concern aspects particular to package travel. Cross cutting issues are dealt with in the consultation launched in the Green Paper on the Review of the Consumer Acquis<sup>5</sup> ("The Green Paper") which closed on 15 May 2007. This consultation does not address issues regulated separately, such as passengers' rights including denied boarding or loss of luggage<sup>6</sup>.

In the light of the outcome of the consultation on the Green Paper and the input to the consultation on this working document, the Commission will consider the need for a reform of the Directive.

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<sup>1</sup> Report on the Implementation of Directive 90/314/EEC on Package Travel and Holiday Tours in the Domestic Legislation of EC Member States [SEC(1999) 1800 final].

<sup>2</sup> EP Resolution of 16 January 2002, on general aspects of consumer protection policy and, in particular, consumer information and education with regard to the application of Directive 90/314/EEC.

<sup>3</sup> Council Conclusions of 13 April 2000.

<sup>4</sup> Redrafting of three Regulations 2407/92 of 23 July 1992 on licensing of air carriers, 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes and 2409/92 of 23 July 1992 on fares and rates for air services, OJ L240, 24/8/1992.

<sup>5</sup> COM(2006) 744, Green Paper on the review of the Consumer Acquis

<sup>6</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ L 46, 17.2.2004. Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, OJ L 285, 17/10/1997, amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council on 13 May 2002, OJ L140, 30/5/2002.

## II. OVERVIEW OF THE MAIN PROVISIONS OF THE DIRECTIVE

Article 2 of the Directive gives definitions of some terms:

- "Package" is defined as a pre-arranged combination of transport, and/or accommodation and/or other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package. The Directive only applies where at least two of these elements are sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes over-night accommodation<sup>7</sup>. The separate billing of various components of the same package does not absolve the organiser or the retailer from his obligations. The European Court of Justice (ECJ) has made it clear that "pre-arranged combination" includes combinations of tourist services put together at the moment when the contract is concluded between the retailer and the consumer.<sup>8</sup>
- The definition of "consumer" in the same article differs from the scope of most consumer directives, since it covers the person who takes, or agrees to take, the package, e.g. it is not limited to private persons acting outside their profession.
- "Organiser" is defined as the person who, other than occasionally, organises packages and sells or offers them for sale, whether directly or through a retailer. The "retailer" is defined as the person who sells or offers for sale the package put together by the organiser. Often in the past, organisers were tour operators and retailers travel agents. This is, however, a simplification of the current situation since a travel agency may put together packages and thus qualify legally as an organiser. Similarly an airline offering, for instance, weekend packages may come under the definition of organiser.

The Directive regulates the liability of package organisers and retailers, who must accept responsibility for the performance of the services offered (article 5). There are some exceptions, for example the cases of "*force majeure*". However, even in these cases, the organiser must use his best endeavours to inform and assist consumers. The amount of compensation payable may be subject to certain reasonable limits. In cases where the organiser declares before the journey that he is constrained to alter any of the essential terms of the contract, the consumer may decide to withdraw from the contract and get his money back or, when possible, a substitute package of equivalent or higher quality (article 4). If, after departure, a significant proportion of the services cannot be provided, for instance a specific excursion, constituting a significant part of a round trip, the organiser must offer an alternative arrangement.

Articles 3 and 4 prescribe the minimum information that must be given to consumers at different points of time. The price and adequate information concerning the journey must be included in the brochure. Passport, visa requirements applicable to nationals of the Member

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<sup>7</sup> Note that for the transport part of the package travel, other specific instruments may apply, which impose certain obligations on co-contractors of passengers, including package travel organisers, which are deemed to prevail over those set out in the Directive. This would for instance be the case for the liability of carriers of passengers by sea and inland waterways in the case of accidents, where a Convention has been adopted under the aegis of the International Maritime Organization and is in the process of being implemented into EC law (COM (2005) 592).

<sup>8</sup> The Club Tour Case, C-400/00.

State or States concerned as well as information on health formalities need to be given in an appropriate form before the contract is concluded. Another set of information requirements to be provided after the reservation, but "in good time before the start of the journey" relates, for instance, to details on the journey and contact information. The Directive also states what needs to form part of the contract: an annex to the Directive sets out the minimum elements which need to be included.

Under Article 6, the organiser and/or retailer or his local representative has to make prompt efforts to find appropriate solutions in case of complaints.

Article 7 contains provisions on the security to be provided by organisers to cover repayment of the price and repatriation of consumers in the event of the organiser's insolvency.

The Directive has been transposed in all Member States. Given the minimum harmonisation character of the Directive, a number of Member States have adopted national provisions which go beyond the level of consumer protection foreseen in the Directive.

### **III. MAIN REGULATORY ISSUES AT STAKE**

At the time of the adoption of the Directive, holiday makers generally bought package holidays put together by organisers from retailers, acting as intermediaries. The organisers offered packages including e.g. transportation, in many cases operated by charter carriers, and accommodation. The main sales channel for the organisers' packages were, in most cases, the retailers, although some companies used direct sales already at the time. If consumers preferred to book a scheduled flight, from an airline or a retailer, those tickets were often subject to restrictions and were often relatively expensive.

There has been a rapid evolution in the travel sector during the last years. The development of the internet has made it possible for consumers to make their reservations themselves using the websites of airlines, hotels, rail, cruise, bus and coach companies, retailers and organisers. Internet has also enabled consumers to get an overview of the market without recourse to intermediaries, and facilitated comparison of market offers.

The entry of low cost air carriers has revolutionized the supply, enhancing competition. Consumers have got access to tickets at lower prices and flexible tickets have become more affordable. These market developments have blurred the distinctions between airlines, organisers and retailers. For instance airlines offer on their web pages accommodation, car rental and other travel components in addition to the flight, while organisers now sell packages including scheduled flights, or offer "seat only" with charter carriers.

The cruise industry has very much evolved during the last decade, and it is one of the fastest growing economic sectors with constant high annual growth rates worldwide. For instance, cruise capacity in the Mediterranean and Northern and Western Europe has increased by 24 percent and 5 percent respectively in 2007<sup>9</sup>.

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<sup>9</sup> Figures from "Cruise industry news quarterly", summer 2007.

The Commission has been made aware of an increasing trend, in some Member States, for consumers to put together their own holiday components from different organisers (so called *dynamic packaging*), instead of opting for packages pre-arranged by an organiser or a retailer. One consequence of this, in some parts of the EU at least, may be that the sale of package holidays now constitutes a smaller proportion of the sale of total travel sales than at the time of the adoption of the Directive. The regulation of these dynamic packages seems to be an issue in a number of Member States. It may not always be clear which travel arrangements are covered by the Directive. For instance, after booking a flight on a website of a low cost airline, the consumer may be prompted to book a hotel and/or car rental and is then directed to separate websites. If the bookings of the different services are subject to separate contracts made with distinct companies and with separate payments, the package may not be covered by the Directive. Often it is not made clear to the consumer that different protection applies for more or less identical travel packages, which are sold differently. This uncertainty and possibly divergent interpretations of the Directive by the Member States may affect competition and consumer protection.

#### **IV. QUESTIONS FOR PUBLIC CONSULTATION**

The Commission wishes to collect the Member States' and stakeholders' views on the application of the Directive and its suitability for new market conditions and/or products. Submissions on problems which have not been raised in the questions are also welcome.

After the consultation period has ended, the Commission will publish a summary of responses on its website. Responses and comments of interested parties will also be made public on the internet site of the European Commission, unless the sender explicitly requests otherwise. These responses will be fed into the evidence base gathered by the Commission in order to pursue the broader work on the review of the consumer regulatory framework.

All interested parties who wish to respond to the questions of the report should submit replies to the European Commission by 1 October 2007. Please answer as fully as possible and send your comments (marked "Consultation on the Package Travel Directive") to either:

European Commission  
Directorate-General for Health and Consumer Protection  
Rue de la Loi 200  
B-1049 Brussels  
Belgium

or by e-mail to [SANCO-B2@ec.europa.eu](mailto:SANCO-B2@ec.europa.eu).

### **1. Scope of the Directive and definitions (Articles 1 and 2)**

#### *1.1 Scope of the Directive ("Package")*

The issue of what should be considered a package within the meaning of the directive has been brought up by several stakeholders and Member States, indicating difficulties in interpreting the Directive. Certain expressions may need clarification, such as "*other tourist services* not ancillary to transport or accommodation and accounting for a *significant proportion* of the package".

There may also be a need to define the expression “*inclusive price*” in the light of ECJ rulings.<sup>10</sup> The Court ruled that the term package must be interpreted so as to include holidays organised by retailers, at the request of, and in accordance with, the specifications of a consumer. Following the same judgement, the term “pre-arranged” includes combinations of tourist services put together at the moment when the contract is concluded. Thereby, travel arrangements by travel agencies or by internet platforms which spontaneously combine, on the specific request of the consumer, tourist services like flights and hotel accommodation offered by different service providers are considered as packages. Moreover, according to the new air transport market access legislation, currently under discussion<sup>11</sup>, the airlines could be subject to new obligations and would have to provide to the consumers the most comprehensive information on the ticket price. This will have to be considered within the review of the Directive.

Concerning “*dynamic packages*”, the scope of the Directive may be clarified to determine whether these products should be covered or not. Differences between on the one hand cases where the retailer/organiser offers different travel components (hotel, car rental etc.) on his web site and, on the other hand, cases where the retailer/organiser links his web site to other businesses' offering such components should be considered.

Cruises are a special case of package holidays from a transport point of view, since it is difficult to draw a line between the maritime transport service and the accommodation aspects.

The Commission has also received requests to extend the protection afforded by the Directive to services performed over a period of less than twenty-four hours or which do not include overnight accommodation, e.g. organised sightseeing excursions or organised tours to cultural or sporting events.

*Question 1:* Is the current scope of the Directive adequate to ensure protection for consumers and a level playing field in today's holiday market?

*Question 2:* Do any of the definitions or notions used in the Directive cause problems? If so, please describe them.

## 1.2 “Organiser” and “Retailer”

Some stakeholders have argued that only the organiser should comply with the Package Travel Directive, irrespective of whether he sells the package directly or through a retailer. However, when considering the responsibility of the retailer, it must be considered that he may act either as an intermediary selling packages combined by other organisers, *or* as an organiser combining independently different elements of a trip. It may not be appropriate to make the organiser responsible for oral or other information given by the retailer to the consumer at the time of the reservation of a travel package or promises contained in the retailers' marketing of a package.

<sup>10</sup> The Club Tour Case, C-400/00

<sup>11</sup> See COM(2006)396 final, Proposal for a Regulation of the European Parliament and of the Council on common rules for the operator of air transport services in the Community.

The Commission has received calls to extend the scope of the Directive to all package organisers, including organisers which put together a package “occasionally”, e.g. packages organised in the course of specific activities (sport, school, religious activity, etc). In some Member States, this type of extension of the Directive's scope has already been made.

Since the Directive often makes use of the term "retailer" in a formula like "the organiser and/or retailer", this leaves discretion to the Member States as to which one of them should be obliged to fulfil the duties imposed by the Directive.<sup>12</sup> Clarification may be needed.

*Question 3:* Have you encountered problems with the definition of organiser or retailer and their respective obligations under the Directive, for instance concerning organisers who occasionally put together packages? If so, please describe them.

### 1.3 "Consumer"

The notion of "consumer" in the Directive is not limited to natural persons travelling for leisure purposes, but includes every person, natural or legal, taking a package. Many Member States have, when transposing the Directive, avoided the term "consumer" in order not to contradict the general notion of "consumer".

The European Parliament has called for a clarification of the term in the Directive. In the Green Paper on the Review of the acquis, the Commission consults on a common definition of consumer for several types of consumer contracts. Two options are presented, defining consumers as natural persons acting for purposes which are outside their trade, business or professions (option 1), or for purposes falling *primarily* outside their trade, business and profession (option2).

The difference between the Package Travel Directive and the seven other consumer protection directives under review is that the Package Travel Directive's notion of consumer also covers B2B (Business to Business) relations. On the one hand, the use of one of the definitions proposed in the Green Paper would exclude packages bought by professionals mainly for professional reasons.

This would diminish the rights of business passengers. It would also be necessary to consider how to assess the situation when a package bought both for business and leisure purposes falls within the scope of the Directive (i.e.: mixed usage transactions). On the other hand, it could be argued that the need for protection of consumers and businesses differ and that by excluding B2B transactions from the field of application the prices of consumers' packages may decrease since organisers and retailers would not be obliged to set up security guarantees for as many passengers.

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<sup>12</sup> The Comparative Analysis of the EC Consumer Law, p. 224, which is available on [http://ec.europa.eu/consumers/cons\\_int/safe/acquis/index\\_en.htm](http://ec.europa.eu/consumers/cons_int/safe/acquis/index_en.htm)

*Question 4:* Do you think that persons travelling exclusively for professional reasons should be excluded from the scope of the Directive?

## **2. Pre-contractual information requirements (Article 3)**

Consumer stakeholders believe that the Directive could specify that pre-contractual information constitutes a part of the contract. The Directive expressly states that information given in the brochure is binding for the organiser/retailer; however, as the organiser/retailer is exempted from this obligation if he informs the consumer of changes before the conclusion of the contract, the binding nature of the brochure can be relatively easily overcome. It has been put forward that the Directive should stipulate clearly that any descriptive material, whether on websites or in hard copy form, should be subject to the provisions of the Directive. Furthermore, pre-contractual information should, to be in line with recent legislation, include the name of the operating air carrier as well as the "black list" of the air companies.<sup>13</sup>

The extensive use of web information and the increasingly common practice to provide only limited information in the brochure, making reference to more details on the internet, needs to be considered in this context. Business stakeholders have claimed that, with brochures printed well in advance and with price fluctuations, due for instance to exchange rates and petrol prices, it should be sufficient to indicate reference prices in printing and refer consumers to the internet for actual prices. Otherwise, the costs of reprinting brochures would ultimately increase the prices of the travel arrangements. This argument needs to be considered since consumers may find it more difficult to compare different alternatives when reading the brochures if the prices are not indicated, and that they may, if in dispute with the organiser after the journey, have difficulties in proving what was promised before departure since the information on the web may have changed in the meantime. In addition, several consumers do not have access to internet<sup>14</sup> and to keep costs down, organisers could, instead of printing prices in the brochures, provide separate price lists together with the brochure.

There is a variety of national deviations when implementing the articles on information requirements. Almost all Member States have added some obligations for the organisers. These may constitute cross border barriers since it may be difficult for an organiser to produce brochures that can be used in several Member States.

Finally some stakeholders have argued that this provision of the Directive is redundant in the light of Directive 2005/29 concerning unfair business to consumer commercial practices (UCP)<sup>15</sup>

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<sup>13</sup> Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (Text with EEA relevance)!

<sup>14</sup> According to a special Eurobarometer survey on e-communications conducted between 7 December 2005 and 11 January 2006, 40% of EU25 (not including Bulgaria and Romania) households have access to internet, ranging from 80% in the NL to 14 % in Slovakia.  
[http://ec.europa.eu/information\\_society/policy/ecommerce/doc/info\\_centre/studies\\_ext\\_consult/ecommerce\\_household\\_study/eb\\_jul06\\_main\\_report\\_en.pdf](http://ec.europa.eu/information_society/policy/ecommerce/doc/info_centre/studies_ext_consult/ecommerce_household_study/eb_jul06_main_report_en.pdf)

<sup>15</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation

which will apply from the end of 2007 and which sets standards for information not to be misleading. It should, however, be noted that UCP will not introduce information requirements that are specific to package travel such as the need to indicate tourist classification of the hotel, passport or visa requirements, the minimum number of persons required for the package to take place or other information that traditionally has been identified as important for consumers to be aware of before booking their journey. In addition, UCP will not necessarily provide immediate contractual protection. Remedies for UCP violations will depend on the type of enforcement adopted in each MS. In some cases, consumers will be able to use civil law remedies whereas, in other cases, only administrative type of sanctions will be available (injunctions, fines). Moreover, the Services Directive introduces information requirements which are complementary to those laid down in other Community instruments.

*Question 5:* Have you encountered problems with the pre-contractual information requirements? If yes, please give a short description.

*Question 6:* Is the list of information to include in travel brochures at Article 3.2 up to date?

*Question 7:* How should the information requirements be adapted to the increasing use of the internet? Should it be possible to provide less information, e.g. on the price, in the brochures, if that information is made available on the web?

*Question 8:* What information requirements, such as classification of the hotel or the passport or visa requirements, need to be separately regulated to respect the specifics of package travel?

### **3. Information requirements and variation in price (Article 4.1-4.4)**

It has been suggested<sup>16</sup> that the requirement that pre-contractual information should be provided "in writing or any other appropriate form" should be clarified. This could possibly be done in connection with the similar discussions on the content of the notion "durable medium", used in the Distance Selling Directive<sup>17</sup> and the E-commerce directive<sup>18</sup> e.g. regarding confirmation of a distance purchase.

Some Member States have made use of the possibility to make exceptions from information requirements when last minute contracts are concluded. It could be envisaged to further specify in the Directive what information needs to be given when concluding such contracts.

The Directive sets out provisions concerning additional charges which can be imposed on the consumer in precise circumstances. The Directive does not spell out whether the contract may provide for the organiser's administrative costs, connected to e.g. price increases due to altering

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(EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), OJ L 149, 11.6.2005.

<sup>16</sup> The Comparative Analysis of the EC Consumer Law, p. 206.

<sup>17</sup> Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts, OJ L 144, 4.6.1997, p. 19.

<sup>18</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178, 17.7.2000, p. 1.

fuel prices, to be passed on to consumers. The Commission wishes to hear stakeholders' views on this issue.

Question 9: Are the information requirements in article 4.1-2 and in the annex up to date?

Question 10: Have you encountered problems with the provisions on price variations?

#### **4. Withdrawal from the contract by the consumer and right to compensation, notably in case of cancellation (Article 4.5-4.6)**

According to Article 4.5, the consumer can withdraw from the contract only if the organiser significantly alters any of the essential terms, such as the price. Consumer stakeholders note that there are many changes which can significantly alter the contract such as the accommodation offered, the travel time or duration, or the tourist services which are available at the destination.

For instance, with regard to cruise tours, when the organiser fails to cover one of the legs of a scheduled route and does not stop at one or several of the scheduled ports of scale, industry tends to claim that, since the accommodation and the related services (e.g. meals, leisure time) have been provided, passengers do not have a right to compensation for that missed leg of their journey. From a consumer's point of view, a cruise package includes all scheduled ports of scale with the opportunity to experience the destinations to the fullest, why they may ask for a refund or compensation.

However, it may not always be clear to the parties what amounts to an essential term without resorting to litigation. What is essential may be perceived differently by different consumers, depending on the aim of the journey, and that may also affect the assessment as to whether an appropriate substitute journey has been offered to the consumer as different individuals may value the same travel arrangement differently.

The provisions for compensation in cases of cancellation and withdrawal of the contract as set out in Article 4.6 may need to be reconsidered. For instance, the Directive does not specify the method for calculation of the compensation neither in the case of withdrawal or cancellation (article 4), nor in the case of improper performance of the contract (article 5). This issue needs to be examined in the light of the review of the consumer acquis: the Green Paper consults both on the possible introduction of a set of general contractual remedies available to consumers in the case of breach of any consumer contract, and on a general right to damages. In the field of package travel, private initiatives have led to the set-up of voluntary benchmarks taken up in the "Frankfurter Tabelle" to facilitate the calculation of refunds in case of non-fulfilment of parts of the contract.<sup>19</sup>

The Commission is also interested in hearing whether the provisions concerning cancellation in case of an insufficient number of participants have caused any problems in practice.

Question 11: Have you encountered problems with the provisions of Article 4.5-4.6, in particular the reference to "essential terms" and "substitute package"?

<sup>19</sup> <http://kanzlei.de/reisem.htm>

Question 12: Have you encountered problems with cancellation for the reason of an insufficient number of participants? Should the consumer be compensated in case of cancellation on the ground that there is an insufficient number of participants?

Question 13: Do you think there is a need for a generalised method of calculation of compensation?

## **5. Liability of organisers (Article 5)**

Article 5.1 generally provides that Member States shall take steps to ensure that retailers and/or organisers are liable for the proper performance of the contract irrespective of whether the obligations under the contract are to be performed by the organiser and/or the retailer or by someone else. The transposition of this article in the Member States differs significantly. In most cases the organiser is liable, including in cases of performance by someone else. However, the liability of the retailer is often more limited. Differences between Member States' legislation and the possibility for the consumer to claim his rights may then be problematic in particular in cases where the retailer and the organiser are established in different Member States. It could be considered whether a retailer who is selling products from organisers based in another country, be it another Member State or a third country, should be jointly liable in all cases. Such a system must not, however, create Internal Market barriers.

It could also be considered whether the limitation for non-physical damage under the contract should be deleted, or at least, whether a common threshold should be introduced. Finally, according to the ECJ<sup>20</sup>, article 5 is to be interpreted as conferring on consumers, in principle, a right to compensation for moral damage resulting from the non-performance or improper performance of the services constituting a package holiday. A provision recognising this right in the Directive could be considered. Most Member States have not expressly stipulated for the compensation for non-material damage in the context of their package travel law. When considering a revision of the consumer's right to damages, account must also be taken of the outcome of the consultation in the Green Paper on the possible introduction of a general right to damages for breach of contract and its extent/coverage.

Question 14: Does the liability of the retailer respectively the organiser need to be clarified?

Question 15: Do you think that the notion of “damages” should be clarified, for instance regarding moral damage?

## **6. Consumer complaints (Article 6)**

Article 6 provides that, in cases of complaint, the organiser and/or retailer or his local representative, if there is one, must make prompt efforts to find appropriate solutions.

According to many stakeholders, this provision appears to be imprecise and leads to confusion. It may therefore need to be clarified how the terms “prompt efforts” and “appropriate solutions” should be interpreted, i.e. what to do when the organiser and/or retailer has no local

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<sup>20</sup> Case C-168/00, Simone Leitner.

representative, as well as if a consumer fails to communicate a problem to the organiser. In the latter case the organiser does not have an opportunity to take action to put matters right, whereby the consumer cannot claim damages at a later date.

Question 16: Have you encountered problems with Article 6? Is there a need to clarify the meaning of the terms “prompt efforts” and “appropriate solutions”?

## **7. Security for Insolvency (Article 7)**

The ECJ has clarified that all risks possibly arising from the insolvency of the organiser shall be fully covered.<sup>21</sup> Article 7 does not prescribe how the obligation for the organiser and/or retailer to provide sufficient evidence of security for the refund of money paid, and for the repatriation of the consumer in the event of insolvency, is to be implemented. The wording "sufficient evidence of security" is imprecise. As a result, a multitude of systems have appeared, e.g. collective funds, bank guarantees and insurance schemes. There seems to be significant differences in the level of consumer protection across Europe and anti-competitive situations may occur.

It may also be complicated for an authority in one Member State to conclude whether an organiser who claims to have set a guarantee within another Member States system, thereby provides sufficient protection. The Commission is aware of allegations that some Member States may require a business trading cross border to comply with their national rules, although the business has complied with the rules of its country of establishment. This is, however, not permitted according to European jurisprudence<sup>22</sup>.

The EP Resolution calls for the current wide variations in interpretation by Member States to be significantly reduced in order to give equally effective consumer protection throughout the EU. The Commission, in its 1999 report on the Implementation of the Directive, also includes a list of principles that should be observed by national measures transposing Article 7 of the Directive.

One option may be the introduction of a uniform system across the EU. As pointed out in stakeholder contacts with the Commission, it is unlikely that a consistent pan-European approach to financial protection can be implemented, since different measures will suit different market places. A possibility may be to keep the current state of play nationally and reinforce the cooperation between the different Member States' authorities to overcome significant differences and gaps in the system and encourage exchange of best practices.

Question 17: What are your experiences of the guarantee scheme system in your Member State and, when applicable, of the interaction between different Member States' systems? How could in your view the system be improved?

Question 18: Does, in your view, the fact that scheduled airline business does not have such a guarantee scheme impact on market conditions?

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<sup>21</sup> Case C-364/96 – Verein für Konsumenteninformation.

<sup>22</sup> Case C 410/96 – Ambry.

## 8. Other issues

In this working document stakeholders are consulted on a number of issues that have been identified as important in the context of reviewing the Package Travel Directive. The Commission welcomes information and suggestions on any other matter deemed to be pertinent and relevant to overall objectives of the review. One issue could be that of disabled persons and persons with reduced mobility.<sup>23</sup>

Question 19: Is/are there any other issue(s) or area(s) that require(s) to be explored further or addressed at EU level in the context of consumer protection? Are there market trends that in particular should be taken into account when considering a revision of the Directive and, in that case, what facts and/or figures exist confirming such a market development?

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<sup>23</sup> The Regulation (EC) 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air, OJ L204, 26/7/2006, applies to travelling by air, but there is not yet equivalent regulation of other modes of transport.