



Brussels, 9.7.2013  
COM(2013) 513 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**BRINGING THE EU PACKAGE TRAVEL RULES INTO THE DIGITAL AGE**

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**1. EU PACKAGE TRAVEL IN THE 21ST CENTURY**

With some 1.8 million businesses, mostly SMEs, employing about 5.2% of the total workforce, tourism is an important sector of the economy and a source of growth in the European Union. Travel, tourism and related sectors account for around 10% of EU GDP<sup>1</sup>.

The EU is the world's No 1 tourist destination, with 400 million international arrivals in 2012<sup>2</sup>. Europeans made more than 1 billion holiday trips in 2011<sup>3</sup>, almost 80% of them in the EU<sup>4</sup>. In spite of the recent economic crisis, international tourist arrivals in the EU continued to grow (by more than 7%) from 2010 to 2012, as did the number of holiday trips taken by Europeans. This makes tourism one of the most resilient sectors of the EU economy.

To ensure confidence in the high quality of travel services sold anywhere in the EU market, EU law protects travellers' rights, particularly in relation to package holidays.

But the travel market has been transformed, notably by the internet, since the Package Travel Directive<sup>5</sup> was adopted over 20 years ago. The Commission must respond to widespread calls from industry, consumers and legislators to keep the Directive up to date and fit for the digital age.

Revising the Directive will, in line with the EU strategy for tourism<sup>6</sup>, help in strengthening European tourism by adjusting the existing rules to changed consumer behaviour, as announced by the European Consumer Agenda<sup>7</sup> and re-stated by the second EU Citizenship Report<sup>8</sup>. Covering new combinations of travel services will affect about 50% of the market and should increase travellers' trust and satisfaction.

**2. THE WIDER FRAMEWORK OF EU RIGHTS FOR HOLIDAY MAKERS**

Consumers buying individual travel services are protected by a wide range of EU and national rules, whether they book through a local travel agent, online or by telephone.

The EU rules aim to ensure that, as the most vulnerable party to the contract, especially when travelling, consumers enjoy a general set of rights which limit problems and guarantee acceptable service throughout the EU.

When buying package holidays, they benefit from extra protection.

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<sup>1</sup> Commission communication *Europe, the world's No 1 tourist destination — a new political framework for tourism in Europe*, COM(2010) 352 final, 30.6.2010.

<sup>2</sup> UNWTO, World Tourism Barometer, January 2013.

<sup>3</sup> Statistics in focus 28/2012, Tourism in Europe, Results for 2011.

<sup>4</sup> Eurostat press release, 139/2011.

<sup>5</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.

<sup>6</sup> COM(2010) 352 final, 30.6.2010.

<sup>7</sup> *A European Consumer Agenda – Boosting confidence and growth*, COM(2012) 225 final, 22.05.2012.

<sup>8</sup> *EU Citizenship Report 2013 — EU citizens: your rights, your future*, COM(2013) 269 final, 08.05.2013.

- **General consumer rights before, during and after purchasing a trip**

Travel and tourism services (such as accommodation and car rental) are covered by general EU consumer law<sup>9</sup>, so consumers making travel arrangements are protected against unfair practices throughout the EU.

Traders must display the full price of the product, e.g. including local fees, taxes and handling fees. Advertising must not be misleading or trick consumers into buying a product they would not have bought otherwise. For example, on websites displaying prices and customer reviews, traders may not pose as consumers or pass on materially inaccurate information<sup>10</sup>.

When selling travel services online, sellers must give detailed information, including their contact details and a description of the product. They may not use pre-ticked boxes to induce consumers to buy additional services<sup>11</sup>. Furthermore, contracts for travel services must not contain unfair terms. For example, the seller may not impose terms which the consumer had no real opportunity to read before signing the contract.

In general, if a trader based in another Member State attracts business (e.g. online) in the Member State where they live, EU consumers are protected by their country's consumer law, and they may sue the trader, and can only be sued, in their own country<sup>12</sup>.

***Example:** Jean booked a hotel in Mallorca via a popular travel review website. He arrived at the hotel and found out that his room, facing a backstreet, did not fit the webpage description, according to which all rooms had a balcony with a sea view. Such misleading marketing is prohibited under the Unfair Commercial Practices Directive.*

- **Passenger rights**

The EU is the first region in the world to have comprehensive legislation on passenger rights for all transport modes: air, rail, maritime, and bus and coach<sup>13</sup>.

Passenger rights are based on three key principles: non-discrimination; accurate and timely information; and immediate and proportionate assistance. Passengers must be correctly informed about their rights before departure, are entitled to a refund or rerouting if their journey is disrupted, and must receive assistance and, under certain conditions, compensation.

***Example:** Maria booked a flight in October to spend the Christmas holidays with her family. One week before she was due to leave, she learned that the airline had cancelled her flight due to poor ticket sales. As the airline was unable to offer her any alternative flight, it had to pay compensation. That compensation enabled Maria to purchase new tickets with a different airline.*

<sup>9</sup> In particular, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair commercial practices and Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

<sup>10</sup> See points 18 and 22 of Annex I to the Unfair Commercial Practices Directive.

<sup>11</sup> As from June 2014 when Directive 2011/83/EU will apply across the EU.

<sup>12</sup> See Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), as regards the law that applies. On jurisdiction, see Articles 15–17 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. There are certain exemptions to these rules, e.g. for transport or carriage contracts if the contracts are not part of a package. For further interpretation of Article 15(1)(c) and (3) of Regulation (EC) No 44/2001 in relation to a trader's internet site, see the EU Court of Justice ruling of 7 December 2010 in Case C-585/08, *Hotel Alpenhof*.

<sup>13</sup> See the regulations on passenger rights (Regulations (EC) No 2004/261, (EC) No 1371/2007, (EC) No 1177/2010 and (EC) No 181/2011).

- **Other rights enshrined in travel and tourism legislation**

Other, more specific legislation is in place to protect travellers' interests, such as Regulation 1008/2008<sup>14</sup>, requiring airfares to be published inclusive of all applicable taxes and charges, and the Timeshare Directive 2008/122/EC<sup>15</sup>, laying down strict information requirements and a 14-day right of withdrawal to protect consumers against unwanted contracts.

- **Specific rights for package travellers**

Package tours and holidays are complex combinations of travel services which typically include transport and accommodation and may include other services, such as car rental or excursions.

As various service providers are often involved, a problem with one service may affect the others. The traveller may find it difficult to deal with subcontractors because of language barriers or cultural differences at the holiday destination and, in such cases, will not even have a contract with the various services providers.

These conditions, and the cross-border dimension of many of these services, led the EU to introduce the Package Travel Directive in 1990. The Directive offers comprehensive protection which is not available to buyers of individual travel services, by making the retailer and/or organiser liable for correct performance of all the services included in the package, and requiring that package travellers be reimbursed and repatriated if the service provider responsible goes bankrupt.

#### **THE 10 KEY RIGHTS UNDER THE 1990 PACKAGE TRAVEL DIRECTIVE**

1. You receive all necessary information about the holiday before you sign the contract.
2. You always have one party (either the retailer or the organiser: the name and address will always be specified in the contract) that is liable for the correct performance of all the services included in the contract.
3. You are given an emergency number or a contact point where you can get in touch with the organiser or the travel agent.
4. You can transfer your booking to another person, if you cannot leave on holiday yourself.
5. The price of your trip cannot be changed later than 20 days before departure, and before that only in very limited situations.
6. You can cancel the contract and get your money back if any of the essential elements of the travel package has been changed.
7. If, before departure, the trader that is responsible for your holiday cancels the package, you can get a refund and compensation, if appropriate.
8. If, after departure, important parts of the package cannot be provided, alternative arrangements have to be made, at no extra cost, for you to continue your holiday.
9. You have the right to be given prompt assistance if you are in difficulty.
10. If the trader responsible goes bankrupt, your pre-payments will be refunded and, if your trip has begun, you will be repatriated.

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<sup>14</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.

<sup>15</sup> Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

### 3. REFORMING THE PACKAGE TRAVEL DIRECTIVE

- **Why is reform needed?**

With more and more people connected to the internet<sup>16</sup>, the travel market has increasingly moved online. In 2011, online travel sales accounted for around 35 % of all travel bookings; in the sole month of March 2013, nearly 183 million citizens visited an on-line travel website<sup>17</sup>.

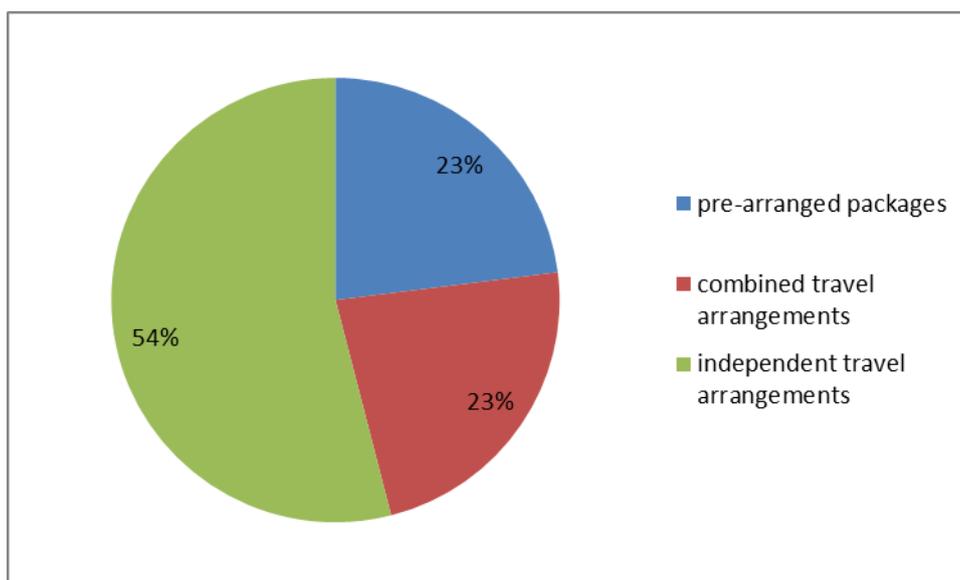
The travel market has also been transformed by the liberalisation of the airline sector, leading to cheaper and more accessible flight tickets.

The Package Travel Directive was adopted at a time when people went to a travel agent to buy their holidays, typically as ‘ready-to-go’ solutions which covered all the details.

Now, although 23 % of EU travellers still purchase traditional, prearranged packages, more and more either buy different parts of their trips separately (54 % of Europeans who took a holiday in 2011), or buy customised holidays which are put together by one or more commercially linked traders to suit their needs and preferences<sup>18</sup>. Though typical of online sales, this format is also available from high-street travel agents who put together holidays for their customers.

Such ‘combined travel arrangements’ now account for 23 % of the holiday market, roughly 118 million trips every year.

They include travel arrangements which display features which travellers typically associate with packages as well as arrangements where a trader offering travel services merely facilitates the separate booking of another travel service.



The advent of these new types of holidays has created ambiguities, because both businesses and consumers may be unsure whether they are covered by the legislation.

<sup>16</sup> 65 % of EU citizens used internet at least once a week in 2010 (Eurostat Data in Focus, 50/2010).

<sup>17</sup> <http://www.newmediatrendwatch.com/regional-overview/103-europe?start=2> , ‘Online Travel Market’.

<sup>18</sup> Market evolution has been particularly striking in certain Member States, such as the UK: according to data provided by a major UK tour operator, 98 % of passengers travelling on leisure flights from the UK were protected under the Directive in 1997, but now this number is less than 50 %.

In the Club Tour case<sup>19</sup>, the EU Court of Justice stated that a combination of tourist services supplied by a travel agency to meet the consumer's specific requests up to the moment of conclusion of the contract is covered by the Directive. However, applying the Directive and this ruling, especially to online sales, has raised complex legal issues and led to court cases in the Member States<sup>20</sup>.

In practice, legal protection may differ, depending on how, where and by whom the arrangements are offered for sale, even though the travel components may be identical.

Numerous Member States have responded to the new market developments, in different ways. Some<sup>21</sup> have laws that aim to protect consumers buying specific services that resemble traditional package holidays. For instance, the UK recently reformed insolvency protection to extend it to operators selling non-domestic flights plus at least one other travel service (the so-called 'Flight Plus' reform)<sup>22</sup>. Similarly, Sweden requires insolvency protection for travel arrangements consisting of separate transport and accommodation services that together 'bear a substantial resemblance to a package tour'. And German law takes consumer perceptions into account in assessing whether a particular combination of travel services is covered by the rules on packages.

In this new market environment, the current EU rules no longer meet the needs of consumers and businesses. The different legal requirements across the Member States, e.g. on pre-contractual information, liability and insolvency protection, mean that businesses have more difficulty expanding their operations across borders. So travel businesses are no longer competing on an equal footing.

Different rules in different Member States also make it difficult for smaller companies to sell their products across borders, leading to a reduced level of choice for consumers. The Directive also generates unnecessary red tape, e.g. because the rules relating to printed brochures are outdated.

The outdated scope of the Directive also means consumers can lose money when they buy travel products that are not covered while believing that they are protected.

#### KEY PROBLEMS WITH THE EXISTING DIRECTIVE

- 67% of EU citizens mistakenly thought that they were protected when buying these 'new packages'.
- Users of 'new packages' are twice as likely to have problems as users of traditional pre-arranged packages. Also, if there is a problem, the average cost to the consumer is almost €600, compared to less than €200 for traditional packages.
- The overall loss to buyers of 'new packages' in the EU is more than €1 billion annually.
- Unclear and fragmented rules on legal liability are a burden both on consumers and on businesses.
- Businesses across the EU selling equivalent travel products are not competing on an equal footing.

The general consumer protection and passenger rights rules that apply to individual travel services do not fit the new, combined travel arrangements. Thus, there is a clear need for legislation that addresses these. Modernising the Directive's rules and adapting them to the internet era would therefore bring tangible advantages.

<sup>19</sup> Case C-400/00.

<sup>20</sup> E.g. cases ECJ C-400/00 (Club-Tour), ECJ C-178/94, C-179/94, C-188/94, C-189/94 C-190/94, CAA vs Travel Republic (UK), the German *Bundesgerichtshof* judgment of 30 September 2010 in case Xa ZR 130/08, and the Dutch *Eerste Kamer Hoge Raad* ruling of 11 June 2010 in case 08/04611, SGR vs ANVR.

<sup>21</sup> E.g. AUT, BE, BG, CZ, DE, DK, EE, FR, HU, UK, LT, LU, LV, PL, SE and NL — replies to a questionnaire issued in preparation for a workshop on the review of the Directive held in Brussels on 5 June 2012.

<sup>22</sup> <http://www.caa.co.uk/default.aspx?pageid=12990>.

- **How does the proposal modernise the existing rules?**

The proposal clarifies the existing Directive and brings it up to date with legal and market developments.

Firstly, while still focusing on ‘packages’, it is wider in scope and clearly includes new, commonly used combined travel arrangements. It also puts in place a flexible system for business travel that avoids overregulation, by excluding business trips that are bought under a framework contract from a trader specialising in the arrangement of business travel.

*Example: Thomas booked a flight to Thailand directly from the website of airline X. When booking, he was offered accommodation at a hotel. He purchased both services and paid an inclusive price on the airline’s website. His friend James had in the meantime bought accommodation at the same hotel and a flight with the same airline via a pre-arranged travel package offered by Leisure Group Y. While they were in Thailand, airline X went bankrupt and their return flight was cancelled. Thomas had then to make his own travel arrangements to get home, which cost him € 700 on top of the cost for his original ticket. James, by contrast, was repatriated at no additional cost thanks to Y’s bankruptcy protection. With this proposal, Thomas would be repatriated at no additional cost — in exactly the same way as James.*

Secondly, the proposal ensures **greater market transparency** by enabling all travellers to clearly identify whether they are being offered a package or not, thus avoiding confusion. It also updates the information requirements, taking into account the development of EU consumer law since 1990.

Thirdly, the proposal **repeals special rules on brochures**: with the internet, there seems less need for specific printed information. The current rules have led businesses to unnecessarily reprint their advertising material, incurring undue costs of about € 390 million per year. However, the proposal ensures that the traveller will still receive all the key information before signing a contract and that any potentially important news after that, for instance a change to the itinerary, is communicated in writing (including email).

Fourthly, the proposal gives travellers **new cancellation rights**. While keeping their current right to transfer the contract, consumers will have the right to cancel the contract before departure, albeit by paying the organiser reasonable compensation for the costs incurred. In the event of natural disasters, warfare or similar serious events at destination, consumers will also have the right to cancel the contract without paying compensation. Rules on **prices will be fairer and more predictable** with the introduction of a 10 % cap on price increases.

Fifthly, the proposal provides **clearer remedies and a better system of redress** if something goes wrong, by tying in with the recently adopted EU legislation on alternative and online dispute resolution, new rules making travel agents liable for booking mistakes and a provision that gives travellers the option to address complaints or claims directly through the retailer from which they bought their holiday. The proposal also **streamlines the rules on contractual liability**. Travellers will still have a single contact point if something goes wrong during the holiday, but since organisers are made liable for the performance of the services included, more traders will have incentives to be more diligent when choosing subcontractors. If a package is sold through an EU retailer but the organiser is based outside the EU, travellers will be able to seek redress directly from the retailer.

Finally, it **clarifies the insolvency protection rule**, and explicitly obliges Member States to ensure mutual recognition of national insolvency protection schemes, within a structured cooperation mechanism. This solution takes into account a recent evaluation of the Services Directive<sup>23</sup>, which showed that some Member States still do not accept the insurance cover

<sup>23</sup> Commission staff working document on the result of the performance checks of the internal market for services (construction, business services and tourism), SWD(2012) 147 final, 8.6.2012. See especially point 3.1.4 and Annex 1.

required of tour operators in their Member State of establishment, thus forcing them to duplicate costs across borders. Under some circumstances, also any traveller having concluded separate contracts with different travel service providers through an intermediary will benefit from insolvency protection.

*SunFun Travels, a travel organiser based in Luxembourg, uses airports in Belgium, France, the Netherlands and Germany for its flights and would like to offer its packages to consumers living in these countries. However, SunFun Travels faces problems getting its insolvency protection scheme, contracted in Luxembourg, accepted by these other Member States. SunFun Travels has therefore so far not managed to expand its activities outside Luxembourg. With this proposal, it could eventually do so, thanks to a reinforced cooperation mechanism across Member States.*

#### IMPACT OF THE PROPOSAL ON TRAVELLERS

- Almost 120 million travellers buying combined travel arrangements will be protected, which is expected to reduce losses to consumers by about €450 million a year<sup>24</sup>.
- When buying a combination of travel services, travellers will have to be told whether it is a fully protected package or not.
- Travellers will be able to better understand what kind of product they are purchasing and the level of protection received.
- Package holidaymakers will have better EU-wide protection, more flexibility and a clear set of remedies if something goes wrong.

#### IMPACT OF THE PROPOSAL ON BUSINESSES

- It will make competition in the travel market fairer, while keeping compliance costs reasonable for all (around €8 per package, which represents a cost reduction for package providers subject to the current Directive - and around €3 per person, for those selling other, assisted combinations of travel services<sup>25</sup>).
- For traders currently subject to the Directive, administrative costs of about €390 million per year linked to outdated rules will be eliminated<sup>26</sup>.
- Excluding managed business travel from the Directive will lead to savings of up to €76 million per year<sup>27</sup>. This avoids overregulation while ensuring that micro-entrepreneurs, in particular, can be protected if they so choose.
- Cross-border trade will be facilitated by common, EU-wide rules on information, liability and mutual recognition of insolvency protection schemes.

#### • A proportionate response to new market developments

Over the last 20 years, the travel market has changed, as has the EU regulatory framework applying to it.

Today, a number of EU rules are in place which did not exist when the Directive was adopted and which ensure a safety net for all travellers. Nevertheless, these rules do not grant travellers the specific protection they need when buying the new types of combinations of travel services, which, because of their complexity, can have multiple consequences if something goes wrong. By modernising and adapting the scope of protection, it will be possible to tackle the current consumer detriment suffered by buyers of these ‘combined travel arrangements’.

Although faced with increased competition, traditional packages continue to attract millions of customers across the EU, and beyond. The rationale for having specific rules for combined travel products remains valid, while the changes in the ways people book them should be reflected in the law. Overall, it is crucial that consumers fully understand what they are

<sup>24</sup> See Impact Assessment accompanying this proposal.

<sup>25</sup> Ibidem.

<sup>26</sup> Ibidem.

<sup>27</sup> Ibidem.

offered and can confidently choose the travel arrangements that best match their specific needs.

It is essential to preserve market innovation and the diversity of new, especially online, business models, while ensuring fair and transparent competition among all those selling substitutable services. Therefore, the proposal tries to lay down a targeted and proportionate solution to reduce the current problems while taking fully into account the specific position of SMEs as suppliers and users of travel services.

Indeed, considering that an overwhelming majority (99 %) of EU tour operators and travel agents are SMEs (of which 92 % are micro-enterprises), the proposal aims to reduce the average cost of offering traditional packages, by modernising the rules and cutting red tape. By making all operators offering substitutable travel services subject to the same rules and compliance costs, the proposal will restore a level playing field, from which SMEs will benefit even more than larger operators. Additionally, removing obstacles to cross-border trade, by means of more uniform rules on pre-contractual information and an ad hoc mechanism to facilitate the mutual recognition of insolvency protection schemes, will open up more opportunities for businesses, particularly SMEs, to expand their activities in different Member States.

At the same time, the proposal leaves all off- and on-line traders free to offer their services to facilitate the arrangement of holidays involving the combination of separate travel services, without becoming liable for the performance of the different services. However in the interest of fair competition and in order to protect consumers, the obligation to provide sufficient evidence of security for the refund of pre-payments and the repatriation of travellers in the area of insolvency should also apply to assisted travel arrangements.

The proposal also takes account of the specific situation of SMEs as buyers of travel services, by entitling them to the same level of protection afforded to individual consumers unless they have chosen to have a specific framework contract with a specialised travel management company.

#### **4. CONCLUSION**

The 1990 Package Travel Directive has enhanced the quality of package travel services but needs to be updated to cover new market developments.

This proposal to amend the Directive enhances consumer protection at a reasonable cost to the industry while leaving businesses and consumers free to choose what they wish to sell and buy.

By reducing legal fragmentation and strengthening mutual recognition, the proposal will remove obstacles to cross-border trade, thus fostering competition among older and newer market players selling substitutable travel products. It will make the market more transparent, particularly the online market, so as to increase travellers' trust and boost demand from within and outside the EU, while increasing certainty, flexibility and choice.

In the current challenging times, this set of measures will also contribute to improving consumer confidence and boosting growth in this key sector of the EU economy.