Transposition of Directive (EU) No 2015/2302 on Package Travel and Linked Travel Arrangements Workshop with Member States on 18 May 2017

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Agenda: See agenda attached.

Disclaimer: While the Commission services are trying to assist Member States as much as possible in the transposition process, a binding interpretation of Directive (EU) No 2015/2302 can only be provided by the Court of Justice of the European Union. The replies to specific questions are based on statements by the relevant service in DG Justice and Consumers and do not necessarily reflect the official position of the Commission.

Whenever these minutes refer to articles and recitals without identifying a specific Directive, reference is made to Directive (EU) No 2015/2302.

Welcome – purpose and objectives of the meeting

Ms. Veronica MANFREDI welcomed the delegates from the Member States to the fifth expert meeting on the transposition of the new Package Travel Directive (PTD). Ms. MANFREDI informed the delegates about the progress made in the context of the Fitness Check of EU Consumer and Marketing Law (REFIT), the results of which were going to be presented by the Commissioner on 29 May 2017 and would then be published on the Commission's website.

Ms. MANFREDI asked the Member States about their progress in the transposition process. None of the Member States reported any problems about meeting the 1 January 2018 deadline for the transposition of the Directive.

I. Exchange of information and discussion of issues arising in connection with the transposition of Directive (EU) No 2015/2302

Presentation by ETTSA on practical examples of online booking processes, in particular in connection with the rules on linked travel arrangements

ETTSA (the European Technology and Travel Services Association) presented its draft industry guidance document, which is intended as practical guidance for operators to help them prepare for the transposition and application of the new Directive. As industry representatives, ETTSA took this initiative in order to provide practical guidance in cases

where the text of the Directive is silent or vague. The guidance provided insights into the practical problems that can emerge with the concept of linked travel arrangement, particularly the concept of "facilitation in a targeted manner". ETTSA also looked at other EU legislation for insights on how to delineate this concept. The concept of "active" and "passive" action by the trader in e-Commerce Directive (as seen in the C-324/09 *L'Oréal v eBay* case) and the concept of "invitation to purchase" from the Unfair Commercial Practices Directive could be relevant.

LU welcomed the idea of a guidance document, particularly for SMEs. However, LU stressed that there are several concepts in the Directive that do not allow for black and white positions, and it could be made clearer which concepts may fall into a grey area. LU had some doubts on whether the situation of "facilitation in a targeted manner" as described on page 18 falls really out of scope, since the advertisement next to the booking page appears to be rather targeted with the message "reserve now", even if date and place are not preselected when the traveller clicks on the link. LU will see over the course of the summer whether guidance will be given also to the LU industry.

COM referred to Recital 13, in particular the following sentence, which highlights the commercial interest which could be present in the facilitation: *"Such facilitation will often be based on a commercial link involving remuneration between the trader who facilitates the procurement of additional travel services and the other trader, regardless of the calculation method of such remuneration which might, for instance, be based on the number of clicks or on the turnover."* COM also pointed out the margin of manoeuvre that exists for the first trader/website in allowing advertisements to be place on its website.

FR welcomed the idea of a guidance document and, similarly to LU, considered that confining facilitation in a targeted manner exclusively to cases where date and place are already selected when the link is opened would be too limited; it is rather about the way consumers perceive the advertisement.

ETTSA noted that questions like these are at the heart of the discussion on what constitutes facilitation in a targeted manner and that there is certainly a commercial element in advertisement. However, ETTSA was concerned that defining the scope of LTAs too broadly could lead to a ban of advertising in practice, since traders might be inclined to not display such ads in order to prevent liability and thereby lose revenue, which would have a negative impact particularly on SMEs. ETTSA highlighted the benefits of distinguishing between "deep links", i.e. specific offers with, for instance, indication of a particular hotel or particular hotels for a particular date/period at a particular price, and more generic ads. In particular, with deep links, the commercial interest is greater for the traders, since consumers are more likely to conclude contracts as a result of such specific ads and their willingness to pay for ads like that is also much higher.

COM inquired about the reactions to the use of the "invitation to purchase" concept from the UCPD, which notably includes information about the price.

BE considered that such issues warrant a case-by-case assessment and it should be seen whether the first trader/website can decide which ads can be displayed.

ES noted that the content of the ads will generally depend on Google and that the question of whether a specific ad is an invitation to purchase depends not only on the presence of a price.

ETTSA noted the importance of the price and place as indicators of a degree of knowledge and connection to relevant travel details, which could imply coordination between the first and second trader.

SE noted that not all advertised services have a price that is dependent on the travel details. For certain services, the price could be fixed all year round.

COM also asked MSs for their views on the standard information forms that should be provided to travellers by traders facilitating LTAs, in particular where it is alleged that such traders do not receive any money from travellers.

ETTSA highlighted that, in certain situations where an online platform is the first trader within a linked travel arrangement, the Directive requires it to provide travellers with information on the insolvency protection afforded to them. However, such protection would not exist in cases where the online platform never receives payments from the consumer. ETTSA suggested that, in order not to mislead travellers, the most appropriate solution would be not to include information on insolvency protection in such cases. This would be better than adding a sentence to the standard information sheet specifying that insolvency protection will not be available for the specific LTA in question. However, the Directive would appear not to give much flexibility regarding the standard information to be provided.

COM noted that Article 19 (2) 2nd sub-paragraph last half-sentence appears to leave a certain margin of manoeuvre, which would allow for different disclaimers. In any event, it would be important that the information provided to travellers is correct in light of Article 19 (2) first subparagraph in conjunction with Article 19 (1) (See also question 4 on page 17 of the minutes of the workshop of 13 June 2016).

COM concluded that MS should send written comments to the COM by 30 June 2017 concerning ETTSA's draft industry guidance, including the classification of certain borderline examples, as well as the presentation of compulsory information on LTAs in cases where a trader facilitating an LTA receives no payments from travellers.

Presentation of the Consumer Protection Cooperation wiki platform for exchanging information

COM gave a presentation and demo on the wiki platform used by the Consumer Protection Cooperation (CPC) network, which consists of national authorities responsible for enforcing EU consumer protection laws in EU and EEA countries. The platform functions as a communication and information exchange tool, which could be adapted to meet the needs of the practical aspects of the mutual recognition of insolvency protection envisioned in the Package Travel Directive.

LV shared their experience on using the system and considered that it could be a possible platform for exchanges also in the context of the Package Travel Directive.

SE highlighted that in some MS the authority that deals with insolvency protection will not be the same authority that belongs to the CPC-network.

COM clarified that it is possible to add authorities as users of the site, regardless of whether they are part of the CPC network.

UK inquired whether the wiki platform includes an instant messaging functionality.

COM noted that, while there is no instant messaging functionality as such, it is possible to send messages via the platform to other users with minor delay.

LT asked whether the wiki platform has any functionality that would enable MS to monitor and enforce the 15-day deadline to respond, as stipulated in Article 18(4).

COM noted that it is possible to set deadlines for tasks and monitor them, however, compliance with such deadlines would be voluntary.

Questions raised by the Member States regarding packages and linked travel arrangements

1) Recital 12 – in a targeted manner - How is it determined whether an advertisement, e.g. on a confirmation page or in a booking confirmation e-mail after a completed travel service order, is considered to be "facilitation in a targeted manner" or just general advertisement? The Travel Industry in Denmark argues that the owner of a website has great influence on which advertisements are shown on the confirmation page, even if they are placed on the basis of cookies or metadata, and has a commercial interest in such advertisements, often being paid per click.

COM noted that this question is directly related to the point discussed in connection with ETTSA's presentation, e.g. the example on page 16 of their presentation, the decisive

question being whether the facilitation of the booking of the second service occurs "in a targeted manner".

From the traveller's point of view, such situations will often be perceived as a targeted facilitation of the purchase of additional travel services, whereas ETTSA is arguing that that approach would be too broad from the perspective of the involved traders.

COM referred to the possibility for Member States to provide comments on ETTSA's draft industry guidance by 30 June 2017.

2) Art. 3(5), Recital 18 – LTAs, tourist services - Tourist services can be of different value and hence constitute less or more than 25 percent of the total price of the trip. However, the actual total price of the trip is not necessarily known to the trader when he provides a link to a website with several tourist services available for purchase. How should the trader fulfil his obligations according to the Directive if it is not evident to him whether or not he is about to sell a linked travel arrangement?

COM considered that, in case of Article 3 (5) (a), "the facilitator" will often be able to judge early whether there may be an LTA also regarding such combinations. At the same time, it acknowledged that, in case of Article 3 (5) (b), it will not always be clear at the moment when a link for the booking of a second travel service is provided whether the combination of one travel service in the sense of Article 3 (1) (a), (b) or (c) with "another tourist service" in the sense of (d) will constitute an LTA if such other tourist service is booked within 24 hours. However, given that the value of the first service is known to "the facilitator" and in light of the nature of the second service, "the facilitator" will, even in that case, often be able to establish whether an LTA may be created or not with a certain likelihood.

Therefore, it would seem appropriate that **only in cases where an LTA can be excluded at the outset on the basis of Article 3 (5) second sub-paragraph, the "facilitator" should not be obliged to provide the information under 19 (2) in conjunction with Annex II.**

If an LTA cannot be excluded, the trader should inform the traveller, in line with Article 19 (2) and Annex II, that, if he/she books an additional travel service, there will not be a package and that there will be insolvency protection for money paid over to the facilitator[1]. Furthermore, it would be appropriate in such cases to add a sentence to the relevant information sheet in Annex II indicating that there will be an LTA and insolvency protection only if the other tourist service constitutes a significant proportion of the combination or is, advertised as or otherwise constitutes an essential feature of the trip or holiday. Such additional information would be in line with the objective of Article 19 (1) and (2), and Article 19 (2) second sub-paragraph, provides for some flexibility if a particular case is not addressed specifically in the forms of Annex II.

[1] Regarding the question of whether information on insolvency protection may be omitted in specific cases, see page 3 of these minutes as well as question 4 on page 17 of the minutes of the workshop of 13 June 2016.

3) Art. 3(5) – LTA - Can the Commission confirm that the order in which a travel service and a tourist service are bought can have influence on whether a trip constitutes a LTA?
Example: a ticket to a football match is bought first, after which a stay at a hotel is booked in the manner described in Article 3(5) – in this situation the football match (tourist service) would probably represent an essential feature of the trip. However, if the hotel is booked first and the football ticket afterwards, that seems less certain.

COM noted that the question of the essential feature would require a case-by-case assessment in light of all relevant circumstances. If the football ticket is bought first, it would appear to be clear that that tourist service is an essential feature of the trip. If the football ticket is bought last, it may still constitute an essential feature or indeed a significant proportion of the value of the combined value of the services, which will depend on a case-by-case assessment.

4) Art. 3(5) – LTA - How should situations where a traveller buys e.g. a plane ticket to London and a hotel in Sydney for a long journey (e.g. a round trip tour around the world) with e.g. 1 month between the travel to London and the accommodation in Sydney be categorised? Will this be an LTA/package since it is in principle the same trip, despite the long period between the traveller's use of the travel services?

COM pointed out that the issue of the "same" trip or holiday was discussed on 25 October 2016 (see Point II.2 of the minutes). This question warrants a case-by-case assessment looking at all relevant circumstances in terms of time, place, purpose etc. of the relevant services. A smaller gap in terms of places and time does not necessarily mean that this cannot be the same trip or holiday. However, if there is a clear gap in terms of places and time, one will no longer be able to consider two travel services as being part of the same trip or holiday for the purposes of the Directive.

5) Art. 3 – package - Should these examples be considered packages :
A. a youth camp (camp for children aged 7-26 years) that has an activity licence according to national law (qualification of counsellors is needed and it is organized in certain premises) but that is offered many times during the summer to the public and consists of bus transportation to the premises, accommodation, language courses (or bus excursion to city or creative activities or swimming). Those youth camps are often partially financed by municipalities or different public authorities to support the diverse development of young persons, but participants also have to pay for them.
B. a sports camp that is organized abroad and that consists of transportation, accommodation and sport activities

Based on the information provided, **COM** notes that examples A and B would appear to be packages, since different types of travel services in the sense of Article 3 (1) are combined, unless the conditions of Article 2 (2) (b) were to be met: not-for-profit, only occasionally and only to a limited group of travellers. According to the available information, not all

conditions of Article 2 (2) (b) seem to be met in example A. In example B, there is no information on those criteria.

6) Article 19 - LTAs – certificate/proof of insolvency protection– a follow-up to point 10 of the minutes of 16 February 2017.

At and after the previous workshop, the COM had asked the Member States to comment on the question of a certificate or other means of proof of insolvency protection and on their intentions in that respect. No MS objected to the idea of a certificate, but there was very little feedback from the Member States.

PL noted that it is still under consideration whether such a requirement will be added.

LU had considered introducing such a requirement and had added it in their initial proposal. However, it was not included in the final draft law.

LT included in their proposal a requirement to notify such information to the authorities, but no certificate obligation as such.

The COM regretted that there was no common approach to this issue.

Questions on insolvency protection

7) Licensing requirements for third country operators - If licensing is an obligatory requirement for tour operators and agencies in our country, can we also state in the law that licensing is also obligatory for 3rd countries' operators? Licensing will not be obligatory for EU operators, if they have insolvency protection according to their Member State's regulation.

COM noted that licensing as such is not regulated in the Directive. However, insolvency protection is in many MS a licensing requirement. Third country operators which register a company in the EU and arrange insolvency protection under the law of Member State can benefit from mutual recognition. However, those who are not established in the EU/EEA are, according to Article 17 (1), second subparagraph, subject to the insolvency protection rules of the Member States which they target. This would mean that if licensing is a requirement in Latvia, then organisers not established in another MS but directing their activities to Latvia would also be subject to that rule.

8) Chapter V – insolvency protection - Could the term "insolvent" be defined or clarified in the national legislation of each country, according to the rules of each country that define when a company becomes insolvent or bankrupt?

COM pointed out that there is no formal definition of "insolvency" in the Directive. If Member States define "insolvency" for the purposes of the national rules transposing the

Directive such definition will have to be fully compatible with the Directive and would have to take into account in particular Article 17 (4) and recital 39. Recital 39 contains the following sentence: *"Effectiveness implies that the protection should become available as soon as, as a consequence, of the organiser's liquidity problems, travel services are not being performed, will not be or will only partly be performed, or where service providers require travellers to pay for them."*

9) Recital 39 – insolvency - Can we define "insolvency" in our Tourism Law according to Recital 39? Otherwise the term "insolvency" may overlap with other national regulations.

COM added that if Member States define "insolvency" for the purposes of the rules transposing the Directive, it would indeed be appropriate if they did so in line with Recital 39, in particular the sentence quoted in the previous reply.

10) Recital 40 – insolvency protection - Recital 40 explicitly states that the Member States' national insolvency protection system does not have to guarantee full refunds for highly remote risks. A number of cultural institutions such as zoos and music venues, as well as public transportation services, are either publicly funded/supported or have a public deficit guarantee. Will these traders be covered by recital 40 and considered to have a highly remote risk of insolvency? Does this mean that these traders - if they facilitate linked travel arrangements - will not be obliged to provide security in accordance with Article 19?

COM noted that the case of publicly funded/supported institutions or bodies with a public guarantee for their debts is not explicitly mentioned as an example for a highly remote risk in recital 40. However, recital 40 does not contain an exhaustive list of examples of highly remote risk scenarios. If a Member State can show that in relation to particular institutions/bodies there is structurally no risk that they will become insolvent, there may indeed be no need to provide for insolvency protection.

11) Article 17 and 18 – multiple establishments - Can there be multiple establishments at all (Art 17(1))? Could Art 18(1) apply in a way that companies that have subsidiaries (different legal persons) in different MS could choose the law of which MS they prefer to follow or does each subsidiary have to provide a security under the law of the MS where it is established so that it is usable in that MS? In the first case travellers may have to submit claims to an insurance company or a fund in another Member State and will possibly have to go through an authority based in another Member State rather than in their home country.

COM invited the MS to comment on this problem and identify any practical difficulties that they see.

LU did not see any problems with subsidiaries benefitting from the insolvency protection arranged by the main company of a group. Moreover, many LU organisers use the BE guarantee fund.

FR shared the view of LU concerning the insolvency protection of subsidiaries.

ET highlighted the obstacles that travellers would face in case they have to enforce their rights in another MS, involving also different languages.

LT considered that this was mainly a practical enforcement issue, which relates to the proposal presented by the Baltic countries in previous workshops.

COM stated that it already flows from the (active and passive) freedom to provide services under the Treaty that an organiser can arrange its insolvency protection through a provider of financial services based in another Member State. This was confirmed by the Court of Justice in Case C-410/96 Ambry. It, therefore, must be possible that a single provider of financial services provides insolvency protection for all packages or LTAs sold by a company or a group of companies in the EU/EEA. Furthermore, it is evident under Articles 17 and 18 that, in the case of cross-border sales, organisers have to comply exclusively with the insolvency protection requirements of the MS of their establishment/registration and not with those of all MS in which they target travellers.

However, in such cases, effectiveness of the required insolvency protection also requires that travellers based in other Member States can benefit from insolvency protection without encountering undue procedural and practical problems. This naturally requires flexibility, for instance, regarding the language of communication with the affected travellers. Furthermore, good cooperation between the relevant national authorities via the central contact points will be essential in such cases.

In this respects the situation is not fundamentally different in the case of multiple establishments through subsidiaries established/registered in different Member States.

According to the minutes of 16 February 2017, the COM stated that only entities with legal personality can be subject to the insolvency protection obligations. According to the minutes of the workshop of 25 February 2016, the COM considered that, in case of subsidiaries in different MS, the relevant group can choose one establishment, i.e. one national law under which the insolvency protection for the different subsidiaries is arranged and which would then have to be recognised by the other MS. At the same time, the COM stated that, in the case of multiple establishments, there is no obligation for an insolvency protection entity (e.g. an insurance company or a guarantee fund) to arrange the insolvency protection for establishments in different Member States or possibly the whole EU.

If MS have further comments on this issue they are invited to send comments to COM.

12) Article 17(1) – continuation of the package - Who could offer the continuation of the package, the organizer, the insurance company or the national authority that is responsible for the management of the payments? What is the funding mechanism in case of continuation of the package, and who is going to guarantee the continuation of the

package? Could it be another organiser taking over the liabilities of the insolvent organiser?

COM noted that continuation of the package implies that, instead of repatriating travellers as quickly as possible, travellers are offered the possibility to finish their holiday, which will generally be advantageous for the affected travellers and may also be economically more efficient. The question of who can offer the continuation of the package will depend on how insolvency protection is organised in the relevant MS. For instance, an insurance company or a travel guarantee fund, may find another organiser – by way of tender or otherwise – who would then be contractually responsible for carrying out the remainder of the package. The new organiser would then presumably be paid by the Fund or by the insurance company that provides insolvency protection and would be liable for any inadequate performance of the package. Depending on applicable procedures, also public authorities may try to find a substitute organiser. COM invited the MS to report on their experience.

In LU, the continuation of the package is common practice. NO stated that their Travel Guarantee Fund will ask for offers from other organisers[2], In FR and the NL this is done in a similar way and another member of the association of tour operators will often take over the relevant packages. In the CZ the bank or insurance company will make arrangements on a case-by-case basis.

Questions concerning scope and definitions

13) Article 4 – full harmonisation - Article 4 states that Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in that Directive, including more or less stringent provisions which would ensure a different level of traveller protection. What about national provisions on liability insurance for organisers, or any obligation to offer to the traveller insurance against accidents or illness during the trip, damage or loss of luggage or voluntary health insurance for the duration of the trip? If it is contrary to the Directive, would it be possible to keep these provisions as a possibility for an organizer and not as an obligation (e.g. „the organizer can“ instead of „the organizer shall“)?

COM noted that many MS require compulsory liability insurance for organisers and possibly retailers. This particular aspect of package travel is not regulated by the Directive. Therefore, MS should be able to maintain such rules, even on a mandatory basis. Regarding insurance for the traveller, Article 5 (1) (h) covers the following pre-contractual information obligation: *"information on optional or compulsory insurance to cover the cost of termination of the contract by the traveller or the cost of assistance, including repatriation, in the event of accident, illness or death."* It would appear that, in light of this provision, Member States, could maintain the possibility or even obligation for organisers to offer the relevant types of travel insurance to travellers.

[2] Page 2 of the minutes of the workshop of 25 October 2016

FR asked whether Article 4 (level of harmonisation) would leave some flexibility to Member States as to the wording regarding responsibility for the performance / lack of conformity under Articles 13 and 14.

COM stated that, apart from the exception laid down in Article 13 (1) second sub-paragraph, it did not see any scope for deviating solutions under Articles 13 and 14.

14) Recital 17 - long-term - Can the Commission share their view on how to understand the phrase "long-term"? Example A: Can a language course which lasts for 3 weeks be considered as long-term accommodation in the meaning of the directive? Or a course lasting 3 months? Example B: Can all lease contracts be excluded from the scope of the Directive, regardless of their duration (even if accommodation is provided for a short period)?

COM explains that under Article 3 (1) (b) "accommodation for residential purposes" is excluded and that recital 17 states that this concept includes "long-term language courses", whereas the term "long-term" is not defined more precisely. In any event, it would not be advisable to put anything concrete in legislation, as this is a matter for guidance and evolving court practices. Generally, one could imagine that this formulation covers accommodation for language courses that goes beyond the duration of what could still correspond to a "normal" holiday. Furthermore the term "accommodation" does not distinguish according to type of accommodation offered and would include, for instance, a flat.

15) Article 2 - limited group of travellers - A "limited group of travellers" could include a very big number of travellers. Example A: A Facebook (public or secret) group with 1000 members - is it a limited group of travellers? Example B: There is a skiing club on Facebook and you can become a member by liking and if such a member shares the advertisement of a package - then can it be considered as offering packages only to a limited group or not?

COM noted that the size of the group is not strictly defined by the Directive. In any event, one has to take into account that this criterion is one out of three criteria of the *de minimis* rule laid down in Article 2 (2) (b) which creates an exception from the application of the Directive. While in theory every group or any offer is somehow limited (e.g. to the citizens of the country where the TV programme makes an advertisement), the concept of a "limited" group in the Directive contains the notion of a smaller, tighter and more structured group, as confirmed by Recital 19, which refers to charities, sports clubs and schools as examples. The same could apply to an amateur orchestra or similar groups.

Example A - Facebook group of 1000: Facebook groups can be quickly changed and enlarged. In light of the *de minimis* purpose of the exception, it would appear not to be justified to exclude such a big group (e.g. a Facebook group of 1000 people) from the scope of the Directive, but only groups of a size that is compatible with the idea of a typical non-profit group. However, the PTD being fully harmonised, national law should not use a more

concrete term than "limited group", while non-exhaustive examples such as in recital 19 may be acceptable. It is for the courts and authorities to see in concrete cases what number is still covered.

Example B: For the size of the group, one would have to take the perspective of the organiser and not of a Facebook subscriber sharing an advertisement.

16) Recital 19 – a few times a year - Can the Commission please share their view on how to understand the phrase "a few times a year"? Example: A sports club organises training camps for its 6 football teams, one camp for each in a year, total of organised camps 6 times a year – can it be considered "a few times a year"? Is it in line with the Directive if there are no rules in national legislation on how many times a year packages can be organised as far as it is clear that such organising is occasional? How many times a year is occasional depends a lot on the concrete circumstances – for example schools with 12 classes which want to organise one trip a year for each class – this is technically more than "a few times" but it should still be understood as occasional activity.

COM noted that the concept of "a few times a year" in Recital 19 is given as an example for "occasionally" and leaves a certain margin of interpretation. 5 or 6 times might still be covered by the exception if all other conditions of Article 2 (2) (b) are met and where this is in keeping with the idea of a *de minimis* exception. Rigid rules on the number of trips in national law would not be in line with the approach of the Directive. If there is any doubt whether packages are covered by the exception, it would probably be safer for the relevant organiser to comply with the Directive. In any event the exception would only apply if a sports club, school etc. organises the package themselves without going through a professional organiser.

17) Article 3(1)(a) and (d) – carriage of passengers or tourist service - In the minutes from the 3rd workshop (25 October 2016) COM answered a question regarding City Cards (question 7). Could COM please elaborate on whether or not a City Card would be a travel or a tourist service, if the following conditions apply:
1. 80% of the users find it very important that public transport is included, when deciding to purchase the city card.
2. 95% of the users make use of public transport.
3. The users on average take 4 trips per day with the card.
4. Transport to and from airport is included in the card.
5. Free transport by train, bus, harbour bus and Metro in the entire Copenhagen Region is included in the card.

COM referred to question 7 under "packages and linked travel arrangements in the minutes of the workshop of 25 October 2016 and considered that such a City Card could be considered as carriage of passengers if that is clearly the main purpose of the City Card if and other services included are secondary. If other services are not clearly secondary City cards may, depending on a case-by-case assessment, constitute a combination of different

travel services, i.e. a package, in its own right. The "City Card" described in the example would appear to go clearly beyond a "minor transport service" as referred to in recital 17.

18) Recital 22 – organiser - Can COM give an example of when a trader is involved in the creation of a package in such a way that he is in fact acting as an organiser as described in recital 22?

COM noted that Recital 22 describes, in a general way, the approach to identifying the organiser of a package by looking at the involvement of the trader in the combination of the services and not looking at whether the trader is a tour operator, online or off-line travel agency, an airline, a hotel etc. Recital 22 does not describe a specific example of how a trader becomes an organiser.

19) Article 2 – traveller - Art. 2(1) states that the Directive applies to packages offered for sale or sold by traders to travellers and to linked travel arrangements facilitated by traders for travellers. Since a traveller means any person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract, does that entail that the Directive does not apply to contracts where a legal person is party on the traveller's side, e.g. where an employee travels on the basis of a contract concluded by his/her employer? In that situation it is clear that the employee has the right to travel according to the contract and falls under the definition of a traveller, but the package is not sold to the traveller as stated in Article 2(1). Or does the definition of traveller include legal persons in the term "any person"?

COM expressed that both legal and natural persons can be "travellers" for the purposes of the Directive. Therefore, both the legal person as the party concluding the contract and the physical person actually travelling will be "travellers" for the purposes of specific provisions of the Directive. In relation to package travel contracts concluded by legal persons, Article 2 (2) (c) may be relevant.

Questions regarding pre-contractual information requirements

20) Article 5(1) – In which way is the organiser required to give the traveller the relevant standard information form to ensure that the traveller sees and reads it? a) When the traveller buys the package online? b) When the traveller buys the package at a travel agency?

COM noted that in both cases the information should be provided before the contract is concluded or the traveller makes a binding offer. At a travel agent's the travel agent will have to hand over an information sheet at the latest directly before the booking is completed, whereas in an online environment the information sheet will have to appear prominently, most likely in a window or a box, before the booking is completed.

21) Article 5(1)(c) – Who is supposed to inform the traveller of the total price when it is not known which travel service the traveller will buy in case of a click-through? If the organiser cannot inform the traveller of the full price of the package before the traveller has made a second booking in a click-through, which effect does that have in relation to Art. 6(2)?

COM noted that for click-through packages within the meaning of Article 3 (2) (b) (v), Article 5 (2) is relevant for pre-contractual information: each trader has to provide the information as listed in points (a) to (h) of Article 5 (1) "in so far as it is relevant for the respective travel services they offer", i.e. including point (c) on the price. This means that each service provider will have to indicate the price of his service, including additional fees, charges and other costs, but not the total price for all combined services. Under Article 6(2), the organiser and the second trader will not be able to ask for additional fees, charges and other costs if they did not inform the traveller on those fees, charges and costs. Under Article 7 (3) (2), as soon as the organiser is informed that a package has been created (through the booking of a second travel service), he has to provide to the traveller the information referred to in point (a) to (h) of Article 7 (2).

Questions regarding Chapter III - price changes and termination

22) Article 10(1) and (4) – price reduction - How is the traveller supposed to know whether and when he is entitled to a price reduction?

COM noted that, in practice, price reduction under Article 10 (4) will largely depend on the organiser's diligence. However, travellers can, of course, observe the market and if, for instance, they notice a significant change in the relevant exchange rate or fuel costs, they can approach the organiser. Consumer organisations may also become active in that respect.

23) Article 12(1) – termination – Is the organiser also required to give the traveller a justification for the amount of the termination fees in case of standard fees, or does that requirement only apply in cases where no standard fees are specified in the contract?

COM noted that it may not be entirely clear whether the last sentence of Article 12 (1) (justification for the amount of the termination fees) applies only to the third sentence (case-by-case termination fee) or also to the second sentence (standardised termination fees). However, COM saw no reason why the traveller should not be able to request justification of standardised termination fees to see whether they are "reasonable". The type of justification relating to sentences 2 and 3 may be different though, focussing on typical, more abstract scenarios for sentence two, and more specific circumstances in relation to sentence 3.

Questions regarding Chapter IV - liability

24) Article 13(5) and (6) – responsibility for performance - Could COM give a general elaboration on the correlation between these articles with special attention to the following questions: Will a situation where a significant proportion of the travel services cannot be provided not always constitute a situation where a lack of conformity substantially affects the performance of the package? That would explain why in language versions other than the English version there is an "also" before "without terminating the package" in Article 13(6)(2).
What is the consequence of the traveller's termination of the contract according to Article 13(6)(1)? Does the traveller get his money back?
What is the purpose of Article 13(6)(2)? If the traveller does not terminate the contract, it seems that he would have the right to price reduction and/or compensation directly according to Article 14 anyway? Can COM confirm that the only difference is then the fact that he has the right to repatriation under Article 13 (6) (2)?

COM agreed that there is a certain overlap between Article 13(6)(1) and Article 13(6)(2). The situation where a significant proportion of the travel services cannot be provided as agreed but where it is impossible to provide alternative arrangement or where the traveller rejects the alternative arrangements offered by the organiser (Art. 13 (5) and Art. 13(6)(2)), will generally mean that there is a lack of conformity which substantially affects the performance of the package (Art. 13 (6) (1)). Pursuant to Article 13(6)(1) and Article 13(6)(2) the traveller is entitled to price reduction and/or compensation under Article 14, which will imply a refund and potentially additional compensation as well as entitlement to repatriation. The main purpose of Article 13(6)(2) is to clarify that in this particular subgroup, where no alternative arrangements are offered or accepted, the traveller is entitled to those rights also without a formal termination of the contract (as under Article 4 (7) (2) of Directive 90/314). Whether there is an "also" in the text of Art. 13(6)(2), as it is the case in some language versions, or not, as it is the case in the English version, would not appear to make any difference in that respect. Article 14 (1) and (3) grants the general rights to price reduction and compensation in the event of any lack of conformity, including in cases where the trip or holiday is already completed, but was not of the agreed quality, or where the problem was not very significant. Article 13 (6) provides, in addition, that where there are significant problems *during the performance* of the contract that are not resolved under Article 13 (3) and (5), the traveller may terminate the trip or holiday and has to be repatriated, i.e. the travellers does not have to stay until the initially agreed time of departure, but also confirms that, in such cases, price Article 14 (1) – price reduction - and (3) –compensation - applies.

25) Article 14(4) – compensation - Does the limitation to pay compensation to three times the total price of the package correspond to the total price per passenger or the total price overall in case of more than one passenger? In case of the latter, the maximum could be much higher, even though only one traveller has the right to compensation.

COM noted that the text of the second sentence of Article 14(4) third sentence is not entirely clear as to whether it refers to the total price of the package for the whole family/party or only for the proportion of the price for the affected traveller. The question of whether the price of the package per traveller or the price for the whole group applies can make a significant difference, in particular in cases of larger groups and where only particular individuals are affected by the lack of conformity and where this is not a matter of personal injury[3]. While the term "total price of the package" might suggest that the price for all participants is meant, it is not certain that that was the intention. On the other hand, the idea of a proportionate limitation may be better taken into account if, in cases where only one traveller out of a larger group is affected, only the price of the package for that person is taken into account. COM wondered whether the Member States who already have similar rules in their national laws have any views on this point, but there were not comments.

III. Discussion on a potential 6th workshop

According to feedback received prior to the workshop, the Member States did not identify a strong need for an additional workshop, which may also be related to the advanced stage of the transposition process in several Member States. With few exceptions, this was confirmed at the workshop. While concluding that there would not be an additional workshop during the transposition phase, the COM stated that the Member States could still send further comments and questions to the COM. Moreover, after the transposition deadline, an *ad hoc* meeting may still be organised regarding the administrative cooperation between national authorities.

When asked about the current state of the transposition process, DE, LU and NL indicated that they have already launched the parliamentary procedure and CZ and PL indicated that that they would still do so before the summer break. In FR the transposition act will be adopted in the form of an "ordonnance". Amongst the other MS nobody anticipated problems in meeting the transposition deadline 1 January 2018.

IV. The UNWTO's work on an international convention on tourism, including an annex on package travel

COM provided an update on the progress with the draft Convention on the Protection of Tourists and the Rights and Obligations of Tourism Service Providers. COM explained that, on 27 March 2017 it had received a negotiating mandate for the Convention, including its Annexes II (package travel) and III (accommodation services), and that, at the level of the UNWTO, the initial timetable of finalising the Convention in September 2017 had been abandoned. COM also explained that the negotiations are accompanied by a special Council

[3] In the case of personal injury, intention or negligence this possibility to limit liability does not exsit.

committee, whose next meeting would take place on 13 June 2017, and through which the national experts could provide any comments.

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Closing remarks

COM thanked the Member States for their participation in the workshops and expressed its hope that all Member States will transpose the Directive on time. COM repeated that, while there would not be a 6th workshop, MS would be welcome to contact it if there were any further queries.

COM asked MS to send by 30 June 2017:

- any comments that they may have on ETTSA's draft Industry Guidance, including the classification of certain borderline examples, as well as the presentation of compulsory information on LTAs in cases where a trader facilitating an LTA receives no payments from travellers;
- any updates on their future insolvency protection system, using the format of the two existing Word documents; please also include information on the way in which continuation of the package is offered in your country;
- information on their position regarding a particular certificate through which a traveller would be informed that an LTA had been formed in cases where the traveller is entitled to insolvency protection.

In addition, MS were invited to further reflect on practical aspects of mutual recognition and administrative cooperation.