

WORKING DOCUMENT OF THE COMMISSION

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

SUMMARY OF RESPONSES

The Commission has prepared this summary on the basis of the contributions to the Working document that was published on the SANCO web page in July 2007. All replies sent in until mid November have been considered in this summary.

1. General

Respondents widely endorse the Commission's description of the way the travel market has evolved since the Directive was adopted. They equally recognise the issues the Commission has raised and deems may be necessary to be dealt with. Some respondents call for a consistent approach, whenever possible, with the Review of the Consumer Acquis and the implementation of the Unfair Commercial Practices Directive.

2. Scope of the Directive and definitions

Almost all the **Member States and all consumer stakeholders** call for a clarification regarding the scope of the Directive. Most of them, together with approximately half of the business stakeholders, think that the Directive should cover packages, which are put together at the demand of the consumer (dynamic packaging). The provisions of the Directive do not presently reflect this reality. Respondents widely recognise the problematic issue of distinguishing which travelling arrangements should be considered as dynamic packages. The issue particularly arises with interlinked web sites. Indeed, it is a problem that retailers by selling different elements of the package, for instance airline ticket and accommodation, on different web sites and under different company names, claim that the consumer has concluded several independent contracts while the latter was under the impression that the contracts represented one unique package. In doing so, retailers may sell packages which circumvent the Directive. In line with this, there is a strong call from a majority of the respondents to revise and clarify definitions such as "pre-arranged", "inclusive price" and "other tourist services". One Member State suggests drawing up an indicative list of "other tourist services". A handful of replies raises the issue that there is a need for consumers to be better informed on the protection they can/may obtain when they purchase a particular journey.

Albeit **business stakeholders** unanimously support the need for revision, they hold different views on how the revision should take place. While half of them believe that dynamic packages should be covered by the Directive, the remaining business stakeholders are divided. One half requests an extension of the Directive to all kinds of travel services. The other half believes that there is no need for a Directive at all. Indeed, they deem that travel services should be considered like any other service with the exception of repatriation in case of bankruptcy, which may have to be regulated separately. They emphasise that, today, package tour operators have a competitive disadvantage with those organisers/retailers that are not covered by the Directive and thus are not obliged to set financial guarantees and take responsibility for sub-service providers.

A minority of the respondents, evenly split between the different stakeholder groups, address the issue of package tours **lasting less than 24 hours or which do not include overnight accommodation**. They question whether these should continue to be exempted from the scope of the Directive. Member States are divided over this issue. Consumer stakeholders favour the inclusion of these arrangements in the Directive. Conversely, the majority of businesses are against such an inclusion.

Those in favour underline that passengers of short trips are just as much in need of protection considering that a short trip may be as costly as a trip lasting several days (e.g. an excursion to a football game or to a theatrical performance). Those against argue that the extension of the application of the Directive to such package tours would increase costs and have a negative impact on the market of, for instance, daily bus excursions.

Organisers **occasionally organising package tours** (for instance schools, churches, third age organisations) are currently excluded from the scope of the Directive leading to a number of comments on behalf of 20% of the respondents from all stakeholder groups. Almost all of them wish to have "occasional" packages included within the Directive. In line with a few of the responses, there may be a need to clarify the term "occasionally" and draw the line between small group trips and trips organised for hundreds of people.

Although very few stakeholders comment on **cruises**, the outcome of the consultation shows that it may be necessary to clarify when a "cruise" may be considered to be a package. A small number of consumer stakeholders raise the issue of the consumer protection for **hotel** stays and "holiday home" rentals. They remain dissatisfied with the different level of protection that consumers benefit from in comparison to package travel. Conversely, the hotel industry signals that the combination of accommodation and tourist services other than transport should be exempted from the scope of the Directive. As far as financial guarantees are concerned they argue that hotels generally do not receive substantial payment in advance and do not pose a risk of insolvency as they have tangible assets.

The Directive covers every individual leaving on a package tour, whether a consumer or a professional. Member States, consumer stakeholders and businesses are equally divided over whether a **revised Directive should be limited to consumers or kept as it is**.

Approximately half of the respondents in the different stakeholder groups are in favour of including all passengers into the scope of the Directive. They believe that it would be far too difficult to decide in each case whether the passenger is a consumer or not, in particular when it is a mixed purpose trip. They equally note that other travel legislation and conventions make no distinction between consumer and professional. Student or third age group bookings raise an additional issue. Such passengers should, according to consumer stakeholders, be covered by consumer protection rules; however in Member States these bookings do not come under consumer law.

Those who wish to limit the scope of the Directive solely to consumers highlight the necessary consistency with the rest of the Consumer acquis. They also underline the fact that consumers and professionals have diverging needs of protection. It is argued that the Directive is intended to apply to holidays and tourism and that therefore there is no reason for the Directive to cover business travel.

3. Liability of organiser and retailer

The majority of stakeholders, in particular businesses, **call for a clarification of the responsibility of the organiser and the retailer**. Those stakeholders who are happy with today's state of play generally base their opinion on the way their Member State applies the Directive rather than on the Directive itself. A consumer stakeholder notes that, in practice, organisers, retailers and airlines mutually accuse each other of being responsible when a problem occurs, which generates consumer complaints.

The situation is often further complicated when organisers and retailers established in different Member States are involved. A majority of the stakeholders are in favour of a system whereby the organiser should take responsibility for the arrangements made for the duration of the journey as he is the person who may influence them. The retailer's responsibility should be limited to the explicit information he himself provides.

However, a retailer who puts together packages, as opposed to simply acting as an intermediary, should be considered as an organiser. A few consumer stakeholders have raised the possibility of establishing "joint liability" in situations where the consumer buys his package tour from a retailer in his own Member State while the organiser is established in another Member State. Should any issue arise, this would enable the consumer to turn to the retailer in his own country instead of having to correspond with the organiser abroad.

There are divergent views as to whether consumers' right to **moral damages** should be clarified or elaborated on by the Directive. Consumer stakeholders are generally in favour of such a clarification underlining the specificity of holiday arrangements in which consumers have very high expectations and where important interests are at stake. Businesses are against such a clarification. Member States are divided over the issue, the majority of which indicating that a right to moral damages already exists in their own national legislation.

4. Information requirements

4.1. Information provided in the contract

A minority of stakeholders comment on the information to be provided in the contract, listed in the annex of the Directive. It therefore appears that the list drawn up in the annex is broadly adequate and that substantial changes are therefore not required.

A small number of consumer stakeholders and Member States raise the eventuality of revising, or at least clarifying, the provision on limited information requirements in the case of **last minute bookings**.

4.2. Pre-contractual information and information to provide before departure

Consumer stakeholders suggest a number of key information obligations the organiser should be required to provide in the brochure. All of them stress that all information, including prices, must be given in writing or some other form and not only on the web. **Many consumers do not have access to the internet** and it is a matter of principle that the consumer should be informed rather than having to seek out the information himself.

Conversely, business stakeholders explain that the provision on information in brochures is out of date. It is not possible to keep prices up to date as it is stated in the Directive. Indeed, prices are nowadays subject to rapid changes as they vary over time. Businesses feel consumers can find the prices on the web. Some of them suggest that the brochure could indicate reference prices or explain the method of calculation of the price. Later adjustments could be made on the internet. Businesses are overridingly concerned that **not too many information requirements** should be imposed on them in order not to put too much burden on their activities.

In their turn, Member States generally do not appear to have major concerns about the information requirements in the present Directive. With few exceptions, all Member States endorse the solution whereby consumers must have access to **updated prices in other ways than merely by a reference in the brochure to a website**. They put forward various solutions such as separate price lists, toll free numbers or other written media. They equally stress the **importance of written proof as a basis for solving/regulating future disputes**. Stemming from this, it is suggested that it may be worth considering whether only selected information should form part of the contract as opposed to complete information listed on a web site.

4.3. Specific information requirements to package travel

A few stakeholders have explicitly commented on the information requirements regarding hotel classification and passport/visa and health requirements. A number of Member States and business stakeholders suggest removing the obligation to indicate the **classification of hotel accommodation**. Indeed they find such information ineffective given that the classification varies, first between Member States where "one star" implies different standards in each country, and second between the different organisers' own rating systems. On the contrary a few Member States and consumer organisations ask for clearer information in the Directive on the meaning of the classification. Only a very small number of consumer and business stakeholders suggest the introduction of a harmonised EU classification system. As far as **passport/visa and health requirements** are concerned, a handful of Member States and business stakeholders feel that only limited information should be provided to the consumer. They suggest indicating to consumers where to turn to for such information. They argue that passport and visa requirements may vary at short notice and that the organiser should not be held responsible for keeping up to date with such changes.

5. Price variations

According to the Directive the prices laid down in the contract **may not be increased during the 20 days prior to departure**. Prices may only be increased prior to those 20 days if transport costs (fuel), taxes and/or exchange rates increase.

A majority of Member States and ECCs have not reported any concerns with the provision. Some of them stress the need to clearly inform consumers about the circumstances under which prices may be subject to changes. A very small number of consumer stakeholders and Member States would welcome prolonging the 20 days period and/or **suggest establishing a maximum price increase percentage**. One Member State questions the need in many cases to increase prices due to changes in fuel prices given that it is common business practice to hedge against price increases. Meanwhile, a clear majority of business stakeholders criticise the provision, calling for more flexibility to increase prices if and whenever necessary. According to these businesses the 20 day period is too long. They call for the **possibility to cover their price increases** in extreme cases, for instance after the 9/11 terrorist attack.

The very few respondents, Member States and consumer stakeholders, who commented on whether there should be a right for the organiser/retailer to claim administrative costs connected to price increases due to altering fuel prices for instance, held the view that such costs should not be passed onto the consumer.

6. Cancellation of the contract by the consumer and right to compensation

If the organiser is constrained to significantly alter any of the essential terms, such as the price, the consumer may withdraw from the contract and be compensated. If the organiser cancels the package the consumer may be compensated except when the cancellation is justified by an insufficient number of participants.

A majority of both Member States and consumer stakeholders ask for a **clarification of "essential terms"**, although some believe it would be **difficult to draw up any exhaustive list** of terms. Indeed, the perception on what is deemed to be "essential" varies from consumer to consumer. This issue has attracted less interest on behalf of the businesses, however among those addressing the matter the views are divided over the necessity to clarify the notion "essential terms". Business stakeholders unanimously argue **against compensation to consumers in cases where cancellation is made due to a too small number of participants**. According to them, the provision is reasonable and the introduction of a right to compensation in these cases would result in a reduction of the number of holidays proposed and an increase in prices. Both Member States and consumer stakeholders are divided over whether consumers should have the right to compensation in the case of cancellation when there is an insufficient number of participants. In a few Member States no cancellation may be made later than a certain number of days before departure and from the consumer side it is suggested that such a provision should be included in the revised Directive. They also suggest that the organiser should be obliged to provide the proof that he cancels a journey due to an insufficient number of participants so as to avoid that this is used as an excuse to cancel when in fact there are other reasons for doing so.

The idea of a **generalised method of calculation of compensation meets no support**, neither among business stakeholders nor Member States. They claim the need for a case by case approach. Almost half of consumer stakeholders support the idea, at least to establish a minimum level of compensation or to establish common guidelines in this respect. Two of them even propose the introduction of a flat rate compensation system.

7. Consumer complaints

In cases of consumer complaints, the organiser/retailer or his local representative must, according to the Directive, make **"prompt efforts"** to find **"appropriate solutions"**. There are different views within the stakeholder groups on whether there is a need to clarify these notions or, due to the need for an individual assessment in each case and the fact that the notions reflect good business practice, leave them undefined. Consumer stakeholders generally call for clarification. However, this does not appear to be the most important issue.

8. Refund and repatriation in case of insolvency

The organiser/retailer is obliged to provide sufficient evidence of security for the **refund of money paid and the repatriation of the consumer in the event of insolvency**.

The idea of a **common EU security system meets no support among most stakeholders**. Even if a small number of them find this an interesting possibility, such a system is considered to be too difficult to introduce in practice.

A majority of the Member States addressing the issue show interest for an increased cooperation notably to exchange best practices. Both Member State and business stakeholder responses raise the need to clarify how to handle cross-border cases where an organiser sells packages in another Member State.

A large number of stakeholders find that the fact that organisers/retailers, but not airlines, have to provide the consumer with a financial security against insolvency creates **market distortion**. Many stakeholders from all stakeholder groups argue that airlines just as much as all service providers should set guarantees. According to these respondents, airlines carry similar risks to organisers/retailers when it comes to the length of time between the reception of payments and the execution of services. A few contributions, both from business and consumer stakeholders, suggest introducing a specific trust mark indicating to consumers whether they are protected or not.

Those stakeholders who are against enlarging the scope of the requirement to provide guarantees highlight that such an extension would not serve any purpose but rather obstruct new developments in tourism and prove to be a **hindering factor for smaller companies and new entrants** in the business. One respondent illustrates this with the following example: if all service providers were to provide a guarantee, this would require in practice that a small hotel in Lithuania, which may be booked by telephone or fax, provides the guest with a security voucher. It could even require a restaurant, a theatre, a ship or a bus-trip to provide insolvency protection schemes for their customers. One Member State stresses that, in the case of airlines, a **licence system for scheduled airlines** already exists, according to which the latter must be solvent.

9. Some other issues brought forward in the consultation replies

- The establishment of partial refund in the case of force majeure. Need for interpretation of the term "force majeure" which is often used to justify non-compensation.
- The impact of offshore companies promoting and selling their products in the EU.
- The need for clarification and the introduction of information requirements on the ways consumers may seek recourse.
- The need for clarification of the burden of proof: The consumer must demonstrate whether the package does not correspond to the contract.
- The introduction of provisions taking into account the needs of handicapped individuals.
- The consideration of pilgrim packages when reviewing the Directive.
- The introduction of sanctions for cases where the organiser/retailer does not respect requirements provided by the Directive.
- The clarification of the respective responsibility of the organiser and the airline when, for instance, a flight included in a package is cancelled.

- The application of the Distance Selling Directive, in particular in relation to its right of withdrawal, in the case of the purchase of a package travel by distance selling methods.
- The clarification and possible harmonisation of Article 5.2. of the Package travel Directive regarding Member States' right to limit the responsibility of organisers/retailers in accordance with international conventions.
- The introduction of obligations for consumers, for instance to control the validity of their travel documents, to bring their passport/visa on the journey, to behave reasonably during the journey and to give correct information regarding personal data.