

Approved Resolutions for Association for Consumer Rights AGM 29 March 2014

2. Package Travel and Consumer Rights

Package Travel, Package Holidays and Package Tours

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Justification

Given the increase in travelling across the EU and the increase in mobility by EU citizens for various reasons the Proposal for a Directive 90/314/EEC on package travel is very timely as it recognises the rights of different citizens in different contexts of travel situations

- The Directive on package travel and assisted travel arrangements is a long awaited update of the 1990 Package Travel Directive. This updated directive includes the new digital media as a tool enabling consumers to book their holidays and eliminates some outdated elements
- The proposal aims to secure greater transparency for consumers, ensuring that consumers are informed of the kind of contract they are entering into and their respective rights. This aims to avoid the recurrence of past instances when consumers may have been misled in believing that they were protected

. The **scope** covers a wider range of travel and includes:

- pre-arranged packages, from a retailer or online provider;
- the new category of customised packages contracted from an online provider or high street retailer;
- other customised travel arrangements (assisted travel arrangements), where a retailer or online travel service provider acts as intermediary

Recommendations

The **definition** of 'travel' should include

- business travel, or a combination of business and
- occasional travel organisers should to ensure a level playing field and also adequate consumer protection.
- packages and assisted travel arrangements lasting less than 24 hours should be included in the scope of the proposal. As the duration is limited, the risk for the trader is lower and consumers may be confronted with as many problems as with any other package. In addition, in some countries, this limit does not exist;
- booking particulars should include any particular of the client being transferred and not merely credit card information

Access to information

- Although the dissemination of information today is mostly by digital means, there are still a number of European consumers who do not have this facility, either by choice or because of limited access, and should not be discriminated against when it comes to access to information on their travel packages or updating this information.

- The methodology for transparency should be clear and practicable for ease of reference and not left entirely into the retailers' discretion.
- “reasonable” fees for cancellation need to be more clearly defined, and strongly emphasises that EUR 100 compensation is insufficient and reduces current consumer rights.

Transparency

Clear and more information for consumers on what they are agreeing to. However, putting this transparency into practice may not be as straightforward as it seems, given that the methodology for implementing it is left up to the retailer.

- Responsibility should lie with both the organiser and the retailer, not just the organiser
- Consumers are often confused as to who is who in the contractual chain and very often identify the retailer as the contractual counterpart.
- Furthermore, consumers should not be left to rely on the retailer's goodwill to transfer complaints. The consumer needs to be given all information at the contract stage and informed in writing of any changes

Special rules on publication

Consumers who refrain from using the Internet, out of choice or lack of resources, should not be disadvantaged in terms of access to correct information.

Pre-contractual information and changes to the contract

Pre-contractual information should be provided in a durable form so that consumers can read it at any time. Although information, either pre-contractual or contractual, provided to the traveller can be changed, information related to the name and the address of the provider are too important to be changed, and should therefore not be subject to change.

- Significant changes to the contract should only be possible if they do not entail inconvenience for the passenger. Moreover, the acceptance of the changes by the consumer should be explicit, not tacit
- The right of the organiser to cancel the package if the minimum number of persons required is not reached should be deleted. Although this possibility already exists in the current directive it can no longer be justified, as technology now allows traders to easily foresee and manage the risks involved in their offers and operations.
- The contracts should be in the consumer's language and the text should be such that a consumer can understand

Cancellation rights

- Consumers will not only retain the right to transfer a contract to a third person but also to cancel a contract under the new rules. Should they do so, they will be obliged to pay a reasonable fee to the organiser to cover costs incurred.
- The extension of the consumer's right to cancel before departure is included in the new directive. However, the real value of "reasonable" fees in case of termination by the consumer needs to be established.

- The directive should set up general principles or rules on how to calculate the compensation due by the consumer. The fees should not be disproportionate or excessive.
- Moreover, the consumer should be able to cancel the contract for reasons that are unforeseen and beyond one's control, such as illness or a death in the family, without paying compensation, this being a corollary of the proposed right of the organiser to cancel in cases of force majeure without paying compensation.
- **Liability for non-performance**
- The compensation of up to EUR 100 and three nights per traveller is completely unacceptable. It contradicts the general liability of the organiser to perform the package as agreed with the consumer. Furthermore it is against the principle of "full compensation" for damages, which is a general principle of law in all EU Member States.
- The proposed directive specifically includes the rights of disabled persons. The price limit should never be applied for persons with reduced mobility (PRMs).
- Certification of accessibility and the relevant standardisation should also be included, as this would provide invaluable information to the travel agent.
- The principle of placing responsibility on the traveller to notify the organiser of "their (the traveller's) particular needs at least 48 hours before the start of the package" should also apply to people with disabilities.
- Often the traveller would like to do this but cannot find a way of communicating this information to the organiser. Hence, it is important that the methods for communicating such information be made clear to the traveller (these might, for instance, include a specific field in the online application form).

An improved system of redress

- Redress is a crucial aspect for consumer protection. Until now, consumers were sometimes faced with a situation in which the burden of responsibility shifted from one service provider to another, leaving the consumer in an exasperating situation.
- The proposed outlines the need for a single point of contact in case something goes wrong.
- There is the need of simplifying redress for consumers by having one single point of contact for when something goes wrong in customised package travel.
- This single point of contact should be made clear from the very start of discussions on a contract for a package holiday.
- Consumers should have reasonable time to lodge their complaint and not be compelled to do immediately; in this way they will not be denied their right to redress after the travel period.
- Furthermore, although individual travel arrangements are not covered by this directive, they should not involve any lesser degree of consumer protection.

Consolidation of legal provision

- There is a problem with legal fragmentation in travel and holiday rights and that a more harmonised approach is required.

- Travel and holidays are not covered under General Consumer Rights legislation, as from the Consumers Rights Directive 2011/83. This exclusion gives rise to the fragmentation and weak protection for European consumers when travelling.
- Furthermore, whereas individual travel is covered in a different way under other directives and is accorded specific rights by these directives, the variety and range of rights in the different directives do create further confusion for the traveller.