



European Economic and Social Committee

INT/710
**Package travel, package
holidays and package tours**

Brussels, 11 December 2013

OPINION

of the

European Economic and Social Committee

on the

Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC
COM(2013) 512 final – 2013/0246 (COD)

Rapporteur-General: **Ms Darmanin**

INT/710 - CES5087-2013_00_00_TRA_AC – 2013/0246 (COD)

On 6 September 2013 and on 10 September 2013 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC
COM(2013) 512 final– 2013/0246 (COD).

On 12 November 2013 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Ms Darmanin as rapporteur-general at its 494th plenary session, held on 10 and 11 December 2013 (meeting of 11 December), and adopted the following opinion by 96 votes to one with three abstentions.

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1. **Recommendations**

1.1 The EESC welcomes the Proposal for a Directive on package travel and assisted travel arrangements. It acknowledges that the scope and definitions set out in the directive constitute a core component of the proposal, and therefore recommends that:

- business travel, or a combination of business and pleasure not purchased under a framework contract which takes the form of package travel or assisted travel arrangements, clearly fall within the scope of the proposal;
- occasional travel organisers should also fall within the scope of this directive to ensure a level playing field and also adequate consumer protection. Hence the removal of "occasionally organised travel" from point 19 of the proposal;
- 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 as referred to in the definition of assisted travel arrangement (Article 3(2)(v) should be any particular of the client being transferred and not merely credit card information as outlined in point 18 of the recital of the proposal;
- the last sentence of article 3(2)(b)(v) "at the latest when the booking of the first service is confirmed", should be deleted as a reference to a specific time frame is problematic and creates confusion;
- the references to "the same" and "separate" booking processes in articles 3(2)(b)(i) and 3(5)(a) respectively, should be deleted.

1.2 The EESC applauds the move towards more transparency. However the methodology for such transparency should be clear and practicable for ease of reference and not left entirely into the retailers' discretion.

1.3 Whereas the EESC supports the dissemination of information by digital means, the EESC points out that there are still a number of European consumers who do not have this facility, either by choice or because of limited access, and that they should not be discriminated against when it comes to access to information on their travel packages or updating this information.

1.4 The EESC recommends that "reasonable" fees for cancellation be more clearly defined, and strongly emphasises that EUR 100 compensation is insufficient and reduces current consumer rights.

1.5 The EESC believes it is possible to amend Directive 90/314/EEC, adapting it to new technologies without having to decrease the level of consumer protection.

2. **Background**

2.1 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.

2.2 The Commission began work on the revision of this directive in 2007, going through impact assessments, the consultation process and specific stakeholder meetings.

3. **Definition**

3.1 A core element of the updated directive is the scope of the directive and the definitions it provides. 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.

3.2 The scope of the directive does not cover independent travel arrangements or business travel arrangements and defines other areas excluded in Article 2. In this regard the EESC emphasises that the exclusion under Article 2(2)(c) should in no way effect the entrepreneur or one of their employees who takes up an assisted travel arrangement or package travel for the purpose of work, or a combination of work and pleasure, which do not fall under a framework contract. Hence, to all intents and purposes such travel would fall within the definition of travel package and/or assisted travel arrangements.

3.3 This new definition ensures that package travel has a broader scope than simply the traditional package holiday; it also includes more modern trends in holiday-making, thus covering an additional 23% of holiday-makers. It is expected that nearly half of holiday-makers will be covered by this new directive (46%)¹. Whereas 7 out of 10 traditional travel packages are purchased at a physical travel agent, a number of consumers purchase such traditional packages online, and increasing use is also being made of the Internet for tailor made packages².

3.4 The EESC welcomes this new broader definition of package travel, which clearly addresses issues raised by customised travel packages which were not covered by the 1990 directive, despite the fact that consumers were generally under the impression that they were protected. In the EESC's view, package travel does not necessarily combine transport and accommodation: instead, it is a combination of at least two different components, whether car rental or excursions, transport, accommodation, sports or any other component pertaining to one's holiday.

3.5 The definition of package under Article 3(2) defines a wide range of aspects of package travel. The EESC is satisfied with the definition but points out that "particulars" as stipulated in point 2(b)(v) of this article should be any booking particulars of the client that are transferred and not merely credit card information as pointed out in the Explanatory Memorandum (point 18) of the directive. The EESC therefore recommends that the last two sentences of point 18 of the recital be deleted. Furthermore, the EESC stresses that such transfers of particulars should not be tied to a specific moment in time and therefore recommends that the wording in recital 18 and Article 3(2)(b)(v) "at the latest when the booking of the first service is confirmed" be deleted altogether.

¹ Data derived from the EC Impact Assessment SWD(2013) 263 final.

² Survey carried out by BEUC and its members on "Holiday and Travel".

3.6 The EESC points out that the directive should also apply to occasional organisers of travel packages, whose responsibilities and obligations should also be covered. This would ensure that a consumer is protected irrespective of the organiser of the travel and also ensure a level playing field for organisers of travel packages. Hence, the EESC recommends that the phrase "occasionally organised packages" should be deleted from point 19 of the Explanatory Memorandum to the directive.

3.7 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 exist³.

4. **Transparency**

4.1 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.

4.2 The EESC is in favour of 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.

4.3 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, hence the proper implementation of article 13 is paramount.

5. **Special rules on publication**

5.1 The requirement to reprint brochures stipulated in the 1990 directive has been repealed since the Internet has heralded a new era of information for consumers. Removing this requirement will save the industry EUR390 million per year⁴. However, the new proposal still requires that the consumer be given all information at the contract stage and informed in writing of any changes.

5.2 The EESC welcomes the savings for the industry, and strongly advocates that this saving be channelled into innovation, employment and growth. However, the EESC believes that

³ In Hungary and Austria for instance journeys of less than 24 hours are covered. Already in some countries (ex. Spain) it is increasingly frequent to offer combinations consisting of transport + dinner + tickets to attend a show or a sporting event, the whole service being performed in less than 24 hours without accommodation.

⁴ Data derived from the EC Impact Assessment SWD(2013) 263 final.

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.

6. **Pre-contractual information and changes to the contract**

- 6.1 The EESC emphasises the need that pre contractual information should be provided in a durable form so that consumers can read it at any time.
- 6.2 Furthermore, the EESC accepts that information, either pre contractual or contractual, provided to the traveller can be changed, but 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.
- 6.3 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 as is being proposed in Article 9.2 (b).
- 6.4 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.
- 6.5 The contracts should be in the consumer's language.

7. **Cancellation rights**

- 7.1 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.
- 7.2 The EESC supports the extension of the consumer's right to cancel before departure. However, it questions the real value of "reasonable" fees in case of termination by the consumer. 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.
- 7.3 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.

8. **Liability for non-performance**

- 8.1 The compensation of up to EUR 100 and three nights per traveller is completely unacceptable to the EESC. 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 price limit should never be applied for persons with reduced mobility (PRMs).
- 8.2 The EESC is glad to note that the proposed directive specifically includes the rights of disabled persons, for example in Chapter 4.
- 8.3 The EESC recommends to the Commission that the recital of the Proposed Directive should include references to certification of accessibility and the standardisation thereof, as this would provide invaluable information to the travel agent.
- 8.4 The EESC agrees that 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. However, the Committee points out that 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).

9. **An improved system of redress**

- 9.1 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 proposal outlines the need for a single point of contact in case something goes wrong.
- 9.2 The EESC is in favour 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.
- 9.3 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.

10. **Impact of the proposal**

- 10.1 The EESC recognises the significant impact of this new proposal, both on consumers and on business. There are a number of benefits for both parties, as outlined in the Commission press releases on this subject.

10.2 The revised proposal will result in stronger consumer protection in certain areas and savings for the industry. Despite this, the EESC is still concerned about the proper implementation of information that shall be passed on to the consumer and clear responsibilities from the industry.

10.3 Furthermore, although individual travel arrangements are not covered by this directive, they should not involve any lesser degree of consumer protection.

11. **Consolidation of legal provisions**

11.1 The EESC notes that 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 by these directives, the variety and range of rights in the different directives do create further confusion for the traveller.

12. **Insolvency**

12.1 The protection of consumers against insolvency contained in the proposal is positive, to avoid situations of helpless consumers trying to cope with insolvency situations when enjoying their vacation. However, administrative cooperation should be ensured and contact points provided should be operate quickly.

13. **Review**

13.1 The EESC is pleased to note that within 5 years the Commission aims to submit a review to the Council and the Parliament on the application of this proposal, and also to make legislative proposals. The EESC emphasises that such a review should start immediately the directive comes into force; this will ensure that a clear picture of the implementation is available in the early stages and legislative proposals will not require an exorbitant amount of time to be adopted.

14. **Harmonisation and relationship with general contract law**

14.1 The full harmonisation proposed by the Commission should not lead to a fall in the current level of consumer protection. Member States should have the freedom to supplement the rules of the directive and maintain existing rules at national level.

14.2 The EESC stresses that the system of specific remedies in case of non-performance or bad performance by the trader has implications for general contract law in the Member States and

that consequently the relationship between the proposal and general contract law needs to be clarified.

15. **Other Points**

- 15.1 Vague terms in the Commission's proposal, such as significant part (Article 2(2)(d), reasonable time limit (Article 9(2)(b) and disproportionate (Article11)(2), should be more clearly defined.
- 15.2 Points 2(b)(i) and 5(a) of Article 3 are contradictory and therefore need clarification.
- 15.3 The Commission should produce a non-exhaustive indicative list for other tourist services (Article 3(1)(d), in addition to the fees and the time limits referred in Article 10(1) and the extraordinary circumstances referred in Article12(3)(iii).

Brussels, 11 December 2013.

The President
of the
European Economic and Social Committee

Henri Malosse
