

Background information

Review of the consumer acquis: State of play and positions of ECTAA

1. The review of the consumer acquis

Over the past years, the Commission started a review of the European consumer protection legislations, often referred to as the consumer acquis. The aim of the review is to simplify, complete and improve the existing consumer protection regulatory framework.

The Community acquis on consumer protection is composed of 8 Directives, notably:

- Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises (Doorstep Selling Directive)
- Directive 90/314/EEC on package travel, package holidays and package tours
- Directive 93/13/EEC on unfair terms in consumer contracts
- Directive 94/47/EC on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (Timeshare Directive)
- Directive 97/7/EC on the protection of consumers in respect of distance contracts (Distance Selling Directive)
- Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers
- Directive 98/27/EC on injunctions for the protection of consumers' interests
- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

The European Commission has conducted consultations of all interested parties on how the consumer acquis should be revised. The Commission has already presented some proposals for revision (e.g. Timeshare Directive) and others will follow in the course of the next 2 years (including possibly the Package Travel Directive).

2. Positions of ECTAA

In the frame of the consultations, ECTAA has adopted the following positions:

2.1. Review of the Consumer Acquis

In general terms, ECTAA is in favour of a **one single consumer protection Directive** (often referred to as horizontal instrument), **which establishes basic rights of consumers in their contracts with any undertaking**, irrespective of the goods/services provided. **When necessary**, and only for those issues that are not regulated in the horizontal Directive, this horizontal Directive **could be supplemented by Directives that regulate specific contracts**.

ECTAA also insisted that the review of the acquis should **cover all consumer contracts** and **all Member States should apply the same rules**, i.e. they must not be allowed to adopt stricter provisions than the ones provided in the EU legislation.

2.2. Package Travel Directive

Directive 90/314 on package travel, package holidays and package tours is one of the most important European legislation for the Members of ECTAA. It imposes various obligations on organisers and sometimes on retailers of package travel. Minimum information on the package offered must be provided to the consumer, before and after the contract has been concluded. When the organiser is not able to provide the services making up the package, the consumer has the right either to accept modifications or to cancel the package, and in some instances, he is entitled to receive compensation. The organiser must constitute a financial guarantee to make sure that the consumer will be reimbursed or will be compensated if the organiser goes bankrupt.

In the frame of the Commission consultation on the Package Travel Directive, ECTAA advocated to **replace the sector specific legislation for package travel by one single consumer protection legislation covering all goods and services**, including travel services. Such legislation would cover all aspects of consumer protection, such as general information requirements, contract performance, contractual liability and guarantee of prepayments. This may be supplemented by a sector specific legislation which would cover aspects specific to travel services, such as repatriation of travellers when any travel service provider goes bankrupt.

However, should this option not be retained and the Package Travel Directive simply revised, then ECTAA strongly advocates for the **extension of its scope to cover all travel service providers who sell in their own name any form of combination of travel services**, in order to cover the practice of **dynamic packaging** and ensure a level playing field between all providers of travel services.

ECTAA also calls for **more flexibility** in terms of the **information on prices** that must be given to the consumer before he makes his booking and also on the possibility to **vary the price** after the contract is concluded.

Finally, ECTAA considers that **retailers**, who are merely intermediaries, **should be excluded from the Directive** and that **only organisers should have to provide a financial guarantee**. Airlines must be subject to the **same requirement** of providing a financial guarantee.

2.3. Distance Selling

Directive on Distance Selling regulates sales of goods or services that are made at a distance.

It contains an important exemption for travel agents and tour operators. Indeed, when selling accommodation, transport, catering or leisure services at a distance, travel agents are exempted from providing prior information, from confirming the sale in writing, from performing the contract within 30 days and more importantly, consumers cannot change their mind and withdraw from the contract that they concluded.

In the frame of the Commission consultation, **ECTAA insisted on the need to maintain the special exemption regime for accommodation, transport, catering or leisure services and in particular that no right to withdraw from the contract applies to such services.**

2.4. Doorstep Selling

Directive on Distance Selling regulates sales to consumers during an excursion that a trader is specifically organizing away from his business premises or during a visit by a trader to the consumer's home or to the consumer's place of work if the consumer has not expressly solicited the visit of the trader.

The most important element of this Directive is that it gives the consumer the possibility to change his mind and to renounce to his purchase within a given time limit. It was considered that the consumer needs to be particularly protected against those sales because he could be put under pressure to purchase something that he does not really want to.

In the frame of the questions raised in the Commission consultation document, ECTAA **strongly opposed the regulation of sales made at the consumer's home or place of work when the trader visited him at his specific request or sales made during a fair, like for example a travel fair**. In both cases, the consumer is not caught by surprise since he clearly expressed his intention to have contacts with a trader.
