

QUESTIONNAIRE FOR INDUSTRY ORGANISATIONS

Review of the Package Travel Directive

BACKGROUND

The Package Travel Directive (hereafter referred to as the **PTD**), which came into effect in 1990, is aimed at protecting consumers in the area of package travel. Some of the most important rules concern the liability of package organisers and retailers, who must accept responsibility for the performance of the services offered. The Directive also prescribes the minimum information that must be given to consumers and contains provisions on the security to be provided in the event of insolvency.

The travel sector has evolved considerably, especially with the development of the internet and the rise of low-cost air carriers. Consumers are also now putting together their own holiday components from different providers, instead of opting for pre-arranged packages. The Commission is considering reviewing the PTD in order to reflect the current market situation. This issue has already been the subject of number of studies and consultations available on DG SANCO's website http://ec.europa.eu/consumers/rights/travel_en.htm.

The aim of this survey is to evaluate the size of existing problems and assess possible policy options in terms of their economic, social and environmental impacts and comparing their relative merits, in order to identify a preferred policy option. Below, you will find a list of questions, which should help us identify advantages and drawbacks for each possible course of action on EU level on special consumer protection in the area of package travel. We recognise that some questions will be difficult to answer precisely; please give your best estimate where possible. Beyond the scope of these questions, please feel free to provide additional information at the e-mail address: sanco-b2@ec.europa.eu

We would like to receive your completed questionnaire by **7 February 2010**. Please also note that the **maximum time to complete each of the sections is 90 minutes**. **Partial responses will not be saved**. This means once you start filling in the questionnaire, you have to answer all compulsory questions to submit your response. You can, however, preview the whole questionnaire in a document format (pdf). Received contributions will be published on the Internet. It is important to read the specific privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with

For organisations: Since the launch in June 2008 of the Register for Interest Representatives (lobbyists) as part of the European Transparency Initiative, organisations are invited to use this Register to provide the European Commission and the public at large with information about their objectives, funding and structures. It is Commission policy that submissions from organisations will be considered as individual contributions unless the organisations have registered. (<http://ec.europa.eu/transparency/regrin/>)

SECTION A: ABOUT YOU AND YOUR ORGANISATION

Please provide **details about yourself and your organisation** below.

Name:	Mr. Michel de Blust
Organisation name:	ECTAA, the European Tour Operators' and Travel Agents' Associations
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Please indicate the **percentage of your member companies** with the following characteristics:

Number of employees:	<10 <input type="checkbox"/>	<50 <input type="checkbox"/>	<250 <input type="checkbox"/>	>250 <input type="checkbox"/>
Annual turnover:	<€2m <input type="checkbox"/>	<€10m <input type="checkbox"/>	<€50m <input type="checkbox"/>	>€50m <input type="checkbox"/>

Please indicate which EU Member States are covered by the **operations of your member companies**: (Please tick)

Austria		Germany		Netherlands		Across EU-27	X
Belgium		Greece		Poland		EFTA/EEA	X
Bulgaria		Hungary		Portugal		Candidate Countries	X
Cyprus		Ireland		Romania		Far East	
Czech Republic		Italy		Spain		North America	
Denmark		Latvia		Slovakia		Other Country	
Estonia		Lithuania		Slovenia			
Finland		Luxembourg		Sweden			
France		Malta		United Kingdom			

Indicate which of the following best describes **your member's operations**. Please tick all that apply (optional)

My members are organisers of travel combinations (where 'combinations' implies more than one component of a trip (i.e. two or more of transport, accommodation and tourist activities))	<input type="checkbox"/>
My members are sellers of pre-packaged combinations or deals containing any two of transport, accommodation and tourist activities	<input type="checkbox"/>
My members are sellers of combinations which are put together at the request of the consumer and purchased at the same time	<input type="checkbox"/>
My members are sellers of one travel component (e.g. flight-only, hotel only, or city tours only), but my members websites provide links to other websites where consumers may purchase other components	<input type="checkbox"/>
My members are sellers of stand-alone purchases of transport, accommodation and/or tourist activities	<input type="checkbox"/>
My members are service providers (in the areas of accommodation/transport/tourist services e.g. a hotel)	<input type="checkbox"/>
My members are none of the above (<i>please specify role</i>)	ECTAA is a European trade association, whose Members are national associations of tour operators and travel agents established in 25 Member States, Switzerland, Norway, Croatia and Turkey.

If your members have a significant market share of the national or EU market for a particular travel component or aspect, kindly provide information on this in the box below. *Please note that this information is important for assessing (and avoiding) disproportionate impacts of any changes to the PTD on specific markets, countries or travel products* (optional)

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SECTION B: DEFINITIONS, TERMINOLOGIES AND SCOPE OF THE DIRECTIVE

The Package Travel Directive (PTD) covers pre-arranged holiday packages which combine at least two of the following: (1) transport, (2) accommodation, (3) other tourist services not ancillary to transport or accommodation and accounting for a 'significant proportion of the package'. Consumers are covered where: (a) at least two of the above elements are sold at an inclusive price (disregarding separate billing) and (b) the service covers more than 24 hours or includes an overnight accommodation.

1. Using ticks, if a new PTD were introduced, indicate which of the following travel-related products or arrangements you think should be **within the scope**? (compulsory)

Accommodation, transport and/or other tourist services purchased as a package for an inclusive price (i.e. current definition of a package travel under the PTD)	X
Accommodation, transport and/or other tourist services purchased on the internet from the same site where consumers can assemble the content of the package	X
Accommodation, transport and/or other tourist services purchased on the internet from different sites which are clearly linked on their web pages	X
Cruises	X
Transport and tourist activities where the service covers a period of less than 24 hours (e.g. return flight and ticket to Wimbledon tennis match)	
Transportation which includes accommodation (e.g. overnight boat/train trips in a cabin with bed, etc)	
Packages purchased for solely business purposes	
Packages purchased for solely leisure purposes	X
Packages purchased for mixed purposes (private& business)	
Packages occasionally organised by a company which normally does not organise packages (e.g. package travel to Oktoberfest in Germany organised and sold by a bank for best clients once a year)	X
Packages occasionally organised by a non-business organisation (or not-for-profit organisation) which normally does not organise packages (e.g. package travel to Vatican for Christmas celebration organised and sold by the local church)	X
Do not know	
Other (please specify)	

2. What percentages of the products you currently sell include 'other tourist services' in sole combination with transport or in sole combination with accommodation as defined above? (compulsory)

<10% 10-20% 20-30% 30-40% >50% Not applicable

3. Would you agree with the term 'significant proportion of the package' (when referring to other tourist services) being clarified as a fixed minimum percentage of the overall package price? (optional)

YES NO Do not know

4. If **YES**, which of the following percentages do you agree with? (optional)

10% 20% 30% 40% 50% Other (specify)

SECTION C: INFORMATION REQUIREMENTS

The current PTD requires that certain specific information - which is comprehensible, accurate and not misleading - is made available to consumers at either the pre-contractual stage, in the contract, or simply **'in good time'** prior to the start of the journey. The following questions are intended to indicate, at which stage, you believe the following information should be provided.

5. On a scale of 1-5, indicate how important it is for you to receive information on the listed aspects in order to purchase a travel package? (5 = Essential, 4 = Very important, 3 = Important, 2 = Slightly important, 1 = Not important and 0 = Do not know) (compulsory)

Amount to be paid (money or %) on account and the schedule for paying balance	5
Other tourist activities included in the total price	5
Destination and the means and quality of transport to be used	5
Health requirements e.g. vaccinations required, "safe" practices	0
Meal plans	0
Name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call	0
Insurance possibilities or options	0
Passport and Visa requirements	0
Travel and holiday itinerary	0
Type and quality of accommodation and its location	5
Travel time, intermediate stops and transport connections/transits and details of the place to be occupied by the traveller (e.g. cabin or berth on ship, sleeper compartment on train)	0
Whether minimum number is required for package to take place and deadline for informing consumer of cancellation if numbers not achieved	5
Other (please specify)	
Other (please specify)	
Other (please specify)	

6. Indicate at which stage(s) you believe each of the following information should be compulsory to provide, if at all? **Please leave blank if you do not know or you believe it should not be compulsory** (optional)

Information on:	In the brochure	Pre contract	In the Contract	Before Departure	Should not be compulsory	Do not know
Amount to be paid (money or %) on account and the schedule for paying balance		X	X			
Other tourist activities included in the total price		X	X			
Destination and the means and quality of transport to be used		X	X			
Health requirements e.g. vaccinations required, "safe" practices		X				
Meal plans		X	X			
Name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call				X		
Insurance possibilities or options		X				
Passport and Visa requirements		X				
Travel and holiday itinerary						X

Information on:	In the brochure	Pre contract	In the Contract	Before Departure	Should not be compulsory	Do not know
Type and quality of accommodation and its location		X	X			
Travel time, intermediate stops and transport connections/transits and details of the place to be occupied by the traveller (e.g. cabin or berth on ship, sleeper compartment on train)				X		
Whether minimum number is required for package to take place and deadline for informing consumer of cancellation if numbers not achieved		X	X			
Other (please specify)						
Other (please specify)						
Other (please specify)						

7. The PTD does not specify the form in which information is to be provided to the consumer. Assuming all information has to be provided in the same form at each stage, indicate the form in which you believe this information should be provided? (compulsory)

	On paper or other printed means	On durable medium (e.g. emails, fax, cd-roms)	On websites or other marketing material	Other (please specify)	No formal requirement needed
At the pre-contract stage					X
In the Contract					X
Before Departure					X

8. Who should be **responsible for providing information** to consumers after the contract is signed? (optional)

The Organiser/ Tour Operator The Retailer/ Seller/Travel Agent Other parties (specify)

9. Which of these do you consider to be a **last minute booking**? (compulsory) Bookings made:

7 - 14 days before departure 3 - 7 days before departure 2 days before departure 24 hrs before departure or less Other (specify) 0-14 days

10. Do you think there is a need for special rules regarding information requirement for last minute bookings given the short period of time between signing the contract and departure. If YES, please specify

Yes. Information requirements should be reduced and more flexible, taking into account the fact that last minute bookings are close to departure. Article 4 (2) (c) of the Package Travel Directive should be maintained.

11. Currently, what is the average cost to your members of providing information (in order to meet the requirements of the Directive) to consumers for an average trip? (Please select preferred option as a % of the overall trip price or in €) (compulsory)

0.5% 1% 1.5% 2% >2% Other (specify)

€1 - €2 €2 - €5 €5 - €10 €10 - €20 Other (specify)

12. Where possible, please provide a breakdown of all costs associated with different information requirements below (e.g. costs of re-printing brochures, binding obligations of what should be included in marketing material, etc) (optional)

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13. What suggestions do you have for reducing costs for your members arising from existing obligations to provide information to the consumer and by what percentage do you think these measures might reduce costs? Please explain your answer (optional)

<p>The revised Package Travel Directive should take into account the development of new technologies and the provision of information in an electronic format. In particular, the organiser should be allowed to refer the customer to his website, for example to obtain information on applicable prices, or to refer him to other websites providing specific information, for example on passport, visa requirements, health and safety practices. Also, there should be no obligation to provide the same information on a specific issue at different stages (e.g. Brochure, booking confirmation, travel documents).</p>

SECTION D: LIABILITIES, OBLIGATIONS AND RESPONSIBILITY FOR CONSUMER DIFFICULTIES

14. Please provide information on cases where prompt assistance has been provided to consumers in difficulty by your members due to failures which are attributed to a third party or due to force majeure. (optional)

How many such cases occur per 1000 travel packages?	
What is the average cost of assistance provided for each case (in €)?	

15. How often (as a % of all cases in the last 2 years where damages have been claimed by consumers) has *force majeure* been a reason to deny compensation by your members?

<1% 2-5% 5-10% 10-15% >25% Don't know

16. The PTD provides the possibility for the organiser to cancel the travel package on the grounds that there are too few participants if this is notified in the contract. Please provide details on how this possibility is used by your members. (optional)

How many such cases occur per 1000 travel packages?	
On average, how many days prior to the planned day of departure is notice provided to the consumer that the travel package has been cancelled?	

17. In your opinion, who should be the responsible party for **assisting a consumer with problems** during package travels? Tick all that apply (compulsory)

Seller of the package (The party who receives the payment directly e.g. travel agency)	
The provider of the service where the difficulty arises (who may receive the payment indirectly, e.g. airline or hotel which is not organising the package)	X
The organiser of the package (tour-operator)	X
Other (<i>please specify</i>)	

18. If you ticked more than one box and/or believe the responsible party should vary by circumstance, please provide reasons for your answer in the space below. (optional)

We refer the Commission to our additional written comments.

19. In your opinion, who should be the responsible party for **the proper performance of the services as stated in the contract**? Tick all that apply (compulsory)

Seller of the package (The party who receives the payment directly e.g. travel agency)	
The provider of the service where the difficulty arises (who may receive the payment indirectly, e.g. airline or hotel which is not organising the package)	X
The organiser of the package (tour-operator)	X
Other (<i>please specify</i>)	

20. If you ticked more than one box, please provide reasons for your answer below. (optional)

We refer the Commission to our additional written comments.

21. Please provide information on how much on average (in € annually per company) your members currently pay into national insolvency protection schemes, as required by the Directive. Please provide any additional information regarding strengths and weaknesses of these schemes. (optional)

Since ECTAA Members are national associations of tour operators and travel agents, ECTAA is not in a position to provide such information. In all Members States, tour operators and travel agents are subject to different legal obligations in terms of financial guarantee. The form of the financial guarantee can be very different, such as bank guarantees, guarantee funds and insurance policies. Also, the basis for the calculation of the guarantee that must be provided differs between Member States.

22. Please identify (and quantify, where possible) any costs associated with complying with the current PTD that arise for your members (optional)

Cost item	Average Cost/€per package trip
Liabilities for proper performance	
Providing assistance for consumers in difficulties	
Insolvency protection	
Compliance costs for companies selling cross-border	
Other (please specify)	

SECTION E: CONTRACT CHANGES

23. In which situations, if any, do you think consumers should have a **right to withdraw from the contract** before departure **without** paying any compensation (optional)

Only when the organiser significantly alters the contract, as provided under Article 4 (5), (6) and (7) of the Package Travel Directive. ECTAA warns the Commission against any attempt to define the notion of “essential terms”. Indeed, an element of a package may be essential for one package and not for another. As a consequence, it would be difficult to further define this notion without losing the flexibility that is necessary to adapt to the various products on the market. ECTAA therefore recommends not to further define the notion of “essential terms”. Any interpretation should be left to the courts.

24. In which situations, if any, do you think consumers should have a right to cancel the contract before departure **by paying compensation** (optional)

In any situation.

25. The current legislation requires the organiser to inform the consumer as quickly as possible if they have to change significantly any of the ‘essential terms’ of a package holiday. Indicate which of the following elements you consider as being an “essential term”. Please tick all that apply (compulsory)

Possible Essential Terms	Tick
Changes in overall price	X
Change in carrier (airline, train service provider etc.)	
Changes in travel times and/or dates	X
Changes in travel/holiday destination	X
Change in accommodation (e.g. different hotel)	X
Changes in components of additional services (e.g. sightseeing tours, entertainment packages)	
Changes in itinerary of additional services	
Change in the payment schedule	X
Change in special requirements which both parties accepted (e.g. facilities for disabled person)	X
Other (specify)	

26. What are the main reasons for changes to the price agreed in the contract? Please identify the estimated percentage of the occurrence of price changes due to each reason in last two years. Also, please state how much on average each reason tends to increase the price (use minus (-) sign, for price decrease). (Please tick all that apply) optional

Information	% occurrence	% level of price changes
Variations in transportation costs, including the cost of fuel (fuel surcharges)		
Variations in taxes, duties and fees chargeable for services such as landing taxes, embarkation/disembarkation fees at ports and airports		
Variations in exchange rates applied to the package		

Other (please specify)		
Other (please specify)		

27. When should be the cut-off point for allowing any price changes (either UP or DOWN) from what was agreed in the contract (e.g. due to variations in transportation costs, taxes, duties or exchange rates etc.)?

8 weeks before trip 6 weeks before trip 4 weeks before trip 20 days before trip

Prices should be binding Other (please specify)

28. What should be a maximum acceptable level of price changes from what was agreed in the contract? (compulsory)

<1% 2-5% 5-10% 15-25% >25% It shouldn't be specified Prices should be binding

SECTION F: FUTURE REGULATORY FRAMEWORK

29. Using a scale of 1 - 5 (where 1 = not at all important and 5 = very important), rate the following aspects of the current PTD, indicating which you consider to be the most important aspects **requiring regulatory update?** (compulsory)

Removal of cross border barriers in the form of differing or additional requirements at national levels	3
Including other (modern) channels of marketing communication (apart from the brochure) in the scope of the Directive (e.g. the internet)	5
Clarification/updating of definitions and crucial terminology in the Directive (e.g. "consumer", retailer, organiser, essential terms of the contract, etc.)	5
Clarifying the scope of the Directive	5
Extending the scope of the Directive	5
Other (please specify)	

30. Using a scale of 1 - 5 (where 1 = not at all important and 5 = very important), rate the following aspects of the current PTD, indicating which you consider to **require harmonisation across the EU?** (compulsory)

The scope and definitions in the PTD	5
The information requirements	1
The liabilities of organisers/retailers	1
Rules regarding cancellation/withdrawal by consumers	1
Rules regarding changes in price and essential terms by providers	1
Rules regarding insolvency protection	5
Establishment of a pan-European fund or scheme for insolvency	1
Other (please specify)	

31. One way of increasing consumers' awareness could be the introduction of a package travel label (logo) or trust mark on offers to inform consumers of whether a given product is covered by the PTD or not. Using a scale of 1 - 5 (where 5 = very highly effective and 1 = not effective), rate the following possible outcomes of introducing such a label. (compulsory)

It will help consumers to understand whether they are protected or not	1
It will provide greater regulatory clarity for businesses and provide a more competitive framework for the market	1
It will help public authorities - in monitoring the market and enforcing the PTD requirements	1
Other (<i>please specify</i>)	

32. Please provide an estimate of the total extra cost that would be incurred by your members annually due to a potential introduction of a requirement to clearly label travel offers and contracts that fall within the scope of the PTD. Please provide any cost estimates in €

At this stage, without knowing the details of the scheme, it is impossible to provide any data on costs.
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33. Which of the following ways of ensuring the protection of consumers would you prefer? Please give reasons for your answer (optional)

A more up-to-date EU Directive	X
Repeal of the Directive and the use of other existing legislation (<i>please give examples of such legislation in the space 'other' below</i>)	
Issuing of detailed guidance for businesses	
Undertaking awareness campaigns	
Industry self-regulation	
None of the above	
Other (<i>please specify</i>)	
Reasons for answer	

34. Using a scale of 1 - 5 (where 1 = not at all important and 5 = very important), rate the following possible obstacles to cross-border trade stemming from the rules in the current PTD? (compulsory)

Obstacles to cross border trade	Rating
Divergent information requirements	3
Different scope of the protection rules	5
Divergent definitions	5
Different insolvency schemes	1
Different national rules concerning liability and obligations of the contractual parties	4
Other (<i>please specify</i>)	

35. If the rules regarding package travel were to be harmonised across Member States, you would expect the level of cross-border sales for your members to... (tick one) (optional)

Increase a lot Increase a little Not change Decrease a little Decrease a lot

36. The current PTD rules on insolvency pertain to package travels only and do not cover stand alone products. However, following a recent spate of airlines going bust (bankrupt), it is important to consider the level of protection currently being offered to consumers. Please note that there will be a possibility to provide more detailed comments on this matter in the context of a forthcoming consultation on air passenger rights. Do you think it should be compulsory, optional or not required at all when buying **standalone airline tickets** (i.e. not as part of a package) to provide specific protection (or insurance) so that passengers would be **reimbursed for money paid** over or repatriated **if the airline went bankrupt?** (compulsory)

It should be compulsory and included in the price	X
It should be optional (passengers may choose whether to buy, but all airlines must offer it, i.e. optional insurance)	
Airlines should not be required to offer protection	
Do not know	

37. Finally, if you want to provide additional information, please do so below.

We refer the Commission to our additional written comments.

Thank you very much for completing this questionnaire

**QUESTIONNAIRE FOR INDUSTRY ORGANISATIONS
ON THE REVIEW OF THE PACKAGE TRAVEL DIRECTIVE**

ADDITIONAL COMMENTS OF ECTAA

ECTAA, the European Tour Operators' and Travel Agents' Associations, represents national associations of tour operators and travel agents established in 25 EU Member States, in Norway, Switzerland, Croatia and Turkey.

Given the importance of the Package Travel Directive for European organisers and travel agents, ECTAA has filled in the online questionnaire for industry organisations but feels that further comments are necessary to clarify some of our responses and/or to further elaborate on various issues that may or may not be addressed in the questionnaire. Therefore, ECTAA' additional comments are supplementing our responses to the questionnaire, which are attached, and form integral part of the response of ECTAA to the European Commission's consultation on the Package Travel Directive.

1. Section B: Definitions, terminologies and scope of the Directive

The scope, which is very closely linked with the review of the current definitions in Article 2 of the Package Travel Directive, is one of the most essential elements of the review of the Package Travel Directive. ECTAA considers that clear and robust definitions will therefore be key to the definition of the scope. Bearing this in mind, ECTAA wishes to work closely with the European Commission in that exercise in the course of the preparatory work for drafting a revised Package Travel Directive.

In all cases, it is essential that the scope is limited to combinations of travel services. Sale of a single and separate travel service should remain outside of the scope of the revised Directive.

Question 1

Among the items to choose from in question 1 are "packages purchased for mixed purposes (private & business)". ECTAA believes that the notion of mixed purposes packages is very unclear and therefore, we are unable to assess whether such packages should be included in the scope or not. The nature of a package will have to be determined in relation to the parties to the contract, who will be defined in the revised Package Travel Directive. In any event, in line with other consumer EU legislation, ECTAA considers that packages purchased for solely business purposes should not fall under the scope of the Directive.

Question 2

Given that its Members are national associations of organisers and travel agents, question 2 is not applicable to ECTAA.

Question 3

ECTAA does not believe that the term “significant proportion of the package” should be defined by reference to the percentage of the overall package but rather by reference to the purpose of the package and the importance of the particular service in that.

The cost of the particular service might be a relevant factor in determining the importance but will not be the defining characteristic. It should be also recognised that, as the package is likely to be sold at an inclusive price, the price of individual services may not be apparent to the consumer.

2. Section C: Information requirements

Question 5

ECTAA believes that the basic information that a consumer needs to take an informed decision to purchase a package are:

- the amount to be paid,
- the other tourist activities included in the total price,
- the destination,
- the means of transport to be used,
- the type and quality of accommodation and its location,
- whether a minimum number of participants is required for the package to take place.

Indeed, all these elements relate to the fundamental elements of any contract, i.e. its object and the price to be paid.

ECTAA would however stress that concerning the third aspect listed in question 5, “destination and the means and quality of transport to be used”, the notion of “quality of transport” is in our view irrelevant and should be deleted.

For all other aspects listed in question 5, we cannot rate their importance because they are sales and marketing information that will be given to the consumer either pre-contractually or at the time of the contract, depending on the type of package. Indeed, for some packages, it might be fundamental that the consumer is aware of some of those aspects in order to take the decision to purchase a package travel, while it might not be the case for other packages.

We are concerned that the concept of “safe” health practices has been introduced to the list of information. Such a concept does not appear in the current Directive and would appear to be open to difficulties of interpretation and to place too wide an obligation on travel companies. We do not know what such a concept is intended to cover and it has no ordinary meaning for the industry or consumers.

We are also concerned about the reference to local representatives and local agencies for the provision of assistance. Any widening of the scope of the Directive will mean that travel companies might be included whose business model does not allow for local representatives in resort or access to local agencies for consumer assistance. We do not consider that such representation is essential. What the consumer needs is transparency and clear information about the assistance that might be available. A 24 hour telephone helpline might well be more effective than a restricted –availability resort representative.

The reference to passport and visa requirements is also of concern as, again, any widening of the scope of the Directive will mean that travel companies offering holidays that fall within that wider scope will be unable to provide this information for all the destinations and nationalities that might be involved.

Question 6

The brochure should be exclusively considered as an information document. Compared to the time when the Package Travel Directive was adopted, the brochure is no longer an essential information and sales tool. Therefore, its content should not be legally regulated. All the information included in the brochure should be indicative. Accurate and updated information will always be provided to the consumer before the conclusion of the contract.

We reiterate our comment above that the notion of “quality of transport” should be deleted in respect of the third item listed in question 6. Also, the comments that we made under question 5 in relation to other information items remain valid for question 6.

It is not possible to indicate at which stage information on travel and holiday itinerary should preferably be provided because it will depend on the type of services that are included in the package. If the package includes many excursions and various transfers, it will be important to provide information to the consumer in due time to allow him to take an informed decision to book. On the other hand, if the package only includes transportation and one week at a given holiday resort; there will be no itinerary to provide.

Question 7

ECTAA believes that a revised Package Travel Directive should not impose formal requirements as to the form in which the information is to be provided. Indeed, in each Member States, rules of evidence are governed by national law. Therefore, it is not appropriate to address this issue in a European instrument.

Question 8

Since the organiser is the other party to the package travel contract concluded with the consumer, the responsibility of providing information to the consumer after the contract is signed should exclusively fall on him.

If the organiser chooses to appoint a retailer as his agent for the sale of his products, in his contract with the retailer, the organiser will secure that adequate information is passed on to the consumer. Therefore, whenever required by the organiser, the retailer will have to properly inform the consumer in accordance with the instructions of his principal. In this sense, the retailer plays an essential role in providing the adequate information to the consumer but this should not entail that he should bear the final responsibility for providing information to the consumer. Only the organiser should.

Question 12

ECTAA being a trade association composed of national associations of travel agents and organisers, we are not in a position to provide a breakdown of costs associated with different information requirements.

However, ECTAA wishes to underline that compliance with information requirements entail significant costs for organisers.

In particular, gathering, presenting and updating information will always represent an important part of an organiser’s operational costs. New technologies have not significantly reduced those costs. They have only added new means for conveying that information to the consumer.

3. Section D: Liabilities, obligations and responsibilities for consumer difficulties

Questions 14 and 15

Given the nature of our membership, it is not possible to provide data on the frequency of occurrence of force majeure. However, ECTAA believes that if force majeure plays a part in any failure in the provision of the services included in the package travel contract, the organiser is clearly not responsible for that failure and should therefore not be subject to an obligation to compensate the consumer.

In addition, when a package is cancelled for reasons of force majeure, ECTAA considers that this should put an end to the obligations of both parties under the contract. Indeed, under the current Package Travel Directive, the organiser does not have to compensate the consumer if the package is cancelled for cases of force majeure but he still has to comply with Article 4 (6) and possibly propose an alternative package. However, in many cases, force majeure makes it impossible to propose a package that can be considered as a valuable alternative for the consumer. For example, if a hurricane occurs in a given region of the world, it will be very difficult for the organiser to propose a valuable alternative in that same region.

Question 16

In many of their contracts, organisers include a term providing that the contracted package will only take place if a minimum number of persons conclude the same package travel contract. Annually in Europe, millions of contracts contain this clause, which is expressly allowed in the Package Travel Directive.

These clauses are particularly common in group travel, such as coach tours or study tours, which are an important part of the tour operating business. The same is true for 50% of the river cruises and 25% of the ocean cruises. On an annual basis, there are approximately 50 million persons who buy tours (round trips)¹ in the EU and the EEA, of which one third are organized in groups.

Minimum number of participants' terms are essential for organisers and the revised Package Travel Directive must keep allowing their use. Indeed, they allow a calculation with low margins, the consumer thereby benefiting from acceptable prices. Would the clause not be allowed, the organiser would have to base its price calculation on a very low number of participants. The result would be an extreme increase in prices or that some of those products would disappear from the market. In both cases, it will be to the detriment of the consumer.

Furthermore, such terms are essential for organisers who want to launch new innovative packages on the market. As they have no certainty that there will be an actual demand for such new products, it is important that they keep the flexibility, as long as the consumer is adequately informed that cancellation may occur because of a lack of participants.

In addition, in most markets, our Member associations recommend to their member organizers that no cancellation for lack of participants occurs after the date set for payment of the balance of the price of the package. This flexibility and the time frame appear to meet the needs of the industry and consumers.

¹ Tours or round trips designate organised tours where the traveller visits different cities and sites of a single country or of a specific region of the world, which implies transportation from one point to another and accommodation in different hotels.

Questions 17, 18, 19 and 20

Responsibility for assisting a consumer with problems during a package holiday and for the proper performance of the services as stated in the contract should rest with the provider of the service and the organiser of the package.

A new Directive should give the consumer a statutory entitlement for the services to be provided in accordance with the terms of the contract for the package. This entitlement should be enforceable against the supplier of the service as well as the organiser of the package. Such an entitlement will increase the level of consumer protection as it will place a responsibility on the service supplier to conform with the terms of the package contract which is not the case at present.

This entitlement should be mirrored by a statutory right for the organiser of the package to an indemnity from the supplier of any of the services to be provided as part of the package holiday in the event that the services are not supplied in accordance with the terms of the contract.

Such a framework will further increase consumer protection by overcoming any local law or jurisdictional issues which may exist, which currently place obstacles in the way of any consumer seeking to enforce rights against local service suppliers.

It will also assist consumers where the contract services have not been properly performed and where the organiser of the package has failed or is unable to meet any claims.

Where the seller of the package is not the organiser of the package, e.g. where it is an agent of the organiser of the package, he should not be responsible for assisting a consumer with problems during a package holiday or for the proper performance of the services as stated in the contract except where the organiser of the package holiday is not resident in any Member State and does not accept responsibility in accordance with the Directive.

4. Section E Contract changes

Questions 23 and 24

In addition to our replies to these questions, ECTAA would like to stress that it is strongly opposed to a general right of the consumer to withdraw from the package travel contracts, without paying compensation.

Indeed, travel services with a nominative reservation or tailor made services are often a combination of interdependent different services from various suppliers and therefore cannot be kept on hold or resold after withdrawal. Also, when a package involves a complicated itinerary, composed of various combinations of services, it is essential that all bookings are confirmed directly; otherwise it could jeopardize the whole travel itinerary. Furthermore, organisers have commitments with the actual providers of the services included in the package and any decision of the consumer to withdraw from the contract will in most instances have a financial detrimental impact on the organiser.

In addition, promotional offers, like for instance last minute bookings, are limited in quantity and in time. If a right of withdrawal applies, the trader will simply not be able to book such promotional offers for the consumer. Furthermore, it is impossible to manage last minute bookings if the consumer can withdraw from the contract until for instance the day of departure.

In circumstances where the consumer would have to pay compensation because of his decision to withdraw from the contract, ECTAA considers that no method of calculation of

compensation should be introduced in the revised Package Travel Directive. Legislation, which is generally frozen for several years, is too rigid to deal with compensation levels.

Question 25

If we indicated which changes in some of the terms of the contract could possibly be considered as essential, we however insist that such changes should not automatically give the consumer the right to withdraw from the contract. We adopted the point of view that it is important of informing the consumer of any of the changes that we have identified in our reply to question 25 but we do not consider that it gives in all instances the right to the consumer to withdraw from the contract. As currently provided in the Package Travel Directive, a withdrawal should only be allowed when the alteration is significant.

Questions 26 to 28

ECTAA is not in a position to provide data, at European level, on the frequency of occurrence of price variations due to the reasons listed in question 26 as well as on how much they tend to increase the price.

However, ECTAA strongly advises the European Commission to maintain the organiser's right to change the price agreed in the contract for reasons provided in Article 4(4) of the Package Travel Directive in a revised Directive, because it is essential for organisers.

Many European organisers include in their contracts a term that allows them to review the price agreed in the contract. Given that such a revision is only allowed in the very limited circumstances of variations in transportation costs, in taxes, dues or fees applicable to the services included in the package or in exchange rates, the scale of variation of the price, compared to the overall price of the package is rather limited.

The price of a package may for example be reviewed when air carriers raise their fuel surcharges or when airport taxes or charges, like for example the air passenger duty in the UK or domestic government taxes, are increased. In the last years, there were very frequent variations in such charges. If per passenger, those variations are of a rather limited amount, they nonetheless represent a very heavy burden for organisers if they had to absorb them for all their customers. Therefore, price variations after the conclusion of the contract must remain allowed in the revised Package Travel Directive.

The impact of these costs increases on package organisers should not be underestimated and neither should the benefit to the industry and consumers of the risk of such increase being shared.

5. Section F Future regulatory framework

Question 30

ECTAA is conscious of the importance of defining the level of harmonisation of a revised Package Travel Directive. However, at this stage, we do not wish to take a firm position on the level of harmonisation of several aspects, without knowing exactly how they will be regulated. ECTAA will be in a better position to deal with this question at a later stage of the Commission's preparatory work.

The only aspects that we consider at this stage requiring harmonisation are the scope and the definitions of the Package Travel Directive as well as the rules regarding insolvency protection, in the sense that Member States should mutually recognise their respective insolvency schemes. No European wide financial protection scheme should be established as each Member States should remain free to decide how to organise financial protection.

Question 31

ECTAA considers that a package travel logo should not be introduced at European level but rather at national level. Would the Commission consider that there would be nonetheless merit in establishing a European package travel logo, ECTAA considers that sufficient and adequate EU funding will be needed to put the logo in place. Furthermore, it must be subject to strong quality control by the European Commission, which must effectively monitor its use and where necessary, withdraw it from traders.

Question 34

In relation to our comments under question 30, we would like to specify that in our opinion, it is not the divergence in insolvency schemes established by Member States that constitutes an obstacle to cross-border trade but rather Member States' failure to recognise insolvency schemes put in place in other Member States when organisers established in those Member states operate on their territory.

Question 35

The Package Travel Directive is not perceived by organisers as being a major obstacle to cross-border trade because those organisers who want to sell cross-border have already taken the necessary measures to comply with the legal requirements applicable in the various Member States where they operate.

However, there are other obstacles to cross-border trade than the Package Travel Directive, such as VAT requirements. Another major obstacle is related to the requirements imposed by IATA (the International Air Transport Association) for being allowed to sell and issue air tickets of its member airlines.

Question 36

In relation to financial protection of seat only tickets, ECTAA would like to stress that the policy option that will be chosen by the European Commission should take into account the need for a level playing field between organisers of package travel and air transport service providers. Such level playing field implies an equal treatment of all types of packages, i.e. pre-arranged and dynamic packages provided to consumers, as well as equal treatment of air passengers, whether they have booked a standalone ticket or a package.

To ensure an equal treatment of all types of packages, if the Commission decides that seat only tickets should be covered by a financial guarantee system, this should not relieve airlines providing dynamic packages to consumers from the obligation to provide an adequate financial guarantee under the revised Package Travel Directive. Indeed, if the consumer books a flight, accommodation and other services from an airline website, even if the flight would be covered by a specific seat only financial guarantee, the other services included in the package would not. Therefore, airlines offering dynamic packages should be fully covered under the Package Travel Directive.

Besides, we strongly recommend for equal treatment of air passengers in case of insolvency, irrespective of whether they booked a package travel or a standalone air ticket. It is entirely illogical to allow air passengers to make unprotected advance payments to airlines for tickets and to risk being stranded abroad whilst requiring that travel organisers who, in many cases, use those same airlines and same flights, to make arrangements to protect the advance payments and to put in place repatriation schemes.

If the European Commission decides that financial protection should be optional for seat only tickets, ECTAA strongly believes that financial protection requirements for package travel services should also be optional.

Concerning the financial protection of stand alone tickets, ECTAA will make more detailed comments in its response to the Commission's Consultation on Air Passenger Rights.

6. Other items not addressed in the questionnaire

Scope: Article 1 of the Package Travel Directive

Article 1 of the current Package Travel Directive provides that the Directive applies to packages sold or offered for sale in the territory of the Community. This Article must remain unchanged, because it clearly states that any provider of package travel services, whether established in the European Union or in a third country, must comply with the Directive, when he sells or offers for sale package travels in the EU. It guarantees that national authorities are competent to also control third country providers who sell or offer for sale their services in the European Union and who must comply with the applicable legislation.

Transfer of booking

According to Article 4 (3) of the Package Travel Directive, the consumer may transfer his booking to another person if he first gives the organiser reasonable notice of his intention before departure. ECTAA does not question the consumer's right to transfer his booking but considers that it must be conditioned to the actual ability of the organiser to transfer the booking. Indeed, actual providers of the services included in the package may not allow transfer of bookings or only against payment of a fee. This is for example the case for many scheduled airlines. In some situations, the organiser should be allowed to oppose to the consumer's request or the consumer should indemnify the organiser of any costs incurred by his decision to transfer his booking.

Exemption from liability

According to Article 5 (2), the organiser shall not be liable towards the consumer when the improper performance of the contract is attributable to the consumer.

This exemption of liability should be extended to situations where the consumer failed to adequately inform the organiser of any element that the organiser should have known in order to assess whether he would actually be in a position to properly perform the contract. For example, if the consumer has a specific health problem that could jeopardize the proper performance of the contract, he should adequately inform the organiser.

Limitation of liability in accordance of international conventions

Under Article 5 (2), § 3 of the Package Travel Directive, Member States may allow compensation to be limited in accordance with the international conventions governing the services included in the package. This provision is problematic because:

- currently, only the compensation to be granted may be limited in accordance with international conventions but not the liability itself. If an organiser is held liable for improper performance of the contract on the basis of the Package Travel Directive, he will compensate the consumer and be substituted in his rights against the actual service supplier. However, when the organiser will exercise a right of redress, the service provider will most certainly oppose the limitations of liability allowed by international conventions. As a consequence, the organiser will have no effective right of redress and will in fact bear all costs.

- limiting the application of relevant international conventions for compensation only, is again placing organisers at a competitive disadvantage compared to other travel service providers, who may base themselves on international conventions to limit their liability and the compensation to be paid to the consumers.
- the choice left to the Member States to allow limitations has generated differences between the Member States and thus distortion of competition between EU organisers.

These problems can only be solved by imposing an obligation on Member States to allow exclusion or limitation of both the liability and the compensation in accordance with international conventions. In the same way, when service providers are allowed to exclude or limit their liability or compensation under existing EU instruments, organisers should also be allowed to invoke such EU instruments.

Consumer mitigation

Article 5 (4) of the Package Travel Directive requires the consumer to communicate any failure in the performance of a contract which he perceives on the spot to the supplier of the services concerned or the organiser, at the earliest opportunity.

The primary obligation in this provision is on the consumer but the courts have been reluctant to enforce that obligation even where the organiser has complied with their obligation to give notice. The intention of the Directive appears to be clear but this does not translate into certainty between the parties where complaints arise.

The review should reinforce the intention of the Directive to provide certainty for both consumers and organisers.
