

The Revision of the package travel Directive: ECTAA's Position Paper

Established in 1961, ECTAA is the European Federation of Travel Agents and Tour Operators Associations. All together the Travel trade in Europe counts some 70 000 enterprises in 31 EU and EEA Member states, employing nearly 500 000 people. The majority of European Travel agents and Tour operators are SMEs.

The Package Travel Directive was adopted in 1990 and was covering most of the holiday market at the time of its adoption.

However, Consumer patterns have changed over the last 23 years, and new distribution channels have emerged thanks technological developments and the widespread usage of internet. Today, the European Consumer has access to multiple distribution channels from the classical paper brochure to mobile applications.

Taking into consideration these market changes, the European Commission has published a proposal for revision of the Package Travel Directive.

ECTAA welcomes the initiative of the European Commission to modernize the legislation, in order to offer a good level of consumer protection across the Internal Market, while ensuring a level playing field among all market actors.

ECTAA considers that the revision of the Package Travel Directive should be driven by the following core principles:

- Ensuring an indispensable level playing field among all market stakeholders.
- Ensure that any consumer across the EU and the EEA benefits from the same level of protection when purchasing a combination of travel services, irrespective of the distribution channel.
- Preserve and foster the competitiveness of the European Tourism industry, through an equitable balance between rights and obligations of both enterprises and consumers.

ECTAA's executive summary of the position:

- A targeted harmonisation approach
- A clear and consistent definition of Package. This definition of package should be extended in order to include all “Click through” combinations – [Article 3](#)
- The exclusion of travel arrangements purchased for business purposes, under commercial agreements - [Article 2](#)
- Pre-contractual information shall be limited to what is essential. Some provisions are difficult to comply with (visa requirement), some others are irrelevant (languages of activities at the hotel). - [Articles 4 and 6](#)
- In the event of a price change – [Article 8](#)
 - o The 10% maximum price increase should be a threshold allowing the consumer to cancel a package without penalty.
 - o All transportation costs justifying a price increase should be included (electricity for example).
 - o The price decrease should be actionable only if the amount exceeds the reasonable administrative costs.
- A single regime for organisers
- Non-material damages should be dealt at Member state level - [Article 12.2](#)
- The amount of damages should be capped up to one time the price of the package purchased – [Article 12](#)
- The refund of a cancelled trip shall be in line with the consumer right directive (without undue delay). A 14 days period is not compatible with international transactions in the travel industry - [Articles 9\(4\) and 10 \(4\)](#)
- Unavoidable and Extraordinary Circumstances should be assessed on the basis of objective criteria such as Member State's travel advices - [Article 10 \(2\)](#)
- The assistance costs in case of unavoidable and extraordinary circumstances should be proportional and in line with similarly to the bus and coach or maritime transportation regulations there should be no liability of the organizer towards the consumer in cases of unavoidable and extraordinary circumstances - [Article 11 \(5\)](#)
- The deletion of the reference of “place of residence” of the organiser with respect to the mutual recognition of national insolvency Scheme. This will oblige any organiser established outside the EEA and directly selling to the European consumer to provide a financial guarantee - [Articles 15 and 16](#)

Scope and definitions:

General comments:

ECTAA welcomes widening of the scope of the directive proposed by the Commission. However, ECTAA believes that the scope lacks of clarity and wishes to propose some amendments in order to clarify the text: (business travel, occasional organiser, definition of package and Assisted travel arrangements...).

ECTAA is of the opinion that the directive in its general fashion focusses on the traders where it would be simpler and more consistent to focus on the product sold. Such modification would avoid any loophole in the legislation.

Considering that the definitions of package and assisted travel arrangement are the keys to strengthen the internal market of travel services, such definitions should be of maximum harmonisation. A maximum harmonisation approach will ensure a consistent level of consumer protection and a level playing field between all market actors. Based on article 4 on the [Directive on Consumer Rights](#) (2011/83/EC), ECTAA proposes the following amendment.

Article 3 (new paragraph)

Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in article 3 paragraphs 2 and 5, including more or less stringent provisions to ensure a different level of consumer protection.

Scope: Packages and assisted travel arrangements

ECTAA welcomes the extension of the scope of the Directive and the clarification concerning some combinations of travel services, whether the consumer buys online, offline, through a single point of sale or multiple linked websites;

In order to insure a level playing field between all market actors, it is important to have a “future proof” scope covering new forms of travel combinations:

- Traditional packages
- Dynamic packages
- **Most importantly, *click-through packages*.** We must indeed avoid that new distribution channels are used to escape the legislation and deprive consumer from any protection when travelling. It is of paramount importance **to correct the wording of this article**. In order to provide for a future proof solution and to avoid loopholes in the Directive, **this provision should refer to any kind of booking data that is transferred between websites in order to complete travel bookings.**

Definition – package - Article 3 (2) (b)

ECTAA welcomes the broadening of the scope of what is considered as a package and the intention of the Commission to include a part of the click through combinations. The data to be transferred between two websites (indent v) are the “names, credit card details or other information necessary to obtain a payment” (recital 18 of the proposal). Those data are very specific and nearly no types of combinations, in particular those sold by low cost carriers, will fall under this definition.

ECTAA recalls that the provision defining “click-through” should refer to any kind of booking data that is transferred between websites in order to complete travel bookings:

- names,
- destination,
- Time of departure and arrival.

The part of the sentence referring to “particulars needed to conclude a booking transaction” should therefore be replaced by “any booking data”. Furthermore, the reference to the point in time when the data is transferred should be deleted. Corresponding changes shall be reflected in Recital 18.

ECTAA proposes the following amendment:

Article 3 (2) (b)

- (i) *purchased from a single point of sale where the consumer selects all travel services before agreeing to pay, within the same booking process, **or***
- (ii) *offered or charged at an inclusive price or total price, **or***
- (iii) *advertised or sold under the term ‘package’ or under a similar term, **or***
- (iv) *combined after the conclusion of a contract by which a trader entitles the ~~traveller~~ **consumer** to choose among a selection of different types of travel services, or*
- (v) *purchased from separate traders through linked online booking processes where the ~~traveller’s~~ **consumer’s** name or booking data needed to conclude a booking transaction are transferred between the traders ~~at the latest when the booking of the first service is confirmed;~~*

Definitions – assisted travel arrangement - Article 3 (5)

ECTAA believes that broadening the definition of “package” is absolutely necessary and should cover most of the combinations of travel services sold to consumers. However, ECTAA recognises the value of “Assisted Travel Arrangement” as a solution to make the directive future proof and provides an appropriate level of protection for the consumer in case of bankruptcy of one of the services’ supplier.

ECTAA would welcome some clarifications of the definition and suggests the following amendment.

Article 3 (5)

*'assisted travel arrangement' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if **one of the traders concerned** or a retailer facilitates the combination:*

*(a) **where the consumer selects and agrees to pay for each travel service separately** on the basis of separate bookings on the occasion of a single visit or contact with the point of sale*

Exclusion of business travel - Article 2 (2) (c):

ECTAA welcomes the fact that business travels concluded under a framework contract are excluded from the scope of the Directive. However, such reference to the term “employer” narrows the definition and excludes professions where the traveller is not an employee (self-employed traveller) even under a framework contract.

Moreover, the exclusion only concerns traders specialized in the sale of managed business travel, creating an uneven level playing field among travel agents selling both leisure and business travel services.

ECTAA calls for a clearer exclusion of business travel by targeting services that are provided to a legal person, where that person and not the business traveller, is invoiced:

Article 2 Paragraph 2 c)

*packages and assisted travel arrangements purchased ~~on the basis of a framework contract between the traveller's employer~~ **by a business on whose behalf the traveller is travelling** and a trader ~~specializing in the arrangement of business travel;~~*

Definition of retailer

A retailer should not become an organiser when he sells an auxiliary service to a package which has been combined by an organiser, e.g. a transfer to the airport. Otherwise, the combination of the package and the auxiliary service would be considered as an overreaching package for which the retailer would need to take responsibility as an organizer. That would be a disproportionate burdening of the retailer as for the dominating parts of the services contracted the consumer would already have an organizer to refer to. Therefore, in such instances, the travel agent should not be forced into the role of an organiser as long as he makes the consumer well aware that he is

concluding two separate contracts for the provision of two different services: a package travel contract with a given organiser in whose name the retailer is selling the package and a contract for another auxiliary service, booked with a well identified and distinct service provider.

Article 2(2) (f) *new*

(f) contract covering an ancillary service to a package which has been combined by an organiser where it is apparent from the display of the price for the separate service that this is an ancillary service and the company name, legal entity and address of the service supplier of the sold auxiliary service are communicated in advance to the conclusion of the contract if such information is available in the written or electronic booking offer.

Definition of traveller/consumer:

As a business traveller should be distinguished from a consumer and for a better consistency with the Consumer acqut, ECTAA proposes to refer to the “consumer” instead of the “traveller” defined in Article 3 (6). Changes should to be made throughout the entire text.

Article 3(6)

“consumer” means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession

Single regime for organiser

Compared with the current directive, the reference to occasional organizer, previously in article 2.2, has been deleted. However, the recital 19 of the proposal suggests the exclusion of this category without giving a precise definition (such as the sale of packages not more than twice a year). This wording is not satisfactory as it could allow Member States to exempt occasional organizers with important room for interpretation. Such provision will lead to a situations and abuses similar to the current legislation.

Therefore ECTAA calls for the deletion of recital 19

Following the same logic ECTAA proposes a series of changes focusing on the products sold rather than the selling entity, thus limiting loopholes due to the trader’s activity

Scope: (Article 2 (1))

Article 2

*This Directive shall apply to packages offered for sale or sold by traders **that traders sell, offer for sale or where they facilitate the sale of the package** to travellers, with the exception of (...)*

Definition of organizer: Article 3 (8)

In order to ensure that all relevant traders fall within the scope of the Directive, it is proposed that the definition of the organizer should refer to traders that **sell, offer for sale or that facilitate the sale of the package to travellers.**

Definition of trader: Article 3 (7):

ECTAA proposes the following amendment to the definition of trader:

Article 3 (7)

(7) 'trader' means any person who sells or offers for sale travel services or facilitates the procurement of travel services whether in their own name, as an intermediary or otherwise; ~~who is acting for purposes relating to his trade, business, craft or profession;~~

Information requirements—Articles 4 and 6

General comments:

ECTAA expresses its concerns regarding the increase of the information to be provided to the consumer. The proposed requirements are irrelevant with respect to the main contractual information and should be deleted. Moreover an excess of information will confuse consumers more than helping them.

ECTAA is of the opinion that the following information should be deleted:

- Spoken language for activities: Article 4 (1) (a) vi)

ECTAA calls for the amendment of the following information:

Rather than making a requirement to provide information on accessibility on a general basis, such information should preferably be made available upon request (e.g. by reference to article 20 of regulation EC 1371/2007 on rail passenger rights).

Article 4 (1) (a) vii)

(vii) **Upon request**, whether access for persons with reduced mobility is guaranteed throughout the trip or holiday

Information on the approximate time for obtaining visa (article 4 (f)):

The obligation to provide information on the approximate periods for obtaining visa should be deleted from the proposal. Such information is often very difficult to get, or can change without prior notice. Therefore, ECTAA calls for keeping the wording of the current directive:

General information on passport and visa requirements for nationals of the Member State or States concerned and health formalities required for the journey and the stay;

Contact details article 6 (2) (c):

Article 12 (3) (b) places the onus on the traveller to inform the organizer without undue delay of any lack of conformity. The obligation of the organizer to provide information about the action to take in the event of lack of conformity should be consistent with that obligation of the traveller, with a reasonable process outlined in the contract.

Therefore ECTAA suggests the following amendment, which would be consistent with article 12(3):

Article 6 (2) (c)

(c) *the details of the process the ~~traveller~~ **consumer** should follow and any relevant contact details in the event that the ~~traveller~~ **consumer** perceives any lack of conformity ~~a contact point where the traveller can complain about any lack of conformity which he perceives on the spot;~~*

Specific information for minor travellers (Article 6 (2) (f)):

ECTAA suggests clarifying that the information shall be given if the minor is unaccompanied. Otherwise, tour operators would have to provide such information in cases where the minor is traveling together with his parents or family.

Therefore ECTAA would therefore propose the following amendments:

Article 6 (2) (f)

where **unaccompanied** minors travel on a package that includes accommodation, information enabling direct contact with the minor or the person responsible at the minor's place of stay

The following information should be added:

Possibility to subscribe to a travel insurance

The currently applicable Directive 90/314/ECC provides for the obligation to inform the traveller about the possibility to conclude an insurance policy to cover the costs of cancellation or the costs of assistance including repatriation in the event of an accident or illness (Article 4 (b) (1) (iv) of the current Directive). This information is helpful for travellers not subscribing already to an insurance or if they are inadequately insured in the event of a specific trip.

ECTAA believes that **the provision in Article 4 (1) (b) (iv) of Directive 90/314/ECC should be Maintained in the revised Directive:**

Article 4 (new paragraph)

*(h) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the ~~traveller~~ **consumer** or the cost of assistance, including repatriation, in the event of accident or illness.*

Alteration of the price - Article 8

The price of a package can be increased by a maximum of 10% for the following reasons:

- Fuel surcharges,
- Taxes and fees from third parties unrelated to the performance of the package,
- Exchange rate changes.

Tour operators who decide to increase prices also have an obligation to lower prices when the situation is favourable for consumers.

While ECTAA welcomes the possibility for organiser to increase the price of the package, some clarifications are needed:

- The 10% threshold should be the trigger point allowing the consumer to cancel his contract due to changes in the contract term.
- Some elements justifying a price increase should be included (transportation costs other than fuel, for example, electricity).
- The price decrease should be triggered “after the deduction of a reasonable amount due to administrative costs”.
- Justification shall be provided to the consumer upon request
- Those measures should be of maximum harmonisation.

ECTAA proposes the following amendments:

Article 8

Member States shall ensure that prices are not subject to revision, unless the contract expressly reserves the possibility of an increase and obliges the organiser to reduce prices to the same extent as a direct consequence of changes:

*(a) ~~in the cost of~~ **transportation costs, including the cost of** fuel for the carriage of passengers,*

*(b) ~~in the level of taxes or fees on the included travel services imposed by third parties not directly involved in the performance of the package,~~ **dues, taxes or fees chargeable for certain services,** including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports,*
or

(c) in the exchange rates relevant to the package.

*2. The price increase referred to in paragraph 1 shall not exceed 10% of the price of the package **or shall entitle the consumer to cancel the contract under the conditions provided in Article 9.***

3. The price increase referred to in paragraph 1 shall be valid only if the organiser notifies the traveller consumer of it with a justification and calculation on a durable medium at the latest 20 days prior to the start of the package. A justification and calculation on a durable medium shall be provided upon request

*4. **A price decrease shall be due after the deduction of a reasonable amount due to administrative costs by the organiser***

*5. **Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this article, including more or less stringent provisions to ensure a different level of consumer protection.***

Termination of the contract before the start of the package –Article 9 and 10

Cancellation by the traveller due to important changes in the package contract - Article 9(2):

Article 9 (2) ensures the right for the traveller to cancel the package if the organiser alters significantly any of the main characteristics of the travel services. Such a change should only arise where the change results in a significant change to the package as a whole. A significant change to the meal plan or to excursions may not themselves result in a significant change to the package as a whole. The provision of article 9 shall reflect such changes:

ECTAA would welcome the following amendments:

Article 9(2)

1. *if, before the start of the package, the organiser is constrained to alter significantly any of the main characteristics of the travel services as defined in point (a) of Article 4 or special requirements as referred to in point (a) of Article 6(2), the organiser shall without undue delay inform the ~~traveller~~ **consumer** in a clear and prominent manner on a durable medium of:*
- (a) the proposed changes and*
 - (b) **where the proposed changes will significantly change the performance of the package, the fact that the ~~traveller~~ consumer may terminate the contract without penalty within a specified reasonable time-limit and that otherwise the proposed alteration will be considered as accepted.***

Impossibility to perform a package due to unavoidable and extraordinary circumstances (UEC) article 10(2)

Before departure:

ECTAA calls for a clear delimitation of the right of the consumer to cancel a package due to UEC. UEC should not be based on the consumer own assessment but on the basis of objective criteria (Member State's travel advices).

Such goal can be achieved by including the last sentence of Recital 26 in Article 10 (2):

Furthermore, ECTAA recommends adopting the Chernobyl-ruling of the German Federal Supreme Court (Az. VII ZR 60/89) by which the splitting of the costs of cancellation between the organiser and the consumer in cases of UEC was introduced. This would be appropriate because such a provision would not expect the organiser to shoulder costs charged by his service providers alone in case of UEC which are not his fault. An according provision in the Directive could read as follows:

Article 10 (2)

*The ~~traveller~~ **consumer** shall have the right to terminate the contract before the start of the package without compensation in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the package. **The organiser shall be able to demand the refund of half of his payments to the service provider from the consumer if the organiser is obliged to payment by the service provider despite the non-utilization of the services.***

Unavoidable and extraordinary circumstances shall be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities, advise against travelling place of destination.

Assistance to the consumer in case of unavoidable and extraordinary circumstances - Article 11 (5) and (6)

According to the proposal, the organizer shall provide assistance to travellers in case of unavoidable and extraordinary circumstances of 100€/person/day for a maximum of 3 days. This provision is similar to the proposal revising the Air Passenger Rights regulation (APR).

Regarding this provision, inspired by the current proposal for a Regulation on Air Passenger rights, ECTAA would like to express concerns for the following reasons:

- ECTAA disagrees with the additional burden of the obligation to provide assistance lying exclusively with the organizer. This obligation is even more stringent than the one in the air passenger rights Regulation proposal, as the APR proposal provides an exemption for trips of less than 250km by small aircraft (80 seats).
- ECTAA disapproves the alignment of the capping with the air passenger rights Regulation proposal, rather than passenger rights legislation in other modes of transport, which firstly foresee a capping of 80€/person for a maximum of 2 days and which secondly provide an exemption of such a liability of the carrier in cases of adverse weather conditions or natural disasters, in other words in cases of extraordinary and unforeseeable circumstances (Article 17 and Article 20 of Regulation EC No. 1177/2010 as well as Article 21 and 23 of Regulation EC No. 181/2011).
- The travel industry is mostly composed of SMEs. Putting a non-fault-based liability in cases of force majeure on these companies will significantly affect their economic and competitive situation in Europe – especially since there is no insurance available to cover the risk of extraordinary and unforeseeable circumstances for organizers.
- Therefore, ECTAA believes that in line with the regulations for bus and coach as well as the maritime passenger rights the Directive should exempt the organizer from any liability in cases of unforeseeable and extraordinary circumstances. ECTAA proposes to take on the solution provided in the German Civil Code, Article 651j instead which foresees a sharing of the extra costs in such situations.

Article 11 (5)

As long as it is impossible to ensure the traveller's timely return because of unavoidable and extraordinary circumstances, the organiser shall not bear the cost for the continued stay exceeding EUR 100 per night and three nights per traveller

If the package is substantially obstructed, jeopardised or impaired as the result of extraordinary circumstances that were not foreseeable when the contract was entered into, then both the travel

organiser and the consumer may terminate the contract merely under this provision. If the contract is terminated then the organiser loses his claim to the agreed package price. However, he may demand compensation for travel services already provided or yet to be provided in order to bring the travel package to an end. The organiser is obliged to take measures necessitated by cancellation of the contract, including without limitation, if the contract includes return transport, to transport the traveller back. Extra costs for return transport are to be borne by the parties one-half each. Apart from this, extra costs are borne by the consumer.

Furthermore, Article 11(6) provides that the organizer shall have an unlimited liability to bear the costs of a continued stay if the traveller is a person with reduced mobility. This does not seem proportionate. While it is fully understandable and acceptable that the needs of persons with reduced mobility should be given extra attention – especially in cases of unforeseeable and extraordinary circumstances – it is not comprehensible why such consumers should have financial advantages over other consumers. Also, such an unlimited liability will be an immense additional burden for organizers, especially those offering packages that are accessible for persons with reduced mobility. It will therefore become far less attractive for organizers to provide packages for this target group.

Moreover, according to article 11(6) the organizer may not invoke unavoidable and extraordinary circumstances to limit the costs if the relevant transport provider cannot rely on such circumstances under applicable Union legislation. ECTAA has concerns about the fact that the organizer may not invoke the costs capping if the relevant transport provider cannot rely on such circumstances under applicable Union legislation. There may be a number of reasons that prevent an organizer from ensuring a traveller's timely return and those reasons may be unrelated to the actual transport service. The organizer should be able to rely on the fact of unavoidable and extraordinary circumstances even if they do not affect the relevant transport provider.

ECTAA calls for the deletion of article 11(6)

Reimbursement – articles 9 (4) and 10 (4) (a):

The Commission's proposal states that the organizer shall reimburse within fourteen days all payments received if the traveller terminates the contract in the event of significant changes to any of the main characteristics of the travel services or in case of a cancellation due to unavoidable and extraordinary circumstances.

ECTAA considers that the 14 days is way too short and does not take into account the specificities of the travel industry. The general rules established by the Consumer Right Directive stipulate that, after the termination of a contract, a refund has to be made “without undue delay” (art 18.3). In particular, Travel industry involves cross border and international transactions, making it more complex to retrieve advanced payments made to service providers. In such context, a reimbursement within 14 days becomes a requirement impossible to fulfil.

For those reasons, ECTAA calls for an alignment with the Consumer Rights Directive (Article 18 (3)) and the replacement of the 14 days threshold by the expression “without undue delay”.

Article 9(4)

*If the contract is terminated pursuant to point (b) of paragraph 2, the organiser shall refund all payments received from the ~~traveller~~ **consumer** ~~within fourteen days~~ **without undue delay** after the contract is terminated. The ~~traveller~~ **consumer** shall, where appropriate, be entitled to compensation in accordance with Article 12.*

Article 10 (4)

*In cases of termination under paragraphs 1, 2 and 3, the organiser shall reimburse any undue payment made by the ~~traveller~~ **consumer** ~~within fourteen days~~ **without undue delay**.*

Minimum number of participants not reached (Article 4(1) (e) and 10 (3) (a)):

The organiser may terminate the contract without paying compensation to the traveller, if the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination within the period fixed in the contract and not later than 20 days before the start of the package. Such long time period can prevent the organiser to reach the minimum number of participants through last minute sales, to the detriment of both travellers and tour operators.

Therefore ECTAA proposes to maintain the wording from the current Directive 90/314 and calls for the deletion of the 20 days time limit:

Article 4 paragraph 1 (e):

(e) the minimum number of persons required for the package to take place and a time-limit ~~of at least 20 days~~ before the start of the package for the possible cancellation if that number is not reached;

Article 10 paragraph 3 (a):

*(a) the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the ~~traveller~~ **consumer** of the termination within the period fixed in the contract ~~and not later than 20 days before the start of the package~~; or*

Price reduction and compensation for damages - Article 12 (2):

Non-material damage:

ECTAA strongly disagree with the inclusion of non-material damages as it will become a massive additional burden on the organizer, and is not in line with national legislations. ECTAA advocates that the recognition of non-material damages shall be dealt at Member State level.

Moreover, in order to allow organisers to be insured about this kind of loss, compensations shall be capped up to a certain amount which shall not exceed one time the price of the package.

ECTAA recalls that contractual liability is a cornerstone of national contract law and should be applied in accordance with the national practices. Therefore ECTAA would advice as follows:

Non-material damage such as moral damage is a concept not in place in all Member States. Taking into account such damages shall be left at the discretion of the Member state.

ECTAA therefore calls for the deletion of the term “non-material damage”

Article 12 (2)

*The ~~traveller~~ **consumer** shall be entitled to receive compensation from the organiser for any damage, ~~including non-material damage~~, which the ~~traveller~~ **consumer** sustains as a result of any lack of conformity.*

Differentiation of the Package Travel Directive from the Air Passenger Rights Regulation (Article 12(5))

Even though a cumulative claims with regard to this Directive and the passenger rights regulations shall in principle be ruled out, the wording of this paragraph does still allow travellers to claim a price reduction on the one hand from the organizer for not having performed the package as contractually agreed and on the other hand demand compensation for his inconveniences from the airline. These two claims are distinct and therefore might not fall under the requirement of the draft that the rights referred to may not safeguard the same interest or have the same objective, even

though the traveller would be paid twice as a remedy for the same incident that disturbed his holiday. Therefore ECTAA suggests deleting the last sentence of Article 12(5):

Article 12 (5)

*Any right to compensation or price reduction under this Directive shall not affect the rights of ~~travellers~~ **consumers** under Regulation (EC) No 261/200429, Regulation (EC) No1371/200730, Regulation (EU) No 1177/201031 and Regulation (EU) No 181/201132. ~~Travellers Consumers~~ shall be entitled to present claims under this Directive and under those Regulations, but may not, in relation to the same facts, cumulate rights under different legal bases ~~if the rights safeguard the same interest or have the same objective.~~*

Obligation to provide assistance (Article 14):

According to article 14 of the proposal: an organizer shall give prompt assistance to a consumer in difficulty, in particular regarding:

- Providing information on health services, local authorities, consular assistance and
- Assisting the traveller in making necessary distance communication and alternative travel arrangements.

The costs arising from the assistance will be borne by the organizer, except in situations where requiring assistance is caused by the consumer's gross negligence or intent. As the proposal does not specify what the duty of assistance covers, the organizer could be required to assist the traveller in unreasonable situations, this might lead to abuses.

ECTAA proposes an amendment to clarify that the organizer can only assist a consumer in so far as the difficulties of the traveller are directly relating to the travel services contracted.

The following amendment is proposed:

Article 14

*Member States shall ensure that the organiser gives prompt assistance to the ~~traveller~~ **consumer** in difficulty, in particular by:*

- a) providing appropriate information on health services, local authorities and consular assistance, and*
- b) Assisting the ~~traveller~~ **consumer** in making distance communications and **assisting in sourcing** alternative travel arrangements.*

*The organizer shall be able to charge a reasonable fee for such assistance **in order to reimburse the cost of the assistance** ~~if the situation is caused by the traveller's negligence or intent.~~ **The assistance shall be provided in so far it is appropriate and reasonable.***

Mutual recognition of insolvency protection:

Articles 15 and 16 require organizers established in the EU and retailers selling ATAs to provide a financial protection for travellers in case of insolvency. ECTAA welcomes that the text proposes a principle of mutual recognition of insolvency protection, allowing organizers and retailers to sell their products in another Member State without complying with the local insolvency regime.

Article 18 requires from organizers based outside the European Economic Area to comply, either themselves or through a retailer, with the rules regarding the liability for the proper performance of the package and insolvency protection.

While ECTAA welcomes the principle of mutual recognition of insolvency systems within Europe, the reference to the place of establishment of the organizer in article 15 creates a loophole that some organizers might use to avoid the additional costs the financial protection requirement. According to the proposal, an organiser established outside of the EEA and directly selling to consumer is not obliged to provide any proof of insolvency protection. For those reasons ECTAA proposes that the reference to **the place of establishment of the organizer** or retailer in the territory of one of the EU-Member States should be **deleted from Article 15 (1) and Article 16 (4)**.

Moreover, the reference to a prompt reimbursement in article 15 (1) might jeopardize the relation between organizer and their insurance company in some Member State. ECTAA proposes to replace the expression “prompt” by “as soon as possible”.

Article 15 (1)

*Member States shall ensure that organisers and retailers facilitating the procurement of assisted travel arrangements ~~established in their territory~~ obtain a security for the effective ~~and prompt~~ refund **as soon as possible**, of all payments made by ~~travellers~~ **consumers** and, insofar as carriage of passengers is included, for the ~~travellers'~~ **consumers'** effective and prompt repatriation in the event of insolvency.*

Article 16(4):

If a Member State has doubts about the insolvency protection of an organiser or of a retailer facilitating the procurement of assisted travel arrangements which ~~is established in a different Member State and~~ is operating on its territory, it shall seek clarification from the Member State of establishment. Member States shall respond to requests from other Member States at the latest within 15 working days of receiving them

Liability of the Retailer for Booking Errors (Article 19)

In its recital 37 the Commission made it clear that the liability of retailer concerning booking errors should only extend as far as errors are directly attributed to the retailer's own mistakes. However, in the according Article, the retailer's liability extends beyond this. That seems inappropriate and should in perspective of ECTAA be corrected in line with recital 37.

Article 19:

*Member States shall ensure that a retailer who has agreed to arrange the booking of a package or assisted travel arrangements or who facilitates the booking of such services shall be liable for any errors **or mistake directly attributable to the retailer** occurring in the booking process, unless such errors are attributable to the traveller or to unavoidable and extraordinary circumstances.*

Repeals and Transposition (Articles 26 and 27)

The proposal foresees a period of 18 months for the repeal of Directive 90/314/EEC and the transposition of the new Directive into national law instead of the usual 24 months. Due to the complexity and the broad changes which will result from the proposal, a significant number of members advised that a minimum 24 months transposition period should apply.

ECTAA calls for a transposition period of 24 months:

Article 26

Repeals

*Directive 90/314/EC is repealed as of [~~18~~ **24** months after the entry into force of this Directive]. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the table in Annex I to this Directive.*

Article 27

Transposition

*1. Member States shall adopt and publish, by [~~18~~ **24** months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.*

They shall forthwith communicate to the Commission the text of those provisions.

*2. They shall apply those provisions from [~~18~~ **24** months after the entry into force of this Directive] (...)*

For further information about the document, please do not hesitate to contact ECTAA secretariat at secretariat@ectaa.eu, Tel: +32 2 644 34 50