



**THE EUROPEAN TRAVEL AGENTS'  
AND TOUR OPERATORS' ASSOCIATIONS**

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## ***ACTIVITY REPORT***

**November 2009 – November 2010**

# Introduction

Dear Board Members,

Dear Members,

Please find enclosed the 14<sup>th</sup> edition of the ECTAA yearly activity report covering most of 2010.

While 2010 has shown signs of improvements compared with last year, the air space closure following the volcano ash cloud heavily impacted the travel trade and in particular tour operators.

As you will read from the attached report, our association has been very busy this year in Brussels and Strasbourg to make the voice of our industry heard on a vast number of matters, including : Transport Policy (improvement of air passenger rights, including protection against airlines' failure), Consumer Protection Policy (revision of the package travel directive and consumer rights), Justice and Home Affairs (consular protection and data protection), Internal Market (recognition of professional qualifications), Fiscal Matters (revision of TOMS and of the place of supply rules for services), Enterprise Policy (new Communication on tourism), Standardisation (ISO & CEN), Destination and Sustainability Issues, IATA matters, etc...

On a daily basis, our Secretariat in Brussels, with the support of the Board, our Technical Committees and the Members have been advocating the views and positions of the trade with the European Commission, the European Parliament, the Council, the Member States' Permanent Representations, etc... The Secretariat also monitored and analysed a considerable amount of information and documents emanating from the EU Institutions in order to brief the Members, prepare ECTAA's papers and common positions, etc...

The proposed working programme for 2011, which has also been reviewed by the Strategic Committee, shows that 2011 will be another very busy year.

In particular, our trade will be confronted with the revision of a directive, which is one of the legislative cornerstones of our Industry: the Package Travel Directive. The Commission intends to publish a proposal for a new Directive in the second semester of 2011. This revision will probably have an even greater impact on our enterprises than the repercussions the original Package Travel Directive had when it was first introduced in 1992.

With this in mind, the lobby work in Brussels will be of immense strategic importance in 2011. ECTAA and the entire membership will need to act in unison to ensure that a united voice expresses the strong views of the industry. Past experience indeed suggests that failing to reach harmonized views helps the consumer lobby to further claim more consumer protection, of which the costs and burdens will strike our enterprises. Strong and well-coordinated lobbying both at European and national level will thus be the key for a successful representation of our industry.

Finally, I would like to thank the Vice Presidents and the Treasurer, all the Members of the Board, the Chairmen and the Members of the committees for their active contribution and support during the year. On behalf of all of our Members I would also like to thank our Secretariat team in Brussels for all the work done in 2010.

Irena Gueorguieva  
President  
Brussels/Sofia November 2010

# 1. TRANSPORT

## 1.1. Air Transport

### 1.1.1. Future of Transport

*Issue:* In June 2009 the European Commission adopted a Communication on “A sustainable future for transport: Towards an integrated, technology-led and user friendly system”, which is a follow-up to the White Paper issued in 2001 that sets an agenda for transport policy throughout 2010.

The Communication aims at stimulating further debate in order to identify concrete policy proposals for its next Transport White Paper, scheduled for 2011.

*ECTAA position / action:* ECTAA has participated in the consultation process and comments were made on the policy proposals highlighted in the Communication.

### 1.1.2. Regulation 80/2009 on a Code of Conduct for CRSs

*Issue:* The new Regulation on a Code of Conduct for Computerised Reservation Systems (CRSs) prohibits the identification of travel agents in MIDTs, except if agreed by the travel agent and subject to certain safeguards. The rule extends to third parties' intelligence products based on data resulting from CRS use, such as IATA PaxIS.

*ECTAA position / action:* ECTAA reported to the European Commission problematic practices of certain airlines and CRSs in respect of agents' identification in MIDTs. ECTAA in conjunction with GEBTA on 11 September 2009 filed a complaint against IATA concerning the identification of agents in data used for other purposes than billing and settlement.

*Status of project and next steps:* The European Commission indicated that it clarified the correct application of the provision on agents' identification with concerned stakeholders.

Following our complaint against IATA, the European Commission received IATA's response. It is preparing the next step of the procedure, i.e. either the rejection of the complaint or a statement of objection. ECTAA has been calling on the European Commission to promptly put an end to the infringement of the Code of Conduct.

### 1.1.3. Regulation 1008/2008 on Air Services

*Issue:* The Regulation on Air Services deals notably with better monitoring of carriers' finances, with transparency of prices and with the prohibition to discriminate in access to fares based on location in the EU.

Some airlines continue to discriminate in access to fares based on the place of establishment of the agent, in particular by not showing certain fares or classes in CRSs. Besides this, the information on air fares and supplements is not always provided in a clear manner by airlines.

Some Member States were slow to determine which national authority would be in charge of enforcing the Regulation.

*ECTAA position / action:* ECTAA presented to the European Commission and to the national enforcement authorities the issues concerning price transparency (fuel surcharges, fare unbundling) and non-discrimination in access to fares. ECTAA carried out for this

purpose a cross border check on access to fares in 6 countries, which revealed that discrimination in access to fares is still a common practice.

*Status of project and next steps:*

The European Commission provided a list of the national authorities in charge of enforcing the Regulation's provisions on pricing. It is preparing a new interpretation note of the Regulation concerning transparent pricing and non discrimination in access to fares.

#### **1.1.4. Air Passenger Rights**

*Issue:*

The European Commission launched a public consultation in December 2009 in the field of air passenger rights. The aim of this consultation was to review, and if necessary improve, the legislation in force on air passenger rights and to see whether passenger protection is required for new or existing business practices of air carriers not yet covered by EU legislation and against airline bankruptcy.

*ECTAA position / action:*

ECTAA adopted the following position in relation to:

- Luggage: There is insufficient information and rights for passengers whose luggage is lost, damaged or delayed. Existing passenger rights should be effectively enforced by National Enforcement Bodies, but there is no need to raise compensation amounts in case of mishandled luggage.
- Denied boarding / cancellations / delays: There should be better reporting by carriers and National Enforcement Bodies on disruptions. Complaint handling procedures should be harmonized.
- Assistance to Persons with Reduced Mobility: Pre-notification of assistance requirements of PRMs should be compulsory.
- Rescheduling of flights: There should be an obligation to inform but no right to refund.
- Sequential use of all coupons: Passengers that have paid the price of the ticket should be entitled to use it or not.
- Passenger protection against airline failures: There should be set of EU rules establishing a mandatory mechanism borne by air carriers to protect passengers against carrier failure, of which the cost would be included in the price. The system should cover reimbursement of the ticket or repatriation. These rules should apply to Community carriers and to non-Community carriers. Each Member State should remain free to decide how to organize the protection scheme (see point 1.1.5).
- Other: Passengers should have the right of passengers to use the services of an intermediary to book a flight.

*Status of project and next steps:*

The Commission intends to issue a Communication on passenger rights for all transport modes which may be followed up in 2012 by a legislative proposal for the revision of the air passenger rights Regulation.

#### **1.1.5. Passenger protection against airline failure**

*Issue:*

The European Commission consulted stakeholders at the end of 2009 on passenger protection against airline insolvency in the framework of the consultation on air passenger rights (see point 1.1.4) and in the framework of the consultation on the revision of the Package Travel Directive (see point 6.3). The European Commission then covered the issue in two separate impact assessment studies, notably a study carried out by DG MOVE which concentrates on collecting statistical data and one part of the impact assessment on the revision of the Package Travel Directive that is dedicated to assessing the potential impact on consumers of introducing optional or mandatory protection

measures.

*ECTAA  
position /  
action:*

ECTAA responded to the consultations and participated in both impact assessment studies. ECTAA has called for a mandatory mechanism borne by air carriers to protect passengers against carrier failure, of which the cost would be included in the price, to cover reimbursement or repatriation, applying to Community carriers and to the farthest extent possible to third country carriers.

*Status of  
project and  
next steps:*

The impact assessments should be finalised at the beginning of 2011, after which the European Commission will determine which measures, if any, should be introduced to protect passengers against airline failure. ECTAA will continue to closely monitor and contribute to the preparatory work. It will also prepare lobbying in view of a legislative proposal.

#### **1.1.6. Regulation 261/2004 on compensation and assistance in case of denied boarding, cancellation or long delay of flights**

*Issue:*

The European Commission has carried out a second evaluation of the application and enforcement of the Regulation by airlines and National Enforcement Bodies (NEBs) respectively. It shows that the Regulation has had no impact on the occurrence of long delays and cancellations. There are still shortcomings in the application and enforcement of the Regulation. Moreover, the Regulation does not address all the problems that passengers may face (e.g. missed connections due to delays).

The European Court of Justice has rendered a judgment in the Sturgeon case, which effectively extends the rights of passengers in case of delays: Passengers are entitled to compensation after a three hour delay at arrival under certain circumstances.

*ECTAA  
position /  
action:*

ECTAA considers that the net impact of this ruling will not only lead to increased cancellations to mitigate delays over three hours, but also lead to price inflation of aviation in the longer term. It believes that in order to remove the uncertainty and confusion that this ruling brings, EU legislation needs to be redrafted to clarify the rules. ECTAA also calls for an Impact Assessment to be undertaken.

*Status of  
project and  
next steps:*

The Commission intends to issue a Communication on passenger rights for all transport modes which may be followed up in 2012 by a legislative proposal for the revision of the air passenger rights Regulation.

#### **1.1.7. Regulation 1107/2006 on the rights of PRMs when travelling by air**

*Issue:*

The European Commission has carried out an evaluation of Regulation 1107/2006, which aimed among other to assess how airlines and airports are implementing the Regulation and to obtain stakeholders views whether changes to the Regulation are required.

*ECTAA  
position /  
action:*

ECTAA participated in the evaluation. It considers that there are no major problems with the application and enforcement of the Regulation. However, there is a lack of pre-notification by PRMs, which can lead to bottlenecks at airports and does not encourage PRMs to notify. ECTAA recommended that priority should be given to passengers that pre-notify, in order to incentivize passenger to pre-notify their assistance requirements.

ECTAA also recommended the Regulation should be changed to the effect that travel agents and tour operators should only be obliged to transfer the PRM assistance notifications to airlines, and no longer to airports.

*Status of  
project and*

The Commission will issue a Communication on the state of play of the

*next steps:* Regulation at the end of 2010.

### **1.1.8. Contact details of person to contact in case of an accident in civil aviation**

*Issue:* In November 2010 the EU adopted Regulation 996/2010 on investigation and prevention of accidents in civil aviation, with the view of improving the existing Community system for civil aviation accident investigation. The Regulation contains a provision requiring airlines to “offer travellers the opportunity to give the name and contact details of a person to be contacted in the event of an accident.” The data should be protected from any commercial use.

*ECTAA position / action:* ECTAA and Members intervened with the Members of the European Parliament and succeeded in the deletion of travel agents from the provision requiring the collection of contact details.

ECTAA is recommending to airlines that they should use the same method of data collection presently used in the US, where a similar requirement already exists, i.e. a form possibly provided at check-in, completed by passengers before departure and dropped into a box, which will only be opened in the case of an accident. This avoids travel agents needing to collect this information from the traveller.

*Status of project and next steps:* The Regulation came into force on 2 December 2010.

### **1.1.9. Air Matters Committee and Technology Working Group**

*Issues:* The Air Matters Committee met twice in 2010, once jointly with the Technology Working Group, on 26 January and 30 September 2010. It prepared the responses to the public consultations on air passenger rights (see point 1.1.4) and the groundhandling Directive (see point 1.1.7). It also reviewed the implementation of the Air Services Regulation (see point 1.1.3) and analysed the impact of the Sturgeon court case in respect of the Regulation 261/2004 (see point 1.1.6). It discussed IATA affairs, reviewing in particular the agenda items of the PAPGJC meetings and the PAConf (see point 5.1). The Committee also discussed issues in relation to the mandatory Secure Flight Programme Data and other APIS requirements (see point 1.1.8). It also reviewed a number of industry affairs, such as credit card charges, fare availability in GDSs, case law on cross ticketing, standardisation of airport codes, etc.

## **1.2. Transport by bus and coach**

### **1.2.1 Rights of passengers traveling by bus and coach**

*Issue:* In December 2008 the Commission published a Regulation proposal on rights of passengers in bus and coach transport. The legislative proposal introduces similar rights for passengers as those adopted in other modes of transport (rail and air), such as compensation in case of accident and lost / damaged luggage, assistance to PRMs, compensation in case of cancellations / delays, etc. With the exception of the provision on liability for accidents / luggage, the scope is limited to regular coach/bus services, i.e. not occasional bus services typically used by tour operators. Travel agents and tour operators will have similar obligations as those introduced in other modes of transport.

*ECTAA position /* ECTAA expressed various concerns, both at the level of the European Parliament and of the Council, concerning the proposal, in particular on the following issues:

- action:*
- Definition of travel agent, tour operator and carrier;
  - Liability regime, which appears to be too constraining for bus and coach undertakings;
  - The need for a clause on exceptional circumstances;
  - Transmission of notification of PRM requirements.

*Status of project and next steps:* Parliament and Council have failed to find an agreement on the text in second reading and the text has entered now the conciliation procedure. The first meeting of the Conciliation Committee took place on the 16th of November. The Conciliation Committee will have maximum 8 weeks time from the first meeting to reach a joint text. If the Parliament and Council don't approve a joint text, the proposal will fail.

The contentious issues are:

- The scope of the regulation, the Council would like to limit to passengers travelling with national and international regular services, but with a possibility at national level to exempt for maximum five years which can be renewed twice, urban, suburban and regional regular services. The Parliament on the other hand, wants to delete the possibility of an exemption for regional services.

- Liability of carriers. The Council adopted an approach building on the existing national systems, adding at the same time a minimum threshold per passenger and per item of luggage. The Parliament is seeking for a higher level of harmonization and states that the carrier shall be liable for the loss or damage resulting from the death of, or personal injury to, passengers, caused by accidents arising out of the operation of bus and coach transport services and occurring while the passenger is in, entering or leaving the vehicle. The non-contractual liability of carriers for damages shall not be subject to any financial limit, be it defined by law, convention or contract.

With regards to definitions, the European Commission rejected the amendment adopted by the EP in the second reading on the definition of tour operator, which was supported by ECTAA, whilst the definition of carrier supported by ECTAA and approved in second reading is likely to be included in the final text of the regulation.

### **1.3. Transport by sea and inland waterway**

#### **1.3.1 Rights of passengers traveling by sea and inland waterway**

*Issue:* The European Parliament and the Council reached agreement on the adoption of a Regulation on the rights of passengers travelling by sea and inland waterways. It introduces similar rights for passengers as those adopted in other modes of transport (rail and air), such as compensation in case of accident and lost / damaged luggage, non-discrimination against and assistance to PRMs, compensation in case of cancellations / delays, etc. Travel agents and tour operators will have similar obligations as those introduced in other modes of transport, e.g. information requirements, PRM assistance notifications, etc.

*ECTAA position / action:* The most contentious issue of ECTAA concerned the wrong definitions of 'travel agents' and 'tour operators'. ECTAA managed to obtain a correct definition of 'travel agents', however 'tour operators' still refer to organizers and their retailers, as referred to in the Package Travel Directive.

*Status of project and next steps:* The Regulation will become applicable two years from the date of its publication in the Official Journal.

### **1.4. Transport by rail**

#### **1.4.1 Technical specifications for the exchange of information and issuance of rail tickets**

*Issue:* ECTAA has been invited to participate in a major European rail project, called TAP TSI, the objective of which is to define and implement procedures and interfaces between all actors in the railway industry, including ticket vendors, that will allow an interoperable exchange of information and issuing of passenger tickets. The TAP TSI prescribes among other protocols, for the data exchange of timetables, tariffs, reservations, train running information, luggage management, etc. Ticket vendors require this information in order to comply with their obligations of informing passengers and issue rail tickets in accordance with the Regulation 1371/2007 on rail passengers' rights and obligations.

*ECTAA position / action:* ECTAA and GEBTA participate in the TAP TSI project to ensure the implementation of adequate interfaces for the issuance of rail tickets.

*Status of project and next steps:* The TAP TSI will formally start in 2011.

## **2. HOME AFFAIRS**

### **2.2. PNR and Data protection**

*Issue:* The EU/US agreement on the transfer of PNR data to the US authorities has been effective since 23 July 2007. However, following the entry into force of the Lisbon Treaty in December 2009, the consent of the European Parliament is required for its continued validity. The European Parliament was asked to give its consent in May 2010, but it postponed the vote until the European Commission presents proposals for a standard approach on PNR transfers.

The European Commission published a Communication on the Global Approach to transfers of PNR to third countries on 21 September 2010 . It is also working with the Council on mandates to negotiate new PNR transfer agreements with the US, Australia and Canada.

The European Commission is working on a future proposal for a Directive on the use of PNR for law enforcement purposes (EU PNR), which should be similar to the previous proposal for a framework decision on EU PNR.

The European Commission published on 4 November 2010 a Communication on a comprehensive approach on personal data protection. It is also preparing a future EU-US agreement on data protection.

*ECTAA position / action:* ECTAA responded in March 2010 to the Commission consultation on a future EU-US agreement on data protection.

ECTAA contacted MEPs to warn against the risk of a legal vacuum if the European Parliament voted against the continued validity of the current EU/US agreement on PNR transfers and explained issues about PNR transfers in view of any future instrument.

ECTAA reiterated its views to the European Commission about a proposal on EU PNR.

*Status of project and next steps:* The European Commission is expected to adopt a proposal on EU PNR in January 2011 and a general proposal on personal data protection later in 2011. In addition, it will negotiate new agreements for PNR transfer with the US, Australia and Canada.



### 3. JUSTICE

#### 3.1. Consular protection

*Issue:* Article 23 of the Treaty on the Functioning of the European Union provides that a citizen who is in the territory of a third country in which his/her Member State is not represented can benefit from diplomatic or consular protection of any other Member State.

In April 2010, the European Commission launched a consultation on the way forward for EU citizens' rights, which notably addressed consular protection.

In the second semester of 2010, the European Commission launched an impact assessment study on improving financial compensation between Member States when consular protection is provided in crisis situations.

*ECTAA position / action:*

Early 2010, after the appointment of the new European Commission, ECTAA met a Member of the Cabinet of Mrs. Viviane Reding, Commissioner for Justice who is in charge of consular protection. The aim was to present our association and to establish initial contact, in view of the five years' Commission term.

ECTAA replied to the consultation on EU citizens' rights, advocating for the development of an information tool, such as a website that would give easy access to coordinates of all Member States' diplomatic and/or consular representations in all third countries. Concerning major crisis situations, which may require evacuation of a large number of EU citizens, ECTAA stressed the need for proper cooperation between the travel industry and Member States, especially the Member State acting as the Lead State.

ECTAA also provided feedback information to the European Commission on the level of participation of those ECTAA members who had accepted to participate in an information campaign on consular protection that the Commission launched in 2008.

Finally, ECTAA met a consultant appointed by the European Commission to conduct an impact assessment study on financial compensation of consular protection. ECTAA also attended a conference that the Commission organised on this topic.

*Status of project and next steps:*

In an EU Citizenship report that it published in October 2010, the Commission announces legislative measures for 2011 in the field of consular protection as well as the creation of a dedicated website and the implementation of targeted communication measures to better inform citizens of their rights to consular protection.

ECTAA will closely monitor these initiatives.

#### 3.2. EU contract law

*Issue:* In July 2010, the European Commission published a Green Paper on policy options for progress towards a European Contract Law for consumers and businesses. This Green Paper follows work undertaken for about 10 years now by the European Commission on harmonization of Member States' contract law.

*ECTAA* The Secretariat consulted with its Members on the policy options set out in the

*position / action:* Green Paper. It was examined by the Legal Committee of ECTAA, which concluded that given the complexity of the issues raised, ECTAA should not reply to the Green Paper.

## **4. COMPETITION POLICY**

### **4.1. Mergers and alliances between airlines**

*Issue:* The European Commission controlled several airline mergers in 2009 and 2010, including notably the merger between British Airways and Iberia.

It pursued its investigations on closer alliances between British Airways/American Airlines/Iberia and between Lufthansa/Continental/United/Air Canada.

The European Commission also carried out with the US DoT a joint research project on transatlantic airline alliances.

*ECTAA position / action:* ECTAA provided comments to the European Commission on the Iberia / British Airways merger.

ECTAA also commented on the commitments proposed by the alliance BA/AA/IB. ECTAA called the European Commission to review its method to analyse the impact of airlines mergers and alliances, in order to take into consideration their effects on distribution.

*Status of project and next steps:* The European Commission approved on 14 July 2010 the BA/IB merger as well as the alliance between BA/IB/AA. It is pursuing its investigations into the proposed cooperation between LH/CO/UA/AC.

It published on 16 November 2010 the report prepared with the US DoT on Transatlantic Airline Alliances.

## **5. IATA**

### **5.1 PAPGJC and PAConf/33**

*Issue:* ECTAA participated in the Passenger Agency Programme Global Joint Council (PAPGJC), which met on 5 March 2010 and 18 October 2010. The Council monitored PAConf/32 actions, discussed accreditation for locations with no physical sales outlet and brought clarifications to the Travel Agency Commissioner budget. It also dealt with the agenda of PAConf/33, notably the proposals to review local financial criteria and remittance frequency and the authority to do so. ECTAA raised other issues with the implementation of the Secure Flight Programme under IATA rules.

*Status of project and next steps:* At PAConf/33, some proposals were withdrawn in line with discussions in the PAPGJC (on the period to apply ADMs, on the authority of the Agency Administrator, on airlines web sales financial securities) or their adoption/application was deferred subject to further agreement between airlines and agents (on the authority to amend financial criteria, on more frequent remittance in Greece and Croatia). The next meeting of the PAPGJC will take place in Spring 2011 and the next PAConf in October 2011.

### **5.2 ASTWG**

*Issue:* ECTAA participated in the Agency Solution Technical Working Group (ASTWG) which met on 16 February 2010. This group composed of agents', airlines' and GDSs' representatives and discussed mainly how to limit and better manage ADMs on guaranteed fares. It also discussed the implementation of EMDs and issues with the Secure Flight Programme. ECTAA called for an extension of the group's terms of reference to enable it to discuss more technical issues involving airlines, agents and GDSs.

*Status of project and next steps:* The new definition of guaranteed fares recommended by the ASTWG was adopted by the Passenger Service Conference in November 2010.  
The next meeting of the ASTWG should take place in conjunction with the next PAPGJC. ECTAA will again raise issues with the implementation of the Secure Flight Programme under IATA rules.

## **6. CONSUMER AND INTERNAL MARKET POLICIES**

### **6.1. Legal Committee**

*Issue:* The Legal Committee of ECTAA jointly met with the Tour Operator Committee on 21 January 2010. It also met on 14 September and on 6 October 2010.  
In their joint meeting, the Legal and the Tour Operator Committees prepared ECTAA's reply to the Commission's consultation on the review of the Package Travel Directive (see point 6.4).  
During its meeting of 14 September, the Legal Committee examined several legal issues raised by a possible extension of the scope of the Package Travel Directive to click-through packages, in order to provide comments to the European Commission.  
During its meeting on the 6<sup>th</sup> of October, the Legal Committee continued to examine issues relating to the revision of the Package Travel Directive, such as revised definitions to cover online sales, the nature of the liability for the proper performance of the contract and mutual recognition of financial protection. The Legal Committee also reviewed the work of the European Parliament and of the Council on the proposal for a Directive on consumer rights (see point 6.3)  
In addition, the Legal Committee discussed such matters as a new Q&A document for travellers affected by the ash cloud that the European Commission published on its website (see point 6.5), Ryanair's policy against intermediaries, the Green Paper on EU contract law (see point 3.2) and the PaxIS complaint (see point 1.1.2).

### **6.2. Tour Operator Committee**

*Issue:* The Tour Operator Committee met on 21 January 2010 jointly with the legal committee ( see point 6.1) and on 14th of October 2009.  
The Committee had a discussion on the revision of the package travel directive and was updated on the different legislative proposals on air related matters.  
The Committee also exchanged views on ECTAA's position on European and international standards in tourism (see point 9.3)  
In addition, it exchanged views on the revision of a special VAT scheme for travel services (see point 7.1) as well as on the professional qualifications of tourist guides and on the Communication on Tourism (see points 6.8 and 8.1)

### 6.3. Proposal for a Directive on Consumer Rights

*Issue:* In October 2008, the European Commission published a proposal for a Directive on Consumer Rights, which incorporates 4 existing Directives on doorstep selling, unfair terms in consumer contracts, distance contracts and consumer sales of goods and guarantees. It contains provisions on common definitions, pre-contractual information, information and right of withdrawal in distance and off-premises contracts as well as unfair contract terms.

Package travel contracts are only subject to the provisions regarding unfair terms. However, the proposal is fully applicable to contracts for the provision of accommodation, transport, car rental, catering and leisure services travel services, except for the provisions on the right of withdrawal and consumer information when they are concluded at a distance.

*ECTAA position / action:* Throughout the year, ECTAA monitored the work of the Council and of the European Parliament and presented its position to both institutions.

In particular, ECTAA met MEP Andreas Schwab, who had been appointed as Rapporteur for the Committee for Internal Market and Consumer Protection (IMCO) as well as some of the Shadow Rapporteurs of that same Committee. ECTAA also met the Spanish Presidency of the Council for the first semester 2010 and sent position papers to the Permanent Representations of the Member States. ECTAA also liaised with the Rapporteur and the Shadow Rapporteurs of the Committee on Legal Affairs (JURI), which is providing an opinion to the IMCO Committee on this proposal.

The main elements of ECTAA's position are:

- Package travel contracts should only be subject to the provisions of the proposal on unfair contract terms.
- Distance and off-premises contracts for the provision of single travel services should be excluded from the Chapter regulating such contract, in order to avoid that a right of withdrawal applies.
- The two lists of unfair terms should be amended to preserve the right of the tour operator to include minimum participants' terms and price revision terms in his contracts. Terms prohibiting or restricting the right of the consumer to use the services of an intermediary should be included in the list of terms always unfair.

*Status of project and next steps:* It is expected that the IMCO Committee will adopt its report at the end of 2010, which could be voted in first reading in Parliament's plenary session in early 2011. The Council could adopt a common approach on the proposal at the end of 2010

### 6.4. Review of the Package Travel Directive

*Issue:* This year, the European Commission intensified its work on the review of the Package Travel Directive. At the end of 2009, it published a consultation on the review of the Package Travel Directive. Following that consultation, the European Commission defined 8 possible policy options for the review of the Package Travel Directive, which were notably debated during a dedicated stakeholder workshop in April 2010. The European Commission also appointed a consultant for the conduct of an impact assessment of these policy options.

*ECTAA position / action:* ECTAA examined in detail the consultation on the review of the Package Travel Directive and provided a comprehensive reply to the Commission, expressing

itself in favor of updating this Directive to adapt it to new and upcoming market developments. ECTAA also participated as a speaker to the stakeholders' workshop, pointing out the elements of ECTAA's preferred policy options. Furthermore, ECTAA liaised with the consultant in charge of the impact assessment and provided them with information, when available. ECTAA also provided information to the European Commission on various issues relating to the review of the Directive, such as for example the extension of the scope to include click-through packages, the nature of the liability and the financial protection of packages as well as of seat only air tickets.

*Status of project and next steps:* The European Commission is pursuing an impact assessment of the review of the Package Travel Directive. A proposal for a review is expected in the second semester of 2011.

## **6.5. Ash cloud**

*Issue:* In April 2010, the airspace of several EU Member States was closed because of the eruption of an Icelandic volcano. As a consequence, thousands of travellers were unable to take their flight back home and were thus stranded for several days either at their holiday destination or at their airport. Also, many packages that had not yet started were cancelled because it was impossible to operate departure flights.

The air space closure generated many problems for tour operators and travel agents. They had to try to bring their customers back home, possibly provide them with some assistance and deal with their business contractual partners such as airlines and hoteliers.

After the air space closure, the European Commission published on its website a series of documents aimed at informing travellers of their rights under the Denied Boarding Regulation as well as under the Package Travel Directive. In respect of the latter Directive, it appeared that the Commission had adopted a very broad interpretation of the organiser's obligations towards the consumer in such a force majeure situation, which in ECTAA's opinion was going beyond what was actually required under the Directive. The Commission notably asserted that in addition to providing an equivalent transport back to their customers' point of departure, organisers had to cover accommodation and meal costs up to the moment their customers were able to leave their holiday destinations.

*ECTAA position / action:* Right from the beginning of the ash cloud crisis, ECTAA sent all Members a summary of relevant applicable rules under the Package Travel Directive and the Denied Boarding Compensation (DBC) Regulation.

ECTAA also strongly opposed the Commission's interpretation of the rights of package travel consumers against the organiser in such a force majeure situation. ECTAA stressed in particular that the DBC Regulation was applicable to both stand alone air ticket passengers as well as to package travel passengers, with the consequence that in the first place, the operating air carrier had to provide travellers with the assistance required under the DBC Regulation.

Concerning the organiser's obligation under the Package Travel Directive, ECTAA was of the opinion that if the package had not yet begun, the consumer had to be provided with an alternative package or be reimbursed. If the consumer was already at his/her place of destination, the organiser had to provide him/her with an equivalent transport back, as soon as it was possible to actually operate it. In both cases however, no compensation had to be paid since it was a force

majeure situation. Whilst the organiser remained under an obligation to provide the consumer affected by a force majeure situation with prompt assistance, the nature of such assistance however differed between the Member States and did not entail that the organiser had to bear all accommodation and meal costs.

ECTAA met with the European Commission and provided it with written comments but unfortunately, no common understanding could be found.

Moreover, ECTAA collected data on the costs and losses incurred by Travel Agents and Tour Operators. This data was consolidated and transmitted to Commissioner Kallas, responsible for Transport, and Commissioner Tajani, responsible for Tourism. Further to ECTAA's request, Commissioner Tajani and the EU Ministers of Tourism agreed that the Commission should consider including tour operators and travel agents in any communication on state aid in response to the volcanic ash cloud, as well as establishing an emergency response system that can aid stranded tourists when faced with similar scenarios in the future.

*Status of project and next steps:*

In June 2010, the European Commission provisionally withdrew the first Q&A document that it had published right after the air space closure. It however published a new one in early October 2010. In the new Q&A document, while there are some improvements in the way information is provided, the Commission sticks to its interpretation of the organiser's obligations, with which ECTAA does not agree.

## **6.6. E-commerce**

*Issue:*

The European Commission conducted a public consultation on electronic commerce in the internal market and the implementation of the Directive on Electronic commerce. It aimed at gathering stakeholders opinions on issues such as the level of development of information society services at national and cross-border level, commercial communications and contractual restrictions on cross-border online sales.

*ECTAA position / action:*

Given the increasing importance of online distribution of travel services, ECTAA replied to the consultation.

## **6.7. Implementation of the Services Directive**

*Issue:*

Directive 2006/123 on Services in the Internal Market regulates the conditions for establishment of a service provider in a Member State and establishes the principle that Member States must ensure free access to and free exercise of service activities by providers who move temporarily into their territory. Member States had to implement this Directive before 28 December 2009.

In the context of the mutual evaluation process of Member States' legislations of implementation that the Services Directive foresees, the European Commission launched a stakeholders' consultation to obtain their feedback on their assessment of its actual implementation in the Member States.

*ECTAA position / action:*

ECTAA responded to the consultation regarding the mutual evaluation process. Furthermore, ECTAA also dealt with questions from Members regarding the interpretation of the Services Directive.

## **6.8. Recognition of Professional qualifications and Tourist Guides**

*Issue:* Since 20 October 2007, Member States must have transposed Directive 2005/36 on the recognition of professional qualifications. The Directive regulates the recognition of the professional qualifications that a person has obtained in a given Member State when he/she wants to establish him or herself on a permanent basis in another Member State.

The Directive also contains rules which aim at facilitating the temporary movement of a service provider established in a Member State, such as for example a tourist guide, who wants to provide his/her services in the territory of another Member State. If the profession is regulated in both Member States, no professional experience is required. If the profession is not regulated in his or her Member State of establishment but well in the host Member State, the service provider must justify 2 years' professional experience over the past 10 years. Member States may in both cases require a yearly prior declaration before the service provider moves into their territory.

The European Commission has now started an evaluation process of the implementation of Directive 2005/36 in the Member States. In October 2010, based on reports submitted to it by Member States, the Commission published a staff working paper providing a first assessment of how, in its opinion, the Directive had been transposed in the Member States.

*ECTAA position / action:* ECTAA continued to provide advice and assistance to Members who had difficulties in ensuring that their tourist guides could freely provide their services in other Member States, as provided for in Directive 2005/36.

ECTAA participated in two stakeholders' conferences organised by the European Commission in the framework the evaluation of the implementation of the Directive.

ECTAA was also specifically consulted by the European Commission on its potential interest in the development of a professional card for tourist guide services delivered by national competent authorities. As the majority of its Members were interested in such a card, ECTAA responded positively to the Commission.

*Status of project and next steps:* By the end of 2010, the European Commission will publish a public consultation of external stakeholders on the evaluation of the implementation of Directive 2005/36.

A Steering Group on professional cards should be established at the beginning of 2011.

## **7. FISCAL MATTERS**

### **7.1. Tour Operator Margin Scheme, articles 306-310 of the VAT Directive 2006/112**

*Issue:* The European Commission has initiated infringement proceedings against a number of Member States for the incorrect application of the special scheme for travel agents. Amongst others, the Commission considers that such supplies made between agents must be taxed according to the normal VAT arrangements. As a consequence Member States have resumed discussions, which had stalled in 2003, on the Directive proposal revising the special scheme. The Belgian Council Presidency is proposing a text, which has been stripped of all provisions, and on which agreement is looking unlikely. As a result it is proposed to extend the scope of the special scheme to all travel supplies, including B2B supplies.

*ECTAA position or action* ECTAA and GEBTA consider that the application strictus sensus of the special VAT scheme is no longer adapted to the current market for the sale of travel services and would lead to enormous distortions of competition. They have thus called for the revision of the special scheme but only support this revision under condition that B2B supplies benefit from the possibility of being taxed according to the normal VAT arrangements.

*Status of project and next steps:* Discussions will continue in the Council working group with a view to reaching an agreement on a revised scheme. If they fail to adopt a revised text, then the Commission will take Member States to the European Court of Justice, which will render a decision on the contentious issues, including the whether or not the special scheme to wholesale supplies (supplies between agents for onwards sale) can be applied.

## **7.2. Revision of the place of supply rules for services, Directive 2008/8**

*Issue:* New place of supply rules for services have come into force since 1 January 2010, according to which services supplied to taxable persons are VATable in the country, where the customer is established (except for certain services).

*ECTAA position or action* A number of problems have been identified with the new rules:  
With the modification of article 47, which now specifically includes ‘the provision of accommodation in the hotel sector’, the service of an intermediary making a hotel booking could either be considered as an intermediary service or as a service linked to immovable property. The latter would represent huge administrative burdens for business travel agents, who will have to register and account for VAT in all Member States in which they make hotel bookings. ECTAA and GEBTA are lobbying the Commission and the Member States to categorize this service as an intermediary service rather than a service linked to immovable property.

Tour operators may also face problems of double taxation and taxation of margins, which until now were VAT exempted, when the buy cultural or sport (or similar) services from non-EU providers as from 2011, as the place of supply of these services in the B2B context will shift to the place where the customer (tour operator) is established. ECTAA is raising this matter with the Commission and the Member States.

*Status of project and next steps:* The Directive proposal on implementation measures of the VAT Directive, including the new place of supply rules for services, addresses the problem above and proposes to treat intermediary services in connection with hotel bookings at the place of establishment of the taxable customer.

## **7.3. Fiscal Committee**

*Issue:* The Fiscal Committee met three times in 2010. At one of the meetings, a civil servant from the European Commission was invited to exchange views and answer questions on the implementation of the new rules in respect of the place of supply of services, which came into effect on 1 January 2010 (see point 7.2.). The Fiscal Committee closely monitored the discussions on implementing rules to be adopted in respect of the place of supply rules and made recommendations. It also monitored developments in respect of the discussions on the revision of the special scheme for travel services and made recommendations. It also reviewed the application of the special scheme in a number of Member States and had an exchange of views on a number of rulings / opinions of the ECoJ affecting travel service suppliers.



## 8. ENTERPRISE POLICY AND TOURISM

### 8.1. Communication "Europe, the world's No 1 tourist destination – a new political framework for tourism in Europe"

*Issue:* In July last the Commission adopted i a Communication on Tourism, also in light of the new competencies of the European Union on tourism.

The Communication puts forward 21 actions at European level to be implemented in close cooperation with representatives of the public and private tourism sector, aimed at supporting the tourism sector and proposes initiatives to promote its competitiveness, its sustainable and quality-based development and the visibility of Europe as an outstanding tourist destination. The actions revolve around the following four pillars:

- Stimulate competitiveness of tourism in the European tourism sector;
- Promote the development of sustainable, responsible and high quality tourism;
- Consolidate the image and profile of Europe as a collection of sustainable and high quality tourist destinations;
- Maximise the potential of EU financial instruments and policies for the development of European Tourism.

*ECTAA position or action* ECTAA welcomed very favourably the ambitious Communication which represents a starting point for the future activities of the Commission on Tourism. ECTAA sent its comments on the Communication both before its adoption and during the elaboration of the action plan that was presented at the European Tourism Forum

*Status of project and next steps:* The European Commission has presented a detailed implementation plan during the European tourism Forum in November and will pursue the actions listed in 2011-2012.

### 8.2. Annual European Tourism Forum (EFT)

*Issue:* Each year the European Commission organizes a European Tourism Forum to discuss the challenges of the sector and enhance the cooperation of stakeholders in tourism, notably the tourism industry, civil society, international organizations, European, national and regional institutions and authorities. The selected theme of this year was "The Need to Strengthen Europe's Role As The Leading Tourism Destination".

The 9th European Tourism Forum will contain two panel discussions and a Plenary Session on the implementation of the new policy framework for tourism in Europe.

*ECTAA position / action:* ECTAA, which is a Member of the ETF Steering Committee, presented a speaker intervening in the panel "Maximising visibility for Europe", who gave a speech on how Europe could be more attractive for its very own European tourists.

### 8.3. Tourism Statistics

<i>Issue:</i>	<p>The European Commission published in April 2010 a new regulation proposal on Tourism Statistics. The proposal, which repeals Council Directive 95/57/EC on the collection of statistical information in the field of tourism, aims at improving the quality of tourism statistics in Europe by establishing a common framework for the production of European Statistics on tourism.</p> <p>The proposal revises several variables such as tourist expenditure, and takes into account recent phenomena such as more short trips of less than four overnight stays or the use of the internet for booking trips.</p> <p>Variables on the use of a tour operator or travel agency for the booking of the trip (transport, accommodation, package) are on a triennial basis.</p>
<i>ECTAA position or action</i>	Ectaa welcomes the new regulation proposal, even if the lack of common methodology between Member States on the production of statistical information will anyhow influence negatively the quality of the collected data.
<i>Status of project and next steps:</i>	The proposal has been approved, with several amendments, by the TRAN Committee and will be voted in plenary in January.

<b>9. STANDARDIZATION</b>
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### 9.1. ISO standards for tourism services

<i>Issue:</i>	<p>At the beginning of 2005 the international standardization body ISO created a new Technical Committee - TC 228 on tourism and related services. The scope of the TC is to standardize “terminology and specifications of the services offered by tourism service providers, including related activities, tourist destinations and the requirements of facilities and equipment used by them, to provide tourism buyers, providers and consumers with criteria for making informed decisions”. Current work items includes standardisations in the fields of: spa and diving services, thalassotherapy services, wellness services, tourist information and reception services in tourist information services, golf services, beaches and natural protected areas and adventure tourism.</p>
<i>ECTAA position / action:</i>	<p>During the creation of the TC and the drafting of the business plan, the industry managed to obtain a stand still clause until 2010 for standardisation projects in the field of accommodation, travel agents and tour operators activities. Despite strong opposition of the industry and in contradiction with previous statements, the TC decided that the stand still clause would no longer apply after 2010 and that there would be no need to review the Business Plan.</p>
<i>Status of project and next steps:</i>	<p>Two New Item Proposals on yacht harbours and industrial tourism are currently being voted on. Moreover, at the last annual meeting in April 2010 the following two new fields of work were presented for consideration:</p> <ul style="list-style-type: none"> <li>- Security and protection of cultural heritage tourism;</li> <li>- Environmentally friendly accommodation establishments.</li> </ul> <p>ECTAA will continue to monitor the work of the ISO TC 228.</p>

### 9.2. CEN standards

<i>Issue:</i>	<p>The European standardization body, CEN, recently published the results of 11 feasibility studies on service standardisation. The main aim of the studies is the</p>
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identification of the service activities where European Standardisation is needed and where there is sufficient stakeholder support. Among the 11 projects, two are likely to have an impact on travel agents and tour operators, namely:

- project CHESSS – “CEN Horizontal European Service Standardisation Strategy”, which aims to assess the feasibility of developing standards across multiple service sectors. The study concludes that there is a horizontal dimension to services and therefore recommends the development of a single generic European service standard;
- Project on “Accessibility in transport and tourism services”, that aims at harmonizing practices in Europe in order to facilitate access in the sectors of tourism and transport for disabled people.

Moreover, CEN will be holding a Seminar on Standardization in the Tourism sector in Brussels on the 8th of December. The aim of the seminar is to take stock of the standardization work done so far at National, European and International levels and to have an exchange of views among stakeholders on any needs and opportunities for new standardization work in the area of tourism services.

*ECTAA  
position /  
action:*

ECTAA is against standardization of tourism products or services, for example by reopening discussions on common terminology or classification, etc.

*Status of  
project and  
next steps:*

ECTAA will monitor the development of all CEN initiatives that are likely to have an impact on the tourism sector.

### **9.3. European Standardisation System**

*Issue:*

The European Commission intends to review and reform the current standardisation system to adapt it to the needs of the changed general framework conditions. Therefore, the Commission initiated the following actions:

- A study on “access to standardisation” has been undertaken on behalf of the European Commission to determine to what extent the European standardisation system in its present form can guarantee appropriate access to all interested parties (final report published in April 2009).
- The setting up of an independent advisory Expert Panel for the Review of the European Standardisation System (EXPRESS) to develop strategic recommendations for the European Commission and other stakeholders which show how standardisation can bring greater value to Europe and can capitalise on its strengths and values in the global standardisation context.
- A public consultation on the review of the European Standardisation System, in view of gaining an understanding of stakeholders’ position on the review of the European Standardisation System and to gather opinions and suggestions in order to shape concrete proposals.

*ECTAA  
position /  
action:*

ECTAA welcomes the review of the European Standardisation System. ECTAA has expressed its views to the EXPRESS panel and has responded to the consultation.

*Status of  
project and  
next steps:*

The results of the open consultation, together with other studies and the EXPRESS Report, will help the European Commission to formulate proposals to the Council of Ministers and the European Parliament in Autumn 2010.

## 10. DESTINATION AND SUSTAINABILITY ISSUES

### 10.1. Destination and Sustainability Committee

*Issue:* Further to the Memorandum of Understanding signed between ECTAA and IFTO, the Board of ECTAA at the last spring biannual meeting in May 2010 approved the creation of a new destination and sustainability committee with competencies on:

1. Sustainability, including the environment, sustainable and responsible tourism;
2. Health and Safety;
3. Crisis Communications Coordination;
4. Destination policy

The Destination and Sustainability Committee met on 21 June 2010 and on 28th October 2010.

The Committee had a discussion on its future working programme, as well on the instruments for crisis communication coordination.

In addition, it had a discussion on the name and contact details of a person to be contacted in case of disruptive events, that led to a proposal to address the tour operators and legal Committees with a view of starting a discussion on a possible position on the revision on the package travel directive.

### 10.2 Destination Issues

*Issue:* Various problems encountered by Tour Operators at destinations

*Status of project and next steps:* The secretariat sent Members a questionnaire on particular issues in destinations. The results of the questionnaire showed that several members encounter a variety of major and minor problems in different destinations. The Secretariat will now prioritize them in order to decide which action should follow.

In the meantime, the Secretariat has already sent letters to:

- the Maldivian authorities on a new tax on tourism that will apply from 1st of January;
- the Kenyan Authorities, on the increase in VISA fees;
- the Tanzanian Authorities, on the plans to build a highway through the Serengeti National Park.

### 10.3. Fight against the commercial sexual exploitation of children in tourism

*Issue:* Commercial sexual exploitation of children

*Status of project and next steps:* ECTAA continues to take an active part in the WTO Work Task Force meetings to protect children from sexual exploitation in tourism, in order to keep track of all the initiatives carried out in this field and to inform Members accordingly.

## 11. ENLARGEMENT

*Issue:* Turkey, Croatia and FYROM are currently in the process for accession to the EU. Since 2005, the EU has started accession negotiations with Turkey and Croatia. Negotiations are based on the country's own programmes and their

pace depends on the country's progress in meeting the requirements for membership.

Iceland applied for accession in July 2009. The European Union also considers Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo as potential candidates.

*ECTAA  
position /  
action:*

ECTAA continues to pay particular attention to the associations of the accession and candidate countries by :

- providing assistance in terms of the interpretation and implementation of the EU acquis and its consequences for the trade.
- attending conferences of the national associations of accession / candidate countries.

## Chapter II: The Working Programme for 2011

The working programme for 2011 will include the following (the list is indicative and not limitative):

### 1. Transport

- European Commission's initiatives to reinforce air passenger rights against airline bankruptcy, in case of luggage incidents and in respect of the DBC Regulation and PRM Regulation.
- Application of the rules on the transparency of air ticket prices
- Access to fares (effectiveness of the Air Services Regulation and the CRS Regulation)
- Protection of agents' commercial data (complaint against PAXIS)
- Mergers and alliances in the airlines' industry under EU competition legislation
- Monitoring new developments in distribution models
- Border control and data transfer issues (ESTA, APIS requirements, PNR data transfer, etc.)
- Monitor the legislative process and implementation of the proposals on passenger rights in international coach and maritime transport
- White Paper on the future of transport
- Communication on airport package: airport capacity assessment and inventory, revision of the groundhandling Directive
- Legislative proposal on the use of security scanners

### 2. IATA issues

- Pursuing with the review of the Programme and safeguard of agents' interests through negotiations or other actions as required.

### 3. Consumer protection and Internal Market policies

1. Proposal for a Directive on Consumer Rights
2. Review of the Package Travel Directive
3. Monitoring of the work of the European Commission on consumer collective redress
4. Monitoring of the evaluation process of Directive on recognition of professional qualifications
5. Monitoring of the possible development of a professional card for service providers
6. Monitoring of the evaluation process of the implementation of the Services Directive
7. Monitoring of possible initiatives in the field of e-commerce

### 4. Fiscal matters

- Implementation of Directive amending the place of supply rules for services
- Proposal for a Commission Regulation implementing the VAT Directive
- Infringement proceedings concerning the margin taxation scheme - Revision of the margin taxation scheme
- Communication on the future of VAT strategy

### 5. Home Affairs

- Initiatives of the European Commission in the field of protection of personal data
- Smart border: legislative proposals to set up an Entry/Exit System and a Registered Traveller Programme
- Communication on the possibility of introducing an EU ESTA

### 6. Justice

- Legislative and non-legislative initiatives in the field of consular protection
- Monitoring of work of the European Commission on EU contract law

### 7. Communication and activities in general

- Liaise with the Commission and monitor the implementation of the tourism communication
- Standards (ISO, CEN and review of ESS)

#### **8. Relations with other industry partners**

- GEBTA, NET, AEA, IACA, WTAAA, IATA, etc.