EUROPEAN COMMISSION

MEMO

Brussels, 9 July 2013

Frequently Asked Questions: Commission proposes to improve consumer rights for 120 million holiday makers

Why is the Commission making this proposal?

More and more people book their holidays online, through different online operators. This has revolutionised the travel market, but means that holiday makers are not always sure of protection if something goes wrong. Around 23% of consumers book pre-arranged traditional package holidays, while 23% buy customised holidays (combined travel arrangements) which are put together by one or more commercially linked traders.

The current rules on package travel either simply do not cover such arrangements, or do so only in an ambiguous manner, leaving consumers unsure of their rights and traders unclear of their obligations.

In a recent survey, 67% of EU citizens mistakenly thought that they were protected when buying such travel arrangements. This has led to confusion amongst consumers and unfair competition between operators.

Why does the 1990 Directive on package travel need updating?

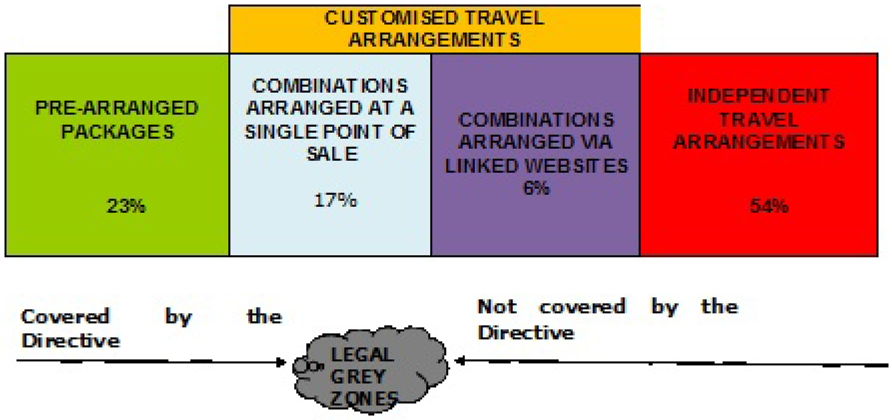
The current Directive refers to "pre-arranged" combinations of travel services and does, therefore, not explicitly cover packages which are combined at the consumer's request.

In the **Club Tour-Case** (Case C-400/00), the Court of Justice of the European Union clarified that the combination of tourist services by a "bricks and mortar" travel agency at the specific request of a consumer falls within the scope of the Directive if the consumer pays an inclusive price and there is a contract between the consumer and a travel agent.

However, this ruling failed to provide full clarity as to which travel arrangements the package travel legislation covers. Also, the ruling does not provide an answer to the question of who is liable if there are different parties (retailer and/or multiple traders) and in cases where the seller is acting as a mere intermediary or where customised combinations of travel services are sold on-line.

The Commission is thus proposing to update EU rules on package travel to get rid of any legal grey zones and **make it clear when you are covered and when you are not**.

Figure: Scope of the 1990 Package Travel Directive



What are the 10 Key Rights under the current, 1990 Package Travel Directive?

- Travellers receive all necessary information about the holiday before signing the contract.
- There is always one party (either the retailer or the organiser: the name and address will always be specified in the contract) that is liable for the correct performance of all the services included in the contract.
- Travellers are given an emergency number or a contact point where they can get in touch with the organiser or the travel agent.
- Travellers can transfer the package to another person, if they cannot leave on holiday themselves.
- The price of the trip cannot be changed later than 20 days before departure, and before that only in very limited situations.
- Travellers may cancel the contract and get their money back if any of the essential elements of the travel package has been changed.
- If, before departure, the trader that is responsible for the holiday cancels the package, travellers can get a refund and compensation, if appropriate.
- If, after departure, important parts of the package cannot be provided, alternative arrangements have to be made, at no extra cost, so that travellers can continue their holiday.
- The right to prompt assistance if a traveller is in difficulty.
- If the trader responsible goes bankrupt, pre-payments will be refunded and, if the trip has started, travellers will be repatriated.

What will change with the revised Directive?

The aim of the revised Directive is to **extend the current protection for traditional, pre-arranged packages to new combinations of travel services**. If those new combinations of travel services feature the characteristics associated with packages, the consumer is protected under the new rules.

For example, a combination that includes all services in one contract or where all services are sold at an inclusive price, will be considered a customised package, irrespective of whether this combination of travel services is sold online or off-line. Such customised packages will be protected in the same way as traditional, pre-arranged packages.

This means, in particular, that the ten key rights under the 1990 Package Travel Directive would also apply to customised packages.

In addition, consumers who buy other types of customised travel arrangements will receive clear information that what they are buying is not a package and that only the individual service providers are responsible for the individual travel service. Travellers buying such products will still have a guarantee that they will get their money back and will be repatriated, in case the seller, the carrier or any other service provider goes bankrupt.

What exactly are the differences between 'packages' and 'other customised travel arrangements' and why does the proposal distinguish between these categories?

There are four distinct categories of travel arrangements:

1. Independent Travel Arrangements (54%)

This is a travel service, such as a flight, accommodation or car rental that is purchased as a stand-alone product. These continue to remain **outside the scope of this Directive**. Other sectoral legislation such as the Passenger Rights Regulations or general EU consumer protection instruments, including the Consumer Rights Directive or the Unfair Commercial Practices Directive apply.

2. Pre-arranged packages (23%)

This is a combination of travel services bundled in advance by an organiser and consisting of at least two of the following services: (1) carriage of passengers, (2) accommodation and (3) other tourist services not ancillary to passenger transport or accommodation and accounting for a significant proportion of the package (e.g. car rental).

These remain **covered by the new Directive**.

3. Customised Packages (20%)

This category includes combinations of travel services where two or more services are purchased either from the same supplier on one website or at one high street travel agent under one contract, but where the consumer is free to choose the different components.

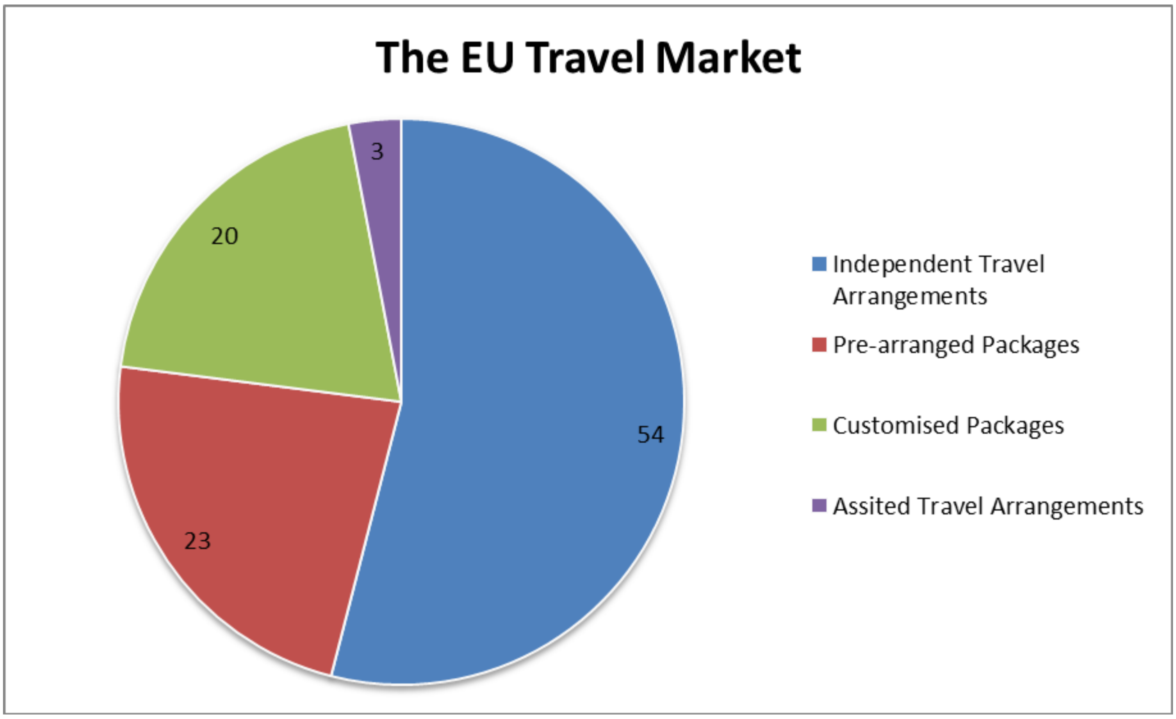
This category also includes combinations of travel services where two or more services are purchased from multiple suppliers under separate contracts but where the consumer's name or personal details are transferred directly between the traders or where an inclusive or total price is charged. An example would be a travel search website of an online travel agent which allows you to search for flights and hotels at the same time and sells you the two contracts (accommodation and flight), each with a different trader, at an all-inclusive price.

These will be considered as packages **by the new Directive and therefore be covered,** meaning the sole or main trader will be considered as an organiser who shoulders liability under the terms of the Directive.

4. Other customised travel arrangements (Assisted Travel Arrangements) (3%)

This category covers combinations of travel services which are sold by a high street/on-line travel agent acting as an intermediary facilitating the putting together of the travel arrangements for the purpose of the same trip or holiday, but which are clearly sold as separate services in distinct transactions. An example would be when a consumer purchases an airline ticket from a web site and then is invited to "click-through" at the latest when that first booking is confirmed to the site of another trader to procure a further travel service (hotel accommodation or car-hire) at the chosen holiday destination.

For these types of travel arrangements, the individual service providers are responsible for the proper performance of the separate contracts, but the retailer who facilitated the travel arrangements must provide clear information about this and must also provide the right to a refund of pre-payments and, when the traveller has already departed on vacation, a right to repatriation in case of the insolvency of one of the service providers.



Source: Eurobarometer 328

What are the advantages for consumers compared with the existing legislation?

- **Better protection of the 120 million holidaymakers buying customised packages** or other customised travel arrangements. Customised holidays are twice as likely to have problems as compared to traditional, pre-arranged packages. Also, if something goes wrong, the extra cost for a consumer who buys a customised travel arrangement is on average €600 today, three times as much as the extra cost for a pre-arranged package.
- **Clear information for all consumers**, who will be told exactly what kind of product they are buying (a package or another customised travel arrangement) and what kind of protection is included in their travel arrangement.
- **Fairer and more predictable prices** for package travellers, with stricter controls on price surcharges (and a 10% cap on price increases) and a **requirement to pass on price reductions** in equivalent circumstances.
- The **possibility for package travellers to address complaints** or claims directly to the retailer (travel agent) from whom they bought their holiday.
- **Increased termination rights.** Unplanned events can occur before departure. Package travellers will enjoy more flexibility by being able to terminate the contract before departure by paying the organiser a reasonable compensation. Consumers will also be able to cancel the contract, free of charge, before departure in the event of natural disasters, warfare, or similar serious situations at the destination that would affect the holiday.
- Other **essential rights for package travellers** (see the 10 key rights of package travellers above) will be maintained and clarified, including information on details of the package before booking, the organiser's responsibility for the performance of all included services with clear rights for travellers when something goes wrong, including price reduction and compensation for damages, assistance to travellers in difficulty, as well as a money-back guarantee and repatriation in case the organiser of the package goes bankrupt.
- Travellers buying **other customised travel arrangements** will for the first time be **protected if the seller or a service provider (e.g. an airline or a hotel) goes bankrupt**, that means money-back guarantee and repatriation.
- **Intermediaries will be made explicitly liable for booking errors** in relation to packages and other customised travel arrangements.

What are the advantages for businesses?

- Modernising the rules and cutting red tape would **bring down compliance costs** to around €8 per package sold which amounts to a reduction of around €3 per package.
- **Abolishing specific requirements for brochures** would save operators and travel agents **€390 million per year**.
- **Excluding managed business travel** from the Directive will lead to savings of up to **€76 million per year**. This avoids overregulation while ensuring that small and micro-businesses can be protected if they so choose.
- EU-wide rules will **make cross-border trade easier**, with common rules on information requirements, liability and other obligations towards travellers.

- The **mutual recognition of insolvency protection schemes** will avoid unnecessary costs for businesses wishing to operate cross-border. Once organisers comply with the insolvency protection requirements of their Member State of establishment, they may sell packages to travellers in other Member States without having to subscribe to the insolvency protection scheme of the traveller's Member State of residence. In addition, host Member States will no longer be able to ask travel agents to take out insolvency protection if the organiser is based in a different Member State. This will help travel operators to extend their offer to other Member States at no extra cost.
- Businesses across the EU selling equivalent travel products will **compete on an equal footing.**

Example of travellers who would be protected under the revised Directive

Example 1

Thomas booked a flight to New York directly from the website of airline X for himself and his partner. When the booking was confirmed, he received an invitation to book a hotel in New York through a link to a hotel booking website. On this website Thomas' travel dates and the number of people wo are travelling were already present. Thomas booked a hotel room on this website. While Thomas was in New York, airline X became insolvent and the return flight was cancelled. Thomas and his partner had to make their own travel arrangements to get home, which cost them €1400 on top of the cost for the original tickets. Under the revised rules, Thomas and his partner's travel arrangements would be covered as an Assisted Travel Arrangement and the two would be repatriated at no additional cost.

Example 2

Anna, a German, booked a flight and four nights accomodation in Rome from an Internet website enabling her to tailor her holiday by combining different travel services. This was done in a single booking process ending with one payment for all the components. When she arrived at the hotel, she found out that the bathroom had no water. She complained at the reception desk, but she was told that the water problem could not be solved and no further rooms were available. Anna then phoned the call centre of the on-line operator where she made the booking, and was told that she had to solve this problem with the hotel herself. Anna eventually had to leave and find another hotel. She lost 3 hours in trying to solve the problem, €3 for phone calls and paid an additional €200 for a room in another hotel. Under the revised rules, Anna's travel arrangements would be treated as a package, meaning that the online operator would be treated as an organiser and would be responsible for resolving the problem, for instance by providing her with an alternative room or hotel.

How do the new rules on package travel relate to passenger rights?

It is clarified in the proposal that package travellers will continue to benefit from the rights under **EU passenger rights regulations in relation to air, train, maritime as well as bus and coach transport**, in addition to their rights under the revised Package Travel Directive.

In the future package travellers will also be able to invoke rights against a carrier and the organiser. However, compensation received from one of these parties will have to be taken into account when claiming compensation from the other party.

At the same time, the proposal seeks to ensure consistency between the package travel legislation and rules applying to carriers, for instance, in relation to liability when it is impossible to bring travellers home because of unavoidable and extraordinary circumstances, as was the case at the time of the ash cloud crisis. In this respect, the proposal clarifies that organisers of packages have to pay for the continued accommodation of travellers at the place of destination, but only for a maximum of three nights.

What is the size of the EU travel market?

The EU is the world's **number one tourist destination**, with **400 million international arrivals** in 2012. The tourism sector counts **1.8 million businesses**, mostly small and medium-sized enterprises, and employs about **5.2% of the total workforce in the EU**.

Europeans made more than **1 billion holiday trips in 2011**, almost 80% of them in the EU. An estimated **120 million consumers a year** buy customised travel arrangements. In the future, they will be protected under the Directive. While today only 23% of consumers can with certainty be said to be protected by the Package Travel Directive when going on holiday.

The EU travel market comprises approximately **90,000 tour operators** and travel agencies[1]. SMEs constitute 99% of these businesses, of which micro enterprises represent 92%. In the EU there are also **200,000 hotels** (99% SMEs, 73% of which are micro enterprises), **13,000 car rentals** (99% SMEs, out of which 94% are micro enterprises), **300 airlines** (50% large and 50% medium sized businesses) and **58,000 businesses** operating in the transport sector other than airlines and car rentals (99% SMEs, about 90% micro enterprises).[2]

[1] Eurostat structural business statistics.
[2] Eurostat structural business statistics, last available data 2009.