

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on package travel, including package holidays and package tours*COM(88) 41 final**(Submitted by the Commission to the Council on 23 March 1988)**(88/C 96/06)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 A thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas one of the main objectives of the Community is to complete the internal market, of which the tourist sector is an essential part, by 1992 at the latest;

Whereas paragraph 36 (b) of the Annex to the Council's resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy invites the Commission to study, *inter alia*, tourism, and, if appropriate, to put forward suitable proposals with due regard for their significance for consumer protection and the effects of differences in Member States' legislation on the proper functioning of the common market;

Whereas the Council adopted on 10 April 1984 a resolution on a Community policy on tourism, wherein, after welcoming the Commission's initiative in drawing attention to the importance of tourism, and after taking note of the Commission's initial guidelines for a Community policy of tourism, the Council invited the Commission to present proposals to it in the field of tourism;

Whereas the Commission's communication to the Council concerning consumer protection policy, which was entitled 'A New Impetus for Consumer Protection Policy' and was approved by resolution of the Council on 6 May 1986, lists in paragraph 37, among the measures proposed by the Commission, the harmon-

ization of legislation on package tours, and point 12 of the Annex setting out the timetable for action envisages the adoption by the Council of a directive on package tours in 1987;

Whereas national laws of Member States concerning package travel show many disparities and the various national practices in this field are markedly different, with the result that the national markets operate divergently from each other and that distortions of competition arise amongst operators established in different Member States;

Whereas certain common rules on package travel will contribute to achieve a common market in services, thus helping operators established in one Member State to render their services in another Member State and consumers to benefit from equal conditions when buying a travel package in any Member State;

Whereas, in concluding contracts for package travel, consumers often thereby contract for the provision of services which are of an international character, such as transportation across frontiers and accommodation and associated services, in payment whereof large amounts of money are transferred between Member States;

Whereas tourism plays an increasingly important role in the economies of the Member States; whereas package travel constitutes an important part of tourism; whereas the package travel industry in Member States would be stimulated to greater growth and productivity if at least a minimum of common rules were adopted in order to structure it to a Community dimension; and whereas this would not only produce benefits for Community citizens undertaking package travel organized on the basis of those rules, but would attract tourists from outside the Community who seek the advantages of guaranteed standards in package travel;

Whereas experience has shown that package travel, commonly paid for in full in advance of departure, has caused a certain level of dissatisfaction, and that the level of dissatisfaction is high enough to justify action, in the form of a Council directive, by the Community;

Whereas the organizer of the package and the retailer of it should be under obligation to ensure that in descriptive matter, and particularly in brochures, relating to package travel which they respectively organize and sell, information should be given which is accurate and also clearly legible and understandable to the consumer;

Whereas the consumer needs to have a record of the terms of contract applicable to the package; whereas this can conveniently be achieved by requiring that all the terms of the contract be stated in writing or such other documentary form as shall be comprehensible and accessible to him, and that he be given a copy thereof;

Whereas the consumer should be at liberty in certain circumstances to transfer to a willing third person a booking made by him for a package;

Whereas the consumer should be protected against any unjustified increase in the price of the package;

Whereas the consumer should in certain circumstances be free to withdraw before departure from a package travel contract concluded with him;

Whereas there should be a clear definition of the rights available to the consumer in circumstances where the organizer of the package cancels it before the agreed date of departure;

Whereas if, after the consumer has departed on the package, there occurs a significant failure of performance of the services for which he has contracted (for whatever cause other than the fault of the consumer) or the organizer perceives that he will be unable to procure a significant part of them to be provided, the organizer should have certain obligations *vis-à-vis* the consumer;

Whereas consumer dissatisfaction could be much reduced if there were imposed on the person who arranges or sells the package an obligation to ensure that all the services which the traveller contracts to receive are rendered at the proper time and efficiently;

Whereas the consumer should be informed in writing of the name of the organizer's local representative, if any, at the package destination(s) and of the means of making contact with such representative, who should use his best endeavours to rectify the consumer's complaints; whereas to the extent possible local tourist authorities should investigate complaints made to them by consumers, should suggest solutions and endeavour to obtain amicable settlement of complaints, and provide

assistance in recording evidence of significant complaints which have not been remedied; and whereas both the consumer and the package travel industry would find that consumers' complaints in this field would be disposed of more expeditiously than at present if in each Member State there existed a rapid, efficient and inexpensive procedure for dealing with those complaints which are not resolved amicably whether provided by public or private bodies;

Whereas both the consumer and the package travel industry would benefit if organizers were placed under an obligation to cover by means of insurance those parts of their liability under this Directive as are insurable; whereas, similarly, each Member State should ensure that within its territory a guarantee fund is available for payment of claims sustainable under this Directive which remain unpaid from some other source;

Whereas the consumer should have the benefit of the protection contemplated by this Directive irrespective of whether he is a direct contracting party, a transferee, or a member of a group on whose behalf another person has concluded a package travel contract;

Whereas Member States should be at liberty to adopt, or retain, more stringent provisions relating to package travel for the purpose of protecting the consumer,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to package travel, including package holidays and package tours.

Article 2

For the purposes of this Directive:

— Package: means the pre-arranged combination of not less than two of the following when organized at a global price and marketed as such:

1. transport,
2. accommodation,
3. other services not ancillary to transport or accommodation;

and the expressions 'package holidays', 'package tours' and 'package travel' shall be interpreted accordingly.

— Organizer: means the person who in the course of his business, organizes the package and offers it by means of brochures, or other forms of advertising, to the public generally.

- Retailer: means the person who sells the package on behalf of the organizer.
- Consumer: means the person who takes or agrees to take the package.
- The contract: means the agreement whereby the consumer purchases the package and the organizer undertakes to provide it.

Article 3

With regard to the marketing and sale of the package, Member States shall ensure that all descriptive matter published or issued by the organizer or the retailer concerning a package, the price thereof and any other terms applicable to the contract therefor, is legible, understandable and accurate, and that brochures relating to a package contain adequate information, where relevant, concerning:

- (a) the type(s) of transport to be used;
 - (b) where hotel or other accommodation is involved, the category (if any), address and main features thereof;
 - (c) the meal plan;
 - (d) visits, excursions or other services included in the package or available optionally on payment of a supplement;
- and that brochures specify:
- (e) either the monetary amount, or the percentage of the price which is to be paid by way of pre-payment, on account of the price; and
 - (f) the timetable for payment of the balance of the price.

Article 4

Member States shall ensure that in relation to the contract the following principles shall apply:

- (1) that the contract contains all the essential terms; by way of illustration there is annexed hereto a list of terms which, depending on the circumstances, are to be considered essential;
- (2) that all the terms of the contract (including such of those set out in the Annex hereto as are appropriate to the particular package) are stated in writing or such other documentary form as shall be comprehensible and accessible to the consumer; and that he shall be given a copy thereof;
- (3) that if the consumer is for serious reasons (such as sickness, bereavement), which he duly communicates to the organizer or retailer not less than one week before the departure date, prevented from proceeding with the package, he is free to transfer his booking to a willing person who satisfies the

conditions, if any, applicable to the package, and the legal or administrative arrangements, if any, for taking part in it, and who shall be responsible for payment of the balance of the price;

- (4) that consumers are protected against unjustified price increases, and in particular:
 - (a) that the price is not varied unless the contract expressly so provides; and that if the contract does so provide, the organizer may, subject to subparagraph (c) below, alter the price solely in order to take account of modifications in:
 - transportation costs, including the cost of fuel,
 - dues, taxes or fees chargeable for certain services, such as airport taxes, landing fees,
 - currency exchange rates,
 but only if the resulting aggregate variation is in excess of 2 % of the agreed price;
 - (b) that the amount of the variation in price, and the reason therefor, is notified in writing to the consumer without delay;
 - (c) that the consumer has one of the following guarantees after he has paid the whole of the price agreed in the contract:
 - (i) either from the thirtieth day prior to the agreed date of departure the price will not be increased;
 - (ii) or during the period of three months following the conclusion of the contract the price will not be increased;
- (5) that the consumer is entitled to withdraw from the contract before departure if important alterations are made to the terms of the contract as agreed, and in particular:
 - (a) if the price is raised by 10 per cent or more; or
 - (b) if the package is modified significantly; or
 - (c) if there is an unreasonable delay in departure, howsoever caused, otherwise than by his own fault;
- (6) that if the consumer withdraws from the contract pursuant to point 5 above, or if, for whatever cause, other than the fault of the consumer, the organizer cancels the package before the agreed date of departure, the consumer is entitled:
 - (a) to take an equivalent substitute package at no extra charge to the consumer; or

(b) to be repaid all sums paid by him under the contract, and where appropriate, be compensated either by the organizer or by the retailer according as the relevant Member State's law shall provide or determine, for non-fulfilment of the contract, except where:

- (i) cancellation is on the grounds that the number of persons who enrolled for the package is less than the minimum number specified by the organizer in the brochure or elsewhere, and the consumer is informed of the cancellation, in writing, not less than 21 days before the advertised or subsequently agreed date of departure; or
- (ii) cancellation is for reasons of *force majeure*; but these reasons shall not include over-booking;

(7) that where, after departure, a significant part of the services contemplated by the contract is not provided or the organizer sees that he will be unable to procure a significant part of them to be provided, (in either case, for whatever cause other than the fault of the consumer) the organizer:

(a) makes suitable alternative arrangements, which are free of cost to the consumer, for the continuation of the package (and if it is a package holiday to a destination at which he has already arrived, to continue it at the place where he is) if such arrangements are capable of being made; or, if such arrangements are impossible to achieve or are not agreed by the consumer,

(b) provides suitable transport for the consumer, free of cost to him, to return him to the place of departure, or to such other return-point as was agreed between them; and

(c) where appropriate, compensates the consumer according as the relevant Member State's law shall provide:

- (i) for significant inconvenience caused to him; and
- (ii) to the extent that the agreed services have not been provided, for non-performance of them, proportionally.

Article 5

The Member States shall, as regards the performance of the contract, take the necessary measures to ensure:

(1) that the services which under the contract are to be provided for the consumer, whether by the organizer or by a third person, shall be rendered punctually and efficiently;

(2) that *vis-à-vis* the consumer, liability for any deficiency in the provision of those services lies either with the organizer or (in those Member States which so prefer) with the retailer.

Article 6

With regard to complaints, Member States shall ensure:

(1) that not later than the time when the tickets or other travel documents are delivered to the consumer he is informed in writing of the name of, and the means of making contact with, the organizer's local representative, if any, at the relevant destination(s); and that this representative uses his best endeavours to rectify the consumer's complaints, particularly if they are substantial;

(2) that to the extent possible local tourist authorities, whether public or private bodies, investigate complaints made to them by consumers, suggest solutions and endeavour to obtain amicable settlement of complaints, and provide assistance in recording evidence of significant complaints which have not been remedied;

(3) that in each of their territories there is available whether provided by public or private bodies a rapid, efficient and inexpensive procedure for use by the consumer in dealing with his complaints concerning any package for which he has contracted, where these are not resolved amicably.

Article 7

Member States shall ensure:

(a) that organizers cover by means of insurance such part of their liability under this Directive as is insurable; and

(b) that there is available in each of their territories a guarantee fund for payment of claims sustainable under this Directive which remain unpaid from some other source.

Article 8

The consumer shall have the benefit of the protection contemplated by this Directive if he is:

(a) the person with whom the organizer or the retailer has concluded the contract, or in the event of a transfer, the transferee;

(b) a person in respect of whom the organizer or the retailer has concluded the contract with another person, such as a parent, guardian or group convener.

Article 9

Member States may adopt, or retain, more stringent provisions in this field to protect the consumer.

Article 10

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 31

December 1990. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of law which they adopt in the field governed by this Directive.

Article 11

This Directive is addressed to the Member States.

*ANNEX***Terms for inclusion in the contract if appropriate to the particular package**

- (a) the travel destination(s); and, where periods of stay are involved, the relevant periods, with dates;
 - (b) the type(s) of transport to be used, the date and time of departure and return and the times of transport connections, if appropriate; and particulars of the place to be occupied by the traveller e.g. cabin/berth on ship, sleeper compartment on train;
 - (c) the departure point and return point;
 - (d) where the package includes hotel accommodation the name, address and category (if any) thereof, the meal plan (if included), and a statement whether a private bathroom or shower is included; and where the package includes another type of accommodation such as a villa, chalet, apartment, flat, room or caravan, a description of its main features;
 - (e) the price of the package, and a statement that it will not be varied except in the event that the organizer is himself compelled to accept modifications, which he cannot avoid or reduce, in respect of transportation costs (including cost of fuel), certain dues, taxes or fees chargeable for services (such as airport or seaport taxes, landing or departure fees) and currency exchange rates;
 - (f) the timetable for payment of the price;
 - (g) other services, if any (e.g. excursions), which are included in the price;
 - (h) any special requirements which the traveller has communicated to the organizer or retailer when booking his travel, and which either of them has accepted.
 - (i) the name and address of the organizer and, where appropriate, of the retailer.
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