



REVIEW OF THE PACKAGE TRAVEL DIRECTIVE

Questionnaire for Consumer Organisations

Answer by BEUC

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ANSWER BY BEUC ON THE QUESTIONNAIRE FOR CONSUMER ORGANISATIONS

Review of the Package Travel Directive

INTRODUCTION

1. The continuous evolution of the travel services market and in particular the developments that took place in the on line market in the last three years¹, call for an update of the regulatory framework in the transport sector (including the package travel directive). The future framework should be one that is consistent, future-proof, inclusive and non-discriminatory i.e. which protects the interests of passengers irrespective of the varied ways they choose to travel (e.g. within or outside of a package, using separate or linked services...).

2. BEUC recommends the adoption of a comprehensive travel directive that would set out the legal rights and remedies of all passengers and holidaymakers in a single piece of legislation. This directive would replace both the existing Package Tours Directive and Regulation 261/2004 on Air Passengers' Rights. The travelling consumer should be able to locate all of his/her rights in a single piece of legislation.

2. We note that the scope of the ongoing consultation is rather limited in comparison to the former². The current consultation is mainly limited to issues related to the scope of the directive, information requirements, contract changes and liability for insolvency. In contrast, the 2007 consultation tackled other important legal and practical issues (notions and definitions, the right of withdrawal, the right to compensation, the different liabilities, and complaints handling) which we think should be brought again to the attention of decision makers. In this answer, we thus refer to some issues that go beyond the scope of the consultation as far as we deem it necessary³.

3. The recent "Study on Consumer Detriment in the area of Dynamic Packages"⁴ provides some useful information on the current travel market. However, the figures and data in that study about package travel and separate travel services appear to differ from data reported by our members. This could be due to the limited scope of the CDS in the sense that it mainly focuses on the problems around "dynamic packages".

4. At the end of this document (Chapter IV) we include further comments and proposals concerning the gaps and weaknesses of the current regulatory framework.

¹ On line fast growing sales (direct sales by airlines and through platforms), the proliferation of "dynamic" packages and the growing sales rate of separate travel services such as "flight only" arrangements and summer house holidays.

² Working Document of the European Commission on the Directive 90/314/EEC, 26 July 2007: http://ec.europa.eu/consumers/rights/commission_working_document_final26-07-2007.pdf

³ We also refer to our detailed answer to the previous consultation: "BEUC comments on the Commission's working document", 10 October 2007 (doc x/057/2007):

<http://www.beuc.eu/BEUCNoFrame/Docs/3/IAJPCOLDJJDDDFGFECGOIHEDDPDB39DBGE19DW3571KM/BEUC/docs/DLS/2007-00965-01-E.pdf>

⁴ London Economics, November 2009.

I. ANSWER BY BEUC ON THE QUESTIONNAIRE FOR CONSUMER ORGANISATIONS

(Draft 16 January 2010)

Review of the Package Travel Directive

SECTION A: ABOUT YOU AND YOUR ORGANISATION

Please provide details about yourself and your organisation below.

Name	
Organisation name:	BEUC
Telephone number:	
E-mail address:	

Please indicate which EU Member States your organisation covers: (Please tick)

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

SECTION B: CONSUMERS' EXPERIENCES WITH PACKAGE TRAVEL

BEUC does not directly deal with consumer complaints. Although we have received several contributions from our member organisations, those are not representative of the overall complaints. Moreover, our members report that the classification method used by the Commission does not always coincide with the classification system. We therefore refrain from answering these questions while referring to the individual responses sent by some of BEUC members.

1. Please estimate the percentage of consumers who you believe are **fully aware** of the protection available to purchasers of 'package travel' under the PTD. (optional)

<5% 5 - 10% 10 - 20% 20 - 50% >50%

2. On average, how many complaints do you receive (or are you aware of) on an annual (yearly) basis from consumers relating to package travel holidays? (optional)

<10 10 - 25 25 - 50 50 - 75 75-100
 100 - 250 250- 500 500 - 1,000 1,000 - 2,000 >2,000

3. Please provide an indication of how complaints break down between different types of travel arrangements. (compulsory)

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

SECTION C: SCOPE OF THE DIRECTIVE

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

4. Using ticks indicate which of the following travel-related products or arrangements you think require special consumer protection rules (e.g. information and liability requirements, insolvency protection in case of bankruptcy, etc.)? (compulsory)

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

SECTION D: INFORMATION REQUIREMENTS

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

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

Amount to be paid (money or %) on account and the schedule for paying balance	5
Other tourist activities included in the total price	5
Destination and the means and quality of transport to be used	5
Health requirements e.g. vaccinations required, “safe” practices	5
Meal plans	5
Name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call	5
Insurance possibilities or options	5
Passport and Visa requirements	5
Travel and holiday itinerary	5
Type and quality of accommodation and its location	5
Travel time, intermediate stops and transport connections/transits and details of the place to be occupied by the traveller (e.g. cabin or berth on ship, sleeper compartment on train)	5
Whether minimum number is required for package to take place and deadline for informing consumer of cancellation if numbers not achieved	5
Other (please specify) : price details, reductions, optional supplements,	5
Other (please specify) : type, goal and target group of the holiday	5
Other (please specify) : persons with reduced mobility	5
Other : info on complaints handling, redress, insolvency protection and liability insurance of tour operator	5
Information regarding risks arising from natural disasters, terror, public health, public order and other sources	5

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

Information on:	In the brochure	Pre contract	In the Contract	Before Departure
Amount to be paid (money or %) on account and the schedule for paying balance	X	X	X	
Other tourist activities included in the total price	X	X	X	
Destination and the means and quality of transport to be used	X	X	X	
Health requirements e.g. vaccinations required, “safe” practices	X	X	X	X
Meal plans	X	X	X	
Name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call		X	X	X

Questionnaire - Definition of Policy Options and Impact Assessment

Information on:	In the brochure	Pre contract	In the Contract	Before Departure
Insurance possibilities or options	X	X	X	
Passport and Visa requirements	X	X	X	X
Travel and holiday itinerary	X	X	X	
Type and quality of accommodation and its location	X	X	X	
Travel time, intermediate stops and transport connections/transits and details of the place to be occupied by the traveller (e.g. cabin or berth on ship, sleeper compartment on train)		X	X	X
Whether minimum number is required for package to take place and deadline for informing consumer of cancellation if numbers not achieved	X	X	X	
Other: price details, reductions, optional supplm.	X	X	X	X
Other : type, goal and target group of the holiday	X		X	
Other : persons with reduced mobility	X	X	X	X

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

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

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

The Organiser/ Tour Operator The Retailer/ Seller/Travel Agent Other parties (specify) X (e.g. hotelkeeper, companion of tour operator)

9. Which of these do you consider to be a **last minute booking**? (compulsory) Bookings made: We consider that this question is not clear. We thus refrain from answering it.

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

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

Yes: inter alia the information about the eventual absence of a right of withdrawal should be compulsory. Otherwise, also in last minute bookings consumers should receive all the necessary information before departure on a durable medium.

SECTION E: LIABILITIES, OBLIGATIONS AND RESPONSIBILITY FOR CONSUMER DIFFICULTIES AND CONTRACT

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

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

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

BEUC proposes a joint liability; otherwise the tour operator/organiser should be liable (with “regress” towards intermediaries); or eventually introduce the liability of the seller like in most other commercial sectors; anyway cancel the wording of the current PTD concerning the liability of the “organiser and/or retailer”; see our chapter IV below

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

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

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

BEUC proposes a joint liability of the tour operator and the retailer. Article 5, paragraph 4, should clarify that the expression “at the earliest opportunity” refers also to the time after the end of the vacation. Consumers/passengers should be able to file complaints to either service provider (i.e. Hotel/seller/tour operator).

SECTION F: CONTRACT CHANGES

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

1) Distance selling of package travel for early bookings.
 2) In cases of “Force majeure”, including sudden illness (see comments and proposals in chapter IV below)

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

Consumer should have the right to cancel the contract by paying reasonable compensation. The updated travel directive should set up (or oblige the MS to set up) a harmonized system for calculating compensation (e.g. proportionate to the price paid for the holiday and based on the moment in time of cancellation in sliding scales). The operator must set out its cancellation terms in an unambiguous and transparent manner.

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

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

18. There can often be a long period of time between publication of a package travel brochure and when a consumer books a holiday. During this period, costs for the seller may have increased and as a result, they may need increase their listed prices. If the seller has communicated clearly in the brochure that possibility, on a scale of 1-5 (where 1 = not acceptable and 5 = fully acceptable), indicate how acceptable it is for the seller of a package travel to **change the price listed in brochures** for the reasons listed below? (Please score all that apply) (compulsory)

Variations in transportation costs, including the cost of fuel (fuel surcharges)	1
Variations in taxes, duties and fees chargeable for services such as landing taxes, embarkation/disembarkation fees at ports and airports	3
Variations in exchange rates applied to the package	1
None of the above – all prices in the brochure should be fixed	
Other	Old price lists in catalogues should be identified as not up-to-date and consumers

<i>(please specify)</i>	with old catalogues have to be informed at least before booking about the new prices in a non-misleading way.
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19. There can often be a long period of time between signing the contract and departure. During this period, costs for the seller may have increased/ decreased. If the seller has communicated that possibility to consumers, on a scale of 1-5 (where 1 = not acceptable and 5 = fully acceptable), indicate how acceptable it is for the seller of a package travel to **change the price agreed in the contract** for the reasons listed below? (Please score all that apply). (compulsory)

Variations in transportation costs, including the cost of fuel (fuel surcharges)	1
Variations in taxes, duties and fees chargeable for services such as landing taxes, embarkation/disembarkation fees at ports and airports	1
Variations in exchange rates applied to the package	1
None of the above – all prices in the contract should be fixed	5
Other <i>(please specify)</i>	

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

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

Prices should be binding Other (please specify)

21. Is there any maximum acceptable level of price changes from what was agreed in the contract? (compulsory)

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

SECTION F: FUTURE REGULATORY FRAMEWORK

22. Is there currently an adequate level of protection provided under the minimum provisions of the PTD when purchasing package travel? (compulsory)

YES NO Do not know

23. If you have answered NO, please identify which aspects should be modified

See below chapter IV with additional remarks and proposals (a.o. confusion between different role and liabilities of travel agent/retailer and tour operator/organiser; prescription periods and other restrictive time limits; liability for independent travel arrangements; etc)

24. Do you believe consumers would be more willing to purchase packages from a seller in another EU country if they have the same rights in all the EU countries? (compulsory)

YES NO Do not know

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

Removal of cross border barriers in the form of differing or additional requirements at national levels	1
Including other (modern) channels of marketing communication (apart from the brochure) in the scope of the Directive (e.g. the internet)	5
Clarification/updating of definitions and crucial terminology in the Directive (e.g. “consumer”, retailer, organiser, essential terms of the contract, etc.)	5
Clarifying the scope of the Directive	5
Extending the scope of the Directive (separate travel arrangements included)	5
Other (<i>please specify</i>)	<ul style="list-style-type: none"> - Including services consisting of a single component or element i.e. only flight or only accommodation. - Bankruptcy - Create a Pan-European body to grade hotels and facilities

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

The scope and definitions in the PTD	5
The information requirements	4
The liabilities of organisers/retailers	5
Rules regarding cancellation/withdrawal by consumers	5
Rules regarding changes in price and essential terms by providers	5
Rules regarding insolvency protection	5
Establishment of a pan-European fund or scheme for insolvency	4
Other (<i>please specify</i>)	

One way of increasing consumers' awareness could be the introduction of a package travel label (logo) or trust mark on offers to inform consumers of whether a given product is covered by the

PTD or not. How is this likely to influence consumers' decisions on which products to purchase? Please indicate the statement which would apply in most cases

Consumers are most likely to purchase those products with label, even if a preferred product is not available under a label	
Consumers would definitely consider whether product is under the label or not	
Whether or not a product is protected or not would not influence consumers' decisions	
Price is more important to consumers than protection and whether or not a product carries the label	
None of the above A proliferation of different logos will not help consumers but confuse them. Any EU logo will have to comply with very strict criteria (see below chapter IV, B 9)	X

27. Which of the following ways of ensuring the protection of consumers would you prefer? Please give reasons for your answer. (optional)

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

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

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

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

See chapter IV below

IV. FURTHER COMMENTS AND PROPOSALS

As mentioned above we consider that the questionnaire at hand does not sufficiently deal with certain issues that are relevant and which mainly refer to:

- ✓ separate bookings, in particular stand alone components (e.g. seat-only, accommodation and car rental) that are offered or sold by service providers;
- ✓ the two main stages around the conclusion of most travel contracts, i.e. the “booking/reservation” with the seller, and the confirmation (i.e. definitive conclusion of “the contract”) by the tour operator - if he is not the seller of course;
- ✓ situations of “Force Majeure” and linked consequences (possible reimbursement, compensation, damages...).

A. Essential remarks and proposals

1. Legislative approach - what kind of harmonisation?

1.1. So far as there is no evidence showing that full harmonisation would bring about a significant increase of the cross-border sales of travel services while increasing the overall protection of consumers/passengers, the updated directive should remain a “minimum” directive. MS should be free to improve the framework offered by EU rules for instance by adapting it to their legal and cultural particularities.

1.2. BEUC’s members report that a full harmonisation of the rules is not likely per se to bring about an increase in cross-border sales. On the contrary, language barriers (consumer purchasing travel services from foreign tour-operators) and the lack of proper enforcement measures at cross-border level are the most problematic barriers in the travel sector.

2. Need to tackle stand-alone travel services

2.1. In order to effectively protect consumers/passengers in a non-discriminatory way, the future directive needs to cover the widest possible number of different travel services. Indeed, both the growing number of sellers, intermediaries, and tour operators/organisers on the travel market and the current wide variety of travel services on offer (including all forms of accommodation, the sale of “seat-only tickets”, car rental, etc) call for a significant widening of the scope of the current directive. In particular, the future directive should do away with the requisite of including at least two services in the “package”.

2.2. Notwithstanding, the “definitions” of the 2 kinds of dynamic packages in questions 3 and 4 of the questionnaire are vague and would be difficult to distinguish, assess and/or apply in practice. In any case, the mentioned criterion concerning the use of “different sites” which are “clearly linked”, seems to be different from the definition in the consumer detriment study

concerning dynamic packages “where all components were not purchased at the same time and packages where billings were issued from several companies”⁵.

2.3. BEUC’s evidences from different member states confirm the underestimated importance of stand-alone travel services. Our member Test-Achats reported that in 2009 ca. 47 % of sales concerned accommodation (as part of a package or not); and ca. 5,3 % of all travel complaints concerned summer house renting outside any package. The Belgian ECC (European consumer Center) reported that 20 % of the travel complaints concerned accommodation (hotels, summer houses...), and 8 % car rentals.

3. Need for clear definitions and legal certainty

3.1. We refer here to our detailed comments (doc X/057/2007) on the Commission’s working document of 26 July 2007⁶. A special attention should be paid to the legal uncertainties concerning notions such as “force majeure” (cfr. Reg. 261/04), “delays” and “cancellations” (cfr. ECJ case nr C-402/07), “essential wishes” versus “preferential wishes”, fault liability versus no-fault (strict) liability, “intermediary” versus “travel agent”/“retailer” and “tour operator”/“organiser” (cfr. differences between the definitions in the PTD and the APR (air passenger’s rights regulation), and different categories of damages, including moral damage

3.2. The different ways, and possible stages through the conclusion of many travel contracts (either in a brick and mortar travel agency, via the internet, or in another way at a distance) create uncertainties regarding the time and place of the conclusion of contracts. In order to seek legal certainty on the applicable law and of jurisdiction, this question should be tackled.

4. Clear rules on liability

4.1. The wording of “operator and/or agent” in the existing PTD is everything but clear and should be abandoned. The Directive should be amended by including some basic rules for travel agents and other travel intermediaries, especially on their liabilities, their information duties and their obligation to take insolvency insurance.

4.2. The practical application of the liability rules of the PTD often results in the dismissal of a legal claim by a consumer, when suing the retailer instead of the organiser (e.g. due to the combined problem of a short prescription period, like in Belgium⁷ and Italy). To spell out the issue the three following solutions could be envisaged:

- a) the joint liability of the seller and the organiser/tour operator (preferred solution);

⁵ According to the figures reported by our Belgian member Test-Achats/Test-Aankoop, in 2009 ca. 20 % of all packages were bought from one website but it was impossible to check the use of different websites.

⁶ <http://www.beuc.eu/BEUCNoFrame/Docs/3/IAJPCOLDJDDDFGFECGOIHEDDPDB39DBGE19DW3571KM/BEUC/docs/DLS/2007-00965-01-E.pdf>; see in particular pages 4 - 6.

⁷ Judgment of the *Cour de Cassation* of Luxemburg in the case *Best Tours*.

- b) the presumed liability of the organiser/tour-operator with a right of “regress” against the seller;
- c) thirdly – as in most other commercial sectors – the presumed liability of the seller with a possible “regress” against the organiser/tour operator.

5. Legal and economic certainty of prices

5.1. Two considerations regarding current commercial practices are necessary here. On the one hand, the classic travel brochures are being replaced more and more by flexible “virtual offers” with numerous modules, and/or by temporary offers that can be combined easily by the consumer or retailer. Prices (updated often in a monthly renewable annex or separate folder) become more and more flexible (practise of “fluid pricing” and “yield management”). On the other hand, tour-operators and airlines are covering the (limited) risk of sudden price variations by techniques like “hedging” concerning their currency risks and variable fuel prices.

Within this new market evolution and as a corollary of the current practise of flexible prices, which are permanently accessible and comparable via the internet BEUC pleads in favour of fixed prices (i.e. price changes should not be allowed once the contract has been concluded),.

5.2. The principle of all-inclusive prices should be applied in the future directive drawing on the already existing legislation in this regard⁸. The general practise to add new supplements like administrative fees, transaction fees, payment fees and other typical air transport fees like check-in fees, security charges, confirmation fees (etc. !) should be forbidden, and all non-optional supplements should be included in the upfront price indication, exception made of the possible supplements for additional services.

6. Effective insolvency protection

6.1. Article 7 of the current directive, should be redrafted in order to provide passengers with an effective protection mechanism. It is a fact that nearly no member state properly complies with this provision. For instance most member states limit the protection to an insurance (or a bond, or a bank guarantee) of a percentage of the turnover of the previous period⁹. The new directive should follow best practices existing in some member states¹⁰. The percentage to cover for insolvency should be included in the all-in price.

Besides the possible reimbursement or repatriation, the continuation of the started holiday should be offered, at the choice of the consumer (current practise under the Belgian “Garantiefonds Reizen”).

⁸ See Unfair Commercial Practises Directive and the Regulation 1008/2008 on common rules for the operation of air services in the Community, especially as for all-in prices.

⁹ According to the Dutch SGR (Stichting Garantiefonds Reisgelden) only holidays offered and contracted on the Dutch market, are covered.

¹⁰ In the UK, the ATOL (Air Travel Organizers Licensing) system has been replaced by a 1£ per passenger contribution. The Austrian model requires a limited basic insurance combined with a fund, which operates if the insurance proves not to be sufficient, for instance concerning cross-border sales (umbrella insurance); in Denmark, the sellers of package travel must have a guarantee fixed according to law that must cover the company’s bankruptcy and losses.

6.2. The rules to enter the market should be tightened¹¹. Here again, attention should be paid to national best practices: for instance many member states require a licence (e.g. Belgium) or registration (e.g. France), which may be obtained by the tour-operator only if he proves to have taken sufficient insolvency insurance.

6.3. The duty to take insurance against the insolvency risk should also cover travel agents and airlines¹².

6.4. Not only insolvency, but also liability claims should be under this scheme¹³ (this was already a part of the proposal of the present PTD).

7. “Force Majeure”, cancellation, compensation and damages

7.1. The current legal uncertainty and the frequent unexpected incidents (e.g. natural disasters, extreme weather conditions, terrorism) call for more protective rules in cases of force majeure: the definition, consequences and needed measures concerning force majeure situations – as provided by art. 4, 6° and art.5, 2° of the current PTD – should be improved. This update should be in line with similar rules existing in the air passengers’ rights legislation and the recent case law of the ECJ¹⁴ (see also 3.1 above).

7.2. The consumer should be entitled to cancel the contract in cases of force majeure (including sudden illness) without penalty. Further, he should have a right to cancel without giving reasons in which case the tour operator might claim for reasonable cancellation fees (e.g. proportionate to the price paid for the holiday and based on the moment in time of cancellation in sliding scales). Principles of how to calculate cancellation fees should be outlined by national law¹⁵.

7.3. As for the calculation of compensation or damages when the liability of the tour-operator is established, the introduction of a harmonized system of calculating compensation would avoid a lot of endless controversies.

7.4. The new directive should reflect the case-law of the ECJ¹⁶ following which the notion of damages includes also moral damage. In fact, in particular in travel law, damage can very often arise from the loss of enjoyment the consumer has suffered because of the improper performance of the travel contract¹⁷.

¹¹ In Greece for instance guarantees are not satisfactory: the amount of money that is required for a travel agency to issue a letter of guarantee in order to acquire its operation permit is 6.000 Euros for agencies that operate at national level and 12.000 Euros for agencies that operate at international level. This amount of money is not enough to compensate even one package travel.

¹² In Denmark, the duty to protection from insolvency also covers airlines established in Denmark.

¹³ For more details, see p. 14 and 15 of the BEUC answer in 2007.

¹⁴ See cases C-549/07, C-402/07 and C-344/04.

¹⁵ The suggestions in this paragraph follow the recommendations of the Round Table of 2001 (see website of DG Sanco).

¹⁶ See case C- 68/00

8. Right of withdrawal

8.1. BEUC recommends deleting the provision in the Distance Selling Directive that excludes transport and accommodation from the right of withdrawal. Unfortunately, the same exemption is taken over in the proposal on Consumers' Rights. There are no reasons for this exemption, and some member states do not apply it at least with regard to package tours (Belgium, e.g.).

8.2. In the case the proposal on Consumers' Rights Directive is not changed, a special provision in the future travel directive is necessary, which at least grants the consumer the right to withdraw in cases of early booking. Early bookings must be defined (e.g. more than 1 month before the start of the holiday¹⁸).

9. Effective complaints handling and redress

9.1. The pre-contractual travel information (the website as well as the brochure, folder, etc...) should clearly mention an easily contactable address. Ideally, the consumer should be able to file complaints using the same channel as for the earlier conclusion of the contract (e.g. via the website for internet bookings), not only concerning possible complaints but also concerning any problem or "after sales service". This information should also be mentioned in the order form as well as in the contract (e.g. in the confirmation by the tour-operator), and in other documents/messages given or sent to the consumer.

9.2. A similar information duty should apply during and after the holiday. Moreover, every service provider should be contactable on a permanent basis (phone or mobile number).

9.3. The consumer should have the opportunity to make his/her claim before, during and after the vacation without any loss of rights when complaints are filed after the vacation.

9.4. Any form of binding settlement during the holiday should be forbidden and void.

9.5. Too short prescription periods for seeking actions (e.g. only one year for non corporal damage, in Belgium¹⁹ and Italy) or for introducing complaints (e.g. ADR) either on the spot or after the holiday, should be prohibited (e.g. only one month in the Netherlands as for the "Geschillencommissie Reizen"). These short periods are a fortiori unfair concerning cross-border complaints handling.

During ADR/ODR settlements the prescription periods should be interrupted and start anew once the ADR/ODR procedure ends.

9.6. The provisions of art. 6 of the PTD as regards consumer complaints are insufficient. In general the new directive should not only elaborate on the procedure to be followed in case the consumer needs to introduce a complaint (e.g. by imposing an e-complaints form), but it should also oblige the MS to impose an ADR or an ODR-system (online dispute resolution). The reference to ADR should be included and be based on the Commission recommendations on ADR (see website of DG Sanco). It should be expressly stated that any appropriate contacts and solutions would be at no extra cost for the consumer (cfr. paying 0900 number by some airlines for complaining concerning sold dynamic packages). In general, more guidance as regards the terms "prompt efforts" and "appropriate solutions" are necessary.

¹⁹ See judgment of the *Cour de Cassation* of Luxemburg in the case Best Tours.

10. Towards a coherent framework

10.1. Consumer protection in the field of transport is a patchwork of different legislative instruments, which are fragmented and lack cohesion. As a result, the travellers/passengers who are confronted with a transport problem during a package travel (or even during a charter flight bought on the website of a tour operator), have to look into various different legal instruments in order to draw a picture and find out his/her eventual rights. This is not an ideal situation, in particular as it concerns consumers. The travelling consumer should be able to locate all of his/her rights in a single piece of legislation.

10.2. In the air sector for instance, the interaction between the package travel protection and the protection given by the regulation 261/2004 on denied boarding, cancellation and long delays of flights, is the source of many disputes. For instance, tour operators who sell the same flights to “package travellers” and to “stand alone travellers”, argue mostly that their liability is limited towards the latter category (fault liability, instead of no-fault liability). When a flight (whether as a part of a package or not) is cancelled or delayed, and the “in house” carrier of the tour operator doesn’t respect his assistance and compensation duties, the future directive should make the tour operator (jointly) liable²⁰.

10.3. Finally, if the sale of transport services would be (totally or partly) integrated in the future travel directive, the insolvency protection by airlines (and possibly by other prepaid transport services like coach transport) could be included at the same time. See also points 2.2, 3.3, 5.1 until 5.3, 6.3 and 6.4, and 7.1 above.

B. Additional remarks and proposals

1. Better targeted information duties

1.1. Besides the specific information duties already mentioned above, the future travel directive should pay special attention to the larger, more flexible, and interactive information possibilities concerning internet bookings (e.g. video-clips, 360° visits, reliable satisfaction ratings, online price reductions and/or optional supplements, etc...).

The future Directive could be inspired by the new timeshare directive 2008/122 on the strict and targeted information duties. Annexes should be added including the main categories of “travel products” as well as model forms e.g. on withdrawal for early bookings (see point A.8). These annexes could be used as a check-list concerning the essential information and contract elements, of which the consumer is not always aware when booking a holiday.

1.2. BEUC does not oppose any measure allowing tour-operators and travel agencies to reduce compliance costs such as a by making greater use of the Internet. Internet can be an alternative to keep the client up to date on the particularities of his/her package (further information about the service providers at the place of destination, photos of the concrete situation and infrastructure or facilities available nearby...). This should not however engender the situation of essential information (prices, accommodation, facilities...) being provided only through Internet or spread

²⁰ Nowadays courts and ADR schemes often dismiss such claims, based on the argument that Reg. 261/2004 would hold only the “operating airline” responsible.

out in different websites as this could result in a lack of transparency. In addition, the fact that yet a high percentage of the EU population does not have access to Internet has to be taken into account when deciding the extent to which Internet can be an alternative to traditional methods of providing information.

1.3. The current list of information items should be completed. The new directive should add the obligation to include in the brochure - as well as on the website and in other pre-contractual and contractual documents - adequate information on the way and time of redress in case of non-proper compliance with obligations, as well as information regarding the insurance(s) and the way to address it in case of insolvency or liability (since liability after bankruptcy is not yet covered by the current insolvency protection) and about the existence – or not – of a cooling off period.

1.4. The information requirements should be strengthened and widened concerning the following issues:

- availability of facilities;
- accessibility for disabled people;
- health and safety requirements or measures²¹;
- any circumstance that can disturb the health or rest of the consumer (e.g. works outside or nearby the hotel);
- communication in emergency situations;
- needed travel documents like passports or visa, optional risk- and assistance insurances;
- the aimed target group and holiday goal by the offer(s) of the tour operator;
- information about included or optional excursions, visits or circuits.

2. Specific contractual aspects

2.1. The content of the travel contracts (the order form as well as the definitive contract or confirmation by the tour operator) should be in line with the above mentioned essential elements. As already explained, the future directive should provide different targeted annexes, which could be used as check-lists, concerning the essential information and contract elements, of which the consumer is not always aware when booking a holiday. The current definition of special wishes, mentioned in the annex to art. 4.2. a of the current PTD, should be clarified distinguishing between “essentials” and “preferentials”.

2.2. The future directive should avoid any misunderstanding about the legal “mandate” of the seller/travel agency/intermediaries vis-à-vis the consumer, taking into account that there exists anyway a similar – and possibly clashing - mandate and/or commercial relation between the seller and tour operator or other travel service provider (cfr. questions 3 and 4 of the questionnaire about the “clear link” between different websites).

2.3. Sellers and tour operators should be obliged to confirm any booking within maximum one week (e.g. current confirmation periods of three weeks are too long, i.e. before the Internet period).

²¹ It is particularly important for elderly or young consumers who travel to potentially unsafe destinations to be given pertinent information about the health and safety risks and the necessary precautions or measures to be taken before departure (vaccines etc), with reference to official government recommendations and useful addresses.

2.4. The necessary information on booking websites, and more especially any legal condition or general/special travel terms, should be clearly displayed, readable, understandable and accessible before and during the possible booking, and easily printable.

2.5. The unfair contract terms directive should remain applicable, albeit specific unfair terms in the field of transport could be dealt with in the future travel directive. (e.g. concerning cancellation rates, “the consumer makes a choice of residence at the travel office”, charter airline “only acting as an intermediary”, etc). See also point A. 3.2 above.

3. Program changes

3.1. According to article 4.5 of the current PTD, the consumer can withdraw from the contract if the organizer significantly alters any of the essential terms, such as the price. Qualifying or not a term as “essential” is a subjective appraisal. The decision to qualify a change as “essential” should not only be dependent on the assessment of the organizer but also on the expectations of the consumer. In other words, a consumer could have chosen a particular package because it contained a number of services that are decisive in his choice to buy that particular package. For the sake of legal certainty, other terms besides the price, should be listed as “essential” (change of accommodation, change of contracted excursions or other services available, non confirmation of an expressed wish in the order form...). With regard to the term “significantly” in relation to price increases, the new directive should set out some rules as to which percentage of increase is considered to be significant for the consumer to be able to cancel the contract (e.g. 5 %). As already explained, price supplements as such (e.g. fuel supplements, exchange rates) should be void.

3.2. Concerning “substitute packages” offered by the organizer in case of cancellation, the substitute package offered by the tour operators should be comparable to the originally planned both in terms of the price and of the characteristics expected by traveller and taking into account the loss of enjoyment incurred by the traveller.

3.3. The future directive should provide a possible compensation concerning non-essential program changes, aiming at a reciprocity between such changes and the mostly foreseen fees or charges if the consumer asks for a comparable change.

4. Minimum number of travellers

4.1. BEUC proposes to delete this exception rule, as it is provided by art. 3.2g and art. 4.6.b.i) of the current PTD. Firstly, the travel market has become much more flexible (cfr. the growing importance of early bookings, promotional offers, and last minutes, linked to ever changing and multiple “contingents” and “alottements”). Secondly because some tour operators misuse the rules by mentioning - in their brochure, website or contract - a percentage of required travellers or (air) passengers while this cannot be verified by the consumer.

4.2. If this rule is to be maintained, BEUC proposes to introduce a precise and long enough delay), a duty to give evidence and to compensate the consumer²². Hopefully, this would constitute an important disincentive to cancellation for the reason of an insufficient number of

²² Since some popular packages are sold out very early before the holiday season begins, it is difficult for the consumer to find a suitable substitute package.

participants. The compensation should cover loss of enjoyment and the potential extra costs of rebooking a new holiday at an increased price.

5. Unfair contract terms and the Consumer Rights Directive

See points A.2.3, 3.3 and B.2.4, 2.5, 3.3 and 4.1.

6. One day travel and non-business organisation

BEUC proposes to include those types of travel within the scope of the future directive. These short holidays as well as the cultural and socially related holidays (the so-called “live to see” holidays by non profit organisations) represent an ever growing market share, which seems to be neglected by the traditional travel market. The future directive should also take into account the growing practise of “mixed” holidays, i.e. combining a business trip with a leisure extension.

7. Excursions, visits and circuits

7.1 The brochures, websites and other travel programs and folders should be very precise on the characteristics of those leisure activities. We notice an ever increasing rate of consumer disputes and detriment when the in relation to these activities (lack of redress, language problem, communication problems ...). BEUC proposes to make the tour operator liable unless he proves that the consumer organised the trip or excursion himself without any initiative nor intervention (mention in the brochure or on the website, advertising or promotion on the spot, commercial fee, etc; cfr. German case law).

8. Language problems

8.1 The future directive should add a specific language requirement at least for online sales. Ideally, the provider should use the language of the country of residence of the consumer/traveller. However, as this is difficult to implement in practice at least the service provider should use in the contract the same language as that used in the advertising material. This language should also be used in emergency communications, after sales services, complaints handling and redress.

9. Need for a trustmark or logo?

The introduction and use of a trustmark could only be considered under the following conditions:

- as a condition “sine qua non”, the new future directive should be widened into a “Travel Services Directive”, avoiding any misunderstanding or confusion with the consumer/traveller/passenger about the scope of application and the widened protection(see points A.1.1, 2 , 3 and 4, 6.3 and 6.4, B.1 and 2, 3 and 8);
- consumer stakeholders should be fully involved in the development, implementation and regular evaluation of the scheme.
- the trustmark should be awarded, monitored and possibly sanctioned (or withdrawn) by the competent national authority, either via a registration (e.g. the recent French travel law), or via the assignment of a licence (e.g. Belgium);
- a special attention and monitoring should be paid to cross-border sales and to online sales;

END