

COMMISSION

EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

on package travel, including package holidays and  
package tours

on)

## EXPLANATORY MEMORANDUM

### INTRODUCTION

On 1 July 1982 the Commission transmitted to the Council "Initial Guidelines for a Community Policy on Tourism"(1), which indicated that amongst many other things the Commission would produce proposals for the protection of consumers taking package tours.

The Economic and Social Committee adopted its Opinion (2) concerning that document on 27 October 1983 and strongly supported the Commission's intention to produce those proposals. At point 3.10 of its Opinion the Committee recognised "that the relative division of responsibilities for default in the chain of the tourist/consumer/travel agent/tour operator, etc is still in a state of flux and that the Commission should examine this policy and suggest remedies". In this same point 3.10 the Committee proposed "the general adoption and harmonization of national guarantee fund legislation".

Expressing the view (point 3.12) "that the interests of tourist operators such as hoteliers and travel agents must not be neglected, as they frequently have no protection against the cancellation of reservations, the bankruptcy of other intermediaries and delays caused by strikes and bad weather", the Committee was nevertheless of the Opinion (point 3.13) "that the Commission should seek to harmonise the conditions for the operation of travel agencies in the Member States".

The European Parliament adopted its Opinion (3) on these matters on 16 December 1983 and agreed with the Economic and Social Committee in supporting the making of such proposals and recommended (point 30(b)) "that the Commission should draw up a European statute for travel agencies" and called on the Commission (point 31(a)) to prepare directives "to provide legal and social consumer protection for tourists by introducing standard regulations for the journey and the holiday resorts".

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(1) Supplement 4/82 - Bull. EC.

(2) OJ No C 358, 31.12.1983, p. 52.

(3) See Parliament's Resolution in OJ No C 10, 16.1.1984, p. 281.

Also, the Consumers' Consultative Committee, in its Opinion dated 13 December 1983, made detailed suggestions for improving the position of consumers who take package tours.

On 10 April 1984 the Council adopted a Resolution on a Community policy on tourism. After welcoming the Commission's initiative in drawing attention to the importance of tourism, the Council took note of the Commission's Initial Guidelines for a Community Policy on Tourism, annexed the text of them to its Resolution, and invited the Commission to present proposals to it in the field of tourism, including a proposal on consumer protection in connection with inclusive holidays.

In those Initial Guidelines, under the heading "The European Community and Tourism", it is stated in the section dealing with the protection of tourists' interests that as part of its consumer information and protection policy the Commission had carried out a number of studies on tourism and, in particular, on the services offered to tourists by travel agents and tour operators, that its first study covered the International Convention dated 23 April 1970 on Travel Contracts, and that this Convention "suffers from a number of shortcomings".

The principal defect of this Convention is, no doubt, that it relieves the organiser of the holiday from liability too easily, for it permits him to terminate the contract in whole or in part, without having to pay compensation, if before or during the period of execution of the contract exceptional circumstances arise which he could not foresee when entering into it and which, had he then known of them, would have induced him not to do so.

Indeed, many of our Member States have since that time adopted legislation which is significantly more protective of the holidaytaker. The Commission applauds their action.

The current legislation in the Member States is, briefly and broadly, as follows :

#### Belgium

Belgium operates the Brussels Convention of 23 April 1970, which is often referred to as the CCV (from the French language title, namely the "Convention internationale relative au contrat de voyage"). The Convention was transposed into Belgian law by the Law dated 30 March 1973, which entered into force on 25 February 1976.

Persons wishing to operate as organisers or as retailers in the travel field must first obtain a licence from the Commissioner for Tourism, who also has power to suspend or even withdraw a licence he has granted. Applicants must show that they have a knowledge of the business, that they are otherwise suitable to hold a licence and that they have adequate funding. They must furnish a financial guarantee and are obliged by law to cover their liabilities by insurance.

The organisation Test-Achats has prepared in conjunction with an association of travel retailers and with certain tour organisers a set of contract conditions and an order form for use between the organiser and the consumer. These two documents are now increasingly used in Belgium and have the great merit of maintaining a fair balance between the interests of the two parties.

#### Denmark

Denmark has no special legislation dealing with travel contracts or, in particular, with package travel. The general law of contract applies, therefore, and the parties' rights and duties are determined by the contract concluded by them. Most travel contracts are made on the basis of the general conditions prepared in 1974 by the Danish Travel Agents Association and approved by Denmark's Consumer Council.

The Travellers' Guarantee Fund was established in 1979 for the purpose of protecting the consumer in case of insolvency on the part of the organiser or retailer. The Fund's resources consist of the written guarantees given, compulsorily, by organisers and retailers, and of the revenue from a form of tax payable by travellers.

Further, a recently introduced system of conciliation for disputes between the consumer and the organiser or retailer is showing satisfactory results.

France

New Law passed on 14 June 1982<sup>(1)</sup> has changed French law considerably with effect from 1 November 1982 by regulating the general conditions of sale by "agences de voyages" to their customers. The "agent de voyages" is the person with whom the consumer usually deals. He may be both a retailer and an organiser, but in any event he has an obligation to ensure that the services for which the consumer contracts are performed unless this is prevented by force majeure, fortuitous circumstances or the acts of third parties who are in no way connected with the providing of those services. The objective, in putting him in this position, is to ensure that the consumer is not left unheeded, if he makes complaints, during the time that the organiser and the retailing intermediary argue between themselves upon the question "who is liable".

This new law applies not only to package holidays but to all package travel.

It provides, inter alia, that the price communicated to the traveller when he enrolls, or makes his reservations, is deemed to be the global and final price, and that it is unalterable except in conformity with the rules of law. The last instalment the consumer pays in respect of the price, when receiving his travel documents, must be of not less than thirty per cent of the total price. The consequences of cancellation by the organiser, and of alteration of the package, are regulated in detail and aim to achieve a fair balance between the interests of the parties.

Commercial operators, whether they are organisers or retailers, must obtain authorisation (licence) to conduct their business. They must cover their liabilities by means of insurance and, in addition, furnish a written guarantee given by a bank or other approved body.

Germany

The Law of 4 May 1979 regulating travel contracts entered into force on 1 October 1979. It required the German Travel Agents Association to amend its general conditions of business, but the travel agents are not bound to use these conditions, for they are only "recommended" and are therefore not compulsory.

(1) See the arrêté interministériel, supplementary to the Law of 11 July 1975 and to the first implementing rules of 28 March 1977.

The 1979 Law applies to travel contracts which cover a combination of services (semble, in English and other languages, "a package"). It regulates both defective performance and non-performance of the services contemplated by the contract, insisting on the cardinal rule that services contracted for must be performed in conformity with the parties' agreement. The organiser is nevertheless entitled to limit the amount of his liability to thrice the amount of the contract price.

German law imposes no obligation on organisers or retailers in respect of licensing, insurance or guarantee funds.

### Greece

Law No 393 of 26 July 1976 relating to the establishment and operation of travel agencies is at present under review. In order to commence and carry on such a business it is necessary to obtain a licence, show proof of adequate training in the sector, and give substantial financial guarantees. Otherwise, the general law of contract applies.

The National Tourist Organisation is responsible for all policy regarding tourism in Greece and for surveillance of hotel and other accommodation available for use by tourists there. A system of classification of such accommodation is in operation.

### Italy

Italy operates the Brussels Convention of 23 April 1970, which was transposed into Italian law via Law No 1084 dated 27 December 1977. To set up business as a travel agent it is necessary to show proof of knowledge of the trade, and adequate funding, and then be approved by the Provincial Tourist Office.

### Ireland

The Transport (Tour Operators and Travel Agents) Act, 1982, with the regulations made under it, such as the Tour Operators (Licensing) Regulations 1983, the Travel Agents (Licensing) Regulations 1983, the Tour Operators and Travel Agents (Bonding) Regulations 1983, the Claims by Customers Regulations 1983 and the Travellers' Protection Fund Regulations 1984, plus the Air Transport Act 1986, the Consumer Information Act (sections 6 to 9 and 11 to 13) and the Sale of Goods and

Supply of Services Act 1980 (Parts IV and V, and also sections 50 to 55) create a wide-ranging system of protection for the consumer, in particular in his role as a taker of travel packages. The general Law of contract applies to regulate the contract concluded between the parties, terms may be imported into the contract by operation of law e.g. the Sale of Goods and Supply of Services Act 1980. The compulsory licensing and bonding arrangements, in concert with the longstop Travellers' Protection Fund, give valuable safeguards to the consumer.

#### Luxembourg

Luxembourg has no special law on travel contracts in general or on package travel in particular. The provisions of the Civil Code therefore regulate the consumer/retailer/organiser relations. A person wishing to conduct business as an organiser or retailer must obtain a licence. To obtain it he must show proof of knowledge of the business and of integrity. There is no obligation to insure or to give a financial guarantee.

#### Netherlands

A Law passed by Parliament on 28 March 1979, but not yet brought into force, would incorporate into the new Civil Code special rules for travel contracts. These rules are in process of being reconsidered, however, so as to distinguish, in particular, between an organiser and an intermediary (retailer).

The relations between an organiser and a consumer (in particular a package holidaytaker) are in practice often, but not always, regulated by the general conditions of contract agreed between the Dutch Consumers' Association and the Travel Agents' Association. Particular care was taken to create in these a fair balance of rights in the event of cancellation by the organiser and of alteration of the package after the consumer has departed on his holiday. The organiser is responsible for ensuring that the services contracted for by the consumer are performed, including those relating to travel and accommodation. The old limitation of the organiser's liability to a financial ceiling not exceeding the price of the holiday has been removed.

The Netherlands has recently created a Travel Complaints Board (Geschillencommissie Reizen) for dealing with consumers' travel complaints by means of conciliation, if possible.

The Travel Guarantee Fund is a voluntary fund which in fact covers ninety eight per cent of the trade and is fed by means of flat rate contributions levied on travel payments made by travellers who obtain their tickets and other travel documents from an organiser or via a retailer. If the travel contract is cancelled or the travel is impaired as a result of insolvency, the traveller can obtain repayment out of the Fund; but it does not provide compensation for defective or sub-standard services.

There is no obligation on organisers or retailers of package tours or other travel to cover their liabilities by means of insurance, nor do they have to obtain a licence to commence and carry on business.

#### Portugal

Travel agents (whether retailers or wholesalers - see below) and tour organisers are regulated by decree-law No. 359/79 of 31 August 1979, as amended by decree-law No. 480/82 of 24 December 1982, and by implementing decrees No. 84/79 of 31 December 1979 and No. 20/83 of 8 March 1983.

These texts fix the scope of liability of travel agents and tour organisers, who are required to obtain formal authorisation, in the form of a licence issued by the Secretary of State for the Tourist Industry, in order to carry on their businesses. They must furnish a written guarantee of solvency and must cover their civil liability by means of insurance. Their duties to customers are regulated by these laws, as also their relationship with the hotel industry.

Portuguese law is perhaps unique in making a distinction between:

Wholesale travel organisers, who plan, organise and operate combined travel and tourist services which they sell via retail travel agents. The wholesaler is free to operate anywhere in the world but is absolutely prohibited from offering or selling travel or tourist services directly to the public.



Tour organisers, who possess all the means necessary for organising and operating travel or tourist services anywhere in the world and who are authorised to offer and sell direct to the public.

Retail travel agents, who are permitted to do business in Portugal but not outside it and who offer and sell direct to the public.

Local tourist offices are permitted by law to organise group travel in circumstances where no other organiser or retailer is operating in the locality.

### Spain

Under the Regulations on the Legal Regime of Travel Agencies (Order dated 9 August 1974) such agencies may enter into the following three types of contracts with their customers:

1. Contracts for the provision of a single service, whereby the agency provides one of a number of authorized services such as ticket sales, hotel or transportation reservations;
2. Contracts for the provision of mixed services, being a combination of two or more authorized services;
3. Contracts for travel packages, being a combination of a number of services for a fixed price.

Under the first two types of contract the client is entitled to hold the other contracting party (the travel agent) liable in respect of his performance of the contract and can oblige him to render accounts, but the travel agency is not liable for breach or non-performance on the part of the provider of the service (hotel, airline, etc.) provided that such breach or non-performance is not caused by the fraud or negligence of the travel agent.

The third type of contract relating to travel packages, is the most widely used for purposes of mass tourism. The organiser may arrange the holiday package with his own resources or may enter into contracts with third-party suppliers on behalf of the client. In either case the legal nature of the relationship is a contract for a "finished work or result" (Travel Agency Regulations, Article 51) as

defined in Article 1544 of the Civil Code. From the legal point of view the main consequence of that classification is that the travel agent is regarded as a general contractor and is liable for the proper performance of the whole package of services, subject to a possible escape from liability in the event of "just cause".

The client may bring legal proceedings for damages directly against the travel agency, which may have a right to claim against the provider of defective services.

Scheduled shipping lines are required by the Royal Decree of 28 March 1984 to inform the public about the frequency of services, tariffs and the general conditions. Failure to comply with these requirements may result in revocation of the operator's licence and withdrawal from the official register of regular shipping lines.

Passengers on scheduled flights who are refused access to an aircraft because it has been overbooked are entitled to compensation (Royal Decrees of 13 June 1980 and 20 August 1981, and Order of 12 March 1984) and there are special rules which fix the amount of the compensation.

#### United Kingdom

The United Kingdom has no laws which govern specifically and exclusively the rights and duties of the parties to a contract for a travel package. The general law of contract, supplemented by certain specific Acts of Parliament, governs the contract concluded by the parties. In certain circumstances the law of torts (i.e. the law relating to civil liability) also applies.

The greater part of this sector of business operates under a scheme of self-regulation. However, the Supply of Goods and Services Act 1982, the Unfair Contract Terms Act 1977, the Misrepresentation Act 1967, the Trade Descriptions Act 1968 and the Consumer Credit Act 1974 all contain provisions which help a consumer who contracts for package travel.

Since 1973 a person who wishes to organise inclusive tours involving air travel, or certain types of charter flight, must first obtain a licence from the Civil Aviation Authority. This body examines the applicant's financial status and determines the money amount of the bond

(written financial guarantee issued by a bank or insurer or both) which the applicant is to be required to furnish for the purpose of covering his liabilities in the event of his insolvency. If, upon his becoming insolvent, that amount proves insufficient, his customers can then resort to the Air Travel Reserve Fund, which was established in 1975, following the collapse of Court Line/Clarksons, to make sure that air package holidaytakers will not suffer financially through the failure of a tour operator. The Fund was initially financed by a government loan which was subsequently repaid from the proceeds of a levy on air travel organisers. The levy was discontinued in 1977 when the Fund reached £ 12 million, but there is power to re-introduce it. In practice, the holders of air travel organisers licences passed on the levy to their customers in the form of a surcharge - in other words they collected it from the traveller.

The Association of British Travel Agents (ABTA) has taken action to ensure that its members' customers are safeguarded against the effects of insolvency. The ABTA members are tour operators and travel agents (what we have called "organisers" and "retailers" in this proposal). The action taken by ABTA has been to require its members to post bonds, take out insurance cover and pay cash levies. Also, the financial status of an applicant for ABTA membership is carefully examined. The operation of the ABTA code of practice is monitored by the Office of Fair Trading. This code contains rules which members must observe concerning descriptions of holidays, booking conditions, alteration and cancellation of holidays, and price variations. It also provides for arbitration and conciliation procedures for disposing of disputes between a member and a customer. The code is binding on ABTA members, who may be fined or expelled if they do not comply.

The Advertising Standards Authority has drawn up a code of practice which regulates the content, presentation, and so forth, of advertisements. The purpose is to ensure that advertisements are "legal, decent, honest and truthful". The ABTA code requires its members to comply with the ASA code.

In 1982 the Restrictive Practices Court had to decide whether certain important restrictions accepted by the members of ABTA when they join the association, and admittedly having the effect of creating an exclusive trading group, should be declared contrary to the public interest or should be permitted to continue. The Court decided that except for the restrictions concerning staffing, premises and a few other matters, the restrictions accepted by ABTA members were not contrary to the public interest. The above review shows that there currently exists a distortion of competition between operators in different Member States, which ought to be eliminated in a common market. The Directive is, therefore, based on Article 100A of the Treaty and aims at a high level of protection. It does not create special problems for less developed economies. There is, therefore, no need to propose provisions appropriate to their case.

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What is the consumer's experience in practice ?

The efforts made by many Member States in recent years to modernise their laws have produced much good fruit. National consumer protection departments and associations have become increasingly vocal about the problems which can beset the package traveller and have underlined the fact that when a consumer buys package travel he pays the price in full before he receives the services for which he has paid. It is this fact, especially, which undermines his bargaining position, or his room for manoeuvre, when things go wrong with the package, and this fact also, no doubt, which, in combination with other factors, has caused national parliaments to pass laws on package travel. Yet they are, and remain, national laws. They do not have a Community dimension.

Statistics can be friend or foe. When the Commission first began to examine the field of package holidays it found great difficulty in obtaining statistics on which it could rely. The Commission therefore caused a survey to be done in certain Member States by an independent firm of market researchers (GfK Marktforschung, Nuremberg) which, in the Federal Republic of Germany, France, Italy and the United Kingdom, interviewed adults who went abroad on a package holiday of five days or more as their main holiday in 1982 or 1983. The report on the survey shows that about three quarters of interviewees in the Federal Republic, France and Italy were proposing to take the same or a similar kind of holiday (i.e. a package holiday) in 1984 as they did in 1982 or 1983. Only about half of the British interviewees expressed that opinion.

The report states that :

"It would be true to say that in 1982 and 1983 the majority of package holidaytakers were satisfied with their holiday. This does not alter the fact that a large number (both percentage-wise and absolutely) experienced certain difficulties or problems in connection with the package holiday they took."

It goes on to give the following figures concerning the interviewees who had those difficulties or problems :

	<u>1982</u>	<u>1983</u>
Federal Republic	27 %	32 %
United Kingdom	31 %	37 %
France	28 %	31 %
Italy	25 %	27 %

Bearing in mind that it is estimated that some 25 million package holidays are taken every year by EC consumers it will be seen that, while most package holidaytakers expressed themselves satisfied, the dissatisfaction rates in the years 1982 and 1983 were, in absolute terms, significant.

Objectively, however, one must distinguish between dissatisfaction levels and complaint levels. They are vastly different things, and the Commission has no interest in obscuring the point. On the other hand, it does appear that the nationally reported figures relating to complaints actually pursued, which seem to vary between 1 % and, at the maximum, 4.5 to 5 %, are not useful indicators of the problem. The reason, no doubt, is that the consumer, having paid the price in full before departing on his holiday, feels that by making a formal complaint he may well find himself involved in an endless argument which, if it has to be terminated in a courtroom, may cost him more money than he can afford.

The Commission considers itself justified in concluding from the report prepared for it by GfK Marktforschung, Nuremberg, that the results produced by the survey can properly lead to the view that consumer dissatisfaction is significant enough to warrant Community action, and that this should take the form of a directive. This view is supported by the results of a survey made in Ireland in 1982 (repeating the one made in 1981), by Irish Marketing Surveys Limited, for the Director of Consumer Affairs, Dublin, to which he kindly allowed the Commission to have access; and by the results of a survey made in 1985 by The Survey Unit of the Consumers' Association, London, at the request of the Commission.

Moreover, at the particular request of a number of Member States, the Commission has widened the scope of its work so as to cover not only package holidays but the whole field of package travel. Thus a package holiday to one destination is covered. A package tour to several destinations is covered. Conference travel, health travel, business or professional travel combined with leisure travel, are covered. The essential criterion is that the travelling consumer has contracted for a travel package. If he has, the rules here proposed by the Commission would apply.

It will be appreciated that whereas a directive on package holidays would affect approximately 25 million EC citizens every year, the extension of the scope so as to include all package travel will affect, beneficially, more than 100 million, or even 150 million, EC citizens, and others, every year.

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COMMENTARY ON THE ARTICLES

Article 1

The purpose of the directive is here stated, namely approximation of Member States' laws, regulations and administrative provisions concerning package travel, including package holidays and package tours.

Article 2

This Article contains the essential definitions. It defines :

package  
organiser  
retailer  
consumer  
the contract

Package

The essence of package travel is that what is offered and accepted is a combination of not less than two elements. The combination commonly includes travel and accommodation in an hotel with all meals. But it may consist of travel and self-catering in a chalet or cottage, or, conceivably, travel to and from the holiday place, plus excursions to places of interest or pleasure from that holiday place, the consumer being responsible for providing his own accommodation and meals; or, in some circumstances (certain sporting holidays, for example), accommodation in, say, school buildings, with self-catering for meals, the organisers making available sporting equipment and instruction but no travel - it being a part of the holiday arrangement that the holidaytakers arrange their own travel to and from the holiday place. The definition of package reflects this analysis.

Organiser and retailer

Note, first, that the expressions "tour operator" and "travel agent" have not been used in this proposal for a directive. The reader may be surprised to learn that this was so as to avoid certain linguistic and legal confusions.

It is important to distinguish between the retailer of travel and the organiser of it. The former is viewed in this proposal as one who advises prospective travellers about the kinds of travel package that are open to them, and who, if they so request, will make their reservations and book their tickets. He is not the person who constructs the package but essentially an intermediary. He is herein called the retailer. The essence of his position

appears to be that he does the above-described things for the traveller if the traveller asks him to do so.

The person who actually constructs the package, however, does it without waiting for a traveller to request him expressly to do so. He concocts the package in advance (no doubt after a good deal of market research concerning trends in demand) and offers to the public a package which he has planned in detail. This is the organiser. In some situations he may provide the package from out of his own resources (e.g. sea travel, on ships owned by him, to a holiday village also owned by him) or partly with his own resources and partly with those of other persons (e.g. a privately-owned airline may offer special-fare flights to, or near to, a holiday resort where it has arranged special-tariff hotel accommodation for the package takers in local hotels not owned by it).

#### Consumer

For the purposes of this proposal the consumer is either one of a group of persons who take a package or an individual who takes one. He may himself have concluded via a retailer, or directly with an organiser, a contract for a package, or he may be a person on whose behalf such a contract has been made e.g. where he is a member of a club, or where he is a schoolchild taking a package holiday with his classmates, and only one contract has been concluded for all.

Article 8, provides in effect that whichever of those categories the consumer belongs to, he shall have the benefit of the consumer protection provisions of the directive.

The contract means the agreement whereby the consumer purchases the package and the organiser undertakes to provide it. The contract may be concluded in writing or by word of mouth or by any other means. Article 4 deals with the contractual aspects.

Article 3

To avoid misunderstanding between the parties, and, in particular, to obviate any misconception on the part of a person who is seeking information about travel packages, this Article provides that all descriptive matter published or issued by the organiser or retailer about the package must be legible, understandable and accurate. This rule also applies to price indications contained in the descriptive matter, and also to references therein to any other terms of the contract. Descriptive matter about package travel is usually contained in brochures issued by organisers. It may equally be contained in newspapers or other periodicals, and even in the contract. Wherever it appears, it must be stated so clearly and understandably that the customer, or prospective customer, can actually read it, grasp its meaning and not be misled.

The Article specifically requires that where a brochure is issued it shall contain adequate information (adequate, that is, for the consumer's needs) about the type(s) of transport to be used, the category (if any) of the relevant hotel, plus its address and main features, the meal plan, and about visits, excursions or other services included in the package or available, if the consumer wants them, on payment of a money supplement.

Furthermore, if a pre-payment is required on account of the price, the brochure must specify the actual amount in money, or the percentage part of the price, which has to be so paid, and the timetable for payment of the balance of the price.

Article 4

The consumer needs to be aware of the terms of the contract. This Article requires him to be given a copy of them.

Paragraph (1) provides that the contract must contain all the essential terms. The Annex to the proposal contains an illustrative list of terms which (depending on the circumstances) are to be regarded as essential.



Paragraph (2) provides that all the terms of the contract must be stated in writing or in such other form as shall be comprehensible and accessible to the consumer. This enables it to be concluded in writing or by word of mouth or by various electronic means, including home ordering systems. If it is concluded in writing the consumer is to be given a copy. If concluded in some other way he is to be given a statement of the contractual terms, and this can be done in one document or more.

It will be observed that the Article contains no rules relating to signature of the contract. The relevant national law will therefore apply to determine this matter.

Paragraph (3). Where there are serious reasons which prevent the consumer from proceeding with the package and these are communicated to the organiser or retailer not less than one week before the departure date, he is to be at liberty to transfer his booking to a person :

- (a) who is willing to receive it; and
- (b) who satisfies the conditions, if any, applicable to the package and the legal or administrative arrangements for taking part in it.

The transferee will be responsible for paying the balance of the price.

Paragraph 4. The basic principle as regards the price is that, once agreed, it must not be changed. Paragraph (4) of Article 4 provides that consumers are to be cushioned against unjustified price increases. In particular, (and this is no doubt rudimentary) no variation is to be made in the price unless the contract expressly so allows. If it does, the price can be varied in order to reflect alterations in the following items :

- transportation costs, including the cost of fuel;
- dues, taxes or fees chargeable for certain services such as airport or seaport taxes for landing/entry and departure/exit;
- currency exchange rates,

but not on any other ground and, even then, only if the aggregate variation is in excess of two per cent of the agreed price.

The amount of the variation in price, and the reason for it, are to be notified in writing to the consumer without delay (see subparagraph (b)).

To ensure that there is a period of total stability of price, subparagraph (c) proposes that once the consumer has paid the price in full he shall then enjoy one of the following benefits (depending on the national law that govern the contract) :

either (i) no variation in price during the period of thirty days preceding the date of departure;

or (ii) no price variation during the period of three months following the conclusion of the contract.

Paragraph (5) describes the circumstances in which the consumer is to be entitled to withdraw from the contract before departure, namely if important alterations are made to the terms of the contract as agreed, and particularly :

- (a) if the price is increased by ten per cent or more; or
- (b) if the package is modified significantly; or
- (c) if, for whatever cause, other than the fault of the consumer, departure is delayed unreasonably.

What is reasonable, or unreasonable, will inevitably depend on the circumstances. Ultimately it will be for the courts to decide.

Paragraph (6) provides that if the consumer withdraws from the contract pursuant to Article 4(5), or the organiser cancels the package before the agreed date of departure (for whatever cause, other than the fault of the consumer) the consumer is to be entitled :

- (a) to take an equivalent substitute package with that organiser, at no extra charge to the consumer; or
- (b) to be repaid all sums that the consumer has paid under the contract, and, where appropriate, be compensated either by the organiser or by the retailer (and it will be for the relevant national law to determine which of these must pay the compensation) for non-fulfilment of the contract. There will be no duty to compensate, however, in the following circumstances : first, if cancellation is on the ground that the number of persons who enrolled for the package is less than the minimum number specified by the

organiser in the brochure, or elsewhere, and the consumer is informed of the cancellation, in writing, not less than twenty one days before the advertised or subsequently agreed date of departure; and secondly if the package is cancelled for reasons of force majeure. Force majeure, in this context, does not include overbooking.

Paragraph (7) provides that a significant failure of performance (or, in other words, non-fulfilment of a significant part of his obligations under the contract) on the part of the organiser after the consumer has departed on the package, or the organiser's realisation that he will be unable to procure the performance of a significant part of the services contemplated in the contract will be performed, (in either case, for whatever cause other than the fault of the consumer) produces the consequence that the organiser must :

- (a) make suitable alternative arrangements, if they are capable of being made, so that the consumer is enabled, without extra cost to himself, to continue the package (and if it is a package holiday to a destination at which he has already arrived, to continue his holiday at that place) or, if such arrangements are impossible to achieve, or the consumer does not agree them,
- (b) provide suitable transport for the consumer to bring him back 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, for significant inconvenience caused to him; and, to the extent that the agreed services have not been provided, for non-performance of them, proportionally.

#### Article 5

This Article requires the Member States to take the necessary measures to ensure that the services for which the consumer has contracted are rendered punctually and efficiently. This applies whether they are to be performed by the organiser or by a third party. It means, amongst other things that the organiser must construct the package in such a way that the various services which under the contract, are to be performed for the package taker are in fact performed in the manner agreed. The package must "work". It is not enough to say that the services provided in satisfaction of the contract (whether

furnished by the organiser himself or by a third person) must be provided without major breakdown. Rather should one say (i) that those services must be performed, and (ii) that they must be performed punctually and efficiently.

The implications of this basic rule are very far-reaching. Thus, for example, in selecting and contracting with third persons who are to provide transport, or other services for the benefit of the holidaytaker in or about the package holiday, the organiser must use proper care and skill, and make sure that they are persons whose performance will satisfy the requirements of the contract.

The effect of paragraph (2) is to require the Member States to make a choice and to fix the liability for any deficiency in performance of the services EITHER on the organiser OR on the retailer, to the intent that the consumer will have one interlocutor when things go wrong. In France, for example, under current French law, the consumer treats with the retailer. In other Member States he will treat with the organiser.

#### Article 6

In point 3.16 of its Opinion the Economic and Social Committee says that "while formal legal protection in the tourist industry is necessary in a fall-back situation, the average citizen does not want to rush into legal action if his grievance can be otherwise redressed. The Committee therefore proposes the harmonization of simple complaints procedures in the Member States, and the superimposition of a new Community procedure if necessary. It suggests the establishment of a national arbitration body in each Member State with responsibility for settling disputes arising within the national territory and consulting its opposite number in other countries in respect of disputes arising abroad".

Under paragraph (1) of Article 6 the Member States are to ensure that the package taker is informed in writing of the name of the organiser's local representative, if any, at his destination(s) and of the means whereby the package taker may make contact with that person, who must do his best to put right the consumer's complaints, especially if they are substantial.

Under paragraph (2) the Member States are to ensure that, <sup>to the extent possible</sup> local tourist authorities, whether they are publicly controlled or are private bodies, do actually investigate consumers' complaints concerning their travel packages, that they seek solutions and attempt to obtain amicable settlement on the spot. Moreover, if no remedy is forthcoming, those bodies are to provide assistance in the recording of evidence of significant complaints.

The Commission has incorporated into its text the basic idea expressed by the Economic and Social Committee, and paragraph (3) contemplates the setting up, in those Member States which do not already have it, of a rapid, efficient and inexpensive procedure whereby package takers' complaints about their package travel can be dealt with. The object is to enable them to be conciliated, <sup>whether by public or private bodies,</sup> without the interference of lawyers, if they are not settled amicably by agreement between the parties.

#### Article 7

At point 3.10 of its Opinion the Economic and Social Committee recognised "that the relative division of responsibilities for default in the chain of the tourist/consumer/travel agent/tour operator, etc. is still in a state of flux and that the Commission should examine this policy and suggest remedies. The Committee proposes the general adoption and harmonization of national guarantee fund legislation."

After considering those views with great care the Commission has come to the conclusion that in fact there are two facets to this matter. First there is the question whether organisers <sup>should</sup> cover the risks of their trade by means of insurance. In most Member States they are obliged to do so - but not in all. The public would be better served if organisers in all Member States were under obligation to contract insurance covering a failure to provide punctually and efficiently the services which they have contracted to supply. But it appears that at the present

time there are risks which cannot be covered by insurance (or which, today, are not so covered). An example is the insolvency of the organiser. It is possible that insurers will in future years issue policies which do in fact provide this cover, but they will need time to examine the difficult problems involved, and in the meanwhile the package takers stand in need of an answer to the question : "What happens to our claims if the organiser is insolvent ?".

This is the second facet of the matter, and the Commission advocates the creation, in every Member State, of a guarantee fund to secure the consumer against the insolvency, and even the disappearance, of the organiser.

Article 7 provides, then, both for compulsory insurance and as a distinct and complementary safeguard, a guarantee fund.

Guarantee funds already exist in four Member States, namely Denmark, the Netherlands, Ireland and the United Kingdom. In the first two of these countries the fund covers the problems of insolvency only. In Denmark it was established by law and is compulsory, whereas in the Netherlands it is purely voluntary and its income derives from those travellers who, having booked tickets with an organiser, or via a retailer, who is a "member" of the Travel Payments Guarantee Fund, then pay him a small sum in cash, half of which he pays over to the fund and he keeps the other half to cover his expenses. Ninety eight per cent of the organisers and retailers are "members" of the fund.

The Irish fund is constituted by "bonding" i.e. the issue of a form of guarantee bond by an insurer. It was established by law and is compulsory. In the United Kingdom, where the guarantees are provided partly by cash contributions from the trade and partly by written guarantees (like Ireland's "bonding", except that in the United Kingdom the guarantees are given both by insurers and banks) the Air Travel Reserve Fund was created to cover any insufficiency of the amount of money provided by bonding. Tour operators (i.e. those persons who in this proposal for a directive are called "organisers") who organise inclusive tours involving air travel, and those who organise certain types of charter flight, have to obtain a licence from the Civil Aviation Authority, which examines the applicant's financial status and determines what amount of bond is necessary to cover the applicant's liabilities in the event of insolvency. The Air Travel Reserve Fund exists to cover any shortfall in the amount of the bond and the actual cost of repatriation and repayment of travellers. Also, the Association of British Travel Agents (ABTA) has taken action to ensure that its members' customers are protected against the effects of insolvency on the part of

any member. ABTA's members are tour operators and travel agents (i.e. the persons called in this proposal for a directive "organisers" and "retailers" respectively). The action taken by ABTA was to require its members to arrange bonding and, in addition, to obtain insurance and pay cash levies into a guarantee fund. Further, the financial status of an applicant for membership of ABTA is thoroughly examined before membership is granted.

Member States will determine for themselves which kind of guarantee scheme they wish to have.

#### Article 8

The protection contemplated by the proposal for the directive is intended to be available not only to the contracting package taker but also to all those for whom he contracts. Article 8 so provides.

#### Article 9

This Article permits Member States to adopt more stringent provisions to protect the consumer in the field covered by the proposal for a directive; and, if they already have in their law more stringent provisions for that purpose, they are at liberty to keep them.

#### Article 10

Paragraph 1 fixes the date by which the Member States are to bring into operation the measures which are necessary for the purpose of implementing the directive, that is to say not later than 31 December 1990. They are to inform the Commission.

Paragraph 2 requires the Member States to send to the Commission the texts of the main provisions of law which they adopt in implementation of the directive.

#### Article 11

The directive will be addressed to the Member States.

The Annex is to be read in conjunction with Article 4 and contains a list of terms which should be included in the contract if they are appropriate to the particular package contracted for.

**Proposal for a directive on package travel,  
including package holidays and package tours**

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 on 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 harmonisation 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 organised 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 organiser 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 organise and sell, information should be given which is accurate and also clearly legible and understandable by 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 <sup>documentary</sup> 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 organiser 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 organiser perceives that he will be unable to procure a significant part of them to be provided, the organiser 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 organiser'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; <sup>to the extent possible</sup> whereas 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 organisers 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 organised 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.

**Organiser** means the person who in the course of his business, organises 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 organiser.

**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 organiser 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 organiser 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 <sup>documentary</sup> 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 organiser 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 organiser 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 :

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either (i) from the thirtieth day prior to the agreed date of departure the price will not be increased; or

(ii) 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 ten 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 organiser 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 organiser 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 ground that the number of persons who enrolled for the package is less than the minimum number specified by the organiser in the brochure or elsewhere, and the consumer is informed of the cancellation, in writing, not less than twenty one 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 overbooking;

(7) that where, after departure, a significant part of the services contemplated by the contract is not provided or the organiser 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 organiser :

(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 organiser 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 organiser 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 organiser'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 <sup>to the extent possible</sup> 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 <sup>whether provided by public or</sup> a rapid, <sup>private bodies</sup> 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 organisers 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 organiser or the retailer has concluded the contract, or in the event of a transfer, the transferee;
- (b) a person in respect of whom the organiser 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.

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Done at Brussels,

For the Council

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 organiser 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 organiser or retailer when booking his travel, and which either of them has accepted.
- (i) the name and address of the organiser and, where appropriate, of the retailer.

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

- I. What is the main reason for introducing the measure?
- II. Features of the businesses in question. In particular:
  - (a) Are there many SMEs?
  - (b) Have any mergers been noted in any regions which are:
    - (i) eligible for regional aid in the Member States?
    - (ii) eligible under the ERDF?
- III. What direct obligations does this measure impose on businesses?
- IV. What indirect obligations are local authorities likely to impose on businesses?
- V. Are there any special measures in respect of SMEs?  
Please specify.
- VI. What is the likely effect on:
  - (a) the competitiveness of businesses?
  - (b) employment?
- VII. Have both sides of industry been consulted?  
Please indicate their opinions.

## PACKAGE TRAVEL

I. The main reasons for introducing the measure, and thus the essential policy objectives, are :

1. by establishing common rules on package travel, to contribute to the creation of a common market in tourism services - and thereby to contribute to the completion of the internal market;
2. to set minimum standards of consumer protection for the EC in relation to package travel.

Action needs to be taken at EC level :

- (a) because the national rules and practices are markedly different. The disparities will not be removed unless the EC approximates the underlying laws.
- (b) because dissatisfaction amongst EC consumers who have taken travel packages, especially package holidays, has been running too high and has been greater in some Member States than in others. Common minimum standards should help to change this situation.

As voluntary codes do not produce law-approximation effects, and as attempts at self-regulation by the trade have not dissipated consumers' dissatisfaction, the consequences of non-intervention by the EC would be that the present divergences of law and practice would widen and that many consumers would continue dissatisfied.

II. The proposal has implications for tour operators and travel agents. The tendency is for the former to become very large, often by takeover (mostly by positive desire for expansion, but occasionally by need of "rescue" acquisition of badly managed or otherwise failing businesses). Travel agencies tend to be small concerns, except for those which form part of a chain.

As tourism and travel services become better organised - and it seems virtually certain that every Member State will increasingly look to them as sources of revenue and as havens of employment - it is to be expected that new, small travel agencies will be established which,

if they prosper, will grow in size and, hopefully, in their profit making.

Tour operators and travel agents are not concentrated in regions eligible for regional aid in Member States, or for ERDF.

The proposal has implications for competition, notably in so far it will require tour operators in the EC to achieve higher standards of performance both at the stage of design or planning of travel packages and at the stage of executing them. The competition element does not stop there, however, for the raising of performance standards in the package travel business in the EC should have the effect of enabling tour operators established in the EC to offer finer service than their competitors operating from outside it.

III. In order to comply with the directive, businesses will be required vis à vis the traveller (see Articles 3 to 7 in the draft proposal) :

- to provide accurate, legible and understandable information;
- to perform agreed services punctually and efficiently;
- to offer alternative services in certain cases of cancellation; to refund the traveller's payments and also pay compensation, in certain other cases;
- to insure their liability to the traveller.

The proposal is not expected to give rise to additional costs for businesses - save as regards insurance, the additional cost whereof is not likely to be more than marginal. On this point, see the letter dated 16 March 1987 from the Comité Européen des Assureurs, Paris, to Mr Latham, EC Commission, DG XI.

So far as can be foreseen, the directive would not stop businesses from continuing with any present activity.

In the absence of a directive the package traveller would remain at risk and there would be no structural move towards common rules of law and common practices.

Administrative costs are not likely to be pushed upwards by the directive. If anything, the effect of having common rules and practices for certain aspects of package travel would be to reduce administrative costs.

- IV. Those Member States whose laws do not correspond to the provisions of the directive would have to legislate for the purpose of implementing its rules.

Action thereafter would lie with the trade; except that :

- (1) in those Member States which decide to institute a travel guarantee fund as a publicly administered fund (see Article 7 (b)) State measures will have to be adopted;
- (2) under Article 6(2) local tourist authorities, whether public or private, will have to provide a consumers' complaints investigation service, plus machinery for making records of evidence in particular cases.

A small extra cost for businesses may arise as a result of the establishment of the guarantee fund, but part of the cost of such funds can be covered by levy on travellers themselves, as in the Netherlands. No other organisations would be involved with the implementation of the directive.

- V. The proposal contains no special provisions in respect of small and medium-sized businesses. SMEs could not be exempted from the scope of application - for if they were granted exemption the result would be a very uneven consumer protection cover.

On the other hand, SMEs are actually likely to be stimulated by such a directive, in so far as the tourism and travel services industries, benefiting from the common rules here proposed, would be more highly organised, efficiency - conscious and, prospectively, expansionist.



VI. (a) See paragraph II above.

(b) Increased demand for services in the tourist and travel trades should actually lead to the creation of many new jobs, full-time and part-time :

- in the tourist destinations (especially Greece, Italy, Portugal, Spain, Central and Southern France, but also in other Member States );
- in the travel designing, planning and organising centres i.e. generally, the originating countries (meaning those whence the travellers come).

There is no reason to suppose that the directive would cause any existing jobs to be lost.

VII. Discussions have been held with :

- The Group of National Travel Agents Associations within the EEC (Head Office, Brussels) both by DG XI and DG VII.
- The International Association of Tour Managers Ltd.
- The Belgian Commissariat au Tourisme.
- The Comité Européen des Assureurs.
- The Association of British Travel Agents (ABTA).
- Several Consumer Organisations, including Test Achats, Belgium and BEUC.
- The National Swedish Board for Consumer Policies.
- The Norwegian Consumers' Ombudsman.

Also, several meetings were held with government experts from all Member States.

What opinions were expressed ?

Briefly, the first reaction of the trade was that if there has to be an EC directive :

- it should not be too detailed; and
- it must cover all package travel (voyages à forfait) and not merely package tours/holidays.

Government experts shared that view.

Consumer organisations showed that they were keen for the EC to have a directive on package travel. The failure of the International Convention (the Brussels Convention, 1970) and the inability of any international or (even regional) body or grouping to make progress in attempts to produce common rules, were, in truth, ample reasons for the support given by consumer organisations to this work.

We would contend that now, when all parties know perfectly well that such a proposal is :

- justified in principle;
- not over-detailed; and
- essentially reasonable and sensible in approach,

it will actually be welcomed, in the expectation that the directive, when adopted, will produce thoroughly useful results.