



## PROPOSALS FOR A NEW PACKAGE TRAVEL DIRECTIVE: AN INTRODUCTION.

*David Grant*

We have waited almost a quarter of a century for it, and its birth is not yet guaranteed, but at last we have proposals for a new Package Travel Directive. On 9 July this year the European Commission published COM (2013) 512 final, “Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC”.<sup>1</sup>

In this issue we have assembled six leading travel lawyers to examine the proposal and to give us their views on how it might work in practice. Each has been given a specific part of the proposal to evaluate in order to provide comprehensive coverage. The purpose of this introductory article is to set the scene and to look at the rationale for the proposed revision of the existing Directive as expressed by the Commission.

It is clear from the explanatory notes accompanying the proposal that the drivers for the revision are twofold: first the growth and importance of the tourism industry in Europe and secondly the changes in the market and business practices since 1990, in particular the impact of the internet on the purchasing of travel products and the rise of the no frills airlines.

As far as the tourism industry is concerned the proposal relates that 1.8 million businesses and 5.2% of the workforce of the EU are concerned with tourism and that the industry contributes 10% of EU GDP thus making it a legitimate target for EU wide regulation.

As for the internet we have seen in the UK the difficulties caused to the regulators by ambiguities in the current directive in such cases as *Civil Aviation Authority v Travel Republic Ltd* [2010] EWHC1151 (Admin) where an OTA successfully argued that they were not selling “packages” as defined in the current Directive – and therefore not subject to the insolvency or liability regime it established. In the words of the proposal “it remains unclear to what extent modern ways of combining travel services are covered by the Directive.” The situation is exacerbated by the fact that different countries have chosen to implement the directive in different ways.

<sup>1</sup> [http://ec.europa.eu/justice/consumer-marketing/files/com\\_2013\\_512\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/com_2013_512_en.pdf). It can also be found on the TLQ website. Go to [www.tlq.travel](http://www.tlq.travel), click on ‘Materials’ and then on ‘European Legislation’.

For an overview of the proposals by the Commission see the Digest in this issue or go to [http://europa.eu/rapid/press-release\\_MEMO-13-667\\_en.doc](http://europa.eu/rapid/press-release_MEMO-13-667_en.doc)

The current Directive was conceived in the age of the printed brochure and many of its provisions are aimed at an era which is fast disappearing yet it ties today's businesses to that outdated model – requiring them to incur unnecessary costs when endeavouring to comply with the information requirements in the directive. The proposal explicitly states that one of its aims is to reduce these brochure compliance costs but also, by introducing a greater measure of harmonisation so that discrepancies between Member States' legislation is minimised, to enable easier cross-border trading and a level playing field for businesses EU wide:

“The proposal seeks to establish a level playing field between operators, remove legal obstacles to cross-border trade and reduce compliance costs for businesses.” (Para. 1.3 of the Explanatory Memorandum.)

At the same time the proposal is mindful that the TFEU requires a high level of consumer protection and the proposal aims to achieve this by the provision of mandatory rules for the protection of travellers.

Consistency with other legislation is also one of the objectives of the proposals. They complement existing EU law on Unfair Contract Terms Directive (93/13/EEC), the Unfair Commercial Practices Directive (2005/29/EC), the Consumer Rights Directive (2011/83/EU), the Regulations in the area of passenger rights (Regulations (EC) No. 2004/261, (EC) No. 1371/2007, (EC) No. 1177/2010 and (EC) No. 181/2011) as well as Directive 2000/31/EC on electronic commerce.

The Explanatory Memorandum explains that when deciding what the scope of a new Directive would be eight options were considered:

*Option 1* – Maintaining the status quo, i.e. maintaining the Directive in its present form;

*Option 2* – Guidelines, i.e. maintaining the Directive in its current form and preparing guidelines, including CJEU rulings and clarification on the scope and liability;

*Option 3* – Package Travel Label and/or requirement on traders selling assisted travel arrangements to state that the services in question do not constitute a package (add-on options);

*Sub-option A* – introduction of a “Package Travel Label” – an obligatory logotype to be presented to consumers when purchasing a package;

*Sub-option B* – introduction of an obligation, for traders offering combined travel arrangements which are not packages, to clarify that they are not selling a package;

*Option 4* – Repeal of the Directive and self-regulation by industry;

*Option 5* – Modernisation of the Directive and coverage of “one-trader packages”;

Option 5 involves a legislative revision which would keep the main structure of the existing Directive, while clarifying its scope through the explicit inclusion of “one-trader packages” and revising several provisions. The revised Directive would apply to travel services which are combined for the same trip or holiday on one website or at one high street agent;

*Option 6* – Graduated approach – modernisation of the Directive and coverage of both “one-trader” and “multi-trader” packages while applying a lighter regime to “multi-trader” assisted travel arrangements.

This option corresponds to Option 5 supplemented with a graduated extension of the scope of the Directive aimed to cover:

“multi-trader” *packages*, i.e. combinations of travel services through different traders showing certain features associated with packages, which would be subject to the same regime as other packages (including full liability for the proper contractual performance and the obligation to procure insolvency protection);

“multi-trader” *assisted travel arrangements*, i.e. those combinations of travel services which do not display the typical features of packages and are hence less likely to mislead consumers.

They would be subject to a lighter regime consisting of insolvency protection and an obligation to state in a clear and prominent manner that each individual service provider is responsible for the correct performance of the services.

*Option 7* – Modernisation of the Directive covering both “one-trader” packages and “multi-trader” travel arrangements.

This option includes Option 5 and 6, whilst subjecting all “multi-trader” assisted travel arrangements to the same obligations as packages.

*Option 8* – “Travel Directive” This option includes Option 7 plus an extension of the scope to stand-alone travel services, e.g. car rental, accommodation or flights, containing in principle the same rules for all travel services irrespective of whether they are part of a package or not.

They concluded that Option 6 was the one to go for and the proposals are based upon that option.

*David Grant is co-editor of the Travel Law Quarterly.  
He can be contacted at david.grant@tlq.travel*