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From: Presidency
To: Permanent Representatives Committee/Council
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Subject: **Preparation of the Council meeting "COMPETITIVENESS" of 26 May 2014**
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
- Progress report

I. INTRODUCTION

1. On 9 July 2013, the Commission submitted its proposal ¹ based on Article 114 of the Treaty, as well as a communication ² on "Bringing the EU package travel rules into the digital age".

¹ 12257/13+COR 1+ REV1 (de).

² 12259/13.

2. The existing Directive, which was adopted in 1990³, created rights for travellers purchasing package holidays, typically consisting of passenger transport and accommodation. This legislation, which has to be considered in the light of the economic and social importance of tourism in the Union, aimed to establish a high level of consumer protection while stimulating business activities with a minimum of common rules. A ruling by the Court of Justice⁴ from 2002 clarified that the notion of "pre-arranged combination" also covers travel services combined by a travel agent at the customer's express request just before the conclusion of a contract between the two. The existing Directive ensures that consumers receive essential information, provides that organisers and/or retailers are responsible for the proper performance of the package and, in the event that the organiser and/or retailer becomes insolvent, guarantees that travellers receive a refund of pre-payments and are repatriated.

However, back in 1990 the travel market was much simpler and the internet did not exist. That being the case, the Commission considers that it remains unclear to what extent modern ways of combining travel services are covered by the existing Directive.

The Commission's report⁵ of 1999 on the implementation of Directive 90/314/EEC also highlighted significant differences in the legislation of the Member States due to the minimum harmonisation approach.

The revision of the Directive responds to requests from the co-legislators, the European Economic and Social Committee and the European Consumer Consultative Group⁶.

³ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.

⁴ Club-Tour Case C-400/00 of 30 April 2002.

⁵ SEC (1999) 1800 final.

⁶ E.g. Council conclusions of the Council meeting on Consumer Affairs of 13 April 2000, European Parliament resolution of 16 January 2002 (2001/2136(INI)), Opinion of the European Economic and Social Committee of 11.05.2011 (Official Journal C 132) and ECCG opinions of 21 April 2010 as well as 8 February 2013.

A large part of the industry and many consumer organisations have also asked for a revision; in particular, it is explicitly mentioned in the European Citizens' Reports ⁷, the European Consumer Agenda ⁸ and the Single Market Act II ⁹.

3. On 6 September 2013, the Council decided to consult the Economic and Social Committee, which adopted its opinion on 11 December 2013 ¹⁰ (the rapporteur was Mrs Anna Maria Darmanin (MT/Group II)).
4. On 19 September 2013, the Council decided to consult the Committee of the Regions, which took the decision not to deliver an opinion ¹¹.
5. On 25 September 2013, the European Parliament appointed MEP Mr Hans-Peter Mayer (PPE/DE) as the rapporteur for this proposal. The European Parliament adopted its position at first reading ¹² on 12 March 2014.

II. WORK CONDUCTED WITHIN THE COUNCIL

6. During the Lithuanian Presidency, the proposal was discussed at four meetings of the Working Party on Consumer Protection and Information (11 September, 16 October, 25 November and 13 December 2013). The first meeting was devoted to the presentation by the Commission and an in-depth discussion on the impact assessment underpinning the proposal. This impact assessment discussion was supported by the indicative checklist developed to examine Commission impact assessments in the Council, in the context of the consideration of Commission proposals and in line with the report on Impact Assessment within the Council ¹³, and constituted one of the three pilot projects conducted by the current trio on that checklist ¹⁴. In the three following meetings the first 11 articles of the proposal were discussed.

⁷ COM(2010) 603 final and COM(2013) 269 final.

⁸ COM(2012) 225 final.

⁹ COM(2012) 573 final – Annex II.

¹⁰ INT/710

¹¹ CDR3771-2013_00_01_TRA_TCD.

¹² 7429/14.

¹³ 8406/13.

¹⁴ Interim results of the pilot project are presented in 16628/13.

The Greek Presidency continued the examination of the rest of the proposal (Articles 12-29) at two meetings (18 March and 1 April 2014), with the result that the whole text has been discussed once at Working Party level.

Apart from the discussions at the Working Party level the Presidency asked the delegations to submit written comments on the provisions of the proposal. This written consultation resulted in the submission of numerous comments (21 Member States sent their contributions), which illustrate the positions of the different Member States.

Based on the oral discussions in the Working Party and the written consultation, the Presidency is able to note the general support of the Member States for the objectives of the proposal, i.e. contributing to the proper functioning of the internal market and to the achievement of a high common level of consumer protection, as well as the need to modernise the current rules.

The Presidency has identified a number of issues on which delegations have different views and which necessitate additional discussions between Member States and the Commission.

7. The main issues identified are the following:

a) Level of harmonisation (Article 1):

A number of delegations raised this issue, as the existing Directive follows a minimum harmonisation approach, and asked for clarifications and explanations. The Commission confirmed that the new proposal aims at full harmonisation in order to establish uniform rights for consumers and a level playing-field for economic operators. Several delegations expressed concern that the proposed full harmonisation approach could undermine specific national provisions existing in the current system and thereby in certain respects lower the existing level of consumer protection. Some delegations therefore prefer minimum harmonisation, at least with regard to certain provisions, or "targeted" full harmonisation, in particular comparing the existing Directive with the new proposal and evaluating its impact on affected traders and on consumers.

b) Scope and definitions (Articles 2 and 3):

Delegations asked for in-depth explanations and clarifications on these articles.

The exclusions in Article 2(2) were discussed, with the aim of either narrowing and/or broadening the scope of the text.

Regarding definitions and in conjunction with Article 2(1), the concepts of "travel service", "package" and "assisted travel arrangement", on the one hand, and the different roles played by the "trader", the "organiser" and the "retailer", on the other, were discussed, including the issue of joint liability. The definition of "traveller" was also compared with the concepts of "passengers" and "consumers", which, although not defined, are also used in the proposal.

c) Insolvency protection (Articles 15 to 17):

These provisions were the subject of in-depth discussions, and many delegations asked for further clarifications and explanations. In particular, several delegations considered the scope of the proposed insolvency protection too broad with regard to either the covered products ("package" and "assisted travel arrangement") or the liability itself, especially as several professionals (trader, organiser, retailer, third-party supplier) could be involved. The proper functioning of the proposed insolvency protection system, based on mutual recognition of national insolvency systems, was also mentioned by delegations. In that context, concerns were expressed about a potential gap in the coverage of the insolvency protection provisions, resulting from their non-application to organisers outside the European Economic Area.

III. FURTHER STEPS

8. The Presidency invites the Member States to take note of the present report, which is intended to prepare further discussions under the incoming Italian Presidency.