



Council of the
European Union

Brussels, 24 November 2014
(OR. en)

15700/14

Interinstitutional File:
2013/0246 (COD)

CONSUM 245
MI 905
TOUR 27

NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Preparation of the Council meeting "COMPETITIVENESS" of 4 December 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 (First reading)

- Note by the Presidency with a view to reaching a general approach at the Competitiveness Council

I. INTRODUCTION

1. On 9 July 2013, the Commission submitted its proposal based on Article 114 of the Treaty, as well as a communication on "Bringing the EU package travel rules into the digital age".
2. The existing Directive, which was adopted in 1990, created rights for travellers purchasing package holidays, typically consisting of passenger transport and accommodation. A ruling by the Court of Justice 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.

However, back in 1990 the travel market was much simpler and on-line sales 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 and it has highlighted significant differences in the legislation of the Member States due to the minimum harmonisation approach.

3. On 6 September 2013, the Council decided to consult the Economic and Social Committee, which adopted its opinion on 11 December 2013. On 19 September 2013, the Council decided to consult the Committee of the Regions, which took the decision not to deliver an opinion.
4. The European Parliament adopted its position at first reading on 12 March 2014. The current European Parliament appointed in November 2014 Ms. Birgit COLLIN-LANGEN (PPE/DE) as rapporteur.

II. WORK CONDUCTED WITHIN THE COUNCIL

5. The examination of the proposal by the Working Party on Consumer Protection and Information started in September 2013 and has since continued uninterrupted.
6. The Commission's impact assessment was examined during the first WP meeting on this dossier. This examination showed that delegations were broadly satisfied with the methods and criteria applied by the Commission in its impact assessment.

A progress report was presented to the Council (Competitiveness) on 26 May 2014. Based on that progress report which identified the scope, insolvency protection as well as the level of harmonisation as the main outstanding issues, the Presidency stepped up efforts to reach an agreement on a general approach before the end of this year.

7. There is general support of the Member States for the objectives of the proposal, i.e. the achievement of a high common level of consumer protection and the proper functioning of the internal market, without undermining the principle of fair competition, as well as the need to modernise the current rules. Only a limited number of political and other issues still needs to be examined.

Following the last Working Party the Presidency has prepared a revised compromise text as set out in document 15951/14 for Coreper on 26 November 2014 to pave the way for a general approach at the forthcoming Competitiveness Council.

III. MAIN POLITICAL ISSUES

8. **B**based on the discussions of the Working Party " the Presidency has identified small businesses" and" alteration of price" as the two political issues for further examination;

a) Small Businesses (recital 17, recital 36a and article 3(2)).

i) During the examination of the proposal many delegations were concerned about a potential negative impact on small businesses which make up the great majority of Europe's tourism industry, in particular regarding the increased administrative and financial burden. At the same time a great majority of delegations and the Commission expressed concerns that national exemptions for small businesses would undermine the principle of fair competition in the single market and ultimately lead to a fragmentation of the EU tourism market. In order to accommodate both concerns the Presidency suggests stating in article 3(2) and recital 17 that where other tourist services are added, for instance, to hotel accommodation, booked as a stand-alone service, after the traveller's arrival at the hotel, such services should not constitute a package. Furthermore, in recital 36a it is clarified that Member States may take into account the specificities of small companies as regards the insolvency protection scheme in relation to packages and assisted travel arrangements.

ii) Another small business related issue is the proposed exclusion of business travel (article 2 (2), letter c) based on a framework contract. During the examination in the Working Party some delegations suggested to exclude business travel from the scope. To this it was pointed out that persons travelling for small businesses might need the same protection as consumers. Moreover persons travelling for larger business are typically protected by a framework contract or other contractual arrangements. The Presidency therefore proposes to strike a balance by specifying that the Directive excludes travel arranged within a framework contract "for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to his trade, business, craft or profession, or where a traveller specifies that he is travelling for professional purposes";

b) Alteration of price (article 8)

As regards the proposed possibility for the traveller to terminate the contract due to an increase of the price for justified reasons, Member States could not agree on the level of the price increase that would trigger this right. Some Member States preferred to refer to a lower percentage than the 10% as proposed by the Commission, while other Member States would prefer a higher percentage. As a way of compromise the Presidency proposes 8% of the total price of the package.

IV OTHER ISSUES

9. Assisted travel arrangements (article 3 (5) and article 17)

One of the new elements of the Commission proposal is the inclusion of "assisted travel arrangements" (ATAs), in the scope of the Directive. This definition covers the case where a traveller buys different travel services for the same trip or holiday in separate transactions where the purchase of such services is facilitated by a trader, but where none of the criteria of a package are present. This would be the case for instance when a traveller books a hotel room using a link sent to him by an air carrier in connection with the confirmation of the flight reservation.

In light of the above described situation the Presidency has opted for a "progressive" approach which would ensure that when buying an ATA the traveller would be protected in case of insolvency of the trader facilitating the ATA and will be repatriated. Furthermore, before concluding a contract leading to an ATA, the trader has to inform the traveller, by using standard language as referred to in Annex 2, explaining that he will not benefit from the rights granted by this directive except for insolvency protection. This compromise aims to strike the right balance between a high level of consumer protection and business competitiveness and growth.

10. **Right of withdrawal for off-premises contracts** (article 10 (5))

In the course of discussions it was proposed that Member States may maintain national provisions concerning the right of withdrawal for off-premises contracts, which is not regulated by EU legislation. Despite considerable efforts by all delegations to find a harmonised solution, the Presidency had to propose as way of a compromise an opening clause which would allow Member States to provide in their national laws for such right of withdrawal.

11. **Compensation for non-material damage** (article 12 (2))

The Commission proposal would grant travellers compensation for any damages, including non-material damage following case law by the European Court of Justice. Some delegations pointed out that non-material damages are subject to different rules in their national legislation, if regulated at all, and that misleading interpretations should be avoided. To this end, the Presidency proposes to specify that travellers are entitled to compensation also for the loss of enjoyment if the lack of conformity is substantial.

V. CONCLUSION

12. COREPER is invited to agree to the Presidency compromise text set out in document 15951/14 with a view of submitting it to the Council for general approach at the Competitiveness Council on 4 December 2014.
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