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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with view to the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC

- Statement of the Council's reasons
- Adopted by the Council on 18 September 2015

I. INTRODUCTION

1. On 9 July 2013, the Commission submitted a 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. 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.
3. The European Parliament (EP) adopted its position at first reading on 12 March 2014, proposing 132 amendments to the Commission proposal. In November 2014 the EP appointed Ms Birgit COLLIN-LANGEN (PPE/DE) as the new rapporteur since the former rapporteur Mr Hans Peter MAYER (PPE/DE) did not stand for re-election.
4. The examination of the proposal by the Working Party on Consumer Protection and Information (WP) started in September 2013. 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.
5. On 4 December 2014, the Council (COMPET) adopted a general approach which served as a mandate to the Presidency to start negotiations with the EP (16054/14).
6. Four informal trilogues were held on 4 February, 5 March, 22 April and 5 May 2015. At the meeting on 5 May an overall compromise package was provisionally agreed by both the EP and the Presidency, which strikes a fair balance between the different interests.
7. Against that background, at its meeting on 28 May 2015, the Council (COMPET) adopted a political agreement, as laid down in 8969/15 and 8969/15 COR 1.
8. Subsequently, by letter of 17 June 2015, the EP informed the Council that the EP would approve the Council's position without amendments at its second reading.

II. OBJECTIVE

9. The general objective of the proposal is to improve the functioning of the internal market and to achieve a high level of consumer protection in the package travel sector. 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. Despite this Court ruling, it remained unclear to what extent modern ways of combining travel services are covered by the Directive.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

10. The original proposal of the Commission has been modified and partially redrafted by the agreement reached between the Council and the EP. In order to contribute to the proper functioning of the internal market and a high level of consumer protection, the objective is to reduce legal fragmentation, to establish a level playing field and to strengthen the European tourism market by systematically removing obstacles to cross-border trade.

B. Key policy issues

11. Level of harmonisation (Article 2(3) and Article 4)

Following an EP amendment, the Council introduced a specific new article on the level of harmonisation by highlighting the principle of 'maximum harmonisation' and supplemented it with an additional paragraph (from the Consumer Rights Directive) safeguarding national contract law. By applying this principle the aim is to make the market more transparent, particularly the online market, so as to increase travellers' trust and boost demand.

12. Definition of a package - inclusion of 'click throughs' (Article 3(2)(b)(v) and Recital 13)

At the request of the EP, the Council agreed to keep the so-called 'click-throughs' included under the definition of a package. A 'click-through' occurs, when at least two different types of travel services are purchased from separate traders through linked online booking processes and when the traveller's name, e-mail address and payment details are transmitted between traders within a 24-hour limit. Moreover, a review clause was added so that the Commission, three years after the entry into force of the Directive, has to assess the effectiveness of this provision, in particular the definition of 'click-throughs', and may come up with a legislative proposal.

13. Linked travel arrangements - LTAs (Article 3(5) and Article 19)

The definition of linked travel arrangements (LTAs), initially called assisted travel arrangements, has been further developed by specifying that the different travel services have to be selected and paid separately by the traveller. Moreover it is specified that the trader has to facilitate the purchase of additional travel services in a targeted manner from another trader and the consequent contract with such other trader has to be concluded not more than 24 hours after the confirmation of the purchase of the first travel service. 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. The aim is to ensure that when buying an LTA the traveller would be protected in the event of the insolvency of the trader facilitating the LTA. Consequently the traveller will have the right to be repatriated if the insolvency of the trader responsible for the carriage of passengers causes the traveller to be stranded at the travel destination. Furthermore, before concluding a contract leading to an LTA, the trader has to inform the traveller, by using standard forms, that he will not benefit from the rights granted by this Directive except for insolvency protection.

14. Definition of a package - combinations forming a package (Article 3(2)(b) and Recital 18)

With a view to easing the financial and administrative burden of small businesses, in particular hotels and bed & breakfast establishments, the Council clarified the definition of a package.

In particular it is clarified that, when an additional travel service is booked and does not account for 25 % or more of the value of the combination of the travel services and does not constitute an essential feature of the trip, or an additional travel service is selected and purchased only after the performance of a first travel service, this should not fall under the definition of a package.

15. Insolvency protection (Articles 17 and 19 and Recitals 38 to 44)

The effectiveness of the protection scheme and discretion as to the way in which insolvency protection is to be arranged by Member States were key objectives of the Council. The text therefore stipulates that insolvency protection should provide for adequate coverage in all likely circumstances and reflect the level of financial risk represented by the trader's activities, but that this liability should not be open-ended. An insolvency protection scheme's liability should extend only to circumstances which reflect the normal assessment of risk. However, effective insolvency protection should not have to take into account highly remote risks as there is no justification for expecting schemes to cover unforeseeable costs. Another important aim was to prevent any unnecessary financial and administrative burden on small and medium-sized enterprises. To this end the text specifies that Member States should take into account the special situation of smaller companies when laying down rules on the insolvency protection to be provided by traders in relation to packages and LTAs.

16. Pre-contractual information (Article 5)

As regards pre-contractual information the text aims to ensure that travellers have the necessary information to make informed choices without overburdening the traveller and the organiser with too many information requirements. The Commission proposal has therefore been streamlined, in particular by deleting any information requirements at the pre-contractual stage on the approximate periods for obtaining visas, given that these periods differ enormously depending on the nationality of the traveller yet have little value for travellers at this stage. However, the Council and the EP agreed on a reference to general information on passport and visa requirements, including approximate periods for obtaining visas.

17. Accommodation in the event of unavoidable and extraordinary circumstances (Article 13(7) and Recital 35)

In the event of unavoidable and extraordinary circumstances which delay the return of the traveller, the text specifies that accommodation in an equivalent category (if possible) is limited to a maximum number of 3 nights unless Union legislation provides otherwise.

18. Alteration of significant contract terms (Article 11(2) and Recital 33)

In the event of alteration of significant contract terms the organiser must inform the traveller of the reasonable time limit within which the traveller has to inform the organiser of his decision, including the option to terminate the contract.

19. Compensation for non-material damage (Article 14(2) and Recital 34)

The Council confirmed the traveller's entitlement to compensation for any damage. This also includes compensation for non-material damage since in a recital it is specified that compensation should also cover non-material damage, such as compensation for loss of enjoyment of the trip or holiday because of substantial problems in the performance of the relevant travel services.

20. Exclusion of occasional and not-for-profit packages and linked travel arrangements (Article 2(2)(b) and Recital 19)

The Council decided to exclude occasional and not-for-profit packages and LTAs from the scope of this Directive given that there is less need to protect travellers in such cases.

However, in order to enable travellers to make informed choices, adequate information that such arrangements are not covered by this Directive should be publicly available.

21. Business travel (Article 2(2)(c))

The text generally excludes business trips, whether packages or LTAs, purchased on the basis of a general 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, since such business trips already enjoy a comparative level of protection in relation to holiday packages.

22. Car rental (Article 3(1)(c))

Rental of 'motorcycles requiring a Category A driving licence under Article 4(3)(c) of Directive 2006/126/EC' is included on a par with 'car rental'. This category of motorcycles is reserved for larger motorbikes with no limit to the engine size or power.

23. Contracts concluded by telephone (Article 27(2))

The Council streamlined the information requirements for contracts concluded by distance communication, including phone, by applying Article 8(6) of the Consumer Rights Directive.

24. Transposition (Article 28)

Member States will have a deadline of 24 and 30 months respectively for transposition and application, given the complexity and far-reaching consequences of the proposed legislation, in particular for national administrations and business.

25. Annexes I and II

In order to make the concept of 'linked travel arrangement' workable and practicable, the Council has added two Annexes which explain in plain language and in a standardised way the rights and obligations of travellers and traders in relation to packages and LTAs.

IV. CONCLUSION

In establishing its position, the Council has taken full account of the proposal of the Commission and of the EP's position at first reading. The text as it now stands reflects in a fair and balanced way the different points of view expressed in the course of negotiations, and it should ensure that travellers and businesses are provided with a simple but effective and future-proof framework which is also enforceable on the ground.
