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REPORT

on general aspects of consumer protection policy and, in particular, consumer information and education with regard to the application of Directive 90/314/EEC (2001/2136(INI))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Philip Bushill-Matthews

(Delegation of the power of decision - Rule 62 of the Rules of Procedure)

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PROCEDURAL PAGE

At the sitting of 25 October 2001 the President of Parliament announced that the Committee on the Environment, Public Health and Consumer Policy had been authorised to draw up a follow-up report, pursuant to Rule 47(2) and Rule 163 of the Rules of Procedure on general aspects of consumer protection policy and, in particular, consumer information and education with regard to the application of Directive 90/314/EEC.

At the same sitting the President of Parliament announced that the Conference of Presidents had delegated the power of decision to the Committee on the Environment, Public Health and Consumer Policy under Rule 62 of the Rules of Procedure (2001/2136(INI)).

The Committee on the Environment, Public Health and Consumer Policy had appointed Philip Bushill-Matthews rapporteur at its meeting of 26 June 2001.

The committee considered the draft report at its meetings of 21 November and 19 December 2001.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Guido Sacconi, acting chairman; Alexander de Roo and Ria Oomen-Ruijten, vice-chairmen; Philip Bushill-Matthews, rapporteur; Per-Arne Arvidsson, Hans Blokland, David Robert Bowe, John Bowis, Avril Doyle, Karl-Heinz Florenz, Robert Goodwill, Françoise Grossetête, Anneli Hulthén, Paul Lannoye, Peter Liese, Minerva Melpomeni Malliori, Patricia McKenna, Erik Meijer (for Jonas Sjöstedt), Rosemarie Müller, Karl Erik Olsson, Béatrice Patrie, Encarnación Redondo Jiménez (for Cristina Gutiérrez Cortines), Didier Rod, Dagmar Roth-Behrendt, Inger Schörling, María Somosa Martínez, Charles Tannock (for Martin Callanan), Antonios Trakatellis, Phillip Whitehead.

The report was tabled on 19 December 2001.

MOTION FOR A RESOLUTION

European Parliament resolution on general aspects of consumer protection and information policy on application of Directive 90/314/EEC (2001/2136(INI))

The European Parliament,

- having regard to Council Directive 90/314/EEC on package travel, package holidays and package tours,¹
 - having regard to the Commission's working paper on the implementation of Directive 90/314/EEC on package travel and holiday tours in the domestic legislation of EC Member States,²
 - having regard to Directive 93/13/EEC on unfair contract term,³
 - having regard to its resolution of 31 March 1998 on improving safety, consumers' rights and trading standards in the tourism sector,⁴
 - having regard to the Consumers' in Europe Group Report CEG 98/16 as at 30 October 1998,
 - having regard to the 2555th Council Meeting "Consumer Affairs" in Luxembourg on 13 April 2000,
 - having regard to the Conclusions of the Expert Group Round Table on Package Travel Contracts,
 - having regard to Rule 47(2) and to Rule 163 of its Rules of Procedure,
 - having delegated the power of decision, pursuant to Rule 62 of its Rules of Procedure, to the Committee on the Environment, Public Health and Consumer Policy,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy (A5-0463/2001),
- A. Whereas tourism is one of the economic and cultural activities with the best present results and future prospects in Europe,
- B. Whereas a main objective of the Directive has been to provide consumers with a single, easily accessible contract partner solely responsible for the whole package, a goal which is not generally met in practice in many Member States because of difficulties in consumers

¹ OJ L 158, 23.06.1990, p.59-64.

² SEC(1999)1800, 05.11.1999.

³ OJ L 095, 21.04.1993, p.29-34.

⁴ OJ C 138, 4.5.1998, p. 4.

obtaining their rights,

- C. Whereas in many Member States, including the United Kingdom –which sends more of its inhabitants abroad on package holidays than any other EU country – complaints about package holidays have continued to rise sharply year on year; with 80% of the complaints in the UK being upheld by ABTA, the conclusion has to be that the Directive has failed to raise standards in the EU package travel industry sufficiently and has thereby failed consumers in its present form,
- D. Whereas a considerable number of provisions of this Directive allow for wide-ranging interpretation, thereby leading to very different approaches by different Member States,
- E. Whereas specifically the transposition of Article 7 into domestic legislation has revealed that the securities offered against travel organisers' or retailers' insolvencies varies considerably by each Member State, as does the level of protection afforded to consumers,
- F. Whereas many package travel operators currently consistently deny responsibility for failures to deliver by airlines, hotels or other agents, even when such agents may be fellow subsidiaries of the same parent company,
- G. Whereas there are no rules for cancellations in the Package Travel Directive, and differing systems of consumer protection prevail in different Member States in this regard,
- H. Whereas the Directive is not applicable to air travel except when included in a package, despite increasing complaints by consumers in this regard,
- I. Whereas there could become problems of unclear consumer protection arising in the context of cross-border purchases of travel packages via the internet,
- J. Whereas package travel is often cross-border, and therefore consumer protection must be on a cross-border basis rather than be subsumed under the issue of subsidiarity,
- K. Whereas it is important that anomalies and omissions within this Directive are effectively addressed prior to the accession of candidate countries, lest such problems become magnified,

1. Recommends that the Directive be updated, widened in scope and deepened in application, and re-issued as a priority;

Specifically:

- 2. Calls for the current wide variations in interpretation by Member States to be significantly reduced, in order to give equally effective consumer protection throughout the EU;
- 3. Calls for European Court of Justice case law to be taken into account and codified in the new directive;
- 4. Calls for a widening of scope of the Directive to recognise that the recent surge in low-cost airline and internet bookings have encouraged more consumers to book separate holiday

components for themselves rather than buying complete packages; notes that it would be inappropriate for consumers to be more highly protected for package travel than for other leisure travel purchased in advance;

5. Suggests that one such improvement would be to allow for packages of less than 24 hours to be incorporated into the scope of the Directive;
6. Asks for the new Directive to state more clearly the legal consequences of neglecting the obligations concerning information and transparency;
7. Calls for better and perhaps newer definitions and clarifications of terms such as “inclusive price”, “package”, “pre-arranged” and “consumer”;
8. Calls for greater clarity regarding the precise liability of organiser and/or retailer regarding failure to perform the contract, or for the improper performance of it, whether or not the operator or agent has directly supplied the service in question;
9. Demands clearer and fuller compensation for consumers if the contract is cancelled by the organiser and/or retailer , with compensation for the organiser and/or retailer against clear evidence of loss;
10. Insists that the rights of consumers under national law must not be restricted by unfair exclusion clauses, or clauses that might make it more difficult for consumers to make claims for compensation;
11. Urges Member States to provide some form of Government guaranteed back-up fund combined with bonds lodged by the travel operator concerned in support of Article 7 standards of consumer protection; insist that consumers should not have to pre-fund their own repatriation in case of organiser and/or retailer insolvency;
12. Urges Member States to ensure that consumers are made more readily aware of their rights of redress under the law and how to claim these rights;
13. Notes that many consumer complaints still arise from consumer disappointment following misleading or incomplete information; calls for the minimum information standards to be reviewed, and applied to all descriptive or promotional material rather than just the holiday brochure itself;
14. Calls for the organiser and/or the retailer to be obliged to inform the consumer of any circumstances that he/she is aware of which might impact upon the enjoyment of the holiday (for example, ongoing construction work in the hotel, the immediate area and/or nearby);
15. Recommends that Article 4(2)(b), which requires that the terms of the contract be communicated to the consumer prior to the conclusion of the contract, be amended to require that the consumer should be given a copy of the organiser and/or the retailer’s full booking confirmation/contract terms within seven days of the customer signing such a contract;
16. Calls for the organiser, pursuant to Article 4 (5), to inform the consumer of any significant

changes to the essential terms of the holiday no later than 14 days before the departure date;

17. Urges greater conformity by Member States to commonly agreed standards classifying accommodation, in order to avoid misleading and/or confusing consumers;
18. Urges tighter rules regarding single person supplements, which not only penalise single parents and older people, but perversely at times produce inferior accommodation;
19. Calls for more information to be provided regarding the accessibility of holiday accommodation to disabled consumers, with more common definitions of aspects such as wheelchair access being adopted by all Member States;
20. Calls for Article 5(1) to be reinforced, to specify more detailed requirements concerning industry obligations regarding provision to consumers of comprehensive health information appropriate to the holiday destination;
21. Calls for strict limits to be put on post-contract surcharging, or fluid pricing, as a result of alleged potential changes in exchange rates, fuel, taxes etc, with a cut-off period extended to at least 30 days prior to travel;
22. Encourages the Commission to proceed with vigour towards the completion of “The Single European Sky”, which could make a significant contribution to reducing flight delays and a major source of consumer complaint;
23. Instructs its President to forward this resolution to the Council and Commission and the Governments and Parliaments of the Member States.

EXPLANATORY STATEMENT

1. History

The Package Travel Directive was a result of a consumer protection programme adopted by the Council in 1986.

Consumer protection policy requires a minimum standard of regulation at the European level, though it is complicated in this instance by the fact that there has not been a separate and specific Tourism Chapter in the Treaty.

However, because it respects subsidiarity, there is only provision for national insolvency protection rather than one at European level. This is not necessarily wrong: however, neither does it mean that national insolvency protection is currently adequate in every Member State.

The Directive is also intended to contribute to the completion of the Internal Market, meaning that it had to establish a legal framework for the services of tour operators within the entire internal market, enabling European consumers to benefit from genuinely comparable conditions when buying a package holiday in any Member State.

2. Committee on Transport and Tourism Report - 2nd March 1998

This particular Report, in its very first conclusion, called upon the Commission to continue verifying, as a matter of the greatest urgency, compliance with the Directive on Package Travel (1990/314EEC), and to ask the Member States' Governments, in the light of any problems encountered or the legislative shortcomings related to the incorporation of that Directive, to ensure its proper application, with particular regard to the guarantee laid down in Article 7 concerning compensation in the event of insolvency or bankruptcy of the travel organiser and/or retailer, resorting if necessary to the infringement procedure for Community law; and called upon the Commission also to collect the views of the professional sectors concerned in the impact of the Directive.

3. Article 7

This Article grants rights to package travellers guaranteeing a refund of money paid over and their repatriation in the event of the organiser and/or retailer's insolvency. It is this Article that has been open to particularly differing interpretations by different Member States.

4. Luxembourg Council Conclusions

The Luxembourg Council Meeting of 13th April 2000 concluded that a considerable number of provisions of this Directive allowed a wide-ranging interpretation, thus leading to different approaches by national law-makers, without prejudice to a technically correct transposition into national legislation by Member States taking into account national circumstances.

Specifically it noted:

a) the fact that the Directive, as it stands, does not limit consumer liability in case of withdrawal by the consumer within a reasonable time from the contract, may need to be

reconsidered;

b) that in Article 7, the coverage of “sufficient evidence of security” in the case of insolvency or bankruptcy of the operator/agency, namely for refunding and/or repatriating the consumer, is the subject of differing interpretation by Member States;

c) there is now ECJ Case Law regarding Article 7, and the Commission should analyse this issue further together with Member States;

d) the Commission should carry on its work undertaken with a view to better protecting the consumer regarding contracts on package travel, in particular by supporting the drawing-up of a code of conduct by the parties concerned in this sector.

5. Commission Staff Working Paper 1999

This paper probed various discrepancies in interpretation among Member States, and suggested that either there should be a more common interpretation of the Directive, or if necessary modifications to the Directive itself.

It was considered, inter alia, that such modifications might include

- clearer descriptors, clarifying the definition of a package holiday “sold or offered at an inclusive price”;
- liability, to determine more rigorously the respective liabilities of organisers and retailers;
- scope, perhaps to include sightseeing excursions or organised tours and events;
- consumer protection in the field of aviation.

6. Member States’ Legislation concerning Article 7 standards of protection

These different amounts of protection are reflected in Member States' legislation. In Germany the implementing provision provides for the refund of the price that has already been paid, as far as services are not performed because of the insolvency or bankruptcy of the organiser and/or retailer. In addition to this, necessary costs for the repatriation of the consumer which he has incurred as a consequence of the insolvency or bankruptcy of the organiser and/or retailer shall be refunded.

In the Netherlands the relevant provision demands, alternatively, the transfer of the obligation of the organiser and/or retailer to another person or refund of the price. In any event the repatriation of the consumer has to be “taken care of”, which seems to allow its actual arrangement as well as a refund of its costs. The preparatory documents to the Dutch Act state that “as a matter of fact” the costs for the repatriation can be deducted from the refund of the price. The Dutch SGR (a guarantee fund for the travel industry) refunds prepayments if one of its members is, as a consequence of “financial inabilities” unable to fulfil his obligation.

In Denmark the law specifies four services of the (obligatory) guarantee fund: the prepaid amount is refunded if the trip cannot start because of financial difficulties of the organiser and/or retailer. Repatriation of the consumer shall be arranged by the fund. The fund also

grants “reasonable compensation” for a fundamental breach of contract during the trip. Accommodation abroad can be arranged, but the consumer has no enforceable right to it.

In the United Kingdom the implementing law takes over the wording from the Directive and adds that for the purpose of minimum protection "a contract shall be treated as having been fully performed if the package or, as the case may be, the part of the package has been completed irrespectively of whether the obligations under the contract have been properly performed for the purposes of liability of the organiser and/or retailer for proper performance. This seems to indicate that lower quality of performance does not lead to a refund claim and leaves the consequences of a cancellation of a package after departure unclear. However, the UK is apparently the only country that has a Government-backed guaranteed back-up fund : experience suggests that bonding or insurance provided solely by the commercial market could never guarantee 100% of claims as the Directive clearly envisages.

Austria implemented the rest of the Directive first, and waited a while until it issued an ordinance concerning insolvency protection. This states that the security must cover the refund of prepayments, as far as services have not been performed due to the insolvency of the organiser and/or retailer. The security must also cover all necessary costs incurred by the consumer for his repatriation. These can be the price of a ticket, a night spent in a hotel (waiting for the next available flight), telephone calls etc.

At first sight the Italian decree implementing the Directive seems no better in this respect: it plainly provides for securing the refund of prepayments and the repatriation of the consumer but the questions remained unresolved and are left to scholars and judges. Yet the decree also demands a compulsory civil liability insurance of the organiser and/or retailer; thus the insolvency guarantee only becomes relevant in cases where refund claims or the costs of reparation remain unpaid by this insurance (e.g. because the organiser has not taken one up or has not paid his premiums).

Portugal has a very consumer-friendly implementation; the security the organiser and/or retailer must provide has to cover not only the refund of prepayments and the repatriation of the consumer, but also additional expenditures incurred by consumers as a consequence of a non- or defective performance on behalf of the organiser and/or retailer, as well as reimbursement of the consumer for any damage inflicted upon him by the organiser and/or retailer or its agents. In this case detailed provisions about the amount of protection and sophisticated distinctions between “refunds” and "refund" seem superfluous, as they are all covered by the security.

7. Member States Legislation: Obligations of Organiser/Retailer

According to the German Act, the organiser and/or retailer "has to ensure that the consumer is reimbursed for ...". He can only fulfil this obligation by providing an insurance or a bank guarantee. Furthermore he has to supply the consumer with a direct claim against the insurance company or bank and to prove this by handing over a certificate of the respective company. Before he has done so he is not allowed to accept consumer payments higher than 10% of the price or DM 500,-. The sanction for this provision consists in a fine of up to DM 10.000,- for each received prepayments.

In the Netherlands, the law obliges the organiser and/or retailer "to take measures necessary to

ensure that...". The organiser and/or retailer has to make known the measures he has taken in brochures, other publications or in any public way. Obviously the Dutch legislator believes in the force of the market. He considers the information of the consumer the most important item and trusts the consumer will take this information into account when booking his trip. Consequently, as it appears from the preparatory documents, sanctions are only provided for false information.

In Denmark, every organiser and/or retailer has to register in a guarantee fund. Only organisers and/or retailers that have been registered are allowed to deal in package travels. The sanction consists in a fine, notwithstanding the application of criminal law.

In the United Kingdom, the organiser and/or retailer "shall at all times be able to provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of an insolvency", thus representing almost the exact wording of the Directive. The organiser and/or retailer shall ensure that at least one of the following arrangements is in force.

A bond is entered into by an authorised institution under which the institution binds itself to pay to an approved body of which the organiser and/or retailer is a member, a certain sum. Alternatively, a bond should be entered into by an authorised institution that has a reserve fund or insurance coverage. Instead of that, the organiser and/or retailer may have an insurance of which the consumers are the insured persons. Finally, all prepayments can be held by a trustee for the consumer. Compliance with these regulations is reinforced by fines. The security for repatriation is only mentioned in very general terms and not referred to in the regulations concerning the various security schemes where only the refund of prepayments is mentioned.

Under Austrian law, the organiser and/or retailer may provide security only by an insurance-contract or a guarantee of a bank or a public entity (e.g. the Chamber of Commerce). The minimum insurance sum is 5% of the organiser and/or retailer's turnover in the respective quarter of last year. The consumer has to obtain a direct claim against the insurer; in addition, this claim has to be independent of whether the securing institution might be free from its obligation towards the organiser and/or retailer. For instance, even if the organiser and/or retailer has not paid his last premium, the consumer must remain secured. The sanction for not providing such a security is, apart from a rather ridiculous fine, a very effective one: the organiser and/or retailer risks losing his licence.

Portugal has very detailed provisions regarding the obligations of the organiser and/or retailer. For the refund of prepayments and additional expenditures caused by non- or defective performance of the travel-contract, the organiser and/or retailer has to supply a guarantee in the form of an insurance, a bank guarantee, a bank deposit or an other means approved by the Director-General of Tourism. For the reimbursement for damages and the repatriation of the consumer, the undertaking must take up a civil-liability insurance. These obligations are accompanied by a supervisory mechanism under the authority of the Director-General of Tourism. Sanctions range from a fine to the suspension or complete loss of licence to trade.

In Italy, too, the implementing law provides for a civil liability insurance. In addition to that it institutes a national guarantee fund which is to secure only the refund of prepayments and the repatriation of the consumer.

None of the above-mentioned laws or proposals includes any reference to the nationality of the consumer. Thus they would seem not to prejudice his rights for that reason. A discrimination on the ground of nationality would in any case be prohibited under EU law. The protection of the consumer depends on the law his contractant partner is subject to, i.e. which criteria he has to meet. According to the principles of EU Law, this should be the law of the company's state of establishment.