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STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE IV ON FLANKING AND HORIZONTAL POLICIES

EEA EFTA Comment

on the proposal for a directive of the European Parliament and of the Council on package travel and assisted travel arrangements COM(2013) 512

1. GENERAL

1. The EEA EFTA States (Iceland, Liechtenstein and Norway) have studied with great interest the European Commission's proposal for a directive on package travel and assisted travel arrangements, and appreciate the opportunity to provide their comments on the proposal. In Norway, the proposal has been subject to a public consultation.
2. Reference is also made to the draft report of the rapporteur Hans-Peter Mayer of 26 November 2013 to the European Parliament's Committee on the Internal Market and Consumer Protection.
3. The EEA EFTA States would like to present the following suggestions for amendments to the proposal which they believe may improve its content to the benefit of both businesses and consumers (the suggestions are further clarified below in points 2 to 7):
 - a. The EEA EFTA States recognise the need for harmonised regulations at EU level in this field due to the international aspect of the travel industry. However, the Directive should provide for derogations in more areas in order to allow for further leeway at national level, and the possibility to maintain stronger consumer protection in the Member States.
 - b. The EEA EFTA States recommend that business travellers be excluded from the scope of the proposal, as business travellers are as capable as organisers or retailers of managing the risk of travel.
 - c. The EEA EFTA States in general support the definitions included in the proposal and believe that they will bring more legal clarity. However, minor changes are proposed to the wording of Article 3(2)(b)(v) of the proposal.

- d. The organiser's right to terminate the contract according to Article 10(3) of the proposal should be extended from 20 to 30 days.
- e. The EEA EFTA States suggest that the retailer's responsibility for the performance of the package should be increased or that the Directive should provide the possibility to derogate on this issue.
- f. The inclusion of assisted travel arrangements in the insolvency protection scheme is supported by the EEA EFTA States. However, it is necessary for the Member States to be able to carry out an independent assessment of the insolvency protection obtained in another Member State. Furthermore, the deadline of 15 days for Member States to respond to another Member State's request for information in Article 16(2) of the proposal is too generous.

2. DEGREE OF HARMONISATION

- 4. The EEA EFTA States understand the Commission's proposal as providing for total harmonisation in this field, so that the possibility for Member States to derogate from its provisions would be limited to areas where this is explicitly stated.
- 5. Consumer organisations in the EEA EFTA States worry that a full harmonisation approach in this field could lead to weakened consumer protection in certain areas. Therefore, they prefer a minimum harmonisation approach. In contrast, the need for harmonised regulation has been emphasised by the travel industry.
- 6. The EEA EFTA States recognise that the travel industry is a typical international industry, and that there is a special need for harmonised regulation in this field in order to establish a level playing field for businesses. However, the EEA EFTA States recommend extending the possibility to derogate from the Directive to more areas compared to the current proposal, in order to maintain or introduce stronger consumer protection where this is considered necessary by the Member States.

3. SCOPE

- 7. The Commission proposes in Article 2 that the Directive should apply to packages offered for sale or sold to travellers. Travellers are basically both consumers and business travellers. However, an exception is made for packages and assisted travel arrangements purchased on the basis of a framework contract between the traveller's employer and a trader specialising in the arrangement of business travel.
- 8. The EEA EFTA States would recommend that all business travellers are excluded from the scope of the Directive. This would be more in line with the scope of other EU directives regulating the rights of consumers. The Commission argues that small businesses often need the same amount of protection as consumers. Many organisers are, however, also small businesses and therefore it does not seem adequate to adopt a binding regulation to protect one party to the contract when two businesses at an equal level are involved. Business travellers are as capable as organisers of managing the risk of their travel. The EEA EFTA States would also like to point out that it does

not seem to be in accordance with legal tradition in some of the EEA EFTA States to adopt binding regulations regarding contractual obligations between businesses. Differentiation between the scope for businesses with framework contracts and those without can lead to differences in competition between businesses. In the public consultation in Norway, stakeholders representing the travel industry, together with the Norwegian Travel Guarantee Fond, argued that all business travellers should be excluded from the scope of the proposed directive.

4. DEFINITIONS

9. The Commission has proposed new definitions of the terms “package travel” and “assisted travel arrangements” in Article 3. The EEA EFTA States find that the proposed definitions will lead to more legal clarity for both consumers and businesses compared to the current definitions.
10. Some of the EEA EFTA States have used the opportunity under the current directive to widen the definition of package travel to include, to some degree, packages that the traveller has put together independently via the internet. In addition, the insolvency protection scheme has been widened to include travel arrangements that share similarities with package travel. The new definitions will, therefore, not lead to major changes in these Member States compared to Member States that apply more narrow definitions. However, the proposed definitions imply that more types of travel arrangements will be covered under the new directive. The EEA EFTA States believe that this will be an advantage for consumers and also important in order to ensure that all businesses in the same market are subject to the same legal framework.
11. The EEA EFTA States note that the European Parliament’s rapporteur proposes that the definition of the term “package travel” be made less exhaustive, in order to ensure that future marketing strategies are also covered. The EEA EFTA States do not recommend a less exhaustive definition as they believe much of the legal clarity and predetermination for both consumers and businesses would be lost.
12. While the EEA EFTA States in general support the proposed definitions, they suggest that Article 3(2)(b)(v) of the proposal be amended. According to the proposal, a travel arrangement is considered to be a package if it is purchased from separate traders through linked online booking processes where the traveller’s name or particulars needed to conclude a booking transaction are transferred between the traders. Recital 18 of the preamble defines such particulars as credit details or other information necessary to obtain a payment. In order to include all travel service providers offering travel services which are easily perceived as packages by consumers, the EEA EFTA States suggest that this provision should also cover linked online booking processes, where particulars such as travel destinations or travel times are transferred between the traders.

5. TERMINATION OF THE CONTRACT

13. Article 10 of the proposal regulates termination of the contract before the start of the performance of the services purchased. The EEA EFTA States take the view that the proposed regulation of the traveller's right to terminate the contract is reasonable.
14. According to Article 10(3) of the proposal, the organiser may terminate the contract without paying compensation to the traveller, up to 20 days before the start of the package, if the number of persons enrolled is smaller than the minimum number stated in the contract. Stakeholders representing consumers in the EEA EFTA States have pointed out that this 20-day time limit is too short, as it allows little time for the travellers to find a new offer in the same price range. The EEA EFTA States, therefore, recommend that the organiser's right to terminate the contract be expanded from 20 to 30 days. This would be in accordance with current practices in some of the EEA EFTA States. In Norway, for instance, the time limit for cancellation is regulated in a general agreement between the Consumer Ombudsman and the business organisations.
15. The EEA EFTA States also refer to the rapporteur's proposal for graduated time limits under Article 10 of the proposal, according to how long the trip is going to last. He proposes a time limit of only seven days for trips lasting between two to six days and of 48 hours for one-day trips. The EEA EFTA States find that these time limits are too short.
16. The EEA EFTA States would also like to mention that stakeholders representing business organisations have pointed out the importance of being able to indicate the minimum number of passengers as a percentage of cabin capacity. The reason for this is that many organisers do not know at an early stage what kind of aeroplane will be used.

6. RETAILER'S RESPONSIBILITY

17. The Commission proposes that the organiser is responsible for the performance of the package (Chapter IV). The retailer's responsibility is reduced to a duty to forward messages to the organiser (Article 13), and to liability for booking errors (Article 19). Under the current directive, it is up to the Member States to regulate whether both the organiser and the retailer should be responsible, or only the organiser.
18. Some of the EEA EFTA States have used the opportunity established by the current directive to impose a liability on both the organiser and the retailer. This is considered to be of particular importance when the organiser is situated abroad and the package is sold through a local retailer. In the view of consumer organisations, reduced liability for retailers will lead to weakened consumer protection.
19. The EEA EFTA States would like to suggest increasing the retailer's responsibility for the performance of the package, or that the Directive provides opens for the possibility to derogate on this issue.

7. INSOLVENCY PROTECTION

20. The EEA EFTA States find that insolvency protection for assisted travel arrangements is a positive expansion of the insolvency protection scheme under the current directive. As pointed out by the Norwegian Travel Guarantee Fund, the inclusion of assisted travel arrangements will capture many operators that currently seem to have organised their businesses in a certain way in order to avoid the current regulation.
21. According to the Commission's proposal, organisers and retailers will be required to obtain security for the effective and prompt refund of all payments made by travellers and prompt repatriation (Article 15). The EEA EFTA States support that the refund should be prompt as this will lead to clearer and stricter requirements for what kinds of securities can be accepted. It is especially important for a well functioning protection scheme that the securities be made available to the administrator of the insolvency protection scheme or the consumer within a short timeframe, in order to organise the repatriation of travellers.
22. However, the EEA EFTA States would like to recommend some changes to Article 16 of the proposal. According to Article 16(1) litra a, Member States shall recognise any insolvency protection obtained by an organiser or a retailer under the rules of its Member State of establishment transposing Article 15. Many Member States have not yet implemented satisfactory insolvency protection schemes. For instance, many Member States accept insurances which do not provide effective refund as sufficient security. This would not be acceptable to all Member States. Therefore, it is necessary for each Member State to carry out an assessment of the insolvency protection of the actual organiser or retailer in another Member State in order to make sure that the requirements of the Directive are met.
23. In Article 16(4) of the proposal, it is proposed that a Member State that has doubts about the insolvency protection of an organiser or retailer established in a different Member State operating on its territory shall seek clarification from the Member State of establishment. The Commission proposes that the Member State of establishment shall respond to the request within 15 working days. The EEA EFTA States find that a deadline of 15 days is too generous. The organiser or retailer in question will be able sell many travel packages within a period of 15 days and hence many consumers could be subject to unnecessary risks. All Member States must be assumed to have a good overview of which organisers and retailers have the required insolvency protection. It should therefore be easy to provide information to other Member States within a shorter deadline.