



Department
for Business
Innovation & Skills

**THE EUROPEAN COMMISSION'S
PROPOSAL FOR A NEW
DIRECTIVE ON PACKAGE TRAVEL
AND ASSISTED TRAVEL
ARRANGEMENTS**

Call for Evidence

SEPTEMBER 2013

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The European Commission's proposal for a new Directive on package travel and assisted travel arrangements: Call for Evidence.

The European Commission has published a proposal for a new Directive on Package Travel and Assisted Travel Arrangements¹. It is intended that the new Directive will replace the current regime under Directive 90/314/EEC as implemented in the UK by the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992/3288 as amended) and the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012.

This Call for Evidence invites you to submit views and information that will help inform the Government's understanding of the impact of the proposal. This will enable the Government to develop its negotiating position as it engages with the other Member States and the Commission in the European Council Working Group, and with the European Parliament.

This Call for Evidence is relevant to consumers and organisations representing the interests of consumers, the travel trade including package travel organisers and retailers, travel agents, other travel organisers and facilitators (for example those currently covered by the ATOL flight-plus licensing requirements) and providers of leisure travel components such as transport providers, hoteliers and other holiday accommodation providers, car rental firms and other providers of tourist services. The Call for Evidence is also relevant to those who are currently engaged in providing financial services to the leisure travel industry in respect of the requirement that it protects consumer prepayments and provides for consumer repatriation in the event of insolvency.

The proposal is a consumer protection measure. Consumer protection is not a devolved matter in Scotland or Wales, but is a devolved matter in Northern Ireland. The current UK regulations which implement the current Directive apply throughout the UK, including in Northern Ireland. It is envisaged that with the consent of the Northern Ireland Assembly any new implementing Regulations will in due course also apply throughout the UK. The UK Government conducts EU negotiations on behalf of the whole UK. We therefore encourage views and information from interested parties wherever they are within the UK.

Issued: 20 September 2013

Respond by: 29 November 2013

¹ http://ec.europa.eu/justice/consumer-marketing/files/com_2013_512_en.pdf

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Introduction

The Commission proposes to replace the current Package Travel Directive (90/314/EEC) with a new Directive which is intended to update consumer protection legislation as it applies to holiday arrangements to reflect the impact of technological developments facilitated by the internet, and the emergence of low cost airlines, since 1990.

The current Directive includes consumer protection measures which supplement generally applicable consumer protection regulation. However, these measures apply only to the traditional package holiday where a single organiser constructs a standalone product consisting of a combination of elements sold under a single price. This would generally consist of transport (most commonly a flight) and accommodation, but might also include other tourist services (a package is defined in the current Directive as being the pre-arranged combination of any two of these three elements sold at an inclusive price).

Successive Governments have supported the case for change to the package travel regime. The UK has one of the most innovative and advanced leisure travel sectors in the world and is one of the biggest markets for leisure travel products in the EU.

One consequence of innovation in this sector is that regulation has failed to keep pace with developments. While consumers may be under the impression that they are buying or arranging a protected package, in many cases these arrangements do not meet the current definition of a package and consumers do not benefit from the same levels of protection as those that book via a traditional package organising business. These assertions appear to be supported by the evidence presented by the Commission in its Impact Assessment² which was published at the same time as the proposal (there is also an Executive Summary of the Commission's Impact Assessment³). As a result many consumers believe that either: they are protected by the regime even though they are not; or, experience considerable confusion about their entitlement in situations where, for example, their provider becomes insolvent or the services delivered are not up to the standard described or contracted for.

The Air Travel Organisers' Licensing (ATOL) scheme.

In order to provide an added degree of security for those who buy a product or book via a method which looks like a package, in 2012 the Government introduced a modification to the ATOL scheme which already provided for financial protection against insolvency in respect of flight-inclusive packages.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0263:FIN:EN:PDF>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0264:FIN:EN:PDF>

The modifications had the effect of extending the financial protection elements to what are known as “Flight-Plus” arrangements. This measure was taken after a decision in the UK courts provided some clarity on the definition of a package; confirming that many of the package organisers whom it had been assumed would be covered by the scope of the Package Travel Directive, and therefore ATOL (which applies the same definition of a “package”), fell outside of the regime.

The future of the ATOL scheme has recently been the subject of another Call for Evidence⁴ conducted by the Department for Transport. The Government is keen to ensure that in the future the arrangements the UK has in place in respect of financial protection minimises the exposure of the tax payer and provides business with a cost effective and efficient system adequate for its needs and those of consumers. The responses to that Call for Evidence are relevant to particular elements of this proposal, and of course the final outcome of this proposal will have a significant impact on the shape and scale of a future ATOL scheme, or any alternative.

The Commission’s case for action.

The Commission has observed that in respect of the traditional package model the existing regime has served consumers and package tour operators well, providing valuable reassurance for consumers in respect of a complicated product. The product generally involves a financial commitment by the consumer well in advance of the delivery of the services and is often delivered abroad. If it goes wrong, but for the added protections in the regime, consumers can be in the position of being abroad with no immediate means of return, or having to seek recompense across borders; or having suffered the loss of their prepayments.

The Commission has identified that the growth of alternative means of providing combinations of travel arrangements has led to an uneven regulatory environment and that traditional package organisers are subject to a level of regulation which many of their competitors who, to the consumer, are providing substantially the same services, are not. It believes that many consumers are confused as to the level of protection, if any, which their chosen method of booking travel arrangements attracts. Research for the Commission⁵ has identified package-like arrangements which currently fall outside of the package travel regime as being the source of most consumer detriment in the sector.

Furthermore, the Commission asserts that cross-border trading is inhibited by, in some cases, a lack of mutual recognition of the systems in place to meet the current Directive’s requirements, varying levels of requirement, and the application of the obligations in the Directive by Member States on different entities in the supply chain. This makes it difficult for a package organiser who has in place arrangements under the rules of its home state

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Review of Package Travel Directive and ATOL Implementation and Funding Arrangements: Call for Evidence - <https://www.gov.uk/government/consultations/atol-call-for-evidence>

⁵ Study on Consumer Detriment in the area of Dynamic Packages – London Economics, Nov. 2009 - http://ec.europa.eu/consumers/rights/docs/study_consumer_detriment_dyna_packages_en.pdf

to compete in another Member State, especially one which does not recognise those arrangements and demands further cover.

The Commission's Communication: Bringing the EU Package Rules into the Digital Age⁶, and the Commission's Impact Assessment, published with the proposal, set out its view in more detail.

The Government's view.

The Government broadly welcomes the proposal and is of the view that it represents a reasonable attempt at seeking to address the issues the Commission has identified as problematic, and which it believes, based on the research it commissioned on "dynamic packaging", are the source of significant levels of consumer detriment and confusion. Our own experience, reflected in court judgments and subsequent adjustment to the ATOL scheme, confirms the degree of uncertainty for business as to the applicability of the current regime.

Before the Government decides on its formal approach to negotiations it is important that those who benefit from consumer protection in the sector and those who are likely to continue to be or to become subject to the provisions of a new Directive, are provided with the opportunity to offer their views and to present whatever evidence they are able to in support of those views. The Government is keen to engage with interested parties throughout the process and already has a good understanding of the position of some of its main industry stakeholders on various elements of the proposal. This, however, is an opportunity to draw this matter to the attention of other interested parties and to encourage them to engage as well. This will help the Government to make a fully informed decision which it hopes will reflect those views as far as the context and the objectives of the proposal permits.

As a starting point the Government believes the Commission has done a good job in evaluating its evidence, gathered Europe-wide, and in the light of several years of engagement with stakeholders and Member States. That is not to say that, as it stands, the proposal does not give some cause for concern in particular respects, or that, in our view, it could not take a more measured approach to areas where we believe there is less evidence of consumer detriment.

⁶ http://ec.europa.eu/justice/consumer-marketing/files/com_2013_513_en.pdf

The Proposal in Brief

The proposal is prefaced with the Commission's Explanatory Memorandum which provides a brief rationale for action; some details of its consultation; the options it has considered in respect of scope; and, its view of the legal elements of the proposal. The Commission's description of each article can be found on page 7 of the Explanatory Memorandum.

The proposal seeks to address the issues it has identified by adjusting the scope of the application of the package travel regime; removing some outdated elements, providing for greater clarification as to application for consumers and traders while maintaining its essential characteristics (provision of pre-contractual information, setting out specific contractual rights, placing liability for the whole package on the organiser and providing for the refund of prepayments and for repatriation in the event of insolvency). The proposal also seeks to clarify the contractual obligations of organisers in the event of changes to arrangements (including limiting an organiser's responsibilities to provide additional accommodation in the event of force majeure situations).

Scope

The Commission proposes an extension to the coverage of the regime by expanding the definition of package arrangements so that it also includes arrangements facilitated by two or more entities within a single booking process, or, where a single entity, such as a web-based operator, facilitates the creation of a "package" by providing to consumers a choice from a range of services from different providers under an inclusive price or by means of an exchange of data which enables the second provider to take payment. These arrangements would all be subject to the full range of protections in the proposal including the organiser taking on the liability for all of the services provided under the contract and providing cover against the insolvency of the organiser and the parties providing the services.

The proposal makes a distinction between those covered by the extended definition of a package and arrangements where commercial connections are looser and where it takes the view that consumers would not believe that they are buying a package. For example, where the opportunity to "click-through" from an airline site at the end of the booking process to another provider which offers accommodation on the dates of travel under an entirely separate contract paid for as a separate transaction. These are characterised in the proposal as "Assisted Travel Arrangements" and it is proposed that those facilitating such arrangements should provide protection against the insolvency of facilitators and the service providers only.

While "Assisted Travel Arrangements" can be considered to be quite distinct from the concept of a "package" the Commission also proposes information requirements which will make the level of protection attached to the different arrangements covered by the Directive very clear to consumers. This, the Commission claims, not only promotes informed consumer choice, but also allows business flexibility as to how it chooses to provide services and the level of protection that attracts. In general, however, the Commission maintains that it will provide for a much fairer regime in terms obligations on competing entities.

The Commission does not propose to regulate all travel arrangements. Those separate arrangements which consumers choose to make themselves which do not involve any “coordinating” by a trader will remain, as at present, subject to general consumer protection regulation, normal contractual rights and any relevant passenger rights legislation.

It will be appreciated that in the UK we already make a similar distinction in legislation between the coverage of the current directive (traditional packages) and the additional coverage of flight-plus arrangements under ATOL mentioned above. Notwithstanding the likely need for clarification in the Commission’s proposed definitions, it seems clear that the majority of those businesses covered in the UK by the package travel regime and the ATOL scheme will be covered by the proposal. However, it seems that the expanded definition of a “package” under the new regime will mean that some business models which are currently subject only to the ATOL requirements as flight-plus arrangers will in future be subject to the whole package travel regime. There will also be some arrangements which do not incorporate a flight, and which otherwise would not currently fall within the package travel regime, which will be caught by the new package definition. For example some methods of making available coach or railway-based holidays, or which include car hire and, say, another tourist service.

Information requirements

The Commission is seeking to rationalise and clarify the information to be provided prior to contracts being agreed and prior to the date of departure. These do not appear to differ significantly from the information currently required in respect of brochures or pre-departure. It seems likely that much of this information is likely to be provided in the normal course of business in any case, but the proposal would ensure that business can be clear about what is required as a minimum. The information must be provided irrespective of the medium by which a business chooses to market their products and services, and the removal of the former tie to brochures means that where a brochure is provided it need not contain all of the information required provided the consumer has access to the information by other means prior to agreeing any contracts.

Contractual obligations and rights

We believe the proposal seeks to ensure that the pre-contractual information is incorporated into the contract. It provides that the traveller is entitled to transfer the bookings to another person and that the organiser may charge a reasonable fee reflecting the actual costs to the organiser of organising the transfer.

Post contractual price increases (permitted for a limited range of reasons where allowed for in the contract) are limited to a maximum of 10% (currently there is no limit. In the UK we have covered the possibility of a price decrease for the same reasons in our regime. This is also part of the proposal which is not in the current Directive.

There are explicit rights for the traveller to withdraw from the contract. Under normal circumstances the trader would be entitled to charge a proportion of the cost of the

arrangements on a rising scale depending on how soon the arrangements were due to begin (this reflects the contractual position in many package contracts already). In relation to force majeure situations however, the traveller would be entitled to a full refund.

In large part the proposal reflects the current Directive in its approach to what should happen in the event of changes to contracts and promised services, although in the event that a force majeure situation leads to a delayed return the organiser will only be liable for a maximum of 3 additional nights of accommodation at €100 per night per traveller. This aligns this obligation with that proposed to be applied to airlines under a new Air Passenger Rights Regulation currently being negotiated and is similar to limits which can be applied under Maritime and Bus and Coach Passenger Rights Regulations.

The proposal otherwise substantially replicates the current regime in respect of the organiser being liable for the performance of the contracts forming part of the package, and needing to seek to put matters right, provide alternatives, or return the traveller with the possibility of compensation where arrangements fail during the holiday. There is however a responsibility placed on the traveller to bring concerns about the performance of the travel services to the attention of the organiser without undue delay, if that requirement is set out clearly in the contract and it is not unreasonable in the circumstances.

Consumer protection against insolvency

The proposal maintains the current position in respect of Member States' freedom to put in place its own systems to enable business to meet its financial protection obligations. The proposal does however seek to clarify that any such systems must take into account the actual financial risk represented by an individual trader's activities and that it must be capable of covering sales to travellers outside of the State of establishment of the business. The coverage must also include the insolvency of any of the service providers concerned with providing the arrangements. Member States must also recognise the protection in place in other Member States in respect of products sold across borders and cannot in that case require compliance with the traveller's home State requirements.

Other proposals which differ from the current Directive

These include: clarification of the organiser / retailer roles within the regime; making only the organiser responsible for the performance of the contract or contracts which comprise a package, and for providing the financial protection elements for packages. The information provisions apply to both and where a retailer is the point of purchase they should also be prepared to accept contact from the traveller on contractual issues and to ensure that such issues are passed on to the organiser without undue delay. Of course this does not prevent the traveller from contacting the organiser direct if that is their preference.

The proposal also seeks to apply requirements in the Consumer Rights Directive on cost only charges for methods of payment (credit/debit cards), explicit consumer agreement to "add-ons" not forming part of a main contract (pre-ticked boxes), and the provision of basic rate telephone lines for contractual matters where the business operates a telephone line for consumers to contact them.

Removal of burdens on business

The Commission has identified elements which should relieve burdens on businesses currently subject to the regime. Among these is the removal of brochure-specific requirements mentioned above which necessitate regular updating when prices change. There is also a specific mutual recognition requirement in respect of the means of financial protection against insolvency. This aims to remove possible existing barriers identified by the Commission to developing cross-border sales activities, as does the maximum harmonisation nature of the proposal. This would mean that consumers could expect the same levels of protection irrespective of the Member State in which the business is established, and that businesses could be clear about what is required of them if they choose to expand into markets in other Member States.

Some relief to the business travel sector will also be provided as the proposal excludes business travel arrangements which have been made by a specialist travel arranger under contract to business employers. However, those business travellers who choose to make their arrangements via the usual consumer facing service providers will continue to benefit from the protections. It is not clear at present whether the intention is that all business travel which can be clearly identified as such should be excluded.

How to respond

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate type of interest group on the response form and, where applicable, how the views of members were assembled.

There is a list of the questions at Annex C.

Responses can be submitted online/by email or by letter or fax to:

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1 Victoria Street,
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This call for evidence will close on Friday, 29 November 2013

Other versions of the document in Braille, other languages or audio-cassette are available on request.

Confidentiality & Data Protection

Any response you send us will be seen in full by BIS. Responses will not usually be published, but will be used to inform the Government's policy on how best to engage negotiations and communications in respect of the Commission's proposal. Responses may be used for further discussions with appropriate stakeholder organisations. Information provided in response to this call for evidence, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Help with queries

Questions about the policy issues raised in the document can be addressed to:

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Questions

These questions relate to particular areas of the proposal which in our view are likely to have a significant impact in relation to the current legislative position. They should be read by reference to the proposal.

Annex A provides links to the relevant pages on the Commission’s website, and to downloads of the proposal and other documents published by the Commission.

We have attempted to provide some analysis and commentary and to indicate where appropriate how the proposal differs from the position under the current directive as implemented in the UK by the Package Travel, Package Holidays and Package Tours Regulations 1992.

Although we are particularly interested in learning about the impact of the proposal in the areas mentioned below, do not feel obliged to answer all of the questions and please feel free to provide any additional comments and evidence in relation to the remainder of the proposal.

Chapter 1 - Scope

Article 2.1

This sets the overall scope of the proposal; that it applies to the sale or offer for sale of packages and to assisted travel arrangements, and sets out elements of the proposal which do not apply to each.

The current Directive applies only to the sale or offer for sale of packages.

Some stakeholders have argued that tying the scope to the “sale or offer for sale” provides a potential loop-hole for those agents who claim to be acting for the consumer and are therefore not selling or offering for sale products; but just their services as locators of service providers. To the consumer their services generally look no different to those of other organisers or agents who package or facilitate assisted travel arrangements. There are elements of the proposal which suggest that the Commission intends the agent for the consumer model to be covered as organisers or assisted travel arrangers (see Article 21.1, Article 21.3 or Recital (10)) but it is not clear and the reliance under this Article on sale or offer for sale might be considered to argue that this is not the intention.

Question 1

Do you agree that the “agent for the consumer” model should be covered by the proposal? Please explain why, providing any evidence to support your views.

If the model should be covered should it be subject to an information provision to make it clear to consumers what the role of the agent is and that the resulting contracts will not benefit from the protections in the proposal; or should the agent be considered to be an

organiser and/or an assisted travel arranger and therefore subject to the relevant parts of the proposal?

Article 2.2

This lists elements of and circumstances of products which should not be covered by the proposal.

Item (a) is a similar exemption to that which applies at present, although there is no longer an explicit exemption for those who sell or offer for sale packages occasionally. We are concerned that those who may have benefitted from this exemption in the past (possibly, for example, social clubs or faith groups that organise packages on a purely ad hoc and irregular basis) will be subject to the regime in the future. We are not aware that this type of arrangement has been a significant cause for concern and see no need to cover it now. However, the overall scope of the proposal is further limited by the new definitions of “organiser” and “retailer” which in turn rely on the definition of “trader”. A trader is defined in Article 3(7) as a person who is acting for purposes relating to his trade, business, craft or profession. This is in line with other EU consumer protection legislation where it is not considered appropriate to apply specific protections designed to address the uneven positions with regard to knowledge and information which exist between traders and consumers to “consumer to consumer” transactions (a view shared by the Government). However, this may mean that ad hoc “amateur” arrangements formerly covered by the “occasional” exemption would not be covered in any case because those making those arrangements would be able to argue that they are not doing so as traders.

Question 2

Do you agree that those who organise ad hoc packages on behalf of, for example, a group of friends or club members or faith groups etc. should continue to be exempt?

If so, are you content that, assuming the effect of the proposal is as we have described, the deciding factor should be whether in making arrangements the person doing so is a “trader” under the proposal?

Item (b) is new and appears to be an acknowledgment that Member States generally have in place specific regimes covering the sale and marketing of financial services. This is the case in the UK and the Government is content that this regime should not apply to such contracts – for example an arrangement which includes travel insurance.

Item (c) excludes certain types of business travel which are the subject of an overarching service contract between businesses whereby one business agrees to arrange the business travel needs of another. This does not exclude travel for business purposes which is booked using consumer facing outlets or other one-off business travel arrangements involving an organiser. Recital (7) to the proposal sheds more light on the Commission’s intention here; that only business travel organised under the umbrella of an overarching service contract or “framework contract” should be excluded because only

under those arrangements which relate solely to business to business contracts are business travellers generally protected under the terms of the service contract in the event of failure of contract or supplier.

Question 3

Do you agree that the proposed exemption is acceptable because the arranger of the business travel covers any necessary protection for business within the overarching contract? If not, please explain and provide any supporting evidence.

Question 4

Do you agree that all other business travel, i.e. that which is generally booked on an ad hoc basis from consumer or business facing outlets should be subject to the protections in the proposal? If not, please explain and provide any supporting evidence.

Question 5

If you believe all business travel should be exempt, how would you propose that business travel booked through consumer facing outlets could be identified in order that the organiser and the enforcement authorities can identify it as an exempt arrangement?

Item (d) relates to when the inclusion of other tourist services (not ancillary to transport, accommodation or car rental), forms a qualifying element of a package. Where the other tourist service does not account for a significant part of the package it should be disregarded (so no package is formed and the arrangement is not subject to the proposal).

This relates to an issue on which as part of the Red Tape Challenge the Government has been lobbying the Commission. It is our view that domestic packages which consist of, say, accommodation and just some other tourist service, for example, access to local amenities such as a golf course or theatre tickets, are not a significant cause for consumer complaint or detriment and do not carry the same risks for consumers as arrangements which include a transport element or which are delivered abroad. We do not believe that the Commission has established the case for maintaining coverage of these types of package delivered domestically.

Recital (17) suggests that in order to be a significant proportion of a package an "other tourist service" should account for not less than 20% of the overall cost, or otherwise represent an essential feature of the trip. The Government is already committed to pressing for relief for domestic packages not including a transport element from the proposal and will continue to do so, but we do not envisage removal of this element as a qualifier in other circumstances. Views on the percentage approach are therefore welcome irrespective of its relevance to our position on the domestic situation.

Question 6

Do you agree that it would meet our general domestic objective if the Government could argue that the only qualifier for “other tourist services” to be relevant should be that it accounts for not less than 20% of the total cost of the arrangement?

Does such an approach rise to further ambiguity as to precisely what the 20% relates to and how it should be calculated?

Question 7

Alternatively, do you agree that the Government should argue for an exemption or for a Member State option to exempt domestic packages which consist just of accommodation and other tourist services?

Item (e) is new but its effect, if any, is not. Stand alone contracts for single travel services are not subject to the current regime.

Article 3 – Definitions

Article 3(1)

This defines “travel service” and in effect sets out the constituent parts of a package or an assisted travel arrangement.

Car rental, formerly considered an “other tourist service” has now been listed separately. This opens the possibility of coverage of a new type of package: one consisting of car hire and another tourist service which is not covered under the current formulation.

Question 8

Is this likely to have any significant impact? If so, please explain and provide any supporting evidence.

Article 3(2)

This defines a “package”.

This represents a significant change from the current Directive and brings within the coverage of the bulk of the proposal a range of different business models in addition to the types of packaged arrangement currently covered.

A package can consist of two main types of arrangement:

A single contract for the provision of at least two types of travel service where the travel services have been assembled by one trader, including at the request of or having been selected by the traveller, prior to the conclusion of the contract. (This is

very similar to the current definition of a package albeit one that relies on their being a single price);

Or,

Where separate contracts are agreed with individual service providers and any of the conditions listed in Article 3(2)(b) are met.

The five conditions listed in Article 3(2)(b) should be read in conjunction with Recitals 8, 10 and 18 which provide some indication of the Commission's intended coverage, the rationale behind its approach, and the intended meanings of some of the terms used, such as "same booking process".

Recital 18 is particularly helpful in relation to the item at Article 3(2)(b)(v) in that it clarifies that the nature of the information transferred between the contracting service providers for an arrangement to qualify as a package must be the consumer's name or information sufficient to enable the business contracting for the added element to take payment from the consumer; it must be more than just dates or destination of travel, for example (this is relevant also to the coverage of "Assisted Travel Arrangements" discussed below).

It seems clear that this new definition is intended to cover arrangements which are currently considered to be packages and will also cover arrangements where there has been considerable debate over whether they fell within the current definition but which in any case do fall within the definition of a Flight-Plus arrangement in the current ATOL Regulations. This suggests that many of those currently considered to be Flight-Plus arrangers, but not package organisers, will be considered package organisers if they maintain their business models, and will be subject to the full provisions of the directive, including that they be liable for the provision of the services forming the package.

It is worth noting in this context that under the proposal (Article 3(3)) a "package travel contract" means either a single contract for the package as a whole, or, where there are different contracts, each of the contracts covering the services in the package. This means that each contracted service provider may be considered to be an organiser (Article 3(8)) and each of them subject to the proposal as an organiser where the resulting arrangement is a package. In practice it envisages that these parties will designate who is the organiser for the purposes of the proposal, but where no designation is made plain to the consumer then each contracting supplier would be separately liable for the whole package, and for meeting the other requirements.

The Government recognises a need for further clarification of this definition and also that the definition of some of the elements which rely on the timing of a given action such as the electronic transfer of data might be too limited, enabling relatively easy circumvention.

Question 9

Do you agree that the extension of the definition of a package is justifiable? Please provide evidence if you are able to counter the Commission's view that the business models now intended to be covered are the main source of consumer detriment in the sector.

Question 10

Do you agree that the proposed definition is clear?

How do you think the definition could be improved, and yet retain the extent of coverage intended?

Question 11

Assuming many current Flight-Plus arrangers and some other businesses which operate a similar model but which do not incorporate flights or are otherwise not in scope of the ATOL Regulations are brought within the definition, to what extent can the added liabilities (for the delivery of the whole contract) be managed by insurance or other (contractual) arrangements between the parties?

Question 12

Do you agree with the Commission's contention that the broader coverage of the definition should result in organisers being incentivised to choose service providers carefully in order to minimise their risk?

Article 3(5)

This defines "assisted travel arrangement".

This is a new model to be covered by the regime and is designed to ensure protection for consumers against the insolvency of service providers where a retailer has facilitated a combination of services, but where the ties between the businesses concerned are not to the extent that a package is sold or offered for sale.

The definition applies where a retailer facilitates the sale of a combination of separate contracts for travel services for the purpose of the same trip where either those separate bookings are made on the occasion of a single visit or contact with the retailer, or where the purchase of additional travel services results from a targeted online reference to a separate trader's site on confirmation of the first booking. This appears to cover what are known as "click-throughs", but only to the extent that some "click-through" models do not fall within the definition of a package.

Again, the Government believes this definition might benefit from some further clarification, particularly to ensure that the difference between a package under Article 3(2)(b)(v) and an assisted travel arrangement under Article 3(5)(b) is clearly understood, and that the issue concerning timing is dealt with.

Please see **Annex B** for some illustrative examples of arrangements which in our view would be packages and assisted travel arrangements under the proposal, and some which would be neither.

Question 13

Is the definition of an assisted travel arrangement clear?

Given the intention, do you think the definition could be improved? If so, how?

Question 14

Do you agree with the Commission's contention that providing lesser coverage for this model provides choice for those businesses whose trade would otherwise fall within the definition of a package?

Do you agree with the Commission's contention that providing this choice, and ensuring that consumers will be aware whether they are buying a fully protected package or an assisted travel arrangement covered for insolvency only will eventually lead to a market which better reflects consumer preference? If so, do you believe that this would be a positive outcome, even though it is possible that the market could adjust to one where there is less consumer protection overall? Please explain.

Article 3(8) & (9)

These define "organiser" and "retailer".

These definitions differ from those in the current regime and they seek to provide clarity as to the different roles and obligations of organisers and retailers within the context of the proposal.

In general, the organiser (or organisers) carries the obligations in respect of packages, and the retailers carries the obligations in respect of assisted travel arrangements. There are instances where a retailer carries obligations in respect of packages; a retailer which acts as agent in respect of the sale of a package supplied by an organiser is responsible with the organiser for ensuring that the pre-contractual information is provided to the traveller (Article 14(1)); and, the retailer must also be prepared to act as a contact point in respect of packages it has acted as agent for, and must ensure that messages, complaints or claims are forwarded to the organiser without undue delay (Article 13).

Question 15

Are the different roles of organiser and retailer sufficiently well defined?

As mentioned above, the definition of “organiser” places the obligations of the proposal on two or more contracting service providers when they are combining and selling or offering to sell packages where, in a package arrangement involving separate contracts for the provision of the services no single contracting service provider has been designated the organiser.

Question 16

Do you agree that businesses will be able to agree among themselves, presumably through contractual arrangements, which should be designated the organiser where a package consists two or more separate contracts with suppliers?

Please provide any other comments or views on the scope of the proposal or the definitions not covered above.

Chapter 2

Article 4 - Pre-contractual information

Article 4.1 & 4.2

These require the organiser(s) and / or the retailer of a package to provide the consumer with the information specified. The information must be provided in a clear and prominent manner and must be provided before the consumer is bound by a contract.

There is no longer a tie to any of this information being provided in a brochure. The information must therefore be provided irrespective of the method of sale or offer.

Most of the information listed in Article 4.1(a)–(g) is already required under the current regime in one way or another. In the absence of the proposal it is our view that most of the information would be likely to be considered material information under the Consumer Protection from Unfair Trading Regulations 2008⁷. (This means that if the information was not provided in the course of marketing travel services in circumstances where the consumer is able to agree contracts (invitation to purchase) then an offence of misleading by omission could arise in the event that a consumer made a decision to buy when otherwise they would not have.)

Elements of the information are required under other EU legislation, for example, the Services Directive or the E-Commerce Directive.

There are three clear additions to the information currently required: information on the language(s) in which any activities which form part of the contract(s) will be carried out; whether access for persons with reduced mobility is guaranteed throughout the trip or holiday; and, confirmation that the services constitute a package (see below).

Question 17

Do you agree that the bulk of the pre-contractual information is likely to be provided by a responsible business in advance of a consumer agreeing a contract irrespective of a legal requirement to do so?

Do you agree that providing such a list in the proposal assists business by providing certainty as to the minimum level of information they should supply.

Are there elements of the pre-contractual requirements which might cause difficulty, taking in to account that we believe the intention is that all of this information forms a part of the contract if agreed?

⁷ SI 2008/1277

Are there improvements or clarifications from which the list would benefit? If so please specify?

Is there anything missing from the list?

Article 4.1(g)

This requires the organiser(s) to confirm, before concluding any contracts, that the arrangement will be a package as covered by the proposal.

Given the broader application of the definition of a “package”, in particular the arrangements which fall within article 3(2)(b)(v), it may be that it is not clear until contracts have been agreed that a package has resulted. It seems, therefore, that there may be circumstances under which this information will need to be provided on the proviso that it only applies in the event that a package results from the linked online booking process.

Question 18

Is this proposal clear enough?

Would this proposal cause any significant difficulties in practice? If so, please explain.

Article 5 – Binding character of the pre-contractual information and conclusion of the contract.

This clarifies that elements of the pre-contractual information cannot be changed unless any changes are communicated in a clear and prominent manner prior to the agreement of a contract.

Information on additional fees and charges or other costs which were not able to be calculated at the time the pre-contractual information is provided must still be provided under Article 4.1(c) by way of an indication that the traveller may bear those costs. If information on those fees and charges is not provided before the final agreement of the contract, the traveller does not have to pay them.

When the contract is agreed the traveller should receive a copy of the contract, or confirmation of the contract on a durable medium (definition in Article 3(10)).

Question 19

Please provide any comments on the effects of Article 5.

Article 6 - contents of a package contract and documents to be provided before travel.

Article 6.2

We believe the intention is that this imports all of the precontractual information into the contract although the option to provide the information in the confirmation of the contract throws some doubt as to whether this would always be the effect. This Article also requires further information to clarify the role of the organiser and on the arrangements in place to cover insolvency.

Article 6.2(e)

This is a new requirement related to the requirements of Article 10 on cancellation before the start of the package.

Article 6.4

This requires the provision of travel, accommodation and itinerary documentation, and the precise details of travel times and connections in good time before the start of the package.

Question 20

Are there any elements of Article 6 which are unclear?

Are there any elements of Article 6 which cause particular difficulties or undue expense? If so, please explain and provide any supporting evidence.

Chapter 3 – Changes to the contract before the start of a package.

Article 7 – transfer of the contract to another traveller.

This clarifies the circumstances under which a package contract can be transferred to another traveller. Both travellers shall be liable for the costs of the contract and for any costs arising from the transfer. The organiser is limited to charging no more for a transfer than it has cost the organiser to put into effect.

This suggests that organisers will not be able to charge a flat rate but will need to calculate the costs associated with the individual transfer.

Question 21

Does this differ from the current position or practice?

Article 8 – Alteration of the price

This is similar to the current allowances whereby for specified reasons and provided the possibility is reserved in the contract a formerly agreed price for a contract or contracts can be altered.

The contract must also allow for price reduction in the event that the factors which are permitted to lead to price rises result in cost reductions for the organiser. This reflects the current position the UK, but not in the current Directive.

There is a new limit to the extent of any price increase of 10% of the price of the package.

Question 22

Do you have any evidence that currently permitted price increases exceed 10% of the total price of the package?

The proposal is explicit in requiring that any permitted price increase cannot be levied unless the traveller is notified of the increase not less than 20 days prior to the start of the package, and that the organiser must provide a justification and a calculation to explain the price increase. The current 30 day limit in the UK is more restrictive, but the current directive sets 20 days.

Question 23

Will either element of this proposal cause particular difficulties? If so, please explain and provide any supporting evidence.

Article 9 – Alteration of other contract terms

Article 9.2

This sets out that the organiser must inform the consumer without undue delay of any significant changes to any of the main characteristics of the travel services.

The article sets out what the main characteristics of the travel services are by reference to Article 4(a) or the special requirements referred to in Article 6(2)(a). Article 4(a) is a list of pre-contractual information requirements.

Question 24

Is there anything on the Article 4(a) list which you consider not to be a main characteristic of the travel service to the extent that significant alteration should entitle the consumer to withdraw from the contract and receive a full refund, and possibly additional compensation? Please explain your reasoning.

Article 10 - Termination of the contract before the start of the package.

Article 10.2

This provides the traveller with the right to terminate the contract without paying compensation to the organiser, that is, the traveller should receive a full refund, in event of unavoidable and extraordinary circumstances occurring at the destination or its immediate vicinity. Recital 26 to the proposal provides some guidance as to the meaning of “unavoidable and extraordinary circumstances” in this context, and on factors which should lead to the conclusion that this provision can be activated.

Question 25

Is this provision clear enough?

Is this provision needed in practice when the organiser has the right to terminate the contract under the same circumstances with the same result for the consumer, given that the organiser is liable in any case for damage to the consumer as the result of negligence?

Article 10.3(a)

This covers the situation where the pre-contractual information has made it clear that the contract is dependent on a minimum number of travellers and that minimum number is not achieved, and the package is cancelled. The proposal sets a new time limit of not less than 20 days before departure for notification of the cancellation to the traveller. Currently this period has been undefined and has been a matter for the contract.

Question 26

Will this cause particular difficulties? If so, please explain and provide any supporting evidence.

Chapter 4

Article 11 – Liability for the performance of the package.

This places liability for the performance of the contracts which go to form a package on the organiser(s) and sets out the consequences of failures in performance.

Article 11.2

This requires the organiser to remedy any lack of conformity with the contract, unless it is disproportionate to do so. It is not clear whether this limitation is intended to apply

universally or only in relation to matters not covered specifically in the rest of Article 11, or excluding those matters.

There is no similar limitation at present and our assumption is that it is not intended to apply to the specific matters for which remedies are set out in the rest of this Article and Article 12.

Question 27

Do you agree that this is a reasonable addition to the current provision?

Would the term “disproportionate” benefit from some further explanation, perhaps in a recital, or is it clear enough?

Articles 11.3 & 11.4

These substantially replicate the current regime in respect of what should happen in the event that a significant proportion of the services in the package cannot be delivered while the package is under way.

Articles 11.5 & 11.6

This clarifies that an organiser is responsible for providing the consumer with additional accommodation in the event that their return is delayed because of unavoidable and extraordinary circumstances. This issue was a matter of some debate at the time of the ash cloud crisis and reflects the Government’s and the Commission’s analysis of the effect of the current Directive at the time. In our view, therefore, this obligation does not represent a change. We acknowledge that this view is not shared by all in the industry. There is, however, a proposed new financial limit and time placed on the obligation.

Article 11.6 makes it clear that the limit on this obligation does not apply to some specified persons; this is a similar to that under a new Air Passenger Rights Regulations currently being negotiated. Maritime and bus and coach passenger rights legislation specifies that particular attention must be paid to the needs of disabled persons and persons with reduced mobility and any accompanying persons in these circumstances.

Question 28

Do you agree that the new financial limit to this obligation is reasonable in the circumstances?

Is the extent of the liability sufficiently clear? In particular, is it sufficiently clear which categories of travellers the limit will not apply to?

On Article 11 generally, are we correct in our assumption that organisers can insure against the risks which the Article is designed to address, in respect of all of the business models which are intended to be covered by the new definition of “package”?

Article 12 – Price reduction and compensation for damages

This sets out the consequences of a failure to deliver the services in conformity with the contract(s).

In the first instance there should be a price reduction (full or partial refund) reflecting any periods during which contracted services were not provided and if replacement services are of a lower quality than those originally contracted for.

Secondly, in the case of damage, including non-material damage (for example, disappointment or stress), caused by any failure to deliver the services contracted for, the consumer shall be entitled to compensation.

There are exceptions to the above obligations set out in Article 12(3) and a requirement (if explicit in the contract) that the consumer should bring issues to the attention of the organiser without undue delay where that is reasonable in the circumstances.

Article 12.4

This places limits on the level of compensation where there are already international conventions which apply limits in the same circumstances.

Article 12.4 also allows compensation limits to be set in the contract but provides that such a limit must not amount to less than three times the total price of the package, with the exception of personal injury and damage caused intentionally or with gross negligence.

In general this compensation regime is similar to the regime which currently applies.

Question 29

Do you agree that setting a maximum for compensation at three times the cost of the package where an organiser chooses to apply limits in the contract is reasonable?

Article 13 – Possibility to contact the organiser via the retailer.

This places a new obligation on retailers to act as a point of contact in respect of messages, complaints or claims relating to packages which they have sold as agents for the organiser. There is no responsibility on the retailer other than to pass on the consumer's complaints etc. without undue delay. The time when contact is made with the retailer will be deemed to have met any time constraints set out in the package contract(s) in relation to raising complaints or making claims etc. This does not prevent the consumer from dealing direct with the organiser.

Question 30

Do you agree that it is reasonable that a consumer should be able to use the retailer who arranged the sale of a package as a contact point? If not, please explain.

Article 14 – Obligation to provide assistance

This requirement on package organisers to provide assistance to travellers in difficulty is more explicit than the current requirement. It also enables the organiser to make a reasonable charge if the reason for the need for assistance is due to the traveller's negligence or intent (e.g. that the situation came about because the traveller intended it to come about by his actions). Recital (32) provides some further clarity as to the nature of the obligation.

Question 31

Is the extent of the Article 14 obligation clear enough?

Chapter 5 – Insolvency Protection

Article 15 – Effectiveness and scope of insolvency protection

Although Article 15.1 is a little more specific, in respect of organisers this requirement is essentially the same as under the current regime. This places a new requirement on retailers facilitating the procurement of the new assisted travel arrangements have in place protection against their insolvency and the insolvency of any of the service providers supplying the travel services.

The provision is for security to be obtained for the effective and prompt return of all payments made by travellers and for the travellers' effective and prompt repatriation in the event of insolvency. ATAs and some packages will have been arranged by facilitating the conclusion of separate contracts between the traveller and the travel service providers. In these scenarios the travellers will most likely still be able to complete their holiday. The proposal however suggests that these travellers should receive a refund in the event of the package organiser or assisted travel arranger's insolvency. It would seem, therefore, that clarification is needed to ensure that, where appropriate to do so, holiday arrangements are fulfilled rather than refunded.

Article 15.2 requires that the insolvency of all service providers is covered and that the means of financial protection should take into account the actual financial risk of a trader's activities. It is unclear how the Commission expects this to work in practice. One interpretation may be that systems which set a flat rate for all businesses acquiring the means of protection may not be acceptable as it is assumed that the risk of insolvency should be reflected in the costs to that business of acquiring the protection.

Question 32

We welcome views on this analysis. While a system which based charges more on individual risk might be fairer in that the less risky businesses would be likely to pay less per sale, the more bespoke approach might add significant costs to all because of the greater complexity in administration of such a regime.

Article 15.2 also proposes that whatever insolvency protection an organiser or retailer organises it should be capable of covering travellers who buy from abroad, irrespective of their place of residence or place of departure. This suggests that the system should be capable of ensuring that travellers based in another Member State or elsewhere who buy packages sold by a business established in the UK would, in the event of insolvency, be repatriated to their place of departure, which could be any airport worldwide. The current system in the UK provides coverage in respect of packages sold or offered for sale in the UK or to those making available flight accommodation in the UK. Those that choose to sell or make available packages in another Member State or who make available flight accommodation in another Member State, even though they may be established in the UK must comply with that Member State's financial protection provisions (because they are not subject to the UK's provisions in respect of that business). The proposal is intended to promote cross border trade by businesses by enabling them to cover the insolvency protection requirement under their "home" regime.

Question 33

Do you agree with the Commission's contention that this proposal will help to achieve its objective of promoting more cross-border trade?

To what extent do you believe the costs of insolvency protection might be affected by the requirement that it covers consumers based in another Member State or elsewhere who would need to be repatriated to their place (airport usually) of departure in the event of insolvency?

Question 34

Do you agree that consumers should have the opportunity to complete their holidays (if appropriate) in the event of the insolvency of the package organiser or assisted travel arranger where the contracts for the travel services are valid and should be honoured by the travel service providers? Do you see any practical difficulties with this approach?

Article 16 Mutual recognition of insolvency protection and administrative cooperation.

Article 16.1

This confirms that Member States must recognise the insolvency protection provided by schemes in the Member State of establishment of organisers and retailers. A Member State cannot therefore require compliance with its insolvency protection scheme in respect of arrangements covered by the insolvency scheme of the Member State of establishment of the organiser or retailer. While this mutual recognition is not explicit in the current Directive we believe this is an expression of the current position under single market rules.

Article 16.2, 16.3 & 16.4

These propose that Member States create or nominate a central contact point to which enquiries from other Member States about organisers and retailers facilitating assisted travel arrangements selling across borders can be directed with a view to ascertaining that these traders have the correct insolvency protection in place. The central contact point is also obliged to inform the Commission and other Member States of the systems for insolvency protection which it applies to traders established in their State and to make available any inventory of traders using their system for insolvency protection.

Question 35

Do you think that having such a system will encourage cross-border trade by, for example, encouraging higher levels of consumer confidence in buying packages or assisted travel arrangements across borders?

Do you have any experience of other types of cross-border trade where similar consumer protection provisions apply? If so, please provide details of your experience and any lessons that may be learned for package travel?

Chapter 6 – Assisted Travel Arrangements**Article 17 – Information requirements for assisted travel arrangements.**

This requires that before the traveller is bound by any contract the facilitator of an assisted travel arrangement provides the traveller with particular information. That information must include that each of the service providers contracted with is solely liable for the performance of its contract and that the traveller will not benefit from the rights provided under the proposal except in respect of insolvency protection.

In practical terms, because of the arrangements covered by the definition at Article 3(5)(b) this might mean providing the required information on the understanding that it only applies in the event that the consumer first purchases one element and then goes onto to purchase other elements which have either been purchased during a single visit or contact with the point of sale, or as the result of a linked online booking which has targeted a particular other service provider.

Question 36

Is this proposal clear enough?

Would it be preferable if the proposal included a set form of words which all assisted travel arrangers were obliged to use?

Would it cost less for business if required to use a set notice in a specified way, rather than formulating and using its own form of words?

Is this a practical proposition given the nature of the business models covered as assisted travel arrangements? If not, please explain.

Art.6 (b) (iii) requires package organisers to provide the name of the entity providing insolvency protection but there does not seem to be a similar requirement in respect of Assisted Travel Arrangers.

Question 37

Should there be a similar requirement for ATAs to ensure that travellers know who will be providing assistance in the event of the ATAs insolvency?

Chapter 7 - General provisions

Article 18 – Particular obligations of the retailer where the organiser is established outside of the EEA.

This proposes that retailers established in the EEA which facilitate the sale of packages of organisers established outside of the EEA take on the obligations in the proposal so that they would be liable for the performance of the contract(s) and for providing insolvency protection, unless the retailer can show that the organiser already complies with these elements of the proposal.

There is no attempt to require package organisers established outside of the EEA to comply with the proposal when they are selling their activities direct to consumers in EEA Member States.

Question 38

What are the likely effects of this provision on any existing market for packages organised outside of the EU but which are sold through EU based entities?

Will the likely costs of complying with this proposal outweigh any likely benefits retailers might accrue from selling for organisers from outside of the EEA?

To what extent might these costs be passed to the organiser as a condition for the retailer providing an EEA established sales platform?

Does the lack of application to sales targeted at EEA Member States from outside of the EEA direct by organisers create a gap which might be exploited? If so, please provide any ideas for practical solutions.

Article 19 – Liability for booking errors.

This clarifies that that retailers who arrange bookings for packages or assisted travel arrangements cannot absolve themselves from the consequences of their errors in making bookings.

Question 39

Does this cause any particular difficulties? If so, please explain and provide any supporting evidence.

Article 20 – Right of redress

While the proposal places liabilities on the organiser and in some instances the retailer in respect of consumers, this provision makes it clear that the proposal does not inhibit organisers and retailers from seeking redress from third parties concerned with whatever led to any claim from the consumer.

Article 21 – Imperative nature of the Directive

This clarifies that irrespective of how a trader presents their services and activities, if what they are doing falls within the definitions of a “package” or an “assisted travel arrangement” they are subject to the proposal.

Article 25 – Amendment of Regulation (EC) No 2006/2004 and Directive 2001/83/EU

Article 25(1)

This amendment is to the Consumer Protection Cooperation Regulation replaces the reference to the current Directive with one to the proposal. This is to enable those who act in relation to cross border enforcement and cooperation issues in compliance with the Regulation to do so in relation to the proposal along with the other EU laws listed.

Article 25(2)

Amends the Consumer Rights Directive (CRD) so that contracts which fall within the package travel regime are no longer exempt from certain provisions of the Directive, in particular:

CRD Article 8(2) (information provisions in respect of distance contracts and the requirement for the explicit acknowledgment by the consumer of the obligation to pay);

Article 19 (prohibition on fees for methods of payment which exceed the actual cost borne by the trader for providing the method);

Article 21 (requirement for a basic rate telephone number where the trader operates a telephone line for contact by consumers in relation to agreed contracts); and,

Article 22 (requirement for the express consent of the consumer before agreeing any extra payments in addition to payment for the main contract, for example, this prohibits pre-ticked add-ons to online sales).

As this simply aligns requirements for contracts covered by the proposal with requirements which apply to other traders in the circumstances we know of no special case which supports the contention that package contracts and contracts making assisted travel arrangements should not be subject to the same regime.

Question 40

Is there a special case to be made against the application of these provisions to contracts covered by the proposal? If so, please explain and provide any supporting evidence.

Impact Assessment

Section 2.3 (page 14) of the Commission's Impact Assessment sets out its analysis of the key problems faced by business under the current regime:

- Absence of a level playing field;
- Unnecessary/unjustified compliance costs comprising:
 - Outdated information requirements;
 - Unjustified costs for package organisers in case force majeure events;
 - Lack of coherence with EU passenger rights;
 - Duplication of protection for business trips;
- Legal discrepancies between Member States comprising:
 - Divergent insolvency protection schemes;
 - Divergent information requirements;
 - Different scope of the protection rules;
 - Different national rules concerning liability and obligations of the contracted parties.

Question 41

Do you agree with the Commission's assessment? If not, please explain and provide any supporting evidence.

Are there other problems which the Commission has not identified?

Section 2.4 (page 20) of the Commission's Impact Assessment sets out its analysis of the key problems faced by consumers under the current regime:

Consumer detriment suffered by users of combined travel arrangements;

Unclear and outdated rules, comprising:

- Uncertainties in relation to prices;
- Uncertain responsibility for liability;
- Lack of a right to termination in force majeure situations;
- Uncertainty as to the right to compensation for non-material damage;
- Cumbersome access to justice in cross-border cases.

Question 42

Do you agree with the Commission's assessment? If not, please explain and provide any supporting evidence.

Do you agree that these issues are significant to the extent that they need to be addressed in the way proposed. Are there alternatives to adding to regulation which might provide acceptable levels of protection?

Are there other problems which the Commission has not identified?

Section 5 (page 20) of the Commission's Impact Assessment sets out its view of the impact of the policy options it identified. The policy option being pursued is policy option 6, which the Commission believes best meets its objective (set out in the table on page 25 of the Impact Assessment). Policy option 6 is policy option 5 with the addition of applying a lighter regime to assisted travel arrangements. The Commission's assessment of the combined impact of policy options 5 and 6 are at pages 35 and 41 respectively.

Question 43

Do you agree with the Commission's overall assessment of the impact of policy option 6? If not, please set out those areas where you believe the assessment is not correct and provide any supporting evidence.

The Commission's assessment looks at the position across the EU. Are there any special elements of the UK market, or the UK regulatory environment, which are likely to either amplify or diminish the Commission's assessment as it might apply to the UK? If so, please explain.

Annex A

Commission web pages and links to relevant documents

Commission Web page on the Proposal:

http://ec.europa.eu/justice/newsroom/consumer-marketing/news/130709_en.htm

Proposal and Explanatory Memorandum:

http://ec.europa.eu/justice/consumer-marketing/files/com_2013_512_en.pdf

Commission Communication Accompanying the Proposal:

http://ec.europa.eu/justice/consumer-marketing/files/com_2013_513_en.pdf

Commission's Impact Assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0263:FIN:EN:PDF>

Commission's Executive Summary of the Impact Assessment:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0264:FIN:EN:PDF>

Commission Study on Consumer Detriment in the area of Dynamic Packages:

http://ec.europa.eu/consumers/rights/docs/study_consumer_detriment_dyna_packages_en.pdf

Commission Package Travel Web page:

http://ec.europa.eu/justice/consumer-marketing/travel/package/index_en.htm

Annex B

Examples of methods of trading which fall within the proposed definitions of “package” and “assisted travel arrangements”

Packaging

1. A traveller books a flight and car hire under a single contract from Jasmine Tours and receives full booking conditions from Jasmine Tours.

This is a package as it is booked on one contract from one trader.

2. A traveller sees an advert for a package holiday and buys it over the phone.

Assuming the “package holiday” consists of at least two different types of travel service, as defined, this is a package as it is advertised as a package.

3. A traveller goes into a travel agent and is offered a range of flights and accommodation at his desired destination. The traveller chooses a flight with Avro and accommodation with Hotels 4 U. The traveller then pays £800 for the booking.

This is a package because, although there are separate contracts for each travel service they were purchased from a single point of sale within the same booking process (i.e. they were selected by the traveller before paying for either).

4. A traveller goes to cheaprooms.com and clicks on the option to buy accommodation plus car hire. She buys her accommodation and with her confirmation of that transaction is a link through to 4wheeldrive.co.uk which shows available car hire for her holiday. Her name and payment details are already filled in so she only has to choose her car and click ‘confirm’ for the booking to be made.

This is a package because the booking is made through linked online booking processes and the name and payment details were transferred between websites when the accommodation booking was confirmed.

5. A traveller goes into a travel agent and books a flight with Panjet. Later that day, perhaps having tried unsuccessfully to find suitable hotel and car hire on the web, they go back to the travel agent and ask them to book a hotel and car hire for them.

The travel agent finds both car hire and accommodation with Destination Tours Limited with whom the travel agent has an agency agreement, and books it for the traveller.

The car hire and accommodation are a package and Destination Tours Limited is the organiser. The flight is not a sale regulated under the proposal. It does not form a part of the “package” because it was booked as a single, entirely separate, transaction which was not a part of the same booking process for the other elements of the holiday.

6. A traveller goes into a travel agent and chooses a cruise from Miami to Cancun with High Sea Cruises. She is concerned that her flights should coincide with the cruise times and so asks the travel agent not to book the cruise until they can confirm flights as well. The travel agent does this and the traveller books the flights and cruise, either under a single transaction or as separate transactions.

This is a package as the two services were booked as part of the same booking process, both having been selected before payment.

7. A traveller goes onto a website, Taikabraik.com, which offers a variety of travel services and methods of combining them. The traveller goes to book a flight, but before that transaction is complete is offered accommodation, they choose their accommodation but before completing are offered car hire, they choose their car hire and then opt to complete the transaction. They are presented with a summary page breaking down all of the payments and possibly that the transaction involves a series of contracts with the different service providers. The consumer then pays under a single payment for all of the services.

If all of the services were to be delivered under a single contract, the arrangement would be a package.

If the services were arranged under a series of contracts with the service providers the arrangement would still constitute a package because they were made within the same booking process.

Even if the consumer was asked to make a series of separate payments the arrangement would still be made from a single point within the same booking process and the arrangement would constitute a package.

8. An hotelier advertises week-end cultural breaks consisting of bed & breakfast accommodation and passes and admission tickets to local exhibitions, museums and a theatre. A consumer responds to the advertisement and books the break.

This is a package because it consists of two or more travel services which were put together by one trader before a contract on all of the services was concluded.

Assisted Travel Arrangements (ATA)

9. A traveller books a flight on air.co.uk and is invited to click on a link from the confirmation page to accomm.com which shows rooms for the dates that she is in destination. She enters her name and payment details on the accomm.com site and books a room.

This is an ATA because the booking is made through a targeted (to accomm.com and the individual traveller) linked online booking processes but only general booking information was transferred between websites – not the name or payment details.

10. A traveller goes into a travel agent and is offered a range of flights and accommodation at their chosen destination. The traveller chooses a flight with Avro for £300 and pays for it. Following the flight transaction she remains in the travel agents and goes on to choose and book accommodation from Hotels 4 U for £500.

This is an ATA because it is a combination of two different types of travel service booked separately on the occasion of a single visit to the point of sale.

11. A traveller goes into a travel agent and books a hotel for two weeks in Paris. They are going to drive to Paris and have already booked their Eurotunnel tickets using a voucher from the newspaper. When they have booked their accommodation the travel agent tells them about a special deal on Euro Disney passes and the customer books them there and then.

The hotel and Disney passes are an ATA as the two services are booked separately on the occasion of a single visit to the travel agent. Had the hotel and the Disney tickets been selected prior any payment, they would have formed a package because they would have been booked from a single point of sale within the same booking process.

Not covered by either definition and therefore not subject to the proposal

12. A traveller goes into a travel agent and books a flight with Flyaway Air. The next day they go back to the same travel agent and book accommodation.

This is neither a package nor an ATA as each travel service is not booked with the other service as one booking process or during a single visit to the agent.

13. A traveller goes into a travel agent and books a day trip by coach including entry to Hatfield House and a gala afternoon tea on the lawns.

This is not a package or an ATA as it covers a period of less than 24 hours.

14. A traveller books a flight on WeflyU.com and then books a hotel on accom.com. There has been no prompt from the WeflyU.com website to go to accom.com

This is not a package or an ATA as there is no linked online booking processes.

15. A traveller goes onto accommodation.com and notices that on the front page of the web site is a link advertising flights available from WeflyU.com. The traveller books accommodation with accom.com and when that is confirmed they return to the front page and click on the link the WeflyU.com. There is no transfer of personal, payment, destination data etc. The traveller is simply linked to the front page of the WeflyU.com web-site. The traveller selects their flights and books them.

This is not a package or an ATA. Although there is an online link between the travel service providers, the bookings were not made as part of the same booking process and the booking process was not linked. The link to WeflyU.com simply took the form of an advertisement directed at visitors to the accom.com site generally and was not the result of any booking undertaken by the traveller.

Annex C

List of Questions

Question 1

Do you agree that the “agent for the consumer” model should be covered by the proposal? Please explain why, providing any evidence to support your views.

If the model should be covered should it be subject to an information provision to make it clear to consumers what the role of the agent is and that the resulting contracts will not benefit from the protections in the proposal; or should the agent be considered to be an organiser and/or an assisted travel arranger and therefore subject to the relevant parts of the proposal?

Question 2

Do you agree that those who organise ad hoc packages on behalf of, for example, a group of friends or club members or faith groups etc. should continue to be exempt?

If so, are you content that, assuming the effect of the proposal is as we have described, the deciding factor should be whether in making arrangements the person doing so is a “trader” under the proposal

Question 3

Do you agree that the proposed exemption is acceptable because the arranger of the business travel covers any necessary protection for business within the overarching contract? In not, please explain and provide any supporting evidence.

Question 4

Do you agree that all other business travel, i.e. that which is generally booked on an ad hoc basis from consumer or business facing outlets should be subject to the protections in the proposal? If not, please explain and provide any supporting evidence.

Question 5

If you believe all business travel should be exempt, how would you propose that business travel booked through consumer facing outlets could be identified in order that the organiser and the enforcement authorities can identify it as an exempt arrangement?

Question 6

Do you agree that it would meet our general domestic objective if the Government could argue that the only qualifier for “other tourist services” to be relevant should be that it accounts for not less than 20% of the total cost of the arrangement?

Does such an approach rise to further ambiguity as to precisely what the 20% relates to and how it should be calculated?

Question 7

Alternatively, do you agree that the Government should argue for an exemption or for a Member State option to exempt domestic packages which consist just of accommodation and other tourist services?

Question 8

Is this likely to have any significant impact? If so, please explain and provide any supporting evidence.

Question 9

Do you agree that the extension of the definition of a package is justifiable? Please provide evidence if you are able to counter the Commission’s view that the business models now intended to be covered are the main source of consumer detriment in the sector.

Question 10

Do you agree that the proposed definition is clear?

How do you think the definition could be improved, and yet retain the extent of coverage intended?

Question 11

Assuming many current Flight-Plus arrangers and some other businesses which operate a similar model but which do not incorporate flights or are otherwise not in scope of the ATOL Regulations are brought within the definition, to what extent can the added liabilities (for the delivery of the whole contract) be managed by insurance or other (contractual) arrangements between the parties?

Question 12

Do you agree with the Commission’s contention that the broader coverage of the definition should result in organisers being incentivised to choose service providers carefully in order to minimise their risk?

Question 13

Is the definition of an assisted travel arrangement clear?

Given the intention, do you think the definition could be improved? If so, how?

Question 14

Do you agree with the Commission's contention that providing lesser coverage for this model provides choice for those businesses whose trade would otherwise fall within the definition of a package?

Do you agree with the Commission's contention that providing this choice, and ensuring that consumers will be aware whether they are buying a fully protected package or an assisted travel arrangement covered for insolvency only will eventually lead to a market which better reflects consumer preference? If so, do you believe that this would be a positive outcome, even though it is possible that the market could adjust to one where there is less consumer protection overall? Please explain.

Question 15

Are the different roles of organiser and retailer sufficiently well defined?

Question 16

Do you agree that businesses will be able to agree among themselves, presumably through contractual arrangements, which should be designated the organiser where a package consists two or more separate contracts with suppliers?

Please provide any other comments or views on the scope of the proposal or the definitions not covered above.

Question 17

Do you agree that the bulk of the pre-contractual information is likely to be provided by a responsible business in advance of a consumer agreeing a contract irrespective of a legal requirement to do so?

Do you agree that providing such a list in the proposal assists business by providing certainty as to the minimum level of information they should supply.

Are there elements of the pre-contractual requirements which might cause difficulty, taking in to account that we believe the intention is that all of this information forms a part of the contract if agreed?

Are there improvements or clarifications from which the list would benefit? If so please specify?

Is there anything missing from the list?

Question 18

Is this proposal clear enough?

Would this proposal cause any significant difficulties in practice? If so, please explain.

Question 19

Please provide any comments on the effects of Article 5.

Question 20

Are there any elements of Article 6 which are unclear?

Are there any elements of Article 6 which cause particular difficulties or undue expense? If so, please explain and provide any supporting evidence.

Question 21

Does this differ from the current position or practice?

Question 22

Do you have any evidence that currently permitted price increases exceed 10% of the total price of the package?

Question 23

Will either element of this proposal cause particular difficulties? If so, please explain and provide any supporting evidence.

Question 24

Is there anything on the Article 4(a) list which you consider not to be a main characteristic of the travel service to the extent that significant alteration should entitle the consumer to withdraw from the contract and receive a full refund, and possibly additional compensation? Please explain your reasoning.

Question 25

Is this provision clear enough?

Is this provision needed in practice when the organiser has the right to terminate the contract under the same circumstances with the same result for the consumer, given that the organiser is liable in any case for damage to the consumer as the result of negligence?

Question 26

Will this cause particular difficulties? If so, please explain and provide any supporting evidence.

Question 27

Do you agree that this is a reasonable addition to the current provision?

Would the term “disproportionate” benefit from some further explanation, perhaps in a recital, or is it clear enough?

Question 28

Do you agree that the new financial limit to this obligation is reasonable in the circumstances?

Is the extent of the liability sufficiently clear? In particular, is it sufficiently clear which categories of travellers the limit will not apply to?

On Article 11 generally, are we correct in our assumption that organisers can insure against the risks which the Article is designed to address, in respect of all of the business models which are intended to be covered by the new definition of “package”?

Question 29

Do you agree that setting a maximum for compensation at three times the cost of the package where an organiser chooses to apply limits in the contract is reasonable?

Question 30

Do you agree that it is reasonable that a consumer should be able to use the retailer who arranged the sale of a package as a contact point? If not, please explain.

Question 31

Is the extent of the Article 14 obligation clear enough?

Question 32

We welcome views on this analysis. While a system which based charges more on individual risk might be fairer in that the less risky businesses would be likely to pay less per sale, the more bespoke approach might add significant costs to all because of the greater complexity in administration of such a regime.

Question 33

Do you agree with the Commission's contention that this proposal will help to achieve its objective of promoting more cross-border trade?

To what extent do you believe the costs of insolvency protection might be affected by the requirement that it covers consumers based in another Member State or elsewhere who would need to be repatriated to their place (airport usually) of departure in the event of insolvency?

Question 34

Do you agree that consumers should have the opportunity to complete their holidays (if appropriate) in the event of the insolvency of the package organiser or assisted travel arranger where the contracts for the travel services are valid and should be honoured by the travel service providers? Do you see any practical difficulties with this approach?

Question 35

Do you think that having such a system will encourage cross-border trade by, for example, encouraging higher levels of consumer confidence in buying packages or assisted travel arrangements across borders?

Do you have any experience of other types of cross-border trade where similar consumer protection provisions apply? If so, please provide details of your experience and any lessons that may be learned for package travel?

Question 36

Is this proposal clear enough?

Would it be preferable if the proposal included a set form of words which all assisted travel arrangers were obliged to use?

Would it cost less for business if required to use a set notice in a specified way, rather than formulating and using its own form of words?

Is this a practical proposition given the nature of the business models covered as assisted travel arrangements? If not, please explain.

Question 37

Should there be a similar requirement for ATAs to ensure that travellers know who will be providing assistance in the event of the ATAs insolvency?

Question 38

What are the likely effects of this provision on any existing market for packages organised outside of the EU but which are sold through EU based entities?

Will the likely costs of complying with this proposal outweigh any likely benefits retailers might accrue from selling for organisers from outside of the EEA?

To what extent might these costs be passed to the organiser as a condition for the retailer providing an EEA established sales platform?

Does the lack of application to sales targeted at EEA Member States from outside of the EEA direct by organisers create a gap which might be exploited? If so, please provide any ideas for practical solutions.

Question 39

Does this cause any particular difficulties? If so, please explain and provide any supporting evidence.

Question 40

Is there a special case to be made against the application of these provisions to contracts covered by the proposal? If so, please explain and provide any supporting evidence.

Question 41

Do you agree with the Commission's assessment? If not, please explain and provide any supporting evidence.

Are there other problems which the Commission has not identified?

Question 42

Do you agree with the Commission's assessment? If not, please explain and provide any supporting evidence.

Do you agree that these issues are significant to the extent that they need to be addressed in the way proposed. Are there alternatives to adding to regulation which might provide acceptable levels of protection?

Are there other problems which the Commission has not identified?

Question 43

Do you agree with the Commission's overall assessment of the impact of policy option 6? If not, please set out those areas where you believe the assessment is not correct and provide any supporting evidence.

The Commission's assessment looks at the position across the EU. Are there any special elements of the UK market, or the UK regulatory environment, which are likely to either amplify or diminish the Commission's assessment as it might apply to the UK? If so, please explain.

Annex D

Distribution

A1 Travel
 Adams & Remers
 Advantage Travel Centres
 AIG
 Air New Zealand Holidays Ltd
 Air Transport Insolvency Protection
 Advisory Committee
 Air Travel Consultancy
 Air Travel Trust (ATT)
 All Leisure Group
 Alternative Risk Management Ltd
 AMTrust
 Anthony Batty
 Arnold Fisher
 ASB Law
 Association of ATOL Companies
 Association of Travel Agents (ATA)
 Association of Bonded Travel Organisers' Trust
 Association of British Insurers
 Association of British Travel Agents (ABTA)
 Association of Independent Tour Operators
 ATIPAC
 Aviva
 Baker Tilly
 Barclays
 Barclaycard
 Barrhead Travel
 BDO LLP
 Board of Airline Representatives UK (BAR-UK)
 Bonaire Fun Travel
 Bookable Holidays
 British Air Transport Association
 British Airways
 British Banking Association
 British Chamber of Commerce
 British Hospitality Association
 British Retail Consortium
 Broadway Travel
 BTG Restructuring
 Camber Ford Law
 Campbell Irvine
 Citizen's Advice Bureau
 Civil Aviation Authority
 Confederation of Passenger Transport
 Consumer Council for Northern Ireland
 Consumer Credit Trade Association
 Consumer Focus
 Co-operative Travel
 Cork Bays & Fisher
 Credit Services Association
 Cruise Lines International Association (CLIA UK and Ireland)
 DeLoitte UK
 EasyJet
 Ebookers
 Elavon
 Euler Hermes
 European Low Fares Airline Association (ELFAA)
 European Technology and Travel Services Association (ETTSA)
 European Tour Operators Association (ETOA)
 Equinox Global
 Expedia
 Federation of Small Businesses
 Field Fisher Waterhouse
 Finance and Leasing Association
 First Data Corp
 Fleetway Travel
 Flightbookers Limited
 Flybe
 Fly Virgin
 Gates & Patners
 Giles Insurance
 Global Pay
 Global Travel Group
 Grant Thornton
 Guild of Travel Management Companies
 Hamlins LLP
 Hart Holidays
 Hays Travel

Hextalls Ltd	Scottish Passenger Agents' Association
Hill Dickinson LLP	Southall Travel
Hillgate Travel	Timeshare Association (TATOC)
Holidaytravelwatch	Thomas Cook
Honeyguide Wildlife Holidays	Touchstone Underwriting
HSBC	Tourism Alliance (CBI)
Infinity Insurance	Towergate Insurance
International Air Transport Association (IATA)	Trading Standards Institute
IPP Insurance	Travel & General Insurance
Interel Group	Travel Bonding (Wentworth Surety)
Jet2.com	Travel Counsellors
Kingston Smith LLP	Travel Network Group
KPMG	Travel Republic
K & L Gates LLP	Travel Trade Consultancy
Lastminute.com	Travel Trust Association
Lending Standards Board	Travlaw
Lloyds Banking	Travelling Naturalist
Local Government Association	Travelsupermarket.com
London Chamber of Commerce and Industry	TUI Travel
London Luton Airports Operation Ltd (LLAOL)	UK Cards Association
London Travel Watch	Vantage Underwriting Agency
Lowcost Travel Group	Virgin Atlantic Airways Ltd
Macintyre Hudson	VisitEngland
Manchester Airports Group	VisitScotland
Mayo Wynne Baxter	VisitWales
MB law	Which?
McGregor Insurance	White Hart Associates
Markel International	Willis Group Holdings
Monarch Airlines	WorldPay Merchant Service
MoneySupermarket	Zurich Insurance
Northern Ireland Tourist Board	
Office of Fair Trading (OFT)	
Ola Holidays	
On Holiday Group	
On The Beach Ltd	
Payments Council	
Pinsent Masons	
Protected Travel Services	
Piper Smith Watton Solicitors	
PWC	
QBE Insurance Europe	
Qwerty Travel	
RSA Group	
Resort Development Organisation	
Ryanair	
Sabre Holdings	
Santander	

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