

### **ภาคผนวก ข**

- ๑๓ COUNCIL DIRECTIVE OF 13 JUNE 1990 ON PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS (90/314/EEC).
- ๑๔ ROUND-TABLE ON PACKAGE TRAVEL CONTRACTS CONCLUSIONS OF THE EXPERT GROUP ADOPTED ON 13 FEBRUARY 2001

**COUNCIL DIRECTIVE OF 13 JUNE 1990 ON PACKAGE TRAVEL, PACKAGE  
HOLIDAYS AND PACKAGE TOURS (90/314/EEC)**

**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community, and in particular Article

100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas one of the main objectives of the Community is to complete the internal market, of which the tourist sector is an essential part;

Whereas the national laws of Member States concerning package travel, package holidays and

package tours, hereinafter referred to as 'packages', show many disparities and national practices in this field are markedly different, which gives rise to obstacles to the freedom to provide services in respect of packages and distortions of competition amongst operators established in different Member States;

Whereas the establishment of common rules on packages will contribute to the elimination of these obstacles and thereby to the achievement of a common market in services, thus enabling operators established in one Member State to offer their services in other Member States and Community consumers to benefit from comparable conditions when buying a package in any Member State;

Whereas paragraph 36 (b) of the Annex to the Council resolution of 19 May 1981 on a second

programme of the European Economic Community for a consumer protection and information policy invites the Commission to study, inter alia, tourism and, if appropriate, to put forward suitable proposals, with due regard for their significance for consumer protection and the effects of differences in Member States' legislation on the proper functioning of the common market;

Whereas in the resolution on a Community policy on tourism on 10 April 1984 the Council welcomed the Commission's initiative in drawing attention to the importance of tourism and took note of the Commission's initial guidelines for a Community policy on tourism;

Whereas the Commission communication to the Council entitled 'A New Impetus for Consumer Protection Policy', which was approved by resolution of the Council on 6 May 1986, lists in paragraph 37, among the measures proposed by the Commission, the harmonization of legislation on packages;

Whereas tourism plays an increasingly important role in the economies of the Member States; whereas the package system is a fundamental part of tourism; whereas the package travel industry in Member States would be stimulated to greater growth and productivity if at least a minimum of common rules were adopted in order to give it a Community dimension; whereas this would not only produce benefits for Community citizens buying packages organized on the basis of those rules, but would attract tourists from outside the Community seeking the advantages of guaranteed standards in packages;

Whereas disparities in the rules protecting consumers in different Member States are a disincentive to consumers in one Member State from buying packages in another Member State; Whereas this disincentive is particularly effective in deterring consumers from buying packages outside their own Member State, and more effective than it would be in relation to the acquisition of other services, having regard to the special nature of the services supplied in a package which generally involve the expenditure of substantial amounts of money in advance and the supply of the services in a State other than that in which the consumer is resident;

Whereas the consumer should have the benefit of the protection introduced by this Directive irrespective of whether he is a direct contracting party, a transferee or a member of a group on whose behalf another person has concluded a contract in respect of a package; Whereas the organizer of the package and/or the retailer of it should be under obligation to ensure that in descriptive matter relating to packages which they respectively organize and sell, the information which is given is not misleading and brochures made available to consumers contain information which is comprehensible and accurate;

Whereas the consumer needs to have a record of the terms of contract applicable to the package;

whereas this can conveniently be achieved by requiring that all the terms of the contract be stated in writing of such other documentary form as shall be comprehensible and accessible to him, and that he be given a copy thereof;

Whereas the consumer should be at liberty in certain circumstances to transfer to a willing third person a booking made by him for a package;

Whereas the price established under the contract should not in principle be subject to revision except

where the possibility of upward or downward revision is expressly provided for in the contract;

whereas that possibility should nonetheless be subject to certain conditions;

Whereas the consumer should in certain circumstances be free to withdraw before departure from a package travel contract;

Whereas there should be a clear definition of the rights available to the the consumer in circumstances where the organizer of the package cancels it before the agreed date of departure;

Whereas if, after the consumer has departed, there occurs a significant failure of performance of the services for which he has contracted or the organizer perceives that he will be unable to procure a significant part of the services to be provided; the organizer should have certain obligations towards the consumer;

Whereas the organizer and/or retailer party to the contract should be liable to the consumer for the proper performance of the obligations arising from the contract; whereas, moreover, the organizer and/or retailer should be liable for the damage resulting for the consumer from failure to perform or improper performance of the contract unless the defects in the performance of the contract are attributable neither to any fault of theirs nor to that of another supplier of services;

Whereas in cases where the organizer and/or retailer is liable for failure to perform or improper performance of the services involved in the package, such liability should be limited in accordance with the international conventions governing such services, in particular the Warsaw Convention of 1929 in International Carriage by Air, the Berne Convention of 1961 on Carriage

by Rail, the Athens Convention of 1974 on Carriage by Sea and the Paris Convention of 1962 on the Liability of Hotelkeepers; whereas, moreover, with regard to damage other than personal injury, it should be possible for liability also to be limited under the package contract provided, however, that such limits are not unreasonable;

Whereas certain arrangements should be made for the information of consumers and the handling of complaints;

Whereas both the consumer and the package travel industry would benefit if organizers and/or retailers were placed under an obligation to provide sufficient evidence of security in the event of

**insolvency;**

Whereas Member States should be at liberty to adopt, or retain, more stringent provisions relating to package travel for the purpose of protecting the consumer,

#### **HAS ADOPTED THIS DIRECTIVE:**

##### **Article 1 –**

The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to packages sold or offered for sale in the territory of the Community.

##### **Article 2 –**

###### **For the purposes of this Directive:**

1. 'package' means the pre-arranged combination of not fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

(a) transport;

(b) accommodation;

(c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package.

The separate billing of various components of the same package shall not absolve the organizer or retailer from the obligations under this Directive;

2. 'organizer' means the person who, other than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer;

3. 'retailer' means the person who sells or offers for sale the package put together by the organizer;

4. 'consumer' means the person who takes or agrees to take the package ('the principal contractor'), or any person on whose behalf the principal contractor agrees to purchase the package ('the other beneficiaries') or any person to whom the principal contractor or any of the other beneficiaries transfers the package ('the transferee');

5. 'contract' means the agreement linking the consumer to the organizer and/or the retailer.

### **Article 3 -**

1. Any descriptive matter concerning a package and supplied by the organizer or the retailer to the consumer, the price of the package and any other conditions applying to the contract must not contain any misleading information.

2. When a brochure is made available to the consumer, it shall indicate in a legible, comprehensible and accurate manner both the price and adequate information concerning:

(a) the destination and the means, characteristics and categories of transport used;

(b) the type of accommodation, its location, category or degree of comfort and its main features, its approval and tourist classification under the rules of the host Member State concerned;

(c) the meal plan;

(d) the itinerary;

(e) general information on passport and visa requirements for nationals of the Member State or States concerned and health formalities required for the journey and the stay;

(f) either the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance;

(g) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation.

The particulars contained in the brochure are binding on the organizer or retailer, unless:

- changes in such particulars have been clearly communicated to the consumer before conclusion of the contract, in which case the brochure shall expressly state so,
- changes are made later following an agreement between the parties to the contract.

#### Article 4 -

1. (a) The organizer and/or the retailer shall provide the consumer, in writing or any other appropriate form, before the contract is concluded, with general information on passport and visa requirements applicable to nationals of the Member State or States concerned and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay;

(b) The organizer and/or retailer shall also provide the consumer, in writing or any other appropriate form, with the following information in good time before the start of the journey:

(i) the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the traveller, e.g. cabin or berth on ship, sleeper compartment on train;

(ii) the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call.

Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contact the organizer and/or the retailer;

(iii) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay;

(iv) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.

2. Member States shall ensure that in relation to the contract the following principles apply:

(a) depending on the particular package, the contract shall contain at least the elements listed in the Annex;

(b) all the terms of the contract are set out in writing or such other form as is comprehensible and accessible to the consumer and must be communicated to him before the conclusion of the contract; the consumer is given a copy of these terms;

(c) the provision under (b) shall not preclude the belated conclusion of last-minute reservations or contracts.

3. Where the consumer is prevented from proceeding with the package, he may transfer his booking, having first given the organizer or the retailer reasonable notice of his intention before departure, to a person who satisfies all the conditions applicable to the package. The transferor of the package and the transferee shall be jointly and severally liable to the organizer or retailer party to the contract for payment of the balance due and for any additional costs arising from such transfer.

4. (a) The prices laid down in the contract shall not be subject to revision unless the contract expressly provides for the possibility of upward or downward revision and states precisely how the revised price is to be calculated, and solely to allow for variations in:

- transportation costs, including the cost of fuel,
- dues, taxes or fees chargeable for certain services, such as landing taxes or embarkation or disembarkation fees at ports and airports,
- the exchange rates applied to the particular package.

(b) During the twenty days prior to the departure date stipulated, the price stated in the contract shall not be increased.



5. If the organizer finds that before the departure he is constrained to alter significantly any of the essential terms, such as the price, he shall notify the consumer as quickly as possible in order to enable him to take appropriate decisions and in particular:

- either to withdraw from the contract without penalty,
- or to accept a rider to the contract specifying the alterations made and their impact on the price.

The consumer shall inform the organizer or the retailer of his decision as soon as possible.

6. If the consumer withdraws from the contract pursuant to paragraph 5, or if, for whatever cause,

other than the fault of the consumer, the organizer cancels the package before the agreed date of departure, the consumer shall be entitled:

(a) either to take a substitute package of equivalent or higher quality where the organizer and/or retailer is able to offer him such a substitute. If the replacement package offered is of lower quality, the organizer shall refund the difference in price to the consumer;

(b) or to be repaid as soon as possible all sums paid by him under the contract. In such a case, he shall be entitled, if appropriate, to be compensated by either the organizer or the retailer, whichever the relevant Member State's law requires, for non-performance of the contract, except where:

(i) cancellation is on the grounds that the number of persons enrolled for the package is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period indicated in the package description; or

(ii) cancellation, excluding overbooking, is for reasons of force majeure, i.e. unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care had been exercised.

7. Where, after departure, a significant proportion of the services contracted for is not provided or the organizer perceives that he will be unable to procure a significant proportion of

the services to be provided, the organizer shall make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package, and where appropriate compensate the consumer for the difference between the services offered and those supplied. If it is impossible to make such arrangements or these are not accepted by the consumer for good reasons, the organizer shall, where appropriate, provide the consumer, at no extra cost, with equivalent transport back to the place of departure, or to another return-point to which the consumer has agreed and shall, where appropriate, compensate the consumer.

#### **Article 5 -**

1. Member States shall take the necessary steps to ensure that the organizer and/or retailer party to the contract is liable to the consumer for the proper performance of the obligations arising from the contract, irrespective of whether such obligations are to be performed by that organizer and/or retailer or by other suppliers of services without prejudice to the right of the organizer and/or retailer to pursue those other suppliers of services.

2. With regard to the damage resulting for the consumer from the failure to perform or the improper performance of the contract, Member States shall take the necessary steps to ensure that the organizer and/or retailer is/are liable unless such failure to perform or improper performance is attributable neither to any fault of theirs nor to that of another supplier of services, because:

- the failures which occur in the performance of the contract are attributable to the consumer,

- such failures are attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable,

- such failures are due to a case of force majeure such as that defined in Article 4 (6), second subparagraph (ii), or to an event which the organizer and/or retailer or the supplier of services, even with all due care, could not foresee or forestall.

In the cases referred to in the second and third indents, the organizer and/or retailer party to the contract shall be required to give prompt assistance to a consumer in difficulty.

In the matter of damages arising from the non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited in accordance with the international conventions governing such services.

In the matter of damage other than personal injury resulting from the non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited under the contract. Such limitation shall not be unreasonable.

3. Without prejudice to the fourth subparagraph of paragraph 2, there may be no exclusion by means of a contractual clause from the provisions of paragraphs 1 and 2.

4. The consumer must communicate any failure in the performance of a contract which he perceives on the spot to the supplier of the services concerned and to the organizer and/or retailer in writing or any other appropriate form at the earliest opportunity.

This obligation must be stated clearly and explicitly in the contract.

#### **Article 6 –**

In cases of complaint, the organizer and/or retailer or his local representative, if there is one, must make prompt efforts to find appropriate solutions.

#### **Article 7 –**

The organizer and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.

#### **Article 8 –**

Member States may adopt or return more stringent provisions in the field covered by this Directive to protect the consumer.

#### **Article 9 -**

1. Member States shall bring into force the measures necessary to comply with this Directive before 31 December 1992. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

**Article 10 –**

This Directive is addressed to the Member States.

Done at Luxembourg, 13 June 1990.

For the Council

The President

D. J. O'MALLEY

**ANNEX**

Elements to be included in the contract if relevant to the particular package;

- (a) the travel destination(s) and, where periods of stay are involved, the relevant periods, with dates;
- (b) the means, characteristics and categories of transport to be used, the dates, times and points of departure and return;
- (c) where the package includes accommodation, its location, its tourist category or degree of comfort, its main features, its compliance with the rules of the host Member State concerned and the meal plan;
- (d) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation;
- (e) the itinerary;
- (f) visits, excursions or other services which are included in the total price agreed for the package;
- (g) the name and address of the organizer, the retailer and, where appropriate, the insurer;
- (h) the price of the package, an indication of the possibility of price revisions under Article 4 (4) and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at ports and airports, tourist taxes) where such costs are not included in the package;
- (i) the payment schedule and method of payment;

(j) special requirements which the consumer has communicated to the organizer or retailer when making the booking, and which both have accepted;

(k) periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract.

### **Introduction**

The "Round Table on Package Travel Contracts" is a group of legal experts, of which one third represent the travel industry, one third represent consumers' associations and one third are independent high-ranking judges, public servants and academics having expertise in the field of legal disputes concerning package travel. This group of experts met at the initiative and under the guidance of the European Commission, in order to discuss and define best practice for package travel and holiday tours. The conclusions of the expert group that are made available here must be seen as non-binding recommendations. They draw their significance from the expertise of the members of the group. They do not, however, reflect the views or the policy of the European

### **Commission.**

The members representing the travel industry have been nominated by ECTAA, the European Travel Agents and Tour Operators Association. The members representing consumers' associations have been selected by the Commission following proposals made by leading consumers' associations from all Member States of the EU. The independent members have been selected by the European Commission.

### **Participants in the Round Table Group:**

#### **ECTAA:**

Mr. Andrew Cooper (UK)

Mr. Riccardo Nardi (UK)

Mrs Brigitte Waignein (B)

Mrs. Karin Aagesen (DK)

Mr. Peter Hamburger (D)

Mrs. Elisabeth Rehulka (A)

Mr. Felix Arevelo (E)

**Consumer Associations:**

Mr. Hans De Coninck (Test Achats/Test Aankoop, B)

Mr. Claude Brasseur (UFC Que Choisir, F)

Mrs. Paola Moreschini (Adiconsum, I)

Mr. Paulo Quelhas Vilarinho (DECO, P)

Mr. Bruce Treloar (Trading Standards Service, UK)

Prof. Klaus Tonner (Universität Rostock, D)

**Independent Experts:**

Mr. Ray Woolley (Office of Fair Trading, UK)

Mr. Dietrich Seyderhelm (Landgericht Frankfurt am Main, D)

Mr. Erik Mickwitz (Kuluttajavirasto, SF)

Mr. Axel Edling (substituted by Mrs. Marianne Abyhammar, both: Konsumentverket, S)

Mr. Jean-Pierre Bouscharain (Conseiller à la Cour de Cassation, F)

**ROUND-TABLE ON PACKAGE TRAVEL CONTRACTS**  
**CONCLUSIONS OF THE EXPERT GROUP**  
**ADOPTED ON 13 FEBRUARY 2001**

This Expert Group on unfair contract terms in package travel arrangements was organized by the Commission. Representatives of consumers and the industry as well as independent experts met to discuss to set out a code of conduct, which, whilst having only the character of “soft law” may serve as a point of reference for travel organizers, retailers and consumers throughout Europe

**1. ORGANISER’S/RETAILER’S OBLIGATIONS BEFORE A CONTRACT IS CONCLUDED**

When a consumer buys a package tour he makes an investment, not only in terms of money but also in terms of time, his leisure time. That is why it can justifiably be claimed that a package tour is a commodity, in respect of which consumers have great expectations.

The fact that a package tour is sold on the basis of information provided by the organizer and/or retailer and that the consumer can usually not acquaint himself with the product in advance, except perhaps in a few special cases, makes great demands on both the organizer and the retailer. The consumer is compelled to make his choice on the basis of his own imagination and the information provided by the operator. It is true that information about most package-tour destinations can be obtained from other sources as well, but the great majority of consumers rely in their decisions expressly on the information and advice provided by the operator and the travel agent.

Another feature typical of the package travel industry, which deserves to be mentioned specifically, is the mode of payment. As an exception from the general rule

according to which a performance shall be simultaneous with a counter performance, the prevailing practice in the package travel industry is that the journey is paid for in advance. This practice has in turn made it necessary to create certain special arrangements for the protection of consumers, for example the security systems which, in the event of the organizer's insolvency, ensure return transport and repayment of the advances paid by the consumers.

- **It thus seems recommendable for the organizer and/or retailer to provide accurate information about the packages, where possible going beyond the mandatory minimum requirements set out in the Package Travel Directive.**
- **The information should not only indicate the destination, but also include an adequate description of the package on the basis of which the consumer can decide whether the package is likely to suit his expectations and whether he able to go on the package. Further information must be, if required, made available for customers with special needs, e.g. families with small children, elderly people, disabled persons, etc.**
- **The information and contract terms must state the price in its entirety, including all taxes and charges.**
- **Cancellation terms on which the consumer is entitled to cancel the package and cancellation charges must also be clearly stated.**
- **The organizer and/or retailer should, where he is able, inform the consumer of whatever circumstances he is aware of that may complicate the journey but that will not impede the accomplishment of the package in any decisive or essential manner, such as ongoing building works in the hotel or its neighborhood.**
- **Special care should be taken by tour organizers and retailers in making promises to consumers that they will meet special requirements. Tour organizers and retailers should distinguish between essential and non-essential requirements, and not promise to meet essential requirements unless they are sure they are able to.**

In what manner and where shall the operator then make the required information available to consumers? If he publishes a brochure, it is most evident that the information



will be included in it. This requirement applies to all kinds of brochures or lists, whether published in printed or electronic form. The question becomes more complicated when the so-called "last-minute" reservations are concerned.

According to the current directive the operator is not required to supply the terms of contract in writing to consumers who have made a last-minute reservation. However, many operators do print their terms on the reverse of their invoices to ensure that the consumer will always receive them. In the absence of such a system, it would be reasonable to oblige the operator to announce where the consumer can obtain these terms or where he can acquaint himself with them.

**– In this case information on the place of business or the internet home page where the terms of contract are available must be considered sufficient. All other information that the operator shall provide the consumer with before the conclusion of the contract should also be available at these places. At the same time this requirement places the operator under an obligation to make the required information available to consumers in a comprehensible and transparent manner.**

## **2. BROCHURES**

The brochure must make clear what is available and what is not, for each type of holiday. Information about non-availability should be clearly brought to the consumer's attention in the brochure or prior to contract. The supplier should give as much detail as he can about the availability of facilities as soon as the information is known.

**– Brochures will not promise facilities**

**\_ that are not available for certain times of year or seasons when the operator is aware in advance that they may not be available**

**\_ *where the operator is otherwise aware in advance of a specific problem or risk of unavailability or knows that certain facilities will not, or may not, be available.***

## **3. INSURANCE**

There is a wide consensus about the benefit to consumers of travel insurance. The tour operator and, where required, the travel agent should inform the consumer of the availability of a suitable travel insurance policy and of a cancellation insurance. However, including a travel insurance policy within the price of the package can be somewhat problematic, especially if the consumer has annual or multi-trip insurance.

**– Unless there are sound reasons to the contrary, tour operators should therefore avoid requiring consumers to obtain double insurance coverage. Nevertheless, the consumer should be requested to make sure that he has an adequate insurance coverage. The organizer and/or retailer must provide, in accordance with their national laws, adequate information about any policy available from them that is suitable for the consumer's requirements.**

#### **4. CANCELLATION OF OR WITHDRAWAL FROM THE CONTRACT**

There are no rules for cancellations in the Package Travel Directive. Various systems of regulating the matter prevail in different European countries. In the Nordic countries there are mutual agreements between the package tour operators and Consumer Ombudsman/ the Consumer Agency. In the other contributing countries each tour operator makes unilateral terms.

The common denominator for all countries is a system where a sliding scale is applied to the cancellation of a package tour. The principle of sliding scales of cancellation charges depending on the date of cancellation has many advantages. They provide a useful degree of certainty and a measure of 'rough justice', help consumers and traders overall by avoiding the time and expense of calculating loss in each individual case, ensure that the consumer does not have to pay for a service that he is no longer interested in and keep the tour operator from suffering a financial loss from the cancellation. But the following principles should be observed in the setting of these scales:

**Sliding scales must be fair and not penalize the consumer.**

- **The fees contained within any scale should not be higher than agreed by industry and consumer groups or public authorities in those States where this system is used, unless such agreements explicitly allow for exceptions..**
- **The fees should follow the principle of "liquidated damages" in other states. In other words, the operator must make a fair, reasonable and genuine pre-estimate of the loss it is likely to suffer if the consumer cancels at a given period before his planned departure**
- **Operators may also use a system where cancellation charges are individually assessed. In such cases, any method of calculation used by the operator must be fair, reasonable and genuine.**
- **In all cases, the operator must set out its cancellation terms in an unambiguous and transparent manner.**

## **5. DISRUPTIVE EVENTS**

This issue has not been included in the Package Travel Directive although the Directive does refer to events beyond the control of the operator or both parties.

As this point concerns situations that may occur at the destination even at the date of the departure it seems appropriate that both parties shall have to cancel the contract at any time.

- **The operator and the traveler should each be entitled to withdraw from the contract if, after the contract has become binding for both parties, at or in the vicinity of the destination or close to the planned route there occurs a disaster, warlike event, general strike or other disruptive event that will seriously disrupt the journey or endanger the safety of the consumer when the journey is to be taken. Public authorities, such as governmental foreign office advice departments should be consulted.**

## **6. EXCLUSION/LIMITATION OF LIABILITY**

Standard contract terms should not contain inappropriate exclusions or limitations of liability. The operator and his agent should be liable for failure to perform the contract, or for improper performance of it, whether or not the operator is directly supplying the service in question. Subject to the terms of international conventions,

- **terms should not exclude or restrict liability for death or personal injury**
- **not seek to hinder the making of claims. Examples (see below) include unreasonable and unlawful time limits, restrictive applicable law and jurisdiction clauses, and exclusive arbitration clauses**
- **not unfairly restrict the damages for direct loss caused by its negligence or that of its agents**
- **not unfairly restrict damages for foreseeable indirect loss caused by the operator's or agent's own negligence. Here 'foreseeable' means that it could reasonably have been anticipated by the parties to the contracts and could have been prevented with reasonable care. And**
- **not restrict liability by more than is permitted by international conventions or mandatory regulatory requirements.**
- **Best practice is for tour operators to inform consumers where international Conventions may restrict liability.**
- **Specific time limits for making claims must be reasonable and give the consumer sufficient opportunity to make his claim.**
- **The contract should require the consumer, if problems arise at the destination, to make his complaint at the earliest opportunity. The tour operator should therefore make all necessary arrangements to enable this obligation to be undertaken..**
- **All the facilities and services promised in the brochures and contracted for must be supplied and liability for not supplying them must not be excluded.**

## **7. PERFORMANCE OF THE CONTRACT BY THE TOUR OPERATOR AND SUBCONTRACTORS**

Where an operator makes a significant change to an essential term, the consumer is entitled to know how it affects the price - so that he can decide whether to exercise his right to cancel or accept the alteration and the impact on price. If he does cancel, he is entitled to choose between three further options: to accept an inferior holiday with a proportionate refund, to cancel with a full refund, or to take an alternative of equivalent or superior quality at no extra cost. Tour operators will offer a holiday of equivalent value if they are able. If the tour operator offers the consumer an equivalent holiday he may also offer the consumer a choice of a more expensive holiday; but the operator may not charge the extra for the more expensive holiday if he does not also offer an *equivalent* one. These protections apply also where the operator has cancelled the holiday.

- **What is a 'significant change' should, in the contract, not be defined by an exhaustive list, though examples can be given.**
- **Where a term excludes liability for 'force majeure' only a definition consistent with that employed in Article 4 of the Package Travel Directive should be used. A list of examples may be given providing that it is clear that the governing words are those of the definition.**

A number of subcontractors are involved in the provision of the contracted package holiday arrangements and any of them could fail to take reasonable care. However, terms should not protect operators from such failure by subcontractors who are their agents or employees, or protect them from negligence in the choice or recommendation of other subcontractors.

- **A term may permit minor or trivial variation to the detail of holiday arrangements if it is narrowly drafted so that it does not permit changes that significantly affect the consumer's view of the quality of facilities or his convenience and enjoyment of the holiday.**

## **8. OVERBOOKING AND CHANGES IN THE ARRANGEMENTS**

Consumers are entitled to expect to receive exactly what they have booked. For example, where a named hotel is booked, rather than unspecified accommodation of a specified standard, care should be taken to ensure that the named hotel is available.

Accordingly, operators must avoid terms that give them wide rights to change what is supplied. Allowing the consumer the right to cancel if he or she does not like the changes offered does not make such a term fair. The right of the operator to change what is contracted must be limited and only exercised when required by forces beyond the control of the operator.

**– A term may be included to allow change to what is contracted if the operator is constrained to do so but must**

**\_ require the operator to notify the consumer at the earliest opportunity, and**

**\_ state (as stated at 7. above) that the consumer is allowed to accept it, to cancel it, or take an alternative holiday as provided in the Package Travel Directive.**

**– If the consumer elects to cancel:**

**\_ there must be no penalty**

**\_ all prepayments to the operator should be refunded**

**\_ the right to compensation for loss suffered by the consumer must not be excluded, or if it is, only where the change had to be proposed because of unforeseeable circumstances beyond the control of the operator.**

**– Where a holiday is taken and for reasons other than force majeure (cf. Art. 4 Package Travel Directive) the tour operator is unable to procure a significant proportion of the service provided, the operator will**

**\_ make suitable alternative arrangements at no cost to the consumer, to enable the holiday to continue, and**

**\_ compensate the consumer where appropriate for the difference between the services promised and those supplied.**

**– If it is not possible to make these arrangements or the consumer does not accept them for good reason, the operator will**

**\_ provide equivalent return transport to the departure point or to a place the consumer agrees and**

**\_ will compensate the consumer where appropriate.**

## **9. CONSUMER REDRESS - COMPETENT JURISDICTION - EXTRA-JUDICIAL SETTLEMENT**

The rights of consumers to redress under national law must not be restricted by unfair exclusion clauses, or clauses that make it more difficult for the consumer to make claims for compensation.

- Consumers should not be prevented or discouraged by a term from bringing a claim in their home jurisdiction under their home law, or the jurisdiction of the tour operator under the law of that jurisdiction. Contract terms must not purport to reduce consumers' rights under the appropriate international Conventions.**
- Where extra-judicial settlement (eg conciliation or arbitration) is offered, the consumer must be able to choose whether or not to accept the option. Arbitration schemes may be organized by trade associations of operators, but decision making process must be independent of trade association.**