



THE EUROPEAN TRAVEL AGENTS'  
AND TOUR OPERATORS' ASSOCIATIONS

Ref: AD08-293/123

## ***ACTIVITY REPORT***

**November 2007 – November 2008**

# Introduction

Dear Board Members,

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You will find enclosed the 12<sup>th</sup> edition of the ECTAA yearly activity report.

This document reviews the various activities of ECTAA during the past year and highlights what will be the priorities and working programme for 2009. It may be used by Members to report and inform their Membership on all European matters which affect the industry,

The issues and actions of ECTAA briefly summarised in this report provide a general overview of ECTAA's activity.

On a daily basis, the Secretariat is in contact with representatives of the European Commission, Members of the European Parliament and other EU institutions, as well as representatives from other other organisations that have an impact on the industry in Europe. The Secretariat also monitors and analyses a considerable amount of information and documents in order to communicate the essential points to the Members through regular mailings. Common positions reflecting the views of our Industry are then prepared on the basis of exchange with Members and working meetings.

The objective is to monitor and identify future developments in EU legislation, to be involved in the preparation of legislative proposals and to take all opportunities to put the points of our industry forwards.

A strong and well coordinated lobbying both at European and National level is thus the key for a successful representation of the industry.

The Secretariat team  
November 2008

# 1. TRANSPORT

## 1.1. Air Transport

### 1.1.1. Directive proposal on airport charges

*Issue:* The Commission adopted a Directive proposal on airport charges beginning of 2007, which defines a number of principles to be respected by airport operators when they change or introduce new their airport charges, such as non-discrimination between carriers and between passengers, consultation and remedy of airport users, transparency of airport charges, etc.

*ECTAA position / action:* Under the package travel Directive, tour operators are allowed to pass on an increase of airport charges to the customer after conclusion of the contract, but only insofar as this is done 20 days before the stipulated departure date. In most Member States this time period is between 20 days to 1 month. ECTAA has thus insisted to increase the time of consultation and subsequent announcement of final decision on changes to airport charges, so that tour operators can effectively pass on these extra costs to the customers.

*Status of project and next steps:* The European Parliament in second reading has adopted a compromise text which provides for a 4 months consultation and 2 months implementation time under “normal circumstances”. The text thus still leaves the possibility of a shorter consultation and implementation period in exceptional cases. The Council will approve the Directive proposal in the next Transport Council in November 2008. The directive is thus likely to come into effect beginning of 2011.

### 1.1.2. Revision of the CRS Code of Conduct

*Issue:* The Regulation proposal for a revised Code of Conduct on Computerised Reservation Systems (CRSs), as presented by the European Commission in November 2007, contained an unclear definition of parent carriers and did not regulate full fare content in CRSs. It contained a provision removing the identification of travel agents from MIDTs. In 2008, the Regulation proposal went through first reading before the European parliament and the Council.

*ECTAA position / action:* ECTAA promoted and defended its positions by the European Parliament and the Council in the framework of a massive lobby campaign carried out by airlines and CRSs. ECTAA aimed at maintaining non-discrimination rules applicable to airlines that hold an investment stake in a CRS (so-called “parent carriers”), at establishing that agents must not be identified in MIDTs or in other data provided to airlines and that agents should have access, without any discrimination, to full fare content in CRSs.

*Status of project and next steps:* Three years after the initial plan of the European Commission to simply repeal the CRS Code of Conduct, regulation will be maintained and the final text of the Regulation should be adopted by the end of 2008 (entry into force in Spring 2009). It will prohibit the identification of travel agents in MIDTs, except if agreed by the travel agent and subject to certain safeguards. This rule is also applicable to the supply of marketing data to third parties, thus it should be applicable to IATA PaxIS. The Regulation

will not deal with full fare content in CRSs, because the choice of the legislator has been to liberalise fare content in CRSs and CRS fees. Concerning parent carriers, the definition is still open to interpretation. The European Commission will issue guidelines to provide its interpretation of the definition. ECTAA is pursuing lobbying in view of the drafting of those guidelines.

### **1.1.3. Directive 1107/2006/EC on rights of PRMs when traveling by air**

<i>Issue:</i>	In July 2008 the provisions relating to assistance of disabled persons and persons with reduced mobility (PRMs) on board aircrafts and at airports have come into force. It requires travel agents and tour operators, among other, to pass on notifications of PRM assistance requirements to the airline(s) as well as airport(s) of departure, transit and arrival within the EU.
<i>ECTAA position / action:</i>	ECTAA raised the problem that agents and tour operators cannot notify the airports' designated PRM facilitation departments, as they do not have their contact details nor can they send the information in an automated form. ECTAA is thus requesting from the Commission to approve a procedure, by which the notifications are made via the airlines' reservation systems to the airports concerned.
<i>Status of project and next steps:</i>	The Commission will be holding a meeting of all concerned stakeholders (National Enforcement Bodies, representatives of airlines & airports, PRM associations, etc.) beginning of December, during which ECTAA will raise this issue and try to reach an agreement on a standardized procedure.

### **1.1.4. Regulation on common rules for the operation of air transport services in the Community**

<i>Issue:</i>	The Regulation proposal dealt notably with better monitoring of carriers' finances and with transparency of prices, including the indication of an inclusive price and the prohibition to discriminate in access to fares based on location in the EU.
<i>ECTAA position / action:</i>	<p>At the end of the first reading in November 2007, the Council adopted a political agreement resulting from a compromise with the European Parliament.</p> <p>Concerning airlines' finances, the compromise text did not include the amendment supported by ECTAA to require from air carriers that they provide financial security to protect passengers in case of bankruptcy. Concerning transparency of air fares, the text was in line to some extent with the position of ECTAA to oblige airlines to publish inclusive fares in all means of communication addressed directly or indirectly to the travelling public. The compromise text made such obligation incumbent upon all operators (airlines, travel agents, other ticket sellers) and introduced a further obligation to indicate the breakdown of the price. Concerning availability of air fares without discrimination based on location, the compromise text included the notion of "access to fares" recommended by ECTAA, but not the amendment supported by ECTAA on free and equal access to fares, which would have prevented discrimination based on the distribution channel. In line with the ECTAA positions, the Regulation's scope of application was widened and enforcement measures were introduced.</p>

Considering that there was little room for amendments in second reading, ECTAA decided to focus against the obligation to specify the breakdown of the price and in favour of a prohibition to discriminate in access to fares based on the distribution channel. But the final text of the Regulation was approved without any amendment in second reading.

*Status of project and next steps:* The Regulation came into force on 1 November 2008. ECTAA has provided to the Members explanatory notes on the application and possible interpretation of the Regulation.

### **1.1.5. Passenger protection against airline failure**

*Issue:* The Council and the European Commission opposed the introduction, in the Regulation proposal on common rules for the operation of air transport, of a compulsory scheme for passenger protection against airline failure (see point 1.1.4 above).

*ECTAA position / action:* ECTAA has pursued with the request to establish a passenger protection mechanism in European legislation, in the revision of the consumer protection acquis, in the revision of Regulation 785/2004 on insurance requirements for air carriers and aircraft operators or in view of a specific legislation.

In relation with the review of Regulation 785/2004 on insurance requirements for air carriers and aircraft operators, the European Commission announced in April 2008 that there is not a clear-cut case for additional insurance requirements to protect passengers against airline failure. Nevertheless the Commission indicated that it is aware of the potential difficulties for passengers and is further evaluating all aspects linked to this issue.

*Status of project and next steps:* In practise, the European Commission has launched a study to assess all aspects linked to passenger protection against airline failure. It will receive the results of this study around December 2008 and will then decide on further action. ECTAA and its Members are planning to draw again the attention on this issue.

### **1.1.6. Ryanair against bookings through intermediaries**

*Issue:* Ryanair started in 2007 to send letters to travel agents enjoining them to stop using its website to make bookings. Ryanair then initiated legal actions against some online intermediaries, with the claim that intermediaries are not allowed to use its website to make bookings. In addition, Ryanair announced in August 2008 that it would cancel passenger bookings made through third parties websites, though no effective cancellation has been reported. Ryanair also modified its terms and conditions to precise that bookings must be made directly on the Ryanair website.

*ECTAA position / action:* ECTAA defends the possibility for clients to use the services of a travel agent and to benefit from the package travel protection.

ECTAA wrote to and met with the European Commission to raise concerns about the approach and threats of Ryanair in regard of European legislation in the field of consumer protection, air transport and competition law.

ECTAA informed its Members of the judicial decisions in cases opposing Ryanair and intermediaries throughout Europe.

*Status of project and next steps:*

Ryanair has lost three judicial cases against intermediaries in France, Germany and Spain and has won one in Germany. Further cases and appeals are pending.

The European Commission considers that the issue can currently be best handled at national level through legal action. If Ryanair effectively denied boarding to a passenger because it used an intermediary to book the ticket, the case would be investigated under the EC Regulation 261/2004 on denied boarding.

### **1.1.7. Air Matters Committee and Technology Working Group**

*Issues:*

The Air Matters Committee met twice in 2008 jointly with the Technology Working Group, on 31 January and on 16 September 2008. The issues dealt with in those meetings focused on the revision of the CRS Code of Conduct (see point 1.1.2.) and on the IATA Passenger Agency Programme including airline proposals to increase frequency of remittance to BSPs (see point 4.3.). The Air Matters Committee reviewed other European initiatives in the pipeline and the implementation of certain European legislation, such as the denied boarding Regulation and the Regulation on PRMs travelling by air (see point 1.1.3.). In addition, it also discussed such matters as the Lufthansa Preferred Fare Programme, the policies of low cost airlines towards intermediaries (see point 1.1.6.), the policy of certain airlines towards online agents, inclusion of aviation in ETS, passenger protection against airline bankruptcy, a consultation on the development of integrated ticketing for air and rail transport, etc.

## **1.2. Maritime Transport**

### **1.2.1. Liability of carriers by sea and inland waterways**

*Issue:*

In 2005, the European Commission published a proposal for a Regulation on the liability of carriers by seas and inland waterways in the event of accidents. The purpose of this proposal is to incorporate into Community law the provisions of the 2002 Protocol of the Athens Convention relating to the carriage of passengers and their luggage by sea.

*ECTAA position / action:*

ECTAA expressed various concerns, both at the level of the European Parliament and of the Council, concerning the proposal, in particular on the following issues:

- The definition of the notion of carrier in the proposed Regulation would also cover the tour operators in some cases, which must be avoided.
- The scope of the proposed Regulation should be limited to carriage by sea and not be extended to inland waterways.
- Advance payment in case of death should only be provided by the performing carrier.
- Information obligations should not fall on tour operators but only on the carrier and/or the performing carrier.

*Status of project and next steps:*

In June 2008, the Council adopted its common position on the proposal. Among others, the Council excluded inland waterways from the scope of

the proposal, introduced new liability limitations in accordance with the LLMC 1996<sup>1</sup>, decided that advance payment would only to be made by the carrier actually performing the carriage and that information obligation would only lie on the carrier and/or the performing carrier.

In September 2008, the European Parliament adopted in second reading its position on the Council's common position. The Parliament agreed with the Council that inland waterways should be excluded from the scope of the proposal. However, the Parliament took a fundamentally different position than the Council on some other issues. Indeed, the Parliament wants that the information obligations fall on tour operators, that advance payments are also made when a passenger suffers an absolute and permanent invalidity or injuries considered very serious to 75 % or more of the body and that no liability limitations are allowed on the basis of the LLMC 1996.

Since the Council and the European Parliament could not agree on those issues, the conciliation committee has now been convened, with a view of finding an agreement on a joint final text.

### **1.2.2. Rights of passengers traveling by sea and inland waterway**

*Issue:* In 2006 the Commission launched a public consultation followed by a stakeholder meeting in 2007 on possible passenger rights legislation in the field of maritime transport in terms of assistance/compensation in case of disruptive events, non-discrimination of and assistance to PRMs, etc.

The Commission is now finalizing a proposal for a regulation on rights of passengers travelling by sea and inland waterway. Travel agents and tour operators will have similar obligations as those introduced in other modes of transport.

*ECTAA position / action:* ECTAA considers that passengers traveling in the frame of a cruise package holiday should be excluded from the scope as regards the obligation to compensate/refund passengers in the event of cancellation and/or delay, unless such right arises under the package travel Directive. ECTAA also underlined the importance of correct definitions of carriers, tour operators, retailers and ticket sellers in order to guarantee legal certainty.

*Status of project and next steps:* The Commission will adopt the Regulation proposal in December 2008 together with the Regulation proposal on passenger rights in bus/coach transport and will then transmit the text to European Parliament and Council for approval in co-decision procedure.

## **1.3. Transport by bus and coach**

### **1.3.1 Rights of passengers traveling by bus and coach**

*Issue:* The Commission is finalizing a Regulation proposal on rights of passengers in bus and coach transport. The draft legislation introduces similar rights for passengers as those adopted in other modes of transport

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<sup>1</sup> International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996.

(rail and air), such as compensation in case of accident and lost / damaged luggage, assistance to PRMs, compensation in case of cancellations / delays, etc. With the exception of the provision on liability for accidents / luggage, the scope is limited to regular coach/bus services, i.e. not occasional bus services typically used by tour operators. Travel agents and tour operators will have similar obligations as those introduced in other modes of transport.

*ECTAA position / action:*

ECTAA has underlined to the transport Commissioner's Cabinet the inappropriateness of the definitions of ticket vendor and tour operator, which make an amalgamation between these two entities and retailers.

*Status of project and next steps:*

The Commission is expected to present the Regulation proposal on passenger rights in bus/coach in December 2008, together with the Regulation proposal on rights of passengers travelling by sea and inland waterway, and will then transmit the text to the European Parliament and the Council for approval in co-decision procedure.

### **1.3.2 12 day derogation for coach drivers**

*Issue:*

In 2006 the Regulation 561/2006/EC abandoned the 12 day derogation, which enables drivers engaged in occasional international coach tours to postpone the weekly rest period for up to 12 consecutive 24-hour periods following a previous regular weekly rest.

After agreement of the trade unions to the re-instatement of the 12 day derogation, the European Parliament has introduced an amendment in this sense in the frame of a legislative proposal on common rules for access to the market for coach and bus services. However, the Commission may go for a stricter application of this 12 day derogation by restricting it to one transport service only.

*ECTAA position / action:*

ECTAA has been calling for the re-instatement of the 12 derogation. The current rules of weekly rest of drivers after six 24-hour driving periods has considerably increased costs of coach tours longer than 6 days, as it requires the presence of an additional coach driver. Such derogation should not be restricted to one transport service only, as this would jeopardize flexibility for coach operations.

*Status of project and next steps:*

ECTAA is liaising with the European Parliament, the Commission and the Council to obtain the 12 day derogation without any restrictions. The common position of the Council is expected next year, after which the legislative proposal will go into second reading in Parliament.

## **2. FREEDOM, SECURITY AND JUSTICE**

### **2.1. PNR**

*Issue:*

End of 2007, the European Commission published a proposal for a Council Framework Decision on the use of Passenger Name Record for law enforcement. Air carriers will have the obligation to make PNR data for travellers on flights to and from the EU available to Member States' law enforcement authorities. PNR data would be collected for preventing and fighting against terrorist offences and organised crime.

*ECTAA position / action:*

ECTAA and its Members submitted a position paper on the proposal to the Council and the European Parliament. We welcomed the fact that PNR collection exclusively fall on air carriers, that they must only provide data to

they extend that they are collected by carriers and that only flights into and outside the EU are covered. We stressed that the collection of PNR will have a cost for consumers and insisted on the need that Member States agree on a standard format for the data. We criticized the requirement to provide data 24 hours before departure and immediately after flight closure, since it is an unnecessary duplication. We requested that when a booking is made by a travel agent, it should not be necessary to enter the coordinates of the traveller. We stressed that data should not be used for other purposes than border control.

*Status of project and next steps:*

Discussions at the level of the Council are ongoing and notably focus on the possible extension of its scope to intra-EU flights and of the purposes for which data could be collected.

The European Parliament must only be consulted on the proposal but it is a condition of its validity. The opinion of the European Parliament is not expected before beginning of 2009.

## **2.2. Regulation proposal on a Community code on visas**

*Issue:*

On 19 July 2006 the Commission presented a Regulation proposal establishing a Community code on visas. The objective is to consolidate all existing rules into one legal instrument, but also to introduce new provisions that aim at enhancing transparency, clarifying existing rules, harmonizing differing practices, etc. The code lays down the conditions and procedures for the processing of visa applications of third country nationals for stays not exceeding 3 months.

*ECTAA position / action:*

ECTAA and its industry partners have drafted a common industry position: For legitimate travel, such as by tourists, it is important to make the visa application procedure less burdensome (e.g. possibility to apply for a visa in any Member State consulate, one-stop visa application procedure, etc.) and less costly (e.g. reduction of visa fees from 60€ to the previous level of 35€, reduced visa fees for children, multi-entry visas for frequent travelers, etc.).

*Status of project and next steps:*

The LIBE Committee of the European Parliament has adopted a report which has taken on board the vast majority of suggestions made by the industry, including the reduction of visa fees and also the prohibition to raise visa costs for the collection of biometric identifiers by third party sub-contractors. Negotiations are under way with the Council, whose priority is the prevention of illegal immigration and organized criminal activities. It is unlikely that the Council will agree to a reduction of visa fees nor amendments which are likely to reduce the control over applications submitted by people wishing to travel to their country.

## **2.3. Consular protection**

*Issue:*

Initially announced for 2007, in late Spring 2008, the European Commission launched an information campaign on rights of EU citizens on consular protection when traveling outside the EU. The information campaign takes the form of a poster, which notifies EU citizens that they are entitled to request assistance from any EU Member State embassy / consulate, if no embassy / consulate of their own country is available on the spot. Assistance can for example be requested in case of loss of passport, death of a family member, etc.

*ECTAA position /*

Through ECTAA, the European Commission sought the support of

*action:* European travel agents and tour operators. Several Members of ECTAA accepted to participate in the information campaign, their Members travel agents and tour operators displaying the poster in their offices or on their website. ECTAA provided the European Commission with the contact details of the individual Members of our associations. The European Commission sent the posters directly to those who had accepted to participate.

## **2.4. Law applicable to contractual obligations**

*Issue:* End of 2005, the European Commission proposed a Regulation on the law applicable to contractual obligations (Rome I), which aimed at converting into European law the Rome Convention of 1980 on the law applicable to contractual obligations.

After a long procedure, the European Parliament and the Council reached a compromise, which allowed the final adoption of the Regulation on the law applicable to contractual obligation in June 2008.

When the contract is concluded between a consumer and a professional who either pursues his activity in the country where the consumer resides or directs his activities to that country, the parties will be allowed to choose the applicable law but the choice may not deprive the consumer of the protection of the mandatory provisions of the law of his country of habitual residence. If no choice is made, then the law of the country of residence of the consumer will apply.

A provision also determines the law applicable to the contract for the carriage of passengers. The parties can choose the law applicable to the contract between the law of the country of residence of the passenger, the law of the country of residence or of central administration of the carrier or the law of the country of departure or of arrival.

If they did not choose the applicable law, if the country of residence of the passenger is the place of departure or of arrival, the law of that country will apply. If not, the law of the country of residence of the carrier will apply.

*ECTAA position / action:* During the legislative procedure, ECTAA argued with the European Parliament and the Council that the parties to a consumer contract should have the right to choose the applicable law. Furthermore, ECTAA pointed out that the concept of “targeted activities” was not appropriate for determining the law applicable to contractual obligations because it was too vague.

*Status of project and next steps:* The Regulation will apply to contracts concluded after 17 December 2009.

## **3. COMPETITION POLICY**

### **3.1. Concentration and mergers between airlines**

*Issue:* The European Commission controlled in summer 2008 the merger between Delta and Northwest. It is also investigating the project of alliance between British Airways / American Airlines / Iberia and further agreements between major carriers.

Some ECTAA Members have expressed concerns about the impact of those developments on our industry and have underlined the importance of being heard by the authorities on this impact.

*ECTAA position / action:* ECTAA provided comments to the European Commission on the merger Delta / Northwest in order to recommend that the European Commission require strong commitments from the concerned and future merging airlines, in order to prevent unfair competition of the airline sector vis-à-vis travel agencies and to protect passengers' rights and interests in a reasonable balance compared to the interest of airlines.

ECTAA is also involved in the investigations of the European Commission concerning the latest projects of alliance and agreement between major carriers.

*Status of project and next steps:* The merger between Delta and Northwest was cleared, on the basis that the two airlines already cooperated extensively within Skyteam and that their cooperation does not raise competition concerns.

The investigations on the alliances and agreements are on-going.

## **4. IATA**

### **4.1. Euroforum and PAPGJC**

*Issue:* The European Agency Programme Joint Councils' Supervisory Board (Euroforum) met on 5 September 2008. The issues dealt with were the review of the PAConf agenda (see point 4.3), a follow up on European accreditations, the end of neutral paper tickets, the Single European Payment Area (SEPA) and the implementation of IATA flex fares.

The Passenger Agency Programme Global Joint Council (PAPGJC) met on 4 December 2007, 23 April 2008 and 4 September 2008. It dealt with the end of neutral paper tickets, the APJC rules of procedures, the procedures in case of airline failure, the Travel Agency Commissioner (TAC) profile and job description, the TAC account and budget, the implementation of the Payment Card Industry Data Standards and the review of the PAConf agenda (see point 4.3).

### **4.2. Agency Solution Technical Working Group (ASTWG)**

*Issue:* The ASTWG, composed of GDS, agent and airline representatives, held its first meeting on 16-17 June 2008. It agreed on the terms of reference of the group aiming at finding processes to send ADMs on guaranteed fares directly to GDSs. It agreed in addition on a first step proposal to provide to agents an indicator identifying that a fare is guaranteed.

*Status of project and next steps:* The ASTWG proposal was endorsed by PAConf and should come into force on 1 June 2009.

### **4.3. Passenger Agency Conference (PAConf)**

*Issue:* PAConf/31 met on 6-7 October 2008. It decided to increase frequency of remittance in the Netherlands to twice monthly from 1 July 2009 and weekly from 1 January 2010. The proposal to increase remittance

frequency in Germany was withdrawn by the proposing airline. PAConf adopted besides procedures for the management of IATA meetings including APJCs. It decided to discontinue free provision of the Ticketing Handbook.

During the preparation of PAConf, IATA agreed to remove proposals restricting access to the European accreditation. All proposals on ADMs were withdrawn due to the 2 years moratorium decided by PAConf in 2007.

In line with ECTAA's comments, PAConf rejected a proposal to include certain airline websales in the IATA Agency Programme. It adopted a compromise revision of the Travel Agency Commissioner Programme. It adopted the proposal from the ASTWG (see point 4.2).

It rejected ECTAA/GEBTA proposals concerning virtual locations and concerning the update of security requirements in regard of the end of neutral paper tickets. It adopted instead IATA proposals on the accreditation of online agents, certain measures to relax security requirements and a rewritten BSP manual.

#### **4.4. Replacement of the Travel Agency Commissioner (TAC)**

*Issue:* There have been vacancies for TAC functions and some difficulties to agree on the selection of new TACs. IATA presented in April 2008 the draft of a revision of the TAC programme, which would provide to IATA important powers over the TAC and its review procedure. As an alternative to this proposal, the PAPGJC agreed that a working group would prepare a proposal to review the TAC Profile and Resolutions. The working group, composed of IATA, ECTAA/GEBTA and WTAAA, agreed on a compromise revision of the TAC programme and on a TAC job profile in view of recruiting by January 2009 new skilled and neutral TACs.

*Status of project and next steps:* The proposal of the working group was endorsed by PAConf (see point 4.3). The job vacancies were advertised in October 2008 and the selection process should take place in time for new TACs to take office at the beginning of 2009.

## **5. CONSUMER AND INTERNAL MARKET POLICIES**

### **5.1. Legal Committee**

*Issue:* The Legal Committee of ECTAA met on 17 April 2008, on 23 September 2008 and on 4 November 2008.

The Legal Committee analyzed the proposal for a Directive on consumer rights published by the European Commission beginning of October 2008. The Legal Committee discussed in particular the position that ECTAA should adopt, taking into account its previous position paper on the review of the acquis and the upcoming revision of the Package Travel Directive (see point 5.2.). In addition, the Legal Committee discussed such matters as a study on safety and liability issues relating to package travel, the common frame of reference in the area of contract law, the implementation

of the service Directive, liability in case of knowledge that an airline would be blacklisted, the issue of low cost airlines prohibiting the use of their website (see point 1.1.6), inclusive prices on airline's websites, the opportunity of a legal action against IATA, etc.

## 5.2. Review of the consumer acquis

*Issue:*

In October 2008, the European Commission published a proposal for a Directive on consumer rights, which incorporates 4 existing Directives on doorstep selling, unfair terms in consumer contracts, distance contracts and consumer sales of goods and guarantees. It contains provisions on common definitions, pre-contractual information, information and right of withdrawal in distance and off-premises contracts as well as unfair contract terms.

Package travel contracts are only subject to the provisions on unfair terms. However, the proposal is fully applicable to other travel services, except for the provisions on the right of withdrawal and consumer information in distance contracts, which do not apply to contracts for the provision of accommodation, transport, car rental, catering and leisure services.

*ECTAA position / action:*

Before it was officially published, ECTAA had the opportunity of consulting a draft text of the proposal and informed the Members accordingly. The Legal Committee and the Tour Operator Committee examined both the draft and the final proposal.

Based on the previous positions of ECTAA and taking into account the information at our disposal concerning the review of the Package Travel Directive, the Legal Committee and the Tour Operator Committee recommended to the Board that ECTAA requests the inclusion of the package travel contracts in the scope of the proposal. However, package travel contracts should remain exempted from the provisions on consumer information and withdrawal right for distance contracts and off-premises contracts. At the same time, ECTAA should remain proactive and recall to the European Commission that a number of important aspects will remain covered by the Package Travel Directive and/or will need to be addressed during the review of the Package Travel Directive.

In addition, the Legal Committee also concluded that the definition of off-premises contracts should be restricted to contracts concluded during unsolicited visits of the trader; that both distance contracts and off-premises travel services contracts should be exempted from the right of withdrawal; that some terms included in the black or grey list of unfair terms are not appropriate for travel services.

*Status of project and next steps:*

The proposal has now been sent to the Council and the European Parliament. Within the European Parliament, the competent Committee is the Committee for consumer protection and Internal Market.

## 5.3. Review of the Package Travel Directive

*Issue:*

As the Package Travel Directive is part of the Community acquis on consumer protection, its upcoming review has been confirmed by Commissioner Kuneva, when she attended the bi-annual meeting of ECTAA in May 2008. The preparatory work for the review has now started, The European Commission published a call for tender for the conduct of a

survey to estimate and analyse consumer detriment in the package travel sector. The scope of the research should cover travel packages put together at the request of the consumer. Two cases are particularly referred to. In the first case, on one and the same website, the consumer chooses separate travel components which are priced separately and pays for all selected components in one go. In the second case, the consumer buys one component from one website and then clicks on a hyperlink and goes to the site of an associated company. Neither genuine package travel nor genuinely separate bookings are covered.

*ECTAA position / action:* ECTAA will keep on monitoring the preparatory work of the European Commission on the review of the Package Travel Directive and reiterate the industry position on important issues that must remain regulated and/or need to be addressed in the Package Travel Directive.

#### **5.4. Study on Safety and Liability Issues Relating to Package Travel**

*Issue:* Beginning of 2008, a study on safety and liability issues relating to package travel has been submitted to the Committee on Internal Market and Consumer Protection (IMCO) of the European Parliament.

The authors of the study analysed the current European legal framework and gathered some statistics on accidents in package travel. On this basis, the authors of the study made some recommendations to the IMCO Committee on:

- Amending Article 5 of the package Travel Directive to extend the liability of tour operators,
- Updating and re-enacting of an EU Recommendation on fire safety in hotels as a Directive or a Regulation,
- Imposing on the tour operator a duty to monitor a destination with regard to specific risks and to appropriately inform the consumer,
- Giving the consumer the right to cancel the package travel contract in cases of force majeure related to specific risks of travelling to a given destination,
- Extending the scope of the Package Travel Directive to airlines' websites which also sell accommodation and car hire.

*ECTAA position / action:* Some of the issues raised in the study being controversial and sometimes inappropriate, ECTAA and its Members sent comprehensive comments on the study to the Members of the IMCO Committee. ECTAA opposed all recommendations to extend the liability of tour operators as well as to impose additional monitoring duty of destinations with regard to specific risks, with an automatic right of withdrawal of the consumer if such risks occur.

ECTAA expressed support for improving the legal framework on safety requirements applicable to individual service providers as well as for extending the scope of the Package Travel Directive to airlines' websites.

#### **5.5. Proposal for a new Directive on Timeshare and Long-Term Holiday Products**

*Issue:* In June 2007, the European Commission published a proposal for a new Directive on Timeshare. The proposal had a wider scope than the current Directive 94/47 on Timeshare since it would cover timeshare and long-term

holiday products contracts of a duration of more than a year. Resale and exchange contracts were also covered.

*ECTAA position / action:*

ECTAA supported the inclusion of long-term holiday product contracts in the proposal, as they raise similar issues as timeshare products. ECTAA however expressed concerns about:

- the definition of trader, which could create confusion in respect of national definitions of this notion.
- the definition of long-term holiday product contracts, which must be differentiated from the definition of package travel contracts.
- the need to avoid that multi-annual reservations hotel rooms are considered as a timeshare contract.

*Status of project and next steps:*

End of October, the European Parliament voted in first reading on the proposed Directive and adopted a text reflecting a compromise found between the European Parliament and the Council. Therefore, once the Council will have formally voted by the European Parliament, possibly by the end of 2008, the adoption procedure will be completed.

The Council and the Parliament understood our concerns in respect of the definition of long-term holiday contracts and introduced a recital specifying that the provision of the Package Travel Directive should not be affected by the new Directive. Also, concerning multi-annual reservations of hotel rooms, a recital clarifies that the definition of timeshare should not include in its scope multiple reservations of accommodation that do not imply rights and obligations beyond those arising from separate reservations.

## **5.6. Internet sweep of websites selling air tickets**

*Issue:*

In September 2007, at the initiative of the European Commission, consumer protection enforcement authorities of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Greece, Italy, Lithuania, Malta, Portugal, Spain, Sweden and Norway carried out an EU sweep exercise to check websites selling airline tickets. It aimed at investigating breach of consumer law, focusing in particular on misleading advertising and unfair contract terms.

The first results of the sweep showed that about 50% of the sites checked were not complying with EU legislation. Further to the sweep, national authorities conducted enforcement actions. In May 2008, the Commission released a mid-term report, which showed that :

1. 1 in 3 websites have required follow up enforcement action for breaches of consumer law.
2. The main problems were misleading pricing, irregularities related to contract terms (missing or wrong language version and pre-checked boxes for optional services) and non-availability of advertised offers.

Problems were found in websites of airlines but also in other websites selling air tickets such as travel agencies, tour operators or price comparison sites.

*ECTAA position / action:*

As soon as the conduct of the sweep was made public, ECTAA met the European Commission, in order to have a better understanding of the methodology used to conduct the sweep.

ECTAA reiterated the strong willingness of travel agents and tour operators to comply with the applicable legislation on consumer protection

and to cooperate with the European Commission in order to achieve a high level of compliance with legal requirements.

*Status of project and next steps:*

As a follow up to the sweep, Commissioner on consumer protection, Mrs. Meglena Kuneva, announced the initiation of a dialogue with the industry, with the aim of establishing a level playing field for business that improves the situation for consumer in terms of price information, truthful advertisement, fair commercial practices and contract terms. A first meeting, to which ECTAA will participate, will soon take place.

## **5.7. Classification of Consumer Complaints**

*Issue:*

During the summer 2008, the European Commission launched a public consultation to collect the views of interested parties on the opportunity of developing a harmonized methodology for classifying and reporting consumer complaints across the European Union. The European Commission considers that complaints need to be classified in a harmonized way because it would be an efficient tool to screen markets as well as to assess the adequacy of any legislative initiative.

*ECTAA position / action:*

ECTAA participated in the consultation and expressed itself in favour of taking no action on the issue. Taking into account the large variety of business sector potentially involved, ECTAA considers that it will be very difficult to harmonize consumer complaints classification systems.

## **5.8. Collective Redress**

*Issue:*

Over the year, the European Commission pursued its reflexion on the opportunity to act at European level in order to create a collective redress mechanism for consumers.

In particular, the Commission consulted stakeholders on benchmarks that it had identified and that should be respected by effective and efficient collective redress systems in order to ensure satisfactory redress for consumers. Also, it held consultation workshops on collective redress with consumer representatives, businesses and legal practitioners.

*ECTAA position / action:*

ECTAA considers that the European Commission should first examine whether action in the field of collective redress is really needed, taking into account existing redress mechanisms and legislations at national and European level as well as the principle of subsidiarity established in Article 5 of the EC Treaty. ECTAA recommended carrying out a thorough impact assessment before introducing a collective redress mechanism.

ECTAA provided the European Commission with comments on the benchmarks for collective redress that it had identified and also participated in a consultation workshop with business representatives.

## **5.9. Common Frame of Reference**

*Issue:*

A few years ago, the European Commission launched a project aimed at creating a Common Frame of Reference in the area of contract law. It would provide the European Legislators with a "toolbox" to be used for the revision of existing and the preparation of new legislation. This toolbox could contain fundamental principles of contract law, definitions of key concepts and model provisions. End of 2007, researchers appointed by the

European Commission submitted an interim outline edition of the Draft Common Frame of Reference, which should serve as a draft for drawing up the final Common Frame of Reference.

*ECTAA position / action:*

ECTAA analysed the interim outline edition of the Draft Common Frame of Reference and provided comments to the European Commission as well as to the researchers. ECTAA highlighted that the scope of the interim outline edition was too broad, since it covered issues not related to contract law. ECTAA considers that the Common Frame of Reference should be limited to fundamental principles of contract law, definitions of the main relevant abstract legal terms and model rules of contract law.

## 5.10. Implementation of the Services Directive

*Issue:*

Directive 2006/123 on Services in the Internal Market must be transposed by the Member States before 28 December 2009. Therefore, many Member States are now scrutinising their national requirements on access to and exercise of professions, among which the profession of travel agents and tour operators.

*ECTAA position / action:*

This year, ECTAA dealt with many questions from Members regarding the interpretation of the Services Directive. Also, ECTAA provided Members with information on the regulation of the profession of travel agents and tour operators in the various Member States, with a particular focus on those Member States where a licence scheme is in place and the conditions for obtaining the licence concerned.

## 5.11. Recognition of professional qualifications and Tourist Guides

*Issue:*

According to Article 5 of Directive 2005/36 on the recognition of qualification, when a service provider, such as for example a tourist guide, established in a Member State wants to provide his services in another Member State, a distinction must be made between two situations:

1. If the profession of tourist guide is regulated in his Member State of establishment, the tourist guide will be allowed to provide his services on a temporary basis in any other Member State, without having to apply for the recognition of his qualifications and to provide any evidence of professional experience.
2. If the profession of tourist guide is not regulated in his Member State of establishment, the tourist guide who wants to provide his services on a temporary basis in another Member State, which regulates the profession, the tourist guide will have to provide evidence of two years' professional experience.

In both cases, tourist guides may be subject to an obligation to provide a declaration to the host Member State and to some information obligation.

Member States had until 20 October 2007 to transpose the legislation.

*ECTAA position / action:*

ECTAA monitored the transposition of this Directive in the Member States. ECTAA circulated to its Members a table on this issue, indicating in particular whether Member States require that professionals make a declaration in advance, possibly accompanied with specific documents, when they first move to their territory to provide their services on a temporary basis.

ECTAA also provided advice and assistance to Members who met difficulties in obtaining that their tourist guides freely provide their services in other Member States, as provided in Directive 2005/36.

## **6. FISCAL MATTERS**

### **6.1. Revision of the special scheme for travel agents (Articles 306-310 of the VAT Directive)**

*Issue:* In 2007 the European Commission started infringement proceedings against a number of Member States for the incorrect application of the special scheme for travel agents. The Commission considers that travel services provided by third parties and sold by the agent in his own name for the direct benefit of a corporate customer (e.g. organization of an event or conference) should be taxed according to the special scheme, which means that the latter cannot recover VAT on the agent's supply. Moreover, supplies made between agents must be taxed according to the normal VAT arrangements, preventing agents benefiting from the simplification measures offered by the special scheme.

*ECTAA position or action* ECTAA and GEBTA consider that the application strictus sensus of the special VAT scheme is no longer adapted to the current market for the sale of travel services and would lead to enormous distortions of competition. With this in mind ECTAA and GEBTA call for the revision of the special scheme for travel agents: among other, the special VAT scheme should only apply to supplies made to non-taxable persons, but with the possibility for agents to opt-in supplies made to taxable persons.

*Status of project and next steps:* The European Commission cannot act upon the request for the revision of the special VAT scheme, as a proposal to revise the scheme had been proposed in 2002 and is still pending -since end of 2003- in the Council. ECTAA/GEBTA have contacted the French Council Presidency to put the revision of the special VAT scheme back on the agenda of the Council.

### **6.2. Revision of the place of supply rules (Article 9 of the 6<sup>th</sup> VAT Directive)**

*Issue:* The EU adopted a Regulation beginning of 2008 amending the rules on the place of supply of services - and thus of taxation - to taxable and non-taxable persons. Intermediary services to non-taxable persons will continue to be taxable where the underlying service, in which they intervene, is taxable. However, intermediary services to taxable persons will in future always be taxable where the customer is established. Moreover, the place of supply for certain tourism services will also change, for example restaurant services and short-term hire of means of transport.

*Status of project and next steps:* The new rules will come into effect on 1<sup>st</sup> January 2010. ECTAA and GEBTA are analyzing the effects of these changes for the travel agents.

### **6.3. Revision of the list of services eligible to apply reduced VAT rates**

*Issue:* The European Commission intends to review the list of services eligible to apply reduced VAT rates (annex III of the VAT Directive 2006/112/EC) and has launched a consultation in March 2008 to seek the views of interested stakeholders. In the consultation document the possibility of including restaurant services in the annex is envisaged, while deleting accommodation and international passenger transport services from the list of services eligible to apply the reduced VAT rates.

*ECTAA position / action:* ECTAA is in favour of retaining the reduced VAT rates for all tourism services included in annex III, i.e. hotel accommodation and passenger transport services as well as the inclusion of restaurant services. Moreover, it is seeking to include also intermediary services in connection with passenger transport services and parts of the travel agents' margins relating to services eligible to apply the reduced VAT rate, in order to avoid distortions of competition from direct supplies of service suppliers.

In July 2008 the Commission has presented a first proposal on the revision of the annex III of the VAT Directive. As predicted, restaurant services are proposed to be included, but certain Member States are strongly against this inclusion. A second proposal with a more in-depth revision of the annex III is expected in 2009..

## **7. ENTERPRISE POLICY AND TOURISM**

### **7.1. Annual European Tourism Forum (EFT)**

*Issue:* Each year the European Commission organizes a European Tourism Forum to discuss the challenges of the sector and enhance the cooperation of stakeholders in tourism, notably the tourism industry, civil society, international organizations, European, national and regional institutions and authorities. This year the theme of the Forum was "The European Tourism Offer: Quality and Sustainability vis-à-vis Demand Trends".

*ECTAA position / action:* ECTAA, which is a Member of the EFT Steering Committee, presented a speaker intervening on the panel "Europe's Adaptability to World Tourism Demand Trends", which gave an overview Europe's attractiveness from tourists in emerging markets. The issue of expensive and burdensome visa applications was raised.

### **7.2. Fight against the commercial sexual exploitation of children in tourism**

*Issue:* Commercial sexual exploitation of children

*Status of project and next steps:* ECTAA continues to take an active part in the WTO Work Task Force meetings to protect children from the sexual exploitation in tourism, in order to keep track of all the initiatives carried out in this field and to inform Members accordingly.

## 8. STANDARDIZATION

### 8.1. ISO standards for tourism services

*Issue:* Beginning of 2005 the international standardization body ISO has created a new Technical Committee TC 228 on tourism and related services. The scope of the TC is to standardize “terminology and specifications of the services offered by tourism service providers, including related activities, tourist destinations and the requirements of facilities and equipment used by them, to provide tourism buyers, providers and consumers with criteria for making informed decisions”.

*ECTAA position / action:* Despite strong objections from industry against standardization in the field of tourism, ISO had gone ahead with this Technical Committee. However, industry has managed to obtain a stand still clause until 2010, by which no new standardization project can go ahead without stakeholders’ support. Current work items include standardization in the field of spa and diving services, thalassotherapy services, wellness services, tourist information and reception services in tourist information services, golf services as well as beaches and natural protected areas. Further to ECTAA’s request, the proposal on adventure tourism has been withdrawn and will be redrafted to ensure that this will not overlap with the activities of tour operators.

*Status of project and next steps:* ECTAA will continue to monitor the work items meetings in ISO and the developments of the ISO TC 228.

### 8.2. CEN standards

*Issue:* The European standardization body, CEN, has received funding from the European Commission to develop an 18 months project for the development of a Horizontal European Service Standardization Strategy (CHESSS). The idea is that there are fundamental principles of good service, delivery and assessment that are applicable to any service offering, irrespective of the sector or its primary focus. The report has been completed and will be made public before the end of 2008.

CEN also organized, in collaboration with AFNOR - the French standardization association - at the beginning of 2008, a workshop on “Accessibility for disabled people or people with reduced mobility to Transport and Tourism services”. The workshop concluded that there is a need for standardization in this sector and different solutions were proposed.

*ECTAA position / action:* ECTAA is against standardizing of tourism products or services, for example by reopening discussions on common terminology or classification, etc.

*Status of project and next steps:* ECTAA will analyze the CHESSS report once available and will continue to monitor the project and in general CEN’s activity related to the tourism sector.

## 9. ENLARGEMENT

*Issue:* Since 2005 the EU has started accession negotiations with the candidate countries Turkey, Croatia and FYROM, negotiations will be based on the country's own programmes and their pace will depend on the country's progress in meeting the requirements for membership.

*ECTAA position / action:* ECTAA continues to pay particular attention to the associations of the accession and candidate countries by :

- providing assistance in terms of the interpretation and implementation of the EU acquis and its consequences for the trade.
- attending conferences of the national associations of accession / candidate countries.

## 10. RELATIONS WITH OTHER ORGANISATIONS OF THE TOURISM INDUSTRY

### 10.1. NET

*ECTAA action:* ECTAA continues to closely work together with the Members of NET, which includes HOTREC (hotels, restaurants and bars), ETOA (incoming tour operators), EFCO (camp sites and holiday parks) and IRU (coach, bus, taxi operators).

The NET Members meet regularly and coordinate actions with regard to tourism matters, such as the common visa code (see point 2.2), sustainable tourism (see point 7.1), etc. NET is also regularly consulted by the Tourism Unit of the European Commission on all issues affecting the Industry.

### 10.2. GEBTA

*ECTAA action:* ECTAA and GEBTA continue their collaboration on many common issues, such as those relating to IATA, air matters, consumer protection, competition issues, etc. The GEBTA Secretariat is hosted and managed by ECTAA.

### 10.3. IACA and IFTO

*ECTAA action:* ECTAA is cooperating and exchanging information with IACA and IFTO with the aim of 'speaking with one voice' where the interests of the Members coincide.

### 10.4. WTAAA

*Issue:* In 2005, ECTAA joined forces with ASTA (US), AFTA (Australia), ACTA (Canada), ASATA (South Africa), TAFI (India), TAANZ (New Zealand) to form an informal network called WTAAA.

*ECTAA action:* The WTAAA is now represented at PAPGJC level within IATA. ECTAA was also able to involve its third countries partners on issues such as the ISO standards project, the EU visas procedures, etc.

In 2007, the Members of WTAAA recognized the need to give a legal personality to the organization in order to reinforce its representability. Draft statutes and a draft budget were prepared.

In April 2008, WTAAA was eventually incorporated as an International Association with head office in Brussels. ECTAA has been asked to run the Secretariat, which is hosted in ECTAA's premises. The WTAAA hold its Board meeting in September 2008. IATA issues including the recruitment process of new Travel Agency Commissioners were high on the agenda. The Chairman of the WTAAA will be active to expand the membership towards China, Japan, Russia and the ASEAN countries.

## 11. THE MANAGEMENT OF THE SECRETARIAT

It is important to note that besides its public affairs activities, another important part of ECTAA's activities relate to the management of the Secretariat and of the association at large.

The activities involved in 2008 were as follows:

1. Weekly update of the ECTAA website, in particular the Members' section
2. Organization of meetings, including the bi-annual meetings with the host associations and the numerous meetings of the committees / working groups / steering groups. There were more than 15 committee meetings in 2008.
3. Meetings with officials of the EU institutions, including participation to conferences, public consultations, working groups, etc. In particular the lobby activities linked to the revision of the CRS code of conduct required an unprecedented number of meetings with the Rapporteur, the Shadow Rapporteurs and other MEPs.
4. Provision of information and consultancy to the Members: since the enlargement, this activity has increased considerably and the complexity of the issues raised often require increased research work.
5. Presentations to the annual meetings or conferences of the Members: Member associations require on a regular basis the presence of ECTAA at their annual events to brief their Members on European affairs. The Secretariat made some 15 presentations to Members' conferences in 2008.
6. Publications: the Secretariat's publications include daily memos and updates on EU matters, preparation of working documents and draft common positions, consultation of Members on EU legislative proposals, publication of the yearly ECTAA report on EU policies, the annual Activity Report, etc. All in all, over 1.200 documents were circulated to Members in 2008.
7. Full management of the GEBTA Secretariat, organisation of meetings, etc. Since April 2008, ECTAA is also taking care of the WTAAA Secretariat, which require a limited amount of work so far.
8. Internal management of the association: accounting, legal obligations, human resources, financial management, etc.

# Chapter II: The Working Programme for 2009

Our working programme for 2009 will include the following (the list is indicative and not limitative):

## 1. Transport

- ◆ Monitoring of new developments in the distribution models
- ◆ Interpretative guidelines of the European Commission on the definition of parent carriers in the new Regulation on the CRS code of conduct
- ◆ Access to fares (effectiveness of new air transport Regulation and new CRS Regulation)
- ◆ Protection of agents' commercial data (MIDT & PAXIS)
- ◆ Mergers and concentrations in the airlines' industry in the light of the EU competition legislation and the impact on the distribution.
- ◆ Border control and data transfer issues (biometric passports, PNR data transfer, APIS requirements, etc.)
- ◆ Promote initiative on passenger protection against airline failure
- ◆ Regulation proposals on passenger rights in international coach and maritime transport
- ◆ Green transport package, including two Communications on 'greening' the transport sector and internalizing the external cost of transport
- ◆ Monitoring of the conciliation procedure on the proposal for a Regulation on the liability of sea carriers.
- ◆ PRM assistance Reg. 1107/2006

## 2. IATA issues

- ◆ Pursuing with the review of the Programme and safeguard of agents' interests through negotiations or other actions as required, with the EUROFORUM and the PAPGJC.

## 3. Consumer protection and Internal Market policies

- ◆ Proposal for a Directive on Consumer Rights
- ◆ Monitoring of the work of the European Commission on the review of the Package Travel Directive
- ◆ Monitoring of the work of the European Commission on a possible consumer collective redress mechanism.
- ◆ Follow up of the internet sweep on websites selling air tickets
- ◆ Monitoring of the implementation of the Services Directives in the Member States.

## 4. Fiscal matters

- ◆ Implementation of Directive proposal amending the place of supply rules for services
- ◆ Infringement proceedings concerning the margin taxation scheme - Revision of the margin taxation scheme
- ◆ Review of existing legislation on reduced VAT rates

## 5. Freedom, Security and Justice

- ◆ Proposal for a Framework Decision on the use of Passenger Name Record for law enforcement

- ◆ Regulation proposal on a Community code on visas

## **6 Communication and activities in general**

- ◆ Liaise with the Tourism Unit of the Commission and monitor how it will spend the new budget lines of some 5.000.000€ for specific actions which were approved by the European Parliament
- ◆ Standards (ISO and CEN)
- ◆ Monitor the elections of the European parliament in June 2009 as well as the appointment of the new EU Commission in October 2009
- ◆ Pan-European press conference for the trade press with the presence of Commission's and EP representatives (indicative timing – April 2009)

## **7. Relations with other industry partners**

- ◆ GEBTA, NET, AEA, IACA, IFTO, WTAAA, IATA, etc.