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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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Subject: *Preparation of the Council ("Competitiveness") of 28-29 May 2015*
**Proposal for a Directive of the European Parliament and of the
Council on package travel and assisted travel arrangements,
amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and
repealing Council Directive 90/314/EEC (First reading)**
- Political agreement

I. INTRODUCTION

1. On 9 July 2013, the Commission submitted its proposal based on Article 114 of the Treaty, as well as a communication on "Bringing the EU package travel rules into the digital age".

2. The existing Directive, which was adopted in 1990, created rights for travellers purchasing package holidays, typically consisting of passenger transport and accommodation. A ruling by the Court of Justice from 2002 clarified that the notion of "pre-arranged combination" also covers travel services combined by a travel agent at the customer's express request just before the conclusion of a contract between the two.
3. However, back in 1990 the travel market was much simpler and on-line sales did not exist. That being the case, the Commission considers that it remains unclear to what extent modern ways of combining travel services are covered by the existing Directive and it has highlighted significant differences in the legislation of the Member States due to the minimum harmonisation approach.

II. STATE OF PLAY

4. The examination of the proposal by the Working Party on Consumer Protection and Information started in September 2013 and has since continued uninterrupted.
5. On 6 September 2013, the Council decided to consult the Economic and Social Committee, which adopted its opinion on 11 December 2013. On 19 September 2013, the Council decided to consult the Committee of the Regions, which took the decision not to deliver an opinion.
6. The European Parliament adopted its position at first reading on 12 March 2014. In November 2014 the current European Parliament appointed Ms Birgit COLLIN-LANGEN (PPE/DE) as rapporteur.
7. On 4 December 2014, the Council (COMPET) adopted a General Approach which served as a mandate to the Presidency to start negotiations with the European Parliament (doc. 16054/14).

8. Four informal trilogues were held on 4 February, 5 March, 22 April and 5 May 2015. At the meeting on 5 May an overall compromise package was provisionally agreed by both the EP and the Presidency which aims to strike a fair balance between the different interests.
9. After the fourth informal trilogue on 5 May work has continued at technical level between EP, Presidency and Commission to align the recitals with the legislative text and finalise the drafting. The Presidency has on a continuous basis kept delegations informed about the results of this work.
10. The entire final compromise package in its consolidated version is set out in document 8969/15¹.

III. FINAL COMPROMISE PACKAGE

11. On 6 May 2015 the Committee was debriefed about the successful outcome of the fourth informal trilogue. The final compromise package identified and endorsed by both co-legislators represents a fair balance between the different points of view expressed in particular between the need to protect the rights of consumers rights and the need not to impose unnecessary burdens on businesses, especially SMEs.

In the following the key provisions of the compromise package identified at the informal trilogue on 5 May 2015 are listed:

¹ For the ease of delegations the final compromise text is also set out in the document 8880/15 (four column document)

i) Click through (article 3 (2) a (v))

As referred to above the compromise package elaborated by Presidency, EP and Commission is based on the inclusion of "click throughs" under the definition of a package while safeguarding the provisions on the insolvency protection scheme proposed by the Council. Concretely, the EP agreed to include "click-throughs" under the definition of package when at least two different types of travel services are purchased from separate traders through linked online booking processes and when the traveller's name, e-mail address and payment details are transmitted between traders within a 24 hours limit. Moreover, a review clause was added so that the Commission, three years after the entry into force of the Directive, will assess the effectiveness of this provision, in particular the definition of "click-throughs" and may come up with legislative proposal.

ii) Insolvency protection (article 15 and 17 and related recital):

The EP has accepted to follow the Council's approach concerning insolvency protection. However, the text has been further clarified by specifying in article 15 paragraph 2 that "*The security shall be effective and shall cover reasonably foreseeable costs*".

iii) Accommodation in case of unavoidable and extraordinary circumstances (article 11 (5) and recital 30):

As regards the unavoidable and extraordinary circumstances delaying the return of the traveller (Article 11(5) and Recital(30)) the EP as part of an overall compromise accepted the Council's proposal to limit the accommodation in equivalent category (if possible) to a maximum number of 3 nights unless Union legislation is providing differently. In this respect the corresponding recital 30 was amended in order to align it with the corresponding Article.

iv) Tacit vs explicit approval of alteration of significant contract terms (article 9 (2))

The compromise identified by the Presidency, EP and Commission on this issue foresees that in the case of alteration of significant contract terms the organiser shall inform the traveller of the reasonable time-limit within the traveller has to inform the organiser of his decision (to terminate the contract).

v) Compensation for non-material damage (Article 12(2) and recital (29))

Concerning compensation for non-material damages (Article 12(2)) the EP accepted not to make reference to it in the article but to move it to the corresponding recital.

vi) Business travel (article 2(2)(c))

In the light of the overall compromise package the European Parliament accepted the language of the exemption of business travellers as agreed by Member States at the COREPER at April 17.

vii) Car rental (article 3 (1) c):

Following a request by the European Parliament to include also motorbikes under car rental the Presidency invites delegations to consider the inclusion of "motorcycles requiring a Category A driving license under Article 4 (3) (c) of Directive 2006/126/EC". This category of motorcycles is reserved for larger motor bikes with no limit to the engine size or power.

viii) Contracts concluded by telephone (Article 25)

The compromise identified at the trilogue foresees that for contracts concluded by telephone Article 8 paragraph 6 of the Consumer Rights Directive² applies.

² Directive 2011/83/EU

ix) Commission's declaration on the revision of guidance on the application of the Unfair Commercial Practices Directive (UCPD)

The EP accepted to drop amendment 122 on article 17a (new) when the Commission agreed to make a declaration on the revision of the UCPD. The new guidance will also address the issue of commercial practices, in particular travel service providers who market their services online offer additional services in an unclear or ambiguous manner, such as hiding the option of not booking any further services, by taking into account the view expressed by the European Parliament.

x) Transposition (article 27):

The EP accepted the 30 months transposition / application deadline for Members States.

12. Summing up, the key elements of the compromise package reflect in a fair and balanced way the different points of view expressed in the course of negotiations. In particular, the compromise as it stands now keeps the spirit of the General Approach of the Council which aims to provide travellers and business with a simple but effective and future-proof framework which is also enforceable on the ground.

IV. CONCLUSION

13. **The Permanent Representatives Committee is invited to endorse the final compromise package reached with the European Parliament at the fourth informal trilogue as set out in document 8969/15 and to submit it to the COMPET Council on 28 May 2015 in view of reaching a political agreement.**