



**Groupeement des Unions Nationales des Agences et Organismes de  
Voyages de l'UE**  
**Group of National Travel Agents' and Tour Operators' Associations**  
**within the EU**  
Association Internationale sans but lucratif

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Per e-mail

Mr. Peter FAROSS  
Head of Unit  
European Commission  
DG Energy and Transport  
Services of general economic interest and  
users' rights  
B-1049 Brussels

Brussels, the 29<sup>th</sup> of July 2005

Dear Mr. Faross,

**Re: Communication on strengthening passenger rights within the European Union  
and public consultation on rights of passengers in international bus and coach  
transport**

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We take the liberty of contacting you in the frame of the Communication issued by the Commission on 16 February 2005 on strengthening passenger rights within the European Union and the recent public consultation launched on rights of passengers in international bus and coach transport following the Communication.

As you know, ECTAA represents the travel agents and tour operators of 24 Member States, as well as those established in the EU candidate countries and 2 other European countries. Altogether we represent some 80 000 travel agents and tour operators.

Generally speaking ECTAA is not against enhancing passenger rights insofar as they are justified, proportionate to the objective they aim to achieve and reasonable in relation to the cost they engender, which are ultimately borne by the customers themselves. We would thus strongly encourage the Commission to consult the stakeholders before any legislative text is drafted and to carry out a thorough impact and needs assessment study in line with the Better Regulation principles.

With this in mind we welcome very much the Commission's public consultation on passengers of international bus and coach transport and will respond to the questions raised in the working document after consultation of our Members.

May we at this point in time make a general comment on passenger rights measures? While the existing legislation and the legislative initiatives in the pipeline concern in the first place the transport undertakings, often the obligations resulting thereof have a direct impact on travel agents and tour operators.

In the past couple of years, we have seen a proliferation of passenger rights legislations, which do not always take due account of the nature of businesses in the tourism sector. More specifically, travel agents and tour operators are often categorized as transport providers and are for the sake of simplicity subjected to the same stringent obligations as transport providers.

In at least four legislative initiatives we have identified the same problems relating to the fact that travel agents and tour operators are considered in the same way as transport providers. However the activity of transport provider, travel agent and tour operator is very different from both a legal as well as practical point of view; they are subject to different liability regimes and fulfill different obligations in the supply chain.

A tour operator is not a transport provider; it is not required to have an operating air carrier license in accordance with Council Regulation 2407/92/EC nor is it considered to be a railway undertaking licensed according to Council Directive 95/18/EC. The tour operator is simply a contractor of transport services. His responsibilities towards his customers are set down in the package travel Directive 90/314/EC, which provides for an extensive liability coverage. Under Article 5 of this Directive the tour operator is liable 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 to pursue those other suppliers of services.

If legislation considers that tour operators are transport providers and hold them equally responsible for compliance with the obligations under the legislation, the tour operator may lose his right of redress against his suppliers in accordance with Article 5 of the package travel Directive. We thus consider that any obligations resulting from passenger rights legislation should rest with the transport undertakings.

Moreover, from a practical point of view, tour operators are not physically present at the place where the transportation service is provided (airport, train station, port, etc.) so that it cannot comply with many obligations relating to the provision of information and assistance foreseen in the various legislative proposals on passenger rights. Also, the legislative texts do not take into account the different nature of the product provided by a tour operator and by a transport provider; while transport is the single service provided by transport undertakings, transport only constitutes one element of a package which is priced differently (most often cheaper due to purchase of seat allotments) and has a different time sensitivity (transport constitutes only a fraction of the overall holiday package). Thus any compensatory schemes and processes must be adapted to the specificities of the tour operating business. For example, the denied boarding compensation Regulation obliges tour operators to reimburse the price of a ticket in certain circumstances, even though the package is sold at an all-inclusive price, i.e. there is no display of the price of the air ticket and reimbursement of the ticket is not evident.

As regards travel agents, in general Member States have made a distinction between tour operators/organizers and travel agents/retailers. Retailers are intermediaries, who act on behalf of their principal, either the transport undertaking or a tour operator. As such they do not form part of the contract with the passenger and do not assume any responsibility for the actual provision of the travel service. The tour operator on the other hand acts in his own name and is responsible for the proper performance of the obligations resulting from the contract, as they are the contracting partner of the customer.

In their capacity as intermediaries travel agents or retailers have to carry out the instructions of their principal. Thus, there is no need to cover travel agents in the legislative texts on passenger rights, as their principals, who are covered by Community legislations, will pass on the necessary instructions to their intermediaries.

This has also been recognized in the new Regulation 261/2004/EC on denied boarding, cancellation and delays, which only refers to organizers in the meaning of Article 2, point 2, of the package travel Directive and not to retailers (point 3 explicitly taken out of the scope of application). Unfortunately we find retailers again in the Regulation proposal on the identity of the operating carrier.

We hope the Commission will take due account of these differences in any future legislative proposals and we remain at your disposal to provide further explanations on the responsibilities of travel agents and tour operators.

We thank you for your kind attention and remain,

Yours sincerely,

Michel de Blust  
Secretary General