



THE EUROPEAN TRAVEL AGENTS'  
AND TOUR OPERATORS' ASSOCIATIONS

Ref: AD09-285/123

## ***ACTIVITY REPORT***

**November 2008 – November 2009**

# Introduction

Dear Board Members,

Dear Members,

Please find enclosed the 13<sup>th</sup> edition of the ECTAA yearly activity report covering most of 2009.

This year has been very difficult for the whole industry across Europe, as all sectors of the tourism trade have been in one way or the other very seriously affected by the current economic crisis. But the economic situation didn't stop the EU legislators in their regulatory activities.

As you will read from the attached report, our association has been very busy this year in Brussels and Strasbourg to make the voice of our industry heard in a great number of matters and I will just mention a few of them: transport policy (CRS and passenger rights), competition policy (airlines' mergers and alliances), consumer protection policy (consumer rights), justice and home affairs (EU code on visas), internal market (recognition of professional qualifications of tourist guides), fiscal matters (TOMS and place of supply rules for services), standardisation (ISO & CEN), international relations (WTAAA), IATA matters, etc...

On a daily basis, our Secretariat in Brussels, with the support of the Board, our technical committees and the Members, has been advocating the views and positions of the trade with the European Commission, the European Parliament, the Council, the Member States' Permanent Representations, etc... The Secretariat also monitored and analysed a considerable amount of information and documents emanating from the EU Institutions in order to brief the Members, prepare ECTAA's papers and common positions, etc...

The proposed working programme for 2010, which has also been reviewed by the Strategic Committee, shows that 2010 will be another very busy year.

In particular, our trade will be confronted with the probable revision of a directive, which is one of the legislative cornerstones of our Industry: the Package Travel Directive. This revision will probably have an even greater impact on our enterprises than the repercussions the package travel Directive had when it was introduced in 1992.

With this in mind, the lobby work in Brussels will be of strategic importance in 2010. ECTAA and the entire membership will need to act in concert to ensure that a united voice will express the strong views of the industry. Past experience indeed suggests that failing to reach harmonized views will help the consumer lobby to further claim more consumer protection, of which the costs and burdens will strike our enterprises. A strong and well-coordinated lobbying both at European and national level will thus be the key for a successful representation of our industry.

Lastly, I would like to thank here the Vice Presidents and the Treasurer, all the Members of the Board, the Chairmen and the Members of the committees for their active contribution and support during the year. May I also thank on behalf of all Members our Secretariat team in Brussels for all the work done in 2009.

Akis KELEPESHIS

President

Brussels/Nicosia November 2009

## 1. TRANSPORT

### 1.1. Air Transport

#### 1.1.1. Future of Transport

*Issue:* In June 2009 the European Commission adopted a Communication on “A sustainable future for transport: Towards an integrated, technology-led and user friendly system”, which is a follow-up to the White Paper issued in 2001 that sets an agenda for transport policy throughout 2010.

The Communication aims at stimulating further debate in order to identify concrete policy proposals for its next Transport White Paper, scheduled for 2010.

*ECTAA position / action:*

ECTAA has participated to the consultation process and comments were made on the policy proposals highlighted in the Communication.

#### 1.1.2. Regulation 80/2009 on a Code of Conduct for CRSs

*Issue:* The Regulation on a new Code of Conduct for Computerised Reservation Systems (CRSs) came into force on 29 March 2009. It contains a new definition of parent carriers, which is open to interpretation. The Regulation prohibits 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 and is therefore applicable to IATA PaxIS.

*ECTAA position / action:*

Concerning the definition of parent carriers, ECTAA indicated to the European Commission the need for practical guidelines, which would take into account the economic influence of airlines on CRSs.

Concerning marketing data identifying agents, ECTAA monitored and exchanged with the European Commission on the procedures used by CRSs to collect agents' agreement. In respect of IATA PaxIS, considering that it continues to identify all accredited agents without their agreement. ECTAA and GEBTA filed on 11 September 2009 a complaint against IATA for infringement of the Regulation concerning the identification of agents in data used for other purposes than billing and settlement.

*Status of project and next steps:*

The European Commission drafted guidelines on the definition of parent carriers, which were published on 6 March 2009. They are based on theoretical concepts of competition law and do not indicate which airlines fall under the definition.

The European Commission is currently analysing the complaint of ECTAA and GEBTA on the identification of agents in IATA PaxIS without their agreement.

#### 1.1.3. Regulation 1008/2008 on Air Services

*Issue:* The Regulation on Air Services came into force on 1 November 2008. It deals 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.

Some airlines continue to discriminate in access to fares based on the place of establishment of the agent, in particular by not showing certain fares or classes in CRSs. Moreover, the information on air fares and supplements is not always correctly provided by airlines.

Some Member States have not clearly identified the national authority in charge of enforcing the Regulation.

*ECTAA position / action:* ECTAA has drawn the attention of the European Commission on issues about the application of the Regulation.

*Status of project and next steps:* The European Commission has set up meetings with national authorities to address issues raised by the application of the Regulation. The next meeting should take place at the end of 2009 or beginning of 2010.

#### **1.1.4. Check List for compliance of websites selling air tickets with consumer legislation**

*Issue:* Beginning of 2009, the European Commission drafted a list of 14 questions to check compliance of websites selling air tickets with consumer protection legislation such as the Unfair Commercial Practices Directive and the Unfair Contract Terms Directive as well as with the obligations on price transparency provided in the Air Services Regulation.

The European Commission commissioned a study to check compliance of airlines' and travel agents' websites with that list (hereafter the health check study). The European Commission concluded from the results of the study that travel agents' compliance with some of the questions was problematic.

*ECTAA position / action:* ECTAA participated in the drafting of the check list by the European Commission. ECTAA strongly opposed some of the questions, which were going beyond legal requirements. Thanks to our strong intervention, and even though ECTAA did not agree with all questions, the final check list was much reduced compared to the first draft and more in line with actual legal requirements.

ECTAA circulated the final check list to all Members, advising them to distribute that check list to all their member online travel agents so that they could make sure that their websites met the requirements of the check list. ECTAA also circulated to Members draft letters to be sent to their national authorities, in which each question of the final check list was commented and criticized.

After completion of the health check study, ECTAA liaised with the European Commission to examine the results of the study for travel agents. These contacts allowed that, contrary to airlines, no travel agents were named and shamed by the Commissioner for consumer protection when the results of the study were made public during a press conference. The responsible Civil Servant made a presentation at ECTAA's bi-annual meeting in Budapest. ECTAA provided contact information to the European Commission to allow dissemination of information to those travel agents which are not ECTAA Members.

*Status of project and next steps:* The Legal and Air Matters Committee analysed the problematic issues identified by the European Commission for online travel agents and defined ECTAA's position. That position has been recently submitted to the European Commission.

#### **1.1.5. Fuel Surcharges**

*Issue:* Since the end of 2008, an increasing number of airlines have modified their policy on refund of fuel surcharges, with the result that fuel surcharges are not refundable when the fare is non-refundable.

*ECTAA position / action:* ECTAA reported this issue to DG TREN and DG SANCO in April 2009 and again in October 2009, substantiated by a collection of examples provided by the Members. ECTAA requested for transparency and consistency in the treatment of fuel surcharges.

*Status of project and next steps:* The authority to act against airlines' practices on the basis of existing legislation is with national authorities. DG TREN has raised the issue with national authorities and with airlines' associations. It may further address the issue in the coming

meetings with national authorities on the application of the Air Services Regulation (see point 1.1.3 above). DG SANCO received on 3 November 2009 a report from national authorities on airlines' taxes, fees, charges and surcharges, which states that some airline practices in relation with fuel surcharges are in contradiction with the EC Directive on Unfair Commercial Practices. The report also recommends for future Community legislation to include operational costs into the fare. ECTAA will continue to request for consistent and transparent treatment of fuel surcharges.

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

*Issue:* The European Commission received in January 2009 the results of a study on consumer protection against airline bankruptcy, which completed a previous 2005 study. Members of the European Parliament called for the European Commission to initiate a proposal to protect passengers. The European Commissioner for Transport announced in September 2009 his intention to tackle the issue.

*ECTAA position / action:* ECTAA provided comments to the European Commission on its latest study and called again for a protection mechanism, which ensures protection from European and third country carriers, as well as a level playing field with tour operators and travel agents. ECTAA supported MEPs' action. It also contributed to the European Commission's first steps in its preparatory work.

*Status of project and next steps:* DG TREN is carrying out the preparatory work for a legislative instrument and will consult stakeholders (see point 1.1.7). ECTAA will participate to this preparation and consultation, and will follow up with the European Parliament.

#### **1.1.7. Regulation 261/2004 on compensation and assistance in case of denied boarding, cancellation or long delay of flights**

*Issue:* The European Commission is carrying out a second evaluation of the application and enforcement of the Regulation by airlines and National Enforcement Bodies (NEBs) respectively.

*ECTAA position / action:* ECTAA participated to a study carried out by an external consultant in the frame of this second evaluation. ECTAA pointed out some shortcomings by airlines and NEBs but in general did not report major problems. As regards possible improvements in the Regulation, ECTAA pointed out the need for clarification of certain terms, such as "final destination", notably in connection with through tickets. It also suggested the inclusion of schedule changes in the scope of the Regulation.

*Status of project and next steps:* The European Parliament is calling for the revision of the Regulation, as they are receiving many complaints from citizens. The Commission will launch a major public consultation on passenger rights, which will cover (i) luggage incidents, (ii) passenger protection against airline bankruptcy, (iii) application and enforcement of Regulation 1107/2006 on the rights of Persons with Reduced Mobility when travelling by air and (iv) application and enforcement of Regulation 261/2004. ECTAA will participate to the consultation.

#### **1.1.8. Decision of the European Court of Justice concerning Regulation 261/2004 on compensation and assistance in case of denied boarding, cancellation or long delay of flights**

*Issue:* The European Court of Justice has issued a decision in the joined cases C-402/07 and C-432/07, which states that a flight delay, however long, cannot be

considered to be a flight cancellation in the meaning of the Regulation 261/2004. However, the Court considers that the inconvenience and damage resulting from a delay due to flight delay or a cancellation is the same and thus passengers should also be entitled, under certain circumstances, to receive compensation in case of long delays as is the case for flight cancellations.

*ECTAA  
position /  
action:*

ECTAA informed the Members about this court decision.

*Status of  
project and  
next steps:*

The decision of the European Court is binding and final. ECTAA will analyse the impact of this decision for the industry.

### **1.1.9. Luggage incidents**

*Issue:*

The European Commission carried out a consultation in March 2009 on baggage incidents in air transport, including baggage delays as well as destruction, loss and damaged baggage. This is covered by Regulation 889/2002 on air carrier liability in the event of accidents.

*ECTAA  
position /  
action:*

ECTAA participated to the consultation and highlighted a number of problems that customers encounter when making use of their right to claim compensation for baggage delays and destruction, loss or damage to baggage under Regulation 889/2002.

*Status of  
project and  
next steps:*

The European Commission will launch a major public consultation on passenger rights, which will cover (i) luggage incidents, (ii) passenger protection against airline bankruptcy, (iii) application and enforcement of Regulation 1107/2006 on the rights of Persons with Reduced Mobility when travelling by air and (iv) application and enforcement of Regulation 261/2004. ECTAA will consult with Members and participate to the consultation.

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

*Issues:*

The Air Matters Committee met twice in 2009 jointly with the Technology Working Group, on 19 February and on 14 October. The issues dealt with in those meetings focused on industry affairs and European initiatives in the pipeline to reinforce air passenger rights. The Committee also worked on the Check List on air ticket website compliance with consumer rights (see point 1.1.4). It reviewed the implementation of certain European legislation, such as the Air Service Regulation (see point 1.1.3), the Code of Conduct on CRSs (see point 1.1.2) and the denied boarding Regulation. It discussed IATA affairs, including frequency of remittance and financial risk management, the end of the Euroforum and ADMs (see point 4). The Committee also dealt with border controls and advance information issues, the confidentiality of data provided to airlines, information obligations of travel agents, fuel surcharges (see point 1.1.5), the Lufthansa Preferred Fare Programme, the policies of low cost airlines towards intermediaries, etc.

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

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

*Issue:*

In December 2008 the Commission published a Regulation proposal on rights of passengers in bus and coach transport. The legislative proposal introduces similar rights for passengers as those adopted in other modes of transport (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 expressed various concerns, both at the level of the European Parliament and of the Council, concerning the proposal, in particular on the following issues:

- Definition of travel agent, tour operator and carrier;
- Liability regime, which appears to be too constraining for bus and coach undertakings;
- The need for a clause on exceptional circumstances;
- Transmission of notification of PRM requirements.

*Status of project and next steps:*

In April 2009 the European Parliament adopted its legislative resolution on the proposal. The Parliament took on board ECTAA's suggestions on the definitions of ticket vendor, tour operator and transport contract, as well as some provisions on advance payments and exceptional circumstances. The Council is expected to reach a political agreement in December 2009.

### **1.2.2 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.

The European Parliament and the Council of the EU have reached in March 2009 an agreement in second reading on the reintroduction of the 12 days derogation for coach drivers engaged in *single occasional services* on international carriage of passengers. Drivers will be therefore entitled to work on single services of up to twelve days before taking the compulsory rest period. However, after a 6 days trip a driver will not be allowed to work an additional 4 day service and will have to take his rest period.

*ECTAA position / action:*

ECTAA has been calling for the re-instatement of the 12 derogation, without the single service limitation and for a quick completion of the decision making process.

*Status of project and next steps:*

The Regulation 1073/2009, which provides for the 12 derogation for *single occasional services* on international carriage of passengers, was published on 14 November 2009 in the EC Official Journal. The 12 day derogation will apply from 4 June 2010.

## **1.3. Transport by sea and inland waterway**

### **1.3.1 Rights of passengers traveling by sea and inland waterway**

*Issue:*

In December 2008 the Commission published a Regulation proposal on rights of passengers in bus and coach transport. The legislative proposal introduces similar rights for passengers as those adopted in other modes of transport (rail and air), such as compensation in case of accident and lost / damaged luggage, assistance to PRMs, compensation in case of cancellations / delays, etc. Travel agents and tour operators will have similar obligations as those introduced in other modes of transport, e.g. information requirements, PRM assistance notifications, etc.

*ECTAA position / action:*

ECTAA expressed a number of concerns, both at the level of the European Parliament and of the Council in respect of definitions, scope of derogations for cruise journeys, transmission of notification of PRM requirements, etc.

Most of the issues raised by ECTAA have been addressed by the EP or the Council or both. The most contentious point now is the definitions introduced by the Council, which do not clearly distinguish between carrier, travel agent and tour operator.

*Status of project and next steps:*

The legislative proposal is now in second reading before the European Parliament. ECTAA is liaising with the EP, the Council Presidency and the Commission to get a correct definition of travel agent and tour operator.

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

*Issue:*

Following conciliation between the Council and the European Parliament, Regulation 392/2009 on the liability of carriers of passengers by sea in the event of accident was adopted in April 2009.

*ECTAA position / action:*

Throughout the legislative process, ECTAA expressed various concerns, both at the level of the European Parliament and of the Council, notably on the following issues:

- the exclusion of tour operators from the definition of the notion of carrier,
- the limitation of the scope of the proposal to sea carriage,
- the obligation to make advance payment in case of death should exclusively fall on performing carrier,
- only the carrier and/or the performing carrier should have information obligations, not tour operators.

*Status of project and next steps:*

The Regulation, which only applies to carriage by sea, will enter into force on 31 December 2012 at the latest.

Tour operators may be considered as a carrier since the definition of this notion remained unchanged. In addition to its obligation under the Package Travel Directive, if the tour operator is considered as a carrier or performing carrier, he will have to provide the information required by the Regulation

In order to help Members prepare for the entry into force of the Regulation, ECTAA sought clarifications from the European Commission concerning insurance certificates that are annexed to the Regulation as well as on the information obligation. The European Commission confirmed that those information obligations do not lie on travel agents.

## 2. FREEDOM, SECURITY AND JUSTICE

### 2.1. Regulation 810/2009 establishing a Community code on visas

*Issue:* The Council has adopted end of June the Regulation establishing common rules on the procedures and conditions for issuing short-stay visas (visas not exceeding three months in any six-month period).

The new rules make the visa application procedure more transparent and more consumer-friendly.

However, it maintains the current high level of visa fees (60€) and introduces the possibility to revise these fees to reflect administrative costs and to charge extra fees if an external service provider is involved for the collection of biometric data required under another legislation.

*ECTAA position / action:*

ECTAA lobbied to obtain a visa application system that is the least cumbersome (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.). Unfortunately the Council was reluctant to reduce the visa fees but some of the suggestions of ECTAA were taken into account.

*Status of project and next steps:*

The Regulation will come into force as from 5 April 2010.

### 2.2. 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:*

In 2009, ECTAA monitored the work of the Council on the proposed framework Directive and informed the Members accordingly. An important element of concern for ECTAA was that the Council had amended the text to provide that Member States could decide to put on air carriers or their agents or other ticket sellers the obligation to inform passengers on the use of their PNR. ECTAA and its Members strongly opposed that modification, arguing that information obligations should only fall on air carriers, to which the proposed Framework Decision will only apply.

*Status of project and next steps:*

In October 2009, the Council decided to suspend discussions on the proposed Framework Decision until the Lisbon Treaty has entered into force (NB: Lisbon Treaty has been eventually ratified).

### 3. COMPETITION POLICY

#### 3.1. Mergers and alliances between airlines

*Issue:* The European Commission controlled in 2008 and 2009 the takeovers by Lufthansa of Brussels Airlines, British Midlands and Austrian Airlines.

Moreover it has opened formal proceedings on the projects of closer alliances between British Airways/American Airlines/Iberia on one side and Lufthansa/Continental/United/Air Canada on the other side. More recently, a merger proposal between BA and IB has been announced and will be notified to the competition authorities. The European Commission also launched with the US DoT a joint research project on airline alliances.

*ECTAA position / action:*

ECTAA provided comments to the European Commission on the Lufthansa takeovers. ECTAA responded besides to a public consultation on the application of the EC Regulation on merger control, in order to recommend that the European Commission require commitments from merging airlines, in order to prevent unfair competition vis-à-vis travel agents and to protect passengers' rights and interests in a reasonable balance compared to the interest of airlines.

ECTAA responded to questionnaires from the European Commission on the two sets of agreements for closer cooperation between certain airlines within Star Alliance on one side and within Oneworld on the other side. ECTAA also contributed in September 2009 to the study of the European Commission on alliances in transatlantic air services, with a recommendation to extend the analysis of airline alliances' effects to effects on distributors and to require that alliances which want to get closer demonstrate benefits.

*Status of project and next steps:*

The European Commission has sent a statement of objection to BA/AA/IB and is pursuing its investigations into the proposed cooperation between LH/CO/UA/AC and on AF-KLM Delta. ECTAA will continue to monitor and to contribute to control procedures of mergers and alliances between airlines.

#### 3.2 Compliance of the IATA Passenger Agency Programme with European Competition law

*Issue:* ECTAA reported to DG Competition of the European Commission concerns raised by the IATA Passenger Agency Programme under European competition law, in the framework of the consultation on barriers to online services in January 2009 and in a specific letter in March 2009. The issues at stake are notably more frequent remittance to BSPs, onerous financial criteria, the distribution of sensitive data on agents through PaxIS and the absence of pan-European accreditation and BSP. Following a meeting of ECTAA with DG COMP in May 2009, the European Commission sent a questionnaire to ECTAA on the absence of pan-European accreditation and settlement system.

ECTAA explained in the answer to the questionnaire the detrimental effects of the systematic requirements under the IATA Agency Programme for settlement on a national/local basis. ECTAA underlined that this issue is only part of the burdens put on agents under the IATA Programme.

ECTAA raised related issues in its response to the consultation on the review of competition rules applicable to vertical agreements in September 2009.

*Status of project and next steps:*

ECTAA will follow up with the European Commission on compliance of the IATA Passenger Agency Programme with European competition law.

## **4. IATA**

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

*Issue:* The three posts of Travel Agency Commissioners were going to be vacant by the end of 2008.

*ECTAA position / action:* A working group, composed of ECTAA/GEBTA, WTAAA and IATA, agreed on a compromise revision of the TAC programme and on a TAC job profile in view of recruiting skilled and impartial TACs by January 2009.

ECTAA participated to the selection process of candidates, which led to the appointment of three new TACs in January 2009. ECTAA participated in addition to a briefing session of the new TACs on 12 March 2009.

### **4.2. PAPGJC and Euroforum**

*Issue:* ECTAA participated to the Passenger Agency Programme Global Joint Council (PAPGJC), which met on 13 March 2009 and 17 September 2009. It dealt mainly with the agenda of PAConf/32 (see point 4.3). It agreed to amend proposals on the PAConf agenda against fraudulent activities, on APJCs' activities and on financial criteria for agents operating across borders. It reviewed besides the TAC budget and abusive ADMs. Airlines' representatives declined an invitation to carry out a reflection on a reform of the Passenger Agency Programme.

ECTAA submitted in January 2009 a series of items for discussion in the Euroforum. However, IATA did not convene any Euroforum meeting and airlines proposed to repeal the Euroforum. ECTAA called to maintain the Euroforum or at least a forum to discuss European issues.

*Status of project and next steps:* PAConf/32 repealed the Euroforum with effect on 1 November 2009 and introduced a possibility for European issues to be discussed in special PAPGJC meetings with additional delegates representing European countries.

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

*Issue:* ECTAA submitted proposals to PAConf/32 and monitored other relevant proposals on the PAConf agenda.

PAConf/32 took place on 22-23 October 2009. It adopted changes to local financial criteria and remittance frequency in Estonia, Lithuania, Latvia, Bulgaria, Czech Republic, Slovakia, Ireland, Netherlands, Poland and Scandinavia. It also adopted a unilateral proposal from airlines to modify the French financial criteria, which ECTAA is following up with SNAV.

PAConf rejected the ECTAA/GEBTA proposals on reinstatement after default, on interlocutory relief and on accreditation for locations without a physical sales outlet.

It adopted some proposals despite the opposition of ECTAA, in particular the global application of Resolution 818g.

#### **4.4. BSP and the Payment Services Directive**

*Issue:* ECTAA inquired with the European Commission on the application of the Payment Services Directive 2007/64 to Billing and Settlement Plans (BSPs). The issue is whether BSPs carry out payment services within the meaning of the Directive and are therefore subject to the obligations of payment services providers, including safeguarding requirements, rules on consent, liability for unauthorised transactions, defective execution, etc.

*Status of project and next steps:* DG MARKT of the European Commission has indicated that it would need further insight in order to appreciate BSP activities and would like to meet ECTAA and IATA to further discuss the issue. ECTAA has invited IATA to meet DG MARKT together to obtain clarifications.

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

#### **5.1. Legal Committee**

*Issue:* The Legal Committee of ECTAA met on 23 April 2009 and on 22 October 2009. The Committee analysed the work of the European institutions on the proposal for a Directive on consumer rights and its consequences for tour operators and travel agents, recommending amendments of ECTAA's position accordingly (see point 5.4.). It also discussed the upcoming revision of the Package Travel Directive (see point 5.5.) and the main issues that it should address. The Legal Committee worked on the Check list for compliance of websites selling air tickets with consumer legislation (see point 1.1.4.). The Legal Committee exchanged information on the implementation of the Services Directive in the Member States (see point 5.8.). In addition, the Legal Committee discussed such matters as the application of the new CRS Code of Conduct (see point 1.1.2.), the application of the Payment Services Directive (see point 4.4.), Ryanair's policy against intermediaries, case law on sequential use of coupons, etc. The Legal Committee contributed besides to the preparation of the complaint of ECTAA against IATA for infringement of the Regulation 80/2009 on a CRS Code of Conduct in relation with PaxIS.

#### **5.2. Tour Operator Committee**

*Issue:* The Tour Operator Committee met on 15 October 2009. The Committee examined the proposal for a Directive on consumer rights (see point 5.4.) as well as the upcoming revision of the Package Travel Directive (see point 5.5.). It also defined its working programme for 2010. In addition, it exchanged views on the results of the questionnaire on Tour Operators' operational issue as well as on passengers' rights in road and maritime transport (see points 1.2.1. and 1.3.1.). The Tour Operator examined a charter and methodology on fire safety in hotels, proposed by HOTREC, the European federation of hoteliers (see point 5.3.).

### 5.3. Fire Safety in Hotels

*Issue:* Further to the intention of the European Commission to review the existing legislation on fire safety in hotels, HOTREC has proposed to the European Commission a project aimed at improving fire safety in accommodation.

Originally, the project aimed at developing a user-friendly tool for hotel management across Europe, which will facilitate ensuring fire safety, while complying with the existing sets of national, regional and/or local regulations and it includes:

- The development of a common methodology that combines already existing methodologies on fire safety in hotels;
- A Charter that HOTREC's national associations will sign to spread the methodology among their members.

However, during its General Assembly, HOTREC decided to delete the Charter from their project. Only the methodology would remain and stand as a document on its own.

*ECTAA position / action:*

ECTAA is taking part in the Stakeholders Consultative Committee of the project, which is being consulted throughout the process over the work developed by the working party.

The Tour Operator Committee had recommended that ECTAA gave its conditional agreement to the Charter, the condition being the gradual introduction of a mechanism of commitment of individual hoteliers within 24 months from the approval of the charter.

Given that HOTREC has deleted the Charter, ECTAA did not express any support to HOTREC's project.

### 5.4. Proposal for a Directive on consumer rights

*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 contracts for the provision of accommodation, transport, car rental, catering and leisure services travel services, except for the provisions on the right of withdrawal and consumer information when they are concluded at a distance.

*ECTAA position / action:*

Throughout the year, ECTAA monitored the work of the Council and of the European Parliament and presented its position to both institutions.

In its initial position, with a view of creating a level playing field between all stakeholders in the market for travel services, ECTAA advocated for the full inclusion of package travel contracts within the scope of the proposed Directive.

However, when monitoring the work of the Council, it appeared that Member States were considering adopting different scopes for different travel services, notably package travel services, transport services and other travel services such as accommodation and car rentals.

Given that the Council's approach would not allow the establishment of a level playing field, ECTAA amended its position. ECTAA supported the exclusion of package travel contracts from the provisions of the proposal on pre-contractual information and those on distance and off-premises sales. In addition, because it could affect the tour operators' possibility to use contract terms on minimum number of participants and on price revision, ECTAA requested that the

provisions of the proposal on unfair contract terms do not at all apply to package travel contracts. ECTAA also requested that separate travel services contracts were fully exempted from the provisions of the proposal on distance and off-premises contracts.

In autumn 2009, ECTAA intensified its contacts with the Council and the newly elected European Parliament. While many of our interlocutors understood most of our concerns, they expressed serious doubts that from a political point of view, package travel contracts could be exempted from complying with the provisions on unfair terms.

Based on this, ECTAA amended once again its position concerning unfair contract terms. ECTAA is now requesting that the proposed Directive specifies that the Package Travel Directive shall always prevail over the proposals' provisions on unfair contract terms and that two amendments are introduced to the list of terms that are annexed to the proposal.

*Status of project and next steps:*

The Council and the European Parliament continue their work on the proposal. The European Parliament's work is at a very early stage and its first reading should only be completed mid-2010 at the earliest. ECTAA is liaising with the EU Rapporteur and Shadow Rapporteur within the Parliament.

## **5.5. Review of the Package Travel Directive**

*Issue:*

For several years now, the European Commission has announced that the Package Travel Directive would be reviewed, as part of the community acquis on consumer protection.

This year, the European Commission intensified its work on the review of the Package Travel Directive. It is now in the process of finalising a study on consumer detriment in the package travel sector. The Commission has also appointed a consultant to conduct the impact assessment of the review of the Package Travel Directive. In the framework of that impact assessment, the European Commission intends to publish an online consultation by end of November 2009. It will aim at obtaining information to assess the magnitude of the problems on the market, in the framework of the current Package Travel Directive. It will cover the issue of financial guarantee but not in respect of seat only tickets.

*ECTAA position / action:*

ECTAA monitored the preparatory work of the European Commission on the review of the Package Travel Directive. ECTAA also already met with the consultant in charge of the impact assessment. In parallel, ECTAA's committees continued to analyze the main issues of concerns of the industry, in the light of any new development on the market, which is very innovative and changing.

## **5.6. Classification of Consumer Complaints**

*Issue:*

During the summer 2009, the European Commission published a consultation on a harmonised methodology for classifying and reporting consumer complaints and enquiries. The idea of the European Commission is to ensure that organisations across the EU collecting consumer complaints can use a comparable classification method and then report their data to the Commission.

The methodology is only for third party bodies collecting consumer complaints, such as national consumer authorities, consumer organisations, ombudsmen, etc. It does not apply to consumer complaint handling mechanisms operated by traders. Third bodies will be free to use the methodology or not

*ECTAA position / action:*

ECTAA participated in the consultation, notably insisting on the fact that only founded consumer complaints, which led to a final decision sentencing the trader should be taken into account in a future classification.

## 5.7. Collective Redress

*Issue:* Mid 2009, in the course of its reflexion on the opportunity to act at European level in order to create a collective redress mechanism for consumers, the European Commission published a consultation paper on consumer collective redress.

The aim of the consultation was to present the first working analysis of the impact of 5 policy options in the light of the replies to the Green Paper on consumer collective redress and to gather further information, preferably with concrete examples and/or figures on the concrete impact of these policy options, in particular on each national redress systems.

*ECTAA position / action:* ECTAA attended a public hearing organised by the European Commission in the framework of this consultation.

ECTAA also responded to the consultation, expressing itself in favour of no action at European level in the field of consumer collective redress as it would notably be against the principle of subsidiarity.

## 5.8. 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 conditions for access and exercise of the profession of travel agent and tour operator 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.

## 5.9. Recognition of professional qualifications and Tourist Guides

*Issue:* Since 20 October 2007, Member States must have transposed Directive 2005/39 on the recognition of professional qualifications. The Directive regulates the recognition of the professional qualifications that a person has obtained in a given Member State when he wants to establish himself on a permanent basis in another Member State.

The Directive also contains rules on the recognition of qualification, when a service provider established in a Member State, such as for example a tourist guide, wants to provide his services in another Member State on a temporary basis. In principle, if the profession of tourist guide is regulated in the Member State of establishment, the tourist guide will be allowed to provide his services in any other Member State, without having to apply for the recognition of his qualifications and to provide any evidence of professional experience.

If his profession is not regulated in his Member State of establishment and a tourist guide wants to provide his services on a temporary basis in another Member State, where the profession is regulated, he will only have to provide evidence of two years' professional experience.

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

*ECTAA position / action:* ECTAA 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. ECTAA also provided information to Members on the qualification requirements of travel agents and tour operators in

the various Member States.

ECTAA participated as speaker in a hearing of the European Parliament on the implementation of Directive 2005/35, raising the attention of MEPs on the difficulties that tourist guides meet.

## **6. FISCAL MATTERS**

### **6.1. Tour Operator Margin Scheme, articles 306-310 of the VAT Directive 2006/112**

*Issue:* The European Commission has initiated 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 to benefit 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.

The Spanish government, which will take over the Council Presidency as from January 2010, is willing to put the item on the agenda of the Council if there is support from the industry and other Member States.

### **6.2. Revision of the place of supply rules for services, Directive 2008/8**

*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. The major change is that services supplied to taxable persons will always be VATable in the country, where the customer is established (except for certain services). This will also apply for intermediary services.

A number of problems have been identified with the new rules:

With the modification of article 47, which now specifically includes 'the provision of accommodation in the hotel sector', the service of an intermediary making a hotel booking could either be considered as an intermediary service or as a service linked to immovable property. The latter would represent huge administrative burdens for business travel agents, which will have to register and account for VAT in all Member States in which they make hotel bookings. ECTAA and GEBTA are lobbying the Commission and the Member States to categorise this service as an intermediary service rather than a service linked to immovable property.

Tour operators may also face problems of double taxation and taxation of margins, which until now were VAT exempted, when they buy cultural services from non-EU providers as from 2011, as the place of supply of cultural services in the B2B context will shift to the place where the customer (tour operator) is

established. ECTAA is raising this matter with the Commission and the Member States.

*Status of project and next steps:* A proposal for an implementing Commission Regulation providing guidance to Member States on how to transpose the new rules is expected in December 2009. The Commission Regulation will not be in place when the new rules come into effect on 1 January 2010, resulting in different transposition of the new rules in the various Member States and thus possibility of double taxation incidents.

### **6.3. Fiscal Committee**

*Issue:* The Fiscal Committee of ECTAA met on 3 April and 29 October 2009 and essentially focused on two aspects:  
The Committee reviewed the implementation of the new place of supply rules that will come into effect in 2010 and 2011 (cultural services) and discussed problems with the new rules, notably as regards intermediary services in connection with hotel bookings for corporate customers and cultural services supplied to tour operators - see point 6.1.  
The Committee also reviewed the possibility of a revision of the Tour Operator Margin Scheme – see point 6.2.

## **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. The selected theme of this year was "EU Tourism and the Economic Downturn: New Opportunities for a Sustainable and Prosperous Future?"

Four sub-themes were proposed for the four consecutive panels, namely "Consumer behaviour vis-à-vis Sustainability and the Economic Downturn", "Employer-Employee Relations in Tourism", "The Regulatory Framework in Tourism" and "A 2020 Perspective: Promoting Competitive and Sustainable European Tourism".

*ECTAA position / action:* ECTAA, which is a Member of the ETF Steering Committee, presented two speakers intervening in the panel "Consumer behaviour vis-à-vis Sustainability and the Economic Downturn", which gave an overview of the challenges and difficulties that travel agents and tour operators have been facing in the last months.

### **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.

In April 2009 ECTAA also participated to the Public hearing "Protecting children from sex tourism" organized by the Economic and Social Committee of the EU, and presented all the activities that the industry is carrying out to combat the sexual exploitation of children in tourism.

<b>8. STANDARDIZATION</b>
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### 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”. 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, beaches and natural protected areas, yatching clubs and marinas, congress centres, industrial tourism and adventure tourism.

*ECTAA position / action:* Despite strong objections from industry against standardization in the field of tourism, ISO has 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. Further to the opposition of ECTAA and other stakeholders, a proposal on “Management of safety and security in the tourism industry” has been withdrawn. ECTAA has also strongly opposed the creation of a new working group on adventure tourism that has nevertheless been created and will start working on the development of standards in this field.

*Status of project and next steps:* ECTAA will continue to monitor the work of the ISO TC 228 and will participate as an observer in the working group on adventure tourism.

### 8.2. CEN standards

*Issue:* The European standardization body, CEN, has published the results of 11 feasibility studies on service standardisation. The main aim of the studies is the identification of the service activities where European Standardisation is needed and where there is sufficient stakeholder support. Among the 11 projects, two are likely to have an impact on travel agents and tour operators, namely:

- project CHESSS – “CEN Horizontal European Service Standardisation Strategy”, which aims to assess the feasibility of developing standards across multiple service sectors. The study concludes that there is a horizontal dimension to services and therefore recommends the development of a single generic European service standard;
- Project on “Accessibility in transport and tourism services”, that aims at harmonizing practices in Europe in order to facilitate access in the sectors of tourism and transport for disabled people.

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

*Status of project and next steps:* ECTAA will monitor the development of all CEN initiatives that are likely to have an impact on the tourism sector.

### 8.3. European Standardisation System

- Issue:* The European Commission intends to review and reform the current standardisation system to adapt it to the needs of the changed general framework conditions. Therefore, the Commission initiated the following actions:
- A study on "access to standardisation" has been undertaken on behalf of the European Commission to determine to what extent the European standardisation system in its present form can guarantee appropriate access to all interested parties (final report published in April 2009).
  - The setting up of an independent advisory Expert Panel for the Review of the European Standardisation System (EXPRESS) to develop strategic recommendations for the European Commission and other stakeholders which show how standardisation can bring greater value to Europe and can capitalise on its strengths and values in the global standardisation context.
- ECTAA position / action:* ECTAA welcomes the review of the European Standardisation System and has expressed its views to the EXPRESS panel.
- Status of project and next steps:* ECTAA will monitor the results of the EXPRESS Group, which will be available in January 2010, and will continue following the review of the European Standardisation System.

## 9. ENLARGEMENT

*Issue:* Turkey, Croatia and FYROM are currently in the process for accession to the EU. Since 2005, the EU has started accession negotiations with Turkey and Croatia. Negotiations are based on the country's own programmes and their pace depends on the country's progress in meeting the requirements for membership. Iceland applied for accession in July 2009. The European Union considers besides Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo as potential candidates.

*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.

## Chapter II: The Working Programme for 2010

The working programme for 2010 will include the following (the list is indicative and not limitative):

### 1. Transport

- ◆ European Commission's initiatives to reinforce air passenger rights against airline bankruptcy, in case of luggage incidents and in respect of the DBC Regulation and PRM Regulation.
- ◆ Application of the rules on the transparency of air ticket prices
- ◆ Access to fares (effectiveness of the Air Services Regulation and the CRS Regulation)
- ◆ Protection of agents' commercial data (complaint against PAXIS)
- ◆ Mergers and alliances in the airlines' industry under EU competition legislation
- ◆ Monitoring new developments in distribution models
- ◆ Border control and data transfer issues (APIS requirements, etc.)
- ◆ Monitor the legislative process of the proposals on passenger rights in international coach and maritime transport
- ◆ White Paper on the future of transport

### 2. IATA issues

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

### 3. Consumer protection and Internal Market policies

- ◆ Proposal for a Directive on Consumer Rights
- ◆ 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
- ◆ Monitoring of possible initiatives in the field of e-commerce

### 4. Fiscal matters

- ◆ Proposal for a Commission Regulation implementing the VAT Directive
- ◆ Infringement proceedings concerning the margin taxation scheme - Revision of the margin taxation scheme

### 5. Freedom, Security and Justice

- ◆ Proposal for a Framework Decision on the use of Passenger Name Record for law enforcement purposes
- ◆ Follow up of the work of the European Commission on a Common Framework of Reference
- ◆ Possible initiatives of the European Commission in the field of protection of personal data

### 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, CEN and review of ESS)
- ◆ Monitor the appointment of the new EU Commission
- ◆ Setting up a new working group on sustainability

### 7. Relations with other industry partners

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