



turismoeweb

# TOUR PACKAGES ON THE WEB CONSUMER PROTECTION

## Suggestions for Tour Operators

*Partner di progetto*



*Progetto realizzato con il contributo di:*



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## **Foreword**

Several years have gone by since EEC Directive 90/314 on all-inclusive trips, holidays and circuits was published and accepted by all EU Countries and by Italy, first with Law 111/95 and now with the Consumption Code of Legislative Decree 206/05.

Application of the Directive meant standardising UE regulations on all-inclusive trips<sup>1</sup> and in particular set common rules for effective European consumer protection, by specifying information to be supplied, formal requirements for all-inclusive travel contracts and binding regulations for contractual obligations on withdrawals, cancellations, modifications, civil liability of the organisers and/or sellers of all-inclusive trips and the like.

This publication dedicated to Tour Operators summarises the outcome of the **observation and monitoring** activity that the Piedmont Consumers Association pursued on over 100 Internet sites, with special focus on 20 web sites, to assess application of the Directive and its consequent State Regulation for the on-line sales tourism business.

The activity described here is included in the Project *Tourism: On-line Consumer Information and Protection – The Efficacy of EEC Directive 90/314*: it started in the summer of 2005, in partnership with 3 other European Consumer Associations and financed by the European Commission and the Turin Chamber of Commerce.

The idea of analysing on-line offers is based on the fact that Directive approval is no doubt somewhat dated and that means for informing, communicating and proposing Consumer services have developed quite a lot in time.

We there believed it more qualifying to work on the Web that has totally changed tourism offers its Tour Operators and the rules of the game.

We are addressing Tour Operators to offer suggestions for improving and facilitating *secure and informed* Consumer access to purchasing all-inclusive tour packages and/or products on the Web.

The development of tourism is both an off and on-line event that will require ever-increasing monitoring and assessment commitment to safeguard Consumer rights in an expanding market offering economic Tour Operators a great opportunity and a new frontier to develop adequate and innovative forms of Consumer protection.

We trust we shall find areas for confrontation and further cooperation on all tourism issues to create a Permanent Observatory useful to political decision makers in improving the quality of services offered to Tour Operators and better protecting Consumer interests:

*Federconsumatori European Policies National Manager Diego Calabrese*

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<sup>1</sup> An all-inclusive trip is defined as the prefixed combination of at least two of the following elements, namely sales or offers at an all-inclusive price where such service is over 24 hours long it includes one overnight stay:

- transport,
- accommodation,
- other tourist services not accessory to the above, but a significant part of the all-inclusive package.

## **Introduction**

The use of IT and communication technologies by Italian families is not as widespread as in other European countries such as Holland, Denmark and Sweden for instance, but is developing fast. We have to recover a delay due to several diverse reasons but the Web is increasingly entering Italian homes and buying habits year by year.

Some data on Consumers and tourism

The 2006 ISTAT Report on "*IT and Communications Technologies: Family Availability and Individual Uses*" states that over 50% of persons aged 25 to 64 years uses the Internet to communicate by email and retrieve information on goods and services. Services on travel and accommodation involve about 40% of Internet users.

The first item of goods and services purchased is tourism ordered and /or bought on-line by 35.8% of Internet buyers. 41.1% women more frequently buy travel; 33.3% men travel and accommodation.

The first type of product purchased is tickets for air and other type transports in general, followed by hotel bookings and lastly organised trips, that is to say the packages of our project (60, 30 and 10% of on-line tour sales respectively).

***What kinds of offers are present on line? This is a labyrinth real and proper for Consumers!***

Recent data indicate that some 9,000 tour businesses, Tour Operators and/or travel agencies are operational on the Italian market today.

Firstly we wish to underscore that the *difference between Tour Operators and travel agencies* is increasingly less: historical Tour Operators have opened agencies on the territory with specific trade marks and the immense variety of business offers specialising by Customer target, geographic area and organisational procedures is a well-known fact.

Another significant issue is where the Web comes into the picture, a real and proper "*out bordering*" by other Tour Operators entering the tour package business, such as for instance hotels that do not just offer their accommodation but also real and proper trips, or the other even more "external" examples of no-profit organisations with trips to support their charity operations, a real and proper booming "fashion", where organised Tour Operators are still few and far between while the free ventures by "Charitable Organisations" increase at an interesting rate.

Italy has some 250 Tour Operators, with the first 20 holding 60% of the market, and over 100 *networks of travel agencies/Tour Operators*, associated or affiliated to face the market with shared strategies and tools. This is another new event for our country, though in line with the strategies of other European countries, which have stimulated the whole business. Some 45% of the Italian travel agencies are estimated to belong to one or more of these networks.

So, what is better than the Internet as a tool for managing a network? This means the Web has become the shop window for proposals, a channel for offers and sales and an

operational tool for the network, During this project we checked about 250 Internet sites and discovered that the advent of the Internet and the birth of low cost Companies are events that literally overwhelmed the tourist business and the rigid distinction between “organisers” and “sellers”.

The Internet in fact means reaching the End User and the number of offers increases: air carriers dialogue directly with Consumers, Tour Operators organise their own sales networks to better “monitor” their product distribution and agencies make up their packages based on contacts with air carriers, hotels and so on.

This publication purposefully takes no account of the differences among various Tour Operators, of their organisation on the territory and of the market logic: **monitoring had the objective of identifying ways of cooperating with Tour Operators and increasing the level of information supplied to Consumers, for their better protection.**

*Federconsumatori Piemonte Chairman Giovanni Dei Giudici*

## ***PART I – OPERATIONAL CRITERIA AND METHODS***

We wish to summarise the ideas and criteria at the basis of our work on the one hand and some methodological decisions we made on the other. We completed two separate monitoring operations on tour operator Internet sites; the first one on the issue of usability with an analytical card divided into 6 separate sections on accessibility, text structure, navigability, navigation speed, usefulness and graphic art and the second one specifically on the provisos set out by the Directive and the Consumption Code.

Observations initially involved a small number of sites: we selected a sample of some 20 sites for pilot monitoring to underscore details of the tourism business and its organisation specifics. This enabled us to identify the analytical issues most involved by EEC Directive 90/314 that was the core of our research and to underscore any rapport with other applicable legal provisos specified hereunder. Monitoring was then extended to some 100 different sites and our project partners also completed the same though smaller size operation on some Spanish and Lithuanian operator Web sites.

## ***The Tour Operator on the Web: why a labyrinth?***

Who is on the Internet? We have already underscored some data appertaining to the size of the on-line tourism business and here we wish to identify the typical features of all-inclusive packages.

All inclusive tour packages are not currently the core business of on-line transactions as there are two “obstacles” to its development:

- an all-inclusive trip generally requires **time for reflection** by the Consumer who wants to have further information to properly analyse offers and does not always have a fixed and unchangeable target destination; Consumers navigate to find information, offers and compare prices, but need time to come to a final decision and make a definitive choice;
- a trip often involves a **cost** that an Italian Consumer does not like to address by on-line payment with a Credit Card, both out of distrust in the system due to risks in electronic payment methods, privacy and the like and because credit card top limits are too low.

At the same time, tourist packages are the product agencies are concentrating on as opportunities for higher ROI and are increasingly changing with the growing trend towards network aggregation

Tour Operators addressed the above issues by creating **mixed operating systems** and matching on-line Web communication to conventional sales efficacy.

### Web Potential:

- complete presentation of the tour proposal/offer
- Consumer navigation freedom to consult the site at any time and place
- Consumer use of do-it-yourself in selecting package destination and type
- possible not binding on-line booking

### The Efficacy of Conventional Sales:

- contact with the operator for all information needs
- personalisation of the package selected
- communicative physical environment

The combination of these factors generate diverse sales and marketing solutions as follow:

- **Web site + Agency:** Tour Operators presenting their offer on-line supported by a network of agencies for contract underwriting: this makes the role of Internet less invasive and it changes from a mere static on-line catalogue to Internet booking real and proper added to contact with the closest agency, including all intermediate steps as required

[www.alpitour.it](http://www.alpitour.it)

[www.ventaglio.com](http://www.ventaglio.com)

[www.bluvacanze.com](http://www.bluvacanze.com)

[www.travelco.it](http://www.travelco.it)

[www.giramondo.it](http://www.giramondo.it)

[www.robintur.it](http://www.robintur.it)

[www.mappamondo.it](http://www.mappamondo.it)

[www.metamondo.it](http://www.metamondo.it)

- **Web site + Call Centre:** Tour Operators presenting their offer on-line with the availability of one or more Call Centres for contract underwriting: in this case too,

there are diverse procedures, such as information phone service not being free of charge, for instance

[www.cisalpina.it](http://www.cisalpina.it)

[www.cts.it](http://www.cts.it)

[www.travelandia.it](http://www.travelandia.it)

- **Web site + Travel consultants:** Tour Operators presenting their offer on-line supported by a network of agencies on the territory. At Consumer request agents visit Consumers at home and/or elsewhere to supply information and close the contract.

[www.cartorange.com](http://www.cartorange.com)

[www.nextworldtravel.it](http://www.nextworldtravel.it)

[www.evolutiontravel.net](http://www.evolutiontravel.net)

- **Web site + other forms of remote communication:** Tour Operators presenting their offer on-line, not including the transaction, and later closing the remote contract by standard or email or over the phone, without a specific dedicated structure but as a simple Travel Agency

[www.viaggisolidali.it](http://www.viaggisolidali.it)

[www.terresiena.it](http://www.terresiena.it)

[www.langheroero.it](http://www.langheroero.it)

There are many **intermediate and combined procedures**, for instance with the possibilità of going to the Agency but also to book via a Call Centre ([www.lastminutetour.com](http://www.lastminutetour.com))

Just think that even the biggest Web Agencies created to operate exclusively on the Internet are addressing the issue the other way round: they approach the Consumer by proposing, like Expedia, to become a Travel Agency affiliate. In all these cases, the **Internet** is more than a mere step but the **place where negotiations take place**, where Consumers get information for their end decision.

## ***The Internet: a no man's land between various regulations***

This publication was completed just a few months after the following important European papers were produced:

- White Paper on Consumer Purchasing Revision (February 8, 2007)
- EEC Consumer Law Compendium: Comparative Analysis (December 12, 2006)

In 1999, the Commission had already published a report of initial acceptance of the Directive, stressing its strong and weak points added to its empty legal parts. After 7 years the Commission felt the need to update Consumer rights by analysing the Directive on all-inclusive packages, without however addressing the specific issue of the Web.

*What distinguishes a tour package bought from an Agency from one bought on the Internet?* We prefer to underscore the obvious reply: **sales techniques – nothing else.**

The project has always been based on monitoring **information**, on its qualities of clarity, efficacy and understanding: this specific project purposefully “ignores” the use of service, the trip itself with any difficulty and problem it might disclose, and concentrates on the negotiations step.

The **formation of consent** was what our magnifying lenses were concentrated on.

As already specified, monitoring underscored that such **consent starts with information on the Web**; it is sometimes perfected at an Agency or over the phone and sometimes even with a home visit! This not only refers to Italian regulations for acceptance of the European Directive but also those on e-trading, remote contracts, such as Call Centres for instance and outside trade environments, such as home trip consultants for instance.

It is rather peculiar to note that the development of the Internet and its infinitely diversified use make reference to regulations created, devised and used via the Web to protect Consumers for “mixed sales techniques”, while the mentioned regulations had been intended for much different purchasing processes such as door-to-door sales, telemarketing and the like, when the Internet was still a completely marginal event in the life of Consumers.

We therefore monitored the Directive contents transmitted via the Web and decided to also address the issue of warranties set by the Law for Consumers on:

- contracts stipulated on the Web
- remote contracts
- contracts underwritten outside trade environments

It must be borne in mind that before the law on e-trade, regulations on remote contracts and those underwritten outside the trade environment were the only legal sources available for electronic commerce. The procedures available on the Internet of course vary quite considerably and the borderlines are often quite vague and sometimes non-existent, which leads to significant critical issue for Consumer protection.

Article 82 Application Environment of the Consumption Code clearly specifies that regulations on tour packages *be also applied in cases of remote contracts or contracts underwritten outside trade environments*. In 2005, the year the Consumption Code was

published, the Web was already a first actor in the tourist business – and yet there was no reference to the Web! In actual fact, e-trade is a remote contract to all effects and purposes, as proven by legal changes and the Consumption Code itself, with its specific clauses on electronic commerce

*A Support Choice? Forgetfulness? All this makes us think ...*

Our decision was to propose a **cross reference reading of the regulations** mentioned to underscore the lines and contents offering **greater Consumer protection**: contents that could **qualify** the operators on the one hand and more widely **protect** the Consumer on the other, if added properly to a site.

In addition to EEC Directive 90/314 on all-inclusive trips, holidays and circuits, the following legal sources were also reviewed and taken account of:

- Legislative Decree 206 of September 6, 2005 – Consumption Code for tour packages, contracts underwritten outside commercial environments and remote contract
- Legislative Decree 70 of April 9, 2003 – Implementation of EEC Directive 2000/31 on some legal aspects of IT Company services on the home market, with special reference to **electronic commerce**
- Legislative Decree 185 of May 22, 1999 – Implementation of EEC Directive 97/7 on Consumer protection in **remote contracts**
- Legislative Decree 50 of January 15, 1992 – Implementation of EEC Directive 85/577 on contracts underwritten **outside commercial environments**

Comparisons were also made with similar laws for Spain and Lithuania, thanks to cooperation with the Consumer Associations partners in this project.

## ***Information to the Consumer and the Web***

How many Consumers actually know the variety of Internet offers? How many have already found their way through the labyrinth described above?

Italian Consumers are very inexpert navigators and when one does become an expert, he or she remains rather distrustful for a long time, and only buys with a Credit Card for small amounts of money, after finding convenient offers on the Web versus conventional travel agencies. Federconsumatori Piemonte has for some time now been engaged in informing Consumers, in educating users in consumption and general sensitisation of the knowledge of the rules on “informed consumption”.

“An *all-inclusive* holiday chosen via the Web: Information and Consumer Rights and Protection” is the project's slogan. We are firmly convinced that quality information generates a positive and trustworthy attitude on the part of the Consumer, with positive fallout on purchasing propensity. Complete information generates trust in an “inexpert” navigator and makes an expert one more faithful. This is why Federconsumatori Piemonte has elected to **be engaged in information**, both through this publication and via contents specifically directed at Consumers.

## **PART II – SUGGESTIONS AND INDICATIONS TO TOUR OPERATORS**

The chapters that follow are divided by topic and refer to some legal issues, selected as being significant and effective to improve secure and informed Consumer access to buying tour packages on-line. They are proposed because they offer the basis for useful suggestions on Web utilisation in conformity with greater Consumer protection. Some very complex topics would have needed to be addressed separately, so the focus was on **Information to the Consumer**.

Our suggestions are structured as follows:

- legal references
- comments on regulations
- practical or useful suggestions
- some positive examples found on the Web: the inverted commas indicate that they reproduce a push button identified in a tour operator site

Legal references should not be taken as totally binding for all Tour Operators, who remain responsible for checking which specific regulations apply to individual activity publicised.

### Abbreviations used

<b>REGULATION</b>	<b>ABBREVIATION</b>
EEC Directive 90/314 on all-inclusive trips, holidays and circuits	EEC Directive 90/314/
Legislative Degree 206 of September 6, 2005, Consumption Code	Legislative Degree 206/05 COD. CONS.
Legislative Degree 70 of April 9, 2003- Implementation of EEC Directive 2000/30 on some legal issues of IY Company services on the home market with special reference to e-trade.	Legislative Degree 70/03 COMM. ELETT

## ***The Operator's identity on the Web***

Legislative Decree 70/03 – COMM. ELETT. Art. 7 ( <i>Mandatory General Information</i> ) Legislative Decree 206/05 - COD. CONS. Art. 52 ( <i>Consumer Information</i> )
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Indicating precisely and completely all information needed to identify an on-line operator from a *commercial and legal* standpoint is what Stanford University calls **Web credibility**: “Prove there's a real organisation behind the site.”

We wish to remind you that Article 7 binds Tour Operators to “making the following information **easily accessible, in a direct and permanent manner**”:

- a) Company name and style;
- b) domicile and legal seat;
- c) details for fast contact with the operator for direct and effective communication, including email address;
- d) *Registration Number with Company Register*;
- e) identification data and details of any vigilance authority for activities subject to grants, licences or authorisations
- g) *VAT reference number* or other identification number considered as valid in the Member State, if the operator's activity is subject to such taxation.

The Consumer must have **due time** access to the following data as specified by Article 52 of other regulations

- operator legal name, not just the make;
- contact address and access modalities;
- authorisation to exercise tourist activities;

#### EXAMPLES

- ↑ “Who we are” – an example of complete and articulate sub-sections “Who we are – The Group – Its Seats – Mission” with authorisation details
- ↑ In home page: complete legal name, address and VAT reference

## **How does a Site work? How can a Consumer use the Web?**

Legislative Decree 70/03 – COMM. ELETT. Art. 12.1a ( <i>Information on contract underwriting</i> )
Legislative Decree 206/05 - COD. CONS. Art. 52 ( <i>Consumer Information</i> )

The law on electronic commerce specified that the operator be held to “supply” the following information “in a clear, understandable and unequivocal fashion”:

- a) **the various technical steps required for closing a contract;**
- b) (...)
- c) (...);
- d) (...);
- e) **the languages** available to close the contract, in addition to Italian;
- f) indication of **controversy settlement tools**.

Internet sites have become increasingly complex and different from one another, ranging from just a few pages of presentation to thousands of connected pages. The Web replaces or accompanies not just a 10 or 100 page catalogue but also contains real and proper trade steps from negotiations to bookings and or purchases and goes as far as complaints Thus there not only is a complexity of the many contents presented, but the consumer is also called upon to **interact** with the site. According to HTML.it, the Italian reference site for Web developers, “statistics indicate that 39 to 50% of potential sales are lost **because information cannot be found**. The problem is not scant interest in the product, but that fact that visitors cannot properly understand what is being sold and how!

“Usability is the property of a Web site that makes it "easy" to navigate and use”. Good usability rules, a concept well-known to Web communicators, are not anyhow enough, even when applied”!

Article 12 mentioned above is of help in this case as it **goes beyond** all definitions and applications of the concept of usability and indicates that al the technical steps must be illustrated to Consumers. We suggest **supplying this information for all average complexity sites**, even when on-line buying is not specified. This would simplify and facilitate navigation to inexperienced users and the Consumer wastes less time in understanding what to do and has more time to assess the offer!

In the field of technical explanations on package buying procedures to be given the Customer, Article 52 specifies the requirement to also indicate “**the cost for using remote communications techniques**.” Sites using this procedure must therefore clearly indicate it.

Specific site sections should preferably explain to Consumers:

- the purpose of registration procedure requested;
- registration, booking, purchasing or request for information procedures, specifying the steps and data required: this will enable the Consumer to be “ready and prepared” in navigating;
- if the whole procedure is not on-line, what happens off-line and how;
- What the Consumer can do through the site: just book, also buy and give definitive booking
- Consumers can visualise the status of their procedures with current steps specified;
- the existence of an IT service area for technical problems and issues or for specific questions on the sales technique used, including payment security (if provided)
- a site map.

#### EXAMPLES

- ↑ “How to book”: a complete explanation of the procedure, payment included, with clarification of all, on-line and off-line steps such as request sending, availability checking, booking, payment, document sending and the like
- ↑ “How to book”: explanation of the three possible procedures for on-line booking, via a Call Centre and an agency
- ↑ “Booking with us” – section divided into “Advantages – Service Centre – Frequently Asked Questions – Booking Changes – Trip Information – Book Securely – Contractual Conditions” offers the advantage of using one container alone for all “procedural and contractual” information for the Consumer

## Offer contents

Legislative Decree 206/05 - COD. CONS. ART. 87 ( <i>Consumer Information</i> )
Legislative Decree 206/05 - COD. CONS. ART. 88 ( <i>Information Booklet</i> )

The article mentioned are very detailed: there is a lot of information to be given to a Consumer but the Web offers efficient communications solutions. Article 87 mentioned above specifies that the Consumer must be informed “**during negotiations and anyhow before contract underwriting**”.

Information and negotiation as well start on the Web. Supplying complete and easily usable information helps the Consumer in navigating, selecting and buying. The operator of course presents the main assets of the offer, such as destination, duration and cost, sometimes neglecting other details that could qualify the offer, some of which are anyhow specified by the Directive.

Some suggestions on information usability:

- the procedures for booking or simply customising a non booked holiday package, just to check availability, should never split information for the Consumer too much, with too many steps
- the above procedures should anyhow enable:
  - printing and/or storing basic offer contents, apart from customisation
  - printing and/or storing the contents of the customised package before binding booking or purchase
- provide a search engine such as to increase offer value and enable personal search

Some suggestions on contents:

- price: specifically what is included and excluded – details on advances and final payments;
- optional insurance: improve contents and advantages for the Consumer;
- passport, visas, health requirements: with a simple link to institutions you can suggest the Consumer view all requirements in these fields;
- details of the trip: internal transport facilities, phone connections, hotel class and the like are important items to be specified,
- package usability by disabled persons;
- contractual elements (Cf. a specific section on this)

## EXAMPLES

- ↑ “Find your holiday”: an engine with very personal criteria: “Multi-criteria – Geography – Profile – Accessible”
- ↑ “Transparent price card”: shows what the price includes
- ↑ “Useful news for travellers”: contains data on papers, health requirements, Customs, currency added to several other pieces of practical advice
- ↑ “Difficulties”: indicates difficulties that might occur during the trip so the Consumer can assess personal suitability, such as climate issues, types of excursions and the like
- ↑ “Accessible tourism”: a section on trips also accessible to disabled persons
- ↑ “Travel safely”: a section presenting optional insurance policies

## Memory on the web

Legislative Decree 70/03 – COMM. ELETT. Art. 12.3 ( <i>Contract Underwriting Information</i> )
Legislative Decree 206/05 - COD. CONS. Art. 53 ( <i>Information Written Confirmation</i> )
Legislative Decree 206/05 - COD. CONS. Art. 87.1 ( <i>Consumer Information</i> )

Over the past 10 years, the Web has shown all its communicating power. New forms of expression, such as blogs, web communities, on-line diaries are being born through the new channel.

The enormous potential of this tool is often jeopardised by the “evanescence” of data available on the Internet, partly due to the Web’s technical features and partly to User navigational habits: from a the most outstanding case of a non retrievable blacked out site to an offer you can no longer select, and from the innumerable Internet offers not always coded in order of importance to simple not always proper and informed use of navigation that leads to never again finding roads travelled on previously on the network.

Article 12.3 specifies, “**The clauses and general conditions of the contract proposed to the receiver must be at the receiver’s disposal to enable such person per store and reproduce all the data.**” In the field of remote contracts, Articles 53 and 4.1 requires “**confirmation in writing of if so required on another durable support accessible to the signatory**” of all the information useful to close the negotiation and not just the contract itself.

As always, since the Internet is a borderline area between negotiations and purchases, between different contractual formulas, it is advisable to allow the utmost number of possible storing and reproducing facilities without limiting them to general contractual conditions alone.

These are thus some suggestions for Tour Operators:

- **invite the Consumer to print** information selected: the contents of a package, bookings completed, general conditions
- always provide site pages with a “**print**” icon
- in addition to direct printing, also provide possible document reproduction with a document creator, such as Acrobat or equivalent software;
- lay out site pages to allow them to be printed with proper display;
- lay out the site so at print command the pages carry **your Internet site** and printing **date**;
- the same details as specified above also hold for downloadable papers/pages: in particular, it should always be possible to univocally return to the date on which download was made;
- sent/downloadable documents should have legible standard characters;
- when updating the site, enhance this dynamism in individual sections, by indicating the **date** each page of individual packages and transversal sections was updated; this information is something Consumers always consider important;
- in the event of remote or Web contracts clearly indicate durable supports available for contract formalisation.

EXAMPLES

↑ “Last update”

↑ “Help – Send this page – Print – Faq”: grouped controls that appear during booking/buying processes and also enable storing, service and contacts, without making the navigator leave the page to find clarification.

## General conditions on the Web

Legislative Decree 70/03 – COMM. ELETT. Art. 12.3 ( <i>Contract Underwriting Information</i> )
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We have already mentioned the regulations governing operator obligation to make General Contract Conditions available to the Consumer.

Several Tour Operators have started to add General Contract Conditions to their Web site, with different procedures, at least for the time being:

- Tour Operators selling on-line mostly insert the General Conditions inside the buying procedure, with the requirement to click  read and accepted;
- Tour Operators promoting packages on-line insert General Conditions on the display or as a downloadable file.

Considering the heterogeneity of on-line offer on the one hand and the extremely diversified Consumer navigation skills on the other, just the presence of General Conditions does not guarantee a good enough level of Consumer information, so we advise *communicating* contract conditions with a specific personalised message, whatever the sales technique used.

Some suggestions, in particular:

- enable easy identification of distinctive elements of the proposal in **contractual terms**: advance payments, insurance, cancellation rights, terms and penalties for trip cancellation due to insufficient participants, terms for complaints, terms for refusal of contractual modifications, so Consumers can **analyse and assess essential conditions**; we in fact know that in certain cases the Consumption Code leaves the selection of some elements up to the organiser and where this is applied it becomes important to clearly indicate the choices reached versus the Consumer, especially if Consumer protection is enhanced thereby
- identify **distinctive contractual terms** thus becomes “**part of the offer**”, and subject to Consumer assessment: new and expert navigators alike will appreciate this clarity
- enable complete General Conditions download to allow event storing and personalising
- for those sites requiring user registration for diverse reasons, email an information note containing the proposal distinctive elements as mentioned above and/or the General Conditions and/or other useful information

We also suggest to **clearly indicate**, together with all related consequences, all the cases of changes to contractual conditions *by the operator*, cases of renunciation by the *Consumer* and lastly all the cases of *force majeure*: these facts sometimes tend to become confused and renunciation, cancellation, binding communication, return, revision and acceptance get all mixed up. Lastly, we point out that site monitoring has underscored scant condition updating to Consumption Code regulations.

#### EXAMPLES

- ↑ “Travel contract”: downloadable pleasant and precise video display with indication of administrative details, addresses and policies
- ↑ “Aware tourist map”: complete information on Consumer rights at all trips stages, from booking to complaints and the like.

## **Contacts with the Consumer and Complaints**

Legislative Decree 70/03 – COMM. ELETT. Art. 12.3 ( <i>Contract Underwriting Information</i> )
Legislative Decree 206/05 - COD. CONS. ART. 53.1 b ( <i>Information Written Confirmation</i> )
Legislative Decree 206/05 - COD. CONS. ART. 53.1 c ( <i>Information Written Confirmation i</i> )
Legislative Decree 206/05 - COD. CONS. ART. 98 ( <i>Complaints</i> )

We have already underscored the importance of communicating operator identity to Consumers, but after complying with the regulations already mentioned in the dedicated section, the operator can also personalise contacts with the Consumer by means of the IT techniques used on the Web. Contacts with people and the environment that normally occur off-line at a travel agency with the professionalism and style of its personnel, furnishings, music and the like have to be transferred into the Web site to reproduce the same feelings and welcoming.

We therefore advise you to:

- **differentiate the Contact Area** into several dedicated sections, such as booking, complaints, technical problems and so on: this will help Consumers imagine separate expert Tour Operators behind the Web and not just a faceless information area;
- clearly identify a reference travel mail box: the need to ask for information or details of to advise of changed or difficult programmes often comes when on holiday;
- foresee the possibility for Consumers to offer **technical suggestions** or opinions on services via a specific section, to further improve site content or internal data organisation;
- facilitate the exchange opinions between Consumers on services offered; the site must of course not become a forum/or a blog, but, on going back to the already mentioned concept of site credibility, we know that it is firstly built up on the positive reactions from persons who have no direct interest in the activities sponsored by the site itself.

Contacts between operator and Consumers also occur for complaints, a word that appears very rarely on Internet sites, just as though only uttering the word generates trouble! On complaints, however, Article 53 specifies that Consumers must also be informed of the geographical address of the professional whom Consumers can make reference to **in case of complaints**. As for timing, set at 10 days by Article 98, the contract must expressly specify this or another time for filing complaints.

Attention directed at Consumers at a delicate stage such as a complaint can help Tour Operators win Consumer appraisal. In addition to this essentially brief information, it is important that the Consumer can easily identify the **procedure** to counter lacked or improper contract execution and present a claim.

In this connection, the Consumer should be able to rely on:

- a specific contact for complaints, complete with standard and email addresses, telephone and fax numbers, whom to refer to both during the trip and after return home, added to immediately after completing bookings
- a specific contact, complete with standard and email addresses, telephone and fax numbers, whom to refer to for submitting a specific problem encountered during the trip, such as lost baggage, transport delays, unsatisfactory structures for instance
- a clear procedure to follow for expressing remarks, to be downloaded from the site at a section dedicated to these issues, with all necessary papers, formats and the like.
- a description of the procedure for solving complaints adopted by the operator, with sentences, reply terms, responsible persons or offices, and the like.
- Updating of complaint status, such as received, being assessed, results and so on.

#### EXAMPLES

- ↑ “Help us improve” – “Technical Feedback”
- ↑ “Call Centre” for service free of charge during the holiday
- ↑ “Quality questionnaire” on the service/site
- ↑ “Picture tales”: an area containing traveller stories and pictures
- ↑ “Book safely”: contains information on the economic transaction on-line
- ↑ “Grade us”: with the possibility of expressing an opinion on offer, call centre, graphics, easy consultation and download speed quality.

## ***IT Potential***

One weak point of on-line activity is **process length**. True, a click and a Credit Card are enough, but Consumers are still very reluctant to buy on the Web – travel packages especially.

Registration techniques for personalised access are already available and quite widespread, but the possibility of storing selections and restoring booking and buying later on is still quite rare, although it would allow Consumers to more carefully assess the entire content of any offer.

### EXAMPLES

- ↑ “Are you not yet ready to book? Save the items and return later to start off from where you left.  
Note: prices and availability subject to change”
- ↑ “My profile”: enables accessing an area where personal preferences are stored.

## **Memorandum**

Internet site review and assessment have identified quite a few cases of incomplete or erroneous Contract Conditions, not in conformity with standing regulations. There were not so many cases of “clauses against the Consumer”, as rather cases of “superficiality and lack of preparation”, at least in our view! Yet the Consumption Code clearly lays out the contents of a contract and leaves the tour operator with some discretion on certain elements.

So, with the risk of boring you, we remind you that:

- standing regulations are in the Consumption Code (Legislative Decree 206/05), so the reference to Legislative Decree 111/95 is to be considered obsolete;
- among other things, the contract must expressly specify:
  - o the pricing procedure, with advance at booking of no more than 25% of total price;
  - o if the trip has a minimum number of participants, the term within which Consumer must be informed of cancellation in case the minimum number is not achieved;
  - o the term within which the Consumer can submit a complaint for lack of or improper contract execution, whether in compliance of the provisos of 10 days of the Consumption Code or a longer period favourable to the Consumer;
  - o the term within which the Consumer must communicate cancellation of the event of changes to contract condition, as above, of 2 or more days;
  - o possible price review due to causes expressly specified by the Consumption Code, such as changed transport or fuel costs and the like, and review procedures.
- in any case, the price cannot be increased by more than 10% and cannot increase during the 20 days prior to departure
- the contract must be open to transfers, and any transfer expenditure must be shown as well as any specific details to be covered for replacement,

## **PART III – WEB TOURISM: PRESENT AND FUTURE SCENARIOS**

### **Critical items of the Directive applied to the Web**

After this experience, which was mostly marked by studying the types of offers present on the Internet, and vastly diversified in terms of contents and sales techniques, we draw your attention to our starting point: the **definition of a tour package**.

The elements already debated in Europe and currently under Commission review are:

- a) the concept of the *prefixed combination* of at least two of the following, sold or offered at an all-inclusive price, where such service lasts over 24 hours and includes an overnight stay, transport, accommodation and other tourist activities not accessory to transport or accommodation, which are a significant part of the «all-inclusive» offer in compliance with Article 2.1 of EEC Directive 90/314
- b) the *duration of the package* and its *constituent elements* in compliance with Article 2.1 of EEC Directive 90/314
- c) the definition of an organiser with reference to the requirement of *non-occasionalism* in compliance with Article 2.2 of EEC Directive 90/314
- d) the exact definition of shared or divided *seller and organiser liability* in compliance with Article 5.1 of EEC Directive 90/31
- e) the *form* of pre-contract and contract information in compliance with Article 4.1 of EEC Directive 90/314

#### **a.) The Expedia Case**

Expedia literally invented an alternative concept of a tour package. This Company's contractual conditions very clearly explain their choice

The site has the following tourist proposals:

- flight, hotel and car rental services offered individually
- the offers of the site at sections "Flight+Hotel", "Flight+Car", "Flight+Hotel+Car"
- the travel services at section "Special Offers".

The "Travel Service" contract defines these first three proposals

Then, definitions are:

- "Various travel services": the services available on the site, and other Travel Services, such as cruises, holiday homes and the like, for instance.

#### **Does Expedia sell tour packages or not?**

Expedia does certainly not neglect tour packages in its definitions, but just to tell Consumers that the combinations of services rendered by the site, such as Flight+Hotel for instance, which any normal Consumer would take to be a package, **are not a package at all!**

An explanation is given in the Contract

**“Travel Services are not included in Tour Packages** because the selection of Travel Services is structured in the site as a conventional Travel Agency to allow Consumers to combine destination, date, flight, air carrier, price and the like, hotel category, location et cetera and car rental according to their specific needs, as they can select from a well-nigh limitless series of combinations, so the latter is not included in the definition of prefixed combinations suitable to configure a Tour Package in compliance with standing regulations.”

The following is specified for different Travel Services, that is to say tour packages Expedia is an intermediary for but are organised by other Tour Operators:

“The purchase of the Tour Package or different Travel Services is a contract between the User and the Tour Package or different Travel Services provider in compliance with the regulations and conditions applicable to individual suppliers.

With reference to Tour Packages or different Travel Services, Expedia merely grants individual suppliers of the above products the site space required for promotion purposes, and in no way takes part in the sales of such products.

The general sales conditions applied by individual suppliers will be available of the site.”

However, the European Court of Justice (*Cf. Club Tour case*) acted to clarify the concept of prefixed and ruled that the regulations for all-inclusive packages are also applicable to non prefixed custom-made travels.

**The concept of “prefixed” is thus not a constituent element.**

A trip (a tailor-made package as the Ruling states) personalised by a person working in a conventional Travel Agency is a package deal to all purposes and effects. The European Court of Justice explained that such personalisation could also be made through a travel agency or an IT platform. In our view, consistently with what has been specified so far, there is no difference whatsoever between an IT system looking for solutions to satisfy Consumer needs and a travel agency real and proper! The Expedia case is a typical important issue to be solved when thinking of market penetration.

The paradox is that the *greater Tour Operators*, with more resources and possibilities and with sophisticated tools, offer less guarantees than conventional Tour Operators that chose the Web as a sales and/or promotion channel. Some regulations have already accepted this indication and added personalised trips to their package deals.

### **b.) Austria, Finland and Germany – Basic Differences**

Some countries among those mentioned do not specify a minimum duration of 24 hours or an overnight stay to define a tour package and in this sense it seems to us that such regulations are more consistent with changes in the tourism business as well as the very concept of a holiday and the great variety of on-line offers.

When are a visit to a museum, an excursion or a concert hall entrance ticket not accessories to transport and accommodation? Current regulations offer no certain replies and the hotel business especially is experiencing an ever-increasing trend to organise short-duration tour packages that tend to be outside the rules just mentioned, but there are certain one-day offers that deserve precise Consumer guarantees.

### c.) The Italian Case: the Consumption Code

The Italian Consumption Code does not recognise the Directive's definition of a tour package organiser nor does it contain the concept of *non-occasionalism*.

The Directive specifies:

“organiser: **the person** who **not occasionally** organises all-inclusive services and sells or offers them either directly or via sales personnel”

The Consumption Code specifies:

“travel organiser, the **subject** that implements the combination of elements as at Article 84 and undertakes to procure tour packages for third parties in its own name and against payment of an all-inclusive sum of money.”

*The person has become a subject and reference to non-occasionalism has disappeared.*

This doubt requires clarification, since the Internet can become the vehicle for proposals without adequate guarantees or even for fraud. This issue, which is connected to **operator identity**, requires clarification and a definite reply.

There is in fact a marked increase of events pertaining to travels organised both by private subjects and *no-profit organisations*. The issue also involves *public or joint public and private institutions*, established with the object of developing a territory's tourist resources: individual Italian Regions are making different decisions as to the operational status of such subjects. Are they mere intermediaries or package organisers real and proper? The outcome for the Consumer obviously is far different in either case. In Lithuania, national law states the opposite and has “translated” the definition of “organiser” into commercial tour operator.

### **d) Liability: Expedia again**

Exactly what is the issue raised? The Directive does not clearly define the contractual execution liability borderline between organiser and seller. This ambiguity can have very strong effects on the Consumer. Why does Expedia not apply the regulations on all-inclusive package? The only reason is to class itself only as an *intermediary* and thus “not comply” with the requirement set out in Article 5.1 of the Directive (Article 93 of the Consumption Code), which specified that an organiser and/or seller are liable versus the Consumer for proper contract execution.

Expedia's sales conditions state:

The Intermediary is in no case liable for the obligations pursuant on travel organisation, particularly in conformity with Item 3 of Article 22 of the *Consumption Code*, whereby “The *intermediary* is not liable for total or partial execution of travels accommodations or other service object of the contract.”

There is no law on this regulation too and the Expedia case proves it quite clearly.

### **e) Formulation on the Web**

Following on the invasion by the Internet during consent formation and negotiation stages, formulations such as “in writing or by means of other appropriate methods” are difficult to interpret and leave a lot of doubts. This means that possible reproduction and storing and durable supports are so far the clearest formulations for these contexts.

## **Conclusions**

As we have underscored, the tourist business is dynamic, very creative and greatly changing. Some scenarios can perhaps already be imagined, with the Internet as their first actor. A lot is said –in the tourist business especially – of systems for identifying the navigator, by personalising the “man-machine” interaction according to the former’s features; these systems are perhaps not on our doorstep yet or at least not within easy reach of most Tour Operators, but we do know that law-makers are not always in tune with such dynamism and a well-known event often occurs, sometimes after reality has already changed.

For e-trade, lawmakers have always elected to act by means of transversal regulations affecting various different businesses, without governing any specific product or service; we are still waiting for some forecasts to be “**adapted**” to the **Web’s tourist reality**, in a new version of the Directive and/or national laws. We sincerely hope so, as the great development of the Internet in tour buying exposes a great number of Consumers to remarkable risks.

Lastly, this publication never touched upon the topic of “service circulation” in the tourism business and the possibility that thanks to “Europe” Consumers have a greater market of offers and opportunities. Though the Web has revolutionised the market, it has not yet gone beyond the frontiers of tourism; language barriers are still a great obstacle and only bigger groups such as Expedia, Lastminute and others have succeeded in creating multi-language platforms and getting organised in different countries. Average sized structures – and even more so the very small ones – still work with a strong national outlook.

A hypothetical scenario is that different nationality Tour Operators with similar specialisation directed at specific market niches can underwrite **cooperation agreements** to widen the offer range; cooperation agreements not directly perceivable by Consumers, most of whom will anyway continue looking for holidays presented in their own language, but to all purposes and effects presenting an improvement of service and better service circulation, so much hoped for by the European Union.

*Lastly, we can only suggest using a team of Web site design and implementation specialists, inclusive of a communicator and a legal expert but also a Consumer Market expert.*