

## DUTIES AND LIABILITIES OF SPACE TOURIST OPERATORS

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### Abstract

*This paper examines the application of the EC Package Holidays Council Directive 90/314/EEC to space tour operators. The directive can apply to a space tour contract where it combines accommodation and transport or where it combines either accommodation or transport with the space tour or other tourist service provided the package is sold within a Member State. In such a case, the terms of the contract must be comprehensible and accessible. Organizers of packages are liable for failure to perform the contract save where there is an applicable exception. The directive permits Member States to allow clauses permitting some reasonable limitation on compensation in the case of damage other than personal injury resulting from the non-performance or improper performance of the services involved in the package. The directive confers a right to compensation on the consumer for non-material damage (such as feelings of dissatisfaction and disappointment) arising from the non-performance or improper performance of the contract for the package travel, tour or holiday. This paper examines the scope of such duties of those companies that sell space tourism packages and the liability to which they may be exposed.*

### INTRODUCTION

While some consumers may choose to arrange a space tour direct from the space carrier, others may choose to contract with a space tour operator who organises a complete package or travel agent that sells space tour packages. Some regulation has occurred for space tourist carriers, albeit limited to the United States. However, there has been no explicit regulation of space tourist operators. Retailers and organizers of space tour packages, such as Space Adventures, will soon see a growth in the market, with the prediction of

suborbital space tours commencing at the end of the decade. Therefore the need for the regulation of operators will gain importance. The possible application of the existing law that regulates tour operators merits examination for this reason. This paper analyses the potential application of Directive 90/314/EEC on Package Travel, Package Holidays and Package Tours to such operators. The application of the directive would fill such a void. The definitions set out by the directive will be examined, specifically what is meant by a 'package' and an 'organizer', as will the scope of the obligations it imposes on organizers and the impact this will have for space tour operators.

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## THE PACKAGE HOLIDAYS DIRECTIVE

The directive as proposed by the Commission<sup>1</sup> in cooperation of the European Parliament was for the purpose of resolving the ‘disparities’ of Member State practices which were viewed as an obstacle to the internal market.<sup>2</sup> In addition, it was accepted that tourism “plays an increasingly important role in the economies of the Member States” and that the package system is “a fundamental part of tourism”.<sup>3</sup> The freedom to provide tourist services is protected under Articles 43 and 49 of the Treaty (ex Articles 52 and 59) as confirmed by the European Court of Justice (ECJ) in the *André Ambry* case.<sup>4</sup>

The Commission also considered that the package travel industry would grow and increase productivity “if at least a minimum of common rules were adopted”, benefiting not only the Community but its citizens as well as serving to “attract tourists from outside the Community seeking the advantages of guaranteed standards in packages”.<sup>5</sup> The directive only sets down the minimal level of consumer protection. Member States may adopt more stringent measures to protect the consumer, if they see fit.<sup>6</sup> Space tour operators are advised to refer to the transposing instrument in the relevant Member State to ensure they comply with the principles of national law.

### DEFINITION OF A PACKAGE

For the purposes of the directive, a package is defined in Art. 2(1) as “the pre-arranged combination of not fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation: (a) transport; (b) accommodation; (c) other tourist

services not ancillary to transport or accommodation and accounting for a significant proportion of the package.” Separate billing of the components will not allow the organizer to escape the obligations of the directive.<sup>7</sup>

### ‘Pre-Arranged’

The meaning of ‘pre-arranged’ was examined in *Club Tour v Garrido*,<sup>8</sup> where the ECJ concluded that ‘pre-arranged’ elements were those that were chosen by the consumer prior to the conclusion of the contract.<sup>9</sup> In *Leitner v TUI*,<sup>10</sup> the ECJ held that there was nothing preventing a holiday that was specifically tailored to a consumer from coming within this definition where the other elements were present.

### ‘Inclusive’

A price will be found to be ‘inclusive’ even if it does not cover all the elements that the consumer in fact obtained.<sup>11</sup> A ‘flight only’ package would appear to fall outside the scope of the directive.

### ‘Transport’

An additional issue is whether the space carriage element will be considered within transport, rather than as a separate element. In the case of a cycling holiday, the cycle does not qualify as transport, but a tourist service although the cycle is a means of transport.<sup>12</sup> Thus, by analogy, in the case of a space tour package, the space tour, although involving a means of transport, is more likely to be viewed as a tourist service, and advertised as such. However, flights to and from the launch site or accommodation and local transport between the airport and the launch site or accommodation will not amount to a tourist service but rather as

transport and an ancillary service within the definition respectively.

### ‘Accommodation’

As to accommodation, Mason and Grant correctly observe that there is no need for this element to take up a significant portion of the package; duration is therefore irrelevant.<sup>13</sup> The Trading Standards Institute requires ‘accommodation’ to be more than a facility ancillary to other aspects of the arrangements.<sup>14</sup> Where a space tour operator provides not only the overnight accommodation at or near the launch site, the transport to the launch site, training location or place of accommodation or where the service lasts over twenty-four hours, sufficient elements will be met to amount to a package.

### ‘Other Tourist Service’

The remaining question is whether the provision of space tourism, either travelling to, through or from space or a celestial body, will be sufficient to meet the third element. Where there is overnight accommodation and transport, it will be unnecessary to actually show this as two elements will have been met as stated above. If however only transport *or* accommodation is offered, in addition to the space tour, then it will become necessary to answer this question. The central issue is whether the space tourism element can be seen to account for a *significant* portion of the package (“une part significative dans le forfait” in the French text). It is submitted that it would be. Mason and Grant observe that:

“Significance can be measured in a number of ways – by the proportion of the price, by the proportion of

time spent on it or perhaps in cases where it costs little and is over quickly, by the importance attached to it.”<sup>15</sup>

On the three tests above, a space tour to low earth orbit, lasting a few hours from departure to landing, would probably be the most expensive component of the tour and though, by proportion, takes less time than that expended in the accommodation or on transport, it has the greatest importance, both objectively and subjectively, to the space tour package. The question of what was a significant portion was examined in *AFS Intercultural Programmes Finland*.<sup>16</sup> Here a non-profit making organisation arranged student exchanges, including transport to the host country, a stay with a host family (free of charge) and schooling. The Court found that while the transport element had been met, the stay with the host family could not be regarded as accommodation nor could it and the schooling amount to a tourist service. The selection of the school was not a tourist service but was aimed instead at the education of the students. Selection of the host family was considered an ancillary service. It also held that while the preparation of documentation for the stay could be considered to be covered by the concept of other services, it did not take up a significant proportion of the package.<sup>17</sup> Thus education is not a *tourist* service.<sup>18</sup> Saggerson contends that ‘other tourist services’ ‘will be judged qualitatively as well as quantitatively’ on this point.<sup>19</sup> He notes:

“It refers to services which are of more than minimal or incidental or casual importance to the purpose of the trip and to those services which might extend over an identifiable period. In this context, *significant*, it is submitted, does not mean *substantial*. Any judgment should

involve both the time the service takes in the context of the package of the whole, and the relative importance of the service when set in the context of the particular package...”<sup>20</sup>

The UK Department of Trade and Industry has stated on this point that:

“‘Other tourist services’ would form a significant part of the package if their presence or absence determined the nature of the holiday.”<sup>21</sup>

However, it distinguishes between facilities rather than services, a facility being open to all patrons rather than just the consumers of the package. Saggerson views the test as an objective one, limiting the consumer’s own personal view to that of evidential importance, rather than being conclusive.<sup>22</sup> On the other hand, a supplier would have some difficulty refuting a claim that a particular feature that is particularly well-promoted in the pre-contractual advertising was not a service.<sup>23</sup> Where a service has been ‘individually identified, promoted or advertised by a supplier’<sup>24</sup>, it may be viewed as qualitatively significant.<sup>25</sup>

The ECJ has held that it is not necessary for the consumer to pay entirely for the holiday. In *Rechberger and Greindl*,<sup>26</sup> the plaintiffs availed of an advertised offer in a newspaper requiring them to pay only airport tax and a single-room supplement if travelling alone. The tour operator became insolvent. The Court held that the criteria for a package holiday had been met. The plaintiffs had been exposed to the risk of the organizer’s insolvency; the lack of full payment on their part was not material. Therefore, even where a consumer does not pay the full price for a space tour

they will still gain the protection of the directive.

## THE PARTIES TO THE CONTRACT

An ‘organizer’ is defined as “the person who, other than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer”<sup>27</sup> while a ‘retailer’ is defined as “the person who sells or offers for sale the package put together by the organizer”.<sup>28</sup> These definitions are wide enough to cover space tour operators and travel agents that sell space tour packages. A consumer is widely defined by the directive to include “the person who takes or agrees to take the package (‘the principal contractor’), or any person on whose behalf the principal contractor agrees to purchase the package (‘the other beneficiaries’) or any person to whom the principal contractor or any of the other beneficiaries transfers the package (‘the transferee’)”. Clearly, consumers are not then limited to Community citizens, thus fulfilling the objective as set down in clause 7. This definition is also wide enough to cover those consumers that are not simply travelling for leisure, including business travellers.

## OBLIGATIONS OF OPERATORS

### Pre-Contractual Responsibility

The directive provides that “any descriptive matter concerning a package supplied by the organizer or the retailer to the consumer, the price of the package and any other conditions applying to the contract must not contain any misleading information.”<sup>29</sup> This prohibition on misleading information coupled with the provisions of the Misleading Advertising directive,<sup>30</sup> ensure that prospective space tourists are not misled at all pre-

contractual stages. Space tour operators must guard against making misleading claims in the brochures. Article 3(2) requires any brochures furnished to the consumer to indicate in a “legible, comprehensible and accurate manner” both the price and adequate information concerning, *inter alia*, the destination, the type of accommodation, its location, category or degree of comfort and its main features, its approval and tourist classification under the rules of the host Member State concerned, the meal plan, the itinerary, general information on passport and visa requirements for nationals of the Member State or States concerned, health formalities required for the journey and the stay and either the monetary amount or the percentage of the price which is to be paid on account as well as the time-table for payment of the balance. The organizer or retailer is bound by the particulars contained in the brochure save where changes in such particulars have been clearly communicated to the consumer before the conclusion of the contract and is expressly stated in the brochure or where the parties agree to any change subsequently made.<sup>31</sup> These provisions, like those prohibiting misleading information, safeguard the consumer’s right to information. Further safeguards are provided in Article 4 which requires the organizer and/or the retailer to provide the consumer, either in writing or any other appropriate form, with general information on passport and visa and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay prior to the conclusion of the contract. Therefore, organizers cannot escape their responsibilities simply by not issuing a brochure. It is unlikely that space tour operators would have difficulty meeting their pre-contractual responsibilities, although the health

formalities may be more onerous for space tourists.

### Pre-Departure Obligations

Article 4 imposes additional obligations on organizers regarding the provision of information to the consumer. In good time before departure, the operator and/or retailer must provide the consumer, in writing or any other appropriate form, with information such as the times and places of intermediate stops, and transport connections as well as details of the place to be occupied by the traveller, the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call (or where no such representatives or agencies exist, with an emergency telephone number or any other information that will enable him/her to contract the organizer and/or the retailer) and information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness. Again, it is not envisaged that meeting such obligations will pose any difficulty for space tour operators.

### Post-Departure Obligations

The directive also imposes obligations on Member States. They must ensure that certain principles apply to package contracts. Failure to transpose will render the State liable to individuals following *Frankovich*.<sup>32</sup> Where the directive is correctly transposed, the national law will require the terms of the contract to be set out in writing or such other form as is comprehensible and accessible to the consumer and must be communicated to him/her before the

conclusion of the contract. The consumer must be given a copy of the terms.

The consumer, where prevented from proceeding with the package, must be able to transfer his/her booking to a person who satisfies all the conditions applicable to the package, following reasonable notice of this intention to the organizer or the retailer before departure. Space tour operators need not be concerned therefore where the package is transferred that the transferor would be unable to meet the safety or age requirements set out in the initial package. Both the transferor of the package and the transferee remain jointly and severally liable to the organizer or retailer party to the contract for payment of the balance due and for any additional costs arising from such transfer.<sup>33</sup>

Member States' national laws must ensure that the prices laid down in the contract are not subject to revision unless the contract expressly provides for the possibility and states precisely how the revised price is to be calculated. Such variations are only allowed for transportation costs, dues, taxes or fees chargeable for certain services, such as landing taxes or embarkation or disembarkation fees at ports and airports, and the exchange rates applied to the particular package. But no increases may be made within the twenty days prior to departure. Where the organizer alters the essential terms, such as the price, he must notify the consumer as soon as possible and the consumer may withdraw from the contract or accept a rider specifying the alterations made and their impact on the price.

If the consumer elects to withdraw for this reason, or if, for whatever cause, other than the fault of the consumer, the organizer cancels the package before the

agreed date of departure, the consumer is entitled to be repaid or accept another package and a partial refund if the substituted package is of a lower value. The consumer may have a right to compensation in such a case for non-performance of the contract from the organizer/retailer unless the cancellation is on the grounds of *force majeure* or on the grounds that the number of persons enrolled for the package is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period indicated in the package description. Force Majeure is defined with the directive as "unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care had been exercised."

Under Article 4(7) of the directive, where, after departure, a significant proportion of the services contracted for is not provided or the organizer perceives that he will be unable to procure a significant proportion of the services to be provided, the organizer must make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package, and where appropriate compensate the consumer for the difference between the services offered and those supplied. The obligation to find a suitable alternative may be quite a heavy burden to meet where a space carrier is unable to fulfil its obligations. An alternative carrier may simply be unavailable or unable to meet the requirements of the package. As such the amount of compensation may be a reasonably high percentage of the cost of the overall package given that the cost of space carriage, at least in the initial phases of the space tour industry, will most likely be the mostly expensive component of the package. Where the

organizer cannot make such arrangements or these are not accepted by the consumer for good reasons, the organizer must, where appropriate, provide the consumer, at no extra cost, with equivalent transport back to the place of departure, or to another return-point to which the consumer has agreed. They must also compensate the consumer where appropriate.

### FINANCIAL OBLIGATIONS

Article 7 of the directive requires the organizer and/or retailer to “provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.” Clearly this protects the consumer against the costs of the organizer’s and/or retailer’s insolvency but as the perambulatory clauses reveal, this measure was also viewed as benefiting the package travel industry. The directive does not define what will constitute ‘sufficient evidence’ for this purpose. Transposing instruments provide the means by which the organizer/retailer may provide the required evidence. The Commission advocated compulsory insurance and the creation of guarantee funds, which already existed in some states (Ireland, Denmark, the Netherlands and the United Kingdom).<sup>34</sup> Under the Irish Package Holidays and Travel Trade Act 1995<sup>35</sup>, a package provider is deemed to have sufficient evidence of a refund where the package is one in respect of which the provider is required to hold a licence, where an approved body of which the provider is a member enters into a bond with an authorised institution or where the provider has an insurance policy under which the insurer agrees to indemnify the consumer. The production by a space tour operator, of a copy of their bond or insurance policy would probably be sufficient although to ensure

that this would in fact be sufficient to refund all space tourists an examination of the books would be needed.<sup>36</sup> The requirements for financial security on space tour operators are particularly beneficial to space tourists as the sums involved are significantly higher than those of average packages due to the space carriage element.

### LIABILITY FOR DAMAGES

Under Article 5, Member States must take the necessary steps to ensure that the organizer and/or retailer to the contract is liable to the consumer for the proper performance of the obligations arising from the contract, regardless of whether such obligations are to be performed by that organizer and/or retailer or by other suppliers of services, without prejudice to the right of the organizer and/or retailer to pursue those other suppliers of services. The organizer/retailer will not be liable, however, where the failure to perform or improper performance is attributable neither to any fault of theirs nor to that of another supplier of services because it is attributable to the consumer, a third party unconnected with the provision of the services contracted for, and is unforeseeable or unavoidable, *force majeure* (as defined above) or to an event which the organizer and/or retailer or the supplier of services, even with all due care, could not foresee or forestall. The organizer and/or retailer must provide prompt assistance in such cases save where the failure is due to the consumer. The consumer must, of course, inform the organizer and/or retailer of any failure in writing. Significantly, Member States are free to allow clauses permitting reasonable limitations on compensation within the contract in the case of damage *other* than personal injury resulting from the non-performance or improper performance of

the services arises. Ireland, for example, permits clauses limiting the amount of compensation, except where limits are already in place by virtue of an international convention, although clauses excluding liability for non-performance are not permitted.<sup>37</sup> The United Kingdom's transposing instrument also imposes an outright ban on the inclusion of a clause excluding liability.<sup>38</sup> Space tour operators should check the transposing instrument in the relevant Member State to confirm whether such limitations on compensation are permissible. Member States may also permit limitations to all forms of damage in accordance with international conventions, although this is currently a moot point with no such convention in place.

#### Leitner v TUI<sup>39</sup>

This case concerned compensation for non-material damage. The Leitner family booked a package holiday in Turkey. All meals were consumed at the club where they stayed. One week into the vacation, Simone Leitner displayed symptoms of salmonella poisoning. Her parents tended to her for the remainder of the holiday. A letter of complaint was sent to TUI but no response was received. The plaintiffs then brought an action for the physical pain and suffering as well as for non-material injury, namely the loss of enjoyment of the holiday. The plaintiffs were successful on their first claim but the Austrian Court dismissed the latter. However, the ECJ had a different view. Given the purpose of the directive to harmonise the laws of different Member states, the existence in some Member States, but not in others, of an obligation to provide compensation for non-material damage would cause significant distortions of competition. The Court also added that "compensation for non-material damage

arising from the loss of enjoyment of the holiday is of particular importance to consumers."<sup>40</sup> Thus the Court concluded that:

"Article 5 of the directive is to be interpreted as conferring, in principle, on consumers a right to compensation for non-material damage resulting from the non-performance or improper performance of the services constituting a package holiday."<sup>41</sup>

Space tour operators are therefore exposed to liability for compensation for non-material damages, including loss of enjoyment of the space tour by virtue of Article 5, where correctly transposed by the Member State. Consumers have this as a right but this is only of particular significance in Member States, as was the case with Austria, which did not recognise such a head of damages in contract. Other Member States, such as the Republic of Ireland<sup>42</sup> and the United Kingdom, already have such heads of damages.<sup>43</sup> Such an approach is reasonable<sup>44</sup> even without the Community aspect. As Saggerson observes:

"The underlying purpose of all holiday contracts is to provide a degree of peace of mind and freedom from vexation – even where the holiday in question involves strenuous activity. Given that the primary objective of a holiday contract is to provide enjoyment it would be astonishing if damages for the loss of enjoyment or disappointment could not be recovered."<sup>45</sup>

Given the scope of damage, space tour operators should consider including clauses limiting the amount of



compensation available under this head within the contract where such clauses are permitted under national law.

### CONCLUSION

Space tour organizers and travel agents selling space tours will need to meet the obligations set out by the Package Holiday directive where their product comes within the definition of a package. Any holiday must combine either transport or accommodation or, transport or accommodation with the actual space tour itself. It is submitted that a trip into low earth orbit amounts to a tourist service accounting for a significant portion of the package both objectively and subjectively, given both its importance in any space tour, as its absence would seriously diminish the value of such a holiday, and its cost as a percentage of the cost of the rest of the package. Tour operators must not provide misleading information and must provide information relating to itinerary, meals, visas etc. to their customers. They must show sufficient evidence of financial security to protect the space tourist from the risk of the organizer's insolvency. Evidence of insurance policies or bonds should be sufficient, though this will depend on the options set out within municipal law. The space tour organizer will be liable to the space tourist for the proper performance of the contract. The space tourist has a corresponding right to compensation, a right that includes compensation for non-material injury, such as loss of enjoyment and disappointment. No liability will attach to the organizer however where the improper performance is attributable to the space tourist, a third party unconnected with the provision of the services contracted for, and is unforeseeable or unavoidable, *force majeure* or to an event which the

organizer and/or retailer or the supplier of services, even with all due care, could not foresee or forestall. In any case, the space tour operator should refer to the relevant municipal law to confirm that it is meeting the principles binding on organizers.

“A tour operator sells a dream. If he sells a dream he must make it come true. This is fragile; therefore it imposes a great obligation on him to take care.”<sup>46</sup>

Space tour operators are no exception.

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<sup>1</sup> O.J. No. C 96, 12.4.1988, p.5.

<sup>2</sup> Council Directive 90/314/EEC, clause 2.

<sup>3</sup> See generally Yaqub, Zahd “The Package Travel Directive” in Yaqub and Bedford, Becket (eds), *European Travel Law*, John Wiley & Sons, Chichester, 1997, pp.47-72.

<sup>4</sup> Case 410/96 *Criminal Proceedings v André Ambry* [1998] ECR I-7875. See also Case C-26/83 *Graziana Luisi and Guiseppe Carbone v Ministero del Tesoro* [1984] ECR 377; [1985] 3 CMLR 52. See Guyot, Cedric and Dyson, Helen, “Review of European Union Case Law in the Field of Tourism” [2004] *International Travel Law Journal* 199 at pp.201-202.

<sup>5</sup> Directive 90/314/EEC, clause 7.

<sup>6</sup> *Ibid*, Article 8.

<sup>7</sup> Kendall, Vivienne, *EC Consumer Law*, Wiley Chancery, London, 1994, p.131.

<sup>8</sup> Case C-400/00 [2002] ECR I-4051.

<sup>9</sup> See Mason, David and Grant, Stephen, *Holiday Law*, 3<sup>rd</sup> ed., Thomson Sweet and Maxwell, London, 2003, pp.34-39.

<sup>10</sup> Case C-168/00 [2002] ECR I-2631.

<sup>11</sup> See Mason and Grant, *Holiday Law*, *supra*, p.42.

<sup>12</sup> See Mason and Grant, *Holiday Law*, *supra*, p.46.

<sup>13</sup> See the Advocate General's opinion in Case 237/97 *AFS Intercultural Programmes Finland* [1999] ECR I- 0825.

<sup>14</sup> UK DTI Guidelines endorsing the Institute's view, quoted by Mason and Grant, *Holiday Law*, *supra*, p.44.

<sup>15</sup> Mason and Grant, *Holiday Law*, *supra*, p.51.

<sup>16</sup> Case 237/97, [1999] ECR I- 0825. See Guyot and Dyson, *supra*, p.210 and Mason and Grant, *supra*, pp.47-48.

<sup>17</sup> Case 237/97, [1999] ECR I-08525, para 34.  
<sup>18</sup> See Robinson, M., "Who is a Tourist? Issues Arising from the Package Travel Regulations" [1995] *TLJ* 77.  
<sup>19</sup> Saggerson, Alan, *Travel: Law and Litigation*, XPL, Hertfordshire, 2004 p.33.  
<sup>20</sup> *Ibid*, p. 31.  
<sup>21</sup> Quoted in Grant, David and Mason, Stephen, *The EC Directive on Package Travel, Package Holidays and Package Tours*, Travel Law Centre, University of Northumbria, 1993, p.9.  
<sup>22</sup> *Ibid*.  
<sup>23</sup> *Ibid*.  
<sup>24</sup> *Ibid*.  
<sup>25</sup> *Ibid*, p.32.  
<sup>26</sup> Case 140/97 *W. Rechberger and Renate Greindl v Republic of Austria* [1999] ECR I-3499. See Guyot and Dyson, *supra*, pp.207-208.  
<sup>27</sup> Council Directive 90/314/EEC Article 2(2).  
<sup>28</sup> *Ibid*, Article 2(3). See Grant and Mason, *The EC Directive*, *supra*, pp.9-10.  
<sup>29</sup> Council Directive 90/314/EEC, Article 3(1). Tour operators may be exposed to civil liability in respect of misleading information under national law, for example, Regulation 4 of the UK's Package Travel, Package Holidays and Package Tours Regulations 1992. See Nelson-Jones, John and Stewart, Peter, *A Practical Guide to Package Holiday Law and Contracts*, 3<sup>rd</sup> ed., Tolley, Surrey, 1993, p.21.  
<sup>30</sup> Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising OJ No L 250, 19.9.1984, p.17  
<sup>31</sup> Council Directive 90/314, Article 3.  
<sup>32</sup> Case 174/94 *Erich Dillenköfer v Federal Republic of Germany* [1996] ECR I-4845; *Frankovich v Italy* [1991] ECR I-5357; [1992] IRLR 84. See Guyot and Dyson, *supra*, pp.206-207.  
<sup>33</sup> Council Directive 90/314, Article 4(3).  
<sup>34</sup> See Yaqub, *supra*, p.56.  
<sup>35</sup> No. 17 of 1995.  
<sup>36</sup> See Nelson-Jones and Stewart, *supra*, pp.68-69.  
<sup>37</sup> Package Holidays and Travel Trade Act 1995, section 20(3) and (5).  
<sup>38</sup> Package Travel, Package Holidays and Package Tours Regulations (SI 1992/3288), Regulation 15(5). See *Lathrope v Kuoni Travel Ltd.* [1999] C.L.Y. 1381. See generally, Grant, and Mason, *Holiday Law*, *supra*, pp.212 *et seq.* and Mason and Grant, *The EC Directive*, *supra*, p.48  
<sup>39</sup> Case C-168/00 [2002] ECR I-2631. See generally Wiewiórowska-Domagalska, A., Arnokouros, G., Dickie, J. and Loos, M. B.M.,

"ECJ, 12 March 2002, Case C-168/00 *Leitner v TUI Deutschland GmbH & Co. KG* - Compensation for non-material damage under the directive on Package Travel", (2003)11(1) *European Review of Private Law* pp. 91-102, Roth, W.H., "Case *Simon Leitner v TUI Deutschland GmbH & Co. KG*" (2003) 40(4) *Common Market Law Review* 937-951.  
<sup>40</sup>Case C-168/00, para.22.  
<sup>41</sup> *Ibid*, para. 24.  
<sup>42</sup> See *Johnson v Longleat Properties (Dublin) Ltd* (Unreported, High Court, 19 May, 1976 and noted in (1978)13 *Irish Jurist* 186); *O'Keefe v Ryanair Holdings plc* [2002] IEHC 154 (19 June 2002); *Dinnegan v. Ryan* [2002] IEHC 55 (13 May 2002); *Carroll v. Bus Atha Cliath/Dublin Bus* [2005] IEHC 278 (4 August 2005), para.12. See generally Buttimore, Jonathan, *Holiday Law in Ireland*, Blackhall Publishing, Dublin, 1998.  
<sup>43</sup> See *Jarvis v Swan Tours* [1973] QB 233, *Jackson v Horizon Holidays* [1975] 1 WLR 1468, *Askew v Intasun North* [1980] CLY 637, *Levine v Metropolitan Travel* [1980] CLY 638, *Bragg v Yugotours* [1982] CLY 777 and *Hunt v Hourmont* [1983] CLY 983. See Saggerson, *supra*, pp.244-252 and Nelson-Jones and Stewart, *supra*, Appendix D.  
<sup>44</sup> For a different view see Mason, Stephen, "Damages for Distress and Disappointment – Why Us?" [2001] *International Travel Law Journal* 8 (on the Advocate General's opinion in *Leitner*).  
<sup>45</sup> Saggerson, *supra*, p.245. Footnotes omitted.  
<sup>46</sup> *Harris v Torchgrove Ltd.*, Manchester District Registry, [1985] CLY 944. See Nelson-Jones and Stewart, *supra*, Appendix D, pp.280-281.