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## 16379 Law 21/1995 of 6 July on Package Travel

Art 4 (1)(a)  
not implemented

Juan Carlos I, King of Spain

All who see and hear this are informed that I hereby ratify the following Law which has been passed by Parliament.

Explanatory statement

The objective of this Law is to incorporate into Spanish law Directive 90/314/EEC of the Council of the European Communities of 13 June 1990 on package travel, package holidays and package tours, hereinafter referred to as "packages".

The rules incorporating it into national law adopt the status of law in that they establish principles which affect and regulate the improvement, efficiency and performance of package contracts, which implies that this special regulation has an impact on the general terms of contract contained in the Civil and Commercial Codes. On account of this impact, this Law is issued under the protection of the State's authority acknowledged in Article 149(1), (6) and (8) of the Constitution.

The Community legislation on which the national implementing measure is based highlights the disparities in national legislation and national practices in this field, which, in the Community's opinion, constitute serious obstacles to the freedom to provide services amongst operators established in the various Member States of the European Union. For this reason it is considered that completion of the internal market in tourism, given its economic importance, requires approximation and harmonisation of national legislation.

In addition to the objective of harmonisation, the Community Directive also seeks to offer greater protection to consumers by means of the guidelines laid down in the Commission communication to the Council entitled "A New Impetus for Consumer Protection Policy", which was approved by resolution of the Council on 6 May 1986 and which lists in paragraph 37, among the measures proposed by the Commission, the harmonisation of legislation on packages.

The above Community precedents constitute the objective and substance of this Law, which, though it in principle sets out to harmonise the legislation of the Member States of the European Union, also considers an equal level of protection for consumers.

The Law begins by defining the subject of package contracts and the individuals involved or affected by them, defining them on the basis of the minimum services which they must include and, in addition to transport and/or inclusive accommodation, the other tourist services not ancillary to these and accounting for a significant proportion of the package.

Consumer protection focuses primarily on the comprehensive, detailed information which must be provided to the consumer in the package offer by means of a travel programme, the contents of which are binding on the organizer or retailer under the Law. Attention is drawn to the importance of protection through adequate information with the requirement of a written contract and a record of terms describing the package, the complexity of which is apparent.

The consumer's right to transfer his reservation, together with the information concerning the package contract which must be provided before departure and once the contract has been concluded and the restrictions, save in exceptional cases, on price revisions, are some of the many other aspects which guarantee the interests of those buying package holidays.

The regulations and guarantees to ensure the proper performance of the contract continue in the Law with a clear regulation of the consequences of altering the contract and the consequent termination or cancellation of the latter, which leads implicitly to the immediate reimbursement of the sums paid and payment of the relevant compensation. The Law also explicitly provides for liability arising from failure to perform or the improper performance of the contract, the time limit for legal action arising from the rights recognised in the Law being set at two years.

Finally, the Law's protective measures end with the outline of a guarantee system in the event of the failure of organizers and retailers of packages to fulfil their contractual obligations, and with a declaration that such failure to fulfil obligations could be punished in accordance with the legislation in force, without prejudice to the other liabilities which they might incur.

Article 1. *Scope*

1. This Law shall apply to the offering for sale, contracting and execution of the package holidays, tours and travel defined in the following Article.
2. The separate billing of various components of the same package shall not absolve the organizer or retailer from the obligations under this Law.

Art 2(1) in fine

Article 2. *Definitions*

For the purposes of this Law:

Art. 2

1. "package" means 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;
2. "organizer" means the natural or legal person who, other than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer;
3. "retailer" means the natural or legal person who sells or offers for sale the package put together by the organizer;
4. "principal contractor" means the natural or legal person who purchases or agrees to purchase the package;
5. "beneficiary" means the natural person on whose behalf the principal contractor agrees to purchase the package;
6. "transferee" means the natural person to whom the principal contractor or other beneficiary transfers the package;
7. "consumer or user" means any person having the status of principal contractor, beneficiary or transferee;
8. "contract" means the agreement linking the consumer to the organizer and/or the retailer.

Article 3. *Programme and offer of packages*

Art. 3(2)

1. The retailer or the organizer must make available to the consumer a programme or brochure containing written information about the package in question which must include comprehensible and accurate information concerning the following points:
  - (a) destinations and the means of transport, including the characteristics and categories of transport used;
  - (b) duration, itinerary and schedule of the package;
  - (c) list of accommodation, indicating the type, its location, category or degree of comfort and its main features, its approval and tourist classification in those countries in which such classification exists;
  - (d) the number of meals which will be served;
  - (e) general information on passport and visa requirements for nationals of the Member States of the European Union and health formalities required for the journey and the stay;
  - (f) the price of the package and the estimated cost of optional excursions, the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance, as well as any financing terms offered;
  - (g) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation;
  - (h) clauses applicable to possible liability, cancellations and other terms of the package;
  - (i) the name and address of the organizer of the package and, where appropriate, of his legal representative in Spain;
  - (j) any other relevant information concerning the nature of the package offered.
2. The particulars contained in the programme/offer will be binding on the organizer or retailer of the package, unless:

- (a) changes in such particulars have been clearly communicated in writing to the consumer before conclusion of the contract, in which case the programme/offer shall expressly state so; ✓  
 (b) changes are made later following a written agreement between the parties to the contract. ✓

#### Article 4. Form and content of the contract

1. The package contract must be in writing and, depending on the nature of the package to which it applies, must include at least the following elements:

- (a) the travel destination(s); ✓  
 (b) where several periods of stay are involved, the relevant periods, with dates; ✓  
 (c) the means, characteristics and categories of transport to be used; ✓  
 (d) the dates, times and points of departure and return; ✓  
 (e) where the package includes accommodation, its location, its tourist category and its main features, its approval and tourist classification in those countries in which such classification exists, and the meal plan; ✓  
 (f) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation, which must be at least ten days before the scheduled start of the package; ✓  
 (g) the itinerary; ✓  
 (h) visits, excursions or other services which are included in the total price agreed for the package; ✓  
 (i) the name and address of the organizer, the retailer and, where appropriate, the insurer; ✓  
 (j) the price of the package, an indication of the possibility of price revisions under Article 7 of this Law, and an indication of any dues, taxes or fees chargeable for contracted services, where such costs are not included in the price of the package; ✓  
 (k) method of payment and, where appropriate, the payment schedule and financing terms; ✓  
 (l) any special requirements which the consumer has communicated to the organizer or retailer, and which the latter has accepted; ✓  
 (m) the consumer's obligation to communicate any failure in the performance of the contract to the organizer or retailer and, where appropriate, to the supplier of the services concerned in writing or any other documentary form; ✓  
 (n) the time limit for legal action laid down in Article 13 of this Law within which the consumer must make any complaints concerning failure to perform or improper performance of the contract; ✓  
 (o) the period within which the consumer may request confirmation of his reservation.

2. The consumer will be informed before the conclusion of the contract of the terms of the contract and will receive a copy of these terms once they have been formulated. ✓

3. Any descriptive matter concerning a package and supplied by the retailer or the organizer to the consumer, the price of the package and any other conditions applying to the contract must contain truthful, verifiable information, pursuant to Article 10 of General Law 26(?)/1984 on the protection of consumers and users. ✓

#### Article 5. Transfer of booking

1. The principal contractor or the beneficiary may transfer his package booking free of charge to a person who satisfies all the conditions applicable to the package. ✓  
 2. The transfer must be notified in writing to the retailer or the organizer at least fifteen days before the start of the package, unless the parties have agreed to a shorter period in the contract. ✓  
 3. The transferor of the package and the transferee shall be jointly and severally liable to the retailer or organizer party to the contract for payment of the balance due and for any additional costs arising from such transfer. ✓

#### Article 6. Information concerning the package

The retailer or organizer of packages shall provide the consumer with whom they have concluded a

contract, in writing or any other documentary form, with the following information in good time before the start of the journey: ✓

- (a) the times and places of intermediate stops and transport connections, as well as details of the place to be occupied by the traveller on the means of transport to be used; ✓
- (b) the name, address and telephone number of the organizer's or retailer's representative at each destination or, failing that, of local agencies on whose assistance a consumer in difficulty could call. Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contact the organizer or the retailer. ✓
- (c) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay; ✓
- (d) information, in accordance with the legislation in force relating to personal insurance, on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation or transfer to the place of origin, in the event of accident, illness or death. ✓

#### Article 7. Revision of prices

Art 4 (H)(C)(G)

- 1. The prices laid down in the contract shall not be subject to revision unless the contract expressly provides for the possibility of upward or downward revision and states precisely how the revised price is to be calculated. ✓
- 2. Prices will be revised solely to allow for variations in transportation costs, including the cost of fuel; dues, taxes or fees chargeable for certain services; and the exchange rates applied to the particular package. ✓
- 3. Any price increases during the twenty days prior to the departure date will be invalid. ✓

#### Article 8. Alteration of the contract

Art 4 (5)

- 1. If the organizer finds that before the departure he is constrained to alter significantly any of the essential terms of the contract, he shall notify the consumer immediately. ✓
- 2. In this case, unless the parties come to some other arrangement, the consumer may either withdraw from the contract without penalty or accept a rider to the contract specifying the alterations made and their impact on the price. The consumer shall inform the retailer or the organizer of his decision within three days of being notified of the alteration referred to in paragraph 1 of this Article. If the consumer fails to give notice of his decision under the terms specified, it will be understood that he has opted to withdraw from the contract without penalty. ✓

#### Article 9. Withdrawal from the contract or cancellation of the package

Art (4)(6)

- 1. If the consumer chooses to withdraw from the contract pursuant to paragraph 2 of the preceding Article, 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 shall be entitled, upon withdrawal from the contract, to be repaid all sums paid under the contract or to take a substitute package of equivalent or higher quality where the organizer or retailer is able to offer him such a substitute. If the replacement package offered is of lower quality, the organizer or the retailer shall refund the difference in price to the consumer, where sums have already been paid under the contract. The consumer shall also be entitled to this if he does not receive confirmation of his reservation within the time specified in the contract. ✓
- 2. In the above cases, the organizer and the retailer shall be liable for payment to the consumer of any compensation for non-performance of the contract, which under no circumstances may be less than 5% of the total cost of the package contract if the non-performance occurs between two months and fifteen days immediately preceding the scheduled start of the package; 10% if it occurs between fifteen and three days before the start and 25% if it occurs during the 48 hours prior to the start of the package. ✓
- 3. There shall be no obligation to pay compensation in the following cases: ✓
  - (a) where cancellation is 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 contract; ✓

(b) where cancellation, excluding overbooking, is for reasons of force majeure, i.e. 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. ✓

4. The user or consumer may withdraw at any time from the services requested or contracted and is entitled to reimbursement of the sums already paid, but he must compensate the organizer or retailer as set out below, unless the withdrawal is due to force majeure:

(a) the consumer will pay organisational costs, cancellation charges, if any, and compensation of 5% of the total cost of the package if the withdrawal occurs between ten and fifteen days before the start of the package; 15% between three and ten days, and 25% during the 48 hours prior to departure.

If the consumer fails to turn up at the time of departure, he shall be obliged to pay the total cost of the package, including any outstanding payments, unless agreed otherwise by the parties.

(b) Where the package was subject to special reduced-rate contracting terms such as the chartering of aircraft, ships, special fares, etc., cancellation charges for withdrawal from the contract will be established in accordance with the terms agreed between the parties.

Article 10. *Consequences of failure to provide services*

Art 4 (7)

1. Where, after departure, the organizer does not provide or perceives that he will be unable to procure a significant proportion of the services provided for in the contract, he shall make suitable 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. If the consumer continues the package with the alternative arrangements made by the organizer, it is considered that he tacitly accepts these. ✓

2. If it is impossible to make such arrangements or these are not accepted by the consumer for good reasons, the organizer shall 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, without prejudice to the compensation which might be payable. ✓

3. In cases of complaint, the retailer or the organizer must make prompt efforts to find appropriate solutions. ✓

Article 11. *Liability of organizers and retailers*

Art 5 (1) (2)

1. Organizers and retailers of packages will be liable to the consumer for the proper performance of the obligations arising from the contract, depending on the obligations arising from organization of the package, irrespective of whether such obligations are to be performed by that organizer or retailer or by other suppliers of services without prejudice to the right of the organizer or retailer to pursue those other suppliers of services. Where several organizers or retailers are jointly involved in the contract, they will be jointly and severally liable, regardless of their nature and the relationships between them. ✓

2. Organizers and retailers of packages will likewise be liable for any damage resulting for the consumer from failure to perform or improper performance of the contract. ✓

This liability will cease where any of the following circumstances apply:

(a) the failures which occur in the performance of the contract are attributable to the consumer;

(b) such failures are attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable;

(c) such failures are due to a case of force majeure, i.e. 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;

(d) such failures are due to an event which the retailer or organizer, even with all due care, could not foresee or forestall.

Where there is no liability on account of the existence of one of the circumstances referred to in paragraphs (b), (c) and (d), the organizer or retailer party to the contract shall nevertheless be obliged to give the necessary assistance to a consumer in difficulty.

3. Compensation for the damages arising from the non-performance or improper performance of the