Comments by the Malta Business Bureau for the European Commission's public consultation on the Revision of the Package Travel Directive

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The Covid-19 pandemic identified gaps and failures of the Package Travel Directive, which make the upcoming European Commission revision of the Directive opportune and urgent. EU travel and tourism industry experienced reduction of bookings in the range of 60% to 90%, compared to the corresponding periods before the pandemic. The crisis hit SMEs the hardest as they faced challenges related to liquidity, general uncertainty, loss of human resources, and access to finance to maintain operations going.

We applaud the European Commission for acknowledging the economic problems faced by several sectors and for introducing several policy and funding initiatives to address the rapidly evolving situation in 2020; most notably, the SURE programme aimed to safeguard employment, and the Temporary State-aid Framework allowing flexibility for higher state-aid support to industry. In the case of Malta, this had mixed results. The Maltese Government provided a generous wage supplement programme that supported the payroll burden of companies that was broadly successful in retaining people in employment. While other schemes were introduced to temporarily and somewhat cushion other fixed costs, except for state aid to the national airline, there were no sector specific schemes supporting the operations of businesses that were not generating any revenue during a long period throughout the crisis, whilst at the same time they were expected to issue millions of euros in refunds.

The biggest challenge of the travel and tourism industry was liquidity, due to the ban on travel at the start of the pandemic and subsequently very low level of reservations over a long period due to overall uncertainty as well as due to travel restrictions imposed. This must be seen in the context of an unprecedented number of cancellations and request for reimbursement claims. In the case of travel operators, the problem was exacerbated by the fact that the PTD required them to reimburse the full price of the package to the traveler when they do not themselves were in receipt of a reimbursement for prepaid services to other service providers that form part of the package. Travel operators very often have weak bargaining power particularly when negotiating with big suppliers such as airlines.

Operators in the tourism sector were also doubly hit by the pandemic. Because while other sectors had their revenue impacted by a slowdown when the crisis hit, operators in the tourism sector lost business previously generated, and therefore also having to absorb the costs of wages, rents, marketing, commissions, and other operational expenses that were already paid.

In our view, a big failure of the system during the pandemic related to insurance services. While it is not mandatory for consumers to have annual or holiday specific travel insurance policy, even in the cases where these existed and specific pandemic coverage clauses were included, insurance companies took a position against covering the reimbursement cost of package travel in view of the travel organisers' obligations under the PTD. This was the case of Malta at least whereby the insurance companies' position was supported by the Malta Financial Services Authority (the Regulator).

Another serious failure in the PTD exposed by the pandemic relates to the national Insolvency Funds. This was merely intended for a scenario involving the insolvency of individual travel operators. The PTD as it currently stands does not cater for extraordinary situations such as pandemics, and as a result they are not sufficiently robust to cater for large scale insolvencies of multiple travel operators, and in which case it would not be sufficiently robust to reimburse all consumers if triggered in such a scenario.

During the pandemic, the European Commission recommended the introduction of a Voucher option to help operators retain some of the revenue previously generated or to postpone reimbursement to a later date, providing liquidity relief in the short term. Firstly, in our view, postponing a liquidity problem does not resolve it. Secondly, the voucher policy has various limitations and is not very effective in addressing reimbursement obligations. The problem with the Commission's recommendation and wherever it was implemented as an option, was that in the case of an extraordinary situation such as the pandemic, which at the time had no end in sight, consumers generally felt more secure receiving their money back immediately, especially if they considered that the service provider could become insolvent before they utilize the voucher. Even though the Commission Recommendation included suggestions for a guarantee scheme as a back stop for vouchers to cover reimbursements in the case of insolvency, our view is that in the dramatic situation of a pandemic, public trust in such guarantees do not promise a good take up of vouchers, and as long as the schemes are optional, their impact are limited.

Finally, the PTD must address linked travel services more effectively. Since the concept was introduced, it raised numerous concerns as it posed difficulties with respect to enforcement. Linked travel services may be initiated by a service provider who is merely acting as an agent of a combination of services, some of which are not obliged to provide an insolvency cover unlike package travel, and therefore it is unclear as to who should provide insolvency protection for the part of the service provided under the definition of linked travel arrangement and under what terms. This is a grey area that needs to be addressed.

Recommendations:

1. While acknowledging that the PTD regulates package travel only, it is important that same rules apply for other service providers such as airlines and therefore legislations covering other travel or transport services are reviewed to reflect the same principle.
2. Requiring stricter conditions for member states to provide alternative options beyond public Insolvency Fund (such as possibility of private insurance or bank guarantees)
3. Establish stronger minimum standards for Insolvency Funds to avoid larger travel operators circumventing responsibility by registering in member states with low

requirements. This can be avoided if the principles of insolvency obligations are uniformly established for all member states, i.e. stipulating the minimum insolvency cover required for monies paid upfront and how these can be managed.

4. Extend scope of Insolvency Fund for emergency situations such as pandemics.
5. Provide an EU back-stop facility for national insolvency funds, which could take the form of a re-insurance policy.
6. Address linked-travel services and provide practical solutions relating to insolvency coverage for services falling under this definition.

In conclusion, European policies and legislations such as the Package Travel Directive and the Air Passengers Rights Directive must be updated to cater for situations as experienced since the Covid-19 pandemic. Tourism is an important contributor to the economy and tourism activity cannot flourish without the services provided by several operators across the value chain. The tourism sector in general, and in the context of the PTD specifically, travel agents, create significant economic value by providing jobs and by using ancillary services from other sectors. They should be provided a good economic and regulatory framework in which to operate.