

Position Paper



Revision of the Package Travel Directive

APRIL 2024



Background

Tourism is a crucial contributor to the European economy and a substantial amount of tourists opt to travel through organised packages due to the added consumer protection. Traveller rights in cases of disruption to components of services provided in the travel package have been protected by the Travel Package Directive (PTD) that has been adopted since 2015. However, in the last years, the tourism industry has faced several unprecedented challenges, such as the insolvency of a major travel operator Thomas Cook and the Covid-19 pandemic that brought traveling to a complete halt. This exposed failures in the current legislation that led the European Commission to propose a revision to the Directive in November 2023.

The revised PTD proposes changes to numerous aspects of the legislation, such as definitions of what constitutes a package, downpayments, conditions for termination of packages, voucher schemes, increased transparency and streamlined information, insolvency protection, linked travel arrangements, and consumers' right for redress, among others.

Comments:

Definitions (Article 3(2)(b)(i))

The proposed revision is broadening the scope of a package to two separate travel services that are booked within the space of 3 hours after the traveller agreed to pay for the first travel service. Firstly, we question the rationale behind the choice of 3 hours, which seems completely arbitrary.

Secondly, this provision will create uncertainty and practical problems for operators, particularly for small and micro-enterprises, which may not have the most proficient digital tools to automatically identify when the same customer books different services time apart with two different employees of the travel agents.

Finally, a legal question arises on the validity of voiding the first contract between the service provider and traveller where the travel operator only serves as an intermediary, and subsequently having the second travel contract converting to a package contract. This therefore also creates legal uncertainty with regard to the obligation to provide accurate precontractual information in view of the contract terms of the first service when subsequently purchasing the second travel service.

It is therefore proposed to allow operators selling one or more independent services to consider them as separate services (therefore not forming a package) provided that the operator specifically informs the consumer that these are separate independent service and do not constitute a package.

Downpayments (Article 5a)

Travel package organisers are being restrained to request a maximum of 25% downpayment on a travel package service from the traveller. In practice, several service providers require travel package operators to pay a much higher rate (up to 100% of the total cost in advance). Therefore, **the exemption from the 25% downpayment requirement in cases where services providers require a full downpayment is welcome and must be retained by the co-legislators.** In its absence, package organisers would be subject to pressures on their cashflow.

The Directive also requires that travel operators do not request any remaining payment earlier than 28 days prior to the start of the travel package. In this case, **the same principle should apply.** It should be possible for a travel operator to request full payment from a travel when required to meet the contractual obligations by service providers. Otherwise, this will result in added cashflow pressures on package organisers.

All in all, this provision is expected to create substantial administrative burdens on travel operators in order to structure invoices calculating which parts of the package are subject to the 25% maximum downpayment and separating from the services where a higher downpayment is justified. In addition, the exemption might still necessitate a justification by the organiser to the consumer on why a higher amount is being requested.

Moreover, this will prohibit organisers from offering flexible payment plans and might also drive package prices upwards, ultimately having an impact on consumers.

Termination of package (Article 12)

Refund timeline — An implementation challenge arises with respect to adhering to the 14-day refund timeline. The proposal requires that refunds or reimbursements are made “by not later than 14 days”.

Firstly, it must be clarified whether this means that the payment must be processed by the operator within the stipulated 14 days or received by the client. In this respect, it must be noted that **this timeline overlooks the fact that several days are lost in the process of banking transactions** which could take days to be credited to a beneficiary’s account and thus restricts the time available for travel operators to process payments substantially. This challenge should not be underestimated particularly due to seasonality and in the case of small to micro-operators.

It is noted that this situation will be partly addressed with the entry of Regulation 2022/0341(COD) amending regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro, which will result in instant credits for beneficiaries. However this will only apply to intra-EU transactions and thus excludes a substantial amount of transactions that take place through third country banks.

Mitigating risks — Paragraph 2 of Article 12 requires travel operators to provide a full refund when the traveller terminates the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances. Paragraph 3 goes as far as to extending a justification to the right of terminating a package travel contract to conditions emanating at the traveller’s member state of residence. This **overlooks the fact that travelling comes with associated risks** and a travel operator should not suffer the consequence of a traveller cancelling a contract when the services offered in a package remain intact and fully operated by a service provider. Travellers have the option to mitigate such risks by taking an additional travel insurance. In view thereof, such excessive burden imposed on the organiser should be removed.

Administrative costs associated with refunds — Furthermore, cancelling contracts without the possibility to apply a termination fee is not justified due certain administrative costs that would otherwise be incurred by travel operators on behalf of the client, such as credit card charges to book services included in the package. The provision should therefore be amended to **providing a full refund subject to a reasonable administrative fee for unavoidable charges incurred by the business operator.**

Vouchers (Article 12a)

Vouchers were a standard approach adopted to support the cashflow difficulties created by the Covid-19 pandemic for services providers and travel operators. This was a system that was generally accepted by travellers. The revision aims to codify the use of vouchers by travel operators, and this is a good way of adopting a consistent approach across all member states. However, the conditions proposed by the Commission present substantial challenges.

For instance, the Commission proposes that travel operators can provide travellers with a choice of accepting a voucher or request a refund. In normal circumstances of isolated cancellations this approach can work. However, **in extraordinary circumstances such as with the situation of a global pandemic, protecting the cashflow of business operators in the short term must take priority.** In such instances businesses should be able to provide a mandatory voucher option, with a validity period of up to 1 year. As the PTD revision will require the extension of insolvency protection to vouchers, this will strike the right balance between providing legal certainty to travellers and at the same time giving a cashflow breathing space to operators.

On the provision of **transferability of vouchers**, there are some practical challenges since some of the services booked as part of a package, particularly airlines tickets, are often non-transferable or transferable at an administrative fee.

The revision also requires that vouchers are **automatically refunded** by travel operators to travellers upon expiry of the validity period. This is not a practical solution particularly for small and micro-enterprises particularly where they do not have the digital tools to be able to meet such a requirement.

Insolvency Protection (Article 17)

Third country operators — The revised Directive **extends the requirement of insolvency protection to travel operators based outside of the EU territory**, which target and provide services to clients within the EU by contributing to the insolvency fund of the Member State/s which they direct their activities in. **This is a positive development.**

Back-up insolvency fund — In paragraph 3 of Article 17, the proposal requires member states to supervise the effectiveness of insolvency protection and if necessary, require a second level of protection. While an important and welcome suggestion, one must

remark that in Malta no insurance provider to date has shown effective interest in providing such an insurance coverage. For this reason, **the European Commission may consider setting up an EU-wide back-up fund to national insolvency funds.**

Furthermore, considering that the setting up and implementation of national insolvency funds is the competence of member states, it is proposed that in its review and reporting to the Council and European Parliament, as prescribed in Article 2 of the revision, the European Commission includes a criteria of **reviewing the proper functioning of national insolvency funds** and to ascertain that they are sufficiently capitalised for the size of the operators subscribed to it.

Linked Travel Arrangements

The revised PTD adapts the definition of Linked Travel Arrangements (LTA), which will bring services purchased from separate traders through linked online booking processes within the scope of a package, and thus will meet the obligations set out by the Directive in relation to insolvency protection and information requirements.

The Directive requires main service providers linked to secondary service providers in the form of LTAs to make travellers aware that their package falls within such a category, and inform them about their rights under the Package Travel Directive. Moreover, the company responsible for creating the LTA must inform the company that invited the traveller to make the booking in the first place, to ensure that the travellers are being informed of their rights. This can present substantial administrative challenges and it is proposed that member states provide relevant support particularly to small and micro-enterprises.

Under the revised Directive, LTA components of a package will become subject to insolvency protection including where the LTA is responsible of the return journey of the traveller, and thus for their repatriation. The Directive must provide clear guidance on the implementation of this provision, including member state's role in ensuring compliance.

Right of redress and refund rights of organisers (Article 22)

Under the revised Directive, service providers are required to provide refunds to travel operators within 7 days to be able to refund the end consumers within a 14-day timeline. In principle, this is a welcome development because it provides a fairer distribution of burden sharing throughout the whole supply chain. During the Covid-19 pandemic, obligations arising from the Package Travel Directive were only placed on travel operators who were expected to refund consumers without having received a refund from the service providers for cancelled services. This has created a substantial cashflow challenge for package organisers.

The proposed reimbursement timeline could work in normal circumstances of isolated cancellations of services and if there are no other specific disruptions to the administrative operations of companies involved in the supply chain. But **the proposed revision fails to clarify what would be the consequence on the intermediary, in this case, travel operators, should the service provider fail in processing the refund within 7 days.** Would the travel operator still be bound with refunding the traveller within 14 days?

The proposal also fails to consider that **it would be effectively impossible for service providers to refund travel operators in extraordinary circumstances such as the situation faced in the last years with the Covid-19 pandemic.** The PTD must include special provisions that provide more flexibility in such situations, which can also be addressed by the provision of mandatory vouchers as described in an earlier section.

For questions or more detailed information please contact EU Affairs Manager Daniel Debono and Policy Advisor Michele Agius on infobrussels@mbb.org.mt

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