



EUROCHAMBRES POSITION ON THE REVISION OF THE PACKAGE TRAVEL DIRECTIVE

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Tourism plays a vital role in Europe's economy, with many tourists preferring organised packages. Eurochambres believes that the most recent proposal to revise the Package Travel Directive must be carefully finetuned to prevent a further increase in regulatory uncertainty and complexity and support the growth and resilience of the tourism sector.

1. Executive summary

Tourism is a major contributor to Europe's economy, with organised travel packages appealing to many consumers because they offer a blend of convenience and security. The 2015 Package Travel Directive (PTD) enhanced the protection for travellers by covering a wide range of services within a single package, helping to simplify trip planning and reduce the hassle for consumers.

In November 2023, the European Commission proposed a revision to the PTD, following an evaluation that exposed weaknesses such as legal uncertainty and excessive complexity for both businesses and consumers.

This revision introduced significant changes by substantially broadening the "package travel" definition, improving downpayment regulations, simplifying termination conditions for consumers, codifying voucher schemes, enhancing insolvency protection provisions as linked travel arrangements, and overall strengthening consumer redress rights.

While European businesses need to adapt to the evolving tourism landscape, the proposed changes require careful consideration. EU lawmakers must avoid

introducing excessive regulatory burdens that could hinder the sector's recovery and growth, especially in the aftermath of the Covid-19 pandemic.

Eurochambres is particularly concerned with certain provisions linked to revised definitions such as "package travel", the proposed restrictions on downpayments, complex voucher scheme rules, and the extension of the free right of withdrawal for consumers when terminating the package.

This has highlighted the need for more balanced and sustainable solutions in package travel regulations.

It is crucial that co-legislators fine-tune the proposed text to effectively balance consumer rights with the operational needs of tourism businesses. A balanced approach will not only address the shortcomings of the existing Directive but also foster a more resilient and competitive European tourism industry.

2. Eurochambres recommendations on the proposal

• Definitions (Article 3(2)(b)(i))

Complexity – The definition in the current PTD is complex and often incomprehensible. The European Commission acknowledges this complexity, which is why it proposed changes to clarify legal ambiguities by refining the definitions. However, while the goal is to simplify and clarify definitions, by expanding the concept of package tours the Commission proposal actually increases complexity and liability risks for companies. The claim that these changes will reduce legal proceedings is unfounded, as the proposed new definitions shall increase liability and the risk of litigation. Additionally, the Commission's estimate of a 0.3% price increase due to these measures is questionable, with industry experts predicting much higher costs to cover associated risks.

Legal uncertainty and increasing administrative burden – The proposed PTD revision broadens the scope of a package to two separate travel services booked within 3 hours after the traveller agreed to pay for the first service. Eurochambres questions the rationale behind the choice of 3 hours, which seems arbitrary. This provision will create uncertainty, practical problems, and excessive administrative burdens for operators, particularly offline/stationary small and micro-enterprises, which may lack proficient digital tools to automatically identify when a customer books different services time apart via different booking channels (e.g. online, telephone, etc.).

A legal question arises regarding the validity of voiding the first contract in cases where the travel agent is forced into the role of a tour operator, because a second contract was concluded within the 3-hour limit, transforming both contracts into a package. This creates legal uncertainty regarding the obligation to provide accurate precontractual information in view of the terms of the first service when subsequently purchasing the second travel service. Also, there are instances, particularly with online bookings, where consumers compose their travel itinerary without direct intervention or advice by the travel agent. If two separate travel services become a package, travel agents become liable even when travellers make poor judgements such as for example by purchasing connecting flights with insufficient time in between, to exit one plane and board the other.

Article 3 Paragraph 2 introduces further significant ambiguities and arbitrary outcomes regarding booking of services. It stipulates that booking additional travel services within 24 hours creates a package tour if the travel operator invited the traveller to book more services before the traveller agreed to pay for the first travel service (Art 3 (2) lit b i) 3rd indent).

These provisions are impractical, burdensome and totally disproportionate, especially for micro-enterprises, as the creation of a package arbitrarily depends on the point in time when the traveller makes the purchases.

Linked Travel Arrangements (LTAs) – Under the current package travel directive, LTAs include situations where a traveller selects and pays for each travel service separately during a single visit to a sales outlet (Article 3 (5) (a)). Eliminating this provision is unacceptable, as it would limit the variety of individually tailored trips. The proposal's approach, where nearly every combination of travel services becomes a package holiday, is neither legally sound nor economically sustainable.

The proposed changes to Article 3 (5) means that only travel service providers (e.g. hotels, transport companies etc.) could broker linked travel services. Pure intermediaries such as travel agents, who do not provide the travel services themselves, would therefore be excluded from mediating linked travel arrangements in future. This will result in travel agents falling in scope of the Directive as package organisers because they would always fall under the extended definition of "package". This is not appropriate. The EU legal system recognises the value and specific nature of business intermediary services, such as in insurance or credit intermediation. The important role of travel agents as pure intermediaries must be preserved.

Simplifying the definition of LTAs is therefore vital. Eurochambres proposes that combinations of travel services that currently fall under Article 3 2 b (i) and therefore constitute a package, should replace the current complex definition of LTA. This would help to alleviate the current unequal treatment of online and offline providers, and, in addition, simplify the distinction between a package and linked travel services.

All assessment procedures and consultation evaluations by the Commission highlighted burdens on companies in the tourism supply chain, as well as legal ambiguities and excessive complexity. The proposed changes, particularly the further expansion of the package holiday definition, may in fact exacerbate existing challenges. Travel agencies would be forced into the role of tour operators (for example when travellers book two separate services within less than 3 hours, increasing liability risks disproportionate to their income from brokerage activities. This creates economic challenges and obligations for travel agencies to provide guarantees or compensation, potentially exceeding their income from commissions, which is not acceptable.

De-minimis threshold - We welcome the inclusion of the reference to the minimum threshold for other tourist services that do not lead to a package directly into the Directive in addition to the Recitals. Nonetheless, Eurochambres believes that the minimum threshold is currently too low and should be adjusted to at least 30%, to reflect market practices particularly in the hospitality sector.

In addition, the list of services contained in recital 17 of the current PTD, which are not to be regarded as separate travel services, should also be included in the Articles of the Directive. Moreover, this list of examples should be supplemented to include additional travel services, for example, destination cards¹, bike hire, excursions and sports courses, etc.

- **Downpayments (Article 5a)**

In principle, a restriction on the level of downpayment is viewed critically from the business perspective as deposits are necessary to pay service providers and offer security to operators for the eventuality of no-shows or to cover cancellation fees. Downpayments from Operators can be in particular crucial for areas with a strong seasonal business. The diversity of the European tourism markets should be taken into account.

The revised PTD is restricting package travel organisers to request no more than a maximum of 25% downpayment on a travel package service from the traveller. In practice, however, several service providers demand much higher rates, sometimes up to 100% of the total cost in advance. Therefore, the exemption from the 25% downpayment requirement in cases where service providers demand a full downpayment is welcome and must be retained by the co-

¹ Destination cards are often issued at hotel check-in for the duration of the stay. These usually allow you to visit excursion destinations in the region at a discount.

legislators. In its absence, package organisers would be subject to pressures on their cashflow. The Directive also stipulates that travel operators cannot 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 traveller when required to meet contractual obligations by service providers.

The restriction on downpayments is expected to create substantial administrative burdens on travel operators. They would need to structure invoices, calculating which parts of the package are subject to the 25% maximum downpayment and separating those from services where a higher downpayment is justified. Additionally, 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 impacting consumers.

In any case, it is crucial that a level playing field is ensured and restrictions on advance payments are regulated in a fully harmonised manner.

- **Contract of service (Article 7)**

The proposed changes will exacerbate the already excessive information requirements. Specifically, the mandatory double provision offers no additional benefit to travellers, who often feel overwhelmed by the extensive information provided. For companies, this increases the administrative work, contradicting the European Commission's goal of reducing the reporting burden on businesses by at least 25%.

- **Termination of package (Article 12)**

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 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 traveling 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 operable by a service provider. The extension of the free right of withdrawal to circumstances that occur at the home or place of departure therefore leads to a completely disproportionate risk shift to the detriment of the tour operator. For example, text such as (“... unavoidable, extraordinary circumstances ... which affect the journey to the destination”) may be interpreted to refer to circumstances that are within the personal sphere of the traveller, such as a person with walking difficulties due to an injury caused by a personal accident. This means that the entire risk of all exceptional and unavoidable circumstances is entirely attributed to the tour operator. Travelers have the option to mitigate such risks by taking additional travel insurance. Therefore, such excessive burden imposed on the organiser should be removed.

Cancellation rights (according to case law): Unavoidable and extraordinary circumstances that affect part of the travel that is not content of the package travel contract should not result in cancellation rights. For example, if transport is not included in the package and unavoidable and extraordinary circumstances affect the transportation, it does not constitute a cancellation right. It is suggested to include a clarification to this effect in the recitals.

Administrative costs associated with refunds – Furthermore, cancelling contracts without the possibility to apply a termination fee is not justified due to 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 cash flow difficulties created by the Covid-19 pandemic for service providers and travel operators. This was generally accepted by travellers. The revision aims to codify the use of vouchers by travel operators, which is a good way of adopting a consistent approach across all member states. However, the conditions proposed by the Commission present substantial challenges.

Regarding the provision of transferability of vouchers, there are some practical challenges since some of the services booked as part of a package, particularly airline 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 but causes a tremendous bureaucratic burden, particularly for small and micro-enterprises, especially when they do not have the digital tools to meet such a requirement.

Additionally, inconsistencies between the directive text of Article 12a and the standard information sheets regarding the offering of vouchers should be addressed for clarity and consistency.

- **Insolvency Protection (Article 17)**

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. This increases fragmentation of the legal framework. Furthermore, one must remark that in some member states, such as Malta, no insurance provider has shown effective interest in providing such an insurance coverage.

Eurochambres also notes that the impact of the proposed changes on the costs of insolvency protection for EU companies through Article 17 cannot be conclusively estimated. What is being proposed is a complete, all-round insurance, covering all reimbursements and, if necessary, return transport and vouchers, which will result in more expensive contributions for companies. This will ultimately result in higher prices for consumers or make companies that already operate with tight margins to absorb the costs making them less profitable.

- **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.

Eurochambres – the association of European chambers of commerce and industry – represents approximately 20 million businesses in over 40 countries and via a European network of 1700 regional and local chambers. Chambers’ member businesses employ over 120 million people.

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