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From: General Secretariat of the Council  
On: 20 October 2014  
To: Delegations

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Subject: Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC  
- Presidency suggestions

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Delegations will find attached a document with suggestions to be discussed by the working party "Consumer Protection and Information".

Delegations are informed that new text compared to the Commission's proposal is indicated by **bold/underlining** and deletions are marked with ~~strikethrough~~. Text in square brackets [ ] indicates areas where uncertainties remain or where alternative drafting is suggested.

2013/0246 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours<sup>3</sup> lays down a number of important consumer rights in relation to package travel, in particular with regard to information requirements, the liability of traders in relation to the performance of a package and protection against the insolvency of an organiser or a retailer. However, it is necessary to adapt the legislative framework to market developments, in order to make it more suitable for the internal market, remove ambiguities and close legislative gaps.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ L 158, 23.06.1990, p. 59.

- (2) Tourism plays an important role in the economies of the Union and packages represent a significant proportion of that market. The travel market has undergone considerable changes since the adoption of Directive 90/314/EEC. In addition to traditional distribution chains, the Internet has become an increasingly important medium to offer travel services. Travel services are not only combined in the form of traditional pre-arranged packages, but are often combined in a customised fashion. Many of these travel products are either in a legal grey zone or are clearly not covered by Directive 90/314/EEC. This Directive aims to adapt the scope of protection to those developments, enhance transparency and increase legal certainty for travellers and traders.
- (3) Article 169 of the Treaty on the Functioning of the European Union (the Treaty) provides that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 of the Treaty.
- (4) Directive 90/314/EEC gives broad discretion to the Member States as regards transposition; therefore, significant divergences between the laws of the Member States remain. Legal fragmentation leads to higher costs for businesses and obstacles for those wishing to operate cross-border, thus limiting consumers' choice.
- (5) In accordance with Article 26(2) of the Treaty, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The harmonisation of certain aspects of package contracts and assisted travel arrangements is necessary for the creation of a real consumer internal market in this area, striking the right balance between a high level of consumer protection and the competitiveness of businesses.
- (6) The cross-border potential of the package travel market in the Union is currently not fully exploited. Disparities in the rules protecting travellers in different Member States are a disincentive for travellers in one Member State from buying packages and assisted travel arrangements in another Member State and, likewise, a disincentive for organisers and retailers in one Member State from selling such services in another Member State. In order to enable consumers and businesses to benefit fully from the internal market, while ensuring a high level of consumer protection across the Union, it is necessary to further approximate the laws of the Member States relating to packages and assisted travel arrangements. **At the same time, it is important to ensure that traders based in third countries and which direct the marketing of packages or assisted travel arrangements to the Union or one or more of its Member States are subject to the requirements of this Directive, using language from the rules on consumer contracts in Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)<sup>4</sup>. The law applicable to a contract should be determined in accordance with the Union rules on private international law, in particular Regulation (EC) No 593/2008.**

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<sup>4</sup> OJ L 177, 4.7.2008, p. 6.

- (7) The majority of travellers buying packages are consumers in the sense of Union consumer law. At the same time, it is not always easy to distinguish between consumers and representatives of small businesses or professionals who book trips related to their business or profession through the same booking channels as consumers. Such travellers often require a similar level of protection. In contrast, larger companies or organisations often make travel arrangements for their employees on the basis of a framework contract, **often concluded for a specified period** with companies which specialise in the arrangement of business travel. The latter type of travel arrangements do not require the level of protection designed for consumers. Therefore, this Directive should apply to business travellers only insofar as they do not make travel arrangements on the basis of a framework contract. To avoid confusion with the definition of the term 'consumer' in other consumer protection directives, persons protected under this Directive should be referred to as 'travellers'.
- (8) Since travel services may be combined in many different ways, it is appropriate to consider as packages all combinations of travel services that display features which travellers typically associate with packages, notably that separate travel services are bundled together into a single travel product for which the organiser assumes responsibility for proper performance. In accordance with the case law of the Court of Justice of the European Union<sup>5</sup>, it should make no difference whether travel services are combined before any contact with the traveller or at the request of or according to the selection made by the traveller. The same principles should apply irrespective of whether the booking is made through a high street travel agent or online.
- (9) For the sake of transparency, packages should be distinguished from assisted travel arrangements, where online or high street agents assist travellers in ~~combining~~ **procuring** travel services leading the traveller to conclude contracts with different providers of travel services, including through linked booking processes, which do not contain those features and in relation to which it would not be appropriate to apply all obligations applying to packages.
- (10) In light of market developments, it is appropriate to further define packages on the basis of alternative objective criteria which predominantly relate to the way in which the travel services are presented or purchased and where travellers may reasonably expect to be protected by the Directive. This is the case, for instance where different travel services are ~~purchased~~ **selected** for the same trip or holiday **at a single point of sale before the traveller agrees to pay** within the same booking process from a single point of sale or where such services are offered or charged at an inclusive or total price, **as well as where such services are advertised or sold under the term 'package' or under a similar term indicating a close connection between the travel services concerned. Such similar terms could be for instance "combined deal", "all-inclusive" or "all-in arrangement"**. ~~It should be considered that travel services are procured within the same booking process if they are selected before the traveller has agreed to pay.~~

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<sup>5</sup> See Judgment in Case C-400/00 Club Tour, *Viagens e Turismo SA v. Alberto Carlos Lobo Gonçalves Garrido and Club Med Viagens Ld*, ECR 2002, I-04051.

- (11) At the same time, assisted travel arrangements should be distinguished from travel services which travellers book independently, often at different times, even for the purpose of the same trip or holiday. Online assisted travel arrangements should also be distinguished from links through which travellers are simply informed about further travel services in a general fashion, for instance where a hotel or an organiser of an event includes on its website a list of all operators offering transport services to its location independently of any booking or if cookies or meta data are used to place advertisements on websites.
- (12) The purchase of an ~~air~~ travel service on a stand-alone basis as a single travel service constitutes neither a package nor an assisted travel arrangement.
- (13) Particular rules should be laid down for both high street and on-line retailers which assist travellers, on the occasion of a single visit or contact with their own point of sale, in concluding separate contracts with individual service providers and for online retailers which, **for instance** through linked online booking processes, facilitate the procurement of additional travel services from another trader in a targeted manner, at the latest when the booking of the first service is confirmed. These rules would apply for example, where, along with the confirmation of the booking of a first travel service such as a flight or a train journey, a consumer receives an invitation to book an additional travel service available at the chosen travel destination, for instance hotel accommodation, with a link to the booking site of another service provider or intermediary. While those arrangements do not constitute packages within the meaning of this Directive as there can be no confusion that a single organiser has assumed the responsibility for the travel services, such assisted arrangements constitute an alternative business model that often competes closely with packages.
- (14) In order to ensure fair competition and to protect consumers, the obligation to provide sufficient evidence of security for the refund of pre-payments and the repatriation of travellers in the event of insolvency should also apply to assisted travel arrangements.
- (15) To increase clarity for travellers and enable them to make informed choices as to the different types of travel arrangements on offer, it is appropriate to require traders to state **clearly and prominently whether they are offering a package or an assisted travel arrangement, and of the corresponding level of protection, before the traveller agrees to pay** ~~the nature of the arrangement clearly and inform travellers of their rights.~~ A trader's declaration as to the legal nature of the travel product being marketed should correspond to the true legal nature of the product concerned. The enforcement authorities should intervene where traders do not provide accurate information to travellers.

- (16) Only the combination of different travel services, such as accommodation, carriage of passengers **travellers** by bus, rail, water or air, as well as car rental, should be considered for the purposes of identifying a package or an assisted travel arrangement. Accommodation for residential purposes, including for long-term language courses, should not be considered as accommodation within the meaning of this Directive. **Services which are merely ancillary to other travel services, in the sense that they are intrinsically part of another service, should not be considered as travel services in their own right. This means that, for instance, transport of luggage provided as part of carriage of travellers, or meals and cleaning provided as part of accommodation, should not be considered as tourist services in their own right. This also means that in cases where, unlike in the case of a cruise, overnight accommodation is provided as part of passenger transport by road, rail, water or air, accommodation should not be considered as a travel service in itself.**
- (17) Other tourist services, such as admission to concerts, sport events, ~~excursions~~ or event parks, **excursions, guided tours, ski passes and rental of sports equipment such as skiing equipment,** are services that, in combination with either carriage of passengers, accommodation and/or car rental, should be considered as capable of constituting a package or an assisted travel arrangement. However, such packages should only fall within the scope of this Directive if the relevant tourist service accounts for a significant proportion of the package. Generally, the tourist service should be considered as a significant proportion of the package if it accounts for more than 20% of the total price or otherwise represents an essential feature of the trip or holiday. ~~Ancillary~~ **Contracts on financial services, such as travel insurance, or contracts on travel services, for instance transport to or from the airport, arranged by a service provider or an intermediary independently of the organiser, should be outside the scope of this Directive.** ~~transport of luggage, meals and cleaning provided as part of accommodation, should not be considered as tourist services in their own right.~~
- (18) It should also be clarified that contracts by which a trader entitles the traveller after the conclusion of the contract to choose among a selection of different types of travel services, such as in the case of a package travel gift box, should constitute a package. ~~Moreover, a combination of travel services should be considered as a package where the traveller's name or particulars needed to conclude the booking transaction are transferred between the traders at the latest when the booking of the first service is confirmed. Particulars needed to conclude a booking transaction relate to credit card details or other information necessary to obtain a payment. On the other hand, the mere transfer of particulars such as the travel destination or travel times should not be sufficient.~~
- (19) Since there is less need to protect travellers in cases of short-term trips, and in order to avoid unnecessary burden for traders, trips lasting less than 24 hours which do not include accommodation as well as **packages or assisted travel arrangements** offered occasionally **and on a small scale** ~~organised packages,~~ should be excluded from the scope of this Directive. **The latter group will in particular concern trips organised occasionally by non-profit seeking associations for their members, without being offered to a large number of travellers or being advertised to a large audience.**

- (19a) **Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to contracts that fall outside the scope of this Directive. For instance, Member States may maintain or introduce corresponding provisions for certain stand-alone contracts regarding single travel services (as for example the rental of holiday homes) or for packages organised occasionally and on a small scale.**
- (20) The main characteristic of package travel is that at least one trader is responsible as an organiser for the proper performance of the package as a whole. **Member States should be able to choose to place liability exclusively on the organiser or on both organiser and retailer.** ~~Therefore, Only~~ in cases where another trader is acting as the organiser of a package should a trader, typically a high-street or on-line travel agent, be able to act as a mere retailer or intermediary and not be liable as an organiser. Whether a trader is acting as an organiser for a given package should depend on its involvement in the creation of a package as defined under this Directive, and not on the denomination under which it carries out its business. ~~Where two or more traders meet a criterion which makes the combination of travel services a package and where those traders have not informed the traveller which of them is the organiser of the package, all relevant traders should be considered as organisers.~~
- (21) In relation to packages, retailers should be responsible together with the organiser for the provision of pre-contractual information. At the same time it should be clarified that they are liable for booking errors. To facilitate communication, in particular in cross-border cases, travellers should have the possibility of contacting the organiser also via the retailer through which they bought the package.
- (22) The traveller should receive all necessary information before purchasing a package, whether it is sold through means of distance communication, over the counter or through other types of distribution. In providing this information, the trader should take into account the specific needs of travellers who are particularly vulnerable because of their age or physical infirmity, which the trader could reasonably foresee.
- (23) Key information, for example on the main characteristics of the travel services or the prices, provided in advertisements, on the organiser's website or in brochures as part of the pre-contractual information, should be binding, unless the organiser reserves the right to make changes to those elements and unless such changes are clearly and prominently communicated to the traveller before the contract is concluded. However, in light of new communication technologies, there is no longer any need to lay down specific rules on brochures, while it is appropriate to ensure that, in certain circumstances, changes impacting the contract performance are communicated between the parties on a durable medium accessible for future reference. It should always be possible to make changes to that information where both parties to the contract expressly agree on that.

- (24) The information requirements laid down in this Directive are exhaustive, but should be without prejudice to the information requirements provided for in other applicable Union legislation<sup>6</sup>.
- (25) Taking into account the specificities of package travel contracts, rights and obligations of the parties should be laid down, for the time before and after the start of the package, in particular if the package is not properly performed or if particular circumstances change.
- (26) Since packages are often purchased a long time before their performance, unforeseen events may occur. Therefore the traveller should, under certain conditions, be entitled to transfer a package to another traveller. In such situations, the organiser should be able to recover his expenses, for instance if a sub-contractor requires a fee for changing the name of the traveller or for cancelling a transport ticket and issuing a new one. Travellers should also have the possibility of cancelling the contract at any time before the start of the package against ~~paying~~ **payment of an appropriate compensation fee** as well as the right to terminate the contract ~~without paying appropriate compensation~~ **free of charge** where unavoidable and extraordinary circumstances ~~like warfare or a natural disaster~~ will significantly affect the **performance of the** package. **This may cover for example warfare, other serious security problems such as terrorism, floods or earthquakes, significant risks to human health such as the outbreak of a serious disease at the travel destination or weather conditions which make it impossible to travel safely to the destination as agreed in the contract.** ~~Unavoidable and extraordinary circumstances should in particular be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities advise against travelling to the place of destination.~~
- (27) In specific situations, also the organiser should be entitled to terminate the contract before the start of the package without paying compensation, for instance if the minimum number of participants is not reached and where this possibility has been reserved in the contract.
- (28) In certain cases organisers should be allowed to make unilateral changes to the package travel contract. However, travellers should have the right to terminate the contract if the proposed alterations change significantly any of the main characteristics of the travel services. Price increases should be possible only if there has been a change in the cost of fuel **or electricity or other power sources** for the carriage of passengers, in taxes or fees imposed by a third party not directly involved in the performance of the included travel services or in the exchange rates relevant to the package and if both an upward and downward revision of the price is expressly reserved in the contract. ~~Price increases should be limited to 10% of the price of the package~~ **If the organiser proposes a price increase of more than 8% the traveller should be able to terminate the contract.**

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<sup>6</sup> See, Directives 2000/31/EC and 2006/123/EC, as well as Regulations (EC) No 1107/2006, (EC) No 1008/2008, (EC) No. 1371/2007, (EC) No. 181/2011, (EC) No. 1177/2010 and (EC) No 2111/2005.



- (29) It is appropriate to set out specific rules on remedies as regards the lack of conformity in the performance of the package travel contract. The traveller should be entitled to have problems resolved and, where a significant proportion of the services contracted for cannot be provided, the traveller should be offered alternative arrangements. Travellers should also be entitled to a price reduction, **termination** and/or compensation for damages. Compensation should also cover any ~~im~~**non**-material damage, in particular in case of a spoiled **trip or** holiday, and, in justified cases, expenses which the traveller incurred when resolving a problem himself. **While the traveller should be under a duty to communicate at the earliest opportunity a lack of conformity he perceives, failure to do so should be taken into account when determining the appropriate price reduction or compensation only insofar as such notice would have avoided or reduced the damage.**
- (30) In order to ensure consistency, it is appropriate to align the provisions of this Directive with international conventions covering travel services and with the Union legislation on passenger rights. Where the organiser is liable for failure to perform or improper performance of the services included in the package travel contract, the organiser should be able to invoke the limitations of the liability of service providers set out in such international conventions as the Montreal Convention of 1999 for the Unification of certain Rules for International Carriage by Air<sup>7</sup>, the Convention of 1980 concerning International Carriage by Rail (COTIF)<sup>8</sup> and the Athens Convention of 1974 on the Carriage of Passengers and their Luggage by Sea<sup>9</sup>. Where it is impossible, because of unavoidable and extraordinary circumstances, to ensure the traveller's return to the place of departure, the organiser's obligation to bear the cost of the travellers' continued stay at the place of destination should be aligned with the Commission's proposal<sup>10</sup> aimed to amend Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights<sup>11</sup>.

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<sup>7</sup> 2001/539/EC: Council Decision of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (OJ L 194, 18.07.2001, P. 38).

<sup>8</sup> 2013/103/EU: Council Decision of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) (OJ L 51, 23.2.2013, p. 1).

<sup>9</sup> 2012/22/EU: Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof (OJ L 8, 12.1.2012, p. 1).

<sup>10</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air - COM/2013/130 final.

<sup>11</sup> OJ L 46, 17.2.2004, p.1.

- (31) This Directive should not affect the rights of travellers to present claims both under this Directive and under any other relevant Union legislation, so that travellers will continue to have the possibility to address claims to the organiser, the carrier or any other liable party, or, as the case may be, to several parties. It should be clarified that they may not cumulate rights under different legal bases if the rights safeguard the same interest or have the same objective. The organiser's liability is without prejudice to the right to seek redress from third parties, including service providers.
- (32) If the traveller is in difficulty during the trip or holiday, the organiser should be obliged to give ~~prompt~~ **appropriate** assistance. Such assistance should consist mainly in providing, where appropriate, information on aspects such as health services, local authorities and consular assistance, as well as practical help, for instance with regard to distance communications and alternative travel arrangements.
- (33) In its Communication on passenger protection in the event of airline insolvency,<sup>12</sup> the Commission set out measures to improve the protection of travellers in the event of an airline insolvency, including better enforcement of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community<sup>13</sup>, of Regulation No 261/2004 on air passenger rights and engagement with industry stakeholders, failing which a legislative measure could be considered. That Communication concerns the purchase of an individual component, namely air travel services, and therefore is without prejudice to existing rules on packages and does not prevent the legislators to provide for insolvency protection also for buyers of other modern combinations of travel services.
- (34) Member States should ensure that travellers purchasing a package ~~or an assisted travel arrangement~~ are fully protected against the insolvency of the organiser, ~~of the retailer having facilitated the assisted travel arrangement or of any of the service providers~~. Member States in which ~~package organisers and retailers facilitating assisted travel arrangements~~ **organisers** are established should ensure that ~~traders offering such combinations of travel services~~ **they** provide security for the refund of all payments made by travellers and, **insofar as a package includes the carriage of travellers,** for their repatriation in the event of **their** insolvency. While retaining discretion as to the way in which insolvency protection is ~~granted~~ **to be arranged**, Member States should ensure that ~~their national insolvency~~ **the** protection schemes are **is** effective and able to guarantee prompt repatriation and the refund of all travellers affected by the insolvency. **Effectiveness implies that the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not or only partially performed or service providers require travellers to pay for them.**

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<sup>12</sup> COM (2013)129 of 18.3.2013.

<sup>13</sup> OJ L 293, 31.10.2008, p. 3.

- (34a)** The required **For the insolvency protection to be effective, it should cover** take into account the **foreseeable amounts of payments affected by a trader's insolvency and, where applicable, the foreseeable cost for repatriations** actual financial risk of the activities of the organiser, relevant retailer or service provider, including the type of combination of travel services they sell, foreseeable seasonal fluctuations as well as the extent of pre-payments and the way in which these are secured. In accordance with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>14</sup>, in cases where insolvency protection may be provided in the form of a guarantee or an insurance policy, such security may not be limited to attestations issued by financial operators established in a particular Member State.
- (34b)** This means that the protection has to be sufficient to cover all foreseeable payments received by an organiser in peak season, taking into account the period between receiving such payments and the completion of the trip or holiday, as well as, where applicable, the foreseeable cost for repatriations, leaving in all cases a safety margin. This will generally mean that the security has to cover a sufficiently high percentage of the organiser's turnover in packages, and may depend on factors such as the kind of packages sold, including the mode of transport, the travel destination, and any legal restrictions or the organiser's commitments regarding the amounts of pre-payments it may accept and their timing before the start of the package. Whereas the necessary cover may be calculated on the basis of the most recent business data, for instance the turnover achieved in the last business year, organisers should be obliged to adapt the protection in case of increased risks, including an significant increase in the sale of packages. Operators or bodies providing insolvency protection should have sufficient cover for the risks of all organisers for which they provide security.
- (34c)** In light of national particularities regarding the parties to a package travel contract and the receipt of payments from travellers, Member States should be allowed to require also retailers to take out insolvency protection.
- (35)** In accordance with the Treaty and in line with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>15</sup> it is appropriate to lay down rules so as to prevent that the insolvency protection obligations act as an obstacle to the free movement of services and the freedom of establishment, in cases where insolvency protection may be provided in the form of a guarantee or an insurance policy, such security may not be limited to attestations issued by financial operators established in a particular Member State. (35) In order to facilitate the free movement of services **Therefore**, Member States should be obliged to recognise insolvency protection under the law of the Member State of establishment. To facilitate the administrative cooperation and supervision of businesses which are active in different Member States with regard to insolvency protection, Member States should be obliged to designate central contact points.

<sup>14</sup> OJ L376, 27.12.2006, p. 36.

<sup>15</sup> OJ L376, 27.12.2006, p. 36.

- (36) As regards **Traders facilitating** assisted travel arrangements, ~~beyond the obligation to provide insolvency protection and~~ **should be obliged** to inform travellers that **they are not buying a package and that** individual service providers are solely responsible for ~~their~~ **the** performance **of their contracts. Traders facilitating assisted travel arrangements should, in addition, be obliged to provide insolvency protection for the refund of payments they receive and, insofar as they are responsible for the carriage of travellers, for the travellers' repatriation, and should inform travellers accordingly. Traders responsible for the performance of the relevant **individual** contracts **forming part of an assisted travel arrangement** are subject to general Union consumer protection legislation and sector-specific Union legislation.**
- (37) It is appropriate to protect travellers in situations where a retailer arranges the booking of a package or an assisted travel arrangement and where the retailer makes mistakes in the booking process.
- (38) It is also appropriate to confirm that consumers may not waive rights stemming from this Directive and organisers or traders facilitating assisted travel arrangements may not escape from their obligations by claiming that they are simply acting as a service provider, an intermediary or in any other capacity.
- (39) It is necessary that Member States lay down penalties for infringements of national provisions transposing this Directive and ensure that they are enforced. The penalties should be effective, proportionate and dissuasive.
- (40) The adoption of this Directive makes it necessary to adapt certain consumer protection acts. Taking into account that Directive 2011/83/EU of the European Parliament and the Council of 25 October 2011 on consumer rights<sup>16</sup> in its current form does not apply to contracts covered by Directive 90/314/EEC, it is necessary to amend Directive 2011/83/EU to ensure that it **continues to apply** to **individual travel services that form part of an** assisted travel arrangements, **insofar as those individual services are not otherwise excluded from the scope of Directive 2011/83/EU**, and that certain consumer rights laid down in that Directive also apply to packages.
- (41) This Directive should be without prejudice to ~~Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)~~<sup>17</sup> and national contract law for those aspects that are not regulated by it. Since this Directive aims to contribute to the proper functioning of the internal market and to the achievement of a high level of consumer protection, its objectives cannot be achieved by the Member States and can be better achieved at Union level. Therefore, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objectives.

<sup>16</sup> OJ L 304, 22.11.2011, p. 64.

<sup>17</sup> OJ L 177, 4.7.2008, p. 6.

- (42) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. The proposal, in particular, respects the freedom to conduct a business laid down in Article 16 of the Charter, while ensuring a high level of consumer protection within the Union, in accordance with Article 38 of the Charter.
- (43) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

# Chapter I

## Subject matter, scope and definitions

### *Article 1*

#### *Subject matter*

This Directive is to contribute to the proper functioning of the internal market and to the achievement of a high level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States in respect of contracts on package travel and assisted travel arrangements concluded between travellers and traders.

### *Article 2*

#### *Scope*

1. This Directive shall apply to packages ~~offered for sale or sold by traders to travellers~~ with the exception of Article 17, and to assisted travel arrangements with the exception of Articles 4 to 14, Articles 18 and Article 21(1) **where they are offered for sale or are sold to travellers in the Union or where such activities are by any means directed to one or more Member States.**

2. This Directive shall not apply to:

- (a) packages and assisted travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;

**(aa) packages and assisted travel arrangements that are offered or facilitated by natural or legal persons, provided such activities take place**

**- on a small scale and without being addressed to a large group of travellers and,**

**- only occasionally;**

- (b) ancillary contracts covering financial services **concluded in connection with a package travel contract or an assisted travel arrangement;**
- (ba) contracts for travel services added to the travel services comprising the package and concluded without the involvement of the organiser;**
- (c) packages and assisted travel arrangements purchased on the basis of a framework contract between the traveller's employer and a trader specialising in the arrangement of business travel **for the arrangement of business travel between a trader and another trader on whose behalf the traveller is travelling;**
- ~~(d) packages where not more than one travel service as referred to in points (a), (b), and (c) of Article 3(1) is combined with a travel service as referred to in point (d) of Article 3(1) if this service does not account for a significant proportion of the package; or~~
- (e) stand-alone contracts **covering exclusively** for a single travel service.
- (ea) contracts covered by Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts;**

*Article 3*  
*Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (1) 'travel service' means:
- (a) carriage of ~~passengers~~ **travellers**,
  - (b) accommodation other than for residential purposes **and if it is not ancillary to carriage of travellers**,
  - (c) ~~car~~ rental **of cars or other means of transport**,
  - (d) any other tourist service not ancillary to carriage of ~~passengers~~ **travellers**, accommodation or ~~car~~ rental **of means of transport**;
- (2) 'package' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if:
- (a) those services are ~~put together~~ **combined** by one trader, including at the request or according to the selection of the traveller, before a **single** contract on all services is concluded, or
  - (b) irrespective of whether separate contracts are concluded with individual travel service providers, those services are:
    - (i) purchased from a single point of sale **and at least two different travel services have been selected before the traveller agrees to pay**, ~~within the same booking process~~
    - (ii) offered or charged at an inclusive or total price,
    - (iii) advertised or sold under the term 'package' or under a similar term, **or**



- (iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services, or
- (v) ~~purchased from separate traders through linked online booking processes where the traveller's name or particulars needed to conclude a booking transaction are transferred between the traders at the latest when the booking of the first service is confirmed.~~

**Combinations where not more than one travel service as referred to in points (a), (b), and (c) of paragraph 1 is combined with a travel service as referred to in point (d) of paragraph 1 are not packages if the latter service does not account for a significant proportion of the package.**

- (3) 'package travel contract' means a contract on the package as a whole or, if the package is provided under different contracts, all contracts covering services included in the package;
- (4) 'start of the package' means the beginning of the performance of **the first travel service included in** the package **travel contract**;
- (5) 'assisted travel arrangement' means ~~a combination of~~ at least two different types of travel services **purchased** for the purpose of the same trip or holiday, not constituting a package **within the meaning of paragraph 2(b)**, resulting in the conclusion of separate contracts with the individual travel service providers, if a retailer ~~facilitates the combination~~ **facilitates**
  - (a) ~~on the basis of separate bookings~~ **the separate selection and separate payment of each travel service by travellers** on the occasion of a single visit or contact with its point of sale, or
  - (b) ~~through the procurement of additional travel services from another trader in a targeted manner through linked online booking processes at the latest when the booking of the first service is confirmed.~~

- (6) 'traveller' means any person who is seeking to conclude or is entitled to travel on the basis of a contract concluded within the scope of this Directive, including business travellers insofar as they do not travel on the basis of a framework contract. ~~with a trader specialising in the arrangement of business travel;~~
- (7) 'trader' means any **natural** person **or legal person, irrespective of whether privately or publicly owned**, who is acting, **including through any other person acting in his name or on his behalf**, for purposes relating to his trade, business, craft or profession **in relation to contracts covered by this Directive**;
- (8) 'organiser' means a trader who combines and sells or offers for sale packages in the sense of paragraph 2, either directly or through another trader or together with another trader; ~~where more than one trader meets any of the criteria referred to in point (b) of paragraph 2, all of those traders are considered as organisers, unless one of them is designated as organiser and the traveller is informed accordingly;~~
- (9) 'retailer' means a trader other than the organiser who:
- (a) ~~—~~ sells or offers for sale **packages combined by an organiser, either in its own name or on behalf of the organiser**, ~~or~~
  - (b) ~~—~~ facilitates the procurement of travel services which are part of an assisted travel arrangement by assisting travellers in concluding separate contracts for travel services with individual service providers;
- (10) 'durable medium' means any instrument which enables the traveller or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (11) ~~unavoidable and extraordinary circumstances'~~ means a situation beyond the control of ~~the trader~~ **the party who invokes such situation** the consequences of which could not have been avoided even if all reasonable measures had been taken;

(12) 'lack of conformity' means lack of ~~and~~ or improper performance of the travel services included in a package.

**(13) 'minor' means a person below the age of 18 years.**

**(14) 'point of sale' means any retail premises, whether movable or immovable, as well as a retail website or similar online sales facility, including where retail websites or online sales facilities are presented to the travellers as a single facility.**

## Chapter II

### Information obligations and content of the package travel contract

#### *Article 4*

##### Pre-contractual information

1. Member States shall ensure that, before the traveller is bound by any package travel contract or any corresponding offer, the organiser and, where the package is sold through a retailer, also the retailer shall provide the traveller with the following information where applicable to the package:
  - (a) the main characteristics of the travel services:
    - (i) the travel destination(s), itinerary and periods of stay, with dates **and, where accommodation is included, the number of nights included**;
    - (ii) the means, characteristics and categories of transport, the points, dates and time of departure and return or, where the exact time is not yet determined, the approximate time of departure and return, the duration and places of intermediate stops and transport connections;
    - (iii) the location, main features and **where applicable** tourist category of the accommodation **under the rules of the host country concerned**;
    - (iv) ~~whether meals are provided and, if so,~~ the meal plan;
    - (v) visits, excursion(s) or other services included in the total price agreed for the package;

- (vi) **where other tourist services comprise part of a package and the traveller's benefit from those services depends on effective oral communication,** the language in which ~~the activities~~ **those services** will be carried out, and,
- (vii) whether **the trip or holiday is generally suited** access for persons with reduced mobility is ~~guaranteed throughout the trip or holiday,~~ and **upon request of the traveller also precise information on suitability of the trip or holiday in light of the traveller's needs;**
- (b) the trading name, the geographical address of the organiser and, where applicable, the retailer, as well as their telephone number and, **where applicable,** e-mail address;
- (c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance **of the conclusion of the contract,** the fact that the traveller may have to bear such additional costs;
- (d) the arrangements for payment, **including any amount or percentage of the price which is to be paid as a deposit and the timetable for payment of the balance,** and, ~~where applicable, the existence and the conditions for deposits or other financial guarantees to be paid or provided by the traveller;~~
- (e) **where appropriate** the minimum number of persons required for the package to take place and a **the** time-limit of ~~at least 20 days~~ **referred to in Article 10(3)** before the start of the package for the possible cancellation if that number is not reached;
- (f) general information on passport and visa requirements, ~~including approximate periods for obtaining visas,~~ for nationals of the Member State(s) concerned and information on health formalities;
- (g) confirmation that the services constitute a package within the meaning of this Directive **and information on the provision of insolvency protection which applies to the package in accordance with Annex 1.**

**(ga) information on the option to purchase insurance to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.**

2. The information referred to in paragraph 1 shall be provided in a clear, **comprehensible** and prominent manner. **Where such information is provided in writing, it shall be legible.**

#### *Article 5*

##### *Binding character of pre-contractual information and conclusion of the contract*

1. Member States shall ensure that ~~the organiser may not change~~ the information made ~~known~~ **provided** to the traveller pursuant to points (a), (c), (d), (e) and (g) of Article 4(1); ~~unless the organiser reserves the right to make changes to that information and communicates any changes to the traveller in a clear and prominent manner before the conclusion of the contract~~ **shall form an integral part of the package travel contract and shall not be altered unless the contracting parties expressly agree otherwise.**
2. If the information on additional charges, fees or other costs referred to in point (c) of Article 4(1) is not provided prior to the conclusion of the contract, the traveller shall not bear those fees, charges or other costs.
3. ~~At or immediately after the conclusion of the contract, the organizer shall provide the traveller with a copy of the contract or a confirmation of the contract on a durable medium.~~

## Article 6

### *Content of the package travel contract and documents to be supplied before the start of the package*

1. Member States shall ensure that package travel contracts are in plain and intelligible language and, in so far as they are in writing, legible. **At or without undue delay after the conclusion of the contract, the organiser or retailer shall provide the traveller with a copy or confirmation of the contract on a durable medium. The traveller is entitled to request a paper copy if the contract has been concluded in the presence of the organiser or retailer.**
2. The contract or the confirmation of the contract shall include all the information referred to in Article 4(1) ~~It shall include~~ **and** the following ~~additional~~ information:
  - (a) special requirements of the traveller which the organiser has accepted;
  - (b) information that the organiser is:
    - (i) responsible for the proper performance of all included travel services, **and**
    - (ii) obliged to provide assistance if the traveller is in difficulty in accordance with Article 14;
  - ~~(iii) obliged to procure insolvency protection for refund and repatriation in accordance with Article 15, as well as the name of the entity providing the insolvency protection and its contact details, including its geographical address;~~
  - (c) the details **such as name, address, telephone number and e-mail address and where applicable the fax number** of:
    - (i)** a contact point where the traveller can complain about any lack of conformity which he perceives ~~on the spot~~ **during the performance of the package**; **and**
  - ~~(d) the name, geographical address, telephone number, and e-mail address~~
    - (ii)** of the organiser's local representative or contact point whose assistance a traveller in difficulty could request or, where no such representative or contact point exists, an emergency telephone number or the indication of other ways of contacting the organiser;

- (e) information that the traveller may terminate the contract at any time before the start of the package against payment of ~~an appropriate compensation or a reasonable standardised termination fee~~ **or another appropriate fee** if such fees are specified in accordance with Article 10 (1);
  - (f) where minors, **unaccompanied by a parent or a legal guardian**, travel on a package that includes accommodation, information enabling direct contact with the minor or the person responsible at the minor's place of stay;
  - (g) information on available **in-house complaint handling procedures and alternative dispute resolution mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council** and online dispute resolution mechanisms **pursuant to Regulation (EU) No 524/2013 of the European Parliament and of the Council**.
3. The information referred to in paragraph 2 shall be provided in a clear, **comprehensible** and prominent manner.
4. In good time before the start of the package, the organiser shall provide the traveller with the necessary receipts, vouchers or tickets, ~~and including~~ information on the ~~precise~~ **scheduled** times of departure **and, where appropriate applicable, the deadline for check-in, and the scheduled times for** intermediate stops, transport connections and arrival.

#### **Article 6a (new)**

**As regards compliance with the information requirements laid down in this Chapter, the burden of proof shall be on the trader.**



## Chapter III

### Changes to the contract before the start of the package

#### Article 7

##### *Transfer of the contract to another traveller*

1. Member States shall ensure that a traveller may, after giving the organiser reasonable notice on a durable medium before the start of the package, transfer the contract to a person who satisfies all the conditions applicable to that contract.
  2. The transferor of the contract and the transferee shall be jointly and severally liable for the payment of the balance due and for any additional fees, charges or other costs arising from the transfer. Those costs shall not be unreasonable and in any case shall not exceed the actual cost borne by the organiser **due to the transfer of the contract**.
- 2a. It will be for the organiser to prove the additional expenses or costs resulting from the transfer of the contract.**

#### Article 8

##### *Alteration of the price*

1. Member States shall ensure that ~~prices are not subject to revision~~ **after the conclusion of the contract, prices may be increased only if** ~~unless the contract expressly reserves the~~ **this** ~~possibility of an increase~~ and obliges the organiser to reduce prices ~~to the same extent~~. **Price increases shall be possible exclusively** as a direct consequence of changes **in**
  - (a) ~~in~~ the cost of fuel **or other power sources** for the carriage of passengers,
  - (b) ~~in~~ the level of taxes or fees on the included travel services imposed by third parties not directly involved in the performance of the package, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports, or
  - (c) ~~in~~ the exchange rates relevant to the package.

2. **If the price increase referred to in paragraph 1 shall not exceed 10% of the price of the package, the traveller may terminate the contract in accordance with Articles 9 (2) and (4).**
3. **Irrespective of its extent, a price increase referred to in paragraph 1 shall be valid possible** only if the organiser notifies the traveller of it with a justification and calculation on a durable medium at the latest 20 days prior to the start of the package.
4. **If the contract stipulates the possibility of price increases, the organiser shall grant the traveller a price reduction corresponding to a decrease of the costs referred to in points (a), (b) and (c) of paragraph 1 that occurs after the conclusion of the contract and not later than 20 days prior to the start of the package.**

#### *Article 9*

##### *Alteration of other contract terms*

1. Member States shall ensure that, before the start of the package, the organiser may not unilaterally change contract terms other than the price **in accordance with Article 8**, unless:
  - (a) the organiser has reserved that right in the contract,
  - (b) the change is insignificant, and
  - (c) the organiser informs the traveller in a clear, **comprehensible** and prominent manner on a durable medium.

2. If, before the start of the package, the organiser is constrained to alter significantly any of the main characteristics of the travel services as defined in point (a) of Article 4(1) or special requirements as referred to in point (a) of Article 6(2), **the traveller may accept the proposed change or terminate the contract within a reasonable time-limit specified by the organiser. If the traveller does not accept the proposed alteration within the specified time-limit, the contract is deemed terminated, unless the organiser extends this time-limit and the traveller accepts the contract change within that period.**

**The** organiser shall without undue delay inform the traveller in a clear, **comprehensible** and prominent manner on a durable medium of:

- (a) the proposed changes,

**(aa) where appropriate in accordance with paragraph 3, the impact on the price of the package,** and

- (b) the fact that the traveller **must explicitly accept the proposed alteration** ~~may terminate the contract without penalty~~ within a **the** specified reasonable time-limit and that otherwise **the contract will be terminated without penalty** ~~considered as accepted.~~

3. Where the changes to the contract referred to in paragraph 2 result in a package of lower quality or cost, the traveller shall be entitled to an appropriate price reduction.
4. If the contract is terminated pursuant to ~~point (b)~~ of paragraph 2, the organiser shall refund all payments received from the traveller **without undue delay and in any event not later than** ~~within~~ fourteen days after the contract is terminated. The traveller shall, where appropriate, be entitled to compensation in accordance with Article 12 **(2), (3), (4), (5) and (6). In that case the deviation of the proposed alteration from the contract shall be deemed to be a lack of conformity.**

Article 10

*Termination of the contract before the start of the package*

1. Member States shall ensure that the traveller may terminate the contract before the start of the package ~~against payment of an appropriate compensation.~~ **Where the traveller may terminates the contract under this paragraph the traveller may be required to pay an appropriate termination fee** to the organiser. The contract may specify reasonable standardised termination fees **based on the time of the termination before the start performance of the package** and the ~~customary~~ **expected** cost savings and income from alternative deployment of the travel services. In the absence of standardised termination fees, the amount of the ~~compensation~~ **termination fee** shall correspond to the price of the package minus the ~~expenses saved~~ **cost savings and income from alternative deployment of the travel service** ~~by the organiser.~~
2. The traveller shall have the right to terminate the contract before the start of the package without ~~paying any compensation~~ **termination fee** in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the package, **or which significantly affect the carriage of travellers to the destination. In the event of termination under this paragraph the traveller shall be entitled to a full refund of any payments made for the package but shall not be entitled to additional compensation.**
3. The organiser may terminate the contract ~~without paying compensation to~~ **and provide** the traveller **with a full refund of any payments they have made for the package, but shall not be liable for additional compensation**, if:
  - (a) the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination within the period fixed in the contract ~~and not later than 20 days before the start of the package;~~ **or**

(b) the organiser is prevented from performing the contract because of unavoidable and extraordinary circumstances and notifies the traveller of the termination without undue delay before the start of the package.

4. ~~In cases of termination under paragraphs 1, 2 and 3,~~ The organiser shall **provide any refunds required under paragraphs 2 and 3, or with respect to paragraph 1** reimburse any ~~undue payments made by the traveller~~ **has made for the package less the appropriate termination fee. Such refunds or reimbursements shall be made to the traveller without undue delay and in any event not later than** ~~within~~ fourteen days.

## Chapter IV

### Performance of the package

#### Article 11

##### *Liability for the performance of the package*

1. Member States shall ensure that the organiser is responsible for the performance of the travel services included in the contract, irrespective of whether those services are to be performed by the organiser or by other service providers.

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**In relation to retailers established in their territory, Member States may maintain or introduce provisions under which the retailer is also liable for the performance of the package. In that case all obligations on the organiser under Article 6 and Chapters III, IV and V shall also apply to the retailer.**

2. If any of the services are not performed in accordance with the contract, the organiser shall remedy the lack of conformity, ~~unless this is disproportionate.~~
  3. Where a significant proportion of the services cannot be provided as agreed in the contract, the organiser shall make suitable alternative arrangements, at no extra cost to the traveller, **and shall grant the traveller an appropriate price reduction where such alternative arrangements reduce the quality or cost of the package,** ~~for the continuation of the package, including where the traveller's return to the place of departure is not provided as agreed.~~
- 3a. The organiser may refuse to remedy the lack of conformity in accordance with paragraph 2 only where this is impossible or implies disproportionate costs, taking into account the extent of the lack of conformity and the value of the affected services. The traveller may reject alternative arrangements if they are not comparable to what was agreed in the contract or the offered price reduction is inadequate. If the lack of conformity is not remedied, including by way of alternative arrangements, Article 12 shall apply.**

- ~~4. If it is impossible for the organiser to offer suitable alternative arrangements or the traveller does not accept the alternative arrangements proposed because they are not comparable to what was agreed in the contract, the organiser shall, insofar as the package includes the carriage of passengers, provide the traveller at no extra cost with equivalent transport to the place of departure or to another place to which the traveller has agreed and shall, where appropriate, compensate the traveller in accordance with Article 12.~~
5. As long as it is impossible to ensure the traveller's timely return because of unavoidable and extraordinary circumstances, the organiser shall not bear the cost for the continued stay exceeding EUR 100 per night and three nights per traveller.
6. The limitation of costs referred to in paragraph 5 shall not apply to persons with reduced mobility, as defined in Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air<sup>18</sup>, and any person accompanying them, pregnant women and unaccompanied children, as well as persons in need of specific medical assistance, provided the organiser has been notified of their particular needs at least 48 hours before the start of the package. The organiser may not invoke unavoidable and extraordinary circumstances to limit the costs referred to in paragraph 5 if the relevant transport provider may not rely on such circumstances under applicable Union legislation.
- ~~7. If the alternative arrangements result in a package of lower quality or cost, the traveller shall be entitled to a price reduction and, where appropriate, damages in accordance with Article 12.~~

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<sup>18</sup> OJ L 204, 26.7.2006, p. 1.

*Article 12*

*Price reduction and compensation for damages*

1. Member States shall ensure that the traveller is entitled to an appropriate price reduction for:
  - ~~(a) any period during which there was lack of conformity; or~~
  - ~~(b) where the alternative arrangements as referred to in paragraphs 3 and 4 of Article 11 result in a package of lower quality or cost.~~
- 1a. **Where a lack of conformity significantly affects the performance of the package and the trader has failed to remedy it in accordance with paragraphs 2 and 3 of Article or where an immediate termination is justified by a particular interest of the traveller, the traveller may terminate the contract free of charge and may, where appropriate, request compensation in accordance with paragraph 2. If the traveller terminates the contract and the package includes the carriage of travellers, the organiser shall, in addition, provide the traveller at no extra cost with equivalent transport to the place of departure or to another place to which the parties agree.**
2. The traveller shall be entitled to receive compensation from the organiser for any damage, ~~including non-material damage,~~ which the traveller sustains as a result of any lack of conformity.
3. The traveller shall not be entitled to price reduction or compensation for damages if:
  - ~~(a) the organiser proves that the lack of conformity is:~~
  - (i) attributable to the traveller,
  - (ii) attributable to a third party unconnected with the provision of the services contracted for and is unforeseeable or unavoidable, or
  - (iii) due to unavoidable and extraordinary circumstances. ~~or~~



~~(b) — the traveller fails to inform the organiser without undue delay of any lack of conformity which the traveller perceives on the spot if that information requirement was clearly and explicitly stated in the contract, and is reasonable, taking into account the circumstances of the case.~~

**3a. The traveller shall inform the organiser without undue delay of any lack of conformity which he perceives during the performance of the travel service.**

4. Insofar as international conventions binding the Union limit the extent of or the conditions under which compensation is to be paid by a provider carrying out a service which is part of a package, the same limitations shall apply to the organiser. Insofar as international conventions not binding the Union limit compensation to be paid by a service provider, Member States may limit compensation to be paid by the organiser accordingly. In other cases, the contract may limit compensation to be paid by the organiser as long as that limitation does not apply to personal injury ~~and/or~~ damage caused intentionally or with [gross] negligence and does not amount to less than three times the total price of the package.
5. Any right to compensation or price reduction under this Directive shall not affect the rights of travellers under Regulation (EC) No 261/2004<sup>19</sup>, Regulation (EC) No 1371/2007<sup>20</sup>, Regulation (EU) No 1177/2010<sup>21</sup> and Regulation (EU) No 181/2011<sup>22</sup>. Travellers shall be entitled to present claims under this Directive and under those Regulations, but may not, in relation to the same facts, cumulate rights under different legal bases if the rights safeguard the same interest or have the same objective.
6. The prescription period for introducing claims under this Article shall not be shorter than one year.

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<sup>19</sup> OJ L 46, 17.2.2004, p.1

<sup>20</sup> OJ L 315, 3.12.2007, p. 14

<sup>21</sup> OJ L 334, 17.2.2010, p. 1

<sup>22</sup> OJ L 55, 28.2.2011, p.1

### *Article 13*

#### *Possibility to contact the organiser via the retailer*

Member States shall ensure that the traveller may address messages, complaints or claims in relation to the performance of the package directly to the retailer through which it was purchased. The retailer shall forward those messages, complaints or claims to the organiser without undue delay. [For the purpose of compliance with time-limits or prescription periods, receipt of the notifications by the retailer shall be considered as receipt by the organiser.]

### *Article 14*

#### *Obligation to provide assistance*

Member States shall ensure that the organiser gives ~~prompt~~ **appropriate** assistance **without undue delay** to the traveller in difficulty **including in the circumstance referred to in Article 11(5)**, in particular by:

- (a) providing appropriate information on health services, local authorities and consular assistance, and
- (b) assisting the traveller ~~in making~~ **to make** distance communications and **helping the traveller to source/find** alternative travel arrangements.

The organiser shall be able to charge a reasonable fee for such assistance if the situation is caused by the traveller's negligence or intent. **That fee shall not in any case exceed the actual costs incurred by the organiser.**

# Chapter V

## Insolvency protection

### Article 15

#### *Effectiveness and scope of insolvency protection*

- (1) Member States shall ensure that organisers **of packages** and retailers facilitating the procurement of assisted travel arrangements established in their territory obtain **provide** security for the ~~effective and prompt~~ refund of all payments made by travellers **insofar as the relevant services are not performed as a consequence of their insolvency** and, if as the carriage of passengers is included, the travellers' ~~effective and prompt~~ **return (to the place of departure) journey (repatriation)** in the event of insolvency. **Traders which are not established in the Union shall be obliged to provide the security under the law of the Member State to which they predominantly direct their activities.**
- (2) The insolvency protection referred to in paragraph 1 shall take into account the actual financial risk of the relevant trader's activities. It shall benefit travellers regardless of their place of residence, the place of departure or where the package or assisted travel arrangement is sold. **The security shall be effective and shall cover the foreseeable amounts of payments received by the organiser, taking into account the length of the period between down payments and final payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency.**
- (2a) **An organiser's insolvency protection shall benefit travellers regardless of their place of residence, the place of departure or where the package is sold and irrespective of the Member State where the operator or body providing the protection is established.**
- Travellers shall receive a certificate confirming that they have a direct entitlement against the operator or body providing the insolvency protection.**
- (2b) **As soon as it becomes apparent that the performance of the package is affected by the organiser's insolvency, the security shall be available free of charge to ensure repatriations and, if necessary, the financing of accommodation prior to the repatriation.**

(2c) **For travel services that have not been performed, refunds shall be granted without undue delay following the traveller's request.**

[(2d) **In relation to traders established in their territory, Member States may provide that also retailers are subject to the obligations laid down in this Article.]**

#### *Article 16*

##### *Mutual recognition of insolvency protection and administrative cooperation*

1. Member States shall recognise as meeting the requirements of their national rules transposing Article 15 any insolvency protection ~~obtained by an organiser or a retailer facilitating the procurement of assisted travel arrangements~~ **a trader provides** under the rules of ~~it's~~ **the** Member State of **its** establishment transposing Article 15- **or, in the case of a trader not established in the Union, the law of the Member State to which it predominantly directs its activities.**
2. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of ~~organisers and retailers facilitating the procurement of assisted travel arrangements~~ **traders** operating in different Member States. They shall notify the contact details of these contact points to all other Member States and the Commission.
3. The central contact points shall make available to each other all necessary information on their national insolvency protection ~~schemes~~ **requirements** and the identity of the body or bodies providing insolvency protection for ~~a particular~~ **traders** established in their territory. They shall grant each other access to any inventory listing ~~organisers and retailers facilitating the procurement of assisted travel arrangements~~ **traders** which are in compliance with their insolvency protection obligations. **Any such inventory shall be publicly accessible, including on-line.**

4. If a Member State has doubts about the insolvency protection **of a trader** ~~an organiser or of a retailer facilitating the procurement of assisted travel arrangements which is established in a different Member State and is operating on its territory~~, it shall seek clarification from the **trader's** Member State of establishment. Member States shall respond to requests from other Member States **as quickly as possible in light of the urgency and complexity of the matter.** ~~at the latest within 15 working days of receiving them.~~

## Chapter VI

### Assisted travel arrangements

#### Article 17

##### Insolvency protection and information requirements for assisted travel arrangements

- 0. Member States shall ensure that traders facilitating the procurement of assisted travel arrangements within the meaning of Article 3 (5) shall provide security for the refund of all payments they receive from travellers insofar as a travel service which is part of an assisted travel arrangement is not performed as a consequence of their insolvency. If such traders are the party responsible for the carriage of the traveller, the security shall also cover the traveller's repatriation. Articles 15 (1), (2) to (2d) and 16 shall apply accordingly.**

##### Alternative text:

- 0. Member States shall ensure that service providers facilitating the procurement of assisted travel arrangements within the meaning of Article 3 (5) shall provide security for the refund of all payments they receive from travellers for their travel services insofar as those services are not performed as a consequence of their insolvency. If such service providers are responsible for the return transport, the security shall also cover the traveller's repatriation. Articles 15 (1), (2) to (2d) and 16 shall apply accordingly.**
- 1.** ~~Member States shall ensure that,~~ **Before** the traveller is bound by any contract or any corresponding offer **leading to the creation of an** ~~for~~ assisted travel arrangements, the trader facilitating the procurement of assisted travel arrangements shall state in a clear and prominent manner:
- (a) that **the traveller will not benefit from any of the rights granted by this Directive exclusively to package travellers and that** each service provider will be solely responsible for the correct contractual performance of its service; and

- (b) that the traveller will not benefit from any of the rights granted by this Directive exclusively to package travellers, but **that the traveller will benefit from insolvency protection in accordance with paragraph (0)**, benefit from the right to a refund of pre-payments and, insofar as carriage of passengers is included, to repatriation in case the retailer itself or any of the service providers becomes insolvent.

**In order to comply with this paragraph, the trader shall use the relevant standard notice in Annex 2.**

**2. Where the trader facilitating the procurement of assisted travel arrangements has not complied with the requirements set out in paragraphs 0 and 1 of this Article, it shall, in relation to the services included in the assisted travel arrangement, be deemed to be an organiser of a package.**

## Chapter VII

### General provisions

#### *Article 18*

*Particular obligations of the retailer where the organiser is established outside the EEA*

Where the organiser is established outside the EEA, the retailer established in a Member State shall be subject to the obligations laid down for organisers in Chapters IV and V, unless the retailer provides evidence that the organiser complies with Chapters IV and V.

**This article shall not apply in Member States in which, in accordance with the second subparagraph of Article 11 (1), the retailer is also liable for the performance of the package.**

#### *Article 19*

*Liability for booking errors*

Member States shall ensure that a retailer who has agreed to arrange the booking of a package or assisted travel arrangements or who facilitates the booking of such services shall be liable for any errors **he makes** ~~occurring in~~ **during** the booking process **or for any technical defects in the booking system which are attributable to him**, unless such errors are attributable to the traveller ~~or to~~ **A retailer shall not be liable for booking errors which are attributable to the traveller or which are caused by** unavoidable and extraordinary circumstances.

#### *Article 20*

*Right of redress*

In cases where an organiser or, in accordance with **the second subparagraph of** Articles ~~11(1)~~<sup>15</sup> or **Article** 18, a retailer pays compensation, grants price reduction or meets the other obligations incumbent on it under this Directive, no provision of this Directive or of national law may be interpreted as restricting its right to seek redress from any third parties which contributed to the event triggering compensation, price reduction or other obligations.



## *Article 21*

### *Imperative nature of the Directive*

1. A declaration by an organiser that he is acting exclusively as a provider of a travel service, as an intermediary or in any other capacity, or that a package within the meaning of this Directive does not constitute a package, shall not absolve the organiser from the obligations imposed on organisers under this Directive.
2. Travellers may not waive the rights conferred on them by the national measures transposing this Directive.
3. Any contractual arrangement or any statement by the traveller which directly or indirectly waives or restricts the rights conferred on travellers pursuant to this Directive or aims to circumvent the application of this Directive shall not be binding on the traveller.

## *Article 22*

### *Enforcement*

Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

## *Article 23*

### *Penalties*

Member States shall lay down the rules on penalties ~~which enforcement bodies may impose on traders~~ **applicable to** for infringing the **infringements of** national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

## *Article 24*

### *Reporting by the Commission and review*

By [5 years after its entry into force], the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. The report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of traveller rights.

## *Article 25*

### *Amendment of Regulation (EC) No 2006/2004 and Directive 2011/83/EU*

1. Point 5 of the Annex to Regulation (EC) No 2006/2004 is replaced by the following:

'5. Directive [this Directive] of the European Parliament and of the Council of [date of adoption] on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC (OJ [...])'.

2. Point (g) of Article 3(3) of Directive 2011/83/EU is replaced by the following:

'(g) on packages as defined in Article 3(2) of Directive [...] of the European Parliament and of the Council of [date of adoption] on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU and repealing Council Directive 90/314/EEC (OJ [...])", with the exception of Article 8(2), Article 19, Article 21 and Article 22.

## **Chapter VIII**

### **Final provisions**

#### *Article 26*

##### *Repeals*

Directive 90/314/EC is repealed as of [~~18~~ **24** months after the entry into force of this Directive].

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the table in Annex I to this Directive.

#### *Article 27*

##### *Transposition*

1. Member States shall adopt and publish, by ~~18~~ **24** months after the entry into force of this Directive at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
2. They shall apply those provisions from ~~18~~ **30** months after the entry into force of this Directive
3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 28*

*Entry into force*

This Directive shall enter into force on the [twentieth day following that of its publication in the *Official Journal of the European Union*].

*Article 29*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

**A. Information to be provided in an on-line situation**

**The combination of travel services offered to you is a *package within the meaning of the EU Package Travel Directive*.**

**Therefore, you will benefit from all EU rights of package travellers. Company\ies XY will be fully responsible for the correct performance of the trip or holiday as a whole.**

Additionally, as required by law, company\ies XY has\have taken out insolvency protection.

[More information](#)

*Following the link the traveller will receive this information:*

## Key Rights under the EU Package Travel Directive

- Travellers receive all necessary information about the holiday before signing the contract.
- There is always one party that is liable for the correct performance of all the services included in the contract.
- Travellers are given an emergency number or a contact point where they can get in touch with the organiser or the travel agent.
- Travellers can transfer the package to another person, possibly subject to a fee, if they cannot leave on holiday themselves.
- The price of the trip cannot be changed later than 20 days before departure and not by more than 10%, and this only in exceptional, clearly defined situations.
- Travellers may cancel the contract free of charge and get their money back if any of the essential elements of the package, including the price, has changed.
- If, before departure, the trader responsible for the holiday cancels the package, travellers are entitled to a refund and compensation where appropriate.
- Travellers may cancel the contract free of charge before departure in exceptional circumstances, for instance if there are serious security problems at the destination which are likely to affect the holiday.
- Additionally, travellers may always cancel the contract against a fee, including where they wish to cancel for personal reasons.
- If, after departure, significant parts of the package cannot be provided as agreed, alternative arrangements have to be made, at no extra cost, so that travellers can continue their holiday.
- The organiser has to provide assistance if a traveller is in difficulty.
- If the trader responsible becomes insolvent, payments will be refunded. If the trader becomes insolvent after departure of the traveller and if transport is included in the trip or holiday, travellers will be brought home. XY has taken out insolvency protection with YZ [contact details of the insurance/ body providing insolvency protection]. You may contact this body if services are denied because of XY's insolvency.

*Directive 2015/XX/EU as transposed into the relevant national law(s) [LINK]*

**B. Information sheet to be provided where a package travel contract is to be concluded in the physical presence of a trader**

**The combination of travel services offered to you is a *package within the meaning of the EU Package Travel Directive*.**

**Therefore, you will benefit from all EU rights of package travellers. Company\ies XY will be fully responsible for the correct performance of the trip or holiday as a whole.**

Additionally, as required by law, company\ies XY has\have taken out insolvency protection.

**Key Rights under the EU Package Travel Directive**

- Travellers receive all necessary information about the holiday before signing the contract.
- There is always one party that is liable for the correct performance of all the services included in the contract.
- Travellers are given an emergency number or a contact point where they can get in touch with the organiser or the travel agent.
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- The price of the trip cannot be changed later than 20 days before departure and not by more than 10%, and this only in exceptional, clearly defined situations.
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- If, before departure, the trader responsible for the holiday cancels the package, travellers are entitled to a refund and compensation where appropriate.
- Travellers may cancel the contract free of charge before departure in exceptional circumstances, for instance if there are serious security problems at the destination which are likely to affect the holiday.
- Additionally, travellers may always cancel the contract against a fee, including where they wish to cancel for personal reasons.
- If, after departure, significant parts of the package cannot be provided as agreed, alternative arrangements have to be made, at no extra cost, so that travellers can continue their holiday.
- The organiser has to provide assistance if a traveller is in difficulty.
- If the trader responsible becomes insolvent, payments will be refunded. If the trader becomes insolvent after departure of the traveller and if transport is included in the trip or holiday, travellers will be brought home. XY has taken out insolvency protection with YZ [contact details of the insurance/ body providing insolvency

protection]. You may contact this body if services are denied because of XY's insolvency.

*[Website where Directive 2015/XX/EU as transposed into the relevant national law(s) can be found.]*



**A. Information to be provided in the situation of an online reservation if the trader facilitating the assisted travel arrangement is a carrier selling a return ticket<sup>23</sup>**

**When booking any additional travel services you will NOT benefit from rights of package travellers under the EU Package Travel Directive.**

**Therefore, company XY will not be responsible for the correct performance of such additional travel services.** In case of problems please contact the relevant service provider.

However, as required by law, company XY has taken out insolvency protection.

[More information](#)

*Following the link the traveller will receive this information:*

"Insolvency protection" means that there is a guarantee for the refund of your payments if any of the booked travel services (*alternative wording*: the travel services booked with XY are...) is not carried out due to XY becoming insolvent and for your return to the place of departure. XY has taken out insolvency protection with YZ (contact details -including name, geographical address, e-mail and phone number- of the body in charge of the insolvency protection, e.g. a guarantee fund or an insurance company). You may contact this body if the services you have booked are denied because of XY's insolvency.

Directive 2015/XX/EU as transposed into the relevant national law(s) [*LINK*]

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<sup>23</sup> Temporary explanation: outbound and inbound travel

**B. Information to be provided in the situation of an online reservation if the trader facilitating the assisted travel arrangement is service provider other than a carrier selling a return ticket**

**When booking any additional travel services you will NOT benefit from rights of package travellers under the EU Package Travel Directive.**

**Therefore, company XY will not be responsible for the correct performance of such additional travel services.** In case of problems please contact the relevant service provider.

However, as required by law, company XY has taken out insolvency protection.

[More information](#)

*Following the link the traveller will receive this information:*

"Insolvency protection" means that there is a guarantee for the refund of your payments if any of the booked travel services is not carried out due to XY becoming insolvent. XY has taken out insolvency protection with YZ (contact details -including name, geographical address, e-mail and phone number- of the body in charge of the insolvency protection, e.g. a guarantee fund or an insurance company). You may contact this body if the services you have booked are denied because of XY's insolvency.

Directive 2015/XX/EU as transposed into the relevant national law(s) [[LINK](#)]

**C. Information to be provided in the situation of an online reservation if the trader facilitating the assisted travel arrangement is not a service provider**

**When booking additional travel services through company XY for your trip or holiday you will NOT benefit from rights of package travellers under the EU Package Travel Directive.**

**Therefore, company XY will not be responsible for the correct performance of the individual travel services.** In case of problems please contact the relevant service provider.

However, as required by law, company XY has taken out insolvency protection.

*(This sentence and the following information would have to be deleted on the basis of the alternative text for Article 17 (0))*

[More information](#)

*Following the link the traveller will receive this information:*

"Insolvency protection" means that you are guaranteed a refund if any of the booked travel services is not carried out due to XY becoming insolvent. XY has taken out insolvency protection with YZ (contact details -including name, geographical address, e-mail and phone number- of the body in charge of the insolvency protection, e.g. a guarantee fund or an insurance company). You may contact this body if the services you have booked are denied because of XY's insolvency.

Directive 2015/XX/EU as transposed into the relevant national law(s) [[LINK](#)]

**D. Information sheet where the trader facilitating the assisted travel arrangement is not a service provider and the contracts are to be concluded in the physical presence of the trader**

**When booking additional travel services through company XY for your trip or holiday you will NOT benefit from rights of package travellers under the EU Package Travel Directive.**

**Therefore, company XY will not be responsible for the correct performance of the individual travel services.** In case of problems please contact the relevant service provider.

However, as required by law, company XY has taken out insolvency protection.

"Insolvency protection" means that you are guaranteed a refund if any of the booked travel services is not carried out due to XY becoming insolvent. XY has taken out insolvency protection with YZ (contact details -including name, geographical address, e-mail and phone number- of the body in charge of the insolvency protection, e.g. a guarantee fund or an insurance company). You may contact this body if the services you have booked are denied because of XY's insolvency.