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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive
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Delegations will find attached document SWD(2023) 907 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council
amending Directive (EU) 2015/2302 to make the protection of travellers more effective
and to simplify and clarify certain aspects of the Directive

{COM(2023) 905 final} - {SEC(2023) 540 final} - {SWD(2023) 905 final} -
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Introduction

The travel market has undergone major changes due to the increasing use of digital tools. Other major events, in recent years, were the bankruptcy of Thomas Cook in 2019 and the COVID-19 pandemic. In response to these developments and to reports of certain challenges in applying the 2015 Package Travel Directive (Directive (EU) 2015/2302, hereafter the ‘PTD’), the Commission decided to review the Directive. This impact assessment report builds on the findings of an evaluation, a related study prepared for the European Commission, and two reports on the application of the PTD from 2019 and 2021.

Problem definition and need for EU action

The evaluation found three main problems that hamper the effectiveness of the PTD.

1. One problem related to refunds of payments for cancelled travel packages, in particular in a major crisis.

There are four drivers of this problem. The first driver is the practice of prepayments. The second is organisers’ lack of liquidity when having to make many refunds at the same time. This is exacerbated by the fact that the PTD does not include business-to-business rules on refunds in the event of a cancellation. Lastly, there is legal uncertainty regarding the use of vouchers.

2. Prepayments are not sufficiently protected against insolvency of the organiser.

Here, the evaluation identifies three problem drivers. First, there is legal uncertainty as to whether vouchers and refund rights are protected against the organiser’s insolvency. Second, significant differences remain between national insolvency protection systems. Lastly, at least in some Member States, package organisers find it difficult to obtain insolvency protection, especially in times of crisis.

3. Difficulties in implementing the PTD.

Several problem drivers were identified. Certain provisions of the PTD are not sufficiently clear, contain gaps or are too complex. This leads to uneven levels of consumer protection and distortions of competition across the EU as the Directive is applied in different ways.

Given the cross-border nature of package travel, the problems identified since the Directive was adopted can only be tackled consistently by taking action at EU level.

Solutions

This impact assessment examined measures to help tackle the problems identified by amending the PTD. The measures are grouped into three policy options, with the first one focusing on flexible solutions and minimal costs (Option A), the second one containing more rigid measures (Option B), and the third aiming at maximal effectiveness in a crisis situation though implying higher costs (Option C).

Option A involves making targeted amendments to the PTD. It includes limiting prepayments to 25% (unless higher prepayments are justified), rules on voluntary vouchers and a business-to-business refund right where services are cancelled. It strengthens insolvency protection by clarifying that vouchers and refund claims are covered and by specifying parameters for effective insolvency protection, including, where appropriate, the option for Member States to require an insolvency protection back-up fund. It also indicates the possibility of creating a crisis fund guaranteeing rapid refunds to travellers in a major crisis, subject to State aid rules. This option clarifies the definition of ‘package’ and removes one of the types of ‘linked travel arrangements’. It clarifies that circumstances in the country of residence, departure and of destination must be taken into account for the right to cancel a package due to unavoidable and extraordinary circumstances and that travel warnings are an important aspect to consider in this context. It also clarifies the roles of different traders in relation to packages, including for refunds.

Option B comprises more rigid measures that increase the costs for different categories of stakeholders (both businesses and travellers). For instance, it provides for a strict limit of downpayments to 20% for package organisers (without possibility to increase) and mandatory vouchers in the event of a major crisis.

Option C includes measures ensuring the highest level of consumer protection, at high costs. This includes limiting prepayments to 20% (without possibility to increase) for both organisers and service providers, the mandatory creation of a crisis fund and giving specific legal value to travel warnings.

The impact assessment analyses the options in relation to three specific objectives:

Objective 1: Better protection of travellers’ prepayments and their right to a swift refund in the event of cancellations, including in times of a major crisis, whilst maintaining the liquidity of package organisers;

Objective 2: Giving travellers greater protection against organiser insolvency, including in the event of a major crisis, whilst ensuring a level playing field in the internal market; and

Objective 3: Increasing legal certainty and enforceability by clarifying and/or simplifying some of the provisions of the Directive that are interpreted or applied differently or are difficult to apply in practice.

Option C is the most effective option in achieving the specific objectives (especially objectives 1 and 2), followed by Options A and B. This is mainly due to the measures in Option C being mandatory and giving a very high level of consumer protection.

To assess the efficiency of the options, the impact assessment compares the monetised and qualitatively assessed costs and benefits for all stakeholder groups (travellers, public authorities and businesses). Option A is the most efficient option in reaching the objectives, followed by Option B. Due to its high costs, Option C is less efficient than the baseline scenario.

Coherence with other pieces of EU legislation is also key, as the review aims to achieve legal clarity and simplification. Option A achieves the highest degree of coherence, followed by Option B and then Option C (which is less coherent than the baseline scenario).

The sensitivity analysis shows that, overall, Option A performs best. Although it is not the most effective option, it benefits both travellers and businesses at the lowest costs and ensures the highest degree of coherence with other pieces of EU legislation.

The result of this assessment is that Option A is the preferred option.

The Commission consulted several categories of stakeholders (including travellers, package organisers and service providers) on many occasions, and they broadly agreed with the measures included in the preferred option. The main area where their views differ concerns the need to limit prepayments, which is not favoured by many organisers. Views also diverge on insolvency protection for vouchers and refund claims, favoured by most consumer organisations and public authorities but only by a minority of businesses.

Revising the Directive would give rise to some costs for stakeholders, but it is also expected to reduce their burden, thanks to greater legal clarity and simplification. Some Member States already implement several of the measures included in the preferred option with only moderate associated costs. Therefore, in these Member States, businesses would face no additional costs. The higher degree of legal clarity and the simplified regulatory framework are expected to increase the level of compliance, making enforcement more efficient. Providing these clarifications may also reduce the number of disputes before courts.

To assess the effectiveness of the preferred option in achieving the review's objectives after its implementation, the impact assessment identifies several progress indicators. However, it does not change the reporting obligations for public authorities and businesses set under the current PTD. These indicators can serve as the basis for a Commission report to be produced five years after the amending directive is adopted. The information needed will be collected through surveys to stakeholder groups (including travellers, consumer organisations, travel businesses and national authorities). Such surveys will also be useful to feed into subsequent evaluations.