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General Secretariat

Brussels, 25 October 2024

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## CONTRIBUTION

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From: General Secretariat of the Council  
To: Working Party on Consumer Protection and Information

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Subject: 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 - Member States contributions

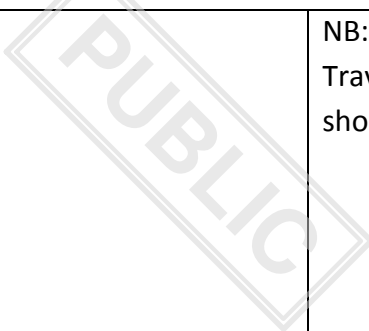
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Delegations will find attached the Member States contributions.

## Malta's written comments on the Proposal amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify certain aspects of the Directive

<u>Presidency Text</u>	<u>Drafting Suggestions</u>	<u>MT comments</u>
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<p>(5a) The new situation where the definition of ‘package’ contains the criterion of a single visit or contact, should be assessed on a case-by-case basis. Not every interruption in the booking process should be automatically presumed to lead to a separate visit or contact. For instance, when a traveller selects a travel service and shortly thereafter books one or more additional travel services, this should be considered as part of the same contact or visit. Even where a traveller leaves the trader’s premises or website after selecting the first travel service and returns to it within a short period of time to complete the booking of an additional service. By contrast, where a traveller, after completing one booking and without previously having enquired about additional</p>		<p><b><u>Non-specific wording</u></b></p> <p>MT would like to point out that non-specific wording such as ‘<b>short-period</b>’ gives rise to ambiguous and inconsistent interpretation and will give rise to disputes. (The concept of the proposed change in Recital 10 should be followed).</p> <p>Moreso, as there are clearly distinct ways of booking, as referred to in the Directive, such as online and physical presence of the traveller in premises. Similarly, when disputes arise between parties, generic wording such as ‘<b>enquiries</b>’ or ‘<b>prompting</b>’, when only done verbally, can prove challenging to prove.</p>
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<p><b>bookings for the same trip or holiday or having been prompted by the trader to make additional bookings, later decides to book an additional travel service on the same website or at the same physical point of sale should not be considered as being part of the same visit or contact.</b></p>		<p>NB: Since MT supports the removal of Linked Travel Arrangements (LTA)s as then this recital should be deleted.</p>
<p>(8The definition of package formed through linked online booking processes in Article 3(2)(b)(v) of Directive (EU) 2015/2302, which <del>required</del><b>requires</b> that the <b>transmission of the</b> traveller’s name, payment details and email address are all transmitted from one trader to another trader, has proved to be too narrow. Therefore, it is appropriate to consider as ‘package’ bookings of different types of travel services for the same trip or holiday as ‘<b>package</b>’ where the trader that is party to a first contract transfers <b>the traveller’s personal data as defined in Article 4(1) of Regulation (EU) 2016/679</b> to a trader that is party to a second or further contract <del>alternatively the traveller’s name, payment details, email address or any other of the traveller’s personal data.</del> <b>This may include, for example, the traveller’s name, payment</b></p>	<p><b><u>This may include, for example, the traveller’s name, payment details, and email address, telephone number, social media account or any other information through which the traveller can be identified.</u></b> Such transfer of <b><u>The reference to “personal data” is intended to take into account any possible future exchange of personal data and is appropriate as an indication for</u></b> indicates a close link between the bookings/ <b><u>or contracts in question and thus to consider them as a package</u></b></p>	<p>Malta supports in principle the complete removal of LTA’s (i.e. Option A).</p> <p>Option ‘C’ i.e. the removal of the concept of LTAs and having one concept of packages with the intention of not reducing the level of protection of the consumer, is acknowledged.</p> <p>In fact, it is noted that the current proposal, not only does not reduce the level of protection but further enhances the protection of the consumer, as former LTAs will now be considered as '<b>packages</b>' and hence subject to the whole Travel Package Directive provisions.</p> <p>This, however, will still raise similar concerns as those raised previously for LTAs, if not more. Such an example would be, who will be responsible for the package (i.e. who will be considered the organiser), in case of default or</p>

<p> <b>details and email address, telephone number, social media account or any other information through which the traveller can be identified.</b> Such transfer of <b>The reference to ‘personal data’ is intended to make the definition more future-proof and is appropriate as an indication for</b> indicates a close link between the bookings/ <b>or contracts in question and thus to consider them as a package so that the criterion of 24 hours for the second booking is not indispensable and should be removed.</b> </p>	<p style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-45deg);">PUBLIC</p>	<p>non-delivery of contractual obligations. Who will bear legal responsibility if the second trader does not inform the first trader?</p> <p>If the co-legislators (that is Council and the European Parliament) decide for this option, then they should consider conducting a detailed legal analysis of possible scenarios raising such issues and address them accordingly, through the insertion of additional legal provisions thus avoiding legal loopholes. MT does not want to slow down the approval of this dossier but wants to ensure that there is tight legal certainty and possible loopholes are closed. Enhanced Consumer protection with legal certainty is of top priority for MT.</p>
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<p>(15) Where a travel service contained in a package is cancelled or not performed and where advance payments have been made to the respective service provider, organisers should be entitled to a refund of the payments made from service providers within 7 days. This right to refund should enable organisers to comply with their obligation to refund travellers within 14 days in cases where also the package travel contract as a whole is</p>	<p>Where a travel service contained in a package is cancelled or not performed and where advance payments have been made to the respective service provider, <del>organisers</del> <b>the buyer (irrespective of whether this is the organizer or the traveller)</b> should be entitled to a refund of the payments made from service providers within <del>7</del> <b>15</b> days. This right to refund should enable organisers to comply with their obligation to refund travellers within <del>14</del> <b>30</b> days</p>	<p>MT proposes that the refunds dates are extended to:</p> <ul style="list-style-type: none"> <li>(a) 15 days that is for the service provider); and</li> <li>(b) 30 days for the organisers when the travel package contract is terminated.</li> </ul> <p>These are more realistic and practical timeframes.</p>
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<p>terminated. Where a travel service provider cancels or does not provide a service contained in a package but where the package travel contract continues to exist, the right to a refund within 7 days should enable organisers to make alternative arrangements.</p>	<p>in cases where also the package travel contract as a whole is terminated. Where a travel service provider cancels or does not provide a service contained in a package but where the package travel contract continues to exist, the right to a refund within <del>7</del><u>15</u> days should enable organisers to make alternative arrangements.</p> <p><b><u>In situations where refunds have to be done en masse or in extraordinary circumstances, these days shall not be applicable, and refunds shall be made without undue delay.</u></b></p>	<p>The Covid period has clearly indicated that the 14 day period is not enough in situations where a large number of travellers need to be refunded at the same time due to the heavy workload and resources required to process the consumer refund requests.</p> <p>The obligation to refund within a 7 day period for service providers and a 14 day period for organisers is too stringent, particularly in extraordinary circumstances or where refunds are to be done en masse. MT is in favour of extending the 7 day and the 14 day period.</p> <p>MT has a serious concern on how the Business to Business (B2B) refund can be enforced effectively especially in the case of businesses base in non-EU countries. 'Organiser' in the first part of this recital should be changed to 'buyer' as the refund should be done between the seller and the buyer i.e refunding of the same account.</p> <p>If the financial burden of meeting refund obligations would heavily impact the financial viability of the undertaking or the sector - given the extraordinary circumstances, it should be permitted that impacted undertaking are allowed to stagger payments of those refunds within a reasonable time, thereby preventing the undertaking from becoming insolvent and triggering the national insolvency mechanism.</p>
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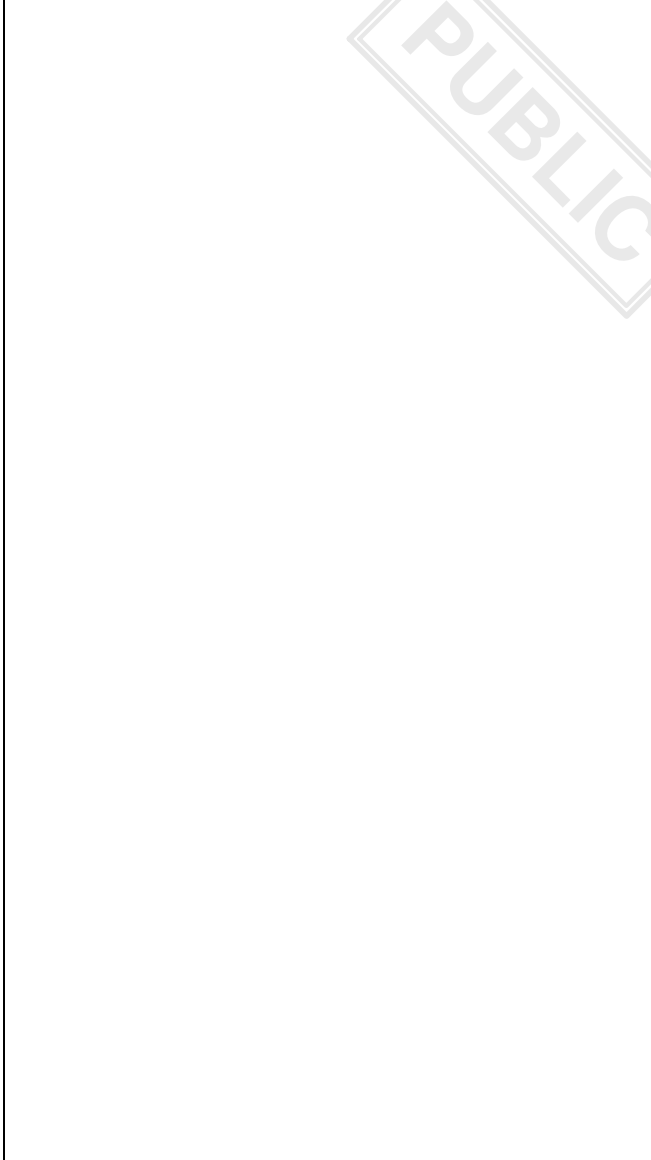
		<p>Also, this would reduce the risk of a systemic crisis in the travel sector, and promote the continued operation of SMEs.</p>
<p><b>16a) On grounds of legal certainty there should be rules on the validity period of vouchers and its possible extension. It is also appropriate to lay down that, during the validity period of the voucher, the traveller's right to a refund is suspended and to specify the instances where such suspension ends and the traveller regains their refund right.</b></p> <p>Organisers may make vouchers more attractive, for example, by increasing the amount of the voucher compared to the traveller's refund right. In such cases, insolvency protection should be limited to the amount of <del>payments received</del> from the traveller's refund right. <b>The amount of the refund right shall be equivalent to the amount originally paid for the travel package by the traveller to the organiser.</b> Since vouchers have a specific monetary value, it is appropriate to lay down that they may be used for any service offered by the organiser, they may be redeemed in parts and are transferable without any additional costs. Transferees should inform the organiser on their identity, so that they can redeem the voucher or receive any refund <del>when the voucher has not been redeemed.</del></p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	<p>MT expresses its concern in cases where the value of a voucher is increased when compared to the refund right. Since the vouchers have a specific monetary value and, as proposed, would be able to be both partly redeemed and used for any service offered by the organiser. It is not clear when it is partly used how the calculation for the refund will be made. MT believes that additional clarification is required.</p>



<p>(20) It should also be clarified that the 14-day refund period, which is triggered by <del>the</del> <b>any</b> termination of the contract, applies regardless of whether the traveller specifically asks for a refund. <b><u>The organiser should reimburse all payments made by or on behalf of the traveller for the package.</u></b></p>	<p>PUBLIC</p>	<p>MT agrees with Presidency's proposal to delete references to insurance for the following reasons:</p> <ol style="list-style-type: none"><li>1. The actual insurance in the current Directive is not considered a travel service – Vide Recital 17 - <i>Financial services such as travel insurances should not be considered as travel services</i> and this should remain as conceptually the travel insurance is an external factor to the package and is there to protect the traveller vis-à-vis the package purchased.</li><li>2. Travel insurances are commonly sold holistically and the premium paid is not broken down but it would cover a comprehensive policy. Calculating the percentage of refund can prove challenging and create disputes.</li></ol>
<p><b>(21) Effectiveness of insolvency protection implies that the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed, will not be or will only partially be performed, or where service providers require travellers to pay for them. Furthermore,</b> in order to ensure effective and uniform protection of travellers and a level</p>		<p><b><u>Recital 21 to 23 and Article 17</u></b></p> <p>It is essential that protection is only provided when the courts confirm that an organiser is unable to meet their obligations. The current wording suggests that insolvency protection would be provided at the first sign of liquidity issues and not when declared by the courts. Businesses often face temporary liquidity</p>



playing field for organisers it should be provided that the insolvency protection of organisers covers all payments made by or on behalf of travellers in the event of the organiser's insolvency, including cases where a package is not performed in full or in part as a consequence of the organiser's insolvency and cases where a traveller was entitled to a refund, including due to a price reduction, or had received a voucher from the organiser before its insolvency.



challenges, particularly those tied to seasonal fluctuations, which do not necessarily lead to insolvency or should warrant immediate insolvency protection.

Although, MT already has an insolvency fund, the regulations should not impose the requirement for Member States to create additional sources of funding and financing. This is placing an additional burden on the industry and will result in the ramping up of costs for the end consumers. MT believes that the principle of subsidiarity should apply. Meaning instead, there should be a greater emphasis on encouraging insurers to provide insolvency protection, as mandating national authorities to create such funds only adds unnecessary bureaucracy.

MT firmly believes that this proposal should not result in the changes of national practices and proven legislation and procedures that have been tested overtime. Furthermore, the refund period should not be independent of insolvency procedures. Only the courts can declare a company insolvent and without such a declaration, there is a risk of abuse. Additionally,



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		<p>organisers should only be able to declare insolvency once confirmed by the courts. It is crucial that court procedures are not bypassed.</p>
<p>(22) In order to ensure <b>the</b> effectiveness of insolvency protection for travellers at all times, it should be provided that the security is sufficient to cover costs for refunds and repatriations in cases where an insolvency occurs at a time when an organiser holds the highest amounts of payments. Any increases of those amounts due to a higher <del>anticipated</del> volume of packages sold in a given period <b>compared to the anticipated sales</b> should be taken into account. It should be clarified that Member States should supervise the insolvency protection of organisers and monitor the <del>market for the provision</del> <b>availability</b> of insolvency protection <del>and that</del>. If necessary <b>to ensure effective insolvency protection</b>, Member States <del>should be able to</del> <b>may</b> require <del>an additional a second level of protection</del> <b>mechanisms</b>, such as a back-up fund <b>to complement, for instance, the protection provided by insurance policies</b>. <del>This may be relevant, for example, where insurance policies do not provide the required level of protection.</del> Such back-up funds should normally be funded exclusively through contributions from</p>		<p>MT agrees with this proposal. However, MT would like to highlight the fact that there effectively always be a time-lag between the actual identification of increases in the volume of the packages and the actual action taken to adjust the insolvency protection.</p>



<p>organisers <del>and</del>. <del>It should be clarified that such measures can</del> <b>should</b> be co-financed by the Member States only in exceptional <b>and duly justified</b> circumstances. <del>and reiterated that those provisions are without prejudice to the Union provisions on State aid insofar</del> <b>Insofar</b> as such measures involve State aid, <b>the Union provisions on State aid apply.</b></p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	
<p>(23) Regarding refunds of <b>travellers'</b> payments in case of an organiser's insolvency, the period for refunds should be further specified, referring to <del>3-12</del> <b>9</b> months after the traveller has submitted the documents necessary to examine the request. <b>Member States can provide for a shorter deadline. The period for refunds is independent of insolvency procedures before a national court or other responsible bodies. It is appropriate to oblige organisers to notify the travellers about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting refunds.</b> It is also appropriate to lay down in a provision that Member States may require retailers to take out insolvency protection in addition to organisers.</p>	<p>23) Regarding refunds of <b>travellers'</b> payments in case of an organiser's insolvency, the period for refunds should be further specified, referring to <b>9</b> months after the traveller has submitted the documents necessary to examine the request and <b>the organiser has been legally declared insolvent as per national insolvency legislation. Member States can provide for a shorter deadline. It is appropriate to oblige organisers to notify the travellers about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting refunds.</b> It is also appropriate to lay down in a provision that Member States may require retailers to take out insolvency protection in addition to organisers..</p>	<p><b>Differences between Liquidity and Insolvency</b></p> <p>Malta would like to comment that it would consider the proposed compromise of 9 months for refunds to travellers in case of insolvencies, as acceptable, subject to the insertion that in addition to the submission of all relevant documentation being submitted by the traveller, the wording after <u>the organiser has been legally declared insolvent as per national insolvency legislation.</u> A proposed wording has been sent by MT in this respect.</p> <p>MT would like to reiterate that liquidity/insolvency issues cannot be separated legally due to national legislation.</p> <p><b>Liquidity and Insolvency matters although related are different situations faced by commercial entities.</b></p>



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The attention of the Presidency is drawn to two matters regarding this proposed condition. The first is that the recitals are using the word liquidity problems interchangeably with insolvency, vide particularly Recital 23 and Recital 39.

In addition, Article 17(1) clearly states the following **“as a consequence of the organiser's insolvency”** and not as stated in Recital 39 “as a consequence of the organiser's liquidity problems”.

Attention is drawn to the fact that an legal/person can have temporary liquidity problems but might not be insolvent.

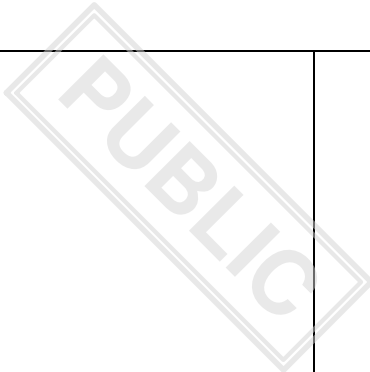
Secondly, is it being expected that Insurance companies/national funds to step in at such early stages before there is confirmation that the legal/person is actually confirmed insolvent.

If this is the case and this course of action is pursued and confirmed, then MT would like to request that the Presidency provides further clarifications on the matter.

Who will decide that travel services are not being performed because of liquidity problems.



		<p>Are we leaving this decision entirely in the hands of the organiser?</p> <p>This could be a dangerous precedent that could lead to abuse by organisers to the detriment of insolvency protection entities.</p> <p>Usually, liquidity issues and insolvency are confirmed by third-party entities in Malta is confirmed with a final decision by courts.</p> <p>If on the other hand, we are basing protection since liquidity which is a lower threshold to insolvency then it would be appreciated if additional explicit guidance is provided in the Directive on:</p> <ul style="list-style-type: none"><li>a) who will decide that there actually are liquidity problems; and</li><li>b) a clear basis and benchmark of what would constitute lack of liquidity.</li></ul>
<p>[39] Member States should ensure that travellers purchasing a package are fully protected against the organiser's insolvency. Member States in which organisers are established should ensure that they provide security for the refund of all payments made by or on behalf of travellers and, insofar as a</p>		<p>As per comment on Recital [23]</p>



<p>package includes the carriage of passengers, for the traveller's repatriation in the event of the organiser's insolvency. However, it should be possible to offer travellers the continuation of the package. While retaining discretion as to the way in which insolvency protection is to be arranged, Member States should ensure that the protection is effective. Effectiveness implies that the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed, will not be or will only partially be performed, or where service providers require travellers to pay for them. Member States should be able to require that organisers provide travellers with a certificate documenting a direct entitlement against the provider of the insolvency protection</p>		
<p>Article 3 (point 2b(i) :      Irrespective of whether separate contracts are concluded with the individual <del>traders travel service providers</del> :</p>	<p>irrespective of whether separate contracts are concluded with individual traders, <del>and</del> <u>if</u>:</p>	<p>MT wants to delete 'and' and replace it with 'if'.</p>
<p>(i) those services are purchased from a single point of sale and</p>		

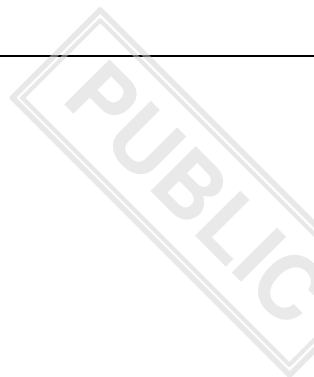
<p>–have been selected before the traveller agrees to pay <b><u>for at least one of the services</u></b>, or</p>	<p>Have been selected before the traveller <del>agrees to pay</del> <b><u>pays or partly pays</u></b>, for at least one of the services, or</p>	<p>The term ‘agrees to pay’ can give rise to uncertainty when this was actually done. Actual payment is a more tangible and determinate factor. MT is basically calling for more legal certainty in the text to cover all possible eventualities full payments and part payments.</p>
<p>Article 3:</p> <p>A combination of travel services where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 is combined with one or more tourist services as referred to in point (d) of point 1 is not a package if the latter services:</p> <p>(a) do not account for at least 25% of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or</p>	<p>do not account for at least 25% of the <b><u>total</u></b> value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or</p>	<p>This addition would provide more legal certainty. MT has added ‘total’.</p>
<p><b><i>Option B: keep LTAs</i></b></p> <p>(b) point 5 is replaced by the following:</p> <p>‘(5) linked travel arrangement’ means a combination of different types of travel services, not falling under the definition of a package in point 2, <del>where, a trader which is party to a contract on the provision of a travel service and receives payments by or on behalf</del></p>		<p><b><u>MT favours the removal of LTAs completely, thus favouring Option A.</u></b></p> <p>The difficulties faced are not only limited to the distinction between LTA’s and packages but also to the actual definition of its constitution, that made the identification of an LTA operation challenging.</p>



~~of a traveller invites a traveller to book additional type of travel service from another trader purchased for the purpose of the same trip or holiday at or via one point of sale within the meaning of point 15 and where a traveller agrees to pay for the second type of travel service within 3/X hours of agreeing to pay for the first type of travel service. ,not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader; and where a contract on the provision of an additional travel service is concluded at the latest 24 hours after the confirmation of the booking of the first contract.~~

~~(a) facilitates, through a single point of sale, the separate selection of travel services within 3 hours; or~~

~~(b) invites a traveller to book at least one additional travel service from another trader where a contract on the provision of the additional travel service is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.~~



**On Option C:** Although Malta still supports in principle the complete removal of LTA's (i.e. Option A), the attempt to remove the concept of LTAs and have one concept of packages whilst not reducing the level of protection of the consumer is acknowledged. In fact, it is noted that the current proposal, not only does not reduce the level of protection but increases the protection of the consumer, as former LTAs will now be considered as 'packages' and hence subject to the whole Travel Package Directive provisions.

This, however, will still raise similar concerns as those raised previously for LTAs, if not more. Such an example would be, who will be responsible for the package (i.e. who will be considered the organiser), in case of default or non-delivery of contractual obligations. Who will bear legal responsibility if the second trader does not inform the first trader?


If Presidency decides for this option, then it should conduct a detailed legal analysis of possible scenarios raising such issues and address them accordingly, through the insertion of additional legal provisions thus avoiding legal loopholes.

<p>Article 5, paragraph 1 (g) :</p> <p>‘(g) information that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate and justifiable termination fee, or, where applicable, the standardised termination fees requested by the organiser, in accordance with Article 12(1), and that the traveller may terminate the package travel contract without paying any termination fee due to unavoidable and extraordinary circumstances as specified under Article 12(2);’.</p>		<p>It should be noted that certain payments made by package organisers to third party service providers might be non-refundable or a fee is charged if terminated. In such cases, organisers might be burdened with the cost.</p> <p>MT would like to ask what has been taken into consideration and what provisions are in place to counter for such occurrences and for the burden not to fall on the organisers when such occurrences occur.</p>
<p>Article 12, paragraph 2 :</p> <p>‘2. Notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the <b>place of departure</b>, at the travel destination or its immediate vicinity, <del>at the place of the traveller’s residence or departure</del> or affecting the journey to the destination, where such circumstances significantly <b>and objectively</b> affect the performance of the package. The traveller may terminate the <b>package travel</b></p>		<p>MT has no objections to the modifications by Presidency on Article 12, par 2. Nonetheless, MT would still require clarification on what happens in the event that travellers at their own risk decide to still proceed with the package and decide to terminate during their trip and/or complain afterwards due to package as contracted not being honoured due to relative unavoidable and extraordinary circumstances. MT believes that it should be clarified that no compensation would be due in such situations.</p>

<p>contract where it can be reasonably expected that the performance of the package travel contract will be significantly <b>and objectively</b> affected by unavoidable and extraordinary circumstances. If the package travel contract is terminated in accordance with 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.'</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-30deg);">PUBLIC</p>	<p>MT also agrees that the customer does not pay a termination fee in the case of unavoidable and extraordinary circumstances. However, this provision is putting the onus solely on the travel package organisers, when such instances could be covered by standard insurance policies taken by consumers. Termination could be restricted to direct costs incurred by the organisers such as non-reimbursement of third-parties due to cancellation fees.</p> <p>Moreover, MT believes that it would be appropriate for an explanation to be provided for what is intended by 'objectively'. It may be worthwhile to have such qualifying criteria added in a recital.</p>
<p>Article 12, paragraph 4</p> <p>'4. The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package minus the appropriate and justifiable termination fee. The organiser shall make such refunds or reimbursements to the traveller without undue delay and, in any event, not later than 14 days after the package travel contract is terminated, <del>regardless of</del></p>	<p>The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package minus the appropriate and justifiable termination fee. The organiser shall make such refunds or reimbursements to the traveller without undue delay and, in any event, not later than <del>14</del> <b>30</b> days after the package travel contract is terminated,</p>	<p><u>Vide also comment of Point (20) recitals</u></p> <p>Depending on the unavoidable and extraordinary circumstances that led to termination under paragraph 2 and 3(b), 14 days does not suffice for the organiser to refund the package especially in extraordinary circumstances or when refunds have to be done <i>en-masse</i>.</p>



<p><del>whether the traveller specifically asks for a refund</del> <b><u>without the need for any prior request by the traveller.</u></b></p>	<p>regardless of whether the traveller specifically asks for a refund.'</p> <p><b><u>In situations where refunds have to be done en masse or in extraordinary circumstances, these days shall not be applicable, and refunds shall be made without undue delay.</u></b></p>	<p>Also the manner in which this is worded gives the impression that even if one opts for a voucher instead, travellers have to be refunded within 14 days.</p> <p>More than 14 days should be given especially in extraordinary circumstances or when refunds are to be done <i>en-masse</i>. MT requests that the 14 days period is extended.</p> <p>A separate provision should be inserted to counter for extraordinary circumstances and en-masse cancellations.</p> <p>If the financial burden of meeting refund obligations would heavily impact the financial viability of the undertaking or the sector - given the extraordinary circumstances, it should be permitted that impacted undertakings are allowed to stagger payments of those refunds within a reasonable time, thereby preventing the undertaking from becoming insolvent and triggering the national insolvency mechanism. Also, this would reduce the risk of a systemic crisis in the travel sector, and promote the continued operation of SMEs.</p>
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<p>Article 12a (Vouchers)</p> <p>2. <del>Before the traveller accepts the</del> <b><u>When offering a voucher to the traveller</u></b>, the organiser shall inform the traveller clearly and prominently <del>in writing</del> <b><u>on a durable medium</u></b> about:</p> <p>-(a) the fact that the traveller is entitled to a refund within 14 days and is not obliged to accept a voucher;</p> <p><b><u>(aa) the amount of the traveller’s refund right;</u></b></p> <p><b><u>(ab) the amount of the voucher;</u></b></p> <p>(b) the validity period of the voucher and the rights of travellers in relation to vouchers as laid down in this Article;</p> <p><b><u>(ba) the fact that the voucher is transferable;</u></b></p> <p><b><u>(bb) the fact that the traveller can redeem the voucher in parts.</u></b></p>		<p>MT agrees with the proposals of the Presidency to make a clear distinction between the organiser’s information obligations when offering a voucher and the information that the voucher itself must contain, together with the introduction of a new para to establish the cases in which the suspension of the traveller’s refund right ends, and the traveller must be refunded.</p> <p>However, MT reiterates and emphasizes the need of including another provision for unavoidable and extraordinary circumstances when such events are of a magnitude that led to mass cancellations like the Covid-19 experience.</p> <p>In this regard, MT would like to request information on whether the proposal of providing a controlled mechanism in cases of global/regional situations of unavoidable and extraordinary circumstances (like COVID-19 situation), that would allow the issuing of vouchers on a mandatory basis, for a limited period of time, has been completely discarded as an option.</p>
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<p>3. <del>The value of the voucher offered shall correspond at least to the amount of the traveller's refund right.</del> The organiser may offer a voucher <del>on</del> <b>of</b> a higher amount <u>than the traveller's refund right.</u></p>		<p>[As per MT comments on vouchers further above vide Note in Recital 16a]</p>
<p><b><u>3a. The traveller shall be entitled to redeem the voucher partially. In that case the traveller may:</u></b></p>		
<p><b><u>(a) redeem the remaining value of the voucher later during the validity period, or</u></b></p>		
<p><b><u>(b) request payment of the remaining refund right, which shall be made within 14 days.</u></b></p>		<p><b><u>Clarification request</u></b></p> <p>MT would like to request a confirmation from the Presidency on the interpretation of this provision that the 14 days' timeline starts counting down from the moment the traveller/consumer makes the relative request for refund of the remaining amount of the voucher.</p> <p>Additionally, Malta would also like to request a confirmation from the Presidency of the understanding of the proposed deletion of 4a(b), whereby it is basically implying that in cases of partial redemption of vouchers, consumers/travellers may request the refund of</p>



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		the unredeemed amount at any point in time and do not need to wait until the end of the voucher's validity period to do so.
<p><b>Article 17 : Effectiveness and scope of insolvency protection</b></p> <p>1. Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers in the event of organisers' insolvency. This shall include the protection of payments made where a package is not performed in full or in part as a consequence of the organiser's insolvency or where a traveller was entitled to <del>any</del> refund, <del>including price reduction,</del> or had received a voucher from the organiser before its insolvency. In relation to <b>Where a traveller receives a</b> vouchers, the security shall be limited to the amount of <del>payments received from</del> the traveller's <b>refund right</b>. If the return journey is included in the package travel contract, organisers shall also provide security for the traveller's repatriation. Continuation of the package may be offered.</p>		MT agrees with the proposed change clarifying the refund amounts of vouchers.

<p>Organisers not established in a Member State which sell or offer for sale packages in a Member State, or which by any means direct such activities to a Member State, shall be obliged to provide the security in accordance with the law of that Member State.</p>		<p>Clarification is needed on the applicability of this provision in case organisers established in a Member State sell or offer packages to non-EU travellers.</p>
<p>4. 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 entity in charge of the insolvency protection is located.</p>		<p>As previously remarked it would be ideal if further provisions are included to better clarify whether this directive applies to non-EU travellers. This seems to give the impression that this directive is meant to protect only EU travellers, whilst the text of the directive, such as this provision, suggests otherwise. Therefore, it is important that this is clarified.</p>
<p>6. Refunds of <b>travellers'</b> payments affected by the organiser's insolvency shall be provided without undue delay <del>after the traveller's request</del> and at the latest within <del>three</del> <b>12 9</b> months after the traveller has submitted <del>the</del> <b>all relevant</b> documents necessary to examine the request <b>as specified in accordance with paragraph 6a point (b). Member States may provide for a shorter deadline for providers of insolvency protection to pay the refunds.</b></p>	<p>Refunds of <b>travellers'</b> payments affected by the organiser's insolvency shall be provided without undue delay after the traveller's request and at the latest within <b>9</b> months after the traveller has submitted the <b>all relevant</b> documents necessary to examine the request <b>as specified in accordance with paragraph 6a point (b) subject to the organiser having been legally declared insolvent as per national insolvency legislation. Member States may provide for a shorter deadline for providers of insolvency protection to pay the refunds.</b></p>	<p>As per comment on Recital [23]</p>



**6a. Organisers shall be obliged to inform the travellers on their website about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting the refunds, including:**

**(a) the name and assistance contact of the competent entity providing insolvency protection;**

~~**(b) the list of documents to be submitted as defined by the competent entity;**~~

~~**(c) the explanation of the applicable insolvency protection mechanism of the Member State;**~~

**(b) special instructions information for travellers who already started their package.**

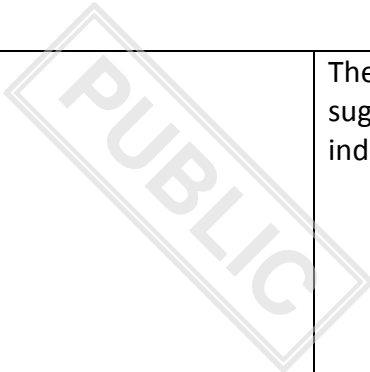
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**Article 17(6a)** - Whilst the obligation to inform travellers about insolvency is supported, the specific reference to the provision of said information on the website is not and considered unnecessarily restrictive. We suggest that if these are to be included, it may be done via a recital and in a non-prescriptive manner.

Moreover, in order to facilitate and expedite the process for entities responsible for insolvency protection to become aware of an organiser's insolvency, the following drafting suggestion is being proposed: -

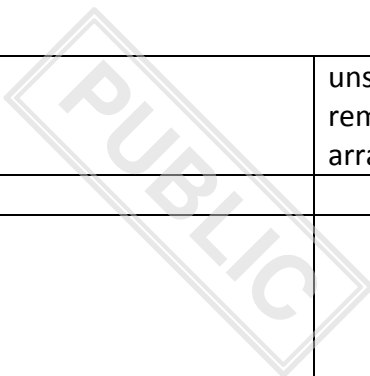
*"Organizers shall be obliged to inform the travellers and the entity responsible for insolvency protection about their insolvency without undue delay and to provide travellers with all the relevant information about the mechanism of requesting the refunds, including:"*

*Re indent (d), the textual reference to 'special instructions' should be retained/reintroduced.*

<p><b>6b. After becoming aware of the organizer's insolvency, the entity responsible for insolvency protection shall be obliged to publish the following information on its website without undue delay:</b></p> <p><b>(a) the fact of the organiser's insolvency;</b></p> <p><b>(b) the list of documents to be submitted for the traveller's claim;</b></p> <p><b>(c) information for travellers who already started their package.</b></p>		<p>The proposed text is supported, with the suggestion to replace the term 'information' in indent (c) with 'special instructions'.</p>
<p><b>'Article 19 Insolvency protection and information requirements for linked travel arrangements</b></p>		
<p>1. For linked travel arrangements, as defined in Article 3(5), Member States shall ensure that traders <b>facilitating linked travel arrangements</b> <del>which invite travellers to conclude a contract on a different type of travel service</del> shall provide security for the refund of all payments they receive from travellers. If such traders are responsible for the traveller's return journey, the security shall also cover the traveller's repatriation. The second</p>		<p>MT reserves its position until a final decision is taken on whether Option A, Option B or Option C will be taken re LTA's.</p> <p><b><u>Clarification</u></b></p> <p>It is unclear how Member States are expected to 'ensure' traders adhere to this provision. Over the years, it has become evident that attempting to implement this concept has proven</p>



<p>subparagraph of Article 17(1), Article 17(2) to (6) and Article 18 shall apply mutatis mutandis.</p>		<p>unsuccessful and should seriously consider removing any reference to linked travel arrangements.</p>
<p>2. <b><u>Before the traveller is bound by any contract leading to the creation of a linked travel arrangement or any corresponding offer, the trader facilitating linked travel arrangements,</u></b> <del>When inviting the traveller to conclude a contract on a different type of travel service, the trader,</del> including where <del>it</del> <b><u>the trader</u></b> is not established in a Member State but, by any means, directs such activities to a Member State, shall provide the traveller with the relevant standard information form set out in Annex II, completed as appropriate. The <b><u>relevant</u></b> form shall be provided in a clear and prominent manner. <b><u>Traders providing Form D or Form E [of the current directive] of Annex II shall make available to travellers a facility through which travellers can inform them on the booking of additional travel services within 24 hours of receiving confirmation of the booking of a first travel service.</u></b></p>		
<p>4. Where a linked travel arrangement is formed, the trader which concludes a contract on a different type of travel service shall inform the trader <b><u>facilitating the linked travel arrangement of the</u></b></p>		<p><b><u>Clarification if Option A (deletion of LTA's) is discarded:</u></b></p> <p>This was already noted in the original drafting of the Directive. What if the second trader does not</p>





<p><b><u>conclusion of the relevant contract</u></b>, which invited the traveller to conclude such contract on this fact.</p>		<p>inform the first trader ? Who will bear responsibility?</p>
<p><b>'Article 22 : Right of redress and refund rights of organisers</b></p>		
<p>(1) In cases where an organiser or, in accordance with the second subparagraph of Article 13(1) or Article 20, a retailer pays compensation, grants price reduction or meets the other obligations incumbent on him under this Directive, Member States shall ensure that the organiser or retailer has the right to seek redress from any third parties which contributed to the event triggering compensation, price reduction or other obligations.</p>		
<p>(2) Member States shall ensure that, when a service provider cancels a service that is part of a package or fails to provide it, that service provider shall refund to the organiser any payments made by the organiser for the service within 7 days. The 7-day period shall start on the day following the cancellation of the service or the day when the service was due to be performed, whichever is the earlier date.'</p>	<p>Member States shall ensure that, when a service provider cancels a service that is part of a package or fails to provide it, that service provider shall refund to the <del>organiser</del> <b>buyer</b> any payments made by the organiser for the service within <del>157</del> days. The <b>157</b>-day period shall start on the day following the cancellation of the service or the day when the service was due to be performed, whichever is the earlier date</p>	<p>Whilst the intention is commendable it will be difficult to monitor in Member States and practically impossible for service providers in third-countries.</p> <p>It is unclear what happens if the service provider does not abide by the same requirement. Will organisers/retailers still be expected to refund if they do not receive the refund from service</p>



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		<p>provider? Also how are non-EU service providers expected to be bound by the same?</p> <p>Moreover, if service providers fail to provide service for a reason which is not attributable to them, they should not be automatically bound to refund depending on the circumstances. For example, if the traveller arrived late for an excursion and hence service was not provided, the service provider shouldn't have to refund.</p> <p>Clarification is being requested on how this can be monitored and how this can be enforced particularly in non-EU Member States.</p> <p>MT also believes that the 7 day period is too stringent. The 7 day period should be extended (in line with the requested extension for the 14 day period).</p> <p>Furthermore, a separate provision for extraordinary or <i>en-masse</i> situations should be inserted as per our drafting suggestions in Article 12 par 4.</p>




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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**

**(Text with EEA relevance)**

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) Directive (EU) 2015/2302 of the European Parliament and of the Council<sup>3</sup> modernised the legal framework for package travel in light of developments in the market and technology. That Directive aimed to cover new ways of booking travel services that had emerged, including customised combinations of travel services, which were not covered by Council

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

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

<sup>3</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

Directive 90/314/EEC<sup>4</sup> or which were in a legal grey area, and strengthened the rights of travellers in different respects. At the same time, it aimed to ensure fairer competition between the different types of travel businesses active in the package travel market.

- (2) In order to pursue those objectives, Directive (EU) 2015/2302 broadened the definition of the term ‘package’ compared to Directive 90/314/EEC. Directive (EU) 2015/2302 further specified existing rights of travellers and introduced new ones, such as the right for travellers to terminate a package travel contract without termination fees, under certain conditions, in the event of unavoidable and extraordinary circumstances. In addition, Directive (EU) 2015/2302 created the new concept of ‘linked travel arrangement’, which encompassed bookings carried out at one point of sale and bookings at different points of sale which a trader ‘facilitates in a targeted manner’. Linked travel arrangements are largely treated like stand-alone services, but payments received by a trader facilitating a linked travel arrangement are to be protected against such trader’s insolvency. Directive (EU) 2015/2302 aimed to ensure transparency by obliging traders to inform travellers on the nature of travel product offered to them and on the associated rights through standard information forms contained in Annexes I and II to that Directive.
- (3) While, overall, Directive (EU) 2015/2302 has worked well, several challenges have emerged since the start of its application on 1 July 2018. The COVID-19 pandemic and related government measures had a significant impact on both the travel industry and travellers and exposed certain weaknesses in prevailing business models and showed that specific provisions of the Directive could be clarified.
- (4) Therefore, it is necessary to close the gaps identified in the current rules, as well as to clarify and simplify certain concepts and provisions, thus enhancing the effectiveness of Directive (EU) 2015/2302 for the benefit of travellers and travel businesses, amongst which there is a large number of micro, small and medium-sized enterprises.

*[Option A – opt to delete LTAs: recital (5) will be deleted]*

*[Option B – opt to keep LTAs: recital (5) will be adapted accordingly]*

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<sup>4</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

*[Option C – opt to incorporate LTAs (b) in the package definition: recital (5) will be adapted accordingly].*

(5) While, overall, the definition of ‘package’ is considered to have been effective, **however based on the practical challenges concerning the usage of linked travel arrangements it is necessary to incorporate the definition of linked travel arrangements into the definition of ‘package’**. **The definition of ‘package’ should cover both situations under the linked travel arrangements definition by modifying the already existing cases and introducing a new situation into the ‘package’**. the definition of and the rules on linked travel arrangements, as well as their delimitation from packages, should be clarified and simplified. Such clarification and simplification of the definitions and concepts ‘package’ and ‘linked travel arrangement’ should increase legal certainty for all parties, while making the protection of travellers more effective, and ensuring a level playing field for traders. At the same time, the number of information forms to be used by traders when informing travellers on their rights should be reduced.

**(5a) The new situation where the definition of ‘package’ contains the criterion of a single visit or contact, should be assessed on a case-by-case basis. Not every interruption in the booking process should be automatically presumed to lead to a separate visit or contact. For instance, when a traveller selects a travel service and shortly thereafter books one or more additional travel services, this should be considered as part of the same contact or visit. Even where a traveller leaves the trader’s premises or website after selecting the first travel service and returns to it within a short period of time to complete the booking of an additional service. By contrast, where a traveller, after completing one booking and without previously having enquired about additional bookings for the same trip or holiday or having been prompted by the trader to make additional bookings, later decides to book an additional travel service on the same website or at the same physical point of sale should not be considered as being part of the same visit or contact.**

(6) The principle underlying the definition of ‘package’ should remain that there is a close link between different travel services booked for the purpose of the same trip or holiday. In order to ensure that there is no overlap between the definition of ‘package’ and ‘linked travel arrangement’ and to eliminate the difficulties in distinguishing between packages and linked travel arrangements, bookings of different types of travel services for the same trip or

holiday at one point of sale where the travel services have been selected before the traveller concludes a first contract should be considered as packages in the same way as travel services booked at one point of sale within a short period of time. In both cases, there is a close link between the bookings of travel services. Therefore, the definition of 'package', should cover both situations, while bookings made on the occasion of a single visit or contact with one point of sale should be removed from the definition of linked travel arrangement.

- (7) — In the context of bookings made within a short period of time at one point of sale, it is appropriate to replace the rather vague criterion of 'a single visit or contact'. Therefore, bookings of different types of travel services for the same trip of holiday made within three hours should always be considered as packages. The same should apply where, before the completion of a first booking, a trader invites a traveller to book additional services for the same trip or holiday after completing the first booking, and where subsequent bookings take place within 24 hours after the conclusion of the first contract.

*[Option C – opt to incorporate LTAs (b) in the package definition: recital (8) will be modified accordingly].*

- (8) The definition of package formed through linked online booking processes in Article 3(2)(b)(v) of Directive (EU) 2015/2302, which ~~required~~ **requires** that the **transmission of the** traveller's name, payment details and email address ~~are all transmitted~~ from one trader to another ~~trader~~, has proved to be too narrow. Therefore, it is appropriate to consider as 'package' bookings of different types of travel services for the same trip or holiday **as 'package'** where the trader that is party to a first contract transfers **the traveller's personal data as defined in Article 4(1) of Regulation (EU) 2016/679** to a trader that is party to a second or further contract ~~alternatively the traveller's name, payment details, email address or any other of the traveller's personal data~~. **This may include, for example, the traveller's name, payment details and email address, telephone number, social media account or any other information through which the traveller can be identified.** ~~Such transfer of~~ **The reference to 'personal data' is intended to make the definition more future-proof and is appropriate as an indication for** ~~indicates~~ a close link between the bookings/ **or** contracts **in question and thus to consider them as a package** ~~so that the criterion of 24 hours for the second booking is not indispensable and should be removed.~~

*[According to Option A and C: recital (9) will be deleted]*

*[Option B – opt to keep LTAs: recital (9) will be adapted accordingly]*

- (9) The definition of ‘a linked travel arrangement’ should cover situations where a trader that is party to a first contract and receives payments from or on behalf of the traveller invites a traveller to book additional types of travel services for the same trip or holiday. In this context, the trader that is party to a first contract should obtain insolvency protection. Furthermore, in order to make sure that travellers fully benefit from the rules on insolvency protection and for traders to know that they are subject to this obligation, it is appropriate that the information forms on linked travel arrangements recommend to travellers to record the invitation and the additional booking, for instance through screenshots, and to inform the trader with whom a first contract was concluded that a contract on an additional type of travel service has been concluded for the same trip or holiday within 24 hours following the invitation from the trader. The trader should be obliged to make available to travellers a facility, such as an email address or a website, where travellers can register such information and shall acknowledge receipt of such information.
- (10) Regarding packages where, for example, accommodation is combined with other tourist services, but which do not contain any carriage of passengers, the general criterion of ‘a significant proportion’ of the value of the combination, applying to tourist services as referred to in Article 3(1)(d), should be replaced with the more specific criterion of ‘at least 25%’ in order to increase legal certainty.
- (11) As demonstrated, in particular, during the COVID-19 pandemic, the prevailing business practice of advance payments, the absence of business-to-business rules on refunds to organiser of packages for services cancelled or not performed by the service providers, the absence of rules on vouchers, as well as uncertainty on whether refund claims and vouchers for cancelled packages are covered by insolvency protection, can cause difficulties in relation to refunds to travellers, in particular, where unavoidable and extraordinary circumstances lead to numerous cancellations and affect many travel destinations. Therefore, it should be provided that travellers’ payments are effectively protected at all times, including in a crisis. Furthermore, it should be ensured that the national insolvency protection systems are resilient and provide more uniform protection.

- (12) ~~There are certain risks which are inherent in the business practice of requiring advance payments, in particular, in situations where organisers are obliged to refund significant amounts to travellers for cancelled trips within a short period of time. Therefore, it should be provided that downpayments, that is to say payments asked of travellers at the time of booking or shortly afterwards, should not be higher than 25% of the total price of the package, and that organisers or, where applicable, retailers should be prevented from requesting the payment of the remaining amount earlier than 28 days before the start of the package. At the same time, organisers and, where applicable, retailers should be able to request higher downpayments where this is necessary to ensure the organisation and proper performance of the package. The level of downpayments requested by organisers may be justified by advance payments to service providers, including where they belong to the same group of companies as the organiser, or the need to cover the organiser's costs directly related to the organisation and performance of the package at the time of booking or shortly afterwards. This may, where applicable, include commissions requested by retailers.~~
- (13) ~~The level of downpayments should not require different calculations for each package but can be established for groups of packages that have similar characteristics regarding the necessity of downpayment. Organisers and, where relevant, retailers should continue to be obliged to inform travellers, before the conclusion of the contract, about the downpayments they request.~~
- (14) ~~Since the limitation of advance payments is not compatible with the concept of package travel gift boxes as referred to in Article 3(5)(b)(iv) of Directive (EU) 2015/2302 and packages booked less than 28 days before the start of the package, these two types of packages should be exempted from the limitation of advance payments introduced by this Directive.~~
- (15) Where a travel service contained in a package is cancelled or not performed and where advance payments have been made to the respective service provider, organisers should be entitled to a refund of the payments made from service providers within 7 days. This right to refund should enable organisers to comply with their obligation to refund travellers within 14 days in cases where also the package travel contract as a whole is terminated. Where a travel service provider cancels or does not provide a service contained in a package but where the package travel contract continues to exist, the right to a refund within 7 days should enable organisers to make alternative arrangements.

(16) In certain situation voluntary vouchers to travellers can be a useful alternative to refunds. Vouchers can give more flexibility to organisers in particular if they are confronted with the obligation to make many refunds within a short period of time. At the same time, vouchers can be acceptable for travellers who do not need an instant refund, as long as there are specific legal guarantees. Therefore, clear rules on vouchers should be laid down which provide such guarantees. Those guarantees should include **transparency compulsory information** on the voluntary nature and on the key characteristics of vouchers **before travellers accept the voucher. It is also appropriate to specify the necessary information to be mentioned on the voucher itself**, as well as on travellers' rights in relation to vouchers, for example, the fact that they are protected against the organiser's insolvency and that travellers are entitled to an automatic refund where a voucher is not redeemed during its period of validity.

**(16a) On grounds of legal certainty there should be rules on the validity period of vouchers and its possible extension. It is also appropriate to lay down that, during the validity period of the voucher, the traveller's right to a refund is suspended and to specify the instances where such suspension ends and the traveller regains their refund right.**

Organisers may make vouchers more attractive, for example, by increasing the amount of the voucher compared to the traveller's refund right. In such cases, insolvency protection should be limited to the amount of payments received from the traveller's refund right. **The amount of the refund right shall be equivalent to the amount originally paid for the travel package by the traveller to the organiser. Since vouchers have a specific monetary value, it is appropriate to lay down that they may be used for any service offered by the organiser, they may be redeemed in parts and are transferable without any additional costs. Transferees should inform the organiser on their identity, so that they can redeem the voucher or receive any refund when the voucher has not been redeemed.**

(17) It is conceivable for Member States to provide for mechanisms ensuring refunds to travellers in accordance with the legal requirements, for cases where packages are cancelled due to unavoidable and extraordinary circumstances and where organisers are unable comply with their refund obligations. In order to increase transparency, Member States introducing or maintaining such mechanisms should be obliged to inform the Commission and the central contact points of the other Member States about such mechanisms. Such mechanisms are normally funded exclusively through contributions from organisers. Only in exceptional **and**

**Commented [ML1]:** LV: **Before the transfer of the voucher**. Transferees should inform the organiser on **the identity of the transferee**, so that they can redeem the voucher or receive any refund.

**Commented [ML2]:** Latvia proposes to clarify that the organizer should be informed about the transfer of voucher BEFORE the transfer happens, not AFTER.

**duly justified** circumstances can such mechanisms be co-financed by Member States, and their introduction is without prejudice to the Union provisions on State aid.

(18) The multitude of conceivable situations that may give rise to the termination of a package travel contract due to unavoidable and extraordinary circumstances which significantly affect the performance of a package requires a case-by-case assessment, for instance, in light of the nature and the extent of such circumstances. It should be clarified that the termination of a contract is possible if it can be reasonably expected that its performance will be significantly affected by unavoidable and extraordinary circumstances. **The assessment as to whether unavoidable and extraordinary circumstances will have significant effects on the performance of the package must be based on a prediction, at the moment of the termination of the contract, of the likelihood that the unavoidable and extraordinary circumstances will have significant effects on the performance of the package. Where a traveller terminates the contract, such assessment must be made from the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect, based on information available at the date of termination of the package travel contract in question. Effects of unavoidable and extraordinary circumstances occurring at the place of departure, destination and at the various places connected with the start and return of the trip in question or affecting the journey to or from the destination should be taken into account where they affect the performance of travel services included in the package travel contract.**

(18a) **Unavoidable and extraordinary circumstances may cover not only circumstances which make it impossible to perform a package but also circumstances which, without preventing such performance, mean that the package cannot be performed without exposing the travellers concerned to risks to their health and safety, taking into account, where appropriate, personal circumstances of the travellers concerned, such as the fact of travelling with young children or of belonging to a higher-risk group. The relevance of such circumstances and their effects on the package should be established objectively.**

(19) **Official warnings against travel to a particular destination issued by the authorities of the Member State of departure or traveller's residence or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of residence or departure after returning from the trip or holiday, such as quarantine requirements for a significant period, can be elements to be taken into account in the assessment of whether a termination of the contract is justified. Every situation needs to be assessed on a case-by-case basis. Furthermore, the absence of official travel warnings does not prevent establishing the existence of those circumstances and their effects on the performance of the package.** During the Covid-19 pandemic, different interpretations emerged regarding cancellation rights due to 'unavoidable and extraordinary circumstances' including in relation to the relevance of travel warnings. It is, therefore, appropriate to specify that official travel warnings for the travel destination issued by the authorities of the Member State of the traveller's residence or departure or the country of destination, are important elements when assessing the justification of the termination of a contract. It should also be clarified that serious restrictions at the travel destination or applying after returning from the trip or holiday, such as quarantine requirements for a significant period, are also relevant when assessing the justification of the termination of a package travel contract.

**Commented [ML3]:** LV: Official warnings against travel to a particular destination issued by the authorities of the Member State of departure ~~or traveller's residence~~ or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of ~~residence or~~ departure after returning from the trip or holiday, such as quarantine requirements for a significant period, can be elements to be taken into account in the assessment of whether a termination of the contract is justified. Every situation needs to be assessed on a case-by-case basis.

**Commented [ML4]:** The scope of unavoidable circumstances should not be broadened to traveller's residence, because the organizer cannot be responsible to delivering the traveller to the departure point of the package, unless it is included in the price and contract of the package. If, for example, the traveller chooses to purchase a package that starts in a different country, and must travel to that country by themselves, the organizer must not be held responsible if the traveller doesn't arrive on time or wants to terminate package because they cannot depart from their residence.

(20) It should also be clarified that the 14-day refund period, which is triggered by the **any** termination of the contract, applies regardless of whether the traveller specifically asks for a refund. **The organiser should reimburse all payments made by or on behalf of the traveller for the package.**

**Commented [ML5]:** It should also be clarified that the 14-day refund period, which is triggered by any termination of the contract, applies regardless of whether the traveller specifically asks for a refund, **if there is no need for additional payment information from traveller.** The organiser should reimburse all payments made by or on behalf of the traveller for the package **after receiving all the necessary documentation from the traveller.**

(21) **Effectiveness of insolvency protection implies that the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed, will not be or will only partially be performed, or where service providers require travellers to pay for them. Furthermore,** in order to ensure effective and uniform protection of travellers and a level playing field for organisers it should be provided that the insolvency protection of organisers covers all payments made by or on behalf of travellers in the event of the organiser's insolvency, including **eases** where a package is not performed in full or in part as a consequence of the organiser's **insolvency and eases** where a traveller was entitled to a refund, **including due to a price reduction**, or had received a voucher from the organiser before its insolvency.

**Commented [ML6]:** Latvia is against automatic reimbursement to the traveller if no refund is requested. Please find the arguments with Article 12(4).

- (22) In order to ensure **the** effectiveness of insolvency protection for travellers at all times, it should be provided that the security is sufficient to cover costs for refunds and repatriations in cases where an insolvency occurs at a time when an organiser holds the highest amounts of payments. Any increases of those amounts due to a higher ~~anticipated~~ volume of packages sold in a given period **compared to the anticipated sales** should be taken into account. It should be clarified that Member States should supervise the insolvency protection of organisers and monitor the ~~market for the provision~~ **availability** of insolvency protection ~~and that~~. If necessary **to ensure effective insolvency protection**, Member States ~~should be able to~~ **may** require ~~an additional a second level of protection~~ **mechanisms**, such as a back-up fund **to complement, for instance, the protection provided by insurance policies**. ~~This may be relevant, for example, where insurance policies do not provide the required level of protection.~~ Such back-up funds should normally be funded exclusively through contributions from organisers ~~and~~. ~~It should be clarified that such measures can~~ **should** be co-financed by the Member States only in exceptional **and duly justified** circumstances. ~~and reiterated that those provisions are without prejudice to the Union provisions on State aid insofar~~ **Insofar** as such measures involve State aid, **the Union provisions on State aid apply**.
- (23) Regarding refunds of **travellers'** payments in case of an organiser's insolvency, the period for refunds should be further specified, referring to ~~3-9~~ months after the traveller has submitted the documents necessary to examine the request. **Member States can provide for a shorter deadline. The period for refunds is independent of insolvency procedures before a national court or other responsible bodies. It is appropriate to oblige organisers to notify the travellers about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting refunds.** It is also appropriate to lay down in a provision that Member States may require retailers to take out insolvency protection in addition to organisers.
- (24) It should be clarified that the central contact points are responsible for the exchange of information in relation to insolvency protection and related questions, including any mechanisms to ensure timely refunds for terminated package travel contracts.
- (25) It is important that travellers are properly informed on their rights, are able to understand the information provided to them and have access to that information when they need it. Therefore, certain changes should be made regarding pre-contractual information

requirements, the content of a package travel contract and the standard information forms set out in Annexes I and II to Directive (EU) 2015/2302. For example, the standard information forms in Annex I should specify the trader responsible for refunds for cancelled packages.

The right to terminate a package travel contract without a fee due to unavoidable and extraordinary circumstances should be presented next to the possibility to cancel a package subject to a cancellation fee. In addition, organisers should be obliged to add the standard information form to the contract so that it is available to travellers after the conclusion of the contract, along with contact details of the relevant traders.

- (26) Directive (EU) 2015/2302 should, therefore, be amended accordingly.
- (27) Since the objective of this Directive, namely to contribute to the proper functioning of the internal market in relation to package travel and to the achievement of a high and as uniform as possible level of consumer protection in this sector, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, 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 that objective.
- (28) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. This Directive, 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.
- (29) The Commission should submit to the European Parliament and to the Council a report on the application of this Directive within 5 years of its entry into force. While the impacts of this Directive on travel businesses, including on micro, small and medium-sized organisers have been carefully assessed, it is appropriate to take into account in this report the impact of its application on micro, small and medium-sized organisers. Where necessary, the report should be accompanied by legislative proposals,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1***Amendments to Directive (EU) 2015/2302**

Directive (EU) 2015/2302 is amended as follows:

- (1) Article 1 is replaced by the following:

*'Article 1***Subject matter**

'The purpose of this Directive is to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States in respect of contracts between travellers and traders relating to package travel and linked travel arrangements, as well as certain aspects of contracts between organisers of packages and service providers'.

- (2) in Article 2, paragraph 1 is replaced by the following:

'1. This Directive applies to packages offered for sale or sold by traders to travellers and to linked travel arrangements facilitated by traders for travellers.

It also applies to refund rights of organisers as defined in Article 3(8) against travel service providers in case of cancellation or non-provision of a service that is part of a travel package.

- (3) Article 3 is amended as follows:

- (a) point 2 is replaced by the following:

'(2) 'package' means a combination of at least two different types of travel services, as defined in point 1, for the purpose of the same trip or holiday, if:

- (a) those services are combined by one trader, including at the request of or in accordance with 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, and:
- (i) those services are purchased from a single point of sale and
    - ~~– have been selected before the traveller agrees to pay, or~~
    - ~~– other types of travel services are booked within 3 hours after the traveller agreed to pay for the first travel service, or~~
    - ~~– other types of travel services are booked within 24 hours after the traveller agreed to pay for the first travel service and if, before the traveller agreed to pay for the first travel service, the trader invited the traveller to subsequently book one or more additional types of travel services, or~~
  - (ii) are offered, sold or paid at an inclusive or total price, regardless of any separate billing, or
  - (iii) are advertised or sold under the term ‘package’ or under a similar term, or
  - (iv) are 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) are purchased from separate traders through linked online booking processes where ~~the traveller’s name, payment details and e-mail address~~ ~~or~~ the traveller’s ~~other~~ personal data are transmitted from the trader with whom the first contract is concluded to another trader or other traders and a contract with the latter trader or traders is **concluded at the latest 24 hours after the confirmation of the booking of the first travel service.**

A combination of travel services where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 is combined with one or more tourist services as referred to in point (d) of point 1 is not a package if the latter services:

- (a) do not account for at least 25% of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or

- (b) are selected and purchased only after the performance of a travel service as referred to in point (a), (b) or (c) of point 1 has started;’.

**Option A: delete LTAs (implies also the deletion of Article 19 and of Annex II)**

**Commented [ML7]:** LV supports option A

- (b) point 5 is ~~deleted~~, replaced by the following:

**Option B: keep LTAs: the current definition will be simplified and clarified (that implies a few changes in Article 19 and maintaining five forms in Annex II)**

**Option C: opt to move the content of the LTA b) definition to the package definition and the LTAs will be deleted together with Annex II**

Article 3 is amended as follows:

- (a) point 2 is replaced by the following:

‘(2) ‘package’ means a combination of at least two different types of travel services, as defined in point 1, for the purpose of the same trip or holiday, if:

- (a) those services are combined by one trader, including at the request of or in accordance with 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 **traders** ~~travel service providers, and those services:~~
- (i) those services are purchased from a single point of sale and

~~–have been selected before the traveller agrees to pay~~ **for at least one of the services,** or

~~–other types of travel services are booked within 3 hours after the traveller agreed to pay for the first travel service, or~~

~~–other types of travel services are booked within 24 hours after the traveller agreed to pay for the first travel service and if, before the traveller agreed to pay for the first travel service, the trader invited the traveller to subsequently book one or more additional types of travel services, or~~

**Commented [ML8]:** LV: –have been selected before the traveller agrees to pay **for at least one of the services**

**Commented [ML9]:** In practice, PRES suggestion won’t work. If the traveller agrees to pay for only one of the services, it cannot constitute a package, as there is no guarantee that the traveller will pay for the second service to actually form a package. A package requires at least two services, so the traveller must pay for at least two services for the purchase to be considered a package.

- (ii) are offered, sold or paid at an inclusive or total price, regardless of any separate billing, or
- (iii) are advertised or sold under the term 'package' or under a similar term, or
- (iv) are 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) are purchased from separate traders through linked online booking processes where ~~the traveller's name, payment details and e-mail address or the traveller's other~~ personal data are transmitted from the trader, **or in a targeted manner, the trader facilitates the procurement of at least one additional travel service from another trader** with whom the first contract is concluded to another trader or other traders and a contract with the latter trader or traders is **concluded at the latest 24 hours after the confirmation of the booking of the first travel service.** ~~or~~

~~(vi) the trader facilitates the separate selection of travel services on the occasion of the same visit or contact with a single point of sale.~~

A combination of travel services where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 is combined with one or more tourist services as referred to in point (d) of point 1 is not a package if the latter services:

- (a) ~~do not account for at least 25% of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or~~
- (b) are selected and purchased only after the performance of a travel service as referred to in point (a), (b) or (c) of point 1 has started; ~~or~~

(b) point 5 is **deleted**.

***Option B: keep LTAs***

(b) point 5 is replaced by the following:

**Commented [ML10]:** LV: do not account for **at least 25% a significant proportion** of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination

**Commented [ML11]:** Latvia does not support the proposal regarding exceptions - the definition of a value of 25% for the second service in the case of a combination of two tourism services (transport/hosting/car rental + second service). Latvia considers that this requirement is too categorical, and it is not always possible to accurately determine the value of the service. Situations may arise where, for example, the same combination of services will be counted as a package in one case and not in the other (for example, a tourist accommodation offering to purchase concert tickets - depending on the price of the ticket, the service will count as a package in one case and not in the other). This will create confusion for both the organiser and the consumer.

**Commented [ML12]:** LV: **(c) are part of service provider's on-site services, regardless of the value of this combination or how they are advertised.**

**Commented [ML13]:** Latvia proposes a new exemption from the package definition - to exempt those combinations of services from the scope of this directive, where a single service provider offers additional on-site services for an inclusive price (for example, accommodation + massage or accommodation + sauna etc). We fear that the package definition is too broad and it could harm tourism SME's - even those, which were not meant to fall under this directive. There is a big risk that many tourism service providers may accidentally become organizers if they add some additional service(s) to their main service (accommodation) that they offer as additional activities on-site. And we would prefer to protect these small and micro entrepreneurs that usually operate in remote rural areas and offer unique local products (not operating as organizers for their business).

'(5) linked travel arrangement' means a combination of different types of travel services, not falling under the definition of a package in point 2, where, a trader which is party to a contract on the provision of a travel service and receives payments by or on behalf of a traveller invites a traveller to book additional type of travel service from another trader purchased for the purpose of the same trip or holiday at or via one point of sale within the meaning of point 15 and where a traveller agrees to pay for the second type of travel service within 3/X hours of agreeing to pay for the first type of travel service. ,not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader; and where a contract on the provision of an additional travel service is concluded at the latest 24 hours after the confirmation of the booking of the first contract.

(a) — facilitates, through a single point of sale, the separate selection of travel services within 3 hours; or

(b) — invites a traveller to book at least one additional travel service from another trader where a contract on the provision of the additional travel service is concluded at the latest 24 hours after the confirmation of the booking of the first travel service;

(4) Article 5, paragraph 1, is amended as follows:

(a) — point (d) is replaced by the following:

'(d) — the arrangements for payment, including any amount or percentage of the price which is to be paid as a downpayment and the timing for payment of the balance, in accordance with Article 5a, or financial guarantees to be paid or provided by the traveller;'

(b) — point (g) is replaced by the following:

'(g) — information that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate and justifiable termination fee, or, where applicable, the standardised termination fees requested by the organiser, in accordance with Article 12(1), and that the traveller may terminate the package travel

contract without paying any termination fee due to unavoidable and extraordinary circumstances as specified under Article 12(2);’.

(5) — the following Article 5a is inserted:

*‘Article 5a*

**Payments**

~~Member States shall ensure that, except for packages as defined in Article 3, point (2)(b)(iv), and packages booked less than 28 days before the start of the package, the organiser or, where applicable, the retailer shall not request downpayments exceeding 25% of the total price of the package and shall not request the remaining payment earlier than 28 days before the start of the package. The organiser, or where applicable, the retailer may request higher downpayments where this is necessary to ensure the organisation and the performance of the package. The downpayments may cover advance payments to providers of services included in the package and costs incurred by the organiser, or where applicable the retailer, specifically in relation to the organisation and performance of the package insofar as it is necessary to cover those costs at the time of booking.’.~~

(6) Article 7 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

‘(b) information:

- (i) that the organiser is responsible for the proper performance of all travel services included in the contract in accordance with Article 13, for any refunds due to the termination of or changes to a contract, and for providing assistance if the traveller is in difficulty in accordance with Article 16;
- (ii) where applicable, that the traveller may also contact the organiser via the retailer.’

(b) the following paragraph 2a is inserted:

‘2a. The relevant information form set out in Annex I shall be attached to the contract. The contract shall contain a clear reference to that information form.’.

(7) Article 12 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the **place of departure**, at the travel destination or its immediate vicinity, ~~at the place of the traveller’s residence or departure~~ or affecting the journey to the destination, where such circumstances significantly **and objectively** affect the performance of the package. **The traveller may terminate the package travel contract where it can be reasonably expected that the performance of the package travel contract will be significantly and objectively affected by unavoidable and extraordinary circumstances.** If the package travel contract is terminated in accordance with 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.’

(b) ~~the following paragraph 3a is inserted:~~

~~‘3a. Official warnings against travel to a particular destination issued by the authorities of the Member State of departure or traveller’s residence or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of residence or departure after returning from the trip or holiday, shall be important elements to be taken into account in the assessment of whether a termination of the contract based on paragraph 2 and paragraph 3, point (b), is justified.’~~

(c) paragraph 4 is replaced by the following:

‘4. The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package minus the appropriate and justifiable termination fee. **The organiser shall make such refunds or reimbursements to the traveller without undue delay and, in any event, not later than 14 days after the package travel contract is terminated, regardless of whether the traveller specifically asks for a refund without the need for any prior request by the traveller.**’

**Commented [ML14]:** LV: The traveller may terminate the package travel contract **where it can be reasonably expected that the performance of where there is no possibility to perform** the package travel contract and **it will** be significantly affected by unavoidable and extraordinary circumstances.

**Commented [ML15]:** Latvia supports PRES proposal. At the same time we propose an alternative drafting proposal.

**Commented [ML16]:** LV: The organiser shall make such refunds or reimbursements to the traveller without undue delay and, in any event, not later than 14 days after the package travel contract is terminated, **and the organiser has received the necessary reimbursement documentation from the traveller.**

**Commented [ML17]:** Latvia is against automatic reimbursement to the traveller if no refund is requested (Article 12(4)). After assessing the experience gained so far in the field of monitoring Directive 2015/2302, Latvia concludes that, especially in cases where the package is sold through a trader (tour agent) or settled in cash, automatic reimbursement within 14 days can be challenging. This could lead to a situation where the organiser must already request the traveller’s billing data by entering a contract, accumulate them, which in turn would increase the administrative burden for both the organiser and trader - by processing data, the use of which, could occur only rarely. It should also be noted that personal data may change, which may make it considerably more difficult to meet the above requirements. The confidentiality of contracts and the protection of personal data should also be taken into considered.

In addition, accounting legislation requires a document, such as an application for a refund.

It will be impossible for the organizers to prove to the state revenue services and law enforcement agencies why a refund was made to a person who may have made the payment on behalf of another person, and that the other person returned the funds to the payer. Additionally, the application is necessary because there may be situations where the payer has changed their bank account, switched banks, moved to another country, and only the application serves as the basis for correctly processing the refund. Therefore, any transfer of money by the organiser (or trader) requires a written application - a document based on which the transfer is made.

Thus Latvia encourages to review the proposal and evaluate the possibility to determine that the money should be returned to the consumer within 14 days after receipt of all necessary reimbursement documentation from the traveller. In addition, the process of reimbursement through traders should be assessed further, because there are frequent situations when the traveller makes payment immediately to the trader and the organiser does not have access to the traveller’s payment data at all.

Where Member States introduce or maintain mechanisms aiming to ensure that refunds to travellers are made within the time period laid down in the first subparagraph, following the termination of package travel contracts in accordance with paragraphs 2 and 3, they shall inform the Commission and the central contact points of the other Member States, referred to in Article 18(2) about those mechanisms. ~~Any co-financing of such mechanisms by Member States is possible only in exceptional and duly justified circumstances and shall be conditional on approval under the Union State aid provisions.~~

(8) the following Article 12a is inserted:

*Article 12a*

**Vouchers**

1. Member States shall ensure that, where a contract is terminated pursuant to Articles 10, 11 or 12, the organiser may give the traveller the choice to accept a voucher **to be used for any travel service offered by the organiser** which can be used for a future package instead of a refund.
2. ~~Before the traveller accepts the~~ **When offering a voucher to the traveller,** the organiser shall inform the traveller clearly and prominently ~~in writing~~ **on a durable medium** about:
  - (a) the fact that the traveller is entitled to a refund within 14 days and is not obliged to accept a voucher;
    - (aa) the amount of the traveller's refund right;**
    - (ab) the amount of the voucher;**
  - (b) the validity period of the voucher and the rights of travellers in relation to vouchers as laid down in this Article;
    - (ba) the fact that the voucher is transferable;**
    - (bb) the fact that the traveller can redeem the voucher in parts.**

3. ~~The value of the voucher offered shall correspond at least to the amount of the traveller's refund right. The organiser may offer a voucher on~~ **of a higher amount than the traveller's refund right.**

**3a. The traveller shall be entitled to redeem the voucher partially. In that case the traveller may:**

**(a) redeem the remaining value of the voucher later during the validity period, or**

**(b) request payment of the remaining refund right, which shall be made within 14 days.**

4. ~~The Travellers' shall lose their right to a refund~~ **shall be suspended** during the validity period of the voucher ~~only if~~ **provided that** they **received the information referred to in paragraph 2 and explicitly accepted** the voucher instead of a refund explicitly and in writing **on a durable medium**. ~~The parties may at any time agree on a full refund before a voucher is redeemed or expires.~~

**4a. Without prejudice of paragraph 3a point (b), the suspension of the traveller's refund right shall end:**

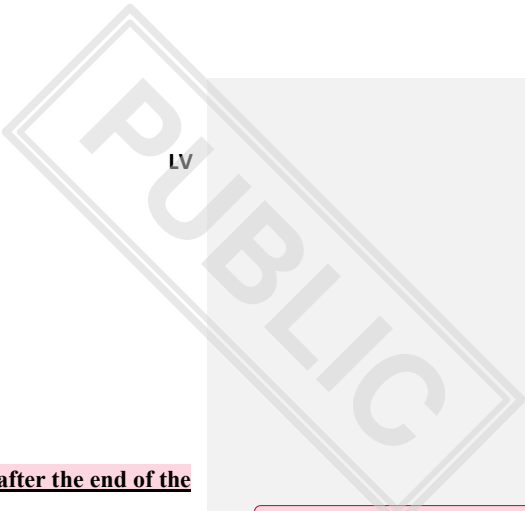
**(a) at the end of the validity period of the voucher if the voucher is not redeemed;**

**(b) at the moment when the parties agree on a full refund before a voucher is redeemed or expires; or**

**(c) in the event of the organiser's insolvency.**

5. Vouchers shall have a validity period of a maximum of 12 months from the day a traveller accepts a voucher in accordance with paragraph 4. That period may be extended once for up to 12 months with the explicit ~~and written~~ agreement of both parties **on a durable medium**.

**5a. The voucher shall contain at least the following information in a clear and comprehensible manner:**



- (a) the trading name of the organiser;
- (b) the amount of the traveller's refund right;
- (c) the amount of the voucher;
- (d) the validity period of the voucher;
- (e) the fact that the traveller is entitled to a refund 14 days after the end of the validity period without the need for any prior request;
- (f) the traveller's rights in relation to the partial redemption of the voucher under paragraph 3a;
- (g) the fact that the amount of the traveller's refund right is covered by the organiser's insolvency protection;
- (h) the fact that the voucher is transferable and the details on how to inform the organiser about a transfer.

**Commented [ML18]:** LV: (e) the fact that the traveller is entitled to a refund 14 days after the end of the validity period, **without the need for any prior request;**

**Commented [ML19]:** Latvia proposes flexibility for MS to be able to ask for some written requests to travellers after the expiration of voucher. This is important, so that the organizer is able to validate the contact information of the traveller (voucher holder). Please also see Latvia's arguments in article 12 paragraph 4.

7. ~~If the voucher is not redeemed within its validity period, The organiser shall refund the amount specified in the voucher~~ **the traveller without undue delay as soon as possible and, in any event, not later than at the latest within 14 days after the end of the validity period** ~~suspension of the traveller's refund right ends in accordance with paragraph 4a points (a) and (b), without the need of for any prior request by the traveller.~~

**Commented [ML20]:** LV: The organiser shall refund the traveller without undue delay and, in any event, not later than 14 days after the suspension of the traveller's refund right ends in accordance with paragraph 4a points (a) and (b), **without the need for any prior request by the traveller.**

8. Vouchers shall be transferable to another traveller without any additional cost. ~~The traveller to whom a voucher is transferred shall inform the organiser who issued the voucher of the transfer and provide their personal data necessary for the redemption of the voucher or any refund.~~

**Commented [ML21]:** Latvia proposes flexibility for MS to be able to ask for some written requests to travellers after the expiration of voucher. This is important, so that the organizer is able to validate the contact information of the traveller (voucher holder). Please also see Latvia's arguments in article 12 paragraph 4.

9. ~~Vouchers~~ **The traveller's refund right, as mentioned on the voucher,** shall be covered by insolvency protection to be arranged by the organiser under Article 17 ~~for the amount of the payments received from the traveller.~~

**Commented [ML22]:** LV: The traveller to whom a voucher is transferred shall inform the organiser who issued the voucher of the transfer **before the actual transfer** and provide their personal data necessary for any refund.

**Commented [ML23]:** Latvia proposes to clarify that the organizer should be informed about the transfer of voucher BEFORE the transfer happens, not AFTER.

(9) Article 17 is replaced with the following:

*Article 17*

### Effectiveness and scope of insolvency protection

1. Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers in the event of organisers' insolvency. This shall include the protection of payments made where a package is not performed in full or in part as a consequence of the organiser's insolvency or where a traveller was entitled to ~~any refund, including price reduction,~~ or had received a voucher from the organiser before its insolvency. ~~In relation to~~ **Where a traveller receives a** vouchers, the security shall be limited to the amount of ~~payments received from~~ the traveller's **refund right**. If the return journey is included in the package travel contract, organisers shall also provide security for the traveller's repatriation. Continuation of the package may be offered.

Organisers not established in a Member State which sell or offer for sale packages in a Member State, or which by any means direct such activities to a Member State, shall be obliged to provide the security in accordance with the law of that Member State.

2. The security referred to in paragraph 1 shall be effective and shall cover reasonably foreseeable costs. It shall cover the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between the receipt of any payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency. The security shall be sufficient to cover costs for refunds and, where applicable, repatriations ~~and vouchers,~~ at all times. The ~~coverage~~ **security shall be sufficient to cover the risk related to an insolvency in periods when organisers hold the highest amounts of payments and** shall take into account ~~where organisers hold the highest amounts of payments and~~ any changes in the volume of sales of packages.
3. To ensure the effectiveness of insolvency protection, Member States shall supervise the insolvency protection arrangements of organisers established on their territory; **and** monitor the ~~market for the provision~~ **availability** of insolvency protection **solutions**; ~~and may, if necessary, require a second level of protection. Any co-financing by Member States is possible only in exceptional and duly justified~~

circumstances and shall be conditional on approval under the Union State aid provisions.

4. 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 entity in charge of the insolvency protection is located.
5. When 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.
6. Refunds of **travellers'** payments affected by the organiser's insolvency shall be provided without undue delay ~~after the traveller's request~~ and at the latest within ~~three~~**9** months after the traveller has submitted ~~the~~**all relevant** documents necessary to examine the request **as specified in accordance with paragraph 6a point (b). Member States may provide for a shorter deadline for providers of insolvency protection to pay the refunds.**

**6a. Organisers shall be obliged to inform the travellers on their website about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting the refunds, including:**

**(a) the name and assistance contact of the competent entity providing insolvency protection;**

**(b) the list of documents to be submitted as defined by the competent entity;**

**(c) the explanation of the applicable insolvency protection mechanism of the Member State;**

**(d) special instructions information for travellers who already started their package.**

**6b. After becoming aware of the organizer's insolvency, the entity responsible for insolvency protection shall be obliged to publish the following information on its website without undue delay:**

**(a) the fact of the organiser's insolvency;**

**(b) the list of documents to be submitted for the traveller's claim;**

**(c) information for travellers who already started their package.**

7. Where this is justified in light of payments received by retailers, Member States may require retailers to take out insolvency protection in addition to organisers irrespective of the second subparagraph of Article 13(1).'
- (10) in Article 18, paragraph 2, is replaced by the following:

'2. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of organisers operating in different Member States and to exchange information in relation to insolvency protection and any mechanisms put in place to ensure the effectiveness of refunds for terminated package travel contracts. Member States shall notify the contact details of those contact points to all other Member States and the Commission.'

*[According to Option A and C-Article 19 will be-deleted]*

*[Option B – keep LTA: Article 19 will be aligned to the new definition:]*

- (11) Article 19 is replaced by the following:

*'Article 19*

#### **Insolvency protection and information requirements for linked travel arrangements**

1. For linked travel arrangements, as defined in Article 3(5), Member States shall ensure that traders **facilitating linked travel arrangements** ~~which invite travellers to conclude a contract on a different type of travel service~~ shall provide security for the refund of all payments they receive from travellers. If such traders are responsible for the traveller's return journey, the security shall also cover the traveller's repatriation. The second subparagraph of Article 17(1), Article 17(2) to (6) and Article 18 shall apply mutatis mutandis.
2. **Before the traveller is bound by any contract leading to the creation of a linked travel arrangement or any corresponding offer, the trader facilitating linked travel arrangements,** ~~When inviting the traveller to conclude a contract on a~~

different type of travel service, the trader, including where it ~~the trader~~ is not established in a Member State but, by any means, directs such activities to a Member State, shall provide the traveller with the relevant standard information form set out in Annex II, completed as appropriate. The **relevant** form shall be provided in a clear and prominent manner. **Traders providing Form D or Form E [of the current directive] of Annex II shall make available to travellers a facility through which travellers can inform them on the booking of additional travel services within 24 hours of receiving confirmation of the booking of a first travel service.**

3. Where traders do not comply with the requirements set out in paragraphs 1 and 2 of this Article, the rights and obligations laid down in Articles 9 and 12 and Chapter IV shall apply in relation to the travel services included in the linked travel arrangement.
4. Where a linked travel arrangement is formed, the trader which concludes a contract on a different type of travel service shall inform the trader **facilitating the linked travel arrangement of the conclusion of the relevant contract,** ~~which invited the traveller to conclude such contract on this fact.~~

(12) Article 22 is replaced by the following:

*'Article 22*

**Right of redress and refund rights of organisers**

- (1) In cases where an organiser or, in accordance with the second subparagraph of Article 13(1) or Article 20, a retailer pays compensation, grants price reduction or meets the other obligations incumbent on him under this Directive, Member States shall ensure that the organiser or retailer has the right to seek redress from any third parties which contributed to the event triggering compensation, price reduction or other obligations.
- (2) Member States shall ensure that, when a service provider cancels a service that is part of a package or fails to provide it, that service provider shall refund to the organiser any payments made by the organiser for the service within 7 days. The 7-day period shall start on the day following the cancellation of the service or the day when the service was due to be performed, whichever is the earlier date.'

**(12a) In Article 23, a new paragraph 3a is inserted:**

**‘(3a) Paragraphs 2 and 3 of this Article shall apply accordingly to the organiser’s refund right under Article 22(2).’**

- (13) Annex I is replaced by the text in Annex I to this Directive.
- (14) Annex II is replaced by the text in Annex II to this Directive.

#### *Article 2*

##### Reporting by the Commission and review

By [5 years after the entry into force of this Directive], the Commission shall submit to the European Parliament and to the Council a report on the application of this Directive. This report will also take into account the impact on micro, small and medium-sized organisers.

The report shall be accompanied, where necessary, by legislative proposals.

#### *Article 3*

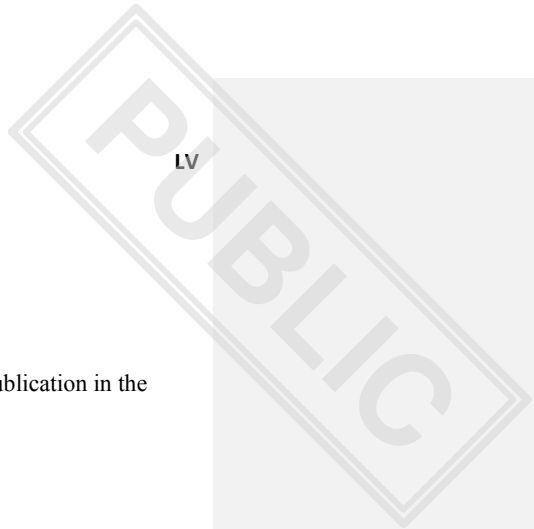
##### Transposition

1. Member States shall adopt and publish, by [~~18~~ **30** months after the entry into force of the 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.

They shall apply those provisions from [6 months after the transposition deadline].

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.

2. 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 4*

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 5*

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

The President    The President

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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**

**(Text with EEA relevance)**

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) Directive (EU) 2015/2302 of the European Parliament and of the Council<sup>3</sup> modernised the legal framework for package travel in light of developments in the market and technology. That Directive aimed to cover new ways of booking travel services that had emerged, including customised combinations of travel services, which were not covered by Council Directive 90/314/EEC<sup>4</sup> or which were in a legal grey area, and strengthened the rights of

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

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

<sup>3</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

<sup>4</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

travellers in different respects. At the same time, it aimed to ensure fairer competition between the different types of travel businesses active in the package travel market.

- (2) In order to pursue those objectives, Directive (EU) 2015/2302 broadened the definition of the term ‘package’ compared to Directive 90/314/EEC. Directive (EU) 2015/2302 further specified existing rights of travellers and introduced new ones, such as the right for travellers to terminate a package travel contract without termination fees, under certain conditions, in the event of unavoidable and extraordinary circumstances. In addition, Directive (EU) 2015/2302 created the new concept of ‘linked travel arrangement’, which encompassed bookings carried out at one point of sale and bookings at different points of sale which a trader ‘facilitates in a targeted manner’. Linked travel arrangements are largely treated like stand-alone services, but payments received by a trader facilitating a linked travel arrangement are to be protected against such trader’s insolvency. Directive (EU) 2015/2302 aimed to ensure transparency by obliging traders to inform travellers on the nature of travel product offered to them and on the associated rights through standard information forms contained in Annexes I and II to that Directive.
- (3) While, overall, Directive (EU) 2015/2302 has worked well, several challenges have emerged since the start of its application on 1 July 2018. The COVID-19 pandemic and related government measures had a significant impact on both the travel industry and travellers and exposed certain weaknesses in prevailing business models and showed that specific provisions of the Directive could be clarified.
- (4) Therefore, it is necessary to close the gaps identified in the current rules, as well as to clarify and simplify certain concepts and provisions, thus enhancing the effectiveness of Directive (EU) 2015/2302 for the benefit of travellers and travel businesses, amongst which there is a large number of micro, small and medium-sized enterprises.

*[Option A – opt to delete LTAs: recital (5) will be deleted]*

*[Option B – opt to keep LTAs: recital (5) will be adapted accordingly]*

*[Option C – opt to incorporate LTAs (b) in the package definition: recital (5) will be adapted accordingly].*

- (5) While, overall, the definition of ‘package’ is considered to have been effective, **however based on the practical challenges concerning the usage of linked travel arrangements it is necessary to incorporate the definition of linked travel arrangements into the**

**definition of ‘package’. The definition of ‘package’ should cover both situations under the linked travel arrangements definition by modifying the already existing cases and introducing a new situation into the ‘package’.** the definition of and the rules on linked travel arrangements, as well as their delimitation from packages, should be clarified and simplified. Such clarification and simplification of the definitions and concepts ‘package’ and ‘linked travel arrangement’ should increase legal certainty for all parties, while making the protection of travellers more effective, and ensuring a level playing field for traders. At the same time, the number of information forms to be used by traders when informing travellers on their rights should be reduced.

**(5a) The new situation where the definition of ‘package’ contains the criterion of a single visit or contact, should be assessed on a case-by-case basis. Not every interruption in the booking process should be automatically presumed to lead to a separate visit or contact. For instance, when a traveller selects a travel service and shortly thereafter books one or more additional travel services, this should be considered as part of the same contact or visit. Even where a traveller leaves the trader’s premises or website after selecting the first travel service and returns to it within a short period of time to complete the booking of an additional service. By contrast, where a traveller, after completing one booking and without previously having enquired about additional bookings for the same trip or holiday or having been prompted by the trader to make additional bookings, later decides to book an additional travel service on the same website or at the same physical point of sale should not be considered as being part of the same visit or contact.**

(6) The principle underlying the definition of ‘package’ should remain that there is a close link between different travel services booked for the purpose of the same trip or holiday. In order to ensure that there is no overlap between the definition of ‘package’ and ‘linked travel arrangement’ and to eliminate the difficulties in distinguishing between packages and linked travel arrangements, bookings of different types of travel services for the same trip or holiday at one point of sale where the travel services have been selected before the traveller concludes a first contract should be considered as packages in the same way as travel services booked at one point of sale within a short period of time. In both cases, there is a close link between the bookings of travel services. Therefore, the definition of ‘package’, should cover both situations, while bookings made on the occasion of a single visit of or contact with one point of sale should be removed from the definition of linked travel arrangement.

- (7) In the context of bookings made within a short period of time at one point of sale, it is appropriate to replace the rather vague criterion of ‘a single visit or contact’. Therefore, bookings of different types of travel services for the same trip or holiday made within three hours should always be considered as packages. The same should apply where, before the completion of a first booking, a trader invites a traveller to book additional services for the same trip or holiday after completing the first booking, and where subsequent bookings take place within 24 hours after the conclusion of the first contract.

*[Option C – opt to incorporate LTAs (b) in the package definition: recital (8) will be modified accordingly].*

- (8) The definition of package formed through linked online booking processes in Article 3(2)(b)(v) of Directive (EU) 2015/2302, which ~~required~~ **requires** that the **transmission of the** traveller’s name, payment details and email address ~~are all transmitted~~ from one trader to another ~~trader~~, has proved to be too narrow. Therefore, it is appropriate to consider as ‘package’ bookings of different types of travel services for the same trip or holiday **as ‘package’** where the trader that is party to a first contract transfers **the traveller’s personal data as defined in Article 4(1) of Regulation (EU) 2016/679** to a trader that is party to a second or further contract ~~alternatively the traveller’s name, payment details, email address or any other of the traveller’s personal data.~~ **This may include, for example, the traveller’s name, payment details and email address, telephone number, social media account or any other information through which the traveller can be identified.** ~~Such transfer of~~ **The reference to ‘personal data’ is intended to make the definition more future-proof and is appropriate as an indication for** ~~indicates a close link between the bookings/ or contracts~~ **in question and thus to consider them as a package** ~~so that the criterion of 24 hours for the second booking is not indispensable and should be removed.~~

*[According to Option A and C: recital (9) will be deleted]*

*[Option B – opt to keep LTAs: recital (9) will be adapted accordingly]*

- (9) The definition of ‘a linked travel arrangement’ should cover situations where a trader that is party to a first contract and receives payments from or on behalf of the traveller invites a traveller to book additional types of travel services for the same trip or holiday. In this context, the trader that is party to a first contract should obtain insolvency protection. Furthermore, in order to make sure that travellers fully benefit from the rules on insolvency protection and for traders to know that they are subject to this obligation, it is appropriate

that the information forms on linked travel arrangements recommend to travellers to record the invitation and the additional booking, for instance through screenshots, and to inform the trader with whom a first contract was concluded that a contract on an additional type of travel service has been concluded for the same trip or holiday within 24 hours following the invitation from the trader. The trader should be obliged to make available to travellers a facility, such as an email address or a website, where travellers can register such information and shall acknowledge receipt of such information.

- (10) Regarding packages where, for example, accommodation is combined with other tourist services, but which do not contain any carriage of passengers, the general criterion of ‘a significant proportion’ of the value of the combination, applying to tourist services as referred to in Article 3(1)(d), should be replaced with the more specific criterion of ‘at least 25%’ in order to increase legal certainty.
- (11) As demonstrated, in particular, during the COVID-19 pandemic, the prevailing business practice of advance payments, the absence of business-to-business rules on refunds to organiser of packages for services cancelled or not performed by the service providers, the absence of rules on vouchers, as well as uncertainty on whether refund claims and vouchers for cancelled packages are covered by insolvency protection, can cause difficulties in relation to refunds to travellers, in particular, where unavoidable and extraordinary circumstances lead to numerous cancellations and affect many travel destinations. Therefore, it should be provided that travellers’ payments are effectively protected at all times, including in a crisis. Furthermore, it should be ensured that the national insolvency protection systems are resilient and provide more uniform protection.
- (12) ~~There are certain risks which are inherent in the business practice of requiring advance payments, in particular, in situations where organisers are obliged to refund significant amounts to travellers for cancelled trips within a short period of time. Therefore, it should be provided that downpayments, that is to say payments asked of travellers at the time of booking or shortly afterwards, should not be higher than 25% of the total price of the package, and that organisers or, where applicable, retailers should be prevented from requesting the payment of the remaining amount earlier than 28 days before the start of the package. At the same time, organisers and, where applicable, retailers should be able to request higher downpayments where this is necessary to ensure the organisation and proper performance of the package. The level of downpayments requested by organisers may be justified by advance payments to service providers, including where they belong to the same~~

~~group of companies as the organiser, or the need to cover the organiser's costs directly related to the organisation and performance of the package at the time of booking or shortly afterwards. This may, where applicable, include commissions requested by retailers.~~

- (13) ~~The level of downpayments should not require different calculations for each package but can be established for groups of packages that have similar characteristics regarding the necessity of downpayment. Organisers and, where relevant, retailers should continue to be obliged to inform travellers, before the conclusion of the contract, about the downpayments they request.~~
- (14) ~~Since the limitation of advance payments is not compatible with the concept of package travel gift boxes as referred to in Article 3(5)(b)(iv) of Directive (EU) 2015/2302 and packages booked less than 28 days before the start of the package, these two types of packages should be exempted from the limitation of advance payments introduced by this Directive.~~
- (15) Where a travel service contained in a package is cancelled or not performed and where advance payments have been made to the respective service provider, organisers should be entitled to a refund of the payments made from service providers within 7 days. This right to refund should enable organisers to comply with their obligation to refund travellers within 14 days in cases where also the package travel contract as a whole is terminated. Where a travel service provider cancels or does not provide a service contained in a package but where the package travel contract continues to exist, the right to a refund within 7 days should enable organisers to make alternative arrangements. **In order to make refund obligations effective, Member States will provide for an obligation on the part of the providers of tourist services to provide a guarantee in favour of the organisers of tourist packages.**
- (16) In certain situation voluntary vouchers to travellers can be a useful alternative to refunds. Vouchers can give more flexibility to organisers in particular if they are confronted with the obligation to make many refunds within a short period of time. At the same time, vouchers can be acceptable for travellers who do not need an instant refund, as long as there are specific legal guarantees. Therefore, clear rules on vouchers should be laid down which provide such guarantees. Those guarantees should include ~~transparency~~ **compulsory information** on the voluntary nature and on the key characteristics of vouchers **before travellers accept the voucher. It is also appropriate to specify the necessary**

information to be mentioned on the voucher itself, as well as on travellers' rights in relation to vouchers, for example, the fact that they are protected against the organiser's insolvency and that travellers are entitled to an automatic refund where a voucher is not redeemed during its period of validity.

**(16a) On grounds of legal certainty there should be rules on the validity period of vouchers and its possible extension. It is also appropriate to lay down that, during the validity period of the voucher, the traveller's right to a refund is suspended and to specify the instances where such suspension ends and the traveller regains their refund right.**

Organisers may make vouchers more attractive, for example, by increasing the amount of the voucher compared to the traveller's refund right. In such cases, insolvency protection should be limited to the amount of payments received from the traveller's refund right. **The amount of the refund right shall be equivalent to the amount originally paid for the travel package by the traveller to the organiser. Since vouchers have a specific monetary value, it is appropriate to lay down that they may be used for any service offered by the organiser, they may be redeemed in parts and are transferable without any additional costs. Transferees should inform the organiser on their identity, so that they can redeem the voucher or receive any refund when the voucher has not been redeemed.**

- (17) It is conceivable for Member States to provide for mechanisms ensuring refunds to travellers in accordance with the legal requirements, for cases where packages are cancelled due to unavoidable and extraordinary circumstances and where organisers are unable to comply with their refund obligations. In order to increase transparency, Member States introducing or maintaining such mechanisms should be obliged to inform the Commission and the central contact points of the other Member States about such mechanisms. Such mechanisms are normally funded exclusively through contributions from organisers. Only in exceptional **and duly justified** circumstances can such mechanisms be co-financed by Member States, and their introduction is without prejudice to the Union provisions on State aid.
- (18) The multitude of conceivable situations that may give rise to the termination of a package travel contract due to unavoidable and extraordinary circumstances which significantly affect the performance of a package requires a case-by-case assessment, for instance, in light of the nature and the extent of such circumstances. It should be clarified that the termination of a contract is possible if it can be reasonably expected that its performance will be significantly affected by unavoidable and extraordinary circumstances; **this may cover**

circumstances that are beyond the subjective sphere of the traveller and his family, for example warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely to the destination as agreed in the package travel contract; illness or personal accidents occurring to the traveller prior to departure are not considered relevant circumstances within the meaning of this provision. The assessment as to whether unavoidable and extraordinary circumstances will have significant effects on the performance of the package must be based on a prediction, at the moment of the termination of the contract, of the likelihood that the unavoidable and extraordinary circumstances will have significant effects on the performance of the package and on the likelihood that they will also be present when the contract will be executed. Where a traveller terminates the contract, such assessment must be made from the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect, based on information available at the date of termination of the package travel contract in question. Effects of unavoidable and extraordinary circumstances occurring at the place of departure, destination and at the various places connected with the start and return of the trip in question or affecting the journey to or from the destination should be taken into account where they affect the performance of travel services included in the package travel contract.

- (18a)** Unavoidable and extraordinary circumstances may cover not only circumstances which make it impossible to perform a package but also objective circumstances that will reasonably be present at the date of departure which, without preventing such performance, mean that the package cannot be performed without exposing the travellers concerned to risks to their health and safety, taking into account, where appropriate, personal circumstances of the travellers concerned, such as the fact of travelling with young children or of belonging to a higher-risk group. The relevance of such circumstances and their effects on the package should be established objectively.
- (19) Official warnings against travel to a particular destination issued by the authorities of the Member State of departure or traveller's residence or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of residence or departure after returning from the trip or holiday, such as quarantine requirements for a significant period, can be elements to be taken into account in the assessment of whether a termination of the contract is

**justified. Every situation needs to be assessed on a case-by-case basis. Furthermore, the absence of official travel warnings does not prevent establishing the existence of those circumstances and their effects on the performance of the package.** During the Covid-19 pandemic, different interpretations emerged regarding cancellation rights due to ‘unavoidable and extraordinary circumstances’ including in relation to the relevance of travel warnings. It is, therefore, appropriate to specify that official travel warnings for the travel destination issued by the authorities of the Member State of the traveller’s residence or departure or the country of destination, are important elements when assessing the justification of the termination of a contract. It should also be clarified that serious restrictions at the travel destination or applying after returning from the trip or holiday, such as quarantine requirements for a significant period, are also relevant when assessing the justification of the termination of a package travel contract.

- (20) It should also be clarified that the 14-day refund period, which is triggered by the **any** termination of the contract, applies regardless of whether the traveller specifically asks for a refund. **The organiser should reimburse all payments made by or on behalf of the traveller for the package.**
- (21) **Effectiveness of insolvency protection implies that the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed, will not be or will only partially be performed, or where service providers require travellers to pay for them. Furthermore,** in order to ensure effective and uniform protection of travellers and a level playing field for organisers it should be provided that the insolvency protection of organisers covers all payments made by or on behalf of travellers in the event of the organiser’s insolvency, including cases where a package is not performed in full or in part as a consequence of the organiser’s insolvency and cases where a traveller was entitled to a refund, **including due to a price reduction,** or had received a voucher from the organiser before its insolvency.
- (22) In order to ensure **the** effectiveness of insolvency protection for travellers at all times, it should be provided that the security is sufficient to cover costs for refunds and repatriations in cases where an insolvency occurs at a time when an organiser holds the highest amounts of payments. Any increases of those amounts due to a higher ~~anticipated~~ volume of packages sold in a given period **compared to the anticipated sales** should be taken into account. It should be clarified that Member States should supervise the insolvency protection of organisers and monitor the market for the provision **availability** of insolvency

protection ~~and that~~. If necessary **to ensure effective insolvency protection**, Member States should be able to **may** require an additional a second level of protection **mechanisms**, such as a back-up fund **to complement, for instance, the protection provided by insurance policies**. This ~~may be relevant, for example, where insurance policies do not provide the required level of protection~~. Such back-up funds should normally be funded exclusively through contributions from organisers **and**. It ~~should be clarified that such measures can~~ **should** be co-financed by the Member States only in exceptional **and duly justified** circumstances. ~~and reiterated that those provisions are without prejudice to the Union provisions on State aid insofar~~ **Insofar** as such measures involve State aid, **the Union provisions on State aid apply**.

- (23) Regarding refunds of **travellers'** payments in case of an organiser's insolvency, the period for refunds should be further specified, referring to ~~3-9~~ **3-9** months after the traveller has submitted the documents necessary to examine the request. **Member States can provide for a shorter deadline. The period for refunds is independent of insolvency procedures before a national court or other responsible bodies. It is appropriate to oblige organisers to notify the travellers about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting refunds.** It is also appropriate to lay down in a provision that Member States may require retailers to take out insolvency protection in addition to organisers.
- (24) It should be clarified that the central contact points are responsible for the exchange of information in relation to insolvency protection and related questions, including any mechanisms to ensure timely refunds for terminated package travel contracts.
- (25) It is important that travellers are properly informed on their rights, are able to understand the information provided to them and have access to that information when they need it. Therefore, certain changes should be made regarding pre-contractual information requirements, the content of a package travel contract and the standard information forms set out in Annexes I and II to Directive (EU) 2015/2302. For example, the standard information forms in Annex I should specify the trader responsible for refunds for cancelled packages. The right to terminate a package travel contract without a fee due to unavoidable and extraordinary circumstances should be presented next to the possibility to cancel a package subject to a cancellation fee. In addition, organisers should be obliged to add the standard information form to the contract so that it is available to travellers after the conclusion of the contract, along with contact details of the relevant traders.

- (26) Directive (EU) 2015/2302 should, therefore, be amended accordingly.
- (27) Since the objective of this Directive, namely to contribute to the proper functioning of the internal market in relation to package travel and to the achievement of a high and as uniform as possible level of consumer protection in this sector, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, 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 that objective.
- (28) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. This Directive, 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.
- (29) The Commission should submit to the European Parliament and to the Council a report on the application of this Directive within 5 years of its entry into force. While the impacts of this Directive on travel businesses, including on micro, small and medium-sized organisers have been carefully assessed, it is appropriate to take into account in this report the impact of its application on micro, small and medium-sized organisers. Where necessary, the report should be accompanied by legislative proposals,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments to Directive (EU) 2015/2302**

Directive (EU) 2015/2302 is amended as follows:

- (1) Article 1 is replaced by the following:

*'Article 1*

**Subject matter**

'The purpose of this Directive is to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States in respect of contracts between travellers and traders relating to package travel and linked travel arrangements, as well as certain aspects of contracts between organisers of packages and service providers'.

- (2) in Article 2, paragraph 1 is replaced by the following:

'1. This Directive applies to packages offered for sale or sold by traders to travellers and to linked travel arrangements facilitated by traders for travellers.

It also applies to refund rights of organisers as defined in Article 3(8) against travel service providers in case of cancellation or non-provision of a service that is part of a travel package.

- (3) Article 3 is amended as follows:

- (a) point 2 is replaced by the following:

'(2) 'package' means a combination of at least two different types of travel services, as defined in point 1, for the purpose of the same trip or holiday, if:

- (a) those services are combined by one trader, including at the request of or in accordance with 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, and:

(i) those services are purchased from a single point of sale and

~~–have been selected before the traveller agrees to pay, or~~

~~–other types of travel services are booked within 3 hours after the traveller agreed to pay for the first travel service, or~~

~~–other types of travel services are booked within 24 hours after the traveller agreed to pay for the first travel service and if, before the traveller agreed to pay for the first travel service, the trader invited the traveller to subsequently book one or more additional types of travel services, or~~

(ii) are offered, sold or paid at an inclusive or total price, regardless of any separate billing, or

(iii) are advertised or sold under the term ‘package’ or under a similar term, or

(iv) are 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) are purchased from separate traders through linked online booking processes where ~~the traveller’s name, payment details and e-mail address~~ ~~or the traveller’s other~~ personal data are transmitted from the trader with whom the first contract is concluded to another trader or other traders and a contract with the latter trader or traders is **concluded at the latest 24 hours after the confirmation of the booking of the first travel service.**

A combination of travel services where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 is combined with one or more tourist services as referred to in point (d) of point 1 is not a package if the latter services:

(a) do not account for at least 25% of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or

- (b) are selected and purchased only after the performance of a travel service as referred to in point (a), (b) or (c) of point 1 has started;’.

***Option A: delete LTAs (implies also the deletion of Article 19 and of Annex II)***

- (b) point 5 is **deleted**, replaced by the following:

***Option B: keep LTAs: the current definition will be simplified and clarified (that implies a few changes in Article 19 and maintaining five forms in Annex II)***

***Option C: opt to move the content of the LTA b) definition to the package definition and the LTAs will be deleted together with Annex II***

Article 3 is amended as follows:

- (a) point 2 is replaced by the following:

‘(2) ‘package’ means a combination of at least two different types of travel services, as defined in point 1, for the purpose of the same trip or holiday, if:

- (a) those services are combined by one trader, including at the request of or in accordance with 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 **traders** ~~travel service providers, and **those services**:~~

- (i) those services are purchased from a single point of sale and

–have been selected before the traveller agrees to pay **for at least one of the services**, or

~~–other types of travel services are booked within 3 hours after the traveller agreed to pay for the first travel service, or~~

~~–other types of travel services are booked within 24 hours after the traveller agreed to pay for the first travel service and if, before the traveller agreed to pay for the first travel service, the trader invited the traveller to subsequently book one or more additional types of travel services, or~~

- (ii) are offered, sold or paid at an inclusive or total price, regardless of any separate

billing, or

- (iii) are advertised or sold under the term ‘package’ or under a similar term, or
- (iv) are 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) are purchased from separate traders through linked online booking processes where ~~the traveller’s name, payment details and e-mail address or the traveller’s other~~ personal data are transmitted from the trader, **or in a targeted manner, the trader facilitates the procurement of at least one additional travel service from another trader** with whom the first contract is concluded to another trader or other traders and a contract with the latter trader or traders is **concluded at the latest 24 hours after the confirmation of the booking of the first travel service.** ~~or~~
- (vi) ~~the trader facilitates the separate selection of travel services on the occasion of the same visit or contact with a single point of sale.~~

A combination of travel services where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 is combined with one or more tourist services as referred to in point (d) of point 1 is not a package if the latter services:

- (a) do not account for at least 25% of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or
  - (b) are selected and purchased only after the performance of a travel service as referred to in point (a), (b) or (c) of point 1 has started;’.
- (b) point 5 is **deleted.**

***Option B: keep LTAs***

- (b) point 5 is replaced by the following:

‘(5) linked travel arrangement’ means a combination of different types of travel services, not falling under the definition of a package in point 2, ~~where, a trader which is party to a contract on the provision of a travel service and receives payments by or on behalf of a traveller invites a traveller to book additional type~~

of travel service from another trader **purchased** for the purpose of **the** same trip or holiday **at or via one point of sale within the meaning of point 15 and where a traveller agrees to pay for the second type of travel service within 3/X hours of agreeing to pay for the first type of travel service, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader;** and where a contract on the provision of an additional travel service is concluded at the latest 24 hours after the confirmation of the booking of the first contract.

**(a) — facilitates, through a single point of sale, the separate selection of travel services within 3 hours; or**

**(b) — invites a traveller to book at least one additional travel service from another trader where a contract on the provision of the additional travel service is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.**

(4) Article 5, paragraph 1, is amended as follows:

(a) point (d) is replaced by the following:

~~‘(d) the arrangements for payment, including any amount or percentage of the price which is to be paid as a downpayment and the timing for payment of the balance, in accordance with Article 5a, or financial guarantees to be paid or provided by the traveller;’;~~

(b) point (g) is replaced by the following:

‘(g) information that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate and justifiable termination fee, or, where applicable, the standardised termination fees requested by the organiser, in accordance with Article 12(1), and that the traveller may terminate the package travel contract without paying any termination fee due to unavoidable and extraordinary circumstances as specified under Article 12(2);’.

(5) the following Article 5a is inserted:

*‘Article 5a*

## Payments

~~Member States shall ensure that, except for packages as defined in Article 3, point (2)(b)(iv), and packages booked less than 28 days before the start of the package, the organiser or, where applicable, the retailer shall not request downpayments exceeding 25% of the total price of the package and shall not request the remaining payment earlier than 28 days before the start of the package. The organiser, or where applicable, the retailer may request higher downpayments where this is necessary to ensure the organisation and the performance of the package. The downpayments may cover advance payments to providers of services included in the package and costs incurred by the organiser, or where applicable the retailer, specifically in relation to the organisation and performance of the package insofar as it is necessary to cover those costs at the time of booking.’~~

(6) Article 7 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

‘(b) information:

- (i) that the organiser is responsible for the proper performance of all travel services included in the contract in accordance with Article 13, for any refunds due to the termination of or changes to a contract, and for providing assistance if the traveller is in difficulty in accordance with Article 16;
- (ii) where applicable, that the traveller may also contact the organiser via the retailer.’

(b) the following paragraph 2a is inserted:

‘2a. The relevant information form set out in Annex I shall be attached to the contract. The contract shall contain a clear reference to that information form.’

(7) Article 12 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances, **outside the subjective sphere of the traveller**, occurring at the **place of departure**, at the travel destination or

its immediate vicinity, ~~at the place of the traveller's residence or departure~~ or affecting the journey to the destination, where such circumstances significantly **and objectively** affect the performance of the package. The traveller may terminate the **package travel** contract where it can be reasonably expected that the performance of the package travel contract will be significantly **and objectively** affected by unavoidable and extraordinary circumstances, **that will reasonably be present at the date of departure**. If the package travel contract is terminated in accordance with 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.'

(b) the following paragraph 3a is inserted:

~~'3a. Official warnings against travel to a particular destination issued by the authorities of the Member State of departure or traveller's residence or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of residence or departure after returning from the trip or holiday, shall be important elements to be taken into account in the assessment of whether a termination of the contract based on paragraph 2 and paragraph 3, point (b), is justified.'~~

(c) paragraph 4 is replaced by the following:

'4. The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package minus the appropriate and justifiable termination fee. The organiser shall make such refunds or reimbursements to the traveller without undue delay and, in any event, not later than 14 days after the package travel contract is terminated, **regardless of whether the traveller specifically asks for a refund without the need for any prior request by the traveller.**'

Where Member States introduce or maintain mechanisms aiming to ensure that refunds to travellers are made within the time period laid down in the first subparagraph, following the termination of package travel contracts in accordance with paragraphs 2 and 3, they shall inform the Commission and the central contact points of the other Member States, referred to in Article 18(2) about those mechanisms. ~~Any co-financing of such mechanisms by Member States is possible~~

~~only in exceptional and duly justified circumstances and shall be conditional on approval under the Union State aid provisions.'~~

(8) the following Article 12a is inserted:

*'Article 12a*

### **Vouchers**

1. Member States shall ensure that, where a contract is terminated pursuant to Articles 10, 11 or 12, the organiser may give the traveller the choice to accept a voucher **to be used for any travel service offered by the organiser** ~~which can be used for a future package instead of a refund.~~
2. ~~Before the traveller accepts the~~ **When offering a voucher to the traveller,** the organiser shall inform the traveller clearly and prominently ~~in writing~~ **on a durable medium** about:
  - (a) the fact that the traveller is entitled to a refund within 14 days and is not obliged to accept a voucher;
  - (aa) the amount of the traveller's refund right;**
  - (ab) the amount of the voucher;**
  - (b) the validity period of the voucher and the rights of travellers in relation to vouchers as laid down in this Article;
  - (ba) the fact that the voucher is transferable;-**
  - (bb) the fact that the traveller can redeem the voucher in parts.**
3. ~~The value of the voucher offered shall correspond at least to the amount of the traveller's refund right. The organiser may offer a voucher on~~ **of a higher amount than the traveller's refund right.**
- 3a. The traveller shall be entitled to redeem the voucher partially. In that case the traveller may:**
  - (a) **redeem the remaining value of the voucher later during the validity period, or**

**(b) request payment of the remaining refund right, which shall be made within 14 days.**

4. ~~The Travellers' shall lose their~~ right to a refund **shall be suspended** during the validity period of the voucher ~~only if~~ **provided that** they **received the information referred to in paragraph 2 and explicitly accepted** the voucher instead of a refund explicitly and in writing **on a durable medium**. The parties may at any time agree on a full refund before a voucher is redeemed or expires.

**4a. Without prejudice of paragraph 3a point (b), the suspension of the traveller's refund right shall end:**

**(a) at the end of the validity period of the voucher if the voucher is not redeemed;**

**(b) at the moment when the parties agree on a full refund before a voucher is redeemed or expires; or**

**(c) in the event of the organiser's insolvency.**

5. Vouchers shall have a validity period of a maximum of 12 months from the day a traveller accepts a voucher in accordance with paragraph 4. That period may be extended once for up to 12 months with the explicit ~~and written~~ agreement of both parties **on a durable medium**.

**5a. The voucher shall contain at least the following information in a clear and comprehensible manner:**

**(a) the trading name of the organiser;**

**(b) the amount of the traveller's refund right;**

**(c) the amount of the voucher;**

**(d) the validity period of the voucher;**

**(e) the fact that the traveller is entitled to a refund 14 days after the end of the validity period without the need for any prior request;**

**(f) the traveller's rights in relation to the partial redemption of the voucher under paragraph 3a;**

**(g) the fact that the amount of the traveller's refund right is covered by the organiser's insolvency protection;**

**(h) the fact that the voucher is transferable and the details on how to inform the organiser about a transfer.**

7. ~~If the voucher is not redeemed within its validity period,~~ The organiser shall refund the amount specified in the voucher **the traveller without undue delay** as soon as possible and, **in any event, not later than** at the latest within 14 days after the end of the validity period **suspension of the traveller's refund right ends in accordance with paragraph 4a points (a) and (b),** without the need of **for** any prior request by the traveller.
8. Vouchers shall be transferable to another traveller without any additional cost. **The traveller to whom a voucher is transferred shall inform the organiser who issued the voucher of the transfer and provide their personal data necessary for the redemption of the voucher or any refund.**
9. ~~Vouchers~~ **The traveller's refund right, as mentioned on the voucher,** shall be covered by insolvency protection to be arranged by the organiser under Article 17 ~~for the amount of the payments received from the traveller.~~

(9) Article 17 is replaced with the following:

*'Article 17*

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

1. Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers in the event of organisers' insolvency. This shall include the protection of payments made where a package is not performed in full or in part as a consequence of the organiser's insolvency or where a traveller was entitled to ~~any~~ refund, **including price reduction,** or had received a voucher from the organiser before its insolvency. In relation to **Where a traveller receives a** vouchers, the security shall be limited to the

amount of ~~payments received from the traveller's~~ **refund right**. If the return journey is included in the package travel contract, organisers shall also provide security for the traveller's repatriation. Continuation of the package may be offered.

Organisers not established in a Member State which sell or offer for sale packages in a Member State, or which by any means direct such activities to a Member State, shall be obliged to provide the security in accordance with the law of that Member State.

2. The security referred to in paragraph 1 shall be effective and shall cover reasonably foreseeable costs. It shall cover the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between the receipt of any payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency. The security shall be sufficient to cover costs for refunds and, where applicable, repatriations ~~and vouchers~~, at all times. The ~~coverage~~ **security shall be sufficient to cover the risk related to an insolvency in periods when organisers hold the highest amounts of payments and** shall take into account ~~where organisers hold the highest amounts of payments and~~ any changes in the volume of sales of packages.
3. To ensure the effectiveness of insolvency protection, Member States shall supervise the insolvency protection arrangements of organisers established on their territory, **and** monitor the ~~market for the provision~~ **availability** of insolvency protection **solutions**, ~~and may, if necessary, require a second level of protection. Any co-financing by Member States is possible only in exceptional and duly justified circumstances and shall be conditional on approval under the Union State aid provisions.~~
4. 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 entity in charge of the insolvency protection is located.
5. When 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.
6. Refunds of **travellers'** payments affected by the organiser's insolvency shall be

provided without undue delay after the traveller's request and at the latest within ~~three~~ **2** months after the traveller has submitted the **all relevant** documents necessary to examine the request **as specified in accordance with paragraph 6a point (b).**

**Member States may provide for a shorter deadline for providers of insolvency protection to pay the refunds.**

**6a. Organisers shall be obliged to inform the travellers on their website about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting the refunds, including:**

(a) **the name and assistance contact of the competent entity providing insolvency protection;**

(b) **the list of documents to be submitted as defined by the competent entity;**

(c) **the explanation of the applicable insolvency protection mechanism of the Member State;**

**(db) special instructions information for travellers who already started their package.**

**6b. After becoming aware of the organizer's insolvency, the entity responsible for insolvency protection shall be obliged to publish the following information on its website without undue delay:**

(a) **the fact of the organiser's insolvency;**

(b) **the list of documents to be submitted for the traveller's claim;**

(c) **information for travellers who already started their package.**

7. Where this is justified in light of payments received by retailers, Member States may require retailers to take out insolvency protection in addition to organisers irrespective of the second subparagraph of Article 13(1).'

(10) in Article 18, paragraph 2, is replaced by the following:

'2. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of organisers operating in different Member States and to exchange information in relation to insolvency protection and any mechanisms put in place to

ensure the effectiveness of refunds for terminated package travel contracts. Member States shall notify the contact details of those contact points to all other Member States and the Commission.’

*[According to Option A and C-Article 19 will be deleted]*

*[Option B – keep LTA: Article 19 will be aligned to the new definition:]*

(11) Article 19 is replaced by the following:

*‘Article 19*

### **Insolvency protection and information requirements for linked travel arrangements**

1. For linked travel arrangements, as defined in Article 3(5), Member States shall ensure that traders **facilitating linked travel arrangements** ~~which invite travellers to conclude a contract on a different type of travel service~~ shall provide security for the refund of all payments they receive from travellers. If such traders are responsible for the traveller’s return journey, the security shall also cover the traveller’s repatriation. The second subparagraph of Article 17(1), Article 17(2) to (6) and Article 18 shall apply mutatis mutandis.
2. **Before the traveller is bound by any contract leading to the creation of a linked travel arrangement or any corresponding offer, the trader facilitating linked travel arrangements.** ~~When inviting the traveller to conclude a contract on a different type of travel service, the trader,~~ including where it ~~is~~ **the trader** is not established in a Member State but, by any means, directs such activities to a Member State, shall provide the traveller with the relevant standard information form set out in Annex II, completed as appropriate. The **relevant** form shall be provided in a clear and prominent manner. **Traders providing Form D or Form E [of the current directive] of Annex II shall make available to travellers a facility through which travellers can inform them on the booking of additional travel services within 24 hours of receiving confirmation of the booking of a first travel service.**
3. Where traders do not comply with the requirements set out in paragraphs 1 and 2 of this Article, the rights and obligations laid down in Articles 9 and 12 and Chapter IV shall apply in relation to the travel services included in the linked travel arrangement.
4. Where a linked travel arrangement is formed, the trader which concludes a contract

on a different type of travel service shall inform the trader **facilitating the linked travel arrangement of the conclusion of the relevant contract**, ~~which invited the traveller to conclude such contract on this fact.~~

(12) Article 22 is replaced by the following:

*‘Article 22*

**Right of redress and refund rights of organisers**

- (1) In cases where an organiser or, in accordance with the second subparagraph of Article 13(1) or Article 20, a retailer pays compensation, grants price reduction or meets the other obligations incumbent on him under this Directive, Member States shall ensure that the organiser or retailer has the right to seek redress from any third parties which contributed to the event triggering compensation, price reduction or other obligations.
- (2) Member States shall ensure that, when a service provider cancels a service that is part of a package or fails to provide it, that service provider shall refund to the organiser any payments made by the organiser for the service within 7 days. The 7-day period shall start on the day following the cancellation of the service or the day when the service was due to be performed, whichever is the earlier date.’
- (3) **The suppliers of tourist services provide a bank or insurance guarantee on first demand in favour of the travel organisers in order to guarantee the actual refund referred to in paragraph 2 above. The organisers of the packages may enforce the guarantee if the supplier has not carried out the refund after the 7-day referred above has expired.**

**(12a) In Article 23, a new paragraph 3a is inserted:**

**‘(3a) Paragraphs 2 and 3 of this Article shall apply accordingly to the organiser’s refund right under Article 22(2).’**

(13) Annex I is replaced by the text in Annex I to this Directive.

(14) Annex II is replaced by the text in Annex II to this Directive.

*Article 2*

## Reporting by the Commission and review

By [5 years after the entry into force of this Directive], the Commission shall submit to the European Parliament and to the Council a report on the application of this Directive. This report will also take into account the impact on micro, small and medium-sized organisers.

The report shall be accompanied, where necessary, by legislative proposals.

*Article 3*

## Transposition

1. Member States shall adopt and publish, by [~~18~~ **30** months after the entry into force of the 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.

They shall apply those provisions from [6 months after the transposition deadline].

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.

2. 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 4*

## 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 5*

## Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

The President    The President

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## Comments on the proposed amendments - Revision of Directive (EU) 2015/2302 on Package Travel - Working Party on Consumer Protection and Information

The Italian delegation sets out its proposals for amendments to the compromise presented by the Presidency, shown in red in the text, in Recitals 15, 18 and 18a and in Articles 12 and 22; below there are the corresponding relevant comments.

One important issue concerns the regulation of unavoidable and extraordinary circumstances and the withdrawal of the traveller, two of the main reasons for disputes between travellers and organisers.

In particular, travellers are pushing to equate illness and accident (their own or that of a family member) with the unavoidable and extraordinary circumstances that justify withdrawal without charge under Article 12 of the PTD; the courts are increasingly inclined to follow this line. If this line becomes established, even in light of the text of the Proposal, organisers will be completely exposed: they will not be able to recover anything from their suppliers and travellers will no longer be interested in purchasing policies to cover withdrawal penalties.

At the moment, the courts recognise the legitimacy of withdrawal without penalty on the grounds of illness on the basis of the general principles of impossibility despite the fact that the PTD has limited such circumstances to the hypotheses of the current Recital 31.

The proposed Amendment considerably extends the scope of such *unavoidable and extraordinary circumstances*, also providing for case-by-case assessments.

Therefore, under the new Recital 18, travellers will be able to withdraw in the event of illness as well as in the face of mere unfavourable weather forecasts.

In view of this extension of the scope and interpretation, we request to make very clear that the unavoidable and extraordinary circumstances relevant for the purposes of **Article 12** are not those pertaining to the subjective sphere of the traveller.

The amendment introduced to Article 12(2) incorporated the clarification that: *“where such circumstances significantly and objectively affect the performance of the package. The traveller may terminate the package travel contract where it can be reasonably expected that the performance of the package travel contract will be significantly and objectively affected by unavoidable and extraordinary circumstances”*.

This does not appear to be adequate; in fact, it is necessary to clarify that not only must these circumstances have an objective effect on the usability of the package, but that they themselves must belong to the objective and not to the subjective sphere of the traveller.

We propose to emphasise in **recital 18** what is now foreseen in recital 31.

Without the provision of a clear perimeter, the organiser will be obliged to reimburse travellers as much and more than an insurance company, rather than a service provider.

Consequently, in order to limit losses, the organiser will tend to always include compulsory insurance cover in the price of the package, with a significant increase in costs for the traveller.

**In recital 15**, we propose the obligation to provide a guarantee in favour of package organizers by the suppliers of tourist services, in order to make the reimbursement obligations effective. services.

**In Article 22** the proposed amendment provides that the suppliers of tourist services shall provide a bank or insurance guarantee on first demand in favour of the tour organisers, in order to guarantee the effective reimbursement referred to in paragraph 2 above.

PUBLIC

Paris, le 22 octobre 2024

## NOTE DES AUTORITÉS FRANÇAISES

**Objet :** Commentaires écrits concernant le troisième texte de compromis sur la proposition de révision de la directive (UE) 2015/2302 relative aux voyages à forfait

**Réf. :** SGAE/MINUME/2024/547

**PJ. :** traduction anglaise de courtoisie

À l'invitation de la présidence hongroise à l'issue du groupe de travail « Protection et information du consommateur » du 15 octobre 2024, les autorités françaises souhaitent faire part des commentaires écrits suivants relatifs au troisième texte de compromis (st09562-re03) sur la proposition de directive (UE) 2015/2302 relative aux voyages à forfait.

**Conformément aux instructions de la présidence visant à ne pas aborder les aspects du texte liés aux définitions dans le cadre de cet exercice, les autorités françaises ne détailleront pas les arguments à l'appui de leur demande de suppression de la catégorie de prestation de voyage liée (article 3.5).**

**Elles remercient la présidence par ce nouveau compromis mais considèrent que le texte mérite encore d'être amélioré sur plusieurs points, outre les définitions, en prévoyant notamment :**

- un encadrement proportionné du transfert des avoirs qui constitue un risque de blanchiment d'argent et financement du terrorisme ;
- la garantie du consentement exprès du consommateur à recevoir un avoir, et du remboursement automatique du solde de l'avoir en cas d'utilisation partielle ;
- le remboursement intégral des frais administratifs et de dossier en cas d'annulation du voyage.

### **Considérant 16a sur les bons à valoir et leur transférabilité**

**Les autorités françaises soutiennent la proposition de limitation des remboursements des bons à valoir au montant initial de l'achat, pour les cas de bons à valoir bonifiés.**

**Elles souhaitent également que, en cas de cession du bon à valoir, le nouveau bénéficiaire du bon se signale auprès du voyageur.**

*Amendement rédactionnel proposé en fin de considérant 16a :*

(16a) (...) **Transferees should inform the organiser on the transfer in a simple way and provide the proof of the transfer along with their identity, so that they can receive the refund when the voucher has not been redeemed. In order to prevent the risks of money laundering or terrorist financing, vouchers could only be transferred once.**

### **Considérant 18a sur les circonstances exceptionnelles et inévitables et les cas individuels**

Les autorités françaises rappellent leur position selon laquelle les circonstances exceptionnelles et inévitables devraient résulter de phénomènes irrépressibles objectifs, et donc s'appliquer aux voyageurs quels qu'ils soient.

**Elles saluent les améliorations apportées dans le 3<sup>e</sup> compromis avec une meilleure objectivation des circonstances** qui, sans empêcher l'exécution du forfait, impliquent que cette exécution ne peut avoir lieu sans exposer les voyageurs concernés à des risques pour leur santé et pour leur sécurité. Elles soutiennent notamment la suppression de l'adjectif « *personal* » pour qualifier les circonstances à prendre en compte et l'ajout d'une phrase concernant la nécessité d'une évaluation objective de la pertinence et des effets de ces circonstances.

**En revanche, les autorités françaises regrettent** que les références à la situation familiale des voyageurs ou à l'appartenance de voyageurs à un groupe à risque plus élevé aient été conservées, en ce que ces illustrations conservent un élément de subjectivité, **et demandent par conséquent la suppression** de ces références.

### **Considérant 19 sur les conseils aux voyageurs**

**Les autorités françaises rappellent leur opposition à l'introduction de toute mention** des « conseils aux voyageurs » et de tout lien établi avec la caractérisation d'une situation de « circonstances exceptionnelles et inévitables » **et demandent la suppression de la première phrase de ce considérant**, même amendée dans le nouveau compromis.

Elles soulignent que cette demande vise notamment à éviter les risques contentieux en matière de conseils ainsi que ceux relatifs à une inégalité de traitement entre les voyageurs selon leur pays d'origine ou de résidence et apportera les précisions suivantes :

- il n'existe guère d'harmonisation à l'échelle de l'UE en matière de pratique d'émissions d'avertissements aux voyageurs, ni même d'évaluation uniforme entre États membres de la situation dans une région, un lieu ou un pays ;
- la mention de ces recommandations dans le texte pourrait mener à l'introduction d'une inégalité de traitement entre les consommateurs, et poser un risque d'insécurité juridique en cas d'avertissements aux voyageurs contradictoires entre différents pays ;
- cette opposition à toute mention des « conseils aux voyageurs » rejoint la position équilibrée de la Cour de justice de l'Union européenne qui, interrogée sur la nécessité ou non de constater l'existence de telles recommandations pour que soient reconnues des circonstances exceptionnelles et inévitables, a répondu par la négative, dans son arrêt C-299/22 (points 27 à 36, en particulier point 35) du 29 février 2024.

Les autorités françaises rappellent par ailleurs que :

- les conseils aux voyageurs ne relèvent en aucun cas d'une compétence de l'UE, mais de la politique consulaire des États membres pour laquelle l'UE n'a qu'une compétence d'appui : leur intégration expresse à tout texte normatif européen est donc à observer avec la plus grande prudence, quand bien même ce serait par simple référence ;
- dans la mesure où les conseils aux voyageurs sont dépourvus de caractère normatif et impératif, il convient d'éviter qu'ils puissent fonder l'engagement de la responsabilité de l'État pour faute ; leur

intégration expresse dans la directive apparaît susceptible de multiplier le risque de contentieux dirigés contre les États, en parallèle des litiges entre consommateurs et prestataires de services de voyage.

### **Considérant 21 sur l'insolvabilité**

**Les autorités françaises soulignent les risques de confusion** liés à la juxtaposition, dans la même phrase, des notions d'insolvabilité et de problèmes de liquidité et demandera la suppression de cette dernière.

### **Considérant 23 sur les délais de remboursements en cas d'insolvabilité**

**Les autorités françaises soutiennent** le nouveau délai de 9 mois proposé par la présidence et le fait que la procédure et les délais de remboursement doivent être indépendants du droit national des faillites si ce dernier est moins protecteur que le droit prévu dans la présente directive.

Les autorités françaises sont également favorables à l'obligation de prévenir les voyageurs en cas d'insolvabilité. Toutefois, si une procédure judiciaire d'insolvabilité avec dessaisissement du débiteur est ouverte, cette obligation pourrait incomber au professionnel désigné. Une tournure impersonnelle est proposée au considérant 23 pour englober ces deux éventualités. Par ailleurs, afin d'éviter le risque de renvoi de responsabilité s'agissant de l'obligation de fournir l'information de l'insolvabilité au consommateur, un complément est proposé pour décrire les deux cas de figure possibles.

**Elles proposent** par ailleurs que chaque État Membre puisse fixer la liste des documents que le voyageur doit présenter pour l'examen de sa demande.

*Amendement rédactionnel proposé au considérant 23 :*

(23) Regarding refunds of **travellers'** payments in case of an organiser's insolvency, the period for refunds should be further specified, referring to ~~3~~**9** months after the traveller has submitted the documents necessary to examine the request. **Member States can provide for a shorter deadline. The period for refunds is independent of insolvency procedures before a national court or other responsible bodies. They may also establish the list of documents that the traveler must submit for the examination of his request. Members States shall ensure that the travellers are notified It is appropriate to oblige organisers to notify the travellers about their insolvency without undue delay about the organiser's insolvency and to provided with all relevant information about the mechanism of requesting refunds. This obligation should rely on organisers or, if insolvency proceedings are opened were the debtor is not in charge, on the designated professional.** It is also appropriate to lay down in a provision that Member States may require retailers to take out insolvency protection in addition to organisers.

### **Article 2 sur le champ d'application de la directive**

**En préambule, les autorités françaises regrettent que le champ d'application de la directive n'ait pas été précisé et que l'expression « offre à la vente » (article 2) ait été maintenu en l'état, malgré la définition proposée qui permettrait de lever les risques d'incertitude juridique à la fois pour les professionnels et les autorités ainsi que les difficultés sur le marché intérieur.**

Les autorités françaises soulèvent en particulier le cas des « *travel planners* » (planificateurs de voyage) pour lesquels, en l'état du droit actuel, il est difficile de savoir s'ils doivent ou non avoir une garantie financière suivant le type de service qu'ils délivrent.

Elles rappellent enfin leurs arguments à l'appui de cette demande de clarification :

- la révision de la directive devrait être l'occasion de clarifier la notion d'offre à la vente dans un double objectif : d'une part, éviter que des intervenants occasionnels ne soient assujettis aux mêmes obligations que les voyagistes et, d'autre part, éviter que des professionnels jouent de l'imprécision

de cette notion en ne se faisant pas rémunérer directement par les consommateurs pour contourner les dispositions de la directive ;

- cette rédaction alternative permettrait une distinction simple entre les professionnels qui doivent être soumis aux dispositions pertinentes de la directive et les autres ;
- sans la clarification proposée, une interprétation différente par les États membres de cette notion est susceptible de créer des difficultés sur le marché intérieur, alors même que le secteur connaît le développement de nouveaux acteurs dont il est difficile d'apprécier s'ils relèvent ou non de la directive.

*Amendement rédactionnel proposé au paragraphe 1 de l'article 2 :*

1. This Directive applies to packages ~~offered for sale or~~ sold by traders to travellers **and to packages organized, on a regular basis, by a professional who also reserves the different services included in these packages with service providers in exchange for monetary remuneration paid by these professionals** ~~-and to linked travel arrangements facilitated by traders for travellers.~~

### **Article 12 sur la résiliation du contrat de voyage à forfait et le droit de rétractation avant le début du forfait**

- S'agissant des paragraphe 2 et suivants sur les circonstances exceptionnelles et inévitables

**S'agissant de la prise en compte du lieu de résidence**, les autorités françaises saluent le fait qu'il ne soit plus pris en compte.

**En revanche, s'agissant de la prise en compte du lieu de départ**, telle que mentionnée dans l'article 12 paragraphe 2 et dans le considérant 18, **elles réitèrent leur opposition** à la formulation proposée « *effects of unavoidable and extraordinary circumstances occurring at the place of departure* » qui conduirait à une multiplication des contentieux.

- S'agissant du paragraphe 3a sur l'avis aux voyageurs

**S'agissant des « conseils aux voyageurs, les autorités françaises remercient la présidence et saluent leur suppression comme critère possible des circonstances exceptionnelles et inévitables dans le texte de l'article 12, au point 3a. Les modifications apportées vont dans le bon sens.**

- S'agissant du paragraphe 4 sur les remboursements

**S'agissant du considérant 20, les autorités françaises demandent de préciser** que les frais de dossier doivent dans tous les cas être intégralement remboursés, sans préjudice des éventuels frais de résiliation facturés.

**S'agissant de l'article 12, paragraphe 4, elles constatent que le compromis prévoit bien le remboursement de l'intégralité des paiements effectués par le voyageur mais souhaitent mentionner explicitement la prise en compte des frais de dossier dans le remboursement afin de tirer les enseignements des préjudices subis** par certains consommateurs pendant la période du covid qui ont subi des frais indûment facturés.

*Amendement rédactionnel proposé au paragraphe 4 de l'article 12 :*

4. The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package, **including processing fees**, minus the appropriate and justifiable termination fee.(...)

### Article 12a (et considérants 16 et 16a) sur les bons à valoir

- S'agissant du consentement exprimé par le consommateur à recevoir un avoir :

Les autorités françaises renouvellent tout d'abord leur demande consistant à prévoir que le bon à valoir ne peut être délivré qu'avec le consentement exprès du consommateur (et non explicite), c'est-à-dire en exigeant une action positive de sa part, en cohérence avec la directive 2011/83 sur les droits des consommateurs.

Elles soulignent que :

- il est nécessaire d'encadrer davantage le recueil du consentement du consommateur afin d'interdire l'utilisation par les voyagistes de case pré-cochée pour recueillir le choix du consommateur ;
- cette proposition, plus protectrice du consentement du consommateur, s'inspire pleinement de la directive 2011/83, qui utilise les formules « *express request* » ou « *express consent* » pour impliquer une action positive de la part du consommateur et écarter la pratique des cases pré-cochées à l'avance par le professionnel, notamment sur internet ;
- l'adjectif « *explicitly* » ne renvoie qu'au caractère clair et non équivoque de l'acceptation, et ne paraît donc pas suffisant pour interdire la pratique des cases pré-cochées à l'avance par le professionnel.

Par ailleurs, les autorités françaises soutiennent l'ajout au paragraphe 1, déjà présent dans le deuxième compromis, pour préciser que l'avoir peut être utilisé pour tout service de voyage proposé par l'organisateur.

En revanche, elles soulignent que la rédaction au paragraphe 4 demeure ambiguë, du fait de la formulation « *provided that they received the information referred to in paragraph 2 and explicitly accepted the voucher instead of a refund on a durable medium* » qui peut laisser supposer que ces conditions ne seraient pas systématiquement remplies.

Enfin, elles rappellent que la clarté et l'ambition du texte pourrait être encore renforcées en

- (i) précisant la période pendant laquelle le choix entre un remboursement ou un avoir sera proposé au client,
- (ii) précisant qu'en cas d'absence de réponse du client dans un délai de 7 jours, celui-ci est présumé refuser l'avoir.

*Amendement rédactionnel proposé au paragraphe 1 de l'article 12a :*

1. Member States shall ensure that, where a contract is terminated pursuant to Articles 10, 11 or 12, the organiser may give the traveller the choice to accept a voucher **to be used for any travel service offered by the organiser** ~~which can be used for a future package~~ instead of a refund.

**Before issuing the traveller with a voucher, the organizer shall seek the express consent of the traveller to a voucher. The traveller's consent shall not be given by default, that is to say in the absence of express opposition on his part to accept the voucher.**

**The organiser who gives the traveller the choice to accept a voucher shall inform the traveller within 3 days after the termination of the contract. If no response is received within 7 days, the consumer is presumed to have refused the voucher.**

- S'agissant de la nécessité de limiter le transfert des avoirs et de la gratuité du transfert

Les autorités françaises soulignent les risques liés à des transferts répétés des avoirs et proposera une solution simple consistant à limiter cette opération à une seule occurrence et qui, combinée à l'introduction d'une obligation de signalement auprès du voyageur par le bénéficiaire, constitue une mesure d'atténuation proportionnée afin de lutter contre le blanchiment d'argent et le financement du terrorisme.

Elles rappellent les arguments à l'appui de cette proposition :

- l'utilisation du bon à valoir mérite d'être davantage encadrée car cette utilisation n'est pas nominative (sauf pour le dernier possesseur, qui doit se signaler pour être remboursé) ; l'avoir apparaissant aussi non-traçable qu'un paiement en espèces, cette impossibilité de tracer les flux est un facteur de risques de blanchiment d'argent et de financement du terrorisme. En outre, le bon permettrait en théorie une conversion des fonds pour en dissimuler l'origine illicite, par exemple en le rachetant en espèces pour ensuite demander remboursement au voyageur par virement ;
- les dispositifs actuels de lutte contre le blanchiment et le financement du terrorisme ne trouveraient pas à s'appliquer pour le transfert des avoirs (pour mémoire, un plafond de paiement par espèces ou par monnaie électronique est fixé à 10.000 € dans l'Union européenne, les bons au porteur sont interdits et les transferts de cryptoactifs sont soumis à une règle de transparence sur l'identification du donneur d'ordre et du bénéficiaire dès le premier euro) ;
- l'émission et le décaissement de bons à valoir ne feraient intervenir aucun professionnel assujéti à la lutte contre le blanchiment et le financement du terrorisme, qui se doivent d'appliquer de strictes obligations de vigilance : or, ces professionnels, lorsqu'ils agissent comme intermédiaires dans une transaction, peuvent identifier une opération suspecte et ont alors le devoir de la signaler à la cellule de renseignement financier ; ce filet de sécurité serait absent dans le cas des bons à valoir émis par un voyageur.

**Enfin, les autorités françaises proposent de compléter la rédaction du paragraphe 5a (h) afin de préciser que l'avoir est transférable gratuitement, sans coût additionnel pour le consommateur.**

*Amendements rédactionnels proposés aux paragraphes 5a et 8 de l'article 12a :*

5. (...)

**(h) the fact that the voucher is transferable only once, without any additional costs, and the details on how to necessarily inform the organiser about a transfer.**  
**i) the identity details of the initial traveller.**

8. Vouchers shall be transferable to another traveller without any additional cost. **The traveller to whom a voucher is transferred shall inform the organiser who issued the voucher of the transfer in a simple way and provide the proof of the transfer along with his ~~their~~ personal data necessary for any refund.**

- S'agissant du remboursement des avoirs

**Les autorités françaises soulignent que le remboursement doit demeurer automatique, même en cas d'utilisation partielle, c'est-à-dire sans que le consommateur ait besoin d'en faire la demande, cela pour rassurer le consommateur et renforcer ainsi l'attractivité des bons à valoir. Elles demandent donc le retour à la rédaction du compromis précédent sur ce point.**

Elles soulignent notamment les arguments suivants :

- la proposition sur la possibilité d'utiliser les avoirs en plusieurs fois ne permettrait plus de prévoir un remboursement automatique du solde de l'avoir dès qu'il aura été utilisé, même partiellement, sans que le client ait besoin d'en faire la demande ;
- en outre, une telle disposition n'apporterait aucun bénéfice supplémentaire pour les consommateurs : au contraire, la rédaction proposée priverait les consommateurs du remboursement automatique du solde de l'avoir dès son utilisation, alors même que la grande majorité des consommateurs ne vont pas acheter plusieurs voyages sur une année ;
- si tous les consommateurs sont automatiquement remboursés du solde dès l'utilisation de l'avoir, ceux qui voudront réserver un second voyage pourront le faire en payant en numéraire.

## Article 17 sur la protection contre l'insolvabilité

- S'agissant du montant du remboursement (paragraphe 1)

Les autorités françaises rappellent que le montant du remboursement doit s'entendre comme égal au montant du paiement du consommateur au voyageur.

**Elles soulignent en revanche que le garant financier ne doit pas rembourser la différence entre le montant du paiement du consommateur et le montant de l'avoir**, lorsque ce dernier est supérieur au prix effectivement payé par le consommateur (avoirs bonifiés), **et approuvent les précisions** apportées en ce sens dans le troisième compromis.

- S'agissant de l'effectivité du contrôle de la garantie (paragraphe 2 et article 18)

**Les autorités françaises soulignent la nécessité de renforcer l'effectivité de la protection** contre l'insolvabilité des voyageurs intervenant en libre prestation de service compte tenu des nombreuses difficultés rencontrées dans la mise en œuvre des échanges d'informations prévues par l'actuelle directive pour savoir si un voyageur intervenant depuis un autre État membre a une garantie ou non.

**Elles rappellent donc leur proposition consistant à :**

- (i) **imposer de registres nationaux répertoriant les voyageurs et leurs garants,**
- (ii) **prévoir la centralisation de ces informations au niveau européen.**

**Les autorités françaises regrettent que cette proposition n'ait pas été reprise dans ce nouveau compromis et soulignent que ce dispositif déjà mis en œuvre en France n'induit aucune charge administrative et permet de répondre à l'obligation des États membres de veiller au respect du droit de l'Union et notamment de l'existence de garanties financières.**

Elles rappellent enfin :

- la simplicité de ce dispositif et les modalités de sa mise en place :
  - o au niveau national, un registre par pays répertorierait à la fois les professionnels de chaque pays et leurs garants, après vérification par les autorités nationales, ces listes devant être facilement accessibles au public par exemple via une simple page internet ;
  - o au niveau européen, une page internet pourrait être fournie par la Commission européenne avec, par exemple, des liens renvoyant vers les sites nationaux ;
- l'absence de charge administrative nouvelle pour les États membres dès lors qu'ils sont déjà tenus, en vertu des dispositions de l'article 17 de la directive, de veiller au respect de l'obligation de garantie financière incombant aux organisateurs.

*Amendement rédactionnel proposé au paragraphe 2 de l'article 18 :*

2. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of organisers operating in different Member States and to exchange information in relation to insolvency protection and any mechanisms put in place to ensure the effectiveness of refunds for terminated package travel contracts. Member States shall notify the contact details of those contact points to all other Member States and the Commission. **Each Member State shall create a list including all traders allowed to sell packages in their countries and their guarantee.**

**These registers shall be public and accessible and shall facilitate the cooperation between the contacts points in between states.**

**All the registers of all the Member States shall be listed at the Commission via a web page which links back to the directories of the Member States.**

- S'agissant des délais de remboursement en cas d'insolvabilité

En lien avec le considérant 23, **les autorités françaises soutiennent** le nouveau délai de 9 mois proposé par la présidence et le fait que la procédure et les délais de remboursement doivent être indépendants du droit national des faillites si ce dernier est moins protecteur que le droit prévu dans la présente directive.

**Elles proposent** par ailleurs que chaque État Membre puisse fixer la liste des documents que le voyageur doit présenter pour l'examen de sa demande.

*Amendement rédactionnel proposé au paragraphe 6 de l'article 17 :*

6. Refunds of **travellers'** payments affected by the organiser's insolvency shall be provided without undue delay ~~after the traveller's request~~ and at the latest within ~~three~~ **9** months after the traveller has submitted ~~the~~ **all relevant** documents necessary to examine the request **as specified in accordance with paragraph 6a point (b). Member States may provide for a shorter deadline for providers of insolvency protection to pay the refunds. Each member State can determine the list of the documents necessary for the refund**

- S'agissant de l'obligation d'information (paragraphe 6a)

Les autorités françaises saluent l'initiative d'introduire une obligation d'information à la suite de la défaillance d'un opérateur, ainsi que l'obligation pour le voyageur de fournir les informations à ses clients à travers son site internet concernant le professionnel à qui le consommateur doit s'adresser en cas de faillite.

Elles soulignent néanmoins l'imprécision de l'expression « *undue delay* » s'agissant du délai dans lequel est enserrée cette obligation d'information du consommateur.

Les autorités françaises proposent également un amendement rédactionnel en lien avec leurs observations au considérant 23 sur la possibilité de dessaisissement de l'opérateur dans le cadre d'une procédure d'insolvabilité judiciaire, qui ne sera alors pas débiteur de l'obligation d'information.

*Amendement rédactionnel proposé au paragraphe 6a de l'article 17 :*

**6a. Organisers shall be obliged to inform the t**~~Travellers~~ **should be informed on their** through the **organisers'** website about their insolvency ~~without undue delay~~ and ~~to~~ **provided with all relevant information about the mechanism of requesting the refunds, including: [...]**

- S'agissant des modalités de mise en œuvre de l'obligation d'information (paragraphe 6b)

Les autorités françaises font part de leur approbation quant à l'introduction de cette obligation d'information du consommateur à la charge du garant du professionnel défaillant. Elles soulignent que cette pratique permettra d'améliorer le processus pour les remboursements des consommateurs par le garant en leur donnant un meilleur accès à l'information concernant les justificatifs nécessaires.

## Annexe – Traduction anglaise de courtoisie

*Commentaires écrits concernant le second texte de compromis sur la proposition de révision de la directive (UE) 2015/2302 relative aux voyages à forfait*

At the invitation of the Hungarian Presidency following the Working Party on Consumer Protection and Information on 15 October 2024, the French authorities wish to provide the following written comments on the third compromise text (st09562-re03) on the proposal for Directive (EU) 2015/2302 on package travel.

**In accordance with the Presidency's instructions not to address definitional aspects of the text in the context of this exercise, the French authorities will not detail the arguments in support of their request to delete the category of linked travel service (Article 3.5).**

**They thank the Presidency for this new compromise, but consider that the text still needs to be improved on a number of points, in addition to the definitions:**

- a proportionate supervision of the transfer of vouchers, which constitutes a risk of money laundering and terrorist financing;
- the guarantee of the consumer's express consent to receive a voucher, and automatic reimbursement of the balance of the voucher in the event of partial use;
- full reimbursement of administrative and booking fees in the event of cancellation of the travel.

### **Recital 16a on vouchers and their transferability**

**The French authorities support the proposal to limit refunds** of vouchers to the initial amount of the voucher purchase.

**They would also like the new beneficiary of the voucher to notify the tour operator if the voucher is transferred.**

*Proposed drafting amendment at the end of recital 16a:*

(16a) (...) **Transferees should inform the organiser on the transfer in a simple way and provide the proof of the transfer along with their identity, so that they can receive the refund when the voucher has not been redeemed. In order to prevent the risks of money laundering or terrorist financing, vouchers could only be transferred once.**

### **Recital 18a on exceptional and unavoidable circumstances and individual cases**

The French authorities reiterate their position that exceptional and unavoidable circumstances should result from objective, irrepressible phenomena and therefore apply to all travellers.

**They welcome the improvements made in the third compromise with a more objective definition of circumstances** which, without preventing the package from being carried out, imply that it cannot be carried out without exposing the travellers concerned to risks to their health and safety. In particular, they support the deletion of the adjective "personal" describing the circumstances to be taken into account and the addition of a sentence on the need for an objective assessment of the relevance and impact of these circumstances.

**On the other hand, the French authorities regret** the references to the family situation of travellers or to travellers belonging to a higher risk group, as these illustrations maintain an element of subjectivity in the appreciation of exceptional circumstances. They therefore request that these references to be deleted.

### **Recital 19 on travel advice**

The French authorities reiterate their opposition to the introduction of any mention to “travel advice” and any link established with the characterisation of a situation of « *exceptional and unavoidable circumstances* ». They therefore **ask for the deletion of the first sentence of this recital**, even as amended in the new compromise.

They underline that the aim of this request is to avoid litigation risks related to travel advice and those related to unequal treatment between travelers according to their country of origin and/or residence. Moreover:

- there is no EU-wide harmonisation of the issuing of travel warnings, or even uniform assessment between Member States of the situation in a given region, place or country;
- mentioning these recommendations in the text could lead to the introduction of unequal treatment between consumers, and pose a risk of legal uncertainty in the event of conflicting travel warnings between different countries;
- this opposition to any mention of ‘travel advices’ is in line with the balanced position of the Court of Justice of the European Union which, when asked whether it was necessary to establish the existence of such recommendations in order to recognise exceptional and unavoidable circumstances, replied negatively in its judgment C-299/22 (points 27 to 36, in particular point 35) of 29 February 2024.

The French authorities also point out that:

- travel advice does not in any way fall within the competence of the EU, but rather under the consular policy of the Member States for which the EU only has a supporting competence: the explicit inclusion of travel advice into any European normative text is therefore to be observed with the greatest caution, even if it is by simple reference;
- if the travel advice is not prescriptive and mandatory, it could provide a basis for the State to be held liable for fault; their express integration into the directive seems likely to reinforce the risk of legal action against the State, in parallel with disputes between consumers and travel service providers.

### **Recital 21 on insolvency**

The French authorities stress the risks of confusion linked to the use in the same sentence of the concepts of insolvency and liquidity problems and ask for the deletion of the concept of liquidity problems.

### **Recital 23 on refund deadlines in case of insolvency**

The French authorities support the new 9-month deadline proposed by the presidency and the fact that the procedure and refund deadlines must be independent of national bankrupt law if the latter is less protective than the one provided for in this directive.

The French authorities are also in favour of an obligation to inform travellers in case of insolvency. However, if insolvency proceedings are opened and the debtor is removed, this obligation could fall to the designated professional. An impersonal form of the wording could cover these two eventualities. In addition, to prevent the risk of avoidance of this responsibility to inform the consumer on the state of insolvency of the organizer, the French authorities suggest a clarification describing both hypotheses. In addition, to avoid the risk of a shift of responsibility with respect to the obligation to provide information on insolvency to the consumer, an additional description is proposed to describe the two possible scenarios.

**They also propose** that each Member State should be able to determine the list of documents that travellers must present in order to have their applications evaluated.

*Proposed drafting amendment to recital 23 :*

(23) Regarding refunds of **travellers'** payments in case of an organiser's insolvency, the period for refunds should be further specified, referring to ~~3~~**9** months after the traveller has submitted the documents necessary to examine the request. **Member States can provide for a shorter deadline. The period for refunds is independent of insolvency procedures before a national court or other responsible bodies. They may also establish the list of documents that the traveler must submit for the examination of his request. Members States shall ensure that the travellers are notified ~~It is appropriate to oblige organisers to notify the travellers about their insolvency~~ without undue delay ~~about the organiser's insolvency~~ and ~~to~~ provided with all relevant information about the mechanism of requesting refunds. This obligation should rely on organisers or, if insolvency proceedings are opened were the debtor is not in charge, on the designated professional.** It is also appropriate to lay down in a provision that Member States may require retailers to take out insolvency protection in addition to organisers.

**Article 2 on the scope of the directive:**

**As a first point, the French authorities regret that the scope of the directive has not been clarified and that the expression “offered for sale” (Article 2) has been kept as it is, despite the proposed amendment to the definition, which would remove the risks of legal uncertainty for both professionals and competent authorities, as well as difficulties within the internal market.**

The French authorities raise in particular the case of travel planners, for whom, as the law stands at present, it is difficult to know whether or not they should have an insolvency protection depending on the type of service they provide.

Finally, they reiterate their arguments in support of this request for clarification:

- the revision of the Directive should provide an opportunity to clarify the concept of 'offer for sale' with a twofold objective: firstly, to prevent occasional operators from being subject to the same obligations as tour operators and, secondly, to prevent professionals from exploiting the vagueness of this concept by not being paid directly by consumers in order to overcome the provisions of the directive;
- this alternative wording (see below) would allow for a simple distinction to be made between professionals who must be subject to the relevant provisions of directive and others;
- without the proposed clarification, a different interpretation of this concept by the Member States is likely to create difficulties in the internal market, at a time where we witness the development of new players whose inclusion in or exclusion from the scope of the directive is difficult to assess.

*Proposed drafting amendment proposed in paragraph 1 of Article 2*

1. This Directive applies to packages ~~offered for sale or~~ sold by traders to travellers **and to packages organized, on a regular basis, by a professional who also reserves the different services included in these packages with service providers in exchange for monetary remuneration paid by these professionals** ~~-and to linked travel arrangements facilitated by traders for travellers.~~

**Article 12 on termination of the package travel contract and the right of withdrawal before the start of the package**

- Paragraphs 2 and following on exceptional and unavoidable circumstances

The French authorities welcome the fact that **the place of residence is no longer taken into account.**

**However, with regard to the place of departure**, still mentioned in article 12(2) and recital 18, **they reiterate their opposition to the proposed wording effects of “unavoidable and extraordinary circumstances occurring at the place of departure”**, which would lead to an increase in litigation.

- Paragraph 3a on travel advice

The French authorities welcome the Presidency’s deletion of the “travel advice” as a possible criterion for exceptional and unavoidable circumstances in the text of Article 12, point 3a. The changes made are a step in the right direction.

- Paragraph 4 on refunds

**Regarding recital 20, the French authorities request that it is specified** that the handling fees must in all cases be reimbursed in full, without prejudice to any cancellation fees charged.

**Regarding Article 12(4), they note that the compromise does provide for the refunds of all payments made by the traveller; they wish to explicitly mention the inclusion of handling fees in the reimbursement in order to draw lessons from the damage suffered by certain consumers during the covid period who were unduly charged.**

*Drafting amendment to paragraph 4 of Article 12*

4. The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package, **including processing fees**, minus the appropriate and justifiable termination fee.(...)

**Article 12a (and recitals 16 and 16a) on vouchers**

- Regarding the consent expressed by the consumer to receive a voucher:

**First, the French authorities reiterate their request that the voucher can only be issued with the express (not only “explicit”) consent of the consumer, that is to say by requiring positive action on their part, in line with directive 2011/83 on consumer rights.**

They underline that :

- it is necessary to further regulate the collection of consumer consent in order to prohibit the use by tour operators of pre-ticked boxes to collect the consumer's choice;

- this proposal, which is more protective of the consumer consent, is fully inspired by Directive 2011/83, which uses the terms "express request" or "express consent" to imply a positive action on the part of the consumer and to rule out the practice of boxes pre-ticked in advance by the professional, particularly on the internet;

- the adjective "explicitly" only refers to the clear and unequivocal nature of the acceptance, and therefore does not appear sufficient to prohibit the practice of boxes pre-ticked in advance by the professional.

Furthermore, the French authorities support the addition to paragraph 1, already added in the second compromise, specifying that the vouchers can be used for any travel service offered by the organizer.

However, they point out that the wording in paragraph 4 remains ambiguous, due to the wording "provided that they received the information referred to in paragraph 2 and explicitly accepted the voucher instead of a refund on a durable medium" which may suggest that these conditions would not be systematically met.

Finally, they point out that the clarity and ambition of the text could be further strengthened by:

- (i) specifying the period during which the choice between a refund or a credit will be offered to the customer,
- (ii) specifying that in the event of no reply from the customer within 7 days, the latter is presumed to refuse the voucher.

*Drafting amendment to paragraph 1 of Article 12a:*

1. Member States shall ensure that, where a contract is terminated pursuant to Articles 10, 11 or 12, the organiser may give the traveller the choice to accept a voucher **to be used for any travel service offered by the organiser** ~~which can be used for a future package~~ instead of a refund.

**Before issuing the traveller with a voucher, the organizer shall seek the express consent of the traveller to a voucher. The traveller's consent shall not be given by default, that is to say in the absence of express opposition on his part to accept the voucher.**

**The organiser who gives the traveller the choice to accept a voucher shall inform the traveller within 3 days after the termination of the contract. If no response is received within 7 days, the consumer is presumed to have refused the voucher.**

*- Regarding the need to limit the transfer of vouchers and the free transfer:*

The French authorities highlight the risks linked with repeated transfers of vouchers and will propose a simple solution consisting of limiting this operation to a single occurrence and which, combined with the introduction of a reporting obligation to the tour operator by the beneficiary, constitutes a proportionate mitigation measure in order to prevent money laundering and the financing of terrorism.

They recall the arguments supporting this proposition:

- the use of the voucher should be more regulated since it is not nominative (except for the last owner, who must report to be reimbursed); since the voucher appears as untraceable as a cash payment, this impossibility of tracing the flows is a risk factor for money laundering and terrorist financing. In addition, the voucher would theoretically allow a conversion of funds to conceal their illicit origin, for example by buying it back in cash and then requesting reimbursement from the tour operator by transfer;
- the current anti-money laundering and anti-terrorist financing measures would not apply to the transfer of assets (as a reminder, a cash or electronic money payment ceiling is set at €10,000 in the European Union, bearer bonds are prohibited and crypto-asset transfers are subject to a transparency rule on the identification of the payer and the beneficiary from the first euro);
- the issue and disbursement of vouchers would not involve any professional subject to the anti-money laundering and anti-terrorist financing measures, who must apply strict vigilance obligations: however, these professionals, when acting as intermediaries in a transaction, can identify a suspicious transaction and then have a duty to report it to the financial intelligence unit; this safety net would be absent in the case of vouchers issued by a tour operator.

Finally, the French authorities propose to complete the wording of paragraph 5a (h) in order to specify that the credit is transferable free of charge, without additional cost for the consumer.

*Drafting amendments to paragraphs 5a and 8 of Article 12a:*

5. (...)

**(h) the fact that the voucher is transferable only once, without any additional costs, and the details on how to necessarily inform the organiser about a transfer;**  
**i) the identity details of the initial traveller.**

8. Vouchers shall be transferable to another traveller without any additional cost. **The traveller to whom a voucher is transferred shall inform the organiser who issued the voucher of the transfer in a simple way and provide the proof of the transfer along with his ~~their~~ personal data necessary for any refund.**

*- Regarding the refund of vouchers*

The French authorities underline that reimbursement must remain automatic, even in the event of partial use, i.e., without the consumer having to request it, in order to reassure the consumer and thus strengthen the attractiveness of vouchers. They are therefore in favor of sticking to the wording of the previous compromise on this point.

They, in particular, highlight the following arguments:

- the proposal on the possibility of using vouchers in several times would no longer allow for an automatic refund of the balance of the credit as soon as it has been used, even partially, without the customer having to request it;
- in addition, such a provision would not bring any additional benefit to consumers: on the contrary, the proposed wording would deprive consumers of the automatic refund of the balance of the credit as soon as it is used, even though the vast majority of consumers will typically not buy several trips in a year;
- if all consumers are automatically refunded the balance as soon as the credit is used, those who wish to book a second trip will be able to do so by paying cash.

### **Article 17 on insolvency protection**

- *Regarding the amount of the refund (paragraph 1)*

The French authorities point out that the amount of the refund must be understood as equal to the amount of the consumer's payment to the tour operator.

However they underline, that the financial guarantor must not reimburse the difference between the amount of the consumer's payment and the amount of the voucher, when the latter is higher than the price actually paid by the consumer (bonus credits). They therefore approve the clarifications made to this effect in the third compromise.

- *Regarding the effectiveness of insolvency protection (paragraph 2 and article 18)*

The French authorities recall the need to strengthen the effectiveness of protection against the insolvency of tour operators operating under the freedom to provide services, given the many difficulties encountered in implementing the exchange of information provided for by the current directive to determine whether a tour operator operating from another Member State has a guarantee or not.

They therefore reiterate their proposal

- (i) to impose the implementation of national registers listing tour operators and their guarantors,

- (ii) to provide for the centralization of this information at European level.

The French authorities regret that this proposal has not been included in the new compromise and stress that this system, already implemented in France, does not entail any administrative burden and enables Member states to ensure compliance with EU law, in particular the already existent insolvency protections.

Finally, they recall:

- the simplicity of this system and the methods for its implementation:
  - o at the national level, a register per country would list both the professionals of each country and their guarantors, after verification by the national authorities, these lists having to be easily accessible to the public, for example via a simple web page;
  - o at the European level, a web page could be provided by the European Commission with, for example, links to national sites;
- the absence of a new administrative burden for the Member States since they are already required, under the provisions of Article 17 of the Directive, to ensure compliance with the financial guarantee obligation incumbent on the organizers.

*Drafting amendment to paragraph 2 of Article 18:*

2. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of organisers operating in different Member States and to exchange information in relation to insolvency protection and any mechanisms put in place to ensure the effectiveness of refunds for terminated package travel contracts. Member States shall notify the contact details of those contact points to all other Member States and the Commission. **Each Member State shall create a list including all traders allowed to sell packages in their countries and their guarantee. These registers shall be public and accessible and shall facilitate the cooperation between the contacts points in between states. All the registers of all the Member States shall be listed at the Commission via a web page which links back to the directories of the Member States.**

- Regarding repayment deadlines in the case of insolvency

In relation to with recital 23, **the French authorities** support the new 9-month period proposed by the presidency and the fact that the procedure and repayment periods must be independent of national bankruptcy law if the latter is less protective than the one provided for in this directive.

**They also suggest** each Member State may establish the list of documents that the traveller must present for the examination of his application.

*Proposed editorial amendments of paragraph 6 article 17 :6.*

Refunds of **travellers'** payments affected by the organiser's insolvency shall be provided without undue delay after the traveller's request and at the latest within **three 9** months after the traveller has submitted the **all relevant** documents necessary to examine the request **as specified in accordance with paragraph 6a point (b). Member States may provide for a shorter deadline for providers of insolvency protection to pay the refunds. Each member State can determine the list of the documents necessary for the refund**

- Regarding the obligation of information (paragraph 6a)

The French authorities first welcome the introduction of an obligation of information following the failure of an operator, as well as the obligation for the tour operator to provide information to their customers via its website concerning the professional whom the consumer must contact in the case of bankruptcy.

They nevertheless highlight the imprecision of the terms "undue delay" concerning the time limit within which this obligation to inform the consumer is imposed.

Finally, the French authorities also propose a drafting amendment in connection with their observations in recital 23 on the possibility of dispossession of the operator in the context of judicial insolvency proceedings, which will then not be liable for the information obligation.

*Amendement rédactionnel proposé au paragraphe 6a de l'article 17 :*

**6a. Organisers shall be obliged to inform the travellers should be informed on their through the organisers' website about their insolvency without undue delay and to provided with all relevant information about the mechanism of requesting the refunds, including: [...]**

- *- Regarding the methods of implementing the information obligation (paragraph 6b)*

The French authorities approve the introduction of the guarantor's obligation to inform the consumer of the defaulting professional. They emphasize that this practice will improve the process for consumer reimbursements by the guarantor by giving them better access to information concerning the necessary supporting documents.

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Some drafting proposals of Finland

### Recitals 5 and 9

First of all, at least in the current form, we still support option A and as a drafting proposal support deleting recitals 5, 5a, 9, Article 3 point 5, Article 19, and Annex II.

### Recital 15

Our proposal is to delete this

### Recital 16a

It is good that it has been clarified that the refund right corresponds to the amount originally paid. Therefore, we support the addition in 16a.

### In Recital 19

We suggest following change to the recital 19, because there is a reference to “those circumstances” in the last sentence.

Official warnings against travel to a particular destination issued by the authorities of the Member State of departure or traveller’s residence or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of residence or departure after returning from the trip or holiday, can be elements to be taken into account in the assessment of whether ~~a termination of the contract justified~~ **there are unavoidable and extraordinary circumstances and if those circumstances will have significant effects on the performance of the package.**

### Article 1

We support deletion of LTAs. B2B relations should be based on freedom of contract and no mandatory provisions should apply. Therefore we suggest the following deletion.

~~‘The purpose of this Directive is to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States in respect of contracts between travellers and traders relating to package travel and linked travel arrangements, as well as certain aspects of contracts between organisers of packages and service providers’.~~

### Article 2 paragraph 1

Delete the following:

1. This Directive applies to packages offered for sale or sold by traders to travellers. ~~and to linked travel arrangements facilitated by traders for travellers.~~

~~It also applies to refund rights of organisers as defined in Article 3(8) against travel service providers in case of cancellation or non-provision of a service that is part of a travel package.~~

Article 5, paragraph 1, point d and Article 5a

As we have commented earlier, we fully agree with the deletion.

Article 5, paragraph 1, point g

Despite of what article 12 (1) stipulates, termination fees are often in practice quite high. We suggest clarifying e.g. in the recitals what is meant by appropriate and justifiable termination fees.

Article 12a

We are content that the proposal contains the main elements, which in our opinion are needed regarding vouchers, i.e. the need for explicit acceptance of the voucher and the insolvency protection, as well as the fact that the refund right protected corresponds to the amount originally paid. We only have couple of minor suggestions. We suggest that the traveller, who doesn't redeem the voucher fully, would get the remaining value when the validity period ends, just like the other voucher users, without specific request. Paragraph 4a (a) would be applicable regardless of whether the voucher has been used fully or partially.

4a. Without prejudice of paragraph 3a point (b), the suspension of the traveller's refund right shall end:

(a) at the end of the validity period of the voucher if the voucher, **or part of it**, is not redeemed;

In paragraph 5a point (e) we propose following addition:

(e) the fact that the traveller is entitled to a refund **within** 14 days after the end of the validity period without the need for any prior request;

Article 17 paragraph 3

The authorities of the the MS cannot ensure availability of services that private businesses provide to the market. Therefore, we suggest the following change.

3. To ensure the effectiveness of insolvency protection, Member States shall supervise the insolvency protection arrangements of organisers established on their territory **and that the security referred to in paragraph 1 is effective and shall cover reasonably foreseeable costs as well as estimated cost for repatriations.** ~~and monitor the availability of insolvency protection solutions.,~~

Article 17, paragraph 6a

Why would one limit the information requirement to one channel only? We would suggest deleting the reference to website or changing it to something more general:

Organisers shall be obliged to inform the travellers ~~on their website~~ about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting the refunds, including:

Article 22, Right of redress and refund rights of organisers, paragraph 2

We have major reservations regarding this proposal. We find it problematic that the directive, the main purpose of which is to achieve the highest possible level of consumer protection, would, as proposed, interfere with companies' freedom of contract. We suggest deleting this or at least making the provision non-mandatory.

In Article 23, a new paragraph 3a

We do not support the mandatory nature of B2B regulation. Our proposal is to delete this.



## Comments from Estonia

Here are our comments and drafting proposals to documents ST 9562/24 REV3 and 9562/24 REV3 COR1:

1. We are still supporting option A and leaving LTAs out of the scope
2. Recital 5a – we cannot support the explanation in recital 5a as it creates more confusion about the meaning of "same visit or contact," leading to numerous questions and difficulties in enforcement. Criteria like "shortly thereafter books" and "returns to it in a short period of time" are too vague and therefore not reasonably applicable in practice. We should aim for a solution in the definitions where it is immediately clear to all parties at the time of purchasing travel services whether the services fall within the scope of the directive or not. Any later verifications, screenshots, proof of the number of visits to the point of sale, etc., do not provide the necessary clarity.
3. Rec 8 – It is mentioned here that transmission of personal data „has proved to be too narrow“. In our opinion, it is necessary to clarify in this recital which situations should specifically be covered here and what is too narrowly defined in the current wording. This would help clarify the exact problem, making it easier to work towards a solution. At this point, it is concerning that the reference to personal data (Regulation EU 2016/679) is too broad, as it could apply to almost any data. In practice, this would lead to increased uncertainty for all parties involved and could result in numerous disputes. Therefore, we believe that the definition of personal data should be more precisely specified
4. Recital 10 – during several working parties and, also in the bilateral meeting we raised the question about accommodation establishments being considered as tour operators when offering onsite activities next to accommodation. Current PTD defines that only services that are intrinsically part of another travel service (accommodation service) are not considered as individual tourist services in its own right, meaning that there are some services which are intrinsically part of the accommodation (e.g cleaning) but there are also services that are not included in the room rent and that are offered additionally (priced separately as for example spa treatments, rental of sauna). In practise, a lot of on-site activities are offered at hotels, tourist farms etc, which travellers can choose in addition to the accommodation as accommodation can also be provided without those services. Travellers can have accommodation with those on-site activities or they can choose accommodation without additional on-site activities. However, in 1st occasion this could form a package and on the 2nd occasion it is not. We believe that such on-site activities should not be treated as individual tourist services at all. Entrepreneurs should not be placed in a situation where they constantly have to assess whether a certain activity is an integral part of another activity or not; we propose offering them greater certainty in this regard. Therefore, we suggest adding additional sentence to the end of recital 10 accordingly, to provide accommodation service providers more clarity and legal certainty:

*„(10) Regarding packages where, for example, accommodation is combined with other tourist services, but which do not contain any carriage of passengers, the general criterion of ‘a significant proportion’ of the value of the combination, applying to tourist services as referred to in Article 3(1)(d), should be replaced with the more specific criterion of ‘at least 25%’ in order to increase legal certainty. **Also, in order to increase legal certainty, it should be noted that different on-site activities provided as a part of accommodation, regardless of their value, do not lead to the creation of the package if these services are combined only with accommodation.**”*

5. Recital 15 – we would like to point it out that in the passengers' rights package, these reimbursement deadlines have already been significantly extended in the interim compromise texts, and we should try to keep these deadlines harmonized in our drafts, as different deadlines will cause confusion.
6. Recital 16a – Estonia supports the clarification introduced about refund right being equivalent to the amount originally paid by the traveller, thank you for this important addition! However, we would like to remove the last sentence about transferees' obligation to inform organiser on their identity (see also our comments on art 12a paragraph 8).
7. Recital 18 – Estonia supports this text
8. Recital 18a – we propose to delete the last part of the sentence starting from "... taking into account[...]" in given recital". Or alternatively, to replace this part of the sentence with; "while taking into account specific circumstances to which the parties have agreed on".
9. Recital 19 – we can be flexible as regards the reference made about the quarantine requirements made in the text. However, we would suggest changing slightly this recital, removing the reference to the residence of the traveller (as it has been also done in another recitals). We would also like to

clarify the wording, taking into account that the place of departure may not always be the same as the place of arrival:

“(19) Official warnings against travel to a particular destination issued by the authorities of the Member State of departure or traveller’s residence or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or final destination under the contract or in the Member State of residence or departure after returning from the trip or holiday, such as quarantine requirements for a significant period, can be elements to be taken into account in the assessment of whether a termination of the contract is justified. Every situation needs to be assessed on a case-by-case basis. Furthermore, the absence of official travel warnings does not prevent establishing the existence of those circumstances and their effects on the performance of the package.”

10. Recital 21– we are open to the idea of defining the common criteria of establishment of insolvency but would appreciate if the list of such criteria would not be given in an exhaustive way as there might also be other relevant criteria applicable for certain occasions that are foreseen in MS legislation. Therefore, we would suggest adding “for example” in front of the list of criteria:

“(21) Effectiveness of insolvency protection implies that the protection should become available as soon as, for example as a consequence of the organiser's liquidity problems, travel services are not being performed, will not be or will only partially be performed, or where service providers require travellers to pay for them.” Estonia fully supports the approach according to which insolvency is not equivalent with bankruptcy, as this would not be in the interest of travellers. In Estonia, for example, the insolvency protection covers also situation of temporary liquidity problems of the organiser. The organiser can request the initiation of insolvency proceedings (i.e., the use of the guarantee/insurance) if they declare themselves temporarily or permanently incapable of fulfilling their obligations. Additionally, if the organiser is unavailable, the proceedings can be initiated by the competent authority. (Consumer Protection and Technical Regulatory Authority) itself. Proceedings can also be initiated if the organiser’s guarantee/insurance has expired, they are unable to renew it, and they still have obligations to travellers that they are unable to fulfil. Since the exact criteria may be established differently in each Member State, we would appreciate if Member States could retain the right to design their respective systems accordingly.

11. Recital 23 – Estonia can support the new text. We would suggest minor amendment to the following sentence, so that the explanation would take into account different existing practises in MS’s:

„(23)...[...] It is appropriate to oblige organisers to notify the travellers and entities providing insolvency protection or, where applicable, also competent authorities, about their insolvency without undue delay and to provide travellers all relevant information about the mechanism of requesting refunds...[...]“

12. Article 12a paragraph 3a(b) – we have doubts whether in case of partial use of the voucher it is justified to refund the remaining part of the voucher in 14 days instead of the general deadline in case of vouchers. We see risks here that this would reduce the attractiveness of the voucher for organisers if they cannot take into account the overall validity period of the voucher and to plan their economic activity respectively. Therefore, we would prefer deleting the point (b).
13. Article 12a paragraph 8 – we propose to delete the last sentence of the paragraph 8 and leave it to the discretion of the MS civil law. Also, we believe that FR worries regarding the possible risks of money laundering should also be taken account and analysed further
14. Article 17 paragraph 1 – Estonia supports the new text and thanks PRES for the amendments made
15. Article 17 paragraphs 6a and 6b – We consider it important that MS retain the right of discretion to structure their insolvency protection systems independently in the future. Therefore, we suggest that the regulation at the directive level should not become overly restrictive and should avoid addressing details. Our proposal is to remove paragraph 6(b) and, for paragraph 6(a), to keep only the introductory sentence, which generally obliges the organisers to inform both travellers and the relevant authorities of their insolvency. We also believe that such notification should not be limited to the website but should be allowed through any other appropriate and suitable mean foreseen in MS legislation. If 6a would be deleted, also paragraph 6 should be modified accordingly (reference to point b)). We would suggest following wording:

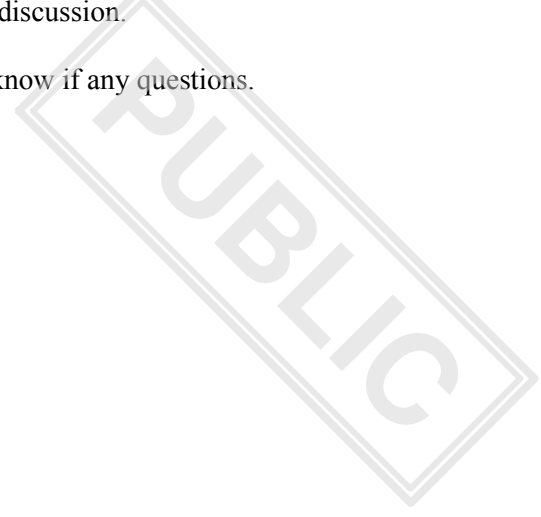
“6a. Organisers shall be obliged to inform the travellers and entities providing insolvency protection, and where applicable, also competent authorities, ~~on their website~~ about their insolvency without undue delay and to provide travellers all relevant information about the mechanism of requesting the refunds, ~~including:~~  
~~(a) the name and assistance contact of the competent entity providing insolvency protection;~~  
~~(b) the list of documents to be submitted as defined by the competent entity;~~  
~~(c) the explanation of the applicable insolvency protection mechanism of the Member State;~~  
~~(db) special instructions information for travellers who already started their package.~~”

**6b. Deleted<sup>66</sup>**

16. Art 22(3) – For us, the need to intervene in B2B relationships within this directive remains questionable; this point requires further analysis and discussion.

Thank you for considering our suggestions and please let us know if any questions.

Regards,



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

Drafting Suggestions

Germany

Germany would like to thank the Hungarian Council Presidency for the opportunity to submit text proposals in advance of the 8<sup>th</sup> Council Working Group. From Germany's point of view, the third text proposal is already moving in the right direction. However, some key points of discussion have still not been clarified. From a German perspective, the opportunity should be taken to achieve real progress in package travel law. Further discussions will be required to achieve this aim. Therefore, Germany would like to use the following submission to point out certain points in which, from Germany's view-point, amendments are particularly necessary (besides the definitions):

**1. Article 5 paragraph 4 (Pre-contractual information): This proposal stands in conjunction with Germany's remark regarding Art. 3 para 2 b v) [rejection of broadening the definition of linked online booking processes]**

- 4. In the case of a booking of at least two different types of travel services for the purpose of the same trip through linked online booking processes which are not a package in the meaning of Art. 3 para. 2 b v), the traveller must be informed by a clearly visible notice that the selected travel services do not constitute a package.**

Reasons:

Germany rejects the proposed link to any "personal data" in the case of linked booking processes according to Art. 3 para.2 b v). The definition of package travel could potentially be overly broad, thereby undermining other business models that rely on it. If an extension of the definition is intended to qualify certain booking constellations as a package travel, these constellations must first be described precisely. In addition, it must be clearly explained why it is necessary to qualify such constellations as a package travel - with all the associated factual and legal consequences. Until that, Germany is sceptical about changing the definition with regard to the linked online booking processes.

**Instead of broadening the definition of linked booking processes in Art. 3 para.2 b v), we suggest an obligation for pre-contractual information of the traveller in case a linked booking through linked booking processes does not constitute a package:** Especially in the context of click-through bookings, there is a significant risk that travellers can not clearly identify whether they are booking a package travel from one company or several travel services from different companies. From Germany's point of view, it is therefore important to create more transparency and legal certainty for consumers. Germany therefore proposes the inclusion of an explicit notice during the booking process, which must

be actively confirmed as read, stating that the selected travel services do not constitute a package travel.

2. **Article 12 paragraph 2 (Termination of the package travel contract and the right of withdrawal before the start of the package), Recital 19**

a. **Article 12 paragraph 2**

2. Notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring **at a place that has a direct connection to the organiser's contractual obligation to perform at the place of departure, ~~at the travel destination or its immediate vicinity, at the place of the traveller's residence or departure or affecting the journey to the destination~~**, where such circumstances significantly **and objectively** affect the performance of the package. The traveller may terminate the **package travel** contract where it can be reasonably expected that the performance of the package travel contract will be significantly **and objectively** affected by unavoidable and extraordinary circumstances. If the package travel contract is terminated in accordance with 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.

Reasons:

Circumstances at the place of departure should only be included if the booked package includes transport from the place of departure to the place of destination. Otherwise, in the case of package travel that do not include transport, the risk of unavoidable, extraordinary circumstances occurring at the place of departure, which is a sole risk of the traveller, would become the risk of the package organiser.

In view of these continuing uncertainties, DEU would strongly like to appeal for support for the alternative approach ahead. This ensures that unavoidable and extraordinary circumstances would only have an implication for travellers' rights if they occur at a place that is directly connected to a contractual service obligation of the organiser. Only a connection of this kind justifies a responsibility on the part of the organiser for extraordinary circumstances.

b. **Recital (19)**

- (19) Official warnings against travel to a particular destination issued by the authorities of the Member State of ~~departure or~~ traveller's residence ~~or the country of destination~~, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of residence or departure after returning from the trip or holiday, **such as quarantine requirements for a significant period**, can be elements to be taken into account in the assessment of whether a

termination of the contract is justified. Every situation needs to be assessed on a case-by-case basis. Furthermore, the absence of official travel warnings does not prevent establishing the existence of those circumstances and their effects on the performance of the package. During the Covid-19 pandemic, different interpretations emerged regarding cancellation rights due to 'unavoidable and extraordinary circumstances' including in relation to the relevance of travel warnings. It is, therefore, appropriate to specify that official travel warnings for the travel destination issued by the authorities of the Member State of the traveller's residence or departure or the country of destination, are important elements when assessing the justification of the termination of a contract. It should also be clarified that serious restrictions at the travel destination or applying after returning from the trip or holiday, such as quarantine requirements for a significant period, are also relevant when assessing the justification of the termination of a package travel contract.

Reasons:

Recital (19) still does not clarify how to deal with conflicting travel warnings. DEU therefore favours only mentioning official travel warnings issued by an authorised authority at the traveller's place of residence. Travel warnings at the place of departure and country of destination should therefore be cancelled.

### 3. Article 17 (Insolvency protection)

#### a. Article 17 paragraph 2

2. The security referred to in paragraph 1 shall be effective and shall cover reasonably foreseeable costs. It shall cover the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between the receipt of any payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency. The security shall be sufficient to cover costs for refunds and, where applicable, repatriations and vouchers, at all times. ~~The coverage security shall be sufficient to cover the risk related to an insolvency in periods when organisers hold the highest amounts of payments and shall take into account where organisers hold the highest amounts of payments and any changes in the volume of sales of packages.~~

Reasons:

In Germany's view this means a contradiction to Recital (40), which stipulates that very unlikely risks do not have to be taken into account in insolvency insurance. At times when organisers generate the highest turnover, the risk of insolvency is also very unlikely. Consequently, periods with the highest turnover should only be considered for insolvency protection if other circumstances indicate a risk of insolvency.

**b. Article 17 paragraph 6**

6. Refunds of **travellers'** payments affected by the organiser's insolvency shall be provided without undue delay ~~after the traveller's request~~ and at the latest within ~~three~~ **9 twelve** months after the traveller has submitted the **all relevant** documents necessary to examine the request ~~as specified in accordance with paragraph 6a point (b)~~. **Member States may provide for a shorter deadline for providers of insolvency protection to pay the refunds.**

**Reasons:**

Germany has serious reservations about the shortening of the reimbursement period in the event of insolvency to a maximum of nine months. Even the twelve months period contained in the penultimate text proposal are not too generous for a proper reimbursement procedure - especially in the case of major insolvencies such as the FTI insolvency. DEU therefore calls for the period for reimbursement to be set at a minimum of twelve months.

In addition to these particularly essential points already mentioned above, the following points are also of importance:

1. Recital (18a) (Termination of the package travel contract and the right of withdrawal before the start of the package)

(18a) Unavoidable and extraordinary circumstances may cover not only circumstances which make it impossible to perform a package but also circumstances which, without preventing such performance, mean that the package cannot be performed without exposing the travellers concerned to risks to their health and safety, ~~taking into account, where appropriate, personal circumstances of the travellers concerned, such as the fact of travelling with young children or of belonging to a higher-risk group.~~ The relevance of such circumstances and their effects on the package should be established objectively.

Reasons:

Purely subjective reasons on the part of the traveller must be excluded (see above).

2. Article 12a (Vouchers), Recital 16a

a. Article 12a paragraph 3a

**3a. The traveller shall be entitled to redeem the voucher partially. In that case the traveller may:**

**(a) redeem the remaining value of the voucher later during the validity period, or**

**(b) request payment of the remaining refund right, which shall be made within 14 days.**

Reasons:

DEU proposes the deletion of Article 12a paragraph 3a (b) and the related consequential provisions in paragraphs 4a and 7. The regulation would otherwise mean that the travel provider cannot reliably plan with the traveller's decision to use a voucher. The traveller could use the voucher at any time to pay for or partially pay for a very cheap service and thus causes the due date for the final payment. Consequently, different due date regulations would apply for the refund of the total travel price without using the voucher compared to the refund of the partial travel price after using the voucher for a (cheaper) trip.

b. Article 12a paragraph 8

8. Vouchers shall be transferable to another traveller without any additional cost. ~~The traveller to whom a voucher is transferred shall inform the organiser who issued the voucher of the transfer and provide their personal data necessary for the redemption of the voucher or any refund.~~

Reasons:

Travel companies will have to ensure that a voucher is only used once by the particular authorised person. Also, the regulation does not specify the consequences if the new voucher holder does not comply with the obligation to notify the company.

c. Recital 16a

- (16a) On grounds of legal certainty there should be rules on the validity period of vouchers and its possible extension. It is also appropriate to lay down that, during the validity period of the voucher, the traveller's right to a refund is suspended and to specify the instances where such suspension ends and the traveller regains their refund right. Organisers may make vouchers more attractive, for example, by increasing the amount of the voucher compared to the traveller's refund right. In such cases, insolvency protection should be limited to the amount of payments received from the traveller's refund right. The amount of the refund right shall be equivalent to the amount originally paid for the travel package by the traveller to the organiser. Since vouchers have a specific monetary value, it is appropriate to lay down that they may be used for any service offered by the organiser, they may be redeemed in parts and are transferable without any additional costs. ~~Transferees should inform the organiser on their identity, so that they can redeem the voucher or receive any refund when the voucher has not been redeemed.~~

Reasons:

See above.

2. Article 17 (Insolvency protection), Recital 21a. Article 17 paragraph 6a

- 6a. Organisers shall be obliged to inform the travellers on their website in an appropriate manner about their insolvency without undue delay ~~and to provide all relevant information about the mechanism of requesting the refunds, including:~~
- ~~(a) the name and assistance contact of the competent entity providing insolvency protection;~~
  - ~~(b) the list of documents to be submitted as defined by the competent entity;~~

~~(c) the explanation of the applicable insolvency protection mechanism of the Member State;~~

~~(db) special instructions information for travellers who already started their package.~~

Reasons:

An obligation to provide information exclusively via the organiser's website is not appropriate and is therefore rejected by DEU. After all, there are mainly smaller companies that do not have a website. Instead, DEU believes that "website" should be replaced by "in an appropriate manner".

Furthermore, due to the different insolvency protection systems, the Member States should be able to decide for themselves how travellers are informed in detail about the reimbursement procedure. The remaining text proposal on Article 17(6a) of the draft directive is therefore rejected.

b. Article 17 paragraph 6b

~~6b. — After becoming aware of the organizer's insolvency, the entity responsible for insolvency protection shall be obliged to publish the following information on its website without undue delay: (a) the fact of the organiser's insolvency; (b) the list of documents to be submitted for the traveller's claim; (c) information for travellers who already started their package.~~

Reasons:

See above.

c. Recital 21

- (21) ~~Effectiveness of insolvency protection implies that the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed, will not be or will only partially be performed, or where service providers require travellers to pay for them. Furthermore,~~ in order to ensure effective and uniform protection of travellers and a level playing field for organisers it should be provided that the insolvency protection of organisers covers all payments made by or on behalf of travellers in the event of the organiser's insolvency, including ~~cases where a package is not performed in full or in part as a consequence of the organiser's insolvency and cases~~ where a traveller was entitled to a refund, ~~including due to a price reduction,~~ or had received a voucher from the organiser before its insolvency.

Reasons:

From Germany's point of view, it is unclear why the aforementioned new regulation should be included. According to statements made by the Commission at the last Council Working Group, this passage is already included in Recital (39) of the current Package Travel Directive. From Germany's point of view, a new provision in the revised Directive is therefore not necessary.

**SK comments on the 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 – documents ST 9562/24 REV3 and 9562/24 REV3 COR1**

**Article 3 – LTAs**

We support option A.

**Article 12 (2)**

We believe that the reference to the place of departure should only be taken into account where the package organiser arranges for the traveller to be transported from the place of departure. If the package does not include transport, the responsibility for unavoidable and extraordinary circumstances occurring at the place of departure should lie with the traveller. Taking into account the place of departure even in cases where transport is not included in the package would be an inappropriate transfer of risk to the organiser.

We therefore suggest that the reference to the place of departure should be retained only in situations where the organiser is responsible for the transport and therefore has a direct contractual obligation.

**Article 17 (6a) and (6b)**

We support the deletion of paragraph 6a from the draft directive as we consider this obligation to be problematic and difficult to enforce. Organisers who become insolvent cease to carry out any business activities and often stop communicating. The obligation to inform travellers would therefore be practically impossible to fulfil, as the organiser often no longer has the ability or competence to fulfil this obligation. We also draw attention to the fact that in Slovakia there is no legal obligation for the organiser to set up a website.

We therefore suggest that the obligation to inform travellers should be transferred to the insolvency protection provider as set out in paragraph 6b. This entity is in a much better position to ensure that travellers are informed and that this obligation is effectively fulfilled.

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

**Presidency text proposal – WK 9562/3/24**

**REV 3**

**PT written comments – October 2024**

- **Recital 18a**

Regarding the changes made to this recital, it should be noted that the final part, which has now been added, is unclear. The final part states that *“the relevance of such circumstances and their effects on the package should be established objectively”*. Given the context, the question arises as to what the PRES intends to establish when it says that the circumstances and their effects must be established objectively, i.e. who is this statement referring to/who will be responsible for objectively establishing the circumstances and their effects.

- **Recital 23**

Regarding the amendment made to recital 23, it is worth noting that the sentence now added to the recital may raise questions of interpretation. In fact, for the traveler to be able to exercise their right to reimbursement under the insolvency protection mechanism, the travel agency must be insolvent, and this must be decreed by the court. **We therefore ask to what extent the period established for the reimbursement of amounts can be independent of insolvency proceedings, or rather of which proceedings.**

- **Article 5a**

In principle PT is in favour of a provision establishing a limitation on prepayments, something it has previously advocated. In fact, PT agrees with the view that limiting advance payments could have the advantage of limiting the risk of financial losses for consumers, while at the same time reducing the difficulties in finding insurers willing to operate in the sector, a circumstance that is pointed out as problematic by the industry.

Nevertheless, and in what regards COM's proposal, we believe that the wording initially proposed by COM raised doubts, namely regarding the 25% limit and the cases in which a higher percentage payment could be required, as well as the possibility of instalment plans, by agreement between the consumer and the travel agency.

In this sense, and in the case of a Council's majority in favor of eliminating the rule, **PT could show flexibility, without prejudice to the possibility of resuming this discussion during the negotiations with the EP.**

Finally, however, it should be noted that one of the meetings of working group revealed that **some delegations already have rules on the limitation of prepayments, so if this provision is deleted, the recitals should at least include the possibility for each MS to legislate to establish limitations on prepayments.**

- **Article 12**

Regarding the changes made to Article 12(2), PT has some reservations about the introduction of the word "*objectively*".

In fact, **PT believes no added value can be identified in the introduction of yet another indeterminate concept, which is not included and explained in the recitals.**

Regarding **paragraph 3a**, now deleted, although PT is not opposed to moving the reference to warnings to the recitals, **we prefer to keep it in the operative part of the text.**

- **Article 12a**

PT reiterates its understanding regarding the maintenance in paragraph 2 of the reference to the **need to transmit the information before accepting the voucher**, as proposed in the following drafting suggestion:

~~Before the traveller accepts the~~ **When offering a voucher, and before the traveller accepts it, to the traveller,** the organiser shall inform the traveller clearly and prominently in writing **on a durable medium** about: (...)

- **Article 17**

Regarding the changes made to Article 17, PT supports the direction the text is taking and believes the changes made generally contribute to improving the text.

However, in what regards paragraph 6a, and in line with the suggestions made by DE in the last working party meeting, we believe that the obligation to inform consumers about the insolvency of the organizer shouldn't be limited to the website of the organizer. It

should be possible to inform consumers through other means that may be more appropriate. Therefore, we suggest the following text:

*Organisers shall be obliged to inform the travellers on their website, **or by other appropriate means**, about their insolvency without undue delay and to provide all relevant information about the mechanism of requesting the refunds, including: (...)*

**Lisboa, October 2024**

### *Comments from Poland.*

*Dear Presidency,*

With respect to your message and fruitful discussions we had lastly at the WP, please kindly find PL concern to the compromise text of 23.09.24 and PL position presented at the G.23 meeting on 15.10.24:

1) Having considered that there are 900 LTA entities operating currently in PL we would highly appreciate a resolution on possible repeal of the provisions on the definition of the Linked Travel Arrangements (LTA) as well as highly foreseen inclusion to the draft of an adequate period for the adaptation of national legislation.

2) In the event that it will be decided to keep LTA in the directive, PL would highly appreciate kind explanation that changes related to its functioning will be of minimal harmonization.

3) With respect to voucher regulations, PL is very much foreseeing to develop them as similar as possible to those already existing in PL, and being introduced during the COVID period. PL experience in this field turned out to be very preventive to the insolvency of tour operators, and granted the travellers of completing their travel later (i.e. post COVID period).

4) In this context PL looks very much to consider a voucher as an extraordinary measure, being a tourist event and not a single service. A voucher in the legal sense is de facto an addendum to the original travel event contract thus it should fulfil the conditions on the content and mandatory elements of the contract that the current PTD provides for. However it should also consider possible modifications to allow the original participation agreement not to be terminated (e.i. the addendum will relate to a new date of the travel).

5) With respect to regulations on deadlines for reimbursement in case of tour operators` insolvency, and to ensure the highest protection of the travellers, PL would appreciate very much of keeping the regulations already existing in PL law, namely a deadline for reimbursement of min. 30 days and max. 90 days, and being a part of minimum harmonization (in PL law the prompt reimbursement to travellers depends only on the submission of a declaration of insolvency by the tour operator to the Registration Authority and the recognition of the application by the insurer. This allows the short significantly the deadlines also because the entire process of handling payments to travellers is carried through a dedicated IT system, simplifying and accelerating the payment process). We are consent very much of different systems on reimbursements in other MSs therefore we would appreciate very much accepting our point.

Dear Presidency,

Thanking you again for kind cooperation we would appreciate very much your kind consideration of the presented.

With kindest regards,

**PL Team**

The Netherlands would like to make the following points:

### Article 3

- The Netherlands is in favour of **removing the LTA's** from the directive.
  - In practice, it is very hard to determine whether a LTA has been purchased. The first trader is in the most cases not aware of the purchase of the second travel service, because of lack of technical resources or exchanging personal data between traders is not possible, because of the rules of the GDPR.
  - The consumer that books a LTA does not face the same risks as a consumer that books a package. The traveler does not have to deal with one party acting for other parties, and (advance) payments will be made directly to the various service providers. The chance of negative effects in the event of insolvency is therefore smaller.

### article 12a

- The Netherlands suggests to explain in the recitals what the meaning is of "explicitly" in article 12a and that this means that is **not possible to inform the consumers about the vouchers** via the **terms of reference**.
- The Netherlands suggests **to remove the option of transferability or to regulate that a voucher can only be transferred once.**
  - We foresee practical problems with imposing an obligation to make vouchers transferable. For example, changing the name of a ticket leads to additional costs, and it is unclear which party has to pay this costs.
  - With transferability there is a risk that vouchers will become a business model. To avoid that, we should require that a voucher can only be transferred once and that a voucher can only be transferred to a natural person, individual consumer.

### Article 17, 6a

- The Netherlands is not in favour of an **obligation for travel organisations to notify consumers in case of insolvency.**
  - In The Netherlands it is impossible to obligate an organisor to inform the consumer about their insolvency, because from the moment an organisor becomes insolvent, it loses access to its administrative data.