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CONTRIBUTION

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

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Subject: Package Travel Directive - Table with updated Member States comments - DE note.

Delegations will find attached a note from the German delegation with additional comments on Package Travel Directive.

Revision of the Package Travel Directive

Accompanying document to the 3-column document prepared by the Belgian Council Presidency

Position of Germany as at 22/04/24

Germany would like to thank the Belgian Council Presidency for the opportunity to comment in writing on the entire contents of the Directive proposal using the 3-column document.

To begin with, Germany would like to reiterate that it generally supports the proposal's objectives of making the protection of travellers more effective and of simplifying and clarifying certain aspects of the Package Travel Directive. Unfortunately, there are several areas in which the Commission's proposal does not yet satisfy these overarching objectives. In addition to the comments made in the 3-column document, Germany would therefore like to use the following submission to point out certain areas in which, from Germany's viewpoint, amendments are particularly necessary:

1. Modification of the definitions of 'package' and 'linked travel arrangements', new Article 3 of the draft Directive

In principle, Germany welcomes the Commission's basic objective of clarifying and simplifying the terms used in package travel legislation. However, care must be taken to find solutions that are reasonable for traders and travellers alike. As things currently stand, the Commission's proposal falls short in this respect. Germany sees a considerable need for amendment in respect of the proposed changes in definition.

The new Article 3(2) sentence 1 (b)(i) of the draft Directive:

Germany rejects the proposed modification of the definition of 'package' in Article 3(2) sentence 1 (b)(i) of the draft Directive. This modified definition means that in future, the booking of various individual travel services will be regarded as the booking of a package if the individual travel services are booked within a 3-hour period or, under certain further conditions, within a 24-hour period. As a result, the proposal has the effect of significantly and inappropriately expanding the concept of a 'package'.

A 'package' is a special product whose core element is the bundling of different travel services by an organiser. The current legislative framework for package travel is based on the idea that the person who bundles the travel services should also bear responsibility for the package's implementation. The Commission's proposal goes far beyond this spirit and purpose because in future, separate bookings of different individual services at one point of sale will be treated as a package if they are made within a 3-hour period or, under certain further conditions, within a 24-hour period. This extends the Directive's scope to cases that clearly do not fall under the basic idea of the current package travel legislation – namely the organisation and bundling of travel services by an organiser – and for which the special protection afforded to travellers would be inappropriate.

This expansion of the definition would likely have a significant impact on booking behaviour and would restrict business practices in the travel industry. The German travel industry fears that the SMEs which largely dominate the over-the-counter segment in Germany would not

generally be able to afford liability as organisers; furthermore, the technical and bureaucratic hurdles would dramatically increase. Overall, Germany believes that offering and booking individual travel services must remain a possible and viable option, without automatically resulting in the creation of a package on the sole basis of a given period of 3 or 24 hours.

The new Article 3(2) sentence 1 (b)(v) of the draft Directive:

Germany supports the basic idea of developing a legislative framework for linked online booking processes that is reasonable for traders and travellers alike. That said, care must be taken to ensure that the separate booking of different travel services remains a viable option when booking online. This is equally applicable to directly sold and 'facilitated' travel services.

As it currently stands, the Commission's proposal falls short in this respect. If different travel services are booked at different times and no temporal connection is required between them, there is no unifying element strong enough to justify regarding the individual bookings as a package. The ensuing practical and legal problems and other uncertainties in practice are almost impossible to estimate. For example: if a traveller books a rental car six months after booking a flight, should this really result in the flight booking and the car booking subsequently being defined as a package? What would be the approach to information requirements in such cases, and how would insolvency protection be guaranteed? In light of these issues and in order to ensure appropriate outcomes, the criterion of 24 hours should therefore absolutely be retained.

For those cases where it is unclear to travellers when booking several different travel services online (e.g. flight, hotel and car rental) whether they have concluded several different contracts or have booked a package with the associated protection, specific modifications may be worthwhile in order to eliminate this legal uncertainty. In Germany's view, however, this can better be achieved using clearly visible information and explanations than by expanding the scope of the Package Travel Directive.

The new Article 3(5) of the draft Directive:

Based on the Commission's proposal, regulatory components of 'linked travel arrangements' are supposed to become part of the definition of a 'package'. But in Germany's view, this would not make it any easier to apply the terms. Rather, it would only serve to shift the application problems from the definition of a 'linked travel arrangement' to the definition of a 'package', thereby making the definition of a 'package' even more complex.

In Germany's view, practitioners have grown accustomed to applying the currently applicable definition of 'linked travel arrangements' – a term which, despite being unwieldy, nonetheless does justice to the interests involved. Since Germany rejects the proposed expansion of the definition of 'package', the appropriate step would be to retain the existing definition of 'linked travel arrangements'.

Furthermore, since the proposed Directive would mean that pure retailers of travel services no longer fall within the scope of 'linked travel arrangements', the remaining applicable cases would be very limited.

2. Expansion of the traveller's right of withdrawal in unavoidable and extraordinary circumstances, new Article 12(2) and Article 12(3a) of the draft Directive

Germany rejects the proposed introduction of a free cancellation option in the event of unavoidable and extraordinary circumstances occurring at the place of the traveller's residence, as set out in the new Article 12(2) of the draft Directive. If the place of residence is not the same as the place of departure, there is no contractual linking factor that could establish the organiser's liability for the traveller's general life risks. For example, the proposed Directive does not provide for an appropriate outcome in cases where unavoidable and extraordinary circumstances occur at the traveller's place of residence but where the traveller starts their trip from a place other than their place of residence. In such cases, making the organiser liable for the traveller's general life risks would be clearly excessive.

Furthermore, the link to the 'place of departure' seems rather intangible and raises further uncertainties. (Does it mean the specific place from which the traveller actually leaves for their trip? Is the place of departure connected with the use of means transport and is therefore to be considered as synonymous with the place from which their flight, train, bus, etc. departs? Would this also apply if the package in question did not itself include the means of transport, for example because the traveller booked the journey to the destination separately?) In Germany's view, unavoidable and extraordinary circumstances should generally only have implications for a traveller's termination rights if they occur at a place that is directly connected to a contractual service obligation of the organiser. A further point to reconsider in Germany's view would then be whether risks occurring at the place of departure should also always be borne in full by the organiser.

Moreover, in the interests of legal certainty, Article 12(3a) of the draft Directive should only cover travel warnings issued by the authorities at the traveller's place of residence. Otherwise, there is a risk of considerable legal uncertainty in the event of contradictory travel warnings in different countries.

3. Modification of the provisions on insolvency protection, new Article 17(6) of the draft Directive

Germany understands the approach taken in the new Article 17 of the draft Directive, which aims to tighten the provisions on insolvency protection. That said, the details still require further discussion and clarification. However, Germany has considerable concerns about the new Article 17(6) of the draft Directive and its proposed introduction of a fixed deadline of three months for refunds in the event of insolvency – a provision which seems impracticable in view of insolvency cases in Germany. Germany is therefore in favour of deleting the refund deadline without replacement.

In addition, Member States must be given the necessary flexibility in implementation; the national budgetary sovereignty of the Member States must not be restricted.

Germany reserves the right to make additional comments on the draft Directive over the further course of the negotiations.