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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

Subject: Package Travel Directive - Member States comments on the Presidency text proposals (document ST 9562 /24)

Delegations will find attached the Member States comments on the above-mentioned document.

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Written 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

Austria would like to thank the Belgian Council Presidency for the opportunity to comment in writing on the partial presidency compromise proposal as well as other aspects of the revised package travel directive. Kindly understand these written comments as an addition to our previous comments in the 3-column-tables and the questionnaire.

Article 3 – Definition of Package and LTA

Austria rejects the proposed amendments to the definition of a ‘package’ in Art. 3 (2) (b)(i) 2nd and 3rd indent and suggests better and EU-wide standardised information obligations that are short, easy-to-read and eye-catching. They should inform a traveller beforehand whether a package will be concluded or not and which rights are associated with it.

The Austrian economy foresees the most serious problems with the newly proposed definition of a ‘package’ in practice. There is a risk that the 3 or 24 hour provisions in Art. 3(2)(b)(i) 2nd and 3rd indent will lead to great legal uncertainty for companies, especially if a traveller chooses different communication channels for contacting a company (e.g. online shop and telephone). In the case of phone communication, in particular, it will be difficult to determine when exactly a call had taken place – even more so in the event of evidence proceedings. It would also be hard to differentiate between Art. 3(2)(b)(i) 3rd indent and Art. 3(5).

Travellers should be able to make an informed decision before booking and be able to decide consciously for or against concluding a package or LTA. Clear provisions on short, easy-to-read, eye-catching, and EU-wide standardised information obligations that have to be fulfilled immediately prior to booking a trip would achieve this objective. The traveller could have to, for example, explicitly confirm that he has been informed about a package being concluded or not being concluded.

Austria would like to maintain Linked Travel Arrangements in their current form.

The proposed amendments to Art. 3 would lead to the abolition of linked travel arrangements altogether with an increase in costs for European companies because services such as higher liability risk and insolvency protection would rise. Companies would pass these higher costs on to consumers. The supply would reduce massively, because only 16,000 of approximately 6 million

global accommodation options are under contract with tour operators. Without the possibility of booking linked travel arrangements, consumers would likely resort to offers from third countries without proper consultation with a travel agency. This would distort the international market at the expense of European companies.

The demand for individually compiled travel arrangements within the framework of linked travel arrangements is particularly strong in Austria, which is why the maintaining of linked travel arrangements is of special importance to Austria.

For consumers linked travel arrangements offer additional value due to information obligations and insolvency protection.

Therefore, Austria also needs to reject the proposals to delete linked travel arrangements, as proposed by several Member States.

Article 5a – Payments

Austria proposes the deletion of Art. 5a.

Austria has national down payment restrictions, which are clear and work very well, especially in the context of insolvency protection. The proposed Art. 5a would lead to a significant deterioration of the existing level of protection for Austrian consumers and would create great legal uncertainty for consumers as well as businesses.

The exemption, where the retailer may request higher down payments, is too vague and will most likely lead to legal issues and judicial proceedings. The absence of an absolute time limit for down payments – Austria prohibits payments earlier than 11 months before the end of the trip – will lead to a significant increase in payments to be covered by insolvency protection. Therefore, the insolvency risk to be covered would rise significantly, jeopardising the existing insolvency protection system in Austria.

Article 12 – Termination in the event of unavoidable and extraordinary circumstances

In the last working party meetings Com and the Presidency stated, that the intent was to transpose ECJ case law into a regulation. The current **Presidency Proposal** seems to have a much wider scope of application, because the Article itself does not refer to any place at all. It will be up to the courts to decide on a case-by-case basis, which circumstances will enable travellers to terminate the contract without paying any termination fee, which Austrian stakeholders for consumer protection welcome. The Austrian economy fears an unacceptable increase in terminations due to unavoidable and extraordinary circumstances with a rule that is based solely on a case-by-case basis without any

geographical reference points in the Article itself. Moreover, the Austrian economy doubts that the proposal (together with recital 18a, which mentions travelling with children) stays within the current case law and worries about a lack of predictability.

In Art. 12 (4) of the **Presidency Proposal** 'premiums paid in respect of the already insured period before the termination of the package travel contract' are mentioned as a possibility for the organiser to ask for an appropriate and justifiable termination fee. Recital 20 does not clarify the Article, but rather uses a similar phrasing ('insurance cover already enjoyed by the traveller'). In the last working party meeting on May 16th, 2024 the Presidency explained, this provision was supposed to include only travel insurance sold as part of a package. The aim was to prevent organisers from having to reimburse travel insurance premiums. However, the provision is quite complicated and it is left to interpretation, which insurance falls within its scope. Clearly, travel insurance is no travel service under the PTD and the organiser usually acts as an insurance agent. Because of various implications, travel insurance contracts and possible refund rights concerning them should not be part of the PTD. Not only is the 'already insured period' a relevant factor for the maturity of the insurance premium, but also the purpose of the insurance contract. There might also be cases where travellers can claim damages against the organiser because they sold a package knowing that the trip could not take place – which according to Austrian stakeholders for consumer protection occasionally happened during the Covid-19 pandemic. If organisers sell packages at an inclusive price, it might also be hard to determine an appropriate price for the travel insurance. To be brief, the mentioning of (travel) insurance in Art. 12 (4) leads to legal uncertainty and difficult implications with insurance law.

Austria supports the deletion of the 'co-financing of such mechanisms by Member States' in Art. 12 (4) of the **Presidency Proposal** as it only refers to the Union State aid provisions already in place and has no stand-alone signification.

Article 12a – Vouchers

Austrian stakeholders for consumer protection welcome the increase of information obligations in Art. 12a of the **Presidency Proposal** and the possibility of redeeming vouchers for all types of travel services, instead of only for packages. That according to Art. 12a (4) the traveller's right to a refund, when accepting a voucher, will only be suspended, if they have received all the information referred to in Art. 12a (2), is very important to them. They ask that it be ensured that organisers cannot fulfil their information obligations by providing their general terms and conditions.

The Austrian economy remains extremely sceptical. It considers the provisions on vouchers to be inapplicable because of the immense administration efforts coming with them and does not see any financial relief for SME.

The further clarifications in Art. 12a are welcomed.

Article 17 – Effectiveness and scope of insolvency protection

Regarding paragraph 1:

The addition of ‘including price reduction’ needs to be examined more closely. The aim of the insolvency protection is that travellers get their actually made payments back in a short period of time, if the package is not performed. The right to a price reduction arises after the start of the package and includes not only partial non-fulfilment, but also poor fulfilment of a contractual obligation. These claims are often disputed and it is often difficult to assess whether a lack of conformity actually existed and to what extent the price reduction is justified which is why there is a fear of insolvency protection payments being delayed as such because this task could be a major challenge for insolvency protection providers. Therefore, we would ask the Presidency to explain in more detail which cases are being considered with “including price reduction”. Furthermore, we ask for a detailed clarification whether, according to the currently applicable directive, price reduction claims due to a lack of conformity of the package travel are already covered by insolvency protection.

Regarding paragraph 2:

Austria’s insolvency protection system actually covers the risk of insolvency in periods when organisers hold the highest amounts of payments as proposed in the revised directive (Art. 17 (2)). If the organiser has peaks of sales, the insurance sum for the whole year has to be at least 50 % of the turnover of the month with the highest turnover.

Article 22/23 (3a) – Refund right of organisers

In Art. 23 (3a) of the **Presidency Proposal** an imperative nature of the B2B refund right is introduced. In the last working party meeting on May 16th, 2024 the Presidency mentioned that the 7-day period will have to be discussed at a later stage to ensure accordance with other EU regulations (e.g. multimodal travel and air-passenger rights). From a traveller’s perspective any ensuring of their refund right is highly welcomed. However, Austria would like to emphasise that – according to the Austrian economy – the 7-day period is far too short in a B2B context and there are concerns about the practical enforceability.



23/05/2024

REVISION OF THE PACKAGE TRAVEL DIRECTIVE

SPANISH COMMENTS

Spain would like to thank the Belgian Presidency for the opportunity to send written comments and for all their work regarding the proposal for a Directive amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive (Package Travel Directive).

Spain generally supports the Commission's original proposal and its objectives of making the protection of travellers more effective and of simplifying certain aspects of the Directive. We would also like to state that we see the compromise proposal discussed in the last WP meeting going in the right direction.

Taking into account the ongoing discussion between the MMSS delegations, we would like to underline the key elements of the proposal to us:

1. Definitions (art. 3)

We have expressed our support to the Commission's proposal on this matter, since we agree with the principle underlying the definition of package, which involves a close link between different travel services booked for the purpose of the same trip or holiday. There are situations in which the traders circumvent the formation of a package where it should be considered as one and this issue has to be addressed.

On the other hand, we would like to keep the definition of linked travel arrangements proposed by the Commission.

It is worth recalling that the modification of the definition of package is linked to the simplification of the definition of LTA and intends to remove the current grey zone or circumvention potential between packages and LTAs type (a). At the same time, the criterion of a single visit or contact would be replaced with a specification of a short time window within which the transactions are concluded. This would introduce greater legal certainty, as it should not be difficult to record compliance with the different time limits. According to the impact assessment, many stakeholders were in favour of such simplification.

Even though we still have some doubts about how the proposed amendment would work in practice and about the measures needed to effectively demonstrate compliance with the time limits, **we would regret it if no changes were introduced on the current PTD definitions in order to solve this issue.**



2. Payments (art. 5a)

Spain fully supports the introduction of a new provision on advance payments, but we consider that the current proposal has two weaknesses:

The 25% limit might be too low in several cases, as shown by the data collected in the impact analysis.

On the other hand, the formula "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" is too vague and in practice could lead to the organiser/trader requesting higher downpayments in any case.

Therefore, in order to ensure greater legal certainty and smoother functioning of the market, **we propose to raise the limit to 40% and, at the same time, to introduce an additional justification and information requirement for cases where it needs to be extended.** Hence, we propose the following wording:

*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 **2540%** 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, **provided that this necessity is duly justified and the traveller is informed thereof.***

Recital 13 should be amended accordingly.

3. Official warnings (art. 12.3a)

Spain is in favour of inserting in the Directive a reference to the possibility of taking into account official travel warnings. We support the Commission proposal as we agree that official warnings should indeed be one of the elements to be taken into account on a case-by-case basis when assessing whether a termination of the contract based on paragraph 2 and paragraph 3, point (b), is justified. We could also accept a change to limit this official warnings to those issued by the authorities of the Member State of the traveller's residence. To address some of the concerns raised about the possible liability of Member States, it could be clarified that there is no automatic link between travel warnings and cancellation rights. In that case, recital 19 should be amended accordingly.



4. Refunds of payments (art. 17.6)

Spain fully supports introducing a time limit for the refunds of payments affected by the organiser's insolvency. The current Directive, which states that "refunds shall be provided without undue delay after the traveller's request", lacks precision and therefore doesn't provide for enough protection for travellers.

We also understand that there are some concerns about the proposed time limit. Therefore, we could admit raising it up to a maximum of six months in some cases as long as this raise is justified. Hence, we propose an addition stating that refunds of payments could be provided at the latest within six months due to justified circumstances which are unconnected to the organiser. In that case, recital 23 should be amended accordingly.

5. Other modifications to take into account:

5.1. Termination of the contract (art. 12.2)

On one hand, for the sake of legal certainty, the reference to unavoidable and extraordinary circumstances should be better clarified in article 12.2 and recital 18a. We also believe that the added drafting in recital 18 regarding the assessment to be made from the perspective of an average traveller is confusing and can be detrimental to consumer protection, and therefore it should be modified.

On the other hand, we would like to bring into the discussion the fact that the opinion of the EESC and also the consumer associations (through BEUC) have highlighted the need to set a timeframe before departure (30 days and until the start of the journey), during which during which the trader must in any case accept that consumers can terminate their package travel contract at no cost in the event of "unavoidable and extraordinary circumstances". In the current text we find that "the traveller shall have the right to terminate the travel package contract before the start of the package". This change would avoid traders invoking the argument that consumers' cancellation is "too early" to apply cancellation fees. Beyond this time threshold, analysis should be carried out on a case-by-case basis.

We would welcome other delegations' opinion regarding this issue.

5.2. Second level of protection (art. 17.3)

Spain would prefer to keep the reference to a second level of protection in the provision, as proposed by the Commission.

24.5.2024

Working Party on Consumer Protection and Information

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

FI comments on Precidency partial text proposal (9562/24)

Termination of the package travel contract and the right of withdrawal before the start of the package: article 12, para 2 and 4 and recitals 18, 18a and 20

We support the wording in Article 12 (2) and recitals 18 and 18 a.

However we consider that issues related to travel insurance or other types of financial services such as credit used to finance travel, should not be regulated in the Package Travel Directive. We understand that package travel organisers in some Member States acts as insurance intermediaries or as ancillary insurance intermediaries, but even in this is case the insurance contract is not part of the package travel contract. Therefore the question of refund of insurance premiums should not be regulated in this Directive.

We also propose that the concept of “*appropriate and justifiable termination fee*” is clarified in recital 20 as these fees are sometimes very high.

We would amend the PCY 's proposal as follows:

Article 12

'4. The organiser shall provide any refunds required under paragraphs 1 to 3. Where applicable, the organiser may subtract an appropriate and justifiable termination fee as referred to in paragraph 1. 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.

Recital 20

*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. The organiser should reimburse all payments made by or on behalf of the traveller for the package. It is also appropriate to specify that organisers may subtract where applicable, any appropriate and justifiable termination fee. **The termination fee should correspond to the costs incurred by the organiser as a result of the termination if the package travel contract is terminated well before the start of the package. In such case it is probable that the package will be sold to another passenger.***

Vouchers: article 12a and recital 16

We mainly support article 12 a.

Instead of providing that the organiser shall refund the amount paid by the traveller, Article 12 a (7) should indicate that the organiser shall refund the amount which the traveller is entitled to in accordance with Articles 10, 11 and 12. If the voucher is only partially redeemed during its validity period, the organiser shall refund the remaining part of the amount.

Effectiveness of insolvency protection: article 17, para 1-3 and recitals 21 and 22

We emphasise that in paragraph 6 the three months period to refund payments is far too short. Experience has shown that this cannot be achieved in most cases. We therefore suggest the following text:

6. Refunds of payments affected by the organiser's insolvency shall be provided without undue delay after the traveller's request and at the latest within three months after the traveller has submitted the documents necessary to examine the request.

Imperative nature of the Directive: article 23, para 3a

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.

The travel package Directive applies to the rights and obligations related to a contractual relationship between a consumer as a passenger and a trader offering travel packages. It should not impose obligations on matters related to a contractual relationship between two entrepreneurs. Therefore, Article 22 of the Directive should not include the new paragraph 2 of the Commission proposal. Nor should a new paragraph 3a be added to Article 23 of the Directive.

SI written comments on the Presidency compromise proposal (doc. 9562/24)

We would like to thank the PRE for the preparation of the first compromise proposal in which also our suggestions were considered. We believe that the proposed amendments go in the right direction, but some further clarifications are still needed to ensure legal certainty.

Article 5a (Payments)

SI believes that Article 5a needs some improvements and further clarifications.

Since the partial compromise text of the PRE did not interfere with Article 5a of the COM proposal, we generally maintain the same position. We are aware that certain organisers and agents, which are SMEs, are often unable to organize tourist packages without an advance downpayment from consumers, as they do not have sufficient funds to be able to reserve the sums for all the necessary costs in advance. On the other hand, the exception is very broadly defined and open to abuse against the consumer. The limitation to the advance payment of 25% of the price should also apply to the relationship between providers of tourist services and organizers or agents of tourist packages, otherwise it will be difficult to avoid paying higher downpayments.

SI would like to additionally point out that the draft directive does not define sufficiently the criteria how or in what way will the organizers or travel agents determine that is necessary to demand higher downpayments to ensure the organisation and the performance of the package. If such exemptions in favour of the organizers shall exist, it needs to be transparent and information of the fulfilment of the criteria for the request for a higher downpayment must be disclosed to the consumer in due time (for example before the conclusion of the package travel contract).

The information justifying the request for a higher downpayments must be made available to supervision authorities for inspection.

Based on the discussions so far, we join the Member States, which raised the question of whether the limitation of advance payments could interfere with the possibility of paying in instalments. We also agree with the position expressed by the COM at the last session that this issue should be discussed, and we ask the PRE to analyse this issue in detail. If necessary, the Council Legal Service should also examine the legal aspect of this issue. If it is determined that there may be an unwanted interference with the existing method of paying in instalments, which is also common in SI, we suggest that an exception is provided in the article or at least in the recital. For example: "The provision of Article 5a does not apply when the traveller and the organiser or, where applicable, the retailer, at the express request of the traveller, agree on payment in instalments."

Article 12(2) (Termination of the package travel contract and the right of withdrawal before the start of the package) and recitals 18, 18a and 20.

We support more detailed explanation on what can constitute "unavoidable and extraordinary circumstances" within the meaning of the recent case law of the Court of Justice of the EU.

We believe there is no significant difference whether the provisions "extraordinary circumstances occurring 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" are in the article or in the recital since the provision does not establish an obligation to comply with official

warnings. We suggest that the Council Legal Service explains what the difference is if the warning is in the article instead of in the recital.

Article 12(3a) (Termination of the package travel contract and the right of withdrawal before the start of the package)

Since the compromise text of the PRE did not interfere with Article 12(3a), we generally maintain the same position as on the draft proposal. In general SI does not oppose the purpose of the article which sets out reference to official travel warnings in Article 12(3a).

But as already provided in our previous comments we believe that proposed text still lacks legal certainty. First, it should be better defined whether all official warnings or only travel bans should be taken into account, as most official warnings are only formulated as advice and warnings.

In addition, it is also necessary to clarify how to prevent unequal treatment resulting from a non-uniform assessment of the situation in a region, place, or country. In practice, the assessments differ, which puts both organizers and passengers in an unequal position. Also, official warnings in Member States vary greatly in practice, so the diction that hints at an "important element of assessment" is vague. In addition, the official bodies of the country either bear or do not bear material responsibility for the issued warning, which is also not negligible. Does an important element have more value than other relevant elements included in the assessment by law or does important mean that these elements should be taken into account if they exist, without any predefined value.

SI may provide additional explanations or proposals on the text of this article after the consultation with stakeholders is completed.

Article 12(4) (Termination of the package travel contract and the right of withdrawal before the start of the package)

SI agrees that the reference to state aid rules has been deleted.

Article 12a (Vouchers)

SI supports amendment.

Article 17 (Effectiveness and scope of insolvency protection)

SI can be flexible regarding changes.

Article 22 (Right of redress and refund rights of organisers)

SI can be flexible regarding changes.

Article 26 (Reporting by the Commission and review)

SI supports the amendment.

Estonia

We would like to send some of the recommendations regarding the partial compromise text (doc. 9562/24) that we shared orally last time, also in writing for your further consideration.

Article 12 and recitals 18-18a.

In our opinion, the changes are moving in the right direction, and it is positive that references to the place of residence have been omitted from the text. However, we suggest a small addition to recital 18a: „*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, which is known to the organiser...*“. Although the aim here has been to complement the provisions with the ECJ case-law, we are concerned that the organiser's responsibility may extend too far and fall outside their area of responsibility. Thus we suggest a more balanced solution for organiser here. The idea is that the organiser should be able to rely on the information provided by the traveller in advance, during the conclusion of the contract. In our opinion, the organiser should primarily be held responsible for circumstances of which he has been informed and has planned the trip accordingly. For example, organiser may not be aware that a person belongs to a certain risk group, such as due to health reasons. Travelers can also insure themselves against personal risks.

Article 12a on vouchers

Estonia supports the regulation on vouchers, also the possibility to transfer the voucher. We would propose only one slight modification in paragraph 8, that obliges the transferee to inform the organiser and to share their necessary personal data with the organiser. We propose to delete the 2nd sentence „~~That other traveller shall inform the organiser who issued the voucher of this transfer and provide their personal data necessary for any refund.~~“ as it does not align with our civil law. Presumably every MS has its own rules on assignment of claims and respective notifications, that could be applied according to national law also in respect of vouchers. For example, according to Estonian Law of Obligations Act, the obligation has to be performed to the obligee who is known to the organiser (if the organiser has been informed or should have known that the claim has been assigned, then the new creditor must be satisfied. If it is not, it is performed to the creditor known to the organiser). Hopefully these explanations are helpful.

Article 23 on B2B refund rights

Additions to this article raise serious concerns as it might have far more implications on B2B relations than only refund rights. We understand the provision in such a way that the directive does not only stipulate the refund deadline, but completely blocks the possibility in transactions between companies, i.e. in contracts between service providers and organisers, to agree on any limitations of liability concerning the provision of the service by the service provider, including a situation where, for example, force majeure situation occurs (the provision contains a reference - when a service provider cancels a service). This means that entrepreneurs cannot agree on the limitations of liability or, for example, choose the applicable law. Can the PRES or Council Legal Service KOM confirm this understanding? This is a major change compared to the current directive. In addition, in such a case, would it constitute “overriding mandatory provisions” within the meaning of Article 9 of the Rome I Regulation (593/2008)? We would greatly appreciate any additional information on this matter, so we can consider whether to support such a significant restriction on freedom of contract.

We are happy to discuss these issues further or share additional explanations.
Sincerely,