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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, including comments from FR.

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.

REPRESENTACIÓN PERMANENTE
DE ESPAÑA ANTE LA UNIÓN EUROPEA

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* ***~~25~~40%*** *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 assesment 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 amendment 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. T**he 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 organise 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,

RÉPUBLIQUE FRANÇAISE
Liberté
Égalité
Fraternité

Paris, le 29 mai 2024

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits concernant la proposition de directive modifiant la directive (UE) 2015/2302 relative aux voyages à forfait et aux prestations de voyage liées

PJ. : Traduction anglaise de courtoisie

Réf. : SGAE/MINUME/2024/323

À l'invitation de la présidence belge à l'issue du groupe de travail « protection et information du consommateur » du 16 mai 2024, les autorités françaises souhaitent faire part de leurs commentaires écrits suivants au sujet de la proposition de directive citée en objet.

I. Commentaires préalables

En préambule, les autorités françaises rappellent leur soutien de principe à l'initiative de la Commission en vue de la révision de la directive (UE) 2015/2032 qui apparaît doublement nécessaire pour, d'une part, régler les problèmes juridiques posés par le texte actuel depuis son entrée en application et, d'autre part, pour tirer les enseignements des évènements récents comme la faillite de la société Thomas Cook et surtout la crise sanitaire liée à la pandémie de covid-19.

Les autorités françaises remercient la présidence pour les discussions menées au sein du groupe de travail « protection et information du consommateur ». Elles constatent toutefois que, non seulement plusieurs importantes interrogations et préoccupations exprimées par les États membres persistent à ce stade mais aussi, l'évolution globale de la négociation ne va pas, pour le moment, dans le sens de la clarification espérée.

En vue de rendre possible le premier compromis complet sur le texte, les autorités françaises souhaitent faire part de leurs commentaires actualisés sur des points importants de la proposition, notamment les définitions et le périmètre de la directive, et plus spécifiquement la définition du forfait (article 3.2) ainsi que la notion de prestation de voyage liée (article 3.5), la limitation des prépaiements (article 5 bis), la notion de circonstances exceptionnelles et inévitables et notamment les conseils aux voyageurs (article 12.3 point a), la définition des bons à valoir (article 12 bis), les registres des voyageurs (article 17) et enfin le délai de remboursement après la transmission des éléments de dossier au garant par le consommateur (article 17.6).

II. Commentaires détaillés

II.1. Commentaires sur les définitions et le périmètre de la directive (articles 2 et 3)

a) Sur la notion d'« offre à la vente » (article 2)

Les autorités françaises considèrent que la notion d'offre à la vente ou « offer for sale » est trop imprécise et reste une source d'incertitudes et de litige à la fois pour les professionnels et les autorités. Ainsi, en l'état actuel du droit, il est difficile de savoir si les « *travel planners » (*planificateurs de voyage) doivent ou non avoir une garantie financière suivant le type de service qu'ils délivrent.

Elles estiment que la révision de la directive devrait être l'occasion de clarifier cette notion 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 d'« offre à la vente » en ne se faisant pas rémunérer directement par les consommateurs pour contourner les dispositions de la directive.

C'est pourquoi les autorités françaises proposent, à l'article 2, le remplacement de l'expression « offre à la vente », par une définition plus précise : « *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* ».

Elles soulignent que cette définition proposée permettrait de déterminer rapidement qui peut être considéré comme un professionnel du tourisme et doit donc respecter les obligations afférentes. A titre d'illustration, les professionnels, notamment présents sur internet, qui organisent des forfaits, mais qui se présentent comme « *travel planners* » doivent, le cas échéant, notamment selon les modalités de leur rémunération, pouvoir être considérés comme des voyagistes et donc avoir une garantie financière pour pouvoir exercer.

b) Sur l'extension de la définition du forfait (article 3.2)

Les autorités françaises considèrent que la notion de forfait actuelle est déjà trop large et imprécise. Il convient donc d'écarter les définitions additionnelles proposées à l'article 3(2)(b)(i), qui rendraient cette notion encore plus floue, pour s'en tenir à la définition du forfait qui existe dans la directive en vigueur.

Les autorités françaises rappellent tout d'abord que la notion de forfait doit rester intimement liée à celle de l'organisation d'un bouquet de prestations par un professionnel : un forfait ne se compose pas tout seul.

Elles estiment par ailleurs que les délais de trois heures et de 24 heures seraient complexes à mettre en œuvre pour les professionnels car le forfait ne serait constitué qu'au moment de la 2ème réservation. Cette complexité proviendrait notamment :
- de la difficulté rencontrée par le professionnel pour identifier les informations précontractuelles à communiquer au voyageur, sans savoir à l'avance s'il réservera une 2ème prestation dans les 3 heures ;
- de la difficulté d'apporter la preuve en cas de litige, et de contrôler la mesure pour les autorités nationales, les copies d'écran enregistrées lors de la réservation ne pouvant pas sérieusement constituer une méthode de preuve (ces pièces pouvant être largement modifiées par divers logiciels).

Les autorités françaises constatent également que les délais considérés (3 h et 24 h) ne reposent pas sur des considérations pratiques et apparaissent arbitraires.

Enfin, et compte tenu de cette complexité de mise en œuvre, les autorités françaises estiment que les dispositions liées à ces délais constitueraient une source de litiges à la fois pour les professionnels et les consommateurs.

c) Sur la notion de prestation de voyage liée (PVL) (article 3.5)

Les autorités françaises considèrent qu'il est nécessaire de supprimer la notion de prestation de voyage liée dont la définition à l'article 3.5 n'est pas claire.

Elles constatent tout d'abord que la prestation de voyage liée (PVL) constitue aujourd'hui un dispositif qui est source de confusion pour les professionnels et pour les consommateurs et qui génère une grande insécurité juridique pour les professionnels, sans pour autant offrir de protection réelle au consommateur.

En effet, il apparaît que la PVL ne peut pas se manifester concrètement dans la réalité, puisque, dans le cas d'une PVL en chaîne, le premier professionnel n'a aucun moyen de savoir que le consommateur a contracté avec un deuxième professionnel. Il est ainsi matériellement impossible pour une compagnie aérienne ou un hôtelier qui vend sur internet via des liens de renvoi sur des pages partenaires, de savoir si d'autres prestations ont été réservées en plus de la sienne.

Par ailleurs, les autorités françaises ne disposent à ce jour d'aucune donnée, aucun élément chiffré, démontrant l'effectivité de cette catégorie juridique au sein de l'UE. En particulier, elles constatent l'absence de tels éléments tangibles dans l'étude d'impact de la proposition législative permettant d'évaluer la mise en œuvre de cette catégorie juridique par les différents opérateurs économiques (compagnies aériennes, hôteliers ou loueurs de voiture notamment) et de plaider, le cas échéant, pour le maintien de cette notion.

De même, s'agissant de l'effectivité de l'application de la protection contre l'insolvabilité, les autorités françaises constatent que les garants financiers ne disposent pas de données pour les éventuels cas de défaillance car aucun consommateur n'y aurait jamais eu recours.

II.2. Commentaires sur la limitation des prépaiements (article 5 bis)

S'agissant de l'article 5 bis, les autorités françaises souhaitent la suppression des limites posées aux prépaiements et soulignent qu'une telle limitation poserait à la fois des difficultés aux professionnels et aux consommateurs.

a) S'agissant des professionnels

Les autorités françaises estiment qu'une limitation des prépaiements ne permettrait pas le bon fonctionnement des opérateurs de voyages et de séjours qui devraient alors payer les billets d'avion et d'autres prestations lors de la réservation.

Elles soulignent ainsi, depuis le début des discussions, la nécessaire cohérence entre les règles encadrant les forfaits et celles encadrant les transports. Or, elles constatent qu'aucune limite de prépaiement n'est posée aux transporteurs et, que par conséquent, cette cohérence législative n'est pas assurée.

Les autorités françaises rappellent en effet que, dans le cas de forfaits comprenant un trajet aérien, les voyagistes doivent réserver et payer la part pour la réservation aérienne qui peut représenter plus de 25 % du prix du forfait, ce montant devant être payé à la compagnie aérienne au moment de la réservation ou, au plus tard, 15 jours après.

À titre d'illustration, elles retiennent que, même si les parts relatives des composantes du forfait peuvent varier selon différents paramètres, notamment la durée du voyage et surtout la distance de la destination :
- dans le cas du moyen-courrier, l'aérien représente environ 35 % du prix total, les autres prestations (hôtels, transports sur place…) en représentant 65 % ;
- dans le cas du long-courrier, la place de l'aérien peut représenter 65 % du prix du forfait ;
- en moyenne, les professionnels estiment que, toutes destinations confondues, l'aérien représente environ 50 % du prix du forfait, ce qui conduit les voyagistes à décaisser environ 60 % du montant du forfait en tenant compte des autres prestations (hôtels notamment).

Les autorités françaises constatent donc que, dans le cas d'une limitation des prépaiements à 25 % du total, les voyagistes seraient contraints à décaisser 35% du montant total du forfait, sur leur propre trésorerie, pour payer les prestataires.

b) S'agissant des consommateurs

Les autorités françaises estiment tout d'abord qu'une limitation des prépaiements ne permettrait pas le paiement en plusieurs fois pour les consommateurs souhaitant mensualiser la dépense ou pour les foyers à plus faibles revenus, alors que les voyages à forfait peuvent représenter une dépense importante pour les consommateurs.

Elles considèrent par ailleurs que le règlement du solde du forfait 28 jours avant le début de l'exécution (délai qui semble choisi de façon arbitraire) poserait également des difficultés pour certains consommateurs en situation financière fragile, qui se retrouveraient à devoir payer un montant important (75 % du prix) en une seule fois.

II.3. Commentaires sur les bons à valoir (article 12 bis)

Les autorités françaises souhaitent formuler des propositions afin de clarifier et de mieux encadrer les mécanismes prévus par le texte pour améliorer la mise en œuvre et l'attractivité des bons à valoir, dans l'intérêt des consommateurs.

a) S'agissant de la mise en œuvre des bons à valoir

Les autorités françaises souhaiteraient rappeler que les bons à valoir résultent d'un choix du consommateur et que les modalités de ce choix doivent être encadrées, afin de s'assurer que le consommateur ne se voie pas imposer un tel bon.

Les autorités françaises estiment donc nécessaire de compléter la proposition de directive pour :

(i) prévoir explicitement que le bon à valoir ne peut être délivré qu'avec le consentement exprès du consommateur, en s'inspirant de l'article 22 de la directive 2011/83 relative aux droits des consommateurs,
(ii) préciser la période pendant laquelle le choix entre un remboursement ou un avoir sera proposé au client,
(iii) indiquer qu'en cas d'absence de réponse du client dans un délai de 7 jours, celui-ci est présumé refuser l'avoir.

Elles renvoient ainsi aux propositions rédactionnelles formulées dans leurs commentaires écrits précédents (NAF SGAE/MINUME/2024/226) du 11 avril 2024 consistant en l'ajout de deux nouveaux alinéas à l'article 12 bis :

« 1 bis. 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. »

« 2 bis. 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. In the event of no response from the traveller within 7 days, the traveller is presumed to refuse the voucher. »

b) S'agissant de l'attractivité du dispositif

De manière générale, et s'agissant d'un choix du consommateur, les autorités françaises saluent les initiatives tendant à améliorer l'attractivité du bon à valoir. En particulier, elles sont favorables à la possibilité d'utiliser le bon pour l'ensemble des services proposés par l'opérateur, tel que proposé par le compromis partiel de la présidence (st09562).

Les autorités françaises sont également favorables à la possibilité de transfert du bon entre consommateurs. Elles estiment néanmoins nécessaire de compléter la directive pour :
- limiter ce transfert à une opération, le bon à valoir n'étant pas considéré comme une monnaie ;
- prévoir un mécanisme simple et facilement réalisable pour que le consommateur informe l'opérateur de ce transfert, à défaut, cela risquerait de rendre inopérant la possibilité de transfert.

Enfin, les autorités françaises estiment qu'il est nécessaire de clarifier les possibilités de remboursement en matière de bon à valoir, notamment en cas de faillite du voyagiste, pour s'assurer que le consommateur soit remboursé.

Elles renvoient ainsi aux propositions rédactionnelles formulées dans leurs commentaires écrits précédents (NAF SGAE/MINUME/2024/226) du 11 avril 2024, notamment avec la mention « only once » au point 8 de l'article 12 bis.

c) S'agissant des orientations proposées dans le compromis partiel de la Présidence (st09562)

Les autorités françaises expriment les réserves suivantes :

- Au considérant 16, la formulation selon laquelle l'avoir n'est plus valable en cas de faillite du voyagiste est source de confusion et d'interrogation, d'autant plus que le texte indique que la garantie financière couvre bien les avoirs.

- A l'article 12 bis :
  - la nouvelle notion introduite dans le texte de « durable medium » au lieu de « in writing » pour l'information du voyageur mérite d'être précisée ;
  - la rédaction du paragraphe 4 demeure ambigüe et pourrait laisser penser que l'acceptation du bon à valoir pourrait ne pas être systématiquement explicite (« The travellers' right to a refund shall be suspended during the validity period of the voucher only if they received the information referred to in paragraph 2 and accepted the voucher instead of a refund explicitly on a durable medium »).

II.4. Commentaires sur les circonstances exceptionnelles et inévitables (CEI)

a) S'agissant du lien établi entre les « conseils aux voyageurs » et les CEI

Les autorités françaises font part de leur opposition à l'introduction de la mention des conseils aux voyageurs et le lien établi avec la caractérisation d'une situation de « circonstances exceptionnelles et inévitables ».

Elles rappellent 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. Par ailleurs, si **les conseils aux voyageurs sont dépourvus de caractère normatif et impératif**, ils **pourraient fonder l'engagement de la responsabilité de l'Etat pour faute.** Leur intégration expresse dans la directive apparait à cet égard susceptible de **renforcer le risque de recours à l'encontre de l'Etat**, en parallèle des litiges entre consommateurs et prestataires de services de voyage.

Enfin, les autorités françaises soulignent qu'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 Etats membres de la situation dans une région, un lieu ou un pays, ce qui 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.

b) S'agissant de la qualification des « circonstances exceptionnelles et inévitables »

Les autorités françaises considèrent que les CEI résultent de phénomènes irrépressibles objectifs et s'interrogent sur une introduction de catégories de voyageurs proposée par le compromis partiel de la présidence qui risquerait de complexifier la notion de CEI et augmenterait les risques de contentieux.

Les autorités françaises estiment que les circonstances exceptionnelles et inévitables ne doivent pas tenir compte de l'âge, de la situation familiale ou de l'état de santé des participants. Cela pourrait être discriminant pour les consommateurs qui pourraient se voir refuser d'acheter un voyage auprès d'une agence qui pourrait les considérer comme trop "à risque".

Enfin, les circonstances exceptionnelles et inévitables n'ont pas vocation à se substituer aux assurances voyages que le consommateur peut choisir de souscrire ou non de façon individuelle.

Elles proposent donc de préciser que les circonstances exceptionnelles et inévitables couvrent non seulement les situations dans lesquelles le forfait ne peut pas être fourni, mais également les situations dans lesquelles le forfait peut matériellement être fourni mais dans des conditions dangereuses pour la sécurité et la santé des voyageurs, quels qu'ils soient.

II.5. Commentaires sur les registres des voyagistes (article 17 et article 18.2)

Les autorités françaises considèrent que les dispositions de la directive doivent être plus précises pour que les autorités puissent assurer une garantie effective dans l'ensemble des Etats membres, notamment dans le cas de voyagistes intervenant en libre prestation de service.

Elles proposent donc la création d'un registre par Etat membre répertoriant les voyagistes établis sur leur territoire et leurs garants. Elles estiment en effet que seul un dispositif de ce type permettrait de vérifier le garant d'un voyagiste dans le cas où celui-ci intervient en libre prestation de services. Ces listes devraient par ailleurs être facilement accessibles au public et le lien renvoyant vers ces sites devrait être centralisé auprès de la Commission européenne.

A l'article 17, elles proposent donc d'ajouter à la fin de cet article la phrase suivante : « *Each Member State publishes and updates a register of organizers and their guarantors.*»

A l'article 18.2, elles proposent d'ajouter à la fin de cet article la phrase suivante : *« Each member state shall create a list of, on the one hand, all traders established on its territory and allowed to sell packages and of, on the other hand, their guarantor. 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 Members States.* »

Les autorités françaises considèrent que la mise en place d'un tel dispositif au sein de l'Union européenne faciliterait la communication entre les autorités des États membres ainsi que l'information du consommateur, ce dernier pouvant facilement savoir si le professionnel auquel il souhaite s'adresser est garanti ou pas. Ce système permettrait également une diminution importante de l'activité illégale (absence de garantie), les contrôles au sein des États membres étant facilités.

Enfin, les autorités françaises soulignent qu'un tel dispositif est actuellement en vigueur en France et que sa mise en œuvre n'a pas suscité de difficulté particulière ni de coût significatif. Il repose globalement sur une page internet et un tableau de recensement, le tout accessible au public.

II.6. Commentaires sur le délai de remboursement après la transmission des éléments de dossier au garant par le consommateur (article 17.6)

A l'article 17.6, les autorités françaises considèrent qu'il serait souhaitable de permettre l'extension du délai de remboursement à un délai maximum de 6 mois afin de faire bénéficier les garants financiers d'une plus grande souplesse surtout dans les cas où les défaillances financières concernent de très nombreux clients (plus de 45 000 clients en France pour la société Thomas Cook), le délai de trois mois étant alors peu réaliste.

En outre, elles estiment que chaque État Membre doit pouvoir fixer la liste des documents que le voyageur doit présenter pour l'examen de sa demande.

Les autorités françaises proposent donc l'amendement suivant :

« A period of three months could be extended to six months so as to allow greater flexibility for financial guarantors. Each Member State can set the list of the documents that the traveller shall present for the examination of the request. »

Annexe – Traduction anglaise de courtoisie

Object: Written comments on the proposal for a directive amending Directive (EU) 2015/2302 in order to increase the effectiveness of the protection of travellers and to simplify and clarify certain elements of the directive

Following the invitation of the Belgian Presidency at the end of the 'consumer protection and information' working group on 16 May 2024, the French authorities wish to submit the following written comments on the proposal for a directive referred to above.

I. General comments

In preamble, the French authorities reiterate their support in principle for the initiative of the Commission with a view to the revision of Directive (EU) 2015/2032 which appears doubly necessary, first, to solve the legal problems posed by the current text since it came into force and, second, to learn from recent events such as the bankruptcy of Thomas Cook and, more importantly, the health crisis linked to the covid-19 pandemic.

The French authorities would like to thank the Presidency for the discussions held within the 'consumer protection and information' working group, but note that a number of important questions and concerns expressed by the Member States persist at this stage. In addition, the overall progress of the negotiations is not currently moving in the direction of the expected clarifications.

In order to make possible the first full compromise on the text, the French authorities wish to provide their updated comments on important points of the proposal, in particular the definitions and scope of the directive, and more specifically the definition of the package (article 3.2) as well as the concept of linked travel service (article 3.5), the limitation of prepayments (article 5 bis), the concept of exceptional and unavoidable circumstances and in particular travel advice (article 12.3 point a), the definition of vouchers to be claimed (article 12 bis), the traveller registers (article 17) and finally the reimbursement period after transmission of the file elements to the guarantor by the consumer (article 17.6)°.

II. Detailed comments

II.1 Definitions and scope of the directive (articles 2 and 3)

a) On the notion of "offer for sale" (article 2)

The French authorities believe that the expression *"packages offered for sale"* is too imprecise and contentious for both professionals and the authorities. Under current law, the requirement for travel planners to have a financial guarantee depends on the type of service they provide.

They consider that the revision of the Directive should provide an opportunity to clarify this concept with a dual objective: first, to prevent occasional operators from being subject to the same obligations as tour operators and, second, to prevent professionals from using the imprecision of the concept of "offer for sale" by not being paid directly by consumers so as to overcome the provisions of the Directive.

This is why the French authorities are proposing, in Article 2, to replace the expression "offer for sale" with a more precise definition « "*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"* ».

They underline that this proposed definition would make it possible to identify quickly who can be considered as a tourism professional and must therefore comply with the relevant obligations. For instance, professionals, particularly on the Internet, who organise packages but present themselves as 'travel planners' should, if necessary – particularly according to the terms of their remuneration –be considered as tour operators and therefore required to have a financial guarantee to operate.

b) On the extension of the definition of the package (article 3.2)

The French authorities consider that the concept of package is already too broad and imprecise and that this new definition proposed at Article 3(2)(b)(i) with other types of travel services should be removed so as to maintain the definition of the current directive.

On the one hand, the French Authorities recall that the notion of package must remain linked to the organisation of a package of touristic services by a professional; a package cannot be created without this active intervention.

On the other hand, they consider that the three-hour deadline and the 24-hour period would be too complex for professionals to implement because the package would only be finalised at the time of the second reservation.

The French authorities stress that the complexity stems in particular from:
- the difficulty faced by the professional in identifying the pre-contractual information to be communicated to the traveller, without knowing in advance whether he will book a second service within 3 hours;
- the difficulty of providing proof in the event of litigation and monitoring these measures for national authorities; screen captures taken at the time of booking cannot constitute reliable evidence (as these documents can be extensively modified by various software programs).

The French authorities also note that the deadlines considered (3 hours and 24 hours) are not based on practical considerations and thus seem arbitrary.

Finally, and given the complexity of implementation, the French authorities consider that the provisions related to these time limits would be a source of litigations for both professionals and consumers.

c) On the notion of "linked travel arrangement" (LTA) (article 3.5)

The French authorities propose to remove the legal concept of "linked travel arrangement" (LTA) due to its unclear definition as stated in article 3.5.

First of all, they note that this concept is currently a source of confusion for both professionals and consumers; it creates a great deal of legal uncertainty for professionals, without providing any effective legal protection for consumers.

Indeed, it appears that the "LTA" cannot manifest itself concretely in reality. In the case of an LTA chain, the first professional cannot be aware that the consumer has contracted with a second professional. Therefore, it is practically impossible for an airline or hotel operator selling on the Internet via links to partner pages to know whether other services have been booked in addition to their own.

In addition, the French authorities do not have any data proving that this legal category has been effective so far within the European Union.

In particular, they note the absence of such tangible elements in the impact assessment of the legislative proposal making it possible to evaluate the implementation of this legal category by the various economic operators (airlines, hotels or car rental companies in particular) and to argue, if necessary, for the retention of this notion.

Moreover, with regard to the effectiveness of the implementation of insolvency protection, the French authorities note that financial guarantors do not have any data on potential default cases, as no consumer has ever sought recourse to them.

II.2. The limitation on prepayments (article 5 bis)

In article 5 bis, the French authorities believe that there is no need to limit prepayments and propose the deletion of this notion. They underline that such a limitation would raise difficulties for both professionals and consumers.

a) Regarding professionals

The French authorities consider that limiting pre-payments would not allow travel and holiday operators to function properly, as they currently have to pay for airline tickets and other services at the time of booking.

Since the beginning of the discussion, they have stressed the need for coherence between the different regulations of the Mobility package. However, no prepayment limit is imposed on transport companies; therefore, consistency is not ensured if only organisers of packages have to apply a limit.

The French authorities stress that organisers and retailers must book and immediately pay the portion for the air reservation, which can represent more than 25% of the package price. This amount must be paid to the airline company at the time of booking or, at the latest, within 15 days after booking.

For instance, the French authorities note that, although the relative proportions of the elements of the package may vary based on several parameters, in particular the length of the journey and, almost importantly, the distance to the destination:
- in the case of medium-haul journeys, air travel represents around 35% of the total price, with other services (hotels, local transport, etc.) accounting for 65%;
- in the case of long-haul, air travel can account for 65% of the package price;
- on average, professionals consider that for all destinations combined, air travel accounts for around 50% of the price of the package, leading tour operators to pay out around 60% of the package amount, taking into account other services (hotels in particular).

The French authorities therefore note that, in the event of pre-payments being limited to 25% of the total, tour operators would be forced to deduct 35% of the total amount of the package from their own cash flow in order to pay the service providers.

b) Regarding consumers

The French authorities consider, first that limiting prepayments would prevent consumers and lower-income households from paying in installements or from making monthly payments. Indeed, travel packages may represent a significant expense for consumers.

They also consider that not requiring the remaining payment earlier than 28 days before poses difficulties in the event of the consumer's insolvency. The consumer would end up having to pay a significant amount at once (75% of the price).

II.3. Vouchers (article 12 bis)

The French authorities wish to submit proposals to clarify and provide a better framework for the mechanisms outlined in the text in order to improve the implementation and attractiveness of value vouchers to the benefit of consumers.

a) Regarding the use of vouchers

The French authorities would like to point out that vouchers are the result of a consumer choice and that the terms and conditions of this choice must be regulated to ensure that the consumer is not forced to use such a voucher.

Therefore, the French authorities consider it necessary to complete the proposal for a Directive in order to:

(i) explicitly state that the voucher can only be issued with the consumer's express consent, drawing inspiration from Article 22 of Directive 2011/83 on consumers' rights;
(ii) specify the period during which the choice between a refund or a voucher will be offered to the customer,
(iii) state that if the customer does not react within 7 days, they are presumed to refuse the voucher.

Thus, the French authorities refer to the drafting proposals made in their previous written comments (NAF SGAE/MINUME/2024/226) of 11 April 2024 consisting of the addition of two new paragraphs to Article 12 a:

"1 bis. 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."

"2 bis. 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. In the event of no response from the traveller within 7 days, the traveller is presumed to refuse the voucher."

b) Regarding the attractiveness of this system

Generally speaking, as this is a consumer's choice, the French authorities welcome the initiatives which aim at improving the attractiveness of the voucher. In particular, they support the proposal which aims to make it possible to use the voucher for all the services offered by the operator, as proposed in the Presidency's partial compromise (*reference of the document st 09562*).

The French authorities are also in favour of the possibility of transferring the voucher between consumers. However, they consider it necessary to amend the directive in order to:
- limit this transfer to a single transaction, as the voucher is not considered as a currency;
- provide for a simple and easily achievable mechanism for the consumer to inform the operator of the transfer; otherwise, the transfer option would be made ineffective.

Finally, the French authorities consider that it is necessary to clarify the possibilities for reimbursement in the case of vouchers, especially in the case of the tour operator's insolvency, to ensure that the consumer is reimbursed.

Thus, the French authorities refer to the drafting proposals made in their previous written comments (NAF SGAE/MINUME/2024/226) of 11 April 2024, in particular with the words "only once" in point 8 of Article 12bis.

Finally, with regard to the evolutions proposed by the Presidency's partial compromise (st09562), the French authorities express the following concerns:

-In recital 16, the wording stating that the voucher is no longer effective in the event of the tour operator's insolvency is a source of confusion and concern especially as the text indicates that the financial guarantee does cover the vouchers.

-In article 12 bis:
- the new notion introduced in the text of "*durable medium"* instead of "*in writing"* for passenger information needs to be clarified;
- The wording of paragraph 4 remains ambiguous and could lead to believe that acceptance of the voucher may not be systematically explicit. ("*The travellers' right to a refund shall be suspended during the validity period of the voucher only if they received the information referred to in paragraph 2 and accepted the voucher instead of a refund explicitly on a durable medium"*).

II.4. The exceptional and unavoidable circumstances (Article 12 3.a)

a) Regarding the link established between "travel advice" and "exceptional and unavoidable circumstances"

The French authorities express their opposition to the introduction of the mention of travel advice and the link established with the characterization of a situation of "exceptional and unavoidable circumstances".

They recall that travel advice does not in any way fall within the competence of the EU, but of Member States' consular policy for which the EU only has a supporting competence. Their express integration into any European text must therefore be observed with the greatest caution, even if it is by simple reference. Furthermore, if the travel advice is devoid of normative and imperative character, it could establish the state's

liability for fault. Their express integration into the directive appears in this regard likely to reinforce the risk of litigation against the state, in parallel with disputes between consumers and travel service providers.

Finally, the French authorities emphasize that there is hardly any harmonization at EU level in terms of the practice of issuing travel warnings, nor even a uniform assessment between Member States of the situation in a region or a country, which could lead to the introduction of unequal treatment between consumers, and then create a risk of legal uncertainty in the event of conflicting travel warnings between different countries.

b) Regarding the qualification of "exceptional and unavoidable circumstances"

The French authorities consider that the exceptional and unavoidable circumstances result from objective irrepressible phenomenon and question the introduction of categories of travelers proposed by the partial compromise of the presidency which would risk complicating the notion of exceptional and unavoidable circumstances and therefore increase the risks of litigation.

The French authorities consider that exceptional and unavoidable circumstances should not take into account the age, family situation or state of health of the participants. This could be discriminatory for consumers who could be refused to purchase a trip from a travel agency that could consider them too "at risk".

Finally, exceptional and unavoidable circumstances are not intended to replace travel insurance that the consumer can choose to take out or not individually.

They therefore propose to specify that exceptional and unavoidable circumstances cover not only situations in which the package cannot be provided, but also situations in which the package can physically be provided but in conditions which may be dangerous to the safety and health of the people. travelers, whoever they may be.

II.5. Tour operator registers (article 17 and article 18.2)

The French authorities consider that the provisions of the directive must be more precise so that the authorities can ensure an effective guarantee in all Member States, particularly in the case of tour operators operating under the freedom to provide services.

They therefore propose the creation of a register per Member State listing the tour operators established in their territory and their guarantors. Indeed, they consider that only a system of this type would make it possible to verify the guarantor of a tour operator in the event that the latter operates under the freedom to provide services. These lists should also be easily accessible to the public and the link to these sites should be centralized at the European Commission.

In article 17, they therefore propose adding the following sentence at the end of this article: "*Each Member State publishes and updates a register of organizers and their guarantors*."

In Article 18.2, they propose adding the following sentence at the end of this article: "*Each member state shall create a list of, on the one hand, all traders established on its territory and allowed to sell packages and of, on the other hand, their guarantor. These registers shall be public and accessible and shall facilitate the cooperation between the contact 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*. »

The French authorities consider that the establishment of such a system would be a virtuous system within the European Union because it would facilitate communication between the authorities of the MS as well as consumer information. The consumer could easily know if the professional he wishes to contact is guaranteed or not. This would also allow a significant reduction in illegal activity (absence of guarantee), with controls within MS being facilitated.

Finally, the French authorities point out that such a mechanism is currently in force in France and that its implementation has not given rise to any particular difficulty or significant cost. It is mainly based on a web page and a census table, all accessible to the public.

II.6. The reimbursement period after transmission of the file elements to the guarantor by the consumer (Article 17.6)

In Article 17.6, the French authorities consider that it would be appropriate to allow the extension of the repayment period to a maximum period of 6 months in order to provide financial guarantors with greater flexibility, especially in cases where financial failures affects a large number of customers (more than 45,000 customers in France for the Thomas Cook bankruptcy). The three-month deadline would not appear realistic in this kind of situation.

In addition, according to the French authorities, each Member State must be able to set a list of documents that the traveller must present for the examination of their application.

The French authorities are therefore proposing the following amendment:

“A period of three months could be extended to six months so as to allow greater flexibility for financial guarantors. Each Member State can set the list of the documents that the traveller shall present for the examination of the request.”