

ECTAA Preliminary Position on the PTD proposal

Summary of main points regarding the PTD revision proposal

- 1- No limitation on advance payment should be introduced for package travel (new Art. 5a):**
 - The refund problems faced by consumers during COVID 19 were mainly due to the lack of refund in the whole travel value chain, especially for individual flights.
 - This is an additional obligation on top of the insolvency protection and various other guarantees that a package organiser already has to provide (e.g. securities for the sale of tickets and for credit card companies). Standalone operators do not have to provide such protection. Applying the PTD principles of protection of prepayments to standalone travels would be a better solution.
 - The most vulnerable consumers will be affected by the two-payment rule, which will limit travellers' ability to pay in instalments (4 or 5 times). This restriction will drive up package prices, weaken the liquidity of travel organisers and will not reduce the cost of insolvency protection. On the contrary, it will further fragilize organisers' liquidities and encourage consumers to choose cheaper, less protected travel alternatives.
- 2- Proposed changes to the definition of package are more complex and impossible to apply (Art. 3(3) and 3(5)):**
 - The definitions of packages and LTAs are far too complex. Simplification would have been much more welcome and future-proof. This can still be achieved if more is done on passenger rights by providing equivalent protection to consumers at all times.
 - The provisions on packages bought within 3 or 24 hours are impossible to comply with. It clashes with the obligation to provide accurate pre-contractual information in the same PTD. It is impossible to know in advance what service will be sold, as it may change afterwards. Moreover, changing the terms and conditions of the first service after the sale will be confusing and burdensome for consumers.
- 3- Package organisers are not insurers (taking into account the place of departure/return in the right to cancel free of charge) (Article 12)**
 - ECTAA strongly opposes the inclusion of the situation of the place of departure and return as a possible reason for a free cancellation by the consumer. The balance of risks goes too far with this proposal. An organiser is responsible for what is promised and provided for in the contract. In addition, we are entering the field of travel insurance. Package organisers are not insurers and more discussion with the insurance sector to cover the risks that have occurred during Covid 19 should be explored. However, the Package Travel Directive is not the place for such a debate.
 - If such a right is introduced, the B2B refund rules need to be aligned, i.e. all services of the package should be refunded, even those not cancelled by the supplier.

MAIN AREAS OF CONCERN

1. New Article 5a: Limitation of prepayments:

No limitation on advance payment should be introduced for package travel (new Art. 5a):

- The refund problems faced by consumers during COVID 19 were mainly due to the lack of refund in the whole travel value chain, especially for individual flights.
- This is an additional obligation on top of the insolvency protection and various other guarantees that a package organiser already has to provide (e.g. securities for the sale of tickets and for credit card companies). Standalone operators do not have to provide such protection. Applying the PTD principles of protection of prepayments to standalone travels would be a better solution.
- The most vulnerable consumers will be affected by the two-payment rule, which will limit travellers' ability to pay in instalments (4 or 5 times). This restriction will drive up package prices, weaken the liquidity of travel organisers and will not reduce the cost of insolvency protection. On the contrary, it will further fragilize organisers' liquidities and encourage consumers to choose cheaper, less protected travel alternatives.

Explanation:

1. **Package travel is not the root cause:** In the context of the Pandemic, packages were by far less problematic than standalone travel services, in particular airlines. Where package organisers were constrained in processing refunds, this was largely due to the refusal or delay on the part of their suppliers to refund (again mostly airlines). There is abundant documentation about the great difference of complaints (Fig 1), the amount of state aids (Fig 2) and whether the grants were actually applied to the refund of customers (Fig 3).

Fig1: Comparison of cross border complaints from Fig 14, Source: [Consumer scoreboard 2023](#)

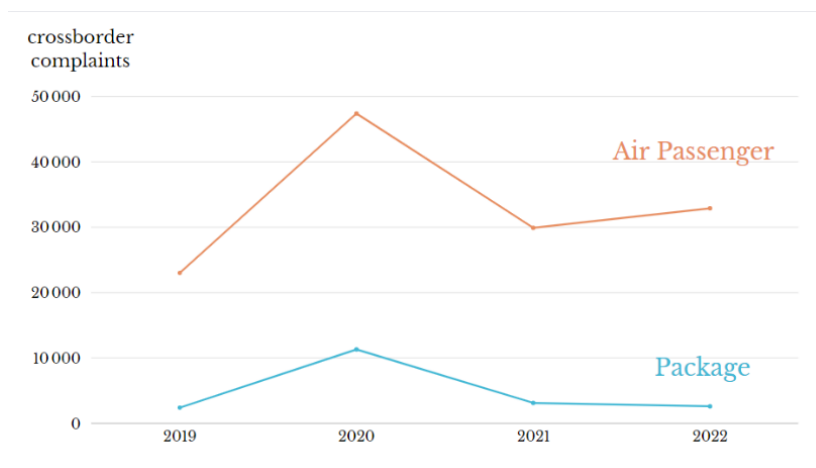
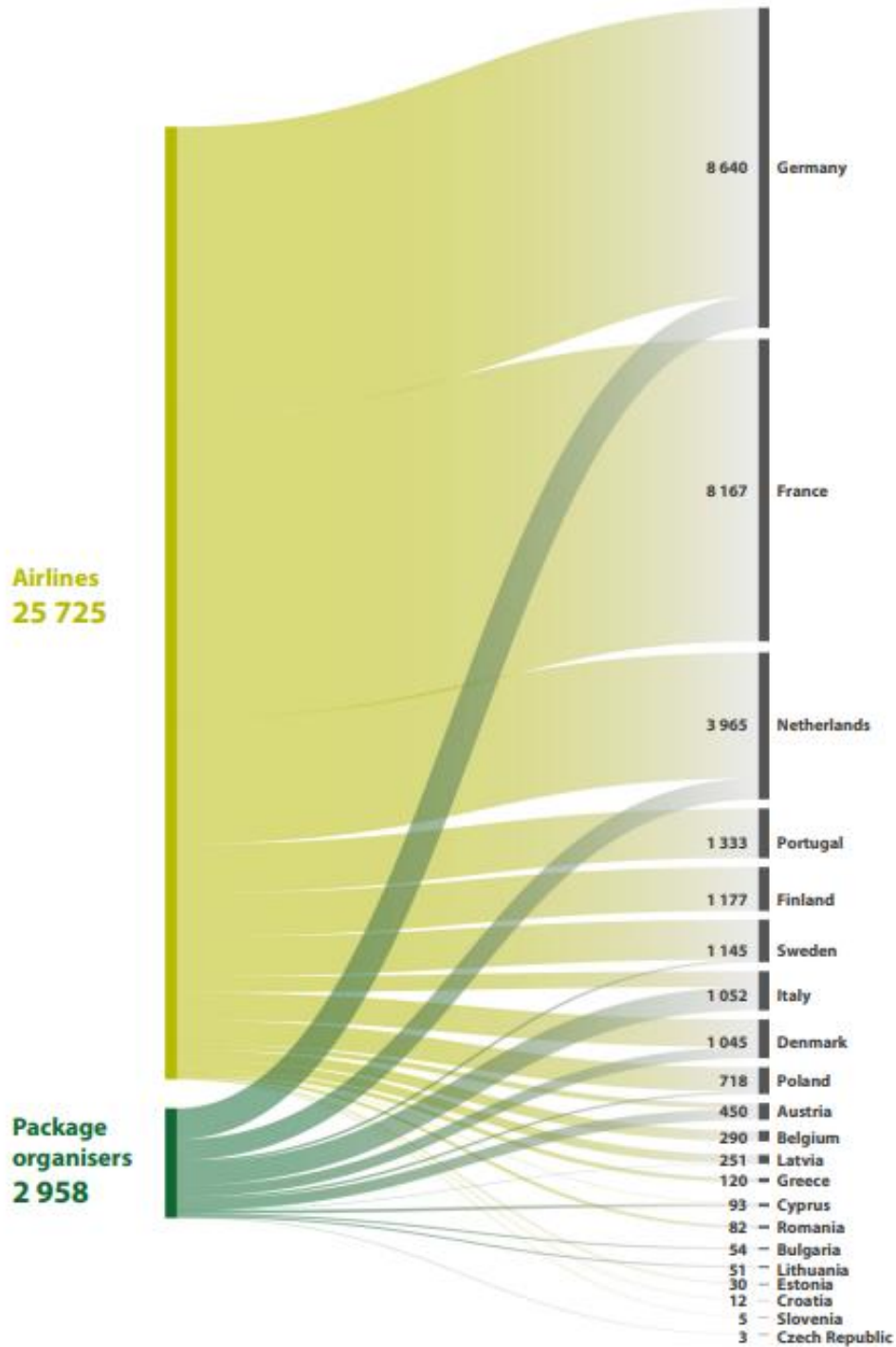


Fig 2: Comparison of amount of State aids dedicated to airlines vs package organisers. Source: [ECA Special Report 15/2021: Air passenger rights during the COVID-19 pandemic](#)

Figure 5 – State aid to airlines and package organisers by Member State (in million euros)



Source: ECA analysis of State aid decisions.

Fig 3: ECA report- State aid in the airline and package sector points 58 to 61.
 Source: [ECA Special Report 15/2021: Air passenger rights during the COVID-19 pandemic](#)

	Airlines	Package Travel
Share of State aid	58. Our analysis showed that most of the aid granted by Member States (€31.8 billion, more than 90 % of the total aid provided) went to airlines.	
Amount spent on State aid	58. €25.7 billion of State aid to specific airlines and €6.1 billion multi-sectoral aid. Total 31.8 billion	60. 16 measures (providing a total support of €2.9 billion)
Objective of the State aid/refund of consumers	59. We also found that, in none of the 38 cases reviewed, Member States explicitly included the reimbursement of passengers as an objective or as a condition for granting the aid, despite the Commission's suggestion to do so	61. The design of 13 out of the 16 cases reflected a specific and explicit concern with the rights of package travellers

The proposed regulation would distort competition. Firstly, payment terms, both advance and final, are crucial competitive parameters in the travel industry. The proposal significantly reduces the ability of tour operators to compete internally on these terms.

Secondly, the fact that only tour operators are subject to this restriction also distorts competition. This means that all suppliers of travel services not covered by the Package Travel Directive will be in a much better competitive position if the proposal only regulates the organiser's payment terms to the traveller.

2. Unnecessary double/triple protection:

Advance payments made by package travellers are already protected against insolvency (Art. 17 & 18 of the current PTD), while none of the service providers selling their services, who sometimes collect a 100% advance payment at the time of booking (e.g. stand-alone flights), are covered by any protection. It would make much more sense to protect the pre-payments of the vast majority of travellers who book stand-alone flights.

In addition to the insolvency protection arrangements that package tour operators are required to put in place under the PTD, they are also required to provide various forms of security to third parties, such as bank guarantees, which underpin the PTD insolvency protection arrangements, financial security arrangements are required by suppliers such as IATA for the sale of standalone flights, and credit card companies seek similar arrangements to cover customer charge-back requests. Against this background, the imposition of a limit on advance payments is disproportionate and unnecessary.

Standalone service providers or suppliers will thus gain an obvious unfair competitive advantage by being able to offer more attractive prices and payment terms if they are not affected in terms of liquidity in the same way as tour operators.

At the same time, consumer protection will be reduced if travellers are encouraged to buy directly from suppliers at a lower price, at the cost of losing the excellent protection that comes with buying a package.

In order to avoid a situation with such distortive elements of competition, while at the same time ensuring a higher level of protection in the travel and transport sector as a whole, the most obvious solution would indeed be to introduce a common European requirement for insolvency protection in air transport as part of the ongoing revision of passenger rights legislation.

The introduction of common insolvency protection rules for all passenger air transport would provide a much higher level of protection for all EU citizens. At the same time, such an arrangement would address the challenges cited by the European Commission as the reason for its proposal to limit the ability of tour operators to receive advance payments.

Finally, the proposal carries the risk that travellers will cancel their trips shortly before departure but before the final payment has been made. This would result in additional costs and therefore more expensive holidays for both tour operators and travellers.

This measure will not save money but instead will drive prices up and weaken package organisers.

Firstly, the restriction on advance payments will require bookings to be settled in two instalments (25% and then 75%). This will de facto prevent operators from offering more flexible payment plans, such as instalment payments (e.g. 4 or 5 instalments). This will affect the most vulnerable consumers.

Moreover, restricting advance payments for packages will not save money on insolvency protection. On the contrary, it is more likely that a package tour operator will not make a profit in the first half of the year, thus weakening its liquidity.

The limitation will prevent package organisers to make profit for the first half of the year

The proposed provision allows for exceptions to the general rule that advance payments may not exceed 25% in specific cases. However, this exception is far from sufficient to address the liquidity problems that this provision will create for tour operators.

The proposed exemption scheme does not allow package tour operators to cover their operating costs (salaries, building/energy costs) or their margin. Given that the peak booking period for packages is usually in winter for packages departing in July/August, this means that a package organiser will only start to make a profit in June/July (28 days before departure, when the proposal allows the organiser to collect the balance of the money).

As a result, the liquidity of package tour operators will be weakened and they will be more exposed to insolvency risks (which is the exact opposite of what this limitation is supposed to achieve). Insurance costs will increase to cover the new risks, pushing up package prices. Packages will be less attractive to price-conscious consumers, who will prefer cheaper but unprotected alternatives.

The exemption to limit advance payments will still compel organisers to pre-finance package holiday

According to the wording, only prepayments to suppliers at the time of the conclusion of the contract can be received from the traveller. As a package holiday often consists of several different travel services from different suppliers, payment to these suppliers will depend on their individual payment terms and will therefore vary for each package holiday.

The wording of the provision, which provides that only payments at the time of contract conclusion are covered by the exemption, makes the practical application of the provision illusory and thus fails to address the significant liquidity risk that the provision imposes on the travel organiser.

In cases where payment to suppliers is required after conclusion of the contract but within 28 days before departure, the tour operator is effectively forced to pre-finance large parts of the package for the traveller.

Article 3: Definitions

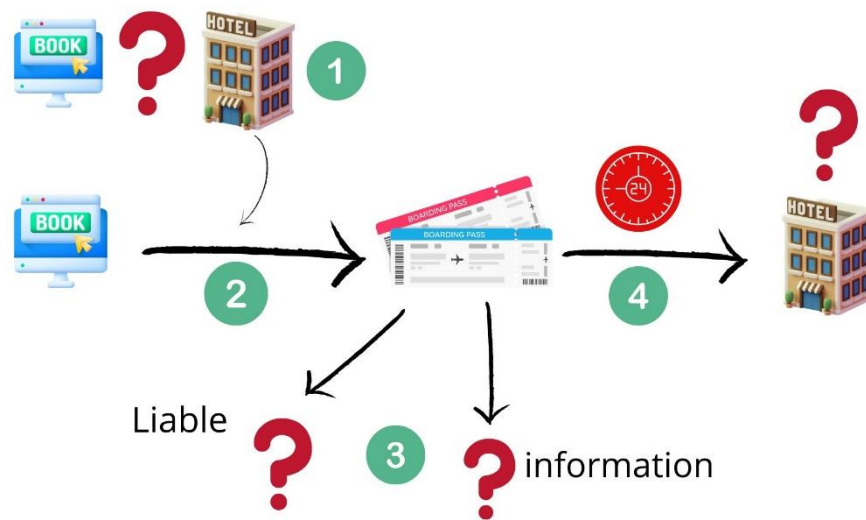
New combinations of packages more complex and impossible to apply (art 3(3) and 3(5)):

- 1- Definitions of package and LTA are far too complex and unworkable in practical terms. A simplification would have been much more welcomed and future proof
- 2- Provisions on packages concluded within 3 and 24 hours is impossible to comply with. It is incompatible with the obligation to provide accurate precontractual information under the very same PTD. It is impossible to know what service will be sold in advance as it can change afterwards. Moreover, changing the contract terms of the first service after its sale will be confusing and burdensome for the consumers
- 3- Definitions on Click Through package should have a time limit. As drafted the combination captured by the definition is too far reaching

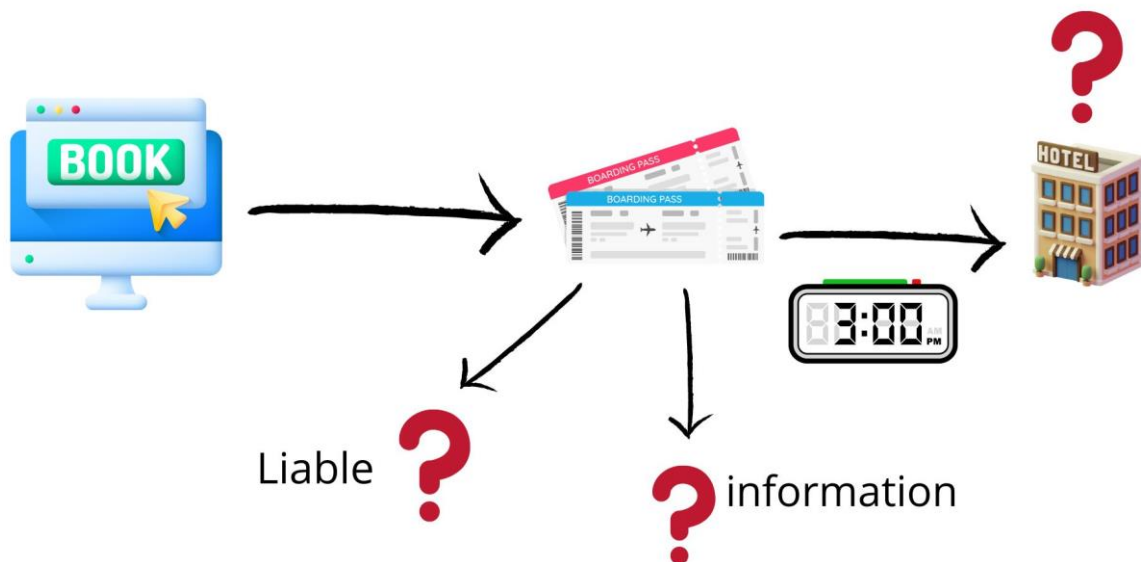
- 1- The definitions of package and LTA are too complex. A simplification of the scope would have been welcome. The existing definitions of package are difficult to apply, enforce and for consumers to understand. This could be achieved by applying a comparable level of protection to individual travel services and packages. Better equivalence would allow the scope to be simplified without compromising consumer protection. ECTAA regrets that the European Commission, when working on the parallel revisions of passenger rights and the PTD, did not go further in alignment, preferring a light brush approach on passenger rights, while further complexifying and overburdening the PTD. As a result, the proposed definition of package will be more complex than the current one, to the extent that it will be unworkable for intermediaries to sell both packages and individual services.
- 2- The new definition of a package made by booking 2 services consecutively within 3 hours is particularly critical. It assumes that the consumer could put together a package without the organiser being informed (different names, different credit cards, etc...). Arrangements made by consumers may not be viable (eg connecting times between flights too short). An organiser should not be responsible for a package that he would never have agreed to sell.
- 3- With the definition of package including now the consecutive sales of two travel services within 3h and 24h, it would be impossible to provide accurate precontractual information of the first travel service as neither the trader nor the consumer will know what kind of service is purchased (package or standalone service) until eventually a second sale is concluded or the time limit is passed.

Example of the “24h package”:

To be a package, the trader must offer the possibility of booking an additional travel service (here a hotel) (1) during the booking process of the first travel service (a flight) (2). The problem is that it is impossible to know what the consumer actually books as first travel service (standalone service or package) (3) until the second travel service is booked or the 24h time limit is over (4)...As drafted it is not possible to provide the consumer with essential information on the first service, such as the identity of the professional responsible for providing the service, the existence of insolvency protection, etc...



A similar logic would apply to the “3h package”. A valid contract for a single travel service may become part of a package when a consumer books an additional service within 3h. This means, for the first travel service, that the party liable for the contract, the legislation governing B2C relations and the information to be provided might change, depending on the booking of a second travel service. In short, neither the trader nor the consumer knows exactly what is booked on a travel website for 3 hours, resulting in inaccurate pre contractual information...



Aside the automatic infringement of precontractual information, packages concluded “within 3h or 24h” are disproportionately burdensome to apply from a contract law perspective. The conclusion of a package after the sale of the second service within 3h will only be possible with

a change in the contract terms of the first service (from standalone service to a component of a package). How to do that? Should the consumer sign an addendum to the first contract he just agreed on? What if the consumer refuses to sign it? Is it even able to refuse (a consumer can't waive its consumer rights)?

Article 12: Package organisers are not insurers (consideration of the place of departure/ return in the right to cancel free of charge)

- 1- ECTAA strongly opposes the inclusion of the situation of the place of departure and return as a possible basis for the consumer's right to cancel free of charge. The balance of risk in this proposal goes too far. Rights under the Package Travel Directive should be based on objectively verifiable facts and not on expectations, perceptions or feelings. Similarly, the tour operator should only be liable for what is set out in the package travel contract. Therefore, the tour operator is liable for matters directly related to the provision of the various travel services included in the package. Beyond that, we are entering the realm of travel insurance. Package tour operators are not insurers and further discussions with the insurance sector should be explored to cover the risks that have arisen during Covid 19.
- 2- If such a right is introduced, then the B2B refund rules need to be aligned, i.e. the third-party supplier of a travel service, such as an airline, should be obliged to refund the organiser, regardless of whether the third-party supplier provided the service (i.e. the airline operated the flight) or not. Otherwise, where will the organiser find the money to refund the traveller? Moreover, in the event of a cancellation due to an UEC at the place of departure/return, the travel services composing the package will still operate, leaving the organisers with no right of redress against the suppliers (i.e. 'the ghost flights' of the Pandemic).

If the Commission wishes to introduce such a right, then the organiser's right of redress/the suppliers' obligation to reimburse in Article 22(2) must be aligned with Article 12(2), meaning that all services composing the package should be refunded to the organiser, even the ones that were performed or could have been performed. Otherwise, there is a strong possibility that a supplier will retain the travellers' monies, leading to the organiser to reimburse the traveller from its own funds - further weakening the organiser's liquidity and giving the suppliers an unfair advantage in retaining the traveller's monies.

Art 17 Insolvency protection

- 1- The integration of refund claim of cancelled package should be clarified to ensure that the protection doesn't go beyond what the customer has paid, otherwise the proposal is too

far reaching. Similarly, clarification on should be made to ensure the protection is limited to the customer's actual loss, in particular concerning partially performed package.

- 2- In relation to the three-month deadline in Article 17(6), ECTAA notes that this is not realistic, in particular if refund claims are involved. and that instead some flexibility should be provided for, so that in exceptional situations (e.g. pandemic) this repayment deadline can be waived.

Other measures to be considered in the revision:

In addition to the priorities identified by ECTAA and presented in this document, there are several other issues that deserve to be addressed. More information will be provided in due course.

- Exclusion of business travel should be extended to MICE travel
- Information on the approximate time of departure should be optional and not mandatory as it is now in the existing PTD.
- B2B refunds should be based on an obligation for suppliers to refund cancelled packages, not on a right of recourse for organisers.
- The rapid refund mechanism should allow Member States to introduce ad hoc state aid in the event of a major crisis. At present, the proposal favours the establishment of a more costly and less flexible crisis fund.
- In the event of a major crisis affecting the ability of package tour operators to recover consumer payments from suppliers, refunds should be made as soon as possible, not within 14 days as in the current legislation.
