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# Reforming Package Travel Law in a post-pandemic world



**THE EUROPEAN TRAVEL AGENTS'  
AND TOUR OPERATORS' ASSOCIATIONS**

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The travel sector has been greatly hit by the pandemic. In March 2020, travel agents and tour operators have seen an almost complete stop to their activities, while enduring cancellation costs due to the pandemic and uncoordinated, ever changing travel restrictions and advices. Whilst the package holiday delivers the gold standard of protection to travellers, that protection comes at a high cost to travel companies and will be a significant impediment to the survival and growth of existing travel companies and to the entry into the market of new businesses.

On 1 March 2021, the European Commission published a report on the application of the Package Travel Directive (PTD)<sup>1</sup>. The report accurately highlighted the challenges faced by the package travel industry and the tourism industry in general, in particular:

- Complex concept of Linked Travel Arrangements (LTAs);
- Insolvency protection (IP): insurability of the risk/ suitability of national IP systems/ application to the transport sector (in particular the airline sector)/ prepayment vs limitation of prepayment/ pan-European guarantee fund;
- The traveller's right to reimbursement: delay/ liquidity issues/ voucher/ unfair burden in the travel sector vs B2B reimbursement obligations.

ECTAA believes that the pandemic has exposed the limits of the principles on which the PTD is grounded: the protection provided to travellers in the PTD has to be solely carried by the package organiser<sup>2</sup>.

I. What was deemed protective for travellers in the 1990s, when package travel was by far the most popular product, has lost its relevance 30 years later. According to Eurostat<sup>3</sup>, traditional packages constituted only 9% of the travel products sold in 2017 and only a minority of travellers benefit from the PTD. It is simply not possible, in the current context, to have a consumer protection Directive in place that is clear, future proof and guaranteeing a level playing field by only revising the PTD. Travel legislation will need to be more flexible and more protective towards travellers. There is therefore a need for **an in-depth reform consisting of a harmonisation of the PTD and passenger rights regulations (in particular air travel) to balance the obligations and risks between package organisers, airlines and consumers.**

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<sup>1</sup> [Report](#) from the Commission to the European Parliament and the Council on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements, COM (2021)090 final

<sup>2</sup> In some countries, liability has been also extended to the retailer

<sup>3</sup> Which is a sharp drop compared with the share of 23% of prearranged package reported in the 2013 impact assessment accompanying the PTD proposal (see fig. 2 p. 13)  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0263&from=EN>

II. Secondly, the PTD is not adequate to deal with large scale events such as pandemics. While some emergency measures and financial support provided by Member States have allowed most travel companies to survive up till now, emergency mechanisms have to be put in place in order to better handle highly remote risks such as pandemics and ensure a swift refund of consumers in future.

In view of these elements and the current evaluation of the EU legislation, please find hereafter ECTAA's assessment of the current provisions and proposals for improvement to make a future-proof update of the PTD.

## 1. PACKAGE TRAVEL OF TOMORROW: BETTER HARMONISATION OF PACKAGE TRAVELLERS' AND PASSENGERS' RIGHTS

Covid19 has precipitated a change in how travel will be sold in the future. This crisis has shown that, for the travel industry to be sustainable in the future, a thorough reform of the PTD and Air Passenger Rights Regulations is required.

### 1.1 Financial protection:

#### 1.1.1 Application of a principle "prepayment = insolvency protection" to air transport

#### **ECTAA's Proposal:**

**Transport services (in particular air travel services) that require the traveller to pay in advance should be protected against the service provider's insolvency.**

At the moment only package travel organisers (and sometimes retailers) and LTA facilitators (to a limited extend) are required to carry an insolvency protection. In order to regain travellers' confidence while providing more flexibility to package organisers, it is necessary to consider increasing the minimum level of travellers'/passengers' protection to be applied to air travel services.

**Both the Commission and the European Court of Auditors (ECA)<sup>4</sup> have noted how the pandemic has brought into sharp focus the exposure of passengers in the absence of airline insolvency protection.**

**Travellers require protection against the insolvency of airlines!** The past couple of years have shown how fragile the airline business is. Therefore, following the principle that travellers' prepayments should be financially protected, and given the experiences drawn from Thomas Cook and the current pandemic, **an airline insolvency protection would be crucial.**

<sup>4</sup> [Special Report 15/2021](#): Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts

The benefits of such proposal are:

- o Travellers' prepayments would be better protected against airlines insolvency, irrespective of the type of services purchased (package or standalone flight).
- o The understanding of travellers' rights with regard to insolvency would be greatly improved.
- o Imposing additional protection on prepayments will enable the tourism sector to find alternative payment solutions such as the "pay as you go" business model.

**Remarks:**

This protection should apply to services providers, it is important **that Member States do not bypass this obligation by imposing on intermediaries such as travel agents to carry the insolvency protection instead of the service provider.**

*1.1.2 Costs, availability and coverage of the insolvency protection:*

**ECTAA's Proposal:**

**Open a debate on a more sustainable and affordable insolvency protection that would also cover B2B transactions.**

Taking into account the above-mentioned conclusions, it would also be important to tackle the high costs and limited availability of insolvency protection schemes. With the Covid19 pandemic, several insurers pulled out of the market and it has become increasingly difficult for organisers to be adequately protected. It is important to avoid any price increase for the protection. The fact that there is no capping in the insolvency protection is an issue as it becomes harder to find enterprises prepared to cover the risk (insurance/reinsurance/funds). **It is therefore crucial to open a discussion on insolvency protection to guarantee its affordability, availability and effectiveness based on the findings gathered from the successive crisis (Thomas Cook failure and the Covid19 pandemic) that hit the travel industry in the past few years.**

Financial protection should be available to both consumers (as direct clients) and businesses (who refunded consumers to cover the failure) alike.

The form of the insolvency protection at national level should be left flexible while its main purpose remains the protection of consumers' prepayments.

### 1.1.3 Limitation of prepayments for packages: tackling an issue by the wrong end

The report on the application of the PTD and the inception impact assessment<sup>5</sup> referred to the limitation of prepayments as a possible solution to limit the refunds, in particular in situations similar to what the industry experienced during the pandemic.

**ECTAA cannot support a limitation of prepayment only applied to package organisers or LTA retailers while leaving out all other service providers in the travel value chain.** The PTD, as drafted, does not prohibit an organiser to limit or not use a prepayment business model. What prevents them from offering that option more often is that service suppliers require advanced payments, in particular if air transport is involved. The Covid19 pandemic has shown that the travel value chain functions as a whole ecosystem. During the pandemic, packages were not refunded because organisers have been unable to get refunds from their suppliers, in particular airlines. Package organisers do not hold the prepayments. Should a limitation of prepayment be implemented, it has to be done along the whole value chain. Otherwise, it would put a new insurmountable burden on the package travel industry and the SMEs composing the vast majority of these companies. We acknowledge that imposing such general limitation will be extremely challenging, in particular with services providers based outside the EU.

Moreover, if pre-payments were limited there are no means to prevent travellers' "no show", i.e. travellers that book services but neither keeps nor cancels them.

## 1.2 Ensuring a swift refund of consumers by addressing the shortcomings in the B2B environment:

### ECTAA's Proposal:

**Ensure that package travellers are refunded in time. To do so, service suppliers holding the prepayments must refund the intermediaries.**

**Amend Art 22 of the PTD to:**

- **Impose an obligation on service suppliers to refund the package organiser/retailer within the legal deadline (before 14 days) in the event of a package cancelled due to an Unavoidable and Extraordinary Circumstance.**
- **Make this obligation effectively enforceable.**

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<sup>5</sup> [Inception impact assessment](#)

During the Covid19 pandemic, the main reason why package organisers/retailers could not refund their customers stems from their inability to recover the traveller's monies from service providers (in particular airlines). Tour operator and travel agents were given vouchers from their suppliers or their requests for a refund were simply not processed. In such a situation there are no means to quickly recover the money or ensure that business partners fulfil their contractual obligations. Due to the dominant position of some business partners on the market, it has, at best, taken months for travel agents to secure refunds.

In order to prevent this situation, an obligation to refund a package traveller should also apply to the service providers who hold the prepayments. That obligation should be applied to all services that are part of a package, in particular the air transport segment. The refund of prepayment should be processed in the same way the payment of the services composing the package was done.

If applied, intermediaries who do not hold the prepayments will be in a position to refund the travellers back and fulfil their refunds obligations. One way to implement such obligation would be to amend Article 22 of the PTD. As currently worded, Article 22 fails to adequately support an organiser's right to recover traveller's monies from the travel service suppliers that are holding the traveller's monies, where the package is cancelled due to an Unavoidable and Extraordinary Circumstance.

As seen during the pandemic, having contractual obligations does not mean that these obligations will be met in particular in the context of customer refunds. **More effective swift enforcement tools ensuring that B2B contractual obligations are fulfilled would be much welcomed.** That can also be achieved via amendments of Article 22 of the PTD. Similarly, such changes should be mirrored in the Air Passenger Rights Regulation<sup>6</sup> by amending Article 8.2 (refund of air transport component of a package travel) and 13 (right of redress).

### **1.3 Simplification of the scope of PTD:**

#### **ECTAA's Proposal:**

**Limit the scope of package travel to preconstructed package, combination of services marketed as package or sold at a total/inclusive price.**

The share of traditional packages is in sharp decline (from 23% in 2012 to 9% in 2017). More and more companies are de-packaging their products due to the high requirements and the lack of insurance products to cover their risks. Due to these business developments, this very protective directive is

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<sup>6</sup> Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

becoming increasingly irrelevant, with less traders able to offer such products. More flexibility should therefore be considered in order to make the PTD more future proof.

**To that end, ECTAA suggests to make the package travel more flexible by moving the definition of dynamic packaging (art 3 2) b(i) of the PTD) to the linked travel arrangement category.**

It would provide a welcomed flexibility in the way travel is sold, in particular for brick-and-mortar travel agents. They cannot, unlike in an online environment, artificially separate the sale of combined travel services to fall into the LTA category. As a consequence, such a modification would provide more balance between online and offline environments. In terms of protection of consumers, LTA would be strengthened should a protection against insolvency of transport services be implemented (See 1.1).

However, if the further improvement of the protection of travellers and passengers is the ultimate goal of the European consumer policy, there are more merits to bring other travel and transport legislations to the level of protection already achieved by the PTD rather than overburdening an already protective legislation.

## **2. LESSONS FROM THE PANDEMIC: HOW TO IMPROVE REFUNDS WHILE ENSURING THE SURVIVAL OF THE TOURISM INDUSTRY**

The pandemic and the worldwide standstill of travel for a year and a half were scenarios not foreseen by the EU travel legislations. The PTD recognises, in Recital (40), that the insolvency protection should be proportionate and not cover highly remote risks such as the failure of multiple organisers.

Similar proportionality principles should also apply to refunds in the event of large-scale events limiting worldwide travel (such as pandemics). In such cases, alternative financial mechanisms should be put in place in order to ensure the full refund of customers within the legal deadline (see 2.1). A rapid refund system should be set up to ensure the swift refund of consumers. In addition, some mechanisms (e.g. vouchers), which were put in place by Member States during the pandemic, deserve to become legally available and regulated in the future.

### **ECTAA's Proposal:**

**In the event of highly remote risks similar to the current pandemic, a rapid refund system, either set up at EU level or coordinated at national level, should be mobilised to ensure the refund of travellers in a timely manner.**

**Enshrinement of voucher recommendations in the PTD.**

## **2.1 Rapid response system to refund customers in the event of massive cancellations**

An EU or a coordinated national financial support mechanism to ensure the swift refund of consumers and the survival of the industry in the event of worldwide travel restrictions should be considered.

Such fund or coordination should be prepared in advance in order to be rapidly deployed should worldwide travel restrictions and other highly remote risks occur in the future.

The implementation of such mechanism will have a cost and should not become an additional financial burden on companies that just got through the crisis. Increasing the compliance cost of packages will just drive more companies and consumers away from the package travel model.

## **2.2 Integration of voucher recommendations in the PTD.**

Vouchers were, in some EU Member States, the first measure to be put in place to tackle the liquidity crisis during spring 2020. It has allowed travel companies to better handle the waves of refunds. While vouchers are possible for transport services, this possibility is not offered for package travel. ECTAA believes that the recommendation of the European Commission on vouchers of 13 May 2020 <sup>7</sup> should be integrated in the PTD, as well as other passenger rights regulations.

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<sup>7</sup> [Commission Recommendation 2020/648](#) on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic