



Towards a reform of EU law on package travel

SUMMARY *The tourist sector is an important part of the EU's economy, generating 10% of its GDP. The internet and the rise of low-cost airlines have changed both business approaches and consumer behaviour patterns. Instead of traditional pre-arranged packages, many tourists now either combine the different elements of their holidays themselves or purchase customised packages.*

The existing [Directive on package travel](#) grants consumers numerous rights, in particular with regard to pre-contractual information. However, as it dates back to 1990, it covers only traditional, pre-arranged packages.

This legal framework has been further developed by the Court of Justice of the EU which strengthened consumer rights in the event of tour-operator insolvency and loss of enjoyment during holiday.

The 1990 Directive provides for minimum harmonisation, allowing Member States to enact more consumer-friendly rules.

In July 2013, the Commission presented a [proposal](#) for a new Directive on package travel and assisted travel arrangements. It is aimed at adapting the legal framework to the challenges of the digital era. The European Parliament has supported the idea of reforming the law on package travel in two resolutions.



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Background

Importance of tourism for EU citizens and the economy

The EU is the world's most visited tourist destination. In 2008, it was visited by 370 million international tourists (40% of worldwide arrivals). European citizens are Europe's most important tourists, generating 72% of the overall profit of the EU's tourist industry. In fact, 90% of journeys undertaken by EU citizens are within the Union. The [tourist industry](#) in the EU employs 5.2% of the total workforce (9.7 million jobs) and consists of approximately 1.8 million businesses, contributing 10% of the EU's GDP.¹

Changing models of travel arrangement

When the [Directive on package travel, package holidays and package tours](#) (1990) was enacted, tourists would most often go to a travel agency to buy a pre-arranged holiday package. The Directive therefore only applies to this type of ready-made package. Since then, however, owing to the transition to a digital economy and the emergence of the low-cost airline sector, consumer behaviour patterns have changed.² Although 23% of European tourists still choose the traditional pre-arranged packages prepared by travel agencies, the majority no longer does so. Some 54% of Europeans now buy all components of their holiday on their own ('independent travel arrangements'). A

further 23% of EU holidaymakers opt for 'combined travel arrangements' (also known as [dynamic packages](#)); that is customised holidays, which are put together by one or more commercially linked traders, usually purchased online.

Despite a change in consumer habits and the growing popularity of dynamic packages, citizens are not aware of the lack of protection under the existing Directive. In fact, 80% of European tourists who purchased 'dynamic packages' believed them to be within the scope of protection of the Directive, although this is usually doubtful.³ This situation has led to growing support for revision of the legal framework.

The 1990 Directive

Definition of 'package'

The [Directive on package travel, package holidays and package tours](#) (1990) applies only to a 'package', which is defined as a pre-arranged combination of two or more elements of a holiday trip. These can include transport (e.g. aeroplane ticket), accommodation (e.g. hotel stay) or other tourist services (not linked to transport or accommodation), which account for a significant proportion of the package (e.g. car rental).

Business travel contracts

The [notion of 'consumer'](#) in the Directive is understood in a broader manner than in other consumer directives, with no restriction to natural persons acting outside the scope of an economic activity. Therefore, persons concluding package travel contracts for business-related purposes count as consumers, and business trips are covered by the Directive.⁴

Consumer's information rights

The Directive grants consumers information rights, covering the pre-contractual phase, the content of the contract, and the pre-travel phase. Traders are not allowed to provide any misleading information, and the content of brochures is binding on them. Consumers must be given contact infor-

mation for a local representative of the trader, or an emergency telephone number enabling them to contact the trader.

Revision of contract

As a rule, the prices laid down in the contract may not be revised. However, the contract may provide for revision due to a change of transport costs, taxes and fees or exchange rates. No increase in price is allowed in the 20 days prior to departure.

If the organiser is constrained to modify the essential terms of the contract (e.g. price), they must inform the consumer. The consumer may then either **withdraw from the contract** without penalty, or accept a modification of the contract.

Cancellation of package

If the consumer withdraws from the contract because of a rise in the price or any other reason (other than the consumer's own fault) or if the package is cancelled by the organiser, the consumer may either claim a substitute package or be reimbursed. In case of cancellation by the organiser, the consumer is also entitled to compensation.

Non-performance by organiser

If after departure a significant proportion of the package is not performed by the organiser, they must make suitable alternative arrangements, without additional payment. Member States (MS) must ensure that organisers and retailers are liable to the consumer for the proper performance of the contract.

Insolvency protection

Tour organisers and retailers are under a duty to provide sufficient evidence of security to cover the reimbursement of consumers and their repatriation in the event of the trader's insolvency.

Developments in case law

Traveller's right in case of insolvency

The Court of Justice (CJEU) ruled that the Directive confers upon consumers – in the event of the trader's insolvency – a legal

right to demand the reimbursement of all sums paid over and to be repatriated at the expense of the trader's insurer (*Dillenkofer* case, 1996). The Court further indicated that this right of the consumer may not be limited or excluded by national implementing provisions (*Rechberger* case, 1999). Thus national rules which set the minimum security at a level which is too low relative to the actual risk, violate the Directive. Moreover, the traveller's right to reimbursement extends also to situations in which the traveller, following the tour operator's insolvency, was forced to pay for their stay a second time (directly to the hotelier) before being able to leave the hotel and return home (*Verein für Konsumenteninformation* case, 1998).

The security provided to consumers by the Directive also covers situations in which the travel organiser becomes insolvent as a result of their own fraudulent conduct (e.g. they never planned to organise the trip) (*Blödel-Pawlik* case, 2012).

Compensation for non-material damage

As regards the traveller's right to compensation in case of improper performance of the contract, the CJEU held that it extends also to non-material damage (*Leitner* case, 2002). In the case at hand, a holidaymaker suffered from food poisoning. The CJEU indicated that the plaintiff ought to be entitled not only to compensation for physical pain and suffering caused by the food poisoning itself, but also compensation for loss of enjoyment of the holiday.

The *Leitner* case was widely commented upon by scholars because it gave an EU-wide understanding of 'damages'.⁵ Some see it as part of the CJEU's development of EU consumer protection, going beyond national standards,⁶ and even as the 'nucleus of an emerging substantive European contract law'.⁷

Customised packages

Customised packages, which are organised by a travel agency at the request of

consumers, and according to their specifications, are also included in the Directive's notion of a 'package' (*Club-Tour* case, 2002).

Implementation in the Member States

The Directive contains a minimum harmonisation clause,⁸ and therefore MS may adopt or retain more consumer-friendly rules in their national legal systems.⁹

Extensions of scope

Some MS have extended the scope of the Directive's regime to include persons operating tourist services occasionally or to cover travel contracts which are either not packages (single service) or are short packages (trips without overnight stay).

Extensions of information duties

Many MS have extended the information duties under the Directive, often adding that the handing over of a brochure is compulsory, or formulating deadlines within which pre-travel information must be provided. Some MS require pre-contractual information to be in written form. Some MS have introduced sanctions in case of non-compliance with information duties (e.g. fines, revocation of licence to run a travel agency).

Limits on modification of price

Whilst the Directive restricts any modification of the price before departure, some MS introduced provisions which only limited price increases. Therefore, traders are free to reduce prices without limit. Some MS have limited the circumstances in which price increases are allowed (e.g. change in exchange rate exceeding 10%). Others have limited the overall price increase permissible (e.g. no more than 10% of the original price).

Extensions of contract requirements

Many MS have introduced additional elements to be included in the contract, such as conditions for termination by the traveller or trader. Some MS have introduced the requirement of written form for contracts.

Extensions of trader's liability

Some MS have extended the compulsory cover for the trader, as well as introduced direct insurance claims for the traveller against the insurer, even when the trader is not insolvent. The consumer's right to compensation for non-material damage, as recognised in the [Leitner](#) case, is explicitly codified in some MS.

Security in case of insolvency

MS have provided detailed rules on the security that the trader must take out in case of insolvency. Some have provided for minimum insurance sums based e.g. on trader's net revenue or their forecast turnover. Some MS issue licences to traders only on condition of providing security.

EP support for the reform

The EP indicated its support for the revision of the law on package travel in a 2010 [resolution](#). In a [resolution](#) of 4 July 2013, the EP stated that it expects that the revision of the Directive will take into account the impact of e-commerce and digital markets upon consumer behaviour, as well as improve the quality, content and reliability of information provided to tourists.

the tourist industry and consumer behaviour patterns (e.g. internet bookings, dynamic packages).

Broader scope of protection

One of the chief aims of the proposal is to expand the scope of protection to new types of travel arrangements, besides the traditional pre-arranged travel package. First of all, the notion of a package itself would

be expanded to cover customised packages. Second, a limited scope of protection would also be granted to consumers purchasing 'assisted travel arrangements'.

Definition of a package

'Packages' would cover not only traditional, pre-arranged combinations of travel services, but also individual travel services

Commission proposal

Background of the proposal

The Package Travel Directive was initially intended to be covered – as part of a bundle of eight directives – by the revision of the consumer *acquis*.¹⁰ However, the [proposal](#) for a Consumer Rights Directive tabled in 2008 covered only four directives, with that on package travel left out.

The revision process of the Directive was launched in 2007 when the Commission published a [working document](#). It [consulted](#) stakeholders, who [supported](#) the idea of the revision. In 2009, the Commission published a [study](#) on consumer detriment in the area of dynamic packages, and launched a second [consultation](#) of stakeholders. After further workshops and conferences with stakeholders in 2010 and [2012](#), on 9 July 2013, the Commission adopted a [proposal](#) for a new Directive on package travel and assisted travel arrangements, to replace the existing 1990 Directive. It focuses on adapting the legal framework to changes in

provided under separate contracts, if they are:

- purchased from a single point of sale within the same booking process,
- offered at an inclusive price,
- advertised or sold as a 'package',
- combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services,
- purchased from separate traders through linked online booking processes, where the traveller's data are transferred between traders at the latest when the booking of the first service is confirmed.

Example of a 'customised package' to be covered by the new directive: a consumer visits a travel agent's website which allows to search for airline tickets, hotel bookings and car rental (all provided by different traders), which are then sold for an all-inclusive price.

Assisted travel arrangement (ATA)

An ATA would be defined as a combination of at least two different types of travel

services for the same trip or holiday, not constituting a package, which results in the conclusion of separate contracts with the individual travel services providers, if a retailer facilitates the combination:

- on the basis of separate bookings on the occasion of a single visit or contact with the point of sale, or
- through the procurement of additional travel services from another trader in a targeted manner, through linked online booking processes.

Example of an ATA: *a consumer buys an airline ticket on a website, and after the booking is confirmed, they are invited to click on a link leading to another trader's website in order to book a hotel or car rental services.*

ATA purchasers would have a right to reimbursement and repatriation in case of the trader's insolvency. The retailer would also have to warn them that each trader is independently liable for performance of their service.

Business travel

In contrast to the current Directive, travel services purchased on the basis of a framework contract between a company and a trader specialising in arranging business travel would be excluded from the scope of the Directive. Other business travellers would continue to be covered.

Duties of retailers and organisers

An 'organiser' would be defined as a trader who combines and sells or offers packages, either on their own, or together with another trader, or through another trader. In such cases all such traders would be considered as organisers. A 'retailer' would be defined as a trader other than the organiser, who sells or offers for sale packages or facilitates the procurement of travel services which are part of an ATA.

Organisers would be liable for:

- providing pre-contractual information,
- performance of the package (including subcontracted services),¹¹

- in principle, compensation for any damage, including non-material damage, caused by lack of conformity,
- providing assistance to travellers in case of difficulty,
- procuring insolvency protection (to cover the refunding of sums paid by the traveller and, if necessary, the traveller's repatriation).

Retailers would be liable for:

- providing pre-contractual information,
- booking errors,
- procuring insolvency protection if they facilitate the purchase of ATAs.

Although no longer liable for the performance of the package, retailers would function as **contact points**, through which travellers would be able to address messages, complaints or claims with all the effects of addressing them directly to the organiser.

Consumer's right of withdrawal

Travellers would have a right to withdraw from the contract before the start of the package, against appropriate compensation to the trader. However, in the event of unavoidable and extraordinary circumstances (e.g. natural disaster, warfare), the traveller would be allowed to cancel the package without paying any penalty.

Price changes before start of package

The new rules would limit changes in the price to 10% of the original price of the package, and require traders who wish to adjust prices upwards to apply discounts in equivalent circumstances.

Forced stay at destination

If due to unavoidable and extraordinary circumstances it is impossible to organise the traveller's timely return, the organiser would be obliged to bear the cost of their forced stay during the first three nights, at a maximum rate of €100 per night. This limitation would not apply to certain vulnerable travellers.

Insolvency protection

Organisers and retailers facilitating the procurement of ATAs would have to obtain security – in the event of insolvency – to cover the effective and prompt refund of all payments made by travellers and for their repatriation. This insolvency protection would have to take into account the actual financial risk of the trader's activities. There would be mutual recognition of insolvency protection within the EU. MS would designate central contact points to facilitate administrative cooperation.

Mandatory nature and penalties

The mandatory nature of the traveller-protection rules in the Directive would be explicitly recognised. Organisers would not be able to avoid their duties by stating that they are providing only a travel service rather than a package or that they are acting only as an intermediary. Travellers would not be able to waive their rights.

Following the Directives on [unfair commercial practices](#) and [consumer rights](#), the proposal would oblige the MS to introduce effective, proportionate and dissuasive penalties on traders violating its rules.

No more minimum harmonisation clause

The proposal does not include a minimum harmonisation clause like that found in the 1990 Directive.

Further reading

[Study on Consumer Detriment in the area of Dynamic Packages](#) / London Economics, 2009

[Implementation of the Package Travel Directive](#) / H. Schulte-Nölke et al., Policy Department A Economic and Scientific Policy, European Parliament, 2012

[Bringing the EU Package Travel Rules into the Digital Age](#), COM(2013) 513 final, 9 July 2013

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<http://www.library.ep.ec>

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Endnotes

- ¹ [Proposal](#) for a Directive on package travel and assisted travel arrangements, 2013/0246 (COD), p. 2.
- ² [Frequently Asked Questions: Commission proposes to improve consumer rights for 120 million holiday makers](#), MEMO/13/667 / European Commission, p. 2-4; [Bringing the EU Package Travel Rules into the Digital Age](#), COM(2013) 513 final, 9 July 2013, p. 5.
- ³ [Study on Safety and Liability Issues Relating to Package Travel](#) / Frank Alleweldt et al., European Parliament Policy Department Economic and Scientific Policy, 2007, p. 8.
- ⁴ [The notion of consumer](#) / Martin Ebers, in: [EC Consumer Law Compendium](#), 2008, p. 716.
- ⁵ [What is the Role of the ECJ in EC Private Law? A Comment on the ECJ judgments in Oceano Grupo, Freiburger Kommunalbauten, Leitner and Veedfald](#) / Peter Rott, in: *Hanse Law Review*, vol. 1, no. 1, 2005, p. 13.
- ⁶ See e.g. [Judicial Activism of the European Court of Justice and the Development of the European Social Mode in Anti-Discrimination and Consumer Law](#) / Hans-Wolfgang Micklitz, *EUI Working Papers LAW No. 2009/19*, p. 16.
- ⁷ [Protection of Consumers' Economic Interests by EC Contract Law – Some Follow-up Remarks](#) / Norbert Reich, in: *Sydney Law Review* vol. 28, 2006, pp. 37-62, p. 47.
- ⁸ On 'minimum harmonisation' (as opposed to 'total harmonisation') see e.g. *Economic Law, Consumer Interests and EU Integration* / Norbert Reich, in: [Understanding EU Consumer Law](#), Intersentia 2009, p. 40-41.
- ⁹ On the implementation of the Directive in the MS see: [Package Travel Directive \(90/314\)](#) / Hans Schulte-Nölke, Leonie Meyer-Schwickerath, in: [EC Consumer Law Compendium](#), 2008; [Implementation of the Package Travel Directive](#) / Hans Schulte-Nölke et al., Policy Department A study, 2012.
- ¹⁰ [European Contract Law and the revision of the acquis: the way forward](#), COM(2004) 651 final, 11 October 2004, p. 3.
- ¹¹ Cfr. [Study on Safety and Liability Issues Relating to Package Travel](#), supra, p. 33 which recommended explicitly providing that the liability of the organiser is 'strict' (i.e. independent from fault) and that the burden of proof should be shifted to the organiser.