IMPLEMENTATION OF THE PACKAGE TRAVEL DIRECTIVE

STUDY

Abstract
This study provides an updated evaluation of the Package Travel Directive. Firstly, the implementation of the Directive – especially though the current state of play in the new Member States – is analysed. Particular aspects of the Directive are treated, such as the problem of the travel provider becoming insolvent, issues relating to intermediaries and travel not regulated by the Directive. Secondly, proposals are treated. The Directive is evaluated from the perspectives of stakeholders and consumers. An update is given on the latest relevant legislative developments. This includes, specifically, the Consumer Rights Directive and the proposal for a European Sales Law in e-commerce. As a result, specific overarching proposals are made which may remedy the issues addressed.
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LIST OF ABBREVIATIONS

Art. Article
B2B Business-to-business
BGB German Civil Code (Bürgerliches Gesetzbuch)
CC Civil Code
COM Commission Staff Working Document
CRD Consumer Rights Directive
ECJ European Court of Justice
etc. et cetera
EU European Union
EUR Euro
ibid. ibidem; repetition of the same citation
i.e. id est; that is
No. Number
p. page
et seq. et sequitur; and the following
UCP Unfair Commercial Practices Directive
UTCC Directive on Unfair terms in Consumer Contracts
EXECUTIVE SUMMARY

Background

Council Directive 90/314/EEC on Package Travel and Holiday Tours ("the Directive") was adopted over two decades ago. The Directive seeks mainly to protect parties who purchase holiday packages, which generally take the form of travel and overnight accommodation packaged by a single provider. It does this by providing a minimum harmonised level of protection of package travellers against the organisers and retailers of their package. The Directive was originally conceived with a European Union of 13 Member States in mind who were to incorporate the provisions of the Directive by 13 December 1992.1 This was the first wave of the Directive’s implementation. With the major enlargement of the EU in 2004,2 the "new Member States” were required to transpose European Union law into their national legal systems.3 As a result of the enlargement of the European Union to its present day size of 27 Member States, the Directive has undergone a second life of implementation in the past decade. It is the Directive’s second life which provides the focus for this study’s analysis of the way in which the Directive has been implemented.

The second major development since the adoption of the Package Travel and Holiday Tours Directive has been the unravelling of the traditional package holiday. The success of low-cost airlines and greater access to the internet are but two factors which have led to consumers picking and choosing various deals from a variety of service providers to repackage a custom-made holiday. As there is no link between the service providers, whether legal or commercial, the Directive affords no protection in these instances. A related trend to the unravelling of the package holiday is the so-called "dynamic package". An example of dynamic packaging being where an internet platform, for example, for booking flights will also provide “add-ons” by which the consumer can contract for services such as car-hire, insurance or hotel accommodation. Although commercially linked, it is the consumer who individually contracts with each service provider. The extent to which the protection of the Directive is given to consumers of dynamic packaging is consequently unclear, despite limited positive judicial intervention.4 This major development in the market should be taken into consideration for any prospective reform of the Directive.

Implementation of the Directive

- The Directive is one of minimum harmonisation. Member States are therefore free to choose the form and method for transposing a directive into national law as long as the transposition achieves the aims set by the directive. This has resulted in great variety in the mode of transposition (whether the law of transposition takes the form of a Code, a separate Act on Package Travel, or is implemented through secondary legislation). Due to the principle of harmonisation, variations in the national laws are normally fully compatible with the Directive. Therefore the following remarks are restricted to significant points of interest which are compatible with the Directive unless otherwise stated.

  - Scope of application:
    - The new Member States use different terms from those used in the Directive with the exception of ‘package’ where a uniform definition is the norm;

1 Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.
2 Although also in 1995 (Finland, Sweden) and 2007 (Bulgaria, Romania).
3 Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.
4 ECJ judgment of 30 April 2002, C-400/00 - Club Tour.
There is a mixed approach by new Member States to the issue of whether commercial or non-commercial interests are used in defining terms used by the Directive. The definition of package “organisers” is restricted in some Member States to those acting in a commercial interest, whilst other Member States apply the Directive’s provisions to organisers acting non-commercially as well.

- **Measures of consumer protection** (equivalencies in substance)
  - Additional information duties: some new Member States specify a timeframe for obtaining a passport and visa. The Czech Republic, Estonia and Slovenia are the only new Member States to impose the duties only on the organiser (Estonia and Slovenia) or travel agency (Czech Republic). Specific timeframes are stipulated in the new Member States in the transposition of the Directive expression ‘in good time’.
  - Limitation of price revision: while half of the new Member States introduced national provisions restricting price increase as well as price decrease, the other half of the new Member States have introduced provisions which only restrict price increases.
  - Consumer rights: there are divergences in the regime of notification by the consumer of the exercise of consumer rights. There is a limitation of the right of cancellation in Lithuania, which is not in conformity with the Directive.

- **Article 7 – insolvency**: in setting minimum levels of insurance, which may not be sufficient to refund the consumer fully, several of the new Member States seem to be in non-conformity with the Directive.\(^5\)

- **Intermediaries**
  - The role of intermediary is decisive in three main areas: (1) the conclusion of the contract, and (2) responsibilities and (3) liability to the consumer.
  - However, the role and the responsibilities of intermediaries are difficult to determine in the Member State transpositions through use of the expression in the Directive of “organiser and/or retailer”.

- **Travel falling outside the scope of the Directive**
  - Small package travel: in general, Member States have not extended the scope of application of the Directive to these packages where, for instance, the service covers a period up to twenty-four hours or does not include overnight accommodation.\(^6\) In such cases, some protection is afforded through the general rules of contract and the Unfair Terms in Consumer Contracts (UTCC) Directive.\(^7\) However, where non-performance of one service has knock-on effects upon the other services contractually based remedies are of no avail to the disappointed consumer. Such a regulatory gap could nonetheless be filled through extending the scope of the Directive to small package travel.
  - Individual travel services: are perhaps too far removed from the specific problems in the functioning of the market which the Package Travel Directive was designed to meet. As a result, wholesale reform may not be required. However, it may be worth considering insolvency protection for individual travel services.

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\(^6\) Germany is an exception where the protection of the Directive is applied (excluding protection against insolvency).

Reform

- **Evaluating the Directive from the perspective of stakeholders.**
  
  o The following weaknesses have been noted by stakeholders: the inclusion of dynamic packaging within the scope of the Directive; difficulties in interpreting the Directive, especially relating to general key terms such as “consumer”, “organiser”, “retailer”; the non-mandatory incorporation of pre-contractual duties into the contract; lack of clarity in relation to specific aspects of the information requirements as well as what constitutes an essential term for the purposes of withdrawing and cancelling the package travel contract; insolvency regimes may create barriers to trade.

  o These problems can mostly be resolved through greater clarity in policy decisions. It might be worth considering full harmonisation in the most sensitive areas like pre-contractual information duties, brochures and formal requirements for information duties as well as exclusion of liability clauses. However, as past experience has demonstrated, this may prove very difficult to integrate into the existing national legal systems without a certain level of completeness in, for example, the remedies granted to consumers in cases of non-performance or defective performance. This problem must be addressed through further research.

- **The latest legislative developments**

  o Consumer Rights Directive ("CRD"). As the Directive was not included in the consolidating work of the CRD and excluded from its scope of application, the position of consumers has actually deteriorated in specific instances. Thus, any reform of the Directive needs to consider whether consumers who conclude package travel contracts in an off-premises or distance selling situation need specific protection. In addition to the former point, it would be desirable for improvements in definition achieved by the CRD be carried over into any reform of the Directive.

  o European Sales law. Two points are worthy of interest. Firstly, in relation to legislative technique, the optional instrument on a common European Sales law could provide a useful template for an (optional) EU travel code. Secondly, on a more substantive level, damages for non-material loss, as well as rules on termination, excuse or on restitution after termination could be provided for explicitly in a newly reformed directive on package travel.

**Overarching proposals for Reform: greater clarity**

- **An EU label?** Greater precision is needed in determining which duties apply to intermediaries. The issue is less who should be responsible in absolute terms, but rather clearly determining which person is responsible. A European label could be introduced indicating that the proposed contract is governed by EU law and specifically mentioning the persons against whom consumer remedies can be pursued.

- **A European Travel Code?** A basic policy decision has to be made on whether just consumers (i.e. persons who are acting for non-commercial purposes) or every traveller should be protected. Should reform of the Directive envisage an extension in the scope of application of the contracting party (the person travelling), then it would be advisable to enact an overarching EU Travel Law. This would take the form of a single law consolidating the existing patchwork of European legislation in the area of travel and supplemented by generalised rules on pre-contractual information duties, the basic obligations under the most relevant travel contracts and remedies.
IMPLEMENTATION AND REFORM OF THE PACKAGE TRAVEL DIRECTIVE

1. INTRODUCTION

This study aims to provide background information and advice on priority measures and actions to be taken in the field of package travel. Council Directive 90/314/EEC on Package Travel and Holiday Tours was adopted on 23 June 1991 and needed to be transposed by Member States by 31 December 1992. The Directive was designed to protect consumers who contract package travel in the EU. It covered the sale of a pre-arranged combination: consumers were covered where at least two of these travel elements were sold or offered for sale at an inclusive price and the service covered a period of more than twenty-four hours or includes over-night accommodation.

There were two main regulatory measures contained in the Directive: information duties and rules on the liability of providers of package travel. The Directive prescribed rules on the information that must be given to consumers at different points in time. It thus contained specific requirements with regard to the content of brochures where provided on information such as the price, itinerary and formalities in the event of cancellation. In relation to liability, the Directive imposed responsibility for the performance of the services offered. This included specifically rules on compensation for non-performance or unsatisfactory performance of the contract as well as the duty to help consumers in the eventuality that the package did not go according to plan.

In order to assess the success of the Package Travel Directive ("the Directive"), this presupposes a full exposition of its implementation before proposals for reform can be made. The part on the implementation of the Directive provides an overview of the current state of play, focussing upon its latest implementation in new Member States. It also includes specific concepts of the Directive. These are, firstly, the problem of Article 7 relating to security in case of insolvency, then issues relating to intermediaries and finally the scope of application, specifically travel which is not covered by the Directive. The part on reform begins with an exposé of the strengths and weaknesses of the Directive as perceived by stakeholders and consumers and an update on the latest legislative developments in the field. Concerning this latter point, this includes the Consumer Rights Directive and the proposal for a European Sales Law in e-commerce. Once analysed, specific overarching proposals which address the issues can, finally, be made. This generalised conclusion for measures and actions to be taken is based upon the need for clarity: greater clarity in the duties of intermediaries and the greater clarity as to the persons who are protected under the EU regime. The endnote thus begs the question: is now the time for a European Travel Code?

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8 OJ n° L. 158 of 13 June 1990, page 159.
2. IMPLEMENTATION

2.1. Generally

The Package Travel Directive 90/314/EEC has been transposed in all new Member States. Member States are free to choose the form and method for transposing a directive into national law as long as the transposition achieves the aims set by the directive. This is the principle of minimum harmonisation.

As a result of the principle of minimum harmonisation and the consequent freedom of the Member States in implementing the Directive, the Member States’ transpositions differ enormously in legislative technique. The majority of the Member States chose to transpose the Directive’s provisions through a special act on package travel. The only Member States not to have chosen this approach are Austria, Estonia, Germany, Italy, the Netherlands and Slovenia. These Member States chose to transpose the Directive’s provisions in more general regulations like the Civil Code (Germany and Slovenia as well as Czech Republic, Hungary, Lithuania and Slovakia), Consumer Codes (Austria and Italy), the Law of Obligations (Estonia and Slovenia), Tourism Act (Estonia as well as Bulgaria, France, Latvia and Lithuania) or others (Austria, Estonia and Slovenia). Another way of transposing the Directive’s provisions is by government decree, which was chosen among Austria, Denmark, Finland, Germany, Hungary, Luxembourg, Latvia, the Netherlands and Portugal.

The principle of minimum harmonisation is also stated expressly in the Directive’s Recital. Thus, Member States are at liberty to adopt, or retain, more stringent provisions relating to package travel for the purpose of protecting the consumer. Therefore, most deviations from the Directive fully conform to the Directive and this is the case with the account given of the implementation by new Member States.

The focus of the current state of play of the implementation of the Package Travel Directives must lie on the new Member States. A full analysis of the first wave of implementations is available elsewhere. Over the past ten years many states have joined the European Union. These new Member States are Cyprus, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovakia and Slovenia, which joined the European Union in 2004, as well as Bulgaria and Romania, which joined the European Union in 2007. As there has not been an analysis of the Directive’s implementation in these Member States, the following up-to-date analysis will focus on them.

2.2. New Member States

2.2.1. Scope of application of concepts used in the Directive

In some cases, the Member States provide a wider scope of application in the field of package travel by broadening the notion of ‘organiser’ (Art. 2(2)) or ‘package’ (Art. 2(1)). Most Member States made use of the minimum clause and of the options provided for in Art. 5(2)(4) of the Directive.

The terms ‘consumer’, ‘organiser’, ‘retailer’, ‘package’ and ‘contract’ as provided by the Directive are not always used in the transposition laws of the Member States. Among the new Member States the majority have used different terms for ‘consumer’, ‘organiser’ and ‘retailer’. In the case of the terms ‘consumer’ and ‘organiser’, some of the new Member

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9 Art. 288(3) of the Treaty on the Functioning of the European Union.
10 For further information on the national transposition laws: http://www.eu-consumer-law.org/.
States have used more than one term (ROMANIA\textsuperscript{12} ‘consumer’ as well as ‘tourist’; LATVIA: ‘operator’ as well as ‘undertaking’). Only regarding the term ‘package’ have the majority of the new Member States used the term as formulated in the Directive. Different terms used by the other new Member States are ‘tourist travel with general price’ (BULGARIA), ‘tourist event’ (POLAND) or ‘excursion’ (CZECH REPUBLIC and SLOVAKIA). HUNGARY\textsuperscript{13} and LITHUANIA have used the term ‘package’ as well as the term ‘travel contract’. Most of the new Member States have used a single definition of ‘contract’. HUNGARY\textsuperscript{14} and LITHUANIA have used a combined definition of ‘contract’ and ‘package’, whereas SLOVENIA has used ‘package’ in the definition of contract. ESTONIA and POLAND have no specific legislative transposition for ‘contract’.

The majority of the new Member States have deviated from the contents of the Directive’s definitions for ‘retailer’, ‘package’ and ‘contract’. Almost all new Member States have deviated from the content of the definition for ‘organiser’. While CYPRUS, CZECH REPUBLIC, ESTONIA, HUNGARY, POLAND, ROMANIA, SLOVAKIA and SLOVENIA\textsuperscript{15} have not introduced an explicit requirement of acting other than occasionally, other new Member States have introduced a restriction to commercial persons (CZECH REPUBLIC, ESTONIA, HUNGARY, LITHUANIA, POLAND, SLOVAKIA and SLOVENIA) or specialized agency (ROMANIA). HUNGARY\textsuperscript{16} has also introduced a qualified exclusion of not-for-profit organisations. Only regarding the content of the definition for ‘consumer’, have the majority of the new Member States transposed the content of the definition in a substantively equivalent manner to the Directive. Deviations have only been made by POLAND, which has excluded professionals from the definition of ‘consumer’, and HUNGARY, LITHUANIA and LATVIA\textsuperscript{17}, which have not explicitly transposed the second and third part of the Directive’s definition.

2.2.2. Measures of consumer protection

- Information duties

Information duties have been regulated in detail in the Directive. The Directive contains provisions about information in travel brochures, pre-contractual information duties, information before the start of the journey, elements that have to be included in the contract, information requirements with regard to all terms of the contract, a general prohibition of misleading information and sanctions for non-compliance with the information duties.

The information duties concerning travel brochures are regulated in Art. 3(2)(1) of the Package Travel Directive. The majority of the new Member States have used a different term than the term ‘brochure’ as used in the Directive. ESTONIA is the only new Member State to have transposed the information requirements in a substantially equivalent manner to the Directive. The majority of the new Member States chose to go beyond the standards set substantively in the Directive by introducing additional information requirements.

Art. 4(1)(a) of the Package Travel Directive provides provisions for pre-contractual information duties concerning passport and visa requirements and health formalities. All new Member States have transposed these information duties. Except for HUNGARY, ROMANIA and SLOVENIA, the majority of the new Member States have also introduced provisions concerning the timeframe for obtaining a passport and visa. The majority of new Member States have also introduced additional information requirements to be

\textsuperscript{12} The definition in Art. 2(4) Law 631 of 16 November 2001 uses the term ‘consumer’ while other regulations, e.g. Art. 15 of the same law, mention the term ‘tourist’.

\textsuperscript{13} Government Decree No. 214/1996 uses the term ‘travel contract’ when transposing the definition of ‘package’, in contrast to the definition in Decree No. 213/1996.

\textsuperscript{14} § 415-416 of the CC contains general rules with respect to travel contracts; Government Decrees No. 213/1996 and 214/1996 establish special rules.

\textsuperscript{15} The Code of Obligations does not define who an organiser is. However, the Promotion of Tourism Development Act defines who may be an organiser/seller of tourism: a sole trader or a legal person.

\textsuperscript{16} Article 1(4) of the Government Decree No. 213/1996.

\textsuperscript{17} It is unclear whether the definition of ‘client’ also covers the transferee of a travel package purchased by a third person.
Implementation of the Package Travel Directive

provided before the conclusion of the contract, whereas exemptions have only been introduced in BULGARIA, ESTONIA, HUNGARY and SLOVENIA. The majority of the new Member States have imposed the duty of providing information on the organiser and/or retailer, as stated in the Directive. CZECH REPUBLIC, ESTONIA and SLOVENIA are the only new Member States to impose the duty only on the organiser (ESTONIA and SLOVENIA) or travel agency (CZECH REPUBLIC). In all new Member States, the information must be provided before the conclusion of the contract, in accordance with the Directive. Most new Member States deviated from the Directive's method for providing the information, providing that the information may only be given in written form (BULGARIA, LITHUANIA and POLAND), in a format which can be reproduced in writing (ESTONIA), or in a brochure, or in other written form (CZECH REPUBLIC, HUNGARY and SLOVAKIA).

According to Art. 4(1)(b) of the Package Travel Directive, certain information has to be provided before the start of the journey. While most of the new Member States followed the Directive by imposing the obligation on the organiser and/or retailer, there is no specific transposition of this requirement in LATVIA. Nevertheless, LITHUANIAN law includes all the information duties in Art. 4(1)(b) of the Directive in the requirements to be fulfilled before the contract is concluded.18 Some of the new Member States have introduced a more specific timeframe in which the information has to be provided, for example 7 calendar days (CZECH REPUBLIC, HUNGARY and SLOVAKIA) or 7 working days (BULGARIA) before the start of the journey. The majority of the new Member States require the information to be provided only in written form, thereby deviating from the Directive. In CZECH REPUBLIC and ESTONIA no special form is necessary. ESTONIA, POLAND and SLOVENIA have not transposed all the information requirements listed in the Directive. While the majority of the new Member States have introduced additional information requirements, exemptions have only been introduced in BULGARIA, CZECH REPUBLIC20, ESTONIA and SLOVAKIA21.

In Art. 4(2)(a) of the Package Travel Directive it is stipulated that the contract shall contain at least the elements listed in the Annex of the Directive. Information on the itinerary, services included in the package price, the package price itself and information on deadlines for lodging a complaint due to improper or non-performance are the elements listed in the Directive's Annex that have been transposed in all of the new Member States. HUNGARY, LITHUANIA, MALTA, SLOVAKIA and SLOVENIA have not transposed all of the elements listed in the Directive's Annex. Except for ESTONIA, all new Member States have also introduced additional elements. HUNGARY, SLOVAKIA and SLOVENIA have also introduced exemptions. In the majority of the new Member States the elements have to be included in the travel contract, as stipulated in the Directive. However, a different approach has been taken in ESTONIA and SLOVENIA22, where the elements must be included in a confirmation document.

Except for POLAND and SLOVENIA, the national laws of the new Member States stipulate that all the terms of the contract must be communicated to the consumer before the conclusion of the contract, following Art. 4(2)(b) of the Package Travel Directive. The alternative given by the Directive, of providing the contract in another form that is comprehensible to the consumer, has only been transposed in BULGARIA, HUNGARY23, LATVIA and LITHUANIA. In ROMANIA, the contract may also be presented in the form of a catalogue, folder or other written form.24 Exemptions have been introduced in general in MALTA and in case of last-minute booking, as in accordance with Art. 4(2)(c) of the Package Travel Directive, by CYPRUS and SLOVAKIA.

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18 Article 5 of the Cabinet Regulation No. 163.
19 CC sec. 852d(1).
20 CC sec. 852(2).
21 If the contract is concluded less than 7 days before departure.
22 Equally possible in a travel programme.
23 § 2(4) of the Government Decree No. 214/1996 rules that the contract must be in writing.
The majority of the new Member States have transposed a general prohibition of misleading information substantially equivalent to Art. 3(1) of the Package Travel Directive. Variations have been introduced in CZECH REPUBLIC, LATVIA and SLOVAKIA, where the information given must be accurate, complete, clear and precise (LATVIA) or where the consumer must be provided with exact, clear, correct and truthful information (CZECH REPUBLIC and SLOVAKIA).

CYPRUS, HUNGARY and MALTA have also introduced sanctions in case of non-compliance with information duties. Such sanctions take the form of fines or other administrative law sanctions, which can be found in CYPRUS, or an operator's licence to run a travel agency can be revoked, as introduced in HUNGARY and MALTA. In CZECH REPUBLIC, on the other hand, there are no special sanctions, though the general system governing improper performance and damages applies.

- Limitation of price revision

Art. 4(4)(a) of the Directive restricts changes in the price. While half of the new Member States introduced national provisions restricting price increase as well as price decrease, the other half of the new Member States have introduced provisions which only restrict price increases.

The majority of the new Member States have transposed the conditions for price revision as stipulated in the Directive. CZECH REPUBLIC and SLOVAKIA are the only Member States to have introduced variations as regards the conditions. In CZECH REPUBLIC, an increase in the package price is possible only as a result of an increase in “payments connected with transportation, e.g. airport and port taxes, included in the price of the package”. Furthermore, an increase in price due to variations in the exchange rate of the Czech crown is only possible where the exchange rate increases by more than 10 % on average. Additionally, an agreement between the parties may state that the travel agency is entitled to increase the package price unilaterally if the revision method is precisely set out in the contract. A similar provision can be found in the SLOVAKIAN transposition law, which states that a change in the exchange rate of the Slovak crown can only be taken into account if the exchange rate increases by more than 5 % on average.

CZECH REPUBLIC and SLOVAKIA also deviated from the Directive's minimum harmonisation requirement that 20 days prior to the departure the price stated in the contract shall not be increased, by introducing a 21-day-period. Other increases in the level of consumer protection which is provided in the Directive have been made limiting the value of price increases under the contract. The limit of price increase varies from 2% (CYPRUS), 5% (BULGARIA) to 10% (ROMANIA and SLOVENIA) of the original/agreed price.

- Consumer rights

Where the consumer is prevented from proceeding with the package, Art. 4(3) of the Package Travel Directive stipulates that the consumer may change his booking. In that case, according to the Directive, the consumer must notify the organiser or the retailer of his intention. While SLOVENIAN law does not require notification to the organiser and/or retailer, in the majority of the new Member States, only the organiser has to be notified. Only BULGARIA, ESTONIA and MALTA have transposed this provision precisely as found in the Directive, requiring a notification either to the organiser or the retailer.

25 CC § 852c.
26 CC § 852c(2).
27 CC § 852c(2)(c).
28 CC § 852c(1).
29 Article 11(3) of the Package Travel, Holidays and Tours Law.
30 Article 35 of the Law on Tourism.
32 Article 899 of the Code of Obligations.
Most of the new Member States require the notice to be given within the period agreed in the package travel contract. No specific period is required in Lithuania. Under Lithuanian law, the tourist is entitled to have the trip transferred to a third person who must then agree to all the terms of the contract. Only in Czech Republic, Lithuania and Slovakia must the notification be given in a specific form (written form). The majority of the new Member States also transposed the rules concerning liability as stated in the Directive, by introducing joint and several liability on the transferor and transferee.

In cases of significant alterations to essential terms of the contract, the majority of the new Member States grant the consumer a right of cancellation and a power to accept the alteration, thereby transposing the provision of Art. 4(5) of the Package Travel Directive. Lithuania is the only member state not to have explicitly transposed this provision. Lithuanian law simply grants tour organisers the right to waive the contract for compelling reasons, though they are still obliged to inform the tourist of this decision.

All remaining new Member States grant a right of cancellation. In case of cancellation, the consumer is entitled to take a substitute package of equivalent or higher quality and is also entitled to reimbursement of all sums paid in the majority of the new Member States. Instead of transposing the Directive's requirement for the reimbursement to take place 'as soon as possible', Bulgaria, Cyprus, Hungary and Poland have introduced a more specific timeframe in which the reimbursement has to take place. However, no timeframe has been introduced in Czech Republic. Furthermore, Czech Republic, Slovakia and Hungary have also introduced cancellation penalties.

Variations exist in regard to the right to accept the alteration. While in some new Member States the consumer is just entitled to accept the alteration (Czech Republic, Hungary, Poland, Romania and Slovakia), in other new Member States, the consumer can accept a rider to the contract (Bulgaria, Cyprus, Latvia and Malta), or has the right to accept a replacement of an equivalent or higher standard (Estonia, Hungary and Latvia).

The majority of the new Member States have adopted the Directive’s requirement of significant alterations to the essential terms. Variations of this requirement can be found in Czech Republic, Poland, Romania and Slovakia.

Except for Slovenia, all new Member States have adopted the organiser’s obligation to notify the consumer about the alterations. The majority of the new Member States have imposed this obligation on the organiser, thereby following the Directive’s provision. While most of the new Member States require the notification to be given ‘as quickly as possible’ (Cyprus, Estonia, Malta and Slovakia), ‘immediately’ (Bulgaria), ‘without delay’ (Latvia and Poland), Romania has introduced a more specific timeframe of 15 days before departure. No time limit has been introduced in Czech Republic and Hungary.

Besides the information concerning any alteration to the contract, some of the new Member States also require the notification to contain information on a right to choose (Poland), information about any price increase or information on how to cancel the journey (Estonia).

According to Art. 4(5) of the Package Travel Directive, the consumer is obliged to inform the organiser or the retailer of his decision regarding cancellation of the contract or accepting the alteration, as soon as possible. Most of the new Member States have

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33 CC Art. 6.753(1).
34 CC, Art. 6.753(2).
35 CC, § 741f(1).
36 CC Art. 6.751(1).
37 Article 15 (b) of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2000: acceptance of the new conditions of the contract.
38 According to § 872(2) of the Law of Obligations, the traveller may, instead of withdrawing, demand a substitute package of equivalent or higher cost (if the tour operator is able to offer such a substitute), or a substitute package of lower cost and a refund of the difference in price between the packages.
deviated from the Directive's timeframe ('as soon as possible') by either introducing a specific timeline calculated in calendar days or by referring to the timeframe established by the travel bureau (SLOVAKIA).

Except for ESTONIA, all the other new Member States have transposed the provisions of Art. 4(6) of the Package Travel Directive regarding the consumer's right to be compensated for non-performance of the contract, with all the exemptions contained in Art. 4(6) i) and ii).

- Additional duties of the organiser

Art. 4(7) and Art. 6 of the Package Travel Directive also impose additional duties on the organiser. These additional duties are the obligation to make alternative arrangements (Art. 4(7)), the duty to provide equivalent return transportation and compensation (Art. 4(7)(2)) and the duty to make prompt efforts in case of complaints (Art. 6).

Except for SLOVENIA, all the other new Member States have transposed the obligation to make alternative arrangements, though with variations as CZECH REPUBLIC and ESTONIA. HUNGARY and POLAND have also introduced additional requirements.

While SLOVENIA has transposed the duty to provide equivalent transport for the return journey and compensation (indirectly), the other new Member States have transposed this provision directly, with some variations in CZECH REPUBLIC, ESTONIA, POLAND and SLOVAKIA. SLOVENIAN law does not contain any specific provision. The substance of Art. 4(7) of the Directive can rather be found in several different articles of the Code of Obligations. It is stated that the agreed accommodation may only be replaced with accommodation facilities of the same category or of a higher category at the travel organiser's expense, and only in the agreed location. This seems stricter than the Directive's 'suitable alternative arrangements'. In the event of substantial alterations without justified reasons, the organiser must return everything obtained from the traveller, who is allowed to cancel the contract.40

Most of the new Member States have transposed the organiser's duty to make prompt efforts in case of complaints as provided by Directive. However, no specific legislative transposition of this provision can be found in LITHUANIA, LATVIA, POLAND and SLOVENIA. Most new Member States also impose the duty on the consumer's counterparty, the organiser or retailer. The local representative, as mentioned in the Directive, is only mentioned in the national laws of BULGARIA, CYPRUS and MALTA. In HUNGARY, the traveller must inform the representative of a problem without delay, who, in turn, is obliged to act and inform the travel company without delay. If there is no representative, a travel agency must be informed.

- Liability

Art. 5 of the Package Travel Directive sets the liability of the organiser and/or retailer. The majority of the new Member States have transposed the Directive's provision of Art. 5(2) concerning the liability for damages and exemptions of liability as under the Directive. Deviations have been introduced in POLAND, ROMANIA and SLOVENIA. HUNGARY and ESTONIA are the only new Member States not to have explicitly transposed the Directive's provision.

Art. 5(2)(4) and(4) grant the possibility to introduce a limitation on the amount of damages to be paid. The majority of the new Member States have introduced provisions allowing the compensation to be limited in accordance with international conventions and for non-material damage suffered by the consumer. However, no transposition has been made in LATVIA, ROMANIA and SLOVENIA, regarding the limitation in accordance to

39 Article 903 of the Code of Obligations only regulates when changes in the travel programme are permitted.
international conventions, and in HUNGARY and LATVIA, regarding limitation in matters of damages other than personal injury.

ESTONIA explicitly provides for compensation for loss of enjoyment.\(^{41}\) In HUNGARY, the organiser may need to compensate for non-material damages as well.\(^{42}\) ROMANIA does not expressly stipulate the compensation for non-material damage. However, such damages might be obtained in accordance with the general rules.\(^{43}\)

Except for ROMANIA, the majority of the new Member States have transposed the organiser’s duty for assistance to the consumer in difficulty, by mostly deviating from Art. 5(2)(2) of the Directive.

Art. 5(4) of the Package Travel Directive is one of the few exceptional cases in which where the Directive imposes a duty on the consumer. According to this provision, the consumer has the duty to communicate any shortcomings in performance. The majority of the new Member States have transposed this provision with deviations. No explicit transposition of the provision can be found in LITHUANIA and SLOVENIA.

2.2.3. Conclusion

In terms of scope and particular measures of consumer protection, the implementation of the Directive in the new Member States can thus be described as typical. The scope of terms used in the Directive is adjusted to the particular Member State, in several cases resulting in an increased level of protection for the consumer. A very similar picture arises from an analysis of the implementation of particular measures of consumer protection, such as information duties and the rights of, as well liability to, consumers. Perhaps one distinctive characteristic which can be taken from the implementation in the new Member States is the use of specific, calculated time periods. Thus, instead of employing a term such as ‘within a reasonable delay’, many of the new Member States provide for ‘x number of days’.

2.3. The Implementation of Article 7

Art. 7 of the Package Travel Directive provides a provision concerning security in case of insolvency. According to Art. 7, “the organiser and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the reparation of the consumer in the event of insolvency”. Because the text of Art. 7 leaves great liberty to the Member States in the choice of the appropriate measures, the ECJ has clarified in several cases how the provision has to be interpreted regarding certain aspects.

In the Dillenkofer Case (C-178/94)\(^{44}\), the Court stated that national provisions transposing Art. 7 must not allow consumers to suffer the loss of any portion of the package price, therefore, consumers were to receive the full cost of their reparation and the full amount of monies paid over. Except for POLAND, in all other new Member States, any payments (including partial payments) made and reparation costs must be refunded. Under some of the new Member States’ laws, accommodation (ESTONIA) or other needs resulting from non-performance (HUNGARY and SLOVENIA\(^{45}\)) must be refunded. In SLOVAKIA, the difference between the package prices in the case of a substitute package or the difference in the case of a package only partially provided must be refunded.\(^{46}\)

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\(^{41}\) Ibid., p. 327.
\(^{42}\) Ibid.
\(^{43}\) Ibid., p. 328.
\(^{44}\) C-178/94 - Dillenkofer.
\(^{45}\) Damage caused to consumers as a result of a breach of contract.
\(^{46}\) Consumer Law Compendium (Fn. 39), p. 335.
Because there is no indication in the Directive’s text that the security mentioned in Art. 7 might be limited, the ECJ ruled in the Rechberger Case (C-140/97)\(^{47}\) that 5% of a quarter’s turnover would provide no sufficient security. However, some of the new Member States have introduced a minimum insurance sum.

New Member States, having introduced a minimum insurance sum are CYPRUS (minimum sum is equivalent to 20% or more of the payments received by the other party to the contract during the 12-month period preceding the start date of the bond or equivalent to the maximum amount of all payments “which the other party to the contract expects at any moment to be in his possession, pursuant to contracts which have not yet been fully performed, or whichever amount is greater”\(^{49}\)), HUNGARY (at least 12 % of the travel company’s net revenue\(^{49}\)), LITHUANIA\(^{50}\) (distinguishes between cases where the tour organiser’s annual revenue is over/under 4 million LTL) and LATVIA (security must cover the money the customer has paid over a period of not less than one year and a sum of 50 % of the forecast turnover for the following year, but not less than 20 000 lats).\(^{51}\)

In SLOVAKIA, a guarantee certificate has to be provided before the payment, whereas in MALTA and POLAND information on insurance is required to be provided in the travel brochure (MALTA) or in a written confirmation (POLAND).\(^{52}\) In some of the new Member States, the security is also a condition for the tour organiser’s licence (Bulgaria\(^{53}\), CZECH REPUBLIC, HUNGARY, POLAND, SLOVAKIA and SLOVENIA).

### 2.4. Intermediaries

#### 2.4.1. Initial Position and Demand for steps taken in favour of the consumer

The role and the responsibilities of intermediaries as they appear after the implementation of the Directive are difficult to determine. When analysing the various approaches towards transposing the Directive’s provisions, one must bear in mind the different preconditions set by the characteristics of the market in each Member State. While in several Member States it was, and still is, common practice for an organiser as well as a retailer to be involved in the conclusion and/or execution of package travel contracts, such a separation of competences and responsibilities is not typically found in other Member States. Therefore, both at the time of drafting and following the coming into force of the Directive, the harmonised provisions proved difficult to adapt to the specific parameters and stages of development of the different national markets. The state of affairs in this respect has not changed in the past 20 years.

As a result, the national legislation which transposes the Package Travel Directive has been unsuccessful in properly clarifying the role and responsibilities of intermediaries in a consumer-friendly way.

Due to the fact that the Directive essentially leaves it to the discretion of the Member States upon whom certain legal duties are placed,\(^{54}\) the Member States have adopted several different terms in characterising “intermediaries”, such as “travel agency” or “travel agent”. However, the national definitions do not clarify whether travel agents organising the package or its retailers are meant. In fact, the plethora of different terms referring to “intermediaries” may actually have resulted in even less of a distinction

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\(^{47}\) C-140/97 - Rechberger.  
\(^{48}\) Article 18(4) of the Package Travel, Holidays and Tours Law of 1998.  
\(^{49}\) Article 8(2) of Government Decree 213/1996.  
\(^{50}\) Article 7(3) of the Law on Tourism. The calculation must take the previous year into account and cover all contracts concluded for the supply of tourist services abroad.  
\(^{51}\) Consumer Law Compendium, p. 336 – 337.  
\(^{52}\) Consumer Law Compendium, p. 337.  
\(^{53}\) Articles 41 and 43 of the Law on Tourism.  
\(^{54}\) Consumer Law Compendium, p. 224.
between retailers and organisers than that contained in the Directive. In some laws, the “organiser” and “retailer” even seem combined.

It can thus be concluded that necessary increases in the level of consumer protection could be brought about by clarifying the distribution of competences between those whom the consumer deals with in relation to package travel and, most importantly, which remedies the consumer has against whom.

One possible approach might be to introduce a visible label which indicates to the consumer that he is now involving in a contract on a package travel under European Law. This would, on the one hand, warn the consumer that he is entering a contract on package travel and, on the other hand, make clear to the consumer, when opting in, against whom he can make an eventual claim should anything go wrong. However, this presupposes that the Directive first specifies who is liable and on which grounds under European Contract Law.

2.4.2. The situation today

This section is intended to give an overview of the situation as it is found today. It does not claim to be conclusive as this would go beyond the scope of this study. Nevertheless, it should give an impression of the most obvious difficulties involved in the transposition of the Directive.

There is often a lack of precision as to whether certain obligations concern either the organising party or an intermediate person. As the Directive itself mostly employs the expression “organiser and/or retailer”, many national laws have adopted similarly vague terms in determining who is responsible for what.

Already the transposition of the definition of a “package travel” given by the Directive has been adopted differently by the Member States. (2), stating the general responsibility under this Directive of either the organizer or the retailer, has not been transposed constantly by adopting the term “organizer or retailer”. See for illustration the following examples concerning, one the one hand, the conclusion of the contract, on the other, the responsibilities as well as the liability.

- Conclusion and content of the contract

Intermediaries sometimes play a decisive role in the conclusion of the contract. For a valid package travel contract, Romanian law, for example, calls for the written receipt of reservation from either the organiser or the retailer.

When it comes to pre-contractual information duties, the terms used for implementing the Directive vary from only organizer/only retailer or travel agency to provider, contractor and “the other party”. Most Member States, however, have adopted the terms of the Directive.

In terms of requirements concerning the content of the contract, in numerous Member States, the contract has to include the contact information of the intermediary in addition to that of the organiser.56

In many national laws, intermediaries, as well as the organiser himself, must be contactable during the time in which the consumer is away. This is part of intermediaries’ contractual information duties which must be performed prior to departure.

Other national provisions do not clarify whether the person who must be available for contact is the organiser or the retailer.

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55 With regard to the fact that this study is based on the Consumer Law Compendium which has been published in 2008, it needs to be considered that smaller changes in national law might not have been taken into account yet.

56 See above on the implementation of consumer rights.
• Responsibilities

In part, the responsibilities of intermediaries depend on general provisions in national law which determine the person with whom the consumer has concluded the contract, i.e. the organiser or the retailer. This is owing to the fact that the Directive does not refer to the parties in terms of the contract, but rather in terms of their respective responsibilities (i.e. retailer or organiser). This can be illustrated through Art. 6 of the Directive, according to which, in cases of complaint, the organizer and/or retailer or his local representative, if there is one, must make prompt efforts to find appropriate solutions’. In Germany, for instance, there are no rules explicitly regulating the legal relationship between intermediaries and the consumer. According to general provisions, the intermediary will only be liable in exceptional cases, such as miscounselling.

Although Art. 4 (7) of the Directive allows for the organiser of the package travel to provide suitable alternative arrangements as well as to compensate the consumer for significant parts of the service that have not been supplied, some national laws hold the intermediary to this obligation too (“travel agent” etc.).

Concerning the implementation of Art. 7 of the Directive, which imposes a legal obligation of the organiser and/or retailer to provide sufficient evidence of security in the event of insolvency so that the consumer can be repatriated and refunded any money paid over, no national transposition expressly limits that obligation to the retailer only. Most commonly, the exact expression of the Directive (organiser and/or retailer) has been adopted.

• Liability

As opposed to Art. 5 (2) of the Directive, some Member States have not adopted fully the limitation on unreasonable contractual limitations of liability under this article. Consequently, intermediaries may also be strictly liable in certain cases. Otherwise, several Member States in which Art. 5 of the Directive was adopted in full, make the organiser and retailer either jointly liable or individually liable.

In terms of the extent to which intermediaries may be liable, national law provides a variety of different rules, making it difficult to determine the exact extent of liability in cross-border cases. As a result, the safest compliance practice in cross-border cases is simply not to limit liability at all.

In the case of infringements by the intermediary (or the organiser as well) there are many different sanctions applied by the Member States. This might have the effect that intermediaries feel pressured to conform in minute detail to information duties resulting from transnational cases in order to avoid liability in other Member States whose financial consequences are hardly possible to estimate. However, in reality it most likely hinders cross-border transactions. So too do the great differences between the obligations of intermediaries in the Member States. Due to those differences, intermediaries who sell package travel deals organised abroad are susceptible to the imposition of all the obligations which would otherwise be owed solely by the organiser. As a result, this might be hindering cross-border transactions.

However, these cases each provide valid variations of transposition which fully comply with the Directive. This is due to the fact that the Directive only makes use of the expression “organizer and/or retailer”.

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57 See above on the implementation of consumer rights; where the consumer is prevented from proceeding with the package, the consumer may change his booking. In that case, according to the Directive, the consumer must notify the organiser or the retailer of his intention. In the majority of the member states, only the organiser has to be notified.
2.4.3. Conclusion: Proposal: A EU label indicating consumer protection

In conclusion, intermediaries are generally-speaking subject to the same legal requirements as organisers. Firstly, it is usually either the organiser or the intermediate person who must be contactable where complications arise during the travel. It is likewise for either the organiser or intermediary to satisfy the pre-contractual duty to provide contact details to the "consumer". Finally, damages are to be claimed against either one of these persons. Nevertheless, many Member States do not impose legal obligations upon intermediaries as a distinct group, since the respective national laws do not specify expressly upon whom which certain obligations fall and differences in terminology hinder the drawing of clear lines.

2.5. Travel falling outside the scope of the Directive

2.5.1. Small package travel

Certain package travel deals do not fall under the Package Travel Directive. This is the case, for example, when the service only covers a period of up to twenty-four hours or does not include overnight accommodation.58

The Member States do not usually enact specific legislation protecting the consumers of such types of ‘small package travel’. One exception is GERMANY, where the scope of the specific regulation of package travel in the German Civil Code59 is slightly broader than in the Directive. Combinations of travel services, such as a coach trip and a football ticket for less than 24 hours and without an overnight stay therefore generally fall within the scope of the German transposition law of the Directive. Where this is the case, the level of protection is therefore the same as under the Directive. The only exception is the German transposition of Article 7 of the Directive (§ 651 k BGB) in which such short term packages are exempted. To that extent, German consumers are not protected against the insolvency of the tour organiser.

In contrast, the vast majority of the other Member States have not extended the scope of their specific travel legislation to such ‘small package tours’. Therefore, such trips do not fall under the specific protective instruments of the Directive. Consumer protection is left to more general rules of the national laws on the relevant type of service contract. However, it has to be noted that the general protection against unfair terms based on national laws, as well as the transposition laws of the Directive on Unfair Terms in Consumer Contracts,60 should exclude the most harmful contract clauses, such as exclusions of liability. With regard to the individual elements of the package (e.g. the bus trip or the ticket to a sports event) consumers should be relatively well protected. The problematic cases are those where non-performance or defective performance of one element of the package spoils the purpose of the trip (e.g. the bus fails and the consumer does not reach the sport venue and has no right of refund for the ticket, since it was his/her risk not to arrive in time). It is highly probable that national laws contain regulatory gaps with regard to such package-specific risks. Without any specific regulation on such small packages, the consumer may only have individual rights against the providers of the individual elements of the package, but no general claim against the tour organiser. This regulatory gap could easily be filled by slightly extending the scope of the Directive to certain small packages. So as not to overburden tour organisers with information duties and measures of insolvency protection, one could, however, consider exempting packages sold for a very low price. The model would be article 2(4) of the Consumer Rights Directive (exemption for packages with a price lower than 50 EUR).61

58 Art. 2 (1) D. 90/314.
59 § 651 et seq., BGB.
2.5.2. Individual travel services

Firstly, it has to be noted that there is still some protection in some areas (flights, bus trips, trains, ferries) under EU Law in particular typical cases. Moreover, international flights and train trips fall under conventions which, in certain cases, grant (but also limit) travellers' rights (not only consumers).

Consumer rights in cases of individual travel services, such as flights, train journeys, the renting of holiday homes, hotel accommodation (not forming a package), depend on the national legislation for the relevant type of service contract. In those legal systems where civil codifications have sections on specific contracts, individual travel services will usually fall under the section for contracts of work or rental contracts. Where this is the case, the specific remedies available for this type of contract apply (as a rule, e.g.: right to terminate; the right to reduce price; claim for damages, often with specific duties of notification and rather short cut-off or limitation periods). In those systems where there is no civil codification or just a general law of contract, the situation is rather similar. Consumers will then have rather similar rights under general contract law. Since the Unfair Terms Directive applies, many types of unfair clauses in this area should be prohibited.

Consequentially, a general European law on individual travel services might be not very urgent. This is particularly true since some obvious practices which are not consumer friendly such as overbooking, denied boarding without reason or the sale of additional services with pre-ticked boxes already have been tackled by European legislation.

If one were to look for possible prospective fields of EU activity, one could perhaps inquire into the extent to which consumer rights are endangered in cases of insolvency. Other than for package travel, there is no insolvency protection of consumers, especially with regard to advance payments. One could also enquire into the extent to which – in general – the different level of pre-contractual information duties in the European legal systems leads to consumer protection gaps in some systems where there are few or hardly any pre-contractual information duties.
3. REFORM

First of all, it needs to be noted that the analysis of the way in which the Directive has been transposed in Member States did not reveal substantial gaps. Although some Member States broadened the scope of their travel laws in different respects, these findings do not lead to the conclusion that there is an urgent need to extend the scope of the Directive.

However, it has been suggested that there be some extensions to the scope (e.g. one-day trips, conferences, flights) or new protection instruments (e.g. the insertion of general rules on cancellation fees if the consumer cancels without a justified reason).

3.1. Weaknesses of the Directive as seen by stakeholders and possible remedies

3.1.1. The issues at stake

Several problems have been encountered by the stakeholders with regard to the following issues:

- Dynamic packaging
- Difficulties in interpreting the Directive
- "Organiser" and "Retailer";
- "Consumer";
- Pre-contractual information requirements (Article 3);
- Information requirements and variation in price (Article 4.1-4.4);
- Withdrawal from the contract by the consumer and right to compensation, notably in case of cancellation (Article 4.5-4.6);
- Liability of organisers (Article 5);
- Consumer complaints (Article 6);
- Security for Insolvency (Article 7);
- Inconsistencies or ambiguities.

a ) Dynamic packaging

The Commission has been made aware of an increasing trend in some Member States of consumers putting together their own holiday components from different organisers (so-called dynamic packaging), instead of opting for packages pre-arranged by an organiser or a retailer.62

One consequence of this, in some parts of the EU at least, may be that the sale of package holidays now constitutes a smaller proportion of the sale of total travel sales than at the time of the adoption of the Directive.63 The regulation of these dynamic

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63 Working Document 2007 (Fn 61), p. 5. The number of consumers booking ‘dynamic packages’ is increasing dramatically. By 2009, 23% of EU citizens had used dynamic packages in the past 2 years, but the figure is over 40% in countries such as Ireland (46%) or Sweden (44%), and very high also in countries such as Slovenia (42%) and Italy (36%), see MEMO/09/523. Dynamic packages already accounted for 33 % of the total travel market in 2009.
packages seems to be an issue in a number of Member States.\(^{64}\) It may not always be clear which travel arrangements are covered by the Directive. For instance, after booking a flight on the website of a low cost airline, the consumer may be prompted to book a hotel and/or car rental and is then directed to separate websites. If the bookings of the different services are subject to separate contracts made with distinct companies and with separate payments, the package may not be covered by the Directive.

Often it is not made clear to the consumer that different levels of protection apply for more or less identical travel packages, which are sold differently. This uncertainty, and possibly divergent interpretations of the Directive by the Member States, may affect competition and the level of consumer protection.\(^{65}\)

The scope of the Directive could be clarified in order to determine whether these products are covered or not. Differences between, on the one hand, cases where the retailers/organisers offer different travel components (hotel, car rental etc.) on their websites and, on the other hand, cases where retailers/organisers link their web site to other businesses offering such components should be considered.

b) Difficulties in interpreting the Directive

The issue of what should be considered a package within the meaning of the Directive has been brought up by several stakeholders and Member States.\(^{66}\) Certain expressions may need clarification, such as "other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package".

There may also be a need to define the expression "inclusive price" in the light of ECJ rulings.\(^{67}\) The Court ruled that the term package must be interpreted so as to include holidays organised by retailers, at the request of, and in accordance with, the specifications of a consumer. Following the same judgement, the term "pre-arranged" includes combinations of tourist services put together at the moment when the contract is concluded.

Thereby, travel arrangements are considered as packages when made through travel agencies or internet platforms which provide the option of combining, on the specific request of the consumer, tourist services like flights and hotel accommodation offered by different service providers. Moreover, according to the new air transport market access legislation, currently under discussion,\(^{68}\) the airlines could be subject to new obligations and would have to provide to the consumers the most comprehensive information on the ticket price. This will have to be considered within the review of the Directive.

The Commission has also received requests to extend the protection afforded by the Directive to consumers in relation to services performed over a period of less than twenty-four hours or which do not include overnight accommodation, e.g. organised sightseeing excursions or organised tours to cultural or sporting events.\(^{69}\)

\(^{64}\) Ibid., p. 6.
\(^{65}\) Ibid.
\(^{66}\) Ibid.; see also: Department for Business, Enterprise and Regulatory Reform, What is a package? A guidance note for travel organisers, 2008, p. 3.
\(^{67}\) C-400/00 – Club Tour.
\(^{69}\) Summary of responses to the consultation launched to gather stakeholders' opinions on the existing problems and preferred solutions in order to identify preferred policy options as part of the Commission's review of the Package Travel Directive, 2010, p. 2; also, Working Document 2007, p. 8.
c) "Organiser" and "Retailer"70

Some stakeholders have argued that only organisers should comply with the Package Travel Directive, irrespective of whether they sell the package directly or through a retailer.71 However, when considering the liability of the retailer, it must be considered that he may act either as an intermediary selling packages put together by others, or as an organiser combining independently different elements of a trip. It may not be appropriate to make the organiser liable for the legal consequences resulting from oral or other information given by the retailer to the consumer at the time of the conclusion of a travel package or promises contained in the retailers' marketing of a package. The Commission has received calls to extend the scope of the Directive to all package organisers, including organisers which put together a package "occasionally", e.g. packages organised in the course of specific activities (sport, school, religious activity, etc).72

In some Member States, this type of extension in the Directive's scope of application has already been made. Since the Directive often makes use of the term "retailer" in an expression such as "the organiser and/or retailer", this leaves discretion to the Member States as to which one of them should be obliged to fulfil the duties imposed by the Directive.73 Clarification may be needed.

It is suggested here, that businesses who organise package trips as well as retailers should be under a specific double information duty, namely (1) to inform the consumer that the service falls under EU Legislation and (2) to indicate the identity and address of the tour organiser as being the person responsible and liable for all consumer rights and claims under the EU Package Travel Legislation.

d) "Consumer"

The notion of "consumer" in the Directive is not limited to natural persons travelling for leisure purposes, but includes every person, natural or legal, taking a package. Many Member States have, when transposing the Directive, avoided the term "consumer" so as not to make an exception to contradict the general notion of "consumer".74

The difference between the Package Travel Directive and the seven other consumer protection directives under review is that the Package Travel Directive's notion of consumer also covers B2B (Business to Business) relationships.

On the one hand, the use of one of the definitions proposed in the Green Paper on the Review of the acquis would exclude packages bought by professionals for predominantly professional reasons. This would diminish the rights of business passengers. It would also be necessary to consider how to frame a test for assessing whether and to what extent a package bought both for business and leisure purposes falls within the scope of the Directive (i.e.: mixed usage transactions).75 Moreover, the Directive defines the consumer as being the one who concludes the contract and not necessarily the one who travels. A basic decision has to be made about whether just consumers (i.e. persons who are acting for a non-commercial purpose) or every traveller should be protected. Moreover, for cases where the party to a travel contract and the person who travels are different persons, it has to be clarified whether the one, the other or both shall have rights under the Directive. With a view to an overarching EU Travel Law, it might be advisable to protect at least the person who travels irrespectively of whether this person is a consumer or not.

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71 Summary of responses (Fn 68), p. 4.
72 Ibid., p. 2; Working Document 2007, p.8; Consumer Law Compendium, p. 213.
73 Consumer Law Compendium, p. 224.
75 Ibid.
On the other hand, it could be argued that consumers and businesses do not require the same level of protection, and that by excluding B2B transactions from the field of application, the price of consumers’ packages would decrease since organisers and retailers would not be obliged to insure themselves against passenger claims to the same extent as before.  

### e) Pre-contractual information requirements (Article 3)

Consumer stakeholders believe that the Directive could specify that pre-contractual information forms a part of the contract. The Directive expressly states that information given in the brochure is binding for the organiser/retailer; however, as the organiser/retailer is exempted from this obligation if he informs the consumer of changes before the conclusion of the contract, the binding nature of the brochure can be relatively easily overcome. It has been put forward that the Directive should stipulate clearly that any descriptive material, whether on websites or in hard copy form, should be subject to the provisions of the Directive. Furthermore, pre-contractual information should, to be in line with recent legislation, include the name of the operating air carrier as well as the “black list” of the air companies.

The extensive use of web information and the increasingly common practice of providing only limited information in the brochure, making reference to more details on the internet, need to be considered in this context. Business stakeholders have claimed that, with brochures printed well in advance and with price fluctuations, due for instance to exchange rates and petrol prices, it should be sufficient to indicate reference prices in print and refer consumers to the internet for actual prices. Otherwise, the costs of reprinting brochures would ultimately increase the prices of the travel arrangements. This argument needs to be considered since consumers may find it more difficult to compare different alternatives when reading the brochures if the prices are not indicated, and that they may, if in dispute with the organiser after the journey, have difficulties in proving what was promised before departure, since the information on the web may have changed in the meantime. In addition, some consumers do not have access to the internet and to keep costs down, organisers could, instead of printing prices in the brochures, provide separate price lists together with the brochure.

There are a variety of national deviations when implementing the articles on information requirements. Almost all Member States have added some obligations for the organisers which exceed those contained in the Directive. These may constitute cross border barriers since it may be difficult for an organiser to produce brochures that can be used in several Member States.

Finally, some stakeholders have argued that this provision of the Directive is redundant in the light of Directive 2005/29 concerning unfair business to consumer commercial practices (UCP) which have applied since the end of 2007 and which sets standards for

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76 Ibid., p 9.
77 Ibid.; Summary of responses, p. 4.
80 Summary of responses, p. 3.
81 According to a special Eurobarometer survey on e-communications conducted between 7 December 2005 and 11 January 2006, 40% of EU25 (not including Bulgaria and Romania) households have access to internet, ranging from 80% in the NL to 14 % in Slovakia. See http://ec.europa.eu/information_society/policy/ecomm/doc/info_centre/studies_ext_consult/ecomm_household__study/eb_jul06_main_report_en.pdf.
Implementation of the Package Travel Directive

Information not to be misleading. It should, however, be noted that the UCP will not introduce information requirements that are specific to package travel such as the need to indicate tourist classifications of the hotel, passport or visa requirements, the minimum number of persons required for the package to take place, or other information that traditionally has been identified as important for consumers to be aware of before booking their journey. In addition, the UCP will not necessarily result in direct remedies arising from the contract. Remedies for UCP infringements will depend on the type of enforcement adopted in each MS. In some cases, consumers will be able to use civil law remedies whereas, in other cases, only administrative law sanctions will be available (injunctions, fines). Moreover, the Services Directive introduces information requirements which are complementary to those laid down in other Community instruments.

f) Information requirements and variation in price (Article 4.1-4.4)
It has been suggested\(^{83}\) that the requirement that pre-contractual information should be provided "in writing or any other appropriate form" should be clarified. This could possibly be done in connection with similar discussions on the content of the notion "durable medium", used in the Distance Selling Directive\(^{84}\) and the E-commerce directive\(^{85}\) e.g. regarding confirmation of a distance purchase.

Some Member States have made use of the possibility to make exceptions from information requirements when last minute contracts are concluded. Further specification in the Directive as to which information needs to be given when concluding such contracts could be.

The Directive sets out provisions concerning additional charges which can be imposed on the consumer in precise circumstances. The Directive does not spell out whether the contract may provide for the organiser's administrative costs, connected to e.g. price increases due to fluctuating fuel prices, to be passed on to consumers.

g) Withdrawal from the contract by the consumer and right to compensation, notably in case of cancellation (Article 4.5-4.6)
According to Article 4.5, the consumer can withdraw from the contract only if the organiser significantly alters any of the essential terms, such as the price. Consumer stakeholders note that there are many changes which can significantly alter the contract such as the accommodation offered, the travel time or duration, or the tourist services which are available at the destination.\(^{86}\)

For instance, with regard to cruise tours, when the organiser fails to cover one of the legs of a scheduled route and does not stop at one or several of the scheduled ports of call, industry tends to claim that, since the accommodation and the related services (e.g. meals, leisure time) have been provided, passengers do not have a right to compensation for that missed leg of their journey. From a consumer's point of view, a cruise package includes all scheduled ports of call with the opportunity to experience the destinations to the fullest, the dissatisfaction of which should result in a refund or compensation.

However, it may not always be clear to the parties what amounts to an essential term without resorting to litigation. What is essential may be perceived differently by different consumers, depending on the purpose of the journey, and that may also affect the assessment as to whether an appropriate substitute journey has been offered to the consumer as different individuals may evaluate the same travel arrangement differently.

\(^{83}\) Consumer Law Compendium, p. 212.
The provisions for compensation in cases of cancellation and withdrawal from the contract as set out in Article 4.6 may need to be reconsidered. For instance, the Directive does not specify the method for calculating the compensation neither in the case of withdrawal or cancellation (article 4), nor in the case of improper performance of the contract (article 5). This issue needs to be examined in the light of the review of the consumer acquis: the Green Paper consults both on the possible introduction of a set of general contractual remedies available to consumers in the case of breach of any consumer contract, and on a general right to damages. In the field of package travel, private initiatives have led to the setting-up of voluntary benchmarks taken up in the "Frankfurter Tabelle" to facilitate the calculation of refunds in case of non-fulfilment of parts of the contract.

h) Liability of organisers (Article 5)

Article 5.1 generally provides that Member States shall take steps to ensure that retailers and/or organisers are liable for the proper performance of the contract irrespective of whether the obligations under the contract are to be performed by the organiser and/or the retailer, or by someone else. The transposition of this article in the Member States differs significantly. In most cases the organiser is liable, including in cases of performance by someone else. However, the liability of the retailer is often more limited. Differences between Member States' legislation and the possibility for the consumer to assert his rights may then be problematic in particular in cases where the retailer and the organiser are established in different Member States. Consideration could be given to whether a retailer who is selling products from organisers based in another country, be it another Member State or a third country, should be jointly liable in all cases. Such a system must not, however, create internal barriers to trade.

Consideration could also be given to whether the limitation for non-physical damage under the contract should be deleted, or, at least, as to whether a common threshold should be introduced. Finally, according to the ECJ, article 5 is to be interpreted as conferring on consumers, in principle, a right to compensation for non-economic loss resulting from the non-performance or improper performance of the services constituting a package holiday. A provision recognising this right in the Directive could be considered. Most Member States have not expressly stipulated for the compensation for non-economic in the context of their package travel law. When considering a revision of the consumer's right to damages, account must also be taken of the outcome of the consultation in the Green Paper on the possible introduction of a general right to damages for breach of contract and its extent/coverage.

i) Consumer complaints (Article 6)

Article 6 provides that, in cases of complaint, the organiser and/or retailer or his local representative, if there is one, must make attempts to find appropriate solutions promptly.

According to many stakeholders, this provision appears to be imprecise and leads to confusion. It may therefore need to be clarified how the terms “prompt efforts” and “appropriate solutions” should be interpreted, i.e. what to do when the organiser and/or retailer has no local representative, as well as where a consumer fails to communicate a problem to the organiser. In the latter case, the organiser does not have an opportunity to take action to put matters right, with the consequence that the consumer cannot claim damages at a later date.

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87 Idem.
88 Consumer Law Compendium, p. 215 et seq.
89 http://kanzlei.de/reisem.htm.
91 C-168/00 - Simone Leitner.
j) Security for Insolvency (Article 7)

The ECJ has clarified that all risks possibly arising from the insolvency of the organiser shall be fully covered.\(^93\) Article 7 does not prescribe how the obligation for the organiser and/or retailer to provide sufficient evidence of security for the refund of money paid, and for the repatriation of the consumer in the event of insolvency, is to be implemented. The wording "sufficient evidence of security" is imprecise. As a result, a multitude of systems have appeared, e.g. collective funds, bank guarantees and insurance schemes. There seem to be significant differences in the level of consumer protection across Europe and anti-competitive situations may occur.

Furthermore, it may be complicated for an authority in one Member State to conclude whether an organiser who claims to have set a guarantee within another Member States system thereby provides sufficient protection. The Commission is aware of allegations that some Member States may require a business trading cross border to comply with their national rules, although the business has complied with the rules of its country of establishment.\(^94\) This is, however, not permitted according to ECJ decisions on mutual recognition.\(^95\)

In November 2009, the European Parliament issued a new resolution dealing with general aspects of consumer protection which called for the Commission to 'propose, when reviewing the Travel Package Directive, an extension for repatriation or re-routing for the passengers [of airlines which go bankrupt] concerned'. An overwhelming majority of stakeholders (Member States' Authorities, consumer organisations and industry associations) are in favour of updating and clarifying the existing Directive as described above. The European Parliament Resolution called for the current wide variations in interpretation by Member States to be significantly reduced in order to give equally effective consumer protection throughout the EU. The Commission, in its 1999 report on the Implementation of the Directive, also included a list of principles that should be observed by national measures transposing Article 7 of the Directive.

One option may be the introduction of a uniform system across the EU. As pointed out in stakeholder contacts with the Commission, it is unlikely that a consistent pan-European approach to financial protection can be implemented, since different measures will suit different geographical markets.\(^96\) A possibility may be to leave the national status quo and reinforce cooperation between the different Member States' authorities to overcome significant differences and gaps in the system and encourage the exchange of best practices.

It should also be considered whether the position of passengers of bankrupt airlines should be strengthened. There is hardly any protection and compensation for those passengers under the Package Travel Directive.

First of all, airline bankruptcy is not a case of Article 7 of the Directive. This Article only covers the insolvency of the organiser and/or the retailer. However, the airline is neither organiser nor retailer as defined in Art. 2(2) and (3) of the Directive.

Second of all, those passengers, who have only purchased transportation by an airline, are not covered by the protection of the Package Travel Directive. The Directives scope only applies to the purchase of a "package" which, according to Art. 2(1) of the Directive means the pre-arranged combination of transport (lit. a) and/or accommodation (lit. b) and/or other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package (lit. c). If the transportation by the airline has been combined with accommodation and/or other tourist services, the only protection in

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\(^95\) ECJ Judgment of 1 December 1998, Case C 410/96 – Ambry.

case of airline bankruptcy is provided in Art. 5(1), (2) of the Directive. In this case the organiser/and or retailer is obliged to give prompt assistance to a consumer in difficulty.

Therefore, the Commission might consider, when reviewing the Package Travel Directive, an extension for repatriation or re-routing for the passengers of bankrupt airlines. This could be done by extending the scope of Article 7 on cases of insolvency of other suppliers of services, like airlines.

k) Inconsistencies or ambiguities

Some potentially significant inconsistencies or ambiguities in the Directive are:

- Use of the term ‘pre-arranged’ in the definition of ‘package’ (Art. 2(1)) is misleading because the ECJ (C-400/00 – Club-Tour) has clarified that combinations of tourist services tailored by a travel agency to the specific requests of the consumer are also covered.

- The notion of ‘organiser’ (Art. 2(2)) does not equate with the commonly used definition of “acting professionally in the course of his business” and also includes private persons and non-profit-making organisations; the exact meaning of acting “occasionally” is unclear.

- The notion of ‘consumer’ (Art. 2(4)) deviates substantively from the definition in the other consumer protection directives.

- By using the wording “organiser and/or retailer”, the Directive did not clearly decide whether the organiser, the retailer or both carry obligations vis-à-vis the consumer. This decision is left to the Member States’ discretion. They have to ensure that at least one of the two is liable in any case. The Member States’ transposition laws do not only show great differences, but have also created many uncertainties. Especially in those Member States that provided for a different and separate liability for the organiser and the retailer (with each of them being liable for problems occurring in their respective spheres), it may be rather unclear who is liable for what.

- Unclear formal requirements for the information due under Art. 4(1)(a) and (b) (“in writing or any other appropriate form”).

- Unclear formal requirements for the contract in Art. 4(2) (“in writing or such other form as is comprehensible and accessible to the consumer”; “copy of these terms”). In particular, there should be clarification of the extent to which information has to be given on paper (if at all), on a durable medium, or whether other electronic forms suffice. A revised directive has to clarify this for each item of information. A model could be the formal requirements for information duties of the Consumer Rights Directive, or the rather similar, but slightly more developed, information duties of the Proposal for a Common European Sales Law.

- It is unclear whether exemptions from information requirements in the case of last-minute contracts are applicable only with regard to Art 4(2)(b), or also with regard to other information duties (in particular Art. 4(1)).

- The wording in Art. 4(3) (“having given the organiser ‘or’ the retailer reasonable notice”) does not clarify whether the Member States or the consumer may choose the

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addressee. Moreover, it is unclear whether “reasonable notice” refers only to a reasonable period of time, and indeed how long such a period should be.

- It is unclear whether Art. 4(4) (“upward ‘or’ downward revision”) requires transposition to deal with both possibilities (and not only with the possibility to increase [and not to decrease] the price).

- The use of the term “withdrawal” in Art. 4(5) and (6) may be confused with the ‘cooling-off periods’ provided for in other Directives, which are commonly described as a "right of withdrawal".

- In Art. 4(7), it is unclear whether the duty to compensate the consumer “where appropriate” constitutes an independent specific liability rule or just refers to the general rule in Art 5(2) of the Directive.

- Article 5 does not explicitly state that – according to the ruling of the ECJ in the Simone Leitner case – the consumer must also have a right to compensation for non-economic loss and, in particular, that such compensation can arise from the loss of enjoyment suffered by the consumer because of the improper performance of the travel contract.

3.1.2. Recommendations and an evaluation of their importance

In order to remove ambiguities, inconsistencies or barriers to trade, the following solutions could be enacted:99

- Definition of ‘package’: inclusion of tailor-made packages offered by travel agencies according to the ECJ ruling in Club-Tour. This would mean deleting the misleading term “pre-arranged”; should there be a political decision to extend the scope, this could, in particular, include packages with a duration of less than 24 hours or without overnight accommodation.

- Definition of ‘consumer’: bringing the definition into line with other definitions in EU consumer law – or clarifying that business trips are also included.

- Definition of ‘organiser’: bringing the definition into line with other definitions of “professional” or “supplier” in EU contract law, thereby also deleting the phrase “other than occasionally”.

- Clarification that the organiser is obliged and liable in all cases and that it is left to Member States to determine whether the retailer is jointly liable.

- Introduction of a specific double information duty on all businesses who organise package trips as well as retailers, namely (1) to inform the consumer that the service falls under EU Package Travel Legislation and (2) to indicate the identity and address of the tour organiser as being the person responsible and liable for all consumer rights and claims under the EU Package Travel Legislation.

- Definition of the terms “in writing” or “any other appropriate form” in Art. 4(1)(a) and (b), as well as of “in writing or such other form as is comprehensible and accessible to the consumer” and “copy of these terms” in Art. 4(2), thereby possibly making use of the definition of “another durable medium” as under Art. 2(f) of Directive 2002/65. This would also adapt the Directive to the requirements of e-commerce.

- Clarification of whether, in the case of last-minute contracts, exemptions from information requirements may also be permissible with regard to Art. 3(2) (brochure) and Art. 4(1)(a) (information to be provided before conclusion of contract).

99 See also Summary of responses, especially pp. 3, 4 and 6.
Clarification that the wording in Art. 4(3) (“having given the organiser ‘or’ the retailer reasonable notice”) leaves the choice of addressee to the consumer (and not to the Member States); moreover, clarification of whether “reasonable notice” refers only to a reasonable period for giving notice, and of how long such a period should be; finally, clarification that Member States do not have to introduce requirement of form (e.g. in writing) for the giving of notice.

Clarification that the transposition of Art. 4(4) (“upward ‘or’ downward revision”) must deal with both possibilities (replacement of ‘or’ by ‘and’).

Clarification of whether in Art. 4(7) the duty to compensate the consumer “where appropriate” constitutes an independent specific liability rule or just refers to the general rule in Art. 5(2) of the Directive.

Clarification that Art. 5 also grants a right to compensation for non-economic loss, in particular, that such loss can arise from the loss of enjoyment (Simone Leitner).

Regulation of the possibility to contractually limit compensation in the case of damages resulting from non-performance or improper performance of services included in the package in Art. 5(2).

Insertion of a general provision obliging Member States to ensure that adequate and effective means exist to ensure compliance with the Directive in the interests of consumers.

In order to ensure that the Member States can no longer introduce or maintain additional instruments protecting consumers and thereby create barriers to trade, one option could be to consider full harmonisation in the most sensitive areas like pre-contractual information duties, brochures and formal requirements for information duties. This might also cover contractual exclusion clauses.100

It has, however, to be borne in mind that full harmonisation in the area of substantive Contract Law, in particular with regard to rules on remedies for non-performance, may be very difficult to integrate into the existing national legal systems. In order to be operable, a fully harmonised system requires a certain level of completeness in, for example, the remedies granted to consumers in cases of non-performance or defective performance. It is not possible simply to fully harmonise existing claims for damages under Article 5 of the Package Travel Directive without providing a comprehensive set of rules on conformity and non-conformity remedies other than damages (e.g. termination, reduction of price, remedying non-performance) and rules on the extent and calculation of damages. The famous ECJ case of “Simone Leitner” (which clarifies a claim for non-commercial damages) is only one example of this.

The same is true if, instead of a full harmonisation directive, an optional instrument were enacted which operated either as a self-standing set of rules or covered the vast majority of situations likely to arise under the package travel contract. Both full harmonisation and an optional instrument therefore need to regulate matters more comprehensively.

3.2. An Update on the Latest Legislative Developments

There are two main legislative developments which are worth mentioning when considering the reform of the Package Travel Directive: the Consumer Credit Rights Directive and the proposal for an Optional Instrument as regards e-commerce.

100 Consumer Law Compendium, p. 216.
3.2.1. Improvements in the light of the Consumer Rights Directive

Package travel falling under the scope of the Package Travel Directive is explicitly excluded from the scope of the Consumer Rights Directive and other types of package travel would also normally be excluded from the scope of the new directive owing to their minor value, as already is the case under the old Distance Selling Directive. In cases of distance selling, consumers booking a package travel do not have a right to withdraw and do not profit from the modernised information duties of the directive. This is also the case for package travel contracts concluded on the doorstep. To this extent, the position of consumers has actually deteriorated in comparison to the situation under the old Doorstep Selling Directive.

Any reform of the Package Travel Directive thus needs to consider whether consumers who conclude package travel contracts in an off-premises or distance selling situation need specific protection. Since a general right of withdrawal would probably be too harsh for tour organisers, protection similar to the scheme of the Consumer Rights Directive would mainly consist of information duties. Since, however, the Package Travel Law regulates many information duties in any case, the distance and doorstep selling specific aspects could probably be taken into account when reforming the Package Travel Directive.

At the very least, the Consumer Rights Directive offers some examples of progress in legislative technique. One possible improvement in light of the Consumer Rights Directive would be to copy-and-paste the definition of consumer. The advantage would be that the same definition of consumer applies in yet another European law on consumer protection. It should, however, be borne in mind that this would change the personal scope of application. The old definition in the current Package Travel Directive seems to include also trips concluded for business purposes (e.g. a package consisting of flight and hotel accommodation for a business trip). A policy decision is needed on whether Package Travel Law should be part of Consumer Law (then copy-pasting of the consumer definition of the Consumer Rights Directive is advisable) or if Package Travel Law should be designed as a part of a general travel law. In this case, new legislation should grant travellers specific rights by sole virtue of their status as travellers, irrespective of whether they are consumers or not. The model for this technique is the Air Passenger Rights Regulation as well as similar regulation for train and ferry services. Only for some consumer specific protections instruments, such as protection against the risk of insolvency of the organiser, could remain part of consumer law.

3.2.2. The latest legislative developments as regards e-commerce: European sales law

The current state of EU Legislation in the field of e-commerce and the perspectives for further development have been outlined in the recent Commission Communication on the Digital single market for e-commerce and online services. The Communication describes the state of EU e-commerce legislation as a “patchwork” of many different laws, rules, standards and practises, often with little or no interoperability. A key piece of legislation, the E-Commerce Directive, was enacted in 2000. According to the conclusions of the Commission, a revision of that directive is not required at the moment. However, the future major legislative development in this area will probably be the regulation on a common European sales law which is currently in the legislative process.

E-commerce is increasingly used for marketing package travel and concluding package travel contracts. Similar to the situation in the area of sales law, the existing of 27 different legal systems might hinder pan EU marketing and selling of package travel. In the field of sales law, the Commission seeks to solve this problem by installing an optional instrument, which would exist alongside the 27 Member States laws. A rather
similar solution could be feasible in the area of package travel. On the basis of the already existing general parts of the proposal for a common European sales law, a regulation for a common European travel law could be developed.

Even if EU legislation should opt for the more traditional means of regulation by simply revising the Package Travel Directive, the revision could make use of the achievements made in the course of the preparation of the Common European Sales Law. The most obvious example is the claim for damages. The current Package Travel Directive contains in its article 5 a claim for damages of the consumer against the tour organiser. In the famous case, "Simone Leitner", the ECJ held that this claim also includes damages for non-material loss because of lost or spoilt holidays. A revised Package Travel Directive could regulate this expressly and thereby make use of the corresponding provisions on damages in the Common European Sales Law. Other parts from this proposal, which could be used as a source of inspiration and building material for a revised Package Travel Directive, are the provisions on termination, on excuse or on restitution after termination.

3.3. **Overarching proposals for Reform: greater clarity**

3.3.1. **Clarity for intermediaries: An EU label**

As has already been fully exposed, the Directive demonstrates a lack of precision in determining which duties apply to intermediaries. Greater precision would increase the level of consumer protection. To summarise, the issue is less who should be responsible in absolute terms, but rather clarity in determining which person is responsible. Only once there is greater precision in the latter issue, can there be meaningful discussion on the former and there are necessarily greater marginal returns to be had for raising the level of consumer protection throughout the EU by tackling the former. In providing greater legal certainty and transparency, it is likely, as a positive secondary effect, that this will correspond in increasing the number of cross-border transactions.

A solution could be the introduction of an abstract duty for the person with whom the consumer contracts to state in the contract:

- the nature of the contract as being a contract on package travel (or a ‘warning’ that the contract does not fall under the EU legislation) and
- the person against whom which consumer rights can be exercised.

Such regulation at EU level would require further specification in the corresponding national legislation. Again, the decisive issue is not subjectively who should be available for contact, but objectively specifying a particular person.

Initially, the proposition of imposing an abstract duty to label the contract, as well as the proposal of a new kind of labelling icon, might be met with concerns that there could be the attempt, on the side of the parties contracting with the consumer, to avoid such labelling. Certainly, there would be additional costs as a result, such as, insurance for the person contracting with the consumer. However, as experience has shown, even the requirement of providing sufficient evidence of security for the case of insolvency is satisfied in practice. Concerns grounded upon evasion of the duty are therefore, in all likelihood unfounded. In reality, it is more likely that the requirement of a label, such as the one proposed here, will not result in attempts of avoidance. Quite to the contrary, its introduction would probably alleviate attempts of avoidance because the duty is devoid of ambiguity and absolute.

As far as the abstract duty to label a contract on a package travel is concerned, one might, in addition, see the risk of “letter-box companies” being formed, the purpose of which is to be referred to as responsible under the contract and then to become insolvent so that the

103 C-168/00 - Simone Leitner.
104 See Study on Consumer Detriment (Fn 61), p. 15.
actual organisation behind the letter-box escapes liability. In order to prevent such attempts, it would be necessary to impose the duty to name either the party organising or retailing, or those representing such parties, as a contact person. Thereby, there is greater clarity for the consumer but also evasion tactics can be hindered.

Because the level of consumer protection in the EU is not yet satisfactory, a reasonable response would be to consider taking further steps such as the ones proposed here.

3.3.2. A European Travel Code?

The current Package Travel Directive uses a definition of consumer which deviates from the definitions in other consumer protection directives in so far as travel for business purposes is also protected under the Directive. Moreover, the Directive defines the consumer as being the one who concludes the package contract and not necessarily the one who travels. A basic policy decision has to be made on whether just consumers (i.e. persons who are acting for non-commercial purposes) or every traveller should be protected. Moreover, for cases where the party to a travel contract and the person who travels are different persons, it has to be clarified whether the one, the other or both shall have rights under the Directive. With a view to an overarching EU Travel Law, it might be advisable to protect at least the person who travels irrespective of whether this person is a consumer or not.

Legal certainty and consumer confidence could be increased by a European Travel Code which would firstly require a consolidating law of the patchwork of existing European legislation and then generalise some rules on pre-contractual information duties, the basic obligations under the most relevant travel contracts and consumer remedies. Such a general European Travel Code could be based on the enormous preparatory work for the Draft Common Frame of Reference and the Common European Sales Law. This would also ensure coherence between the different pieces of European legislation in the area of consumer and contract law.

4. GENERAL CONCLUSION

Reform of the Package Travel Directive should be seen as part of an overarching travel and tourism law of the EU. It might even be advisable to consolidate the various different pieces of EU Legislation into one legislative instrument which could be called the “EU Travel Code”.

Two specific recommendations can be made. In the interests of legislative coherency, it is essential that greater precision be given to two issues: first, which persons should be protected under the legislation and, second, which parties should be obliged to grant this protection.

The current Package Travel Directive uses a definition of consumer which deviates from the definitions in other consumer protection directives in so far as travel for business purposes is also protected under the Directive. Moreover, the Directive defines the consumer as being the one who concludes the package contract and not necessarily the one who travels. A basic policy decision has to be made on whether just consumers (i.e. persons who are acting for non-commercial purposes) or every traveller should be protected. Moreover, for cases where the party to a travel contract and the person who travels are different persons, it has to be clarified whether the one, the other or both shall have rights under the Directive. With a view to an overarching EU Travel Law, it might be advisable to protect at least the person who travels irrespective of whether this person is a consumer or not.

As to the other party – the party which is obliged to grant the protection of the Directive – an improved Package Travel Directive would clarify which parties with whom the
consumer deals, in particular the organiser or the retailer, owe what protection to the consumer or traveller. It is suggested here, that businesses who organise package trips as well as retailers should be under a specific double information duty, namely (1) to inform the consumer that the service falls under EU Legislation and (2) to indicate the identity and address of the tour organiser as being the person responsible and liable for all consumer rights and claims under the EU Package Travel Legislation.
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  National Law
  o Bulgarian Law on Tourism.
  o Cyprian Package, Travel Holidays and Tours Law.
  o Czech Civil Code.
- Estonian Law of Obligations.
- German Civil Code, Bürgerliches Gesetzbuch.
- Hungarian Civil Code.
- Lithuanian Cabinet Regulation No. 163.
- Lithuanian Civil Code.
- Romanian Government Ordinance 107/1999 on package travel.
- Slovakian Civil Code.
- Slovenian Code of Obligations.

**Cases**

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- ECJ, 30.04.2002, C-400/00 - Club Tour.
- ECJ, 15.06.1999, C-140/97 - Rechberger Case.
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### ANNEX

**Table 1: Implementation of the Directive in all Member States**

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<td>Reisebürosicherungsverordnung <em>(RSV)</em> <em>(Regulation on travel agencies implementing Art. 7 Package Travel Directive)</em></td>
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<td>Loi du 16/2/1994 régissant le contrat d'organisation de voyages et le contrat d'intermédiaire de voyages / Wet tot regeling van het contract tot reisorganisatie en reisbemiddeling <em>(Act of 16 February 1994 regulating the package travel contracts and the travel intermediation contracts FR/NL)</em></td>
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<td>Arrêté royal du 1/2/1995 déterminant les conditions de l'assurance de la responsabilité professionnelle des organisateurs et intermédiaires de voyages envers les voyageurs / Koninklijk besluit tot vaststelling van de voorwaarden van de verzekering van de professionele aansprakelijkheid van de reisorganisatoren en de reisbemiddelaars jegens de reizigers <em>(Royal Decree of 1 February 1995 determining the assurance conditions of the liability of travel organisers and retailers FR/NL)</em></td>
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</tr>
<tr>
<td>Country</td>
<td>Law/Code</td>
</tr>
<tr>
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</tr>
<tr>
<td>Finland</td>
<td>Valmismatkalaki 1079/1994 (Package Travel Act 1079/1994)</td>
</tr>
<tr>
<td>France</td>
<td>Code du tourisme (Tourism Code)</td>
</tr>
<tr>
<td>Germany</td>
<td>Bürgerliches Gesetzbuch (BGB) (Civil Code) Gesetz gegen den unlauteren Wettbewerb (UWG) (Act against unfair competition)</td>
</tr>
<tr>
<td>Country</td>
<td>Text</td>
</tr>
<tr>
<td>---------</td>
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</tr>
<tr>
<td>Germany</td>
<td>Preisangabenverordnung (Price indication regulation)</td>
</tr>
<tr>
<td>Greece</td>
<td>Proedriko Diatagma 339/96 peri organomenon taksidion se simmorfosi pros tin odigia 90/314 (EEL 158/59) gia ta organomena taksidia kai tis organomenes diakopes kai perigiseis (Decree No. 339/96 on packages transposing Directive 90/314)</td>
</tr>
</tbody>
</table>
| Hungary | 1959. évi IV. törvény a Polgári Törvénykönyvről (Civil Code)  
214/1996. (XII.23.) Korm. rend. az utazást közvetítő szerződésekről (Government Decree No. 214/1996. (XII.23.) on Travel Contract and Mediation of Travel) |  |
<p>| Ireland | Package Holidays and Travel Trade Act, 1995 (Package Holidays and Travel Trade Act, 1995) |  |
| Italy | Codice del consumo (Consumer Code) |  |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Law Name (Language)</th>
<th>Law Title</th>
<th>Note</th>
</tr>
</thead>
</table>
| Latvia     | Patērētāju tiesību aizsardzības likums (Consumer Rights Protection Law)               | Tūrisma likums (Tourism Law)                                                                  | Noteikumi Nr. 67
<p>|            |                                                                                     | &quot;Noteikumi par kompleksa tūrisma pakalpojuma sagatavošanas un īstenošanas kārtību, klientam sniedzamo informāciju un kompleksā tūrisma pakalpojuma sniedzēja un klienta tiesībām un pienākumiem&quot; (Cabinet Regulation Nr. 67 &quot;Regulations regarding the Procedures for the Preparation and Implementation of a Package Tourism Service, Information to Be Provided to a Client, and the Rights and Duties of a Package Tourism Service Provider and a Client&quot;) |
| Lithuania  | Lietuvos Respublikos Civilinis Kodeksas (Civil Code)                                 | Lietuvos Respublikos turizmo įstatymas (Law on Tourism)                                      |      |
|            | Lietuvos Respublikos vartotojų teisių apsaugos įstatymas (Law on Consumer Protection) |                                                                                              |      |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Document Description</th>
<th>English Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td>Règlement grand-ducal du 4 novembre 1997 déterminant le montant, les modalités et l'utilisation de la garantie financiè</td>
<td>Decree of 4 November 1997 on the amount, conditions and use of the financial guarantees provided in article 6 of the law of 14 June 1994</td>
</tr>
<tr>
<td>Malta</td>
<td>Att dwar Servizzi ta’ l-Ivvjaggar u tat-Turizmu ghal Malta (Malta Travel and Tourism Services Act)</td>
<td>Package Travel, Package Holidays and Package Tours Regulations, 2000</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Burgerlijk Wetboek (Dutch Civil Code)</td>
<td>Besluit van 15 januari 1993, houdende regels inzake de gegevens die de organisatoren van georganiseerde reizen ten behoeve van de reizigers moeten vermelden (Gegevensbesluit georganiseerde reizen) (Decree of 15 January 1993 containing rules concerning information that organisers of package travel must notify in the interest of travellers)</td>
</tr>
<tr>
<td>Poland</td>
<td>Ustawa z dnia 2 lipca 2004 r.o swobodzie działalności gospodarczej (Act of 2 July 2004 on the Freedom of Economic Activity)</td>
<td>Ustawa o usługach turystycznych z 29 sierpnia 1997 r. (The Act on Tourist Services of 29 August 1997)</td>
</tr>
<tr>
<td>Country</td>
<td>Legislation Description</td>
<td></td>
</tr>
<tr>
<td>---------</td>
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<td></td>
</tr>
</tbody>
</table>
| Portugal | Código Civil (Civil Code)  
Lei nº 24/96 de 31 de Julho (Regime legal aplicável à defesa dos consumidores) (Consumer Protection Act No. 24/96)  
Decreto-Lei n.º 198/93, de 27 de Maio, revogado pelo Decreto-Lei nº 209/97, de 13 de Agosto, alterado pelo Decreto-Lei n.º 12/99, de 11 de Janeiro (Decree-Law nr 198/93, of May 27 modified by Decree-Law 12/99 of 11 January) |
| Romania | Ordonanta nr. 107 din 30 iulie 1999 privind activitatea de comercializare a pachetelor de servicii turistice (Government Ordinance no.107/1999 on package travel) |
| Slovakia | Zákon č.40/1964 Zb. Občiansky zákonník (Civil Code)  
| Slovenia | Obligacijski zakonik (Code of Obligations)  
Zakon o spodbujanju razvoja turizma (Promotion of Tourism Development Act)  
Zakon o varstvu potrošnikov (Consumer Protection Act) |
### Implementation of the Package Travel Directive

#### Spain

| Norms of the Autonomous Communities about Travel (examples) (Norms of the Autonomous Communities about Travel (examples)) |
| Real Decreto Legislativo 1/2007 (Legislative Decree 1/2007) |

#### Sweden


#### United Kingdom

| Package Travel, Package Holidays and Package Tour Regulations 1992 (Package Travel, Package Holidays and Package Tour Regulations 1992) |

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### Table 2: Implementation of the definition of « package », Art. 2 para 1, 1st sent.

<table>
<thead>
<tr>
<th>Member State</th>
<th>Article</th>
<th>Name of the Statute</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cyprus</td>
<td>Art. 3 (1) - (2)</td>
<td>The Package Travel, Holidays and Tours Law of 1998, L.51(I)/98</td>
<td>Article 2 simply refers to the definition of the term “package” laid down in Article 3(1) &amp; (2).</td>
</tr>
<tr>
<td></td>
<td>Art. 2</td>
<td></td>
<td>Article 2 simply refers to the definition of the term “package” laid down in Article 3(1) &amp; (2). This reference to the said definition is listed seventh in Art 2.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>§ 2 para 1 lit. a - c</td>
<td>Act No. 281/2001 on Package Travel</td>
<td>§ 2, section (2) - exclusions of the term “package”</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Art. 883 para 1</td>
<td>Code of Obligations</td>
<td>This provision defines package as a culmination of accommodation, transfer and other services that are related to the former two. The provision still applies, although its contents are repeated in the new art. 57a par. 1 CPA.</td>
</tr>
<tr>
<td></td>
<td>Art. 33</td>
<td>Promotion of Tourism Development Act</td>
<td>Provision of the same substance as in the Directive. The provision still applies, although most of its contents are duplicated in art. 57a of the Consumer Protection Act. The legislator gave no explanation as to what is the purpose of the numerous new CPA provisions, duplicating already existing provisions of the Obligations Code and The Promotion of Tourism Development Act, which continue to</td>
</tr>
</tbody>
</table>
be in force. Legally there is no need for this; on the contrary - it is causing ambiguity and confusion. It can probably be attributed to inconsiderate drafting of legislation. The application of the Consumer Protection Act (and the exclusion of the Obligations Code and Promotion of Tourism development Act) with regard to issues regulated repeatedly, is justified by the principles of lex specialis, and lex posterior.

<p>| Art. 57a para 2 | Consumer Protection Act | The new art. 57a par. 2 defines a &quot;package&quot; (&quot;turistični aranžma&quot;) in the same way as art. 33 of the Promotion of Tourism Development Act and the Directive, the content of the provision is duplicated. |
| Art. 57 | | This is a reference provision only – it explains that tourist services are regulated in specific laws. |</p>
<table>
<thead>
<tr>
<th>Member State</th>
<th>Article</th>
<th>Name of the Statute</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>No. 8 in conjunction with No. 7 Additional provisions, Law on Tourism</td>
<td>Law on tourism</td>
<td>Instead of the concept “organizer” the Bulgarian Law on Tourism employs the concept “tour-operator” and “tour-operator activity”. The concept tour-operator is broader than organiser. It encompasses not only the offering and sale of “packages” but also of individual travel services. No. 8 Additional provisions, Law on Tourism defines “tour-operator” as “a person registered under this law to carry out tour-operator activity”. No. 7 Additional provisions, Law on Tourism in turn defines “tour-operator activity” as “the organizing of group or individual package tours or the sale of travels directly or through a tourist agent by contract or a voucher to the end-consumer”</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Art. 2</td>
<td>The Package Travel, Holidays and Tours Law of 1998, L.51(I)/98</td>
<td>The particular definition is listed third in Article 2. The phrase “other than occasionally” is omitted in the said definition.</td>
</tr>
<tr>
<td>Hungary</td>
<td>§ 1 para 2 lit. a, c, d, g</td>
<td>Government Decree No. 213/1996. (XII.23.) on Travel Organisation and Agency Activities</td>
<td>§ 2 - § 7 regulate registration process of organiser. § 1 para 2 lit. g amended with Government decree 20/2007. (II.20.) Korm. rendelet.</td>
</tr>
<tr>
<td>Poland</td>
<td>Art. 3 no. 5</td>
<td>The Act on Tourist Services of 29 August 1997</td>
<td>Reference to a businessperson (defined by the Act on Freedom of Economic Activity) who organises a ‘tourist event’.</td>
</tr>
<tr>
<td></td>
<td>Art. 4 no. 1</td>
<td>Act of 2 July 2004 on the Freedom of Economic Activity</td>
<td>Reference to a businessperson (defined by the Act on Freedom of Economic Activity) who organises a ‘tourist event’.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Code of Obligations</td>
<td>There is no definition of an organizer in the Code of Obligations, the Code explains only that the seller of a package travel that was arranged by an organizer whose seat is in another state, is deemed to be an organizer as well. The provision is still in force but a definition of organiser (corresponding to the Directive's) is given in art. 1 para 10 of the Consumer Protection Act.</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td><strong>Art. 883 para 2</strong></td>
<td>Promotion of Tourism Development Act</td>
<td>The provision defines who may be an organizer and seller of tourist arrangements, i.e. a sole trader or a juristic person. The provision is still in force but a definition of organiser (corresponding to the Directive's) is given in art. 1 para 10 of the Consumer Protection Act.</td>
<td></td>
</tr>
<tr>
<td><strong>Art. 34 para 1</strong></td>
<td>Consumer Protection Act</td>
<td>This provision gives only a very broad, general definition of an undertaking for the purposes of the Consumer Protection Law. It does not define a package travel organizer. A definition of organiser (corresponding to the Directive's) is given in art. 1 para 10 of the Consumer Protection Act.</td>
<td></td>
</tr>
</tbody>
</table>
### Table 4: Implementation of the definition of « retailer », Art. 2 para 3

<table>
<thead>
<tr>
<th>Member State</th>
<th>Article</th>
<th>Name of the Statute</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bulgaria</strong></td>
<td>No. 10 in conjunction with No. 9 Additional provisions, Law on Tourism</td>
<td>Law on tourism</td>
<td>No. 10 Additional provisions Law on Tourism defines tourist agent as “a person registered under this Law to carry out tourist agent activity”. Tourist agent activity is in turn defined as “acting as intermediary (agent) with sales of package tours, of air, water and bus transportation of passengers, with the rendering of reservation services, visa, tourist guide and other additional tourist services, as well as insurance in connection with travels.”</td>
</tr>
<tr>
<td><strong>Cyprus</strong></td>
<td>Art. 2</td>
<td>The Package Travel, Holidays and Tours Law of 1998, L.51(I)/98</td>
<td>The particular definition is listed 9th in Article 2.</td>
</tr>
<tr>
<td><strong>Lithuania</strong></td>
<td>Art. 6.747 para 3</td>
<td>Civil Code</td>
<td>The Lithuanian implementing provisions use the term “travelling agency”.</td>
</tr>
<tr>
<td></td>
<td>Art. 2 para 7</td>
<td>Law on Tourism</td>
<td>The Lithuanian implementing provisions use the term “travelling agency”.</td>
</tr>
<tr>
<td><strong>Slovakia</strong></td>
<td>§ 4 para 1, § 3 para 2 lit. a - e</td>
<td>Act No. 281/2001 on Package Travel</td>
<td>Definition of retailer (travel agency)Relationship between organizer and retailer § 3, section (2), (3), (4) – obligations of the retailer</td>
</tr>
<tr>
<td></td>
<td>Art. 883 para 2</td>
<td>Code of Obligations</td>
<td>The Code of Obligations explains that the seller of a package travel that was arranged by an organizer whose seat is in another state, is deemed to be an organizer as well. The provision is still in force but a new definition of retailer (corresponding to the Directive's) is given in art. 1 para 10, 2nd sentence of the Consumer Protection Act.</td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>Art. 34 para 2</td>
<td>Promotion of Tourism Development Act</td>
<td>The law defines who may provide services of selling touristic arrangements. The provision is still in force but a new definition of retailer (corresponding to the Directive's) is given in art. 1 para 11 and 10, 2nd sentence of the Consumer Protection Act.</td>
</tr>
<tr>
<td></td>
<td>Art. 1 para 10, 2nd sentence and 11</td>
<td>Consumer Protection Act</td>
<td>The provision is still in force but a new definition of retailer (corresponding to the Directive's) is given in art. 1 para 11 and 10, 2nd sentence Zakon o varstvu potrošnikov.</td>
</tr>
<tr>
<td>Member State</td>
<td>Article</td>
<td>Name of the Statute</td>
<td>Comment</td>
</tr>
<tr>
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</tr>
<tr>
<td>Cyprus</td>
<td>Art. 2</td>
<td>The Package Travel, Holidays and Tours Law of 1998, L.51(I)/98</td>
<td>The particular definition is listed sixth in Article 2.</td>
</tr>
<tr>
<td>Latvia</td>
<td>Art. 1 para 1 section 3</td>
<td>Consumer Rights Protection Law</td>
<td>On October 27th, 2005, the changes were made in Consumer Law Protection Law-excluding legal persons from the scope of “consumer”. So from the November 11th, 2005 these changes came into force in Latvia.</td>
</tr>
<tr>
<td>Romania</td>
<td>Art. 2 no. 4</td>
<td>Government Ordinance no.107/1999 on package travel</td>
<td>The new definition of the consumer is in accordance with the amendment brought by the Law no. 363/2007 regarding the incorrect practices of the traders in their relation with the consumers and the harmonisation of the regulations with the European legislation regarding the consumers protection: “any person of group of physical persons constituted in associations which buy or undertake to buy the package travel – main contractor – or any other person in which name the main contractor undertakes to buy the package travel – other beneficiaries - or any other person in favour of which the main contractor or other beneficiaries assign the package travel – the transferee”.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Art. 1 para 2</td>
<td>Consumer Protection Act</td>
<td>This provision gives only a very broad, general definition of a consumer, it defines it as a natural person who is obtaining or using goods and services in majority for personal use or for use in its household. The Code of Obligations, however, does not give any definition of a consumer, it only defines the rights and obligations of the “passenger”. The provision is still in force but the definition of a package travel contract is repeated in the new art. 57a par. 1 CPA. Legally, there was no reason for this.</td>
</tr>
</tbody>
</table>
**Table 6: Implementation of the definition of « contract », Art. 2 para 5**

<table>
<thead>
<tr>
<th>Member State</th>
<th>Article</th>
<th>Name of the Statute</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cyprus</strong></td>
<td>Art. 2</td>
<td>The Package Travel, Holidays and Tours Law of 1998, L.51(I)/98</td>
<td>The particular definition is listed tenth in Article 2. Please note that Article 2 of the transposition contains several additional definitions. These are for the terms “Authorised Officer”, “Brochure”, “Competent Authority”, “Licensed Insurer”, “Minister”, “Offer”, “Premises” and “The Other Party to the Contract”.</td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>Art. 883 para 1</td>
<td>Code of Obligations</td>
<td>The package travel contract is defined in the first article of the package travel chapter of the Code of Obligations as a contract between a travel organizer that obliges himself to provide the specific services and a passenger that obliges himself to pay the lump sum price. The provision is still in force but the definition of a package travel contract is repeated in the new art. 57a par. 1 CPA. Legally, there was no reason for this.</td>
</tr>
</tbody>
</table>
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