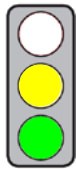


## KEY ISSUES

**Objective of the Directive:** Consumer protection for travellers will be fully harmonised. Bookings through travel agents and online will be placed on an equal footing.

**Parties affected:** Travellers, travel organisers and travel retailers.



**Pro:** (1) Full harmonisation of consumer protection legislation strengthens the single market.

(2) Equal treatment for bookings made in travel agencies and online provides a level playing field for travel organisers.

**Contra:** The lack of a suitable definition for "unavoidable and extraordinary circumstances" where performance fails to conform to the contract, and for travellers "in difficulties", gives rise to legal uncertainty.

## CONTENT

### Title

**Proposal COM(2013) 512** of 09 July 2013 for a **Directive** of the European Parliament and the Council on **package travel and assisted travel arrangements**, amending Regulation (EC) No. 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC

### Brief Summary

Note: In the absence of any indication to the contrary, references to articles and page numbers relate to Proposal COM(2013) 512.

#### ► Background and objectives

- Increased use of the internet has pushed up the number of trips booked online. Thus, in 2011, the proportion of online bookings already made up 35% of all trips booked in the EU, that is to say 83.6 billion euro. [p. 3; SWD(2013) 263, p. 11] In addition, modes of booking have become noticeably more individualised.
- The existing Package Travel Directive (90/314/EEC) no longer meets the requirements of the new modes of booking; it will therefore be replaced by the proposed Directive COM(2013) 512 which, in particular, will be more focussed on the importance of online sales channels (Recitals No. 1 and 2). At the same time, the Consumer Rights Directive (2011/83/EU) will be amended.

#### ► Area of application

- The Directive contains - different - provisions for "package travel" (Art. 4 et seqq.) and "assisted travel arrangements" (Art. 17), irrespective of whether the trip is booked by a travel agent or online.
- It does not apply to (Art. 2 (2); Recitals No. 7, 17, 19)
  - trips which are shorter than 24 hours and do not include an overnight stay;
  - business trips booked on the basis of a framework contract between the traveller's employer and a company which specialises in the arrangement of business travel;
  - "ancillary" contracts for financial services, e.g. for loans or travel insurance;
  - independent contracts for individual travel services;
  - package trips which combine carriage of passengers, accommodation or car rental with another tourist service where this does not form a "significant proportion" of the package, i.e. does not account for more than 20% of the total price or otherwise represent an "essential" feature.

#### ► Definitions

- Travel services means (Art. 3 (1); Recitals No. 16 and 17)
  - carriage of passengers,
  - accommodation other than for residential purposes such as long-term language courses,
  - car rental and
  - any other tourist service - e.g. sale of entry tickets - which is not "ancillary" to the foregoing travel services.
- A travel organiser is a trader who puts together travel packages and sells them directly or via a travel retailer (Art. 3 (8)).
- A travel retailer is a trader who (Art. 3 (9))
  - sells travel packages but does not put them together, or
  - "facilitates" the procurement of travel services which are part of an assisted travel arrangement.

- A package combines at least two different travel services. The requirement is that these (Art. 3 (2); Recitals No. 10 and 18)
  - are put together by the same provider of travel services prior to conclusion of the contract, or
  - are booked with several providers of travel services - e.g. airline and hotel -
    - in one booking process at a single point of sale, or
    - are offered at an inclusive price, or
    - are sold together under the term "package" or under a "similar" term, or
    - are put together after conclusion of the contract by which a traveller can choose among a selection of travel services - e.g. as in the case of a travel gift box - or
    - are purchased through "linked" online booking processes where the traveller's particulars "needed" for the booking - e.g. name, credit card details - are transferred between the providers ("click-through bookings").

In the latter case, all providers are deemed to be travel organisers unless one of them is designated as the sole organiser and the traveller is informed accordingly (Art. 3 (8)).

- An assisted travel arrangement consists of at least two different travel services which are acquired from the providers, in separate contracts, via one travel retailer. The requirement is that these (Art. 3 (5); Recital No. 9)
  - are booked in separate booking processes at a single point of sale, or
  - are purchased via "linked" online booking processes without the traveller's particulars "needed" for the booking being transferred between the providers.

#### ► Package travel: Information obligations

- The traveller receives all the information "applicable" to package travel, prior to concluding the contract, in a "clear and prominent manner" from the travel organiser and travel retailer (Details: Art. 4 (1) and (2); Recital No. 22).
- The contract must designate a contact point for any complaints by the traveller (Art. 6 (2) c and d).
- The traveller shall receive a copy or electronic confirmation of the contract (Art. 5 (3)).

#### ► Package travel: Changes to the contract prior to travel

- The travel organiser may only pass price increases on to the traveller if (Art. 8; Recital No. 28)
  - this obligation has been reserved in the contract and provided the organiser is also obliged to pass on price reductions,
  - the traveller is notified of this no later than 20 days prior to travel and
  - the increase does not exceed 10% of the package price.
- The travel organiser may make other "insignificant" changes if (Art. 9 (1))
  - this is permitted by the contract and
  - the traveller is notified of the change in a "clear and prominent manner" on a durable medium.
- If the travel organiser is "constrained" to alter "significantly" any of the "main" travel services (Art. 4 (1) a), the traveller may terminate the contract without penalty. Failure to terminate is deemed to be acceptance. (Art. 9 (2))

#### ► Package travel: Termination of the contract prior to travel

- The traveller may terminate the contract
  - at any time and without giving a reason against payment of "appropriate" compensation to the travel organiser (Art. 10 (1)) and
  - free of charge in the case of "significant" change by the travel organiser (Art. 9 (2); see above).
- The traveller and the travel organiser may terminate the contract in the case of "unavoidable and extraordinary circumstances" occurring at the destination (Art. 10 (2) and (3) b).
  - Such circumstances exist in a "situation beyond the control of the trader the consequences of which could not have been avoided even if all reasonable measures had been taken" (Art. 3 (11)).
  - Examples are natural disasters and warfare, particularly in the case of official travel warnings (Recital No. 26).
- In the case of termination, the travel organiser must reimburse the traveller for any undue payment within fourteen days (Art. 9 (4), Art. 10 (4)).

#### ► Package travel: Duties of the travel organiser where performance fails to conform to the contract

- The travel organiser is responsible for performance of all travel services (Art. 11 (1)).
- Remedying lack of conformity: The travel organiser must remedy any lack of conformity unless this is "disproportionate" (Art. 11 (2)).
- Substitute performance: Where a "significant" proportion of the travel services cannot be provided as agreed in the contract, the travel organiser shall provide the traveller, at no extra cost, with (Art. 11 (3) and (4); Recital No. 29)
  - "suitable alternative arrangements" for the continuation of the package or
  - provide the traveller with "equivalent" transport to the place of departure.
- Accommodation costs: If it is impossible to ensure the traveller's timely return because of "unavoidable and extraordinary circumstances", the travel organiser shall bear the overnight accommodation costs for no more than three additional nights up to a maximum of 100 euro per night per traveller (Art. 11 (5) and (6)).

- Compensation: Where performance does not conform to the contract, the travel organiser must compensate the traveller for material and non-material damage - e.g. spoilt holiday - (Art. 12 (2); Recital No. 29).
  - This does not include damage "attributable" to the traveller or to an unconnected third party or due to "unavoidable and extraordinary circumstances" (Art. 12 (3) a).
  - In addition, compensation is excluded where the traveller breaches a contractually agreed duty to immediately report any lack of conformity to the travel organiser (Art. 12 (3) b).
- Price reduction: Where performance does not conform to the contract, the traveller is entitled to a price reduction for the relevant period (Art. 12 (1); see also Art. 9 (3) and Art. 11 (7)). The grounds excluding the right to compensation apply accordingly (Art. 12 (3)).
- Assistance: The travel organiser must provide a traveller in "difficulties" with "prompt" assistance such as by providing information, distance communication links and "alternative travel arrangements". If the traveller has caused the "difficulties" intentionally or negligently, the travel organiser can charge a "reasonable" payment. (Art. 14; Recital No. 32)
- ▶ **Package travel: Duties of the travel retailer where performance fails to conform to the contract**
  - Where the travel organiser is established outside the European Economic Area (EEA), primary liability lies with the travel retailer (Art. 18).
  - The travel retailer must ensure that it can be contacted "directly" by the traveller and that it forwards any complaints and other communications to the travel organiser "without undue delay". For the purpose of compliance with time-limits, receipt of the notifications by the travel retailer shall suffice. (Art. 13)
- ▶ **Package and assisted travel arrangements: Insolvency protection**
  - In the case of insolvency, the travel organiser and the travel retailer must ensure the "effective and prompt" refund of all payments and that the traveller's repatriation is guaranteed (Art. 15 (1); Recital No. 34).
  - Member States must give mutual recognition to each others' national systems of insolvency protection (Art. 16 (1)) and designate central contact points (Art. 16 (2)–(4); Recital No. 35).
- ▶ **Assisted travel arrangements: Information obligations**

Travel retailers must inform travellers in a "clear and prominent manner" prior to procurement of assisted travel arrangements that the rights applicable to package travel do not apply and that each provider is individually liable to the traveller for performance of the travel services which it offers (Art. 17).
- ▶ **Transposition, imperative nature of the Directive and relationship to other legislation**
  - By contrast with the current situation (see Art. 8 Directive 90/314/EEC), the Member States cannot impose a higher level of consumer protection (cf. Annex I; Recital No. 6).
  - It is not possible to deviate from the provisions of the Directive to the detriment of the traveller (cf. Art. 21).
  - Passenger rights with respect to the individual transport providers remain unaffected by package travel arrangements. Multiple assertion of the same claim, however, is not permitted. (Art. 12 (5))
  - The Consumer Rights Directive applies, without restriction, to assisted travel arrangements; with regard to package travel deals, its application is limited, specifically to the duties to provide information in the case of distance selling (Art. 25 (2); amended Art. 3 (3) g Directive 2011/83/EU).

### Statement on Subsidiarity by the Commission

Due to the differences which still exist between the laws of the Member States, a new approximation of laws at EU level is required (p. 6).

### Policy Context

The Commission announced the reform of EU travel law in the Communication on tourism policy [COM(2010) 352; see [cepPolicyBrief](#)] and the European Consumer Agenda [COM(2012) 225; see [cepPolicyBrief](#)].

### Legislative Procedure

9 July 2013	Adoption by the Commission
10 March 2014	First reading in the European Parliament (EP)
Open	Adoption by the EP and the Council, publication in the Official Journal of the European Union, entry into force

### Options for Influencing the Political Process

Directorates General:	DG Justice (leading)
Committees of the European Parliament:	Internal Market and Consumer Protection (leading), Rapporteur Hans-Peter Mayer (EPP Group, D);
Federal Ministries:	Justice (leading)
Committees of the German Bundestag:	Legal Affairs (leading)
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

## Formalities

Legislative competence:	Art. 114 TFEU (Single Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

## ASSESSMENT

### Economic Impact Assessment

**The ban on imposing a higher level of consumer protection at national level**, which would exceed the requirements of the Directive, results in full harmonisation. It **strengthens the internal market** for package and assisted travel arrangements.

**Equal treatment for bookings made in travel agencies and online** places sales channels on an equal footing and thus **provides a level playing field for travel organisers**.

**The definition of "unavoidable and extraordinary circumstances", where performance fails to conform to the contract, is too vague and therefore results in - avoidable - legal uncertainty.** This is all the more serious because of the far-reaching legal consequences. In case of dispute, the courts have to decide; this gives rise to costs of litigation. In addition, due to the legal uncertainty, almost no insurance company will be willing to cover these cases. This may result in the range of destinations becoming limited to those with low risk, or to surcharges for those with higher risk. Both of these penalise package travel by comparison with other types of travel. It would be feasible, in this regard, to create legal certainty by having mandatory groups of cases; this path was chosen recently by the Commission in the new Regulation on air passenger rights [see Annex 1 COM(2013) 130]. It would also be feasible to allow the traveller, in these cases, to opt to release the travel organiser from liability in return for a price reduction.

**Legal certainty also suffers from the fact that there is a failure to clarify when a traveller is in "difficulties"** obliging the organiser to provide assistance; there is no definition or group of cases.

The travel retailer does incur additional costs as a result of having to be available to the traveller, free of charge, as a contact point, and this is particularly true for micro-enterprises. However, it can ensure more effective communication at lower cost, particularly with foreign travel organisers. What is not appropriate to the travel retailer's role as agent, however, is its primary responsibility for proper performance of the package contract where the travel organiser is established outside the EEA. This represents a significant risk compared to generally low margins. It could lead to such offers disappearing from the market and consumers then - in case of doubt, without protection - booking directly with the organiser based outside Europe.

The mandatory notification that, in the case of assisted travel arrangements, the traveller does not have the same rights as with package deals, improves transparency and enables the traveller to choose more efficiently.

### Legal Assessment

#### Legislative Competence

Unproblematic. The European Court of Justice (ECJ) recognises, in particular, that areas which are already harmonised, can be "re-harmonised" (ECJ, Case C-58/08, Vodafone and others, par. 34).

#### Subsidiarity

Unproblematic.

#### Proportionality

Unproblematic.

#### Compatibility with EU Law in other Respects

Unproblematic.

#### Impact on German Law

The legal provisions relating to travel [Section 651a et seqq. German Civil Code (BGB)] will have to be adapted. In this regard, the legislator must not exceed the protection level provided by the Directive.

### Conclusion

Full harmonisation of consumer protection legislation for package and assisted travel arrangements strengthens the single market. Equal treatment for bookings made in travel agencies and online provides a level playing field for travel organisers. The lack of a suitable definition for "unavoidable and extraordinary circumstances" where performance fails to conform to the contract, and for travellers "in difficulties", gives rise to avoidable legal uncertainty.