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Opinion of the European Economic and Social Committee

Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive

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Section responsible	Single Market, Production and Consumption
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Outcome of vote (for/against/abstentions)	134/7/6

1. Conclusions and recommendations

1.1. The COVID-19 crisis highlighted shortcomings connected with the existing Directive on package travel and linked travel arrangements (PTD). With this in mind, the EESC agrees with the Commission's proposals to revise the Directive and provide stronger protection for holidaymakers.

1.2. The EESC notes that PTD's existing provisions, while creating a harmonised framework within the EU, have not prevented divergent practices in some respects across Member States.

1.3. Whereas the existing Directive affords consumer protection in the event of operators' insolvency, the EESC is of the view that protection does not go far enough in some respects. Certain problems arose at national level when implementing this Directive, as was the case with the Thomas Cook bankruptcy, and there were legal uncertainties during the pandemic. Hence the reasons for an effective system that protects travellers while placing responsibility on service providers across the whole supply chain.

1.4. The EESC therefore considers a revision of the PTD both timely and necessary, and in general welcomes the revised PTD, which aims to codify voucher schemes and provide clear information and legal guarantees to travellers, while giving more flexibility to travel businesses.

1.5. The EESC welcomes the removal of the overlap between packages and Linked travel arrangements (LTAs). This means that when different types of travel services are purchased at the same time for the same trip or holiday and from the same point of sale, this will be treated as a package. This would stop companies promoting LTAs when they are selling travel packages, thus protecting consumers.

1.6. The EESC notes that consumers rely heavily on intermediaries for standalone air tickets and package travel. The sale of standalone air tickets via intermediaries is an issue covered by the Air Passenger Rights Regulation – Commission Regulation (EC) No 26/2004 ([1]) (APRR). The PTD, which applies to travel packages, cannot address such shortcomings. The EESC notes, however, that the PTD proposal takes the rules of the APRR into account and aims to increase coherence with the APRR.

1.7. The EESC is of the view that the Commission's proposal on the PTD introduces positive significant changes that seek to find a balance between the protection of travellers on the one hand and the interests of travel package operators on the other. Further, providing refunds to customers in case of cancellation of services places a responsibility on all service providers within the supply chain but this is well within the scope of the PTD, revised or otherwise. At the same time, it is necessary to consider the cashflow limitations of service providers in exceptional situations as experienced recently during the COVID-19 pandemic.

1.8. The EESC considers package holidays as an important segment of tourism business and that they constitute the safest of all forms of travel, offering the best consumer protection. The Commission's proposal aims to address existing shortcomings in the PTD. This is welcomed by the EESC, as the proposal will have positive impacts for package organisers, particularly the B2B refund right and the rules on vouchers, both of which help organisers maintain their liquidity.

1.9. The proposal aims to regulate down payments made by travellers at EU level to package holidays, limiting such payments to 25 % of the total package price, unless there is a justification for a higher amount (the limit may be relaxed, if necessary, for package operators to pay service providers). The EESC considers this flexibility as necessary for package holidays and would not require travel operators to be exposed to higher down payments to service providers, safeguarding their cashflow. Further consideration also needs to be given as to how this proposed requirement would apply where a package is formed by a booking of an additional travel service and where payments are made to different providers.

1.10. The EESC also notes that the Commission proposal specifies that higher prepayments will continue to be possible to cover advance payments to service providers, such as airlines.

1.11. Finally; the EESC recommends that the outcome of the Commission's proposal be as balanced as possible, ensuring that EU package travel remains as competitive as possible while affording protection to consumers with minimal impact on prices and burdens on businesses.

2. **Background**

2.1. The EU is the world's number one tourist destination representing two-thirds of all international tourist arrivals in 2022. The number of tourism businesses is estimated at 2,3 million, employing 12,3 million people ([2]).

2.2. European citizens engage with tourism businesses in a variety of travel services and in a variety of ways, either directly or through intermediaries. Directive (EU) 2015/2302 of the European Parliament and of the Council ([3]) on package travel and linked travel arrangements (otherwise known as PTD) sought to modernise the legal framework for package travel and afford some degree of protection for consumers as well as increasing competition across various types of travel businesses in the package travel market.

([1]) Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register (OJ L 5, 9.1.2004, p. 25).
([2]) https://www.europarl.europa.eu/factsheets/en/sheet/126/turizem.
([3]) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11/12/2015, p. 1).

2.3. The effectiveness of the existing Directive was severely tested by the restrictive measures following the outbreak of COVID-19, with package holidays being cancelled on a massive scale, as well as the 2019 Thomas Cook bankruptcy. Because of the scale of cancellations, many travellers did not receive refunds or received them much later than the 14 days as stipulated in the Directive. In response to this, the Commission recommended and encouraged the use of vouchers subject to the agreement of travellers and their protection against the insolvency of the package organiser. Despite this recommendation, several Member States deviated from the PTD resulting in the Commission opening infringement proceedings against 11 Member States.

2.4. Against this background, the Commission proposed revising the Directive to strengthen consumer protection including in the event of a crisis like COVID-19. The Commission's proposal is also intended to enhance the functioning of the Internal Market in the package travel sector. The proposed revisions aim to address the weaknesses of the existing Directive in terms of gaps, legal uncertainty and complexity.

2.5. The revised Directive also aims to improve the coherence between the PTD and Regulation (EC) No 261/2004, otherwise known as the Air Passenger Rights Regulation or APRR, in particular by introducing vouchers and business-to-business refunds. The business to business refund right contained in the proposal means that organisers would be entitled to a refund from service providers within 7 days where a travel service is cancelled. This would allow organisers to reimburse travellers within 14 days, without endangering their liquidity.

2.6. The Commission proposal addresses an EU-wide problem, since package travel is a cross-border sector involving EU citizens travelling anywhere within and outside the EU, as well as package holidays sold to travellers by organisers in other Member States. Given the cross-border nature of package holidays, the only way to adequately address problems affecting travellers is through EU legislation. Providing protection to EU travellers cannot be addressed by individual Member States.

2.7. Action at EU level is the most effective way of providing adequate protection to both EU travellers and operators, while at the same improving the functioning of the internal market in package travel. There will be more uniformity in the sector if the proposed vouchers and down payments, as well as insolvency protection, are laid down at EU level. Member States would still be able to choose the type of national insolvency protection system, e.g. a system based on insurance policies or on a mutual fund, to which organisers contribute. In order to ensure that the national systems are effective, additional parameters are set out in the proposal and Member States are expected to supervise the insolvency protection of organisers. The proposal specifies that, where effective insolvency protection is necessary, Member States may set up a back-up fund for instance, in addition to insolvency protection insurance policies. The introduction of such funds may increase costs of package travel. However, Member States are not obliged to do so and the possibility of setting up insolvency protection back-up funds already exists.

2.8. The Commission proposal also stipulates that instead of refunds, organisers may offer vouchers covered by insolvency protection, subject to the consent of travellers. This measure is positive for businesses as it provides them with the possibility of gaining more liquidity. Covering vouchers and open refund claims by insolvency protection may result in an increase in insolvency protection costs for operators in Member States where vouchers and refund claims are currently not covered by insolvency protection. Though some additional costs may occur, consumers, stand to gain from better protection through the legal guarantees attached to the use of vouchers, including insolvency protection.

2.9. The Commission also proposes a flexible limitation of down payments to 25 %, which can be increased depending on the need to make higher advance payments to service providers or to cover other costs related to the organisation and performance of package travel, as far as it is necessary to cover those costs at the time of booking. According to the impact assessment made by the Commission, the added cost to operators would be limited with only a slight increase in prices for travellers.

3. **General comments**

3.1. The existing Directive on package travel and linked travel arrangements (PTD) provides a high level of protection to holidaymakers. It protects against insolvency on the part of package organisers, including tour operators, gives them specific rights when something goes wrong during the trip, e.g. a right to alternative arrangements, price reduction and compensation. It also gives them the right to cancel a travel package, entitling them to a refund of their payments where the cancellation is due to unavoidable and extraordinary circumstances. However, the COVID-19 crisis highlighted a number of shortcomings. With this in mind, the EESC agrees with the Commission's proposals to revise the directive and provide stronger protection for holidaymakers.

3.2. The EESC notes that while creating a harmonised framework within the EU, the PTD's existing provisions have not prevented divergent practices in some respects. Thousands of consumers were adversely affected by the way organisers dealt with refunds for cancelled packages during the pandemic, whereas 15 Member States adopted rules deviating from the PTD by temporarily allowing package organisers to postpone refunds or impose vouchers on consumers. The Commission opened infringement proceedings against 11 Member States.

3.3. The EESC also notes that in the existing PTD, there is no provision for deadlines to deal with consumers' complaints while consumer participation in alternative dispute resolution schemes is not mandatory. Also, in many cases, operators have not followed up on decisions taken by enforcement authorities. Therefore, imposing sanctions for not complying with deadlines may be deemed necessary. Additionally, applying maximum percentages for pre-payment and payment schedules would limit the risk for consumers and would also make insolvency protection less expensive for operators.

3.4. Whereas the existing Directive affords consumer protection in the event of operators' insolvency, the EESC is of the view that protection does not go far enough in some respects. Certain problems arose at national level when implementing this Directive, as was the case with the Thomas Cook bankruptcy, and there were legal uncertainties during the pandemic. Hence the reason for revising the PTD, thereby increasing the effectiveness of national insolvency protection systems. Such systems should afford protection to consumers in all circumstances, avoidable or otherwise, with reimbursements being made within a reasonable time frame.

3.5. As things stand, when a package organiser (e.g. a tour operator) or a traveller cancels a package due to 'unavoidable and extraordinary circumstances', consumers are entitled to monetary reimbursement within 14 days. However, there is no reference to vouchers in the existing Directive. The EESC therefore considers a revision of the PTD both timely and necessary, and in general welcomes the revised PTD, which aims to codify voucher schemes and provide clear information and legal guarantees to travellers, while giving more flexibility to travel businesses.

3.6. Presently, holidaymakers can terminate their holiday without incurring fees if 'unavoidable and extraordinary circumstances' occur at the destination or close to the destination. However, the existing Directive only specifies that travellers can cancel 'before the start of the package' without setting a timeframe. When COVID-19 struck, given the absence of a defined period for the declaration of withdrawal, many operators refused to reimburse consumers. The EESC notes that the Commission proposal does not contain a defined period for the declaration of the termination of the contract.

3.7. Linked travel arrangements (LTAs) can often be complex with consumers often unsure whether their booking is a package travel or an LTA. Operators can therefore take advantage of this. Therefore, the EESC welcomes the removal of the overlap between packages and LTAs with the effect that when different types of travel services are purchased at the same time for the same trip or holiday from the same point of sale, this will be treated as a package. This would stop companies promoting LTAs when they are selling travel packages thus, protecting consumers.

3.8. As far as online bookings are concerned, the EESC notes that consumers rely heavily on intermediaries for standalone air tickets and package travel. The sale of standalone air tickets via intermediaries is an issue covered by the Air Passenger Rights Regulation – Regulation (EC) No 26/2004 (APRR). The PTD, which applies to travel packages, cannot address such shortcomings. The EESC notes, however, that the PTD proposal takes the rules of the APRR into account and aims to increase coherence with the APRR.

4. **Specific comments**

4.1. The EESC is of the view that the Commission's proposal on the PTD introduces positive changes that seek to find a balance between the protection of travellers on one hand and the interests of travel package operators on the other.

4.2. The EESC considers package holidays as an important segment of tourism business and that they constitute the safest of all forms of travel while offering the best consumer protection. The Commission's proposal aims to address existing shortcomings in the PTD. This is welcomed by the EESC as the proposal will have positive impacts for package organisers, particularly the B2B refund right and the rules on vouchers, both of which help organisers maintain their liquidity.

4.3. The proposal aims to regulate down payments made by travellers at EU level to package holidays, limiting such payments to 25 % of the total package price (the limit may be relaxed, if necessary, for package operators to pay service providers). Although full customer payment at the time of booking for travel services is often the case, the EESC considers this proposed flexibility in respect of the down payment as necessary, as it creates a balance between the interests of businesses and those of travellers, and does not require travel operators to be exposed to higher down payments to service providers, safeguarding their cashflow. Further, providing refunds to customers in case of cancellation of services places a responsibility on all service providers within the supply chain but this is well within the scope of the PTD, revised or otherwise. At the same time, it is necessary to consider the cashflow limitations of service providers in exceptional situations, as experienced recently during the COVID-19 pandemic.

4.4. The EESC also notes that in the Commission's impact assessment, it was found that, holiday packages tour operators already ask for down payments which are much lower than 100 % and more in the region of 25-35 %. Therefore, the proposed new rule for packages would result in only a moderate 5 % reduction in the level of prepayments. Further, the EESC agrees with the proposed flexibility allowing package operators to ask for a down payment in excess of 25 % if deemed justified. However, consideration also needs to be given as to how the proposed down payment would apply where a package is formed by a booking of an additional travel service and where payments are made to different providers.

4.5. The EESC notes that the Commission's proposal specifies that higher prepayments will continue to be possible to cover advance payments to service providers, such as airlines. Therefore, the impact on service providers such as airlines and their business from the implementation of the proposal is expected to be minimal.

4.6. The EESC also notes that tourism has recovered from the devastating effects imposed by health restrictions in response to COVID-19. The pandemic was an exceptional circumstance. Under normal circumstances, the package travel sector has proved to be very successful with very limited problems for consumers. The EESC believes that the Commission proposal, if carefully calibrated, would continue strengthening the sector.

4.7. Finally, the EESC recommends that the outcome of the Commission's proposal be as balanced as possible, ensuring that EU package travel remains as competitive as possible while affording protection to consumers with minimal impacts on prices and burdens on businesses.

Brussels, 24 April 2024.

The President
of the European Economic and Social Committee
Olivier RÖPKE