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COMMISSION STAFF WORKING DOCUMENT
Accompanying the document

Report from the Commission to the European Parliament and the Council

on the provisions of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 november 2015 on package travel and linked travel arrangements applying to online bookings made at different points of sale

{COM(2019) 270 final}

This Staff Working Document presents further background information for the Commission Report on the provisions of the Package Travel and Linked Travel Arrangements Directive applying to online bookings made at different points of sale ('click-through' bookings)[1].

1. Methodology

The national measures transposing Directive 2015/2302 on package travel and linked travel arrangements (Package Travel Directive)[2] started applying in the Member States on 1 July 2018.

In July 2018, the Commission's Directorate-General Justice and Consumers set up an expert group on package travel and linked travel arrangements[3] ("the Expert Group"). It is composed of experts representing EU business organisations active in the travel sector, national/EU organisations representing consumers and travellers, national alternative dispute resolution bodies specialised in travel and tourism, and entities providing insolvency protection for the travel sector (see list of members in Annex 1).

The Expert Group assisted in the design and the distribution of the questionnaires for the targeted stakeholder consultation that was carried out in October and November 2018. Altogether almost 200 contributions were received from the travel and tourism business. The airline sector, albeit represented in the Expert Group, did not provide feedback to the stakeholder consultation. For further details on the number of contributions received, see Annex 2. The Expert Group and the competent enforcement authorities were also consulted on a draft version of the report.[4]

In parallel, the national data protection authorities were consulted, through the Secretariat of the European Data Protection Board, on the data protection aspects of the relevant provisions[5].

2. Transposition of the Package Travel Directive in the Member States

The Member States had to transpose the Package Travel Directive by 1 January 2018. The Commission opened infringement procedures against 14 Member States for non-communication of national transposition measures. By March 2019, all Member States had notified the Commission of the complete transposition of the Directive. Most Member States

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1 Report from the Commission to the European Parliament and to the Council on the provisions of Directive (EU) 2015/2302 of the European parliament and of the Council of 25 November 2015 on package travel and linked travel arrangement applying to online booking made at different points of sale. [COM(2019)270]

2 Directive (EU) 2015/2302 of the European parliament and of the Council of 25 November 2015 on package travel and linked travel arrangement, amending regulation (EC) N° 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 of 11.12.2015, p. 1.

3 Stakeholder expert group to support the application of the Package Travel and Linked Travel Arrangements Directive (2015/2302) (E03617) http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3617&NewSearch=1&NewSearch=1

4 Through the Consumer Protection Cooperation (CPC) network and at the Expert Group meeting of 25 January 2019, minutes available http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeeting&meetingId=11510

5 Nine replies received from Cyprus, Germany, Estonia, Greece, Ireland, Lithuania, Latvia, Malta and Slovakia.

used the same wording as the Directive when transposing Articles 3(2) and 3(5), containing the definitions of 'package' and 'linked travel arrangement'.

Some Member States adopted additional provisions[6] or guidance documents[7] aimed at clarifying certain concepts. In some cases, such guidance documents refer to the discussions held in the transposition workshops organised by the Commission[8].

Most Member States reproduced in their national legislation[9] the standard information forms set out in the annexes of the Directive which operators must use for the pre-contractual information of travellers in the case of package travel contracts (Article 5; Annex I) and linked travel arrangements (Article 19; Annex II).

Apart from late transposition, no *prima facie* problems related to the transposition of the Directive's provisions relevant for 'click-through' booking have been identified so far. The Commission has started a systematic assessment of the conformity of the national transposition measures with the Directive in April 2019. The results will be considered for the general report on the implementation of the Directive due by 2021.

3. Different forms of linked online travel booking processes

3.1. Packages purchased online from different points of sale

Article 3(2) of the Package Travel Directive contains the definition of 'package'. Its point (b) describes five scenarios that lead to the creation of a package which apply irrespective of whether separate contracts are concluded with individual travel service providers. While packages "offered, sold or charged at an inclusive or total price" (Article 3(2)(b)(ii)) or "advertised or sold as a 'package' or under a similar term" (Article 3(2)(b)(iii)) could, at least theoretically, also be booked online at *different* points of sale, they are usually purchased at a *single* point of sale (e.g. on the package organiser's website) and are not covered by the report.

Article 3(2)(b)(v) specifically covers the situation of a 'click-through' booking involving different points of sale:
'package' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if:

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6 E.g. the German law (§651w, Absatz 1, 2. Unterabsatz, BGB) provides that "facilitation in a targeted manner" of a linked travel arrangement shall not apply if the trader merely puts the traveller in contact with another trader and the amended Italian Legislative Decree No 79 of 23 May 2011 provides that *"supplementary travel service means ancillary services such as, inter alia, transport of luggage provided as part of carriage of passengers; use of pay and display parking at stations or airports; carriage of passengers for short distances as part of a guided tour or transfers between an accommodation facility and a travelling station by other means; organisation of entertainment or sporting activities; provision of meals, drinks and cleaning provided in the context of accommodation; use of bicycles, skis and other equipment from the accommodation facility or access to on-site facilities such as swimming pools, beaches, gyms, saunas, wellness centres or spas, including for hotel guests; any other typical supplementary service according to local customs*".

7 E.g. Guidelines, Loi du 21 novembre 2017 relative à la vente de voyages à forfait, de prestations de voyage liées et de services de voyage (BE), LU guidelines and Package Travel and Linked Travel Arrangements Regulation 2018 Guidance for Business (UK).

8 The Commission services held 5 workshops with Member States to discuss the transposition of the PTD. Minutes of these meetings are publicly available here https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35324.

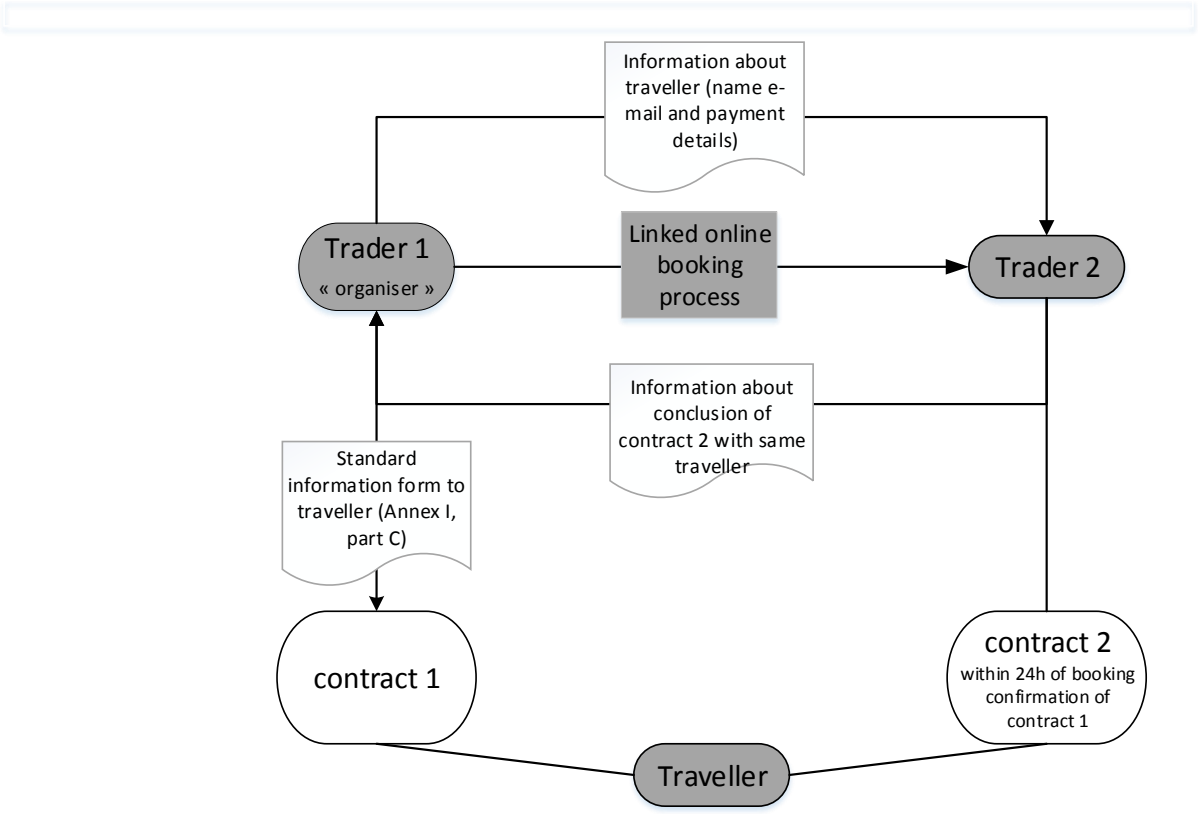
9 Sweden has not yet communicated the standard forms for which the Swedish Consumer Agency has received the powers to adopt them.

[…]

– *purchased from separate traders through linked online booking processes where the traveller's name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.*

The aim of the Commission Report and this Staff Working Document is precisely to analyse whether this provision should be adjusted or broadened. The following chart illustrates the relationship between the two traders involved in the linked online booking process.

Click-through package – Art. 3 (2)(b)(v)



3.1.1. Click-through packages in application of Article 3(2)(b)(v)

According to Article 5 of the Directive, organisers of packages must provide travellers with the standard information by means of the relevant form as set out in the Annex I of the Directive.

In case of 'click-through' packages within the meaning of Article 3(2)(b)(v), organisers have to use Part C of Annex I. This form being exclusively used for this specific type of package, feedback on its use would be an indication of the extent to which operators offer 'click-through' packages as defined in Article 3(2)(b)(v).

In replies to the questionnaires, several trade associations indicated that their members do not offer 'click-through' packages. Hence, they do not use the form set out in Part C of the Annex I.

Other trade associations indicated that their members would offer click-through packages, using either the standard information form for packages defined in Article 3(2)(b)(ii) and (iii) (i.e. part A of the Annex I) or, sometimes, for packages defined in Article 3(2)(b)(v) (part C of the Annex I). However, these trade associations also indicated that their members usually do not transfer the traveller's personal data (name, email address and payments details) to another trader while this is a requirement for 'click-through' packages as defined in Article 3(2)(b)(v). These somehow contradictory replies may be due to a misunderstanding of the questionnaire as well as little experience with the use of the new standard information forms. As to the first point, some respondents may have considered the selection (by means of 'clicking') of several travel services on the same website as a 'click-through' booking even though the travel services are purchased from a single point of sale and would therefore not qualify as a linked online booking process. As regards the use of information forms, the organiser of a package within the meaning of Article 3(2)(b)(ii) or (iii) must use the standard information form set out in part A of Annex I even in the, rather theoretical, case of a 'click-through' booking from different points of sale.

Competent authorities and alternative dispute resolution bodies[10] have not reported about queries or complaints regarding the use of any of the standard information forms for 'click-through' bookings and no enforcement action has been undertaken in this respect so far, possibly due to the short period of time since the application of the new rules.

Whilst some data protection authorities received queries related to the application of the new General Data Protection Regulation[11] in the travel or tourism sector, they did not report about queries or complaints in relation to the data protection related provisions of the Package Travel Directive[12]. Alternative dispute resolution bodies or competent authorities for enforcement of the Package Travel Directive did not report about queries or complaints related to data protection within the framework of the application of the Package Travel Directive either.

From this feedback, one might conclude that the offer of 'click-through' packages within the meaning of sub-paragraph (v) of Article 3(2)(b) appears to be a rather rare phenomenon. However, in the absence of feedback from the airline sector to the stakeholder consultation further studies are necessary to have a clearer picture of the prevalence of 'click-through' packages on the market.

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[10] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.6.2013, p. 63–79.

[11] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/*EC*, OJ L 119, 4.5.2016, p. 1–88.

[12] Nine replies received; only Greek authority received request for presentation on General Data Protection Regulation by the Hellenic Chamber of Hotels.

3.1.2. Adjustment or broadening of the definition of 'click-through' booking of a package in Article 3(2)(b)(v)

Most of the consulted stakeholders either had no opinion yet regarding a possible modification of the definition in Article 3(2)(b)(v) or were against it, as it would be too early to take a well-informed decision in light of the limited practical experience with the application of the new rules. In addition, the Expert Group concluded that it was too early to draw conclusions regarding a possible adjustment or broadening of the definition. Some members of the Expert Group, however, specified that this should not be understood as an endorsement of the definitions and the specific rules on online bookings of packages and linked travel arrangements.

Respondents in favour of a modification of the definition considered that it should be broadened, by deleting some of its requirements namely the need for a transfer of payment details from one trader to the other, which would be extremely rare[13].

Among authorities, views were diverse. Some authorities and alternative dispute resolution bodies would support broadening the definition in order to prevent the possibility to circumvent the current definition and make enforcement easier, especially with regard to the 24 hours rule. Other authorities would rather favour a more narrow definition (with additional requirements) or even a deletion of Article 3(2)(b)(v) as they considered it as too complex and hardly used.

The Expert Group highlighted that rather than the definition itself, it is the delimitation between packages booked online from a single point of sale (and not through a linked online 'click-through' booking process) and the facilitation of the separate selection and payment of travel services in the form of a linked travel arrangement which is challenging for the industry, but also for consumers who may not be aware of the change brought by the Package Travel Directive.

3.2. Qualification of online bookings made at different points of sale as package or linked travel arrangement

The operator must inform the traveller whether he/she is about to conclude a package or a linked travel arrangement.

If not a package, online booking of travel services at different points of sale may be qualified as linked travel arrangement within the meaning of Article 3(5) of the Directive. A linked travel arrangement can either be concluded through the separate selection and payment of travel services on the occasion of a traveller's single visit or contact with his point of sale (Article 3(5)(a) - not relevant for the report) or when a "*trader facilitates […] in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of*

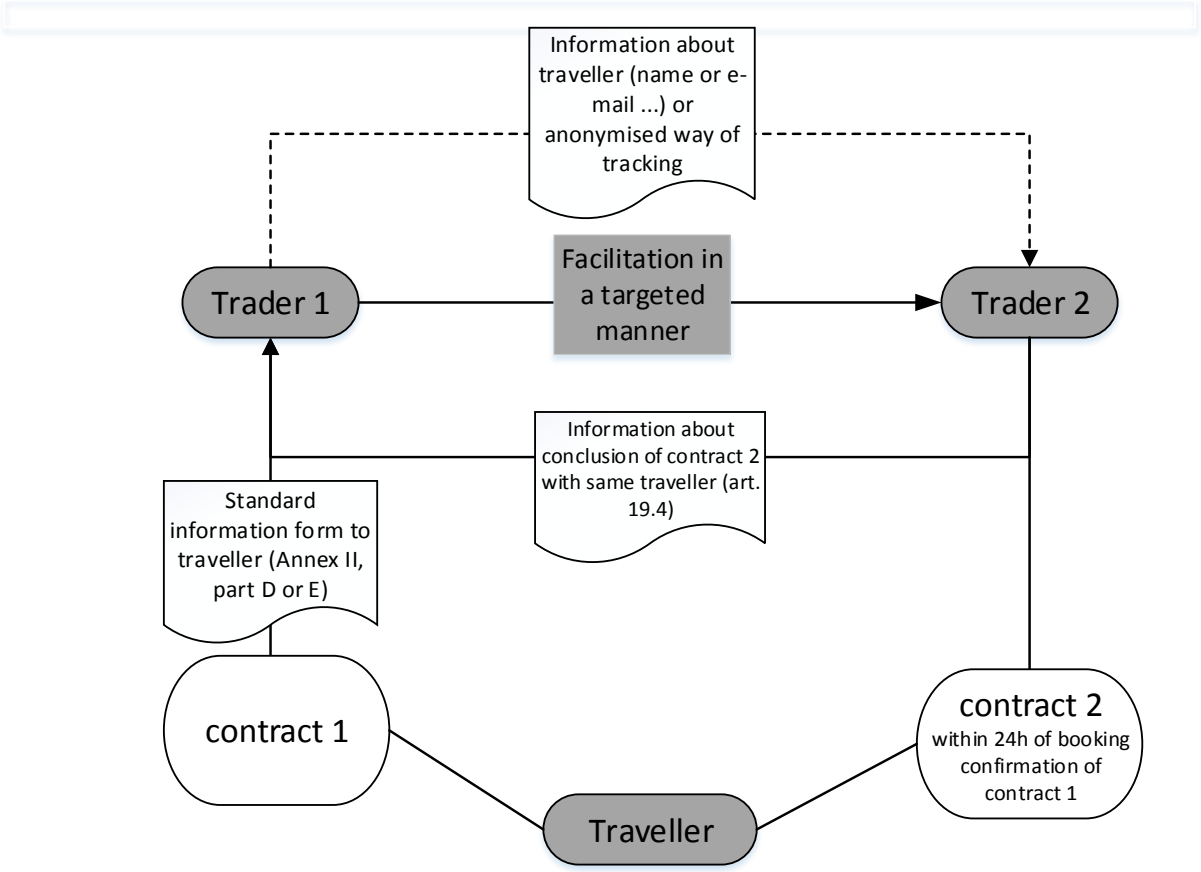
[13] In particular, the ECTAA (representing European travel agents and tour operators associations) emphasised that there is no or extremely few transfer of payment details between traders.

the booking of the first travel service" (Article 3(5)(b) - click-through LTA relevant for the report).

Recital 12 of the Directive clarifies in this respect that "*online linked travel arrangements should […] be distinguished from linked websites which do not have the objective of concluding a contract with the traveller and from links through which travellers are simply informed about further travel services in a general way, for instance where a hotel or an organiser of an event includes on its website a list of all operators offering transport services to its location independently of any booking or if 'cookies' or meta data are used to place advertisements on websites.*"

The following chart illustrates the relationship between the two traders in a linked travel arrangement that is facilitated in a targeted manner.

Click-through LTA – Art. 3 (5)(b)



It is noteworthy that most providers of insolvency protection that responded (e.g. insurers, guarantee funds) do not differentiate between packages and linked travel arrangements (being click-through or not) for the purpose of securing their clients[14]. According to them, there is no relevant difference in the financial risk to be covered for these two types of combinations in case of insolvency. Providers of insolvency protection consider that they do not yet have sufficient data or tools to determine the different risks for packages versus LTAs.

[14] Some insurers, however, do make such differentiation.

3.2.1. Challenges in relation with 'click-through' linked travel arrangements

Based on discussions within the Expert Group and stakeholders' feedback, one of the key challenges related to the new concept of linked travel arrangements is the lack of clarity regarding the meaning of "facilitation in a targeted manner" and the determination whether or not a second trader has concluded a contract with a traveller within 24 hours after the first contract.

As regards "facilitation in a targeted manner", there is uncertainty whether or not it requires an active promotion of the second transaction by the facilitating trader and whether or not the provision of relevant (general) advertisements is covered by this concept.

The practical challenge how to determine whether a contract with a second trader has been concluded within 24 hours concerns the information exchange between the first trader (i.e. the one facilitating the procurement of an additional travel service) and the second trader. According to Article 19(4) of the Package Travel Directive, the second trader, upon conclusion of a contract with a traveller within 24 hours of the first contract, must inform the first trader of the conclusion of the second travel service. To that end, the first trader should, in practice, inform the second trader that he has concluded a contract with the traveller beforehand, even though such information obligation is not expressly laid down in the Directive.

It was however reported that the second trader often is either not aware of his obligation to share such information, lacks the appropriate technology to track and identify the first trader or is reluctant to inform the first trader about the conclusion of a contract with a traveller for business reasons as this may increase the price that the first trader requests for the link.

Other factors invoked are the complexity of booking in cascade involving three or more traders, terminology used in national legislations and uncertainty about the legal basis for the transfer of some personal data.

Two members of the Expert Group reported that some of their members send anonymised information about travel destination, dates and types of travel service to the second trader. However, the majority of hotels who contributed do not send any information about the contract concluded with a traveller because they do not know if a second contract is actually concluded.

3.2.2. Coping with challenges in relation to 'click-through' bookings

In order to address the challenges related to 'click-through' bookings, a large number of travel and tourism operators indicated that they have re-assessed existing partnerships with other traders or are in the process of doing so, in order to ensure that they exchange information with partners they can trust and who have the technological capacity.

The new rules also appear to have led to changes in the design of traders' websites (e.g. tabs presentation) and the provision of additional information to the one that is mandatory. One Expert Group member also reported about the creation of a separate company specifically for online bookings.

Several participants in the Expert Group pointed out that some of their members ceased to offer the possibility of 'click-through' booking of travel services offered by another trader or limited the promotion of third party services for fear of falling inadvertently into the linked travel arrangement category.

In addition, alternative dispute resolution bodies reported about certain changes of business practices, for example of hotels, related to uncertainties with regard to the concepts of "other tourist services" and "facilitation in a targeted manner". In order to avoid the risk to become subject to rules on linked travel arrangements, a number of traders seem to have stopped transferring customers' information or to provide links on their website to other service providers.

Whilst disputes related to the new rules are, if existing at all, still rare, alternative dispute resolution bodies and authorities pointed out that enforcement will be challenging. Some mentioned in particular that verification whether the two contracts are concluded within 24 hours would be almost impossible. Others consider that the distinction between 'click-through' booking of a package or of a linked travel arrangement would be difficult for an authority to enforce. Some authorities consider the legislation too complicated for both traders and consumers. Therefore, traders would be unable to fulfil the requirements and consumers be unaware of their rights.

There is therefore a strong call from stakeholders and authorities for guidance on the application of the current rules to bring more clarity, legal certainty and uniformity, which could be more helpful than legislative changes at this stage. In addition, although this was not raised during the stakeholder consultation and discussions in the expert group, the application of the Package Travel Directive to online intermediation services, comparison sites and search engines may also need to be further studied.

Annex 1

Members of the Stakeholder Expert Group to support the application of the Package Travel Directive[15]

EU-level or national organisations representing consumers and/or travellers

- ULC (Union Luxembourgeoise des Consommateurs)
- DECO (Portuguese Association for the consumer defence)
- VzBv (Federation of German consumer organisations)
- AK (Austrian Federal Chamber of Labour, Bundesarbeitskammer Österreich)
- EPF (European Passengers' Federation)

EU-level business organisations representing traders active in the travel sector and involved in the provision of package travel and/or linked travel arrangements

- ECTAA (The European Travel Agents' and Tour Operators' Associations)
- HOTREC (Hospitality Europe)
- CER (The Voice of European Railways)
- CLIA Europe (The Cruise Lines International Association)
- ECSA (European Community Shipowners' Association)
- ETTSA (European Technology & Travel Services Association)
- FITE (International Federation of Equestrian Tourism)
- ETOA (European Tourism Association aisbl)
- EHHA (European Holiday Home Association)
- Eurogites (European Federation of Rural Tourism)
- A4E (Airlines for Europe)

Organisations representing entities providing insolvency protection for the travel sector

- GDV (Gesamtverband der Deutschen Versicherungswirtschaft e.V. - German Insurance Association)

National alternative dispute resolution bodies specialised in (package) travel and/or tourism

- MTV Mediation Tourisme et Voyage
- Tourism Service Board – Austrian Federal Ministry of Sustainability and Tourism (Bundesministerium für Nachhaltigkeit und Tourismus - Tourismus-Servicestelle)
- Česká obchodní inspekce - ČOI (Czeck Trade Inspection Authority)

[15] The Expert Group is listed in the Commission's Register of Expert Groups under the reference E03617 http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3617&NewSearch=1&NewSearch=1

Annex 2

Result of stakeholder consultation

The targeted stakeholder consultation was carried out during the period October/November 2018. Questionnaires were addressed to travel operators and providers of insolvency protection in the travel sector, consumers'/travellers' organisations (members of BEUC[16] and European Passenger Federation), competent authorities responsible for enforcement of the Package Travel Directive[17] and to alternative dispute resolution bodies.

Addressees of the questionnaires	**Respondents**	**Numbers of answers received by Commission services**	**Numbers of answers aggregated by the associations**
Competent authorities responsible for enforcement of the PTD	Authorities from Sweden, Germany, Cyprus, Latvia, Denmark, Slovenia, Czech Republic, Netherlands, Finland, Estonia, Luxembourg, Norway, Greece, Portugal[18]	14	na
Alternative dispute resolution bodies	Bodies operating in Austria, in Czech Republic, in France, in Sweden, in Czech Republic, in United Kingdom, in Ireland and in Spain	9	na
Consumers'/travellers' organisations	Members of BEUC (from PT, DE and AT) and European Passenger Federation	4	na
Travel and tourism operators			
	CLIA Europe	1	2
	HOTREC - Hospitality Europe	8	12
	CER - Railways Community of European Railway and Infrastructure companies	0[19]	77

[16] Bureau Européen des Unions de Consommateurs.

[17] Awareness of the competent authorities responsible for enforcement of the PTD was raised through message to the Consumer Protection Cooperation network.

[18] Spain explained that it did not contribute, as the PTD was not yet transposed in Spain at that time.

[19] A small size German reseller of package holidays claimed being member of CER and Airlines for Europe; CER indicated that the respondent was not one of its member.

	ECTAA - The European Travel Agents' and Tour operators associations	82	85
	EHHA - European Holiday Home Association	0	3
	ETTSA - European Technology & Travel Services Association	1	2
	ECSA - European Community Shipowners' association	0	1
	FITE- International Federation of Equestrian Tourism	1	0
	ETOA - European Tourism Association aisbl	1[20]	0[21]
	Eurogites (European Federation of Rural Tourism)	0	0
	A4E -Airlines for Europe's members	0[22]	0
	Others[23]	9	
	TOTAL 195[24] answers received (105+90)	105[25]	182[26] of which 90 answers were received directly by the associations
Insurers			
	Insurance Europe	6	6[27]

[20] Also member of ECTAA

[21] ETOA (European tourism Association aisbl) explained that they did not receive any response or comment. ETOA perception is that "the concept, let alone the definition, of an LTA enjoys somewhat limited awareness so caution may be needed in interpreting the responses we do receive". This was supported by Eurogites (European Federation of Rural Tourism).

[22] A small size German reseller of package holidays claimed being member of CER and Airlines for Europe; it is however not mentioned in the latter's list of members; see also footnote 19.

[23] Respondents not being members of an association.

[24] Answers received by Commission services and associations.

[25] Answers received by Commission services were forwarded to the associations which the respondent indicated as being a member of. Some answers may have been aggregated by different associations, in case of multiple memberships.

[26] Answers forwarded by Commission services and answers received directly by the associations.

[27] 6 establishments operating in Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Spain, Sweden, United Kingdom and Norway.

	Others	4	
	Total:	10	
Guarantee funds	EGFATT	1	4[28]

[28] EGFATT aggregated the replies from four out of its eight members (from ABTA Limited (UK), Garantiefonds Reizen - Fonds de Garantie Voyages – GFG (BE/LU), SGR (NL) and the Commission for Aviation Regulation (IE)).