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# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements

## 1. The Directive

Directive (EU) 2015/2302 on package travel and linked travel arrangements ('the PTD' or 'the Directive') was adopted on 25 November 2015[1]. It replaced Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. The PTD builds on the key features of the 1990 Directive, including information requirements, provisions on contract changes and liabilities, as well as the protection of consumers in case of the organiser's insolvency. The new PTD significantly extends the level of consumer protection, taking into consideration new online booking models for combinations of travel services.

After its report on the provisions of the PTD applying to online bookings made at different points of sale issued in June 2019 ('click-through bookings' report)[2], the Commission submits this general report on the application of the PTD in accordance with Article 26, sentence 2, of the PTD to the European Parliament and the Council[3].

The stakeholder expert group to support the application of the PTD[4] and national authorities[5] were consulted for the preparation of this report.

### 1.1. The main elements of the Directive

Under the PTD, the organiser of a package is responsible for the performance of all services forming part of the package, irrespective of whether those services are to be performed by the organiser itself or by other service providers. When replacing the 1990 Directive, the PTD extended the concept of 'package', modelled originally on pre-arranged package holidays, to customised or tailor-made holidays that a trader, including traditional tour operators, online or off-line travel agencies, airlines and hotels, composes of different travel services selected by the traveller. All those traders can be 'organisers' for the purposes of the PTD.

The main elements of the PTD[6] are:

- The wide definition of 'package', including ready-made holidays offered by a tour operator and the customised selection of components for a trip or holiday by the traveller at a single online or off-line point of sale;
- The introduction of the concept of Linked Travel Arrangement (LTA), which is a looser combination of two or more travel services for the same trip or holiday than a package.

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1 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) 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 of 11.12.2015, p. 1.

2 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, 21.6.2019, accompanied by the Staff Working Document SWD(2019) 270 final.

3 This report covers the 27 EU Member States. Where appropriate, it refers to information concerning the United Kingdom (UK), which left the EU on 31 January 2020.

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

5 Consumer Protection Cooperation Committee, Central Contact Points established under the PTD, Tourism Advisory Committee.

6 See also the summary available at https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX%3A32015L2302&qid=1529931942475

Contrary to the organiser of a package, traders facilitating an LTA are liable only for the performance of travel services they carry out themselves. A combination of travel services qualifies as LTA when one trader facilitates

  - the purchase of different services through separate booking processes during a single visit to a travel agent or website or,
  - in a targeted manner the purchase of an additional travel service from another supplier within 24 hours after a traveller receives confirmation of the booking of the first travel service (e.g. through providing in the booking confirmation a link to another service provider);

- enhanced information requirements: businesses must inform travellers whether they are offered a package or linked travel arrangement and on their key rights through standardised information forms. They must provide information on the features and characteristics of the package, its price and any additional charges;
- companies selling package holidays must provide security for refunds and the repatriation of travellers in case organisers go bankrupt. To a limited extent, such guarantee also applies to LTAs. Traders facilitating an LTA must provide a money-back guarantee for payments they receive from the traveller in case the relevant travel service is not performed due to their insolvency. This guarantee covers also repatriation when the trader facilitating an LTA is responsible for the carriage of passengers, e.g. an airline. The PTD lays down the principle of mutual recognition for the insolvency protection provided by organisers or traders facilitating an LTA in accordance with the law of their Member State of establishment;
- strict rules on liability: apart from certain exceptions, the organiser of a package is liable if something goes wrong, no matter who performs the travel services;
- stronger cancellation rights: travellers may cancel their package holiday for any reason against a reasonable termination fee. They may cancel their holiday free of charge, in particular, in case of "unavoidable and extraordinary circumstances"[7] at the travel destination which affect the performance of the package (e.g. war, natural disasters or outbreak of a serious disease) or if the price of the package is raised by over 8% of the original price;
- assistance to travellers: where travellers cannot return from their package holiday due to "unavoidable and extraordinary circumstances", they are granted accommodation for up to three nights, unless longer periods are provided for in Union passenger rights legislation. In general, organisers must provide assistance to travellers in difficulty, in particular, by providing information on health services and consular assistance.

### 1.2. Market data

In 2017, packages represented around 9% of all tourism trips of EU27 residents and had a share of around 21% of the total tourism expenditure[8]. On average, each EU tourist spent around 762 EUR on a package trip within EU27 (overall expenditure: around 58 billion EUR)

[7] The concept of "unavoidable and extraordinary circumstances" replaces the "force majeure" concept used in the 1990 Directive.

[8] All tourism trips in 2017: around 1.1 billion; total expenditure during those trips was around 444 billion EUR; ESTAT, 2017 data, Number of trips by type of organisation (from 2014 onwards) [TOUR_DEM_TTORG__custom_410560]; Expenditure by type of organisation (from 2014 onwards) [TOUR_DEM_EXORG__custom_410607].

and 1756 EUR on a package trip to the rest of the world (overall expenditure: around 36 billion EUR)[9]. By far the main destination country within Europe was Spain (overall expenditure: around 15 billion EUR).

According to a Market Monitoring Survey on packaged holidays and tours[10], in 2020, a majority of EU27 consumers (81%) trusted the packaged holiday and tour services providers. This figure varies to some extent by Member State, from a high of 90% (in Croatia and Portugal) to a low of 60% (in Poland). A large majority (91%) report positive experiences of making purchases in the market, with few notable differences between countries or sociodemographic subgroups.

Consumers who made their purchase at a travel agency generally paid one total price for the different services (82%). In contrast, 25% of those who purchased services online, did so on a single website but paid for each service separately, while 19% purchased them on one website and then clicked on a link on that site to buy another service from a different provider.

11% of consumers experienced problems with the services they purchased, or with operators, that gave them legitimate reason to complain. Of this group, 40% experienced financial loss while 79% experienced non-financial impacts such as loss of time, anger, frustration, stress or anxiety. Of all those who experienced problems, the majority (62%) filed a complaint. Just over half (54%) reported being satisfied with the outcome of the complaint, while 42% reported being dissatisfied.

## 2. Transposition

The Member States had to transpose the Package Travel Directive by 1 January 2018. Between February 2016 and May 2017, the Commission organised five workshops to assist the Member States in the transposition of the Directive[11].

### 2.1. Respect of transposition deadline

In March 2018, the Commission opened infringement procedures for non-communication of national transposition measures against 14 Member States. Two Member States transposed the Directive only after the Commission had issued a reasoned opinion pursuant to Article 258 of the TFEU. By March 2019, all Member States had notified the Commission of the complete transposition of the Directive.

### 2.2. Conformity assessment of transposition measures

A conformity assessment study of the national transposition measures conducted by an external contractor was finalised at the beginning of 2021. According to that study, there may be, to various degrees, potential non-conformity issues in all Member States, e.g. as regards

[9] Expenditure on package trips includes the amount paid for the package and all other tourism expenditure during the trip.

[10] The survey was conducted by Ipsos between 27 July and 26 October 2020 and covered a reference period of one year preceding the survey interview. It is not possible to identify to what extent the respondents based their answers on experiences during the COVID-19 pandemic. The results of the Market Monitoring Survey are available on the European Commission's website at https://ec.europa.eu/info/policies/consumers/consumer-protection/evidence-based-consumer-policy/market-monitoring_en

[11] See minutes of transposition workshops, available on the European Commission's website at https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35324. Those minutes do not reflect the official position of the Commission regarding the interpretation of the PTD.

definitions, pre-contractual information requirements, travellers' termination rights and termination fees, consequences of lack of or improper performance of the contract, the obligations of traders facilitating LTAs, liability for booking errors and the imperative nature of the PTD. The problems identified do not show a general trend, except for the fact that the proper transposition of the provisions on insolvency protection, notably its effectiveness, may not be fully guaranteed in many Member States. The Commission will analyse the findings of the study and, where appropriate, consider entering into a dialogue with the Member States and/or opening infringement proceedings.

## 3. Application and enforcement

The Member States were obliged to apply their rules transposing the PTD from 1 July 2018.

### 3.1. Awareness-raising

The Commission issued a press release[12] to draw attention to the entry into application of the new rules, provided information for travellers[13] and businesses[14] on its YOUR EUROPE website and included package travel in its **#yourEUright** communication campaign about several key consumer rights launched in 2019[15]. Nonetheless, consumer representatives consider that many consumers are not sufficiently aware of their rights, in particular in relation to their rights when they want to terminate a package travel contract.

### 3.2. Main challenges related to the application of the Directive

In the transposition phase and the first years of application, in particular the broad definition of 'package', the new concept of LTA, the delimitation between the two concepts and the standard information forms gave rise to questions from stakeholders and authorities. Moreover, challenges materialised in relation to insolvency protection, in particular in the context of the Thomas Cook bankruptcy (see chapter 4), and the COVID-19 pandemic (see chapter 5).

#### 3.2.1. Broad scope of package definition

Any combination of at least two different types of travel services for the same trip or holiday combined by one trader, including at the request of the traveller, is a package, if all services are included in a single contract or if other criteria are met, e.g. an inclusive or total price. Exemptions from the scope of the Directive are very limited[16]. This led to uncertainties during and after the transposition of the PTD as regards the question of whether the Directive applies to providers of tourist accommodation services that include free access to local leisure activities or transport services (e.g. 'tourist cards') in their offer.

Examples: 1. A farmer who advertises on its website horse-riding holidays, including accommodation and horse-riding classes at a total price is an organiser of a package under the PTD.

[12] IP/18/4293 of 29 June 2018, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4293.
[13] https://europa.eu/youreurope/citizens/travel/holidays/package-travel/index_en.htm
[14] https://europa.eu/youreurope/business/selling-in-eu/selling-goods-services/package-travel/index_en.htm
[15] https://europa.eu/youreuright/your-rights_en#node-24
[16] See Article 2(2) PTD which provides three cases of exemptions: 1. Trips of less than 24 hours unless overnight accommodation is included; 2. trips offered occasionally, on a not-for-profit basis and only to a limited group of travellers; 3. trips purchased within the framework of a general arrangement for business travel.

2. A travel agent who advises his/her customer about possible safari tours and, in accordance with the latter's selection, books a flight, accommodation in different lodges and a guided tour, for which the traveller agrees to pay once he has selected all the components, is the organiser of that package and liable for the performance of the different included travel services.

Representatives of small undertakings in the tourism and leisure sector (e.g. rural tourism, sport clubs) consider that small or very small undertakings should be exempted from the PTD, especially where no transport is offered. Consumer and travel business organisations, however, consider that additional exemptions would not be an appropriate solution.

### 3.2.2. Linked travel arrangements (LTA)

The concept of LTA was introduced taking into account market developments where traders (mainly online but also off-line) assist travellers in concluding separate contracts with individual travel service providers for the same trip within a short period of time. It covers two scenarios where a trader *facilitates* the booking of travel services provided by other providers and extends the application of certain rules of the PTD to such business models.

Examples: 1. A travel agent books a flight for a customer and the traveller pays for the flight. Then, still during the same visit at the travel agency, the travel agent books accommodation at a hotel for the same trip, which had not been selected and availability of the hotel had not been checked before the booking of the flight, and requests payment or a down payment for the hotel. Through separate selection and separate payment of each travel service, the travel agency has facilitated an LTA.

2. In the e-mail confirmation of a flight booking, the airline provides a link to a hotel booking website offering the traveller the possibility to book a hotel at the travel destination. If the traveller clicks on the link and, within 24 hours after receiving the flight booking confirmation, books a room for his trip, the airline has facilitated an LTA in a 'targeted manner'.

While recitals 12 and 13 of the PTD give some guidance as regards the concept of LTA, the application of this concept has arguably raised the highest number of questions. Consumer and business stakeholders consider the LTA definition overly complex and difficult to apply in practice.

It is not always clear what '*facilitation'* and *'facilitation in a targeted manner'* actually means. Recital 12 clarifies that the posting of links through which travellers are merely informed about further travel services in a general way should not be considered as facilitating an LTA. Hence, an active promotion, based on a commercial link involving remuneration between the trader facilitating the procurement of an additional travel service and the other trader, will generally be required (see recital 13).

A challenge with the application of the LTA concept is linked to the fact that, in the second example provided above, the insolvency protection obligation, where applicable, depends on an uncertain event in the future, i.e. the fact of whether the traveller books an additional travel service from another trader within 24 hours after the first booking. If this is the case, the provider of the first travel service who receives pre-payments from the traveller has to provide insolvency protection for those payments. Although Article 19(4) PTD requires the second trader to inform the trader facilitating the LTA about the conclusion of a contract with the traveller, the first trader does not necessarily have all the information to determine in

which cases an LTA was formed. It is reported that the providers of the additional travel service do not always comply with their reporting obligations, e.g. due to lack of technical means for secured exchange of data or fear to breach the General Data Protection Regulation[17]. Such uncertainty could lead to difficulties when arranging the required insolvency protection.

Concerns have also been raised that, with the exception of insolvency protection and certain pre-contractual information requirements, the PTD does not provide for the liability of traders facilitating an LTA for the performance of the relevant services. Consumer representatives are concerned that travel service providers misleadingly present themselves as a trader facilitating an LTA rather than as an organiser in order to avoid the stricter liability rules applicable to packages, leaving consumers with a lower level of protection.

### 3.2.3. Delimitation between package and LTA

The distinction between certain packages and certain LTAs can be difficult[18]. A travel agent who books a flight and a hotel for its customer and issues one invoice for both services sells a package. When the same services were not selected jointly, the travel agent that books them one after the other and does not charge a total price facilitates an LTA.

With regard to 'click-through bookings'[19] it may be very difficult for consumers and enforcement authorities to prove whether a package, an LTA or none of them was concluded, as explained in the 2019 'click-through bookings' report. A travel service provider who, after completion of a booking, transfers the traveller's name, payment details and e-mail address to another trader with whom a second service is booked within 24 hours of the confirmation of the first booking, is the organiser of a package and hence liable for the performance of both services. If one of those data elements is not transferred, the first trader facilitates a LTA and is only liable for the performance of its own service, provided the second booking happens within 24 hours. If it happens later, the PTD is not applicable at all. It is reported that, in practice, it is difficult to demonstrate what data was transferred between traders or the moment of the booking of the second travel service.

### 3.2.4. Information requirements

According to Articles 5 and 19 PTD, organisers, retailers and traders facilitating an LTA must provide travellers with specific information before the conclusion of the contract. The pre-contractual information requirements on the specific package in question, overall, do not seem to pose major problems[20]. In addition, the PTD provides three different standard information forms for package travel contracts[21] and five different forms for LTAs[22] that must be provided to the travellers.

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17 See Section 3.2.1. of the Staff Working Document SWD(2019) 270 final, see above footnote 2.

18 See flowchart "Package travel or not?", available at https://ec.europa.eu/info/files/flowchart-package-travel-or-not_en

19 A 'click-through booking' refers to a situation where the traveller books different travel services from different websites (different points of sale), but the bookings are related through links provided from website to website.

20 As regards the information requirement whether the trip or holiday is generally suitable for persons with reduced mobility (Article 5(1)(a)(viii) PTD), it was raised that such information is not always easy to provide as it may depend on different factors known to the organiser only after the traveller's selection. Such information should therefore rather be provided upon the traveller's request.

21 Annex I, Part A, B and C.

On 26 November 2019, the Commission services organised a workshop on the application of the PTD in the airlines sector[23], also to follow up on the Commission's 'click-through bookings' report. Representatives of airlines considered that the standard information forms are too complex, technical and difficult to read especially on mobile devices. In particular, as regards the standard forms for LTAs, it was argued that the information could be considered confusing and deterrent, as travellers are primarily informed that they do not benefit from rights applying to packages.

However, it was precisely the aim of this information requirement to draw the attention of consumers to the different level of protection offered by packages as opposed to LTAs and thus give them an informed choice between the two models. Consumer organisations argue that transparency should be further enhanced by informing travellers who book a stand-alone travel service about the level of protection linked to it, which, in the case of transport services is ensured by the EU passenger rights Regulations[24].

Representatives of travel businesses suggest, in particular in view of COVID-19, enhanced consumer information and protection for all travel services, including stand-alone services. They argue that this could give more freedom to operators and consumers when choosing a combination of travel services (a fully protected package or an LTA style combination of travel services with clear liability for the proper performance of the services for each service provider).

### 3.3. Enforcement

Article 24 PTD requires Member States to ensure that adequate and effective means exist to ensure compliance with the Directive. Enforcement is organised differently in the Member States in accordance with their respective legal traditions. As a large part of the PTD provisions concern the contractual relationship between organiser and traveller, those provisions can be privately enforced by travellers before courts or alternative dispute resolution bodies. The PTD falls within the scope of the new Directive on representative actions that Member States will have to transpose by the end of 2022[25]. With the application of this Directive, qualified entities will be able to bring collective actions both to cease the infringements of travellers' rights and to obtain redress. In addition, according to the conformity assessment study (see above 2.2), in the majority of Member States at least certain requirements of the PTD are subject to administrative or criminal penalties. Public enforcement is particularly relevant for checking compliance with insolvency protection requirements and information requirements.

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22 Annex II, Part A, B, C, D and E.

23 Ref. no. ARES(2020)270448.

24 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1); Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14); Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1); Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55 28.2.2011, p. 1).

25 See no. 53 of Annex I of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1.

The PTD falls within the scope of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation)[26]. In exchanges within the CPC network, several authorities reported on enforcement actions at national level. Cross-border infringements of the PTD that have harmed, harm or are likely to harm the collective interests of consumers can also be publicly enforced through the cooperation mechanism established under the CPC Regulation.

*Alternative Dispute Resolution (ADR) and online dispute resolution (ODR)*

Directive 2013/11/EU on alternative dispute resolution for consumer disputes (ADR Directive)[27] and Regulation (EU) 524/2013 on online dispute resolution for consumer disputes (ODR Regulation)[28] established a horizontal legislative framework that is applicable also to the PTD. The national ADR landscapes are diverse[29]. In several Member States the ADR bodies responsible for 'transport services' also cover package travel disputes, while in other Member States this sector is covered by the residual ADR bodies for consumer disputes[30]. Consumers purchasing goods or services online can make use of the European Online Dispute Resolution (ODR) platform, but the available data shows that the number of package travel related complaints on the ODR platform remains low[31].

The Commission does not have exact figures about the level of participation of organisers in ADR proceedings. Consumer organisations and some national ADR bodies[32] however report that voluntary ADR participation in the package travel sector is generally very low.

The French ADR body Médiation Tourisme et Voyage (MTV) covers essentially the whole travel and transport sector. In 2019, it received 8667 requests (around 21% of them concerned typical package tours); for 5449 amicable solutions were proposed with an acceptance rate of 93.5%[33]. The main topics of disputes related to package travel concerned performance of the contract, contract cancellations or alterations and the quality of the service.

The German authorities informed the Commission services that during the period 2016 to 2019, 24% of the applications submitted for dispute resolution to the Universalschlichtungsstelle des Bundes (Federal General Conciliation Body) concerned services in the leisure sector, in particular package travel. From the beginning of 2020 until

[26] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, OJ L 345, 27.12.2017, p. 1, point 25 of the annex.

[27] 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 (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63.

[28] Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165, 18.6.2013, p. 1.

[29] See Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes, COM(2019) 425 final, 25.9.2019.

[30] Information about the areas of competence of ADR bodies is available on the ODR platform: https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2

[31] During the period March to December 2020, consumers submitted 323 complaints via the Commission's ODR platform against online traders in the field of package travel.

[32] E.g. the German conciliation body for passenger transport söp and general consumer conciliation body.

[33] See MTV's 2019 annual report, www.mtv.travel/wp-content/uploads/2020/05/RAPPORT-2019.pdf

the end of August, the number of applications concerning package travel was 27% of the total number of disputes, in view of the travel disruptions caused by the COVID-19 pandemic[34].

A survey conducted by the Commission services on the impact of the COVID-19 on the ADR bodies showed that they have in general managed to cope with their heavier workload, with some having introduced digital tools, e.g. videoconferencing.

*Information from European Consumer Centres (ECC)*

In 2019, the network of European Consumer Centres (ECC)[35] dealt with 2399 queries and 261 complaints related to the PTD[36]. In 2020, due to COVID-19, the numbers increased by 368% (11226 queries) and 250% (914 complaints). Furthermore, the proportion of the total ECC caseload that related to the PTD increased significantly from 2% in 2019 to 7% of the total caseload in 2020[37]. The average case-handling time remained the same and the rate of successful or neutral[38] outcome of ECC intervention with a trader increased from 61% in 2019 to 70% in 2020[39]. In 2019, non-conformity of the performance or misleading acts or omissions were the main topic of queries and complaints (39%). In 2020, cancellation and non-performance was the topic number one (62%). In 2020, the ECCs published a brochure on the interpretation of the PTD[40] and shared FAQs on their national websites and social media channels to assist consumers in view of the spike of complaints in the travel sector, including packages.

## 4. Insolvency protection

According to Article 17 of the PTD, organisers must provide security for the refund of all payments made by travellers insofar as the relevant travel services are not performed as a consequence of the organiser's insolvency. That security shall also cover the travellers' repatriation if carriage of passengers is included in the package. While Member States retained discretion as to the way in which insolvency protection is to be arranged, they must ensure that the protection is effective in accordance with the requirements laid down in Article 17 of the PTD. Overall, the 2015 PTD has led to a significant improvement of the national insolvency protection systems compared to the one under the 1990 PTD. In 21 Member States, the insolvency protection is organised by the sector itself, either through private guarantee funds, insurance companies, a combination of both or other forms of private arrangement, such as bank guarantees. Two Member States (Finland and Portugal) have set up a guarantee fund established as a public entity. Four Member States (Czechia, Denmark, Malta, Poland) and the UK have a mixed system, which means that a form of

[34] See also the 2020 annual report of the Universalschlichtungsstelle des Bundes, https://www.verbraucher-schlichter.de/media/file/84.Taetigkeitsbericht2020.pdf

[35] ECC Net is a network of independently-managed offices co-funded by the European Commission. It provides free information and advice to consumers who purchase products and services within the EU and assists with out-of-court settlement of disputes arising between traders and consumers from different EU Member States.

[36] Queries cover all requests for information and assistance received by ECCs; complaints cover cases where ECCs contact the trader to find a solution.

[37] Further information about the context in which the increase in travel related queries occurred is available in the report 15 Years of ECC Net: https://assets.website-files.com/5f9fdbf6d1bfacd47b425986/5fa40a62acd24ca8c8ddc07c_2020-10-30-Report-ECCNET-Web.pdf

[38] Neutral outcome is when the case is referred to an ADR body or when the consumers fail to progress their case (e.g. does not supply documentation requested by ECC).

[39] The comparison is between complaints that were both made and resolved in 2020 and complaints that were made and resolved in 2019.

[40] https://www.epc.si/media/2020/Package-travel-across-the-EU_ENG.pdf

private security is complemented by a publicly administered guarantee fund (double layer) or that the guarantee funds are administered by private-public organisations.

### 4.1. Functioning of insolvency protection schemes – the Thomas Cook bankruptcy

The failure in September 2019 of the UK based Thomas Cook Group plc., one of the world's leading leisure travel groups, with sales of £9.6 billion and around 19 million clients in the year prior to its bankruptcy, sent shock-waves through the whole tourism sector. Thomas Cook was active across the EU through different subsidiaries and brands in several Member States and had more than 21 000 employees. The bankruptcy affected around 600 000 holidaymakers, who either had to be repatriated or reimbursed the money they had paid in advance. Travellers in almost all EU countries were affected.

To the extent that travellers had bought a package tour, they were covered by the relevant national insolvency protection schemes.

The UK Civil Aviation Authority (CAA) organised the largest peacetime repatriation of more than 140 000 travellers. In the UK alone, the competent authority settled around 340 000 claims, at a value of almost £350 million covered by the government-run Air Travel Organiser's Licence (ATOL) protection scheme[41].

The bankruptcy of Thomas Cook's German subsidiaries left around 140 000 travellers stranded abroad, who were repatriated with the help of the insolvency protection provider Zurich Versicherungen[42]. The insolvency protection, however, was insufficient to fully cover the refunds of travellers not yet at their destination (estimated 287.4 million EUR), because of a cap in the liability of insurance companies covering this risk[43]. The federal government committed to compensate all affected travellers for the difference between their pre-payments and the amount of refunds received from the insurance company covering the insolvent Thomas Cook companies[44]. According to information provided by the German authorities, at the beginning of February 2021, 105 306 travellers had completed their registrations for such claims and up to 10 000 registrations could possibly still be completed[45].

In France, more than 53 000 travellers were affected and the costs for the travel guarantee fund APST, that covered Thomas Cook's French subsidiaries, are estimated between 40 and 50 million EUR. Around 10 500 travellers were repatriated and more than 30 000 customers could spend their holidays with other tour operators. The refund of more than 11 500 travellers can start only once the insolvency procedure is finalised and all eligible refund files are completed.

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41 https://www.caa.co.uk/News/99--of-Thomas-Cook-claims-now-settled/?catid=159

42 https://www.newsroom.zurich.de/pressreleases/zurich-startet-mit-erstattungen-an-kunden-der-insolventen-thomas-cook-deutschland-gmbh-bundesregierung-stellt-ausgleich-fuer-thomas-cook-kunden-in-punkt-punkt-punkt-2952671

43 See https://www.newsroom.zurich.de/pressreleases/thomas-cook-insolvenz-zurich-startet-zweiten-zahlungslauf-3041808

44 See the Federal Government's press communication 417 of 11 December 2019, https://www.bundesregierung.de/breg-de/aktuelles/pressemitteilungen/bundesregierung-laesst-thomas-cook-kunden-nicht-im-regen-stehen-1705836. As reaction to the Thomas Cook bankruptcy, the German Government decided to reform the insolvency protection system for package travel, see https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/061020_Insolvenzsicherung_Reiserecht.html

45 See also information about the procedure to register claims on the website of the German Ministry of Justice and for Consumer protection https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/111220_Thomas_Cook.html (accessed on 15 December 2020).

Thomas Cook continued to have insolvency protection in each of the Member States where its different subsidiaries were established and did not rely on the mutual recognition mechanism under the PTD. Therefore, the costs for repatriation and reimbursement of the travellers concerned across the EU were shared among the different insolvency protection providers in the Member States, and did not rest on one single travel guarantee fund or insurance company.

## 4.2. Assessment

### 4.2.1. Repatriation of travellers and refund of payments

Overall, and having regard to the magnitude of the Thomas Cook bankruptcy, the insolvency protection systems appear to have functioned well, even though they were put under great strain. The affected travellers, who had already been at their travel destination, were repatriated or could terminate their holidays as planned. According to the information available to the Commission, travellers who had not yet started their package have received or should receive a refund of their pre-payments. However, in some Member States travellers had to wait a long time to receive a refund, or have not yet received a full refund more than one year after the Thomas Cook bankruptcy, even though Article 17(5) of the PTD requires that refunds shall be provided without undue delay after the traveller's request.

### 4.2.2. Insurability of risks

Some business stakeholders represented in the PTD stakeholder expert group and authorities have expressed concerns that it may be increasingly difficult to find appropriate insolvency protection providers that are willing and capable to cover the risks related to the bankruptcy of a big organiser, especially during peak season. Relatively few travel guarantee funds and insurance companies provide insolvency protection. It has been reported that banks were no longer providing security for organisers and that also some of the already relatively few insurance companies offering insolvency protection are pulling out of the market (e.g. in Austria[46] and Belgium[47]). It is therefore important to find a solid system that effectively protects travellers against the risk of insolvency. Ideas brought forward to address different challenges include multiple security providers for one organiser or the setting up of a pan-EU guarantee fund as a kind of re-insurance for the first line guarantors.

### 4.2.3. Divergences between national insolvency protection systems

The PTD requires that the insolvency protection must be 'effective' but has left the way in which this protection is to be arranged to the Member States (see recital 39 of the PTD). The challenges in some Member States to cover repatriation and refunds has led consumer organisations to call for further harmonisation of the national insolvency protection systems, including minimum criteria how the insolvency protection system should be designed and to ensure that guarantee funds are adequately funded. However, the PTD already provides more details on the required insolvency protection than the 1990 PTD and it was controversial in the legislative negotiations on the PTD how prescriptive the Directive should be in this respect. Representatives of the insurance industry have pointed out that repatriations can be better organised by the travel industry itself (e.g. through a guarantee fund) while the core business of financial institutions is to deal with payments.

[46] See recital 7 of the Commission Decision of 4.2.2021 in State aid case SA.60521, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_60521

[47] See minutes of the 4th meeting of the PTD stakeholder expert group (24.11.2020).

#### 4.2.4. Preference for continuation of the package holiday

In particular representatives of travel guarantee funds in the PTD stakeholder expert group stressed that in case of an organiser's insolvency the continuation of the booked package, instead of repatriation or refund, would be the best solution for travellers and providers of travel services[48]. In recital 39 of the PTD, it is stated that it should be possible to offer travellers the continuation of the package.

#### 4.2.5. Limitation of pre-payments

Pre-payment is the usual payment mode for package travel. In Germany, based on national case law on unfair contract terms, pre-payments for package travel are in principle limited to 20% down payment at the time of booking, unless the organiser duly justifies a higher pre-payment due to expenditures arising at the time of contract conclusion; the rest is due not more than 30 days before begin of the trip[49]. Nonetheless, Thomas Cook's bankruptcy led to refund claims of estimated 287.4 million EUR in Germany, eventually prompting the government to pay for outstanding refunds (see above under section 4.1.). Also in Austria, restrictions on pre-payments for package travel exist, which, however, do not apply when unlimited insolvency protection is available[50].

In order to limit the exposure of travellers to the insolvency risk, but also to reduce the risks of security providers, and hence the costs for it, consumer and traveller organisations have put forward the idea to limit the amount of pre-payments and require travellers to pay only when they receive the service. They argue that by limiting pre-payments, the risk to be covered by insolvency protection systems could possibly be limited mainly to repatriation, and travellers would be better protected in case of cancellations[51].

As pre-paid services, such as carriage of passengers, are often part of a package, the feasibility, scope and constraints of a potential limitation of pre-payments in the package travel sector would have to be assessed having regard to the broader tourism eco-system.

Representatives of the transport and travel sectors consider that limitation of pre-payments could worsen their critical liquidity situation. They also point out that pre-payment is the global standard for travel services and unilateral EU requirements limiting this business model could have far-reaching implications and distort the level playing field vis-à-vis non-EU competitors. In addition, industry representatives stress that package holiday prices can

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48 See minutes of the 3rd meeting of the PTD stakeholder expert group (3.12.2019).

49 See judgments of the Bundesgerichtshof of 9.12.2014, X ZR 13/14, and of 25.7.2017, X ZR 71/16, http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=4803bc48cdfac870b7acb7fba96c1c46&nr=70492&pos=0&anz=1, Urteil des X. Zivilsenats vom 25.7.2017 - X ZR 71/16 - (bundesgerichtshof.de)

50 See §4(4) of the Package Travel Order (Pauschalreiseverordnung): pre-payments may only be accepted 11 months before the agreed end of the trip; pre-payments of more than 20% may only be requested 20 days before the start of the trip, unless unlimited insolvency protection is available.

51 See position paper of the Verband Deutsches Reisemanagement e.V. of May 2020 at https://www.vdr-service.de/fileadmin/der-verband/politische-arbeit/vdr-positionen/2020-05_VDR-Position_Payment-Practice-Airline-Tickets_Pay-As-You-Check-In.pdf; Gutachten Vorkasse im Reise- und Flugbereich (Dec. 2020) commissioned by the German consumer organisation vzbv (not yet published); minutes of the 3rd meeting of the PTD stakeholder expert group (3.12.2019). See also Commission Staff Working Document SWD(2020) 331 final, 9.12.2020, point 947.

be kept low because travel operators purchase large allotments of hotel and transport capacity in advance, financed with pre-payments from consumers[52].

#### 4.2.6. Insolvency protection against the bankruptcy of transport operators

In its resolution in reaction to the bankruptcy of Thomas Cook[53], the European Parliament acknowledged the effective repatriation and did not raise any concerns in respect of the PTD. In this context, the Parliament nevertheless repeated its request to extend insolvency protection to seat-only flights in the framework of the revision of the Air Passenger Rights Regulation 261/2004. The insolvency of an airline can affect travellers, tour operators and intermediaries. For example, if a package travel contract with a flight component is cancelled in accordance with the PTD, the organiser may have to refund the traveller the full price irrespective of whether he still holds the money or will be able to recover it from the airline. The call from a number of stakeholders representing travel businesses and consumers for the introduction of mandatory insolvency protection to be provided by airlines has become louder in the context of the COVID-19 crisis. The Aviation Roundtable Report on the Recovery of European Aviation (November 2020) acknowledges that this crisis has shown that passengers feel they may find themselves unprotected in case of insolvency of airlines and suggests that the impact of airline insolvency protection could be further analysed[54].

In its Sustainable and Smart Mobility Strategy of 9 December 2020, the Commission stated that the "*EU must help passengers when transport operators go bankrupt or are in a major liquidity crisis as in the context of COVID-19 pandemic. Stranded passengers need to be repatriated and their tickets have to be reimbursed in case of cancellations by carriers. The Commission considers options and benefits of possible means that protect passengers against such events and will, if appropriate, make legislative proposals*"[55].

## 5. The COVID-19 pandemic

On 30 January 2020, the World Health Organization (WHO) declared a public health emergency of international concern over the global outbreak of COVID- 19 and, on 11 March 2020, characterised it as a pandemic.

The COVID-19 pandemic has resulted in unprecedented worldwide travel restrictions causing almost a standstill of travel in Europe and many other parts of the world. This is having a serious impact on the whole tourism ecosystem. UNWTO data show for January-October 2020 a reduction of tourism results in Europe of 72% compared to 2019[56]. Besides the loss of

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[52] According to the UK consumer organisation Which?, package holidays are cheaper for 2021 summer holidays than 'do it yourself' bookings, see https://www.which.co.uk/news/2020/11/package-holiday-deals-cheaper-for-summer-2021-versus-booking-diy/ (accessed on 16.12.2020)

[53] European Parliament resolution of 24 October 2019 on the negative impact of the bankruptcy of Thomas Cook on EU tourism (2019/2854(RSP)), https://www.europarl.europa.eu/doceo/document/B-9-2019-0120_EN.pdf

[54] https://a4e.eu/wp-content/uploads/aviation-round-table-report-16-11-2020.pdf, page 10.

[55] Communication from the Commission COM(2020) 789 final, point 91.

[56] United Nations World Tourism Organization (UNWTO), expressed in international tourist arrivals, see https://www.unwto.org/international-tourism-and-covid-19. The European Travel Agents' and Tour Operators' Associations (ECTAA) reports an average of minus 80% of turnover compared to 2019, see https://www.ectaa.org/Uploads/press-releases/PUBS-PR-20201218-2020-The-year-travel-stopped.pdf. Eurostat data show a 49% decline in the number of nights spent in EU tourist accommodation establishments for the period January-September 2020, see https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tourism_statistics_-_nights_spent_at_tourist_accommodation_establishments&stable=1#First_semester_of_2020:_dramatic_drop_in_number_of_nights_spent_in_EU_tourist_accommodation. Based on April-May 2020 data, the

revenues, organisers are particularly hit by the fact that refund requests from travellers due to cancellations significantly exceed the level of new bookings. The Commission's Joint Research Centre estimated in a 'second wave' scenario that 11.7 million jobs could be at risk in the EU economy as a result of a drop in tourist arrivals in 2020[57]. At the same time, according to consumer organisations, by December 2020 thousands of consumers had not yet received a refund in money for cancelled holidays[58].

### 5.1. Travel cancellations due to COVID-19

COVID-19 triggered the application of the PTD provisions concerning "unavoidable and extraordinary circumstances" which is defined in Article 3(12) PTD as *"a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken*"[59]. Significant risks to human health, such as the outbreak of a serious disease at the travel destination or its immediate vicinity usually qualify as such unavoidable and extraordinary circumstances (see recital 31 PTD).

In accordance with Article 12 PTD, the traveller can terminate the package travel contract without penalty if there are "*unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination*" (Article 12(2) PTD). The organiser of a package can terminate the contract without penalty as well if he is prevented from performing the contract because of "unavoidable and extraordinary circumstances" (Article 12(3) PTD). In those cases, the traveller has the right to a full refund of any payments made for the package within 14 days after termination of the contract (Article 12(4) PTD).

On 5 March 2020, with an update on 19 March 2020, the Commission services published on the Commission's website informal guidance on the application of the Package Travel Directive in connection with COVID-19[60], confirming the traveller's right to get a full refund, if, based on a case-by-case assessment, the conditions of Article 12(2) or (3) of the PTD are met. In that note, the Commission services also stated that, having regard to the cash-flow situation of organisers, travellers should consider accepting that their package tour is postponed to a later point in time, which, having regard to the current uncertainty to make

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Commission's Joint Research Centre estimated a 68% decline by the end of the year in case of a 'second wave scenario`, Behavioural changes in tourism in times of COVID-19, https://publications.jrc.ec.europa.eu/repository/bitstream/JRC121262/report_covid_tour_emp_final.pdf.

57 Behavioural changes in tourism in times of COVID-19, https://publications.jrc.ec.europa.eu/repository/bitstream/JRC121262/report_covid_tour_emp_final.pdf.

58 See BEUC's Evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers' of 14.12.2020, https://www.beuc.eu/publications/travel-voucher-chaos-continues-several-eu-countries-and-travel-industry-still-flouting/html

59 According to the minutes of the 2nd transposition workshop of 13 June 2016 (p. 19) "unavoidable and extraordinary circumstances" within the meaning of the PTD imply that the relevant event was not predictable or foreseeable at the time of the booking, available at https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35324. Those minutes do not reflect the official position of the Commission regarding the interpretation of the PTD. Article 4(6)(ii) of Council Directive 90/314/EEC used the term "*force majeure, i.e. unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care had been exercised*".

60 https://ec.europa.eu/info/sites/info/files/coronavirus_info_ptd_19.3.2020.pdf, published on the Commission's COVID-19 response website https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation_en

travel plans, could be done by credit note ("voucher"). Several Member States requested the Commission to suspend the 14 days refund right and/or replace it with a temporary voucher solution[61].

In a letter of 27 March 2020 addressed to all Member States[62], Commissioner Reynders recalled that the traveller's reimbursement right had to be applied to COVID-19 related cancellations. To ease businesses' liquidity problems, he suggested that tour operators could offer vouchers under the condition that the travellers (1) would have the choice to accept the voucher and (2) should have the possibility to ask for a full refund if, eventually, they did not make use of it. In addition, Commissioner Reynders also stressed that measures to ensure robust insolvency protection were needed to enhance travellers' confidence to make such choice.

#### 5.1.1. Commission Recommendation on vouchers

On 13 May 2020, the Commission adopted Recommendation (EU) 2020/648 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic[63]. In this Recommendation, the Commission again recalled the right to reimbursement under the applicable EU legislation, namely the PTD and EU passenger rights Regulations. At the same time, the Recommendation recognises the unsustainable cash-flow and revenue situation for the transport and travel sectors, due to the numerous cancellations entailed by the coronavirus pandemic. The Commission therefore recommended ways in which vouchers could be made more attractive, as an alternative to reimbursement in money, in order to increase their acceptance by passengers and travellers. The Recommendation also pointed out what kind of Union schemes are available to support undertakings in the travel and transport sectors.

By letter of Commissioner Reynders and Commissioner Vălean of 14 May 2020[64], the Commission drew the attention of all Member States to this Recommendation. The Commission requested, amongst other things, that PTD and EU passenger rights Regulations are correctly applied and that practices in violation of such rules are detected in a timely manner and effectively sanctioned[65].

With its Recommendation the Commission gave a clear signal to Member States and stakeholders that it would not follow calls for lowering consumer protection[66]. Several

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61 See in this respect e.g. the decision of the German Government of 2 April 2020 to request the Commission to submit at EU level proposals on package travel and passenger rights that should temporarily replace cash refunds by vouchers in case of COVID-19 related cancellations, https://www.bundesregierung.de/breg-de/aktuelles/im-sogenannten-corona-kabinett-der-bundesregierung-wurde-heute-folgender-beschluss-fuer-eine-gutscheinloesung-bei-pauschalreisen-flugtickets-und-freizeitveranstaltungen-gefasst--1738744

62 Ref. no ARES(2020)1801052.

63 OJ L 151, 14.5.2020, p. 10–16.

64 Ref. no. ARES(2020)2559372.

65 See also FAQ document on Commission's coronavirus response website: https://ec.europa.eu/info/sites/info/files/passenger-rights-faqs_3107_en.pdf

66 In its resolution of 19 June 2020 on transport and tourism in 2020 and beyond the European Parliament called on the Commission to propose common EU rules on the terms and conditions of the vouchers issued related to COVID-19 while maintaining a high level of consumer protection; it also suggested exploring the possibility of establishing a European Travel Guarantee scheme for companies to secure financial liquidity in order to guarantee refunds to travellers as well as repatriation costs, together with fair compensation for any damages incurred in the event of bankruptcy, see https://www.europarl.europa.eu/doceo/document/TA-9-2020-0169_EN.html, points 14 and 15.

Member States[67], following the Commission Recommendation, adopted legislation on voluntary vouchers related to package travel and/or adopted State aid measures to support the travel sector directly under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak[68] or under the Treaty[69]. Consumer organisations, however, have complained that EU countries, airlines and tour operators are poorly following the Commission Recommendation[70].

### 5.1.2. Temporary national rules derogating from the PTD

According to the information of the Commission, 15 Member States adopted specific rules temporarily allowing organisers of packages to impose vouchers, instead of reimbursing payments in money, for cancelled trips, or to postpone reimbursement beyond the 14-day period, which is contrary to Article 12(2), 12(3)(b) and 12(4) read in conjunction with Article 4 of the PTD.

As a consequence, in line with the clear position expressed in its Recommendation 2020/648, the Commission opened infringement proceedings against 11 Member States[71]. The Commission did not open infringement proceedings against the four Member States in which the temporary derogations from the PTD had expired or had been amended when the Commission decided on the opening of infringement proceedings. At the time of this report, infringement procedures against four Member States are still open.

In several Member States, the non-compliant national measures, albeit not in force any more, continued to produce effects, for example because travellers who received compulsory vouchers based on the expired or repealed legislation had to wait at least until the end of the validity of such vouchers, before they could claim the refund of the pre-payments made for their cancelled package tour. The Commission urged those Member States to take measures to remedy the situation created by the past legislation contrary to the PTD and make sure that consumers, who prefer reimbursement in money to a voucher, effectively receive a refund in accordance with the PTD[72].

### 5.1.3. National State aid measures

Besides general State aid schemes available also to operators in the tourism sector, several Member States adopted specific State aid measures to support package travel organisers and, in particular, set up guarantee schemes for vouchers to ensure that, in the event of insolvency

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67 E.g. Cyprus, Germany, Hungary, Latvia provided a regulatory framework for voluntary vouchers; Greece and Italy did the same after the opening of infringement procedures. Denmark, Germany, the Netherlands, Poland adopted State aid measures in support of insolvency protection systems.

68 See Communication from the Commission of 19 March 2020 - Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1. The Temporary Framework was amended on 3 April, 8 May, 29 June, 13 October 2020 and 28 January 2021, see informal consolidated version on the Commission's website under https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html

69 Under Article 107(3)(b) of the TFEU, whilst taking into account, by analogy, certain requirements of the Temporary Framework.

70 See BEUC's report "Covid-19 and EU Travellers' Right - Evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers'" of 14.12.2020, https://www.beuc.eu/publications/travel-voucher-chaos-continues-several-eu-countries-and-travel-industry-still-flouting/html

71 See Commission's press communications of 2 July and 30 October 2020 (under point 5 – Justice): https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212 and https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687

72 Letter of 30.10.2020 addressed to ten Member States, ref. no ARES(2020)6156146.

of the organiser, travellers are reimbursed, as recommended by the Commission in its Recommendation 2020/648. The Commission approved those measures in accordance with the Temporary Framework for State aid measures[73] or under the Treaty[74].

Denmark adopted a €200 million loan in support of the Travel Guarantee Fund for travel cancellations due to coronavirus outbreak[75]. Germany adopted a €840 million guarantee scheme to secure voluntary vouchers accepted by travellers instead of cash refunds[76]. With this scheme, Germany aimed at making vouchers an attractive alternative to reimbursement in money. Poland adopted measures to support tour operators and other undertakings active in tourism and culture[77]. Under this scheme, the Polish State reimburses travellers affected by COVID-19 related cancellations on behalf of tour operators, which will have to repay those loans. Italy adopted measures to provide direct grants to tour operators and travel agents in order to compensate for losses[78]. The Netherlands adopted a €165 million loan to support the five Dutch guarantee funds that provide guarantee schemes for package travel organisers[79]. The purpose of this State aid is to provide liquidity to the funds to ensure sufficient cover for all payments to travellers in case of travel operators' insolvency, including the reimbursement of 'Corona vouchers'. Bulgaria adopted an aid scheme of around €26 million for tour operators and travel agents for compensation of losses related to refunds to be made to travellers whose packages have been cancelled because of COVID-19[80]. Cyprus adopted aid of an estimated amount of €86.6 million in the form of guarantees for credit notes issued to consumers and package travel organisers in order to secure those voluntary vouchers against a possible insolvency of the issuer[81]. Sweden adopted aid in form of loans to travel agencies and tour operators to support them fulfilling their legal reimbursement obligations[82]. Austria adopted aid in the form of State guarantees to cover, for a limited amount of time, the insolvency risk of package travel organisers and facilitators of linked travel services having regard to the withdrawal of banks and insurance providers from package travel insurance and the difficulties for package travel organisers and facilitators of linked travel services to find affordable guarantees on the market[83].

## 5.2. Challenges

### 5.2.1. Respect of travellers' right to reimbursement

Across the EU, several thousands of travellers whose trips had to be cancelled because of COVID-19 reportedly did not receive reimbursements within 14 days as provided for under Article 12(4) PTD; they were either refused a refund, imposed a voucher against their wish, could not contact the organiser, received a refund with significant delay or only partially, or were otherwise hindered to claim their right[84]. Also the increase in the number of queries and

[73] See footnote 68.
[74] See footnote 69.
[75] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56856
[76] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57741
[77] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58102
[78] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_59755
[79] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57985
[80] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_59990
[81] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_59668
[82] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_59639
[83] https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_60521
[84] See BEUC's report referred to in footnote 70 and its survey among their members regarding complaints in the package travel sector (not published).

complaints received by ADR bodies, ECCs and consumer organisations gave rise to concerns regarding the respect for travellers' rights under the PTD.

### 5.2.2. Difficulties for businesses

As described in section 5.1., COVID-19 triggered the application of the notion of "unavoidable and extraordinary circumstances" as defined in Article 3(12) PTD. Recital 31 mentions, as examples, "*warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely*". Such events are usually, but not necessarily, limited to a specific destination or a particular part of the world.

Organisers are often able to address such events by changing the destination, postponing the date of the trip or refunding the traveller cross-financed through income from bookings to other destinations, if those circumstances are isolated to a specific destination. In case of a pandemic that leads globally to a quasi-standstill of travel over a longer period, as in the case of COVID-19, refund obligations are significantly higher than income from new bookings. In addition, organisers often have fixed costs stretching the companies' financial situation. Eventually this can harm the travellers' interests if an organiser goes bankrupt and the travellers has to make claims to the insolvency assets.

The Commission Recommendation on vouchers (see above 5.1.1.) aimed to address also the liquidity problems of organisers caused by COVID-19 related to massive cancellations. Those liquidity problems are exacerbated by the fact that organisers have to reimburse the full price of the package to the traveller while they do not always receive reimbursement of prepaid services that form part of the package from service providers on time. If service providers go bankrupt in the meanwhile, organisers may not receive refunds at all. This can result in an unfair sharing of the burden among operators in the travel eco-system[85].

Some package organisers and intermediaries reported that, during the COVID-19 crisis, airlines stopped the automatic refund mechanism towards organisers and other travel agents through the Global Distribution Systems ("Computerised Reservations Systems"), while organisers had to refund the money to travellers.

The uneven character of the business-to-business relation is further aggravated by the different legal regimes of organisers and transport services providers. Contrary to the PTD, passengers who cancel a flight or other transport service themselves do not have a right to reimbursement under the EU passenger rights Regulations, even in case of extraordinary circumstances. In such a case, the legal consequences and in particular the passenger's right to reimbursement are determined by the terms and conditions of the contract concluded between the passenger and the transport operator and the applicable law of the Member States. For example, if a traveller who booked a package with a flight component, cancelled the package travel contract in accordance with the PTD, the organiser has to reimburse the traveller, but has no right under EU law to claim a refund from the airline if the flight was operated. The organiser would rather need to assert a possible right to refund under the relevant law of the Member State concerned.

Some package travel organisers have suggested amending Article 22 of the PTD and adding a refund obligation of suppliers of travel services that are not provided due to the termination

[85] Recital 13 of the Commission Recommendation (EU) 2020/648.

of the package travel contract, if the organiser has to reimburse the traveller. The airline sector, on the other hand, has raised strong concerns with regard to regulating in the PTD the often complex business-to-business relations between organisers and travel service suppliers.

### 5.2.3. Official travel warning or advice

It is widely recognised that an official travel warning of national authorities is an important indicator that a package travel contract can be cancelled due to unavoidable and extraordinary circumstances affecting the performance of the trip. However, the PTD itself is silent in respect of the legal value of travel warning or advice issued by governments, as, at the moment of its adoption, some Member States were strongly opposed to any reference to official travel advice in the Directive[86].

The issuing of travel advice is the competence of the Member States, which exchange information on the advice they issue through the Consular OnLine (CoOL) network. During the COVID-19 pandemic, Member States issued travel advice not only in respect of third countries, but also regarding other Member States, typically discouraging all non-essential travel. National travel warnings or advice were made, initially, in a non-coordinated way. This caused uncertainties for travel business and consumers, especially in cross-border situations, about their rights and obligations.

On 13 October 2020, the Council adopted a Recommendation[87] on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic within the EU. Although not addressing travel advice directly, Member States agreed on a common map on the COVID-19 risk level in the EU, published by the European Centre for Disease Prevention and Control. In addition, Member States committed to clear and timely information to the public provided, among others, via the Re-open EU platform[88]. In view of the evolving epidemiological situation, the Council amended the Recommendation on 1 February 2021[89].

### 5.2.4. Vouchers

Contrary to the passenger rights Regulations, the PTD does not expressly provide for the possibility to make refunds in form of a voucher. In its Recommendation (EU) 2020/648, the Commission recognised that organisers may propose vouchers as an alternative to reimbursement in money, subject to the traveller's voluntary acceptance, in the event of cancellations (see above section 5.1.1.).

Germany[90], Hungary[91], Latvia[92] and Cyprus[93] have adopted national rules setting a legal framework for vouchers proposed for voluntary acceptance by travellers in the package travel

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86 The Commission proposal for the PTD, COM(2013) 512 final of 9.7.2013, stated in its recital 26: "*Unavoidable and extraordinary circumstances should in particular be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities, advise against travelling to the place of destination.*" This statement was deleted during the legislative negotiations.

87 Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, OJ L 337, 14.10.2020, p. 3.

88 https://reopen.europa.eu/en

89 Council Recommendation (EU) 2021/119 of 1 February 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, OJ L 36I, 2.2.2021, p. 1.

90 Act of 10 July 2020 to mitigate the consequences of the COVID-19 outbreak in package travel contract law, BGBl 2020 Teil I Nr. 35 of 16.7.2020, p. 1643.

91 Government Decree 242/2020 of 27 May on the special rules applicable to contracts for travel services during an emergency.

sector, along the lines of the Commission Recommendation, in particular regarding protection against the insolvency of the issuer. Italy and Greece have followed parts of the Recommendation when amending their laws after the opening of infringement proceedings. Spain amended its legislation to prevent the opening of the infringement proceedings. Ireland introduced State-backed refund credit notes that may be offered to customers of tour operators and travel agents operating in Ireland instead of a cash refund, if the customer agrees[94].

The Commission stated clearly that the travellers' right to reimbursement as provided by the PTD had to be respected and considered that vouchers are an acceptable solution only if their acceptance is optional for the traveller.

### 5.2.5. Insolvency protection

The question arose whether pending claims for reimbursements from travellers were covered by the insolvency protection systems provided in accordance with the PTD. Article 17(1) PTD requires organisers to provide security for the refund of all payments made by the traveller "*insofar as the relevant services are not performed as a consequence of the organiser's insolvency*". The Commission considered in its Recommendation 2020/648 that, if organisers become insolvent, there is a risk that many travellers would not receive any refund, as their claims against organisers are not protected[95].

Nonetheless, representatives of travel guarantee funds have alerted that some insolvency protection providers may come under significant additional pressure in the coming months, if they had to step in to reimburse vouchers issued by organisers going bankrupt in high numbers. This is especially the case in Member States that obliged existing insolvency protection providers to cover vouchers without supporting measures[96]. The question may arise whether refunds may be limited in light of recital 40 PTD according to which 'highly remote risks' do not need to be taken into account for an effective insolvency protection[97].

In the context of the preparation of this report, consumer organisations and some Member States suggested that the PTD should be amended to ensure that consumers' refund claims are protected also in situations where the package travel contract had been terminated on grounds

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92 Law on the Management of the Spread of COVID-19 Infection, chapter V, section 46, Latvijas Vēstnesis, 110A, 09.06.2020, OP number: 2020/110A.1.

93 The Emergency Measures in the Tourism Sector Law of 2020, Law 59(I)/2020 of 22 May 2020.

94 https://www.gov.ie/en/publication/1ae3d-refund-credit-note/

95 See Recital 14 of Recommendation 2020/648. See also page 6 of the minutes of the 3rd transposition workshop of the PTD (25 Oct. 2016) which state: "*The wording of Article 17(1) suggests that, if the contract was terminated before the insolvency occurs, the performance was no longer due at the time when the insolvency occurred, meaning that the insolvency did not cause the lack of performance of the travel services. Under Article 17 (1), insolvency protection seems to cover only loss of money due to lack of performance, but not claims for refunds which existed already at the time of insolvency."* The minutes, which are available at https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35324, do not reflect the official position of the Commission with regard to the interpretation of the PTD.

96 According to information available to the Commission, the value of 'mandatory' Corona vouchers issued in France is around 850 million EUR and in Belgium around 300 million EUR. The main Dutch guarantee fund covers vouchers with a value of around 400 million EUR.

97 Recital 40 of the PTD states: "*However, effective insolvency protection should not have to take into account highly remote risks, for instance the simultaneous insolvency of several of the largest organisers, where to do so would disproportionately affect the cost of the protection, thus hampering its effectiveness. In such cases the guarantee for refunds may be limited*".

not related to the organiser's insolvency, such as due to unavoidable and extraordinary circumstances.

### 5.2.6. Insurance

Risks related to pandemics are often excluded from insurance policies, in particular travel cancellation insurance[98]. This limits the possibility of travellers to insure themselves against possible losses due to cancellation of a trip caused by a pandemic.

Some travel business stakeholders have suggested that organisers should be allowed to include appropriate personal travel insurance in a package with an opt-in/out option. Within the PTD stakeholder group, consumer organisations however stressed that any insurance taken out by the travellers themselves should in no way limit existing travellers' refund rights and the protection under the mandatory insolvency protection.

## 6. Next steps

The issues described in this report, in particular in sections 3.2, 4 and 5, and their practical consequences require further analysis. In particular, the full impact of the COVID-19 crisis on the sector and the level of consumer protection should be further evaluated.

As announced in its New Consumer Agenda, building on the findings of the present report, the Commission will carry out by 2022 a "*deeper analysis into whether the current regulatory framework for package travel, including as regards insolvency protection, is still fully up to the task of ensuring robust and comprehensive consumer protection at all times, taking into account also developments in the field of passenger rights*"[99]. The upcoming in-depth analysis planned for 2022 will not aim to lower consumer protection. On the contrary, the Commission will assess how the high level of consumer protection provided by the PTD can be ensured, how the rights of consumers can be effectively enforced at all times and how a fairer sharing of the burden among economic operators along the value chain could contribute to this objective.

This action under the Consumer Agenda will take into account the relevant actions announced in the Sustainable and Smart Mobility Strategy. These actions comprise (1) the review of the passenger rights regulatory framework, including to ensure its resilience to extensive travel disruptions and options for multimodal tickets[100] and (2) the assessment of options and, if appropriate, the proposal for an adequate financial protection scheme to protect passengers against the risk of a liquidity crisis or an insolvency regarding the reimbursement of tickets and if needed their repatriation[101] by 2022.

To this end, the Commission will assess whether the differences between the PTD and the passenger rights Regulations as regards insolvency protection and cancellation rights are justified or if the rules should be more aligned[102] and whether specific rules for situations like COVID-19 should be proposed[103], with the objective to better protect consumers.

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98 See e.g. the analysis of the Belgian consumer organisation Test Achats published on 22.10.2020, https://www.test-achats.be/argent/assurances-assistance-voyage/dossier/coronavirus.

99 Communication from the Commission to the European Parliament and the Council, New Consumer Agenda - Strengthening consumer resilience for sustainable recovery, COM(2020) 696 final, 13.11.2020.

100 Annex to COM(2020) 789 final, action 63.

101 Annex to COM(2020) 789 final, action 64.

102 149 respondents to the public consultation for the New Consumer Agenda replied to question 3 that EU rules on passengers' and travellers' rights in the passenger rights regulations and the PTD should be more aligned

(37,91%); 43 replied that differences in the rules are appropriate (10,94%) and 201 replied with "don't know" (51,15%), see summary report available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12464-A-New-Consumer-Agenda/public-consultation.

[103] 159 respondents to the public consultation for the New Consumer Agenda replied to question 2 whether specific rules (e.g. longer reimbursement deadlines or vouchers) should apply in a situation where worldwide travel restrictions have caused almost a standstill of travel with "yes" (40,46%); 56 respondents replied "no" (14,25%) and 178 replied "don't know" (45,29%), see summary report available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12464-A-New-Consumer-Agenda/public-consultation.