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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

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1. Context and purpose of the report

Nowadays, consumers combine travel services (transport, accommodation, car rental, leisure activities) for the same trip or holiday in many different ways. They buy, online or offline, 'pre-arranged' packages or they 'customise' their package by themselves. To that end, they can use the services of a travel agency or book directly several items (transport, car rental, hotel, excursions) from one or different service providers.

One of the objectives of the 2015 Package Travel and Linked Travel Arrangements Directive (Package Travel Directive)[1] was to adapt the legislation on package travel to new online booking models, in particular, to better protect consumers who are using combinations of services.

To that end, the new Package Travel Directive extends the definition of 'package' beyond traditional pre-arranged packages. A package now also covers customised combinations of travel services (online and offline) that are put together at the request of or in accordance with the selection of the traveller. In addition, the Directive introduces the concept of 'linked travel arrangements' which is a combination of travel services facilitated by a trader, such as an airline.

The Directive provides a high level of protection to travellers who buy packages. This includes, inter alia: money-back guarantee and repatriation when the organiser becomes insolvent; organiser's liability for the performance of all travel services that are part of the package; clear information for travellers; price modifications allowed only in very specific circumstances.

Contrary to the organiser of a package, traders facilitating a linked travel arrangement are liable only for their own travel service. They must provide a money-back guarantee for payments they receive from the traveller in case the travel service is not performed due to their insolvency. This guarantee shall cover also repatriation when the trader facilitating a linked travel arrangement is responsible for the carriage of passengers, e.g. an airline. Traders facilitating a linked travel arrangement are, however, not responsible for the performance (or possible insolvency) of any other service provider under the linked travel arrangement.

In order for travellers to have a clear understanding of their more limited rights in case of a linked travel arrangement, the trader facilitating it must inform the travellers that the protection provided for packages does not apply to their situation and that they are only protected against insolvency of the trader facilitating the linked travel arrangement. If this trader does not inform the traveller about these limitations, or fails to provide for insolvency protection, it is legally bound to assume largely the same responsibilities as a package organiser, including those related to the performance of the combined travel services.

Today, most travellers book travel services online and it is the booking process which will determine whether the traveller has booked a package, a linked travel arrangement or merely stand-alone services. This is relevant for the legal obligations of traders and for the level of

[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) 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.

protection of travellers. For stand-alone travel services (e.g. flights only), no mandatory protection of travellers against insolvency of the provider exists at EU level.

When the traveller books different travel services, e.g. a flight and accommodation, from the same website his/her rights depend on whether the travel services are offered, sold or charged at a total or inclusive price or whether the traveller has to pay or agree to pay for each of the travel services separately. In the first case it is a package, in the second case a linked travel arrangement.

When 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, this is considered a 'click-through' booking. However, depending on the characteristics of such bookings, they can either lead to the creation of a package with full protection, a linked travel arrangement with limited protection or stand-alone services, not covered by the Directive.

The criteria for defining 'click-through packages' were subject to lengthy discussions during the legislative negotiations. The definition requires that the first trader transmit to the second trader the specific traveller's personal data, i.e. the traveller's name, payment details and email address. A 'click-through linked travel arrangement' requires that the first trader facilitates "in a targeted manner" the purchase of at least one additional travel service. In both cases ('click-through package' and 'click-through linked travel arrangement') the traveller must book the second travel service within 24 hours of the booking of the first travel service. Beyond this time-limit, the different travel services are simply stand-alone travel services.

The Commission was tasked to report shortly after the entry into application of the Package Travel Directive on the new provisions on 'click-through' bookings, in particular whether an amendment of the definition of "click-through packages" would be appropriate (Article 26 of the Directive)[2]. A general report on the application of the Directive will follow in 2021.

2. Main findings on 'click-through' bookings

By March 2019, all Member States have transposed the Package Travel Directive in their national legal order. Apart from late transposition, no *prima facie* problems specifically related to the transposition of the provisions relevant for 'click-through' bookings of packages or linked travel arrangements have been identified so far.

In order to evaluate the use of click-through bookings, an expert group composed of 20 different organisations representing consumer associations, travel and tourism business associations, providers of insolvency protection and alternative dispute resolution (ADR) bodies was set up and met twice.[3] In addition, a targeted stakeholder consultation was carried out in October/November 2018. Replies were received from 14 competent authorities, nine alternative dispute resolution bodies, four consumer associations, 195 travel and tourism operators' or their associations and 14 providers of insolvency protection or their associations. The trade association Airlines for Europe is a member of the expert group, but neither this association nor its members

[2] See Staff Working Document SWD(2019)270

[3] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3617&news=1

contributed to the targeted consultation. This should be taken into account in the assessment of the results of the consultation, as the airline sector is one of those most concerned by 'click-through' bookings.

From the information gathered during this consultation process, it appears that:

- 'Click-through packages' within the meaning of the specific definition in Article 3(2)(b)(v) of the Directive, which implies the transfer of personal data (name, e-mail and payment details of the traveller) and the provision of the specific standard information form provided in Annex I, Part C of the Directive, are rarely offered, if at all, by those business operators who contributed to this consultation. However, nothing can be concluded on airlines' practices so far.
- Further assessment of business practices, in particular of airlines and large travel booking platforms, in relation to click-through bookings are therefore necessary, before drawing conclusions regarding a possible adjustment of the definitions provided in the Directive.
- Stakeholders and authorities who contributed to the consultation raised the need to continue to work on effective and uniform application of the new rules of the Directive, including guidance to ensure unified implementation.
    - In relation to linked travel arrangements, stakeholders pointed to, inter alia, the lack of clarity regarding the meaning of "facilitation in a targeted manner" and the criteria for determining whether or not a second trader has concluded a contract with a traveller within 24 hours after the first contract.
    - The distinction between packages and linked travel arrangements seems to remain challenging for all travel operators, including hotels.
    - Finally, consumers need to be better aware of the extended protection brought by the Package Travel Directive.

3. Follow-up

As follow-up to this report and in preparation of the general report on the application of the Package Travel Directive scheduled for 2021, the Commission will:

- further assess linked online booking processes that lead to a combination of travel services in order to obtain a clearer picture of the offer of 'click-through' packages and linked travel arrangements on the market;
- complete its assessment of national measures transposing the Directive;
- raise awareness of travellers about their rights under the Directive in the framework of a broad communication campaign targeted at consumers to start before the end of 2019;
- continue to interact with relevant stakeholders through the expert group in order to collect information about problems with the application of the Directive's provisions and, to the extent possible, find appropriate solutions;
- facilitate coordination and cooperation between the authorities in charge of enforcement of the Directive through the Consumer Protection Cooperation (CPC) network and

between the central contact points of Member States to facilitate the administrative cooperation and supervision of organisers operating in different Member States. Targeted coordinated compliance assessments could be launched in the forthcoming months as part of the activities of the CPC network.