

The Consumer Voice in Europe

## PROPOSAL FOR A REVISED PACKAGE TRAVEL DIRECTIVE

A first step to guarantee robust consumer protection



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## Why it matters to consumers

European consumers often book their holidays and travel services through pre-arranged or customised packages. These contracts are governed by the Package Travel Directive (PTD)<sup>1</sup>. 1 in 10 tourist trips by EU residents is organised in the form of a package, representing 1/5 of total EU tourism expenditure<sup>2</sup>. Despite being an important consumer protection instrument, the Thomas Cook bankruptcy and the COVID-19 pandemic have revealed significant shortcomings with the current PTD. The European Commission's November 2023 proposal to amend the PTD must correct these shortcomings so as to ensure high levels of consumer protection, especially in crisis situations such as bankruptcies and large-scale disruptions.

## Summary

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Overall, **BEUC welcomes the European Commission's November 2023 proposal to make the Package Travel Directive<sup>3</sup> more effective** and considers it to be a good first step towards more robust protection for consumers using package travel services, including in crisis situations (i.e. unavoidable and extraordinary circumstances such as bankruptcies and large scale disruptions).

### **BEUC supports:**

Provisions in the proposal to:

- Revise definitions of package travel and link travel arrangements (LTAs) – (Articles 3(2) & 3(5))
- Clarify consumer rights and allow consumers to cancel their trip free of charge in times of crisis. BEUC supports the proposed approach that travel warnings from official authorities should be an important condition to determine whether consumers can activate their rights to reimbursement at no cost in times of crisis. It is also a great improvement that consumers would be entitled to trigger their rights when they *reasonably* expected that their package travel contracts would be significantly affected – (Articles 12(2) & 12(3a))
- Establish minimum requirements for vouchers, which would be voluntary for consumers (i.e. consumers would have the right to insist on a refund rather than a voucher), insolvency protected and refundable – (Article 12a)

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<sup>1</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, ELI: <http://data.europa.eu/eli/dir/2015/2302/oj>

<sup>2</sup> 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 - COM/2021/90 final

<sup>3</sup> See BEUC Press Release : <https://www.beuc.eu/press-releases/eu-can-do-better-protect-passengers-and-their-rights> , dated on 29 November 2023.

- Update the insolvency protection provisions so as to clarify their scope and ensure effectiveness – (Article 17)
- Introduce clear Business-to-Business (B2B) refund rules to allow swift consumer refunds – (Article 22).

**However, to make the proposed revision of the Package Travel Directive more effective at reaching its objective of ensuring more robust consumer protection, important elements need to be better defined.**

For instance, BEUC recommends:

- **Stricter rules to secure consumer pre-payments (Article 5a Payments):** BEUC welcomes the proposal to limit the number of pre-payments that travel agencies can demand from consumers before the start of a holiday package. This would benefit consumers by limiting financial losses and helping passengers to get refunded in case things go wrong. However, **as currently drafted, the proposal is too flexible to achieve its objective.**
- **As an alternative to pre-payments to travel operators, the proposal should allow consumers' pre-payments to be held in an escrow/trusted account<sup>4</sup> rather than being held by the travel operator themselves (Article 5a).** The same system should be applied in all travel sectors (air, rail, bus, waterborne) in the context of EU passenger rights reform.<sup>5</sup>
- **Introducing a clear timeframe before departure (30 days and until the start of the journey),** during which consumers, on simple presentation of a valid travel warning from a government authority, can terminate their package travel contract at no cost in the event of "unavoidable and extraordinary circumstances". This would avoid traders invoking the argument that consumers' cancellation is "too early" to apply cancellation fees. Beyond this time threshold, analysis should be carried out on a case-by-case basis. – (Article 12(2)).

**In addition, the proposed revision of the PTD does not tackle several fundamental shortcomings of the current Directive that must be addressed. The proposal must therefore:**

- **Empower consumers to quickly assert their rights by introducing clear and strict deadlines (e.g. 14 days) for tour operators and intermediaries to deal with consumer complaints and by obliging traders to participate in alternative dispute resolution (ADR) schemes (Article 24 of the current PTD).** Enforcement and redress remain the blind spot of the package travel proposal, notwithstanding vast evidence and the sheer number of consumer complaints. This is despite the Commission recognising that "EU consumers rightly expect transport companies and tour operators to respect their right to full reimbursement of prepayments".
- **Introduce truly dissuasive penalties (Article 25 of the current PTD).** BEUC calls for an introduction of specific stiff penalties for infringing the Directive, based on a percentage of the annual turnover of tour operators, travel agents and intermediaries.

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<sup>4</sup> A trusted account, or escrow service, is a system in which a third party temporarily holds the payments until a particular contractual condition or legal obligations have been met. This third party could be a bank, or any financial institution recognised as capable of providing these services under Member States' national law. See Section 2.1 of the paper for detailed explanations.

<sup>5</sup> See BEUC position paper Passenger rights 2.0: Towards better consumer protection and a more resilient travel sector, Section II, available [here](#).

Similar provisions already exist in an increasing number of EU consumer protection laws <sup>6</sup> and beyond.

- **Define contractual obligations for link travel arrangements (LTAs) (Chapter VI PTD).** These contractual obligations must counter business models that currently allow operators to circumvent the stricter liability regime of package travel contracts to the detriment of consumers.
- **Ensure coherence between the Package Travel Directive and the passenger rights Regulations (especially for air travel).** The review of EU passenger rights Regulations must be undertaken consistently with the revision of the package travel Directive. In particular, current legal gaps must be corrected and insolvency protection provisions must apply in the airline sector and consumer cancellation rights extended<sup>7</sup>.

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<sup>6</sup> See the Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules, amending the Unfair Commercial Practices, the Consumer Rights, the Unfair Contract Terms and the Price Indication Directive. See also for instance the GDPR (Article 83), and the Digital Services Act (DSA) (Article 42).

<sup>7</sup> For more details, see BEUC Position Paper on the Proposal for a Regulation as regards enforcement of passenger rights in the Union, REVISION OF PASSENGER RIGHTS REGULATIONS – The EU can do (far) more to Better Protect Passengers and their Rights, to be published soon.

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# Introduction

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In the wake of the COVID-19 pandemic, the European Commission announced, in its New Consumer Agenda<sup>8</sup>, its intention to review the package travel Directive (PTD). BEUC welcomed this announcement<sup>9</sup>.

The Commission stated that its main objectives were to learn lessons from the pandemic and update the consumer protection framework. The Commission in particular wanted to ensure that traveller rights were respected in crisis situations (i.e. unavoidable and extraordinary circumstances such as bankruptcies and large scale disruptions) and to align EU passenger rights rules with the PTD so as to ensure consistency. This is particularly the case for consumer cancellation rights in times of crisis and for the protection of consumer pre-payments against airline insolvency.

After a long delay, in November 2023 the Commission published its **“Passenger Mobility Package”** including in particular<sup>10</sup> proposals to:

- **amend the Package Travel Directive (EU) 2015/2302 (so-called PTD)** to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive
- introduce passenger rights in the context of multimodal journeys<sup>11</sup>
- improve the enforcement of passenger rights in the Union<sup>12</sup>

## 1. Positive points

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BEUC **strongly supports** the following elements of the European Commission proposal to amend the package travel Directive:

### Effectiveness and scope of insolvency protection – (Article 17)

#### The proposal

The proposal would clarify in a new Article 17(1) of the PTD that reimbursements and voluntary vouchers offered to consumers would be protected against the insolvency of tour operators and travel agents.

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<sup>8</sup> See Communication COM(2020) 696 final, New Consumer Agenda - Strengthening consumer resilience for sustainable recovery, available [here](#).

<sup>9</sup> See BEUC Comments on the Package Travel Directive the Roadmap and inception impact assessment. Available [here](#).

<sup>10</sup> See European Commission [communication](#): Improved rights and better information for travellers. The package is also composed Commission Recommendation of 29.11.2023 on means to address the impact of automation and digitalisation on the transport workforce [C(2023) 8067] and a Communication from the Commission: Creation of a common European mobility data space [COM(2023) 751]. These are not considered in this position paper.

<sup>11</sup> Proposal for a Regulation of the European Parliament and of the Council on passenger rights in the context of multimodal journeys [COM(2023) 752].

<sup>12</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union [COM(2023) 753]

The proposal to revise the Directive would also clarify (Article 17(2)) that insolvency protection schemes must be sufficient to guarantee not only consumer refunds but also the repatriation of consumers, if necessary. The coverage would have to take into account periods in a business year where travel agents and tour operators hold the highest amounts of payments and any changes in the volume of sales of packages. It specifies that the insolvency protection scheme would have to consider the changes in the volume of packages sold to consumers and the necessary repatriations to be covered compared to the anticipated volume to ensure the efficiency of such protection.

The proposal would also require Member States to supervise insolvency protection mechanisms to ensure that they were sufficient and could, if necessary, require a second level of protection for traders, for instance, a backup fund to be financed by the industry. The proposal would allow, under strict and duly justified conditions, Member States to co-finance such backup funds, as long as they respected EU State aid rules (Article 17(3)).

The proposal would also specify that consumers would have to receive their refunds, once they had provided the evidence necessary for the insolvency guarantors to examine their request, within 3 months (Article 17(6)).

Finally, the proposal would allow (but not require) Member States to oblige retailers to subscribe to an insolvency protection scheme (Article 17(7)).

### BEUC position

#### **BEUC welcomes the European Commission's proposal to clarify the scope of the rules on insolvency and to ensure their effectiveness.**

Protection against trader insolvency is a key provision of the current Directive, and an important protection for consumers who are prepared to pay more to benefit from it. However, it is also one of the provisions that has been most poorly implemented at national level, diminishing its effectiveness and therefore consumer protection<sup>13</sup>. This is therefore an area where reform is needed, as called for by most consumer protection authorities<sup>14</sup>.

In addition, during the pandemic, many legal uncertainties arose as to what was, and what was not, covered by Article 17 of the current Package Travel Directive.

For example, it was unclear whether:

- Consumers' pending reimbursements were protected in case of bankruptcy. For instance, situations where passengers cancelled their package travel contracts two days before the bankruptcy of a travel agent.
- Vouchers accepted by passengers (or forced on them depending on the national derogatory rules introduced by Member States) were covered against insolvency.

Many consumer disputes arose between consumers and professionals, and this triggered much debate among stakeholders.

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<sup>13</sup> See Report from the European 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 - COM/2021/90 final – Point 2.2. Conformity assessment of transposition measures

<sup>14</sup> See Commission Staff Working Document – Executive Summary of the Impact Assessment Report, SWD(2023) 907 Final. P.3., Available [here](#).

The European Commission's May 2020 Recommendation on vouchers<sup>15</sup> confirmed that under the current PTD, pending refund claims and vouchers where **not** covered by insolvency protection rules, and so encouraged Member States to do so. **This situation demonstrated a serious legal gap in consumer protection.**

The Commission Recommendation highlighted a paradoxical situation, as consumers wishing to assert their rights to monetary reimbursement, provided for in Article 12(4) of the PTD, were less protected against insolvency than consumers who left their money with bankrupt operators, or where Member States decided to protect forced vouchers<sup>16</sup> against insolvency. The proposal to clarify the rules on insolvency is therefore welcome.

The proposal to introduce a 3-month deadline for insolvency protection schemes to reimburse consumers following a bankruptcy is also very welcome. In the wake of the Thomas Cook bankruptcy, thousands of consumers had to wait for years to get their money back<sup>17</sup>. This situation is unacceptable and contrary to the objectives of Article 17 of the PTD to have "effective" insolvency protection mechanisms. It has also created a serious disparity of treatment and protection between consumers.

However, to make the 3-month deadline effective in practice, BEUC recommends that:

- The consequences of the non-compliance are established directly in the PTD. At the very least, Member States should be able to introduce sanctions for non-compliance at national level, such as late payment interest.
- There are clear rules on which documents are required to activate the insolvency mechanism.

BEUC also supports the introduction of an obligation on Member States to monitor the insolvency protection regimes. Indeed, as demonstrated in the PTD implementation report from the European Commission, insolvency protection is the provision that has created the most implementation issues.<sup>18</sup> Such control by Member States would ensure that the protection afforded to consumers was sufficient and effective in practice and could prevent the recurrence of problems such as those encountered in Germany during the Thomas Cook bankruptcy<sup>19</sup>. Indeed, the insurance taken out by the company was largely insufficient to meet the reimbursement and repatriation obligations laid down in the Directive because it was capped. As a result, the German Government had to inject public funds. Such a new monitoring obligation would prevent a repetition of such a situation.

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<sup>15</sup> Commission Recommendation (EU) 2020/648 of 13 May 2020 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.

<sup>16</sup> Forced vouchers are vouchers which have been imposed by tour operators or travel agents on consumers under derogatory Member States rules, authorizing this imposition during the COVID-19 pandemic, this in total contradiction with the Package Travel Directive (or Passenger Rights Regulations). See [BEUC Report](#), Travel voucher chaos continues: several EU countries and travel industry still flouting EU law on travel refunds, December 2020.

<sup>17</sup> In France for example, in August 2021, nearly 17,000 consumers were still waiting for their refunds while in other Member States consumers have already been fully refunded. See [https://www.tourmag.com/II-Faillite-Thomas-Cook-deux-ans-apres-des-milliers-de-clients-attendent-de-recuperer-leur-du\\_a110343.html](https://www.tourmag.com/II-Faillite-Thomas-Cook-deux-ans-apres-des-milliers-de-clients-attendent-de-recuperer-leur-du_a110343.html)

<sup>18</sup> Report from the European 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 - COM/2021/90 final – Point 2.2. Conformity assessment of transposition measures

<sup>19</sup> Report from the European 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 - COM/2021/90 final – point 4.1



### BEUC Recommendations:

BEUC fully supports all the amendments proposed in the proposal aiming to clarify the scope of the insolvency protection under the Package Travel Directive.

However, to ensure its full effectiveness BEUC recommends to:

- **Amend Article 17** to introduce consequences of the non-compliance with the 3-month deadline
- **Amend Article 17** to clarify which documents are required to activate the insolvency mechanism.

### Consumer cancellation rights in times of crisis - (Article 12)

#### The proposal

The proposal would clarify key elements of Article 12(2) of the PTD and specify the right to a refund in the case of termination of contracts arising from "unavoidable and extraordinary circumstances".

It clarifies that termination of a contract, at no cost to consumers, would be possible if it could "reasonably be expected" that performance of the contract would be "significantly affected by unavoidable and extraordinary circumstances" – (Article 12(2)).

The proposal would also clarify the relevance of official warnings to trigger this right to cancel at no cost, by specifying that official travel warnings: (1) for the travel destination issued by the authorities of the passenger's Member State of residence or (2) departure, or (3) of the country of destination, would be important elements to be considered when assessing the justification for terminating a travel package contract at no cost to consumers - (Article 12(3a)).

The proposal would also specify that serious restrictions at the destination or on return, such as quarantine for a significant period, would also constitute relevant criteria - (Article 12(3a)).

#### BEUC position

**BEUC welcomes these proposals to clarify the Directive, as they would bring legal certainty for consumers and industry professionals alike<sup>20</sup>.**

Indeed, as recognised in the Explanatory Memorandum of the proposal, during the pandemic, numerous interpretations emerged between stakeholders as to the validity and admissibility of government travel warnings as a determining factor in benefiting from a no-cost reimbursement of package travel in times of crisis. This problem is also exacerbated by Member States having different ways of issuing and classifying travel warnings, and that sometimes different authorities within the same Member State had unclear or contradictory opinions (Ministry of Health vs Ministry of Foreign Affairs for instance).

<sup>20</sup> See Summary Report of the Online Public Consultation in relation to the revision of the Package Travel Directive, where the majority of stakeholders (55%) considered that rules on cancellation rights are not clear enough and should be amended.

Disputes also arose as to whether quarantine requirements on entry to, or return from, a country should be considered as a sufficient criterion. As a result, practices have differed widely from trader to trader, making the situation perilous for consumers and exposing them to financial losses, sometimes substantial due to the large penalty fees applied by tour operators and travel agents in case of late cancellation of packages under Article 12(1) of the PTD.

The proposal to include in the PTD's provisions that official warnings concerning travel to a particular destination, issued by the authorities of the Member State of departure, or of the passengers' residence, or of destination and the fact that consumers would be subject to "serious restrictions at the travel destination or in the Member States of residence or departure after return from the trip" would be *"important elements to be taken into account in assessing whether a cancellation of the contract without charge can be activated by consumers"* is in our assessment a substantial improvement that would provide clarity, especially for consumers.

Finally, BEUC supports the proposal in the revised Article 12(2) PTD, which would allow consumers to terminate the contract at no cost when it could *"reasonably be expected"* that the performance of the PTD contract would be *"significantly affected by unavoidable and extraordinary circumstances"*.

The proposed use of the wording "reasonably" is appreciated as it would give consumers flexibility, especially when faced with situations that evolve rapidly (as during the COVID-19 crisis, for example) or appear suddenly (for instance, travel restrictions after a natural disaster or terrorist attack).

For example, during the pandemic, the situation in different EU and non-EU countries changed very rapidly (travel warnings and travel restrictions). In some Member States, there were strict lockdowns, while in others restaurants and museums were open to the public. Such differences made the situation very difficult for consumers.

Under the current PTD, for consumers to benefit from the right to cancel at no cost, it is necessary that the unavoidable and extraordinary circumstances occurring at the place of destination, or its immediate vicinity, "significantly" affect the performance of their package. In practice, it is very difficult, if not impossible, for a consumer to assess this. Relaxing this criterion by indicating that consumers can request cancellation at no cost if they can "reasonably" expect that the performance of the package will be significantly affected is therefore very welcome for consumers.

However, the proposal fails to address an important issue necessary to ensure even greater legal certainty for all players regarding cancellation rights in times of crisis.

The current PTD states in Article 12(2) that consumers can cancel their package free of charge, *"before the start of the package"*, but does not indicate a timeframe to do so. This legal vacuum was an additional source of disputes and different interpretations by traders during the pandemic, with some refusing to refund at no cost, arguing that consumers' cancellation requests were too early, and therefore applied penalty charges to the refund, sometimes substantial.

The proposal to revise the PTD unfortunately still fails to define the period before the start of a package during which a consumer could ask for a cancellation free of charge, leaving the door open for further disputes in the event of another crisis. To remedy this, Article 12(2) of the Package Travel Directive must be amended to clarify that if the consumer had received valid official travel warnings within 30 days before the start of the package travel contract, this should be sufficient to automatically activate the right to cancel at no cost

under Article 12(2) PTD. Beyond this time threshold, analysis should be carried out on a case-by-case basis.

Finally, one of the objectives of the Passenger Mobility Package and the reforms of the PTD and of the Passenger Rights Framework (especially Air) was to ensure consistency between the various EU frameworks which are deeply interlinked. This is to ensure greater protection for passengers and holidaymakers, and to correct important legal gaps that are detrimental to consumers but also to numerous other actors in the tourism value chain (e.g. intermediaries, travel agents)<sup>21</sup>. **One of the divergences between the frameworks is the lack of alignment of consumer cancellation rights.**

While consumers benefit from cancellation rights under the PTD (Article 12 PTD), this right does not exist for consumers under EU air passenger rights rules, either in normal times or in times of crisis. As a result, during the pandemic, despite official warnings from Member States not to travel, consumers lost money because flights continued to take off.

**This situation needs to change, as it is highly detrimental not only to consumers, but also to other players such as travel agents, who have a strict responsibility towards consumers.** Thus, if consumers decide to cancel their package, travel agents have to refund them in full, without having any right of recourse against the transport operators as no statutory cancellation rights exist under EU rules.

Therefore, BEUC urges the the European Parliament and EU Council of Ministers to ensure coherence of the EU passenger rights rules by introducing consumer cancellation rights for passengers travelling by air, rail, coach, on water or as part of a multimodal journey, as initially considered by the Commission in its preparatory work on the Passenger Rights initiatives<sup>22</sup>.

#### BEUC Recommendations:

- **BEUC supports the amendments of the Articles 12(2), 12(4) PTD and the introduction of the new paragraph 12(3a)** as they bring more clarity on how to activate and benefit from the right to cancel package travel contracts at no cost in crisis time as well as the criteria and receivable evidence to do so.
- **Amend Article 12(2)** to introduce a clear timeframe before the departure (30 days and until the start of the journey), in which consumers, with the simple presentation of a valid travel warning, can automatically terminate their package travel contract at no costs in the event of “unavoidable and extraordinary circumstances”. Beyond this time threshold, analysis should be carried out on a case-by-case basis.
- **Coherence between the ongoing reviews of PTD and the Air Passenger Rights Framework should be ensured, by correcting existing legal gaps.** One of them is to align consumers' cancellation rights in the Passenger Rights texts (especially Air) to the Package Travel sector. Coherence is key as it will ensure better consumer protection but also more fairness in the tourism sector as requested by industry stakeholders.

<sup>21</sup> See joint ECTAA and EU Travel Tech factsheet: THE PACKAGE TRAVEL DIRECTIVE: How can we make it fit for purpose?, available [here](#).

<sup>22</sup> For more details, see BEUC Position Paper on the Proposal for a Regulation as regards enforcement of passenger rights in the Union, REVISION OF PASSENGER RIGHTS REGULATIONS – The EU can do (far) more to Better Protect Passengers and their Rights, to be published soon. See also BEUC call for evidence for an Impact Assessment of the Better Protection of Passengers and their Rights initiative (2021)7881104. Available [here](#).

## Vouchers – (Article 12a)

### The proposal

The proposal would introduce a **new article 12a** into the PTD recognising vouchers as a possible refund method for consumers, not only in times of crisis, but on condition the consumer gave their formal agreement (in other words, consumers would still be entitled to ask for a monetary refund within 14 days).

In particular, and in line with the principles of the European Commission's May 2020 Recommendation on vouchers<sup>23</sup>, the proposal clarifies that:

- vouchers would be voluntary - consumers could decide to opt for a cash refund within 14 days if they preferred and operators would be obliged to inform consumers about the right to a refund and about the conditions applicable to the vouchers
- the value of the vouchers would have to be at least equal to the amount of the refund to which the traveller is entitled. Traders can decide to provide vouchers worth more than the refund value
- vouchers would be transferable to another traveller without any additional cost
- vouchers would be valid for 12 months maximum, extendable for the same period, only with the explicit and written consent of both parties. During the validity period of the vouchers, the consumer cannot ask for an early refund except if the parties agree so.
- vouchers would have to be covered by insolvency protection, to be arranged by the organiser, for the amount of the payments received from the traveller.

### BEUC position

**BEUC welcomes the introduction of clear rules for vouchers as there is no explicit reference to 'vouchers' in the current Package Travel Directive, contrary to EU passenger rights Regulations.**

The absence of clear and binding rules on vouchers was highly detrimental to consumers during the pandemic.

The European Commission's May 2020 Recommendation on vouchers, which reiterated that vouchers could only be voluntary, was not legally binding. As a result, its application and implementation by Member States and operators on the ground were clearly insufficient, as was demonstrated by BEUC<sup>24</sup> and acknowledged by the European Commission in the Explanatory Memorandum of the proposal<sup>25</sup>.

Indeed, numerous Member States<sup>26</sup> took advantage of this legal loophole in the current PTD to introduce harmful rules authorising travel agents, tour operators and transport operators to delay refunds and impose vouchers on consumers, with random conditions that varied widely between Member States. Sometimes these vouchers were neither covered against insolvency, nor refundable. This situation forced the European Commission to launch eleven infringement procedures against Member States.

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<sup>23</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H0648>, last consulted on 05 December 2023.

<sup>24</sup> See BEUC report: "COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers.

<sup>25</sup> See Explanatory Memorandum of the Proposal for a Directive Amending the Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive. Available [here](#).

<sup>26</sup> Idem.

Despite welcoming its inclusion in the proposal, BEUC would recommend amending Article 12a to ensure that vouchers **could be used on all tourism services proposed by the tour operators or the travel agencies emitting the voucher**. Consumers' situations may also change. They should be able, for instance, to spend the value of their vouchers for several short trips (several city trips, for instance), instead of being forced to book another long package travel contract, for example.

Lastly, BEUC also recommends **completing the current proposal for Article 12a** to avoid application issues by introducing formal requirements for vouchers. In some countries, BEUC members reported problems with vouchers issued during the pandemic. For instance, in Portugal, the legal value of the voucher has been called into question several times, and particularly when proof of payment was not provided or when consumers received no other documentation from travel agents (invoice, receipt, exchanged emails).

To avoid disputes, it is crucial to define some **mandatory formal requirements** and **some mandatory information** to be given to consumers (e.g. date of issue, expiry date, an indication that if not used it must be refunded; an indication regarding insolvency protection and how to activate it, information on which travel services can be chosen by consumers with the voucher).

#### **BEUC Recommendations:**

BEUC supports the current proposal. However, as a matter of legal certainty:

- **Article 12a (7) should be amended** to clarify that consumers are also eligible for a refund of any vouchers not fully or partially used.
- **Article 12a should be completed** to clarify that consumers can use their vouchers for all services proposed by the entity emitting the voucher.
- **Formal requirements for vouchers should be established** to avoid problems in the application (e.g. date of issue, expiry date, an indication that if not used it must be refunded, an indication regarding insolvency protection and the applicable insolvency protection mechanism).

#### **B2B refund rules - (Article 22).**

##### **The proposal**

The European Commission's proposal would introduce refund rights for package travel organisers in a new Article 22(2) of the PTD.

Under this proposed provision, when a service provider cancelled a service forming part of a package, or failed to carry it out, it would have to reimburse the organiser within 7 days of the day following the cancellation of the service or the day on which the service should have been carried out, whichever is the earlier.

##### **BEUC position**

**BEUC supports the proposal to introduce clear B2B refund rules in the Package Travel Directive.**

Under the current Package Travel Directive, in case of termination of contracts, any reimbursement to consumers *"shall be made to the traveller without undue delay and in any event not later than 14 days after the package travel contract is terminated"*<sup>27</sup>.

However, in practice this deadline is rarely respected by travel agents and tour organisers<sup>28</sup>. This was even clearer during the pandemic when consumers had to wait for months and sometimes years to get their money back<sup>29</sup>. Industry stakeholders even reported cases where airlines deliberately blocked intermediaries and tour operators from receiving automated refunds, *de facto* preventing them from reimbursing consumers<sup>30</sup>.

**This is a serious problem because travel service providers, and airlines in particular, are not subject to strict refund deadlines.** As a result, tour operators and travel organisers are currently obliged to reimburse consumers within a deadline that they are sometimes unable to meet if travel service providers such as hotels or airlines are not diligent and prompt in their reimbursements. This is to the detriment of consumers.

The introduction of strict deadlines for B2B refunds would have several advantages:

- 1) it would ensure swift and timely consumer refunds
- 2) intermediaries such as travel agents, would get consumers' money back from service providers within a pre-defined and strict timeframe
- 3) national authorities would also be in a position to enforce strict, well-defined rules, which was not the case until now and which has led to a prolonged discussion between consumer protection authorities (CPC authorities) and online booking intermediaries<sup>31</sup>.

**A clear refund timeframe would therefore be beneficial for all actors of the tourism value chain, and for consumers.**

However, **one crucial point is missing**: how to ensure compliance from travel service providers (notably airlines) with the new rules. Indeed, without deterrent rules and strict enforcement, such useful provisions risk remaining a dead letter.

It is therefore essential for a fair market and effective protection of consumers to **introduce enforcement provisions in the revised PTD to ensure compliance** with the B2B refund rules. Indeed, as well as being very harmful to consumers, this is also a question of fairness between players in the tourism sector. Travel agents and tour operators are responsible for obligations (to refund) they cannot currently necessarily comply with. It is therefore crucial to give national authorities deterrent tools to take action against traders that fail to respect the refund deadlines. To do so, BEUC recommends the introduction of fines based on a percentage of traders' annual turnover for non-compliance with B2B refund deadlines.

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<sup>27</sup> Article 12(4) PTD.

<sup>28</sup> See European Parliament Study on the Performance of the Package Travel Directive (2023), Section 1.2.4, Available [here](#).

<sup>29</sup> See Report from the European 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 - COM/2021/90 final – Point 2.2. Conformity assessment of transposition measures , Section 5.2.1., Available [here](#).

<sup>30</sup> See for instance EU Travel Tech Press Release: Airlines' Refusal to Refund Travel Companies and Their Customers Has to Stop!, available [here](#), last consulted on 05 December 2023.

<sup>31</sup> [https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel\\_en](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en) , last consulted on 08 December 2023.

### **BEUC Recommendations:**

- **BEUC supports** the introduction of strict B2B refund rules in the PTD to allow consumer refunds within the legal 14-days deadline of Article 12(4) PTD.
- **Amend Article 22** to introduce the consequences of non-compliance with the B2B refund rules by introducing deterrent fines based on traders' turnover.

## **2. To be improved**

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### **2.1. Limits on pre-payments: an excessively flexible approach - (Article 5a)**

#### **The proposal**

The proposal would introduce a new Article 5a whereby consumer pre-payments could not, in principle, exceed 25% of the total price of the package tour at the time of booking, and any remaining pre-payments could not be requested less than 28 days before the start of the package tour.

The proposal would include exceptions authorising tour operators to ask for more pre-payments when this is necessary to ensure the "organisation and execution" of the package. In particular, it is proposed that pre-payments could cover advance payments to service providers (e.g. airlines) included in a package and "costs incurred by organisers, or where applicable the retailers, specifically in relation to the organisation and performance of the package insofar as it is necessary to cover those costs at the time of the booking".

Recital 12 of the proposal further indicates that down-payments could be requested from consumers to, for instance, cover "commissions requested by retailers".

#### **BEUC position**

**BEUC welcomes the intention to limit the number of pre-payments that tour organisers and travel agencies can request from consumers before the start of the holiday package. However, the current proposal is too flexible to achieve its objective.**

- Background – Why better-protecting consumers' pre-payments is pivotal?

The Thomas Cook and COVID-19 crises have highlighted the fragility of the holiday package sector business model, which is based on full (and far in advance) pre-payments by consumers. The same goes for the transport sector (especially airlines).

**This business model is neither sustainable nor resilient in times of crisis.** Indeed, the risks of insolvency are high and insolvency protection schemes may, as the report on the application of the package travel Directive points out, not be fully effective and prove insufficient to protect passengers (e.g. the bankruptcy of Thomas Cook). BEUC therefore welcomed the proposal to revise the package travel Directive so as to further limit pre-payments and introduce clear, harmonised provisions on payment terms and payment schedules.

**These situations have clearly demonstrated the need to better protect consumer pre-payments** by limiting consumers' financial losses, helping travellers get refunded in case things go wrong, and limiting the difficulties for travel agents and tour organisers to find an insolvency "insurer" by diminishing the amount to be covered.

- The current proposal:

The current proposal, despite indicating a 25% threshold for down payments that could be asked of holidaymakers, would nevertheless allow travel agents and tour operators to *"request higher down payments, where this is necessary to ensure the organisation and the proper performance of the package"*, as well as *"commission requested by retailers"*.

This **unclear wording** and **excessively flexible approach leaves important loopholes that would restricting the effectiveness of the pre-payment limit**. Indeed, the risk is that professionals will present a wide range of costs as indispensable *"to ensure the organisation and the proper performance of the package"* as such costs could arguably, be everything and anything.

- Origin of the proposal:

The current proposal, as explained in its Explanatory Memorandum<sup>32</sup>, is inspired by Germany, where, based on German Supreme Court case law on the national law implementing the EU Unfair Contract Terms Directive, limits down-payments to 20% at the time of the booking and the remainder is due not earlier than 30 days before the beginning of the package travel. An exception to the rule is accepted where organisers *"duly justify"* them, due to the expenditures present at the time of the conclusion of the contracts<sup>33</sup>.

The current proposal, as it stands, would **therefore limit consumer protection in Germany**, which is in direct contradiction with the objectives of the proposal.

On the contrary, the **the upcoming negotiations should result in a level of consumer protection that is at least equal to that under current German case law**.

Furthermore, stricter rules on pre-payments should be introduced by **limiting exceptions** to 'duly justified' costs and by **reducing to 7 days before the beginning of the package** tour the timeframe to pay the remaining amount.

- **The alternative: securing consumer payments via trusted accounts or "escrow" services.**

As an alternative to the full prohibition of consumer pre-payments in passengers' rights legislation, BEUC would favour the introduction of provisions to hold travellers' payments in an escrow/trusted account until the journey starts<sup>34</sup> in the case of a simple transport service contract, or until the start of the package tour for package travel contracts.

A trusted account, or escrow service, is a system in which a third party temporarily holds the payments until a particular contractual condition or legal obligation has been met. This

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<sup>32</sup> See COM(2023) 905 Final, p.10. Available [here](#).

<sup>33</sup> See judgement of the Bundesgerichtshof of 9.12.2014, X ZR 13/14, based on the rules on unfair contract terms <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=4803bc48cdfac870b7acb7fba96c1c46&nr=70492&pos=0&anz=1>, last consulted on 07 December 2023.

<sup>34</sup> This point is also valid and should be applicable to all transport modes (air, rail, bus, waterborne).



third party could be a bank, or any financial institution recognised as capable of providing these services under Member States' national law.

The escrow provider's responsibilities in a transaction would include receiving and holding payments from consumers and disbursing funds to traders when contractual conditions are met or when legal obligations are fulfilled. Traditionally, the role of an escrow provider in the transaction is to protect the payments of the buyers and sellers before they are transferred from one party to the other.

Applied to the specific case of travel operators and tour organisers, the third party would:

- collect consumer payments
- hold them
- transfer the payments to traders only when the contract of carriage is fully performed (the journey takes place), or in the case of a package travel contract, when the package travel begins.

Only when these prerequisites were met would the funds be released by the escrow providers to the professionals (airlines/rail, bus and boat companies and tour operators/travel agencies).

On the contrary, if the airline/rail, bus or boat company, tour organiser or travel agency failed to fulfill their legal and/or contractual obligations (e.g. cancellation of flights), then the funds would be returned to consumers.

***This solution can also be an interesting and viable alternative to the current system of direct pre-payments from consumers to airlines/rail, bus and boat companies and tour operators and would have various benefits for passengers as well as for the travel industry. It is also a solution favoured by the European Court of Auditors<sup>35</sup> and some industry stakeholders<sup>36</sup>.***

A trusted account system would solve the following pre-departure problems:

- *On one hand*, in the event of a flight cancellation by an airline or cancellation of a package travel contract, the money would be immediately returned to consumers by the third party. This would prevent consumers from having to wait months to be reimbursed as happened during the COVID-19 crisis<sup>37</sup>. *On the other hand*, professionals would not have to directly refund large sums to travellers in a short period of time, since the money would be blocked in a third-party trusted account.

**Therefore, this would also ensure their financial viability and strengthen the resilience of the sector in the case of new crises.**

- Holding travellers' pre-payments on a third party's account would also, mathematically limit the number of pre-payments received and handled by tour operators, travel agencies and airlines. As a result, the amounts to be covered against their insolvency would decrease drastically. Therefore, this is likely to remedy the difficulty of finding insolvency insurance providers, which was pointed

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<sup>35</sup> See [Special Report](#) Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts, Recommendation 1, Last consulted on 07 December 2023.

<sup>36</sup> See EU Travel Tech presentation in the IMCO Hearing on the Package Travel Directive, [https://www.europarl.europa.eu/cmsdata/279277/EU%20Travel%20Tech\\_PTD.pdf](https://www.europarl.europa.eu/cmsdata/279277/EU%20Travel%20Tech_PTD.pdf) , last consulted on 07 December 2023.

<sup>37</sup> See [BEUC's report](#) "COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers", published on 10 December 2020.

out by tourism professionals in the report on the application of the package travel Directive.<sup>38</sup>

In practice, such protection systems, despite not being mandated by **law are *de facto* already present in many areas of consumption, including the tourism sector.**

For example, several well-known payment-receiving marketplaces such as AirBnB<sup>39</sup>, Alibaba<sup>40</sup>, Viagogo<sup>41</sup>, BlablaCar, Vinted<sup>42</sup>, block consumer payments for a certain period until the services have been performed.

The car rental sector is another interesting example of how securing consumer prepayments can be done. Consumers' payment is blocked on their bank account until the contract is fulfilled, after which it is released into the retailer's account. The same goes for the deposit in case of damage to the car, which is blocked and then refunded to consumers fully, or partly if they damage the vehicle<sup>43</sup>. Other major players such as PayPal<sup>44</sup> also function as trusted account providers.

At the national level, the real estate sector also provides examples that work well. For instance, in Belgium, when consumers buy a house or an apartment that still needs to be built, their pre-payments are strictly regulated in proportion to the progress of the construction<sup>45</sup>.

There are numerous examples on the market that could serve as an inspiration and could be a way to:

- 1) better protect consumers' pre-payments in the transport and tourism sector and ensure their swift refund also in times of crisis,
- 2) better protect operators by avoiding the need for massive money flows, due to simultaneous consumer refund requests, in case of a widespread crisis.

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<sup>38</sup> See [Report](#) from the European 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 - COM/2021/90 final, point 4.2.2, published on 26 February 2021.

<sup>39</sup> See AirBnB webpage, When you'll get your payout : [https://www.airbnb.co.uk/help/article/425?set=bev\\_on\\_new\\_domain=1701439374\\_YmZkNjlmMzQ3Zigw](https://www.airbnb.co.uk/help/article/425?set=bev_on_new_domain=1701439374_YmZkNjlmMzQ3Zigw), last consulted on 06 December 2023.

<sup>40</sup> See 5 Successful Marketplaces That Use Escrow, available [here](#), last consulted on 06 December 2023.

<sup>41</sup> <https://www.viagogo.be/LandingPage/1000748>

<sup>42</sup> [https://www.vinted.co.uk/terms\\_and\\_conditions](https://www.vinted.co.uk/terms_and_conditions), last consulted on 11 January 2024.

<sup>43</sup> See ECC-Net webpage on car rental : <https://www.europe-consommateurs.eu/en/travelling-motor-vehicles/motor-vehicles/car-rental.html>, last consulted on 06 December 2023.

<sup>44</sup> <https://www.paypal.com/us/webapps/mpp/paypal-safety-and-security>, "If there's a problem with a transaction, we'll put a hold on the funds until the issue is resolved. We investigate and stay involved every step of the way". Last consulted on 6 December 2023.

<sup>45</sup> See so called loi "Breyne", available here : [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lq.pl?language=fr&la=F&cn=1971070930&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lq.pl?language=fr&la=F&cn=1971070930&table_name=loi), last consulted on 06 December 2023.

### **BEUC Recommendations:**

**BEUC welcomes the ambition to better secure consumers pre-payments**, but the current provisions of Article 5a are unclear and too flexible, leaving important loopholes to be exploited by traders, and so, limiting the effectiveness of the provision.

**The current proposal is not aligned with the existing German limitation of pre-payments**, and will, if adopted as such, **diminish the existing protection of German consumers**. The German example (20% of downpayments to be asked at booking time, despite duly justified) **should be the starting point of negotiations**.

#### **BEUC recommends:**

- **Amend Article 5a** to ensure that only 'duly justified' costs can be asked as pre-payment.
- **Amend Article new 5a** to ensure that remaining amount to be paid cannot be asked until 7 days before the beginning of the package travel. This would also ensure greater protection of consumers down-payments.
- **Alternatively, amend Article new 5a** to introduce an obligation to better protect consumers pre-payments by securing them via trusted accounts or "escrow" services as it exists already in a wide range of consumer sectors (Marketplaces, car rental, real estate etc.).

## **2.2. Link travel arrangements and "click-through" bookings – lack of clarity - (Articles 3(2) & 3(5))**

### **The proposal**

The proposal would adapt and simplify the definitions of package travel and link travel arrangements (LTAs) in the Directive.

Under the proposal, services booked from separate traders through a linked online booking process would be considered as a package when any travellers data is shared between traders.

Furthermore, the proposal would establish that bookings of different types of travel services for the same trip at one point of sale within 3 hours, would be considered as a package in the same way as the booking of different travel services for the same trip at one point of sale where the services were selected before the travellers concluded the contracts.

LTAs defined in Article 3(5)(a) would therefore be simplified and integrated into the definition of "click-through packages".

### **BEUC position**

**BEUC supports the proposed new provisions of Articles 3(2) and 3(5), as they would bring more protection for consumers.**

Currently a travel service provider, such as an airline that after completing 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 defined as the organiser of a package and hence liable for the performance of both services.

All the consumer data needs to be transferred as otherwise, the first trader simply facilitates an LTA and is only liable for the performance of its own service, provided the second booking happens within 24 hours.

If it happens after the 24-hour timeframe, the PTD is currently not applicable at all.

It is therefore nearly impossible for consumers (but also enforcers) to prove whether a package, an LTA or none of them was concluded, as was also confirmed in the European Commission 'click-through bookings' report<sup>46</sup>. It is, indeed, complex to demonstrate what data was transferred between traders or the moment of the booking of the second travel service. It is also extremely difficult for consumers to understand the type of contracts they concluded, and the type of protection attached to that contract.

The current proposal is therefore **an improvement for consumers** as it would withdraw the exhaustive list of personal data that needs to be shared between traders for the travel contracts to become a package. In addition, by introducing the wording "other personal data", the proposal would mean that from now on any transfer of consumers personal data would be applicable, broadening the scope of application of packages (proposed new Article 3(2)(b)(v)).

The proposal to simplify the definition of the LTA and to withdraw the wording "targeted manner" is welcome as the current rules have triggered a lot of debates between stakeholders<sup>47</sup>.

**However, despite introducing this welcome clarification, we consider that the understanding of LTAs by consumers and enforcement from authorities would remain challenging.** Furthermore, BEUC is concerned about the wording of recital 9, stating that in order to fully benefit from the rules on insolvency protection and for traders to know that they are subject to this obligation on LTAs, consumers should be encouraged via the standardised information form "to record the invitation and the additional booking, for instance through screenshots, and to inform the trader with whom a first contract was concluded that a contract on an additional type of travel service has been concluded for the same trip or holiday within 24 hours following the invitation from the trader".

**Consumers should not be required to prove the type of contracts they are concluding and the protection they are entitled to. Instead, the professionals involved should have the obligation to confirm the type of commercial transaction.**

Furthermore, the current proposal is still missing important elements to better protect consumers booking linked travel arrangements. Under the current proposal, as in the existing PTD, except for insolvency protection and certain pre-contractual information requirements, **traders facilitating an LTA would still not be liable for the**

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<sup>46</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:270:FIN> , last consulted on 06 December 2023.

<sup>47</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A90%3AFIN> , see section 3.2.2 Link Travel Arrangements, last consulted on 06 December 2023.

**performance of the relevant services.** Travel service providers would be able to continue to mislead consumers by presenting themselves as a trader facilitating an LTA rather than as an organiser, and so avoid the stricter liability rules applicable to packages, leaving consumers with a lower level of protection.

To ensure more certainty, the proposal to revise the PTD Directive must establish contractual obligations resulting from LTAs.

#### **BEUC Recommendations:**

- **BEUC supports** the clarification and simplification brought by the amendments of Articles 3(2) and 3(5) of the initiative.
- **Develop Chapter VI of the PTD** to establish the contractual obligations resulting from LTAs, and to counter the development of business models which circumvent the stricter liability regime of package travel contracts to the detriment of consumers.
- **Discard every proposal which would require consumers to substantiate themselves their reservations (via screenshots)**, and therefore the type of contracts they enter into and the protection to which they are entitled<sup>1</sup>. This burden should fall on the operator offering the LTAs, not on consumers

### **3. What is missing: clear information and enforcement**

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#### **3.1. Enforcement and redress : blind spot of the proposal to revise the PTD**

##### **The proposal**

**The proposal does not include any amendments to ensure better enforcement of the rules and travellers' rights.**

The current Article 24 of the PTD specifies that "*Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive*", and Article 25 indicates that, "*Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented*". The proposal to amend the PTD would not change the current provision that simply states that "*penalties provided for shall be effective, proportionate and dissuasive*".

##### **BEUC position**

**BEUC is disappointed by the absence of amendments in the proposal to amend the Package Travel Directive to empower consumers to exercise their rights easily and swiftly, and for authorities to really deter rogue players.**

This absence is despite clear and substantial evidence that the tourism industry as a whole is one of the sectors which is most prone to consumer complaints – pre, during and post –

pandemic and the recognition by the European Commission in its New Consumer Agenda<sup>48</sup> that “*EU consumers rightly expect transport undertakings and tour operators to respect their right to a full refund of pre-payments*”. The PTD implementation report<sup>49</sup> also highlights that 40% of passengers who experienced disruptions, suffered a “financial loss”. It also shows that where travellers had grounds for a claim and complained to their tour organiser, 42% of them were dissatisfied with the outcome of their complaints.

Recently, our British member Which? also published research<sup>50</sup> highlighting that many surveyed consumers were pessimistic about the ease of seeking redress and do not feel confident that the protection to which they are entitled works well if things go wrong in the tourism sector. It also revealed that more than half of consumers felt it would be difficult to get a refund for package holiday issues (60%), and 57% felt it would be difficult to get a refund when flights are cancelled. This should change.

To remedy the lack of enforcement and redress, BEUC considers that the Directive’s provisions must be substantially improved:

- **Mandatory participation in Alternative Dispute Resolution (‘ADR’) schemes**

As noted in the report from the Commission on the application of the PTD, tour operators’ participation in ADR schemes is fragmented and limited<sup>51</sup>. This means that **consumers do not have a fast and inexpensive way to obtain redress from tour operators, travel agents, online booking intermediaries, carriers etc.**

Therefore, BEUC recommends EU policymakers to amend the proposal so as to require the creation of one independent sectorial ADR in every EU Member State and mandatory participation for tour organisers, retailers, and online intermediaries<sup>52</sup> as already exists in certain EU legislation and specific sectors at the national level. Furthermore, ADR decisions should be binding on traders.

The creation of such a mandatory scheme, coupled with monitoring of compliance of respect for deadlines in deciding cases by the competent authorities in charge of supervising ADR systems, would provide passengers with an efficient enforcement alternative to court action. Naturally, ADR decisions could be subject to appeal before a court but the burden of launching the court proceedings should be put on the trader, not on the consumer (who is the weaker party in this transaction).

The creation of a unique travel sector-specific ADR scheme is essential, because currently - as highlighted by the Commission’s report on the ADR Directive - most ADR bodies are not specialised in travel services.

In the airline sector, it is worth mentioning that the last DG Move study on the protection of EU air passenger rights published in January 2020 highlighted that ADR schemes are considered as a reliable and “efficient and effective way for handling disputed claims” by all the stakeholders (consumers and industry).

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<sup>48</sup> See Communication COM (2020) 696 final, New Consumer Agenda - Strengthening consumer resilience for sustainable recovery, available here.

<sup>49</sup> Report from the European 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 - COM/2021/90 final – Point 1.2.

<sup>50</sup> See [Which? Research](#), “It’s all so confusing, why is nothing simple”: Consumer difficulty navigating the complicated landscape of holiday protections, last consulted on 08 December 2023.

<sup>51</sup> Idem. Point 3.3 Enforcement: “Voluntary ADR participation in the package travel sector is generally very low”.

<sup>52</sup> See also Article 26(3) of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125) regarding disputes between household customers and electricity undertakings.

A travel sector-specific ADR entity would provide consumers with a clear and easily accessible contact point if things go wrong and cannot be resolved with the tour operator and would avoid, as seen in the air travel sector, the emergence of private actors (claim agencies), flooding courts with low-value cases that should easily be solved by an efficient and mandatory sectorial ADR entity.

- Truly dissuasive sanctions

Under the Package Travel Directive, sanctions for infringements need to be “effective, proportionate and dissuasive”. In practice, such a vague provision leads to a very fragmented landscape<sup>53</sup>. In many countries, penalties are very rarely imposed and if they are, their amounts are insufficient to have a real dissuasive effect on operators.

BEUC calls for the introduction of higher penalties for infringing the Package Travel Directive (the same goes for the Air Passenger Rights Regulation), which would be based on a percentage of the annual turnovers of tour operators and intermediaries (carriers’ turnover for transport operators).

Similar provisions already exist in an increasing number of EU consumer laws and other laws: examples include [Directive \(EU\) 2019/2161](#) as regards the better enforcement and modernisation of Union consumer protection rules (Unfair Commercial Practices Directive, Consumer Rights Directive, Unfair Contract Terms Directive, etc.), the [GDPR](#) (Article 83), and the [Digital Services Act \(DSA\)](#) (Article 42).

- Clear and strict deadlines to deal with consumer complaints

Article 7 of the current Package Travel Directive only requires tour organisers or retailers to provide passengers with information on available ‘in-house’ complaint handling procedures and on existing ADR mechanisms. However, it does not establish any deadline to deal with consumer complaints.

As there is no time limit established in the Directive, passengers often struggle to obtain timely and complete responses from tour operators, and it is often not clear how long they would have to wait before taking further action. Such an unacceptable situation could easily be solved by introducing strict deadlines in the Directive to deal with travellers’ complaints. **This period should not be longer than two weeks (14 days)**. In case of non-compliance by traders with the deadlines, penalties should be introduced in the Directive such as periodic penalty payments per day of delay.

This timeframe should be introduced for tour organisers, retailers, and online intermediaries, and be part of the information to be supplied before the start of the package under Article 7 of the Directive.

Furthermore, it should be clarified in the Directive **that mediation by consumer organisations representing consumers should be accepted as the preliminary complaint of consumers**. Too often, cases submitted by consumer associations are rejected by traders on the grounds that consumers have not made a prior request to the professionals on their own, making the enforcement of passengers’ rights too burdensome.

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<sup>53</sup> 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, COM(2021) 90 final.



### BEUC Recommendations:

Reinforcement of the Enforcement and Redress provisions of the Directive should be a priority for EU policymakers. Holidaymakers have strong rights but struggle to enforce them. BEUC recommends to:

- **Amend Article 7 PTD** to introduce clear and strict deadlines for traders to deal with consumer complaints (14 days). Mediation by consumer organisation should be recognized as a preliminary consumer complaints.
- **Amend Article 12(4) to establish** that the non-compliance with refund and compensation deadlines should trigger consequences (e.g.: periodic penalty payments, doubling the amount of compensation to be paid, etc).
- **Amend Article 24 PTD** to mandate the participation of travel agents, intermediaries, tour organisers and carriers to ADR bodies. Their decision should be binding on traders, and appealable to the Court.
- **Amend Article 25 PTD** to introduce truly dissuasive sanctions based on traders' turnover in case of widespread infringements to the PTD (the same should go in the Passenger Rights reform for carriers).

## 3.2. Clearer information for consumers

### The proposal

The proposal to amend the PTD would clarify some information to be given to consumers, particularly at the pre-contractual stage.

It would clarify that:

- Consumers would have to be informed at the pre-contractual stage (Article 5(g) PTD) that they could also cancel their package contract at no cost due to unavoidable and extraordinary circumstances. Under the current PTD, only information on cancellation by consumers against a fee was provided upfront.
- Consumers would have to be informed of the percentage of prepayments to be paid at the time of booking and when the remainder should be paid - in line with the proposed new rules on pre-payments (new Article 5a).

The proposal to amend the PTD would also give consumers more clarity, as the package travel contract would have to clearly state that the organiser is the party responsible for refunds and that passengers could contact the organiser via the retailer.

To improve information for consumers, the proposal would also require that the standardised form (Annex 1 PTD) to be attached to consumer contracts, so that consumers could have access to it even after the contracts are concluded.

The proposal would simplify the standardised form for LTAs (Annex 2) to reflect the new definitions of long-term agreements.

### BEUC position

**The clarifications provided by the proposal are welcome.**



**However, the proposal fails to tackle several important issues which have given rise to many consumer complaints and debates among stakeholders in recent years, leaving important questions unanswered.**

Furthermore, the way pre-contractual information is presented to consumers should be enhanced.

- Standalone products sold by tour organisers and agencies should also be subject to an obligation of information under the PTD.

As currently drafted, the scope of the PTD requires traders to inform consumers about the nature of their contract only when booking a package holiday, or an LTA. This obligation does not apply to standalone products sold by the very same professional.

In practice, in case of a problem, consumers will not be affected if they book a single travel service - such as a single flight or accommodation - via an organiser. But when they reserve more than one standalone service for the purpose of the same trip the lines are blurred for passengers between the three categories defined by the Directive: package, LTAs and standalone services. However, only the first two are covered by the current scope of the PTD while no provision of the Directive applies to standalone products.

Our British member Which? recently published research to determine consumers understanding of holiday protection <sup>54</sup>. This research highlights that travellers struggle to identify the protections that booking individual elements separately or linked travel arrangements (LTAs) afford to them. It underlined that a lack of clear information, as is the case for now, can cause confusion amongst holidaymakers, who think they know what protection they have, when in fact they may be wrong.

Since the difficult distinction and blurred division between packages and other services has always been a major problem in the package holiday sector<sup>55</sup>, the proposal to revise the Directive should address it and **provide clear provisions on pre-contractual information to consumers including for standalone transport services.**

#### BEUC recommendations:

- Introduce a **new Article** to provide clear provisions on pre-contractual information to consumers buying standalone transport services sold by travel organisers and travel agencies.

<sup>54</sup> See [Which? Research](#), "It's all so confusing, why is nothing simple": Consumer difficulty navigating the complicated landscape of holiday protections, last consulted on 08 December 2023.

<sup>55</sup> See Report from the European 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 - COM/2021/90 final.

- Pre-contractual information requirements related to travel agents' contact details and health requirements should be clarified (Article 5(1)(b) and (f)).

During the pandemic, BEUC members reported on numerous occasions that it was difficult for consumers:

- to contact the tourism industry, travel agencies, tour operators, intermediaries, carriers, etc.
- to obtain relevant information on travel restrictions applicable in the country of destination (and transit where applicable), such as quarantine on arrival, or vaccination requirements or "sanitary" passes in place. However, this is fundamental information for consumers to decide whether to travel or not.

These problems were confirmed by the European Parliament study on the performance of the PTD, which conducted a survey of travel agents' websites, revealing that only 2 websites out of the 30 surveyed show information on passport visa and health requirements of the country of destination (all websites analysed offer international travel)<sup>56</sup>.

Lessons from this feedback must be reflected in the amendments to the Package Travel Directive.

#### **BEUC Recommendations:**

- **Amend Article 5(1)(b)** to clarify that travel agencies, tour operators and intermediaries shall have an effective method of contact in place and shall provide consumers with a free-of-charge telephone number and a functional email address.
- **Amend Article 5(1)(h) PTD**, to clearly state that consumers shall receive at pre-contractual stage information on all health formalities, of the country of destination (vaccinal obligation, quarantines, etc.). In the case of transit, information on the health obligations of the country of transit must also have been given to consumers, to prevent them from getting stuck at their place of transit. This information should be made by reference to official websites of competent authorities.
- **Amend Article 11 PTD** to clarify that in the event of a change in the conditions of access to a territory part of the Package Travel Contract for any reasons (including health) likely to alter the performance of the package (travel restrictions, introduction of a quarantine, etc.), tour operators and retailers should immediately contact the consumers to inform them about the changes. This information should be made by reference to the official websites of competent authorities.

- Formal requirements to communicate pre-contractual information.

Package travel and LTAs are complex products, and it is not easy for consumers, industry professionals and even enforcers to find their way around them, as the delineation between the different products is thin, as demonstrated in the European Commission's report on the application of the PTD<sup>57</sup>.

<sup>56</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740097/IPOL\\_STU\(2023\)740097\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740097/IPOL_STU(2023)740097_EN.pdf) , last consulted on 08 December 2023.

<sup>57</sup> See Report from the European 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 - COM/2021/90 final.

While mandatory pre-contractual information is indispensable for consumers to make an informed decision, many stakeholders argue that the current standard pre-contractual forms are too complicated and not easily understood by consumers<sup>58</sup>, making them ineffective.

BEUC, therefore, welcomes the European Commission's intention to 1) simplify the definitions of the concepts of LTAs or "click-through" bookings, and 2) the desire to ensure that consumers are better informed about their rights by introducing an obligation to transmit the applicable form also at the time of conclusion of the contract.

However, in our view, EU policymakers should make a further effort to simplify and better present the pre-contractual information to be received by consumers (Article 5 PTD) to ensure that passengers understand their rights as fully as possible.

In this respect, the **European Parliament Study on the performance of the Package Travel Directive** and broader consumer protection issues in the implementation of passenger rights<sup>59</sup> **suggests an interesting way forward** that EU policymakers should consider during the process of adoption of the proposed amendment of the PTD.

The Parliament study proposes to develop a "**Key Information Document and Visual Aids**" to help consumers be better informed and understand their rights and obligations (such as price, cancellation rights, etc.). In this respect, we can draw inspiration from the insurance sector, where it is compulsory to give consumers a standardised summary of the main guarantees of insurance products<sup>60</sup> (see Figures 1 & 2 below).

The study also proposed to create visual aids, diagrams or infographics to promote and supplement written information and help consumers understand what they are buying.

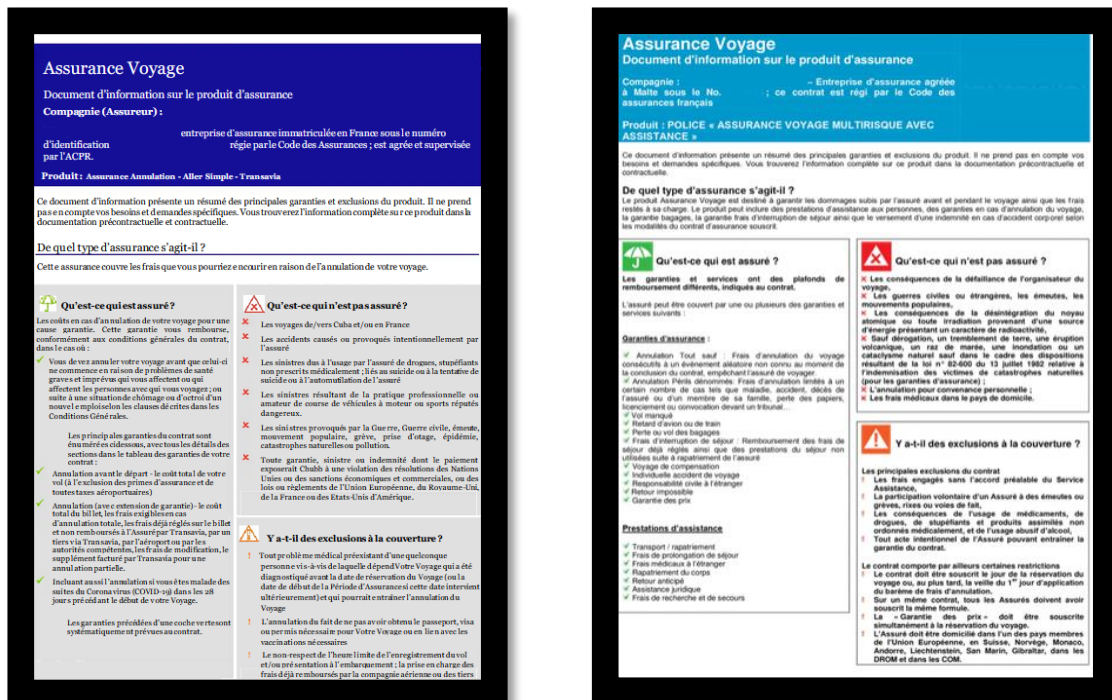
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<sup>58</sup> See point 1.2.2 of the European Parliament Study on the performance of the Package Travel Directive and broader consumer protection issues in the implementation of passenger rights Study, available [here](#).

<sup>59</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740097/IPOL\\_STU\(2023\)740097\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740097/IPOL_STU(2023)740097_EN.pdf) , last consulted on 07 December 2023.

<sup>60</sup> See for instance the Consumer Credit Directive (2008/48/EC) and new Directive 2023/2225 on credit agreements for consumers where mandatory standardized form with "key" precontractual information exists already.

Figures 1 & 2: examples of information document on insurance products



## BEUC Recommendations:

- **Amend Article 5 PTD and introduce an Annex III**, as proposed by the European Parliament Study on the performance of the Package Travel Directive to introduce Key Information Document and Visual Aids to make it easier for consumers to understand what is in their contracts in a simplified and more graphic way, and therefore to further understand their rights and obligations.

### 3.3. Consumer cancellation fee rules must be simplified (Article 12(1))

The current Article 12(1) of the PTD specifies that where passengers terminate their contract, they "[...]may be required to pay an appropriate and justifiable termination fee to the organiser."

The article also specifies that the contract "may specify reasonable standardised termination fees based on the time of the termination of the contract before the start of the package and the expected cost savings and income from alternative deployment of the travel services. If no standard termination fees are defined in the contract" [...] the amount of the termination fee shall correspond to the price of the package minus the cost savings and income from alternative deployment of the travel services. **The organiser should justify its termination fees only at the "traveller's request"**. BEUC considers that the calculation formula in Article 12(1) of the current PTD is too complex and unclear for passengers and should be amended.

While the time of termination and the actual costs seem to be reasonable as a basis for determining termination fees, the criterion concerning the income from alternative deployment of the travel services seems to be too subjective and unjustified. Moreover, when the contract does not provide for such standardised fees, it seems impossible for the consumer to know the eventual costs, given this complexity of the formula that includes undefined and subjective criteria.

**BEUC considers that all fees/costs/charges retained by the organiser should be transparent and justified without a request by consumers.**

The introduction of clear rules is essential because consumers can currently be required to pay disproportionate cancellation fees. For instance, the European Parliament study on the performance of the Package Travel Directive<sup>61</sup> revealed that online travel agents and other intermediates do not always comply with Article 12 of the PTD in charging appropriate cancellation fees. In some cases, they apply a 100% cancellation fee, even when cancellations are made far in advance<sup>62</sup>.

#### BEUC Recommendations:

- **Amend Article 12(1) PTD** to simplify the formula to calculate consumer cancellation fees.
- **Amend Article 12(1) PTD** to mandate organisers and where relevant retailers to justify upfront to consumers all fees/costs/charges retain, without consumers having to request.

## 4. Conclusions

BEUC overall supports the **proposal to amend the Package Travel Directive** and its objectives of bringing clarity and legal certainty for consumers and all players in the sector. The current proposal is a first step forward to ensure the PTD is still fit for purpose and to ensure that it is an efficient tool to protect consumers, including in crisis situations such as bankruptcies and large-scale disruptions.

However, some of the proposed changes, while going in the right direction, as drafted, do not go far enough (e.g. flexible limitation of prepayments – Article 5a) or be challenging to apply in practice (new definitions of LTAs – Article 3).

Other issues, despite an obvious need for further regulatory intervention, are completely missing from the proposal (Section 3), such as ensuring effective enforcement and redress, which is a recurring problem in the tourism industry as a whole. It is therefore essential that the European Parliament and EU Council of Ministers focus on effective enforcement and redress during the negotiation process.

Finally, the idea of the Commission's Passenger Mobility Package was to ensure that the lessons of the pandemic are learned and to ensure that the Package Travel Directive and the Passenger Rights Frameworks are future-proof. To achieve this important objective, **BEUC reiterates the fundamental importance of coherence between the Package Travel Directive and the Passenger Rights Regulations (especially for air travel).**

<sup>61</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740097/IPOL\\_STU\(2023\)740097\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740097/IPOL_STU(2023)740097_EN.pdf), See Point 1.2.4 and Section 3.4 on non-compliant market practices, last consulted on 07 December 2023.

<sup>62</sup> Idem.

EU policymakers must ensure that the Passenger Rights frameworks mirror the PTD by introducing statutory cancellation rights for consumers, and obliging airlines to protect themselves against insolvency, as has been the case for decades in the package travel sector. This is not only a question of consumer protection but also of fairness in the tourism sector<sup>63</sup>.

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<sup>63</sup> See the joint call from European consumers, industry, and insurance providers on urgent need for mandatory insolvency protection scheme in the airline sector. Letter sent to Commissioners Valean and Reynders on December 2022. Available [here](#).



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