



The Consumer Voice in Europe

Revision of the Package Travel Directive

European Parliament's first reading Resolution, March 12, 2014

BEUC position paper

Contact: **Nuria Rodriguez** – consumercontracts@beuc.eu

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BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND

Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • Fax +32 (0)2 740 28 02 • consumers@beuc.eu • www.beuc.eu
EC register for interest representatives: identification number 9505781573-45

Summary

- The principle of **minimum harmonisation should be the default rule**, with some issues subjected to **maximum harmonisation where possible and necessary**, without lowering the current level of national consumer protection.
- The definition of a '**package**' should include purchases made by **linked, online booking processes** where the **booking data** are transferred between the different service providers, not only when the name or the credit card details are transferred.
- Packages and assisted travel arrangements covering a period of **less than 24 hours** should be included in the Directive, not excluded as proposed.
- Traders selling **standalone services and retailers of linked travel arrangements (LTAs)**¹ should be obliged to provide the consumer with **relevant information** about the service sold, **confirm the booking** and be **liable for any errors** which occur in the **booking** process.
- Price increases after the conclusion of the contract should be subject to a clear **cap of 3%** of the price paid and be notified at least **40 days before** the date of departure. **No price increase** should be allowed for **late bookings** (4 months before departure). The consumer should not be required to pay any fee to benefit from eventual price reductions.
- Significant contractual changes should only be possible when they do not cause significant detriment to the consumer and should be fair and reasonable. Acceptance or refusal by the consumer should be **explicit** (not tacitly implied).
- Regarding the right of the organiser to terminate the contract due to an **insufficient number of participants**, the timeline for notification to the consumer must be no shorter than **20 days before departure** (preferably 30 days). The organiser should provide evidence for the termination and **the consumer should be compensated for any damage suffered**. The compensation should cover loss of enjoyment and the potential extra costs of rebooking a new holiday at an increased price.
- The consumer should have the **right to cancel the contract (and be reimbursed for the amount paid) without paying compensation** for reasons of *force majeure* (e.g. illness, accident, death in the family).
- The right of the consumer to a **price reduction** for a **lack of conformity** should be based on the **strict liability** of the organiser ("no-fault liability"); the **limitation of the obligation** to provide **care/assistance** (to 3 nights of accommodation and €100 per night) **should be deleted**.
- The **right to compensation should not** be excluded if the consumer does not **notify a lack of conformity on the spot**.
- The consumer should have the **right to withdraw from a distance selling contract within 48 hours of booking**.
- Where contracts are concluded **off-premises**, a **14 day right of withdrawal** should be introduced **as stipulated for package holidays in the previous doorstep selling directive (Directive 85/577/EEC)**.

¹ LTAs corresponds to the category assisted travel arrangements (ATAs) in the Commission proposal. BEUC support the Parliament's proposal to name it LTAs.

General considerations

BEUC has given a qualified welcome to the European Parliament's first reading Resolution of March 12, 2014².

It introduces some improvements and clarifications to the Commission proposal; however, our general assessment is that the Resolution does not add value to the current Directive.

Clarity and legal certainty have been further compromised as regards the scope. Moreover, the Parliament's adoption of the principle of maximum harmonisation as a default rule for most issues will reduce some national consumer rights, particularly in the field of national contract law.

Therefore, we advocate widening the scope and clarification in order to guarantee future-proof legislation which appropriately addresses consumer detriment in the travel sector.

We equally believe that the proposal should follow the principle of **mixed harmonisation** - minimum harmonisation should be the default rule and maximum harmonisation applied only **when possible and necessary**, without lowering current levels national consumer protections in particular with contract law issues. We urge legislators to improve the overall level of consumer protection.

Maximum harmonisation/mixed harmonisation

In contrast to the current Package Travel Directive, the European Parliament adopted the principle of maximum harmonisation as a default rule with only a few exceptions (e.g. liability of the organiser and/or retailer).

BEUC does not support such a radical "solution". Normally, maximum harmonisation should involve a higher level of protection than that adopted by the Parliament. Very few provisions improve the current (minimum harmonisation) Directive. In particular, the contract law provisions of the proposal would preclude and conflict with some more protective national contract law provisions.

We therefore advocate the principle of **minimum harmonisation as a default rule** with some issues subject to maximum harmonisation when possible and necessary without lowering the current level of consumer protection.

Scope and definitions

The amendments adopted by the Parliament do not improve the Commission proposal in relation to the scope. The Parliament adopted **too narrow** a definition of online click-through "packages"; only covering business models which involve a

² European Parliament legislative resolution of 12 March 2014 on the proposal for a directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC:
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2014-0222%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

transfer of personal data and contact details of the consumer, among the service providers in the chain (see amendment 44³).

Yet, such an approach is unsuited to a market in continuous movement and in which business models evolve fast. In addition, **discerning the transfer of personal data is not straightforward for the consumer** and traders could easily argue that their model does not involve any transfer of personal data.

In addition, the definition of online "linked travel arrangements" (no liability for the retailer) is very similar to the definition of online click-through packages (liability for the organiser). This creates **legal uncertainty** for both consumers and businesses which could be easily abused to circumvent the more protective provisions of the directive applicable to "packages".

The scope of the future directive needs to be **flexible and future-proof** in order to ensure that it does not become obsolete soon after its adoption as it must regulate an **evolving market**. To achieve this, the definitions of the scope should not focus on the business models traders decide to deploy, but rather the type of product sold and on the expectations of consumers when buying different travel elements for the same trip. It is a fact that travel services which are meant to be used one after the other in the same trip, should carry a higher level of consumer protection as the failure of one element can have a knock-on effect on the subsequent travel services booked.

It is this aspect which should drive the discussions on the needed extension of the scope of the current Directive.

Therefore, the **definition of online click-through packages** (purchased from separate traders) should encompass combined services for the same trip wherein **any booking data are transferred** among the different service providers. Moreover, the purchase of "packages" from a single point of sale (as in a physical agency) should be fully covered by the definition of "package" if the services are to be used for the same trip or holiday.

We **see no reason for the exclusion of combinations or trips covering a period of less than 24 hours**. As the duration is limited, the risk for the trader is lower but consumers could be confronted with the same problems as with any other package⁴.

As regards the **sale of standalone products**, we regret that the Parliament's Resolution did not endorse the amendment of its Transport Committee⁵ in this regard. Several of our members have reported problematic cases around the sale of standalone services particularly when carried out through intermediaries⁶.

³ Amendment 44 on article 3.2 b) v:...purchased from separate traders through linked online booking processes where the traveller's name **and other personal data, such as contact details, credit card details or passport details**, needed to conclude a booking transaction are transferred between the traders at the latest **24 hours after** the booking of the first service is confirmed.

⁴ For instance in Austria and Hungary, journeys covering less than 24 hours are included in the scope of the laws.

⁵ Amendment 107 of the Opinion of the Transport Committee:
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-524.534%2b03%2bDOC%2bPDF%2bV0%2f%2fEN>

⁶ July 2012: A consumer booked a flight from Innsbruck via Frankfurt and the USA to Peru in an Austrian travel agency. The travel agency did not inform the passenger that he had to register on line for a stay in USA (ESTA) even though it was only for transit. In Frankfurt she was required to present such registration (too close before departure of her flight) but she could not register anymore. Consequently she was denied boarding and lost about € 700 for the ticket. She went

Moreover, some Member States have **extended the scope** of their laws on package travel to cover sales of **standalone services**⁷.

Therefore, we believe traders selling standalone services should be required to provide certain relevant information and to confirm the bookings of the services sold. Should this not be the case, it should at least be clearly stated that member states can maintain or introduce national laws in this respect (see amendment 16 of the Parliament's Resolution).

Transparency and information requirements

Notwithstanding the essential need to bring legal certainty to the distinction between "packages" and linked travel arrangements (LTAs), traders should clearly indicate **their status and their liabilities vis-à-vis consumers** before a contract is concluded, in particular when offering LTAs (deprived of full protection) in line with article 17b) of the proposal⁸. Therefore we support amendment 121 adopted by the Parliament which complements this information obligation **by introducing a "sanction" for non-compliance**, namely that the consumer will benefit from the rights granted by sellers of "packages". This should have a dissuasive effect on misleading traders.

Regarding general **information requirements**, we regret that the Resolution of the Parliament did not impose certain information requirements **on the sellers of LTAs**, which were proposed in amendments 95 to 104 of the **Transport committee Opinion**⁹. Indeed, article 25 of the Commission proposal implies that the information requirements of The Consumers' Rights Directive (CRD), apply to retailers of LTAs. Yet, The Consumers' Rights Directive scope fully excludes all contracts made in the transport sector. To remedy this, the above mentioned amendments of the Transport Committee Opinion, introduce the relevant information requirements of the CRD to apply to all retailers of LTAs as well as the following sector specific information items:

- *where transport services are included, general information on passport and visa requirements, including approximate periods for obtaining visas, for all travellers including nationals of other member states, and information on health formalities;*

back home from Frankfurt to Innsbruck with a new ticket for about € 300,00. She had to get to Peru within one week to start a summer holiday-job, but tickets to Peru now were only available from € 2.000.-. So the consumer was confronted with a damage of about € 3.000.

⁷ E.g. Belgium, Norway, Germany. According to the Belgian law (16 February 1994) transposing the package travel directive, any intermediary offering stand-alone services has a number of (information) obligations vis-à-vis the consumer; it is also liable for the fulfilment of the contract concluded; it also has an responsibility of diligence and is obliged to provide assistance to the passenger in difficulty. In Germany, case law applies all the rules on package travel also to different standalone service like the rent of holiday homes.

⁸ Article 17 of the Commission proposal: "*Member States shall ensure that...the trader facilitating the procurement of assisted travel arrangements shall state in a clear and prominent manner:*

...
(b) *that the traveller will not benefit from any of the rights granted by this Directive exclusively to package travellers, but will benefit from the right to a refund of prepayments and, insofar as carriage of passengers is included, to repatriation in case the retailer itself or any of the service providers becomes insolvent.*"

⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-524.534%2b03%2bDOC%2bPDF%2bV0%2f%2fEN>

- *where necessary, information regarding possible risks at the place of destination or its immediate vicinity with regard to natural disasters, public health, public order, terrorism, etc..."*.

The introduction of those information requirements is also a corollary of amendment 122 of the first reading Resolution requiring traders of additional (linked) services to inform the retailer about *"the confirmed booking of additional travel services, which shall, when taken together with the first travel service booked, constitute a linked travel arrangement"*.

Transfer of the contract to another traveller (article 7)

Both the current Directive and the proposal allow the consumer to transfer the package to another traveller provided the traveller gives "reasonable notice" to the organiser. Yet, the Parliament's first reading Resolution sets a *maximum* period of 7 days to give such notice (amendment 82¹⁰).

It is unclear whether this means the traveller could give the notification earlier than 7 days before departure or if the 7 days is a cut off time limit. The latter interpretation seems more logical to the issue at stake (the trader's interest is to be notified as soon as possible). If the latter interpretation is confirmed, the laws of some member states which provide for shorter notification periods (e.g. in Germany the consumer can request a transfer until departure, in Greece the consumer can request a transfer 5 working days before departure) will be negatively affected.

Price increases (article 8)

The European Parliament has **partially improved the Commission proposal** by allowing the consumer to **terminate the contract** if price increases are higher than 8% while the organiser cannot pass on to the consumer increases which are lower than 3% of the price (amendments 86¹¹ and 87¹²). We also support the addition of the right of the consumer to be offered an **alternative package** following a price increase; this is provided for in the current Directive, but was unjustifiably deleted in the Commission proposal.

However, we **regret** that the European Parliament deleted the cap on price increases as supported by the Commission. The fact the consumer can terminate the contract beyond a certain increase or be offered an alternative package does not provide sufficient protection in many cases, in particular when combined with the (unfortunate) introduction of tacit implied acceptance of the consumer of contractual changes (including price increases).

¹⁰ Amendment 82 on article 7.1: *Member States shall ensure that a traveller may, after giving the organiser **or the retailer** notice on a durable medium **within a maximum of seven days** before the start of the package, transfer the contract to a person who satisfies all the conditions applicable to that contract.*

¹¹ *A price reduction pursuant to paragraph 1 of 3% or more shall be passed on to the traveller. A price increase pursuant to paragraph 1 may be passed on to the traveller only if the price changes by 3% or more. In the event of a price reduction of 3% or more, the organiser may charge a lump sum of €10 per traveller for administrative expenses.*

¹² ***If the price increase referred to in paragraph 1 exceeds 8% of the price of the package, Article 9(2) shall apply.***

Moreover, in certain countries no price increases on **late bookings** (2 or 4 months before departure, in Germany and Austria respectively) are allowed.

In relation to **price decreases**, the Parliament's text allows the organiser to charge the consumer a fee for them to benefit from a price decrease. We consider this clause to be **unfair** as it represents an imbalance between the rights and obligations of the parties. It is also problematic as regards the principle of full harmonisation since it is not present in the current Directive and is thus likely to negatively impact national laws.

Unilateral contractual changes (article 9)

BEUC underlines that the Commission proposal goes too far in allowing significant contractual changes before departure. In **some member states, contractual changes are only allowed in very limited circumstances**, if they do not represent a significant inconvenience to the passenger and/or if they are fair and not essential (e.g. Germany, Austria). Moreover, allowing (maintaining) a **tacit acceptance** of the consumer to significant contractual changes (article 9.2), would be **in conflict with many national laws** (due to the principle of full harmonisation) as the current Directive does not expressly allow for tacit agreement of the consumer. Should this be maintained, the Directive should at the very least establish a pre-contractual information obligation about such tacit agreement and the time after which the agreement will be deemed tacit should be specified.

Regarding **flight times**, amendment 91 of the Parliament's first reading Resolution implies that delays or changes of schedule **which differ by less than 3 hours** from the scheduled time of departure or return, are insignificant. This rule does not exist in the current Directive, nor in many member states laws; it is thus, **likely to weaken the position of passengers** in many countries (e.g. Germany).

Therefore, we believe the Directive should be more restrictive in allowing significant changes; those **should only be possible when they do not cause significant inconvenience to the consumer and should be fair and reasonable**. Acceptance by the consumer should be explicit, not tacit.

Termination by the consumer before departure (article 10.2)

We support the extension of the right of the consumer to terminate the contract if extraordinary circumstances occur at the place of destination. We, however **advise deletion** of the Parliament's additional condition of requiring "significant alterations to the contract" as this introduces a distinct, unrelated **element of uncertainty** which will **obstruct the exercise of this right**.

In addition, the consumer should have the **right to terminate the contract** (and reimbursed the amount paid) without paying compensation in **force majeure** situations (illness, accident...). Allowing the organiser to cancel the contract for reasons of force majeure (article 10.3 b)¹³, but excluding this possibility for the

¹³ The organiser may terminate the contract without paying compensation to the traveller if:...

consumer, is unfair and results in an imbalance between the rights and obligations of the parties due to the lack of reciprocity. Thus, the Directive should grant the consumer the same right to cancel the contract following extraordinary circumstances of the consumer¹⁴ (e.g. illness, accident, death in the family).

Termination by the organiser before departure (article 10.3)

BEUC considers the right of the organiser to terminate the contract until 20 days before departure without compensation should the minimum number of participants not be reached, as **outdated**. Contrary to the situation in the 1990s, current travel technologies and practices allow traders to easily **foresee and manage the risks** involved in their offers.

Yet, the European Parliament's Resolution regrettably did not change this rule substantially and so failed again to ensure a future proof framework. Moreover, the replacement of the current system – of obligatory notification 20 days before departure – by a three-tier system – depending on the duration of the trip – proposed by the Parliament¹⁵, will reduce consumer protection levels in many cases.

Therefore, if the legislator maintains the right to terminate the contract on those grounds the timeline for notification to the consumer must not be shorter than 20 days before departure (preferably 30 days), **the organiser should provide evidence for the termination and the consumer should be compensated**.

Liability for lack of conformity (article 11)

We regret that the Parliament rejected amendments on the **joint liability** of the organiser and retailer. While the application of the principle of minimum harmonisation to this issue is to be welcomed (amendment 102¹⁶), we consider the introduction of this principle as the only way and an obvious opportunity to **guarantee a future-proof framework** at European level. We contend that the new package travel directive should take the changes experienced in the market in recent years into account which render it more difficult for consumers to identify the liable party. The once clear distinction between organiser and travel agency has become blurred mainly due to the proliferation of online travel agencies and travel sites and platforms.

Moreover, the Resolution of the Parliament limits the liability of the organiser (or retailer) to situations where the lack of conformity was reported by the traveller and when remedying this lack is not *disproportionate*. Yet, these limitations of

(b) The organiser is prevented from performing the contract because of unavoidable and extraordinary circumstances and notifies the traveller of the termination without undue delay before the start of the package.

¹⁴ This right was proposed in an amendment finally rejected in the Plenary vote; it was also adopted in the Opinion of the Transport Committee (amendment 71).

¹⁵ Amendment 102: *(i) 20 days before the start of the package in the case of trips lasting more than six days, (ii) seven days before the start of the package in the case of trips lasting between two and six days, (iii) 48 hours before the start of the package in the case of one-day trips.*

¹⁶ *Member States may maintain or introduce provisions which provide that the retailer is also liable for the performance of the package and therefore bound by the obligations arising from this Article and point (b) of Article 6(2), Articles 12, 15(1) and 16.*

liability do not exist in the current Directive and thus are likely to entail a **reduction of consumer protection in many member states**.

Paragraph 5 of article 11 contains yet **another limit on the liability** of the organiser/retailer. **If the timely return of the travellers cannot take place due to extraordinary circumstances**, the right to (free) accommodation is restricted. Even though the Parliament Resolution allows for 5 nights of accommodation (3 nights in the Commission proposal) the current Directive does not foresee any limitation. In general, this restriction runs counter to the general obligation of care of the organiser and it has not been subject to impact assessment in the context of package travel.

Price reduction and compensation for damages (article 12)

The European Parliament did not substantially amend nor improve the Commission proposal in **article 12**. This is problematic as this provision **further limits the liability of the organiser** should there be a lack of conformity in some instances.

The proposal treats price reduction and compensation for damages by the same regime, namely by a fault-base regime. Yet, price reduction is typically a no-fault remedy, where the trader is strictly liable. As a result, many national contract laws (e.g. Luxembourg, Germany, Austria) will be negatively affected when combined with the principle of maximum harmonisation.

Moreover, the proposal also allows the organiser to limit its liability in the **contract terms** (article 12.4). Yet, this limitation of liability does not exist in the current Directive, nor in the laws of many member states (e.g. France, Spain, Hungary, Sweden and Latvia).

However we do support the new amendment to article 12.6 extending the minimum **prescription period** for introducing claims from 1 to 3 years¹⁷. This is particularly important for cross-order complaints to ensure the consumer does not lose the right to introduce complaints. Moreover, it should be added that the prescription period is to be suspended during and until an eventual out of court alternative dispute resolution (ADR) procedure (ADR) ends.

Relationship with the Consumers Rights Directive (CRD)¹⁸

BEUC welcomes Article 25 of the Commission proposal as it incorporates a number of consumer rights and safeguards which were excluded from the Consumers Rights Directive (CRD) for package travellers:

- safeguards against internet traps: an obligation on the trader to explicitly inform the consumer of the obligation to make a payment¹⁹;

¹⁷ We assume that the prescription period addressed in this article refers to the period to take a civil action in court. Yet, it could be also interpreted as referring to the period to file a complaint against this organiser/retailer. This should be clarified.

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and the Council.

¹⁹ Article 8.2) of the CRD.

- prohibition on excessive fees for using electronic payment means (credit card extra charges)²⁰;
- right of the consumer to contact the seller by telephone at the basic rate (prohibition of high rate telephone lines)²¹;
- Prohibition of pre-ticked boxes for additional services on websites or forms²².

We also support amendment 126²³ of the Parliament's Resolution setting up some formal requirements for the conclusion of contracts (packages and LTA) echoing the CRD. However, other protective provisions of the CRD are excluded, in particular the right of withdrawal.

Regarding LTAs, according to paragraph 2 of article 25 of the proposal²⁴, LTAs would be fully covered by the CRD as this paragraph (only) excludes packages from the scope of the CRD. We support this coverage. Yet, as mentioned above, the CRD itself excludes transport contracts (and so many combinations facilitated by sellers of LTAs) from its scope and the right of withdrawal (when contracts are concluded at a distance and off-premises).

Thus, it should be clarified that in application of the principle of the *lex specialis*²⁵, **the package travel proposal overrides the exclusion of transport contracts of the CRD.**

In relation to contracts **concluded at a distance** (internet) we advocate a **right of withdrawal** for early bookings made at a distance (e.g. online), as a solution which would not interfere in the capacity policy of the service providers. At the least, consumers should be allowed to cancel the contract within 48 hours of the booking. As regards **off-premises contracts**, the right of withdrawal was inappropriately excluded in the Consumer Rights Directive for package contracts (the Directive on door-to-door selling included this right, also for package travel) and so should be reintroduced in the new Package Travel Directive. The rule in the CRD should apply to packages and LTAs i.e. **14 days after the conclusion of the contract**²⁶.

END

²⁰ Article 19 of the CRD.

²¹ Article 21 of the CRD.

²² Article 22 of the CRD.

²³ *1. Member States shall ensure that all contracts covered by this Directive are in plain and intelligible language and, insofar as they are in writing, legible. The language of the contract shall be the same as that of the pre-contractual information;*
2. The contract shall be provided on a durable medium. With respect to off-premises contracts, the contract shall be provided also on paper; *3. If the contract is concluded by telephone, the trader shall confirm the offer to the traveller on a durable medium and the traveller shall only be bound when he signs the contract or sends his written agreement on a durable medium.*

²⁴ Article 25.5 of the proposal amends the CRD by excluding (only) "packages" from the scope of the CRD.

²⁵ Article 3.2 of the CRD: If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors.

²⁶ Article 9 of the Consumer Rights Directive.