

BEUC Comments on the Package Travel Directive Roadmap and inception impact assessment

The Directive on package travel and linked travel arrangements (hereafter 'PTD') is an important consumer protection instrument as it includes rules on consumer protection in case of insolvency of a tour operator and key consumer rights in case of cancellation for unavoidable and extraordinary circumstances as well as clear liability rules. However, almost two years after its entering into force, the Thomas Cook bankruptcy in 2019 and the COVID-19 pandemic have shown shortcomings of the current framework that need to be addressed to ensure that consumers are effectively protected and their confidence in the tourism industry restored in the post-COVID-19 era.

BEUC welcomes the Commission Roadmap and plans to assess in 2022 whether the Package Travel Directive is still adequate and up to date to guarantee a high level of consumer protection.

BEUC supports the approach taken by the Commission in the upcoming review of the Package Travel Directive and the Commission's preparedness to draw the lessons from the successive crisis to ensure that consumers benefit from robust and comprehensive protection, especially in times of crisis. *In particular, BEUC supports:*

- The eventual further limitation of pre-payments to be made by package travellers, avoiding/limiting the risk for travellers having to wait for refunds
- The establishment of clear rules on voluntary vouchers and clarifications or additional rules on refunds where packages are cancelled due to unavoidable and extraordinary circumstances, including with regard to insolvency protection,
- The call to have additional provisions on the national insolvency protection systems, and the possibility to create an EU insolvency back-up fund,
- The potential creation of a special fund(s) at national or Union level to cover refunds in times of crisis without requiring the insolvency of the relevant package organisers,
- The need to establish rules on refunds from providers of travel services (e.g., airlines) to package organisers,

However, we think that additional elements should be assessed in the upcoming revision of the Package Travel Directive, namely:

- A review of the PTD must focus on strong measures to better enforce consumer rights, which, as the COVID-19 pandemic has demonstrated, is a significant weakness in EU legislation on travellers' rights (e.g., requiring mandatory participation to Alternative Dispute Resolution, stronger enforcement provision etc.).
- A review of the insolvency dispositions of the Directive is necessary to make sure that voluntary vouchers, but also pending reimbursements are covered against the insolvency of the tour organiser (i.e., the scope of the insolvency protection rules should be reviewed).
- Common minimum criteria should be established in the Directive itself to design national insolvency protection schemes. Experience has shown that numerous insolvency protection mechanisms are far from sufficient and effective to cover all consumer claims. The report on the implementation of the PTD pointed out that potential non-compliance, especially in relation to insolvency provisions, was present in most Member States and, that this failure to transpose correctly jeopardises the effectiveness of the insolvency protection schemes. A review of the current drafting and the establishment of common criteria are therefore necessary.
- It should be clear, that any derogatory rules for crisis situations such as amendments of the legal timeframe to reimburse consumers or the possibility to impose vouchers is incompatible with the objective of ensuring strong consumer protection. It is precisely in times of crisis that consumers must be protected, and their rights respected.
- A growing number of consumers are using online booking intermediaries (ex: online agents, booking platforms, ticket brokers etc) to book standalone tickets and package holidays. However, neither the Package Travel Directive, nor the passenger rights regulations deal with intermediaries and do not establish clear responsibilities for them. A review of the PTD should be an opportunity to introduce clear liability rules for online booking intermediaries regarding assistance, information, and refund obligations to consumers. The COVID-19 crisis has demonstrated and highlighted many problems related to online intermediaries. As a consequence, consumers were caught between different actors and had to wait for months to be reimbursed. This can be solved in the PTD and other passenger rights regulations by introducing clear liability rules for the different actors of the travel supply chain.
- A clarification of the rules on the right of withdrawal in case of unavoidable and extraordinary circumstances is necessary. Article 12(2) PTD that travellers have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the place of destination or in its immediate vicinity. This provision was subject to numerous disputes during the COVID-19 crisis as the Directive does not specify a specific time frame. During the pandemic, some traders used this lack of clarity and refused to grant consumers with a full reimbursement they were/are entitled to, considering that their withdrawal requests based on official travel warnings were too early. It would be a significant improvement for consumers if there was a defined period in the Directive e.g., of 30 days for the declaration of withdrawal based on the unavoidable and extraordinary circumstances. Furthermore, it should be clear in the Directive, that any official statement recognised as such in the country of residence of the consumer or in the country of destination of the package, discouraging or prohibiting consumers from

traveling must be considered admissible and sufficient evidence to benefit from the protection granted by Article 12(2) PTD, namely, a full refund of the package, without charge, penalty or fee.

- During the pandemic, numerous BEUC members reported that consumers who concluded a cross-border contract with a tour operator located in an EU Member State which authorised the imposition of vouchers could not get reimbursed, in violation of the Package Travel Directive as transposed in their country of residence. Such disparity of treatment and the issues of applicable law should be tackled in case of review.
- Contractual obligations resulting from link travel arrangements should be established/defined in the reviewed PTD. Furthermore, standalone products sold by tour organisers and agencies should also be subject to an obligation of information under the Package Travel Directive.
- A review of the Package Travel Directive must be done in a consistent manner with the other passenger rights regulations, especially the Air Passenger Rights Regulation. For instance:
 - o *First*, it is more important than ever that consumers are protected in case of airline insolvency. This has been a long-standing demand of BEUC, but the crises and the massive/unprecedented financial aid allocated by Member States to airlines - more than €30bn according to the last Court of Auditors report on Air Passenger Rights during the COVID-19 pandemic¹ - show that consumers are now even more exposed to airline bankruptcies. It will therefore be essential in the event of a review to ensure that rules on this obligation to be insolvency protected are present in both the PTD and the Air Passenger Rights Regulation, as proposed by the European Parliament in its 2014 position², by the Commission in its Sustainable and Smart Mobility Strategy³, and by the new Court of Auditors report on Air Passenger Rights during the COVID-19 pandemic⁴.
 - o *Second*, the Package Travel Directive provides that consumers may cancel their package and receive a full refund at no cost, "*in the event of unavoidable and extraordinary circumstances*" (Article 12(2) PTD). However, consumers' right to a full reimbursement, if they cancel their flights due to unavoidable and extraordinary circumstances does not exist in the APR Regulation where consumers cannot benefit from such reimbursement. In the airline sector, consumer rights in such circumstances are governed by the terms and conditions of the ticket and/or the goodwill of the airlines. Of course, this has greatly affected consumers during the pandemic. Many lost their money because they complied with the recommendations of the national authorities (ban of travel to certain destination, or dissuasive/negative travel advice), but their flights were maintained by the airlines. Moreover, this creates a disparity between consumers who, depending on the type of service booked (Package vs single air service), have / have not the right to be reimbursed despite boarding the same plane. For BEUC, to be consistent, travellers' rights to cancel the journey in case of "extraordinary circumstances" and to be fully reimbursed should be introduced in the APR Regulation as it exists in the PTD.

¹ https://www.eca.europa.eu/Lists/ECADocuments/SR21_15/SR_passenger-rights_covid_EN.pdf

² https://www.europarl.europa.eu/doceo/document/TA-7-2014-0092_EN.html?redirect

³ <https://ec.europa.eu/transport/sites/default/files/legislation/com20200789.pdf>

⁴ https://www.eca.europa.eu/Lists/ECADocuments/SR21_15/SR_passenger-rights_covid_EN.pdf

BEUC will soon publish a position paper on the revision of the Package Travel Directive and would be glad to contribute to the upcoming public consultation and impact assessment.

BEUC Publications related to the Package Travel Directive:

- BEUC's [position](#) on travellers' rights in the COVID-19 context, published in April 2020.
- A Coordinated Strategy for the Exit and Recovery of the Aviation Industry from the COVID-19 Crisis, BEUC's [contribution](#) to the Roundtable, published in August 2020.
- [COVID-19 and EU Travellers' Rights](#) - Evaluation of the Member States Implementation of the EU Recommendation on vouchers, published in December 2020.

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