

The Consumer Voice in Europe

THE PACKAGE TRAVEL DIRECTIVE :

BEUC's Position on how to regain consumers' trust in the tourism sector



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Why it matters to consumers

The Directive on package travel and linked travel arrangements (hereafter 'PTD')¹ is an important consumer protection instrument, particularly due to the rules regarding protection in the case of insolvency of a tour operator. This Directive also provides for key consumer rights in case of cancellation for unavoidable and extraordinary circumstances. However, three years after its application, the Thomas Cook bankruptcy in 2019 and the COVID-19 pandemic have revealed shortcomings in the current framework that need to be corrected to ensure that consumers are still effectively protected as well as to restore their confidence in the tourism industry in the post-COVID-19 era.

Summary

In November 2020, the European Commission adopted its 'New Consumer Agenda',² which indicated that a thorough analysis of the Package Travel Directive (PTD) will be conducted by 2022 based on the implementation report published in February 2021³. The objective of this assessment is to establish whether the current protection framework provided by the Directive is still up to date.

BEUC agrees that the current Directive needs to be reviewed in view of addressing several shortcomings, which for example led to important differences in its interpretation and enforcement during the Thomas Cook bankruptcy and the COVID-19 pandemic⁴. This was the case, *inter alia*, regarding the coverage and scope of insolvency protection schemes.

The review of the PTD must pursue the objective, as indicated in the Inception impact assessment of the Directive⁵ to ensure that consumers benefit from a high level of consumer protection – even in crisis time and must notably focus on the introduction of strong measures to enforce consumers' rights, which, as the COVID-19 pandemic has further demonstrated, is a significant flaw in the EU travellers' legislations. In addition, the review of the PTD will also be an opportunity to tackle structural problems in the tourism industry such as full the pre-payment practice that has shown its limits during the pandemic.

Finally, BEUC members have highlighted problems not necessarily related to ongoing crisis, but which still need to be addressed by the review of the Directive, such as the complexity of certain definitions like 'Link Travel Arrangements' (hereafter 'LTAs').

¹ [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.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0696&qid=1605887353618>

³ [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.

⁴ See BEUC [Position paper](#) on travellers' rights in the COVID-19 context, April 2020.

⁵ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13117-Package-travel-review-of-EU-rules_en

BEUC recommendations:

1. A strong focus on enforcement and consumer redress with, notably a mandatory participation in Alternative Dispute Resolution (ADR) schemes of tour organisers, retailers, and online intermediaries.
2. A review of the insolvency dispositions of the Directive is necessary to make sure that all vouchers are covered against the insolvency of the tour organiser. Similarly, reimbursement claims for refunds where the cause of cancellation is not insolvency e.g., due to unavoidable and extraordinary circumstances, should also benefit from the protection afforded by the PTD.
3. Common minimum criteria to design national insolvency protection schemes should be introduced.
4. Any proposal to incorporate derogatory rules for a crisis situation such as amendments of the legal timeframe to reimburse consumers or the possibility to impose vouchers should be rejected. It is precisely in times of crisis that consumers must be protected, and their rights respected.
5. Maintain the obligation to subscribe to insolvency protection mechanisms.
6. Clear liability rules should be introduced for online booking intermediaries regarding assistance, information, and refund obligations to consumers.
7. A clarification of the rules on consumers' right of withdrawal in case of unavoidable and extraordinary circumstances should be introduced in the revised PTD.
8. 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 authorized mandatory 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.
9. Contractual obligations resulting from linked travel arrangements should be established 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.
10. A review of the PTD must be done in a consistent manner with the other passenger rights regulations, especially the Air Passenger Rights Regulation (ex : introduction of an insolvency protection in the airline sector, introduction of a passenger rights to cancel its journey in case of extraordinary circumstances and to be fully reimbursed in the APR Regulation as in Article 12(2) PTD).
11. Cooperation between tourism stakeholders should be increased and formalised to facilitate and make enforcement more efficient.

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1. Strong enforcement and redress provisions are needed

The Package Travel Directive contains two articles related to enforcement. Article 24 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 penalties provided for shall be effective, proportionate and dissuasive”.

From BEUC’s perspective, these provisions are vague and lead to a fragmented landscape within the EU.

The ‘New Consumer Agenda’⁶ acknowledges that the enforcement of travellers’ rights has been problematic during the COVID-19 pandemic. To date, to our knowledge, at least one Member State⁷ is still subject to the European Commission’s infringement procedures for implementing national legislation in contradiction with the PTD. Such national unlawful legislations either amended the mandatory 14 days legal time frame to reimburse consumers in cash or authorised traders to impose vouchers on consumers.⁸

However, as rightly pointed out by the Consumer Agenda, “EU consumers rightly expect transport undertakings and tour operators to respect their right to a full refund of pre-payments”.⁹ Furthermore, the report on the application of the Package Travel Directive highlights that 40% of travellers 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 complaints¹⁰.

To remedy the lack of enforcement and redress, BEUC considers that significant improvements to the Directive’s provisions are needed:

1.1. Mandatory participation in Alternative Dispute Resolution (‘ADR’) schemes

As noted in the report from the Commission on the application of the PTD Directive, tour operators’ participation in ADR schemes is fragmented and limited.¹¹ This means that consumers do not have a fast and inexpensive way to obtain redress from tour operators. Therefore, BEUC asks for the creation of one independent sectorial ADR in every EU Member State and mandatory participation for tour organisers, retailers and online intermediaries. Furthermore, ADR decisions should be binding on traders. The creation of such a mandatory scheme coupled with close monitoring of compliance of the respect for deadlines in deciding cases by the competent authorities in charge of supervising ADR systems will provide travellers with an efficient enforcement alternative to court actions.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0696>

⁷ Slovakia. For more detail, see European Commission Press Release, “[Refund for cancelled travel during the pandemic: Commission decides to refer SLOVAKIA to the Court of Justice](#)”, (INFR(2020)2250), published on 9 June 2021.

⁸ See [BEUC report](#) : “COVID-19 and EU Travellers’ Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers”, December 2020.

⁹ See point 2 of the “New consumer Agenda”.

¹⁰ [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.

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

Naturally, these decisions could be subject to recourse 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 Directive¹² - most ADR bodies are not specialised in travel services. This will provide consumers with a clear and easily accessible contact point if things go wrong and cannot be resolved with the tour operator.

Several examples of mandatory ADR schemes in the tourism sector already exist and have been considered by the Commission's ADR Report as good models:

In *Germany*, a public ADR body has been set up for consumer disputes in the airline sector. National legislation requires airlines to participate in ADR procedures before such body, unless they join a certified private ADR entity. Legislation has encouraged airlines to become members of an association operating an ADR body in the passenger transport sector. Today, 44 of the association's members are airlines. By joining the association, airlines accept the binding nature of the rules of procedure of the ADR entity. In 2018, the ADR body reached a settlement rate of 86% for disputes between airlines and consumers.¹³

In *the Netherlands*, the Foundation of Consumer Dispute Boards (*Stichting Geschillencommissies voor Consumentenzaken*) manages a general council and more than 50 sector dispute resolution councils. The rules of procedure of the sector councils are agreed upon by the trade association and the consumer organisation of the relevant retail sector. As members of their trade association, merchants are required to participate in the proceedings before the sector council and to comply with its decisions. Compliance with these conditions is furthermore ensured by a guarantee system managed by the professional association: if the board of directors orders the professional to pay a sum of money to the consumer and the professional fails to do so, the consumer can claim this sum directly from the professional association¹⁴.

In other sectors, such as energy, a number of Member States have made it compulsory for operators to participate in ADRs through national legislation¹⁵.

In the airline sector, the last DG Move study on the protection of EU air passenger rights published in January 2020¹⁶ 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).¹⁷

¹²https://ec.europa.eu/info/sites/info/files/com_2019_425_f1_report_from_commission_en_v3_p1_1045545_0.pdf

¹³ See the Conciliation Body for Passenger Transport's ('Schlichtungsstelle für den öffentlichen Personenverkehr – söp') 2018 annual activity report, available at https://soep-online.de/assets/files/14.03_soep_Jahresbericht%202018.pdf, p. 16.

¹⁴ [Report](#) from the Commission to the European Parliament and the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes - COM/2019/425 final – Box 3.

¹⁵ 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.

¹⁶ https://ec.europa.eu/transport/themes/passengers/news/2020-01-13-air-passenger-rights-study_en

¹⁷ See point 4.81 and point 6.34 of the study on the protection of EU air passenger rights.

These examples should serve as a basis for creating national ADR bodies to resolve, 'out-of-court', disputes related to package travel in an efficient and effective way.

Furthermore, to improve the efficiency of 'out-of-court' settlements, **we recommend expanding the applicability of enforcement decisions taken by the authorities**, as already exists in the airline sector in Canada¹⁸. Decisions of enforcement authorities issued after an individual complaint should be automatically applicable to all other travellers on the same package and who have the same cause for action (i.e., same cancellation of package or reimbursement issue).

1.2. Clear and strict deadlines to deal with consumer complaints should be introduced.

Article 7 of the Package Travel Directive only requires tour organisers or retailers to provide travellers 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, travellers 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 be easily solved by introducing strict deadlines in the Directive to deal with travellers' complaints. This period should not be longer than two weeks. 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.

1.3. Truly dissuasive sanctions should be defined

Under the current drafting of the Package Travel Directive, sanctions for infringements need to be "*effective, proportionate and dissuasive*"¹⁹. This resulted into a very fragmented landscape across Member States, sanctions are rarely imposed, and the amounts do not have the desired dissuasive effect on infringing organisers.

BEUC calls for the harmonisation of a framework for deterrent sanctions for infringing the Package Travel Directive, which should be based on the percentage of the professional's annual turnover²⁰. Furthermore, as a matter of transparency, enforcement authorities could be required to make public the information about imposed sanctions.

¹⁸ Canada Transportation Act - s86(1)(h)(iii.1)

¹⁹ Article 25 PTD.

²⁰ Similar constructions have been already applied in the General Data Protection Regulation (Regulation (EU) 2016/679) or more recently in the proposal for the directive on better enforcement and modernisation of EU consumer protection rules (COM(2018) 185 final).

1.4. Global compliance of the sector with travellers rights needs closer monitoring

BEUC encourages the Commission and national enforcement authorities responsible for the application of the Directive to work closely to ensure that the tourism industry is fully complying with consumer rights as established in the Directive.

Given the lack of enforcement of travellers' legislation and the numerous unfair commercial practices observed in the tourism sector - even before the COVID-19 crisis - we encourage the European Commission to closely monitor the sector's compliance with travellers' rights and, where necessary, to launch with the competent authorities, coordinated enforcement actions using the new prerogatives and powers granted by Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws ('CPC-Regulation')²¹.

This would be fully in line with the objectives of the New Consumer Agenda,²² which specifies that the enforcement priorities of the CPC Authorities will focus on the impact of COVID-19 on consumer rights and notably travel issues.

BEUC recommendations:

- The creation of one independent sectorial ADR in every EU Member State. Tour organisers, retailers and online intermediaries should be required to participate in ADR schemes and their decisions should be binding on them.
- Decisions of enforcement authorities issued after an individual complaint should be automatically applicable to all other travellers on the same package and who have the same cause for action (i.e., same cancellation or reimbursement).
- Clear and strict deadlines for dealing with consumer complaints should be introduced in the Directive. Such an obligation should be enlarged to online intermediaries and should not exceed two weeks. Appropriate sanctions such as periodic penalty payments should be introduced if traders do not comply with the deadlines.
- Truly dissuasive sanctions, based on the percentage of the trader's annual turnover, should be introduced.
- The Commission and national enforcement authorities should closely cooperate to monitor that the sector is complying with travellers' rights as defined in the Package Travel Directive and launch, where necessary, coordinated enforcement actions based on the new CPC Regulation.

²¹ [Regulation \(EU\) 2017/2394](#) of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

²² See point 3.3 of the "New consumer Agenda."

2. Re-consider the 'full pre-payment' business model of the tourism sector

The successive Thomas Cook and COVID-19 crises have clearly highlighted the need for the package holiday sector to review its business model, one based on consumers' full (and far in advance) pre-payments.

This business model is both precarious and non-resilient. This is because the risks of insolvency are high and the insolvency funds could be, as specified in the report on the application of the PTD, not fully effective and insufficient to protect travellers (i.e., Thomas Cook Bankruptcy). Consequently, BEUC welcomes that the Inception impact assessment of the Package Travel Directive considers further limiting pre-payments.²³

In this regard, the revision of the Directive should be an opportunity to introduce clear and harmonised provisions on payment modalities (such as a maximum percentage of pre-payments that could be requested from consumers) as well as payment schedules.

As an example, in Germany, the Supreme Court²⁴ ruled that in the package travel sector, pre-payments must be limited to 20% of the full price at the time of booking, while the rest is due not more than 30 days before the beginning of the trip. BEUC recommends to draw inspiration from the German experience and introduce in the Directive, for example:

- Maximum 20% of the price of the package should be paid by consumers at the time of booking and,
- The remaining 80% should be paid at the start of the package, or at the earliest one week before the start of the package.

This would:

- Limit the risk of financial loss for consumers in case of organiser insolvency and avoid the risk for travellers of not being reimbursed and having to struggle for months to receive their full refund in case of massive new travel disruptions and,
- Reduce the difficulties to find insurers willing to operate in the package travel sector²⁵. If consumers' pre-payments are limited, less expensive insolvency protection will be needed. Tour organisers and travel agencies will only have to insure themselves against insolvency with significantly lower insurance premiums and, insurers will be less reluctant to cover big operators.

Finally, our German member *Verbraucherzentrale Bundesverband* published in March 2021²⁶, a study on a possible review of the pre-payment business models of German tour organisers. This study shows that a further limitation of prepayment in the package travel Sector is both feasible and viable for all stakeholders in the tourism industry.

²³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13117-Package-travel-review-of-EU-rules_en

²⁴ 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>

²⁵ 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.

²⁶ <https://www.vzbv.de/pressemitteilungen/vorkasse-bei-flug-und-reise-abschaffen>

BEUC recommendations:

The Commission, in its forthcoming impact assessment of the PTD, should examine the possibility of introducing strict and harmonised limitations on pre-payments by holidaymakers. In doing so, the Commission should consider the potential benefits for consumers and for making the package travel sector more resilient to future crises, in conformity with the objectives of the new Sustainable and Smart Mobility Strategy. The Commission should also assess any potential impact of this proposal on competition in the package travel sector in the different EU Member States and on package travel prices.

3. Clarifying the insolvency protection provisions of the Package Travel Directive

3.1. Protection against the insolvency of tour operators : a key element to regain consumers' confidence after the COVID-19 crisis

Article 17(1) of the Package Travel Directive states that, "Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on the behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser insolvency [...]".

After the pandemic outbreak, several industry stakeholders proposed to remove the obligation established by the Directive to subscribe to a mandatory insolvency mechanism, arguing that no other sector guarantees such protection to consumers.²⁷ The industry proposed replacing this mandatory protection with optional travel insurance to be paid for by travellers. For BEUC, any proposal to remove the obligation to subscribe to mandatory insolvency protection schemes should be rejected, for the following reasons.

First, the insolvency protection mechanism in the package travel sector goes hand-in-hand with consumers' pre-payments. This protection is the very essence of the Package Travel Directive and removing it would be contrary to the principle of Article 12 and 169 Treaty on the Functioning of the European Union to promote the interests of consumers and to ensure strong consumer protection. Moreover, such a proposal would be contrary to the statements of the New Consumer Agenda and the general report on the application of the PTD, which states that the review will be an opportunity to verify that the Directive, "is still fully up to the task of ensuring robust and comprehensive consumer protection at all times²⁸ [...]" and that, "the upcoming analysis "planned for 2022, will not aim to lower consumer protection. On the contrary [the objective will be to] assess how the high-level protection provided by the PTD can be ensured [...]"²⁹.

²⁷ See [minutes](#) of the 4th meeting of the PTD stakeholder expert group (24.11.2020).

²⁸ See point 2 of the "New consumer Agenda".

²⁹ [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 6.

Second, when consumers enter into a package travel contract, they often agree to pay more compared to organising the travel themselves, precisely to benefit from the increased protection granted by the PTD, notably regarding the protection against the risks of organisers' insolvency.

Third, BEUC members have repeatedly pointed out during the COVID-19 crisis that travel insurances, bought by consumers and proposed by the industry as an alternative to the insolvency protection obligation of the PTD, are ineffective because they exclude the risks of pandemics from their policies.

For example, our Belgian member *Test-Achats/Test-Aankoop*³⁰ indicated that most insurers do not cover cancellations related to travel bans from the Belgian authorities. Other insurers specify in their terms and conditions that the coverage only applies if the disease is the only cause of the cancellation of the package. *De facto*, this excludes the majority of situations and is not fit for purpose.

Our UK member, *Which?* recently published an article³¹ indicating that none of the travel insurance policies offered to consumers covered all the possible reasons for trip cancellation related to COVID-19. Our member's study shows that the new insurance policies proposed to travellers are less protective than in March 2020, at the start of the pandemic (more exemptions etc.) and reported the situation to the UK regulator.

Furthermore, already in 2019, the European Insurance and Occupational Pensions Authority (EIOPA) published a study identifying a lot of consumer protection problems with travel insurance policies. Among others, they present very high commission fees, poor value for money, useless products, many contractual exclusions, inadequate cover etc. As a result of those findings, EIOPA issued a formal warning to the travel insurance industry in response to the issues identified.³²

Thus, a review of the Directive excluding the mandatory protection against insolvency is neither desirable for consumers, who will lose important protection, nor for the package travel industry, since this would divert consumers away from tour operators towards other individual services that consumers would compose themselves.

Instead, to regain consumer confidence post-COVID-19, it will be essential to maintain the strong consumer protection granted by the PTD by, introducing important limits on the maximum pre-payments that can be requested from consumers before the start of a package tour,³³ by strengthening existing insolvency protection mechanisms, and by ensuring compliance with the rules.

³⁰ <https://www.test-achats.be/argent/assurances-assistance-voyage/dossier/coronavirus>

³¹ <https://www.which.co.uk/news/2021/04/coronavirus-what-it-means-for-your-travel-insurance/>

³² https://www.eiopa.europa.eu/content/eiopa-identifies-consumer-protection-issues-travel-insurance-and-issues-warning-travel_en

³³ See our proposals on point 2 of the Position Paper.

3.2. Clarification of the insolvency dispositions of Article 17(1) PTD

The COVID-19 crisis has revealed several shortcomings regarding the insolvency protection provisions of the PTD.

Because of the wording of the Article 17(1), of the Recital 39 and the leeway granted to Member States during the transposition of the PTD, there are divergent insolvency protection systems, resulting in fragmented solutions and interpretations across EU Member States and the travel industry.

Article 17(1) specifies that, "Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on the behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency [...]". Recital 39 of the Directive further details that "[such] protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed".

However, the freedom given to Member States at transposition time, has led to a heterogeneous situation across the EU. As a result, different systems are in place within the EU (regarding funds, insurance, or a combination of both). During the pandemic, due to the large amount of consumer claims for reimbursement, many insolvency protections schemes would not have been sufficient without Member States' financial support. This situation already arose during the Thomas Cook bankruptcy in Germany where the insurance policy used to fulfil the obligations of the Directive was capped and far from sufficient to cover all consumers' claims³⁴.

Furthermore, uncertainties have emerged in recent months as to whether situations such as pandemics were covered by this insolvency protection mechanism or not because of the wording of Recital 40. The latter indicates that insolvency protection schemes should not have taken into account "highly remote risk".³⁵ As a result, several Member States have had to clarify in their national emergency measures during the pandemic that voluntary vouchers accepted by travellers and consumer claims for reimbursement were also protected against insolvency³⁶.

A review of the PTD would be an opportunity to make existing insolvency protection schemes more robust to cope with the consequences of situations like the COVID-19 pandemic and to make them more resilient. In addition, a review of the Directive would be an opportunity to ensure that all European consumers benefit from a broader scope of financial protection of pre-payments, including for cancelled travel in extraordinary circumstances such as the COVID-19 pandemic. This should also apply to all vouchers accepted by consumers.

³⁴ [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.

³⁵ Recital 40 PTD.

³⁶ See [BEUC report](#) : "COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers", December 2020.

3.3. The scope of the Directive's insolvency protection should be extended

During the COVID-19 crisis, another important issue raised by BEUC members was whether package tours cancelled due to the pandemic and not covered by a voucher would be protected against insolvency. Many consumers found themselves in a situation where the organiser did not issue a voucher but only delayed their monetary reimbursement. The current Directive is silent on this point.

In its EU Recommendation on vouchers,³⁷ the European Commission clarified the situation by stating that pending monetary reimbursements do not benefit from the insolvency protection granted by the PTD. To remedy the situation during the pandemic, the Commission encouraged Member States to use, for instance, the flexibility granted by the State aid Temporary Framework to extend the current protective mechanisms to cover vouchers and pending consumers' monetary refunds for cancelled package holidays because of the pandemic. However, to our knowledge, following the Recommendation, only Finland introduced a national emergency measure doing so³⁸.

The review of the Directive should correct this problem. This lack of protection creates a paradoxical situation because consumers who wish to enforce their rights to monetary reimbursement, provided for in Article 12(4) of the PTD, are less protected against insolvency than consumers who have accepted or had a voucher imposed on them.

Therefore, we encourage the European Commission to amend Article 17 of the Directive to ensure that all European consumers benefit from stronger financial protection. The revision should ensure that consumers' refund claims are also protected in cases where package travel contracts are terminated on grounds not related to an organiser's insolvency, e.g., due to unavoidable and extraordinary circumstances. Furthermore, the protection should cover monetary refunds, but also all vouchers offered to travellers.

3.4. Set-up minimum criteria for insolvency protection schemes

The Thomas Cook bankruptcy and the COVID-19 pandemic have demonstrated that several insolvency protection mechanisms might have been far from sufficient and effective to cover all consumer claims. The report on the implementation of the PTD pointed out that potential non-compliance, particularly in relation to insolvency provisions, was the case in most Member States, and that this failure to transpose correctly jeopardises the effectiveness of the insolvency protection schemes³⁹.

As currently drafted, the dispositions of Article 17 of the Directive allowed Member States to introduce different types of insolvency protection mechanisms: insurance policies, funds, or a combination of both. As a result, in Germany, the insurance policy used by Thomas Cook to fulfil its obligations under the Directive was capped and, in the end, was clearly insufficient to meet the different obligations of reimbursement and repatriation imposed in the Directive after its collapse.

³⁷ [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

³⁸ See [BEUC report](#) : "COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers", point 3.3, December 2020.

³⁹ [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.

Furthermore, our national members have reported that two years after the Thomas Cook bankruptcy, many consumers have still not been reimbursed by the insolvency protection mechanism. This is due, notably, to the different national rules applicable to bankruptcy proceedings. In France for example, in August 2021, nearly 17,000 consumers⁴⁰ were still waiting for their refunds while in other Member States consumers have already been fully refunded. This is because in France, consumers must wait for the complete end of the insolvency procedure, which can take years. This situation is unacceptable and contrary to the objectives of Article 17 of the PTD to have "effective" mechanisms of protection against insolvency. It also creates an important disparity of treatment between consumers.

BEUC recommends drawing from the experience with the Thomas Cook bankruptcy so that the provisions of the Directive are amended to introduce minimum criteria:

- to prescribe how the insolvency protection system should be designed,
- to ensure that guarantee funds are adequately funded. Minimum limits for insolvency protection schemes should be defined with specific rules for large organisers, and,
- to introduce maximum timeframes for the insolvency protection to be activated for consumers. It should be indicated in the Directive that the insolvency protection scheme should be able to be activated as soon as the bankruptcy is officially recognised/declared according to national law.

3.5. Insurability of risks: who insures the insurers?

Following the two crises impacting the tourism industry mentioned above, some concerns were raised that it could become difficult for tour operators to find appropriate insolvency protection providers that would be willing, and capable to cover the risks related to the bankruptcy of a big organiser, especially during peak seasons⁴¹.

Industry stakeholders have said that banks were no longer providing securities for organisers and that relatively few travel guarantee funds, or insurance companies provide insolvency protection to organisers.

To remedy such possible difficulties, it has been proposed either that organisers could have multiple security providers (e.g., two insurers) or the setting up of a pan-EU guarantee fund as a back-up insurer for the first line guarantors.

It is essential that the PTD continues to maintain strong consumer protection, particularly in the event of insolvency of operators. While BEUC would be supportive of proposals that ensure effective protection against insolvency, it is essential that the solution finally chosen ensures that consumers are not impacted by possible multiple choices of insolvency protection schemes:

- *First*, if two schemes are co-existing, consumers should be immediately informed, at pre-contractual stage, of which fund/insurance will be responsible for their contracts in case of bankruptcy of the tour organiser,

⁴⁰ https://www.tourmag.com/Liquidation-de-Thomas-Cook-bientot-les-premiers-remboursements-pour-les-clients_a109937.html

⁴¹ *Idem* – point 4.2.2.

- *Second*, the level of protection should be the same for consumers, irrespective of the insurance company or fund responsible for handling their demands (e.g., if the first protection scheme is a guarantee fund and the second a capped insurance policy).

3.6. Coherence of the PTD with the Air Passenger Rights Regulation regarding insolvency protection should be considered

Currently, two travellers taking the same plane to go to the same place, are in two totally different legal situations in case of insolvency of the carrier, depending on the type of services they have booked.

While the PTD provides protection allowing consumers to be reimbursed and repatriated for free in case of bankruptcy of the tour organiser, travellers who have booked stand-alone plane tickets do not benefit from any EU legal protection against insolvency, nor reimbursement nor repatriation.⁴² This is because the Air Passenger Rights Regulation 261/2004⁴³ does not oblige airlines to subscribe to an insolvency protection mechanism.

However, since the beginning of 2017, at least 32 airlines have gone bankrupt. The trend was accelerating before the pandemic and will be even stronger in the months and years to come. As a reminder, according to the "DG Move Study on the Protection of the EU passenger rights",⁴⁴ because of this lack of insolvency protection, once a consumer is harmed by an airline insolvency, on average they incur €431 in costs and 87% of this sum is not recoverable. This situation is not acceptable.

Therefore, BEUC would welcome a possible alignment of the PTD and Regulation 261/2004 on this specific issue of insolvency protection, as recommended by the European Parliament in its position adopted in 2014⁴⁵ on the ongoing review of the Air Passenger Rights Regulation, its recommendation in the aftermath of the Thomas Cook bankruptcy⁴⁶, and also by the recently published European Court of Auditors report⁴⁷.

Furthermore, the European Commission in its recent, "Smart and Sustainable Mobility Strategy," also suggested this possible alignment, by recognising that passengers need to be repatriated and their tickets reimbursed in case of operators' bankruptcy. It also states that it will consider options to protect passengers against such events and will, if appropriate, make legislative proposals.⁴⁸

⁴² Only exemption, in Denmark, there is a "guarantee fund" financed by Danish travel agencies which can also be used in the event of the bankruptcy of Danish airlines.

⁴³ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance)

⁴⁴ <https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1>

⁴⁵ EP proposed a creation of a guarantee fund or a compulsory insurance scheme to ensure that passengers can be reimbursed or repatriated when their flights are cancelled due to the insolvency of an air carrier or the suspension of its operations as the result of the revocation of its operating licence [Am 11].

⁴⁶ https://www.europarl.europa.eu/doceo/document/TA-9-2019-0047_EN.html

⁴⁷ [Special Report 15/2021](#): Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts.

⁴⁸ <https://ec.europa.eu/transport/sites/transport/files/legislation/com20200789.pdf>

BEUC recommendations:

- Any proposal to remove obligations to subscribe to mandatory insolvency protection mechanisms in the place of optional travel insurances should be rejected.
- Minimum criteria for insolvency protection regimes should be inserted in the PTD to ensure that all regimes are effective and provide strong protection for all consumers in all EU Member States.
- Insolvency provisions and in particular Article 17 of the Directive should be redrafted, and its scope broadened to make clear that all delayed reimbursements and all vouchers accepted by consumers as an alternative to cash reimbursement are covered in case of tour organiser insolvency. It should also be clarified that situations such as pandemics are covered by the mandatory insolvency protection mechanism established in the Directive.
- BEUC, strongly supports the European Parliament 2014 position and the new Sustainable and Smart Mobility Strategy's call for the introduction of a mandatory mechanism to protect consumers against the insolvency of airlines. This mechanism should guarantee, at least, the reimbursement and the repatriation of consumers.

4. No derogatory rules for times of crisis should be introduced in the Directive

Any proposal to incorporate derogatory rules in crisis periods, such as the amendment of the legal timeframe to reimburse consumers or granting the possibility to impose vouchers on consumers must be rejected in any review of the PTD. It is precisely in times of crisis that consumers must be protected. Likewise, a reviewed Directive should not be an opportunity to water down travellers' rights. A crisis - as exceptional as COVID-19 - should never be a basis for a lasting decrease in the protection of travellers.

Events such as COVID-19, the Icelandic ash volcano cloud etc. which are exceptional by their nature should not be used as a pretext to diminish travellers' rights. Introducing emergency rules, depriving consumers of some of their rights, such as the right to monetary refunds - as called for by the industry during the pandemic - would send a very bad signal to European consumers. On the other hand, the provisions of the PTD relating to consumers' right to a monetary refund are clear and should not be changed or subject to exemptions.

If the Directive is revised and provisions to regulate vouchers are introduced as a possible alternative to refunds, it should be clear from the text that vouchers should always be voluntary (at the choice of the consumer), and the minimum criteria for voluntary vouchers (such as protection against insolvency, flexibility, duration etc.) should be included directly in the Directive (see point 4.1 below).

BEUCs recommendations:

- Any call for regulatory flexibility in the application of the PTD in times of crisis which has a negative impact on consumers, should be rejected.
- The current rules on refunds in case of cancellation are clear and should be maintained as such.

4.1. Voluntary vouchers as an alternative to monetary reimbursement

In its current drafting, Article 12 of the PTD⁴⁹ provides that, if a package holiday contract is cancelled due to “unavoidable and extraordinary circumstances,” by the traveller or the organiser, holiday makers have the right to get a full monetary reimbursement of any payments made for the package within 14 days maximum after termination of the contract. There is no explicit reference to ‘vouchers’ indicated in the Directive, contrary to EU passenger Rights Regulations.

However, as recognised by the EU Recommendation on vouchers⁵⁰ and by the updated guidelines on the Directive⁵¹ published in March 2020, the organiser may offer the traveller a voucher, but this possibility does not deprive travellers of their right to a monetary reimbursement. The final choice must belong to the consumer.

The Recommendation was welcomed by BEUC because it recalls travellers’ rights to a monetary reimbursement while providing criteria to make voluntary vouchers attractive for consumers.

In December 2020, BEUC published a report on the Recommendation’s implementation by Member States and the industry.⁵² Among the findings, to our knowledge, during the pandemic 18 Member States introduced national emergency measures in direct contradiction with the PTD. Among these Member States, eight⁵³ introduced measures allowing traders to impose vouchers on consumers for cancelled package holiday contracts.

⁴⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>

⁵⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020H0648>

⁵¹ https://ec.europa.eu/info/sites/info/files/coronavirus_info_ptd_19.3.2020.pdf

⁵² See [BEUC report](#) : “COVID-19 and EU Travellers’ Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers”, December 2020.

⁵³ Belgium, Cyprus, Czech Republic, France, Greece, Italy, Portugal, Slovakia.

These unlawful measures led the European Commission to launch infringement procedures against 11 Member States between July⁵⁴ and October⁵⁵ 2020. To date, to our knowledge, one Member State still has an illegal national emergency measure affecting consumers in force.^{56 57}

Because of these unlawful temporary legislations, thousands of travellers have had their rights denied and many consumers continue to wait, sometimes for months, for their monetary reimbursement. To date, only a very few Member States have legislated to make voluntary vouchers attractive for consumers⁵⁸.

As a result of these repeated breaches, our UK member Which? discovered in an investigation published in November 2020,⁵⁹ that nearly four in ten (37%) people who have had a package holiday cancelled by their provider since the beginning of the pandemic said the experience has had a negative impact on their confidence in the travel industry. In France, the State Secretary for Transport estimated the total amount of vouchers imposed on consumers due to the cancellation of package vacations at around €750m.⁶⁰

This situation is unacceptable and must be corrected by the reviewed Directive. Thus, if it formally introduces a possibility of reimbursement by voluntary voucher, their use will have to be framed by minimum rules defined by the Directive itself. The non-binding character of the Recommendation has led to weak and disparate implementation among the Member States and, *in fine*, by the industry to the detriment of consumers⁶¹ (shorter deadline, no reimbursement after the end of voucher's validity etc.).

For BEUC, the EU Recommendation on vouchers should be incorporated in the Directive to ensure that vouchers: a) remain voluntary as in all other passenger rights regulations; b) are insolvency protected, c) are transferable and d) set minimum validity standards.

4.2. New bookings should be subject to ordinary rules established by the Directive

Industry stakeholders have suggested during the pandemic that the mandatory nature of the Directive established in the Article 23, should be relaxed and that new bookings made after the appearance of the COVID-19 pandemic, could no longer be cancelled, free of charge by consumers, because of new restrictions imposed in the context of the pandemic based on the rules on "unavoidable and extraordinary circumstances" defined in Article 12 PTD. They argued that since the pandemic is now a "known-event" by travellers it should no longer be possible to cancel a trip by arguing that it is an "unavoidable and extraordinary circumstances".

⁵⁴ https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212

⁵⁵ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687

⁵⁶ Slovakia.

⁵⁷ [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 5.1.2.

⁵⁸ See [BEUC report](#) : "COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers", December 2020.

⁵⁹ <https://press.which.co.uk/whichpressreleases/more-than-1-billion-in-refunds-being-illegally-withheld-for-cancelled-holidays/>

⁶⁰ <https://www.vie-publique.fr/discours/276189-entretien-jean-baptiste-lemoyne-01092020-tourisme>

⁶¹ See [BEUC report](#) : "COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers", point 3.5 & 4, December 2020.

In BEUC's view such call for flexibility is unacceptable and should be rejected. If package travel is offered to consumers during a pandemic, they should be subject to the normal protective rules granted by the Directive. Consumers should be able to cancel their trips, free of charge, in case of "unavoidable and extraordinary circumstances" as indicated in Article 12(2) PTD.

Instead of amending the binding nature of the Directive in crisis periods, BEUC would propose to clarify the statute and the legal value of official travel warnings and advice (see point 7 below). The Directive is silent in this respect. The real issue at stake is the lack of harmonised solutions at EU level of the legal value of the travel warnings and on travel bans. Such lack of clarity and harmonisation has led to numerous litigations.

If destinations, regions, or countries are subject to travel warnings that discourage or prohibit consumers from travelling, package holidays to these destinations should not be sold to consumers. If travel packages are sold, consumers should be able to benefit from their full rights and therefore, be able to cancel their package at no charge based on these official warnings and Article 12(2) PTD.

BEUCs recommendations:

- Any call for regulatory flexibility in the application of the PTD such as the imposition of vouchers and/or the postponement of the legal time frame to reimbursement in times of crisis should be rejected.
- The integration of the EU Recommendation on vouchers in the Directive to ensure that, vouchers: remain voluntary as in all other passenger rights regulations, are insolvency protected, are transferable and benefit from minimum validity standards.
- New bookings in crisis period (such as pandemics) should be subject to the classic rules established by the PTD and the national measures transposing it.

5. Better cross-border enforcement is needed

During the COVID-19 crisis, many Member States introduced measures derogating from the Directive and as such are contrary to EU law.⁶² Several BEUC members stressed that a growing number of consumers was being affected by the cross-border dimension of package travel contracts.

A striking example regards the case of a consumer who bought a package holiday from a retailer in their home country and could not benefit from a refund because the package organiser – who is responsible under the PTD for the reimbursement – was domiciled in another EU Member State which already had set up derogatory measures in direct contradiction with the PTD.

⁶² https://www.beuc.eu/publications/beuc-x-2020-119_covid-19_and_eu_travellers_rights.pdf

Such situations create frustration for consumers, despite the fact that under Rome I Regulation (Article 6(2)), the consumer cannot be deprived from the higher level of protection granted by their country of residence when a trader directs its operations to this EU Member State.

BEUCs recommendations:

- Disparity of treatment and the issues of applicable law should be tackled in case of review of the Package Travel Directive.

6. Clearer rules are needed for bookings made via online intermediaries

A growing number of consumers are using online booking intermediaries to book standalone tickets and package holidays. However, neither the PTD, nor the passenger rights regulations deal with intermediaries and do not establish clear responsibilities for the latter.⁶³

The current dispositions of the article 12(4) of the PTD specifies that organisers are responsible for reimbursement in case of cancellation. On the other hand, Articles 5 and 8 of the Air Passenger Rights Regulation 261/2004, require airlines to reimburse the consumer in case of flight cancellation. During the crisis, because of these two contradictory provisions and the lack of clear liabilities, the industry (organisers, airlines, intermediaries), often refused to reimburse consumers by sending them back to other parties.

In addition, as reported by BEUC members, if the intermediary finally conceded to refund consumers, it often held part of the reimbursement in the form of administrative fees.

Consumers were/are harmed by this situation and struggled, and for a lot of them are still struggling to get their refund, sometimes since the beginning of the pandemic. Among the main recurring problems encountered by consumers, the inability to contact online intermediaries, because they do not have any obligation to set up a complaint handling procedure, the provision of bad or partial information on travellers' rights, non-compliance with rules set up in the PTD etc. This situation was already problematic before the COVID-19 pandemic.

This situation led the Network of European Consumer Centers ('ECC-Net') to launch in October 2020, an external alert of an EU-wide dimension to the Consumer Protection Authorities Network on the practices of intermediaries during the pandemic.⁶⁴

⁶³ See also the [European Commission Questions and Answer Passenger rights and Package Travel](#), published on 26 May 2020.

⁶⁴ See ECC-Net [external alert](#) : « Le CEC France alerte sur les plateformes de réservation en ligne ».

This legal gap should be corrected in the PTD to prevent such situations from recurring for consumers.

BEUCs recommendations:

- The Commission should ensure and that any review of the PTD and passenger rights regulations clarify the role and responsibilities of the different actors, especially for online intermediaries.
- The review should also introduce clear provisions that travellers' reimbursement in case of cancellation by the professional or the holiday maker due to "unavoidable and extraordinary circumstances" must be free of any charge or administrative fee.

7. Cancellation rights: rules on termination of a package travel contract and the right of withdrawal before the start of the package should be updated

7.1. Rules on the right of withdrawal in extraordinary circumstances and the legal value of official travel warnings must be clarified

Article 12(2) of the PTD specifies that "[...] the traveller shall 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 its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination. In the event of termination of the package travel contract under this paragraph, the traveller shall be entitled to a full refund of any payments made for the package[.]."

During the COVID-19 crisis, BEUC members reported that this provision was subject to numerous disputes. The Directive only specifies that travellers can cancel the contract "before the start of the package" but does not specify a specific time frame to do so. Recital 31 does not provide additional information, only detailing the kind of extraordinary circumstances that may allow the consumer's withdrawal at no cost.

During the pandemic, some traders used this lack of clarity and refused to grant consumers with the full reimbursement they were/are entitled to, considering that their withdrawal requests based on official travel warnings were too early. This situation is clearly unacceptable. 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.

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.

7.2. The formula for calculating cancellation fees imposed on travellers in case of termination of a contract must be simplified

Article 12(1) PTD specifies that where travellers 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 only justify its termination fees only at the “traveller's request”. BEUC considers that the calculation formula Article 12(1) PTD is too complex, unclear for travellers and should be reviewed.

While the time of termination and the actual costs seem to us to be reasonable to determine termination fees, the criterion concerning the income from alternative deployment of the travel services seems to us 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 criterion.

Finally, BEUC considers that all fees/costs/charges retained by the organiser should always be transparent and justified.

7.3. Rules should be introduced for consumers that can no longer travel

In its current drafting, Article 12(1) of the Directive provides cancellation rights of holiday makers. Thus, travellers can cancel their contracts at any time before the start of the package tour, subject to payment of a cancellation fee. This covers situations where a consumer – voluntarily - does not want to travel anymore. It is a consumer's deliberate choice. However, the PTD is silent on situations where consumers are unable to travel, such as in the case of illness or accident requiring surgery, unexpected hospitalisation etc.

In these inherently different situations, it is difficult for consumers to understand why they are subject to the same regime as consumers who simply change their mind and no longer want to travel.

A review of the Directive should be an opportunity to introduce balanced rules that apply if consumers can no longer travel.

7.4. Legal regimes on cancellation rules should be more coherent between the PTD and the Air Passenger Rights Regulation

The PTD provides in its article 12 for cancellation rights. The second paragraph specifies that, consumers may cancel their package and receive a full refund at no cost, "in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination".

Contrary to the PTD, passengers who cancel a flight themselves are not entitled to reimbursement under Regulation 261/2004 on Air Passenger Rights, even in case of extraordinary circumstances. In such circumstances, consumer rights are governed by the terms and conditions of the ticket and/or the goodwill of the airlines. Of course, this situation has greatly affected consumers during the pandemic. Many lost their money because they complied with national authorities' recommendations (travel bans to certain destinations, or dissuasive/negative travel advice), but their flights were nevertheless maintained by the airlines. Moreover, this creates a disparity between consumers who, depending on the type of service booked (package vs single air service), do/do not have the right respectively to be reimbursed despite boarding the same plane⁶⁵.

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 Air Passenger Rights Regulation as it exists in the PTD.

⁶⁵ [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 5.2.2.

BEUCs recommendations:

- Member States travel warning schemes should be harmonised. If not, there is an urgent need to clarify what evidence is admissible to justify “extraordinary circumstances”. According to BEUC, an official warning from a Member State or an official state body (municipality, authority etc.) that advises against and/or prohibits travel, but also warnings which determine or inform about significant restrictions not compatible with leisure travel, should be considered as sufficient evidence for consumers to benefit from the right of withdrawal at no cost established in Article 12(2) PTD.
- Introduce a clear timeframe for consumers to allow them to make their withdrawal request and to benefit from their right to terminate their package travel contract at no cost in the event of “unavoidable and extraordinary circumstances”.
- The criteria for calculating cancellation fees imposed on travellers in case of termination of a package travel contract must be simplified. All fees/costs/charges retained by the organiser should be transparent and justified.
- The introduction of balanced rules that apply if consumers can no longer travel.
- Travellers’ rights to cancel the journey in case of "extraordinary circumstances" and to be fully reimbursed should be introduced in the Air Passenger Rights Regulation as it exists in the Article 12(2) PTD.

8. Definitions: clarification of the key definitions

8.1. Link travel arrangements ("LTAs")

Under the article 3(5) of the PTD, a ‘linked travel arrangement’ (LTA) means:

“[...] at least two different types of travel services purchased for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates:

(a) on the occasion of a single visit or contact with his point of sale, the separate selection and separate payment of each travel service by travellers; or

(b) in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

Where not more than one type of travel service as referred to in point (a), (b) or (c) of point 1 and one or more tourist services as referred to in point (d) of point 1 are purchased, they do not constitute a linked travel arrangement if the latter services do not account for a significant proportion of the combined value of the services and are not advertised as, and do not otherwise represent, an essential feature of the trip or holiday”.

This definition is complex⁶⁶ and not easily understandable by consumers and industry stakeholders.⁶⁷ Furthermore, this definition falls short and allows for abuse to consumers’ detriment. As a result, as highlighted by the general report on the application of the Directive, it is very difficult, if not impossible, for consumers and enforcement authorities to prove whether a package or an LTA⁶⁸ was concluded. Therefore, a simplification and clarification of several concepts should be made in the event of a review of the Directive.

In case of LTA contracts, the Directive merely prescribes provisions relating to the pre-contractual information to be given to consumers and insolvency protection provisions.⁶⁹ However, contractual obligations resulting from LTA contracts are currently not defined in the text.

In BEUC's view, this lack of prescription of a liability regime for the performance of LTA contracts has led some companies to create or adapt their business models based on LTAs, when in reality they are selling packages. This is done to avoid the stricter liability regime applicable to package travel organisers to consumers’ detriment (ex : Ryanair, EasyJet etc.).

As consumers are not able to clearly understand whether they have entered a package holiday contract or an LTA, they are not able to understand the extent of traders' obligations, and the exact scope of the protection they should benefit from.

A review of the PTD should further develop chapter VI on other obligations resulting from LTA contracts, otherwise, these practices aiming to circumvent the more protective regime of package travel contracts are likely to increase and consumers will be left unprotected, or less protected than they should be.

⁶⁶ Article 3(5) PTD.

⁶⁷ [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 3.2.2.

⁶⁸ *Idem*, 3.2.3.

⁶⁹ Chapter VI - Article 19 PTD.

8.2. The broad scope of the definition of 'package' should be upheld

The Directive gives a broad definition of a 'package'⁷⁰ and only a very limited number of exclusions are defined. Thus, according to the Article 2(2) PTD the Directive does not apply to⁷¹:

- Trips of less than 24 hours unless overnight accommodation is included,
- Trips offered occasionally, on a not-for-profit basis and only to a limited group of travellers,
- Trips purchased within the framework of a general arrangement for business travel.

This broad scope grants consumers strong protection.

In the aftermath of the COVID-19 pandemic, the industry has suggested to review the definition of 'package' and to diminish its scope. Thus, it has been proposed that small undertakings should be exempted from the provisions of the Directive⁷². BEUC is strongly opposed to the creation of additional exemptions.

When buying package holidays, consumers want and need legal certainty. They also want clarity concerning their rights and obligations. This point is valid for package travel contracts, but also for other types of transport and tourism services. Such desires of clarity and legal certainty have been highlighted notably in the recent DG Move Study on the protection of EU air passenger rights⁷³ and also reflected by both the tourism industry and travellers in the recent "Aviation Roundtable Report"⁷⁴.

Therefore, introducing additional exemptions and derogations is not a good way forward and could create confusion and frustration for consumers who would not understand why, depending on where they buy their package holiday contract or, depending on the size of the company, they would not benefit from the same level of protection.

Furthermore, it is worth recalling that if consumers decided to pass through an organiser or via a small undertaking and, often accept to pay a higher price rather than to create their trips themselves, it is precisely because they want to benefit from the protection of the PTD. A recent study conducted⁷⁵ by our UK member Which? reported that nearly four in ten people who have had a package holiday cancelled by their provider since the beginning of the outbreak said the experience has had a negative impact on their confidence in the travel industry. Therefore, diminishing consumers' protection in case of review of the Directive, by creating different exemptions and rules, would not be an appropriate way forward.

To the contrary, more legal certainty and greater respect for the rights of travellers should be the way forward to regain consumer trust in the market.

⁷⁰ Article 3(2) PTD.

⁷¹ Article 2(2) PTD.

⁷² 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 3.2.1.

⁷³ <https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1>

⁷⁴ <https://a4e.eu/wp-content/uploads/aviation-round-table-report-16-11-2020.pdf>

⁷⁵ <https://conversation.which.co.uk/travel-leisure/refund-reform-travel-campaign/>

BEUCs recommendations:

- Ensure that the strong protection granted by the current broad definition of 'package' and the very limited exemptions is maintained. Any attempt to diminish the scope of the PTD should be rejected. Consumers need legal certainty and clarity about their rights. Their protection should remain the same, irrespective of the place of purchase or the size of the company with which they concluded with their package holiday contract.
- Further develop Chapter VI of the PTD to clarify 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 consumers' detriment.

9. 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 impacted, 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 travel the lines are blurred for travellers between the three categories defined by the Directive – package, LTA, 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.

Since the difficult distinction and blurred division between packages and other services has always been a major problem in the package holiday sector, a revision of the Directive should address it and provide clear provisions on pre-contractual information to consumers (including for standalone transport services).

BEUCs recommendations:

- Provide clear provisions on pre-contractual information to consumers including for standalone transport services sold by organisers and agencies.

10. Greater coordination between the various stakeholders of the tourism industry is needed

The COVID-19 crisis has highlighted that greater coordination between tourism market stakeholders, namely consumer associations, tour organisers, airlines, national authorities, and the European Commission is essential. This should result in tangible consumer-protection provisions if the PTD is revised.

This co-operation could include:

- Reporting obligations on the tourism industry to national enforcement bodies (NEBs) regarding the respect of traveller's rights,
- Reporting obligations from NEBs to the Commission on travellers' rights issues.
- The possibility for consumer associations to access non-commercially sensitive data transmitted by stakeholders to NEBs,
- The possibility for consumer associations to refer cases of non-compliance with the PTD to the NEBs.

BEUCs recommendations:

- Enhance the coordination and cooperation between all tourism market stakeholders (consumer associations, airlines, national authorities, and the European Commission).

END



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