

## **A4E's POSITION ON THE REVISION OF THE PACKAGE TRAVEL DIRECTIVE**

### **Abstract**

This paper sets out Airlines for Europe's (A4E) position on the European Commission's proposal for the revision of the Package Travel Directive (PTD).

A4E acknowledges the need to ensure a high level of consumer protection and welcomes the European Commission's attempt at clarifying the PTD. However, the current PTD already contains a high level of consumer protection, and a further increase in obligations for tour operators (TO) and any service provider, including airlines, offering combined travel services risks having a detrimental effect on the whole travel industry, and therefore ultimately also for consumers.

It remains of utmost importance that an unprecedented and unforeseeable disruption of global tourism as caused by the COVID-19 pandemic is not considered as a basis for imposing new legislation.

The proposals seek to expand the definition of package travel and clarify linked travel arrangements. However, the text does not provide for a much-needed reduction of complexity in the definitions. The proposal to extend the scope of packages to arrangements booked at the same point of sale at different stages within a certain timeframe will be hard to implement in practice. An efficient PTD would require clearer definitions that reflect the reality of the package travel market.

A4E does not believe that limiting downpayments benefits consumers. It will lead to less certainty for tour operators and service providers, preventing them from optimising their capacities, and, inevitably, leading to higher prices for consumers. This could also lead to a higher risk of no-show and late cancellation by consumers, increasing costs for both tour operators and consumers themselves.

The existing traveller's right to termination of the package travel contract in the event of exceptional circumstances under the PTD should not be expanded to situations happening at the place of the traveller's residence or departure. It will make TO subject to incalculable liabilities for events which are completely out of their control and have no connection with the holiday. Furthermore, this should never apply to personal circumstances of consumers and situations already covered by insurance.

A4E finds the proposal to further increase the existing requirements on insolvency protection for package organisers to be disproportionate and out of scope when suggested to cover both refund obligations which incur before an insolvency and transmissible refund vouchers. A4E is concerned that it only leads to additional costs and reduced choices, although the travel industry, including airlines, presents very few cases of insolvency.

Finally, A4E believes that business-to-business (B2B) refund rights should not be regulated by the PTD and should remain subject to contractual arrangements between businesses. Should it remain covered by the directive, it should not be extended to situations outside of cancellations of service or failure to

provide the service nor imposed as an automatic right. In any case, the 7-day time period for reimbursement should only start upon receipt of the request by the service provider.

## The extension of the package definition

Currently, a clear definition of a package allows effective budgeting and low prices. The Commission's proposal to introduce 3 and 24-hour windows for consumers<sup>1</sup> to book additional travel services on a trader's website to form a package will, however, **lead to a significant increase in complexity and confusion and should be eliminated.**

First, this change could potentially discourage airlines and service providers from offering additional bookings of other tourist services (e.g. hotels or car rentals), as they might unintentionally create packages, thereby highlighting the need for clear and straightforward regulation. This new classification would force service providers offering those types of additional bookings to assume the new significant responsibilities and liabilities such as ensuring contracts are in place with suppliers to enable redress/recovery from suppliers. This would raise overhead costs, increase prices for consumers, and ultimately reduce the range of arrangements offered.

In addition, the Commission's proposal will be difficult to implement in practice. The introduction of time windows in which consumers can return to a trader's website and book another travel service to form part of a package will create complexity and confusion. Tracking different purchases becomes particularly challenging as each booking is given its own reference number, making it difficult to link separate transactions into a single cohesive package. This problem is further exacerbated by the fact that not all organisers offer facilities for consumers to log into an account and add additional services to an existing booking. Even for organisers that do provide such account facilities, integrating separate transactions into a unified package would necessitate more complex and costly system functionalities. The proposed definition of package will create confusion for passengers on what protection applies to their travel. The difficulty of tracking these different transactions would make it unclear for both service providers and consumers which protection applies to the purchase.

Overall, A4E believes that a more balanced position should be adopted, which would benefit consumers both in terms of price and protection and would reflect better the reality of the package travel market by providing greater freedom and flexibility for travel companies like airlines to grow and expand their travel offerings for consumers, while ensuring that consumers are always aware of their rights.

## The limitation of downpayments

First, A4E would like to stress that the unprecedented COVID-19 pandemic, which has led to a liquidity crisis within the travel industry and does not illustrate the normal functioning of tour operators and travel service providers, should not be the basis for imposing downpayment restrictions. In normal

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<sup>1</sup> Article 3 (2)(b) i. Proposal 2023/0435.

times, the travel industry has not proven to be risky. Therefore, a specific limitation of downpayments should not be introduced.

Customer payment at the time of booking is the global standard for travel and tourism services, including package holidays. Yet, the new proposal for a PTD imposes on TO and retailers not to “request downpayments exceeding 25% of the total price of the package”, only allowing them to request the rest of the payment at the earliest “28 days before the start of the package”<sup>2</sup>. The only exception to this limitation is that higher downpayments may be requested when this is “necessary to ensure the organisation and the performance of the package”.

**A4E strongly opposes to the implementation of any sort of limitation of downpayment**, should it be subject to exception or not.

The exception as outlined in the text lacks clarity and, even if the limitation is supposed to be flexible, it remains unclear as to what can rightly be considered as “necessary” in the eyes of the Commission. In practice, organisers often need to pay an amount exceeding 25% of the total package price to the service providers upfront. Having to justify each time the need for a higher pre-payment will induce very burdensome administrative procedures. In addition, where commercial agreements are in place between TO and airlines, the payment schedules may not always allow TO to cover the full B2B pre-payment amount with a downpayment from the consumer. For instance, where TO contract blocks of seat capacity with airlines, it may not be possible for them to demonstrate a need for pre-payments above 25%. Nevertheless, TO will still incur commercial risk and may need to pre-finance these B2B pre-payments to airlines out of other means or intend to share the risk with other service providers.

From a consumer point of view, advance payment enables companies to offer a wider choice of services at lower prices. On the contrary, having a limitation of down-payment up to 25% increases the risk of no-show and non-payment, leading to TO and retailers having less visibility of demand and certainty as to how to optimise their capacities. In a static market, with reduced liquidity and increased external financing costs, TO will not be able to offer as much variety and low prices for consumers.

Moreover, it makes tour operators subject to a higher risk of late cancellations, payment default or fraud, ultimately leading to a reduced financial stability of companies throughout the touristic value chain. Without liquidity, they would also see their capacity to fulfil their legal obligations towards consumers (such as refunding in a limited time period for instance) diminished. Alongside, their competitiveness will be reduced, in comparison with travel services providers (mostly non-European platforms) which will not be subject to such obligations.

On a longer term, the increasing administrative burden and lower financial certainty deriving from the limitation of downpayment will make it less attractive for TO to still offer package holidays at all.

Finally, A4E does not believe that such downpayment obligation should be required both from the travel package industry, nor the airline industry which model also relies on similar pre-payment<sup>3</sup>.

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<sup>2</sup> Article 5a Proposal 2023/0435.

<sup>3</sup> See [A4E’s Position on Prepayment of Tickets](#).

## Right to cancellation for the traveller under extraordinary circumstances

The proposal extends the right to cancellation beyond exceptional circumstances happening at the destination, now also covering exceptional circumstances “at the place of the traveller’s residence or departure or affecting the journey to the destination, where such circumstances significantly affect the performance of the package”<sup>4</sup>.

A4E welcomes that the Commission has specified that “official travel warnings” and “serious restrictions”<sup>5</sup> should be considered in assessing exceptional circumstances as it gives more information as to how to interpret this right. However, **such an extension risks creating even more uncertainty**. Travel warnings have shown to widely differ, as was best illustrated by the situation during the COVID-19 pandemic when Member States imposed uncoordinated travel restrictions and offering uncoherent travel advice. Without uniform travel bans, and the lack of formalised legal value of official travel warnings within the EU, the criteria risks being impractical and hard to apply with predictability.

The proposal should also specifically mention that this cancellation right should not apply to situations impacting the consumer personally, as such cases should be covered by travel insurance at the cost of the consumer.

Finally, there should be an addition to the existing PTD to ensure a proper balance between consumer rights and the necessity for TO to operate leisure flights (whether through their own in-house airline or a third-party airline which they contracted) in times of disruption. More specifically, in case it is no longer economical for a TO to operate holidays to a certain destination and for a given departure date, due to a substantial number of customers withdrawing from their contract based on the existing traveller’s right to terminate the package travel contract, the tour operator should be entitled to offer the remaining customers the choice between a full refund and an alternative holiday, however without an entitlement for further compensation.

For the same reasons, such a right to cancellation should not be extended to stand-alone services when they are not included as part of a package<sup>6</sup>.

## Insolvency protection

The new PTD proposal is set to provide “security for the refund of all payments made by or on behalf of travellers in the event of organisers’ insolvency”<sup>7</sup>. It aims at increasing the already high requirements on insolvency protection<sup>8</sup>, as well as further expanding its scope to refund obligations which

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<sup>4</sup> Article 12. 2. Proposal 2023/0435.

<sup>5</sup> Article 12.3a. Proposal 2023/0435.

<sup>6</sup> In that case, stand-alone services have their own cancellation rules depending on whether they are refundable, an insurance applies etc.

<sup>7</sup> Article 17 (1) Proposal 2023/0435.

<sup>8</sup> While it is clear here that this applies to cases with two or more travel services bundled together, A4E urges that it remains applicable to solely those cases and that it is not extended to flight-only cases. See [A4E’s Position on Airline Insolvencies](#).

incur before an insolvency, and to transmissible refund vouchers. A4E urges for particular attention as to the traveller's right to refund being exerted under the format of vouchers: while vouchers are still not properly regulated, TO might hardly be able to control the identity of the person benefiting from it, which risks opening to fraud cases.

More generally, **A4E urges for moderation, to ensure that insolvency protection is still affordable and viable for tour operators.** Extending the insolvency protection based on an unprecedented pandemic like the COVID-19 crisis would be disproportionate, while it is proven that the normal risk of insolvency within the travel industry is low<sup>9</sup> and, therefore, does not require an extensive insolvency protection scheme.

## Right of redress and refund rights of organisers

Finally, the proposal offers to tour operators a legal right to refund in 7 days from a service provider when the latter fails to deliver its service or cancels it<sup>10</sup>.

Alongside, **B2B refund rights should not be covered by EU consumer legislation and should remain subject to contractual arrangements and the freedom of doing business.** For instance, for airlines it is a global practice that the reimbursement will follow the booking method<sup>11</sup>, should that be TO, Online Travel Agents (OTA) or passengers. While distribution channels are getting more complex and the automation of reimbursement disregards the complexity of the current framework, sticking to this global practice would lead to more certainty for businesses.

**Should B2B refunds remain covered by the PTD text, it should clearly mention that this 7-day time period should only start upon receipt of the request by the service provider.**

However, the **refund should never be automatic.** This would not be appropriate, since in the case of cancellations, the passenger has the choice of alternative travel arrangements or a refund. If refunds were automatic, the passenger would no longer have this choice. Moreover, it is of utmost importance that it remains in line with other refund systems which are not automatic. In practice, service providers and organisers might not have any prior commercial agreement, or the package can be booked via an OTA. Without prior knowledge of the service providers that the service has been booked as part of a package, the implementation of an automatic B2B refund right will be impossible to put in place and would require detailed manual processing and assessment.

Finally, such refund rights should in any case never be extended to situations outside of cancellations or failure to provide the service.

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<sup>9</sup> For instance, 0.04% of total EU passengers were affected by an airline insolvency from 2011-2019. Steer, Study on the current level of protection of passenger rights in the EU, 2020. Available [here](#).

<sup>10</sup> Article 22 (2) Proposal 2023/0435.

<sup>11</sup> Refund of flights is covered in parallel by EU261 and passengers are entitled to refunds if the carrier cancels their flight (Regulation EU261/2004). When applying those concomitant rules, there might be a risk of double-payment with consumers benefiting both from EU261 compensation and PTD price reductions on the same flight - without service providers and tour operators being able to deduct one from the other.