



Study to support the preparation of an evaluation of the Package Travel Directive back-to-back with an impact assessment on its potential revision

Final Report

Written by ICF
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STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT ASSESSMENT ON ITS POTENTIAL REVISION

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List of acronyms

ADR	Alternative Dispute Resolution
APRR	Air Passengers Rights Regulation
A4E	Airlines4Europe
BEUC	European Consumer Organisation
B2C	Business to consumers
B2B	Business to business
CCP	Central Contact Points
CPCs	Consumer Protection Cooperation Authorities
DG JUST	European Commission Directorate-General for Justice and Consumers
DG MOVE	European Commission Directorate-General for Mobility and Transport
ECA	European Court of Auditors
ECTAA	European Travel Agents' and Tour Operators' Associations
EEA	European Economic Area
EGFATT	European Guarantee Funds' Association for Travel and Tourism
ESS	Early-stage scoping
EU	European Union
EUTT	EU travel tech
ICT	Information and Communications Technologies
ISG	Inter-service group
LTA	Linked travel arrangement
NCA	National competent authority
OTA	Online travel agency
PTD	Package Travel Directive
TEU	Treaty on European Union

TFEU

Treaty on the Functioning of the European Union

1 Introduction

This Final Report has been prepared by ICF for the study to support the preparation of an evaluation of the Package Travel Directive (PTD) back-to-back with an impact assessment on its potential revision. The study was launched by the European Commission Directorate-General for Justice and Consumers (DG JUST) in February 2022. The purpose of this report is to present the findings (full details are included in the annexes) and conclusions of the evaluation and the impact assessment.

1.1 Objective of the study

The main objective of the study is to provide DG JUST with evidence-based analysis in support of the:

- Evaluation of the PTD and its application;
- Impact assessment of the shortcomings identified in the evaluation, considering the parallel review of the Passenger Rights Regulation by the European Commission Directorate-General for Mobility and Transport (DG MOVE) (under mutual coordination with DG JUST).

The PTD regulates several aspects of travel packages: information requirements, provisions on contract changes and liabilities, and the protection of travellers in case of the organiser's insolvency. It also considers new online booking models for combinations of travel services (through the inclusion of dynamic packages in the definition of 'package' and the new concept of linked travel arrangements (LTAs)). Important challenges have emerged since the PTD began to apply on 1 July 2018. These relate to refunds of pre-payments during the COVID-19 pandemic, insolvency protection (particularly in the context of the Thomas Cook bankruptcy) and the definitions of the main concepts of the Directive, notably LTAs.

This final report comprises two main sections: the first focuses on the evaluation of the PTD implementation (Chapter 2), while the second contains the assessment of impacts identified under the proposed policy options (POs) for future action (Chapter 3). The report is based on robust data collection and analysis, including both quantitative data and qualitative evidence from stakeholder interviews, public consultation, targeted surveys, workshops and in-depth desk research.

The evaluation report provides an evidence-based assessment of the Directive and delivers responses to a set of key questions assessing the extent to which the PTD has achieved its objectives. The results of the evaluation set the ground for the identification of the key problem areas and the definition of policy options. The report is structured as follows:

- Chapter 2 provides a description of the methodology, tasks, results, and conclusions of the evaluation;
- Chapter 3 presents the methodology, tasks, and results of the impact assessment, including a cost-benefit analysis. It also presents the comparison of the options, in line with the steps defined in the Better Regulation Guidelines (BRG0).

The report is accompanied by the following Annexes:

- Annex 1 - List of Documents reviewed (included in this report);
- Annex 2 - Market practices and development (focus on 10 Member States) (included in this report);
- Annex 3 - Workshop minutes (included in this report);
- Annex 4 - Legislative and other measures adopted in Member States and other EEA countries since July 2018 (included in this report);

- Annex 5 - Competitiveness check for preferred option 1 (included in this report);
- Annex 6 - Methodological approach of the study (included in this report);
- Annex 7 – Evaluation framework (included in this report);
- Annex 8 - Multi-criteria analysis (submitted as separate Annex);
- Annex 9 – Analysis of the Public Consultation (submitted as separate Annex);
- Annex 10 - Consultation Synopsis Report (submitted as separate Annex);
- Annex 11 – Workshop documents (submitted as separate Annex)
- Annex 12 - Targeted surveys summary report (submitted as separate Annex);
- Annex 13 – Cost-Benefit table for Efficiency (Evaluation) (submitted as separate Annex);

2 Evaluation of the PTD

2.1 Context of the evaluation

The evaluation of the PTD seeks to strengthen consumer protection, including insolvency protection, and to incorporate lessons from the COVID-19 crisis. It follows the publication of the 2020 New Consumer Agenda¹, and the 2021 report on the Application of the Package Travel Directive².

The baseline for the evaluation is 2013, the date of the previous impact assessment for the 2015 revision. That baseline is compared with two other specific periods: November 2015 to July 2018, the ‘transition period’, where the Directive was being transposed by the Member States; and July 2018 to 2023, the ‘application period’, corresponding to the current situation and its projection within the 2023-2032 time horizon.

The evaluation relies on a variety of primary and secondary sources to establish the baseline, including interviews, surveys and workshops. It seeks to assess the PTD with respect to its:

- Effectiveness (degree to which it achieved the objectives set in the previous impact assessment, see Figure 1);
- Efficiency (distribution of costs and benefits and simplification potential);
- Relevance (over the evaluation period and now);
- Coherence (external and internal), particularly with key EU legislation such as the Air Passenger Rights Regulation (APRR);
- EU added value (above what the Member States could have achieved alone).

The five key evaluation criteria are subdivided into evaluation questions (see Annex 7), which are then addressed using the information from desk-based research and stakeholder consultations. The findings are described in Chapter 2.

2.2 Methodology

2.2.1 Overview

The evaluation uses a combination of desk-based research, public consultation, targeted surveys, consumer survey, interviews with a wide group of relevant stakeholders and

¹ European Commission, Communication from the Commission to the European Parliament and the Council, New Consumer Agenda Strengthening consumer resilience for sustainable recovery, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0696>

² European Commission, The Application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A90%3AFIN>

workshops. The consultation strategy was refined in discussion with DG JUST at the inception stage.

2.2.2 Literature review

The targeted desk research focuses on the evaluation and impact assessment research frameworks. It follows the main research questions and sub-questions, as well as the main indicators of the research frameworks. The findings from the desk research are triangulated with the evidence collected through the public consultation, scoping interviews, interviews with stakeholders, targeted surveys and workshops.

The study team also reviewed a list of documents (see Annex 1) independently researched or received from DG JUST. The desk research includes legal research intended to map and assess the state of play of the transposition and application of the PTD in the 27 European Union Member States (EU-27) and European Economic Area (EEA) countries.

2.2.3 Social media listening

An in-house data science team undertook a social media listening exercise, extracting background information from then-Twitter (now 'X') on consumer experiences with travel packages and LTAs (e.g. vouchers, refunds), encompassing a preliminary sentiment analysis of consumers' satisfaction. Tasks included:

- Collecting and merging key hashtags on travel packages, LTAs and PTD main concepts;
- Translating hashtags and other keywords into all EU-27/EEA official languages;
- Collecting 3,291 then-tweets (now posts) from EU-27/EEA countries;
- Developing illustrative visuals presenting consumer satisfaction with the main concepts of the PTD.

2.2.4 Public consultation

A public consultation ran from 15 February 2022 to 10 May 2022 (13 weeks)³. It followed the call for evidence (consultation on the evaluation roadmap/inception impact assessment) published in August 2021. It gathered inputs and feedback from stakeholders on the current rules of the PTD and potential impacts of options for future action.

The public consultation collected 520 responses on EU Survey, primarily from companies and business organisations (hereafter, 'companies')⁴ and from 22 of the EU-27. Position papers were submitted by 122 respondents. The study analysed closed questions and a sample of open-ended questions, as well as the public consultation position papers, whose results are referenced throughout this report (see Annex 9 – Public consultations).

Respondents were invited to share information and views on several major issues related to the PTD: market developments; definitions and scope of application; cancellations, liquidity and reimbursements; insolvency protection, pre-payments and preparation for a liquidity crisis; and LTAs. Of the 520 responses, 62% were from companies (323), 13% from EU citizens (68), 10% from business associations (53), 5% from public authorities (25), 3% from consumer organisations (21), 1% from non-EU citizens (3), 1% from non-governmental

³ European Commission, *Package travel: review of EU rules*, Have Your Say, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13117-Package-travel-review-of-EU-rules/public-consultation_en

⁴ The 323 companies who responded included 249 (77%) micro-companies (1-9 employees), 43 (13%) small companies (10-49 employees), 18 (6%) medium-sized companies (50-249 employees) and 13 (4%) large organisations (250+ employees).

organisations (NGOs) (3), <1% from academic and research institutions (1), <1% from trade unions (1), and 4% from others (22).

2.2.5 Targeted surveys

Targeted surveys were used to gather information from relevant stakeholder groups. Three targeted surveys ran from 17 October 2022 to 2 December 2022. The following stakeholder groups were consulted:

- Companies and business associations: 27 responses;
- Consumer organisations: 12 responses;
- Consumers: 10,152 responses;
- National competent authorities (NCAs)
 - Regulatory and enforcement: 28 responses;
 - Insolvency protection agencies: 13 responses.

The surveys collected information on stakeholders' views of current market trends in package travel, including cancellation rights, voucher use and reimbursements. It also sought to establish the main challenges, costs and benefits of current legislation. Member State enforcement and insolvency protection authorities and agencies were asked to define the key characteristics of their national insolvency protection systems, while consumer organisations were asked about the scale of consumer detriment and specific challenges. The results of the targeted surveys are referenced throughout this report, with a full summary report available in Annex 12 - Targeted surveys summary report.

2.2.6 Interviews

The interviews were conducted in two stages – scoping interviews and full-scale interviews. In early 2022, eight scoping interviews were carried out with officials from the European Commission, European and national consumer organisations and industry associations to support the early-stage scoping (ESS) and fine-tuning the study approach.

Following the scoping stage, targeted interviews were carried out to gather qualitative and quantitative information on the evaluation of the PTD and the potential measures to be analysed under the impact assessment. The targeted interviews took place over nine weeks, from 12 October to 9 December 2022. Interviewees were invited to take part in an online meeting lasting 45-60 minutes.

The study team conducted 49 interviews with stakeholders: 6 consumer organisations (2 at EU level, 4 at Member State level), 17 business associations (7 at EU level, 10 at Member State level), 7 individual companies (3 at EU level, 4 at Member State level), 2 individual experts (1 at EU level, 1 at Member State level), and 17 national competent authorities. A total of 211 stakeholders were invited to the interview process.

Interview guides were tailored to three stakeholder categories: consumer organisations, companies, and NCAs. Participants were asked to contextualise their role and knowledge of the PTD and to provide their views on market trends (including pre-payments and cancellation rights), definitions, insolvency protection, and enforcement of the PTD. The questions targeted Member State-level transposition and enforcement issues (NCAs), trends in particular business sectors (companies) and complaints in the context of consumer protection (consumer organisations), while also inviting comment on other cross-cutting issues. The questionnaires encouraged interviewees responsible for, or with experience in, insolvency protection funds to provide more detailed figures on costs, staffing and infrastructure.

2.2.7 Workshops

Two stakeholder workshops updated stakeholders on the progress of the study and gathered information and opinions on the problem areas identified and potential proposed measures. Both workshops were held virtually, on 26 October and 7 December 2022 (see Annex 11 - Workshop documents).

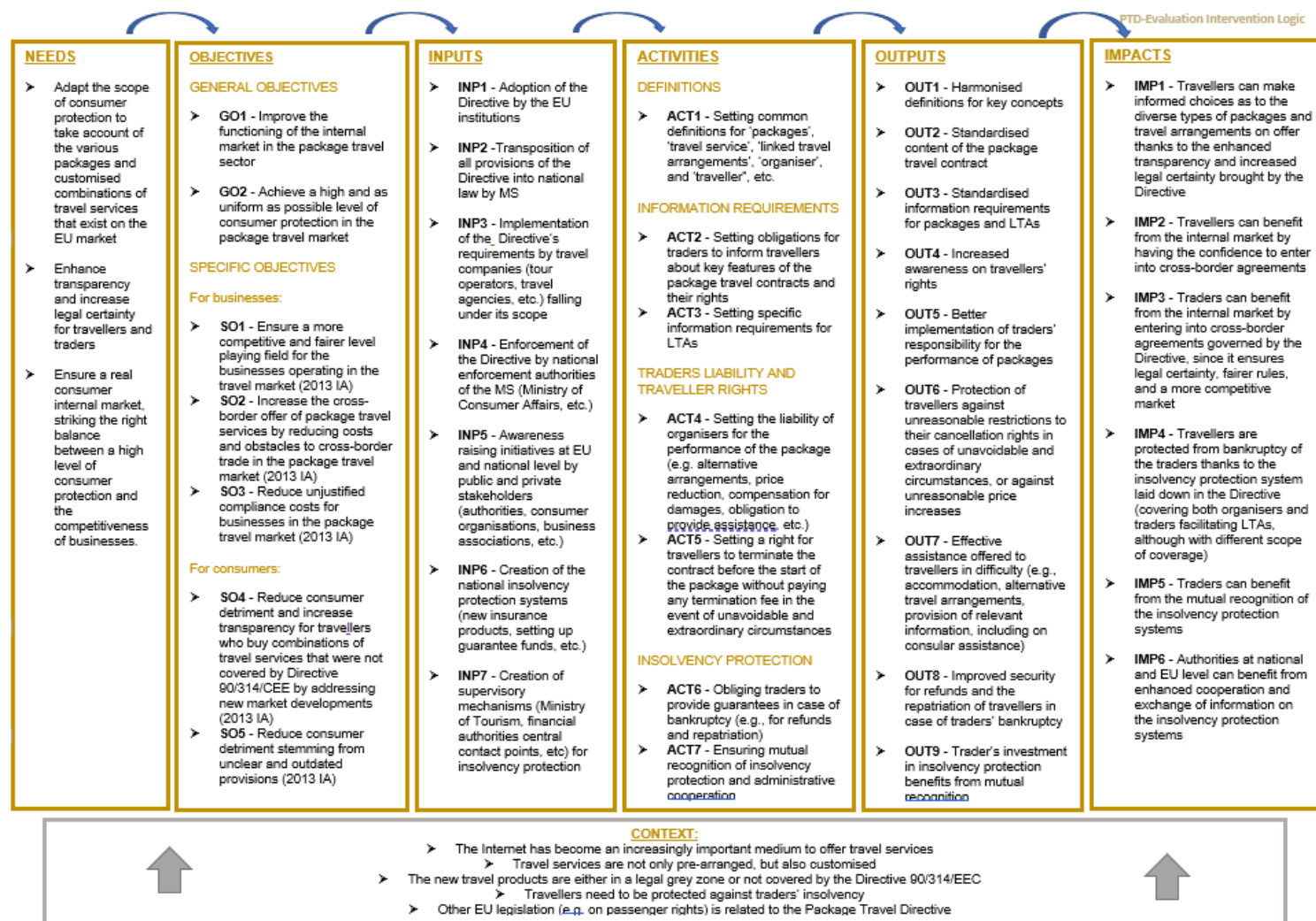
2.3 Intervention logic

The first PTD (90/314/EEC) was adopted in 1990. Its aim was to create harmonised minimum standards for package travel organisers across the EU and ensure the protection of consumers. It defined packages as a combination of at least two different kinds of services, sold together at an inclusive price and covering a period of 24 hours or overnight accommodation. The 1990 Directive was replaced by a new Directive in 2015 to reflect the evolution of the travel industry and the increasing presence of digital sales and services. The 2015 Directive had to be transposed in the Member States by January 2018 and began to apply in July 2018. It included a broader definition of 'package' and added the concept of LTA.

Figure 1 presents the intervention logic for the evaluation of the PTD. It guided the evaluation process by identifying the general and specific objectives of the Directive and explaining how the inputs and activities (e.g. obligations) translate into outputs that will lead to the desired outcomes and results. It also provides an overview of the context and needs to which the PTD responded (e.g. external factors).

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Figure 1. Intervention logic



2.4 Findings

2.4.1 Baseline

This section describes the baseline of the evaluation. It first provides an overview of market trends in the area of package travel, followed by an analysis of the application of the PTD in practice and an overview of the efficiency and effectiveness of existing insolvency protection systems. The timeframe for the market trend analysis covers three timeframes, 2013-2015, through 2016-2018, and 2019-onwards. Data limitations mean that it is not always possible to cover all timeframes in all datasets.

2.4.1.1 Contextual overview of market trends

Tourism has a key role in the global economy. Driven by rising income levels and falling costs in aviation and accommodation, the number of tourists grew globally from 680 million in 2000 to over 1.5 billion in 2019⁵.

The European region continues to be recognised as the global leader in international tourism. In recent decades, the EU has retained its position as the world's leading destination for tourism⁶, welcoming roughly two-thirds of all international tourist arrivals worldwide in 2022⁷. The tourism industry plays a key role in the EU economy due to its economic and employment potential. In 2018, over 1 in 10 enterprises in the European non-financial business economy were in tourism industries, accounting for 2.3 million enterprises and employing some 12.3 million people⁸.

The COVID-19 pandemic prompted the introduction of lockdowns and other measures in Member States, limiting movement across and within countries and heavily impacting global and EU tourism trends. As a result, the contribution of tourism to total Gross Domestic Product (GDP) in Europe halved, from 9.5% in 2019 to 4.9% in 2020. International tourism arrivals declined by 70% in 2020 compared to 2019. According to the World Travel and Tourism Council, 3.6 million jobs were lost in Europe in 2020⁹.

Small and medium-sized enterprises (SMEs) were hit particularly hard by COVID-19 restrictions. According to data from SME United, around 90% of EU SMEs were negatively affected by COVID-19 restrictions, including a loss of turnover and increasing unemployment rates¹⁰.

However, the World Economic Forum (WEF) recently reported signs of recovery in the market, with a 27% rise in nights spent in tourist accommodation in the EU in 2021 (still

⁵ International Monetary Fund, 'Tourism in the Post-Pandemic World. Economic challenges and opportunities for Asia-Pacific and the Western Hemisphere', IMF No 21/02, 2021, p. 3.

⁶ European Commission, *Impact assessment accompanying the document on package travel and assisted travel arrangements*, SWD(2013) 263 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0263:FIN:EN:PDF>

⁷ Statista, *Travel and tourism in Europe - statistics & facts*, 2022, https://www.statista.com/topics/3848/travel-and-tourism-in-europe/#topicHeader__wrapper

⁸ European Parliament, *Factsheets of the European Union – Tourism*, 2022, https://www.europarl.europa.eu/ftu/pdf/en/FTU_3.4.12.pdf

⁹ European Parliament, *Relaunching transport and tourism in the EU after COVID-19*, Policy Department for Structural and Cohesion Policies Directorate-General for Internal Policies, 2021, p. 8, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690884/IPOL_STU\(2021\)690884_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690884/IPOL_STU(2021)690884_EN.pdf)

¹⁰ SME United, *A view on the COVID impact on and support measures for SMEs*, 2020, <https://www.smeunited.eu/admin/storage/smeunited/200417-covid19-impact1.pdf>

37% less than in 2019)¹¹. The outlook remains positive, with travel demand in 2022 projected at between 20%¹² and 30%¹³ below pre-pandemic levels.

The following sections provide an in-depth analysis of the package travel market, drawing on Eurostat data¹⁴, literature, and analysis of the public consultation, targeted surveys, interviews and workshops for this study.

Market trends and evolution of the package travel market

In 2013, the impact assessment accompanying the proposal for amending the 1990 Council Directive on package travel, package holidays and package tours emphasised the need to extend the applicability of the original PTD. Indeed, the study found that the applicability of the PTD solely to pre-arranged packages¹⁵ was self-limiting, given the increasing numbers of consumers putting trips together themselves, using one or more traders¹⁶.

A 2019 Commission report noted the continuing trend in consumers combining travel services for the same trip in different ways. Consumers buy pre-arranged or customised packages, online or offline, using tour operators or travel agencies, or booking directly with one or more service providers¹⁷.

According to estimates in the 2013 impact assessment, pre-arranged packages accounted for about 23% of the total market value (around 118 million trips), not taking into account the dynamic packages the 2015 Directive aimed to include (which have been effectively included since July 2018).

Eurostat figures show that in 2014, the number of packages accounted for 9%¹⁸ of the total number of trips for personal reasons in the EU (around 86 million trips)^{19,20}. In 2017, packages continued to represent 9% of all tourism trips in the EU-27²¹. In 2014, the sector generated spending of around EUR 66.50 billion in 2014, some 23% of total spending in the EU for travel for personal reasons. In 2017, the package sector generated expenditure of roughly EUR 85.04 billion, again representing some 23% of total spending in the EU for travels for personal reasons.

¹¹ World Economic Forum, *How quickly is tourism recovering from COVID-19?*, 2022, <https://www.weforum.org/agenda/2022/03/europe-tourism-has-slow-pandemic-recovery/>

¹² European Travel Commission, *European Tourism 2021 – Trends & Prospects (Q4/2021)*, 2022, <https://etc-corporate.org/reports/european-tourism-2021-trends-prospects-q4-2021/>

¹³ European Travel Commission, *European Tourism 2022 – Trends & Prospects (Q2/2022)*, 2022, https://etc-corporate.org/uploads/2022/07/Quarterly-Report-Q2-2022_Public-1.pdf

¹⁴ Figures in Tables 1 and 2 are rounded.

¹⁵ Council Directive of 13 June 1990 on package travel, package holidays and package tours, 90/314/EEC.

¹⁶ European Commission, *Impact Assessment*, SWD(2013) 263 final.

¹⁷ European Commission, *Report from the Commission to the European Parliament and the Council on the provisions of Directive (EU) 2015/2302 on package travel and linked travel arrangements, applying to online bookings made at different points of sale*, COM(2019) 270 final.

¹⁸ Comparability with data on pre-arranged packages provided in the 2013 impact assessment is impossible because sources and definitions differ.

¹⁹ Information on package travels is gathered through Eurostat datasets and the definitions used are derived from the regulatory framework in force during the timeframe considered. For 2014, the definition of package is contained in Article 2(1) of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.

²⁰ Eurostat, Trips by trip arrangement (2014-2019), https://ec.europa.eu/eurostat/databrowser/view/tour_dem_ttorg/default/table?lang=en

²¹ In 2017, the definition of package contained in Directive 90/314 still applied, rather than Article 3(2) of Directive (EU) 2015/2302 on package travel and linked travel arrangements.

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Tables 1 and 2 present these trends for 2014 and 2017²².

Table 1. Top three Member States, by number of trips (millions)

Member State	2014	Share of EU-27, 2014	2017	Share of EU-27, 2017
Germany	38 m	44%	36 m	42%
France	11 m	13%	9 m	10%
Austria	5 m	6%	n/a	n/a
Sweden	n/a	n/a	7 m	9%
Top 3	54 m	63%	53 m	61%
EU-27	86 m	100%	87 m	100%
EU-28 ²³	99 m	n/a	112 m	n/a

Source: ICF, based on Eurostat – Number of trips by type of organisation (from 2014 onwards) [tour_dem_ttorg], purpose – personal reasons, duration – 1 night or over, partner – all countries of the world.

The overall absolute number of packages in the EU remained quite steady over the period 2014-2017, with a minor increase of approx. 0.4%. At the same time, the absolute number of packages for the top three Member States countries (Germany, France, Austria in 2014; Germany, France, Sweden in 2017) diminished by 3%. Differences across national markets are clear.

The targeted survey asked companies about differences in the share of packages sold in different Member States. Of those that responded, 4 out of 11 pointed to some differences, with the remaining 7 stating they did not know²⁴. One stakeholder noted that differences are explained by consumer behaviour and buying patterns for travel.

According to some stakeholders, consumers are now booking fewer packages, although that part of the market still exists²⁵, for example for people travelling in groups²⁶. Of the respondents to the business survey, 8 of 23 explained that their annual share of packages changed since July 2018, when the PTD began to apply²⁷.

Table 2. Share of different types of travel services since 2013

Types of travel services sold	Changes	July 2018-February/March 2020 (outbreak of COVID-19)	Feb/March 2020-July 2021 (introduction of EU Digital COVID Certificate)	July 2021-present
Packages (including ready-made and customised) sold offline, either directly by the organiser or via a retailer or as a retailer (insofar as the respondent acts as retailer)	Increase	3/6 (50%)	1/6 (17%)	2/6 (33%)
	Decrease	3/6 (50%)	5/6 (83%)	4/6 (67%)
Packages (including ready-made and customised) sold online directly by the organiser or via a retailer, or as a retailer	Increase	5/7 (71%)	1/7 (14%)	4/7 (57%)
	Decrease	2/7 (29%)	6/7 (86%)	3/7 (43%)

²² Analysis limited to 2014, 2017 due to lack of available data on Eurostat.

²³ Eurostat estimation.

²⁴ Business targeted survey Q.2: n=11; 4 yes, 7 don't know.

²⁵ Scoping interview with consumer organisation; PTD study, Minutes of the Workshop of the PTD, 2022; PTD study with businesses and consumer representatives, 2022.

²⁶ Scoping interview with consumer organisation; PTD study, 2022.

²⁷ Business targeted survey Q.3: n=23; 8 yes, 4 no, 11 don't know.

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Types of travel services sold	Changes	July 2018- February/March 2020 (outbreak of COVID-19)	Feb/March 2020-July 2021 (introduction of EU Digital COVID Certificate)	July 2021- present
(insofar as the respondent acts as retailer)				
LTAs (sold offline)	Increase	2/3 (67%)	1/3 (33%)	1/3 (33%)
	Decrease	1/3 (33%)	2/3 (67%)	2/3 (67%)
LTAs (sold online)	Increase	3/3 (100%)	0/3 (0%)	2/3 (67%)
	Decrease	0/3 (0%)	3/3 (100%)	1/3 (33%)
Standalone travel services (sold offline)	Increase	2/4 (50%)	1/4 (25%)	2/4 (50%)
	Decrease	2/4 (50%)	3/4 (75%)	2/4 (50%)
Standalone travel services (sold online)	Increase	2/3 (67%)	0/3 (0%)	3/4 (75%)
	Decrease	1/3 (33%)	3/3 (100%)	1/4 (25%)

Source: Based on business associations targeted survey Q4.

Respondents indicated that following the outbreak of the pandemic, the sales of packages decreased, with a slight majority of respondents indicating a subsequent increase in the share of packages sold online from July 2021²⁸. This appears to be linked to the spread of the COVID-19 pandemic, which hit the travel market significantly. This was confirmed by all stakeholders in the consultations. For instance, an absolute majority of respondents^{29,30,31}, when asked about the extent to which the COVID-19 pandemic had impacted the package travel sector, indicated that it had a substantial impact.

For EEA countries, the only available data are the number of packages in Norway in 2017, which was approximately 2 million, constituting almost 9% of its total travel market and generating total spending of EUR 3 billion.

Table 3 provides an overview of the total expenditure for package travel across the EU.

Table 3. Expenditure for package travel, top three Member States (EUR billion)

Member State	2014	Share of EU- 27, 2014	2017	Share of EU- 27, 2017
Germany	EUR 26 bn	39%	EUR 29 bn	35%
France	EUR 13 bn	20%	EUR 12 bn	15%
Austria	EUR 4 bn	7%	n/a	n/a
Sweden	n/a	n/a	EUR 12 bn	14%
Top 3	EUR 44 bn	66%	EUR 53 bn	63%
EU-27	EUR 67 bn	100%	EUR 85 bn	100%

²⁸ Business targeted survey Q.4: July 2018-Feb/March 2020: Packages sold offline: n=6, 3 increase, 3 decrease; packages sold online: n=7, 5 increase, 2 decrease; Feb/March 2020-July 2021: packages sold offline: n=6, 1 increase, 5 decrease; packages sold online: n=7, 1 increase, 6 decrease; July 2021-present: packages sold offline: n=6, 2 increase, 4 decrease; packages sold online: n=7, 4 increase, 3 decrease.

²⁹ Business targeted survey Q. 5: n=24; 23 to a large extent, 1 don't know.

³⁰ Consumer organisations targeted survey Q. 2: n=12; 12 to a large extent.

³¹ NCAs regulatory and enforcement targeted survey Q. 22: n=27; 26 to a large extent, 1 to a small extent.

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Source: ICF, based on Eurostat – Expenditure by type of organisation (from 2014 onwards) [tour_dem_exorg], purpose – personal reasons, duration – 1 night or over, partner – all countries of the world, trip arrangement – package travel.

Germany, France and Austria also ranked in the top three for spending on package travel in 2014, with Sweden replacing Austria in 2017.

In 2020, the Market Monitoring Survey found that 81% of EU-27 consumers trust the package holiday and tour services market (no further detail was provided). Figures ranged from a high of 90% in Croatia and Portugal to a low of 60% in Poland³². The public consultation asked about the reasons for choosing a package instead of booking travel services separately, with 75% of respondents preferring packages because it is easier to find all services at the point of sale³³. In addition, 70% of respondents indicated the availability of more guarantees as a reason for preferring packages³⁴.

LTAs

The scope of the 1990 Directive was limited to so-called pre-arranged packages, i.e. a combination of at least two travel services bundled in advance by a package organiser. The Directive excluded dynamic packages and other combinations of travel services – what the 2013 impact assessment referred to as ‘combined travel arrangements’³⁵.

The impact assessment emphasised that limiting the scope of the Directive to pre-arranged packages rendered the legislation outdated and unclear, as it did not cover services combined at the consumer’s request, or directly by consumers themselves, which had increased as a consequence of trend towards online travel purchases.

One of the novelties in the 2015 PTD was its applicability to the newly created category of LTAs (Article 3(5) PTD). Estimates for the 2013 impact assessment showed that, at the time of the study, approx. 15 million of 500 million holiday trips were multi-trader assisted travel arrangements, which Article 3(5)(b) aimed to capture. There are very limited data on relevance of LTAs before July 2018.

Table 4 presents the share of LTAs as a proportion of sales of specific respondents to the business targeted survey, over selected time periods. The limited number of responses does not allow specific trends to be identified³⁶.

Table 4. Share of LTAs in respondents’ sales³⁷

Timeframe	LTAs sold offline, n=6	LTAs sold online, n=7
Baseline and transition period (2013-June 2018)	1-10% - 4 respondents	1-10% - 5 respondents
	10-20% - 1 respondent	30-50% - 1 respondent
Start of application of the PTD (July 2018-Feb/March 2020)	1-10% - 4 respondents	1-10% - 5 respondents
	10-20% - 2 respondents	30-50% - 2 respondents
COVID-19 pandemic (February/March 2020-July 2021)	1-10% - 6 respondents	1-10% - 6 respondents
	/	10-20% - 1 respondent
COVID-19 pandemic (July 2021-present)	1-10% - 4 respondents	1-10% - 5 respondents
	10-20% - 1 respondent	10-20% - 1 respondent

³² European Commission, *Market Monitoring Survey 2020*, 2021, p. 6,

https://commission.europa.eu/system/files/2021-03/mms-overview-report-19-20_en.pdf

³³ Public consultation Q1: 354/471 respondents.

³⁴ Ibid.: 332/471 respondents.

³⁵ European Commission, *Impact assessment*, SWD(2013) 263 final, p. 7.

³⁶ 40/520 public consultation respondents indicated facilitating LTAs as part of their activities.

³⁷ Business targeted survey Q.1.

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Timeframe	LTAs sold offline, n=6	LTAs sold online, n=7
	30-50%- 1 respondent	30-50% - 1 respondent

Source: ICF, based on business targeted survey.

Business stakeholders were asked if the annual share of LTAs sold since July 2018 – when the PTD entered into force – had increased. However, the very limited number of answers to this question (n=3) prevented any conclusion.

In the framework of the consultation for this study, the large majority of stakeholders noted that they do not have specific data on LTAs, citing the difficulty of detecting when an LTA is concluded (see further discussion at Section 2.5.1 - Effectiveness).

Travel distribution environment: main stakeholders and turnover

The travel economy is based on a sophisticated network of travel distribution stakeholders, such as service providers, global distribution systems, online travel agencies (OTAs), traditional travel agencies, travel management companies and tour operators³⁸. Within this network, consumers are reached through direct or intermediated distribution. Direct distribution is when a service provider sells the service to consumers directly, while intermediated distribution involves third parties such as travel agencies, tour operators and OTAs, which sell consumers services provided by other parties³⁹.

According to Eurostat data, there were approx. 112,000 travel agency, tour operator and other reservation services in the EU in 2019 (Table 4), almost 100% of which were SMEs⁴⁰, employing 470,000 people. Information on turnover is not available for the EU-27, but turnover generated by the EU-28⁴¹ in 2018 was around EUR 197,300 million (Table 5)⁴².

Discounting the effects of the COVID-19 pandemic, these data confirm a trend of continuous growth in the sector since 2013. At that time, the EU travel market comprised approximately 90,000 tour operators and travel agencies, with SMEs constituting 99% of the business, of which micro enterprises represented 92%⁴³.

Table 5. Travel agency, tour operator and other reservation service and related activities, top three (thousands)

Member State	2013-2015		2016-2018		2019
Italy	15.4	16.1	16.8	17.6	18.2
Spain	10.9	11.4	12.9	14.5	14.7
Germany	10.5	12	12.3	13.1	12.6
Top 3	36.7	39.5	42.1	45.2	45.5

³⁸ Lupiáñez-Villanueva, F., et al., *Behavioural study on advertising and marketing practices in travel booking websites and apps: final report*, Consumers, Health, Agriculture and Food Executive Agency, Publications Office of the European Union, 2020, p. 20.

³⁹ Ibid.

⁴⁰ SMEs accounted for 99.9%. According to Eurostat data, in 2019, there were 130 travel agency, tour operator and other reservation service and related activities enterprises in the EU that employed 250+ people.

⁴¹ EU-27 plus United Kingdom (UK).

⁴² In 2018, the UK generated a turnover of EUR 52,196 million.

⁴³ European Commission, *Impact assessment*, SWD(2013) 263 final.

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Member State	2013-2015		2016-2018		2019
EU-27	89.3	97.1	101.5	108.4	112.4

Source: ICF, based on Eurostat annual enterprise statistics for special aggregates of activities (NACE Rev. 2) [sbs_na_sca_r2], Nace_r2 – Travel agency, tour operator and other reservation service and related activities.

The number of travel agencies and other reservation services has progressively increased. Between 2013 and 2015, the number of operators in the EU increased by 9%, and by 7% between 2016 and 2018, with overall growth of 26% from 2013 to 2019. Italy, Spain and Germany accounted for the top three countries over the whole period, with the number of agencies increasing by 24% between 2013 and 2019.

Table 6. Travel agency, tour operator and other reservation service and related activities, turnover, top three (EUR million)

Country	2013	EU-28 share	2018	EU-28 share
UK	EUR 47,543	30%	EUR 52,196.5	26%
Germany	EUR 27,932.1	17%	EUR 35,177.3	18%
Spain	EUR 16,840.5	11%	EUR 23,989.5	12%
Top 3	EUR 92,315.6	58%	EUR 111,363.3	56%
EU-28	EUR 160,000		EUR 197,297.3	

Source: ICF, based on Eurostat annual enterprise statistics for special aggregates of activities (NACE Rev. 2) [sbs_na_sca_r2], Nace_r2 – Travel agency, tour operator and other reservation service and related activities.

The scarcity of data on turnover does not allow for more in-depth analysis, but there is nevertheless a clear growing trend. The rise in EU-28 turnover from 2013 to 2018 amounted to 23%, and the top three countries – UK, Germany, Spain – increased their turnover by 21%. This trend changed significantly in 2020, due to the strong impact of the COVID-19 pandemic on the market. For instance, German companies' turnover reduced by approx. 67% compared to 2018 (to EUR 11,473 million), while Spanish agencies' turnover decreased by 64% (to EUR 8,641 million)⁴⁴.

As shown in Table 7, the industry of travel agencies and related services is predominantly composed of micro-enterprises. In 2019, 94% of the EU's travel agencies were companies with fewer than nine employees. The remaining 6% was composed of SMEs employing between 10 and 249 people. By contrast, large companies (250+ employees) accounted for just 0.1% of EU-27 travel enterprises. Figures on turnover are not comparable due to limited data available. However, Table 8 shows that bigger companies, although fewer in number, generated higher turnover than SMEs.

Table 7. Travel agencies, tour operators and other reservation services and related activities, by number of employees

Type of enterprise	2013	2015	2016	2018	2019 ⁴⁵
	89,810	98,153	102,712	109,693	105,982

⁴⁴ Eurostat, Annual enterprise statistics for special aggregates of activities (NACE Rev. 2) [sbs_na_sca_r2].

⁴⁵ Data not available for the EU-28 in 2019.

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Type of enterprise	2013	2015	2016	2018	2019 ⁴⁵
0-9 employees	93% of EU-28	94% of EU-28	94% of EU-28	94% of EU-28	94% of EU-27
10-249 employees	6,381	6,668	6,725	6,952	6,304
	7% of EU-28	6% of EU-28	6% of EU-28	6% of EU-28	6% of EU-27
250+ employees	160	156	161	180	139
	0.2% of EU-28	0.1% of EU-28	0.1% of EU-28	0.2% of EU-28	0.1% of EU-27

Source: ICF, based on Eurostat annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [sbs_sc_sca_r2], Nace_r2 – Travel agency, tour operator and other reservation service and related activities.

Table 8. Travel agency, tour operator and other reservation service and related activities, turnover (EUR million, EU-28)

Type of enterprise	2013	2015	2016	2018 ⁴⁶
0-9 employees	EUR 33,301	EUR 37,373	EUR 40,098	EUR 29,000
10-249 employees	EUR 64,538	EUR 72,963	EUR 71,422	EUR 53,731
250+ employees	EUR 62,833	EUR 69,875	EUR 72,324	n/a

Source: ICF, based on Eurostat annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [sbs_sc_sca_r2], Nace_r2 – Travel agency, tour operator and other reservation service and related activities, Indic_SB – Turnover or gross premiums written - million euro.

2.4.1.2 Changes in business practices

The 2013 impact assessment emphasised how the growing number of internet users had shifted the travel market significantly online, with travel services the most popular category purchased online. It noted that the main problem with the 1990 PTD was that it was no longer fit for the increasing trend towards online travel purchases.

That trend of purchasing travel services online has continued, with the tourism sector outperforming other industries in the share of businesses selling online. This is explained by the information-intensive nature of the tourism sector and the wealth of information easily available online⁴⁷. Statista's Digital Market Outlook in 2018 concluded that the internet is the main global driver for the travel booking market⁴⁸. In line with this conclusion, the 2020

⁴⁶ Data for 2018 refer to EU-27.

⁴⁷ OECD, 'Chapter 2: Preparing tourism businesses for the digital future', *OECD Tourism trends and policies, 2020*; see also European Commission, Behavioural study [...], p. 20.

⁴⁸ European Commission, Behavioural study [...].

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Market Monitoring Survey reported that 43% of consumers who had purchased package holidays and tour services had done so online, using the websites of travel operators⁴⁹.

As shown in Table 9⁵⁰, the percentage of people purchasing holiday services in the EU has increased over the years. However, Table 10 shows a dramatic decline in online purchases of travel services (e.g., transport service) in 2020 and 2021 due to the COVID-19 pandemic.

Table 9. Online purchases of travel and holiday accommodation, tickets for events, other travel arrangements (transport tickets, car hire, etc.) (% of all individuals)

Category	Area	2013	2015	2016	2018	2019
Travel and holiday accommodation	EU-27	23%	24%	25%	28%	31%
Tickets for events	EU-27	16%	17%	18%	20%	23%
Other travel arrangements	EU-27	16%	17%	18%	20%	22%

Source: ICF, based on Eurostat – Internet purchases by individuals (until 2019) [isoc_ec_ibuy].

Table 10. Online purchases, 3-month period (% of all individuals)

Category	GEO	2020	2021
Rented accommodation	EU-27	11%	9%
Transport service	EU-27	10%	8%

Source: ICF, based on Eurostat – Internet purchases - goods or services (2020 onwards) [isoc_ec_ibgs].

The increased use of the internet by travellers has impacted the way actors in the travel and tourism sectors conduct their business. Firstly, service providers in tourism destinations have embraced the internet for marketing purposes, by promoting their offers through webpages⁵¹. Mobile marketing has become particularly popular, with consumers favouring apps for their speed and functionality⁵². In addition, Organisation for Economic Co-operation and Development (OECD)-sponsored research revealed that, on average, 77% of accommodation and food and beverage companies – including 22 Member States, Norway and Iceland, have a website and 70% use social media to conduct their business⁵³.

Secondly, according to the European Commission's behavioural study, the online expansion of the industry has created a complex web of actors, intermediaries, and new business-to-consumer (B2C) relationships. The agents participating in the creation and distribution of travel information have multiplied, encompassing OTAs, supplier websites, tour operators, consolidators and meta-search and corporate enterprises. These market players have used information and communications technology (ICT) developments in innovative ways to advertise and sell their products⁵⁴. Although OTAs can be easily

⁴⁹ European Commission, *Market Monitoring Survey 2020*, 2021, p. 6, https://ec.europa.eu/info/sites/default/files/new-cars-mms20-ppt_en.pdf

⁵⁰ The categories provided for the years from 2013 to 2019 differ slightly to those for 2020-2021.

⁵¹ Ibid., p. 9.

⁵² Ibid., p. 20.

⁵³ OECD, *OECD Tourism trends and policies*, 2020.

⁵⁴ European Commission, *Behavioural study [...]*, p. 20.

understood as intermediaries, research indicates that their key role is to preserve market positions, extend search marketing, and meet consumer demand for packaged and spontaneous travel⁵⁵. These channels have acquired a central role, given increased consumers' dependence on them for their purchase decision-making⁵⁶.

Previous research identified three predominant business models used by OTAs⁵⁷:

1. **Advertising model:** OTAs offer travel and non-travel advertisers access to consumers through their website. Revenue is collected from the fees paid to display the ad, as well as from consumers' click-throughs from the ad⁵⁸;
2. **Agency or 'commission' model:** OTAs facilitate the transaction and receive a commission from the traveller and/or travel supplier on every transaction concluded through its website (e.g. booking.com; Airbnb)⁵⁹;
3. **Merchant model:** OTAs facilitate booking on their website by buying services in bulk in advance before selling them to the consumer (e.g. Expedia)⁶⁰. The main source of revenue is the difference in price.

Overall, companies tend to use a combination of models, with one as their principal source of revenue. The majority of OTAs or providers in the EU use the advertising or agency business model⁶¹. The relevance of the online travel market is linked to two aspects: firstly, package holidays are often booked through online travel booking systems, either through an online travel service provider acting as an intermediary or directly as tour operator⁶². Secondly, online service providers frequently partner with other travel providers, allowing them to propose their partners' options on their websites or to refer to their partners to complete the booking or add additional services⁶³. These practices thus seem relevant for the possible conclusion of LTAs as well.

One of the main objectives of the 2015 PTD was to adapt the Directive to the increase in online bookings. When asked in the public consultation how well-adapted the PTD is to market trends – including expansion of sales by online booking and bookings on mobile devices – more than half of the respondents said that the PTD is not well adapted to these market trends⁶⁴. Figure 2 shows that only 4% of stakeholders believe the PTD to be very well adapted to online market trends. There were no major disagreements between the specific groups of respondents⁶⁵.

⁵⁵ Ibid., p. 22.

⁵⁶ Ibid., p. 20.

⁵⁷ Ibid., p. 29. In addition to the three models, the research explains that some companies incorporate features of the so-called subscription model, which consists of generating revenue from customers' subscription to their special services and sales.

⁵⁸ World Bank Group, *Rebuilding Tourism Competitiveness - Tourism response, recovery, and resilience to the COVID-19 crisis*, 2020.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ European Commission, Behavioural study [...], p. 34.

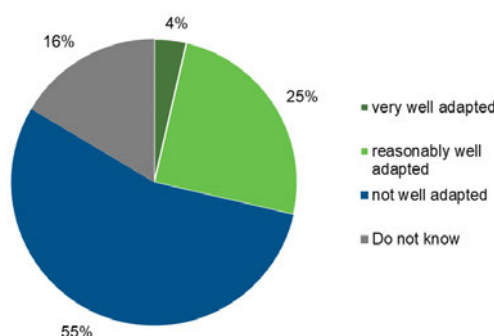
⁶² Ibid., p. 21.

⁶³ Ibid., p. 35.

⁶⁴ Q3: 257/468 respondents.

⁶⁵ 55% of companies (n=286), 72% of business associations (n=50), 57% of consumer organisations (n=21), 45% of public authorities (n=22), 45% of EU citizens (n=66), 62.5% of others (n=16) and 67% of NGOs (n=3) replied 'not well adapted', 67% of non-EU citizens (n=3), replied 'do not know'; 1 academic/research institution (n=1) replied 'reasonably adapted'.

Figure 2. Public consultation: how well-adapted is the PTD to market trends (n= 468)



Source: ICF, based on public consultation Q.3.

2.4.1.3 Pre-payment models

Already at the time of the 2013 impact assessment, pre-payments were described as the standard payment model in the package travel sector, which was traditionally characterised by consumers booking packages before departure and by way of a pre-payment⁶⁶.

Pre-payment continues to be the usual payment model for package travel. According to stakeholders in the transport and travel sectors, pre-payment models are a global standard for travel services⁶⁷. By investing the pre-payments from the travellers, travel operators can purchase large allotments of services in advance, allowing low(er) prices⁶⁸.

When asked about the most frequently used payment models for different types of travel services, the majority of the responding consumer organisations and companies reported that, for package travel, travellers make a down-payment at the time of booking, with the remainder paid some time before the start of the contract (e.g. one month)⁶⁹. Respondents (albeit in small numbers) confirmed the predominance of pre-payments model in the package travel sector. This finding was replicated in all other consultation activities.

On the pre-payment models in place, the literature refers to the German model. Based on national case-law on unfair contract terms⁷⁰, pre-payments are limited to a 20% down-payment at the time of booking, with the rest due not more than 30 days before the beginning of the trip⁷¹. As an exception, pre-payment can be higher than 20% in circumstances where the organiser duly justifies it, due to expenditure present at the

⁶⁶ European Commission, *Impact assessment*, SWD(2013) 263 final, p. 76.

⁶⁷ European Commission, *Report 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, p. 12.

⁶⁸ Ibid.

⁶⁹ Business targeted survey Q.8: n=10, 10 down-payment at the time of booking; consumer organisations targeted survey Q.3: n=12, 11 down-payment at the time of booking.

⁷⁰ BGH – X ZR 71/16, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=79534&pos=0&anz=1>;
BGH - X ZR 85/12, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=46187c163b972182902743377a1dcc62&nr=70493&pos=0&anz=1>

⁷¹ European Commission, *Report 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, p. 12.

moment of the package contract conclusion. The authorities reported a positive experience overall with the model⁷².

Another pre-payment model is in place in Austria⁷³, where legislation provides that customers' pre-payments may be accepted at the earliest 11 months before the agreed end of the trip, and that no more than 20% of the package price can be accepted earlier than 20 days before the start of the trip. However, these restrictions do not apply where unlimited insolvency protection is available.

There are some Member States where rules on pre-payments have not been adopted, but commercial practices have developed on a voluntary basis. For instance, some organisers apply limits on pre-payments depending on how early the consumer books the trip⁷⁴. The authorities of one Member State explained that the industry itself applied a limitation of 20% of the price paid, 10 days after booking, with the rest due four weeks before the start of the trip. The practice, however, may vary in light of the flight component and length of the trip⁷⁵. Another stakeholder explained that in Italy, some organisers ask for 25/30% of pre-payment and the price of the air tickets issued, with the remainder paid 20 days before the trip. The percentage of down-payment and the remainder to be paid is clearly specified in the contract and in the organiser's terms and conditions⁷⁶.

The majority of business stakeholders confirmed that different payment models are used in different Member States⁷⁷. Two stakeholders indicated that the pre-payment and payment schedule, in general, depend on the product type (e.g. package travel, single travel bookings) and the time of booking, and that they reflect their anticipated payments to suppliers. This was confirmed in their response to the question on whether the payment models for packages depend on the type of services included in the package. A large majority replied positively⁷⁸, with one stakeholder explaining that the advance charged to consumers is related to the advance payable to suppliers. Others shared that pre-paid and non-refundable services are paid at the time of booking, and transport services providers – particularly airlines – request upfront payments for bookings. Therefore, whenever a package includes such transport services, the payment model is adjusted to the pre-payment obligation. One outlined that in their Member State, large organisers that use charters require limited pre-payments. Nevertheless, for packages involving scheduled (non-chartered) flights, where organisers have to pay service providers, they need a pre-payment to cover the entire flight fare⁷⁹. A stakeholder from the airline sector explained that the pre-payment practice constitutes a structural model of the industry, because numerous costs are paid upfront (e.g. fuel is pre-purchased through mechanisms involving pre-payments, regardless of whether or not the aircraft flies). They added that pre-payments are key for air fares, both in terms of guaranteeing fares and low prices (e.g. with pre-payments, airlines can offer cheaper fares)⁸⁰.

⁷² Workshop with experts from national authorities - Consumer Protection Cooperation (CPC) Network, 5 December 2022.

⁷³ Package Travel Order (*Pauschalreiseverordnung*), <https://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010321>

⁷⁴ Workshop with experts from national authorities - CPC Network, Review of the PTD, 12 May 2022.

⁷⁵ Workshop with CPC authorities, 5 December 2022.

⁷⁶ Interview with business association, 5 December 2022.

⁷⁷ Business targeted survey Q. 9: n=25, 11 yes, 7 no, 7 don't know.

⁷⁸ Business targeted survey Q. 10: n=25, 12 yes, 6 no, 7 don't know.

⁷⁹ Workshop with CPC authorities, 12 May 2022.

⁸⁰ Interview with business organisation, December 2022.

One stakeholder mentioned that due to cultural differences in the market, some services may not accept credit cards, instead preferring bank transfers, with a frequent situation of pre-payments at the time of booking and the remainder in cash on arrival⁸¹.

Overall, the respondents to the business targeted survey indicated differences in payment models across Member States and travel products, but generally agreed that the main payment models are credit cards, bank transfers and cash⁸².

2.4.1.4 Termination of package travel contracts and reimbursement

The consultations showed that the share of package travel contracts terminated before their start was very limited before the COVID-19 pandemic. The targeted surveys, with the majority of both consumer organisations and businesses, indicated that the share was 1-10% before the pandemic⁸³.

Among the reasons for terminating packages before the COVID-19 pandemic, consumer organisations (albeit in limited numbers) indicated the organiser significantly altering any of the main characteristics of the package or proposing to increase the price of the package by more than 8% (Article 11 PTD)⁸⁴. Other reasons included warfare and security concerns at the place of destination, natural disasters, and health concerns.

Both the majority of consumer organisations and businesses indicated that before the COVID-19 pandemic, there were few disagreements between organisers and travellers on whether the situations used as justification for terminating the package qualified as unavoidable and extraordinary circumstances⁸⁵.

However, after the outbreak of the COVID-19 pandemic, the situation in the market changed significantly. The number of cancellations due to unavoidable and extraordinary circumstances (Article 12(2) and 12(3)(b) PTD) skyrocketed in 2020. The pandemic resulted in numerous travel bans, warnings, and restrictions at borders, bringing the tourism sector virtually to a standstill. In April 2020, there were 88% fewer flights in the EU than in April 2019, with 99% fewer passengers and roughly 50 million flight tickets cancelled between March and May 2020. The effect of travel restrictions on flights was more widespread in the EU than in other parts of the world⁸⁶. By May 2020, there was an 85% reduction in long-distance railway passenger services compared to 2019, an 80% decrease in regional rail passenger services and 90% in cruise and passenger ships services⁸⁷. In the first wave of the pandemic (March-June 2020), international rail passenger volumes dropped by almost

⁸¹ Business targeted survey open questions Q. 9A.

⁸² Business targeted survey open questions Q. 9A; Q. 10A.

⁸³ Business targeted survey Q.11: n=15, 12 1-10%, 3 10-20%; consumer organisations targeted survey Q. 4: n=8, 5 1-10%, 1 10-20%, 2 >50%.

⁸⁴ Consumer organisations targeted survey Q. 5: n=10, 4 Warfare and security concerns at the place of destination, 4 Natural disasters, 6 Organiser significantly altered any of the main characteristics of the package, 4 Health concerns at the place of destination, 6 Other.

⁸⁵ Business targeted survey Q. 12: n=20, 3 to a large extent, 1 to a moderate extent, 13 to a small extent, 3 don't know; consumer organisations targeted survey Q. 6: n=12, 2 to a large extent, 4 to a moderate extent, 5 to a small extent, 1 don't know.

⁸⁶ European Court of Auditors (ECA), *Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts*, Special report, 2021, pp. 12-13.

⁸⁷ European Commission, Commission Recommendation (EU) 2020/648 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, 2020, p. 1.

100% for all operators⁸⁸. The sector experienced revenue losses of EUR 24 billion in 2020, compared to 2019. While data are not available on the number of packages in 2020, or the number of travel services which formed part of a package, the sharp reduction in bookings and increase in cancellations strongly suggest a similar decline for the package sector.

Under Articles 12(2) and 12(3)(b) of the PTD, travellers have a right to full reimbursement of their advance payments to organisers where the contract is terminated because 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 destination⁸⁹. This right applied during the COVID-19 pandemic, as a significant risk to human health such as the outbreak of a disease in the country of destination or its vicinity usually qualifies as an unavoidable and extraordinary circumstance⁹⁰.

Throughout Europe, travel agencies, tour operators and airlines were confronted with millions of refund claims and complaints from consumers⁹¹. Package organisers faced issues at two levels: they had booked travel services in advance for travellers, making partial or full payments to service providers; and travellers were cancelling their trips and asking for reimbursement, without the possibility for organisers to get their money back from service suppliers⁹². As the number of bookings also collapsed, companies were unable to generate new sources of revenue to execute refunds, impacting their liquidity⁹³. Travel agencies, tour operators, airlines and railway companies started to offer their customers vouchers instead of cash refunds. According to the Member State authorities that responded to the targeted survey, package organisers rarely (if ever) offered vouchers before COVID-19, but have since begun to offer them frequently⁹⁴. One Member State authority explained that, before the pandemic, if a voucher was issued, this was only on a contractual basis between the organiser and the traveller⁹⁵. Similarly, businesses noted that before the pandemic, vouchers were offered rarely but are since offered frequently⁹⁶.

Many Member States introduced special temporary rules on the cancellation of packages in 2020 in response to the COVID-19 pandemic. For example, 15 Member States gave package organisers the option to provide a voucher instead of a reimbursement, or to

⁸⁸ European Parliament, *Relaunching transport and tourism in the EU after COVID-19*, Committee on Transport and Tourism (TRAN Committee), 2022, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/690899/IPOL_STU\(2022\)690899_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/690899/IPOL_STU(2022)690899_EN.pdf)

⁸⁹ Article 3(12) PTD defines unavoidable and extraordinary circumstances as 'situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken'.

⁹⁰ European Commission, *Information on the Package Travel Directive in connection with COVID-19*, 2020.

⁹¹ European Travel Agents' and Tour Operators' Associations (ECTAA), *COVID-19 and Tourism in Europe: Which Consequences for Travel Agencies and Tour Operators - Impact of Package Travel Directive and other EU legislation on the travel companies in the context of the pandemic*, 2020, p. 5.

⁹² *Ibid.*, p. 6.

⁹³ *Ibid.*

⁹⁴ NCAs regulatory and enforcement targeted survey Q.5: n=24, Before COVID-19: 0 frequently, 16 rarely, 4 never; Since the outbreak of COVID-19: 20 frequently, 0 rarely, 0 never.

⁹⁵ Interview with Member State NCA, 25 November 2022.

⁹⁶ Business targeted survey Q. 16: n=25, Before COVID-19: 5 frequently, 11 rarely, 3 never, 6 don't know; Since the outbreak of COVID-19: 18 frequently, 1 rarely, 0 never, 6 don't know.

postpone reimbursement beyond the 14-day period^{97,98}. In March 2020, while rejecting the idea of mandatory vouchers, the European Commission encouraged travellers, where possible, to consider agreeing to their package being postponed to a later date by a means of a voucher.

In May 2020, the Commission adopted a Recommendation 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 pandemic⁹⁹, encouraging organisers to make them more attractive for consumers. The Commission explained that vouchers should be protected against the insolvency of the organiser through robust and effective protection set up by the private or public sector. Vouchers should also have certain characteristics, such as a validity period of at least 12 months, provide access to payment of any package offered by the organiser, and be available to use in respect of all new bookings made before their expiry date even where the payment or the service took place after that date.

During the consultations, Member States were asked about the share of travellers who voluntarily accepted vouchers in connection with COVID-19-related cancellations, but most did not have this information¹⁰⁰. Similarly, most companies and consumer organisations did not know the share. Of the companies, 4 out of 20 respondents reported that the share of travellers accepting vouchers was between 30% and 50%¹⁰¹, while 2 of 8 consumer organisations reported a share of between 10% and 30%¹⁰².

Given the non-binding nature of recommendations, package organisers continued to issue vouchers at their own discretion, or in line with national rules, resulting in travellers in different EU countries being treated differently¹⁰³. Stakeholders hold mixed views on the matter: consumer organisations emphasised the importance for businesses of maintaining travellers' right to a monetary refund¹⁰⁴. However, travellers often did not have this choice, where national measures allowed traders to impose vouchers on consumers for cancelled package contracts. Therefore, the Commission opened infringement proceedings against 11 Member States¹⁰⁵.

⁹⁷ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 16.

⁹⁸ ECA, *Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts*, Special report, 2021.

⁹⁹ European Commission, Recommendation on vouchers, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020H0648&from=EN>.

¹⁰⁰ NCAs regulatory and enforcement targeted survey Q. 7: n=18, Less than 10%: 2; Between 10% and 30%: 3; Between 30% and 50%: 1; Between 50% and 75%: 2; More than 75%: 0; Don't know: 10.

¹⁰¹ Business targeted survey Q. 17: n=20, Less than 10%: 0; Between 10% and 30%: 2; Between 30% and 50%: 4; Between 50% and 75%: 3; More than 75%: 1; Don't know: 10.

¹⁰² Consumer organisations targeted survey Q. 12: n=8, Less than 10%: 1; Between 10% and 30%: 2; Between 30% and 50%: 1; Between 50% and 75%: 0; More than 75%: 1; Don't know: 3.

¹⁰³ ECA, *Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts*, Special report, 2021.

¹⁰⁴ European Consumer Organisation (BEUC), *The Package Travel Directive: BEUC's position on how to regain consumers' trust in the tourism sector*, 2021, p. 17.

¹⁰⁵ European Commission, Press communications of 2 July and 30 October 2020 (under point 5 – Justice): https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212 and https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687; the Commission did not open infringement proceedings against the four Member States in which the temporary derogations from the PTD had expired or had been amended when the Commission decided on the opening of infringement proceedings; European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 16.

One industry stakeholder explained that often travel agents had no choice but to impose vouchers on their customers, as it was the only short-term alternative solution to help traders to avoid bankruptcy¹⁰⁶. Academic research suggests that vouchers should benefit travellers and tour organisers alike, and this cannot be the case in the framework of mandatory vouchers¹⁰⁷.

These findings were confirmed by the social media listening exercise for this study, which detected several reasons underlying consumers' negative experiences. These included delays in receiving refunds or vouchers from travel companies after travel arrangements were cancelled, the timeframes within which vouchers needed to be used, and the difficulties consumers encountered when they sought refunds instead of vouchers¹⁰⁸.

2.4.2 Current state of play: analysis of the implementation of the PTD in the Member States

Member States had to transpose the PTD by 1 January 2018. However, as 14 Member States had not communicated their transposition by March 2018, the Commission opened infringement procedures against them. By March 2019, the Commission had received notification of the transposition of the PTD into their legal systems from all 14 Member States¹⁰⁹.

In the 2021 PTD application report, the Commission stated that, according to a conformity assessment study of the national transposition measures, 'some potential non-conformity issues' on different aspects of the Directive 'may [exist], to various degrees, [...] in all Member States', particularly in relation to 'definitions, pre-contractual information requirements, travellers' termination rights and termination fees, consequences of lack of or improper performance of the contract, the obligations of traders facilitating LTAs, liability for booking errors and the imperative nature of the PTD'. The external contractor also reported that apart from doubts on the effectiveness of the transposition of provisions on insolvency protection in certain Member States, no other general trend was identified across Member States¹¹⁰.

¹⁰⁶ ECTAA, *COVID-19 and Tourism in Europe: Which Consequences for Travel Agencies and Tour Operators - Impact of Package Travel Directive and other EU legislation on the travel companies in the context of the pandemic*, 2020, p. 7.

¹⁰⁷ Loos, M.B.M., *One day I'll fly away... Voucher schemes for cancelled package travel contracts after the outbreak of the COVID-19 pandemic*, Amsterdam Law School Legal Studies Research Paper, No. 2021-13, 2021.

¹⁰⁸ The social media listening task collected Twitter data from the EU-27/EEA from June 2020 to June 2022 for commentary discussing travel packages, including vouchers and refunds, during the COVID-19 crisis. The data include all Twitter comments (excluding retweets) that mention the set of predefined keywords related to travel packages. 3,291 tweets were collected, translated, and then modelled in English.

¹⁰⁹ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 3.

¹¹⁰ Including on definitions, pre-contractual information requirements, travellers' termination rights and termination fees, consequences of lack of or improper performance of the contract, the obligations of traders facilitating LTAs, liability for booking errors and the imperative nature of the PTD (European Commission, *Report on the application of the PTD*, COM(2021) 90 final, pp. 3, 4).

2.4.2.1 Measures adopted since the application date of the PTD in July 2018

Since the application date of the PTD in July 2018, all Member States, and the other EEA countries¹¹¹ have adopted different types of measures (see details in Annex 6).

The measures varied considerably across countries. Many countries introduced emergency measures, mostly limited in time (until the end of the state of emergency). Some measures concerned the possibility to offer vouchers as an alternative to a monetary refund in case of cancelled package travel and transport services, while others consisted of specific schemes to support carriers and package organisers, including guarantee schemes in the event of their insolvency.

Some countries offer consumers the possibility to accept vouchers for trip cancellations, without depriving them of the right to a monetary refund. Other countries introduced the option of voluntary vouchers but extended the deadline for a cash refund during the emergency period. Between March and May 2020, the European Commission decided to publish guidance and recommendations on the application of the EU passenger rights and the PTD in connection with the COVID-19 emergency (see sub-section 2.4.2.2). However, in December 2020, consumer organisations announced that the emergency national measures differed markedly across the countries and complained that the recommendations were poorly followed across Europe¹¹².

Some measures (particularly in relation to mandatory vouchers and postponement of the 14-day period) were considered by the Commission to violate the PTD, resulting in opening several infringement proceedings (see sub-section 2.4.2.2).

Many Member States amended their legislation following the Commission's recommendation or the opening of infringement proceedings¹¹³. In some cases, the temporary legislation was not amended because it expired with the end of the emergency period¹¹⁴. The 2021 application report noted that in several Member States, the non-compliant measures, despite being no longer in force, continued to produce detrimental effects on consumers, with the Commission urging those Member States to remedy the situation created by the past legislation¹¹⁵.

2.4.2.2 Refunds in case of unavoidable and extraordinary circumstances

Due to the COVID-19 pandemic, most travel arrangements had to be cancelled. This led to 'an unsustainable cash-flow and revenue situation for the transport and travel sectors'¹¹⁶.

¹¹¹ Norway, Iceland. No relevant information was identified in Liechtenstein.

¹¹² BEUC, *COVID-19 and EU travellers' rights - evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers'*, 2020, https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-119_covid-19_and_eu_travellers_rights.pdf

¹¹³ Only two Member States adopted emergency measures after the Commission recommendation on vouchers was issued (Bulgaria, Slovakia).

¹¹⁴ On 30 October 2020, the Commission closed the infringement procedures against Czechia, France, Greece, Italy, Poland, and Portugal because the national emergency measures had expired.

¹¹⁵ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 16.

¹¹⁶ European 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, recital 13.

Most Member States adopted measures to help package travel operators facing reimbursement claims due to cancellations. The European Parliament called on the Commission to propose common EU rules on the terms and conditions of the vouchers issued related to COVID-19, reiterating that consumer rights remained valid in the context of the pandemic and that any national measures adopted to support the industry must not lower those rights¹¹⁷.

Under the PTD¹¹⁸, travellers can cancel the contract 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'¹¹⁹. In such cases, travellers have the right to a full refund of any payments made for the package, without undue delay and in any event within 14 days of termination of the contract. The same refund rights apply if organisers cancel the contract when they are 'prevented from performing the contract because of unavoidable and extraordinary circumstances'¹²⁰. The PTD provides exclusively for a refund, which is understood to be a restitution of money (Court of Justice of the European Union (CJEU) ruling of 8 June 2023, C-407/21 *UCF Que Choisir et CLVC*). Travellers may agree to a voucher offered by the organisers, but the PTD contains no specific rules on vouchers.

Many package travel contracts include transport services. The Union Passenger Rights Regulations¹²¹ provide for passenger rights only in the event of cancellation by the carrier. A right for passengers to cancel the contract in the event of extraordinary circumstances and be refunded, similar to the right of travellers under the PTD, does not exist under the Passenger Rights Regulations. If the carrier cancels a flight, it has to offer the passengers the choice between refund and re-routing. Reimbursement of the full cost of the ticket is due within seven days, 14 days or one month, depending on the type of transport¹²².

¹¹⁷ European Parliament, Resolution of 19 June 2020 on transport and tourism in 2020 and beyond; the European Parliament also suggested exploring the possibility of establishing a European travel guarantee scheme for companies to secure financial liquidity in order to guarantee refunds to travellers, as well as repatriation costs, together with fair compensation for any damages incurred in the event of bankruptcy (see https://www.europarl.europa.eu/doceo/document/TA-9-2020-0169_EN.html, points 14 and 15).

¹¹⁸ The PTD provides that if a package trip is cancelled due to 'unavoidable and extraordinary circumstances', either by the traveller or by the organiser (Article 12(2) and 12(3)b) PTD), travellers have the right to a full refund of any payments made for the package within a period of 14 days (Article 12(5) PTD),

¹¹⁹ Article 12(2) PTD.

¹²⁰ Article 12(3)(b) and Article 12(5) PTD.

¹²¹ 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 (OJ L 46, 17.2.2004, p. 1); Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14); Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1); Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55 28.2.2011, p. 1).

¹²² According to the Union Passenger Rights Regulations, reimbursement of the full cost of the ticket is due within seven days following the passenger's request in the cases of air, sea and inland waterways transport, 14 days after the offer has been made or the request has been received for bus and coach transport, and one month after the request in the case of rail transport.

Contrary to the PTD, the reimbursement can be made in money or in the form of a voucher. However, reimbursement by means of a voucher is only possible if the passenger agrees¹²³.

In March 2020, the Commission adopted Interpretative Guidelines on EU Passenger Rights Regulations in the context of the COVID-19 emergency¹²⁴, reiterating the passengers' right to choose between cash reimbursement and a voucher. It also published informal guidance on the application of the PTD in connection with COVID-19¹²⁵.

In May 2020, the Commission issued a recommendation on vouchers¹²⁶ to guide and support Member States, considering that 'making vouchers more attractive, as an alternative to reimbursement in money, would increase their acceptance by passengers and travellers'. The Commission believed that this would help to ease the liquidity problems of carriers and organisers, ultimately leading to better protection of the interests of passengers and travellers. To that end, vouchers should be protected against insolvency of the carrier or of the organiser. Such protection could be set up by the private or the public sector and should be sufficiently effective and robust. It should cover 'at least those vouchers that present the characteristics described in th[e] Recommendation'¹²⁷.

In July and October 2020, the Commission launched infringement procedures against 11 Member States¹²⁸ for measures allowing package organisers to issue mandatory vouchers¹²⁹ instead of reimbursement for cancelled trips, or postponing reimbursement far beyond the 14-day period¹³⁰.

During the consultation for this study, most NCAs called for clarification on the rules on travel cancellations¹³¹. In their view, the interpretation of the concept of 'unavoidable and extraordinary circumstances' was difficult in practice. According to Article 3(12) of the PTD 'unavoidable and extraordinary circumstances' means a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken. Several questions¹³² have been

¹²³ Article 7(3) Regulation (EC) No 261/2004; Article 16 (1)(a) Regulation (EC) No 1371/2007; Article 18 (1)(b) Regulation (EU) No 1177/2010; Article 19 (1)(b) Regulation (EU) No 181/2011.

¹²⁴ OJ C 891, 18.3.2020, p. 1.

¹²⁵ See https://ec.europa.eu/info/sites/info/files/coronavirus_info_ptd_19.3.2020.pdf (published on the Commission's COVID-19 response website, https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation_en).

¹²⁶ European 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.

¹²⁷ Ibid., recitals 15 and 16.

¹²⁸ Bulgaria, Czechia, Cyprus, Greece, France, Italy, Croatia, Lithuania, Poland, Portugal, Slovakia.

¹²⁹ Depriving passengers of their right to choose between reimbursement in money and other forms of refund, such as a voucher.

¹³⁰ Infringement database, https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm

¹³¹ NCA regulatory and enforcement targeted survey, open Q.2.

¹³² Austria (Request for a preliminary ruling from the *Oberster Gerichtshof* (Austria) lodged on 16 August 2022 — *GF v Schauinsland-Reisen GmbH* (Case C-546/22) (2022/C 408/45); Request for a preliminary ruling from the *Oberster Gerichtshof* (Austria) lodged on 21 June 2022 — *DocLX Travel Events GmbH v Verein für Konsumenteninformation* (Case C-414/22) (2022/C 359/48); Request for a preliminary ruling from the *Oberster Gerichtshof* (Austria) lodged on 11 March 2022 — *TR, UQ v FTI Touristik GmbH* (Case C-193/22) (2022/C 237/44); Request for a preliminary ruling from the *Landesgericht Salzburg* (Austria) lodged on 5 May 2021 — *FC v FTI Touristik GmbH* (Case C-287/21) (2021/C 278/47); Germany (Request for a preliminary ruling from the *Landgericht Frankfurt am Main* (Germany) lodged on 29 July 2022 — *AQ v trendtours Touristik GmbH* (Case C-511/22) (2022/C 441/08); Request for a preliminary ruling from the *Landgericht*

referred to the CJEU in relation to the cancellation right under Article 12(2). Concerns were raised by both consumer and industry stakeholders in relation to the disparity between the PTD and Passenger Rights Regulations in respect of the right to a refund depending on the service booked, e.g. travel package vs single air service, or whether the transport services included in the package were cancelled by the carrier. In case of flight cancellation, the passenger could only rely on the airlines' terms and conditions, as the APRR does not foresee the right to a full refund 'in the event of unavoidable and extraordinary circumstances' (as in Article 12 PTD). In the case of packages cancelled by organisers or travellers, if the transport service included in the package is not cancelled by the carrier, there is no refund obligation for the carrier. However, the organiser is obliged to refund travellers¹³³ without being able to recover the pre-payments to carriers¹³⁴.

2.4.2.3 LTAs

The application of LTAs¹³⁵ is considered challenging by both industry and consumer stakeholders¹³⁶. Throughout the consultation, stakeholders echoed difficulties in understanding, applying, and securing enforcement of LTAs. This was confirmed during the workshop in May 2022 on the 'Review of the PTD' with experts from national authorities of the CPC Network. Some CPC authorities pointed out that LTAs were rarely used – if at all – due to their complexity. At the meeting of the Stakeholder Expert Group, in November 2022¹³⁷, consumer organisations argued that LTAs are difficult to implement in practice, noting that airlines thus seek to circumvent the PTD, to the detriment of the consumer.

Frankfurt am Main (Germany) lodged on 9 August 2022 — *PA v trendtours Touristik GmbH* (Case C-529/22) (2022/C 441/09); Request for a preliminary ruling from the *Bundesgerichtshof* (Germany) lodged on 5 September 2022 — *QM v Kiwi Tours GmbH* (Case C-584/22) (2022/C 441/24); Request for a preliminary ruling from the *Amtsgericht Düsseldorf* (Germany) lodged on 15 December 2021 — *EV v Alltours Flugreisen GmbH* (Case C-776/21) (2022/C 138/12)); Spain (Request for a preliminary ruling from the *Juzgado de Primera Instancia de Cartagena* (Spain) lodged on 8 February 2022 — *RTG v Tuk Travel, S.L.* (Case C-83/22) (2022/C 213/33); Lithuania (Request for a preliminary ruling from the *Lietuvos Aukščiausiasis Teismas* (Lithuania) lodged on 4 May 2022 — *M. D. v 'Tez Tour' UAB* (Case C-299/22) (2022/C 311/05); two other requests for preliminary rulings have been lodged on related issues, namely on the voluntary or mandatory nature of vouchers (Germany: Request for a preliminary ruling from the *Landgericht München* (Germany) lodged on 17 November 2021 — *RSD Reise Service Deutschland GmbH v QL* (Case C-690/21) (2022/C 51/29)) and on the possible derogation to obligation to a refund (France: Request for a preliminary ruling from the *Conseil d'État* (France) lodged on 2 July 2021 — *Union fédérale des consommateurs — Que choisir (UFC — Que choisir), Consommation, logement et cadre de vie (CLCV) v Premier ministre, Ministre de l'Économie, des Finances et de la Relance* (Case C-407/21) (2021/C 357/18)).

¹³³ Under Article 13(1) PTD, 'the organiser is responsible for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers.'

¹³⁴ European Guarantee Funds' Association for Travel and Tourism (EGFATT) and ECTAA, Workshop on insolvency protection in the PTD, 13 May 2022 (with the participation of the European Commission); BEUC, *COVID-19 and EU travellers' rights - Evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers'*, 2020, https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-119_covid-19_and_eu_travellers_rights.pdf

¹³⁵ LTAs are contracts concluded when a traveller books an additional travel service from another trader within 24 hours of the first booking.

¹³⁶ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 5.

¹³⁷ European Commission, Minutes of the meeting of the Stakeholder Expert Group to discuss the draft report on the application of the Package Travel and Linked Travel Arrangements Directive (2015/2302) on 8 November 2022, 2022, <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=45600&fromExpertGroups=3617>.

Little data are available on LTA market trends. Few consumers are aware that they have purchased an LTA: when asked if they were aware of the difference between packages and LTAs, a large majority of consumers were not¹³⁸. BEUC has argued that the complexity of LTAs and consumers' lack of certainty as to whether they have booked a package or an LTA can lead to abuse¹³⁹.

Several legal and technical obstacles mean that companies involved in such contracts do not always comply with legal requirements. For instance, in Sweden, a case where a consumer booked a flight from a website, and later booked a hotel from the same site, was held to constitute an LTA by the National Board for Consumer Disputes, although the trader operating the website had not informed the consumer that such a purchase constituted an LTA¹⁴⁰. Such types of contracts are difficult to implement, especially when insolvency protection obligation applies. Although Article 19(4) of the PTD requires the second trader (not facilitating the LTA) to inform the first trader (facilitating the LTA) of the conclusion of the contract with the traveller, it does not take into consideration that the first trader does not necessarily have all the information to determine in which cases an LTA was formed. There are some indications that in certain situations, the providers of the additional travel services do not always comply with their reporting obligations, sometimes due to a lack of technical tools for secured exchange of data or fear of breaching the General Data Protection Regulation (GDPR)¹⁴¹. At the workshop on the application of the PTD in the airlines sector on 26 November 2019¹⁴², it was argued that the information forms for LTAs could be considered confusing and deterring, as travellers are primarily informed that they do not benefit from rights applying to packages¹⁴³.

NCAs' responses on the standard information forms for LTAs and possible problems were highly fragmented. In most cases, the authorities did not know the answer, this possibly reflecting the difficulties that Member States encounter in enforcing rules on LTAs.

A 2022 paper by the Austrian Institute for Advanced Studies¹⁴⁴ concluded that while some aspects such as framed information boxes are useful (i.e. visual presentation), the text's formal and abstract language and limited use of concrete examples makes it difficult for consumers to understand the standard information forms.

Finally, the targeted survey for NCAs found that almost half of the respondents reported that travellers do not understand their rights in relation to LTAs, including insolvency protection¹⁴⁵.

2.4.2.4 PTD enforcement issues

The application of the PTD relies on **Member States'** transposition and enforcement. (Public) enforcement is regulated in accordance with each Member State's legal framework: national enforcement bodies are identified in Member States and regulated by national law.

¹³⁸ Consumer survey Q.5: n=8,138, yes 2,263, no 5,875.

¹³⁹ BEUC, *How a revised Package Travel Directive can regain consumers' confidence in the tourism industry*, Factsheet, BEUC-X-2022-003, January 2022.

¹⁴⁰ Beslut 2021-04-21; 2020-08495, [2021], <https://e-justice.europa.eu/caseDetails.do?idTaxonomy=37873&idCountry=27&plang=sv>.

¹⁴¹ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 6.

¹⁴² *Ibid.*, p. 7.

¹⁴³ *Ibid.*, p. 7.

¹⁴⁴ Institute for Advanced Studies, *The standard information form for package travel contracts from a behavioural economics perspective*, 2022.

¹⁴⁵ NCA regulatory and enforcement targeted survey Q.19: n=18, yes 8, don't know 11.

In addition, the CPC Regulation¹⁴⁶ also applies to the PTD. The CPC Regulation establishes a cooperation mechanism and enforcement network between national consumer enforcement authorities in the EU/EEA and the Commission, and can be used for cross-border infringements of the PTD that have harmed, are harming, or are likely to harm the collective interests of consumers.

The PTD contains specific provisions on enforcement: Article 24 contains a general obligation of Member States to ensure adequate and effective means to enforce the PTD, while Article 25 obliges Member States to adopt rules on effective, proportionate and dissuasive penalties applicable to infringements of national provisions transposing the PTD. According to the 2021 application report¹⁴⁷, in the majority of Member States, at least certain requirements of the PTD are subject to administrative or criminal penalties.

The PTD falls within the scope of Directive (EU) 2020/1828 on representative actions, which Member States had to transpose by the end of 2022. This Directive enables qualified entities to bring collective actions to cease infringements of travellers' rights and obtain redress¹⁴⁸.

As a large part of the PTD provisions concern the contractual relationship between the organiser and traveller, those provisions can be privately enforced by travellers before national courts or before **alternative dispute resolution (ADR)** bodies. Directive 2013/11/EU on alternative dispute resolution for consumer disputes (ADR Directive)¹⁴⁹ and Regulation (EU) 524/2013 on online dispute resolution for consumer disputes (ODR Regulation)¹⁵⁰ establish a horizontal legislative framework that is applicable to the PTD. ADR national systems vary considerably from one Member State to another, particularly in their area of competence: PTD disputes can fall under ADR systems responsible for transport services or for consumers. According to the Commission's report on the ADR Directive¹⁵¹, most ADR bodies are not specialised in travel services. BEUC considers that 'a unique and sector specific travel ADR scheme should ideally be created [...]. This will provide consumers with a clear and easily accessible contact point'¹⁵².

¹⁴⁶ Regulation (EU) 2017/2394 of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, OJ L 345, 27.12.2017.

¹⁴⁷ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 7.

¹⁴⁸ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.

¹⁴⁹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63.

¹⁵⁰ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165, 18.6.2013, p. 1.

¹⁵¹

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

¹⁵² BEUC, *Passenger rights 2.0: towards better consumer protection and a more resilient travel sector*, Accompanying paper to BEUC's response to the European Commission's public consultation on the Better Protection of Passengers and their Rights Initiative, BEUC-X-2022-125 of 6/12/2022, p. 22, https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-125_Better_Protection_of_Passengers_and_their_Rights.pdf

However, the latter does not constitute a compulsory procedural step for the enforcement of travellers' rights. Consumer representatives stated on several occasions that package travel organisers should adhere to ADR schemes compulsorily¹⁵³.

Consumers purchasing a package travel entirely or partially online, can make use of the **European ODR platform**, which facilitates access to the quality-certified ADR bodies established under the ADR Directive¹⁵⁴.

European Consumer Centres have a key role in offering travellers assistance in resolving their cross-border complaints and providing free information and advice about their consumer rights within the EU¹⁵⁵. Finally, **civil society, EU citizens and businesses** can also play a role in drawing attention to potential breaches¹⁵⁶.

2.4.2.5 State aid measures

In view of the impact of the COVID-19 pandemic on the economy in general, and on the travel industry specifically, the European Commission enabled Member States to use the full flexibility foreseen under State aid rules to support the economy. In March 2020, the Temporary Framework was adopted to alleviate the aftermath of the travel ban measures and other sanitary restrictions impacting the EU economy¹⁵⁷.

The Temporary Framework is based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU)¹⁵⁸. It complements other possibilities available to Member States to mitigate the social-economic impact of the COVID-19 outbreak in line with EU State aid rules, e.g. the possibility under Article 107(2)b of the TFEU¹⁵⁹ to compensate specific companies or specific sectors for the damage directly caused by 'exceptional occurrences'. Several amendments were adopted to extend the scope of the Temporary Framework¹⁶⁰.

¹⁵³ Meeting of the PTD expert group of 24 March 2022, <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=43479&fromExpertGroups=3617>, and of 8 November 2022, <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=45600&fromExpertGroups=3617>; BEUC, *The Package Travel Directive: BEUC's position on how to regain consumers' trust in the tourism sector*, 2021, https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf

¹⁵⁴ ODR, <https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>

¹⁵⁵ European Commission, *How ECC Net works*, n.d., https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net_en

¹⁵⁶ European Commission, Communication on enforcing EU law for a Europe that delivers, COM(2022) 518 final.

¹⁵⁷ State Aid Temporary Framework, https://competition-policy.ec.europa.eu/state-aid/coronavirus/temporary-framework_en

¹⁵⁸ Consolidated text of the TFEU, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E107&from=EN>

¹⁵⁹ Ibid.

¹⁶⁰ Amendments were adopted in 2020: 3 April 2020 (see https://ec.europa.eu/commission/presscorner/detail/en/ip_20_570), 8 May 2020 (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_838), 29 June 2020 (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1221) and 13 October 2020 (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1872); and in 2021: on 28 January 2021 (https://ec.europa.eu/commission/presscorner/detail/en/ip_21_261) and 18 November 2021 (https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6092).

Since the beginning of the COVID-19 outbreak, 108 State aid measures were adopted under Article 107(2)b of the TFEU,¹⁶¹ 38 under Article 107(3)b of the TFEU,¹⁶² four under Article 107(3)c of the TFEU¹⁶³ and some 700 under the Temporary Framework¹⁶⁴ (all measures are available at the Commission website¹⁶⁵). Only those adopted under Article 107(3)b of the TFEU and under the Temporary Framework are relevant to the PTD. Most of the Member States made use of State aid measures. The decisions had different characteristics and purposes, such as:

- Providing travel organisers with sufficient liquidity to continue their activities during and after the COVID-19 outbreak (see box below):

- ✓ On 3 December 2021, under the State aid Temporary Framework, the European Commission approved a Danish scheme worth approx. EUR 23 million (DKK 173.55 million) to support travel operators in the context of the COVID-19 pandemic. The aid took the form of direct grants available to travel operators registered in the Danish Travel Guarantee Fund (*Rejsegarantifonden*), which aims to refund travellers in case of cancellation of travel packages. The purpose of the scheme was to support the liquidity needs of travel operators that had to pay additional fees to cover the liquidity shortages of the Fund due to the COVID-19 pandemic¹⁶⁶;
- ✓ On 3 February 2022, under the State aid Temporary Framework, the Commission approved an Austrian scheme worth EUR 300 million to support package travel organisers and facilitators of linked travel services affected by the COVID-19 pandemic. The scheme was a re-introduction of a measure approved by the Commission in February 2021 (SA.60521), which expired on 30 June 2021. Under the scheme, the aid took the form of State guarantees covering, for a limited period of time, 100% of the beneficiaries' liability for travel services, which could not be provided in full or in part due to the COVID-19 pandemic. The scheme was temporary and ensured adequate protection of the beneficiaries against the risk of insolvency until 31 December 2022¹⁶⁷;
- ✓ On 10 May 2021, under the State Aid Temporary Framework, the Commission approved a Czech scheme worth approx. EUR 1.9 billion (CZK 50 billion) to support companies affected by the COVID-19 outbreak. The aim of the scheme was to provide beneficiaries with sufficient liquidity to continue their activities during and after the COVID-19 outbreak¹⁶⁸;

¹⁶¹ 1 in 2023, 15 in 2022, 48 in 2021, 44 in 2020

¹⁶² 1 in 2022, 9 in 2021, 18 in 2020.

¹⁶³ All 4 in 2020.

¹⁶⁴ European Commission, Communication on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 91 I/01, C/2020/1863, OJ C 911, 20.3.2020, pp. 1–9.

¹⁶⁵ https://competition-policy.ec.europa.eu/system/files/2023-02/State_aid_decisions_TF_and_107_2b_107_3b_107_3c.pdf

¹⁶⁶ European Commission, 'Commission approves €23.33 million Danish scheme to support travel operators in the context of the coronavirus outbreak (SA.100368)', *Daily News*, MEX/21/6598, 3 December 2021, https://ec.europa.eu/commission/presscorner/detail/en/mex_21_6598

¹⁶⁷ European Commission, '€300 million Austrian scheme for package travel organisers and facilitators of linked travel services in the context of the coronavirus pandemic (SA.101114)', *Daily News*, MEX/22/803, 3 February 2022.

¹⁶⁸ European Commission, '€11.6 million Czech scheme to support travel agencies in context of coronavirus outbreak (SA.61837)', *Daily News*, MEX/21/2441, 10 May 2021.

- ✓ On 18 December 2020, under the State Aid Temporary Framework, the Commission approved a Bulgarian scheme worth approx. EUR 26 million (BGN 51 million) to support tour operators and travel agents in the context of the COVID-19 outbreak, taking the form of direct grants. The aid was granted to tour operators and travel agents: (i) to refund customers whose travel packages were cancelled between 1 March and 31 December 2020 due to the COVID-19 outbreak; and (ii) to cover the costs incurred to carry out their main activities over the same period¹⁶⁹.

- Providing guarantees to travel organisers to ensure the respect of their contractual obligations, including in the event of bankruptcy (see examples in the box):

- ✓ On 25 June 2020, under the State Aid Temporary Framework, the Commission approved two Lithuanian measures worth an estimated total budget of EUR 50 million to support travel agencies, tour operators, accommodation and catering businesses affected by the measures adopted by the Lithuanian authorities to face the COVID-19 emergency. The public support took the form of (i) individual guarantees to ensure that tour operators could respect their contractual obligations, in particular in case of insolvency or bankruptcy; and (ii) loans to tour operators, accommodation and public catering service providers. The first measure provided guarantees to tour operators established in Lithuania, with a maximum amount not exceeding EUR 800,000 per beneficiary. The second measure provided loans to tour operators to finance the reimbursement of travellers for trips that did not take place as a result of COVID-19-related travel restrictions, as well as to accommodation and catering service providers for the costs incurred as a result of the same restrictions¹⁷⁰.

- Supporting vouchers be guaranteed against insolvency, in line with the Commission's Recommendation on vouchers¹⁷¹ (see box below):

¹⁶⁹ European Commission, '€26 million Bulgarian scheme to support tour operators and travel agents in the context of coronavirus outbreak (SA.59990)', *Daily News*, MEX/20/2507, 18 December 2020.

¹⁷⁰ European Commission, '€50 million Lithuanian measures in support of companies operating in the travel sector affected by the coronavirus outbreak (SA.57665)', *Daily News*, MEX/20/1205, 25 June 2020.

¹⁷¹ European Commission Recommendation (EU) 2020/648.

- ✓ On 30 July 2020, under Article 107(3)b of the TFEU, the Commission approved a German state guarantee scheme worth EUR 840 million to cover vouchers issued by travel operators for cancelled travel packages booked prior to 8 March 2020¹⁷²;
- ✓ On 30 March 2021, under the State Aid Temporary Framework, the Commission approved a Dutch loan scheme worth EUR 400 million to support companies providing package travel and linked travel arrangements in the context of the COVID-19 outbreak (*Voucherfonds*). The loan scheme aimed to enable beneficiaries to provide consumers requesting a monetary reimbursement with a cash refund equal to the value of the 'corona voucher'. Under the scheme, the beneficiaries would be eligible for a loan covering a maximum of 80% of their outstanding corona vouchers and, in any event, not higher than EUR 50 million per beneficiary¹⁷³.

2.4.3 Efficiency and effectiveness of insolvency protection systems

One of the main events impacting the national insolvency protection systems set up under the PTD – aside from the COVID-19 pandemic – was the bankruptcy of the worldwide tour operator Thomas Cook in 2019. This crisis was felt throughout the Member States. For instance, the Belgian insolvency protection body had to organise the repatriation of 11,000 passengers, and competent authorities had to deal with thousands of refund claims. The total amount for the guarantee funds amounted to EUR 27 million in Belgium, and around EUR 41 million in France¹⁷⁴. In Germany, the insurance companies in charge of insolvency protection ensured repatriations and – to a limited extent - refunds, while the government had to intervene financially to ensure full refunds. In response, after obtaining State aid approval from the Commission, a new German law was adopted in 2021¹⁷⁵ to strengthen consumer protection when organisers become insolvent. The new law set up a fund to cover the bankruptcy of organisers, with mandatory subscription for all package organisers established in Germany¹⁷⁶. Overall, despite shortcomings and differences in application of the Directive, travellers were protected in case of insolvencies before the COVID-19 crisis.

This section illustrates the main characteristics of the insolvency protection systems implemented by the Member States to comply with the PTD. It should be read in conjunction with section 2.5.1, on effectiveness.

¹⁷² European Commission, '€840 million German guarantee scheme to protect consumers and support the travel industry in the context of the coronavirus outbreak (SA.57741)', Press release, IP/20/1431, 30 July 2020.

¹⁷³ European Commission, '€400 million Dutch loan scheme to support companies providing package travel and linked travel arrangements in context of coronavirus outbreak (SA.62271)', Press release, IP/21/1501, 30 March 2021.

¹⁷⁴ European Commission, Meeting of the Stakeholder Expert Group to discuss the draft report on the application of the Package Travel and Linked Travel Arrangements Directive (2015/2302), 24 November 2020.

¹⁷⁵ State Aid SA.63063 (2021/N) – Germany COVID-19: German Travel Insolvency Fund, https://ec.europa.eu/competition/state_aid/cases1/202129/294812_2298237_100_2.pdf

¹⁷⁶ BEUC, *Insolvency protection in the travel industry: Lessons from successive crises and the way forward to regain consumer trust*, 2021.

Tools implementing PTD insolvency protection requirements in Member States

Article 17 of the PTD contains rules on the effectiveness and scope of the insolvency protection system in the EU. More specifically, under Article 17(1), Member States are obliged to ensure that organisers established in their territory (a) provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency, and (b) provide security for the travellers' repatriation if the carriage of passengers is included in the contract. Article 17(2) specifies certain conditions that should be respected to ensure that the security of Article 17(1) is effective and covers reasonably foreseeable costs. Article 17(3) clarifies the scope of insolvency protection across the Member States and Article 17(4) expands on the rules for the repatriation and accommodation of the travellers when the performance of the package is affected by the organiser's insolvency. Finally, in Article 17(5), the Directive establishes that for the travel services not performed because of an organiser's insolvency, the refund of pre-payments should be provided without undue delay.

The possibility for Member States to decide on the type of insolvency protection systems to implement in their national contexts resulted in a landscape of diverse insolvency protection systems across the EU, with various methods for complying with Article 17 of the PTD. Following the transposition of the PTD into the national legal order, insolvency protection systems varied considerably across the EU Member States.

i. Insolvency protection standards

A key aspect of an insolvency protection system is the insolvency protection standards, which are defined here as the *corpus* of indicators/parameters that characterise a given insolvency protection system and thereby determine the level of security it affords. The discussion of insolvency protection standards is divided into seven main dimensions/indicators, which are introduced in Table 11 and analysed in the EU context in Table 12.

Table 11. Indicators for measuring insolvency protection standards

Insolvency protection standards	Description
Single or multiple protections	Whether a Member State implemented a single or multiple line insolvency protection system (e.g. a system based on a single level of coverage that could be an insurance policy or a bank guarantee, or a multiple system in which, in addition to the first guarantee, the Member State implemented a national system such as a back-up fund)
Exceptions of coverage insurance contracts (of organisers/trader facilitating LTAs) or of alternative methods of insolvency protection of travellers	Whether a given insolvency protection standard (e.g. an insurance policy) provides certain exceptions in the coverage it offers. While the study found that minimum standards of protections are ensured across all Member States, there are systems with a wider/narrower scope (e.g. exceptions that derive from the application of national insurance laws within the context of the PTD)
Method to determine the security requirement (calculation formulas)	Whether a Member State has adopted specific methodologies/formulas for the exact calculation of the level of coverage that should be ensured for each organiser to be compliant with Article 17 of the PTD
Security depends on the type of packages/LTAs	Whether there are different levels of coverage depending on the typology of travel services constituting a package or an LTA

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sold (including the mode of transport, the travel destination)	
Responsibility of the retailer (Article 13)	Whether a Member State transposed Article 13's option on the responsibility of the retailers within its national system, as it also impacts the scope of insolvency protection and, potentially, market practices in the package travel sector
Formula for the calculation of the costs for repatriation	Whether a Member State implements methodologies or formulas to calculate the costs for the repatriation of the travellers in case of insolvency of the organisers
Different requirements for smaller companies (SMEs)	Whether a Member State distinguishes between SMEs and large operators in respect of the security they are supposed to provide

Source: ICF, based on desk research and consultations.

In the EU, insolvency protection can be granted through different levels of protection (single or multiple protections). Normally, a single insolvency protection system implies that the organisers (and, where applicable, retailers) must be protected by at least a first line protection instrument (e.g. insurance policy or bank guarantee). In the case of multiple lines of insolvency protection, generally the first line of protection is supported by a second line that often consists of back-up funds available at national level that are activated when the first line of protection does not sufficiently cover an occurring insolvency. Desk research found that most Member States have a single-protection system (see Table 11).

Table 12. Insolvency protection standards differ across the Member States

Single or multiple protections		Exceptions of coverage insurance contracts (of organisers/trader facilitating LTAs) or of alternative methods of insolvency protection of travellers		Method to determine the security requirement (calculation formulas)		Security depends on the type of packages/LTAs sold (including the mode of transport, the travel destination)		Responsibility of the retailer (Article 13)		Formula for calculating the costs of repatriation		Different requirements for smaller companies (SMEs)	
Single	Multiple	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
18	9	17	6	22	9	12	8	11	16	6	19	5	22

Source: ICF, based on Tipik, *Insolvency protection study*, 2019.

Notes: the numbers represent the number of Member States that introduced a certain element within their national systems; in some cases, multiple options apply simultaneously in Member States for specific package travel products/actors of the value chain; excludes instances where the answer was not detected or was marked as N/A.

Insolvency protection systems, especially where they are provided by private institutions (e.g. insurance companies, bank/financial institutions), present numerous exceptions in the cover provided to travellers in most Member States¹⁷⁷. That cover often depends on the insurance policies taken out by traders and, potentially, by market tradition. As these

¹⁷⁷ For instance, exception of the coverage in case of an insurance policy could be determined by damage caused unlawfully, intentionally or by grossly negligent conduct by certain actors in certain standardised situations for which usually the insurance traders provide exemplificatory lists. These exceptions do not negatively affect the insolvency protection systems across the Member States, although they contribute to enhancing the diversity of the systems in place across them.

exceptions are often not regulated by law, there could be certain scenarios in the event of an insolvency that are covered by the insolvency protection system in some Member States, but not in others.

A key element in determining the level of insolvency protection security is related to the method to determine the security requirement (calculation formula) - an instrument that ensures that certain standards of security are provided. While the majority of Member States use calculation formulas (often set up by legal provisions), a significant minority either have no calculation system in place or have it only to a limited extent (e.g. for certain categories of traders/travel services). The absence of calculation formulas/method leaves it to insurance companies offers (and policies), suggesting, at least theoretically, no guarantee that travellers are sufficiently protected in these Member States¹⁷⁸, or that organisers can source sufficiently and satisfactorily insolvency protection providers. It was not possible to determine whether the absence of calculation formulas resulted in consumers not being covered by an adequate insolvency protection in practice, as no problematic national/cross-border cases were identified (with the exception of Thomas Cook). The PTD has not been in place for long enough, under normal circumstances, for allow stakeholders to develop sufficient practical knowledge of its various aspects (including calculation formulas).

In addition to the method of calculating cover for refunds, desk research found that the vast majority of Member States did not introduce provisions on how to calculate the cost for repatriation of travellers in case of insolvency of the organisers. Consumers may therefore not be sufficiently protected should they need repatriation.

Business associations and companies indicated that the different methodologies to calculate the level of insolvency protection required across the Member States show a clear lack of consistency in the type of protection or guarantee accepted to meet local compliance standards. This fragmentation of rules on the insolvency protection schemes across the EU is detrimental to companies that must navigate compliance with different requirements, as well as to consumers whose level of protection depends on their geographical location¹⁷⁹. On the other hand, insolvency protection systems are organised differently across Member States in order to tailor them to local circumstances and practices, enhancing flexibility in the sector¹⁸⁰.

Article 13(1) of the PTD leaves it to Member States to decide whether or not to introduce provisions on retailers' responsibility for the performance of the package. This is relevant to insolvency protection systems and, conversely, to the level of consumer protection in place at Member State level, especially when a retailer is trading package travel products and receives pre-payments. Several Member States opted not to introduce such retailer responsibility within their national systems, with a significant minority choosing to introduce it. In terms of insolvency protection coverage, where retailers are also responsible for the performance of a package travel, systems of coordination and sharing of the burden of responsibility between retailers and organisers have been implemented. While the evidence yielded no specific examples where retailers have established their businesses in Member States with less stringent requirements (e.g. where retailers are not held responsible for the performance of a package), this could potentially be the case. Although this does not impact the effectiveness of the insolvency protection rules under the PTD as such, it could

¹⁷⁸ BE, LU (desk research).

¹⁷⁹ Public consultation, Q.16a: a *business association* – transport sector (BE), a business association (BE), and an EU citizen (ES); BEUC, *The Package Travel Directive. BEUC's Position on how to regain consumers' trust in the tourism sector*, 2021, p. 13, https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf

¹⁸⁰ Ibid.; a company (CH), and a business association (BE).

potentially constitute a factor influencing market practices and consumer protection across the EU. There is at least one example (Belgium) where a Member State provides insolvency protection for retailers, although retailers are not responsible for the performance of packages (see recital 41PTD).

SME insolvency requirements

A small minority of Member States provide different requirements for **SMEs** in insolvency protection cover they must provide for their activities as package organisers. This may imply that in certain Member States SMEs are granted a more favourable regime than other organisers, and also that the level of consumer protection may vary in Member States where SMEs are subject to less stringent insolvency protection requirements. Conversely, insolvency protection requirements for SMEs may be lighter in certain Member States, with potential impacts on market practices, but this was not detected in the study.

Some stakeholders noted that the lack of standards in the share of packages that need to be covered by some form of insolvency protection guarantee often benefits big tour operators at the expense of medium-sized and smaller operators¹⁸¹. Some noted that there may be discrepancies between the theoretical insolvency protection rules of a country and their application in practice¹⁸².

ii. Types of insolvency protection systems

The landscape of insolvency protection systems available across the EU varies significantly, both theoretically (the systems that are established by national law) and in their costs/availability in practice. Table 13 summarises the principal insolvency protection systems available in the EU. Insurance policies constitute the most common insolvency protection system available at national level. Two Member States (Belgium, Luxembourg) have a single-line protection system entirely based on insurance policies provided predominantly by a fund. The fact that insurance policies are the predominant insolvency protection system in the EU implies that the cost of ensuring consumer protection depends on insurance companies, potentially creating situations where the cost is disproportionate in some Member States. In Member States with no formula or method for calculating the amount of security required to the trader as an insolvency protection scheme and based entirely on insurance policies, this could result in a level of consumer protection dependent on the availability of those insurance policies within the wider insurance market.

Table 13. Types of insolvency protection systems across the EU

Insurance	Private guarantee fund	Bank guarantee (e.g. security from financial institution)	Guarantee from a public corporation (e.g. travel guarantee/mutual fund)	Back-up fund	Escrow accounts/cash deposits
AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IT, LT, LU, LV,	ES, IT, NL	AT, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, LT, LV, PL, RO, SE, SI, SK and IS	AT, DK, EL, LV, MT, PT, RO ¹⁸³ and IS	FI, DK, PL	DK, FI, HU, SE, SI

¹⁸¹ Ibid., a micro company (DE).

¹⁸² Ibid., a business association (BE).

¹⁸³ In Romania, the possibility to set up a guarantee fund is provided in the legislation but has yet to be used.

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PL, RO, SE , SI, SK					
21	3	18	8	3	5

Source: ICF, based on desk research and targeted survey – NCAs (insolvency) (Q1).

Notes: information from the targeted survey in bold; data reflect national legislation and not necessarily whether the systems are put into practice.

Theoretically, bank guarantees (e.g. security provided by a financial institution) represent the second most popular insolvency protection system across the Member States. In most cases, this system is provided as an alternative to insurance policies (e.g. left to the Member States to decide the insolvency protection scheme to which they will subscribe). Bank guarantees are rarely used in practice, despite constituting a widespread theoretical possibility.

As insurance policies and bank guarantees are, at least theoretically, the most common insolvency protection systems available to organisers across the EU, a key point for the analysis of effectiveness is to understand the extent to which these instruments are available in practice, and whether their costs are proportionate. In the targeted survey, the NCAs (insolvency) from Member States implementing an insolvency protection system that relies (at least in part) on insurance policies and/or bank guarantees were asked to indicate the observed trends in the availability of those instruments since 2020. They indicated that the offer of insurance policies and bank guarantees has generally gone down¹⁸⁴. For bank guarantees, respondents were divided, with some considering that the availability of bank guarantees has remained stable overall¹⁸⁵.

One Member State respondent reported experiencing a 'widespread withdrawal of insurance companies at the end of 2020'. This was partly addressed by the national insolvency protection set up in response to the COVID-19 crisis and then by the potential availability of a new insurer in the market¹⁸⁶. Another Member State respondent noted that insurance companies and banks offer insolvency protection in the form of payment commitments (bank guarantees), with one of the larger insurance companies ceasing issuing bank guarantees in 2020. It also noted that available information from businesses suggests increased difficulties in arranging insolvency protection in the form of bank guarantees, with travel operators – particularly smaller or newer organisers – highlighting increased costs and higher demands from insurance companies/banks for security during and after the pandemic¹⁸⁷. There are indications that the insurance policy offer has expanded in one Member State¹⁸⁸, while little is available in another¹⁸⁹. Some Member States, such as Belgium, impose strict requirements for insolvency protection, rendering it 'de facto impossible for some organisers to offer their services on the Belgian market' as there are few insolvency insurers and those offering the service 'refuse to insure organisers'¹⁹⁰.

¹⁸⁴ Targeted survey – NCAs (insolvency) Q.5: 50% (6/12) respondents reported that the offer of insurance policies has gone down, and 42% (5/12) respondents the offer of bank guarantees has reduced.

¹⁸⁵ Indicated by NCAs (insolvency) respondents from HU and IS (2/12 – 17%), with the former pointing out that while the offer remained stable, the practical use of bank guarantees is limited – 'very rare instruments'.

¹⁸⁶ Open text comment to targeted survey – NCAs (insolvency) Q.5: AT.

¹⁸⁷ Open text comment to Targeted survey – NCAs (insolvency) Q.5: SE.

¹⁸⁸ Targeted survey – NCAs (insolvency) Q.5: PT.

¹⁸⁹ Targeted survey – NCAs (insolvency) Q.5: SE.

¹⁹⁰ Public consultation Q.17a: open text comment from a medium-sized company (BE).

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Table 14. Offers in insurance policies and bank guarantees

Type of insolvency protection	Offer in the market	NCA's (insolvency)	Companies
Insurance policies	Offer has expanded	8%	0%
	Offer has remained stable	8%	17%
	Offer has gone down	50%	43%
	No offer/virtually no offer available	17%	9%
Bank guarantees	Offer has expanded	0%	0%
	Offer has remained stable	33%	0%
	Offer has gone down	42%	55%
	No offer/virtually no offer available	8%	14%

Source: ICF, based on targeted survey - NCAs (Insolvency) (Q5), and companies¹⁹¹.

The public consultation asked insolvency protection providers to indicate whether they had noticed an increase in the amounts paid for insolvency protection since July 2018 (e.g. higher volume of contributions to guarantee funds, additional insurance contracts or extension of existing contracts) due to the broader definition of packages or the new insolvency protection obligation for some LTAs. A large share did not notice a significant increase¹⁹², while others noticed an increase due to the broader definition of packages¹⁹³ and an almost equal share pointed to a significant increase but noted it was unclear whether this is due to the broader definition of packages or the introduction of LTAs¹⁹⁴. Significantly, few insolvency protection providers indicated the introduction of LTAs as the reason for the increase¹⁹⁵.

Replies to the targeted survey for companies revealed a significant share of respondents agreeing that prices of both insurance policies and bank guarantees have gone up 'moderately'¹⁹⁶ or 'significantly'¹⁹⁷. Many others replied 'do not know'¹⁹⁸.

Guarantee funds are provided by public corporations or privately managed, with the former more common across the EU. For example, Greece's public guarantee fund implies that each tour operator and travel agent is obliged to lodge a letter of guarantee to the Greek National Tourism Organisation (GNTO), covering the failure in the performance of a contract, including in the event of insolvency (fixed amount of EUR 5,000). While the extent

¹⁹¹ Targeted survey – NCAs (Insolvency) Q.5: n=12; businesses Q.29: n=23 (percentages in the table calculated from these bases).

¹⁹² Public consultation, Section VI. Additional questions for insolvency protection providers, Q.65: 42% (21/50), including 6/10 respondents who previously identified themselves as insolvency protection providers.

¹⁹³ Public consultation Q.65: 20% (10/50); not selected by any insolvency protection provider.

¹⁹⁴ Public consultation Q.65: 18% (9/50), including 1/10 insolvency protection providers.

¹⁹⁵ Public consultation Q.65: 10% (5/50), including 3/10 insolvency protection providers.

¹⁹⁶ Targeted survey – businesses Q.30: 13% (3/23) prices of insurance policies have gone up moderately; 9% (2/23) prices of bank guarantees have gone up moderately.

¹⁹⁷ Targeted survey – businesses Q.30: 39% (9/23) prices of insurance policies have gone up significantly; 39% (9/23) prices of bank guarantees have gone up significantly.

¹⁹⁸ Targeted survey – businesses Q.30: 35% (8/23) 'do not know' for insurance policies; 48% (11/23) 'do not know' for bank guarantees.

of its implementation in practice is difficult to determine, desk research suggests that it is difficult for travellers to benefit from this mechanism in the event of insolvency.

Italy's privately managed guarantee funds are an example of how these funds can be established and managed by consortia of travel agencies selling packages and/or facilitating LTAs. Desk research suggests several private guarantee funds established in Italy, but the fragmented landscape and the fact that funds are not subject to registration makes it difficult to determine the number of available funds or their members. The study interviews did not provide any clarification.

Escrow accounts and cash deposit systems exist in some Member States, with back-up funds identified in Czechia, Finland and Poland. The Czech and Finnish experiences were noted by companies, consumers, and national authorities as a potentially useful benchmark.

Box: Positive aspects of some national insolvency protection systems

In some Member States, travellers are provided with a certificate confirming the existence of insolvency protection, or are informed in another way (e.g. Consumer Protection Authority issues a press release and calls for travellers to submit their claims)¹⁹⁹.

In Bulgaria, the legislator mandates annual insurance contracts to accommodate changes in the trader's risk profile. In case of early termination of an insurance contract, the trader notifies the relevant Ministry.

In Czechia, the financial amount available to refund the traveller is unlimited. The system is based on insurance or bank guarantees, complemented by the Guarantee Fund. If necessary, the insurance company pays benefits to the traveller above the established policy limit, from the Guarantee Fund.

In Sweden, minimum requirements for insolvency protection are to be met so that all payments made for the package are repaid. In Ireland, the insolvency protection system has two layers: if the refund cannot occur through bonds, there is recourse to the Travellers' Protection Fund (established in 2020).

In Germany, a guarantee fund was created under a State aid measure linked to the impact of COVID-19 and is mandatory for all companies/organisers involved in the package travel sector²⁰⁰. This State aid measure is temporary and is set to lapse on 31 October 2027.

In Denmark, a loan system was established through the Danish Guarantee Fund to tackle the crisis. In some Member States such as Poland, vouchers introduced during the COVID-19 crisis are fully covered by insolvency insurance, i.e. consumers are refunded in case of bankruptcy of the tour operators.

2.5 Answers to the evaluation questions

This section includes the summary of the answers to the evaluation questions of the Analytical Framework (See Annex 7).

¹⁹⁹ BG, DE, EE, MT.

²⁰¹ Conclusion reflected in the replies to the targeted survey: (a) NCAs (regulatory and enforcement) Q.20: 52% (14/27) stated that the PTD increased consumer protection across the EU 'to some extent'; 58% (15/26) stated it contributed to the proper functioning of the internal market, by ensuring fairer competition 'to some extent'; (b) Consumer organisations Q.32: 45% (5/11) said that the PTD increased consumer protection across the EU 'to some extent'; 45% (5/11) 'to a great extent'; 64% (7/11) said it contributed to the proper functioning of the internal market by ensuring fairer competition, 'to some extent'; (c) business associations Q.46: 46% (6/13) the PTD increased consumer protection across the EU 'to some extent'; 38% (5/13) 'to a great extent'; 31% (4/13) that it contributed to the proper functioning of the internal market by ensuring fairer competition, 'to some extent'; 38% (5/13) 'not at all'.

2.5.1 Effectiveness

EQ1. To what extent do the observed effects correspond to the PTD objectives, and which elements have contributed to improving consumer protection, including in the areas not previously explicitly covered by the Directive?

Box 1: Objectives of the PTD

General objectives (GO)

- **GO1:** Improve the functioning of the internal market in the package travel sector;
- **GO2:** Achieve a high and uniform as possible level of consumer protection in the package travel market.

Specific objectives (SO)

For businesses

- **SO1:** Ensure a more competitive and fairer level playing field for businesses operating in the travel market (2013 impact assessment);
- **SO2:** Increase the cross-border offer of package travel services by reducing costs and obstacles to cross-border trade in the package travel market (2013 impact assessment);
- **SO3:** Reduce unjustified costs for businesses in the package travel market (2013 impact assessment).

For consumers

- **SO4:** Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services that were not covered by the Directive 90/314/EEC by addressing new market developments (2013 impact assessment).
- **SO5:** Reduce consumer detriment stemming from unclear and outdated provisions (IA

The PTD has been effective in achieving its GOs, at least to some extent²⁰¹. However, the findings indicate that certain SOs, corresponding to certain areas of the PTD, proved less effective than others. Several factors hindered the effectiveness of the PTD, but there are no indications that the resulting reduced effectiveness stemming solely from these factors.

Definitions

In the pursuit of its GOs and SOs, a key aspect of the PTD was to set up common definitions for the package travel sector (ACT1) towards the harmonisation of its key concepts (OUT1).

‘Package’ (Article 3(2))

The evaluation finds that the definition of ‘package’ has been effective overall in achieving the PTD’s objectives²⁰². Evidence points to certain major divisive views between companies

²⁰¹ Conclusion reflected in the replies to the targeted survey: (a) NCAs (regulatory and enforcement) Q.20: 52% (14/27) stated that the PTD increased consumer protection across the EU ‘to some extent’; 58% (15/26) stated it contributed to the proper functioning of the internal market, by ensuring fairer competition ‘to some extent’; (b) Consumer organisations Q.32: 45% (5/11) said that the PTD increased consumer protection across the EU ‘to some extent’; 45% (5/11) ‘to a great extent’; 64% (7/11) said it contributed to the proper functioning of the internal market by ensuring fairer competition, ‘to some extent’; (c) business associations Q.46: 46% (6/13) the PTD increased consumer protection across the EU ‘to some extent’; 38% (5/13) ‘to a great extent’; 31% (4/13) that it contributed to the proper functioning of the internal market by ensuring fairer competition, ‘to some extent’; 38% (5/13) ‘not at all’.

²⁰² Conclusion reflected by the replies to the targeted survey: (a) NCAs (regulatory and enforcement) Q.21: 76% (19/25) the definition of ‘package’ (Article 3(2)) contributes to the achievement of the PTD objectives ‘positively’; 8% ‘very positively’; (b) Consumer organisations Q.33: 40% (4/10) the

and consumers on the types of combination of different travel services constituting 'package' travel, with companies advocating for the introduction of certain exemptions and consumers firmly opposed²⁰³. While these views/policy perspectives are relevant to the implementation and interpretation of the PTD, they do not hinder the effectiveness of the definition of 'package' in the context of the current Directive.

The 2015 PTD broadened the definition and scope of 'package', following the indication of the 2013 impact assessment. The report on the application of Directive (EU) 2015/2302 highlighted that the broadened definition of 'package' determined that [e]xemptions from the scope of the Directive are very limited²⁰⁴. Consumers and companies have very different views: consumer associations believe that the current definition of 'package' should be maintained²⁰⁵ or eventually extended to more combinations of travel services²⁰⁶; a significant share of companies indicated that the definition of 'package' should cover fewer combinations of travel services²⁰⁷. In principle, consumers endorse a broad definition of 'package' as it ensures the highest protection for consumers²⁰⁸, simultaneously pursuing GO2 and SO4, while companies indicated that they would welcome exemptions from the scope of the PTD for certain combination of travel services, as they tend to consider it disproportionate to subject these combinations to the provisions on packages laid down by the PTD²⁰⁹, especially for the pursuit of SO3. These findings of the evaluation reinforced the conclusions of the report on the application of Directive (EU) 2015/2302²¹⁰.

As part of GO1 and SO1 (businesses) and of GO2 and SO5 (consumers), the 2015 PTD clarified certain aspects of the definition of 'package' to better frame whether specific combinations of travel services should be considered a 'package'. The outcome of the 2013 impact assessment led to the amendment of certain components of the definition of 'package' and to the introduction of additional supporting clarifications, such as the

definition of 'package' represents a major obstacle for the pursuit of PTD objectives; (c) Business associations Q.47: 31% (4/13) the definition of 'package' represents a major obstacle for the pursuit of PTD objectives.

²⁰³ Public consultation Q.5: 21% (106/504) the definition of a 'package' should be maintained (57% of consumer organisations (12/21) and 16% of companies (51/316)); 34% (172/504) the definition of 'package' should cover fewer combinations of travel services (45% of companies (143/316), with no consumer organisations in favour); Reiterated by a large consumer organisation (EU level) during the first workshop and the targeted interviews.

²⁰⁴ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 4.

²⁰⁵ Public consultation Q.5: 21% (106/504) the definition of a 'package' should be maintained (57% of consumer organisations (12/21)).

²⁰⁶ Public consultation Q.5: 20% (101/504) the definition of a 'package' should cover more combinations of travel services (24% of consumer organisations (5/21), 18% of companies (58/316), 4% of business associations (2/48)).

²⁰⁷ Public consultation Q.5: 34% (172/504) the definition of 'package' should cover fewer combinations of travel services (45% of companies (143/316) and no consumer organisations in favour); reiterated by a large consumer organisation (EU level) during the first workshop and the targeted interviews.

²⁰⁸ BEUC, *The Package Travel Directive. BEUC's Position on how to regain consumers' trust in the tourism sector*, 2021, p. 26: a 'broad scope grants consumers strong protection'.

²⁰⁹ In the open-text answers to Q.5a of the public consultation, several companies and business associations reiterated that further widening the definition of 'package' would result in disproportionate burdens for the package travel sector. One EU-level business association highlighted that 'extending the definition of a "package" to other types of travel combinations involving e.g. de minimis 'other services' (theatre ticket or a pre-paid meal), or to standalone travel services would be highly disproportionate, unduly burdening the entire travel industry with excessive obligations and resulting in an increase in costs for consumers' (Q.5a public consultation open text response). Several similar replies were provided in the public consultation.

²¹⁰ European Commission, *Report on the application of the PTD*, COM(2021) 90 final.

conditions laid down by Article 3(2) second sub-paragraph (a). In addition, the notion of 'significant proportion of the value of the combination' was clarified in recital 18, which specifies '25% or more of the value of the combination' as one of the criteria to determine whether an 'other tourist service' should be considered as contributing, in combination, to points (a), (b), and (c) of Article 3(1) to the formation of a 'package'. These conditions and clarifications proved effective overall, although practical difficulties remain for stakeholders to discern whether certain combinations of travel services constitute a package under Article 3(2) of the current PTD. Results from the public consultation illustrated some practical difficulties in uniformly defining certain combinations of travel services as 'packages', especially when applying the clause of **'a significant proportion of the value of the combination'**, set out in Article 3(2)(b)(v) paragraph (a) and specified in Recital 18 with the clause of **'25 % or more of the value of the combination'**, as a determining element to discern whether 'other tourist service' could be considered part of a package²¹¹.

While these issues reflect a policy/business orientation in favour of a narrower definition of a 'package', they do not hinder the effectiveness of the PTD's current definition, thus do not impacting the pursuit of the Directive's GO1 and SO1 (businesses) and GO2 and SO5 (consumers).

The 2015 PTD aimed to address the emerging trends in the package travel sectors identified in the 2013 impact assessment, specifically the emerging and rapidly evolving online booking processes and combinations of travel services. This corresponded to the pursuit of GO1 and SO1 (businesses) and of GO2 and SO4 (consumers), with the current PTD introducing a definition of 'click-through package' in Article 3(2)(b)(v)). According to this definition, the online bookings (e.g. flight, accommodation) that a consumer makes through different points of sale fall within the definition of 'package' if the first service provider transmits the customer's name, email address and payment details to the second provider and the second contract is concluded within 24 hours of the first contract. However, 'if there

²¹¹ Public consultation, Q.8 'Currently, combinations of accommodation and tourism services other than transport or car rental are not considered as packages, i.e. are exempted from the PTD, if the value of the other tourism service(s) (e.g. massages and other spa services at a hotel) is below 25% of the overall value of the combination. Do you think that such combinations of travel services should be exempted from the PTD even if the value of the other tourism services is higher than 25% of the total price?': 200/468 'Yes, they should be exempted', including the majority of companies (133/280), and business associations (24/51); 166/468 'No, they should not be exempted', including the majority of consumer organisations (17/21); Stakeholders were asked to provide supporting information in open text, the identification of key trends across responses. Among the respondents' replying 'Yes, they should be exempted' (200/468), trends included: a) Accommodation service providers (e.g. hotels) providing additional on-site travel services (e.g. wine-tasting activities accounting for 25% of the value of the combination) should not be considered packages (e.g. HOTREC, IE public authority (Ministry of the Economy), AT Federal Economic Chamber); b) The broad nature of the conditions clauses 'a significant proportion of the value of the combination' (Article 3(2)(b)(v) paragraph (a)) and '25% or more of the value of the combination' (recital 18) may generate interpretational issues (e.g. Malta Business Bureau, EU Travel Tech, Federazione Turismo Organizzato (FTO) ITALIA – Confcommercio). Among the respondents' replying 'No, they should not be exempted' (166/468), trends included: a) recital 18 is too vague, resulting in Article 3(2)(b)(v) paragraph (a) being hampered in its effectiveness (e.g. Association of Belgian Travel Organisers (ABTO), Nordic Leisure Travel Group, Association of Swedish Travel Agents and Tour Operators (SRF), Dutch Travel Trade Organisation (ANVR), the Danish Consumer Council (*Forbrugerrådet Tænk*), ECTAA, TUI). Stakeholders often suggested considering the 'essential feature' of the package as the condition to be considered when establishing whether or not the combination is a package; b) There is a need to ensure consumer protection in these combination of travel services (e.g. BEUC, MT public authorities, Mastercard).

is no transfer of the customer's details between the suppliers, these bookings are considered linked travel arrangements (LTAs)²¹².

The desk research indicated implementation challenges in the transmission of 'traveller's name, payment details and email address' from the first trader to another trader with whom the traveller would conclude a contract within 24 hours, especially 'to prove whether a package, an LTA or none of them was concluded'²¹³. Various stakeholders pointed out that the condition of 'at the latest 24 hours after the confirmation of the booking of the first travel service' is difficult to apply uniformly. This was confirmed by the findings of the baseline of the present study (see section 2.4.1.2) and the public consultation, where most respondents (across stakeholder types) declared that they consider the PTD poorly adapted to market trends, including expansion of sales by online booking and bookings on mobile devices²¹⁴. Most NCA insolvency authorities, when asked whether the definition of click-through packages contributed to the PTD achieving its GO1 and GO2 in respect of insolvency protection, declared that this was 'not at all' the case²¹⁵, and that it impacted the effectiveness of the PTD's provisions on insolvency protection 'to a very great extent'²¹⁶. This emphasised that, with the definition of click-through package, the current PTD was only partially effective in achieving GO1 and SO1 (businesses) and GO2 and SO4 (consumers).

The entry into force of the PTD in July 2018 coincided with certain observed changes in the market practices of the package travel sector, as highlighted by different stakeholder categories throughout the evaluation²¹⁷ and corroborated by the study baseline (see section 2.4.1). There are indications that traders reduced their package offers²¹⁸, that certain categories of traders changed their booking processes or paths²¹⁹, or present their packages as LTAs²²⁰. However, the evaluation did not establish any causational/causative link between the observed changes in market practices and the broadened definition of

²¹² European Union, Package travel and linked travel arrangements, n.d., https://europa.eu/youreurope/business/selling-in-eu/selling-goods-services/package-travel/index_en.htm

²¹³ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 6.

²¹⁴ Public consultation Q.3: 'not well adapted': 57% (12/21) of consumer organisations, 55% (157/286) of companies, 72% (36/80) of business associations.

²¹⁵ Targeted survey Q.15: 'not at all': 33% (4/12) of NCA (insolvency).

²¹⁶ Targeted survey Q.17 'to a very great extent': 50% (6/12) of NCA (insolvency).

²¹⁷ Targeted survey: (a) business associations Q.5: 36% (8/22) stated that the start of the application of the PTD in 2018 impacted the package travel market 'to a large extent', 32% (7/22) 'to some extent'; (b) consumer organisations Q.2: 42% (5/12) stated that the start of the application of the PTD in 2018 impacted the package travel market 'to a large extent', 17% (2/12) 'to some extent'; (c) NCA (regulatory and enforcement): 19% (5/27) 'to a large extent', 33% (9/27) 'to a moderate extent', 22% (6/27) 'to a small extent'.

²¹⁸ Targeted survey: (a) business associations Q.6: 18% (2/ 11) stated that traders reduced their offers in packages in response to the entry into force of the PTD in 2018 'to a large extent', and 27% (3/11) 'to some extent'; (b) consumer organisations Q.1: 17% (2/12) 'to a moderate extent', 42% (5/12) 'to a small extent'; (c) NCA (regulatory and enforcement): 8% (2/26) 'to a large extent', 12% (3/26) 'to a moderate extent', 19% (5/26) 'to a small extent', 31% (8/26) 'not at all'.

²¹⁹ Targeted survey: (a) business associations Q.6: 17% (2/12) certain categories of traders have changed their booking processes or paths after the entry into force of the PTD in 2018 'to a large extent', 33% (4/12) 'to a small extent'; (b) consumer organisations Q.1: 42% (5/12) this market practice was observed 'to a large extent', 25% (3/12) 'to a small extent'; (c) NCA (regulatory and enforcement) Q.23: 26% (7/27) 'to a moderate extent', 22% (6/27) 'to a small extent'.

²²⁰ Targeted survey: (a) business associations Q.6: 25% (3/12) stated that some traders present their offer as linked travel arrangements, when, in fact, they sell packages after the entry into force of the PTD in 2018 'to some extent', 25% (3/12) 'not at all'; (b) consumer organisations Q.1: 33% (4/12) 'to a moderate extent', 25% (3/12) 'to a small extent'; (c) NCA (regulatory and enforcement) Q.23: 24% (6/25) 'to a small extent', 20% (5/25) 'not at all'.

‘package’ in the current PTD. While the consultation highlighted that it is theoretically possible for traders to decide to reduce their package offer or change their business model so as to evade the obligations in the PTD²²¹, there is no evidence that this scenario is influenced by the current definition of ‘package’ in practice.

LTA (Article 3(5))

There are indications that the definition of LTA (Article 3(5)) for both type (a) and (b) has proved ineffective in achieving PTD’s stated objectives²²². The complexity and lack of clarity in key elements of the definition of LTA led to interpretation and enforcement difficulties and an unclear delimitation between packages and LTAs.

The results of the evaluation should be read in light of the overall lack of available figures on the LTA segment of the market (see section 2.4.1), suggesting issues for stakeholders in discerning whether an LTA is created in practice²²³. The relatively recent entry into force of the PTD – and thus the LTA concept – may also make it difficult for stakeholders to develop sufficient practical experience in the LTA market²²⁴.

The definition of LTA was included in the current PTD in response to the findings of the 2013 impact assessment, indicating that consumer detriment was high in cases of ‘multi-trader’ travel arrangements²²⁵, especially in an online environment. Accordingly, the current

²²¹ Public consultation Q5a, Q8a: several stakeholders pointed out that uncertainties in the definition of ‘package’ and ‘LTA’ may lead to market practices in which traders may decide to change their business models to avoid being considered package organisers.

²²² Targeted survey: (a) NCA (regulatory and enforcement) Q.21: when asked which aspects contributed to the PTD achievement of its stated objectives, 15% (4/26) declared that the definition of LTA (Article 3(5)) and the related rules in Article 19 contributed ‘not at all’, 12% (3/26) ‘very negatively’, 19% (5/26) ‘negatively’, 35% (9/26) ‘very positively’; (b) NCA (insolvency protection) Q.15, on insolvency protection, 8% (1/12) ‘not at all’, 17% (2/12) ‘very negatively’, 17% (2/12) ‘negatively’, and 17% (2/12) ‘very positively’; (c) consumer organisations Q.33: 80% (8/10) respondents declared that the rules on LTAs represent the biggest obstacle to the PTD achieving its stated objectives; (d) business associations Q.47: 54% (7/13) respondents declared that the rules on LTAs represent the biggest obstacle to the PTD achieving its stated objectives. In the public consultation, most respondents declared that LTA did not contribute to the PTD achieving its stated objectives to a large extent: 269/403 for type (a) LTAs in Q.26, and 276/397 for type (b) LTAs in Q.28.

²²³ Several stakeholders outlined issues in determining whether an LTA is created in practice, preventing them from gathering relevant data. During the CPC meeting (12 May 2022) some ‘CPC authorities pointed out that LTAs were rarely or not at all used as the concept was very complicated and consumers did not understand it. Therefore, there were no complaints from consumers. Consequently, as enforcement authorities relied on consumer complaints, it was difficult for them to enforce the PTD provisions on LTAs.’ (minutes of CPC Network workshop on 12 May 2022).

²²⁴ ‘it is very difficult, if not impossible, for consumers and enforcement authorities to prove whether a package or an LTA was concluded’ (BEUC, *The Package Travel Directive: BEUC’s Position on how to regain consumers’ trust in the tourism sector*, 2021, [https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-](https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf)

[115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf](https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf)); ‘The difficulty to determine whether an LTA has been formed or not makes it impossible for enforcement authorities to actually enforce the provisions of the Directive in this regard’ (EU Travel Tech, *Revision of the Package Travel Directive. EU Travel Tech comments on the Inception Impact Assessment Roadmap*, 2021, pp. 6-7, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13117-Package-travel-review-of-EU-rules/F2671051_en); targeted interview with SE national authorities.

²²⁵ The 2013 impact assessment defines multi-trader travel arrangements as ‘combinations of travel services where one trader facilitates in a targeted manner the procurement of travel services from another trader, during a single visit of a point of sale or through linked online booking processes. In

PTD's definition of LTA was intended to better take into account 'market developments where traders (mainly online but also off-line) assist travellers in concluding separate contracts with individual travel service providers for the same trip within a short period of time'²²⁶ and, by doing so, to overcome the limitations of Council Directive 90/314/EEC and pursue the GO1 and SO1 (businesses) and GO2, SO4, and SO5 (consumers).

There are several indications that the complexity and lack of clarity of the definition of LTA (Article 3(5)) decreased the effectiveness of the PTD as a result of enforcement problems and interpretation of this new concept in practice. These elements constitute factors hindering the pursuit of the PTD's GO1 and SO1 (businesses) and GO2, SO4, and SO5 (consumers). The needs of the PTD in laying down provisions for 'multi-trader' booking processes and new trends in the package travel sector are only partially addressed by the current definition of LTA. While there are indications that enforcement issues hindered the overall effectiveness of the PTD, evidence suggests that the current PTD lacks effectiveness in regulating the new trends of the package travel sector, impeding achievement of GO1 and SO1 (businesses) and GO2, SO4, and SO5 (consumers).

The evaluation confirms the findings of the report on the application of the Directive, which specified that 'the application of this concept has arguably raised the highest number of questions' with 'consumer and business stakeholders consider[ing] the LTA definition overly complex and difficult to apply in practice'²²⁷. It also highlighted that recitals 12 and 13 of the PTD, while providing 'some guidance as regards the concept of LTA'²²⁸, did not contribute to improving the effectiveness of the PTD's definition of LTA.

LTA type (a) (Article 3(5) point (a))

Evidence suggests that the definition of LTA type (a) contributed to the PTD achieving GO1 and SO1 (businesses) and GO2, SO4, and SO5 (consumers) to a very limited extent. In the public consultation, a large share of stakeholders believed that LTA type (a) has not contributed to the achievement of PTD GO1 and GO2²²⁹. They specified that this was related to the fact that (a) travellers find it difficult to understand what kind of protection they can expect and whether they will benefit from insolvency protection²³⁰, (b) the distinction between services selected jointly (package) or separately (LTA) is difficult to verify for

such cases consumers conclude separate contracts with the relevant service providers and no elements typical for a package are present' (European Commission, *Impact Assessment*, SWD(2013) 263 final, p. 7).

²²⁶ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 5.

²²⁷ Ibid.; 'it is very difficult, if not impossible, for consumers and enforcement authorities to prove whether a package or an LTA was concluded' (BEUC, *The Package Travel Directive: BEUC's Position on how to regain consumers' trust in the tourism sector*, 2021, https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf); interview with one business association representing small service providers; two consumer associations (DE, NL) and a Member State authority (IE) also suggested that, given the complexity of LTA definition, it should be abolished.

²²⁸ European Commission, *Report on the application of the PTD*, COM(2021) 90 final p. 5.

²²⁹ Public consultation Q.26: 67% (276/397) LTA type (a) did not improve the protection for „, while contributing to fair competition (95% (19/20) of consumer organisations, 81% (17/21) of public authorities, 61% (140/228) of companies, 78% (38/49) of business associations).

²³⁰ Public consultation Q.26a: 90% (19/21) respondents from consumer organisations, 'travellers find it difficult to understand what kind of protection they can expect and whether they will benefit from insolvency protection', 52% (13/25) of public authorities, 62% (33/53) of business associations, 30% (97/323) of companies.

travellers and enforcement authorities²³¹, and, (c) traders may use LTAs to avoid the liability of package organisers – companies and consumers reported different views on the latter²³².

LTA type (b) (Article 3(5) point (b))

The definition of LTA type (b) contributed to the PTD achieving GO1 and SO1 (businesses) and GO2, SO4, and SO5 (consumers) to a very limited extent, according to most respondents to the public consultation²³³. Stakeholders pointed out that the current definition of LTA type (b) is difficult for travellers to (a) understand the kind of protection they can expect and whether they will benefit from insolvency protection²³⁴, (b) decipher whether the booking of a second travel service was facilitated in a targeted manner²³⁵, and (c) it is often not clear to traders facilitating a potential LTA whether the relevant traveller made a booking with a second trader within 24 hours²³⁶. Stakeholders indicated that travellers do not benefit from the protection for packages, nor, often from insolvency protection (or would find it difficult to invoke it in practice). Traders may use LTAs to avoid the liability of package organisers. Again, certain categories of traders may have changed their booking processes or paths, or may present their offer as LTAs when, in fact, they sell packages²³⁷.

Main interpretation and enforcement issues of LTAs

The evaluation found several clusters of interpretation and enforcement issues in the application of the definition of LTA and its related provisions in practice.

Lack of clarity in key elements of the definition of LTA types (a) and (b) (Article 3(5) points (a) and (b)), limiting its effectiveness for companies and consumers

The key concepts of the definition of LTA (Article 3(5)) PTD) lack clarity and would benefit from further clarifications, according to national authorities, companies (package travel sector, airlines, and private insolvency protection funds), and consumer organisations. The following issues are noted as the most challenging in interpretation and implementation:

- ✓ ***Facilitation by trader (LTA type (a) and (b))***. Companies stressed that traders find it difficult to understand the meaning of ‘facilitation’ and the legal implications entailed, as neither the definition of LTA (Article 3(5)) nor recitals 12 and 13 sufficiently clarify this concept²³⁸. The issue of facilitation polarises stakeholders, with consumers

²³¹ Public consultation Q.26a: 71% (15/21) of consumers organisations, ‘the distinction of whether the services were selected jointly (package) or separately (LTA) is difficult to verify for travellers and enforcement authorities’, 60% (15/25) of public authorities, 68% (36/53) of business associations, 27% (86/323) of companies.

²³² Public consultation Q.26a: 71% (15/21) of consumers organisations, ‘traders may use LTAs to avoid the liability of package organisers’, 40% (10/25) of public authorities, 38% (20/53) of business associations, 17% (56/323) of companies.

²³³ Public consultation Q.28: 70% (269/403) stated that LTA type (b) did not improve the protection for travellers, while contributing to fair competition (95% (19/20) of consumer organisations, 90% (19/21) of public authorities, 63% (142/224) of companies, 71% (35/49) of business associations).

²³⁴ Public consultation Q.28a: 70% (200/284) of respondents (57% (35/42) of business associations, 39% (94/145) of companies, 68% (18/19) of consumer organisations, 51% (29/41) of EU citizens, all three NGOs, 50% (6/12) of others, 42% (13/19) of public authorities).

²³⁵ Public consultation Q.28a: 61% (174/284) of respondents (74% (31/42) of business associations, 58% (84/145) of companies, 53% (10/19) of consumer organisations, 59% (24/41) of EU citizens, 66% (2/3) of NGOs, 75% (9/12) of others, 74% (14/19) of public authorities).

²³⁶ Public consultation Q.28a: 61% (174/284) of respondents (67% (28/42) of business associations, 65% (94/145) of companies, 63% (12/19) of consumer organisations, 73% (30/ 41) of EU citizens, 66% (2/3) NGOs, 67% (8/12) of others, 79% (15/19) of public authorities).

²³⁷ See footnotes 261 to 263.

²³⁸ Interview with a large pan-European company organisation in the package travel sector.

expressing concerns that the notion of facilitating should be better clarified, not to scope out certain booking pathways from the PTD provisions – as airlines would prefer – but, rather, to ensure that certain combinations resulting from facilitation are considered packages, as they ‘cannot really be considered mere LTAs or just single services that are combined for the benefit of consumers’²³⁹;

- ✓ ‘Single visit’ (LTA type (a)). There are indications that consumers and companies would benefit from further clarification of ‘single visit’ in relation to LTA type (a) (Article 3(5) point (a)), as this notion could lead to confusion in its implementation²⁴⁰;
- ✓ Concepts of ‘separate selection’ and ‘separate payment’ (LTA type (a)). The requirements for an LTA type (a) to be formed, of ‘separate selection’ and ‘separate payment’ of each travel service by travellers, and their dispersion across the various traders involved mean that the concept of LTA type (a) is difficult to apply and enforce in practice²⁴¹;
- ✓ ‘Facilitation in a targeted manner’ (LTA type (b)). Consumers and companies uniformly indicated that the notion of ‘facilitation in a targeted manner’ that characterises LTAs type (b) is difficult to apply in practice, resulting in implementation challenges²⁴²;
- ✓ ‘[...] at the latest 24 hours after the confirmation of the booking of the first travel service’ (LTA type (b)). The condition laid down by Article 3(5) point (b) of ‘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’ proved difficult to enforce in practice. This was confirmed by the targeted interviews with companies²⁴³ and consumers²⁴⁴, as well as by the public authorities in the public consultation²⁴⁵.

Uncertain boundaries between LTAs and packages reducing the effectiveness of the definitions of LTA types (a) and (b) (Article 3(5) and of packages (Article 3(2))

²³⁹ Interview with a large EU-level consumer organisation.

²⁴⁰ An EU-level business association representing the global distribution systems (GDSs) and travel distributors pointed out that ‘In the future, concepts such as ‘single visit or contact’ need to be well defined and clarified to exclude situations where a consumer merely navigates through websites using tabs in order to make additional purchases’; EU Travel Tech, *EU Travel Tech Comments on the application and revision of the Package Travel Directive*, 2022, p. 12, https://eutraveltech.eu/wp-content/uploads/2022/05/eutt_PTD-supplementary-input-public-consultation_-06052022-Regular.pdf; reiterated by one business association, which stressed that there is a need to define what ‘single visit’ implies, e.g. ‘when does the single visit start, when does the single visit end’. A consumer organisation also highlighted the necessary clarification for terms including ‘single-visit’ (first workshop, 26 October 2022). This was confirmed by public consultation Q.27, with 17.5% (72/410) respondents indicating that there should be a definition or official guidance on the criterion ‘single visit or contact’ to better distinguish LTAs from standalone services.

²⁴¹ Public consultation Q.26b: open text from a respondent from a large company (US) (n=41).

²⁴² This finding was confirmed by one interview with a large consumer organisation and another with a company representing the package travel sector.

²⁴³ An EU-level company representing the global distribution systems (GDS) and travel distributors noted that LTA type (b) ‘is unworkable because nobody knows about whether a transaction took place within the 24-hour threshold’. This was confirmed by an interview with an EU-level large company in the package travel sector during the scoping interview phase.

²⁴⁴ Interview with a large EU-level consumer organisation, pointing out that the threshold of 24 hours for LTA type (b) does not work in practice and welcoming the removal of this condition in case of a revision of the PTD.

²⁴⁵ Public consultation Q.28a: 74% (14/19) of respondents from the public authorities, ‘it is often not clear to traders facilitating a potential LTA whether the relevant traveller made a booking with a second trader within 24 hours.’

There are indications that the lack of clarity and interpretation uncertainties stemming from the definitions of ‘package’ and LTA created difficulties in recognising whether an LTA (type (a) or (b) or a package were formed in practice. This contributed to a significant lack of effectiveness of the PTD in achieving its GO1 and SO1 (businesses) and GO2, SO4, and SO5 (consumers) and, consequently reduced the impact of ACT1²⁴⁶ (see section 2.3) and OUT1. This was confirmed by several stakeholders, who emphasised that it proved almost impossible to discern whether an LTA was formed in practice²⁴⁷ and/or that their organisations – companies, consumers, public authorities – did not detect any LTA or LTA-related issues in practice. As the 2015 PTD aimed to address the emerging trends in the package travel sectors identified at the time of the 2013 impact assessment, specifically the emerging and constantly evolving online booking processes and combinations of travel services, the uncertain boundaries between packages and LTAs, and between LTAs and single travel services, resulted in the definition of LTA and its interaction with the definition of package²⁴⁸ not being effective in pursuing the PTD’s objectives.

Termination of the package travel contract, free of charge, in the event of ‘unavoidable and extraordinary circumstances’ (Article 3(12) and Article 12(2))

In general, the definition of ‘unavoidable and extraordinary circumstances’ (Article 3(12)) was effective in achieving PTD GO1, SO1 (businesses) and GO2, SO2, SO3 (consumers).²⁴⁹

The concept is used where travellers have the right to cancel packages free of charge ‘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 accordance with Article 12(2) of the PTD. In such cases, travellers are entitled to a full refund of any payments made for the package. Article 12(2) of the PTD contains conditions whose fulfilment triggers rights and obligations of the parties. Challenges in applying Article 12(2) emerged during the COVID-19 pandemic (see section 2.4.2.2).

The conclusions of the 2013 impact assessment highlighted that certain provisions of Council Directive 90/314/EEC were outdated, e.g. ‘the lack of termination rights for consumers’²⁵⁰. More specifically, Annex 3 noted that while ‘the organiser is entitled to cancel the package contract without any obligation to pay damages for non-performance of the contract if the cancellation is for reasons of force majeure, solely depending on his assessment of the security situation’, the consumer does not have a similar right to cancel in the event of force majeure²⁵¹. It also clarified that ‘there are examples of organisers refusing to cancel the package even though national travel advice advised against travelling to the destination’²⁵². Consumer lawyers argue that ‘the consumer can have a legitimate need for an option to cancel the contract if there is a force majeure situation in the area of

²⁴⁶ From the intervention logic – Activities – Definitions: ‘Setting common definitions for ‘packages’, ‘travel service’, ‘LTA’, ‘organiser’, and ‘traveller’, etc’.

²⁴⁷ Reiterated almost unanimously everywhere in the data collection by stakeholders of all types.

²⁴⁸ An EU-level company representing the airline sector stressed that ‘that further clarification on the differences between different categories of package and LTA, as opposed to standalone travel services may be useful’ (targeted interview).

²⁴⁹ Most NCAs (regulatory and enforcement bodies) stressed that Article 3(12) contributed positively or very positively to the achievement of the PTD’s objectives (targeted survey for NCAs (regulatory and enforcement) Q.21: 14/26 replied ‘positively’, 4/26 ‘very positively’).

²⁵⁰ European Commission, *Impact assessment*, SWD(2013) 263 final, p. 14.

²⁵¹ European Commission, *Impact assessment*, SWD(2013) 263 final, Annex 3, p. 78.

²⁵² Ibid.

the destination, e.g. warfare or natural disasters, which is likely to have a negative impact on the enjoyment or the safety during the holiday and where the organiser does not take initiative to cancel the package'²⁵³.

In response, the 2015 PTD introduced the definition of 'unavoidable and extraordinary circumstances' (Article 3(12))²⁵⁴ and its related provisions on termination of a package travel contract and on the refund of any payments made for the package due to the emergence of 'unavoidable and extraordinary circumstances' (Article 12(2)). The introduction of the definition of 'unavoidable and extraordinary circumstances' is part of the PTD's efforts to pursue GO1 and SO1 (businesses) and of GO2 and SO4, SO5 (consumers), which are now granted 'stronger cancellation rights'²⁵⁵. Article 3(12) of the PTD defines 'unavoidable and extraordinary circumstances' as 'a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken'²⁵⁶. Recital 31 further specifies the meaning of 'unavoidable and extraordinary circumstances' within the package travel context, by providing the following – non-exhaustive – list of situations configurable as part of Article 3(12): '[...] warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely to the destination as agreed in the package travel contract'²⁵⁷.

Justification for cancellation of a package travel contract in light of 'unavoidable and extraordinary circumstances'

The configuration of 'unavoidable and extraordinary circumstances' plays a crucial role in triggering consumers' termination rights under the current PTD. Article 12(2) lays down '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'²⁵⁸. Thus, within the boundaries and the conditions of Article 12(2) of the PTD, the existence of 'unavoidable and extraordinary circumstances' becomes the justification for the cancellation of a package travel contract before the start of the package. The practical application of Article 12(2) of the PTD varied between the two periods July 2018 (entry into force of the PTD)-beginning of COVID-19 pandemic and COVID-19 pandemic-present.

Before the COVID-19 pandemic, the practical application of 'unavoidable and extraordinary circumstances' as justification for terminating a package travel contract raised disputes between travellers and organisers only to a moderate/small extent, for both consumers²⁵⁹

²⁵³ Ibid.

²⁵⁴ The notion of 'force majeure' was used under Council Directive 90/314/EEC, Article 4(6)(b)(ii), regulating cancellation of the contract.

²⁵⁵ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 2.

²⁵⁶ Article 3(12) PTD.

²⁵⁷ Recital 31 PTD.

²⁵⁸ Article 12(2) PTD.

²⁵⁹ Targeted survey - consumer organisations Q.6: when asked whether, on the justification for terminating a package travel contract *before* the COVID-19 pandemic, they observed the scenario in which 'the parties did not agree on whether the situation qualified as 'unavoidable and extraordinary circumstances' or whether it significantly affected the package in question', 33% (4/12) 'to a moderate extent', 42% (5/12) 'to a small extent'.

and companies²⁶⁰. The situation significantly evolved since the COVID-19 pandemic, with substantial controversy between travellers and organisers, according to most stakeholders from companies²⁶¹ and consumers²⁶².

Travel warnings and the COVID-19 pandemic, including circumstances at the place of departure

The notion of 'official travel warnings' was a key element in determining whether a certain situation could qualify as 'unavoidable and extraordinary circumstances', thus triggering the application of Article 12(2) of the PTD during the COVID-19 pandemic. In the public consultation, stakeholders were asked whether, in case of a revision of the PTD, they see the need to specify the consequences of 'official travel warnings' within the package travel context (e.g. their legal value in connection with cancellations because of unavoidable and extraordinary circumstances). Overall, regulating 'official travel warnings' within the cancellation rights under Article 12(2) due to 'unavoidable and extraordinary circumstances' is not a viable option for most stakeholders²⁶³, with a clear divide between most consumer organisations²⁶⁴, which expressed support, and public authorities²⁶⁵ and companies²⁶⁶, which endorsed this option to a more limited extent. Stakeholders noted that travel warnings are crucial in enabling the refund right in light of unavoidable and extraordinary circumstances, both in the remit of the PTD and of the APRR^{267,268}.

Several stakeholders stressed the degree of misalignment between the PTD and APRR on the interpretation of unavoidable and extraordinary circumstances, with situations in which a refund right can be invoked under the PTD, but not under the APRR²⁶⁹ (see section 2.5.4).

During the COVID-19 pandemic, another controversial issue concerned the unavoidable and extraordinary circumstances occurring at the place of departure. Article 12(2) refers to

²⁶⁰ Targeted survey - companies Q.12: when asked whether, on the justification for terminating a package travel contract *before* the COVID-19 pandemic, they observed the scenario in which 'the parties did not agree on whether the situation qualified as 'unavoidable and extraordinary circumstances' or whether it significantly affected the package in question', 65% (13/20) 'to a small extent'.

²⁶¹ Targeted survey - companies Q.12: when asked whether, on the justification for terminating a package travel contract *since* the COVID-19 pandemic, they observed the scenario in which 'the parties did not agree on whether the situation qualified as 'unavoidable and extraordinary circumstances' or whether it significantly affected the package in question', 55% (12/20) 'to a large extent'.

²⁶² Targeted survey - consumer organisations Q.6: when asked whether, on the justification for terminating a package travel contract *since* the COVID-19 pandemic, they observed the scenario in which 'the parties did not agree on whether the situation qualified as 'unavoidable and extraordinary circumstances' or whether it significantly affected the package in question', 83% (10/12) 'to a large extent'.

²⁶³ Public consultation Q.11: when asked whether the PTD should specifically regulate the consequences of 'official travel warnings', 53% (266/502) selected 'No', while 42% (209/502) said 'Yes'.

²⁶⁴ Public consultation Q.11: 81% (17/21) of consumer organisations agreed with regulating the consequences of 'official travel warnings'.

²⁶⁵ Public consultation Q.11: 45% (10/22) of public authorities were in favour in regulating the consequences of 'official travel warnings'.

²⁶⁶ Public consultation Q.11: 33% (104/319) of companies and 42% (20/48) of business associations were in favour of regulating the consequences of 'official travel warnings'.

²⁶⁷ Regulation (EC) No 261/2004, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0261>

²⁶⁸ Interviews with a large consumer organisation and a large business association; also mentioned by the same organisations during the first workshop on 26 October 2022 and during the PTD Expert Group meeting (8 November 2022).

²⁶⁹ Ibid.

unavoidable and extraordinary circumstances ‘occurring at the place of destination or its immediate vicinity’ and does not specifically refer to the circumstances occurring at the place of departure. However, it provides that travellers have the right to terminate the contract free of charge when the unavoidable and extraordinary circumstances ‘significantly affect the carriage of passengers to the destination’. In practice, while the restrictions on movement or quarantine requirements at the place of departure were making it effectively impossible for a traveller to start the package travel contract (e.g. travellers unable to reach the airport located in another region)²⁷⁰, the organiser/retailer often did not accept this as a justification for the termination without fees under Article 12(2).

When asked whether a potential recast of the current PTD would need to include the circumstances at the place of departure within the boundaries of Article 12(2), responses were split between consumers, who are unanimously in favour²⁷¹, and most companies, which are against²⁷². When asked to identify the biggest obstacle to the PTD achieving its stated objectives, 54% of the respondents from companies and 60% from consumers pointed to the rules on the cancellation of packages²⁷³.

Refund of any payments made for the package due to the emergence of ‘unavoidable and extraordinary circumstances’

This point should be read in conjunction with the definition of ‘unavoidable and extraordinary circumstances’.

Information obligations (Article 5 and Annex I for packages, and Article 19(2) and Annex II (parts A to E) for LTAs).

The information obligations for traders acting as organisers or retailers of a travel package or as facilitators of an LTA stemming from the PTD are respected only to a moderate extent by traders (organisers or retailers) selling travel packages, and even less so by traders facilitating LTAs falling under both types (a) and (b), as defined in the PTD. This limited compliance seems to indicate an enforcement issue around the information obligations for traders, rather than an intrinsic effectiveness problem of the PTD. However, it could still hamper the effectiveness of the PTD in achieving its stated objective, as an exogenous factor.

To address the challenges identified at the time of the 2013 impact assessment, the current PTD introduced enhanced information requirements, while attempting a simplification and standardisation of the overall process to avoid unnecessary/unjustified costs for businesses. Businesses are obliged ‘[to] inform travellers whether they are offered a package or linked travel arrangement and on their key rights through standardised information forms’ and to ‘provide information on the features and characteristics of the package, its price and any additional charges’²⁷⁴. The current PTD pursued the standardisation and simplification of information requirements in its Article 5 (pre-contractual information for package travel contracts) and Article 19(2)(b) (for linked travel arrangements). It thus pursued GO1, SO1, SO3 (businesses) and GO2, SO4, SO5 (consumers) by putting in place ACT2 (setting obligations for traders to inform travellers about key features of the package travel contracts and their rights) and ACT3 (setting specific information requirements for LTAs). Through these activities, the current PTD pursued OUT2 (standardised content of the package travel contracts), OUT3 (standardised

²⁷⁰ Interview with a worldwide business association representing the airline sector.

²⁷¹ Targeted survey – consumer Q.8: 92% (11/12) selected ‘Yes’.

²⁷² Targeted survey – business Q.14: 69% (9/13) selected ‘No’.

²⁷³ Targeted survey – business Q.47: 54% (7/13); targeted survey – consumers Q.33: 60% (6/10).

²⁷⁴ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 2.

information requirements for packages and LTAs), and OUT4 (increased awareness of travellers' rights).

Standard information form of Annex I (packages)

Based on all replies to the public consultation, package organisers are at least moderately compliant with their information obligations under Article 5 and Annex I of the PTD²⁷⁵. In the public consultation, consumer organisations and public authorities were asked for their views on the extent to which traders comply with the obligation to provide one of the standard information forms contained in Annex I to the PTD when they are offering packages as defined in Article 3(2) PTD. Consumer organisations stated that traders have been highly (22%)²⁷⁶, moderately (56%)²⁷⁷, or little compliant (22%)²⁷⁸ with the information obligations under Article 5. Notably, this picture is mirrored by public authorities²⁷⁹. On enforcement problems in the implementation of the information form in Annex I (for packages), 73% of consumer organisations and 47% of NCAs (regulatory and enforcement) highlighted that online traders often do not provide this form, despite offering packages (e.g. they may provide one of the forms in Annex II or no form at all)²⁸⁰.

Standard information forms of Annex II (parts A, B, C) (LTA type (a)) and Annex II (parts D, E) (LTA type (b))

Article 19(2) of the PTD requires traders to comply with the information requirements set out in Article 19(2)(a) and (b) and Annex II (Parts A, B, and C) for LTA type (a) (single point of sale). In the public consultation, more than half of consumers and public authorities indicated that traders had a low level of compliance with the information requirements²⁸¹. The remaining respondents pointed out that traders comply at least moderately²⁸² with the information requirements, while those indicating a high degree of compliance represented the minority view²⁸³.

On LTA type (b) (e.g. facilitated in a targeted manner), Article 19(2) of the PTD requires traders to comply with the information requirements set out in Article 19(2)(a) and (b) and Annex II (Parts D and E). In the public consultation, according to more than half of the respondents from public authorities and consumer organisations, most traders had a low level of compliance with their information obligations²⁸⁴, while roughly one-third of the remaining respondents believe that traders complied only moderately with the information

²⁷⁵ Public consultation Q.37: 45% (47/104) observed a 'high degree of compliance' of traders with the obligation to provide one of the standard information forms contained in Annex I to the PTD when they are offering packages, 40% (42/) observed a 'moderate degree of compliance'.

²⁷⁶ Public consultation Q.37: 22% (4/18) respondents from consumer organisations; Q.37-Q.44 was specifically addressed to consumer organisations and public authorities, but other stakeholder categories also replied, particularly companies and business associations. Only the consumer associations and public authorities' responses are reported here.

²⁷⁷ Public consultation Q.37: 55% (10/18) consumer organisations.

²⁷⁸ Public consultation Q.37: 22% (4/18) consumer organisations

²⁷⁹ Public consultation Q.37: public authorities stated that traders were highly (33%, 5/18), at least moderately (40%, 6/18), or little compliant (27%, 4/18).

²⁸⁰ Targeted surveys Q.30 and Q.18: 73% (8/11) consumer organisations, 47% (9/21) NCAs (regulatory and enforcement).

²⁸¹ Public consultation Q.38: public authorities stated that traders were little compliant (54%, 7/13), as did consumer organisations (56%, 10/18).

²⁸² Public consultation Q.38: public authorities stated that traders were moderately compliant (31%, 4/13), as did consumer organisations (39%, 7/18).

²⁸³ Public consultation Q.38: public authorities stated that traders were highly compliant (15%, 2/13), as did consumer organisations (6%, 1/18).

²⁸⁴ Public consultation Q.39: public authorities stated that traders were little compliant (54%, 7/13), as did consumer organisations (59%, 10/17).

requirements²⁸⁵ Those indicating a high degree of compliance represented the minority view²⁸⁶.

Traders' liability and traveller rights

In Chapter IV (Performance of the package), the PTD addresses these problems by introducing stricter rules on liability, establishing that 'apart from certain exceptions, the organiser of a package is liable if something goes wrong, no matter who performs the travel services'²⁸⁷ thus pursuing GO1, SO1, SO2 (businesses), and GO2, SO5 (consumers). It established ACT4 and ACT5²⁸⁸ to pursue OUT5 (Better implementation of traders' responsibilities for the performance of the packages), and OUT6 (Protection of travellers against unreasonable restrictions to their cancellation rights in cases of unavoidable and extraordinary circumstances, or against unreasonable price increases).

Refund of any payments made for the package due to the emergence of 'unavoidable and extraordinary circumstances'

This aspect is discussed separately under EQ5 below.

Chapter IV – Performance of the package

The evaluation found that the introduction of strict rules on liability by the 2015 PTD was effective in ensuring the pursuit of GO1, SO1, SO2 (businesses) and GO2, SO5 (consumers). There are indications of persisting confusion among consumers in situations where there is division of responsibilities/liabilities for the performance of a package travel contract among the various actors of the value chain, especially in an online environment. Nevertheless, the evidence suggests that problems relating to the responsibility/liability for the performance of the package are linked to enforcement issues rather than to the PTD itself, whose rules in this area are effective.

Article 13(1) of the PTD lays down rules on the responsibility for the performance of the package. In principle, the organiser is responsible for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers. However, the PTD leaves it to Member States to maintain or introduce national provisions under which the retailer is also responsible for the performance of the package and, thus, of the related refund in case of termination of the contract (see Table 11). Desk research suggested that 11 Member States introduced the option of having retailers subscribe to insolvency protection within their national system, while 16 Member States did not²⁸⁹.

The standard information forms in Annex I to be provided before the conclusion of a package travel contract clearly identify the party/parties²⁹⁰ responsible for the performance of the contract, and, under Article 7, the organiser's core obligations have to be identified in the contract.

²⁸⁵ Public consultation Q.39: 31% (4/13) of public authorities and 35% (6/17) stated that traders were moderately compliant.

²⁸⁶ Public consultation Q.38: public authorities stated that traders were highly compliant (15%, 2/13), as did consumer organisations (6%, 1/17).

²⁸⁷ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 2.

²⁸⁸ From the intervention logic (see section 2.3), ACT4: 'Setting the liability of organisers for the performance of the package (e.g., alternative arrangements, price reduction, compensation for damages, obligation to provide assistance, etc.)', and ACT5 'Setting a right for travellers to terminate the contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances.

²⁸⁹ Tipik study, Insolvency protection country factsheets, 2019.

²⁹⁰ For Member States opting for the parallel liability of retailers under Article 13(1) second sub-paragraph.

Nevertheless, there are some indications that travellers may not always understand the exact role of the different traders and, conversely, may not be able to easily identify the trader responsible (organiser) for the refund of pre-payments in the case of termination of a package travel contract. In the public consultation, when asked to express their view on the division of roles and responsibilities in the PTD and national systems, stakeholders were divided, with 38% (mostly public authorities and consumer organisations)²⁹¹ stressing that traders should be obliged to clearly inform travellers which trader is acting as the organiser, retailer or service provider in connection with a package and their obligations towards travellers, and 37% (mostly companies and business associations)²⁹² believing that the current rules are already sufficiently clear.

In the context of the COVID-19 pandemic, it emerged that there were certain difficulties for travellers in contacting/communicating with organisers/retailers who did not reply to emails or phone calls or the office was closed²⁹³. Nevertheless, the evaluation did not detect any effectiveness-related issues concerning Article 15 during 'normal' times.

Most national authorities (60%)²⁹⁴ indicate that where a package was purchased via a retailer, travellers often do not have enough information on who to contact for a refund and are often sent from one trader to another without any effective resolution of their claims.

The practical application of the division of roles and responsibilities presented several enforcement issues. Overall, the evidence points to potential problems in understanding the actor responsible for the performance of the package travel contract and the refund of pre-payments in case of termination of that contract, and to the related business-to-business (B2B) procedural aspects related to that responsibility and liability. Where these elements may hamper the effectiveness of the PTD in achieving GO1, SO1, SO2 (businesses) and GO2, SO5 (consumers), it is as enforcement issues rather than the PTD as such.

Insolvency protection

Insolvency protection constitutes the fourth cluster of activities carried out by the current PTD in the pursuit of GO1, SO1, and SO3 (businesses) and GO2, SO4, and SO5 (consumers). Given the importance of insolvency protection to the achievement of the PTD's objectives, this topic is discussed in both EQ3 and EQ4.

EQ2. How has the still growing role of online intermediaries (in a broad sense, including organisers) and other novel business models affected the effectiveness of the PTD?

While the evidence confirmed the centrality of online intermediaries (including, in a broader sense, the organisers) and other novel business models for the package travel sector, there are no indications that these actors directly affected the effectiveness of the PTD. Several stakeholders, notably consumers, but also companies and NCAs (regulatory and enforcement bodies), voiced some concerns that traders or certain categories of traders

²⁹¹ Public consultation Q.13: 38% (172/450) of respondents (52% (11/21) of public authorities, 67% (2/3) NGOs, 44% (28/64) of EU citizens, 52% (11/21) of consumer organisations, 33% (88/268) of companies, and 37% (18/49) of business associations).

²⁹² Public consultation Q.13: 37% (166/450) of respondents (19% (4/21) of public authorities, 28% (18/64) of EU citizens, 42% (113/268) of companies, 51% (25/49) of business associations).

²⁹³ Public consultation Q.41, for consumer organisations and public authorities: 79% (15/19) of public authorities and 95% (20/21) of consumer organisations indicated that it was difficult for travellers to contact/communicate with the organiser/retailer as they did not reply to emails or phone calls or the office was closed.

²⁹⁴ Targeted survey – NCAs (regulatory and enforcement): 60% (15/25) of respondents said 'Yes'.

changed their business model so as to avoid being considered package organisers²⁹⁵. Findings highlighted that potential changes in business practices in response to the new rules in the 2015 PTD related more to the effects of the implementation of the definitions of 'package' and LTA than to a direct impact of the online intermediaries and other novel business models.

EQ3. How effective are the PTD rules on insolvency protection and the national insolvency protection systems based on those rules?

Box 3: Elements of the PTD's intervention logic concerning insolvency protection

General objectives (GO)

- **GO1:** Improve the functioning of the internal market in the package travel sector;
- **GO2:** Achieve a high and as uniform as possible level of consumer protection in the package travel market.

Specific objectives (SO)

For businesses

- **SO1:** Ensure a more competitive and fairer level playing field for businesses operating in the travel market (2013 impact assessment);
- **SO2:** Increase the cross-border offer of package travel services by reducing costs and obstacles to cross-border trade in the package travel market (2013 impact assessment);
- **SO3:** Reduce unjustified costs for businesses in the package travel market (2013 impact assessment).

For consumers

- **SO4:** Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services that were not covered by the Directive 90/314/EEC by addressing new market developments (2013 impact assessment).

Activities (ACT)

For business and consumers

- **ACT6:** Obliging traders to provide guarantees in case of bankruptcy (e.g. refunds, repatriation).

For businesses

- **ACT7:** Ensuring mutual recognition of insolvency protection and administrative cooperation.

Outputs (OUT)

For consumers

- **OUT8:** Improved security for refunds and repatriation in case of traders' bankruptcy.

For businesses

- **OUT9:** Trader's investment in insolvency protection benefits from mutual recognition.

The rules on insolvency protection are effective overall in achieving the PTD's stated objectives. Several stakeholders emphasised that because the PTD leaves it to Member States to determine the details of their insolvency protection systems, there is no homogeneous application of insolvency protection standards across the EU – this was confirmed by the desk research and consultation. Differences in national insolvency protection schemes could potentially hinder the effectiveness and level of coverage of

²⁹⁵ Public consultation Q.5a, Q.8a: several stakeholders pointed out that uncertainties in the definition of 'package' and LTA may lead to market practices in which traders change their business models so as not to be considered package organisers.

existing systems. Finally, the evidence illustrates that the mutual recognition of insolvency protection systems rarely occurs in practice, but, where used, does not present any practical issues.

The requirement for the organiser and/or retailer to provide security for refunds and repatriation in the event of insolvency was already established under Article 7 of Council Directive 90/314/EEC²⁹⁶. However, the 2013 impact assessment identified two main problems in respect of the insolvency protection system of the previous PTD:

- ✓ The Directive leaves it to Member States to establish the requirements for the actual method of insolvency protection, resulted in diverging methods for providing insolvency protection, and, in some cases, a wider scope of protection than for services included in the package. This led the 2013 impact assessment to conclude that ‘there seems to be significant differences in the level of consumer protection in the Member States’;²⁹⁷
- ✓ The 2013 impact assessment pointed out that ‘different national rules regarding the obligation to provide insolvency protection have also resulted in a situation where some retailers or organisers who are trading cross-border had to pay several times for insolvency protection which already had been secured in another Member State’²⁹⁸.

The current PTD tried to address these two issues through Article 17 (effectiveness and scope of insolvency protection), Article 18 (mutual recognition of insolvency protection and administrative cooperation), and Article 19 (insolvency protection and information requirements for linked travel arrangements), thereby pursuing GO1, SO1, SO2, SO3 (businesses), and GO2, SO4 (consumers) by carrying out ACT6 and ACT7 to achieve OUT8 and OUT9.

Effectiveness and scope of insolvency protection (Article 17)

The 2015 PTD provides additional descriptors to guide Member States in enhancing the effectiveness and robustness of their national insolvency protection systems. However, the current PTD leaves it to Member States to implement insolvency protection schemes within their national systems, provided that the level of coverage of the security available meets the criteria of Article 17 and recitals 39-40 of the PTD. The fact that Member States are free to decide the kind of insolvency protection systems to implement in their national context naturally resulted in a landscape of diverse insolvency protection systems (see section 2.4.3).

The main insolvency protection standards and types of insolvency protection systems vary significantly across the EU, resulting in a high degree of heterogeneity among existing national insolvency protection systems based on those standards (see Table 11). This does not necessarily imply that travellers are less protected in some Member States than others, or that there is a potential distortion of competition in the EU market that could lead companies to establish their businesses in Member States where insolvency protection requirements are less stringent. However, there are indications that these two scenarios (particularly the former) may have occurred or could occur in practice. Nevertheless, the

²⁹⁶ Article 7 Council Directive 90/314/EEC: ‘The organiser and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency’.

²⁹⁷ European Commission, *Impact assessment*, SWD(2013) 263 final, p. 83.

²⁹⁸ *Ibid.*

PTD was generally effective in ensuring that its minimum rules on insolvency protection granted an adequate consumer protection across the EU.

There are indications from consumer organisations that the mechanisms for insolvency protection foreseen in the PTD are sufficient to guarantee a high level of consumer protection to a certain extent²⁹⁹. While this view is shared by the NCAs (insolvency), they expressed a more positive view³⁰⁰. When asked whether they consider travellers in some Member States to benefit from a higher level of protection due to differences in the application of insolvency rules, most consumer organisations and NCAs (insolvency) 'agree' or 'tend to agree'³⁰¹, in similar numbers.

There are indications that the differences between national insolvency protection systems act detrimentally to achieving PTD GO1, SO1, SO2, and GO2, SO4, SO5. However, only some consumer organisations and public authorities indicated that this leads to an insufficient protection of travellers in some Member States³⁰². A large share of companies pointed out that the remaining differences between national protection systems may influence companies' decisions on where to conduct their business or organise their insolvency protection³⁰³ and may lead to unfair competition within the internal market³⁰⁴. In the targeted survey, half of the companies declared that they do not arrange insolvency protection in Member States with less strict/costly insolvency protection requirements, while a minority of them declared that they do³⁰⁵.

In the targeted survey, a significant share of consumer organisations indicated that travellers are not sufficiently protected in some Member States³⁰⁶, with NCAs (insolvency) noting that travellers face problems because of the different insolvency protection rules applying in the Member States³⁰⁷. When asked in the public consultation whether, in their view, the insolvency protection standards for organisers (and, where applicable, retailers) are considerably lower in some Member States compared to others, most public authorities and companies said they 'did not know'³⁰⁸. By contrast, most consumer organisations replied 'yes'³⁰⁹. Consumer organisations and NCAs (insolvency) also 'tend to agree' that companies choose to organise their insolvency protection in Member States with lower protection levels, although most respondents to the surveys stated that they did not know³¹⁰. This may indicate that (a) these stakeholders perceive that the heterogeneity of the national insolvency protection systems across the EU led to different levels of protections, and/or that (b) they believe that, given that Article 17(1) of the PTD leaves it to Member States to organise their insolvency protection systems based on PTD rules, this created, at least

²⁹⁹ See Annex 3 for number and percentages of respondents.

³⁰⁰ See Annex 3 for number and percentages of respondents.

³⁰¹ Ibid.

³⁰² Public consultation Q.17: 28% (125/453) of respondents (59% (13/22) of public authorities, 86% (18/21) of consumer organisations).

³⁰³ Public consultation Q.17: 49% (221/453) of respondents (50% (11/22) of public authorities, 67% (2/3) of NGOs, 52% (11/21) of consumer organisations, 45% (121/270) of companies, 58% (29/50) of business associations).

³⁰⁴ Public consultation Q.17: 45% (202/453) of respondents (32% (7/22) of public authorities, 67% (2/3) of NGOs, 48% (10/21) of consumer organisations, 43% (116/270) of companies, 66% (33/50) of business associations).

³⁰⁵ Targeted survey – businesses Q.27: 50% (11/22) selected 'No', 9% (2/22) 'Yes'.

³⁰⁶ See Annex 4 for number and percentages of respondents.

³⁰⁷ Ibid.

³⁰⁸ Public consultation Q.16: 64% (289/453) of respondents (67% (14/21) of public authorities, 71% (194/272) of companies, 43% (21/49) of business associations).

³⁰⁹ Public consultation Q.16: 28% (125/453) of respondents (67% (14/21) of consumer organisations, 33% (7/21) of public authorities).

³¹⁰ See Annex 4 for number and percentages of respondents.

theoretically, the possibility of different levels of protection, depending on the system implemented in each country. While these analytical standpoints emerged throughout the desk research and consultation, they only represent theoretical scenarios – the evaluation could not ascertain whether certain market dynamics have occurred in practice, due to lack of concrete examples.

Consumer organisations and NCAs (insolvency) ‘tend to agree’ that the continuation of the package according to Article 17(1) of the PTD is normally offered as an alternative in practice, but a large share of respondents ‘did not know’ the answer³¹¹.

Consumer organisations and NCAs (insolvency) were divided on whether the rules on refund through the insolvency protection work well in practice, with most consumers replying ‘tend to disagree’ and public authorities ‘tend to agree’, suggesting ongoing discrepancies between consumer experiences and effective implementation of the insolvency protection rules in practice³¹². Nevertheless, most respondents from NCAs (regulatory and enforcement) indicated that the rules on insolvency protection of the current PTD contributed to the Directive’s achievement of its stated objectives either ‘positively’ or ‘very positively’³¹³.

According to consumer organisations, the guarantee for repatriations (or continuation of the package) in line with Article 17(4) of the PTD is effective to a certain extent³¹⁴. By contrast, most NCAs (insolvency) respondents had experienced no enforcement issues concerning the guarantee for effective repatriation of travellers (or continuation of the package, including the planned return journey) in their Member State/EEA country³¹⁵. While a significant share of consumer organisations declared that they ‘tend to disagree’ that rules on the repatriation of stranded travellers in cases of insolvency work effectively, NCAs (insolvency) replied ‘tend to agree’ on this aspect of the PTD.

In the targeted survey, the NCAs (insolvency) were asked to describe their experiences with reimbursements through their national insolvency protection system, including when large organisers or many organisers went bankrupt around the same time, thereby measuring the effectiveness of Article 17(5) of the PTD (refund without undue *delay*).

On the timeliness of refund claims, NCAs highlighted several indicators and factors that may impact the effectiveness of reimbursements through the insolvency protection systems. One Member State authority pointed out that the speed of settlement (and subsequently the speed of refund) depends on the speed with which the insurance company/bank receives the necessary information to settle the claim, suggesting that the time needed depends more on information than on the volume of claims³¹⁶.

³¹¹ Targeted survey – consumer organisations Q.15 and targeted survey for NCAs (insolvency) Q.16: tend to agree – 33% (4/12) of consumer organisation, 31% (4/13) of NCAs; do not know – 42% (5/12) of consumer organisation, 38% (5/13) of NCAs.

³¹² See Annex 3 for the number and percentages of respondents.

³¹³ Targeted survey – NCAs (regulatory and enforcement) Q.21: 69% (18/26) of respondents selected ‘positively’, 8% (2/26) ‘very positively’.

³¹⁴ Targeted survey – consumer organisations Q.16: 42% (5/12) of respondents selected ‘Yes’.

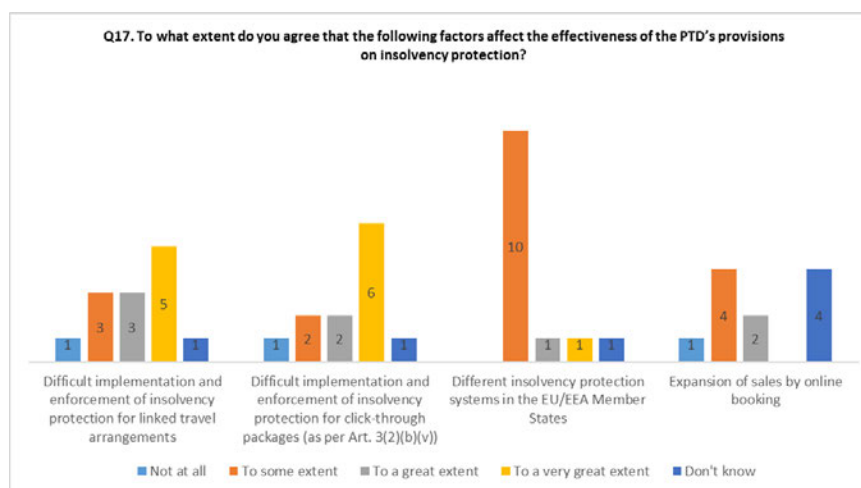
³¹⁵ Targeted survey – NCAs (insolvency) Q.2: 75% (9/12) of respondents declared that this did not constitute an enforcement issue.

³¹⁶ Targeted survey – NCAs (insolvency) Q.3: one open text response from HU (12 respondents in total). Another (EE) stressed that ‘the refund of the payments is paid to consumers after the Consumer Protection and Technical Regulatory Authority has gathered the claims of travellers and checked the justifiability of timely submitted claims’, suggesting that the timeliness of the refund depends on the speed to which the information is processed by the competent bodies.

There are indications that certain Member States and EEA countries lack experience of bankruptcies of large organisers³¹⁷ or simultaneous bankruptcies of several organisers³¹⁸, suggesting that it remains difficult for them to assess the effectiveness of their national system in compliance with Article 17(5). One Member State declared that since its insolvency protection system has only recently been amended to comply with the PTD, there is still a lack of experience³¹⁹. On Article 17(5), consumer organisations declared that travellers ‘often’ face problems when asking for reimbursement of payments for travel services that were not performed following the organiser’s insolvency³²⁰.

Surveyed NCAs (insolvency) indicated that the rules on insolvency protection are generally effective in achieving the PTD’s GO1 and GO2 ‘to some extent’ and, for fewer respondents, ‘to a great extent’³²¹. When asked to indicate the main factors affecting the effectiveness of the PTD’s provisions on insolvency protection, 83% of NCAs (insolvency) pointed out that the different insolvency protection systems in the EU/EEA affected the effectiveness of the PTD at least ‘to some extent’. In addition, the difficult implementation and enforcement of insolvency protection for (a) linked travel arrangements and (b) click-through packages (as per Article 3(2)(b)(v)) hindered the effectiveness of PTD’s provisions on insolvency protection ‘to a very great extent’, according to nearly half of NCAs (insolvency) respondents (see Figure 3).

Figure 3. Factors affecting the effectiveness of the PTD’s provisions on insolvency protection



Source: ICF, based on targeted survey of NCAs (insolvency), Q.17, n=13.

Mutual recognition of insolvency protection (Article 18)

³¹⁷ Targeted survey – NCAs (insolvency) Q.3: three open text responses from AT, PT, SK (12 respondents in total).

³¹⁸ Targeted survey – NCAs (insolvency) Q.3: two open text responses from SK and IS (12 respondents in total).

³¹⁹ Targeted survey – NCAs (insolvency) Q.3: one open text response from DE and IS (12 respondents in total).

³²⁰ Targeted survey – consumer organisations Q.17: 58% (7/12) of respondents selected ‘often’, 33% (4/12) ‘rarely’.

³²¹ Targeted survey – NCAs (insolvency) Q.14: on GO1, 54% (7/13) of respondents selected ‘to some extent’, 23% (3/13) ‘to a great extent’. On GO2, 46% (6/13) of respondents selected ‘to some extent’, 38% (5/13) ‘to a great extent’. When asked to indicate the extent to which the various parts of the PTD contributed to the achievement of its GO1 and GO2, 50% (6/12) respondents to Q.15 stressed that the rules on insolvency (Articles 17, 18, and 19) contributed ‘positively’.

The mutual recognition of insolvency protection as per Article 18 of the PTD is rarely or never³²² used in practice and, where used, does not present any problems for most business stakeholders responding to the related questions in the public consultation^{323,324}. However, information on Article 18 stemming from the various consultation and data collection activities is limited.

EQ4. Is there clarity for traders facilitating an LTA on the insolvency protection cover they have to obtain, and, for consumers, on the fact that they are entitled to insolvency protection, where the conditions under Article 19 PTD are satisfied?

The evaluation finds that it is very difficult for travellers to understand their rights in relation to LTAs, including in relation to the insolvency protection they benefit where the conditions under Article 19 of the PTD are satisfied³²⁵. Conversely, for traders facilitating an LTA, the insolvency protection cover they have to obtain is often unclear, and, making it difficult for them to provide the appropriate information forms in Annex II for an LTA.³²⁶

Several surveyed NCAs (regulatory and enforcement) indicated that travellers do not understand their rights in relation to LTAs, including on insolvency protection. The consumer survey found that most travellers³²⁷, insofar as they booked an LTA since 2018, did not read the information explaining they were booking an LTA, or the rights related to this kind of travel service. Nevertheless, of the minority of travellers that read the information attached to the booking of an LTA, most found the information clear³²⁸.

One CPC authority specified that in the relevant Member State, traditional tour operators were generally compliant with the information requirements for package travel, whereas OTAs did not take responsibility for the packages they sold and did not fulfil the duties on pre-contractual information and the standard information forms³²⁹.

³²² Public consultation Q.55 (Section V. Additional questions for businesses and their organisations): 16% (36/224) of business stakeholders (35 business associations, 189 companies) selected 'rarely', with this the most selected answer by business associations (40%, 14/35); 34% (76/224) selected 'never', with this the most selected answer by companies (39%, 73/189). The biggest share of business respondents (40%, 90/224) replied 'don't know' (42% (80/289) of companies, 29% (10/35) of business associations).

³²³ Public consultation Q.56: 90% (134/149) of companies, 47% (15/17) of business associations.

³²⁴ Public consultation Q.56a open text reply from a micro company (BE).

³²⁵ Targeted survey – consumer organisations Q.31: when asked what kind of problems, if any, they noticed with the standard information forms in Annex II (LTAs), 73% (8/11) of respondents from consumer organisations indicated that '*travellers do not understand their rights in relation to LTAs, including with regard to insolvency protection*'. In the public consultation, most stakeholders indicated that the rules on LTA type (a) did not effectively contribute to the achievement of PTD GO1 and GO2 (public consultation, Q.26: 67% (269/403), including 81% (17/21) of public authorities, 95% (19/20) of consumer organisations, 61% (140/228) of companies, 78% (38/49) of business associations). Most respondents specified that the reason for the lack of effectiveness of the PTD rules on LTA type (a) was determined by the fact that travellers find it difficult to understand the kind of protection they can expect and whether they will benefit from insolvency protection (public consultation Q.26a: 73% (200/273) of respondents).

³²⁶ Sourced from an interview with a large company selling travel packages and LTAs.

³²⁷ Consumer survey Q.7), n=8,138: 'Insofar as you booked a linked travel arrangement (LTA) since 2018, did you read the information explaining to you that you are booking an LTA?': 2,941 read the information (Yes) and 5,197 did not (No). In the public consultation, 73% of respondents indicated that travellers find it difficult to understand the kind of protection they can expect in relation to LTAs and whether they will benefit from insolvency protection (public consultation Q.26a: 200/273 respondents).

³²⁸ Consumer survey Q.7.1, n=2942: 2,586 consumers indicated that the information was clear, while 356 indicated it was not.

³²⁹ Workshop with CPC Network experts on 12 May 2022.

However, in the public consultation, according to 70% of respondents, the distinction between travel services selected jointly (package) or separately (LTA) was difficult to verify for travellers and enforcement authorities³³⁰. This view was held by 27% of companies, 68% of business associations, 60% of public authorities, 40% of EU citizens and 71% of consumer organisations³³¹.

In addition, 30% of companies, 62% of business associations, 52% of public authorities, 40% of EU citizens and 90% of consumer organisations reported finding it difficult to understand the kind of protection they can expect and whether they will benefit from insolvency protection³³².

Evidence suggests that the overall lack of clarity for traders facilitating an LTA on the insolvency protection cover they have to obtain depends on several factors, which hindered the effectiveness of the PTD:

- ✓ Uncertainty about LTA types (a) and (b) leading to traders being unsure if they are considered LTA facilitators under the PTD or traders circumventing the PTD rules to evade its strict rules on liability;
- ✓ Limited understanding and limited/incorrect practical use of the PTD Annex II parts A to E for LTA, resulting in consumers being unaware that they are entitled to insolvency protection if the conditions under Article 19 of the PTD are satisfied.

EQ5. How effective is the PTD in ensuring effective and efficient reimbursement of pre-payments under Article 12(4) even in times of crisis?

This section analyses Article 12(4) of the PTD by framing it in the wider context of Article 12 (termination of the package travel contract and the right of withdrawal before the start of the package). It should be read together with the analysis of unavoidable and extraordinary circumstances in EQ1.

Refund of any payments made for the package due to the emergence of 'unavoidable and extraordinary circumstances'

With the introduction of termination of the package travel contract and refund rights, the PTD responded to the problems highlighted by the 2013 impact assessment by introducing 'stronger cancellation rights' for travellers, who can now 'cancel their holiday free of charge, in particular, in case of 'unavoidable and extraordinary circumstances' at the travel destination which affect the performance of the package (e.g. war, natural disaster, outbreak of a serious disease) or if the price of the package is raised by over 8% of the original price'³³³. These general and specific objectives are linked to ACT5 (Setting a right for travellers to terminate the contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstance) and OUT6 (Protection of travellers against unreasonable restrictions to their cancellation rights in cases of unavoidable and extraordinary circumstances, or against unreasonable price increases).

³³⁰ Public Q.26a : 191/273 respondents.

³³¹ Public consultation Q.26a: 27% (86/323) of companies, 68% (36/53) of business associations, 60% (15/25) of public authorities, 40% (27/68) of EU citizens, 71% (15/21) of consumer organisations.

³³² Public consultation Q.26a: 30% (97/323) of companies, 62% (33/53) of business associations, 52% (13/25) of public authorities, 40% (27/68) of EU citizens, 90% (19/21) of consumer organisations.

³³³ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 2.

The refund rights triggered by ‘unavoidable and extraordinary circumstances’ under Articles 12(2) and 12(3) of the PTD, including the conditions for the reimbursements set out in Article 12(4) proved overall only partially effective during the COVID-19 pandemic³³⁴. While stakeholders from the consumer side pointed to pre-existing issues, albeit to a lesser extent, the findings suggest that the Directive was generally effective in ensuring appropriate and effective termination and refund rights due to the emergence of ‘unavoidable and extraordinary circumstances’. Nevertheless, consumers noted that the COVID-19 pandemic, despite being an event of unprecedented magnitude, should be considered a sort of benchmark for any potential recast of the PTD.

On the refund rights triggered by Article 12 points (2), (3), and (4), stakeholders pointed to several practical issues in the implementation of the PTD, especially during the COVID-19 pandemic (see section 2.4.2).

In the public consultation, when asked about different scenarios travellers experienced with regard to refunds where organisers or travellers terminated a package travel contract because of unavoidable and extraordinary circumstances since February 2020, the targeted stakeholders highlighted four main situations:

- ✓ Travellers received a refund but had to wait longer than one month³³⁵;
- ✓ Travellers received vouchers of the same value instead of refunds and used them for alternative trips or received their money back eventually³³⁶;
- ✓ Travellers received a refund only after filing a complaint to a consumer organisation/ADR body/ECC/public authority/court/Ombudsperson/other³³⁷;
- ✓ Travellers received vouchers to the same value but did not use them for alternative trips before the expiration date and are still waiting for their money³³⁸.

Many consumer organisations indicated further scenarios: (a) travellers received vouchers of the same value but did not use them until the expiration date, when the trader did not refund any money and stated that it had no further obligations towards the travellers³³⁹, (b) travellers did not receive any money or received it with considerable delay since the

³³⁴ Targeted survey – NCAs (regulatory and enforcement) Q.17: on the existence of non-compliance issues in practice, 57% (13/23) of respondents selected ‘Yes’ on the termination of contracts, and 78% (18/23) answered ‘Yes’ on refunds.

³³⁵ Public consultation Q.44 (Section III. Additional questions for consumer organisations and public authorities): 52% (11/21) of consumer organisations and 74% (14/19) of public authorities. Although section was not addressed to them, other stakeholders also replied: 60% (15/25) of EU citizens, 52% (15/29) of companies. In Q.36, a similar question was addressed to individuals using travel services, this scenario was indicated by 20% (19/49) of EU citizens.

³³⁶ Public consultation Q.44: 63% (12/19) of public authorities, 57% (12/21) of consumer organisations. Although this section was not addressed to them, other stakeholders also replied: 34% (10/29) of companies, 75% (3/4) of business associations. In Q.36, a similar question was addressed to individuals using travel services, this scenario was indicated by 22% (11/49) of EU citizens.

³³⁷ Public consultation Q.44: 53% (10/19) of public authorities, 81% (11/21) of consumer organisations. Although this section was not addressed to them, other stakeholders also replied: 14% (4/29) of companies and 25% (1/4) of business associations said that this scenario occurs in practice. In Q.36, a similar question was addressed to individuals using travel services and was indicated by 14% (7/49) of EU citizens.

³³⁸ Public consultation Q.44: 42% (8/19) of public authorities, 81% (17/21) of consumer organisations. Although this section was not addressed to them, other stakeholders also replied: 25% (1/4) of business associations. In Q.36, a similar question was addressed to individuals using travel services and was indicated by 6% (3/49) of EU citizens.

³³⁹ Public consultation Q.44: 57% (12/21) of consumer organisations, 11% (2/19) of public authorities.

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organiser and the retailer could not agree which was responsible for the refund³⁴⁰, and (c) many travellers are still waiting for their money³⁴¹.

In the public consultation for individuals using travel services, stakeholders indicated that it was difficult/not possible to obtain a refund from organisers/retailers³⁴² and that they were given a voucher/credit note despite preferring a refund³⁴³. In a follow-up question, a small but significant share (29%) indicated receiving a full refund within 14 days or with a short delay (within one month) of terminating a package travel contract in light of 'unavoidable and extraordinary circumstances' since February 2020³⁴⁴.

The targeted surveys allowed further clarification of the main practical implementation elements relating to refund rights triggered by the termination of the contract in the event of 'unavoidable and extraordinary circumstances' in accordance with Article 12 points (2), (3), and (4) of the PTD, before and after the COVID-19 pandemic, allowing a greater understanding of the effectiveness of the provisions under normal circumstances and after the outbreak of COVID-19.

Table 15. Main scenarios in consumer refund rights due to 'unavoidable and extraordinary circumstances' under Article 12 of the PTD

Scenarios	Extent	Period	
		Before COVID-19	During COVID-19
Travellers received a full refund within 14 days or at least within one month	Often	33%	0%
	Occasionally	42%	0%
	Rarely	8%	100%
Travellers received a refund without filing a complaint	Often	8%	8%
	Occasionally	25%	8%
	Rarely	42%	75%
Travellers received a refund only after filing a complaint	Often	67%	83%
	Occasionally	25%	17%
	Rarely	0%	0%
Traveller (1) did not receive any money or (2) received it with considerable delay	Often	47%	(1) 45% (2) 91%
	Occasionally	33%	(1) 45% (2) 0%
	Rarely	17%	(1) 0% (2) 0%

Source: ICF, based on targeted survey – consumer organisations, Q.9.

³⁴⁰ Public consultation Q.44: 67% (14/21) of consumer organisations, 32% (6/19) of public authorities.

³⁴¹ Public consultation Q. 44 (Section III. Additional questions for consumer organisations and public authorities: 52% (11/21) of consumer organisations, 11% (2/19) of public authorities.

³⁴² Public consultation, Q. 35 (Section II. Additional questions for individuals using travel services): 26% (15/58) of EU citizens.

³⁴³ Public consultation Q.35: 29% (17/58) of EU citizens.

³⁴⁴ Public consultation Q.36: 29% (14/49) of EU citizens.

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Notes: n=12.

Surveyed consumers largely confirmed the evidence gathered by the public consultation, but provided further nuances on the differentiations between pre-/post-COVID-19 situations. For consumers, the issues with the refund of pre-payments in light of 'unavoidable and extraordinary circumstances' remained the same irrespective of the period under examination. However, the magnitude of the issues changed significantly, with COVID-19 exacerbating existing challenges in the effectiveness of the PTD³⁴⁵. Table 15 shows that travellers received a full refund within 14 days or at least within one month only 'occasionally' before COVID-19 and 'rarely' after the outbreak of COVID-19, i.e. the refund timing laid down in Article 12(4) is only partially effective. This situation during COVID-19 pandemic was also highlighted by the businesses surveyed, which pointed out that travellers received a full refund within 14 days or with a short delay only 'to a small extent' (see Table 15). Consumers indicated that the refund right under Article 12 of the PTD was never something they enjoyed automatically as, before and after the outbreak of the COVID-19 pandemic, travellers 'often' received a refund only after filing a complaint, and 'rarely' without this procedure. There are indications that travellers did not receive any money, or received it with considerable delay, irrespective of the time period.

These scenarios affected the effectiveness of the PTD in achieving its stated objectives, with the majority of NCAs also noting that travellers' rights to a refund are not sufficiently protected in practice, in particular in the event of a major crisis and that this issue could be addressed through amendments to the PTD³⁴⁶. At the same time, there are indications from businesses that the refund rights under Article 12 of the PTD proved burdensome for organisers, at least 'to a moderate extent', as they had to take out loans to cover the costs of refunds to travellers (see Table 16).

Table 16. Main refund scenarios identified by businesses relating to rights under Article 12 of the PTD

Scenarios	Extent	Businesses indication during COVID-19 pandemic
Travellers received a full refund within 14 days or with a short delay (within one month)	To a large extent	5%
	To a moderate extent	23%
	To a small extent	64%
Organisers had to take out loans to cover the costs of refunds to travellers	To a large extent	38%
	To a moderate extent	19%
	To a small extent	0%

Source: ICF, based on targeted survey – business (Q.15).

Notes: n=12; excludes 'don't know' responses.

On the termination of package travel contracts before their start, surveyed NCAs (regulatory and enforcement) highlighted that certain scenarios had evolved before and since COVID-19, negatively impacting the effectiveness of the PTD. The main issue is that refunds of pre-

³⁴⁵ Interview with a large EU-level consumer organisation.

³⁴⁶ Targeted survey – NCAs (insolvency) Q.26: when asked whether and how certain issues should be addressed, 62% (8/13) of respondents indicated that travellers' rights to a refund of pre-payments are not sufficiently protected in practice, in particular in the event of major crisis, and this issue could be addressed through amendments to the PTD. The same indication emerged from the targeted survey – NCAs (regulatory and enforcement) Q.32: 62% (16/26) respondents.

payments were not provided within 14 days, according to most respondents (74%). This seems to have been determined by the pandemic, as it represented an issue only 'to a small extent' before the outbreak of COVID-19. Problems relating to the justification for the termination due to 'unavoidable and extraordinary circumstances', as well as the termination fee, were also noted by NCAs (regulatory and enforcement). In all cases, findings show that these challenges grew from 'to a small extent' before COVID-19 to 'to a large extent' since COVID-19. The situation thus worsened with the pandemic, negatively impacting the effectiveness of the Directive.

Vouchers

The mass cancellation of package travel contracts during the COVID-19 pandemic led organisers/retailers to offer voluntary vouchers to consumers in lieu of a cash refund, citing liquidity problems and their inability to reimburse travellers otherwise. There are no specific provisions in the PTD on the possibility to offer vouchers and their characteristics. Recommendation (EU) 2020/648 of 13 May 2020 developed principles to make vouchers more attractive for travellers, including expressly providing that vouchers should be protected against insolvency of the organiser. The question of whether or not refund claims and vouchers must be covered by insolvency protection under the PTD is currently before the CJEU in relation to refund claims³⁴⁷.

Notwithstanding that vouchers are not specifically regulated by the current PTD, their mass utilisation during the pandemic in the package travel sector allows for a preliminary assessment of their effectiveness in practice as a refund instrument in lieu of a cash refund if the consumer voluntarily accepts it. This assessment is key in the context of this study, given its importance as an element for the impact assessment, although furthering understanding on the extent of the effectiveness of vouchers relates to the practical application of the current PTD only insofar as it concerns the use of vouchers as an alternative to the refund rights under Article 12.

Surveyed consumers indicated a behavioural change in travellers' acceptance of vouchers pre-and post-COVID-19. While travellers 'rarely' accepted vouchers that were not compulsory under national provisions, even if they knew they were not legally obliged to accept them, they 'often' accepted them during COVID-19 (see Table 17). According to most consumers responding to the targeted survey, travellers were 'rarely' explicitly informed that they were not legally obliged to accept a voucher during COVID-19. One large multi-service business organisation from the package travel sector noted that a large share of consumers accepted vouchers, especially in these cases where they did not need to get their money back immediately. That attractiveness of vouchers is crucial, as consumers will not accept them if they see the risk that the company will go bankrupt³⁴⁸. One consumer organisation pointed out that vouchers do not represent a good solution, especially concerning their expiration date, as consumers may decide not to book another trip within that set timeframe³⁴⁹.

³⁴⁷ C-771/22 HDI Global; C-45/23 MS Amlin Insurance.

³⁴⁸ Interview with a multi-service pan-European business organisation from the package travel sector.

³⁴⁹ Interview with a Norwegian consumer organisation.

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Table 17. Voucher and refund rights scenarios identified by consumers due to 'unavoidable and extraordinary circumstances' under Article 12 of the PTD

Scenarios	Extent	Period	
		Before COVID-19	During COVID-19
Travellers accepted vouchers that were not compulsory under national provisions, even if they knew they were not legally obliged to accept them	Often	8%	58%
	Occasionally	25%	33%
	Rarely	33%	8%
Travellers were explicitly informed that they were not legally obliged to accept a voucher	Often	N/A	0%
	Occasionally	N/A	18%
	Rarely	N/A	82%

Source: ICF, based on targeted survey – consumer organisations, Q.9).

Notes: n=12.

When asked for further information on the frequency with which vouchers were used in practice before and since the outbreak of the COVID-19 pandemic, businesses and NCAs (regulatory and enforcement) largely corroborated consumers' views that vouchers were rarely used before COVID-19 and frequently used since its outbreak (see Table 18).

Table 18. Frequency of use of vouchers for refunds in case of termination of a package travel contract before its start in case of 'unavoidable and extraordinary circumstances' under Article 12 of the PTD

Frequency	Business		NCAs (regulatory and enforcement)	
	Before COVID-19	Since the outbreak of COVID-19	Before COVID-19	Since the outbreak of COVID-19
Frequently	20%	72%	0%	100%
Rarely	44%	4%	38%	0%
Never	12%	0%	10%	0%

Source: ICF, based on targeted survey – business Q.16 (n=25), and NCAs (regulatory and enforcement Q.5 (n=24).

Certain practical problems with vouchers and consumer preferences were raised in the public consultation, albeit to a very limited extent. A minority of individuals using travel services reported being given a voucher/credit note although they would have preferred a refund³⁵⁰.

B2B refund rights

The evaluation found that the effectiveness of the reimbursement of pre-payments due to 'unavoidable and extraordinary circumstances' under Article 12 of the PTD is significantly hindered by issues at B2B level. Uncertainties in procedural aspects relating to the responsibilities for the refunds makes it difficult for the PTD to achieve GO1, SO1, SO3

³⁵⁰ Public consultation Q.35 (Section III. Additional questions for consumer organisations and public authorities: 29% (17/58) EU citizens (individuals using travel services).

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(businesses), and GO2, SO4, SO5 (consumers). These challenges also meant that ACT5 has been only partially effective in achieving OUT6 in practice.

Table 19. Main B2B scenarios/issues identified by consumers in relation to refund rights due to 'unavoidable and extraordinary circumstances' under Article 12 of the PTD

Scenarios	Extent	Period	
		Before COVID-19	During COVID-19
Travellers were unaware who to contact for a refund	Often	8%	33%
	Occasionally	67%	50%
	Rarely	17%	17%
Organisers referred travellers to retailers for the refund	Often	50%	67%
	Occasionally	33%	17%
	Rarely	8%	17%
Retailers referred travellers to organisers for the refund	Often	58%	75%
	Occasionally	25%	17%
	Rarely	8%	8%

Source: ICF, based on targeted survey – consumer organisations (Q.9).

Notes: n=12.

There is evidence that travellers were 'occasionally' unaware of who to contact for a refund under Article 12 before COVID-19 and 'often' during the pandemic, indicating certain difficulties for consumers in understanding the reimbursement B2B mechanisms in practice. Confusion about the various actors of the value chain involved in the reimbursement procedures under Article 12 was also evident before and during COVID-19 pandemic. Situations in which (a) organisers referred travellers to retailers for the refund, and (b) retailers referred travellers to organisers for the refund were experienced 'often' by consumers³⁵¹.

Table 20. Main B2B scenarios/issues identified by businesses and NCAs in relation to refund rights due to 'unavoidable and extraordinary circumstances' under Article 12 of the PTD

Scenarios	Extent	Businesses indication during COVID-19 pandemic	NCAs (regulatory and enforcement)
Organisers were unable to provide timely refunds to	To a large extent	45%	23%

³⁵¹ According to a Dutch consumer organisation interviewed, there are also problems with tour operators using resellers, resulting in stipulating contracts that are invisible to travellers. Thus, if the travellers are not bonded directly to a contract with the tour operator but, rather, with a reseller, they do not understand where the money goes, especially bank transfers. This organisation would welcome solutions entailing a direct payment to the tour operator.

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travellers because they did not receive timely refunds from service providers, but have, in the meantime, received refunds from service providers	To a moderate extent	14%	23%
	To a small extent	14%	8%
Organisers were unable to provide timely refunds to travellers because they did not receive timely refunds from service providers and have still not received refunds from service providers	To a large extent	19%	16%
	To a moderate extent	10%	8%
	To a small extent	33%	20%

Source: ICF, based on targeted survey – business Q.15 (n=22), and NCAs (regulatory and enforcement Q.4 (n=27)).

The main B2B challenges relating to refund rights under Article 12 of the PTD were identified in the experience of businesses and NCAs (regulatory and enforcement), particularly in relation to practical scenarios between organisers and service providers. During the COVID-19 pandemic, a significant share of businesses (45%) indicated that organisers were unable to provide timely refunds to travellers because they did not receive timely refunds from service providers. NCAs (regulatory and enforcement) confirmed the same challenge, albeit to a lesser extent (23%) (see Table 21)³⁵².

By contrast, the scenario in which organisers were unable to provide timely refunds to travellers because they did not receive timely refunds from service providers and had still to receive refunds from service providers occurred only to a small extent, according to businesses and NCAs (regulatory and enforcement), both before and during the COVID-19 pandemic. NCAs (regulatory and enforcement) pointed out that the scenario in which refunds from service providers to organisers were delayed significantly, but service providers did not invoke legal reasons for that occurred with a 'high' significance in practice. The fact that service providers refused refunds to organisers, arguing that the termination of the package travel contract does not concern them (e.g., where the flight took place, or the hotel was open) occurred with only 'moderate' significance (see Table 21).

Table 21. Practical problems with the refund processes of cancelled package travel contracts due to the COVID-19 pandemic

Scenarios	Significance	NCAs (regulatory and enforcement)
Refunds from service providers to organisers were delayed significantly, but service providers did not invoke legal reasons	High	38%
	Moderate	27%
	Low	4%
Service providers refused refunds to organisers, arguing that the termination of the package travel contract does not concern them (e.g.	High	23%
	Moderate	31%
	Low	4%

³⁵² Interview with a German business association indicated that some providers had to wait a long time before the money came back for hotels and airlines so there was a gap between the time the tourist paid and the service partners who have to pay through the customer.

where the flight took place or the hotel was open)		
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Source: ICF, based on NCAs (regulatory and enforcement Q.9 (n=26).

Package organisers in the targeted survey declared that some refunds were eventually received from service providers for packages cancelled because of the COVID-19 pandemic³⁵³, indicating issues in the B2B refund mechanisms, especially between package organisers/retailers and service providers. Most respondents from the same stakeholder group would welcome a new EU rule requiring service providers to reimburse organisers where the cancellation is justified under the PTD, within a specific time limit³⁵⁴, which should be shorter than 14 days³⁵⁵.

While the B2B confusion in the division of roles and responsibilities for the refund rights under Article 12, alongside the value chain, represented a detriment for consumers, it also hindered the creation of a level playing field for businesses, impacting the effectiveness of the PTD's pursuit of its objectives. Most respondents from NCAs (regulatory and enforcement) noted that where the package was purchased via a retailer, travellers often did not have enough information on who to contact for a refund and were often sent from one trader to another without an effective resolution of their claims³⁵⁶.

EQ6. How effective has the liability for booking errors introduced in Article 21 PTD been in practice?

The evaluation findings do not allow for a conclusive assessment of the effectiveness of the liability of booking errors introduced in Article 21 of the PTD. Stakeholders were unable to indicate the relevance of Article 21 in practice or gather sufficient evidence. Nevertheless, the available evidence points to the fact that Article 21 of the PTD largely contributes to the Directive's achievement of its objectives, at least according to the majority of NCAs (regulatory and enforcement bodies) surveyed³⁵⁷. The lack of available data on the liability for booking errors laid down by Article 21 of the PTD may also derive from the fact that the entry into force of the PTD (July 2018) is still too recent to allow stakeholders to gather sufficient information on this point or, conversely, to detect the scenario of Article 21 in practice.

2.5.2 Efficiency

Efficiency assesses the benefit-to-cost ratio experienced by various stakeholder groups in implementing the PTD.

³⁵³ Targeted survey – businesses Q.21 (for package organisers): 100% (2/2).

³⁵⁴ Targeted survey – businesses Q.22 (for package organisers): 65% (15/23).

³⁵⁵ Targeted survey – businesses Q.22 (for package organisers): 60% (9/15).

³⁵⁶ Targeted survey – NCAs (regulatory and enforcement) Q.17: 60% (15/25) answered 'Yes'. This was partially confirmed by individuals using travel services in the public consultation Q.35: when asked about the main problems they faced before the start or during a package travel contract, 14% (8/13) of citizens indicated that the 'organiser referred them to the retailer through whom I had bought the package, but the retailer sent them back to the organiser, or vice versa'.

³⁵⁷ Targeted survey – NCAs (regulatory and enforcement) Q.21: 76% (19/26) respondents 'positively', 8% (2/26) 'very positively'.

EQ7. What are the regulatory (including administrative) costs of the PTD for the different stakeholders involved (Member States authorities, businesses, consumers) and for society overall? What are the benefits?

The 2021 European Commission report³⁵⁸ on the application of the PTD notes that consumers are not always sufficiently aware of their rights, particularly in relation to the termination of package travel contracts. Low awareness of their rights can contribute to unnecessary costs for consumers unable to access timely remedies (including compensation) for bankruptcies, cancellations or other relevant challenges during their travels. Whenever travel plans are overturned due to no fault of the traveller, in addition to the actual costs of the lost travel or extra payments for covering their return, travellers must also become knowledgeable about their rights. This introduces an administrative burden, as consumers need to undertake research, engage with travel service providers over the phone or via email, submit documentation, and, in case of no resolution, seek support from competent authorities, claims agencies or lawyers³⁵⁹. The introduction of the PTD increased clarity on consumer rights, which reduced the time and effort needed to understand and exercise those rights. However, areas of improvement remain, due to lack of clarity of certain definitions (e.g. LTAs) and the need to make sure that consumers fully understand their rights as per the information forms.

Business compliance costs include familiarisation with the relevant provisions. The PTD introduced a number of other obligations for package organisers, such as limiting their ability to modify contractual terms and enhanced obligations on the information to be provided to consumers. New costs for businesses stemmed from increased organisers' liability for the performance of the package, including compensation for improper performance and alternative arrangements, and from the new, more stringent measures on insolvency protection.

Costs for national authorities include enforcement and monitoring costs associated with internal legal procedures, particularly the adaptation of national legal texts. Additional enforcement costs can include monitoring and reporting of compliance, as well as information campaigns, training programmes, etc. All stakeholders acknowledged the benefits of the implementation of the PTD, citing increased transparency in transactions, enhanced consumer protection measures, and harmonisation of various national practices.

In relation to the potential for simplification and improvement of the PTD measures that could reduce costs and detriment, stakeholders suggested simplified and clearer definitions, particularly on LTAs, and rules on cancellation rights in case of unavoidable and extraordinary circumstances, including refunds.

EQ8. What is the economic cost for businesses and Member State authorities to comply with the PTD? What are the benefits?

Economic costs for businesses include recurring and one-off costs, most directly the result of PTD requirements. Categories such as administrative and operational costs include costs for hiring and training new staff and daily operational costs for new staff. Compliance costs include those linked to regulatory requirements, such as costs of adapting to the new standard information form or costs of insolvency protection. Instruments increasing the liabilities of businesses in the case of inadequate service, for example, also form part of the possible costs for companies. Benefits to businesses arise from further harmonisation of

³⁵⁸ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 4.

³⁵⁹ European Commission, *Study on the current level of protection of air passenger rights in the EU*, 2020, <https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1>

the rules and reduction of fragmentation in the internal market. This includes increased clarity and understanding of provisions, completed travels and completed payments, which could also be measured via refunds and compensation avoided.

National insolvency protection and enforcement authorities incur one-off and recurring costs in implementing the PTD. One of the key cost categories is enforcement and transposition costs, including the review and adaptation of the national regulatory framework, as well as ensuring coherence among relevant government agencies. Training to familiarise staff with the Directive, as well as new equipment and infrastructure, are also key costs for Member States' authorities. In terms of benefits, increased clarity of certain provisions, particularly insolvency, could reduce some of the administrative burden on authorities, depending on their structure of responsibilities.

EQ9. What factors influenced the efficiency of reaching the objectives set by the PTD?

The lack of clarity of certain provisions, as well as differences in national approaches to insolvency and remedies offered after cancellations during the COVID-19 pandemic, contributed to a somewhat less efficient PTD. The PTD has significantly strengthened consumer rights in the travel sector, but consumers might not always be fully aware of their rights. Member State differences in insolvency protection coverage create a lack of clarity for stakeholders, inducing the idea of different level of protection for travellers, impacting the efficiency of the Directive.

Another factor that influenced the efficiency of the Directive is the difficulty of enforcing certain measures, such as those related to LTAs.

2.5.3 Relevance

EQ10. To what extent do the initial objectives of the PTD still correspond to the current needs?

Considering the share of packages in the tourism market in the EU³⁶⁰, the PTD still responds to the need for a regulatory framework to ensure the functioning of the internal market in the package travel sector and the protection of consumer rights. However, some areas may require changes in the market to be considered, together with the added pressures that can impact the industry during crises.

Feedback from the public consultation indicated that the complexity of the definitions contained in the PTD, combined with the strict rules on liability, led many traders to change their business model/booking process to avoid being considered package organisers. This hampered the proper functioning of the package travel market. Some 57% of respondents consider the PTD not well adapted to market trends³⁶¹. According to the targeted survey, some definitions are not used by businesses (e.g. LTA type (b)) and could be omitted from the Directive.

Implementation of the Directive has brought significant benefits to consumer protection that remain relevant. However, in times of crisis, some of the PTD provisions caused an increase in consumer detriment (e.g. measures related to refunds and to insolvency protection). As an after-effect of the COVID-19 pandemic, stakeholders noted that it may be increasingly

³⁶⁰ 9% of the total number of trips for personal reasons (Eurostat, *Number of trips by type of organisation (from 2014 onwards) [tour_dem_torg], purpose – personal reasons, duration – 1 night or over, partner – all countries of the world*).

³⁶¹ Public consultation Q.3: 55% (257/468) of respondents.

difficult for organisers to find appropriate insolvency protection providers able to cover the risks linked to the insolvency of large companies.

EQ11. To what extent are the key concepts of the PTD still fit for purpose?

The results of the evaluation show that some of the key concepts of the PTD may no longer be fit for purpose, in particular LTAs. They also highlighted that the notion of ‘unavoidable and extraordinary circumstances’ triggering consumers’ cancellation rights under Article 12(2) of the PTD does not fully address a situation of prolonged crisis, such as the COVID-19 pandemic³⁶², creating potential interpretation issues with Article 12(2). Consumer and business stakeholders consider the LTA definition overly complex and difficult to apply. The difficulty for consumers in deciphering the nature of their travel contract (package, LTA) prevent them fully understanding the extent of their rights and degree of protection, as well as the extent of the trader’s obligations³⁶³. In the public consultation, a majority of respondents did not agree that the provisions on LTAs have improved protection for travellers³⁶⁴. Considering the ease with which the rules of packages can be circumvented through the rules on LTAs and their delineation from packages, this element appears to be particularly unfit for purpose.

On the cancellation rights stemming from Article 12, stakeholders consider the provision well adapted under normal circumstances, but not during protracted crises such as the COVID-19 pandemic³⁶⁵, which showed that Article 12 was difficult to implement where large numbers of consumers are entitled to reimbursement at the same time, while the industry is deprived of revenue. Certain adjustments thus seem necessary for crisis situations. More than half of the respondents to the public consultation argued that the current rules on cancellation rights are not sufficiently clear, with consumers refused reimbursement by organisers – the latter denying the existence of unavoidable and extraordinary circumstances (see Section 2.5.1 - Effectiveness).

On refund rights linked to the insolvency protection system of Article 17, the 2021 Commission report on the application of the PTD considered it to function well, especially in response to the magnitude of the Thomas Cook bankruptcy. However, the provision in Article 17(5) according to which the refund shall be provided without undue delay could not be followed in many cases. Also, as an after-effect of the COVID-19 pandemic, stakeholders noted that it may be increasingly difficult for organisers to find appropriate insolvency protection providers able to cover the risks linked to the insolvency of big organisers. The PTD will thus have to propose a more solid system capable of effectively protecting travellers against the risk of insolvency of big market players, in particular.

³⁶² During WS1 of the PTD, one business association pointed out that the notion of ‘unavoidable and extraordinary circumstances’ could potentially create interpretation issues when it comes to situations of prolonged crisis such as COVID-19 pandemic. The same stakeholder stressed that, given the fact that discerning when a crisis starts and end remains unspecified, this may render Article 12(2) difficult to apply in practice. See also footnote 368.

³⁶³ BEUC, *The Package Travel Directive: BEUC’s Position on how to regain consumers’ trust in the tourism sector*, 2021, p. 25.

³⁶⁴ Public consultation Q.26: 67% (269/403) of respondents.

³⁶⁵ A4E, Input for European Commission General Report on Package Travel, October 2020. This view was reiterated during the first workshop on the PTD by a representative of an EU-level business association representing GDSs and travel distributors: ‘[...]in the context of a major crisis, it may not be sufficiently clear under which conditions a crisis ends – and consequently the applicability of the related PTD provisions (e.g., if COVID-19 will never leave, will COVID-19 then be kept considered as an extraordinary and unavoidable circumstance?).’

2.5.4 Coherence

EQ12. Are there any discrepancies and/or inconsistencies/lack of coherence between the provisions of the PTD? [internal coherence]

Definitions

Most definitions in the PTD did not raise any internal coherence issues. However, in some instances, a potential lack of internal coherence was identified within different provisions of the Directive.

It has proven difficult for consumers and enforcement authorities to establish for click-through bookings (Article 3(2)(b)(v) PTD) whether a package, LTA, or neither took place³⁶⁶. As mentioned in the 2019 report³⁶⁷, the practical challenges in click-through LTAs derive from the fact that ‘the second trader is often unaware of the obligation to [inform the first trader of the conclusion of the second travel service], lacks the appropriate technology to track and identify the first trader or is reluctant to inform the first trader about the conclusion of a contract with a traveller for business reasons as this may increase the price that the first trader requests for the link’. Data protection concerns related to the transfer of payment details in a pre-contractual setting may be raised in relation to the application of the principle of data minimisation set up by Article 5 of the GDPR³⁶⁸.

In the case of LTA type (b), as defined in Article 3(5)(b) of the PTD, the insolvency protection obligation (applicable as per Article 19 PTD) depends on the requirement that the traveller books an additional travel service from another trader within 24 hours of the first booking. In practice, however, the first trader does not necessarily have all the information to determine when an LTA was concluded, due to other traders’ lack of compliance with reporting obligations³⁶⁹. This results in a lack of practical application of this type of LTA and, consequently, in travellers not being protected against the insolvency of the LTA facilitator. Nor is the travellers’ right to information ensured, as it is linked to the possibility of establishing the existence of the LTA.

The definitions of ‘trader’, ‘organiser’ and ‘retailer’ set out in Article 3(7), (8) and (9), which need to be read together to understand certain provisions of the Directive, might also create confusion for consumers. According to case-law in Spain, consumers found it difficult to understand the different roles of the companies involved in a travel package³⁷⁰.

³⁶⁶ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 6.

³⁶⁷ European Commission, *Report from the Commission to the European Parliament and the Council on the provisions of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements applying to online bookings made at different points of sale*, COM(2019) 270 final, 21.6.2019, accompanied by SWD(2019) 270 final.

³⁶⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1-88, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679>

³⁶⁹ European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 6; minutes of the PTD expert group meeting of 24 March 2022.

³⁷⁰ See judgments of the Commercial Court of Barcelona, No 310/2022, 313/2022 and 314/2022 of 15/06/2022; judgments of the Commercial Court of Donostia-San Sebastian No 264/2021 of 18/10/2021, 259/2021 of 11/10/2021 and 257/2021 of 08/10/2021. In each case, the claim was addressed against the wrong company, e.g. the airline instead of the travel agency, because of lack of understanding of the roles and responsibilities under the PTD.

Other provisions

The pre-contractual information that the organiser or retailer must share with the traveller, under Article 5 of the PTD, does not specifically include a reference to travellers' right to terminate the contract in accordance with Article 12(2) of the PTD. Although this information requirement is included in the information form of Annex I to the PTD, the fact that it is not specifically mentioned in Article 5 itself could be confusing for consumers and obscure awareness of this right.

EQ13. To what extent is the PTD coherent with wider EU policies, such as rules on free movement of services, fundamental rights, consumer rights, mutual recognition, competition, industrial policy, transport and mobility, environmental protection (sustainability), health and trade, digital policies [external coherence]?

Several EU-level legislative instruments touch on aspects of the PTD or are relevant for provisions in the PTD.

Consumer protection instruments

Legislation in the field of consumer protection is generally coherent with the PTD. Certain synergies exist with Directive 2005/29/EC on unfair B2C commercial practices in the internal market, Directive 2011/114 on misleading and comparative advertising, and Directive 2011/83/EU on consumer rights, with the PTD offering a framework with more specific information requirements on consumer protection provided by pre-contractual information obligations. On ADR and representative actions, the PTD complements to Directive 2013/11, Regulation 524/2013 on ODR for consumer disputes and Directive 2020/1828 on representative actions for the protection of the collective interests of consumers. The PTD is silent on information on environmental aspects of travel packages or LTAs (e.g. environmental footprint), which constitutes a potential gap, in light of the instruments or upcoming legislation. However, 82% of respondents to the public consultation do not consider the need to include rules on environmental impacts in the PTD³⁷¹.

Passenger rights instruments

The objectives and scopes of all passengers' rights instruments complement the PTD. The instruments generally aim to establish a minimum level of passengers' rights, thereby contributing to maintaining a high level of consumer protection. Several consumer protection aspects overlap with passengers' rights (e.g. the right to information, refunds and compensation, assistance). Several pieces of legislation on passengers' rights explicitly regulate where the PTD is applicable instead of passenger rights legislation, thus preventing (to a certain extent) conflicting rules or legal uncertainty³⁷². Compared to the PTD, provisions on information requirements in passengers' rights legislation are tailored to the transportation service, thereby complementing the PTD. Overall, air passengers' rights legislation is coherent with the PTD for provisions on denied boarding. The research shows that all passenger rights' legislation is mostly coherent with the PTD when a service is

³⁷¹ Public consultation Q.31: 82% (391/477) of respondents. However, 40% (8/20) of consumer organisations supported the idea of additional rules on environmental impact.

³⁷² For example, recital 20 of Regulation 1177/2010 on the rights of passengers when travelling by sea and inland waterway; recital 3 of Regulation 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air; Articles 3(6) and 8(2) of Regulation 261/2004 on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights; Article 2(8) of Regulation 181/2011 on the rights of passengers in bus and coach transport.

cancelled or delayed³⁷³. However, there are some potential gaps: there is a diversity of support and assistance to passengers in case of delays, denied boarding and cancellations. On time limits for reimbursement, compensation, and the possibility to issue vouchers, the PTD and passengers' rights legislation are generally inconsistent. There is a potential gap in relation to vouchers, with the absence of an explicit provision on vouchers in the PTD³⁷⁴, while passengers' rights legislation includes provisions on the possibility to use vouchers for reimbursement and/or compensation. On the liability of transportation of service providers, organisers and retailers, passengers' rights legislation and the PTD are generally complementary. Nevertheless, unlike the PTD, which regulates the traveller's right to cancel the package travel contract without paying any termination fee in the event of unavoidable and extraordinary circumstances, the passenger rights legislation does not give passengers the right to terminate the transport contract in the event of extraordinary circumstances. The provisions of the PTD and passengers' rights legislation on complaints of travellers are complementary, with the PTD allowing sufficient flexibility.

State aid instruments, health-related instruments and EU trade commitments

The research did not find any major coherence issues in these fields. Overall, national State aid measures and health-related instruments complement the PTD. EU trade commitments under the World Trade Organization (WTO) General Agreement on Trade in Services³⁷⁵ are also compatible with the PTD and do not pose any issues.

2.5.5 EU added value

EQ14. What is the added value resulting from the application of the PTD, compared to what could reasonably have been expected from Member States acting at national and/or regional levels? What would be the most likely consequences of withdrawing the PTD?

The PTD has a clear degree of added value for EU action above and beyond what could be achieved at the level of the Member States. It provides clarity and equal treatment of consumers across the EU, while creating a far more level playing field for businesses than would otherwise be the case. It increases competition by enhancing consumer choice. This clear added value is reflected in the majority opinion of the surveyed regulatory and enforcement authorities (21/29), who have stated that regulating package travel at EU-level benefits companies and consumers 'to a great extent' compared to regulating it differently in each EU country.

³⁷³ Articles 4, 5, 6, 7, 8, 9 and 11 of Regulation 261/2004 on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights; Articles 17, 18 and 19 of Regulation 1177/2010 on the rights of passengers when travelling by sea and inland waterway; Articles 19 and 21 of Regulation 181/2011 on the rights of passengers in bus and coach transport; Articles 16, 17, 18 and 19 of Regulation 1371/2007 on rail passengers' rights and obligations; Articles 14, 18, 19 and 20 of Regulation 2021/782 on rail passengers' rights and obligations.

³⁷⁴ The need for rules on vouchers under the PTD was a recurring point discussed by stakeholders in several forums (PTD study, second workshop on 7 December 2022, meetings of the PTD expert group of 24 March 2022 and 8 November 2022, BEUC, *The Package Travel Directive: BEUC's position on how to regain consumers' trust in the tourism sector*, 2021).

³⁷⁵ Schedules of WTO Members with Specific Commitments on Tourism Services, [members_tourism_commitments.pdf \(wto.org\)](https://www.wto.org/trade_agreements/special_agreements/tourism_commitments.pdf)

Specific issues in enforcement or interpretation of the PTD may limit the effectiveness of the current regime, reducing its value to consumers and businesses. For some specific provisions of the PTD, including LTAs (as defined in Article 3(5)(a) and (b)), the added value of regulation at EU level is less clear, according to consumers and consumer organisations²⁷⁴.

EQ15. To what extent do the issues addressed by the PTD continue to require action at EU level?

Some issues addressed by the PTD continue to require further action at EU level. As the current problems of the PTD affect its effectiveness (see section 2.5.1), there would be value for EU consumers in tackling those issues at EU level. Proposals to increase protections on pre-payments by travellers, such as by introducing new rules on B2B refunds, were a recurring theme in the stakeholder consultations. Provisions on insolvency protection in the airline sector, as well as best practice examples at Member State level, were also discussed in the consultation. These issues are less suitable for action at Member State level, given the varying and possibly inconsistent levels of protection that could be afforded to consumers. For businesses selling package travel, there may be advantages in creating clarity and a more level playing field.

2.5.6 Conclusions

This evaluation report aimed to provide an assessment of the PTD in order to understand the extent to which the Directive has achieved its objectives. The GOs are:

1. Improving the functioning of the internal market in the package travel sector;
2. Achieving a high and as uniform as possible level of consumer protection in the package travel market.

The Directive introduced numerous novelties in comparison to the 1990 PTD, including setting common definitions, clearer obligations on information requirements, rules on traders' liability and consumer's rights, and specific obligations in respect of insolvency protection (see Figure 1). These novelties responded to the needs identified in the 2013 impact assessment, such as the importance of reflecting the evolution in the travel market, such (e.g. increasing digital sales, travel services provided online). This evaluation was developed by relying on a variety of primary and secondary sources of data to assess the extent to which the PTD achieved its objectives against the following criteria: effectiveness, efficiency, relevance, coherence and EU added value. The background study, describing the baseline to the evaluation, provided key information on market trends in the package travel sector, as well as on the application of the Directive, with a specific focus on the effectiveness and efficiency of insolvency protection. The conclusions of the background study covered a timeframe beyond the baseline period (2013-2015), providing an overview of key trends in a set of other selected timeframes, namely the transition period (2015-2018) when Member States were transposing the Directive, and the application period (2018 onwards)³⁷⁶. This captured key trends and challenges that impacted the application of the PTD (e.g. impact of COVID-19 on the package sector), providing further information to assess the achievement of the Directive's objectives. However, data limitations impacted the analysis and it was not always possible to cover all timeframes in the datasets considered.

Firstly, from the background study it emerged that the EU continues to play a prominent role in the tourism sector, welcoming some two-thirds of all international tourist arrivals

³⁷⁶ See section 2.1 for further information on the timeframes.

worldwide in 2022. Although the tourism industry plays a key role in the EU economy, the COVID-19 pandemic significantly affected global and EU tourism trends, with high levels of job losses and halving the tourism contribution to total European GDP in 2020. These effects hit SMEs in particular, which experienced turnover losses and high levels of unemployment.

Within this broader framework, the research found that in 2014 and in 2017, the number of packages accounted for 9% of the total number of trips for personal reasons in the EU, generating an expenditure of around EUR 66.50 billion in 2014 and EUR 85.04 billion in 2017. This expenditure accounted for 23% of the total spending in the EU for travel for personal reasons. Although data limitation did not allow the identification of trends for the remaining years, the stakeholder consultation suggested that consumers are now booking fewer packages, although part of the market is still willing to conclude package travel contracts. It also emerged that there is an important scarcity of data on LTAs. Neither the desk research nor stakeholder consultation could capture relevant information, possibly reflecting factors such as the difficulty of detecting when an LTA is concluded (because of the challenging in interpreting and applying the definition) and the difficulty in enforcing LTAs.

The sector is characterised by the presence of a complex system of actors, including service providers, GDSs, OTAs, traditional travel agencies, travel management companies, and tour operators. This network has developed over the years, particularly as a result of the key position acquired by the use of online technologies and the internet. According to Eurostat data, the number of travel agencies, tour operators and other reservation services in the EU in 2019 was approximately 112,000, almost 100% of which were SMEs, employing 470,000 people. Information on turnover is not available for the EU-27, but turnover for the EU-28 in 2018 was around EUR 197,300 million.

In the tourism sector, pre-payments are the standard payment model, as a consequence of consumer behaviour (i.e. booking packages long before departure and making pre-payments). Models in place apply by law, as in the case of the so-called German model, which emerges in application of national case-law on unfair contract terms, or as a result of business practices in the Member States. The literature extensively refers to the German model, which consists of 20% down payment at the time of booking, with the rest due not more than 30 days before beginning the trip, with the possibility of pre-payments greater than 20% in circumstances where the organiser duly justifies it.

Before the COVID-19 pandemic, the number of packages terminated before their start was very limited and, according to stakeholders, occurred mainly when the organiser significantly altered any of the main characteristics of the package or proposed to increase its price by more than 8% before the start of the package. Data on the number of packages terminated since the outbreak of COVID-19 are not available, but given its major impact on the tourism sector, as well as stakeholder feedback, it is likely that it increased significantly. As a consequence, travel agencies, tour operators and airlines were confronted with millions of refund claims and complaints from consumers to which many Member States responded through temporary rules on the cancellation of packages, such as issuing vouchers.

By March 2019, all Member States had transposed the PTD into national legislation. The 2021 PTD application report notes some potential non-conformity issues on different aspects of the Directive in all Member States. However, no infringement procedures were launched by the European Commission as of March 2023.

Issues in the enforcement of the PTD were raised by stakeholders, particularly in relation to the concept of LTA, which they noted was difficult to understand and apply in practice.

All Member States and EEA countries adopted different types of measures to apply the PTD, including emergency measures to handle the impact of the COVID-19 pandemic on this sector, mostly limited in time, such as the possibility to issue vouchers as an alternative to a monetary refund for packages cancelled because of the pandemic. Indeed, most travel arrangements were cancelled at the time, bringing important challenges cash flow and revenue challenges for the travel sector. Some Member States allowed package organisers to issue mandatory vouchers instead of reimbursing travellers, derogating from the right to choose between cash reimbursement and a voucher. This was followed by the launching of infringement procedures in July and October 2020 by the Commission.

To respond to the impacts of the pandemic on the economy and on the travel sector, the Commission enabled Member States to use the full flexibility foreseen under the State aid rules, followed by the adoption in March 2020 of the Temporary Framework (based on Article 107(3)(b) TFEU), which complemented other possibilities available to Member States to mitigate the impacts of COVID-19. Most Member States made use of the State aid measures, including providing travel organisers with sufficient liquidity to continue their activities during and after the COVID-19 outbreak, providing guarantees to travel organisers to ensure the respect of their contractual obligations (including in the event of bankruptcy), and supporting vouchers guaranteed against insolvency.

Finally, the background study analysed the landscape of the national insolvency protection systems set up under the PTD. This landscape varies significantly, both theoretically (systems established by national law) and in their costs/availability in practice in the Member States. The main types of insolvency protection are insurance and bank guarantees, followed by fewer cases of guarantees from a public corporation, escrow accounts and cash deposits, back-up funds and private guarantee funds.

The first criterion against which the PTD was assessed was effectiveness. The study found that the PTD was effective in achieving its general objectives, at least to some extent. Findings indicated that certain specific objectives of the PTD were less effective than others.

The evaluation found that the definition of 'package' was generally effective in achieving the PTD objectives, despite certain major divisive views between businesses and consumers on the different types of travel combination services constituting package travel. By contrast, neither the definition of LTA type (a) nor LTA type (b) proved effective. Stakeholders were unable to discern when an LTA was concluded in practice. Another key concept in the Directive is that of the right to cancellation free of charge in case of 'unavoidable and extraordinary circumstances'. Despite the challenges in understanding when the concept could be evoked in practice (particularly in relation to the COVID-19 pandemic), the evaluation found that the definition proved effective overall in achieving the PTD's objectives.

The evaluation examined the information obligations for traders acting as organisers or retailers of a package travel or facilitators. These obligations are respected only to a moderate extent, even less so by traders facilitating LTAs. However, although this limited compliance suggests that there might be an enforcement issue in relation to information obligations, it is unclear whether this would hinder the effectiveness of the PTD itself.

The study concluded that the introduction of stricter rules on traders' liability in the 2015 PTD proved effective in pursuing the Directive's objectives. The consultation showed that there are instances where consumers do not have a clear understanding of the division of responsibilities and liabilities among the different actors in the value chain, but this is largely linked to enforcement issues, rather than the Directive itself. The rules on insolvency protection were generally effective in ensuring the achievement of the PTD's objectives. However, stakeholders emphasised that, as the Directive leaves Member States the discretion to determine the features of their national insolvency protection systems, there is

no homogeneous application of insolvency protection standards across the EU. These differences may potentially hinder the effectiveness of the insolvency schemes and thus consumer protection. Although the PTD foresees mutual recognition of insolvency protection among Member States, this rarely occurs in practice (when it does, it does not present any practical issue). It is difficult for travellers to understand their rights in respect of insolvency protection, and this is particularly in the case of LTAs. Conversely, for traders facilitating LTA, it is often unclear which insolvency protection cover they have to obtain.

Refund rights are a key aspect covered by the PTD, with the 2015 PTD introducing clearer rules. The refund rights triggered by 'unavoidable and extraordinary circumstances', including the conditions for reimbursement, proved only partially effective during the COVID-19 pandemic. By contrast, prior to the pandemic, the application of the Directive's measures was generally effective in ensuring refund rights due to the emergence of 'unavoidable and extraordinary circumstances'. The effectiveness of these measures was significantly hindered by issues at B2B level. Indeed, uncertainties about the procedural aspects relating to responsibility for refunds, alongside the different actors of the value chain, made it difficult for the PTD to achieve its objectives.

The evaluation analysed the efficiency of the Directive's implementation by assessing the cost/benefit ratio experienced by the various stakeholder groups (companies, consumers, NCAs). In relation to main costs, consumers are not always sufficiently aware of their rights, which can result in unnecessary costs when they are not able to access timely remedies. Although the PTD increased clarity on consumer rights and reduced the burden of understanding and exercising those rights, areas of improvement remain, due to lack of clarity of certain definitions (such as LTAs) and the need to make sure that consumers fully understand their rights. New costs for businesses stemmed from increased organisers' liability for the performance of the package, including compensation for improper performance and alternative arrangements, as well as from the new, more stringent measures on insolvency protection. Costs for national authorities include enforcement and monitoring costs associated with internal legal procedures, particularly the adaptation of national legal texts. As for benefits, the implementation of the PTD provided increased clarity on package travel transactions, including the role and obligations of the different players. It also increased clarity on consumer rights.

The third evaluation criterion was the relevance of the Directive. The PTD continues to respond to the need for a regulatory framework to ensure the functioning of the internal market in the package travel sector and the protection of consumer rights. However, some areas may require consideration of changes, particularly in relation to certain definitions (e.g. LTAs.) Implementation of the Directive brought significant benefits to consumer protection, which remain relevant. However, in time of crisis, some of the PTD provisions were found to be less effective, notably those on refund and cancellation rights, causing consumer detriment.

The fourth evaluation criterion was coherence, with the evaluation finding good internal coherence between the various provisions of the PTD, with only minor challenges identified. The main issues related to the distinction between the definitions of click-through packages and LTA type (b). On external coherence, major inconsistencies were found in the field of passengers' rights, although the objectives and scope of other instruments were complementary to the PTD. The main issues identified included differences in insolvency protection requirements and the use and regulation of vouchers.

Finally, the evaluation found that the PTD had a clear added value for EU action. It provided clarity and equal treatment of consumers and created a more level playing field for businesses. It also increased competition by enhancing consumer choice. However, specific issues in enforcement may limit its effectiveness and reduce value to consumers and businesses.

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT ASSESSMENT ON ITS POTENTIAL REVISION

In order to understand how to address the main issues with the implementation of the PTD, the study was developed through an impact assessment (see section 3), which aimed to identify potential POs and measures and to understand the extent to which they could contribute effectively to addressing these key challenges.

3 Impact assessment

3.1 Introduction: Context

3.1.1 Legal context

The objective of the PTD is to strengthen consumer protection and provide clear rules for travel businesses in the EU. This impact assessment study builds on the findings of the evaluation and prior studies conducted by the European Commission, including the 2021 report on the application of the PTD³⁷⁷. The 2021 report identified several challenges stemming from the lack of clarity of certain definitions, the complexity of information obligations, issues with paying reimbursements, and divergent implementation of the insolvency protection rules, among others. These challenges were confirmed by the evaluation. This impact assessment identifies potential POs that can improve the legislative context to strengthen the effectiveness, efficiency and coherence of the PTD.

3.1.2 Political and market environment

Over the past seven years, the travel market has undergone major upheavals that have impacted its functioning. One key factor is the increasing role of tourism within the European economy. The growth of the travel market coincided with the increasing use of digital tools for booking, modifying and cancelling travel services. The growing importance and frequent use of online tools required an analysis of the ongoing relevance of the PTD provisions.

Additional factors that affected the travel market include the Thomas Cook bankruptcy in 2019 and the COVID-19 crisis, alongside various national measures that were adopted in respect of reimbursements for trips cancelled due to COVID-19. The measures aimed to prevent the collapse of the tourism sector in various Member States but contradicted the PTD. Despite pre-dating the COVID-19 crisis, the implementation of definitions related to 'unavoidable and extraordinary circumstances', as well the use of vouchers to reimburse pre-payments, gained further impetus following the pandemic. In line with the steps outlined in the European Commission's Better Regulation Guidelines (BRG) Toolbox³⁷⁸, the impact assessment relied on a combination of cost-benefit and multicriteria analysis (MCA) to identify the stakeholder impacts of the various options and select the most suitable, responding to the criteria of effectiveness, efficiency, and coherence.

3.2 Problem definition

This section presents the problem definition and the case for EU action. The problem definition is based on the outcome of the evaluation.

Problem definition

The problems are presented using a problem tree (BRG Tool #14³⁷⁹), showing the link between the problems identified, their drivers, and their high-level effects. A problem tree helps to establish a *de facto* hierarchy between the causal elements (root of the tree) and their consequences (branches of the tree). It also helps to visually represent the different

³⁷⁷ European Commission, *Report on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements*, 2021, COM(2021) 90 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A90%3AFIN>

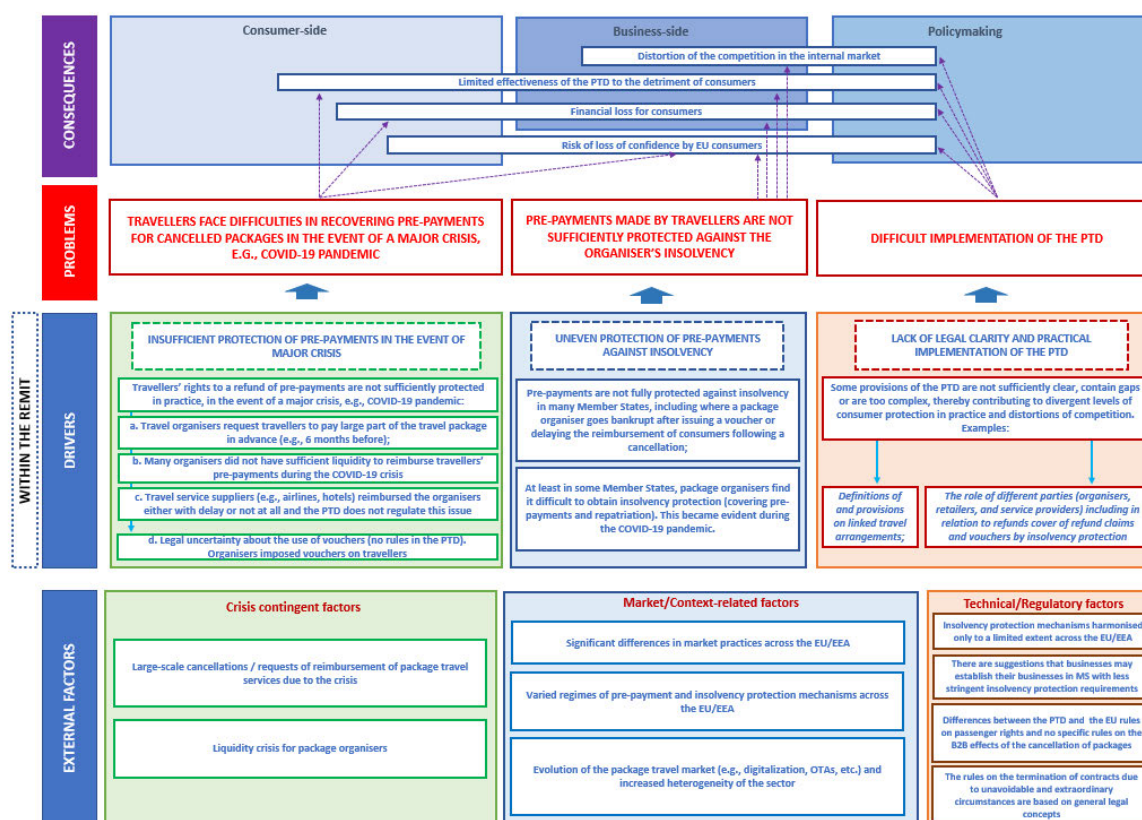
³⁷⁸ European Commission, *Better Regulation Toolbox*, 2021, https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox/better-regulation-toolbox_en

³⁷⁹ See https://ec.europa.eu/info/files/better-regulation-toolbox-14_en

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elements identified and their causal relationships. This problem tree is based primarily on the findings of the evaluation, in-depth desk research, extended data gathering (public consultation, ICF targeted surveys, interviews with key stakeholders), and several discussions in Commission-organised workshops/official meetings with representatives from the sector and from the public authorities, and two ICF-organised workshops on the potential revision of the PTD. ICF proposed a draft problem tree to the during the preliminary tasks of the study, which was then validated throughout the various study tasks and discussions with key stakeholders, and between the study team and the European Commission.

Figure 4. Problem tree



Source: ICF elaboration.

The **external factors** (bottom of the figure) represent events and sectoral developments that cannot be influenced by the policy intervention under consideration. It is important to understand these external factors, as they can limit or increase the positive effects of one or several POs. The problem tree distinguishes three main clusters of external factors: (a) Crisis-contingent factors, (b) Market-context-related factors, and (c) Technical/regulatory factors.

Drivers represent the main underlying causes of the problems that the policy intervention aims to address. They are shown at the base of the figure (root of the tree) and are divided into three main categories: (a) Insufficient protection of pre-payments in the event of major crises, (b) Uneven protection of pre-payments against insolvency, and (c) Lack of legal clarity and practical implementation of the PTD.

Problems are the trunk of the tree and derive from the drivers identified. The key problems identified are: (a) travellers facing difficulties in recovering pre-payments for cancelled packages in the event of a major crisis (e.g., COVID-19); (b) pre-payments by travellers are

not sufficiently protected against the organisers' insolvency; and finally (c) difficulties with the implementation of the PTD.

Finally, **consequences** are the current and future effects of the problems. The effects are distributed under consequences for (1) consumers (limited effectiveness of the PTD to the detriment of consumers, financial loss for consumers, and risk of loss of confidence by EU consumers), (2) businesses (distortion of competition in the internal market) and (3) policy-making (interplay of the consequences for consumers and for businesses).

The following sub-sections detail the external factors, drivers, problems and consequences (effects) presented in the problem tree.

External factors

External factors are independent events and trends that influence the environment in which the PTD operates. Although not affected by the policy intervention, they can limit or increase the positive effects of one or several POs and must be taken into account: (a) Crisis-contingent factors, (b) Market-context-related factors, and (c) Technical/regulatory factors.

i. Crisis-contingent factors

Major crises at a systemic level have the potential to significantly impact both the package travel and transport sectors, as illustrated by the study evaluation. Over the past decade, several different crises occurred across Europe, each of which disrupted the performance of package travel contracts (e.g. 2010 *Eyjafjallajökull* and *Fimmvörðuháls* volcano eruptions in Iceland that blocked air traffic for days; bankruptcy of Thomas Cook worldwide tour operator in 2019; COVID-19 pandemic). Stakeholders noted that the COVID-19 pandemic impacted the package travel sector 'to a large extent'³⁸⁰. Within the context of the package travel sector, three main crisis-contingent factors were identified by the study and clustered:

- ✓ *Large-scale cancellations/requests for reimbursement of package travel services due to the crisis*. During the consultations, it emerged that the share of package travel contracts terminated before their start was very limited before the COVID-19 pandemic (see section 2.4.1.4). Indeed, targeted surveys found that the share of package travel contracts terminated by travellers or organisers before and during the COVID-19 pandemic, reported by both consumer organisations and businesses, was between 1% and 10%³⁸¹. By contrast, the number of cancellations due to unavoidable and extraordinary circumstances (Article 12(2) and 12(3)(b) PTD) skyrocketed in 2020. The pandemic resulted in numerous travel bans, warnings and restrictions at borders that led to a vast number of cancellations and many people being unable to travel, with COVID-19 given as 'unavoidable and extraordinary circumstances' to justify cancellation under Article 12 of the PTD;
- ✓ *Liquidity crisis for package organisers*. The massive wave of cancellations due to the COVID-19 pandemic triggered the right for consumers to terminate package travel contracts before their start without fees, under the conditions set out in Article 12 of the PTD. The sector experienced EUR 24 billion of revenue losses for passenger transport services in 2020, compared to 2019³⁸². While data are not available on the number of packages in 2020, nor on the number of travel services

³⁸⁰ Targeted surveys: (a) NCAs (regulatory and enforcement) Q.22: 96% (26/27) of respondents; (b) businesses Q.5: 96% (23/24) of respondents; (c) consumers Q.5: 100% (12/12) of respondents.

³⁸¹ Targeted surveys: (a) businesses Q.11: 12 1-10%; 3 10-20% (n=15); (b) consumer organisations Q.4: 5 1-10%, 1 10-20%, 2 > 50% (n=8).

³⁸² European Parliament, *Relaunching transport and tourism in the EU after COVID-19*, TRAN Committee, 2022, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/690899/IPOL_STU\(2022\)690899_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/690899/IPOL_STU(2022)690899_EN.pdf)

forming part of a package, the sharp reduction in bookings and increase in cancellations strongly suggest a similar decline for the package sector. This often resulted in package organisers experiencing a liquidity crisis, as a 'snowball' effect of the massive cancellations (and requests of refund of pre-payments due to 'unavoidable and extraordinary circumstances') and of largely ineffective B2B refund mechanisms. During the COVID-19 pandemic, a significant share of businesses (45%)³⁸³ indicated that organisers were unable to provide timely refunds to travellers because they did not receive timely refunds from service providers. They have, in the meantime, however, received refunds from service providers. NCAs (regulatory and enforcement) confirmed this challenge, albeit to a lesser extent (23%)³⁸⁴.

ii. Market/context-related factors

Several market/context-related factors impacted the package travel market. The evaluation indicated three main market/context-related factors considered exogenous to the PTD but capable of influencing the Directive's pursuit of its objectives:

- ✓ *Significant differences in market practices across the EU/EEA.* The targeted survey indicated that the market traditions of the Member States impacted the PTD, at least to a moderate extent, for businesses, consumers, and NCAs (regulatory and enforcement)³⁸⁵. This was confirmed by in-depth desk research into 10 Member States (see Annex 2), illustrating significant differences in their market practices and developments, alongside several parameters³⁸⁶. Differences in market practices and developments thus play a certain role in influencing the efficiency and effectiveness of the PTD provisions, in shaping the future development of the package travel sector, and in impacting the way the Directive will remain fit for purpose in light of current and future needs/trends of the sector;
- ✓ *Varied regimes of pre-payments and insolvency protection mechanisms across the EU/EEA.* The evaluation highlighted that, in relation to package travel, both the majority of the responding consumer organisations and businesses reported that travellers make a down-payment at the time of booking, with the remainder paid some time before the start of the contract (e.g. one month)³⁸⁷. While pre-payment constitutes the most common payment system for the package travel sector, a variety of pre-payments methods exist across the Member States (e.g. the German model, and the Austrian model; see section 2.4.1.3). Article 17 of the PTD introduces rules on the effectiveness and scope of the insolvency protection system in the EU, while Article 17(1) leaves it to Member States to ensure that organisers established in their territory (a) provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency, and (b) provide security for the travellers' repatriation if the carriage of passengers is included in the contract. The PTD gives Member States discretion to implement their national insolvency protection provisions, and indications suggest that such protection has been implemented with a high degree of heterogeneity across the EU (see section 2.4.3 and EQ3). The

³⁸³ Targeted survey – businesses Q.15: 45% (10/ 22) of respondents.

³⁸⁴ Targeted survey – NCAs (regulatory and enforcement) Q.5: 23% (6/26) of respondents.

³⁸⁵ Targeted surveys: (a) NCAs (regulatory and enforcement) Q.22: 27% (7/27) respondents; (b) businesses Q.5: 38% (8/21) of respondents; (c) consumers Q.5: 33% (4/12) of respondents.

³⁸⁶ Number of package travels (number of trips, thousands), Expenditure on package travel (EUR billion), number of travel agencies, tour operators and other reservation services and related activities (number of enterprises, thousands), turnover of travel agencies, tour operators and other reservation services and related activities (EUR billion), see Annex 4.

³⁸⁷ Targeted surveys: (a) businesses Q.8: 100% 10/10 down-payment at the time of booking; (b) consumer organisations Q.3: (92% (11/12) down-payment at the time of booking.

varied regime of insolvency protection systems, while not hindering the efficiency and effectiveness of the PTD as such, may influence its attempts to achieve its stated objectives;

- ✓ *Evolution of the package travel market (e.g. digitalisation, OTAs) and increased heterogeneity of the sector.* Increased use of the internet by travellers has impacted the way actors in the travel and tourism sectors conduct their business (see section 2.4.1.2). Firstly, service providers in tourism destinations have embraced the internet for marketing purposes, by promoting their offers through webpages³⁸⁸. Secondly, according to the European Commission's behavioural study, the online expansion of the industry has created a complex web of actors, intermediaries and new B2C relationships. The evaluation concluded that online intermediaries (including organisers) impacted the package travel sector by increasing the heterogeneity of its market practices³⁸⁹, but there was no evidence that they hindered the PTD's pursuit of its objectives.

Drivers

Drivers represent the main underlying causes of the problems that the policy intervention aims to address. Some drivers are inherent to the protection of pre-payments in the event of major crises and insolvency, while others relate to legal clarity and practical implementation of the PTD. The distinction between the groups of drivers helps to define the problem and provide a clear narrative. However, the distinction can be ambiguous, and drivers under each category have elements of the others. This sub-section describes the three sets of drivers.

i. Insufficient protection of pre-payments in the event of major crises

The first driver focuses on the fact that travellers' rights to a refund of pre-payments are not sufficiently protected in the event of a major crisis (e.g. COVID-19 pandemic). The evaluation found practical issues around the refund rights triggered by Article 12 points (2), (3), and (4) of the PTD, especially after the outbreak and during the COVID-19 pandemic. In the public consultation, most public authorities and consumer organisations pointed out that travellers received a refund but had to wait longer than a month³⁹⁰, indicating a failure to respect the timeframe for the reimbursement of the pre-payments set out in Article 12 of the PTD.

One potential reason may reflect the extent to which travel organisers request travellers to pay a large part of the travel package in advance (e.g. six months before) (see section 2.4.1.3). The possibility of introducing specific rules to limit pre-payments in the package travel sector occupied a core part of the data gathering for both the evaluation and the impact assessment. The sector was divided on potential revision of the PTD entailing a limitation of pre-payments, as they constitute (a) a key element in several consolidated business models (especially airlines, thus impacting the activities of package organisers, which make advance payments to secure travel services through airline operators), and (b) any amendment to the PTD would have to be coherent with the initiatives in the context of the APRR.

³⁸⁸ Ibid., p. 9.

³⁸⁹ Targeted surveys: (a) NCAs (regulatory and enforcement) Q.22: 48% (13/27) of respondents 'to a moderate extent', 37% (10/27) 'to a large extent'; (b) businesses Q.5: 57% (13/23) 'to a large extent'; (c) consumers Q.5: 50% (6/12) 'to a moderate extent'.

³⁹⁰ Public consultation Q.44: 52% (11/21) of consumer organisations, 74% (14/19) of public authorities. Although the question was not addressed to them: 60% (15/25) of EU citizens, 52% (15/29) of companies. In Q.36, in a similar question directed at travellers, this scenario was indicated by 20% (10/49) of EU citizens.

Many organisers did not have sufficient liquidity to reimburse travellers' pre-payments during the COVID-19 crisis. This was due to the massive cancellation of package holidays due to 'unavoidable and extraordinary circumstances' triggering Article 12(2) of the PTD. Businesses indicated that the refund rights triggered by Article 12 of the PTD proved burdensome for organisers, which had 'to a large extent' to take out loans to cover the costs of refunds to travellers³⁹¹.

A key problem exacerbated by the COVID-19 pandemic was B2B refunds, particularly where travel service suppliers (e.g. airlines, hotels) reimbursed organisers either with delay or not at all, and the PTD does not regulate this issue³⁹². A significant share of businesses (45%) indicated that during the COVID-19 pandemic, organisers were unable to provide timely refunds to travellers because they did not receive timely refunds from service providers, but in the meantime, received refunds from service providers. NCAs (regulatory and enforcement) confirmed this challenge, albeit to a lesser extent (23%) (see section 2.5.1). By contrast, the scenario in which organisers were unable to provide timely refunds to travellers because they did not receive timely refunds from service providers and still had not received refunds from service providers, occurred only to a small extent, according to businesses and NCAs (regulatory and enforcement), both before and during COVID-19 pandemic. More specifically, NCAs (regulatory and enforcement) noted that the scenario in which refunds from service providers to organisers were delayed significantly but without invoking legal reasons occurred with 'high' significance in practice (see section 2.5.1).

The mass cancellation of package travel contracts during the COVID-19 pandemic led organisers/retailers to offer or impose vouchers on consumers in lieu of a cash refund, especially as they invoked liquidity problems caused by the pandemic and their inability to reimburse travellers otherwise. There are no provisions in the PTD on the possibility to offer vouchers, nor on their characteristics, and, consequently, no requirement to provide insolvency protection for vouchers. In Recommendation (EU) 2020/648 of 13 May 2020, the Commission developed principles to make vouchers more attractive for travellers (e.g. by providing insolvency protection). Nevertheless, there is still legal uncertainty about the use of vouchers (no rules in the PTD). Certain practical problems with vouchers and consumers' preferences were reported in the public consultation. For instance, 23% of respondents indicated that they were given a voucher/credit note although they would have preferred a refund³⁹³ (see section 2.5.1).

ii. Protection of pre-payments against insolvency

The second driver identified by the problem definition and represented within the problem tree is the protection of pre-payments against the insolvency of organisers across the Member States. This was split into two sub-drivers.

The first sub-driver reflects the evaluation's finding that pre-payments are not fully protected against insolvency in many Member States, including where a package organiser goes bankrupt after issuing a voucher or delays the reimbursement of consumers following a cancellation. In the targeted survey, a significant share of consumer organisations indicated that travellers are not sufficiently protected in some Member States³⁹⁴, with NCAs (insolvency) noting that travellers face problems because of the different insolvency

³⁹¹ Targeted survey – businesses Q.15: 38% (8/21) of respondents.

³⁹² A German business association interviewed indicated that some providers had to wait a long time before receiving reimbursements for hotels and airlines, creating a time gap between the tourist payment and the service partners paying through the customer.

³⁹³ Public consultation Q.35 (for individuals using travel services): 23% (34/147) of respondents, including 29% (17/58) of EU citizens.

³⁹⁴ See Annex 4 for number and percentages of respondents.

protection rules in different Member States³⁹⁵. The public consultation asked whether insolvency protection standards for organisers (and, where applicable, retailers) are considerably lower in some Member States compared to others, with most public authorities and businesses selecting 'do not know'³⁹⁶, while most consumer organisations replied yes³⁹⁷. The evaluation findings may indicate that (a) stakeholders perceive that the heterogeneity of the national insolvency protection systems across the EU leads to different levels of protections, and/or (b) they believe that leaving it to Member States to organise their insolvency protection systems based on PTD rules (Article 17(1)) creates the possibility that the systems implemented by the Member States result in different levels of protection.

On the timeliness of the refund claims under Article 17(5) of the PTD, NCAs highlighted several indicators and factors that may impact the effectiveness of the reimbursements through the insolvency protection systems in practice, for example the speed with which an insurance company/bank receives the necessary information to settle the claim. Overall, there are indications that certain EU/EEA countries lack experience with both the bankruptcies of large organisers³⁹⁸ and the simultaneous bankruptcies of several organisers³⁹⁹, suggesting that it is still difficult for them to assess the effectiveness of their national system in compliance with Article 17(5) of the PTD.

The second sub-driver reflects the fact that in some Member States, package organisers find it difficult to obtain insolvency protection (covering pre-payments and repatriation). This became evident during the COVID-19 pandemic. In the targeted survey, the NCAs (insolvency) whose Member States implemented an insolvency protection system that relied (at least in part) on insurance policies and/or bank guarantees were asked to indicate trends in the availability of those instruments since 2020, with the results suggesting that the offer of insurance policies and bank guarantees has generally decreased⁴⁰⁰. Reduced offers to arrange insolvency protection in their national contexts may complicate package organisers' compliance with PTD requirements on insolvency protection. This may be particularly evident in Member States whose systems fully rely on insurance policies or, in any case, on the market.

iii. Legal clarity and practical implementation of the PTD

The third driver focuses on the legal clarity and practical implementation of the PTD. More specifically, that certain provisions of the PTD are not sufficiently clear, contain gaps or are too complex, thereby contributing to diverging levels of consumer protection and distortion of competition. The evaluation found that:

- ✓ the **definition of 'package'** (Article 3(2) PTD) was generally effective in achieving the PTD's objectives, but major divisive views persist between businesses and consumers on the types of combined travel services that should constitute a 'package', with businesses advocating for the introduction of certain exemptions and consumers firmly opposing this possibility;

³⁹⁵ Ibid.

³⁹⁶ Public consultation Q.16: 64% (289/453) of respondents (67% (14/21) of public authorities, 71% (194/272) of companies, 43% (21/49) of business associations).

³⁹⁷ Public consultation Q.16: 28% (125/453) of respondents (67% (14/21) of consumer organisations, 33% (7/22) of public authorities).

³⁹⁸ Targeted survey – NCAs (insolvency) Q.3: 3/12 open text responses (AT, PT, SK).

³⁹⁹ Targeted survey – NCAs (insolvency) Q.3: 2/12 open text responses (SK, IS).

⁴⁰⁰ Targeted survey – NCAs (insolvency) Q.5: 50% (6/12) of respondents reported that the offer of insurance policies has reduced, 42% (5/12) respondents offer of bank guarantees has reduced.

- ✓ the **definition of LTA** (Article 3(5) PTD) for both type (a) and (b) proved ineffective in achieving the PTD's objectives. Evidence suggests that LTA type (b) definition was more ineffective than LTA type (a);
- ✓ the rules on cancellations due to **'unavoidable and extraordinary circumstances'** (Article 3(12) PTD) was generally effective in achieving PTD GO1, SO1 (businesses) and GO2, SO2, SO3 (consumers) by constituting the justification for cancellation of a package travel contract due to 'unavoidable and extraordinary circumstances'. However, the situation evolved significantly after the outbreak of COVID-19, when the justification for the termination of a package travel contract due to 'unavoidable and extraordinary circumstances' raised several controversies between travellers and organisers, according to most stakeholders from both the business and consumer side.

Problems

The problems derive from the drivers and constitute the main issues given the current context. The key problems concern travellers facing difficulties in recovering pre-payments for cancelled packages in the event of a major crisis (e.g. COVID-19 pandemic), pre-payments made by travellers are not sufficiently protected against organisers' insolvency, and difficulties with the implementation of the PTD.

i. Travellers face difficulties in recovering pre-payments for cancelled packages in the event of a major crisis (e.g. COVID-19 pandemic)

Issues in recovering pre-payments for cancelled packages

The evaluation found that the refund rights triggered by 'unavoidable and extraordinary circumstances' under Articles 12(2) and 12(3) of the PTD, including the conditions for reimbursement set out by Article 12(4), proved only partially effective during the COVID-19 pandemic⁴⁰¹. Stakeholders from the consumer side pointed out that similar problems existed before COVID-19, albeit to a lesser extent. The findings suggest that the Directive was generally effective in ensuring appropriate and effective termination and refund rights due to the emergence of 'unavoidable and extraordinary circumstances'. Consumers pointed out that the COVID-19 pandemic, despite being unprecedented, should be considered a sort of benchmark from which any potential recast of the PTD should start⁴⁰². Conversely, a business association participating in the first workshop (with businesses and consumer organisations) stated that the COVID-19 pandemic highlighted that the PTD is not equipped to protect organisers from the risks posed by these major crises, particularly the refund right set out by the PTD, which resulted in significant financial losses for travel agents and the risk of bankruptcy of package organisers⁴⁰³.

On the refund rights triggered by Article 12 points (2), (3), and (4) of the PTD, the stakeholders highlighted several practical implementation issues, especially after the outbreak and during the COVID-19 pandemic. The public consultation asked about the scenarios they experienced with regard to refunds where organisers or travellers had terminated a package travel contract because of unavoidable and extraordinary circumstances since February 2020, with most consumer organisations and public

⁴⁰¹ Targeted survey – NCAs (regulatory and enforcement) Q.17: on the existence of non-compliance issues in practice, 57% (13/23) of respondents selected 'Yes' for termination of contracts, 78% (18/23) selected 'Yes' on refunds.

⁴⁰² Interview with an EU-level large consumer organisation. Confirmed during the first workshop, with the same organisation stressing that COVID-19 exacerbated an already challenging situation (especially the timeliness of reimbursements)

⁴⁰³ Minutes of the first workshop with businesses and consumer organisations.

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authorities indicating most frequent scenarios where (a) travellers received a refund but had to wait longer than a month⁴⁰⁴, and (b) travellers received a refund only after filing a complaint to a consumer organisation/ADR body/ECC/public authority/court/ombudsperson/other⁴⁰⁵.

There is evidence that further issues relating to refund rights occurred in practice, albeit to a lesser extent and mostly representing consumer organisations' view. For instance, consumer organisations indicated that (a) travellers did not receive any money or received it with considerable delay, as the organiser and retailer could not agree which was responsible for the refund⁴⁰⁶, and (b) many travellers are still waiting for their money⁴⁰⁷. These views were not confirmed by any of the other types of stakeholders. Individuals using single travel services who responded to the public consultation also indicated that it was difficult or impossible to obtain a refund from organisers/retailers⁴⁰⁸ and they were given a voucher/credit note despite preferring a refund⁴⁰⁹. Nevertheless, a significant, if minor, share of individuals using travel services indicated receiving a full refund within 14 days or with a short delay (within one month) of terminating a package travel contract in light of 'unavoidable and extraordinary circumstances' since February 2020⁴¹⁰.

The targeted surveys allowed further clarification of the main practical implementation elements relating to refund rights under 'unavoidable and extraordinary circumstances' (Article 12 points (2), (3), and (4) PTD) before and after the COVID-19 pandemic, enabling a greater understanding of the effectiveness of the provisions under normal circumstances and after the COVID-19 pandemic (see Table 22).

Table 22. Main scenarios identified by consumers in relation to refund rights due to 'unavoidable and extraordinary circumstances' under Article 12 of the PTD

Scenarios	Extent	Period	
		Before COVID-19	During COVID-19
Travellers received a full refund within 14 days or at least within one month	Often	33% (4/12)	0% (0/12)
	Occasionally	42% (5/12)	0% (0/12)
	Rarely	8% (1/12)	100% (12/12)
Travellers received a refund without filing a complaint	Often	8% (1/12)	8% (1/12)
	Occasionally	25% (3/12)	8% (1/12)
	Rarely	42% (5/12)	75% (9/12)
	Often	67% (8/12)	83% (10/12)

⁴⁰⁴ Public consultation Q.44 (Section III. Additional questions for consumer organisations and public authorities): 52% (11/21) of consumer organisations, 74% (14/19) of public authorities. Although not addressed to them, other stakeholders also agreed: 60% (15/25) of EU citizens, 52% (15/29) of companies. In Q.36 of the consultation, a similar question addressed to individuals using travel services, this scenario was indicated by 23% (27/116) of respondents (including 20% (19/49) of EU citizens).

⁴⁰⁵ Public consultation Q.44: 53% (10/19) of public authorities, 81% (11/21) of consumer organisations. Although not addressed to them, other stakeholders also agreed: 14% (4/29) of companies, 25% (1/4) of business associations. In Q.36, a similar question was addressed to individuals using travel services: 16% (18/116) of respondents (including 14% (7/49) of EU citizens).

⁴⁰⁶ Public consultation Q.44: 32% (6/19) of public authorities.

⁴⁰⁷ Public consultation Q.44: 11% (2/19) of public authorities.

⁴⁰⁸ Public consultation Q.35: 38% (22/58) of EU citizens.

⁴⁰⁹ Public consultation Q.35: 29% (17/58) of EU citizens.

⁴¹⁰ Public consultation Q.36: 29% (14/49) of EU citizens.

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Travellers received a refund only after filing a complaint	Occasionally	25% (3/12)	17% (2/12)
	Rarely	0% (0/12)	0% (0/12)
Traveller (1) did not receive any money or (2) received it with considerable delay	Often	47% (5/12)	(1) 45% (5/11) (2) 91% (10/11)
	Occasionally	33% (4/12)	(1) 45% (5/11) (2) 0% (0/11)
	Rarely	17% (2/12)	(1) 0% (0/11) (2) 0% (0/12)

Source: ICF, based on targeted survey – consumer organisations Q.9 (n=12).

For consumers, the issues with the refund of pre-payments in light of ‘unavoidable and extraordinary circumstances’ remained the same, irrespective of the period under examination (before or after the outbreak of the COVID-19 pandemic). However, the magnitude of the issues changed significantly, with COVID-19 exacerbating existing challenges intrinsic to the effectiveness of the PTD⁴¹¹. Table 21 shows that travellers received a full refund within 14 days or at least within one month only ‘occasionally’ before COVID-19, and ‘rarely’ after the outbreak of COVID-19, suggesting that the refund timing laid down by Article 12(4) of the PTD was only partially effective in practice. The situation during the COVID-19 pandemic was confirmed by businesses, which noted that travellers received a full refund within 14 days or with a short delay only ‘to a small extent’⁴¹². Consumers also indicated that the refund right triggered by Article 12 of the PTD was never something they enjoyed automatically as, both before and after the outbreak of COVID-19, travellers ‘often’ received a refund only after filing a complaint, and ‘rarely’ without this procedure. There are indications that travellers did not receive any money, or received it with considerable delay, irrespective of the period under examination. These scenarios impacted the effectiveness of the PTD in achieving its objectives, according to the majority of NCAs (public authorities), which pointed out that travellers’ rights to a refund of pre-payments are not sufficiently protected in practice, in particular in the event of major crisis, and that this issue could be addressed through amendments to the PTD⁴¹³.

In principle, the limitation of pre-payments was discussed extensively throughout the study and will be analysed in-depth in the assessment of the POs and single policy measures. However, the suggestion of establishing rules on pre-payments led to a strong reaction amongst stakeholders, with 69% of respondents stating that they do not wish to see any limitations or prohibitions on pre-payments⁴¹⁴, which are deemed essential to the industry (80% of companies, 80% of business associations, 44% of EU citizens)⁴¹⁵.

⁴¹¹ Interview with a large EU-level consumer organisation.

⁴¹² Targeted survey – businesses Q.15: 64% (14/22) of respondents.

⁴¹³ Targeted survey – NCAs (insolvency) Q.26: when asked whether and how certain issues should be addressed, 62% (8/13) of respondents indicated that travellers’ rights to a refund of pre-payments are not sufficiently protected in practice, in particular in the event of major crisis and this issue could be addressed through amendments to the PTD. The same indication emerged from the targeted survey – NCAs (regulatory and enforcement) Q.32: 62% (16/26).

⁴¹⁴ Public consultation Q.22: 69% (341/496).

⁴¹⁵ Ibid., 80% (249/310) of companies, 80% (41/51) of business associations, 44% (30/68) of EU citizens (n=496). Most consumer organisations chose the answer option of setting a limit to pre-payments of max. 20% of the total price (71%, 15/21).

Legal uncertainties in the use of vouchers

In case of mass cancellations, service providers can struggle to meet their reimbursement obligations. In some cases, instead of cash payment, organisers issued vouchers to consumers, which is not regulated by the PTD. Consumers indicated a behavioural change in travellers' acceptance of vouchers between the period before COVID-19 and during the pandemic. In fact, while travellers 'rarely' accepted vouchers that were not compulsory under national provisions, even if they knew they were not legally obliged to accept them, prior to the COVID-19 pandemic⁴¹⁶, they 'often' accepted them during COVID-19⁴¹⁷. One large multi-service business organisation from the package travel sector explained that a large share of consumers accepted vouchers, especially where they did not need to get their money back immediately. The attractiveness of vouchers is crucial according to this stakeholder, as consumers tend to accept vouchers if they are sufficiently attractive, and do not accept them if they see a risk that the company will become bankrupt⁴¹⁸. One consumer organisation expressed a different view, pointing out that vouchers do not represent a good solution, especially given their expiration dates, as consumers may decide not to book another trip within that set timeframe⁴¹⁹. Nevertheless, there are indications that travellers were 'rarely' explicitly informed that they were not legally obliged to accept a voucher during COVID-19, according to most consumers⁴²⁰.

Issues with B2B refunds

The evaluation found that the effectiveness of the reimbursement of pre-payments due to 'unavoidable and extraordinary circumstances' under Article 12 of the PTD was significantly hindered by issues at B2B level. Procedural uncertainty about responsibility for the refunds, together with different actors in the value chain, made it difficult for the PTD to achieve its GO1, SO1, SO3 (businesses), and GO2, SO4, SO5 (consumers) (see section 2.3). These challenges determined that ACT5 was only partially effective in achieving OUT6.

Participants in the first workshop stressed the need to introduce rules on B2B refunds (e.g. to introduce clear deadlines for reimbursement between different actors across the value chain), which was also highlighted as beneficial in easing difficulties faced by consumers in receiving reimbursements⁴²¹. This was confirmed by the findings of the evaluation. In principle, the B2B confusion in the division of roles and responsibilities for the refund rights under Article 12 of the PTD represented a detriment for consumers' protection, as well as for ensuring a level playing field for businesses, impeding the effectiveness of the PTD in pursuing its stated objectives.

ii. Pre-payments by travellers are not sufficiently protected against organisers' insolvency

- ✓ The PTD aimed to address the problems identified by the 2013 impact assessment, namely (a) the fact that 'there seems to be significant differences in the level of consumer protection in the Member States'⁴²², and (b) the fact that 'different national rules regarding the obligation to provide insolvency protection have also resulted in a situation where some retailers or organisers who are trading cross-border had to pay several times for insolvency protection which already had been secured in

⁴¹⁶ Targeted survey – consumer organisations Q.9: 33% (4/) of respondents.

⁴¹⁷ Targeted survey – consumer organisations Q.9: 58% 7/12) of respondents.

⁴¹⁸ Interview with a multi-service pan-European business organisation from the package travel sector.

⁴¹⁹ Interview with a Norwegian consumer organisation.

⁴²⁰ Targeted survey – consumer organisations Q.9: 82% (9/12) of respondents.

⁴²¹ Minutes of the first workshop with businesses and consumer organisations.

⁴²² European Commission, *Impact assessment*, SWD(2013) 263 final, p. 83.

another Member State⁴²³ (see section 2.4.1, section 2.5.1). It introduced Article 17 (effectiveness and scope of insolvency protection), Article 18 (mutual recognition of insolvency protection and administrative cooperation), and Article 19 (insolvency protection and information requirements for LTAs). In this way, the current PTD pursued GO1, SO1, SO2, SO3 (businesses), and GO2, SO4 (consumers) by carrying out ACT6 and ACT7 towards the achievement of OUT8 and OUT9 (see section 2.3);

- ✓ In principle, the 2015 PTD provides additional descriptors to guide Member States in enhancing the effectiveness and robustness of their national insolvency protection systems based on the provisions set by the Directive, while still leaving them the discretion to implement insolvency protection schemes within their national systems. The fact that Member States decide the kind of insolvency protection systems to implement in their national contexts has naturally resulted in a landscape of diverse insolvency protection systems across the EU, with varied methods for providing the security of Article 17 (see section 2.4.3). The evaluation found that the main insolvency protection standards and types of insolvency protection systems vary significantly across the EU, resulting in a high degree of heterogeneity of national systems based on those standards (see section 2.4.3).

Consumer organisations indicated that the mechanisms for insolvency protection foreseen in the PTD guarantee a high level of consumer protection to only a certain extent⁴²⁴. While this view is shared by the NCAs (insolvency), they felt more positively overall⁴²⁵. When asked whether they consider travellers in some Member States to benefit from a higher level of protection than those in other Member States due to differences in the application of insolvency rules, most consumer organisations and NCAs (insolvency) 'agree' or 'tend to agree'⁴²⁶, to similar extents. A significant share of consumer organisations indicated that travellers are not sufficiently protected in some Member States⁴²⁷, with NCAs (insolvency) noting that travellers face problems because of the different insolvency protection rules applied⁴²⁸.

When asked in the public consultation whether, in their view, the insolvency protection standards for organisers (and, where applicable, retailers) are considerably lower in some Member States, most public authorities and businesses did not know⁴²⁹. By contrast, most consumer organisations replied yes, there are Member States with considerably lower insolvency protection standards than others⁴³⁰ (see section 2.5.1). There is at least a perception that differences in the insolvency protection schemes insufficiently protect travellers in some Member States⁴³¹. Some stakeholders provided concrete examples of different insolvency protection systems and related business practices that could hinder the effectiveness of the PTD. For instance, a Latvian national authority noted that, within the Baltic States, companies tend to register more in Latvia than in Estonia and Lithuania

⁴²³ Ibid.

⁴²⁴ Targeted survey – consumer organisations Q.15: 8% (1/12) 'tend to agree', 42% (5/12) 'tend to disagree', 33% (4/12) 'tend to disagree'.

⁴²⁵ Targeted survey – NCAs (insolvency) Q.16: 31% (4/13) 'tend to agree', 38% (5/13) 'tend to disagree'.

⁴²⁶ Targeted survey – consumer organisations Q.15: 58% (7/12) of respondents.

⁴²⁷ Targeted survey – consumer organisations Q.15: 33% (4/12) of respondents.

⁴²⁸ Targeted survey – NCAs (insolvency) Q.16: 38% (5/13) of respondents.

⁴²⁹ Public consultation Q.16: 64% (289/453) of respondents (including 67% (14/21) of public authorities, 71% (194/272) of companies, 43% (21/49) of business associations.

⁴³⁰ Public consultation Q.16: 28% (125/453) of respondents (including 67% (14/21) of consumer organisations).

⁴³¹ Public consultation Q.17: 28% (125/453) of respondents (including 86% (18/21) of consumer organisations).

because of lower insolvency protection requirements⁴³². While these analytical standpoints were identified throughout the desk research and, they represent theoretical scenarios only, with no evidence of these market dynamics in practice.

The targeted survey asked the NCAs (insolvency) to describe their experiences with reimbursements through the insolvency protection system in their EU/EEA country, including when large organisers or many organisers went bankrupt around the same time (i.e. measuring the effectiveness of Article 17(5) PTD, refund without undue delay). NCAs highlighted several timeliness indicators and factors that may impact the effectiveness of the reimbursements through the insolvency protection systems. One Member State authority pointed out that the speed of settlement depends mainly on the speed with which the insurance company/bank receives the necessary information to settle the claim, suggesting that information, rather than the volume of claims received, is the crucial factor⁴³³.

There are indications that certain EU/EEA countries lack experience of bankruptcies of large organisers⁴³⁴ and/or simultaneous bankruptcies of several organisers⁴³⁵, suggesting that it is still difficult for them to assess the effectiveness of their national systems in compliance with Article 17(5) of the PTD. One Member State declared that its insolvency protection system was only recently amended to comply with the PTD, thus there remained a lack of experience⁴³⁶. In relation to Article 17(5) of the PTD, consumer organisations declared that travellers 'often' faced problems when asking for reimbursement of payments for travel services that were not performed following the organiser's insolvency⁴³⁷.

- ✓ The fact that pre-payments by travellers are not sufficiently protected against the organiser's insolvency constitutes a problem for the PTD, as it hinders the possibility to achieve GO1, SO1, SO2, SO3 (businesses), and GO2, SO4 (consumers) (see section 2.3).

iii. Difficult implementation of the PTD in Member States

The evaluation found that certain aspects of the PTD were difficult to implement in the Member States, thus proving detrimental to the Directive pursuing its objectives. As anticipated in the description of the main drivers of this problem area, the following areas were particularly challenging:

- ✓ **Definitions.** The evaluation found several uncertainties in the interpretation and implementation of the main definitions of the PTD. In the case of 'package', Article 3(2) of the PTD worked effectively, despite certain divisive views among stakeholders (especially businesses and consumers) on the types of travel services that should constitute a 'package', with businesses advocating for the introduction of certain exemptions and consumers firmly opposing this. While the evaluation concluded that these views/policy perspectives are relevant to the implementation and interpretation of the PTD, they do not hinder the effectiveness of the definition of 'package'. In addition, the definition of LTA (Article 3(5) PTD) for both type (a) and

⁴³² Public consultation Q.17a: a national authority (LV).

⁴³³ Targeted survey – NCAs (insolvency) Q.3: 1/12 open text response (HU). Another respondent (EE) stressed that 'the refund of the payments is paid to consumers after the Consumer Protection and Technical Regulatory Authority has gathered the claims of travellers and checked the justifiability of timely submitted claims', suggesting that the timeliness of the refund depends on the speed to which the information is processed by the competent bodies.

⁴³⁴ Targeted survey – NCAs (insolvency) Q.3: 3/12 open text responses (AT, PT, SK).

⁴³⁵ Targeted survey – NCAs (insolvency) Q.3: 2/12 open text responses (SK, IS).

⁴³⁶ Targeted survey – NCAs (insolvency) Q.3: 2/12 open text responses (DE, IS).

⁴³⁷ Targeted survey – consumer organisations Q.17: 58% (7/12) selected 'often', 33% (4/12) 'rarely'.

(b) proved ineffective in achieving the PTD's objectives. Evidence indicated that LTA type (b) definition was less effective than LTA type (a). In the public consultation, the majority of respondents did not believe that the provisions on LTAs had improved protection for travellers or contributed to fair competition (67% LTA type (a); 70% LTA type(b)⁴³⁸;

- ✓ On the **justification for cancellation of a package travel contract** due to 'unavoidable and extraordinary circumstances', the situation has evolved significantly since the COVID-19 pandemic, as the justification for the termination of a package travel contract due to 'unavoidable and extraordinary circumstances' raised several controversies between travellers and organisers, according to most stakeholders from both business and consumer sides. Stakeholders pointed to several issues in triggering the refund rights under Article 12(3) of the PTD, with the notion of 'unavoidable and extraordinary circumstances' not accepted or problematically accepted as a justification for the cancellation of a package travel contract. Several catalysing aspects were raised by stakeholders (e.g. uncertainties of travel warnings, difficulties in outlining the boundaries of 'unavoidable and extraordinary circumstances' in light of the COVID-19 pandemic, travel restrictions and health-related measures such as quarantine obligations in the place of departure);
- ✓ **Refund of pre-payments for cancelled packages not being processed within the 14-day timeframe of the PTD** This was identified as a major issue by consumers and, to a lesser extent, by businesses. While, in principle, consumers highlighted that this issue constitutes a lack of enforcement of the PTD (which also occurred under normal circumstances⁴³⁹), businesses pointed out that respecting this timeframe was impossible during the COVID-19 pandemic, given the magnitude of refunds to be processed, as well as the associated liquidity problems.

The interplay of this problem and sub-problems with its drivers and the external factors act detrimentally to the PTD's pursuit of its objectives GO1, SO1, SO2, SO3 (businesses) and GO2, SO4, SO5 (consumers).

Consequences

Finally, **consequences** are the current and future effects of the problems acknowledged. The effects are distributed under consequences for consumers, businesses, and policy-making.

- ✓ Consumers: the problems identified could lead to the overall erosion of consumer protection in the EU, especially in certain key areas of the PTD (e.g. online package travel, combined travel services). Consumers may experience a financial loss, especially as a consequence of a major crisis, insolvency of organisers and lack of awareness of their rights within the context of the LTA market (e.g. the insolvency protection they should expect). The combined effect of consumer detriments stemming from PTD problems may lead to consumers losing confidence in the EU;
- ✓ Businesses: the problems identified may result in the distortion of competition within the internal market, especially if there is an erosion of the level playing field necessary to achieve the PTD's objectives;
- ✓ Policy-making: interplay of the consequences for consumers and businesses will be felt by policy-making.

⁴³⁸ Public consultation Q.26: 67% (269/403) for LTA type (a), 70% (276/397) for LTA type (b).

⁴³⁹ Minutes of the first workshop with businesses and consumer organisations; view expressed by a large EU-level consumer organisation.

3.3 The EU's right to act

The EU can only act in issues falling within its areas of competence. The current PTD laid down uniform rules in the field of travel packages and LTAs in the Union to give traders and travellers across the EU certainty about their rights and obligations, irrespective of the applicable national law. It also aimed to remove unnecessary costs for cross-border transactions and ensure more choice for consumers.

According to Article 114 of the TFEU, EU action can be taken for the purposes of the approximation of the legislation laid down in the Member States when its object is the establishment and functioning of the internal market. The measures based on this provision should contribute to the elimination of obstacles to the free movement of goods or services, or to the removal of distortions of competition. Thus, Article 114 of the TFEU may be used as the legal basis to prevent the occurrence of obstacles resulting from diverging national laws and approaches, and to address the legal uncertainties and gaps in existing legal frameworks applicable to the package travel sector.

Article 169(1) and Article 169(2)(a) of the TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 of the TFEU. In accordance with Article 26(2) and Article 49 of the TFEU, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The harmonisation of the rights and obligations arising from contracts relating to package travel and LTAs is necessary for the creation of a real consumer internal market, striking the right balance between a high level of consumer protection and competitiveness of businesses.

As shown in the evaluation findings, the initial objectives of the PTD are still relevant, although some of the needs remain unaddressed or insufficiently covered. These should be tackled, considering the share of packages in the tourism sector. Changes to the PTD need to consider the dynamic market environment of travel services, including increased digitalisation and the cross-border nature of package travel (see section 2.4.1), as well as the extent to which the Directive ensures a level playing field for stakeholders and compliance during times of crisis.

Problems related to the functioning of the internal market and the protection of consumer rights require European-level intervention. The objective of improving the functioning of the internal market by removing different interpretations of the PTD in Member State laws and guaranteeing a coherent and harmonised consumer protection, cannot be sufficiently achieved by Member States acting independently. Accordingly, the EU is best placed to address the identified problems in a coordinated manner. This is in line with the subsidiarity principle laid down in Article 5 of the TEU. The review of the Directive complies with the proportionality principle set out in Article 5 of the Treaty on European Union (TEU): it does not exceed what is necessary to achieve the objectives of the Treaties, as it covers only certain aspects of travel law, where action by the Union is considered necessary.

3.4 What should be achieved?

The general objective is to improve the functioning of the PTD by strengthening consumer protection measures, harmonising implementation mechanisms while protecting liquidity of businesses. The following objectives correspond to the identified problems and problem drivers:

- Strengthening the protection of travellers' pre-payments and travellers' right to a timely refund in the event of cancellations, bankruptcy and in times of a major crisis, while maintaining the liquidity of package organisers;

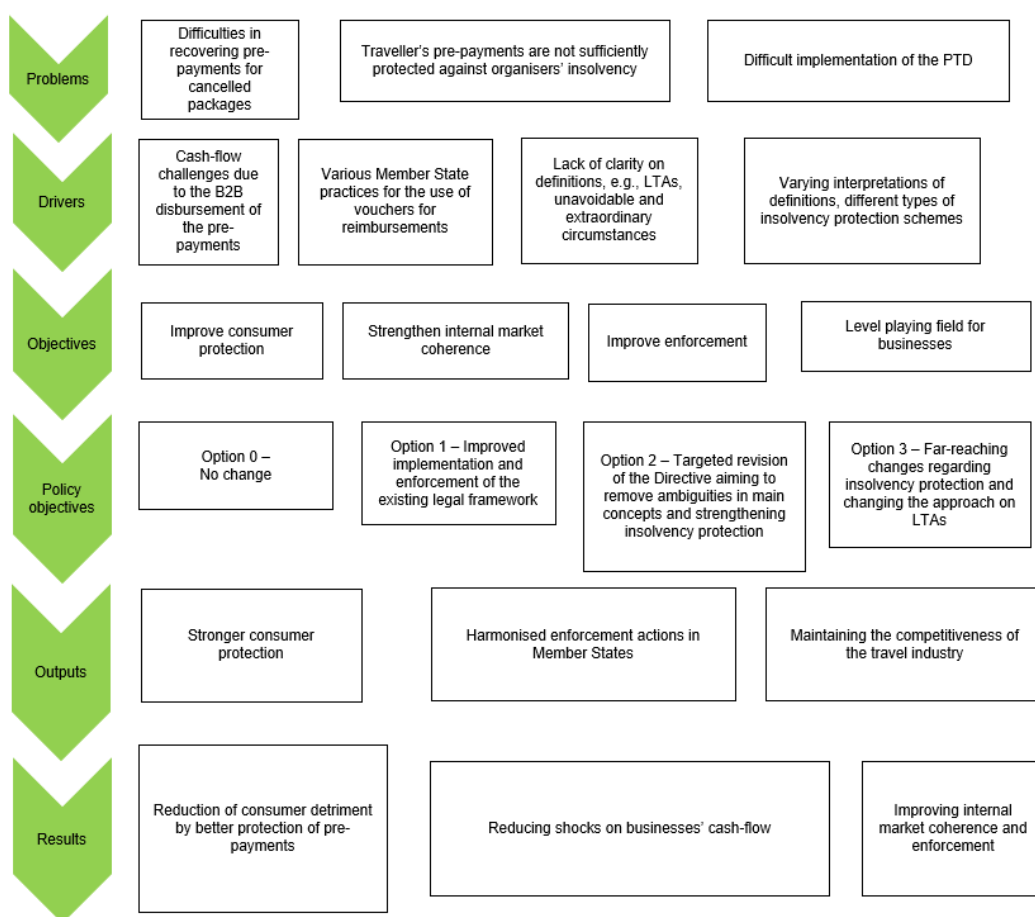
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- Strengthening the protection of travellers against organisers' insolvency, including in the event of a major crisis, thereby ensuring a level playing field in the internal market;
- Enhancing legal certainty by clarifying and/or simplifying certain provisions.

3.4.1 Intervention logic

The intervention logic presents the rationale for the policy change, clearly demonstrating the problems the policy change seeks to address and the actions it aims to take. It represents the causal relationship between the problems, needs, objectives, and inputs that drive the policy action and possible results in the form of outputs and results. The intervention logic was developed and refined through the evaluation activities (e.g., input from stakeholders and literature review).

Figure 3.1 Impact assessment intervention logic



3.5 Proposed POs

3.5.1 Overview of the proposed POs and measures

In addition to the analysis of a future scenario under which the status quo is maintained (PO 0), Table 3.1 summarises the proposed policy options to be assessed.

Table 3.1 Overview of proposed POs and measures

	Option 1: Improved implementation and enforcement of the existing legal framework	Option 2: Targeted revision of the Directive to remove ambiguities in main concepts and strengthen insolvency protection	Option 3: Major revision of the Directive, with far-reaching changes to insolvency protection and changing the approach on LTAs
Problem 1: Travellers face difficulties in recovering pre-payments for cancelled packages in the event of a major crisis (e.g., COVID-19 pandemic)	M 1.1 Clarifications on the role of different parties in the supply chain, but the legal obligation to refund pre-payments will stay with the organiser	M 2.1 Clarification on the role of different parties through changes in the information forms	M 3.1 Clarification of the role of different parties through changes in the information forms (same as PO 2)
	M 1.2 No limitation of pre-payments (as PO 0)	M 2.2 Limitation of pre-payments: partial (20% at booking, remainder four weeks before travel), with flexibility for the organiser to ask for higher prepayment if justified	<p>M 3.2 Limitation of pre-payments:</p> <p>-M 3.2.1 Partial (20% at booking, remainder four weeks before travel), without flexibility</p> <p>oM3.2.1 a) With corresponding limitation of pre-payment to service providers in the framework of a package</p> <p>oM3.2.1 b) no limitation to pre-payment to service providers</p> <p>-M 3.2.2 full (no pre-payment allowed)</p>

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			<p>oM3.2.2 a) With corresponding limitation of pre-payment to service providers</p> <p>oM3.2.1 b) no limitation of pre-payment to service providers</p> <p>-M 3.2.3 offering packages with and without pre-payment</p>
	M 1.3 No change in refund rights of organisers towards service providers (as PO 0)	M 2.3 Introduction of rules on B2B refund right within seven days after information on cancellation by the organiser; reasoning in line with APRR and to enable refund to traveller within 14 days for package organisers against service providers where a package has been cancelled due to unavoidable and extraordinary circumstances under the PTD, to enable organisers to make timely refunds to travellers, while maintaining their liquidity	M 3.3 Introduction of rules on B2B refund right within seven days after information on cancellation by the organiser] for package organisers against service providers, where a package has been cancelled due to unavoidable and extraordinary circumstances under the PTD, to enable organisers to make timely refunds to travellers, while maintaining their liquidity (as PO 2)
	M 1.4 Non-binding measures (e.g. recommendation) encouraging the setting up of crisis funds (rapid refund mechanism) at national level	<p>M 2.4 In relation to crisis fund (rapid refund mechanism):</p> <p>Non-binding measures (e.g. recommendation) encouraging the setting up of crisis funds at national level (as PO 1)</p>	<p>M 3.4 Legislative measures requiring the setting up of a mandatory rapid refund mechanism/crisis fund(s):</p> <p>-M 3.4.1 at national level</p> <p>-M 3.4.2 at EU level</p>

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	M 1.5 Non-binding measures (e.g. recommendation) on voluntary vouchers in non-crisis situations	<p>M 2.5 Rules on voluntary vouchers (possibility of issuing vouchers in lieu of a refund within 14 days would apply always and not be limited to crisis situations):</p> <ul style="list-style-type: none"> -explicitly accepted by travellers after receiving clear information on their refund right -at least the same value as cancelled packages -validity up to 12 months, may be extended once with the explicit agreement of both parties -automatic refund if not redeemed - travellers do not have to ask for refund -protected against the insolvency of the issuer (also applies to pending refund claims) -always possible 	<p>M 3.5 Rules on vouchers:</p> <p>-M 3.5.1 Voluntary vouchers (with same characteristics as under M 2.5) possible only in crisis situations</p>
Problem 2: Pre-payments by travellers are not sufficiently protected against organisers' insolvency	M 1.6 Clarification that there is no need to arrange insolvency protection where organisers do not receive money from travellers or where their insolvency would not expose payments from travellers to any risk	M 2.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested	M 3.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested (as PO 2)
	M 1.7 No additional specifications in relation to insolvency protection cover for vouchers and pending refund claims (as PO 0)	M 2.7 Vouchers and pending refund claims to be protected against insolvency	M 3.7 Vouchers and pending refund claims to be protected against insolvency (as PO 2)

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	<p>M 1.8 No further harmonisation of insolvency protection and no rules on insolvency back-up fund (as PO 0)</p>	<p>M 2.8 Further harmonisation through certain specifications on the effectiveness of insolvency protection</p> <p>-M 2.8.1 to be provided by national systems through criteria related to an exposure analysis based on pre-payment policy, core seasons, and supervision of organisers, etc. Back-up funds (to be funded by organisers) referred to (only) as one means to achieve effective protection</p> <p>-M 2.8.2 Based on a specific minimum percentage of the organiser's annual turnover to be covered by insolvency protection</p>	<p>M 3.8 Further specifications on the effectiveness of insolvency protection (as PO 2 – see changes there + addition of back-up fund – see below):</p> <p>-M 3.8.1 to be provided by national systems through criteria related to an exposure analysis based on pre-payment policy, core seasons, and supervision of organisers, etc. (i.e. M 2.8.1. +mandatory back-up funds to be funded by organisers at national level)</p> <p>-M 3.8.2 Based on a specific minimum percentage of the organiser's annual turnover to be covered by insolvency protection. Mandatory back-up fund at EU level</p>
<p>Problem 3: Difficult implementation of the PTD</p>	<p>M 1.9 Maintaining type A and type B LTAs without an adaptation of the definition of packages; + providing information on insolvency protection only where it exists plus changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours) under PO 2, without an adaptation of the definition of packages</p>	<p>M 2.9.1 Maintaining only type (a) LTAs (i.e. removing type (b) LTAs), with adaptations of the definition of click-through packages; changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours); providing information on insolvency protection only where it exists</p> <p>-M 2.9.2 Deleting both types of LTAs and adapting the definition of click-through package plus the definition of single point of sale package</p> <p>[travellers would benefit from a broader definition of package and less scope for circumvention – very significant simplification effect. However, less flexibility/or circumvention potential (of package travel rules) for businesses]</p>	<p>M 3.9 Same as PO 2</p>

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	M 1.10 Non-binding clarification on cancellation rights due to unavoidable and extraordinary circumstances and on the role of the different parties	M 2.10 Clarification in the PTD on cancellation rights due to unavoidable and extraordinary circumstances and on the roles of the different parties	M 3.10 Regulating the formal value of travel warnings
	M 1.11 Encouraging better enforcement of the PTD through soft-law or best practice exchanges	M 2.11 Encouraging better enforcement of the PTD through soft-law or best practice exchanges (as PO 1)	M 3.11 Encouraging better enforcement of the PTD through soft-law or best practice exchanges (as PO 1)
	M 1.12 No change to the current PTD provisions on penalties (as PO 0)	M 2.12 Inserting penalties of the Modernisation Directive into the PTD	M 3.12 Inserting penalties of the Modernisation Directive into the PTD (as PO 2)

3.5.2 POs or measures discarded

An option containing measures prohibiting any forms of pre-payments during the booking stage was considered but discarded after discussion with relevant stakeholders, as it would present a significant barrier to supply chain operations.

3.6 Assessment of the POs

This section discusses the expected impacts of each PO in terms of its effectiveness in addressing the problems and achieving the policy objectives, efficiency, and coherence. All impacts are assessed incrementally compared to a baseline scenario. The analysis in the baseline scenario, however, considers absolute impacts.

The **baseline scenario** is an extrapolation of what would happen in the event of a policy status quo for the next 10 years. It considers the economic, social, and other consequences for stakeholders, as described in the problem definition.

3.6.1 Approach to the impact assessment

This section assesses the four POs, including the baseline scenario (PO 0). It provides a partial quantitative assessment of the efficiency of the POs, with impacts monetised to the extent possible, based on the available evidence. It also contains a qualitative assessment for each of the POs, covering the following criteria:

- Effectiveness;
- Coherence with the overarching objectives of EU policy and consistency with the proportionality principle;
- Efficiency.

Scoring approaches

The options are qualitatively scored against the criteria of effectiveness, coherence, and efficiency, using the following scoring system:

Table 23. Scoring system

Level of impact	Score
Strong negative impact	--
Slight negative impact	-
No impact compared to baseline	0
Slight positive impact	+
Strong positive impact	++

The baseline (PO 0) is scored as '0' against all three criteria (effectiveness, coherence, and efficiency). All other POs are scored relative to this baseline, using the above scoring system. The options are also scored relative to one another, i.e. two or more options with a similar strength of impact against the same criterion are given a tied score.

The scores and the breakpoints are subjective but are, to the extent possible, grounded in the evidence from the consultation and desk research.

3.6.2 Quantitative analysis of the options

PO 0 is the baseline scenario. The costs associated with this option are therefore an estimate of current costs, assuming they remain constant for the next 10 years. The baseline costs estimated as part of this impact assessment are **not** the costs associated with the current legal framework, i.e. the current costs are taken as a given (0) in order to assess the additional costs of the various options.

The costs assessed for POs 1, 2 and 3 are incremental relative to the baseline (PO 0). These only estimate the additional costs associated with the implementation of each of the measures/actions required by each option, over and above the baseline situation, i.e. costs that would be incurred in any scenario. As such, **total** costs for each option are equal to the costs reported for PO 0 **plus** those reported for each other relevant option.

The study assesses the minimum costs of a number of cost items:

- European Commission (Eurostat):
 - One-off costs of amending the Directive;
 - Recurring costs for monitoring compliance and enforcement by Member States.
- Member States
 - Administrative costs of transposition, alignment of procedures, guidance and training, monitoring and reporting;
 - Monitoring costs;
 - Reporting to the EU.

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Some cost items and cost savings cannot be determined:

- Costs of adapting IT systems;
- Indirect cost savings due to improved policy-making as a result of the changed Directive.

An assessment of costs for the industry was not really possible, given the variables involved. This would be a substantial quantitative exercise, which is not possible within the scope of the study. Similarly, a qualification of benefits was possible, but not a quantification.

Table 24 presents a high-level overview of the approximate costs that can be determined (see Annex 6 for assumptions). These figures should be considered a broad estimate purely for the purposes of distinguishing the cost base for the various POs, without taking account of possible cost savings or benefits. The full explanations for the estimate of the costs are shown in the sub-sections on each PO.

Table 24. Overview of costs

Cost items	Type of costs	PO 0 (EUR)	PO 1 (EUR)	PO 2 (EUR)	PO 3 (EUR)
European Commission					
Amending the Directive/ transposition	One-off	0	-	29,700	40,500
Monitoring compliance	Recurring	0	2,250	4,500	6,750
Member States					
Adaptation and preparation for revised text of the PTD	One-off	0	-	49,677	74,516
Monitoring	Recurring	0	546,448	745,156	993,542
Reporting to the EU	Recurring	0	68,996	86,245	103,494
Totals		0	617,694	915,279	1,218,802

Source: ICF elaboration.

3.6.3 PO 0: baseline (status quo)

3.6.3.1 Overview

PO 0 is the baseline or the no-change scenario. No policy changes are implemented and the current PTD remains in place without modifications. This, however, does not mean that the industry would not undergo certain changes. Therefore, this option involves a dynamic baseline scenario relying on recent industrial trends in employment figures, revenue, and sales data, as well as digitisation.

3.6.3.2 Impact on stakeholders

Industry

Some 2.3 million enterprises are active in tourism in the EU, employing around 12.3 million people⁴⁴⁰. Of these, about 100,000⁴⁴¹ are tour operators, OTAs and off-line travel agencies⁴⁴². In 2015, there were 501,355 tourism accommodations (including hotels, other short-term accommodations and camping grounds) outside the collaborative economy in the EU. By 2019, this number had increased by 23%, to 617,953⁴⁴³. Growth slowed in the face of the pandemic and in 2021, there were 597,171 establishments in the EU-27, down 3% on 2019. In the absence of further travel restrictions, PO 0 estimates that previous dynamic tendencies will return, with the number of tourist establishments reaching 725,000 by 2026 (e.g. around 20% growth), while the number of tour operators and travel agencies reaches 120,000.

This would be reflected by a continuous rise in the number of incoming tourists. While travel came to an almost complete standstill in 2020, the number of incoming visitors increased slightly, to just over 300 million in 2021⁴⁴⁴. If numbers continue their pre-COVID trajectory, the number of EU visitors could return to around 700 million by 2023 and increase to over 800 million by 2026. An estimated 9%⁴⁴⁵ of EU travellers used package holidays in 2017 and that share remained unchanged in 2018⁴⁴⁶. However, following the COVID-19 crisis, both the overall number of trips and the share of package trips declined. In 2021, 879 million trips were taken by EU citizens⁴⁴⁷.

Under PO 0, the cost of complying with the PTD remains the same for the industry. Costs include awareness of PTD requirements, its implementation (administrative burden related to information provision, liability for the performance of the package, and assistance to travellers), and costs of insolvency protection (see Table 25).

⁴⁴⁰ Eurostat, *Tourism statistics*, 2021, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tourism_statistics#:~:text=65%25%20of%20EU%20residents%20made%20at%20least%20one%20personal%20trip,personal%20purposes%20during%20the%20year

⁴⁴¹ 12% increase from 2016-2019, then a 10% decrease by 2020 as a result of COVID-19.

⁴⁴² Data from Eurostat annual detailed enterprise statistics for services (NACE Rev. 2 H-N and S95), https://ec.europa.eu/eurostat/databrowser/view/SBS_NA_1A_SE_R2__custom_4137612/default/table?lang=en

⁴⁴³ Eurostat, 2022, Number of establishments, bedrooms and bed-places, online data code: TOUR_CAP_NAT,

https://ec.europa.eu/eurostat/databrowser/view/tour_cap_nat/default/table?lang=en

⁴⁴⁴ Statista, *Travel and tourism in Europe - statistics & facts*, 2022,

https://www.statista.com/topics/3848/travel-and-tourism-in-europe/#topicHeader__wrapper

⁴⁴⁵ European Commission, *Report on the application of the PTD*, COM(2021) 90 final; data on the share of package travels sourced from: All tourism trips in 2017: around 1.1 billion; total expenditure during those trips was around EUR 444 billion ESTAT, 2017 data, Number of trips by type of organisation (from 2014 onwards) [TOUR_DEM_TTORG__custom_410560] ; Expenditure by type of organisation (from 2014 onwards) [TOUR_DEM_EXORG__custom_410607].

⁴⁴⁶ Eurostat SBS, Tourism, Trips by trip arrangement, TOUR_DEM_TTORG, https://ec.europa.eu/eurostat/databrowser/view/TOUR_DEM_TTORG__custom_4567118/default/table?lang=en

⁴⁴⁷ Eurostat SBS, Package trips by duration, purpose and main destination, TOUR_DEM_TTPW, https://ec.europa.eu/eurostat/databrowser/view/TOUR_DEM_TTPW__custom_4567258/default/table?lang=en

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Table 25. Costs categories for the industry

Provisions	High	Moderate	Low
Information requirements	25% (4/16)	44% (7/16)	31% (5/16)
Liability for the performance of the package, including compensation for improper performance and alternative arrangements	57% (8/14)	29% (4/14)	14% (2/14)
Insolvency protection	50% (7/14)	43% (6/14)	7% (1/14)
Assistance to travellers	27% (4/15)	40% (6/15)	33% (5/15)

Source: Targeted survey - business associations, Q.48.

The evaluation showed that as a result of provisions in the current PTD, industry encountered moderate to high costs..

Information requirements

The 2013 impact assessment emphasised that the evolution in the package travel market had made provisions in the 1990 PTD outdated and unclear, with associated unnecessary and unjustified costs⁴⁴⁸ (e.g. reprinting brochures had become unnecessary). In 2015, the PTD introduced standard information forms to be provided to consumers. This could potentially create burden for business: 44% of business survey respondents stated that compliance was moderately costly/burdensome for their organisations/members, while 25% indicated it was highly costly. This baseline situation is likely to continue in the coming years.

. One leading French business association reported that members faced administrative burdens in adapting travel contracts to PTD requirements. They also claimed that contracts became lengthy and more difficult for consumers to understand as a result and may even have caused loss of business⁴⁴⁹. They mentioned the administrative burden (time and resources) associated with providing customers with 'approximate' flight times. According to one Italian business association, operators have six distinct standard information forms to provide to consumers, increasing the costs related to information requirements (including staff training to ensure that these forms are used correctly)⁴⁵⁰.

Other cost categories related to the implementation of the PTD are liability for the performance of the package, including compensation for improper performance and alternative arrangements, which was considered highly or moderately costly by 86% (12/14) of respondents, and assistance to travellers, which was also rated as highly or moderately costly by 67% (10/15) of respondents.

Information provision is accepted as part of doing business and its costs are often considered insignificant compared to the costs of insolvency protection and liability for the performance of the package. Businesses and associations responding to the targeted

⁴⁴⁸ European Commission, *Impact Assessment*, SWD(2013) 263 final, p. 15.

⁴⁴⁹ Interview with business association.

⁴⁵⁰ Interview with business association.

survey identified an information cost per package of EUR 9.2⁴⁵¹. Only one stakeholder quantified the costs for liability of the performance of the package, including compensation for improper performance, and identified EUR 25⁴⁵² per package cost for businesses. Assistance to travellers had an estimated cost of EUR 65.2 per package, on average⁴⁵³.

In order to achieve and maintain compliance with the PTD, businesses identified additional cost factors arising from the hiring of new staff (29%, 4/14 respondents), staff training (79%, 11/14 respondents), and the purchase of information technology (IT) equipment (57%, 8/14 respondents)⁴⁵⁴. These reflect the adaptations necessary to work within PTD requirements. Although exact figures were not provided, in the absence of regulatory changes, these costs are expected to continue to slightly rise for both SMEs and large companies. One leading operator in Belgium stated that the cost of achieving and maintaining compliance, although difficult to specify in detail, is non-negligible. This included staff costs related to identifying whether a specific product should be classed as an LTA or a package, additional administration in creating separate purchase orders for services sold under LTAs, and approx. EUR 9,000 per year in staff training to comply with rules on insurance⁴⁵⁵. However, they stated that these costs were necessary and not financially damaging.

Costs of insolvency protection

The conditions of insolvency protection, including costs, vary significantly between Member States. The minimum required insurance contributions can be linked to percentage of turnover or a fixed amount, which can range annually from EUR 2,500 to EUR 250,000⁴⁵⁶. Some EU countries have put in place insolvency protection funds, while others rely on insurance policies, bank guarantees, etc. In the absence of changes to the current diverse system of insolvency protection, businesses would continue to face costs related to their differing levels of minimum cover and premium payments.

Reported insurance costs for businesses to cover insolvency protection, as a percentage of annual turnover are 0.1-1.1% in Italy⁴⁵⁷, 0.023% in Belgium⁴⁵⁸, and 0.06-0.26% in France⁴⁵⁹. Although unable to provide specific figures, one leading business association noted that many of its members face rising insurance costs for coverage of insolvency protection⁴⁶⁰. Some businesses stated that the volume of their insurance costs as a percentage of turnover is determined by the structure of the insurance market in their home country, for example in Belgium, only two companies offer this kind of insurance⁴⁶¹.

No data are available to estimate the cost differences for the whole of the package travel sector in different countries. However, maintaining the current discrepancies between the

⁴⁵¹ Targeted survey - industry associations, Q.49. EUR 9.2 is the mean value of the sums indicated by 5 industry associations providing their inputs on Q.49. The small number of respondents, however, caveats this finding.

⁴⁵² Interview with businesses.

⁴⁵³ Targeted survey - industry associations, Q.52. Estimate based on 5 respondents to Q.52 providing an answer to this question. The small number of respondents, however, caveats this finding.

⁴⁵⁴ Targeted survey - industry associations, Q.53.

⁴⁵⁵ Interview with businesses.

⁴⁵⁶ Data from insolvency protection comparative analysis (see Annex 6).

⁴⁵⁷ Interview with business association.

⁴⁵⁸ Interview with businesses.

⁴⁵⁹ Interview with business association.

⁴⁶⁰ Interview with business association.

⁴⁶¹ Interview with businesses.

insolvency protection payments may cause fragmentations in the internal market, particularly related to the competitiveness of businesses in the sector⁴⁶².

The costs for coverage of insolvency protection will be necessary to maintain the high level of protection granted by the Directive and required by the Treaty, unless efficiency is improved.

Benefits

When asked about the overall benefits of the PTD, 73% (16/22) of companies responding to the targeted survey were positive⁴⁶³. The adaptation of the PTD to new market trends has benefitted businesses by making them more competitive and ensuring a level playing field (see section 2.3). Other benefits arise from further harmonisation of the rules and reduced fragmentation in the internal market. This increases clarity and understanding of provisions, completed travel, and completed payments (or refunds and compensation avoided).

Consumers

Costs

In the absence of changes to the PTD, difficulties around pre-payments are expected to continue, particularly in relation to cancellations resulting from major crises. This could mean continued consumer detriment from delays in receiving refunds of pre-payments after cancellations due to crisis and potential loss of pre-payments if organisers become insolvent. Consumers experienced significant detriment related to delays in refunds of pre-payments, with 100% (12/12) of consumer organisations reporting that travellers 'rarely received a full refund within 14 days or with a short delay (within one month)', and 91% (10/11) stating that consumers 'often received their money only with considerable delay'⁴⁶⁴. This was corroborated by NCAs (regulatory and enforcement), with 74% reporting that refunds of pre-payments were not provided within 14 days 'to a large extent' and raised disputes between travellers and organisers⁴⁶⁵.

In 2017, annual consumer expenditure for package travel was estimated to reach EUR 58 billion (EUR 762 per trip) within the EU and EUR 36 billion (EUR 1,756 per trip) for the rest of the world⁴⁶⁶. This corresponds to around 76.1 million trips within the EU and 20.5 million trips to countries outside of the EU. Based on the 2021 report, 11% of consumers experienced problems with the services they purchased, or with operators, that gave them legitimate reason to complain. Of this group, 40% experienced financial loss while 79% experienced non-financial impacts such as loss of time, anger, frustration, stress or anxiety.

⁴⁶² Public consultation Q.16a: a business association – transport sector (BE), a business association (BE), and an EU citizen (ES); BEUC, *The Package Travel Directive. BEUC's Position on how to regain consumers' trust in the tourism sector*, 2021, p. 13, https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf

⁴⁶³ Targeted survey – industry associations, Q.56.

⁴⁶⁴ Targeted survey - consumer organisations, Q.10.

⁴⁶⁵ Targeted survey - NCAs (regulatory and enforcement), Q.1.

⁴⁶⁶ European Commission (2021): Report on package travel and linked travel arrangements https://www.etoa.org/wp-content/uploads/2021/03/COM-2021-90-final_EN-1.pdf <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A90%3AFIN>

⁴⁶⁷. It is unlikely that consumer losses would have amounted to the total value of the trips, however: using an estimate of between 10-30%⁴⁶⁸, the losses could range from EUR 540 million to EUR 1.6 billion.

Just over half (62%) of those who experienced financial loss filed a complaint. Just under half (42%)⁴⁶⁹ of complainants were unsatisfied with the resolution of their complaints, i.e., around 1.12% of all package travel users were dissatisfied, equating to some one million trips, with an estimated value of EUR 1,260 billion and a potential loss of 10-30% (EUR 126 million to EUR 378 million) of their value. Based on the number of people experiencing unsatisfactory service and those who actually filed a complaint, associated costs could range from EUR 126 million to EUR 1.6 billion.

Benefits

Overall, 91% (10/11) of consumer organisations stated that the current PTD has provided benefits⁴⁷⁰, particularly for consumer protection. The PTD provides protection for consumers (notably against cancellations) beyond what could realistically be implemented by the Member States individually. A Commission behavioural study concluded that the PTD ‘helps reduce damages to consumers by about €430 million a year [...] and form[s] the backbone of consumer protection and rights across the European Member States ensuring transparency and high levels of consumer protection. Namely, the Travel Package Directive ensures better protection of consumer rights on all platforms, in line with the evolving digital travel market’⁴⁷¹. NCAs (regulatory and enforcement) stated that the PTD has been effective in ensuring consumer protection, either to a great extent (37%, 10/27) or to some extent (52%, 14/27)⁴⁷². When interviewed, they highlighted the importance of the transparency of rules introduced in the PTD in terms of information provision to consumers, as well as extending insolvency protection to LTAs⁴⁷³.

Member State authorities

Costs

⁴⁶⁷ European Commission (2021): Report on package travel and linked travel arrangements https://www.etoa.org/wp-content/uploads/2021/03/COM-2021-90-final_EN-1.pdf <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A90%3AFIN>, p. 3.

⁴⁶⁸ The average price of an intra-EU flight is around 90 EUR per passenger (<https://www.statista.com/statistics/1125265/average-ticket-price-selected-airlines-europe/>), and long-haul price is 350 EUR per passenger (<https://media.hopper.com/research/consumer-airfare-index-report-march-2022>) which, in case of cancellation or delays would make up 12% of average intra-EU and 20% of international package travel price. Noting that the quoted airfares concern individually purchased tickets, it is assumed that airfares included in package trips may be more economical. Moreover, for the calculation of consumer losses both flights (outgoing and return) would not necessarily be impacted. In terms of consumer losses related to accommodation services, an average hotel price per night in the EU between 100-200 EUR is considered. Consequently, losses resulting from unsatisfactory accommodation can impact 13-26% of package travel prices. Similarly to airfare however, we estimate that accommodation prices be sold at a discount for package trips and consider that not the entirety of costs may be linked to consumer losses.

⁴⁶⁹ European Commission (2021): Report on package travel and linked travel arrangements <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A90%3AFIN>

⁴⁷⁰ Q41 of the targeted survey

⁴⁷¹ European Commission, Behavioural study [...], p 10.

⁴⁷² Targeted survey for NCAs (regulatory and enforcement) Q.20: to a great extent (37%, 10/27), to a small extent (52%, 14/27), to a small extent (11%, 3/27).

⁴⁷³ The level of insolvency protection on LTAs and its benefit to consumers should be viewed in the context of existing problems with the definition of LTAs and whether or not products are indeed considered LTAs (see section 3.10 and Annex 4).

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF
THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT
ASSESSMENT ON ITS POTENTIAL REVISION

NCAAs responding to the targeted survey identified the main cost categories as enforcement, cost of transposition, staff training, equipment purchase and other costs. Table 26 summarises the median data on costs, based on the data provided. NCAAs working with enforcement of the PTD and those working on insolvency protection were consulted separately and the table highlights the differences in costs, where relevant.

Table 26 Average combined recurring and one-off costs for Member State authorities under PO 0

Cost categories	Type of cost	Combined costs for enforcement authorities (EUR)	Combined costs for insolvency protection authorities (EUR)
Enforcement	Recurring	116,000	N/A
Transposition	One-off	97,000	5,500
Staff training	One-off	27,000	925
Equipment purchase	One-off	34,000	N/A
Other costs	One-off	25,000	300 million ⁴⁷⁴

Source: Targeted surveys; data reflect median average of the reported amounts.

Apart from equipment purchase, personnel costs are the main element in the remaining category (here labelled as 'other costs'). Under the category of other costs, regulatory and enforcement bodies monetised the times employees spent on guidance to consumers, internal consultation, explanation of the norms, EU requests, and contact points.

NCAAs also identified ongoing challenges in the implementation of the PTD. These included the lack of an effective IT system in one country which required time spent manually managing the monitoring data, as well as implementation of specific provisions such as Article 17 (on establishing an efficient insolvency protection system) and the enforcement of the 14-day time limit for reimbursement of cancelled packages during the COVID-19 crisis.

Insolvency protection agencies noted the high costs of man-days in relation to the provisions on full refund of payments in case of insolvency.

Benefits

NCAAs (enforcement) identified improved collaboration between NCAAs and other public authorities, as well as improved assistance to consumers, as particular benefits. Consumer benefits were highlighted, particularly the protection against insolvency, cancellation and refund rights, and the right to pre-contractual and contractual information.

In terms of the internal market, Member State authorities found that the PTD improved harmonisation, enhanced transparency and strengthened legal certainty for travellers and traders, including in cross-border transactions.

The perception of benefits varied between insolvency protection agencies. While some acknowledged the benefits of improved consumer choice, others pointed to room for improvement in cooperation with other NCAAs. In Denmark, it was noted that the PTD did not deliver additional improvements to the insolvency protection system in place, but did extend the protection to LTAs, click-through packages and some organisers outside the EU/EEA, despite there being no insolvency cases in those fields.

⁴⁷⁴ One respondent to the targeted survey for NCAAs (insolvency) Q.18.

3.6.4 Option 1: Improved implementation and enforcement of the existing legal framework

3.6.4.1 Impact on stakeholders

Industry

M 1.1 Clarifications (non-binding) on the role of different parties in the supply chain, but the legal obligation to refund pre-payments will stay with the organiser

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

Clarifications on the roles of the different parties on the refund of pre-payments could potentially have a positive impact for businesses, helping them to better understand their obligations and be more prepared for disputes. Clarifications could also increase harmonisation in the internal market by clearly defining the role of different stakeholders, potentially contributing to strengthened internal market coherence (GO2) and ensuring a level playing field for businesses (GO4). However, clarifications aside, the measure does not bring any novelty to the current pre-payment refund mechanism under the PTD, and its implementation would largely keep the status quo in relation to achieving GO2 and GO4. The main challenges related to the refund of pre-payments identified during the consultation would remain.

M 1.2 No limitation of prepayments (as PO 0)

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

Under this measure, current rules on pre-payments would be maintained. M 1.2 entails no additional costs for businesses, as it would keep the status quo and bring no changes in respect of achieving GO2 and GO4. M 1.2 would ensure that businesses can maintain their liquidity and that travel service providers are paid on time. It is also in line with some stakeholders' requests not to limit pre-payments, given that this model constitutes a structural characteristic of the travel market⁴⁷⁵.

M 1.3 No change in refund rights of organisers towards service providers (as PO 0)

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

M 1.3 keeps the current practices in relation to B2B refunds. The measure would substantially keep the status quo, i.e. not entailing additional costs for businesses, nor overcoming the limits of the current B2B refund systems identified in the evaluation. As described under M 1.1, representatives of package organisers emphasised that the current

⁴⁷⁵ Interview with business association representing the airline sector; interview with business association representing the reception sector; interview with business association representing package organisers; first and second workshops with businesses and consumer representatives.

rules impose an excessive burden, which is exacerbated in crisis circumstances. Indeed, it clearly emerged during the COVID-19 pandemic that efficient B2B reimbursement is essential for timely traveller refunds.

Keeping the status quo appears to be largely opposed by the business stakeholders responding to the targeted survey, who emphasised that they would agree to a new EU rule that requires service providers to reimburse organisers where the cancellation is justified under the PTD, within a specific time limit⁴⁷⁶.

M 1.4 Non-binding measures (e.g. recommendation) encouraging the setting up of crisis funds at national level

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+/-	+/-

The objective of the proposed national crisis fund would be to ensure timely refunds to travellers during a liquidity crisis (particularly travellers who do not accept a voucher). This would serve as a rapid refund mechanism, built from contributions by organisers.

Compliance with the recommendation foreseen by this measure could introduce an additional cost category for business that currently operate in Member States without national crisis funds⁴⁷⁷. SMEs tend to have fewer resources to absorb operational or compliance cost increases, meaning they may be disproportionately negatively affected.

Businesses raised concerns about the efficiency of the proposed measure due to the lack of clarity on its functioning, how such a fund could be activated, and the possibility that the interpretation of what could be considered a crisis could generate disputes across the value chain⁴⁷⁸. One stakeholder pointed out that the need for a permanent crisis fund would be lower if voluntary vouchers were protected by insolvency protection⁴⁷⁹.

In terms of social benefits, the crisis fund could provide a safety net for consumers and protect the reputation of businesses, which could help to maintain demand for package holidays. Reducing the risk of consumer mistrust would benefit all businesses.

The fund could also reduce financial burden on businesses during liquidity crisis. This could be particularly beneficial for SMEs with limited financial resources and help to prevent bankruptcy or insolvency.

Overall, the impact of the crisis fund would likely be influenced by a variety of exogenous factors, including the size and financial health of the companies, the competitiveness of the market, and the level of demand for package holidays. The extent to which the measure could contribute to effective internal market coherence (GO2) and a level playing field for businesses (GO4) would largely depend on how and to what extent Member States decide to set up and implement such funds. The impact could potentially be positive in case of harmonisation of the fund implementation in Member States. On the other hand, the impact could have negative effects if, given the non-legally binding nature of the recommendation, Member States put in place a scattered system of crisis funds.

⁴⁷⁶ Targeted survey – businesses Q.22: 65% (15/23) agree, 26% (6/23) disagree, 9% (2/23) don't know.

⁴⁷⁷ Currently the case for the large majority of Member States.

⁴⁷⁸ First and second workshops with businesses and consumer representatives in October 2022 and December 2022.

⁴⁷⁹ Ibid.

M 1.5 Non-binding measures (e.g. recommendation) on voluntary vouchers in crisis and non-crisis situations

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

Vouchers were frequently offered as a means of reimbursing travellers during COVID-19⁴⁸⁰. This was because organisers did not receive timely cash refunds from service providers, and given the high level of cancellations, lacked liquidity to reimburse travellers. According to the majority of the respondents to the business survey, before the pandemic, organisers rarely offered vouchers in lieu of a cash refund⁴⁸¹. This was confirmed by consumer organisations⁴⁸². One Member State authority explained that before the pandemic, vouchers were issued on the basis of contractual agreements between the trader and the traveller⁴⁸³.

Issuing a recommendation on the use of voluntary vouchers could add clarity to the current system beyond the guidelines published by the European Commission on 13 May 2020⁴⁸⁴. Business stakeholders⁴⁸⁵ see these clarifications as necessary, but some others emphasised that a recommendation would not be sufficient to guarantee further harmonisation on vouchers, given its non-legally binding nature⁴⁸⁶. It could potentially leave space to Member States to apply different voucher policies and would not respond to the need to streamline the PTD rules on vouchers with those in the APRR⁴⁸⁷.

Overall, the measure would largely keep the status quo in relation to the possibility of ensuring stronger coherence in the internal market (GO2) and a level playing field for businesses (GO4), particularly as a consequence of its non-legally binding nature.

M 1.6 Clarification that there is no need to arrange insolvency protection where organisers do not receive money from travellers or where their insolvency would not expose payments from travellers to any risk

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=/-	=/-

The majority of business stakeholders responding to the targeted survey disagreed that the PTD should specify that organisers that do not receive pre-payments and do not offer transport are not obliged to take out insolvency protection⁴⁸⁸. Although a different aspect, a

⁴⁸⁰ Targeted survey – businesses, Q.16.2: 72% (18/25) organisers frequently offered vouchers, 4% (1/25) rarely offered vouchers, 0% (0/25) never offered vouchers, 24% (6/25) don't know.

⁴⁸¹ Targeted survey – businesses Q.16.1: 20% (5/25) of organisers frequently offered vouchers, 44% (11/25) rarely offered vouchers, 12% (3/25) never offered vouchers, 24% (6/25) don't know.

⁴⁸² Interview with consumer organisation.

⁴⁸³ Interview with NCA.

⁴⁸⁴ European 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H0648>

⁴⁸⁵ First workshop with businesses and consumer representatives, October 2022.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Targeted survey – businesses Q.31.4: 32% (7/22) agree, 45% (10/22) disagree, 23% (5/22) don't know.

large majority of respondents noted that offering pre-payment and non-prepayment packages for each trip would impose significant additional costs on the industry⁴⁸⁹.

A benefit of this measure could be a reduction in regulatory burden and costs associated with insolvency protection for organisers that do not receive a pre-payment. This could be particularly beneficial for SMEs with limited financial resources.

M 1.7 No additional specifications in relation to insolvency protection cover for vouchers and pending refund claims (as PO 0)

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

Under this measure, no changes would be made to the scope of insolvency protection and the current rules would remain in place. Consequently, vouchers issued for travellers following cancellations may not be protected in case of insolvency of the organiser or travel service provider. This measure assumes no additional costs or benefits for businesses.

M 1.8 No further harmonisation of insolvency protection and no rules on insolvency back-up fund (as PO 0)

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

No additional costs or benefits are foreseen under this measure, which would maintain the status quo in respect of the variety and type of insolvency protection available in Member States. The main challenges identified in relation to the effectiveness and efficiency of the insolvency protection schemes would remain.

M 1.9 Maintaining type A and type B LTAs without an adaptation of the definition of packages; providing information on insolvency protection only where it exists plus changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours)

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

This measure proposes maintaining both types of LTAs, as per the current PTD, with no changes to their definitions. The same challenges in relation to the application and enforcement of LTAs would thus persist, with no change to the achievement of GO2 and GO4.

The consultation collected extensive evidence on the difficulty in understanding, applying and enforcing the concept of LTA. The majority of the businesses and associations responding to the targeted survey identified the need to amend the current PTD by clarifying certain provisions linked to the definition of LTAs, particularly their delineation from packages and standalone services⁴⁹⁰. It is reasonable to assume that this measure would not find support among stakeholders.

⁴⁸⁹ Targeted survey – businesses Q.41.5: 64% (16/20) true, 5% (1/20) not true, 15% (3/20) don't know.

⁴⁹⁰ Targeted survey – businesses Q.57.3: 68% (3/19) issue does not require action, 5% (1/19) issue can best be tackled by better enforcement, 16% (3/19) issue can best be addressed through

While stakeholders were not able to quantify current costs of the lack of clarity, information on insolvency protection (where it exists) and specifying the number of hours within single visits is expected to improve the clarity of information towards customers and lead to increased awareness of the obligations of businesses. On changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours) under PO 1, thus without a legislative change, this could be achieved by providing further guidance on the application of this notion in practice.

M 1.10 Non-binding clarification on cancellation rights due to unavoidable and extraordinary circumstances and on the role of the different parties

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=/+	=/+

Based on the responses to the targeted survey, during the COVID-19 crisis, disputes between travellers and organisers frequently related to whether the situation qualified as 'unavoidable and extraordinary circumstances'⁴⁹¹. The need for clarification on the cancellation rights due to unavoidable and extraordinary circumstances, and on what constitutes 'unavoidable and extraordinary circumstances', were echoed by different stakeholders⁴⁹².

Given the non-legally binding nature of the clarification, the impact of this measure would vary, depending on its actual implementation by Member States. However, it could potentially bring greater clarity, reducing disputes between travellers and organisers, and offering cost savings (administrative burden, legal fees) for businesses. If adopted by the majority of the industry, these clarifications could support the development of industry standards for cancellation policies, which could be beneficial for SMEs without the resources to develop their own policies. This could ensure coherence (GO2) and also help to level the playing field and promote competition based on the quality of services offered (GO4).

The non-binding nature of the measure means that current fragmentations and different interpretations would remain. No monetisation of current or expected future cost savings was provided by stakeholders or the literature.

M 1.11 Encouraging better enforcement of the PTD through soft-law (e.g. guidelines or recommendations) or best practice exchanges

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=/+	=/+

While the measure focuses on NCAs, it could have indirect benefits for businesses via a more harmonised European approach. It could provide more clarity and certainty for businesses engaged in cross-border or intra-EU operations on issues such as travel advice. Soft-law measures such as guidelines or recommendations could help to provide transparency for package travel businesses in respect of their obligations under the Directive. This could be particularly beneficial for SMEs without the resources to keep up with changing regulations and reporting requirements.

a clarification through guidance documents, 63% (12/19) issue can best be addressed through amendments to the PTD.

⁴⁹¹ Targeted survey – businesses Q.12.2.1: 55% (11/20) to a large extent, 15% (3/20) to a moderate extent, 20% (4/20) to a small extent, 10% (2/20) don't know.

⁴⁹² First and second workshops with businesses and consumer representatives in October 2022 and December 2022.

M 1.12 No change to the current PTD provisions on penalties (PO 0)

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

This measure would maintain the status quo without aligning the punitive measures for consumer rights infringements with other relevant EU policies. While this measure would not introduce additional direct costs for businesses, it could negatively impact the cohesion of the internal market (GO2) and fair competition (GO4).

Consumers

M 1.1 Clarifications on the role of different parties in the supply chain, but the legal obligation to refund pre-payments will stay with the organiser

GO1 – Improve consumer protection
=/+

Clarifications could help consumers to better understand their rights and obligations, enabling more informed decisions and better preparation for disputes. Consumers would also be more aware of who to approach for a refund in case of cancellation. Stakeholders from consumer organisations emphasised that consumers often do not understand or know the liable trader to whom they should direct their refund request⁴⁹³.

The clarifications would also promote consistency in interpretation and implementation across the Member States. There is no indication that this would increase costs. The measure thus appears to contribute positively to improving consumer protection (GO1).

M 1.2 No limitation of prepayments (as PO 0)

GO1 – Improve consumer protection
=

While this measure maintains the status quo and does not introduce new costs for consumers/travellers, it could contribute to ongoing consumer detriment arising from delayed reimbursements after cancellations. According to some consumer organisations, there is a need to find ways to limit pre-payments⁴⁹⁴, noting that the current model imposes an excessive burden on consumers, who are asked to pre-pay for packages far in advance and fully⁴⁹⁵. This creates excessive financial exposure for consumers, as became evident during the COVID-19 pandemic.

M 1.3 No change in refund rights of organisers towards service providers (as PO 0)

GO1 – Improve consumer protection
=

This measure would continue current B2B practices, with no time limits for the reimbursement of payments between travel service providers and organisers. This measure

⁴⁹³ Interview with consumer organisation; first and second workshops with businesses and consumer representatives in October 2022 and December 2022.

⁴⁹⁴ One consumer organisation suggested the use of escrow accounts.

⁴⁹⁵ First workshop with businesses and consumer representatives, October 2022.

is not expected to introduce new costs for consumers, but, in conjunction with M 1.2, could contribute to maintaining the current level of consumer detriment arising from delayed reimbursements of pre-payments, rather than improving consumer protection (GO1).

M 1.4 Non-binding measures (e.g. recommendation) encouraging the setting up of crisis funds at national level

GO1 – Improve consumer protection

+

The majority of the consumer organisations responding to the targeted survey would support the setting up of a crisis fund – at the national level –.⁴⁹⁶ Positions on the setting up of such a fund at the EU level are instead more split.⁴⁹⁷ This difference was explained by one stakeholder who shared that, while consumer organisations would support the setting up of a crisis fund at the EU level, the mechanisms for its development, implementation and use would perhaps be too complicated, therefore making the national fund a more feasible solution.⁴⁹⁸

The impact of the measure would depend on decisions at national level, but the proposed voluntary scheme has potential benefits by informing consumers and increasing the options for strengthening protection of their payments. This could benefit consumer protection (GO1), although organisers could also – partially – pass on to consumers the costs the costs required to finance the fund.

M 1.5 Non-binding measures (e.g. recommendation) on voluntary vouchers in non-crisis situations

GO1 – Improve consumer protection

+/-

Limited information was provided by consumer organisations on the share of consumers who voluntarily accept vouchers in non-crisis situations⁴⁹⁹. However, one consumer organisation shared that the issuing and acceptance of vouchers was not common practice before the COVID-19 pandemic⁵⁰⁰.

Issuing recommendations could increase clarity, as consumers would be better informed about their rights and the options available to them in the event of a cancellation. It would also provide flexibility for consumers and offer them a choice between vouchers and cash refunds. Due to its non-binding nature, the measure would not improve consistency of consumer rights across the EU, and its potential effects would depend on the extent to which the recommendation is followed.

M 1.6 Clarification that there is no need to arrange insolvency protection where organisers do not receive money from travellers or where their insolvency would not expose payments from travellers to any risk

⁴⁹⁶ Targeted survey - consumer organisations, Q.23.1: 18% (2/11) strongly agree, 45% (5/11) agree, 18% (2/11) disagree, 0% (0/11) strongly disagree, 18% (2/11) don't know.

⁴⁹⁷ Targeted survey – consumer organisations, Q.23.2: 18% (2/11) strongly agree, 27% (3/11) agree, 9% (1/11) disagree, 0% (0/11) strongly disagree, 45% (5/11) don't know.

⁴⁹⁸ Second workshop with businesses and consumer representatives, December 2022.

⁴⁹⁹ Targeted survey - consumer organisations, Q.12 provided only 5 responses estimating the share of consumers who voluntarily accepted vouchers during the COVID-19 crisis. These responses ranged from less than 10% to over 75%, making it difficult to draw overall conclusions.

⁵⁰⁰ Interview with consumer organisation.

GO1 – Improve consumer protection

=/-

The majority of the consumer organisations responding to the targeted survey disagreed with this measure⁵⁰¹. Overall, it may provide benefits for consumers if the reduced administrative burden for businesses (arising from no insolvency protection) leads to lower prices. However, the measure may weaken consumer protection for travellers who do not make pre-payments. It could also create confusion and uncertainty for consumers, who may not always be fully aware when they are entitled to insolvency protection.

M 1.7 No additional specifications in relation to insolvency protection cover for vouchers and pending refund claims (as PO 0)

GO1 – Improve consumer protection

=

This measure would maintain the status quo. It is not expected to introduce new costs for consumers but could retain the current detriment where consumers are uncertain as to whether travel vouchers are protected against insolvency of the travel organisers or travel service providers.

M 1.8 No further harmonisation of insolvency protection and no rules on insolvency back-up fund (as PO 0)

GO1 – Improve consumer protection

=

Under this measure, no new costs are expected for consumers. However, the measure would maintain the current variety in insolvency protection instruments in the Member States, which can impact operational costs for travel organisers and service providers and thus the final price of packages sold.

M 1.9 Maintaining type (a) and type (b) LTAs without an adaptation of the definition of packages; + providing information on insolvency protection only where it exists plus changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours) under PO 2, without an adaptation of the definition of packages

GO1 – Improve consumer protection

=

Clarification of LTA definitions could be beneficial, but feedback from the whole consultation suggests that industry stakeholders and consumers in general struggle to understand the concept of LTAs. Accordingly, keeping the status quo would not necessarily overcome the main challenges in relation to this concept. A non-legally binding intervention is not in line with stakeholders' opinions, which emphasised the need to intervene on the complexity and lack of clarity of LTAs through amendments to the PTD⁵⁰².

⁵⁰¹ Targeted survey – consumer organisations, Q.19.4: 17% (2/12) agree, 58% (7/12) disagree, 25% (3/12) don't know.

⁵⁰² Targeted survey - consumer organisations, Q.42.3: 0% (0/11) issue does not require action, 0% (0/11) issue can best be tackled by better enforcement, 9% (1/11) issue can best be addressed through a clarification and guidance documents, 90% (10/11) issue can best be addressed through amendments to the PTD.

M 1.10 Non-binding clarification (e.g. recommendation) on cancellation rights due to unavoidable and extraordinary circumstances and on the role of the different parties

GO1 – Improve consumer protection

=/+

According to consumer organisations' responses to the targeted survey, more clarity is needed on when a situation qualifies as 'unavoidable and extraordinary circumstances', as travellers and organisers often do not agree⁵⁰³. Consumers and organisers did not have the same interpretation of these definitions even before the COVID-19 crisis, which caused consumer detriment. Overall, the measure could strengthen consumer awareness and understanding of cancellation rights. In terms of social benefits, it could reduce the number of incidents where consumers have to make additional payments due to unclear cancellation policies. However, given the non-binding nature of the measure, overall benefits may be limited.

M 1.11 Encouraging better enforcement of the PTD through soft-law or best practice exchanges

GO1 – Improve consumer protection

=/+

This measure would directly affect NCA. The results would likely improve customers' experiences of package travel through increased compliance of operators. It could lead to increased consumer protection through better enforcement. No cost factors are foreseen, but the impact would depend on the measures taken at national level.

M 1.12 No change to the current PTD provisions on penalties (as PO 0)

GO1 – Improve consumer protection

=

This measure maintains the status quo without aligning the punitive measures for consumer rights infringements with other relevant EU policies. While it would not introduce additional costs for consumers, it could preserve the consumer detriment arising from lack of harmonisation on consumer rights. No change is not supported by different consumer organisations, which noted the need to introduce such provisions in the PTD⁵⁰⁴.

Member State authorities

M 1.1 Clarifications (non-binding) on the role of different parties in the supply chain, but the legal obligation to refund pre-payments will stay with the organiser

GO3 – Improve enforcement

+

Such clarifications could support more stringent enforcement and increase cohesion between Member State practices (GO3), without creating costs for Member State authorities.

M 1.2 No limitation of prepayments (as PO 0)

GO3 – Improve enforcement

⁵⁰³ Targeted survey - consumer organisations, Q.6: n=12.

⁵⁰⁴ Second workshop with businesses and consumer representatives, December 2022.

=

This measure maintains the status quo and is thus not expected to introduce new costs or benefits for Member State authorities. They emphasised the need for clearer rules on pre-payments to ensure better enforcement⁵⁰⁵.

M 1.3 No change in refund rights of organisers towards service providers (as PO 0)

GO3 – Improve enforcement

=

This measure maintains the status quo and is not expected to introduce new costs or benefits for Member State authorities. The difficulties in ensuring the enforcement of the 14-day rule under the PTD would therefore remain.

M 1.4 Non-binding measures encouraging the setting up of crisis funds at national level

GO3 – Improve enforcement

=/+

The proposed structure of the crisis funds would rely on payments from organisers. No contributions from competent authorities are foreseen, but national regulatory bodies may incur additional tasks related to oversight and monitoring of the operations of such crisis funds. One Member State where a crisis fund is already in operation found that costs for its set up were negligible⁵⁰⁶.

The measure may have no impact on Member State authorities, if they opt not to set up such a fund.

M 1.5 Non-binding measures (e.g. recommendation) on voluntary vouchers in non-crisis situations

GO3 – Improve enforcement

=

Practices on the use of vouchers differ between Member States and the issuing of recommendations could provide guidance to national regulatory and enforcement bodies and facilitate a more harmonised approach. Direct costs are not expected to be incurred by NCAs and, as recommendations are not mandatory, they may not add incur additional monitoring tasks.

M 1.6 Clarification that there is no need to arrange insolvency protection where organisers do not receive money from travellers or where their insolvency would not expose payments from travellers to any risk

GO3 – Improve enforcement

=/+

The NCAs were divided on this measure. If these clarifications are non-binding and issued as recommendations, Member State authorities are not expected to incur costs related to transposition and enforcement.

⁵⁰⁵ Minutes of workshop with CPC Network, May 2022.

⁵⁰⁶ Interview with Member State NCA.

M 1.7 No additional specifications in relation to insolvency protection cover for vouchers and pending refund claims (as PO 0)

GO3 – Improve enforcement
=

This measure would maintain the status quo and is not expected to introduce new costs or benefits for Member State authorities.

M 1.8 No further harmonisation of insolvency protection and no rules on insolvency back-up fund (as PO 0)

GO3 – Improve enforcement
=

Under this measure, no new costs are expected to be imposed on Member State authorities. The measure would maintain the current variety in insolvency protection instruments in Member States.

M 1.9 Maintaining type (a) and type (b) LTAs without an adaptation of the definition of packages; + providing information on insolvency protection only where it exists plus changing the criterion of a ‘single visit or contact’ to a specific number of hours (between 3 and 24 hours) under PO 2

GO3 – Improve enforcement
=

Increased clarity on definitions would benefit regulators’ monitoring and enforcement tasks, even though the clarifications would be rather limited. In the short term, these may not translate into cost savings via man-hours if the relevant national legal provisions need to be adapted to reflect the clarifications (requiring additional resources). In the medium to long term, the benefits of increased legal certainty could contribute to fewer consumer complaints and better enforcement of the provisions on LTAs (GO3).

M 1.10 Non-binding clarification on cancellation rights due to unavoidable and extraordinary circumstances and on the role of the different parties

GO3 – Improve enforcement
=/+

Increased clarity on definitions would benefit regulators’ monitoring and enforcement tasks. However, given their non-binding nature, the situation could remain unchanged, with no associated reduction in consumer complaints.

M 1.11 Encouraging better enforcement of the PTD through soft-law or best practice exchanges

GO3 – Improve enforcement
=/+

This measure could improve collaboration between different national bodies and agencies within Member States, as well as the EU, and lead to efficiency gains through sharing good

practices. However, given the non-binding nature of the measure, the situation could also remain unchanged.

M 1.12 No change to the current PTD provisions on penalties (as PO 0)

GO3 – Improve enforcement
=

This measure would maintain the status quo without aligning the punitive measures for consumer rights infringements with other relevant EU policies. It would not introduce additional costs or benefits for Member States.

3.6.5 PO 2: Targeted revision of the Directive aiming to remove ambiguities in main concepts and strengthening insolvency protection

This section illustrates the measure-by-measure assessment of the impacts of PO 2, which foresees a targeted revision of the PTD in order to remove ambiguities in the main concepts and strengthen insolvency protection. This section presents a high-level overview of the assessment.

3.6.5.1 Impact on stakeholders

This sub-section analyses the impacts of the proposed measures on industry stakeholders, considering its different effects on various categories of stakeholders, e.g. package travel organisers/retailers and travel service providers (hoteliers, airlines, etc.).

Industry

M2.1 Clarification on the role of different parties through changes in the information forms

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=	=

As noted under PO 1, clarification of the roles of stakeholders could impact the legal obligation to refund pre-payments and could be beneficial for both businesses and consumers. However, M2.1 has a limited impact on the industry. This limited impact would effectively result in a status quo situation in respect of effects on GO2 (strengthen internal market coherence) and GO4 (level playing field for business). In terms of costs, businesses would have to change/amend the information forms already in use. The one-off costs of adapting the information requirements under M2.1 is unclear.

M2.2 Limitation of prepayments: partial (20% at booking, remainder four weeks before travel), with flexibility for the organiser to ask for higher pre-payment if justified

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
-	-

The measure may impact the industry negatively overall, as, under the current rules, the limitation of pre-payments applies only to package organisers and not service providers (e.g. airlines, hoteliers). A full limitation of prepayments would be detrimental, though the flexibility foreseen under this measure would cushion the negative effects as organisers can ask for higher prepayments to cover prepayments to service providers. The study collected

extensive evidence pointing to business stakeholders opposing M2.2⁵⁰⁷ and indicating the unfeasibility of limiting pre-payments, as it would severely impact their business models, as well as organisers' liquidity. In the public consultation, the strict interpretation of restrictions to limitations were put to respondents. In that context restrictions on pre-payments for packages and LTAs before the performance of the service (20% at booking, remainder four weeks before travel) was indicated as a viable option by only a very limited share of businesses⁵⁰⁸, with the vast majority indicating that there should be no prohibition on pre-payments for packages⁵⁰⁹. Airlines expressed similar disinterest in the possibility of limiting pre-payments, pointing out that this would be against their business model and would certainly imply significant (unquantified) price increases of tickets. That position suggests that a change in the pre-payment model for the transport sector is highly unlikely, confirming that M2.2 would have a negative impact on the industry, as it would apply solely to package travel organisers/retailers.

In the context of the business survey a question was posed on the strict limitation of prepayments, to which 62% of the businesses responded that M2.2 would entail a cost increase of more than 5% per package⁵¹⁰, while 23% suggested increases of 2.5-5%⁵¹¹. At the same time, 69% concluded that M2.2 would imply a significant reduction in the offer of packages⁵¹². Limitations on pre-payments could thus introduce cost burdens on travel organisers, who, in the absence of pre-payments, would have to self-finance the pre-payments and costs to reserve capacity for transport and accommodation with service providers, impeding achievement of GO4 should the limitation of pre-payment not apply to service providers. This increases operational risks for travel organisers for which liquidity is crucial to maintain their operations and deal with the costs of cancellations and reimbursements. This may be particularly relevant for SMEs, which generally have fewer operational resources, more difficulty accessing finance, and rely more on upfront payments from travellers to fund the cost of the package.

Measure 2.2 allows package organisers flexibility in asking for a higher pre-payment if justified, which would instead be beneficial for businesses compared to a strict limitation of prepayments without any possibility to increase them. However, in case it is not sufficiently clearly described in the PTD what the justification for increased prepayment under M2.2 could be, this may trigger certain interpretation challenges. A maximum share or amount (e.g. what is justifiable in terms of pre-payment) is not defined and there is no information from stakeholders on the numbers of travel organisers that would favour the pre-payment option set out by M2.2, or the percentage of their commercial offerings that would be subject to the measure (e.g. share of packages for which asking a pre-payment of >20% is justified). However, it is estimated that, depending on (a) the demand for specific offerings, (b) current business practices, and (c) differences between M2.2 and the current rules or practices in place in the relevant Member States, package organisers may provide various pre-payment options for certain destination, presumably at different price points.

M2.3 Introduction of rules on B2B refund right within 14 days after information on cancellation by the organiser for package organisers against service providers to

⁵⁰⁷ First and second workshop interviews with business associations representing the package travel sector, EU, and international airline sector, GDSs and travel distributors.

⁵⁰⁸ Public consultation Q.22: 10% (4/51) of business associations, 8% (31/310) of companies.

⁵⁰⁹ Public consultation Q.22: 80% (41/51) of business associations, 80% (249/310) of companies.

⁵¹⁰ Targeted survey – businesses, Q.38: 62% (8/13) of respondents.

⁵¹¹ Targeted survey – businesses, Q.38: 23% (3/13) of respondents.

⁵¹² Targeted survey – businesses, Q.38: 69% (9/13) of respondents.

enable organisers to make timely refunds to travellers, while maintaining their liquidity

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+/-	+/-

This measure introduces a significant change, as organisers are currently obliged to refund travellers where a package has been cancelled due to unavoidable and extraordinary circumstances under the PTD, but there is no corresponding right under EU law to claim a refund from airlines/transport service providers if the service was maintained, even in extraordinary circumstances. There is an overall legitimate objective to ensure fairer burden-sharing among economic operators along the value chain, as one of the key factors preventing organisers from promptly reimbursing pre-payments is the fact that those pre-payments are used to cover the transport and accommodation costs and have to be repaid to the organiser by the service provider. However, the feasibility of M2.3 is challenged, as introducing a specific maximum reimbursement period between service providers and organisers would imply that service providers could neither refuse nor delay such refunds if the termination of the package travel contract is justified under the PTD. There are strong concerns from businesses about regulating the B2B relationship between organisers and travel service suppliers within the context of the PTD. Practical challenges also emerged (e.g. difficulties in proving that the other travel services were sold by the organiser as part of a package/that the PTD applies). If applied, there could be strong distorting effects (e.g. incentives for service providers to ensure that their services are not sold as part of packages).

During workshop discussions on M2.3 and on a potential 14-day reimbursement period, one business association pointed out that the measure should be addressed by considering its two main components:

- Timing of the reimbursement in cases where a refund right is triggered both under the PTD and the APRR (e.g. package travel is cancelled as a result of a cancellation of a flight). In this case, a package organiser would be able to refund consumers within 14 days while avoiding a liquidity crisis only if the airline carrier processes the refund payment within the 7-day deadline. The solution is thus to better enforce compliance with the B2B reimbursement from the air carrier to the package organiser;
- Situations where consumer could request a refund under the PTD do not similarly exist under the APRR, and package travel organisers could not recover pre-payments from airlines (e.g. flight was regularly operated).

Certain businesses (e.g. intermediaries) favour a B2B refund right regulated under the PTD, enabling both consumers and package organisers/intermediaries to trigger their refund rights. An integrated travel services provider business expressed their dissatisfaction with a B2B refund rule, which it said risked increasing the prices of service providers and suppliers because they would see the commitment of the intermediaries as less stable (e.g. there is the possibility that a hotel or flight booking will be cancelled because the package traveller has the right to cancel the holiday based on the PTD), and the related package travel contract, in which they are not involved. They also noted that enforcing a B2B refund right with non-EU air carriers is not viable.

During the preparation of the final report, DG JUST suggested shortening the reimbursement window to seven days. However, no discussions were held with stakeholders to test the possibility. Regulating the B2B repayment timeline could also mean that travel organisers have timely access to payments from accommodation and transport cancellations. Stakeholders were unable to provide specific data on the scale of cost impacts.

M2.4 Non-binding measures (e.g. recommendation) encouraging the setting up of crisis funds at national level (as PO 1)

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+/-	+/-

As described under PO 1.

M2.5 Rules on voluntary vouchers (the possibility of issuing vouchers in lieu of a refund within 14 days would apply always and not be limited to crisis situations). Vouchers would be:

- Explicitly accepted by travellers after receiving clear information on their refund right;
- At least the same value as cancelled packages;
- Valid for up to 12 months, may be extended once with the explicit agreement of both parties;
- Automatic refund if not redeemed - travellers do not have to ask for refund;
- Protected against the insolvency of the issuer (applies also to pending refund claims);
- Always possible to offer.

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+	=/+

Under this measure, the PTD would be updated in line with the 2021 EU Recommendation on vouchers⁵¹³, with a provision identifying the conditions for issuing voluntary vouchers. EEA practices differ on whether vouchers are covered by insolvency protection. Currently, there is no minimum requirement on the content that must be relayed to travellers when offering a voucher. Thus, this measure would strengthen internal market coherence (GO2) across the sector, while clarifying that acceptance of vouchers is voluntary could add transparency to transactions. During the various workshops, industry representatives were, in principle, in favour of codifying the 2020 Commission Recommendation on vouchers, but highlighted that mandatory vouchers are not a feasible solution and represented a temporary emergency measure during the COVID-19 pandemic⁵¹⁴. This concept was reiterated during the first workshop, with a business association representing the package travel sector expressing favour with M2.5 while pointing out that vouchers are not the best solution for the sector in normal circumstances.

Concerning the impacts of M2.5 on GO4, the study finds that the change would have no effect or a minimal positive effect in contributing to the achievement of a level playing field for businesses. Airlines would not consider the need to regulate vouchers under the PTD in normal circumstances, but their regulatory framework allows them to issue vouchers⁵¹⁵, meaning that their cost of adaptation would be minimal. Conversely, package

⁵¹³ European 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H0648>

⁵¹⁴ Minutes of the meeting of the Stakeholder Expert Group to support the application of the Package Travel and Linked Travel Arrangements Directive (2015/2302) on 8 November 2022. Industry representatives position quoted; see also: interview with business organisation selling integrated travel services, including package travel.

⁵¹⁵ Interview with an international business associations representing the airline sector.

organisers/retailers do not see the need to introduce vouchers as an option under normal circumstances. However, given the current B2B landscape - airlines entitled to offer a voucher to organisers, and organisers that may not be able to offer vouchers to consumers – resulting in liquidity issues (if consumers refuse a voucher), M2.5 could have a positive impact on the industry, at least indirectly, as it would allow package organisers to use voluntary vouchers in lieu of cash refunds (at a minimum). In addition, M2.5 would be beneficial in ensuring liquidity benefits to organisers, especially in conjunction with the overall benefits for the sector of offering attractive vouchers.

Box 1. COVID-19 and use of vouchers: B2B issues between the PTD and APRR

During the first workshop, one business association stressed that B2B mechanisms are crucial elements to be analysed in conjunction with M2.5, especially in those cases where airlines are part of a package. During the COVID-19 pandemic, airlines issued vouchers to their customers, which they considered fully voluntary.

However, Regulation (EU) 261/2004 introduces both voluntary and involuntary cancellations. Voluntary cancellations occur where the traveller contacts the airline declaring their impossibility/unwillingness to fly, whereas involuntary cancellations are activated when the airline cancels the travel because the flight is not departing or because there are technical issues with the aircraft, triggering air passenger rights refunds.

During the COVID-19 crisis, there were grey areas where airlines allowed travellers to voluntarily cancel a flight in the event of negative travel advice, instead giving them a voluntary voucher.

Within the PTD remit, the grey area is that the airline is entitled to give a voluntary voucher to the traveller, but if the flight is part of a package, the customer is entitled to a refund. Voluntary vouchers are already a possibility for airlines under the APRR. This mechanism complicates the activities of travel agents:

- Travel agents get vouchers from the airlines;
- Consumers may refuse the vouchers and ask for a refund;
- Airlines may claim that a voucher is the equivalent of a refund;
- Consumers may trigger a refund and end up with a voucher;

For voluntary cancellations, airlines are entitled to give voluntary vouchers and are not obliged to provide a refund. The Commission's Recommendation does not address this issue.

In terms of the value of the vouchers, there is no information to indicate that vouchers that were issued as refunds for cancelled packages were of lower value than the service originally booked. Therefore, while the provision, which stipulates that the value of the voucher must be at least equal or higher than the value of the cancelled package, provides transparency and clarity, it would (a) not introduce further costs to businesses where the value of the voucher is equal to the value of the cancelled package, or (b) introduce additional costs for businesses where the value of the voucher is higher than the value of the cancelled package. As noted under PO 1, clarity on voucher use and the option to provide cash refunds could increase consumer confidence and trust, which could have a positive impact on demand. In the absence of relevant supply chain obligations or financing schemes, travel organisers run the risk of liquidity problems and potential bankruptcies – this measure would not mitigate such risks (see Box 1).

M2.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=/-	=/-

This is a reinforced measure of M1.6, which would introduce clarifications in the text of the revised PTD. The change would be marginal (and potentially negative) for the industry. The rationale is to give package organisers/retailers certain flexibility/incentives to conclude package travel contracts without pre-payments from consumers, enabling corresponding savings in the insolvency protection security (originating from the share of packages sold without pre-payment that do not have to be protected against potential insolvency of the package organisers).

Impacts on GO2 are either negative or non-existent. In principle, pre-payments constitute the business model on which the package travel industry is based and it is unlikely that package travel organisers would change their business practices and sell package travel products without pre-payments, especially if the corresponding pre-payment obligations to travel service providers are retained. While this measure may somewhat reduce the costs associated with insolvency protection, this is not always the case (e.g. depends on whether the cost of insolvency protection is calculated based on turnover or a fixed fee and not proportionate to number of packages sold with/without pre-payment). Even where this measure would enable savings on the insolvency protection, some of that saving may be countered by increased payments to travel service providers, whose payment requests must be covered by the organiser in the absence of pre-payment. M2.6 would interact with pre-payments only, while the cost of repatriation would still need to be covered by an insolvency protection guarantee. If businesses were to opt to introduce packages without pre-payment so as to avoid insolvency protection payments, the price of those packages would likely be higher than those with pre-payment. This legislative change would, however, impose harmonised requirements and enhance coherence in the internal market.

For GO4, M2.6 would result in a marginal, potentially negative, change for the creation of a level playing field for the industry. Given the extent to which insolvency protection systems vary across the EU, including the fact that the amount required for the insolvency protection may be calculated based on the annual turnover (rather than pre-payments), this could imply different impacts across the Member States.

M 2.7. Legislative clarification that vouchers and pending refund claims to be protected against insolvency

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+	=

While M2.7 partly replicates M2.5, it also introduces a harmonised requirement via a legislative revision. As pointed out under M2.5, EEA practices differ in respect of whether or not vouchers are covered by insolvency protection. Amending the text of the PTD with a clarification that vouchers and pending refund claims are to be covered by insolvency protection could strengthen coherence in terms of insolvency coverage (GO2), as well as consumer protection. The overall positive impact on GO2 relates to the fact that, in cases of insolvency of the organiser, the vouchers already issued will be uniformly protected across the EU, according to certain minimum standards.

The public consultation asked stakeholders for their views on whether PTD rules on insolvency protection should be amended to cover refund rights or vouchers issued before an organiser becomes insolvent. Most business respondents showed limited support for the introduction of rules on the protection of both refund rights against an organiser⁵¹⁶ and vouchers issued by organisers in case of insolvency⁵¹⁷. In fact, most pointed out that the existing insolvency protection is sufficient and that an extension of the protection would incur excessive costs⁵¹⁸. The targeted survey asked businesses whether the estimated costs for insuring vouchers issued during a major crisis against the insolvency of an organiser would be reasonable, with 38% strongly disagreeing⁵¹⁹ and 8% disagreeing⁵²⁰. No exact estimates of the costs of protecting vouchers through insolvency protection were found throughout the study. However, the fact that M2.7 would increase businesses' operational costs was highlighted. A similar scenario applies to the businesses' estimated costs for insuring travellers' refund claims for packages cancelled during a major crisis, with 50% strongly disagreeing⁵²¹ that the cost would be reasonable and 8% disagreeing⁵²².

In relation to GO2, while M2.7 would strengthen internal market coherence, it would also imply additional costs and burdens for the industry, to the detriment of the package travel sector. However, given that the current PTD could already be interpreted as covering refund claims and vouchers through its insolvency protection rules – with many Member States already interpreting the rules that way, it is questionable whether M2.7 would actually lead to cost increases. On GO4, the situation for the industry would remain essentially the same while increasing consumer protection. Potential negative impacts (e.g. rendering the cost of protection prohibitive) and remote risks have to be taken into account by insolvency protection providers, including those linked to unavoidable and extraordinary circumstances. In addition, insolvency protection costs for businesses may increase in Member States where vouchers are not currently covered, with possible negative (or no) impacts for the pursuit of GO4.

M2.8 Further harmonisation through specifications on the effectiveness of insolvency protection:

M2.8.1 Further specifications on the effectiveness of insolvency protection to be provided by national systems through

(a) Criteria related to an exposure analysis based on pre-payment policy, core seasons, supervision of organisers, etc.;

(b) Back-up funds (funded by organisers) referred to (only) as one means to achieve effective protection.

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=/+	+/-

⁵¹⁶ Public consultation Q.19: 13% (40/310) of companies, 18% (9/49) of business associations.

⁵¹⁷ Public consultation Q.19: 18% (56/310) of companies, 18% (9/49) of business associations.

⁵¹⁸ Public consultation Q.19: 80% (247/310) of companies, 76% (37/49) of business associations. This point was reiterated during the targeted interviews and the various workshops by an EU-level business association representing the package travel sector, which noted that the issue with insolvency protection within the PTD does not originate from the rules included in the Directive but, rather, from the uneven implementation of those rules across the EEA.

⁵¹⁹ Targeted survey - businesses Q.18: 38% (9/24) of respondents.

⁵²⁰ Targeted survey - businesses Q.18: 8% (2/24) of respondents.

⁵²¹ Targeted survey - businesses Q.18: 50% (12/24) of respondents.

⁵²² Targeted survey - businesses Q.18: 8% (2/24) of respondents.

Measure 2.8.1 would introduce further specifications on the effectiveness of insolvency protection systems by (a) setting out certain criteria for the calculation of the insolvency protection cover to be provided by the organisers on the basis of an exposure analysis (e.g. considering pre-payment policy, core seasons, and supervision of organisers (M2.8.1(a)); and (b) establishing back-up funds (funded by organisers) that would be defined as (only) one of the means to achieve effective protection (M2.8.1(b)).

M2.8.1(a)

M2.8.1(a) is an attempt to provide further harmonisation of the insolvency protection systems across the EU. This responds to the evaluation results, which showed that while the existing insolvency protection systems across the EU are generally effective in pursuing the GOs of the PTD, the fragmentation of national systems and their diverse rules/method of calculating insolvency protection coverage may hinder/limit the effectiveness of PTD implementation. For GO2, the introduction of certain criteria to calculate the insolvency protection cover that organisers would have to provide for their package travel products would have no impact or a positive impact on the industry. As pointed out by a business association representing the package travel sector during the first workshop⁵²³, recital 40 of the PTD already provides sufficient criteria to determine the amount of coverage of the insolvency protection and is used by the Member States, at least to some extent. M2.8.1(a) would have no impact on those national systems that already have similar methods for calculation in place. Conversely, it could have a positive impact for the industry, as it would harmonise the insolvency protection systems by clarifying the criteria under which Member State authorities would have to implement their national insolvency protection systems in an effective and efficient manner.

M2.8.1(a) would have a positive impact on harmonisation of the different systems. No polarised views were identified among business stakeholders (see Table 26). However, according to the results of the evaluation and the report on the application of the PTD⁵²⁴, further harmonisation of the insolvency protection systems may be required, particularly the introduction of common standards/criteria for calculating insolvency protection coverage. Cost increases may occur where systems have to implement radical changes to comply with the criteria set out in M2.8.1(a), but available data do not allow cost assessment, thus impacts of M2.8.1(a) on GO4 could be both positive and negative. This measure would further contribute to the achievement of a level playing field for the package travel sector by minimising the risk – at least theoretically – of businesses establishing their operations in Member States with softer insolvency protection requirements⁵²⁵. It could also, however, impose additional burdens for businesses in having to navigate additional criteria that, given the tradition of each Member State and the multifaceted package travel sector, could be detrimental to the pursuit of GO4.

Table 26. Businesses' views on M2.8.1(a)

	Agree	Disagree	Don't know
Insolvency protection for each organiser should cover a specific minimum percentage of the organiser's annual turnover, e.g. 15-25%	41% (9/22)	27% (6/22)	32% (7/22)

⁵²³ First workshop, position of an EU-level business association representing the package travel sector.

⁵²⁴ European Commission, *Report on the application of the PTD*, COM(2021) 90 final.

⁵²⁵ This point emerged from the evaluation and was addressed to the stakeholders throughout all consultation activities. There were limited findings on this situation in practice, although it was frequently noted by stakeholders as a theoretical possibility.

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF
THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT
ASSESSMENT ON ITS POTENTIAL REVISION

PTD should specify that Member States have to require insolvency protection to cover a sufficiently large share of the organiser's turnover to ensure that an insolvency at the period of the year with the highest risk exposure is fully covered	27% (6/22)	36% (8/22)	36% (8/22)
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Source: Targeted survey for businesses, Q.31 (n=22).

M2.8.1(b)

M2.8.1(b) includes the possible introduction of a voluntary back-up fund, should Member States deem it appropriate. The role of these back-up funds would be to intervene where an insurance policy or a bank guarantee is limited, so as to ensure full reimbursement of travellers' pre-payments. Businesses were unable to provide information on potential costs. The targeted survey asked businesses to express their view on whether Member States should be obliged to create back-up funds through the contributions from organisers, with the results split - 38% agreed with the introduction of back-up funds and 38% disagreed (see Table 25)⁵²⁶.

Table 27. Businesses' views on M2.8.1(a)

	Agree	Disagree	Don't know
Member States whose insolvency protection system relies on insurance policies or bank guarantees, should be obliged to create back-up funds through contributions from organisers. The back-up funds would intervene where an insurance policy or a bank guarantee is limited	38% (8/21)	38% (8/21)	24% (5/21)

Source: Targeted survey for businesses, Q.31 (n=21).

In the pursuit of GO2, this measure would have either no impact or a positive impact on harmonisation of the insolvency protection systems, mitigating situations where no method of calculation or rules for protection are provided at national level (Belgium, Luxembourg) and the level of protection is left solely to the availability/conditions of insurance. In cases where this measure is not yet in place (e.g. creation of a back-up fund), the change could imply additional burdens and costs for organisers, thereby imposing a positive and a negative impact on the pursuit of GO4. Positive, because the creation of a back-up fund would harmonise insolvency protection systems (e.g. by standardising the level of coverage and reducing the theoretical possibility that certain Member States could have less stringent systems in place), and negative, because additional burdens will be imposed on package organisers, potentially impacting the achievement of a level playing field.

M 2.8.2 Based on a specific minimum percentage of the organiser's annual turnover to be covered by insolvency protection

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+	=/-

M2.8.2 introduces minimum insolvency protection coverage of travel organisers' turnover. Businesses responding to the targeted survey⁵²⁷ did not support this initiative, with only 41% (9/22) stating that insolvency protection for each organiser should cover a specific minimum

⁵²⁶ During the first workshop, three business association noted that back-up funds designed as per M2.8.1(b) would benefit package travel organisers (alleviating liquidity risks) and consumers (potentially accelerating the refund timeframe).

⁵²⁷ Targeted survey – businesses, Q.31,

percentage of annual turnover (e.g. 15-25%). Insolvency protection bodies were also divided, with 50% (6/12) of respondents supporting the initiative⁵²⁸. There are no data on the potential costs or cost increases for businesses under this measure. Nevertheless, if assessed against GO2, it would certainly contribute to strengthening internal market coherence, by including uniform criteria based on a minimum percentage of organisers' annual turnover. On the impact of the measure on GO4, it will either continue the status quo or have potentially negative impacts, especially as the industry (both businesses and insolvency protection providers) would have to navigate additional requirements that might potentially prove operationally burdensome. Unintended effects (e.g. circumvention of the rules) remain theoretically possible.

M2.9 Introducing changes to the definition of LTAs by:

M2.9.1 Maintaining only type (a) LTAs, e.g. removing Type (b) LTAs, with adaptations of the definition of click-through packages; changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours); providing information on insolvency protection only where it exists;

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
=/+	+/-

This measure is an amended version of PO 1 (M1.6). M2.9.1 would maintain only type (a) LTAs and delete type (b) from the Directive. Business stakeholders highlighted that they are currently unable to identify type (b) LTAs, given that GDPR rules prevent sharing of data on when booking transactions took place, making the condition of 'at the latest 24 hours after the confirmation of the booking of the first travel service' (Article 3(5)(b)) substantially unworkable. With no effective use of the concept of LTA type (b)⁵²⁹, there should be little to no costs connected to this legislative change.

Following the deletion of Article 3(5)(b) of the PTD, M2.9.1 would introduce adaptations to Article 3(2)(b)(iv), regulating click-through packages so that the main elements of LTA type (b) products are considered part of that definition⁵³⁰. Among the business stakeholders advocating for the deletion of Article 3(5)(b), one business association representing GDSs and travel distributors clarified that the bookings currently considered LTA type (b) 'should [...] be treated as single travel sales as this would provide a clearer distinction for costumers between package bookings with associated protections and non-package bookings'.⁵³¹ On click-through packages, 42% (5/12) business stakeholders disagreed that the definition should be broadened to allow the transfer of travellers' personal data (e.g. name, email address) or payment details from one trader to another, thereby fulfilling the definition of a package⁵³². No cost data were received on how clarifications to the definition of click-through might impact businesses.

M2.9.1 would further specify the criterion of a 'single visit or contact' by introducing a timeframe (between 3 and 24 hours) to gauge the formation of an LTA in order to avoid

⁵²⁸ Targeted survey - insolvency protection bodies, Q.7.

⁵²⁹ Interviews with businesses.

⁵³⁰ Expressed by a large EU association representing the package travel sector during the scoping and targeted interviews.

⁵³¹ EU Travel Tech, *EU Travel Tech comments on the application and revision of the Package Travel Directive*, May 2022, p. 12, https://eustraveltech.eu/wp-content/uploads/2022/05/eutt_PTD-supplementary-input-public-consultation_06052022-Regular.pdf

⁵³² Targeted survey – businesses, Q.44.

abusive recourse to LTAs⁵³³. While stakeholders agreed that a clarification of ‘single visit or contact’ is necessary and would benefit the industry, they had no suggestions for improvement. One business association representing GDSs and travel distributors noted that the concept of ‘single visit or contact’ would ‘need to be well defined and clarified to exclude situations where a consumer merely navigates through a website using tabs in order to make additional purchases’⁵³⁴. However, if type (a) LTAs were included in the definition of package, there would no longer be a need to distinguish between the joint selection of travel services at one point of sale and the ‘separate selection of travel services during a single visit or contact with the point of sale’, which would represent a significant simplification.

When asked about potential changes for LTAs, 29% of companies⁵³⁵ and 36% of business associations⁵³⁶ indicated that in the information forms (Annex II, Parts A, B and C), travellers should be informed about insolvency protection only where they will actually benefit from such protection, in order to avoid false expectations. No additional operational costs are expected as part of PTD compliance with M2.9.1, as the measure implies the removal of an information requirement – in specific cases – and, thus, the reduction of related burdens. However one-off compliance cost could arise in relation to familiarisation with the requirements and the updating of information documents.

The impacts of M2.9.1 on GO2 would be positive or retain the status quo. Certain specifications could be positive for a harmonised application of the definition of LTA (e.g. information on insolvency protection only where needed), but the measure implies no core change to issues related to the enforcement of LTAs in practice. Nevertheless, clarifying the concepts of ‘single visit or contact’, deleting LTA type (b), and reducing the information burden would certainly simplify the legislative framework of the PTD, strengthening internal market coherence.

M2.9.1 would have positive potential impacts for GO4 by maintaining LTA type (a), with certain clarifications to make the definition enforceable. Stakeholders, however, noted the lack of empirical experience. In addition, the specifications on ‘single visit or contact’ would not solve the issues highlighted by the evaluation (e.g. definition of LTA is easy to circumvent, difficult to detect if the criterion is respected) and would imply the same enforcement problems. Overall, the impacts of M2.9.1 are positive – it could contribute to better enforcement and harmonisation, facilitating a level playing field in the package travel sector – and negative – it *de facto* introduces a criterion that may be practically unworkable or, at least, easy to circumvent.

M 2.9.2 Deleting both types of LTA and adapting the definition of click-through package plus the definition of single point of sale package

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
-/=-	-

M2.9.2 would delete Article 3(5) of the PTD by adapting the definitions of click-through package and single point of sale package. The deletion of both types of LTA gained only

⁵³³ Introducing a specific timeframe instead of the concept of ‘single visit or contact’ was endorsed by one business (1/24 businesses interviewed).

⁵³⁴ EU Travel Tech, *EU Travel Tech comments on the application and revision of the Package Travel Directive*, May 2022, p. 12, https://eustraveltech.eu/wp-content/uploads/2022/05/eutt_PTD-supplementary-input-public-consultation_06052022-Regular.pdf

⁵³⁵ Public consultation Q.27: 29% (67/232) of companies.

⁵³⁶ Public consultation Q.27: 36% (18/50) of business associations.

limited support within the industry, with comparatively higher support for the deletion of LTA type (b) than LTA type (a) (see Table 28). This is in line with the results of the evaluation, where business stakeholders highlighted that the enforcement of Article 3(5) of the PTD was challenging in practice and that LTA type (b) was considered practically unworkable⁵³⁷. Overall, while elements of the LTA concept would be included within the definition of click-through package and single point of sale package, the industry – especially OTAs/retailers and airlines - would benefit from keeping a definition of LTA or, at least, a set of rules regulating these types of package travel products.

As explained in the evaluation, the definition of LTA was included in the PTD in response to the findings of the 2013 impact assessment, which indicated high consumer detriment in case of ‘multi-trader’ travel arrangements⁵³⁸, especially in an online environment. More specifically, the impact assessment indicated that (a) the ‘likelihood of receiving assistance is much lower (40%) when the consumer is redirected between websites (e.g. purchasing “multi-trader” travel arrangements) rather than when making a purchase on a single website (60%)’, and (b) ‘67% of consumers who bought combined travel arrangements through an intermediary with billings by different companies wrongly believed that they would receive a refund in case of bankruptcy of one of them’^{539,540}. It also stressed the ‘outdated and unclear scope of the Directive’, noting that ‘it remains unclear whether [...] the current Directive also applies to “one-trader” packages sold online, whereas “multi-trader” packages and “multi-trader” assisted travel arrangements are clearly outside of its scope. This is the case even though at least “one-trader” packages and “multi-trader” packages have similar characteristics and are competing for the same customers’⁵⁴¹. The current PTD’s definition of LTA was supposed to better take into account ‘market developments where traders (mainly online but also off-line) assist travellers in concluding separate contracts with individual travel service providers for the same trip within a short period of time’⁵⁴² and thus overcome the limitations of Council Directive 90/314/EEC.

Accordingly, the complete deletion of Article 3(5) of the PTD would be detrimental to the efforts of the current PTD to regulate multi-trader travel arrangements (especially in an online environment) through Article 3(5) (b). It would also be divisive for the sector, with stakeholders from the package travel sector not supporting the complete deletion of LTAs⁵⁴³ – at least type (a) – while stakeholders from airlines favour withdrawing Article 3(5). Airlines consider the notion of facilitation overly broad (and burdensome) for their online booking

⁵³⁷ E U Travel Tech, *EU Travel Tech comments on the application and revision of the Package Travel Directive*, May 2022, p. 12, https://eutravelttech.eu/wp-content/uploads/2022/05/eutt_PTD-supplementary-input-public-consultation_-06052022-Regular.pdf; interview with an EU-level business association representing the package travel sector; interview with an international business association representing the airline sector.

⁵³⁸ The 2013 impact assessment defined ‘multi-trader’ travel arrangements as ‘combinations of travel services where one trader facilitates in a targeted manner the procurement of travel services from another trader, during a single visit of a point of sale or through linked online booking processes. In such cases consumers conclude separate contracts with the relevant service providers and no elements typical for a package are present’ (European Commission, *Impact assessment*, SWD(2013) 263 final, p. 7).

⁵³⁹ European Commission, *Impact assessment*, SWD(2013) 263 final, p. 20.

⁵⁴⁰ This point is strictly connected to SO4: ‘Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services that were not covered by the Directive 90/314/CEE by addressing new market developments’.

⁵⁴¹ European Commission, *Impact assessment*, SWD(2013) 263 final, p. 13.

⁵⁴² European Commission, *Report on the application of the PTD*, COM(2021) 90 final, p. 5.

⁵⁴³ Interview with an EU-level business association representing the package travel sector; interview with an EU-level business association representing GDSs and travel distributors; first workshop on the PTD study.

systems, notably where they advertise, through tabs in their websites, the possibility to select other travel services at the place of destination without any actual responsibility for the performance of those services⁵⁴⁴. Through the deletion of LTAs type (b), part of the online dimension (multi-trader arrangements) would no longer be regulated as this would be compensated through the extended definition of click-through packages only partially. This has negative or no impacts on GO2, *de facto* weakening the coherence of internal market. M2.9.2 would have an equally negative impact on GO4, as important segments of the market would not be regulated, leading to regulatory gaps that could undermine the level playing field in the sector⁵⁴⁵.

Table 28. Businesses' views on M2.8.1(a)

Business type	LTA type (a)		LTA type (b)	
	It should be abandoned and be replaced with simpler rules	It should be abandoned without any substitute rules	It should be abandoned and be replaced with simpler rules	It should be abandoned without any substitute rules
Business associations	32% (16/50)	20% (10/50)	44% (22/50)	26% (13/50)
Companies	24% (56/232)	18% (42/232)	42% (97/230)	21% (49/230)

Source: Public consultation Q.27 and Q.29.

M2.10 Clarification in the PTD on cancellation rights due to unavoidable and extraordinary circumstances

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+	=

This is a strengthened, legislative version of the same measure under PO 1 (M1.7). In PO 2, the PTD would be amended by including additional clarifications on the cancellation rights that arise under unavoidable and extraordinary circumstances, thereby responding to the challenges identified in the evaluation. Consequently, the number of organisers adopting the new provision would increase compared to PO 1. No data were received from stakeholders estimating the volume of reimbursements to consumers under avoidable and extraordinary circumstances.

M2.10 implies small changes and generally positive impacts on GO2, as clarifications on cancellation rights due to unavoidable and extraordinary circumstances could bring greater clarity and reduce the number of disputes between travellers and organisers (cost savings to businesses, lower consumer detriment). It could also support more stringent enforcement and promote consistency in interpretation and implementation across Member States. There will be no relevant impacts on GO4, as the measure would not directly affect the PTD objective of creating a level playing field for businesses.

⁵⁴⁴ Interview with a global business association representing the airline sector.

⁵⁴⁵ During the first workshop, an EU-level business association representing the package travel sector highlighted that the definition of LTA would have to be amended (clarified) rather than withdrawn, as provides a level playing field by regulating all package travel products that may be sold, which are located outside the definition of packages.

M2.11 Encouraging better enforcement of the PTD through soft law or best practice exchanges (as PO 1)

As described under PO 1.

M2.12 Inserting penalties from the Modernisation Directive⁵⁴⁶ into the PTD

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+	+

This measure would amend Article 25 of the PTD on penalties and align it with other consumer protection directives, including the Consumer Rights Directive, the Unfair Contract Terms Directive, and the Unfair Commercial Practices Directive (as amended by the Modernisation Directive)⁵⁴⁷. Non-compliance with the PTD in the event of widespread infringements with a Union dimension⁵⁴⁸ could then result in fines of up to 4% of annual company turnover, or at least EUR 2 million⁵⁴⁹ in cases where information on turnover is not available. Additional punitive damages can be awarded to consumers based on complaints against unfair commercial practices from national authorities⁵⁵⁰. No additional costs are expected for compliant businesses, and there would be fairer competition for compliant businesses.

Consumers

M2.1 Clarification of the role of different parties through changes in the information forms

GO1 – Improve consumer protection
=/+

On the content of the information forms, over half (64%, 7/11) of consumer organisations responding to the targeted survey said that consumers do not understand the role of the organiser and the retailer in relation to payments and refunds⁵⁵¹. They also noted difficulties in checking organisers' compliance with these information forms (82%, 9/11)⁵⁵². Clarification of these components could help to strengthen consumer protection and reduce consumer detriment, especially in seeking reimbursement from organisers or retailers. However, if clarifications only appear in the information form, impacts on GO1 may be limited. Optimal impacts would occur if a B2B refund mechanism was effectively enforced. In any case, clarification of the role of the different parties through a change in the information forms would be generally beneficial in improving consumer protection. An additional element that should be considered is ensuring that clarification also simplifies the information forms⁵⁵³,

⁵⁴⁶ Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules, <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

⁵⁴⁷ Article 24 Consumer Rights Directive, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0083-20220528>

⁵⁴⁸ As defined under 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R2394>

⁵⁴⁹ Article 8(b) Directive 93/13/EEC, <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

⁵⁵⁰ Article 21 Regulation 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, <https://eur-lex.europa.eu/eli/reg/2017/2394/oj>

⁵⁵¹ Targeted survey – consumer organisations, Q.30 and Q.31.

⁵⁵² Targeted survey – consumers, Q.30.

⁵⁵³ Scoping interview and follow-up targeted interview with a large EU-level consumer association; same instances reiterated during the various workshops.

as the evaluation showed that consumers struggled to understand the forms. Relying on information forms for improving GO1 would have a positive effect overall, but limited value.

M2.2 Limitation of pre-payments: partial (20% at booking, remainder four weeks before travel), with flexibility for the organiser to ask for higher prepayment if justified

GO1 – Improve consumer protection

=/+

From a consumer perspective, M2.2 would impact GO1 to a limited extent, given the overall flexibility left to the industry not to limit pre-payments if duly justified. The possibility that businesses would refrain from using the flexibility clause seems remote, given the nature of the sector. Limitation of pre-payments for the package travel sector alone would severely hinder the pursuit of GO4 for businesses, especially given the corresponding absence of limitation of pre-payments in the airline industry (which is reluctant to pursue any pre-payment limitation policy, given the operational costs of airline operations and the structure of flight revenue management systems). Consumers would welcome a limitation on pre-payments as reducing the risk of their detriment where an organiser goes bankrupt, for example⁵⁵⁴. Consumer organisations noted that, given the high relevance of pre-payment models within the industry and the small likelihood of sectoral support for limiting pre-payments, it would be complex solution, at least in the short term⁵⁵⁵.

It is in consumers' interest to move towards less financially risky models (e.g. limiting pre-payments). One large EU-level consumer organisation suggested exploring different payment systems, e.g. escrow accounts, in which the transaction of the money C2B occurs via a third party that *de facto* holds the money until the start of the package⁵⁵⁶. This model is already in place in the airline industry for B2B transactions within the GDS⁵⁵⁷. In view of the industry's reluctance to limit pre-payments, M2.2 would result in businesses using the flexibility clause to reduce the limitation of pre-payments to the maximum extent, particularly if the limitation extends to the package travel sector but not airlines. This condition would create practical issues and is unlikely to occur in practice, resulting in M2.2 having a *status quo* or very limited effect on improving consumer protection.

Two-thirds (62%, 8/13) of businesses responding to the targeted survey estimated that limitations to pre-payments would increase the costs of packages by at least 5%⁵⁵⁸, which could be passed onto consumers. They also noted that limitations to pre-payments may result in reduced offers, limiting consumer choice⁵⁵⁹. In terms of social benefits, this measure could make package holidays accessible to a wider range of consumers who would be able to spread their payments across a span of weeks. It would also increase their flexibility to change their travel plans, including cancelling trips without potential financial losses or delayed reimbursements. This could be particularly important during times of crisis.

M2.3 Introduction of rules on B2B refund right within 14 days of information on cancellation by the organiser for package organisers against service providers to

⁵⁵⁴ Interview with a large EU-level consumer organisation; reiterated during the first workshop.

⁵⁵⁵ Expressed by a large EU-level consumer organisation during the first and second workshops.

⁵⁵⁶ Interview with a large EU-level consumer organisation; reiterated during the first workshop.

⁵⁵⁷ Interview with a large global business association representing the airline sector.

⁵⁵⁸ Targeted survey – businesses, Q.38.

⁵⁵⁹ Ibid.

enable organisers to make timely refunds to travellers, while maintaining their liquidity

GO1 – Improve consumer protection

+

M2.3 would improve consumer protection (GO1) by ensuring that the B2B refund right of package organisers against service providers occurs in a timeframe that makes it feasible for them to refund the travellers on time, i.e. within the 14-day timeline set out by the PTD. A large EU-level consumer organisation noted that while the B2B issue represents a behind-the-scenes element of which consumers are unaware and which is not their problem, it impacts GO1 by ensuring that the reimbursement of cancelled packages occurs in due time, minimising potential B2B reimbursement delays and assuring sufficient organisers' liquidity, especially in times of crisis. It went on to say that the lack of B2B refund rules affected consumers' right to be reimbursed on time, both in normal times (e.g. pre- pandemic)⁵⁶⁰ and in times of crisis (e.g. during the COVID-19 pandemic)⁵⁶¹. While the issue could be tackled through better enforcement (e.g. compliance with the 14-day deadline included in the PTD) and resolving the misalignment between the PTD and the APRR, consumers would welcome M2.3 in boosting GO1⁵⁶².

M2.4 Non-binding measures (e.g. recommendation) encouraging the setting up of crisis funds at national level (same as PO 1)

As described under PO 1.

M2.5 Rules on voluntary vouchers (the possibility of issuing vouchers in lieu of a refund within 14 days would apply always and not be limited to crisis situations)

- ***explicitly accepted by travellers after receiving clear information on their refund right;***
- ***at least the same value as cancelled packages;***
- ***validity up to 12 months, may be extended once with the explicit agreement of both parties;***
- ***automatic refund if not redeemed - travellers do not have to ask for refund;***
- ***protected against the insolvency of the issuer (also applies to pending refund claims).***

GO1 – Improve consumer protection

+

M2.5 would positively impact the pursuit of GO1 by increasing consumer protection across the Member States. If the proposed rules were binding (included in the PTD), they would bring increased clarity for consumers, who would have the option to accept vouchers in lieu of cash for at least the same value as the original price of the travel. Those who opt for the voucher and do not redeem it for some reason would see their original payment reimbursed after 12 months, while those who do not accept vouchers would have an

⁵⁶⁰ A large EU-level consumer organisation, stated at the first workshop; targeted survey - consumer organisations Q.6: prior to the COVID-19 pandemic, only 8% (1/12) of respondents reported that difficulties with refunds of pre-payments within 14 days.

⁵⁶¹ A large EU-level consumer organisation, stated at the first workshop. Targeted survey - consumer organisations Q.6: post-COVID-19 pandemic, 75% (9/12) of respondents experienced difficulties with the 14-day reimbursement deadline.

⁵⁶² A large EU-level consumer organisation, stated at the first workshop.

immediate refund of their package payments. This measure is not expected to result in direct costs for consumers.

When asked whether the PTD should specify that organisers may issue vouchers instead of a refund within 14 days provided that (a) travellers agree, (b) that there is a guarantee that travellers will receive their money back if the voucher is not used within its validity period, and (c) that vouchers have to be protected against the insolvency of the issuer, 76% (16/21) of consumer organisations responding to the public consultation were in favour⁵⁶³. During the first workshop, a large EU-level consumer organisation noted that further clarifications on vouchers would be necessary to avoid the uncertainties experienced during the first wave of the COVID-19 pandemic. Consumers would welcome the codification of the Commission's 2020 Recommendation on vouchers into the PTD, in the form of minimum harmonisation rules (e.g. vouchers remain voluntary, protected against insolvency, rules on transferability and duration of validity). Minimum rules should also be replicated within the APRR Regulation. Finally, consumers believe that vouchers and pending refund claims should be protected against insolvency⁵⁶⁴.

M2.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested

GO1 – Improve consumer protection

=

As noted under PO 1, a slight majority of consumer organisations (58%, 7/12) responding to the targeted survey⁵⁶⁵ disagreed with this measure. In PO 2, the clarification on insolvency protection and pre-payments would be added to the PTD, providing for more consistent implementation across the Member States. Benefits would include a potentially wider range of package payment options for travellers. Based on the responses of businesses, it is likely that packages without pre-payment would have higher prices, although, depending on the market, prices may remain unchanged or decrease if insolvency protection payments were not needed. M2.6 would have no impact or a moderately positive impact on GO1, as the marginal benefits for consumers would derive from the reduced financial exposure of businesses to pre-payments, thus reducing the risk of a liquidity crisis in case of mass cancellations (and reimbursement obligations), as well as a potential cost decrease for insolvency protection.

M 2.7 Legislative clarification that vouchers and pending refund claims are to be protected against insolvency

GO1 – Improve consumer protection

+

M2.7 partly replicates M2.5 but introduces a harmonised implementation requirement via a legislative revision. The measure would strengthen consumer protection by providing legal certainty that vouchers received following cancellations are covered against organisers' insolvency, i.e. if the package organiser files for bankruptcy during the voucher's validity, the travellers' costs would be reimbursed as part of the insolvency coverage. This is a clear

⁵⁶³ Public consultation Q.12.

⁵⁶⁴ BEUC, *COVID-19 and EU travellers' rights. Evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers'*, 2020, p. 21, https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-119_covid-19_and_eu_travellers_rights.pdf

⁵⁶⁵ Targeted survey - consumer organisations, Q.19.

benefit for consumers and would strengthen the internal market by bringing more coherence to the current diverse approaches of Member States⁵⁶⁶.

M2.8 Further harmonisation through specifications on the effectiveness of insolvency protection:

M2.8.1 Further specifications on the effectiveness of insolvency protection to be provided by national systems through criteria related to an exposure analysis based on pre-payment policy, core seasons, supervision of organisers, etc. Back-up funds (funded by organisers) referred to (only) as one means to achieve effective protection
M 2.8.2 Based on a specific minimum percentage of organisers' annual turnover to be covered by insolvency protection

GO1 – Improve consumer protection

+

The exposure analysis aiming to identify and strengthen the effectiveness of national insolvency systems does not increase costs for consumers, but increases the mechanisms ensuring the effectiveness of insolvency protection, enhancing GO1. No additional burdens are expected from the introduction of backup funds. However, for organisers located in Member States where such funds did not previously exist, this could mean new costs, which may be passed on to consumers via price increases. Consumers in countries where the back-up fund is implemented would see increased benefits from a strengthened insolvency protection system and better protection of payments and pre-payments against the bankruptcy of organisers and service providers. Impacts on GO1 would be generally positive for consumers, for both M2.8.1 and M2.8.2. During the first workshop, a large EU-level consumer organisation stressed that strengthening the rules on insolvency protection through further harmonisation is a crucial consumer priority. Nevertheless, insolvency protection and rules on pre-payments should be considered intertwined problems, with consumers advocating for harmonisation criteria and thus favouring M2.8.1's exposure analysis based on the amount of pre-payment. However, consumers also noted that strengthening insolvency protection within the PTD remit would result overall sterile without equivalent rules on insolvency protection for airlines within the APRR. For M2.8.2, the same consumer organisation pointed out that a back-up fund would be beneficial for consumers, especially if conceptualised as a rapid refund mechanism.

M2.9 Introducing changes to the definition of LTAs by:

M2.9.1 Maintaining only type (a) LTAs, i.e. removing Type (b) LTAs, with adaptations of the definition of click-through packages; changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours); providing information on insolvency protection only where it exists

M 2.9.2 Deleting both types of LTAs and adapting the definition of click-through package plus the definition of single point of sale package

GO1 – Improve consumer protection

+/-

The measure is not expected to result in cost increases for consumers, but could enhance consumer protection by strengthening consumers' ability to understand their rights and the liabilities of the various stakeholders. Benefits could also arise from the simplification and

⁵⁶⁶ BEUC, COVID-19 and EU travellers' rights. Evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers', 2020, p. 21, https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-119_covid-19_and_eu_travellers_rights.pdf; Large EU-level consumer organisation at the first workshop.

clarifications of the terminology related to LTAs, leading to increased awareness of the roles of the stakeholders. On the overall M2.9, a large EU-level consumer organisation stressed that the extreme complexity of the definition of LTA makes it very difficult for operators to really understand Article 3(5) of the PTD, indicating that a revision of the definition is very much necessary. As a potential solution, consumers indicated that either (a) LTAs should be included under the definition of 'package' or (b) the definition of LTA should be simplified by removing certain elements that proved difficult to apply in practice and introducing guidelines. It emphasised guidelines, highlighting that consumers would benefit from application of certain concepts of the PTD – including LTAs - in practice⁵⁶⁷. During the first workshop, one large EU-level organisation pointed out that both LTA types should be retained, despite confusing traders, enforcers and consumers. Consumers highlighted the need to clarify certain terms, including 'click-through' and 'single-visit'. Its members stated that consumers need to be more aware of contractual rules that bind them in LTAs⁵⁶⁸. Accordingly, consumers were reluctant about M2.9.2 and endorsed M2.9.1 to a higher extent. M2.9.1 would impact GO1 positively, while M2.9.2 was perceived by consumers as negative.

M2.10 Clarification in the PTD on cancellation rights due to unavoidable and extraordinary circumstances

GO1 – Improve consumer protection

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As noted under M1.10, consumers would benefit from increased clarity in relation to cancellations under unavoidable and extraordinary circumstances. This could mean greater clarity on their right to seek and receive reimbursements and decreased detriment associated with late or no reimbursement. The added benefit of M2.10 compared to PO 1 is the coherent application it would bring in all EU Member States. There are no data on consumer losses from such cancellations, thus it is not possible to estimate monetary gains.

Consumer stakeholders were asked to provide further details (in open text) on the way in which rules on cancellation should be adapted in case of amendment to the PTD. One indicated that Article 12(2) of the PTD creates interpretational issues and litigation, as it does not specify the timeframe for a consumer to cancel a package due to unavoidable and extraordinary circumstances, without incurring a fee. It stressed that it would be a big step for consumers if the PTD provided for a period of 30 days (for example) before the beginning of the package, during which a withdrawal declaration based on unavoidable and extraordinary circumstances is admissible⁵⁶⁹. Consumers also claimed that M2.10 could prove beneficial in boosting GO1, but coherence between cancellation rights under the PTD and APRR should be ensured, with travellers able to invoke similar rights for package travel contracts and standalone transport services. Without such coherence, the benefits of M2.10 would be limited, given that package travel and the APRR are strongly intertwined.

The importance of travel warnings in triggering the conditions laid down in Article 12(2) of the PRD with regard to unavoidable and extraordinary circumstances were highlighted repeatedly by consumer organisations. They noted that the 'legal value' of travel warnings should be clarified so that any official statement by an authority 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 travelling, should be considered admissible and

⁵⁶⁷ Interview with EU-level consumer organisation.

⁵⁶⁸ EU-level consumer organisation, stated during the first workshop.

⁵⁶⁹ Targeted survey - consumers Q.7: one open-text response (1/12).

sufficient evidence to benefit from the protection and full refund of the package, at no cost⁵⁷⁰. The fact that the PTD should specify that circumstances occurring at the place of departure (e.g. restrictions on movement or quarantine requirements) can also justify the termination of a package travel contract without fees was indicated by 92% (11/12) of the consumer stakeholders responding to the targeted survey⁵⁷¹.

M 2.11 Encouraging better enforcement of the PTD through soft law or best practice exchanges (as PO 1).

As described out under PO 1.

M2.12 Inserting penalties from the Modernisation Directive into the PTD

GO1 – Improve consumer protection
+

Consumer protection would be strengthened, as this measure could facilitate more effective enforcement and higher compliance rates among businesses, leading to lower consumer detriment related to inefficiencies. This measure is not expected to incur additional costs for consumers. One large EU-level consumer organisation called 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 turnover. Furthermore, as a matter of transparency, enforcement authorities could be required to make public the information about imposed sanctions’⁵⁷².

Member State authorities

M2.1 Clarification on the role of different parties through changes in the information forms

GO3 – Improve enforcement
+

A strong majority (71%, 15/21) of regulatory stakeholders responding to the targeted survey⁵⁷³ agreed that travellers do not understand the role of the organiser and the retailer in relation to payments and refunds. Clarifications in the information forms could strengthen consumer protection and support the work of Member States’ regulatory bodies, enhancing the pursuit of GO3. No direct costs are expected to arise for NCAs.

M2.2 Limitation of prepayments: partial (20% at booking, remainder four weeks before travel), with flexibility for the organiser to ask for higher prepayment if justified

GO3 – Improve enforcement
+/-

⁵⁷⁰ Targeted survey - consumers Q.7: 5/12 open text responses.

⁵⁷¹ Targeted survey - consumers Q.8: n=12.

⁵⁷² BEUC, The Package Travel Directive: BEUC’s Position on how to regain consumers’ trust in the tourism sector, 2021, p. 7, https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-115_package_travel_directive_beuc_s_views_on_how_to_regain_consumer_trust_in_the_tourism_sector.pdf; BEUC pointed out that ‘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)’.

⁵⁷³ Targeted survey – NCAs (regulatory and enforcement), Q.18.

Member State enforcement agencies responding to the targeted survey⁵⁷⁴ were split on whether limitations on pre-payments would be beneficial, with 41% (11/27) opposing it and 26% (9/27) opting for 'don't know'. Relevant points in the open text comments included a consumer protection authority noting that there is no need to abolish pre-payments, as this would only lead to higher business costs, including staff hours, transaction processing fees, and complications where multiple payment methods are used. They believed that the core issue is to make the refund process fast and efficient⁵⁷⁵. One consumer protection authority pointed out that abolishing pre-payments would not add costs for enforcement, while another highlighted that costs/impacts on enforcement cannot be quantified⁵⁷⁶. Similarly, one respondent from an enforcement body and another from a consumer protection authority noted that, from a consumer's point of view, limiting pre-payments would be beneficial, but would likely increase costs for organisers⁵⁷⁷.

For one respondent, the limitation of pre-payments would make the business less predictable by enabling cancellations at shorter notice – organisers and service providers need to know occupancy beforehand, as it correlates with pricing (e.g. first minute and last-minute deals)⁵⁷⁸. Two consumer protection authorities similarly stressed that removing pre-payments would have a significant impact on small organisers, which could be forced to advance payments out of their own funds to pay intermediaries, ultimately risking reducing their offer to consumers⁵⁷⁹. Another consumer authority explained that the measure would benefit the sector but it should be left to organisers to decide whether the costs of such packages are higher (e.g. 10% higher if consumers pay only a few days before departure)⁵⁸⁰.

Member State enforcement agencies were asked to indicate their positions on M2.2, i.e. whether they would agree that a new EU rule should require organisers to offer travellers the option of booking a package with a downpayment of up to 20% at the time of booking, and the balance four weeks before departure, at the earliest. 46% (12/26) of respondents were in favour, with 31% (8/26) opposed⁵⁸¹. This measure is expected to introduce costs in the form of regulatory review and transposition (authorities could not indicate precise figures), albeit not across all authorities. M2.2 would have both positive impacts on GO3 – improving the work of enforcement bodies in ensuring consumer protection – and negative impacts – the costs for business would increase, likely being passed onto consumers in the form of price increases and a reduced package travel offer.

M2.3 Introduction of rules on B2B refund right within 14 days of information on cancellation by the organiser for package organisers against service providers to enable organisers to make timely refunds to travellers, while maintaining their liquidity

GO3 – Improve enforcement

+

Rules on B2B refund rights will necessitate adapting the content of the PTD and the relevant national legal provisions. Based on estimates from national insolvency protection bodies

⁵⁷⁴ Targeted survey – Member States, Q.12.

⁵⁷⁵ Targeted survey - NCAs (regulatory and enforcement), Q.12: open text responses.

⁵⁷⁶ Targeted survey - NCAs (regulatory and enforcement), Q.12: two open text responses

⁵⁷⁷ Ibid.

⁵⁷⁸ Targeted survey - NCAs (regulatory and enforcement), Q.12: one open text response.

⁵⁷⁹ Targeted survey - NCAs (regulatory and enforcement), Q.12: two open text responses.

⁵⁸⁰ Targeted survey - NCAs (regulatory and enforcement), Q.12: one open text response.

⁵⁸¹ Targeted survey - NCAs (regulatory and enforcement), Q.13.

(see PO 0), the one-off cost of transposing the PTD was around EUR 5,500. Support for this measure was not unanimous among NCAs, with some noting that B2B arrangements should fall outside the reach of the PTD. Expected benefits include NCAs having to process fewer complaints from consumers about not receiving timely refunds, fewer complaints from companies (for not receiving reimbursement from the service provider), and fewer interventions in view of liquidity problems of companies.

M2.4 Non-binding measures (e.g. recommendation) encouraging the setting up of crisis funds at national level (same as PO 1)

As described under PO 1.

M2.5 Rules on voluntary vouchers (the possibility of issuing vouchers in lieu of a refund within 14 days would apply always and not be limited to crisis situations):

- *explicitly accepted by travellers after receiving clear information on their refund right;*
- *at least the same value as cancelled packages;*
- *validity up to 12 months, may be extended once with the explicit agreement of both parties;*
- *automatic refund if not redeemed - travellers do not have to ask for refund;*
- *protected against the insolvency of the issuer (also applies to pending refund claims).*

GO3 – Improve enforcement

=

Rules on vouchers, if binding, would harmonise existing diverse national practices and create stronger cohesion in the internal market. Direct costs could arise from additional tasks for transposition, implementation and monitoring of compliance, while not implying any significant increase in NCAs' workload (they already monitor whether organisers reimburse consumers on time). In the context of M2.5, NCAs would have to check if organisers reimburse consumers within 14 days, or, in cases where a consumer accepts a voucher and does not use it, within 12 months. The impacts of M2.5 on GO3 thus maintain the status quo.

M2.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested

GO3 – Improve enforcement

=/+

As noted under PO 1, NCAs were split on this proposed measure because some countries already have similar requirements in place. The mandatory nature of the measure would strengthen internal market cohesion by harmonising diverse practices. As part of a legislative clarification, transposition and enforcement costs are expected. NCAs neither agreed nor disagreed⁵⁸² with M2.6, highlighting that it would have a generally positive impact on GO3, with effects mostly at the margins. One-off costs of transposition could range from EUR 5,500 to EUR 97,000, while recurring enforcement costs could reach EUR 116,000 per year.

⁵⁸² Targeted survey - NCAs (regulatory and enforcement), Q.16: 15% (4/27) strongly agreed, 19% (5/27) agreed, 22% (8/27) disagreed, 22% (8/27) strongly disagreed.

M 2.7 Legislative clarification that vouchers and pending refund claims are to be protected against insolvency

GO3 – Improve enforcement

+

Amending the text of the PTD to clarify that vouchers and pending refund claims are to be covered by insolvency protection could strengthen coherence of insolvency coverage and consumer protection, with overall positive impacts on GO3. The measure would introduce similar transposition and enforcement costs as previous measures, but could deliver harmonised enforcement and compliance check approaches between NCAs in different Member States.

M2.8 Further harmonisation through specifications on the effectiveness of insolvency protection:

M2.8.1 Further specifications on the effectiveness of insolvency protection to be provided by the national systems through criteria related to an exposure analysis based on pre-payment policy, core seasons, supervision of organisers, etc. Back-up funds (funded by organisers) referred to (only) as one means to achieve effective protection

M2.8.2 Based on a specific minimum percentage of organisers' annual turnover to be covered by insolvency protection

GO3 – Improve enforcement

+/-

Exposure analysis carried out by NCAs may constitute an additional burden (if considered a new task – some Member States already carry out such tasks). The use of a set of harmonised criteria could strengthen the resilience of national insolvency protection systems and ensure their comparability. National insolvency protection agencies held varied opinions on whether back-up funds would be necessary: some pointed out that while they would support a mandatory back-up fund, the PTD should not define its conditions, while others were more resistant, claiming that the current regulations are sufficient and that the administrative burden of operating such national funds would be too great for smaller countries⁵⁸³. A voluntary system of back-up funds would not create additional burden, as some Member States already have such systems in place. In countries where back-up funds are financed by the government, the proposal for businesses to maintain the fund, could, in theory, free up resources. However, as details of the fund's mechanism have not yet been drafted, the extent of such benefits are not clearly defined. Mandatory funds could harmonise insolvency protection systems but could also introduce enforcement and monitoring costs at national level in Member States where such systems do not already exist. The impacts of M2.8 on GO3 would be both positive – improved enforcement - and negative – potential for additional cost/burden.

M2.9 Introducing changes to the definition of LTAs by:

M2.9.1 Maintaining only type (a) LTAs, i.e. removing type (b) LTAs, with adaptations of the definition of click-through packages; changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours); providing information on insolvency protection only where it exists

M 2.9.2 Deleting both types of LTA and adapting the definition of click-through package plus the definition of single point of sale package

⁵⁸³ Interviews with Member State insolvency protection bodies

GO3 – Improve enforcement

+

Simplification of the LTA definitions and increased clarity would benefit regulators' monitoring and enforcement tasks. Similar to PO 1, in the short term, these clarifications may not translate into cost savings in man-hours, as the relevant national legal provisions would need to be adapted, requiring additional resources. In the medium to long term, however, the benefits of increased legal certainty could contribute to more effective implementation and thus reduced burden on NCAs. However, these benefits would be limited if packages and type (a) LTAs continued to exist in parallel. The impacts of this measure on GO3 would be positive overall.

M2.10 Clarification in the PTD on cancellation rights due to unavoidable and extraordinary circumstances

GO3 – Improve enforcement

+

Clarifications on cancellation rights could improve the effectiveness of enforcement and compliance monitoring by NCAs, leading to savings in the medium to long term. Concerns could arise regarding the liability of Member States if there were an automatic link between travel warnings and cancellation rights. However, a more nuanced rule leaving scope for a case-by-case assessment should alleviate such concerns. The impacts of M2.10 on GO3 would be positive overall.

M 2.11 Encouraging better enforcement of the PTD through soft law or best practice exchanges (as PO 1)

As described under PO 1.

M2.12 Inserting penalties from the Modernisation Directive into the PTD

GO3 – Improve enforcement

+/-

Harmonising consumer rights provisions with the PTD would have benefits for effective enforcement. At the same time, it could require review and adaptation of relevant national legislation, incurring additional one-off transposition and enforcement costs (valued at between EUR 5,500 – EUR 97,000 in PO 1) and recurring annual costs of EUR 116,000 (as per PO 1). The impacts of M2.12 on GO3 would be both positive – improved enforcement – and negative – cost increases.

3.6.6 PO 3: Major revision of the Directive – far-reaching changes to insolvency protection and changing the approach to LTAs

3.6.6.1 Impact on stakeholders

Industry

M3.1 Clarification of the role of different parties through changes in the information forms (same as PO 2)

As described under PO 2.

M3.2 Limitation of prepayments:

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
-	-

M3.2.1 Partial (20% at booking, remainder four weeks before travel), without flexibility with corresponding limitation of pre-payment to service providers in the framework of a package

This measure could potentially have a negative effect on ensuring a level playing field for businesses across the tourism sector (GO4). If service providers were to be required to adapt to a business model that limits pre-payments in the framework of packages only, this could potentially prompt them to ensure that their services are not sold as part of a package. Service providers from the aviation sector repeatedly emphasised that the pre-payment model constitutes a structural model of the industry, given the high up-front costs⁵⁸⁴. They also shared their concern that the limitation of pre-payments could impede the competitiveness of European airlines vis-à-vis non-European companies, given that pre-payments are a standard practice globally⁵⁸⁵. The concern about negative sectoral impacts was shared by service providers from other sectors. Stakeholders from the hotel sector, for instance, emphasised that the pre-payment model is key to the functioning of the industry, and even the limitation of pre-payments would have a negative impact, albeit to a lesser extent than full restriction⁵⁸⁶.

Stakeholders representing package organisers believe that a holistic approach should be taken to the issue of limiting pre-payments, which should not be limited to the package travel sector⁵⁸⁷.

The lack of flexibility in the application of the pre-payment limitation to packages, as proposed by the measure, would avoid potential interpretation disputes, but would not improve coherence in the internal market, as service providers would not be bound to the same limitation of pre-payments under other travel and mobility legislation. This conclusion applies to sub-measures b), c) and d) as well.

no limitation to prepayment to service providers

The limitation of pre-payments to package organisers would disproportionately impact those businesses compared to service providers, as they could lack the liquidity necessary to comply with pre-payment requests from service providers. This could result in high costs and burdens for package organisers, which, in the absence of pre-payments, would have to cover service providers' costs using their own funds (see PO 2).

A study on the German package travel context concluded that the switch to the '20 % downpayment, rest on travel' payment model would trigger a liquidity need for German package organisers of around EUR 1.6 billion. Indeed, they would need to continue to pass on to service providers the funds to cover the costs of the services they provide⁵⁸⁸.

⁵⁸⁴ Interview with business association representing the airline sector.

⁵⁸⁵ Ibid.

⁵⁸⁶ Interview with business association representing the reception sector.

⁵⁸⁷ Second workshop, businesses and consumer representatives, December 2022.

⁵⁸⁸ Lütolf, P., Rupp, M. and Wernli, R., *Gutachten Vorkasse im Reise-und Flugbereich*, Verbraucherzentrale Bundesverband e.V., 2020.

According to one stakeholder from the travel sector, if service providers – particularly airlines – are not providing their services without pre-payments, it would rely on intermediaries and package organisers to purchase services in advance, requiring them to fund the services (in lieu of consumers), likely requiring loans⁵⁸⁹.

The German study emphasised that in the current post-pandemic market environment, it would be particularly challenging for package organisers to raise additional funds, making it advisable to wait for a proper recovery before applying any changes to these business models⁵⁹⁰.

M3.2.2 full (no pre-payment allowed)

- With corresponding limitation of prepayment to service providers

The problems that impact the achievement of GO4 (as described under the sub-options above) would be exacerbated by the full limitation of pre-payments. Indeed, service providers would continue to have the possibility to sell their services outside the framework of the PTD and package organisers would potentially encounter even higher liquidity issues, if no downpayment at all is made.

The full limitation of pre-payments is likely to bring a cost increase per package, as well. The majority of respondents to the business survey emphasised that a strict limitation of pre-payments would potentially result in increases of more than 10% in cost-per-package⁵⁹¹, with the introduction of restrictions on pre-payments following the '20% model' would increase the costs of packages by at least 5%⁵⁹².

Limitation of pre-payments within the framework of the PTD would likely have a negative impact on service providers: one stakeholder from the hotel sector noted that such full limitation would have a high negative impact for the industry, which is based on a pre-payment model⁵⁹³. The same concern was echoed by representatives from the airline sector⁵⁹⁴. On the one hand, corresponding limitations of pre-payments on service providers would have negative implications on their liquidity and competitive position, but could positively impact the liquidity problems faced by organisers, which would not have to anticipate the price of the service. The stakeholder consultation did not gather such evidence, however.

no limitation of pre-payment to service providers

The potential negative impact of this option is described under sub-measure b). The negative consequences would be heightened under a no pre-payment scenario. If no limitations are placed on B2B transactions (i.e. service providers could continue to request that organisers pay the full price of their services, e.g. accommodation, transportation) organisers would have to finance the difference between the capped pre-payment from travellers and the full payment request from service providers from their own resources.

⁵⁸⁹ First workshop, businesses and consumer representatives, October 2022.

⁵⁹⁰ Lütolf, P., Rupp, M. and Wernli, R., *Gutachten Vorkasse im Reise-und Flugbereich*, Verbraucherzentrale Bundesverband e.V., 2020.

⁵⁹¹ Targeted survey - businesses, Q.35: 5% (1/21) no impact, 5% (1/21) 0-2.5% increase of costs per package, 10% (2/21) 5-10% increase of costs per package, 43% (9/21) more than 10% increase of costs per package, 38% (8/21) don't know.

⁵⁹² Targeted survey - businesses, Q.38: 8% (1/13) no increase of costs, 8% (1/13) cost increase of 0-2.5%, 23% (3/13) cost increase of 2.5-5%, 62% (8/13) cost increase of more than 5%.

⁵⁹³ Interview with business association representing the reception sector.

⁵⁹⁴ Interview with business association representing the airline sector.

This would put added pressure on the liquidity of some operators and could disproportionately affect SMEs.

M3.3 Introduction of rules on B2B refund right within 14 days of information on cancellation by the organiser for package organisers against service providers to enable organisers to make timely refunds to travellers, while maintaining their liquidity (same as PO 2)

As described under PO 2.

M 3.4 Legislative measures requiring the setting up of a mandatory rapid refund mechanism/crisis fund(s):

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+/-	+/-

- M 3.4.1 at national level
- M 3.4.2 at EU level

The crisis fund would operate in a similar manner to the proposed national fund under PO 1 and would aim to ensure timely refunds to travellers during a temporary liquidity crisis (rapid refund mechanism).

As noted under PO 1, the setting up of a crisis fund could introduce an additional cost for businesses currently operating in Member States without a national crisis fund. The extent of the impact to businesses would largely depend on the criteria under which organisers contribute to the fund. Organisers operating in Member States without a national crisis fund could be disproportionately hit by the measure – at the level of one-off set-up costs – compared to those operating in Member States where such a fund is already in place. However, only Poland has a national crisis fund in place, meaning that such an impact would be unlikely to emerge in practice.

The majority of respondents to the business survey tended to disagree or strongly disagree with the appropriateness of creating a crisis fund at national⁵⁹⁵ or EU⁵⁹⁶ level in case of a large liquidity crisis. Some noted that it would impose an extra burden on the industry and that the State aid measures functioning during the pandemic proved sufficiently effective⁵⁹⁷.

One business association representing package organisers was in favour of introducing measures to ensure that travellers were refunded in time during a major crisis, thereby avoiding the whole B2B mechanism, which generates potential blocks along the value chain⁵⁹⁸. However, rather than focusing on a crisis fund, they suggested systematising other tools put in place during the COVID-19 pandemic, such as the Danish loan system under the State aid scheme, or the Commission's temporary framework that enabled Member States to implement a State aid plan quickly⁵⁹⁹. Given that the objective is to refund the consumer quickly, a crisis fund may not be the best tool to ensure rapid refund⁶⁰⁰.

Setting common standards on the creation of a crisis fund could benefit coherence in the internal market (GO2), but this would depend on the structure and organisation of the fund.

⁵⁹⁵ Targeted survey - businesses, Q.34: 64% (9/14) disagreed, 21% (3/14) strongly disagreed.

⁵⁹⁶ Targeted survey - businesses, Q.34: 50% (7/14) disagreed, 36% (5/14) strongly disagreed.

⁵⁹⁷ Targeted survey - businesses, Q.34: open text responses.

⁵⁹⁸ First workshop, businesses and consumer representatives, October 2022.

⁵⁹⁹ Ibid.

⁶⁰⁰ Second workshop, businesses and consumer representatives, December 2022.

Unlike the previous POs, the mandatory nature of the measure means that these costs would occur in all Member States, providing more consistency in operational costs. Under M 3.4.2, the crisis fund would be established at EU level, allowing for the pooling of contributions from all Member States and the distribution of funds across countries. This could provide more consistency in payment requirements to the fund compared to potential varying national requirements.

M 3.5 Rules on vouchers: voluntary vouchers possible only in crisis situations

- explicitly accepted by travellers after receiving clear information on their refund right;
- at least the same value as cancelled packages;
- validity up to 12 months, may be extended once with the explicit agreement of both parties;
- automatic refund if not redeemed - travellers do not have to ask for refund;
- protected against the insolvency of the issuer (applies also to pending refund claims).

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+	+

Stakeholders were not consulted on the specific impacts of this measure – vouchers possible only during a crisis situation – as it was not included as part of the original assessment.

Under this measure, voluntary vouchers would be allowed only during crisis situations, alleviating financial constraints on travel organisers and service providers in case of mass cancellations. In the absence of such crisis, organisers would have to provide cash reimbursements. Stakeholders were not asked about the operational cost increases of a scenario where voluntary vouchers were limited to crisis situations, but the majority of the respondents to the targeted survey for businesses stated that prior to the COVID-19 crisis, organisers rarely if ever offered vouchers following cancellations⁶⁰¹. While this changed during the crisis, the responses suggest that over half of the businesses previously provided customers with cash reimbursement.

This measure would ensure a return to those practices, limiting voucher use to crisis situations. Given the legally binding nature of the measure, it would potentially have a positive impact in ensuring harmonised application across the Member States, enhancing coherence in the internal market (GO2). However, interpretation disputes on what constitutes a crisis could emerge (e.g. when the issuance of vouchers is justified). No significant burdens are expected to arise for businesses compared to the status quo. Challenges may occur from ensuring the timeliness of the repayments.

M 3.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested (same as PO 2)

As described under PO 2.

⁶⁰¹ Targeted survey - businesses, Q.16.1: 20% (5/25) organisers frequently offered vouchers, 44% (11/25) organisers rarely offered vouchers, 12% (3/25) organisers never offered vouchers, 24% (6/25) don't know.

M 3.7 Vouchers and pending refund claims to be protected against insolvency (same as PO 2)

As described under PO 2.

M 3.8 Further specifications on the effectiveness of insolvency protection (same as PO 2 + addition of back-up fund):

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+/-	+/-

M 3.8.1 to be provided by national systems through criteria related to an exposure analysis based on pre-payment policy, core seasons, and supervision of organisers, etc., i.e. M 2.8.1. + mandatory back-up funds to be funded by organisers at national level

M 3.8.2 mandatory back-up fund at EU level

Unlike the corresponding measure under PO 2, M.3.8.1 introduces a mandatory national back-up fund, which would intervene where an insurance policy or a bank guarantee is limited in order to ensure full reimbursement of travellers' pre-payments.

Businesses held different views on whether they would support the set-up of such a back-up fund. One stakeholder shared that it could potentially help to alleviate financial risk for package organisers⁶⁰². Another business association believed that there is a need for a back-up fund, but, rather, financed through the contributions of insurers or national travel guarantee funds⁶⁰³. In the targeted survey, businesses expressed mixed positions: when asked if creating a back-up national fund in those Member States whose insolvency protection system relies on insurance or bank guarantees would be appropriate to improve insolvency protection, 38% (8/21) agreed, but another 38% (8/21) disagreed⁶⁰⁴. By contrast, the majority of respondents to the business survey were not in favour of a back-up fund at EU level⁶⁰⁵.

It is not possible to conclude whether or not stakeholders would support the set-up of such a fund at either national or EU level. Views diverged, particularly in relation to who should contribute to the fund (e.g. insurance, organisers) and how the fund should be organised.

The proposed measure considers organisers as potential contributors to the fund, which could increase their costs. There is no estimate of the contributions that would be needed from organisers to finance the back-up fund. At the same time, the fund could harmonise the level of insolvency protection across the EU without directly intervening in the structure of national insolvency protection systems, positively contributing to achieving GO2. Another possible benefit of such a fund could be that insurance companies would be more likely to provide insurance solutions, knowing that there is a fund covering the remaining risk. However, this conclusion did not emerge clearly from the consultation.

⁶⁰² First workshop, businesses and consumer representatives, October 2022.

⁶⁰³ Second workshop, businesses and consumer representatives, December 2022.

⁶⁰⁴ Targeted survey - businesses, Q.31.8: 38% (8/21) agreed, 38% (8/21) disagreed, 24% (5/21) don't know.

⁶⁰⁵ Targeted survey – businesses, Q. 32: 29% (4/14) yes, 64% (9/14) no, 7% (1/14) don't know.

Under M 3.8.2, the mandatory EU back-up fund would function similarly to the national back-up funds proposed under PO 2 and serve as a safety net to cover insolvencies of large organisers or waves of insolvencies.

M3.9 Introducing changes to the definition of LTAs (same as PO 2):

M3.9.1 Maintaining only type (a) LTAs, i.e. removing type (b) LTAs, with adaptations of the definition of click-through packages; changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours); providing information on insolvency protection only where it exists

M 3.9.2 Deleting both types of LTA and adapting the definition of click-through package plus the definition of single point of sale package

As described under PO 2.

M3.10 Regulating travel warnings

GO2 - Strengthen internal market coherence	GO4 - Level playing field for businesses
+	+

Regulating travel warnings between Member States could ease business during times of crisis. It could support planning and foresight for businesses and consumers, reducing the costs of cancellation, repatriation and legal cases related to the use of this definition. It is not expected to introduce new costs to businesses nor to increase their operating expenditure.

Some business stakeholders emphasised that travel warnings would not necessarily be enough to respond to crises, particularly in light of the COVID-19 pandemic experience, where warnings were not aligned among Member States. It could contribute to the achievement of GO2 only if travel warnings were coordinated among Member States.

M 3.11 Encouraging better enforcement of the PTD through soft law or best practice exchanges (same as PO 1)

As described under PO 1.

M3.12 Inserting penalties from the Modernisation Directive into the PTD (same as PO 2)

As described under PO 2.

Consumers

M3.1 Clarification of the role of different parties through changes in the information forms (same as PO 2)

As described under PO 2.

M3.2 Limitation of prepayments:

GO1 – Improve consumer protection
+/-

M3.2.1 Partial (20% at booking, remainder four weeks before travel), without flexibility

- a) **With corresponding limitation of pre-payment to service providers in the framework of a package**
- b) **no limitation to pre-payment to service providers**

M3.2.2 full (no pre-payment allowed)

- a) **With corresponding limitation of pre-payment to service providers**
- b) **no limitation of pre-payment to service providers**

The majority of the businesses responding to the targeted survey agreed that even a minor limitation on pre-payments (e.g. 20% model) could imply cost increases for package organisers of more than 5%⁶⁰⁶. They also noted that the offer available to consumers might be reduced⁶⁰⁷, negatively impacting consumer choice.

According to a recent study of the German market, if package organisers passed on to consumers additional capital costs deriving from the limitation of pre-payments, prices would have to increase by between 0.4% and 1.1%⁶⁰⁸. One stakeholder representing package organisers pointed out that intermediaries do not hold consumer pre-payments, but use them to cover the costs of the services, thus the focus should be on ensuring that, in case of cancellation, the supplier repays the pre-payment to the organise, enabling them to refund consumers. Before assessing whether the PTD should limit pre-payments, they suggested that the pre-payment model of service providers should be examined⁶⁰⁹.

The same study concluded that in the case of a limitation of pre-payments for airlines, if they were to pass on the additional capital costs to German customers, prices would not increase by more than 3.3 %⁶¹⁰. However, this conclusion was contested by a stakeholder from the airline sector, which estimated that airline fare increases would be much higher⁶¹¹. Related consequences could include cutting some connections because they would not be marginally profitable, resulting in less choice and less connectivity for consumers⁶¹².

It seems likely, that this measure would create at least some level of cost for consumers in the form of price increases, potentially impeding achievement of increased consumer protection (GO1).

The majority of the consumer organisations responding to the targeted survey agreed that a new EU rule should require organisers to offer travellers the option of booking a package without pre-payments⁶¹³. A rule limiting downpayments at the time of booking to 20% and allowing organisers to request full payment at the earliest four weeks before departure was their preferred option⁶¹⁴.

⁶⁰⁶ Targeted survey - businesses, Q.38: 8% (1/13) no increase of costs, 8% (1/13) cost increase of 0-2.5%, 23% (3/13) cost increase of 2.5-5%, 62% (8/13) cost increase of more than 5%.

⁶⁰⁷ Targeted survey - businesses, Q.38: 69% (9/13) significantly reduced offer, 23% (3/13) minor reduction in the offer, 8% (1/13) no reduction in the offer.

⁶⁰⁸ Lütolf, P., Rupp, M. and Wernli, R., *Gutachten Vorkasse im Reise-und Flugbereich*, Verbraucherzentrale Bundesverband e.V., 2020.

⁶⁰⁹ First workshop, businesses and consumer representatives, October 2022.

⁶¹⁰ Ibid.

⁶¹¹ Interview with business association representing the airline sector.

⁶¹² Ibid.

⁶¹³ Targeted survey - consumer organisations, Q.13: (50%) 6/12 agreed, 25% (3/12) did not agree, 25% (3/12) didn't know.

⁶¹⁴ Targeted survey - consumer organisations, Q.14: (70% (7/10) a new rule limiting down-payments at the time of booking to 20% and allowing organisers to request full payment at the earliest four weeks before departure.

One stakeholder explained that the Thomas Cook bankruptcy and the COVID-19 crisis highlighted the need for the package travel sector to review the business model based on consumers' early, full pre-payments⁶¹⁵. They believed that the limitation of pre-payments would limit the risk of financial loss for consumers in case of organisers' insolvency, and also reduce the difficulties of finding insurers willing to operate in the travel sector (limited pre-payments would imply less expensive insolvency protection). They also noted that limitation of pre-payments in the package travel sector should be replicated in the airline sector in order to be effective⁶¹⁶.

It appears reasonable that M.3.2 would increase consumer protection (GO1). It would be further strengthened under M 3.2.2, which would ban pre-payments, meaning that consumers would be able to book package holidays and pay the full amount within four weeks of commencing travel. However, this measure may also increase prices and limit available options. From a consumer perspective, the aim is not to have a possible boomerang effect on consumers (e.g. through the increase of costs), but, rather, identify mechanisms to improve the current situation. For instance, one consumer organisation suggested setting up escrow schemes, whereby a third party (e.g. bank) would manage the pre-payment and automatically reimburse the consumer in the event of cancellation⁶¹⁷.

M3.3 Introduction of rules on B2B refund right within 14 days of information on cancellation by the organiser for package organisers against service providers to enable organisers to make timely refunds to travellers, while maintaining their liquidity (same as PO 2)

As described under PO 2.

M 3.4 Legislative measures requiring the setting up of a mandatory rapid refund mechanism/crisis fund(s):

- M 3.4.1 at national level
- M 3.4.2 at EU level

GO1 – Improve consumer protection

+

The set-up of a crisis fund could positively contribute to improving consumer protection (GO1). Stakeholders noted that the fund would ensure the availability of sufficient liquidity to repay consumers in the event of a major crisis⁶¹⁸. Most surveyed consumer organisations agreed that the PTD should require Member States to create national crisis funds that would intervene in the event of a large liquidity crisis⁶¹⁹. Consumer organisations were less certain about such a fund at EU level⁶²⁰. Irrespective of its national or EU nature, they felt the fund would be appropriate even if there were rules on the limitation of pre-payments, B2B refunds, and the protection of vouchers and refund claims against the organiser's

⁶¹⁵ Targeted survey - consumer organisations, Q.14A: open question.

⁶¹⁶ Ibid.

⁶¹⁷ First workshop, businesses and consumer representatives, October 2022.

⁶¹⁸ Ibid.

⁶¹⁹ Targeted survey - consumer organisations, Q.23.1: 18% (2/11) strongly agreed, 45% (5/11) agreed, 18% (2/11) disagreed, 0% (0/11) strongly disagreed, 18% (2/11) did not know.

⁶²⁰ Targeted survey - consumer organisations, Q.23.2: 18% (2/11) strongly agreed, 27% (3/11) agreed, 9% (1/11) disagreed, 0% (0/11) strongly disagreed, 45% (5/11) did not know.

insolvency⁶²¹. This appears to support the conclusion that such a fund would positively impact consumers, ensuring a higher level of consumer protection.

Under M 3.4.1, organisers would contribute to the fund, although the contribution scheme has not been defined⁶²². The idea that it should be organisers rather than consumers who contribute was supported by consumer organisations⁶²³. However, even if consumers are not expected to contribute directly to the crisis fund, businesses may transfer some of their costs to consumers, resulting in a certain degree of consumer detriment. The purpose of the fund, according to one consumer organisation, should be to be clear, fast, and efficient for consumers to obtain a refund, thereby avoiding burdens in practice⁶²⁴. One business stakeholder emphasised that this would not always be the case, as the fund might be difficult to implement and activate in practice⁶²⁵, potentially creating consumer detriment. The efficiency of the system is key in order to avoid possible downside effects.

The binding nature of the measure would harmonise increased consumer protection across all Member States, positively contributing to GO1.

Measure 3.4.2 introduces one EU crisis fund instead of separate national funds managed by Member States. The costs of the crisis fund at EU level, if based on the contribution from travel organisers, could be passed on to travellers in the form of price increases for packages and services. These costs could arise in Member States where there is currently no national crisis fund in operation⁶²⁶.

Consumer organisations pointed out that it could be more difficult for companies and travellers to activate and deal with an EU-level fund, which might also be more complicated to set up in practice⁶²⁷. By contrast, many emphasised that it would ensure harmonisation of refund practices across Member States, thereby harmonising consumer protection⁶²⁸.

These potential costs could be balanced by the increased benefits of ensuring timely cash refunds for consumers. In terms of social benefits, the crisis fund could provide a safety net for consumers, strengthen confidence in the travel market, and increase awareness of consumer rights.

M 3.5 Rules on vouchers: voluntary vouchers possible only in crisis situations

- **explicitly accepted by travellers after receiving clear information on their refund right;**
- **at least the same value as cancelled packages;**
- **validity up to 12 months, may be extended once with the explicit agreement of both parties;**
- **automatic refund if not redeemed - travellers do not have to ask for refund;**

⁶²¹ Targeted survey - consumer organisations, Q.24.1: 64% (7/11) yes, 18% (2/11) no, 18% (2/11) did not know.

⁶²² Suggestions during the workshops pointed to the possibility of calculating the contribution on the basis of the percentage of packages sold, or on the basis of the market share of the traders; others suggested the Danish model based on state loans (see second workshop).

⁶²³ Targeted survey - consumer organisations, Q.26 (multiple choice question): 67% (6/9) national insolvency protection providers, including funds should contribute, 78% (7/9) organisers directly should contribute.

⁶²⁴ First workshop, business and consumer representatives, October 2022.

⁶²⁵ Ibid.

⁶²⁶ Poland is the only Member States that operates a permanent crisis fund.

⁶²⁷ Targeted survey - consumer organisations, Q.25: open text replies.

⁶²⁸ Ibid.

- **protected against the insolvency of the issuer (applies also to pending refund claims).**

GO1 – Improve consumer protection

+

Under this measure, voluntary vouchers would be allowed only during crisis situations, alleviating financial constraints on travel organisers and service providers in case of mass cancellations. In the absence of a crisis, organisers would have to provide cash reimbursements. This measure could benefit consumers who, outside of a crisis situation, would receive cash reimbursements, alleviating the administrative burdens arising from rebooking or reuse of the vouchers. This would have strong social benefits, protecting consumer payments and maintaining trust in businesses. It would positively contribute to improving consumer protection (GO1) by helping consumers to better understand their rights and the refund options available in crisis situations.

According to one consumer organisation, one of the issues related to refunds during the COVID-19 pandemic was Member States taking different approaches to the issuance and use of vouchers, causing consumer detriment⁶²⁹. This could be avoided through M. 3.5, as the measure would harmonise the rules on vouchers across Member States.

Potential administrative costs for businesses could arise, which may be passed on to the traveller.

M 3.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested (same as PO 2)

As described under PO 2.

M 3.7 Vouchers and pending refund claims to be protected against insolvency (same as PO 2)

As described under PO 2.

M 3.8 Further specifications on the effectiveness of insolvency protection (same as PO 2 + addition of back-up fund):

- **M 3.8.1 to be provided by the national systems through criteria related to an exposure analysis based on pre-payment policy, core seasons and supervision of organisers, etc., i.e. M 2.8.1. + mandatory back-up funds to be funded by organisers at national level**

- **M 3.8.2 mandatory back-up fund at EU level**

GO1 – Improve consumer protection

+

Two large consumer organisations supported the set-up of a protection back-up fund⁶³⁰. They emphasised that the fund should be quick and easy to activate in order to quickly respond to the needs of the sector⁶³¹. This would contribute to ensuring that consumers receive their refunds on time. In the targeted survey, most consumer organisations

⁶²⁹ Interview with consumer organisation.

⁶³⁰ First workshop, businesses and consumer representatives, October 2022.

⁶³¹ Ibid.

supported setting up a back-up fund at EU level⁶³², while recognising the practical difficulties of developing and implementing such a fund at EU level⁶³³.

Overall, M. 3.8 should improve consumer protection (GO1) by ensuring that any potential gaps in insurance policies are covered and increasing the availability of insurance solutions.

Although the EU back-up fund would ensure harmonisation across all Member States, potentially contributing to improved consumer protection, the associated level of burden, if any, to businesses is unclear, as is the extent to which cost increases would be passed on to consumers.

The exposure analysis by NCAs foreseen by M. 3.8.1, based on a set of harmonised criteria, could strengthen the resilience of national insolvency protection systems which could benefit consumers during times of crisis. Some stakeholders noted that, in principle, the creation of such a fund at EU level would be beneficial, but national back-up funds appear more suitable, as they are easier to implement and more effective⁶³⁴. One consumer organisation specified that should M. 3.8.1 be preferred, the PTD should define the criteria for ensuring the effectiveness of such a fund⁶³⁵. Finally, two consumer organisations suggested that an independent body or institution should manage the national back-up fund⁶³⁶.

M3.9 Introducing changes to the definition of LTAs (same as PO 2):

- M3.9.1 Maintaining only type (a) LTAs, i.e. removing Type (b) LTAs, with adaptations of the definition of click-through packages; changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours); providing information on insolvency protection only where it exists

- M 3.9.2 Deleting both types of LTA and adapting the definition of click-through package plus the definition of single point of sale package

As described under PO 2.

M 3.10 Regulating travel warnings

GO1 – Improve consumer protection

=/+

Calls for clarification of the legal validity and the meaning/implications of travel warnings were repeated throughout the consultations. In particular, clearer rules would be necessary to clarify how and when consumers are entitled to rely on travel warnings to trigger their right to cancellation at no cost, under the PTD⁶³⁷.

Regulating travel warnings and harmonising the underlying approach could bring clarity for travellers, positively contributing to improving consumer protection (GO1), while the

⁶³² Targeted survey - consumer organisations, Q.20: 67% (8/12) would support, 8% (1/12) would not support, 25% (3/12) did not know.

⁶³³ Second workshop, business and consumer representatives, December 2022.

⁶³⁴ Targeted survey - consumer organisations, Q.20 – open question.

⁶³⁵ Ibid.

⁶³⁶ Ibid.

⁶³⁷ Interview with a consumer organisation; second workshop, businesses and consumer representatives, December 2022.

measure could also enhance timely reimbursement, reducing consumer detriment (albeit to an uncertain extent).

Consumers could also benefit from a potential reduction in legal costs related to court proceedings on cancellations stemming from the use of travel warning definitions.

M 3.11 Encouraging better enforcement of the PTD through soft law or best practice exchanges (same as PO 1)

As described under PO 1.

M3.12 Inserting penalties from the Modernisation Directive into the PTD (same as PO 2)

As described under PO 2.

Member State authorities

M3.1 Clarification of the role of different parties through changes in the information forms (same as PO 2)

As described under PO 2.

M3.2 Limitation of prepayments:

GO3 – Improve enforcement
=

- M3.2.1 Partial (20% at booking, remainder four weeks before travel), without flexibility

- a) With corresponding limitation of pre-payment to service providers in the framework of a package
- b) no limitation to pre-payment to service providers

- M3.2.2 full (no pre-payment allowed)

- b) With corresponding limitation of pre-payment to service providers
- c) no limitation of pre-payment to service providers

Member States responding to the targeted survey were divided on whether they would agree to a new EU rule requiring organisers to offer travellers the option of booking a package without pre-payments (M 3.2.2)⁶³⁸. The majority emphasised that limitation of pre-payments would ensure stronger protection for consumers in case of cancellation but would also result in higher costs and significant uncertainties for businesses⁶³⁹. This could potentially result in higher package prices and a reduced offer⁶⁴⁰. A slightly higher majority

⁶³⁸ Targeted survey – NCAs (regulatory and enforcement), Q.12: 33% (9/27) agreed, 41% (11/27) did not agree, 26% (7/27) did not know.

⁶³⁹ Ibid., open text replies, Q.13.

⁶⁴⁰ Ibid.

would be more likely to agree to adopt EU rules on partial limitation of pre-payments (M. 3.2.1)⁶⁴¹.

Measure 3.2.1.a) would require regulatory bodies to ensure adherence to the 20% maximum pre-payment limitation in B2B transactions, increasing the regulatory burden on NCAs compared to measures 3.2.1 b) and 3.2.2. Overall, an increased regulatory burden can be expected for all Member States if they are to transpose and enforce new regulatory measures on pre-payments. Some Member States are considering specific rules on pre-payments, while others have no formal rules on pre-payments but the travel sector develops voluntary policy in this regard⁶⁴².

Stakeholders from Member States authorities were not asked about potential regulatory cost differences stemming from a full ban on pre-payments.

The overall impact on improving enforcement (GO3) of pre-payment rules is expected to be neither positive nor negative, but similar to the status quo. Stakeholders shared no specific concerns about the enforcement of these measures.

M3.3 Introduction of rules on a B2B refund right within 14 days of information on cancellation by the organiser for package organisers against service providers to enable organisers to make timely refunds to travellers, while maintaining their liquidity (same as PO 2)

As described under PO 2.

M 3.4 Legislative measures requiring the setting up of a mandatory rapid refund mechanism/crisis fund(s):

- M 3.4.1 at national level
- M 3.4.2 at EU level

GO3 – Improve enforcement
+

Under M 3.4.1, national regulatory bodies may incur additional tasks related to the set-up, operation and compliance-monitoring of crisis funds. One Member State that activated a crisis fund during the COVID-19 pandemic reported that costs were not calculated separately, but set-up costs were not significant⁶⁴³, mainly because premises and staff were already in place to run the guarantee fund.

Benefits could include harmonised consumer protection measures across the EU and reduced costs for NCAs in cases of insolvency.

Under M 3.4.2, the EU-level crisis fund would be introduced, taking some financial burden off NCAs that have already introduced such funds (they would face no additional operational costs)⁶⁴⁴.

Overall, the measure would potentially contribute to improving the enforcement of consumer protection rules (GO3).

⁶⁴¹ Targeted survey – NCAs (regulatory and enforcement), Q.13: 46% (12/26) agreed, 31% (8/26) did not agree, 23% (6/26) did not know.

⁶⁴² Minutes of the workshop with experts from CPC Network on 12 May 2022.

⁶⁴³ Interview with Member State NCA.

⁶⁴⁴ A crisis fund is in place in Poland.

M 3.5 Rules on vouchers: voluntary vouchers possible only in crisis situations

- explicitly accepted by travellers after receiving clear information on their refund right;
- at least the same value as cancelled packages;
- validity up to 12 months, may be extended once with the explicit agreement of both parties;
- automatic refund if not redeemed - travellers do not have to ask for refund;
- protected against the insolvency of the issuer (applies also to pending refund claims).

GO3 – Improve enforcement

+/-

Under this measure, voluntary vouchers would only be allowed during crisis situations, alleviating financial constraint on travel organisers and service providers in the event of mass cancellations. Otherwise, travel organisers would have to provide cash reimbursement.

The measure could contribute to better enforcement of consumer rights (GO3) during major crises, although discussions could arise as to such what constitutes a crisis, i.e. when it is legitimate to apply the measure. This would potentially create detriment for enforcing authorities should the context for enforcing the measure not be fully clarified.

Different Member State authorities emphasised the need to ensure that vouchers are secured against insolvency⁶⁴⁵, with almost half (5/11) of the NCAs (insolvency) responding to the targeted survey agreeing that the estimated costs for insuring vouchers issued during a major crisis against the insolvency of an organiser are reasonable⁶⁴⁶. No further information on these costs was provided, however.

Only half (6/12) of the NCAs (insolvency) responding to the targeted survey said that their national rules on insolvency protection cover vouchers⁶⁴⁷, suggesting potentially residual costs for the public authorities in several Member States.

M 3.6 Legislative clarification that no insolvency protection is required where no pre-payments are requested (same as PO 2)

As described under PO 2.

M 3.7 Vouchers and pending refund claims to be protected against insolvency (same as PO 2)

As described under PO 2.

M 3.8 Further specifications on the effectiveness of insolvency protection (same as PO 2 + addition of back-up fund):

- M 3.8.1 to be provided by national systems through criteria related to an exposure analysis based on pre-payment policy, core seasons, and supervision of organisers,

⁶⁴⁵ Workshop with the CPC Network, May 2022; minutes of the meeting of the stakeholder expert group to support the application of the PTD, November 2022.

⁶⁴⁶ Targeted survey – NCAs (insolvency protection), Q.4: 9% (1/11) strongly agree, 36% (4/11) agree, 9% (1/11) tend to disagree, 45% (5/11) don't know.

⁶⁴⁷ Targeted survey – NCAs (insolvency protection), Q.8: 50% (6/12) yes, 50% (6/12) no.

etc., i.e. **M 2.8.1. + mandatory back-up funds to be funded by organisers at national level**

- M 3.8.2 mandatory back-up fund at EU level

GO3 – Improve enforcement
+/-

Exposure analysis by national authorities may constitute an additional burden unless a Member State already undertakes such analysis. The mandated use of common criteria, however, could strengthen the resilience of national insolvency protection systems and ensure their comparability, potentially improving enforcement (GO3).

The mandatory introduction of back-up funds could add enforcement and monitoring costs for NCAs in Member States without such systems. PO 2 noted that NCAs' varying opinions on whether back-up funds would be necessary, with some pointing out that while they would support a mandatory fund, the PTD should not define its conditions. When asked if they would consider it appropriate that Member States whose insolvency protection system relies on insurance policies or bank guarantees should be obliged to create back-up funds, half did not know, and the remaining half was split (three agreed, three disagreed)⁶⁴⁸.

The introduction of an EU back-up fund was rejected by half of the NCAs (national insolvency protection) responding to the targeted survey⁶⁴⁹. One smaller Member State noted the disproportionately higher costs it would face from an EU fund. According to the proposed structure of the EU fund, contributions would be collected from travel organisers, thus reducing the costs for national insolvency protection agencies already maintaining such a fund.

M 3.9 Introducing changes to the definition of LTAs (same as PO 2):

- M3.9.1 Maintaining only type (a) LTAs, i.e. removing Type (b) LTAs, with adaptations of the definition of click-through packages; changing the criterion of a 'single visit or contact' to a specific number of hours (between 3 and 24 hours); providing information on insolvency protection only where it exists

- M 3.9.2 Deleting both types of LTA and adapting the definition of click-through package plus the definition of single point of sale package

As described under PO 2.

M 3.10 Regulating travel warnings:

GO3 – Improve enforcement
+

Member States have their own criteria for determining travel warnings/travel advice for third countries and for incoming visitors. Harmonising travel warnings and identifying NCAs overseeing national-level travel warnings could aid travellers (incoming and outgoing) and travel organisers, as well as supporting Member States to lower the administrative costs of maintaining, updating and revising independent warning systems. However, Member States

⁶⁴⁸ Targeted survey – NCAs (insolvency protection systems), Q.7: n=12.

⁶⁴⁹ Targeted survey – NCAs (insolvency protection systems), Q.10: 8% (1/12) yes, 50% (6/12) no, 42% (5/12) don't know.

have previously opposed the idea of providing a formal legal value to travel warnings and remain somewhat sceptical⁶⁵⁰.

The consultation found no consensus on the legal value of travel warnings: one Member State pointed out that it would be difficult to identify a single authority entitled to issue official travel warnings, with coordination potentially proving cumbersome⁶⁵¹; another, however, felt that guidance on travel warnings would be useful, as such advice significantly differs between Member States⁶⁵².

M 3.11 Encouraging better enforcement of the PTD through soft law or best practice exchanges (same as PO 1)

As described under PO 1.

M3.12 Inserting penalties from the Modernisation Directive into the PTD (same as PO 2)

As described under PO 2.

3.7 Comparison of options

Impact assessment criteria

In addition to comparing POs based on their estimated costs and benefits, the study undertook an assessment of key criteria, looking specifically at the effectiveness, efficiency, coherence and clarity of the different options to establish their overall impacts across the stakeholder groups.

For **effectiveness**, the key consideration is the extent to which the specific option might achieve or progress towards the PTD's objectives. The assessment considered progress via individual options, as well as the role of EU action in delivering benefits. **Efficiency** looked at the cost-benefit ratio of each option for the stakeholder groups, considering the drivers of the costs and their relationship to the overall objectives. Under **coherence**, the analysis examined how the different options could impact Member States' practices, as well as the extent to which the PTD would be better aligned with other relevant EU policies (e.g. APRR, consumer policies).

⁶⁵⁰ Official travel warnings were removed from the 2013 Commission proposal following objections from the Member States.

⁶⁵¹ Interview with NCA.

⁶⁵² Workshop with CPC Network, May 2022.

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Table 29. Analysis of POs: effectiveness

Effectiveness	Strengthen protection of travellers' pre-payments and right to a timely refund in the event of cancellation, bankruptcy, and major crisis, while maintaining the liquidity of package organisers	Strengthen travellers' protection against organisers' insolvency, including in the event of a major crisis, thereby ensuring a level playing field in the internal market	Enhance legal certainty by clarifying and/or simplifying certain provisions
Baseline	(-) The absence of measures addressing liquidity concerns of businesses will continue to negatively impact their ability to reimburse consumers	(+/-) By maintaining the status quo, it is expected that general industry trends will remain in place and continue	(-) Lack of guidance on the interpretation of definitions and insolvency protection instruments (e.g. back-up funds) can contribute to differences in Member State approaches
PO 1	(-/+) No limitations on pre-payments, no change in refund rights, no additional clarification of insolvency protection for vouchers and no rules on insolvency back-up fund – this would contribute to maintaining the status quo and would not introduce additional impacts. Voluntary crisis funds may not bring about changes but could contribute to better understanding of right and obligations and create good practices	(-/=) Clarification of insolvency protection for cases with no pre-payment could have conflicting impacts on businesses and consumers. Additional information on the use of voluntary vouchers could improve clarity for consumers. Clarification of unavoidable and extraordinary circumstances could also improve clarity, although effectiveness may be limited by their non-binding nature	(+/-) Clarification of definitions could increase consumer awareness, support increased harmonisation between Member States and improve legal certainty. Soft law instruments facilitating sharing of good practices could support harmonised enforcement. However, effectiveness is limited by their non-binding nature
PO 2	(+) Limitations on pre-payments, together with B2B refund rights, could benefit consumers and support businesses with liquidity challenges. Voluntary national crisis funds and rules on voluntary vouchers could increase consumer confidence but could also increase costs. The non-binding nature of the instrument could result in limited take-up	(+) Elimination of insolvency protection requirement in the absence of pre-payments could have varying impacts on businesses, depending on the costs of insolvency protection and the increased burden on service providers, possibly affecting consumer prices as well. Legal clarification that vouchers are covered under insolvency protection could deliver clear benefits for consumers. There were no clear outcomes for businesses from	(+) Proposed changes to the definition of LTAs could provide clarity for businesses and consumers and support enforcement by NCAs. Clarification of cancellation rights could benefit businesses and consumers and add transparency to transactions. Clarification of roles of the different parties via the information forms could benefit consumers, as they

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	Mandatory rules on B2B refunds (including deadlines) and national crisis funds could improve consumer protection and mitigate detriment. Clarification of definitions and the use of vouchers could further strengthen consumer protection, but may negatively impact the prices of package trips	the proposed measures to strengthen insolvency protection through exposure analysis, voluntary back-up funds or turnover thresholds. However, consumers in countries where such measures are introduced could see improved protection of their payments	would better understand their rights under the PTD. Harmonisation of penalties with other relevant consumer legislation could strengthen regulatory coherence and increase consumer protection
PO 3	(+/-) Limitations on pre-payments extended to service providers could protect organisers' liquidity but may prompt them to sell their services outside the framework of a package. These measures could effectively protect consumers' pre-payments, but also contribute to price increases and reduced consumer choice. B2B refund rules could facilitate timelier reimbursements and support liquidity of travel organisers. Mandatory crisis funds could provide coherent and consistent protection for consumer payments during crises, but could contribute to price increases. Rules on voluntary vouchers could improve consumer rights and strengthen the transparency of transactions	(+/-) There were no clear outcomes for businesses from the measures to strengthen insolvency protection through exposure analysis. Consumer prices may also be affected. Elimination of insolvency protection requirements in the absence of pre-payments could have varying impacts on businesses, depending on the costs of insolvency protection and the increased burden on service providers. Legal clarification that vouchers are covered under insolvency protection could deliver clear benefits for consumers. The introduction of mandatory back-up funds, although not a major component of this option, could support harmonisation of insolvency protection measures and benefit consumers. However, this is only one of the possible elements to achieve effective insolvency protection	(+) Clarification and simplification of the definitions of LTAs could deliver clear benefits for all stakeholders. Regulating travel warnings could also strengthen transparency and increase clarity. Member States have previously rejected efforts towards such harmonisation. Harmonisation of penalties with other consumer legislation could strengthen regulatory coherence and increase consumer protection. Soft law measures on enforcement could improve clarity for all stakeholders. Clarification of the roles of the different parties via the information forms could be useful for consumers

Source: ICF.

Note: Legend: ++ significant positive impact, +positive impact, +/- neutral, - negative impact, -- significant negative impact.

3.7.1.1 Efficiency

The POs were assessed for efficiency through an MCA that drew on the impact scores under each of the categories (see analysis of options and measures in Chapter 3). Table 30 presents the average score for each impact category, i.e. the average (mean) of the qualitative scores for each measure⁶⁵³.

Several variations and tests of efficiency were used to examine the robustness of the results (see Tables 31-34). The results are explained in detail below.

- ✓ Equal weighting analysis (Table 31): Two analyses are run, one applying equal weighting to each impact category and one applying equal weighting to each dimension. PO 2 performs best, followed by PO 3, under both variations;
- ✓ Local sensitivity test (Table 32 and 33): This removes each impact criterion individually, then re-runs the two equal weightings. Removal of any individual impact criterion does not affect the equal impact category weighting results. PO 2 performs best in 100% of cases, i.e. irrespective of the impact category removed. When impacts on SMEs are removed, PO 3 performs as well as PO 2. Applying the same test at the dimension level, i.e. removing each dimension individually), returns the same results – PO 2 performs best in each case, followed by PO 3. The exception is where the economic dimension is removed, in which case PO 2 and PO 3 score the same;
- ✓ Pairwise comparison (Table 34): This tests the performance of each option against the others, for each impact category. PO 2 performs better and more consistently for more impact criteria than other options.

The analysis yields stable results, indicating that PO 2 performs best, followed by PO 3. The baseline is the worst performing option.

Table 30. Average impact scores, by impact category and PO

Impact category	B	O1	O2	O3
Impacts on businesses	0.0	0.5	0.6	0.5
Macroeconomic impacts	0.0	-1.0	-1.0	-1.0
Impacts on consumers	0.0	0.4	0.9	1.2
Impacts on SMEs	0.0	0.3	-0.3	-0.5
Member State authorities	0.0	0.4	0.6	0.3
Environmental impacts	0.0	0.0	0.0	0.0
Social impacts	0.0	0.8	1.5	1.5

⁶⁵³ Qualitative impact scores: ‘-’ moderate negative impact, ‘-’ significant negative impact, ‘=’ no significant impact, ‘+’ moderate positive impact, ‘++’ significant positive impact, ‘+/-’ inconclusive/uncertain. These were converted to numeric scores as follows: (-- : -2), (- : -1), (= or +/- : 0), (+ : 1), (++ : 2). The score of ‘-/+’ was assigned a zero value as there was insufficient evidence to draw conclusions on the impact. PO impacts assessed relative to the baseline, which is always ‘=’ and thus scores zero.

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Table 31. Ranking of options under equal weights

MCA analysis	B	O1	O2	O3
Equal impact category weights	4 th	3 rd	1 st	2 nd
Equal dimension weights	4 th	3 rd	1 st	2 nd

Table 32. Local sensitivity analysis: ranking of options with each impact category excluded

Excluded impact category	B	O1	O2	O3
Impacts on businesses	4 th	3 rd	1 st	2 nd
Macroeconomic impacts	4 th	3 rd	1 st	2 nd
Impacts on consumers	4 th	3 rd	1 st	2 nd
Impacts on SMEs	4 th	3 rd	1 st	1 st
Member State authorities	4 th	2 nd	1 st	2 nd
Environmental impacts	4 th	3 rd	1 st	2 nd
Social impacts	4 th	2 nd	1 st	2 nd

Table 33. Local sensitivity analysis: ranking of options with each impact dimension excluded

Excluded impact dimension	B	O1	O2	O3
Economic impacts	4 th	3 rd	1 st	1 st
Environmental impacts	4 th	3 rd	1 st	2 nd
Social impacts	4 th	2 nd	1 st	2 nd

Table 34. Pairwise comparison of options: number of criteria on which each PO performs better than another

Performing option	B	O1	O2	O3
B	-	1	2	2
O1	5	-	1	2
O2	4	4	-	3
O3	4	2	1	-

3.7.1.2 Coherence

The proposed measures are broadly coherent with the goals of the EU's consumer strategy (New Consumer Agenda) and with other policies and legislation, such as the APPR, as well as with the EU international trade commitments. Key areas of coherence include the following:

- ✓ Measures are aligned with the New Consumer Agenda's overall objectives to strengthen consumer rights in response to challenges posed by the digital transition, COVID-19 pandemic, and plans for post-COVID-19 recovery;
- ✓ Consumer protection is improved via the proposed harmonisation of the PTD with the Consumer Rights Directive, the Unfair Contract Terms Directive and the Unfair Commercial Practices Directive's (as amended by the Modernisation Directive) on non-compliance;
- ✓ Measures seek to address overlaps between the PTD and the APPR, paying particular attention to reimbursement and the use of vouchers;
- ✓ POs and measures seek to strengthen insolvency protection by harmonising the variety of measures in place in the Member States, without impeding industry competitiveness.

Overall, proposed mandatory measures under PO 2 and PO 3 would increase coherence of Member States' practices on the use of vouchers, reimbursement, B2B refund deadlines, insolvency protection coverage, and cancellations. Combined with exchanges of good practice and other soft law measures for NCAs, they could improve enforcement, ensure clarity, and strengthen the transparency of transactions.

3.8 SME test

Reflecting the Commission's principle of 'think small first', and supporting the growth of SMEs, impacts of any policy change are to be duly considered in impact assessments. The BRG (November 2021 version) clarified the requirement to carry out an SME test as part of an impact assessment, i.e. to consider whether potential changes may pose disproportionate challenges for SMEs. As 85% of new jobs in Europe are provided by SMEs, regulatory changes can have significant impacts on the entire EU economy.

Table 35 presents the four steps of the SME test, explaining the assessment and potential impacts on SMEs.

Table 35. SME test

Step	Impact assessment study approach, outputs and mitigation	Estimated outcome/results
Identification of affected businesses	Evaluation identified the share of SMEs affected by the PTD	<p>About 99% of travel agencies, tour operators and other reservation services in the EU identified as SMEs in 2019 (approx. 112,000 companies), about 94% of which were micro enterprises</p> <p>The proposed changes would impact larger companies as well as SMEs in the package travel industry, including organisers and service providers. None</p>

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		of the measures is expected to significantly impact the number of SMEs operating in the market, but cost factors were identified that might impact their operations and potential future growth
Consultation of SME stakeholders	Representatives of SMEs were invited to participate in the consultations (interviews, surveys). SMEs participated in the public consultation, targeted survey, and interviews	Of the 323 businesses participating in the public consultation, 310 identified as SMEs, of which 249 were micro enterprises (employing fewer than 10 people). In the targeted consultation for businesses and business associations, 6/30 responses were from businesses, only one of which identified as a small company (employing fewer than 50 people). In the interviews, 24/216 stakeholders were businesses and 38/216 were business associations. Seven interviews were with businesses, four with SMEs. The remaining companies did not respond to the invitation or were unavailable
Measurement of impact on SMEs	During the assessment, the impacts on SMEs were identified and highlighted, where relevant or disproportionate. In the absence of quantifiable data, impacts were assessed qualitatively	Information on business and SME impacts were collected from the targeted survey, interviews, and literature. The public consultation contained limited quantifiable cost data. Most quantifiable cost impacts were collected in relation to PO 0 (baseline), as these were built on past practices. Relatively limited quantifiable cost impacts were identified for the proposed options and measures, partly due to uncertainty in the composition of some measures and to the inability of stakeholders to distinguish certain cost items from their overall operational costs. In the absence of cost data, impacts were assessed qualitatively. SME impacts aligned with overall business impacts, with little to no disproportionality. The assessment noted the impact of exogenous factors on SMEs' ability to adopt or cope with regulatory changes, including financial health of the company, consumer base, and selection of offers
Assessment of alternative mechanisms and mitigating measures	Mitigating measures were considered and identified where relevant	Measures with higher flexibility were found to offer more opportunities for SMEs to adapt their practices in line with regulatory changes. Some of the

measures identified increasing consumer trust as having medium-term to long-term impact, which could increase demand and turnover, including for SMEs. Longer transition periods were identified as potential mechanisms to support SME's adaptation to binding instruments

3.9 Monitoring and evaluation

This section identifies the activities and approaches required at EU and Member State levels to monitor implementation and compliance of the proposed changes. The aim is to ensure that appropriate arrangements are put in place to track progress and evaluate stakeholders and Member States. In line with the BRG, monitoring and evaluation must integrate the following principles:

- ✓ Collect only what is relevant so as to minimise administrative burden;
- ✓ Automate as much as possible, using IT tools to shorten data collection and processing time;
- ✓ Use common reporting standards to increase interoperability and ease sharing of data in the context of different policy areas;
- ✓ Make maximum use of existing data to save time and increase coherence of results;
- ✓ Be transparent towards stakeholders and opt to make data publicly available, preferably as 'open data' (according to the principles of the eGovernment Action Plan).⁶⁵⁴

Member State monitoring

The following data should be collected and monitored by NCAs annually:

- ✓ Number of travel organisers selling package trips;
- ✓ Number and types of businesses identified as LTAs (if the concept is maintained);
- ✓ Number and share of non-compliant businesses;
- ✓ Value and number of package trips sold, and share of the whole travel market;
- ✓ Value and average share of pre-payments of the total price paid to organisers;
- ✓ Value and number of services or packages cancelled due to unavoidable and extraordinary circumstances;
- ✓ Share of consumers refunded within 14 days of cancellation for unavoidable and extraordinary circumstances;
- ✓ Average time before refund after cancellation for unavoidable and extraordinary circumstances;
- ✓ Share of consumers accepting vouchers instead of refund in cases of cancellation for unavoidable and extraordinary circumstances;
- ✓ Value and volume of consumer complaints for unsatisfactory services and delayed reimbursement;
- ✓ Number of travel organisers and service providers filing insolvency proceedings;
- ✓ Average value of insolvency protection and share per average annual revenue;

⁶⁵⁴ eGovernment Action Plan: <https://digital-strategy.ec.europa.eu/en/policies/egovernment-action-plan#:~:text=The%20eGovernment%20Action%20Plan%20set,benefits%20of%20digital%20public%20services.>

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- ✓ Average cost of insolvency protection (amount and as share of average annual revenue) per type of company;

Member States should also begin to collect data on the compliance of businesses prior to the implementation of the revised Directive. Member States are recommended to provide at least annual updates to the European Commission on the level of compliance and the support requested from businesses.

EU-level monitoring

The European Commission should review Member State compliance reports at least every five years and adjust the support mechanisms in light of the share of compliant versus non-compliant businesses. The following indicators are proposed for monitoring compliance. The indicators have been developed in line with the RACER criteria: relevant, accepted, credible, easy to monitor and robust.

Table 3.2 Monitoring indicators

Objectives	Indicators	Data source	Frequency of measurement by the Commission
Strengthen consumer protection	Share of non-compliant businesses in Member States (%)	Member State reporting	Every 5 years
	Volume and value of consumer complaints	Member State reporting Reports from consumer organisations	
	Share of consumers receiving refund within 14 days		
	Average time before refund		
	Share of consumers accepting vouchers instead of refund		
Maintain industry competitiveness	Number of travel organisers and service providers in the sector	Self-reporting by industry associations Member State reporting	
	Year-on-year change in bankruptcy cases of organisers	Insolvency protection agencies Industry associations	
	Average value of insolvency protection and share per average annual revenue		
	Average cost of insolvency protection		

Annex 1 List of Documents reviewed

Reference	Type of document	Year
Legislation		
Commission Decision (EU) 2017/175 on establishing EU Ecolabel criteria for tourist accommodation	EU Legislation	2017
Directive (EU) 2011/24 on the application of patients' rights in cross-border healthcare	EU Legislation	2011
Directive (EU) 2015/2302 on package travel and linked travel arrangements	EU Legislation	2015
Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers	EU Legislation	2020
European Commission, (2020), Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	EU Legislation	2020
European Commission, Proposal for a Directive as regards empowering consumers for the green transition through better protection against unfair practices and better information	EU Legislation	2022
Regulation (EC) No 66/2010 on the EU Ecolabel	EU Legislation	2009
Regulation 1008/2008 on common rules for the operation of air services in the Community (Recast)	EU Legislation	2008
Regulation 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air	EU Legislation	2006
Regulation 1177/2010 on the rights of passengers when travelling by sea and inland waterway	EU Legislation	2010
Regulation 1371/2007 on rail passengers' rights and obligations	EU Legislation	2007
Regulation 1371/2007 on rail passengers' rights and obligations	EU Legislation	2007
Regulation 181/2011 on the rights of passengers in bus and coach transport	EU Legislation	2011

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Reference	Type of document	Year
Regulation 2015/848 on insolvency proceedings	EU Legislation	2015
Regulation 2021/782 on rail passengers' rights and obligations	EU Legislation	2021
Regulation 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test, and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic	EU Legislation	2021
Regulation 261/2004 on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights	EU Legislation	2004
EU Documentation		
European Commission (2020), Communication on Coordinated economic response to the COVID-19 Outbreak	EU Documentation	2020
European Commission, (2020), Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 91 I/01, C/2020/1863, OJ C 91	EU Documentation	2020
European Commission, (2013), Impact Assessment accompanying the document on package travel and assisted travel arrangements, SWD(2013) 263final	EU Documentation	2013
European Commission, (2019), Report on the provisions of Directive (EU) 2015/2302 on package travel and linked travel arrangements applying to online bookings made at different points of sale, COM(2019) 270final	EU Documentation	2019
European Commission, (2020), Information on the Package Travel Directive in connection with the COVID-19	EU Documentation	2020
European Commission, (2020), Meeting of the Stakeholder Expert Group to discuss the draft report on the application of the Package Travel and Linked Travel Arrangements Directive (2015/2302)	EU Documentation	2020

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Reference	Type of document	Year
European Commission, (2020), New Consumer Agenda Strengthening consumer resilience for sustainable recovery	EU Documentation	2020
European Commission, (2020), 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	EU Documentation	2020
European Commission, (2020), Study on the current level of protection of air passenger rights in the EU	EU Documentation	2020
European Commission, (2020), Sustainable and Smart Mobility Strategy – Putting European transport on track for the future	EU Documentation	2020
European Commission, (2021), Consumer Conditions Survey 2021 edition	EU Documentation	2021
European Commission, (2021), Market Monitoring Survey 2020	EU Documentation	2021
European Commission, (2021), Report 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.	EU Documentation	2021
European Commission, (2021), Scenarios towards cocreation of transition pathway for tourism for a more resilient, innovative, and sustainable ecosystem, SWD(2021) 164 final	EU Documentation	2021
European Commission, (2022), Consumer protection: Airlines reimburse over 500,000 flight vouchers as result of Commission and consumer authorities action in COVID-19 pandemic, Press release	EU Documentation	2022
European Commission, Consumers, Health, Agriculture and Food Executive Agency, Lupiáñez-Villanueva, F., Montealegre Olaya, A., Bogliacino, F., et al., (2020), Behavioural study on advertising and marketing practices in travel booking websites and apps: final report	EU Documentation	2020
European Court of Auditors, (2021), Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts, Special Report 15/2021	EU Documentation	2021

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Reference	Type of document	Year
European Parliament Policy Department for Structural and Cohesion Policies Directorate-General for Internal Policies, (2021), Relaunching transport and tourism in the EU after COVID-19	EU Documentation	2021
European Parliament, (2019), Resolution on the negative impact of the bankruptcy of Thomas Cook on EU tourism (2019/2854(RSP))	EU Documentation	2019
European Parliament, (2020), Resolution of 19 June 2020 on transport and tourism in 2020 and beyond, (2020/2649(RSP))	EU Documentation	2020
European Parliament (2022), Factsheets of the European Union – Tourism	EU Documentation	2022
European Parliament TRAN Committee, (2022), Relaunching transport and tourism in the EU after COVID-19	EU Documentation	2022
Eurostat, (2021), Tourism statistics, Statics explained	EU Documentation	2021
Minutes: Workshop on insolvency protection for Package Travel, (2022)	EU Documentation – not publicly available	2022
Minutes: Workshop with experts from national authorities - Consumer Protection Cooperation (CPC) network	EU Documentation – not publicly available	2022
Minutes: Workshop with the Central Contact Points of the national insolvency protection systems, (2022)	EU Documentation – not publicly available	2022
Steer for European Commission, (2020), Study on the current level of protection of air passenger rights in the EU, Final Report	EU sponsored research	2020
Stakeholder Organisations' Papers		
Airlines for Europe, (2021), A4E comments on the draft 2021 report on the Package Travel Directive	Business organisation paper	2021

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Reference	Type of document	Year
Airlines for Europe, (2021), A4E Position on Airline insolvencies (submitted as part of the Public Consultation of the PTD)	Business organisation paper	2021
Airlines for Europe, (2021), A4E's position on prepayment of tickets (submitted as part of the Public Consultation of the PTD)	Business organisation paper	2021
Airlines for Europe, (2022), Call for evidence on "better protection of passengers and their rights"	Business organisation paper	2022
BEUC, (2020), A coordinated strategy for the exit and recovery of the aviation industry from the COVID-19 crisis	Consumer organisation paper	2020
BEUC, (2020), BEUC's position on travellers' rights during the COVID-19 crisis	Consumer organisation paper	2020
BEUC, (2020), Comments on the Package Travel Directive Roadmap and inception impact assessment	Consumer organisation paper	2020
BEUC, (2020), Covid-19 and EU Travellers' Rights – Evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers'	Consumer organisation paper	2020
BEUC, (2021), Insolvency protection in the travel industry: Lessons from successive crises and the way forward to regain consumer trust	Consumer organisation paper	2021
BEUC, (2021), The Package Travel Directive: BEUC's Position on how to regain consumers' trust in the tourism sector	Consumer organisation paper	2021
ECTAA, (2021), Covid-19 and Tourism in Europe: Which Consequences for Travel Agencies and Tour Operators	Business organisation paper	2021
SME United (2020),: A view on the COVID impact on and support measures for SMEs	Business organisation paper	2020
International research		

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Reference	Type of document	Year
European Travel Commission, (2022), European Tourism 2021 – Trends & Prospects	International research	2022
European Travel Commission, (2022), European Tourism 2022 – Trends & Prospects	International research	2022
International Monetary Fund, (2021), Tourism in the Post-Pandemic World. Economic challenges and opportunities for Asia-Pacific and the Western Hemisphere, no. 21/02	International research	2021
Lütolf, P., Rupp, M., Wernli, R., (2020), Gutachten Vorkasse im Reise- und Flugbereich	Research	2020
OECD, (2020), OECD Tourism trends and policies	International research	2020
OECD, (2020), OECD Tourism trends and policies - Chapter 2: Preparing tourism businesses for the digital future	International research	2020
Statista, (2022), Travel and tourism in Europe - statistics & facts	International statistics	2022
Travel Guarantee Committee, (2021), Report on the Norwegian travel guarantee system	Documentation – not publicly available	2021
World Bank Group, (2020), Rebuilding Tourism Competitiveness - Tourism response, recovery, and resilience to the COVID-19 crisis	International research	2020
World Economic Forum, (2022), How quickly is tourism recovering from COVID-19?	International research	2022
Academic articles		
Abstiens, K., Spitzenr, F., Walter, A., (2022), The standard package travel information sheet-provides measures to improve consumer information from a behavioural economic point of view	Academic Article	2022
A. P. C. van Wees (2019), Aansprakelijkheid voor gedeeld reisgenot onder de nieuwe regeling van de	Academic Article	2019

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Reference	Type of document	Year
pakketreisovereenkomst en gekoppelde reisarrangementen, Tijdschrift voor Consumentenrecht en handelspraktijken, Vol. 2.		
Bech Serrat, J. M., (2021), Covid-19 Contractual Measures in Hospitality: Lessons from Problematic Regulation in Europe, Journal of European Consumer and Market Law, nr. 2	Academic article	2021
Bernard, N., (2021), Taking Air Passenger Rights Seriously: The Case Against the Exclusivity of the Montreal Convention, International Community Law Review	Academic Article	2021
COVID-19 – Consumer Law Research Group, (2020) Consumer Law and Policy Relating to Change of Circumstances due to the COVID-19 Pandemic	Academic article	2020
Cseres, K. J., (2021), EU State Aid Law and Consumer Protection: an unsettled relationship in times of crisis, Journal of European Competition Law & Practice, Vol. 12, N°8	Academic Article	2021
Cybula P., (2018) Aksjologia zmiany prawa konsumenckiego na przykładzie implementacji w Polsce dyrektywy 2015/2302 w sprawie imprez turystycznych i powiązanych usług turystycznych, 49 Etyka w Turystyce.	Academic Article	2018
Demma C., Il settore turistico e la pandemia di COVID-19, Banca d'Italia, Note Covid-19, 28 September 2021.	Academic Article	2021
Erotokritou, C., Grigorieff, C-I., (2020), EU Regulation No 261/2004 on Air Passenger Rights: The Impact of the COVID-19 on Flight Cancellation and the Concept of Extraordinary Circumstances, Air and Space Law, vol. 45, special issue	Academic Article	2020
Janneke Kruijswijk Jansen (2017), Nieuwe richtlijn pakketreizen en gekoppelde reisarrangementen: veranderingen in aansprakelijkheidsregime?, Verkeersrecht, Vol. 19.	Academic Article	2017
Karabatzos A., (2016), Private autonomy and consumer protection, A contribution to its behavioural economic analysis of law, P.N. Sakkoulas, Law & Economy, Athens.	Academic Article	2016.

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Reference	Type of document	Year
Kardoulia, E., (2020), The Protection of the Consumer-Receiver of Tourist Services Focussing on the Travel Contract, Ph.D. thesis.	Academic Article	2020
Kruijswijk Jansen, J., (2017), Nieuwe richtlijn pakketreizen en gekoppelde reisarrangementen: veranderingen in aansprakelijkheidsregime?, Verkeersrecht, Vol. 19	Academic Article	2017
Kvítková, Z., Petru, Z. (2020), Vouchers as a Result of Corona Virus and the Risks for Tour Operators and Consumers, Journal of Innovative Business and Management, vol. 13, no. 1.	Academic Article	2020
Loos M. (2020), De verhouding tussen de regels voor pakketreizen en de regels voor onvoorziene omstandigheden bij het uitbreken van de coronacrisis, Tijdschrift voor Consumentenrecht en handelspraktijken, Vol. 6.	Academic Article	2020
Loos, M.B.M., (2021), One day I'll fly away... Voucher schemes for cancelled package travel contracts after the outbreak of the COVID-19 pandemic, Amsterdam Law School Legal Studies Research Paper, No. 2021-13	Academic Article	2021
Maguire, A., Bussmann, S., Meier zu Köcker, C., Verra, S. E., Giurgi, L. A. and Ruggeri, K. (2016), Raising concern about the information provided on medical travel agency websites: A place for policy, Health Policy and Technology, Vol. 5, Issue 4	Academic Article	2016
Marak K. (2019), Transpozycja konsumenckich dyrektyw maksymalnych na przykładzie dyrektywy turystycznej 2015/2302 do polskiego porządku prawnego, 329 Acta Universitatis Wratislaviensis.	Academic Article	2019
Morais Carvalho J. (2020). COVID-19 and the cancellation of trips and bookings – Decree-Law No. 17/2020 (COVID-19 e o cancelamento de viagens e reservas – Decreto-Lei n.º 17/2020). Nova Consumer Lab.	Academic Article	2020
Oliveira, M. (2019). The new regime of package travel and linked travel arrangements (O novo regime jurídico das viagens organizadas e serviços de viagem conexos). Center of Consumer Law, Law Faculty of Coimbra University (Centro do Direito de Consumo, Faculdade de Direito, Universidade de Coimbra).	Academic Article	2019

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Reference	Type of document	Year
Pereira Andrade, R. (2018). The package travel contract in light of Directive (EU) 2015/2302 (O contrato de viagem organizada à luz da Diretiva (UE) 2015/2302). Law Faculty of Nova University of Lisbon.	Academic Article	2018
Piovesani, E., (2021), The Response to the Impact of the COVID-19 Pandemic on Contracts for the Carriage of Passengers by Air and Package Travel in the German and Italian Law Systems, Elte Law Journal, vol. 49, issue 2.	Academic Article	2021
Riefa, C., (2020), Coronavirus as a Catalyst to Transform Consumer Policy and Enforcement.	Academic Article	2020
Snel M. V.R. (2020), Het toepassingsbereik van de regeling inzake de pakketreisovereenkomst en het gekoppeld reisarrangement, Tijdschrift voor Consumentenrecht en handelspraktijken, Vol. 5.	Academic Article	2020
Verra, S.E., Krouze, R., Ruggeri, K. (2016), Facilitating safe and successful cross-border healthcare in the European Union, Health Policy, Vol. 120, Issue 6.	Academic Article	2016
National documentation		
Bulgarian Commission for consumer protection 2019 Annual Report.	Report	2019
Bulgarian Commission for consumer protection 2020 Annual Report.	Report	2020
Bulgarian Commission for consumer protection 2021 Annual Report.	Report	2021
Italian Authority of Competition and Market, (Autorità Garante della Concorrenza e del Mercato), Press Release, 28 May 2020.	Press release	2020
Italian Authority of Competition and Market, (Autorità Garante della Concorrenza e del Mercato), Press Release, 24 May 2021.	Press release	2021
Latvian Consumer Rights Protection Centre, 2019 Annual Report.	Report	2019
Latvian Consumer Rights Protection Centre, 2020 Annual Report.	Report	2020

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Reference	Type of document	Year
Latvian Consumer Rights Protection Centre, 2021 Annual Report	Report	2021
Romanian National Consumer Protection Authority (NCPA), 2018 Report.	Report	2018
Romanian National Consumer Protection Authority (NCPA), 2019 Report.	Report	2019

Annex 2 Market practices and development – focus on 10 Member States

MS	Market practices and developments ⁶⁵⁵							
	Number of package travels (number of trips – thousands) ⁶⁵⁶	Expenditure for package travels – (Billion euro) ⁶⁵⁷	Number of travel agency, tour operator and other reservation service and related activities – (Number of enterprises, thousand) & Turnover travel agency, tour operator and other reservation service and related activities – (Billion euro) ⁶⁵⁸			Micro-enterprises (0-9 persons employed) share of total number of travel agency, tour operator and other reservation service and related activities – (Share of the total number of enterprises of the country in focus) ⁶⁵⁹		
			2013-2015	2016-2018	2019	2013-2015	2016-2018	2019

⁶⁵⁵ The timeframe considered goes from 2013 to 2021. Due to lack of data, figures are only given for the years for which data is available.

⁶⁵⁶ Source: ICF. Elaborated based on “Eurostat – Number of trips by type of organisation (from 2014 onwards) [tour_dem_ttorg]”.

⁶⁵⁷ Source: ICF. Elaborated based on “Eurostat – Expenditure by type of organisation (from 2014 onwards) [tour_dem_exorg]”.

⁶⁵⁸ Source: ICF. Elaborated based on “Annual enterprise statistics for special aggregates of activities (NACE Rev. 2) [sbs_na_sca_r2]”.

⁶⁵⁹ Source: ICF. Elaborated based on “Eurostat – Annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [sbs_sc_sca_r2]”.

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DE	Germany has been the top country for the number of package travels in the EU both in 2014 and in 2017.	Germany ranked as the top country for spending on package travel in the EU, both in 2014 and in 2017.	Travel agency 2013: 10.5	Travel agency 2016: 12.3	Travel agency 2019: 12.6	Share, 2013: 86%	Share, 2016: 88%	Share, 2019: 87%
			Travel agency 2015: 12	Travel agency 2018: 13.1	Variation from 2013: +20%	Share, 2015: 88%	Share, 2018: 89%	
	2014: 38 148.2	2014: EUR 26.01						
	2017: 36 278.8	2017: EUR 29.36	Variation: +14%	Variation: +7%	Share of EU27, 2019: 11%			
	Variation from 2014 to 2017: -5%	Variation from 2014 to 2017: +13%	Share of EU27, 2013: 12%	Share of EU27, 2016: 12%	Turnover 2019: EUR 38.2			
	Share of EU27, 2014: 44%	Share of EU27, 2014: 39%	Share of EU27, 2015: 12%	Share of EU27, 2018: 12%	Variation from 2013: +37%			
	Share of EU27, 2017: 42%	Share of EU27, 2017: 35%	Turnover 2013: EUR 27.9	Turnover 2016: EUR 31.6				
			Turnover 2015: EUR 30.4	Turnover 2018: EUR 35.2				
			Variation: +9%	Variation: +11%				

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ES	Spain has been the 4th country for the number of package travels in the EU both in 2014 and in 2017.	Spain ranked as the 5th country for spending on package travel in the EU, both in 2014 and in 2017.	Travel agency 2013: 10.9	Travel agency 2016: 12.9	Travel agency 2019: 14.7	Share, 2013: 95%	Share, 2016: 96%	Share, 2019: 96%
			Travel agency 2015: 11.4	Travel agency 2018: 14.5	Variation from 2013: +35%	Share, 2015: 95%	Share, 2018: 96%	
	2014: 3 837.7	2014: EUR 2.73	Variation: +5%	Variation: +12%	Share of EU27, 2019: 13%			
	2017: 6 450.1	2017: EUR 5.24	Share of EU27, 2013: 12%	Share of EU27, 2016: 13%	Turnover 2019: EUR 25			
	Variation from 2014 to 2017: +68%	Variation from 2014 to 2017: +92%	Share of EU27, 2015: 12%	Share of EU27, 2018: 13%	Variation from 2013: +49%			
	Share of EU27, 2014: 4%	Share of EU27, 2014: 4%	Turnover 2013: EUR 16.8	Turnover 2016: EUR 20.1				
	Share of EU27, 2017: 7%	Share of EU27, 2017: 6%	Turnover 2015: EUR 18.3	Turnover 2018: EUR 24				
			Variation: +9%	Variation: +19%				

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FR	France has been the 2nd top country for the number of package travels in the EU both in 2014 and in 2017.	France ranked as the 2nd top country for spending on package travel in the EU, both in 2014 and in 2017.	Travel agency 2013: 8.1	Travel agency 2016: 8.9	Travel agency 2019: 10	Share, 2013: 93%	Share, 2016: 92%	Share, 2019: 93%
			Travel agency 2015: 8.7	Travel agency 2018: 9	Variation from 2013: +23%	Share, 2015: 92%	Share, 2018: 93%	
	2014: 11 368.4	2014: EUR 13.40						
	2017: 8 883	2017: EUR 12.34	Variation: +7%	Variation: +1%	Share of EU27, 2019: 9%			
	Variation from 2014 to 2017: -22%	Variation from 2014 to 2017: -8%	Share of EU27, 2013: 9%	Share of EU27, 2016: 9%	Turnover 2019: EUR 13.3			
	Share of EU27, 2014: 13%	Share of EU27, 2014: 20%	Share of EU27, 2015: 9%	Share of EU27, 2018: 8%	Variation from 2013: -2%			
	Share of EU27, 2017: 10%	Share of EU27, 2017: 15%	Turnover 2013: EUR 13.7	Turnover 2015: EUR 13.2	Turnover 2016: EUR 13.3			
			Variation: -3%	Turnover 2018: EUR 12.7				
				Variation: -5%				

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IE	Ireland has been the 13th country for the number of package travels in the EU both in 2014 and in 2017.	Ireland ranked as the 13th country for spending on package travel in the EU in 2014, and as the 12th in 2017.	Travel agency 2013: 0.9	Travel agency 2016: 1	Travel agency 2019: 1.3	Share, 2013: 90%	Share, 2016: 91%	Share, 2019: 90%
	2014: 1 200.6	2014: EUR 1.06	Travel agency 2015: 1	Travel agency 2018: 1.2	Variation from 2013: +38%	Share, 2015: 91%	Share, 2018: n.a.	
	2017: 1 143.1	2017: EUR 1.10	Variation: +12%	Variation: +13%	Share of EU27, 2019: 1%			
	Variation from 2014 to 2017: -5%	Variation from 2014 to 2017: +4%	Share of EU27, 2013: 1%	Share of EU27, 2016: 1%	Turnover 2019: EUR 2.3			
	Share of EU27, 2014: 1%	Share of EU27, 2014: 2%	Share of EU27, 2015: 1%	Share of EU27, 2018: 1%	Variation from 2013: +83%			
	Share of EU27, 2017: 1%	Share of EU27, 2017: 1%	Turnover 2013: EUR 1.2	Turnover 2016: EUR 2.9				
IT	Italy has been the 9th country for the number of package travels in the EU	Italy ranked as the 6th country for spending on package travel in the EU in 2014, and as the 8th in 2017.	Turnover 2015: EUR 3.2	Turnover 2018: EUR 3.4				
			Variation: +158%	Variation: +16%				
IT	Italy has been the 9th country for the number of package travels in the EU	Italy ranked as the 6th country for spending on package travel in the EU in 2014, and as the 8th in 2017.	Travel agency 2013: 15.4	Travel agency 2016: 16.8	Travel agency 2019: 18.2	Share, 2013: 96%	Share, 2016: 96%	Share, 2019: 96%

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF
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	in 2014, and the 7 th country in 2017.		Travel agency 2015: 16.1	Travel agency 2018: 17.6	Variation from 2013: +18%	Share, 2015: 96%	Share, 2018: 96%
	2014: 2 468.8	2014: EUR 2.19					
		2017: EUR 3.07	Variation: +5%	Variation: +5%			
	2017: 3 238.3		Share of EU27, 2013: 17%	Share of EU27, 2016: 17%	Share of EU27, 2019: 16%		
	Variation from 2014 to 2017: +31%	Variation from 2014 to 2017: +41%	Share of EU27, 2015: 17%	Share of EU27, 2018: 16%	Turnover 2019: EUR 13.6		
	Share of EU27, 2014: 3%	Share of EU27, 2014: 3%	Turnover 2013: EUR 10.6	Turnover 2016: EUR 11.3	Variation from 2013: +29%		
	Share of EU27, 2017: 4%	Share of EU27, 2017: 4%	Turnover 2015: EUR 11.3	Turnover 2018: EUR 12.8			
			Variation: +7%	Variation: +14%			
LT	Lithuania has been the 24 th country for the number of package travels in the EU in 2014, and the 20 th country in 2017.	Lithuania ranked as the 20 th country for spending on package travel in the EU in 2014, and as the 17 th in 2017.	Travel agency 2013: 1	Travel agency 2016: 1.2	Travel agency 2019: 1.3	Share, 2013: 95%	Share, 2016: 96%
	2014: 223	2014: EUR 0.15	Travel agency 2015: 1.2	Travel agency 2018: 1.3	Variation from 2013: +26%	Share, 2015: 96%	Share, 2018: 96%
							Share, 2019: 95%

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2017: 373 Variation from 2014 to 2017: +67% Share of EU27, 2014: 0.3% Share of EU27, 2017: 0.4%	2017: EUR 0.26	Variation: +13%	Variation: +4%	Share of EU27, 2019: 1%			
	Variation from 2014 to 2017: +76%	Share of EU27, 2013: 1%	Share of EU27, 2016: 1%	Turnover 2019: EUR 0.6			
	Share of EU27, 2014: 0.3%	Share of EU27, 2015: 1%	Share of EU27, 2018: 1%	Variation from 2013: +99%			
	Share of EU27, 2017: 0.4%	Turnover 2013: EUR 0.29 Turnover 2015: EUR 0.33 Variation: +17%	Turnover 2016: EUR 0.4 Turnover 2018: EUR 0.5 Variation: +44%				
NL The Netherlands has been the 6 th country for the number of package travels on package travel in the EU in 2014, and the 5 th country in 2017.	2014: 3 599.8	Travel agency 2013: 4.9	Travel agency 2016: 5.5	Travel agency 2019: 6.7	Share, 2013: 95%	Share, 2016: 96%	Share, 2019: 97%
	2017: 4 469	Travel agency 2015: 5.3	Travel agency 2018: 6.3	Variation from 2013: +34%	Share, 2015: 96%	Share, 2018: 97%	
		Variation: +7%	Variation: +13%	Share of EU27, 2019: 6%			

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	Variation from 2014 to 2017: +24%	Variation from 2014 to 2017: +63%	Share of EU27, 2013: 6%	Share of EU27, 2016: 5%	Turnover 2019:		
	Share of EU27, 2014: 4%	Share of EU27, 2014: 5%	Share of EU27, 2015: 5%	Share of EU27, 2018: 6%	n.a.		
	Share of EU27, 2017: 5%	Share of EU27, 2017: 7%	Turnover 2013: EUR 8.3	Turnover 2016: n.a.	Variation from 2013: n.a.		
			Turnover 2015: n.a.	Turnover 2018: n.a.			
			Variation: n.a.	Variation: n.a.			
PL	Poland has been the 8th country for the number of package travels in the EU in 2014, and the 15th country in 2017.	Poland ranked as the 10th country for spending on package travel in the EU in 2014, and as the 15th in 2017.	Travel agency 2013: 5.5	Travel agency 2016: 6.9	Travel agency 2019: 7.7	Share, 2013: 97%	Share, 2016: 98%
	2014: 2 699.5	2014: EUR 1.70	Travel agency 2015: 6.6	Travel agency 2018: 7.5	Variation from 2013: +39%	Share, 2015: 98%	Share, 2018: 98%
	2017: 874	2017: EUR 0.55	Variation: +20%	Variation: +9%	Share of EU27, 2019: 7%		
	Variation from 2014 to 2017: -68%	Variation from 2014 to 2017: -67%	Share of EU27, 2013: 6%	Share of EU27, 2016: 7%	Turnover 2019: EUR 4.7		Share, 2019: 98%
		Share of EU27, 2014: 3%					

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			Share of EU27, 2014: 3%	Share of EU27, 2017: 1%	Share of EU27, 2015: 7%	Share of EU27, 2018: 7%	Variation from 2013: +113%		
			Share of EU27, 2017: 1%		Turnover 2013: EUR 2.2	Turnover 2016: EUR 2.9			
					Turnover 2015: EUR 2.9	Turnover 2018: EUR 4.2			
					Variation: +33%	Variation: +43%			
RO	Romania has been the 15 th country for the number of package travels in the EU in 2014, and the 16 th country in 2017.	Romania ranked as the 17 th country for spending on package travel in the EU in 2014, and as the 18 th in 2017.			Travel agency 2013: 2.7	Travel agency 2016: 2.8	Travel agency 2019: 2.8	Share, 2013: 94%	Share, 2016: 94%
	2014: 894.6	2014: EUR 0.24			Travel agency 2015: 2.8	Travel agency 2018: 2.8	Variation from 2013: +6%	Share, 2015: 94%	Share, 2018: 94%
	2017: 748.5	2017: EUR 0.25			Variation: +5%	Variation: -2%			
	Variation from 2014 to 2017: -16%	Variation from 2014 to 2017: +4%			Share of EU27, 2013: 3%	Share of EU27, 2016: 3%	Share of EU27, 2019: 3%		
	Share of EU27, 2014: 1%	Share of EU27, 2014: 0.4%			Share of EU27, 2015: 3%	Share of EU27, 2018: 3%	Turnover 2019: EUR 0.9		
	Share of EU27, 2017: 1%	Share of EU27, 2017: 0.3%			Turnover 2013: EUR 0.8				
									Share, 2019: 93%

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF
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			Turnover 2015: EUR 0.9	Turnover 2016: EUR 0.76 Variation from 2013: +9%			
			Variation: +16%	Turnover 2018: EUR 0.79 Variation: +4%			
SE	Sweden has been the 5 th country for the number of package travels in the EU in 2014, and the 3 rd top country in 2017.	Sweden ranked as the 9 th country for spending on package travel in the EU in 2014, and as the 3 rd in 2017.	Travel agency 2013: 3.6	Travel agency 2016: 3.6	Travel agency 2019: 3.4	Share, 2013: 96%	Share, 2019: 96%
	2014: 3 605.7	2014: EUR 1.99	Travel agency 2015: 3.6	Travel agency 2018: 3.4	Variation from 2013: -4%	Share, 2015: 96%	Share, 2018: 96%
	2017: 7 400.4	2017: EUR 11.55	Variation: +2%	Variation: -8%	Share of EU27, 2019: 3%		
	Variation from 2014 to 2017: +105%	Variation from 2014 to 2017: +480%	Share of EU27, 2013: 4%	Share of EU27, 2016: 4%	Turnover 2019: EUR 5.4		
	Share of EU27, 2014: 4%	Share of EU27, 2014: 3%	Share of EU27, 2015: 4%	Share of EU27, 2018: 3%	Variation from 2013: -24%		
	Share of EU27, 2017: 9%	Share of EU27, 2017: 14%	Turnover 2013: EUR 7.1	Turnover 2016: EUR 6.9			
			Turnover 2015: EUR 6.7	Turnover 2018: EUR 6			

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			Variation: -5%				
				Variation: - 13%			

Annex 3 Workshop minutes

A3.1 Workshop 1 - Workshop with businesses and consumer representatives

Wednesday 26th October 2022

List of participants

Stakeholder group	Member State/EU	Name of organisation
Business associations	EU	EGFATT
Business associations	EU	ECTAA
Business associations	EU	Fédération Internationale de Tourisme Equestre (FITE)
Business associations	DE	ERGO Reiseversicherung AG
Business associations	EU	SME United
Business associations	EU	Insurance Europe
Business associations	EU	HOTREC
Business associations	EU	EU Travel Tech
Business associations	IT	Guarantee Fund Vacanze Felici (IT)
Business associations	NL	Travel Guarantee Fund Foundation - Stichting Garantiefonds Reisgelden (NL)
Business associations	EU	Airlines4Europe
Consumer organisations	PT	DECO

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Consumer organisations	EL	KEPKA
Consumer organisations	BG	European Consumer Centre
Consumer organisations	SI	European Consumer Centre
Consumer organisations	DE	VZBV
Consumer organisations	BE	Test Achat
Consumer organisations	LU	European Consumer Centre
Consumer organisations	FR	European Consumer Centre
Consumer organisations	BE	European Consumer Centre
Consumer organisations	LV	European Consumer Centre
Consumer organisations	IT	European Consumer Centre
Consumer organisations	NO	Norwegian Consumer Council
Consumer organisations	EU	BEUC
Consumer organisations	DK	Danish Consumer Council
European Commission	EU	DG MOVE
Individual companies	FR	French Fund: APST
Individual companies	CZ	Fiducia S.R.O
Individual companies	IE	Insurance Ireland

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Individual companies	DK	Danish Travel Guarantee Fund
Individual companies	EU	Expedia
Individual companies	DE	German Travel Guarantee Fund - Deutsche Reisesicherungsfonds
Individual companies	BE	Belgian Fund
Individual companies	NO	Norwegian Travel Guarantee Fund
Individual companies	EU	TUI
Individual companies	HU	EUB Travel Insurance

Introduction to the workshop and to the study

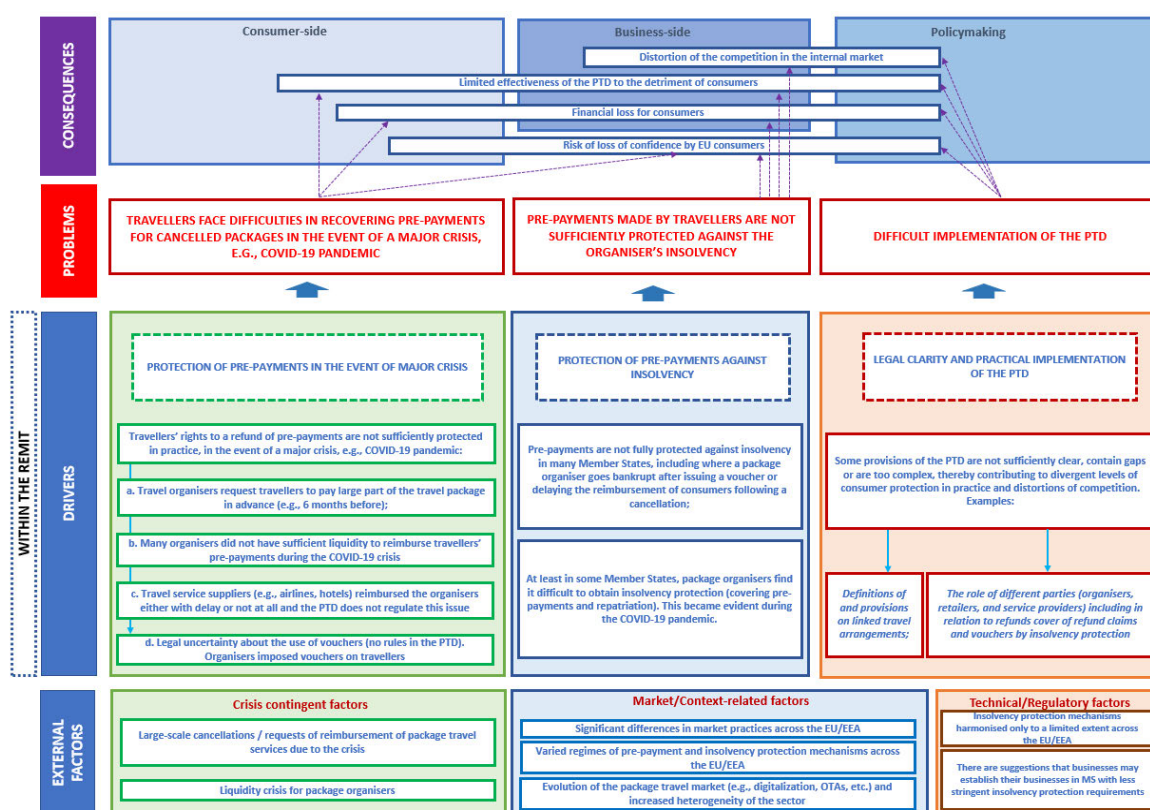
DG JUST introduced the workshop and explained that it was designed as part of ICF's current study that will gather and analyse data for an Evaluation back-to-back with an Impact assessment of the Package Travel Directive in view of its potential revision. DG JUST specified that the workshop is part of the consultation activities carried out for the study, in addition to the Public Consultation (already concluded), the targeted survey questionnaires, and the interviews with key stakeholders. In addition, DG JUST explained that the purpose of the workshop was also to discuss and eventually confirm the Problem Tree of the Package Travel Directive, compiled based on the consultation activities already carried out, as well as to discuss potential measures to address the problems.

ICF reiterated the points raised by DG JUST and explained the agenda for the workshop, that was shared in advance with the participants. ICF also provided further information on the progress-to-date of the study, including pointing out the state of play of the consultation activities and next steps/milestones that will be followed for the remainder part of the exercise.

Presentation of the draft problem tree and preliminary problem definition and its discussion

ICF briefly introduced the main criteria used for Evaluations and IAs according to the Better Regulation Guidelines and that would have been consistently used throughout the workshop. ICF presented the following preliminary *Problem Tree* (hereinafter "PT"), and then opened the floor to the discussion with the participants.

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT ASSESSMENT ON ITS POTENTIAL REVISION



Problems

A business association pointed out that the PT is excessively unbalanced on the issue of pre-payments, whereas the problem with pre-payments vis-à-vis the PTD is related to the fact that suppliers are requesting pre-payment to package organisers. As a general comment, it pointed out that, being the sector mostly composed by SMEs, they cannot be requested to pay the service providers – and, thus, to advance the money – without a pre-payment made by the consumers to the package organisers.

On the same point, one consumer association, while agreeing that pre-payments constitute an issue, from a consumer perspective, pointed out that it is so not only for the package travel sector, but also for the transport sector in general. In this respect, a higher degree of coherence between the package travel sector and transport sector should be achieved. In addition, the consumer association stressed that the enforcement of the PTD is also a problem for the package travel sector and the travel services in general, as there is a clear lack of enforcement of some aspects of the PTD (e.g., the reimbursement to consumers that are delayed) that showcased before the pandemic and then, has been exacerbated by the COVID-19 crisis. The need to have clear rules for the B2B refund right mechanisms (e.g., to introduce clear deadlines for the different reimbursement between different actors across the value chain) was also highlighted as a crucial point.

A business association highlighted that, while the PT already detects several problems linked to the PTD, there are rooms to consider a 4th pillar (problem & consequences) that is the disproportionate burden on intermediaries travel agents in the event of a major crisis. COVID-19 pandemic highlighted that the PTD is not equipped to protect the intermediaries from the risks that these major crises imply for the sector and, particularly, concerning the refund right set out by the PTD, resulting in the significant financial losses for travel agents, which could lead to the bankruptcy of the package organisers, and that in turn could trigger this whole discussion about the insolvency protection. In this respect,

the rationale of the PTD is not to have an insurance that could cover potential bankruptcy of the industry, but rather to ensure that the industry is not put under constant risk of bankruptcy. A calculation model on the risk sharing in the market was provided, as an example, as follows:

- ✓ An intermediary offers package travels for the price of EUR 100, with a margin of 10%;
- ✓ This means that the income of the intermediary is EUR 10, and that the consumer pays the package EUR 100 and that, if the organiser (travel agent or intermediary) sells 10 packages, then he makes EUR 100 as profit;
- ✓ If there is a cancellation of the packages, and organiser must reimburse the whole cost of the 10 packages (EUR 1000).

This example shed the light to the fact that the intermediary's income is linked to a small part of the travel sum and that in the case of a cancellation it must refund the full amount to the consumers. It is in this context that the whole B2B discussions take place, in a situation of misalignment of certain refund requirements (e.g., between the PTD and the air passenger rights). For instance, within the remit of air passenger rights, the flight refund is only required if the flight is not actually departing, but if there is a *negative travel advice* (with the flight still operated) then the travel agent (intermediary, organiser) will need to refund the consumers. This situation enables the B2B element, leading to the misalignment, that determines the fact that travel agents have a disproportionate burden, and a mismatch between the pay-in and pay-out deriving from selling the packages. In practice, if the organiser / intermediary does not get the full refunds from the supplier it can go quickly out of business.

On travel warnings, one consumer association mentioned that the assessment of the feasibility introducing a legal value to travel warnings, allowing them triggering the refund right must be considered. The COVID-19 pandemic exacerbated the situation of uncertainty for consumers, with lack of clarity around the legal value of travel warnings, without any possibility to obtain clearer feedback from any official organisation (e.g., a ministry or an administration). Whether the country of departure or of destination should be considered as a sufficient evidence to trigger these rights needs to be clarified and aligned to the greatest possible extent between the PTD and the air passenger rights Regulation.

ICF requested clarification on the length of the supply chain delays resulting in delays for the organisers to be able to get the refund from the suppliers. One business association expanded on this point, highlighting that, in case a transport service is not taking place resulting in a refund right for the traveller, the PTD establishes the timeframe of 14 days and the Regulation 261/2004 7 days for the refund to be honoured. However, in practice, that 7 days rule is not actually achieved, or in any case has been never achieved during the difficult days of COVID-19 pandemic. A consumer association agreed on this point, specifying that, however, despite the discrepancies between the PTD and the Regulation 261/2004, the rule of the 14 days should be maintained, but paralleled by clearer B2B rules on the refund right/obligations to ensure that consumers get their money on time. In one consumer association's view, the delays in the refund of pre-payment experienced by consumers are also a matter of enforcement, which is a key component for the effectiveness of the refund rules.

One business association highlighted the existence of two aspects related to cancellation within the PTD, with the first being the existence of *unavoidable and extraordinary circumstances*, and the second revolving around *whether a service can be performed or not*. This second element seemed to be less evident in the PT.

DG JUST preliminarily clarified that there was a reference to *official travel warnings* in the 2013 Commission proposal, but that this was removed by the Council. At the time, Member States did not want to have any such specification of the legal status of official travel warnings. In any case, there are many cases before the Court of Justice concerning the cancellation of packages related to COVID-19 now, and one of the issues there is the question is the legal value of official travel warnings .

Drivers

A business association illustrated the main driver determining the potential 4th pillar (problem) to be considered in the PT, being it the *financial burden on the intermediaries and the fact that they would risk getting to bankruptcy*. In this respect, the driver for that is the misalignment of the different pieces of legislation on the refund right, with situation in which there are no refunds (money) coming from the travel service providers to the organisers / intermediaries, especially because:

- ✓ The travel service providers (especially airlines) are in insolvency situations, or they have gone bankrupt; and
- ✓ The travel service providers, in certain situations, have no obligation to refund the customer, while the travel organiser does have the obligation to refund the consumers.

A consumer organisation agreed that the misalignment on both the refund right and the insolvency protection aspects between the PTD and the air passenger rights Regulation needs to be clarified and harmonised, as consumers are severely impacted by it. On the pre-payments side, the harmonisation of the insolvency protection schemes across different Member States remains an open point, requiring establishing minimum criteria to better protect pre-payment against insolvency. In addition, one consumer association overall considers pre-payment to be limited because the less pre-payment are issued, the less insurances must be put in place, thus, reducing the overall risk of having a massive amount of money to be reimbursed in a limited timeframe (this being valid for both the package travel sector and the travel service providers).

A national consumer organisation highlighted a problem experienced in Italy during the COVID-19 pandemic, with the Italian Government adopting emergency rules, and package travel operators having to repay the travellers for cancelled packages. The insurance companies often refused to pay the refund the consumers because indeed their insurance covered the package travel contract, not the voucher the travellers already received in lieu of the refund.

One business association commented on the second pillar for the drivers' cluster corresponding to the main driver *'pre-payments are not fully protected against insolvency'* to point out that there are two main situations to distinguish, namely normal circumstances and in the time of crisis. On this point, one consumer association reiterated the fact that issues with the refund right and insolvency protection were already there before the COVID-19 pandemic, for instance during the Thomas Cook crisis. The Package Travel Report is clear on this point, highlighting that there were problems with the insolvency protection also before the pandemic (e.g., insolvency protection schemes being not harmonised across the Member States, with the need still to establish minimum criteria).

On the 3rd pillar, one business association highlighted that a definition of *unavoidable and extraordinary circumstances* might be required. In addition, in particularly in the context of a major crisis, it is not sufficiently clear under which conditions a crisis actually ends – and consequently the related PTD provisions (e.g., if COVID-19 will never leave, will COVID-19 then be kept as an extraordinary and unavoidable circumstance?). In addition, the Regulation 261/2004 utilises the same wording of the PTD *unavoidable and extraordinary circumstances*, to provide for an exemption from compensation obligations. For example,

in the case of a delay or cancellation that is at fault of the airline, the Regulation specifies that the airline does not refund the pre-payment in case of *unavoidable and extraordinary circumstances*. While the wording is the same, this leads to completely different conclusions, constituting a source of confusion for the consumers. On this point, the Member States have taken the view that the airlines do have to continue to repay the pre-payments, thus, implying that there were no longer *unavoidable or extraordinary circumstances*. However, for the PTD these circumstances are still valid for the current COVID-19 situation, a situation that increased the uncertainties.

On the second pillar, a representative from a consumer association, highlighted that, apart from the protection of pre-payments and the refund right for consumers, some travellers experienced the insolvency or bankruptcy of the organisers when the package is being performed, resulting in further losses (e.g., their hotels not being paid for, their flight tickets being cancelled with them having to pay for their repatriation). The Nordic countries have currently an example of this, with a large operator that became insolvent while performing package travel contracts. Several hundreds of travellers were already in their trips and encountered numerous problems (e.g., they would arrive at hotels with the latter rejecting them as the organiser did not pay them). Thus, there is a need to protect consumers in the event an insolvency crisis or bankruptcy of the organisers occur while a travel package contract is being performed. One business association confirmed the importance of discussing this point under the notion of the continuation of the package in case of insolvency. DG JUST stressed that the PTD already specifies that accommodation costs before repatriation must be covered by the insolvency protection arrangements. If problems occur in practice, this may be more a question of enforcement. In addition, continuation of the package may be offered. From a Commission perspective, in addition, DG JUST recalled several cases in which infringement procedures against Member States were opened a few years ago regarding the effectiveness of national insolvency protection systems, which led to changes in different Member States.

One consumer association elaborated further on the point raised by another consumer association, clarifying how the operator that went bankrupted was established in Denmark as well as in Sweden and, since the Swedish insolvency protection is cheaper than the Danish one, the operator has insured itself under the Swedish system. Prior to the insolvency, the operator already cancelled several travels during the last few months, as it was already in a deep insolvency crisis. According to the Swedish system, the refunds for cancelled package travels are not covered by the insolvency protection; at the same time, the same operator had been also within the Danish system, according to which these cancellations were a part of the process which led to the insolvency, thus, triggering the refund rights through the insolvency protection system. This example brings to the conclusion that it should not be allowed that travel agents established in more than one Member State can freely choose where to be insured. The insurance should follow the consumer, in a way a Danish consumer buying a package travel in a country, then it should be covered by that national insurance scheme.

External factors

In connection with both the problems and drivers, one business association added further elements to the 4th pillar, concerning the external factors influencing that potential problem. Three main issues were indicated:

- ✓ First. In the context of the misalignments, the relationship between refunds and insurance companies becomes crucial (e.g., whether a traveller's pre-payment covered through the insurance or the PTD);
- ✓ Second. Credit card companies and their rules have rules on *chargebacks*, that are sometimes very differently applied across the EU Member States. For instance, if an airline goes bankrupt and the pre-payment was already received by the travel

agent, there are situations where the credit card company will honour a *chargeback* on the travel agent, even if the airline is bankrupt. Thus, when it comes to chargebacks, it is important to investigate how credit card companies and in particular, MasterCard and Visa react to chargebacks, which is another in a way another refund mechanism for consumers.

- ✓ Third. Importance of other players of the wider package travel ecosystem, not directly regulated by the PTD but affecting it, such as the GDSs and the so-called BSPs

Presentation of possible measures, and measure-by-measure discussion on feasibility, effectiveness, efficiency (cost/benefits) and broader impacts

ICF presented the full list of potential preliminary measures to address the identified problems, as well as introducing the interactive polling system used during the workshop and facilitated through a dedicated *Mural* platform.

PROBLEM 1 – Travellers face difficulties in recovering pre-payments for cancelled packages in a major crisis

Measure 1a. Rules on voluntary vouchers in line with COM Recommendation of May 2020. Measure 1b. Clarification that vouchers and refund claims are covered by insolvency protection

A consumer association pointed out that further clarifications on vouchers are needed, especially to avoid the uncertainties experienced during the first wave of the COVID-19 pandemic. COM's 2020 Recommendation on voucher was, thus, welcomed, although it was only a recommendation. It would, thus, be welcomed to codify it into minimum harmonisation rules in a way that, while travel agents and tour operators can go beyond that, it still establishes minimum rules to be followed (e.g., vouchers remaining voluntary, protected against insolvency, rules on transferability, on the duration of the validity). Minimum rules on vouchers should be the case for the package travel sector, but it should also be replicated within the air passenger rights Regulation because we need to have equivalent rules. On measure 1b, vouchers and pending refund claims should be protected against insolvency.

A business association highlighted that the Recommendation on vouchers should at least be clarified. It would be great not to use voucher anymore, as the most important aspect is that there is the continuation of the package travel contract to keep the insolvency protection still in place. It disagrees with measure 1b, as it sees vouchers and refund claims (and refund rights) as two separate aspects (to be addressed separately), while agreeing that they should be both covered by insolvency protection. Another important aspect to consider in relation to refund claims is the separation between normal circumstances and times of crisis (e.g., COVID-19 pandemic and massive cancellations). A concern of members of one business association is that in case of huge crises such as the COVID-19 pandemic where massive cancellations occur, the simultaneous refund claims may lead to an insolvency that, while being covered by an insolvency protection fund, may render the refund rights/claims not effective (with a perverse effect that the consumers are reimbursed only if the company goes bankrupt). Thus, any interventions should really consider how to deal with those massive refund claims in crisis time, and maybe not use the same exact instrument used in normal times (e.g., DK crisis fund is a good starting point).

On Measure 1a, another business association pointed out that, while it is not against the introduction of rules on voluntary vouchers, it considers the Recommendation (May 2020) as only an aspect of the discussion. The B2B is a crucial element to be addressed,

especially in the case airlines are part of a package. During the pandemic airlines have issued vouchers to costumers, which they consider to be fully voluntary. However, in the airline world there are voluntary and involuntary cancellations. The involuntary cancellation is activated when the airline cancels the travel because the flight is not departing or because there is something wrong with the aircraft, thus, triggering air passenger rights refunds. In voluntary cancellation the traveller contacts the airline declaring the impossibility / unwillingness to fly, while the flight is departing. However, during COVID there were grey areas where the airlines were allowing travellers to cancel a flight in case of a negative travel advice, and they were giving them a voluntary voucher. Within the PTD remit, this grey area consists in the fact that the airline is entitled to give a voluntary voucher to the costumer, but if the flight is part of a package the customer is entitled to a refund, while s/he is being given a voluntary voucher by the airline. Voluntary vouchers are already a possibility for the airlines under the air passenger rights regulation. This mechanism complicates the activities of travel agents in the following manner:

- ✓ Travel agents get the vouchers from the airlines;
- ✓ Consumers may refuse the vouchers and ask for a refund instead;
- ✓ Airlines may claim that a voucher is in a way the equivalent of a refund;
- ✓ Consumers may trigger a refund and end up with a voucher;

In brief, the issue is that there is a sort of misalignment between the air passenger rights and the PTD, that is the fact that for voluntary cancellations the airlines are entitled to give voluntary vouchers and they are not forced to actually provide a refund. COM's Recommendation does not address this issue.

A consumer organisation further reiterated the need to better harmonise the rules on cancellation rights between the PTD and the air passenger rights Regulation 261/2004, but also the other passenger rights acquis (e.g., the rules of validity). Further clarification on the various responsibilities in the value chain in case of cancellation are needed. Consumers buy packages through travel agents and trigger the refund mechanisms via the travel agents. However, if consumers decide to opt for vouchers, then the vouchers mean should be given to the consumers through the travel agent. For these reasons, a further harmonisation of the different cancellation rights is needed to avoid the situation presented by one business association. In addition, it should be clarified who would be the main interlocutor for the consumers when they are buying services through these travel agents and/or intermediaries.

On the harmonisation of the air passenger rights and PTD rules, a business association requested additional information to the Commission on the state of play of the two parallel initiatives on the package travel sector and passenger rights. Both DG MOVE and DG JUST replied that there is close coordination between the DGs, with live consultation activities for both the air passenger rights and the PTD remits, feeding into two different – but simultaneous – Impact Assessments.

Measure 2. Business-to-business refund right for package organisers against service providers to enable organisers to make timely refunds to travellers, while maintaining their liquidity

A business association highlighted that the B2B refund right entails two main components:

- B2B refund right in a situation where there is, in fact, a refund right under both the Regulation 261/2004 and the PTD. In this situation, a core issue is the timeline and, namely, whether the regulator, for instance, will be able to enforce the air passenger rights more strictly or more actively against the travel service providers

if they are simply delaying the refund process (e.g., by switching off the refund possibility in the GDS); and

- Misalignment of the legislation. If one piece of law simply does not provide a refund right, then there is nothing to discuss.

Thus, this issue should be split into its two main components. One is related to the timing and potential delay in the refunds, and how to fix the related issues (e.g., the fact that the package travel trader does not get the refunds, but it already must pay the consumer). The second component relates to the other issue that traders will never get the refunds because there is not such right (within Regulation 261/2004) and, thus, this gap in the rights needs to be separately discussed.

On this point, a consumer organisation pointed out that the “behind the scenes B2B” agreements and timeline is something that a consumer is not aware of and potentially it should not even be considered, in principle, a consumer’s problem. Nevertheless, the deadlines/timelines for the refunds rights to be respected are legally binding, and what needs to be granted is that there is a legal situation in which travel agents can comply with these deadlines/timelines. However, the lack of B2B rules, in this respect, largely affects consumers. While this issue affected the market especially during the pandemic, the problems identified were there before (e.g., consumers not being refunded within 14 days happened quite a lot even before the pandemic) and, thus, better rules on refund rights will be beneficial also to consumers. A consumer association also agreed on the fact that the B2B aspect of the refund rights could also be tackled through a better enforcement (e.g., the compliance with the 14-day deadline included in the PTD), and through resolving the misalignment between the PTD and the Regulation 261/2004.

On this point, in addition, another business association specified that the “14 days clause” for the refund rights was introduced by the 2013 revision of the Council Directive 90/314/EEC, as it was worded before as “as soon as possible”. Nevertheless, the “14 days clause” was clearly a short – and perhaps unrealistic – deadline, also considering the actual B2B process of getting the refunds.

DG JUST requested further clarifications on the point raised by two business associations on the B2B liabilities in the case of cancellations and refund rights. Specifically, DG JUST requested whether there were to be a provision in the PTD stating that, if a package has been cancelled, the related refund right should consider both (a) the liability of both package organisers and service providers, or (b) package organisers only. One business association clarified that if the PTD clarifies that not only the costumers but also the intermediaries have refund rights, then the issue is fixed as that will mean that in the case of a cancelled package intermediaries can pay out to customer. For intermediaries, this point is very important in the sense that in a situation in which there is a refund right for consumers, there is the need to make sure that there is sufficient liquidity to honour the refunds. Thus, the new proposal would need to address the issue that the refund right exists between the intermediary (travel agent/organiser) and the travel service provider – whose service, if it is sold in the form of a package, will then have to refund the intermediary (travel agent/organizer).

A business organisation raised the point that if there were such a B2B refund right for normal business time that would risk increasing the prices of service providers and suppliers because they would see the commitment of the intermediaries as less stable (e.g., there is the possibility that the booking of, for instance, a hotel room or a flight, will be cancelled because the package traveller has the right to cancel the holiday based on the PTD), and the related package travel contract in which he is not involved. In addition, the B2B refund rule would be very difficult to enforce not just within the EU but across the

overall travel sector, especially in the case of suppliers from outside the EU for which this refund right rule may not apply.

On this point, a consumer organisation requests further clarification, in relation to the fact that the PTD already foresees the right for consumers to cancel their package, with a penalty, at any time and, thus, the B2B mechanisms to manage cancellations and refund right will not create additional rights for consumers. TUI reacted to this point by specifying that what it was meant was not referring to consumers rights, but to the B2B process, and specifically to the fact that intermediaries, where they act as organisers, should have a refund right from suppliers. However, intermediaries (organisers), when designing and selling a travel package, they will need to have a contract in place, for instance, with hotels, airlines, or other travel services to make up that package. Notably, if there were to be a B2B refund right in place, this means that if the consumer cancels the package, then also the organiser can recover the money from the supplier (hotel, airline). This poses additional risks for the suppliers that they cannot fully control and, thus, could lead to an increase in the prices.

Measure 3. Crisis fund(s)? (A) crisis fund(s) would ensure the timely reimbursement of travellers who do not accept vouchers. Crisis funds would reimburse travellers prior to insolvency, while preserving the liquidity of organisers. To be built up over time through contributions from organisers? Crisis funds at national level or an EU crisis fund?

DG JUST explained that the idea of a crisis fund was mentioned among other things in the report from the European Court of Auditors (ECA) as a measure to be examined in this exercise. The idea is that such a fund would cover refunds to travellers in a way that travellers would get their money back within two weeks in the event of a major crisis capable of triggering a liquidity crisis as well. In addition, presumably such a fund would have to recover the payments over time from the parties that are responsible for the refund (organisers in particular). The idea is that such a body would be available to be used in the event of a major liquidity crisis, so that the refunds can be made without calling into question the liquidity of organisers and, thereby, avoiding insolvencies. Inevitably this will come at a cost, as the money would have to be put aside in normal time in a way that they are available in the fund during a crisis. DG JUST added that the crisis fund should be seen as a tool to be better prepared in case of a crisis, to be used both as complementary and alternative measures to the other existing mechanisms. DG JUST then opened the floor to the other participants requesting further positions on whether the crisis fund could be considered, in principle, a beneficial tool to develop and, if yes, whether it should be organised at national level, or rather at an EU level.

A business association is in favour of having an instrument that will ensure that the traveller, in case of a major crisis, gets a refund in time and, thus, skips the whole B2B mechanisms, which constitutes, indeed, the blockage of the value chain that we have seen during the panel. However, there are other tools that have been put in place during the pandemic that are worth considering as a first instance:

- ✓ First, the state aid system, and in particular the Danish systems through which Denmark directly refunded the consumers that were waiting for a refund, by putting in place, at the same time, a loan system for the organisers for them to be able to repay the refund through instalments. In this way, Denmark put the consumers out of the equation and now the Danish organisers are repaying their debt, without anticipating any money. A parallel point to be considered relates to the definition of crisis (e.g., what triggers such a crisis fund mechanism), and what the money to be put in such a fund will be. The business association's position is that a crisis fund requiring to put money aside in advance is not proportionate to the possibility of

crisis, in normal circumstances. The Danish system of state aid and loans for organisers worked better; and

- ✓ Second, the Commission temporary framework that enabled the Member States to implement a state aid plan in an extremely timely manner. This system as well was beneficial for the industry as it saved businesses from bankruptcy and for consumers that got their refund on time.

Thus, business association's position is to at least assess the costs/benefits of the two alternative instruments in parallel with the discussion on a crisis fund.

On this point a guarantee fund confirmed the Danish mechanism through which the travel organisers could either refund the clients themselves and loan the money from the fund via the Danish state or, in case they did not have the liquidity, they could request the fund to pay out to the customers, and to obtain the same amount in the form of a loan. It is a 6-year loan, divided into 5 instalments (the first one has been paid this year). This system has worked quite well during the crisis, and now the package organisers are restarting selling packages and earning new liquidity to repay the loan. In case an organiser goes bankrupt, the Danish state has placed a frame of 300,000,000 Danish kroner that can be used to repay the losses. Thus, it is true that if the Danish fund anticipates money on behalf of organisers and the latter go bankrupt, there is a loss covered by this frame, even though the back-up in this respect is very limited. The Danish fund, however, was an emergency fund created ad hoc by the Ministry of Business to address the COVID-19 situation, as that was defined as an *extraordinary circumstance*. While it is difficult to forecast whether the Danish fund will work well in the event of a new crisis (e.g., the Ukraine war), the system worked quite well so far. This point was confirmed by the representative of a national consumer association.

A business association requested the floor and expanded on the concept of crisis fund, suggesting calling it as a sort of *liquidity mechanism*. This point because the idea of a fund is the idea of a pot that must be filled, theoretically, by the industry, but that is filled, in reality, by the consumers paying higher prices / additional fees. Thus, business association agreed not to create a liquidity fund, but rather a liquidity mechanism that, in normal circumstances, could potentially only exist on paper, to then be activated in crisis time by the European Commission, in agreement with the Member States and backed by a certain financial mechanisms to create liquidity in the event of major crisis. In addition, this mechanism should be a voluntary one that is activated by those companies that really run into liquidity problems and, thus, will get the liquidity through this mechanism, which ultimately needs to be repaid, possibly with a reasonable fair interest rate.

A consumer organisation expressed in favour of a system that could ensure the availability of enough liquidity to repay the consumers in the event of a major crisis. This system could be called crisis fund, liquidity mechanism, or in other ways, as it is not a point of finding the correct definition but of avoiding burdens and difficulties when it comes to activate these schemes in practice. The main purpose of such a system must be the fact that it is kept clear, fast, and efficient for the consumers. In this respect, the Danish system could be taken as an inspiration to understand how to perhaps replicate across the EU, and how these schemes could be standardised to avoid another situation of different protection models in different Member States, similar to the current situation with the insolvency protection systems.

Measure 4. Limitation of pre-payments?

Moderate limitation of pre-payments (e.g. 20% at the time of booking)?

Obligation for organisers to offer, alternatively, packages without pre-payment?

Complete prohibition of pre-payments?

Should any limitation on pre-payments apply also directly to service providers who provide services (e.g., transport or accommodation) in the framework of a package?

Other alternative solutions to address problem 1?

A business association pointed out that intermediaries do not hold the prepayments, and the 20% rule referred as an option is based on a footnote of a German study that reads as 'if the pre-payment is higher than 20%, the organiser can pass on this cost on the consumer'. This implies that the 20% rule does not really exist in practice. Since, the intermediary does not hold the pre-payment, what should be done is to ensure that, in case of a cancellation, the supplier repay the pre-payment to the organiser to be able to refund the consumers. In this regard, before assessing whether the PTD should limit pre-payments, one shall look at the pre-payment model of service providers. While this issue is not address by the air passenger right *acquis*, the only way to effectively implement the refund right for the pre-payment within the PTD the B2B pre-payment model and the alignment across the value chain should be achieved. The French travel agencies association confirmed this point, stressing that private organisers do not hold the money of the consumers, but they simply need their money to finalise the bookings.

A business association highlighted that, if the issue in the pre-payment does not rely on the organisers and considering that hotels have generally two payment models, a pre-payment at the time of booking or a payment at the check-out, this implies that these two elements (package organisers and hotels) are not an issue for the pre-payment model. Thus, theoretically, the issue is very much on the airline component of a package, and specifically whether an airline is willing to emit a ticket without receiving any payment. However, the airlines also have issues in emitting tickets in advance without a pre-payment, as they claim there are a lot of running costs to be considered, and this cannot be implemented in an international context (e.g., international airlines emitting international tickets – whose business model consists in pre-payments). Notwithstanding this, if the airlines are unwilling to emit tickets without pre-payments, then, in the remit of packages, it relies upon the intermediaries and package organisers to purchase the tickets for the package travel. In most cases, they would have to become sort of *credit institutions* to fund the tickets in lieu of the consumers. Thus, from a package travel perspective, to abolish pre-payment would imply that the organisers and the intermediaries would have to go to the bank and ask a loan to be able to pay the airlines. In conclusion, the point on limiting the pre-payments could only be addressed internationally, by finding a way to ringfencing the pre-payments. In practice this would work as follow:

- ✓ An organiser makes a booking without paying anything, but the pre-payment will be ringfenced within the IATA BSP systems, where all the funds ultimately end up;
- ✓ IATA becomes legally the guardian of pre-payments, and the EU would only have to legislate on this;
- ✓ The payments to the airlines are only released when the flight departs. Thus, if there is a refund right, then the IATA BSP will immediately refund back to the consumer and those funds will remain ring fence, but they will still be in that ring fenced BSP.

A consumer association echoed its business counterparts, highlighting, however, that while the limitation of pre-payment is a not a viable option (especially if done only within the package travel sector), it is also fair to point out that the magnitude of certain major critical events (e.g., COVID-19 pandemic) would require an overall rethink of certain aspects of the existing business models. For instance, the escrow mechanism, in which

there is still a pre-payment model but is managed by a third party. In this case, if the flight is cancelled, its cost will be automatically reimbursed to consumers. The consumer association pointed out also that, in principle, the issues with the insolvency protection and the liquidity crisis of the package organisers and the limitation of pre-payments are strictly intertwined (e.g., it could be that the refund right in the event of a major crisis cannot be honoured exactly because of the enormous number of pre-payments that is done continuously). Thus, if the mechanisms behind the pre-payments and insolvency protection schemes is not rethought, then in case of a new crisis the situation will remain the same. A consumer association is in favour of limiting the pre-payment in the PTD, but in a way that is consistent with the air passenger rights *acquis*.

A business association from the airline sector stressed that for airlines limiting pre-payments would imply practical difficulties, especially giving the international dimension of the aviation industry. There are airlines, for example, that engage in *interlining*, and if pre-payments were to be restricted within the EU, this would go to the detriment of the EU industry – in light of the numerous commercial agreements in place – and, conversely, the consumers that will probably lose the wider connectivity they are currently benefiting. In addition, restricting pre-payments has a significant impact on the operational costs of airlines. Airlines have what could be defined *liquidity cycles*, which are money originating from pre-payments that allows them to cover the fixed costs they face. Thus, cutting pre-payments would have an impact on the average fares' price. Moreover, limiting pre-payment, according to main views from the sector, would imply that consumers will have less choices because pre-payments enable not just airlines to propose their service, but also other service providers to offer a wider range of different fare conditions and more affordable tickets.

In addition, a consumer organisation highlighted that the point, from a consumer perspective, is not that of having a boomerang effect on consumers, but rather to find strategies to improve the current situation, as COVID-19 pandemic testified that keeping the status quo is also not an option. The consumer organisation reiterated the need to assess an *escrow scheme* mechanism for airlines, with the representative from the latter that expressed the need to consult with the members before answering to that point.

DG JUST concluded the discussion by specifying that the European Commission has been mandated by the European Court of Auditors (ECA) to assess the issue of a limitation of pre-payments, which is the reason why they are analysed also in relation to the package travel sector. Alternative solutions (e.g., including escrow accounts or other means ringfencing pre-payments) might also be considered.

PROBLEM 2 : Pre-payments made by travellers are not sufficiently protected against the organisers' insolvency

Measure 5: *Strengthening the effectiveness of insolvency protection through further harmonisation, such as*

further specification of the amounts to be covered, e.g., minimum percentage of annual turnover?

the introduction of mandatory back-up funds (to be funded by organisers) at national level in addition to insurance policies to cover gaps in the insurance policies and increase availability of insurance solutions?

Any other measure that would strengthen insolvency protection?

Any other harmonising measures?

One consumer organisation stressed the importance of the link between insolvency protection and rules on prepayments and the need for harmonised criteria to avoid

problems that emerged during the first transposition process (such as inadequate protection for consumers). The scope should be clarified to include vouchers and pending refunds, in particular as regards large-scale organisers. DG JUST agreed that interpretations can vary and referred to the benefits of clarifications in ensuring similar protection levels.

This consumer organisation also emphasised the need for the airline sector to be ensured for their own risks and activities, and thus for insolvency protection to be introduced in this sector. A national consumer protection organisation indicated that Denmark has an insolvency protection system for airlines as the result of an agreement between relevant parties, including consumer organisations. They expressed that there is broad satisfaction around this system in Denmark and invited DG JUST to explore this case as inspiration.

Two members from business associations emphasized the need to clarify in the rules on packages, that organisers ultimately receiving liquidity in the form of pre-payments is just as important as the completion of the booking. One business association mentioned that criteria are explained in recital 40 of the PTD and are used in certain Member States.

One business association that private insurance and state support in building a back-up fund are a way to ensure the possibility of travellers to be compensated in case of insolvency. They pointed out that Covid vouchers represent a large volume of funds in France and that a part of these are not currently reimbursed. Furthermore, they added that the market in France was not in a position to face another large insolvency crisis. They suggested that a European fund could be limited to ensuring large scale pan-European operators as “European-level risk takers”, leaving national level operators in the hands of national funds.

Measure 6: EU insolvency protection back-up fund? Conditions and requirements?

A consumer organisation reiterated their support for Measure 6, emphasizing the need for this fund to be quick and easy to activate to quickly respond to the needs of the sector. They echoed the opinion of the national consumer organisation who praised the existing example of an airline insolvency protection fund in Denmark.

Responding for a request for clarification from a business organisation, DG JUST stated that the design of a potential back-up fund remains to be defined. The need for this fund would have to be strongly supported and confirmed, and it would need to be clarified what powers an EU-wide system would need to have over national systems. They also expressed the fact that certain prerequisites may need to be achieved, such as harmonisation of national insolvency protection systems. A consumer organisation stated that it may be easier in general to operate with national protection systems. They agree with the idea of an EU back-up fund but insisted on minimum criteria and harmonisation on package travel insolvency schemes in general.

Measure 7: EU insolvency protection fund replacing national insolvency protection systems?

A business organisation stated that the question of repatriations should always be included in discussions on insolvency protection, suggesting that Measure 7 would have limited EU Added Value. One consumer organisation agreed and emphasized the need for national insolvency protection systems to be harmonised ahead of discussions on an EU fund.

PROBLEM 3 : Difficult implementation of the PTD

Measure 8: Clarification and simplification of certain concepts and provisions?

E.g. regarding vouchers, the role of different traders involved in a package, linked travel arrangements (LTAs) and their delineation from packages, including possibly:

information of travellers on insolvency protection for LTAs only where travellers will actually benefit from this protection or

the abandoning of LTAs and adjustments in the definition of packages?

One business association stated that certain definitions on LTAs were unclear in the PTD, stressing the two distinct types of LTA and how difficult it is to explain them to consumers: one where a travel agent offers additional products later but in the same website visit, and one where retailers are included in the LTA in “linked” visits. They believed that the latter is hardly used because it is impossible to execute, as it is impossible to explain to a consumer that it includes no insolvency protection. DG JUST encouraged participants to share their views. A consumer organisation confirmed that they believed the LTA concept should be kept but clarified as the two types have created a situation where traders, enforcers and consumers alike have suffered from confusion. They highlighted the necessary clarification for terms including “click-through”, “single-visit”. Furthermore, BEUC emphasized that their members wished that consumers would be made more aware of contractual rules that bind them in LTAs. Another business association stated their initial doubts on the concept of LTAs but stated that it created a level playing field and obligations when exiting the definition of packages. They stated that to simplify the definition of LTAs, we have to look outside the PTD and harmonise rights on single travel services.

One business association mentioned the issue of “unavoidable and extraordinary circumstances” noted the underlying confusion on this point and the importance of clarifying which institution gets to define what these are and what the indicators for them are. They stated that it would accept that the Commission, the EUCJ or the Member States take up this role as long as it is no longer left in the hands of the organisers. DG JUST – recalled that Commission guidance on this point might be overruled by the EUCJ . Another business association emphasised the importance of taking into account the health measures in destination countries on this point. Furthermore, they raised the issues caused by relying on Member States for determining “unavoidable and extraordinary circumstances” and thus affecting cancellation rights directly. This includes whether Member States issue incorrect information, if their opinions on negative travel advice for a third country diverge (if one marks a country as red on Covid-19 risk maps and another as yellow, for example). They also mentioned the importance of closely defining the term “crisis”. One business association remarked that in France, negative travel advice has no legal value, as mentioned in the terms and conditions of the Ministry of Foreign Affairs. One business association stated that the underlying problem when considering circumstances for cancellations is a misalignment between legal instruments (PTD and APRR, notably), and that having “unavoidable and extraordinary circumstances” as a workable concept means amending the APRR so that they are triggered under the same conditions as they would be in the revised PTD. DG JUST clarified that they could not comment in the context of this study about amending separate sets of legislation.

Final open discussion, wrap-up, and next steps (DG JUST, ICF)

A consumer organisation reiterated how important they believed the lack of enforcement was around the PTD, and insisted that this point should take a major role in the analysis when considering eventual benefit to consumers. A business association agreed on this

point, highlighting the inexistent enforcement of Regulation 261 among national enforcement bodies (for example, only 50 fines issued for non-compliance in France).

ICF introduced a final point of discussion to inform stakeholders that they could provide additional information on market developments for packages and mandatory vouchers. DG JUST reiterated this and encouraged participants to share data if they could, citing the lack of up-to-date public data on these questions.

A consumer organisation reiterated their support for voluntary vouchers. They confirmed that some consumers are still waiting to be reimbursed after problems faced years ago.

As a response to ICF's query, a business association stated that consumers are indeed booking fewer and fewer packages. This is because of a demand for more flexibility. However, the part of the market that wants packages still exists. They also stated the opinion that existing national rules on mandatory accommodation vouchers were incompatible with the discussions about refunds on packages because businesses would be forced to give vouchers and also be faced with rules requiring refunds. Another business association agreed that vouchers were a less ideal solution during the pandemic. A consumer organisation stated that the Commission recommendation on vouchers was good but needed to be enshrined in the PTD. That business association agreed with this statement.

A3.2 Workshop 2 - Workshop with businesses and consumer representatives

Wednesday 7th December 2022

List of participants

Stakeholder group	Member State/EU	Name of organisation
Individual companies	DK	Danish Travel Guarantee Fund
Business associations	AT	Unit Tourism Services at the Austrian Federal Ministry of Labour and Economy
Business associations	EU	European Tourism Association
Business associations	EU	EGFATT
Business associations	EU	Fédération Internationale de L'Automobile
Business associations	FR	Les Entreprises du Voyage - EDV

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF
THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT
ASSESSMENT ON ITS POTENTIAL REVISION

Stakeholder group	Member State/EU	Name of organisation
Business associations	EU	IATA
Business associations	EU	European Holiday Home Association
Business associations	EU	Railtech/European Passenger Federation
Business associations	EU	Cruise Lines International Association (CLIA)
Business associations	EU	EU Travel Tech
Business associations	EU	Airlines for Europe
Business associations	FR	APST Travel
Business associations	EU	Fédération Internationale de Tourisme Equestre
Business associations	EU	Ruraltour-European Federation of Rural Tourism
Business associations	EU	ECTAA
Business associations	EU	EHHA
Business associations	DE	ADAC e.V.
Business associations	DE	German Insurance Association
Consumer organisations	AT	Bundesarbeitskammer Österreich
Consumer organisations	DE	Verbraucherzentrale Bundesverband
Consumer organisations	EU	European Passengers' Federation

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Stakeholder group	Member State/EU	Name of organisation
Consumer organisations	EU	BEUC
Consumer organisations	DK	Danish Consumer Council
Consumer organisations	IT	ECC Italy
Individual companies	EU	Expedia/ELCA
Individual companies	EU	TUI
Individual companies	NL	Stichting Garantiefonds Reisgelden
Individual companies	NL	GFG
Individual companies	PT	DECO
Individual companies	NL	ANWB
Individual companies	DK	Danish Travel Guarantee Fund

Introduction to the workshop

ICF and DG JUST welcomed participants and provided a brief overview of the workshop objectives which is meant to provide a platform for further discussions on the policy measures and the problem tree. DG JUST highlighted the key contribution participants can make to the evaluation and the impact assessment study, particularly on current challenges and possible solutions.

ICF provided further updates on the progress of the study including the targeted surveys and the interviews. ICF emphasised that the focus of the discussions is moving towards the impacts of the various proposed measures.

Presentation of the problems and policy measures

Participants were asked to contribute to the development of the problem tree and the draft policy measures via the interactive platform Mural. ICF staff guided participants on how to engage with the platform.

The following sets of measures were drafted in response to the key problem areas, these are:

- ✓ Protection of prepayment in case of a crisis and introducing binding rules on voluntary vouchers in line with the Commission recommendation of May 2020;
- ✓ Strengthening insolvency protection through increased harmonisation;
- ✓ Potential measures to improve the implementation of the PTD – clarification and simplification.

Stakeholders were asked to provide their views and comments on the proposed measures.

Potential measures aiming to protect payments from travellers and their expected impacts - Binding rules on voluntary vouchers (in line with COM Recommendation of May 2020):

- ✓ explicitly accepted by travellers after receiving clear information on their refund right
- ✓ at least the same value as cancelled packages
- ✓ validity up to 12 months, may be extended once with the explicit agreement of both parties
- ✓ automatic refund if not redeemed - travellers do not have to ask for refund. Any practical problems?
- ✓ protected against the insolvency of the issuer (applies also to pending refund claims)
- ✓ only in a liquidity crisis or as a general rule (in line with air passenger rights)?

General rule would be in line with air passenger rights and would not require the establishment of a liquidity crisis. Potential abuses could be prevented through clear information.

EU INDUSTRY ASSOCIATION: whether or not a voucher should be protected against insolvency and pending refund claims are two different problem and these issues should be dealt with separately. Differences also apply between refund claims in normal times versus massive waves of refunds during crisis times such as COVID-19.

CONSUMER ASSOCIATION: Supporting the idea of rules on voluntary vouchers and the introduction of minimum rules, which traders could go beyond if they want. Vouchers

protected against insolvency is one of the of the key elements. Consumers, often have challenges claiming a cash refund as sometimes vouchers have been renewed. The issue from a consumer protection point of view is the scope of the insolvency protection and we think that pending claims should be covered by this protection, as even in normal times we have problems with the refund, not at the same scale as in the pandemic, of course, but we had delays in reimbursement.

Strengthening insolvency protection through increased harmonisation

Specification of the amounts to be covered, e.g., minimum percentage of annual turnover, or

Setting up criteria for the calculation of the contribution? E.g.: Inserting some elements of recital 40 into Article 17(2). E.g., a sufficiently high percentage of the organiser's turnover in respect of packages or estimated sales of packages, possibly broken down in individual months, cover of high-risk periods and a reference to pre-payment rules or policies – down payments and final payments

Other appropriate criteria?

Rules on the supervision of organisers' insolvency protection arrangements?

Is it necessary to cover the period between receipt of the payment and the end of the performance of the package (as currently provided for) or should/can the time when organisers transfer payments to service providers be taken into account?

No need to arrange insolvency protection where organisers do not receive money from travellers or where their insolvency would not expose payments from travellers to any risk?

Back-up funds?

National back-up fund: Would it be useful to oblige the Member States to create back-up funds (to be funded, in principle, by organisers) at national level to cover gaps in first line protection, e.g., insurance policies, and increase availability of insurance solutions, unless Member States can show that effective insolvency protection is ensured otherwise?

EU back-up fund – requirements for it to work? Necessity? Subsidiarity?

Limitation of pre-payments

Moderate limitation of pre-payments: 20% at the time of booking and 80% four weeks before departure allow package organisers to request higher prepayments in specific cases, e.g., where service providers, including from third countries, insist on pre-payment?

or applicable to service providers within the framework of a package?

Obligation/encouragement for organisers to offer, alternatively, packages without pre-payment?

Business-to-business refund right for package organisers against service providers

to enable organisers to make timely refunds to travellers, while maintaining their liquidity the termination of a package travel contract in accordance with the PTD would apply also to service providers and would trigger a refund right of organisers against service providers.

Crisis fund

Nature:

(A) crisis fund(s) would ensure the timely reimbursement of travellers who do not accept vouchers

Crisis funds would reimburse travellers prior to an insolvency, while preserving the liquidity of organisers.

Financing:

To be built up over time through contributions from organisers, to be calculated, for instance, as a percentage of the price of each package or directly as a fee added to the price of a package?

Estimated costs? – based on experience in the Member States

Compulsory? At national level? At EU level?

Alternative solutions to prepare for a liquidity crisis?

Which of these measures could be combined?

Insolvency protection

EU INDUSTRY ASSOCIATION: Strengthening insolvency protection criteria: there are a number of different calculation system that exists in Europe based on either annual turnover or a flat rate. The general objective is to cover complete prepayments that should be the focus. Currently what is missing is enforcement and an overview on the existing insolvency protection systems. In France for example, the problem is not insolvency protection but rather the procedure. Other issues relate to the financial criteria of insolvency protection. The calculation might create more problems by over-regulating the issue.

CONSUMER ASSOCIATION: Regarding insolvency protection schemes. In some countries it works better than in others. More criteria, more harmonized criteria, are needed to make sure all systems are functioning. But the issue of regulating insolvency protection can create more problems. Additionally, enforcement in Member States should be analysed to ensure we understand the systems that are in place so that we can improve insolvency protection provisions.

National consumer organisation: Insolvency coverage is different from country to country, it's important that the consumers know which coverage they face, which they don't today. There are travel agencies that have offices in multiple countries and they can choose which insolvency protection fund they will use. This information is not available to consumers. The rule should be that the residence of the consumer determines which insolvency protection scheme is used.

Back-up funds

CONSUMER ASSOCIATION: We agree with the use of back-up funds, whether at EU or national level it is still an open question. However, as we discussed last time, EU backup sound seems to be quite complicated to create. So perhaps the most pragmatic way would be to go for national back up funds. The back-up funds should be used in case of severe liquidity crisis.

EU industry association: We can see there that we have to think globally. There is a need for a backup fund or reinsurance fund because there is a real problem for travel guarantee funds to find a reinsurer. The back-up fund would work from the contribution of the insurers or of the contributions of the national Travel Guarantee Fund. The market right now is in need of a reinsurance fund.

DG JUST: How do you envisage an EU back-up fund to be organized?

National consumer organisation: The contributions, should be made at the EU level because it's impossible to organise it at national level. The French system, for example, is under review for a potential state aid violation. An EU-level fund would be easier to organise.

DG JUST: If contributions are expected to come from the taxpayer, it may not be possible to avoid the question of state aid even if it's done at EU level.

EU INDUSTRY ASSOCIATION: Are we talking about the EU backup fund in order to top up the insolvency protection or we are talking about the EU backup fund to deal with the liquidity crisis? What do we do with the existing national backup funds or with those countries that have already introduced a mixed model consisting of an insurance as a first layer and then a backup fund. Would it be mandatory to override these with a new format?

EU INDUSTRY ASSOCIATION: Arranging insurance is not mandatory; the challenges are to find an insurer and cover the price of the insurance as reinsurance is costly. Seven or eight years ago it was possible to find private reinsurers and the costs were in the thousands and in some cases, such as France it was millions. In Denmark in order to become a member of the Danish Travel Guarantee Fund companies need to take out a private insurance which costs around €200,000. And then of course there is a second line of insurance to cover more important bankruptcies above a limited amount.

CONSUMER ASSOCIATION: At the end of the day, all the costs are replicated to consumers as well. So they are already paying. Consumers should not pay for this extra protection. It should be the trader supporting this, they should support their activities of their own risk.

DG JUST: What would happen with the existing national funds? I believe the idea behind these funds is that there may be a limitations or other problems in the insurance contracts which do not give full guarantees to travellers. If that occurs then this backup fund steps in. The question then is: it is possible in some Member States, why is it not possible in other Member States or why would it require a fund set up at EU level? As for the contributions, they would normally have to be covered by the sector. If a fund were to be set up at EU level - should it follow the same idea? It was mentioned that perhaps the insurance sector should contribute. How would this be organized and who would manage such fund and who would decide when it intervenes? These are important questions.

EU INDUSTRY ASSOCIATION: What would be the general idea of an EU reinsurance fund? The national funds would be taken over by this back-up fund? Complex question to answer and I don't have solutions.

Limitations of pre-payments

DG JUST: This has been discussed on different occasions and we've heard also some concerns about limiting prepayments but still it would deal with the issue of protecting payments made by made by travellers.

We've heard from the from the package travel industry the concern that such a rule would have to apply also to service providers and one idea would be if perhaps we don't regulate it for the service as such, but if the services are provided within the framework of a package then these rules would apply as well. Would this be feasible in practice? Regulating pre-prepayments as such could also mean an obligation on organisers to offer, in addition to packages with prepayments also packages without prepayments, which might be a bit more expensive.

CONSUMER ASSOCIATION: On business refunds rights: we need to allow everybody to be able to match this 14-day deadline. We support the different measures regarding the limitation of prepayments, we prefer the first one: 20% at the booking and 80% after. This limitation of pre-payments or this progressive phase out of prepayments needs also to be considered in the air sector and in the transport sector in general. This is also the recommendation of the European Court of Auditors.

Regarding the second point, if we are fully honest from the consumer perspective, it will not change the situation for consumers because the service providers will continue to ask for the full prepayments and then we still have a higher cost to be paid.

On the limitation of prepayment we have different options. The prepayment is only for the organizer that have unlimited insolvency protection. So you have a kind of link between limited insolvency protection, limited prepayment. So what you're suggesting doesn't exist anywhere. Another way is if we would be able to pass on the cost but not pay ourselves. I imagine for instance that normally the highest period for the bookings is around March, April for summer, so that means that a travel agent, which is again usually an SME won't be paid for several months, because you book around February, March and you have to wait until summer or maybe a month before summer, when the rest of the money is paid so you will have the period of what April May, June 3 month without having seen much money.

We need to see a limitation of prepayment in the airline sector but if you are looking at limitation of the service provider only in the PTD and only in the framework of a package then what will happen? Airlines have the choice between selling stand-alone tickets at 100% prepayment at the time of the booking. But if I have a travel agent that want to combine them in a package, I will have a limited prepayment. What do you think the airline will do? There are two choices. They will just put in their ticketing authority. So you know that the contract that you sign between an airline and an accredited travel agent. So then we say I don't want you to sell my tickets as part of a package. Or yes, you can buy my ticket, but that would be a full flex. It's expensive. So that either you remove the choices or increase the price because DG MOVE is not doing anything on prepayment at the moment.

So if you want to touch something on the prepayment, you have to look at the standalone service and the legislation on the standalone service and that's not in your dossier, DG JUST. Please don't try to fix that just in the within the framework of the directive is very dangerous. Thank you.

National industry association: Fully agree with what has just been said. You always ask the same questions, and your answer is always the same. As long as Europe does not address the issue of prepayment of service providers, this discussion cannot take place with the 20% prepayment. You cannot pay the alignment which has to be paid at the time of the booking. So I don't understand how this is supposed to work. You cannot expect a travel agency to pay all the suppliers. In France, for example, the average down payment is between 30 to 40%, but there are some other projects when where you need a full prepayment. For example in a hotel that has to be paid at the time of the booking and the hotels give a special discount to the consumer. At the moment for the for the consumer in terms of prepayment and I think we should keep that that flexibility.

EU INDUSTRY ASSOCIATION: I think you know what our views are on limiting pre-payments, whether it's in the context of packages or for standalone tickets. So I won't dwell on that. I will just reiterate that it would significantly disrupt airline business models. It will lead to higher costs and it will lead to a reduced offer since we had the last workshop, some of our Members have done some internal modelling which indicates that

airfares would rise by about 20% if you had a strict limitation on prepayments and that also impacts whatever.

Let's look at ways to try and protect the payments that consumers are made-up front, but we don't think this is a good way to go. We've also discussed the global implications and what this means for the competitiveness of the European industry, if it's enforceable for non-EU companies. We really have strong reservations about it and we ultimately don't think it's in the consumer interest. Secondly, we don't believe there needs to be an explicit business to business refund right. We think this can be solved through normal commercial relations. Secondly, we don't really see that this was a major problem outside of the specific issues during the COVID crisis and we, from at least an airline perspective, sometimes have issues with travel agents that distribute airline products without actually having any commercial or legal relationship with the airline and then invoke the provisions of the PTD against them.

CONSUMER ASSOCIATION: So what do we do now to better protect consumers prepayments? We have two solutions either we limit the pre-payments or we ask for an insolvency protection of airlines which will provide for a full protection of consumer prepayments. We need to move forward because everybody is under financial pressure now. I would tend to disagree here that we don't have problems with the refund or prepayments even in normal situation. I have plenty of examples just in my office of consumers waiting for three months to get their money back instead of seven days.

There would be a progressing phasing out of prepayment to allow all the actors to adapt their business models. In terms of third countries actors then we are back to a question of enforcement which is missing.

EU INDUSTRY ASSOCIATION: We are happy to see how to better protect the prepayment and it would be better if it's done along the whole value chain. Regarding the B2B refund being a two-way street I fail to see the reality of that because if I look at your Members or the IATA members basically they can cut the tap whenever they want. They have a complete dominance. What I saw for the past month and years is that it's almost impossible to get a refund if you are a travel agent because the process is extremely long and they asked the client to directly contact them saying that they shouldn't buy with a travel agent and that's another problem with the code.

EU INDUSTRY ASSOCIATION: There are lots of potential measures being consulted on including limiting prepayments or doing insolvency protection.

We need to look at this in a holistic way because there is also a revision of the Air Services Regulation, that's ongoing. Where DG MOVE is looking at the financial resilience of airlines and the financial oversight requirements. That is another way of potentially tackling this risk and it might be a more efficient and a better way for everybody because you're trying to tackle the risk before they even occur. It's very simplistic to say either we limit prepayments or we add insolvency protection.

On insolvency protection, I would disagree that this is such a major issue, at least when we look at the trends we've had for the past 20 years. What we saw both from 2000 to 2010 and then from 2011 until essentially COVID we're talking less than 1% of air travellers in the EU are affected by an airline and solvency. So yes, of course, everybody has taken a hit after COVID. The airlines are not alone in that, but most of the major European airlines are still relatively robust. Airlines will automatically reimburse the payment method used during the booking and most likely that's the corporate credit card of the travel agent. There were some issues with BSP during the COVID pandemic, but it doesn't appear to us that these happened more regularly than before. Your members received the funds that they're supposed to receive. Do you need an explicit right? Can this not be solved through contractual relations? How big is this problem really?

EU INDUSTRY ASSOCIATION: We always have issues of getting the money. We need to see how the payment system works. We have to provide several guarantees with regards to the BSP with regards to the credit card company. We pay in advance money for the credit card company. We have to pay the insolvency protection for the prepayment we get. So we have already three protections to provide. We are heavily regulated in the in the context of a package and we just want that in all fairness that same better.

CONSUMER ASSOCIATION: We are talking about the aligning insolvency and its impacts not only on consumers, but also to operators. If we look at what is proposed and what it delivers we're talking about voluntary insurances where we have plenty of examples and studies from our Members demonstrating it does not deliver. Consumers are still not covered, only a few percentage of them who have benefits of a small protection. We have to move forward with something which is binding.

EU INDUSTRY ASSOCIATION: In our view this goes back to a communication that DG Move issued in 2013 on airline insolvency and they're consulting now whether those conclusions are still valid. It's the starting point. We need to address that first and then we can actually perhaps assess whether there is a need for a limitation of prepayments or insolvency protection. We do not have at the moment consistent and effective application of financial oversight requirements of airlines in all EU Member States. Why are we building this massive new architecture when we haven't fixed that up front? Secondly on voluntary insurances. A study on air passenger rights in 2020 SDG concluded that the number of non-covered passengers could simply be improved through information campaigns, national authorities, consumer bodies. That's also a low hanging fruit that we can certainly work on.

EU INDUSTRY ASSOCIATION: We are discussing matters that need to be approached in a holistic way. It's a problem with DG MOVE. The question we have actually here is what can we do in the PTD that will be balanced and proportionate.

EU INDUSTRY ASSOCIATION: Some elements are more on the DG Move side. Communication on Regulation 1008 goes back quite a few years, but we've actually not had any revision of the regulation until now. We also see flight only tickets that have real issues with intermediaries, especially online travel agents. We have this quite striking example in the Netherlands of a travel agent that went bankrupt. Some of our Members actually refunded them or refunded the payment seven months before they went bankrupt and they didn't pay those out to consumers. So from our side this needs to be fixed.

Crisis fund

ICF: The crisis fund would ensure the timely reimbursement of travellers who do not accept vouchers and would reimburse travellers while preserving the liquidity organizers. Financing would be built of contribution from organizers over time. Contribution can be based on the percentage of the price of each package or directly as a minimum fee.

CONSUMER ASSOCIATION: The funding should be by the traders, not by consumers directly. As mentioned, financing can be based on the percentage of the package, but also the market share of the traders. Iterative solution to securing prepayments we mentioned this limitation of prepayments, but another one we mentioned last time also is the escrow schemes which could be a way to secure the consumers on 3rd party account. It could also avoid having a massive amount of money to be reimbursed at once by the different traders.

EU INDUSTRY ASSOCIATION: Crisis fund is maybe not the best way to cover when what we mean is a rapid refund system. The objective again to refund consumer quickly. We need to discuss how to use the experience gained during the pandemic and have clear

guidelines on what would be defined as a crisis and how such a fund would be activated. There could be a phone system that would just be dedicated to the refund of consumer.

National consumer organisation: The scheme we set up in Denmark during the pandemic was working as a support system for the travel agencies and as a protection for the passengers. The support for the travel agency was tied to their refunding of their customers. The result was comparably fewer insolvencies for travel agencies and we have secured most consumers.

DG JUST: Could you provide some more details? Do you consider that in the system that you had set up in Denmark corresponds in any way to the idea of a crisis fund or would you rather consider it to be an alternative system?

Danish Travel Guarantee: It was not a fund built up in advance. We lend money from the state to travel organisers and we have to pay back to the state when we get the repayment from the organizers. There's an interest rate and it has been decided by the EU Commission, it is not a 0% loan.

DG JUST: We have to consider what kind of proposals we should make. We have to look at different alternatives and also complementary tools.

CONSUMER ASSOCIATION: The most interesting is the combination of the protection about the vouchers or at least having minimum rules on vouchers and the insolvency protection. It also depends on what the different policy measures on vouchers will be but in principle we would prefer with voluntary and minimum rules on vouchers coupled with insolvency protection, also covering vouchers in pending refunds. We would also ask for the limitations of prepayment strengthening insolvency protection.

Potential measures to improve the implementation of the PTD – clarification and simplification

Clearer information of travellers on the role of different traders (organiser, retailer, service providers) in relation to performance, payments and refunds

Would this be useful? Do you consider it appropriate that organisers are legally responsible for refunds even insofar as the money is with retailers or service providers, at least for as long as the organiser is solvent?

Simplification of the main concepts through abandoning LTAs and adjusting the definition of packages?

Incorporating LTAs as defined in Article 3(5)(a) in the definition of packages (to avoid the difficult distinction between these LTAs and packages under Article 3(2)(b)(i))?

Broadening the definition of click-through-packages in Article 3(2)(b)(v): transfer of name, email address or payment details sufficient for the creation of a package, and deletion of Article 3(5)(b)?

Would such simplification be beneficial? Alternative ideas for simplification and improved enforceability of the PTD?

If the concept of LTAs were to be abandoned, should there be certain rules for service providers or intermediaries not offering packages, beyond the passenger rights regulations and the Consumer Rights Directive, e.g. information on the flow of payments, on refunds and insolvency protection?

If LTAs were to be maintained (type A, type B or both), what should be done to simplify the rules and improve their enforceability?

Information of travellers on insolvency protection only where it actually exists?

Replacing “a single visit or single contact” with a certain number of hours, e.g. “within 3, 6, 12 or 24 hours”?

Other ideas?

Clarifications regarding cancellations due to ‘unavoidable and extraordinary circumstances’

Cancellation right only if there is an official travel warning or rather automatic right to cancellation if there is a travel warning? Any other rules on the legal value of travel warnings?

Conditions/rules in the country of departure as justification, e.g. significant quarantine requirements?

Same provisions on sanctions as in Directive (EU) 2019/2161 - the Modernisation Directive

Fines for widespread cross-border infringements with a maximum amount of at least 4% of the trader’s annual turnover in the Member State(s) concerned

Common non-exhaustive and indicative criteria for the application of penalties?

Other ideas for simplification, clarification as well as improved enforceability and enforcement?

ICF: We would like to discuss with you whether there should be a clearer distinction on the role of the different traders that are described in the directive, like organizer, retailer, service providers and so on. We would like to hear your views whether this would be useful if you consider that the organizer should be legally responsible for the refunds even if the money is with the retailer or service providers.

EU INDUSTRY ASSOCIATION: The trader can be the organizer and sometimes the retailer, depending on the country and is liable for the performance of the package including the refund. Who does what is a complex matter and I'm just wondering if it would confuse the consumer to have this information. The Package Travel Directive says that normally the package organizer is the one liable for everything and I don't see any benefit in adding this kind of complexity of explaining the whole value chain to the consumer.

CONSUMER ASSOCIATION: Under the PTD, it's clear that it's the organizer who is responsible. There is also a broader question on the role of online intermediaries in general. I mean it's less relevant for the package, but still we have intermediaries acting there. There are currently no rules applying for online intermediaries. We need to clarify who is responsible here and to make it transparent to consumers.

National industry association: In France we have a shared liability between the trader and the organiser, and I've never seen any difficulty with that. The trader and the organizer can make use of alternative dispute resolution.

EU INDUSTRY ASSOCIATION: The PTD does put liability on the organiser for providing information to consumers the problem is when this information is not available to the organisers and the timeline of the PTD does not allow clarifications to arrive from the service providers.

DG JUST: The idea is certainly not to add more information and make it more complicated; we have to consider how information is provided. When the 2015 directive was adopted, some Member States took the position that retailers should also be liable, but there are very different views. It will be difficult to touch this question again this time around.

EU INDUSTRY ASSOCIATION: According to the FIF platform there is an issue between the package organizer and service provider. It's more a service provider and package organizer issue.

CONSUMER ASSOCIATION: You have this problem with service providers and the intermediaries. We also have problems with liabilities between retailers and organizers. So even if the information requirement provision is clear in practice we need to revisit the question of enforcement. Related in general to this pre contractual information requirements, I would tend to say that from the feedback that we have from our members, it seems to be quite confusing for consumers. Many of them receive the wrong forms or are receiving only partial information.

We have seen consumers being refused entering certain countries because they didn't have, the vaccine pass or health requirements fulfilled, but they have not been informed that they need this and who is better placed than sellers of the packages to provide this information to consumers. So it should be the duty of the traders to check with the relevant authorities or person to provide these travel warnings and conditions to entering territories to consumers.

EU INDUSTRY ASSOCIATION: Providing information about VISA requirements can be a significant burden on organisers, most of whom are SMEs, that's not something that can be taken up by them. We had quite a lot of discussion on who should be the liable party and the problem was is that according to the way the PTD is drafted you don't have the choice between organizer, retailer, or both. It's either the organiser or a joint liability and joint liability can also be confusing.

National industry association: You have about 200 countries in the world and 200 nationalities, so about 40,000 possibilities. It's impossible to comply with the specific obligation of information for each passenger.

CONSUMER ASSOCIATION: You know the product that you're selling and as a consumer, this is key pre-contractual information requirement. I mean just imagine we had the example about Malta, where consumers entering the border were denied for not having the proper Maltese vaccination information. I think it's fair from consumer perspective to have this information.

EU INDUSTRY ASSOCIATION: Flights are often an important component of packages. Most of our members and you probably experienced that yourself when you travel have included links or information on where you can find out the applicable entry requirements, but I have to say it's a disproportionate burden on the service providers and organizers to be able to check in every single country what the current requirements are. I think one of the things we saw during the pandemic is how quickly the requirements change often with 48-hours notice. How are you supposed to deal with that then, especially if you're an SME?

Consumers also have to assume some responsibility and there are risks. You need to check your entry requirements. More information on the respective parties in the value chain would be a good idea. We would certainly support that, be it for stand-alone tickets or between service providers and packages.

EU INDUSTRY ASSOCIATION: I would be happy to have clear information on the role of different traders but I think that would be even better if we could have something streamlined along the line of all services.

Definition of LTAs

DG JUST: There have been a permanent request since the adoption of this directive to simplify the rules, make them clearer. This was also reiterated again by the Fit for future platform.

EU industry association: I hear repatriation risk. I hear high volumes of packages and then I think about the big number of small package services by accommodation provider together with a restaurant or a city tour. And this is also a package, and this is this is currently subject to the Package Travel Directive. We need to think what is proportional to all cases where currently the PTD is applicable? Could we establish a threshold and a value? On consumer information: This sounds to me like the famous agreement on GDPR requirements under each e-mail. When nobody reads this ever.

Focus on the core aspects. Make it simple. Otherwise, we have a regulative monster that is impossible to control, impossible to implement in reality and gives a lot of small things where people continuously complain. Try to simplify it in the benefit also of the consumer.

National industry association: The LTA is a difficult concept to understand. Consumers don't know what it is and most travel agencies still do not know what it is. There is a very easy way to simplify the regulation. The solution will be to finally create a protection of insolvency for airlines which will give the exact same level of protection for consumers.

EU INDUSTRY ASSOCIATION: What you are asking is to cover actually less and less travellers now. If you want to simplify the scope the answer is simple. Do not look at it. Look at the other services. As soon as you have equivalent level of protection, whether the consumer booked package travel, or standard service, then you can simplify the scope.

CONSUMER ASSOCIATION: I agree this insolvency protection of airlines. We should perhaps drop this LTA concept and put everything, integrate everything into the packages concept. They have their purposes. They are serving purposes and we need just to simplify them because it is very, very difficult to understand. Clarifying the concept of single visits is necessary but the number of hours is irrelevant. Key pre-contractual information should be better presented to

EU INDUSTRY ASSOCIATION: If we want to protect the consumer, it has to be discussed across the whole value chain we have to stop this super regulated package travel. The LTA concept makes much more sense if an airline actually sell necessary services such as a car rental.

EU INDUSTRY ASSOCIATION: We don't have a view on whether LTAs should be scrapped or redefined, but we do indeed see more and more that there are some online travel intermediaries that bundle different products together and it looks like a linked travel arrangement. If you scrap that definition, then we need to discuss what kind of obligations or protections apply to that versus the traditional concept of a package versus stand-alone services. From a service provider's perspective, the LTA concept is a mess.

DG JUST: There were difficult discussions before the adoption of the 2015 directive. Legally speaking, if the criteria of a package are met then it can't be an LTA, but the concern has always been that perhaps in practice, it does not work this way. That is why we welcome thoughts on how simplification could be achieved.

EU INDUSTRY ASSOCIATION: Everybody wants a simplification, but the problem is that this exercise is limited to the PTD whereas the traveller has different ways of traveling and different contracts. If you want to simplify you have to look at the whole value chain to make sure that you have something that is meaningful, understandable and harmonized, Umm, I think that PD console it alone.

Clarifications regarding cancellations due to ‘unavoidable and extraordinary circumstances

CONSUMER ASSOCIATION: On travel warnings we can only reiterate our call for clarification. Have clear rules or clarification about how and when consumers can use these travel warnings which should be determined by an authority in the Member States of departure.

We have a limitation in terms of time frame (30 days before departure) to activate this, but we need to clarify this. This should also be mirrored in the travel sector in general.

EU INDUSTRY ASSOCIATION: The provisions of the current PTD should be maintained here. So, it's the country of destination that should determine it. It shouldn't apply to the country of departure. We have some hesitation about the use of travel warnings as a trigger cancelling packages or flights, mainly because we saw during the pandemic how unaligned these travel warnings were. take place.

We don't think travel warnings in and of themselves are going to be sufficient and there again we end up unfortunately in a much broader issue, which is the totally uncoordinated way that EU Member States dealt with the pandemic and the conditions to actually travel and access different territories.

EU INDUSTRY ASSOCIATION: The main problem of travel warnings is that it is a complex issue. What happens if somebody has booked knowing perfectly that the country of destination had a red travel warning. Health requirements change within a very short space of time and in such cases what happens to the pre-contractual information where the organiser is liable for information that has now become outdated. It's the liability of the of the organizer to provide accurate pre contractual information.

CONSUMER ASSOCIATION: Consumers need to be informed about the requirements for this we need to have this contractual information about the health situation and be able to cancel.

DG JUST: We've also discussed it with the with the Member States and there is limited feedback so far. You may be aware that there are many cases before national courts. Some cases also before the Court of Justice on cancellations at different stages of the pandemic. There are questions about the point in time when the situation ought to be considered as bad enough to justify a cancellation. And any ideas of how we could usefully clarify at least a few aspects?

EU INDUSTRY ASSOCIATION: There will always be some issues after the after the arrival. We are not here to solve the everything you have to something which is within the contract. If you want to solve the issues of quarantine and all, you have to reopen the whole debate on travel insurance, how to make sure that there is an adequate cover for the consumer. But that's not a problem with the Package Travel Directive itself.

Provisions on sanctions as in Directive (EU) 2019/2161 - the Modernisation Directive and cross-border infringements

CONSUMER ASSOCIATION: I think it's a global problem in the PTD and the same goes also for the passenger rights sector. So, we need to align also provisions in terms of enforcement, especially this sanctioning in case of widespread infringement because this is what we are talking about here. Facing with widespread infringement, I mean it will not create a precedence. We have this in the Omnibus directive, as you mentioned the DSA, the GDPR. So, it's multiplying in every in a lot of text. So, we should have this in the PTD, but also in the passenger rights sector and especially air. We need to broaden the scope here about public enforcement but also private ones.

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF
THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT
ASSESSMENT ON ITS POTENTIAL REVISION

EU INDUSTRY ASSOCIATION: The way that you are looking at widespread infringement is also very important. The final four percent is something that is being applied now in most mostly isolation. So, we find to align with the rest.

DG JUST: Thank you for the comments provided and yes, we will also talk to our colleagues in the enforcement unit.

Annex 4 Legislative and other measures adopted in Member States and other EEA countries since July 2018

LEGISLATIVE AND OTHER MEASURES ADOPTED IN MS SINCE JULY 2018				
MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
AT	YES	Legislative measure	Temporary legislative measure to face the Covid-19 emergency: two amendments in 2020 and 2021 (600. <i>Verordnung der Bundesministerin für Digitalisierung und Wirtschaftsstandort, mit der die Verordnung über Pauschalreisen und verbundene Reiseleistungen (Pauschalreiseverordnung – PRV</i> and 575. <i>Verordnung der Bundesministerin für Digitalisierung und Wirtschaftsstandort, mit der die Verordnung über Pauschalreisen und verbundene Reiseleistungen (Pauschalreiseverordnung – PRV) for 2021</i>) to Travel Package Ordinance (<i>Verordnung der Bundesministerin für Digitalisierung und Wirtschaftsstandort über Pauschalreisen und verbundene Reiseleistungen (Pauschalreiseverordnung – PRV)</i>)	During the Covid-19 crisis, the government decided that the state, via the Austrian Tourism bank (ÖHT), should provide an insurance (for which the state is the guarantor) to SME travel organisers, in accordance with § 3 Para. 3 Z 2 PRV. The State intervention was necessary given the withdrawal of banks and insurance providers from package travel insurance and the difficulties for package travel organisers and facilitators of linked travel services to find affordable guarantees on the market. Since June 15, 2022, no new applications for ÖHT insolvency protection can be submitted. The term of the issued declarations of liability ended on December 31, 2022.
BE	YES	Soft-law measure Administrative measure	Non-binding Guidelines on the application and scope of the transposition measure (<i>Guidelines</i>)	The objective of the Guidelines was to provide a framework for the practical application of the

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p><i>Loi du 21 novembre de relative à 2017 la vente de voyages à forfait, prestations de voyage liées et de services de voyage)</i></p> <p>Temporary legislative measure to face Covid-19 emergency: Ministerial Order on vouchers (<i>Arrêté ministériel du 19 Mars 2020 relatif aux activités à caractère privé ou public, de nature culturelle, sociale, festive, folklorique, sportive et recreative</i>).</p>	<p>law and to specify and explain to stakeholders how to best comply with the law.</p> <p>Ministerial Order introduced rules on vouchers issued due to the Covid-19 emergency (with validity from the 20th March 2020 until the 19th June 2020). The vouchers had a minimum validity period of one year and when not used by this period, consumers had a right to a monetary reimbursement. However, tour operators and organisers were granted an additional six-month period to proceed with the monetary reimbursement.</p>
BG	YES	Legislative measures Soft-law measure	<p>Minor amendments to the Tourism Act in the parts transposing the PTB, with no or very limited impact on the transposition of the PTB.</p> <p>Temporary measure to face the Covid-19 emergency: Article 25 of the Act on the measures and actions during the emergency state, declared with a decision of the Parliament on 13 March 2020 and for overcoming its consequences (<i>Закон за</i></p>	<p>Article 79(5) (about school and children's package travels)⁶⁶⁰ and Article 79a (about tour operators)⁶⁶¹ of the Tourism Act are amended. Finally, Article 75 of the Act to amend and supplement the Tourism Act introduced the obligation for the Commission for consumer protection to apply an administrative measure of 'suspension of any activity' upon non-conclusion of the insurance contract by a tour operator facilitating LTAs.</p>

⁶⁶⁰ The amendment is due to the revision of the Act on bus transportation (Act to amend and supplement the Road Transport Act (*Закон за изменение и допълнение на Закона за автомобилните превози*), promulgated SG No. 60 of 07 July 2020). It clarifies that any travel should take place between 6.00 and 21.00 instead of "daylight hours".

⁶⁶¹ Obligation for tour operators to conclude – directly or via a travel agent – a contract for the travel package before its implementation, for an average period of 2 years.

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			<p><i>мерките и действията по време на извънредното положение, обявено с решение на народното събрание от 13 март 2020 г. и за преодоляване на последиците), promulgated State Gazette No 28 of 24 March 2020, last amended State Gazette, No 32 of 2022.</i></p> <p>Ministry of Tourism (2021), Guidelines for application for financial support for tour organisers and traders for compensation of loss due to Covid-19 (<i>Насоки за кандидатстване по схемата за предоставяне на безвъзмездни финансови средства на туроператори и туристически агенти за компенсиране на загуби в резултат от COVID-19</i>)</p>	<p>In the context of the Covid-19 emergency, it introduces the possibility for the tour operators to reimburse a traveller for a trip cancelled due to Covid-19 to offer a voucher for the amount paid and extended the period for repayment from 14 days to 1 year after the cancellation made by the organizer. The measure was applicable for the period from the 13 March 2020 until the state of emergency was lifted. In addition, the government provided financial aid for the repayment to the travellers for their cancelled travels.</p> <p>The objective of the guidelines is to provide guidance to organisers and traders on how to get compensation of the loss suffered during Covid-19 crisis.</p>
CY	YES	Legislative measure	Temporary legislative measure to face Covid-19 emergency: Law No. 59(I)/2020 in May 2020 ⁶⁶²	It establishes temporary measures allowing the use of vouchers for cancelled package holiday contracts instead of the refund in cash in case of cancellation due to the COVID-19 emergency. The vouchers could be used by the consumer until 31 December 2021. If at

⁶⁶² In July 2020 the European Commission launched an infringement procedure against Cyprus for not complying with the EU Recommendation on vouchers. The procedure was closed in October 2020.

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				<p>the end of the validity period consumers have not used the voucher, they can ask for a monetary reimbursement. It establishes the obligations of the organizers to provide insurance coverage and/or bank guarantee for the vouchers.</p> <p>The vouchers for cancelled package holidays are covered against insolvency by the Cypriot Government, complementing private guarantors.</p>
CZ	YES	Legislative measures	<p>Temporary legislative measure to face Covid-19 emergency: <i>Lex Voucher</i> - 185/2020 Coll.</p> <p>Legislative measure on insolvency protection: <i>Lex Covid</i> - 191/2020 Coll.</p> <p>Temporary legislative measure to face Covid-19 emergency: Act No. 189/2020 Coll.</p> <p>Temporary legislative measure to face Covid-19 emergency: Financial programme of the Ministry of Industry and Trade⁶⁶³</p>	<p>It regulates the possibility for organisers to provide travellers with vouchers instead of refunds in money due to the cancellation of contracts that should be executed between the 20 February and the 31 August 2020 by both the traveller or the organizer, due to unavoidable and extraordinary circumstances.</p> <p>It deals with this issue indirectly and mainly regulates the options in case of insolvency.</p> <p>In connection with the Covid-19 pandemic, an amendment to Act No. 159/1999 Coll. was adopted in relation to trades acting in the capacity of travel service provider (e.g. Airbnb). In the case of online mediation of the conclusion of a travel service contract, at the</p>

⁶⁶³ Available at: <https://www.mpo.cz/cz/rozcestnik/informace-o-koronavirus/covid-2022---sektorova-podpora--266644/>

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				<p>request of the municipal trade office, to provide information on the mediated services, including the type and scope of the mediated services and the identification of the persons who provided the mediated services to the travellers.</p> <p>Financial programme to support small and medium-sized organisers to help them take out statutory insolvency protection insurance during the COVID-19 emergency.</p>
DE	YES	Legislative measures	<p>Temporary legislative measure to face Covid-19 emergency: Act to Mitigate the Consequences of the COVID-19 Pandemic in Package Travel Contract Law and to Ensure the Functioning of the Chambers in the Area of the Federal Lawyers' Act, the Federal Notaries' Act, the Auditors' Act and the Tax Consultancy Act During the COVID 19 Pandemic (<i>Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Pauschalreisevertragsrecht und zur Sicherstellung der Funktionsfähigkeit der Kammern im Bereich der Bundesrechtsanwaltsordnung, der Bundesnotarordnung, der Wirtschaftsprüferordnung und des Steuerberatungsgesetzes während der COVID-19-Pandemie</i>)</p>	<p>It establishes rules valid during the Covid-19 pandemic. These rules concerned all travels paid for prior to 8 March 2020. The rules introduced an option for travel organisers to offer to travellers a voluntary voucher in case that the travel was cancelled due to the Covid 19 pandemic (for both sides – in case of the traveller and the organiser). The vouchers were also guaranteed by the state in case of insolvency of the travel organiser. Vouchers for travel packages booked after 8 March 2020 were not guaranteed.</p> <p>It changed the requirements to ensure effectively that payments can be reimbursed in case of insolvency of the travel organiser. It set up a new Travel Insurance Fund (<i>Reisesicherungsfonds</i>).</p>

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			(COVFRAG) Act on Insolvency Protection through Travel Insurance Funds (<i>Reisesicherungsfondsgesetz - RSG</i>), 25 June 2021	
DK	YES	Legislative measures	Legislative measure to face the Covid-emergency: Act nr 326 of 31/03/2020 (LOV nr 326 af 31/03/2020) Legislative measure to face the Covid-emergency: Act nr 612 of 14/05/2020 (LOV nr 612 af 14/05/2020) Legislative measure to face the Covid-emergency: Act nr 1054 of 30/06/2020 (LOV nr 1054 af 30/06/2020)	It expands the scope of the travel guarantee fund to provide protection for travellers also in cases where a package tour has been cancelled by the travel provider or by the traveller due to 'extraordinary situations affecting significant parts of the travel industry'. It enables travel providers and intermediaries to receive protection from the travel guarantee fund, where they are forced to interrupt a package tour as a result of extraordinary situations affecting significant parts of the industry, and they would be obliged under the Act on package travel and linked travel arrangement' (APT) to grant the traveller a full or partial reduction in the price or to pay for additional costs for home transport. It empowers the Minister of Trade and Industry to issue rules on the provision of subsidies to travel providers and intermediaries.

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
EE	YES	Legislative measures	Amendments to the Estonian Tourism Act with no impact on the transposition of the PTD	There have been amendments to the Tourism Act (entering into force on 1 January 2019) because the Consumer Protection Board was joined with another state authority. All the changes of the Tourism Act are due to the fact that the Tourism Act now correctly refers to the Consumer Protection and Technical Regulatory Authority (<i>Tarbijakaitse ja Tehnilise Järelevalve Amet</i>).
EL	YES	Legislative measure	Temporary legislative measure to face the covid-19 emergency: Act of legislative content n. 84 of 13 April 2020, as ratified by Law 4960/2020 and amended by Law 4722/2020.	It provides exceptions to the rights and obligations of consumers and tourism businesses about the possibility to issue vouchers in case of termination of a contract in the context of the covid-19 pandemic. The act regulates business-to-consumer and business-to-business issues.
ES	YES	Legislative measures	Legislative measure to face the consequences of the bankruptcy of Thomas Cook: Royal Decree law 12/2019, 11 October 2019. Temporary legislative measure to face the Covid-19 pandemic: Royal Decree 11/2020, 31 March 2020,	It introduced urgent measures to alleviate the effects of the opening of insolvency proceedings against the corporate group Thomas Cook. Among other things, it created a credit line with Thomas Cook defaults, a State Financial Fund for Tourism Competitiveness, coordination policies in the field of employment between the central state and the Autonomous Regions and other support and information measures for those directly affected by the Thomas Cook crisis.

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p>Legislative measure amending temporary legislative measure: Royal Decree-law 21/2020, 9 June 2020.</p> <p>It has to be noted that the insolvency protection system in Spain is under the competence of the Autonomous Regions. Legislation at regional level has been modified in several Autonomous Regions since the application date of the PTD. Currently, in some parts of the territory a system based on securities that are directly enforceable by the traveller exists, whereas there are still few regions that require the provisions of 'bonds' to the treasury administrations, not allowing the travellers to enforce their rights prior to a formal decision (e.g. judgement or arbitration award).</p>	<p>It adopted additional urgent social and economic measures to address COVID-19. It allowed organisers of travel packages to issue a voucher instead of reimbursing the payment received by the traveller. This was possible in cases where the organiser could prove that it had not received the necessary reimbursements from other service providers in order to pay the refund to the traveller.</p> <p>It provided that the acceptance of the vouchers had to be on a voluntary basis by the traveller.</p>
FI	YES	Legislative measures	<p>Temporary measure to face the Covid-19 emergency: Act on providers of combined travel services, 921/2017 (<i>Laki matkapalveluyhdistelmien tarjoajista, Riksdagen</i>), 1 July 2018 (MPT), Chapter 2, Section 10a</p>	<p>Introduced in 2020 as a temporary measure (in place between the 26 October 2020 and 31 December 2022) to enable travellers to be reimbursed by the Government in case of cancellations which are due to unavoidable and extraordinary circumstances caused by the Covid-19 epidemic.</p>

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			Temporary measure to face the Covid-19 emergency: Two amendments (act 870/2021 and act 241/2022) to the MTM act 922/917 (<i>Lag om en tillsyns- och insolvensskyddsavgift för leverantörer av kombinerade resetjänster</i>) – Section 5a	Inserting a temporary Section 5a into the MTM, by which the fee for the insolvency protection scheme was waived in 2020 and 2021 respectively.
FR	YES	Administrative measure	Temporary measure to face the Covid-19 emergency: Ordinance n°2020-315, 25 March 2020.	It is related to extraordinary circumstances. The ordinance provides that when a travel contract is cancelled between the 1 March 2020 and 15 September 2020, the organiser may offer, instead of a money, a voucher of equal value, with a validity period of 18 months. If the voucher is not used or partially used by consumers, they will be able to ask for the whole monetary reimbursement or the remaining price difference for the unused part at the end of the validity period.
HR	YES	Legislative measures	Temporary measure to face the Covid-19 emergency: Act amending the Act on Provision of Tourism Services (<i>Zakon o izmjenama i dopunama Zakona o pružanju usluga u turizmu</i>), National Gazette (<i>Narodne novine</i>) No. 42/2020 (Article 38a). Legislative measure adopted to repeal previous legislation: Act amending the Act on Provision of	Article 38a regulates rights and obligations of the parties to the package travel contract in case of non-performance of contract due to COVID-19 pandemic (with respect to all package travel contracts that were to be performed after 1 March 2020). Organisers can issue vouchers to travellers. Should a traveller decide to exercise their right to rescind the contract, the organiser is bound to make a refund of any payments made by the consumer within 14 days after the expiry of 180 days following the cessation of special

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			Tourism Services (<i>Zakon o izmjenama i dopunama Zakona o pružanju usluga u turizmu</i>), National Gazette No. 70/2021.	circumstances. The voucher is covered by insolvency protection mechanism agreed for the package travel in question. It has repealed Article 38a introduced by Act No. 42/2020.
HU	YES	Legislative measure	Temporary measure to face the Covid-19 emergency: Government Decree No. 242/2020.	It introduced special rules applicable for package travel contracts during the Covid-19 emergency. In these cases, instead of the repayment of the fee or advance paid for the travel package, the tour operator could issue a voucher. If the traveller did not accept the voucher, the organiser had to refund all pre-payments made by the traveller. The financial coverage defined in Section 6/F(2)(d) of Act CLXIV of 2005 on Commerce covers the amount satisfactory for the repayment of the vouchers issued under the aforementioned decree in case of the insolvency of the tour operator.
IS	YES	Legislative measures	Legislative measure implementing the PTD: Act 21/2020 (entered into force on 21 March 2020). Temporary legislative measure to face the Covid-19 emergency: Act 78/2020 (entered into force on 17 July 2020).	It amended the role of the Tourist Board in supervision and enforcement of the Act on package tours and interconnected travel arrangements (LSPF), providing some additional powers. It introduced temporary measures to address the negative effects of the Covid-19 pandemic on the activities of organisers or retailers and to safeguard the interests of consumers. This

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p>Temporary legislative measure to face the Covid-19 emergency: Act 111/2020 (entered into force on 17 September 2020).</p> <p>Legislative measure implementing the PTD: Act 91/2021 (entered into force on 8 July 2021).</p>	<p>included the establishment of a Travel Liability Fund, which enables travel organisers to receive loans for an amount equal to any unpaid reimbursement claims, under the condition that the loans are used exclusively to reimburse legally justified reimbursement claims by travellers.</p> <p>It extended deadlines set out in the temporary measures introduced by Act 78/2020.</p> <p>It amended provisions regulating the administration of the Travel Insurance Fund.</p>
IE	YES	Legislative measures	<p>Legislative measure implementing the PTD: S.I. No. 80 of 2019 European Union (Package Travel and Linked Travel Arrangements) Regulations 2019</p> <p>Legislative measure implementing the PTD: S.I. No 105 of 2019 European Union (Package Travel and Linked Travel Arrangements) (No. 2) Regulations 2019</p> <p>Temporary measure to face Covid-19 emergency: S.I. No 218 of 2020</p>	<p>It implements the PTD into national legislation.</p> <p>It amends Schedules 1-4, the Standard information forms, and the template terms of security to be provided by an organizer or trader and guaranteed by a bank.</p> <p>It establishes the meaning and refund conditions for voluntary refund credit notes issued by a tour operator or travel agent to a customer in respect of the cancellation due to Covid-19 of an overseas travel contract.</p> <p>It amends several definitions and establishes the Travellers' Protection Fund, to reimburse</p>

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p>Transport (Tour Operators and Travel Agents) Act 1982 (Disbursements from Fund) Regulations 2020</p> <p>Temporary measure to face Covid-19 emergency: S.I. No 219 of 2020 European Union (Package Travel) Regulations 2020</p> <p>Temporary measure to face Covid-19 emergency: S.I. No 105 of 2021 Transport (Tour Operators and Travel Agents) Act, 1982, (Disbursements from Fund) Regulations 2021.</p> <p>Temporary measure to face Covid-19 emergency: S.I. No 290 of 2021 Transport (Tour Operators and Travel Agents) Act, 1982, (Claims by Customers) Regulations, 2021.</p>	<p>customers. It also defines in extenso what the Fund covers.</p> <p>It covers payments from the Travellers' Protection Fund made to a customer who holds a refund credit note where the tour operator or travel agent is unable or fails to meet the financial or contractual obligations owed to the customer under the refund credit note concerned.</p> <p>It extends from 60 to 120 days the time period within which a customer may make a claim for refund of monies paid or for the reimbursement of reasonable expenses incurred as a result of the inability or failure of the tour operator or travel agent to meet his financial or contractual obligations concerning an overseas travel to which the Regulations apply.</p>
IT	YES	Legislative measures	Temporary legislative measure to face the Covid-19 emergency: Law Decree No. 18, 17 March 2020.	Article 88-bis of this Law has derogated to the discipline provided in Article 41 of Legislative Decree No 79 of 23 May 2011 on the right to cancel the package contract before the beginning of the package travel. It contains a series of provisions concerning the

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			<p>Temporary legislative measure to face the Covid-19 emergency: Law Decree No. 34, 19 May 2020.</p> <p>Legislative measure amending Law Decree No. 18, 17 March 2020: Law No. 77, 17 July 2020.</p> <p>Legislative measure amending Law Decree No. 18, 17 March 2020: Decree Law No. 160, 10 September 2021, converted with amendments in Law n. 27, 24 April 2020</p> <p>Temporary legislative measure to face the Covid-19 emergency: Law No. 69, 21 May 2021.</p> <p>Temporary legislative measure to face the Covid-19 emergency: Decree No. 228, 30 December of 2021, converted with amendments in Law No. 15, 25 March 2022.</p>	<p>reimbursement of travel tickets and packages cancelled because of the COVID-19 crisis.</p> <p>Article 182 (3-<i>bis</i>) of Law Decree No. 34 of 19 May 2020 established a fund for the compensation of consumers holding vouchers issued pursuant to Article 88-<i>bis</i> of Law Decree No. 18 of 17 March 2020, not used by the end of their validity, and not reimbursed due to insolvency or bankruptcy of the tour operator or carrier. Article 182(1) of the same Law has foreseen direct subsidies to tour operators and travel agencies to compensate for losses by establishing a fund.</p> <p>It intervened on the topic of vouchers. First, the validity period of vouchers is prolonged to 18 months. Second, in the cases indicated, vouchers can be used for services taking place after the final term of validity as long as those services are booked within the validity term of the voucher. Thirdly, after 18 months from their issuing, vouchers not used or not used to book services are refunded within fourteen days of expiry.</p> <p>Another area of intervention concerns the times within which the withdrawal from contracts must be exercised by the operator or by the customer in the cases provided for by the law.</p> <p>The Decree Law No. 160, 10 September 2021, converted in Law n. 27, 24 April 2020, established the criteria for the utilisation of the guarantee fund created by Article 88-<i>bis</i> (12-</p>

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				<p>ter) of Law Decree No. 18, 17 March 2020, as amended by Law No. 27 of 24 April 2020, as well as the coverage of vouchers against insolvency.</p> <p>Law No. 69 of 21 May 2021 has extended the validity of vouchers to 24 months.</p> <p>Decree No. 228 of 30 December 2021, converted with modifications in Law No 15 of 25 March 2022, has extended the validity of vouchers from 24 to 30 months.</p>
LT	YES	Legislative measures	<p>Legislative measure implementing the PTD: Order No. V-132 (2018) of the Director of the State Department of Tourism under the Ministry of the Economy of the Republic of Lithuania on approval of the Standard Terms and Conditions for Package Travel Contracts.</p> <p>Legislative measure implementing the PTD: Order No. V-133 (2018) of the Director of the State Department of Tourism under the Ministry of the Economy of the Republic of Lithuania on approval of Standard Information Forms.</p> <p>Legislative measure implementing the PTD: Order No. 1-58 (2018) of the Director of the State Consumer Rights Protection Authority on</p>	<p>It established standard terms and conditions for package travel contracts.</p> <p>It established standard information forms.</p> <p>It established standard information forms after the enforcement of package travel was assigned to SCRPA's competence.</p> <p>It established standard terms and conditions for package travel contracts after the enforcement of package travel was assigned to State Consumer Rights Protection Authority's (SCRPA) competence.</p> <p>It introduced amendments to the Description that have been enacted transposing the PTD.</p> <p>The amendments established the coupon system in cases of war, state of emergency, mobilisation, quarantine, emergency situation or emergency event or when citizens of the Republic of Lithuania are forbidden to leave</p>

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p>approval of Standard Information Forms.</p> <p>Legislative measure implementing the PTD: Order No. 1-57 of the Director of the State Consumer Rights Protection Authority (SCRPA) [<i>Valstybinė vartotojų teisių apsaugos tarnyba</i>] on approval of Standard Terms and Conditions for Package Travel Contracts.</p> <p>Legislative measure clarifying/implementing the PTD: Resolution of the Government of the Republic of Lithuania No 756 on the Description of the Procedure for Ensuring the Fulfilment of Obligations of a Tour organiser.</p> <p>Temporary legislative measure to face the Covid-19 emergency: Law on amending Articles 2, 15 of the Law on Tourism and adding Article 17-1 to the Law.</p> <p>Legislative measure clarifying/implementing the PTD: Resolution No 697 on amendments to the Government of the Republic of Lithuania No 756 "On the approval of the description of the procedure for securing the fulfilment of the obligations of a tour organiser and a</p>	<p>the country or citizens of other countries are forbidden to enter the Republic of Lithuania, and, as a result thereof, it becomes impossible for the travel organiser to fulfil his/her obligations under the contract of the organised tourist trip. These amendments were addressing the tourism sector's financial situation in the context of the COVID-19 crisis.</p> <p>The amendments changed the Description in line with changes described in paragraph 6 and aligned the secondary legislation with the Law on Tourism (LOT).</p> <p>It established that the period for reimbursement of all amounts paid by or on behalf of the tourist for the package tour was extended to 90 days thereby addressing the tourism sector's financial situation due to the COVID-19 crisis and shortly thereafter restored to 14 days from of the date of termination of the package tour contract.</p> <p>It set out a new version of the Law on Tourism. The main changes include e.g. introduction of the concept of "traveller", rules on the withdrawal of the tour organisers' certificate, etc.</p> <p>It brought amendments on e.g. amount of performance security; financial guarantees, etc.</p> <p>The amendments changed the Description in line with changes described in paragraph 1</p>

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LEGISLATIVE AND OTHER MEASURES ADOPTED IN MS SINCE JULY 2018				
MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p>seller of a package of tourist services".</p> <p>Temporary legislative measure to face the Covid-19 emergency: Law on amending Article 6.751 of the Civil Code of the Republic of Lithuania.</p> <p>Legislative measure implementing the PTD: Law on amending Law on Tourism (Law on Tourism of the Republic of Lithuania), (draft law).</p> <p>Legislative measure implementing the PTD: Law on amending Articles 9, 10, 15, 23, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39 and 41 of the Law on Tourism.</p> <p>Legislative measure implementing the PTD: Resolution No 903 on amendments to the Government of the Republic of Lithuania No 756 "On the approval of the description of the procedure for securing the fulfilment of the obligations of a tour organiser and a seller of a package of tourist services".</p>	above and aligned the secondary legislation with the Law on Tourism.
LU	YES	Legislative measure	Temporary legislative measure to face the Covid-19 emergency: Special Regulation of 27 March 2020.	It provided for the provisional suspension of the effects of cancellation in respect of package travel in the context of coronavirus to postpone the reimbursement of consumer advances.

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
LV	YES	Legislative measures	<p>Temporary legislative measure to face the Covid-19 emergency: Law on the Management of the Spread of COVID-19 Infection (<i>Covid-19 infekcijas izplatības pārvaldības likums</i>) of 5 June 2020.</p> <p>Legislative measures clarifying/implementing the PTD: Amendments to the Tourism Law (<i>Grozījumi Tūrisma likumā</i>) of 8 October 2020.</p>	<p>It regulates the certification (voucher) system: an organiser, instead of refunding the traveller, was entitled to draw up a certification (voucher) to the traveller for the amount of the unused trip, if the package travel contract had been terminated (a) due to the declaration of the emergency situation in Latvia caused by the spread of COVID-19 infection or (b) due to force majeure circumstances in the holiday destination in relation to the spread of COVID-19 infection. If a traveller refused to receive the certification, the tour operator and traveller might agree on another solution, including repayment of the money and repayment time limit which could not exceed 12 months from the day when the emergency situation was revoked in the State. The organiser must have the special licence and valid security in the form of an insurance policy issued by an insurer or a guarantee issued by a credit institution. It also lowered the amount of security to be provided by the organiser to prevent mass insolvency of companies in the travel sector (this provision applied until 30 June 2022).</p> <p>Among other things, Article 16(5) of the Tourism Law was amended by including (i) a clarification that the amount of security provided by organisers and traders facilitating linked travel arrangements must be sufficient and effective and (ii) an explanation of the turnover in the sector of package travel and</p>

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LEGISLATIVE AND OTHER MEASURES ADOPTED IN MS SINCE JULY 2018				
MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
				linked travel arrangements, stating that it is the total amount of money received from travellers within a specified period for a package travel arrangement or a service included in a linked travel arrangement.
MT	YES	Legislative measures	Temporary legislation to face Covid-19 emergency: Legal Notice No. 80 of 2020.	It amends Subsidiary Legislation (S.L.) No. 409.19, in particular, the provisions on the termination of the contract and reimbursement to traveller. In case of termination of package travel contract between the 1st of March 2020 and 31st May 2020, L.N. 80 of 2020 extends the repayment period from fourteen days (as indicated in the PTD) to six months after the package travel contract is cancelled.
NL	NO	N/A	N/A	<p>Although no emergency temporary legislation was adopted in the NL, in April 2020, the Dutch Government formally asked the national enforcement bodies to suspend the enforcement of the Air Passenger Rights Regulation (261/2004). Following this suspension of enforcement of traveller legislations for both package travel and standalone tickets, consumers had to wait between six and twelve months to get their monetary reimbursement.</p> <p>Right after the publication of the Commission's recommendation on vouchers,</p>

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
				the Minister of Infrastructure withdrew the suspension of enforcement. ⁶⁶⁴
NO	YES	Legislative measure Administrative measure	Legislative measure clarifying/implementing the PTD: Amendment to Norwegian legislation transposing the PTD. Temporary legislative measure to face the Covid-19 emergency: Government Regulations of April 2020.	This amendment did not affect any of the topics regulated under the PTD. The deadline for reimbursement was extended in April 2020 by Government Regulations to 90 days to refund consumers in the event of the cancellation of package travel with a departure date between 14 March and 14 June 2020. This measure was retroactive and included also overdue claims. The situations in which this reimbursement obligation applies according to the main transposing legislation includes those set out in the PTD.
PL	YES	Legislative measures	Temporary legislative measure to face the Covid-19 emergency: Act on special arrangements for preventing, countering, and combating COVID-19, other communicable diseases and emergencies caused by them (<i>Ustawa o szczególnych</i>	This measure modified the general cancellation right, both in terms of its temporal effects (by postponing legal effects of cancellation), and by adding additional reason for the professional, which was not previously covered by the provisions implementing PTD. According to Article 15k(2), cancellation of an

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych) of 2 March 2020, Journal of Laws of 2020, item 374 with further amendments.	<p>agreement can be replaced with offering a consumer a voucher for a future tourist service. The sums in question are subjected to the general financial insurance of the tourist service organizer.</p> <p>The new provisions established two additional guarantees for repayment to consumers the sums they transferred as a price for a tourist service. The organizer of the tourist service may ask for re-financing consumer expenses from the Tourist Fund of Returns (<i>Turystyczny Fundusz Zwrotów</i>), created at the Bank of National Economy (<i>Bank Gospodarstwa Krajowego</i>), i.e. a state-owned bank that provides financial services to the government and the territorial self-government structures. The fund provides repayments to consumers whose tourist services were cancelled and who were not offered vouchers or did not accept them.</p> <p>Another guarantee for consumer financial interest introduced during the Covid-19 pandemic, is the Tourist Assistance Fund (<i>Turystyczny Fundusz Pomocowy</i>), which constitutes a part of the Insurance Guarantee Fund (<i>Ubezpieczeniowy Fundusz Gwarancyjny</i>). Payments from the Assistance Fund are to be made in the event that the tour operator is unable to provide travellers with refunds for the tourist event, if the event was cancelled</p>

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
				<p>due to unexpected circumstances (under Article 47 TSA).</p> <p>The Tourist Assistance Fund, has also recently been applied by the Polish government to tourist events cancelled due to the war in Ukraine.</p>
PT	YES	Legislative measures Administrative measures	<p>Legislative measure implementing the PTD: Decree-Law No. 9/2021 (<i>Decreto-Lei n.º 9/2021</i>) of 29 January 2021.</p> <p>Temporary legislative measure to face the Covid-19 emergency: Decree-Law No. 10-A/2020, of 13 March 2020 (<i>Decreto-Lei n.º 10-A/2020</i>).</p> <p>Legislative measure repealing temporary legislative measure: Decree-Law No. 22-A/2021 (<i>Decreto-Lei n.º 22-A/2021</i>) of 17 March 2021.</p> <p>Temporary legislative measure to face the Covid-19 emergency: Decree-Law No. 17/2020 (<i>Decreto-Lei n.º 17/2020</i>) of 23 April 2020.</p> <p>Legislative measure repealing temporary emergency measure: Decree-Law No. 62-A/2020 (<i>Decreto-Lei n.º 62-A/2020</i>) of 3 September 2020.</p>	<p>It amends Decree-Law (DL) No. 17/2018 of 8 March 2018 (which establishes the regime for accessing and exercising the activity of travel and tourism agencies and came into force on 1 July 2018). It approves the Legal Regime for Economic Administrative Offenses (<i>Regime Jurídico das Contraordenações Económicas</i>). This act has included the concept of 'economic offense' in DL 17/2018 and subsequently amended the provisions regulating the administrative offenses and the respective sanctions.</p> <p>In the context of the COVID-19 crisis, it established exceptional and temporary measures regarding the epidemiological situation of COVID-19. In its Article 11, it prohibited school trips, or similar trips, and obliged travel agencies to reschedule them, rather than providing for refund.</p> <p>It revoked Decree-Law No. 10-A/2020.</p> <p>It established exceptional and temporary measures relating to the tourism sector, within the scope of the COVID-19 disease pandemic. It includes a set of measures</p>

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LEGISLATIVE AND OTHER MEASURES ADOPTED IN MS SINCE JULY 2018				
MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p>Financial measure: Legislative Order No. 4/2020 (<i>Despacho Normativo</i> n.º. 4/2020) of 25 March 2020.</p> <p>Financial measure: Legal Order No. 9/2022 (<i>Despacho Normativo</i> n.º. 9/2022) of 3 June 2022.</p>	<p>aiming to mitigate the constraints caused in the tourism sector and lays down provisions regarding (i) trips organized by travel and tourism agencies (package travel) (ii) cancellation of reservations in tourist resorts and local accommodation establishments, and (iii) relations between travel and tourism agencies, tourist entertainment operators and tourist resorts and local accommodation establishments.</p> <p>It included a provision exclusively regulating package travel organised by travel and tourism agencies, Article 3, which stated that, in the event of cancellation of a package travel, the consumer could choose one of two solutions: the issuing of a voucher equal to the amount paid, valid until 31 December 2021, or rescheduling the trip to this same date.</p> <p>It reinstated the normal regime of reimbursements.</p> <p>It set up a financial support line aimed at facing the treasury needs of tourist micro-enterprises, whose activity was strongly affected by the economic effects resulting from the outbreak of the COVID-19 disease. It has been amended several times.</p> <p>With this Act, the Government approved the extension of the deadline, from 2 to 4 years, for the reimbursement of the financial support that the companies were granted through the support line.</p>

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				A second line of support was also set out in 2021.
RO	YES	Legislative measures	<p>Legislative measure clarifying/implementing the PTD: Order No. 874/2019 for amending legislation concerning the tourism sector (<i>Ordinul 874/2019 pentru modificarea unor acte normative din domeniul turismului</i>), issued by the Ministry of Tourism, published in the OGR, No. 845, 17 October of 2019.</p> <p>Legislative measure clarifying/implementing the PTD: Order No. 1183/2018 for the approval of the form, content, method of submission and management of Statement on the activity carried out by the organising tourism agencies (<i>Ordinul 1183/2019 pentru aprobarea modelului, conținutului, modalității de depunere și gestionare a "Declarației privind activitatea desfășurată de către agențiile de turism organizatoare"</i>) issued by the Ministry of Tourism, published in the OGR, No. 878, 18 October of 2018.</p>	<p>It amends the provision of Article 3 (2) of Order No. 156/2019, stating that organising travel agencies guarantee the amount paid by or on behalf of the traveller regardless of whether the packages are sold directly to the traveller or through an intermediary travel agency.</p> <p>Order No. 1183/2019 has also suffered minor amendments through Order No. 874/2019, by the introduction of Art. 6 failure to comply with the obligations set forth by the Order or failing to comply with the date of submission of the Statement of activity is penalised with an administrative fine of 10.000 RON (approx. 2000 EUR).</p>
SE	YES	Legislative measures	Legislative measure linked to the PTD transposition, lately amended:	It amended the "Marketing Act" by inserting a reference to the Package Travel Act into the non-exhaustive list of acts to which the

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
		Government Ordinance	<p><i>Lag (2018:1220) om ändring i marknadsföringslagen (2008:486)</i></p> <p>Measure implementing the PTD: <i>Förordning om standardformulär för paketresor och sammanlänkade researrangemang</i></p> <p>Legislative measure linked to the PTD transposition, <i>Lag (2018:1336) om ändring i sjölagen (1994:1009)</i></p> <p>Legislative measure linked to the PTD transposition, lately amended: <i>Lag (2018:1338) om ändring i lagen (2005:59) om distansavtal och avtal utanför affärslokaler</i></p>	<p>Marketing Act shall be applicable in Section 1 of that Act. With the following amendment this reference had been removed, and replaced with a more generalised statement which does mention the PTD.</p> <p>It identified the Swedish Consumer Agency (<i>Konsumentverket</i>) as the authority responsible for issuing certain standard forms listed in the Package Travel Act.</p> <p>It amended the Maritime Act (1994:1009) through amendment of its Chapter 15, Section 8. This provision applies to contracts for maritime passenger transport, and prohibits such passengers from transferring their rights under a contract referring to specific passengers to another passenger. The amendment excluded contracts falling under the Package Travel Act from the scope of this provision.</p> <p>It amended the Distance and Off-Premises Contracts Act (2005:59), which serves to regulate consumer protection for distance contracts and contracts entered into outside of business premises. The amendment concerned Chapter 2, Section 1 of this Act, on the scope of Chapter 2 of the Act regulating the provision of non-financial services. Via the amendment, contracts falling under the Package Travel Act were excluded from the scope of Chapter 2 of the Distance and Off-Premises Contracts Act. This provision has since been further amended, as the exclusion</p>

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MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
				of contracts falling under the Package Travel Act is now instead stated in a separate provision, i.e. Chapter 2, Section 1 a, with effect from the 1 September 2022.
SI	YES	Legislative measures	Temporary legislative measure to face the Covid-19 emergency: Act on Amendments and Supplements to the Act on Intervention Measures to Curb the COVID-19 Epidemic and mitigating its consequences for citizens and the economy (<i>Zakon o spremembah in dopolnitvah Zakona o interventnih ukrepih za zaježitev epidemije COVID-19 in omilitve njenih posledic za državljane in gospodarstvo, Uradni List RS, št. 49/20 z dne 10 April 2020 (ZIUZEOP)</i>).	It regulates the reimbursement possibilities in case of cancellation of the package travel contract in the context of the Covid-19 emergency. In cases where the package travel contract is not fulfilled due to unavoidable and extraordinary circumstances caused by the epidemic, the travel organizer can issue a value note (voucher) to the consumer in the amount of all the consumer's payments. Those consumers, who do not agree with the issuance of the voucher, can demand from the travel organizer the return of all payments, which the organizer is obliged to return within 12 months after the declaration of the end of the epidemic. The guarantee that the tour operator must provide under the Consumer Protection Act (ZVPot) also applies to the issued voucher.
SK	YES	Legislative measures	Legislative measure clarifying/implementing the PTD: Amendment (1 June of 2019) to Act No. 170/2018 (which is relevant for the transposition of almost all provisions of the PTD).	It extended the rights of the traveller. It provided for rights and obligations arising specifically from the pandemic emergency (including mandatory vouchers and a postponement for payment until September 2021).

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LEGISLATIVE AND OTHER MEASURES ADOPTED IN MS SINCE JULY 2018				
MS/EEA MS	New measures since July 2018	Typology of the measures	References	Comments on the measures
			<p>Temporary legislative measure to face the Covid-19 emergency: Amendment (29 May of 2020) to Act No. 170/2018.</p> <p>Legislative measure clarifying/implementing the PTD: Amendment (21 July of 2020) to Act No. 170/2018.</p> <p>Legislative measure amending temporary legislative measure: Amendment (1 April of 2022) to Act No. 170/2018.</p>	<p>It introduced a new obligation for the tour operator agencies. For package travel organised in the territory of another country, the tour operator agency has the obligation, at the request of the supervisory authority, to submit a copy of the authorisation to conduct business in the field, a copy of the arrangement of related tourism services issued under the relevant legislation of the country of establishment of the trader, as well as a copy of the documents relating to its insolvency protection. The provision detailed the information that must be contained in the insolvency protection documents. A single provision was introduced stating that the traveller is entitled to refuse the replacement tour in writing within 14 days of the date of receipt of the notification of the replacement tour if, during an emergency situation due to COVID-19 in the Slovak Republic, is included in the register of job seekers.</p>

Annex 5 Competitiveness check for preferred option 1

Dimensions of competitiveness	Impact of the initiative (++ / + / 0 / - / -- / n.a.)	References to sub-sections of the main report or annexes
Cost and price competitiveness ++		chapter 3.6.2.1
Capacity to innovate +		chapter 3.6.2.1 and 3.6.3
International competitiveness +		chapter 3.6.2.1 and 3.6.3
SME competitiveness +		chapter 3.6.2.1 and 3.6.3

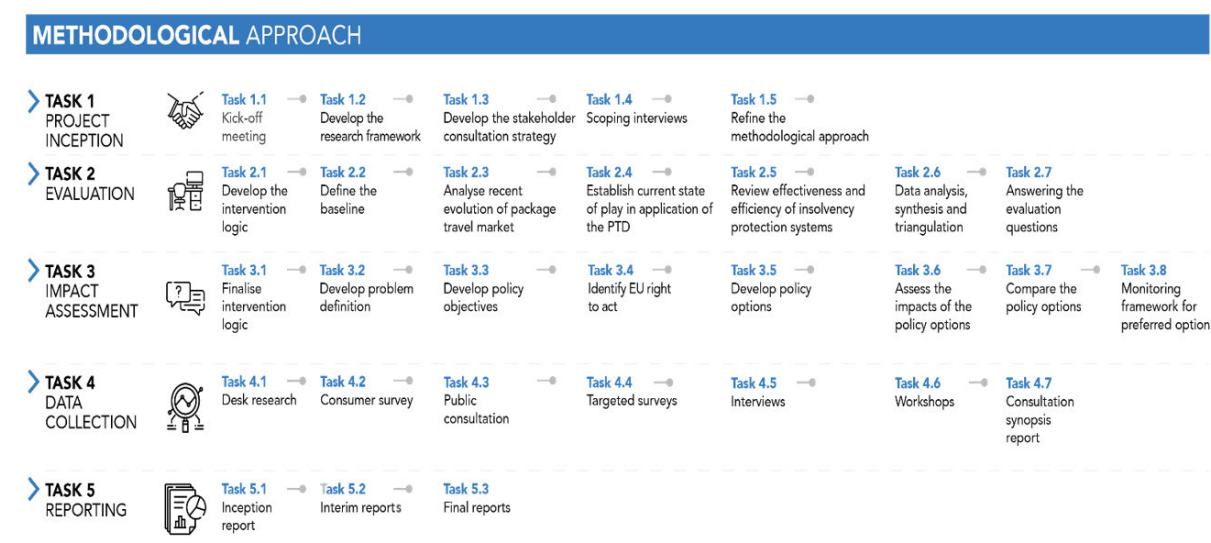
Annex 6 Methodological approach of the study

This Annex illustrates the extended methodological assessment of the iterative tasks that have been carried out for the study. It illustrates the main methodological steps that have been followed by the study team, and the main decisions on the study that have been taken together with DG JUST E2. In case substantial modifications have been made from what was indicated in the Inception Report, this has been duly substantiated in the sections of this Annex. This Annex should be read in conjunction with Section 2.2 of this report. Information included in the main body of the report have not been included in the present Annex.

A6.1 Task-by-task methodology for the back-to-back evaluation

This study had a duration of 12 months during which ICF performed five main tasks (see Figure 5), several sub-tasks, including tasks not originally planned for at proposal and inception phase, for which a full breakdown will be provided in this section. Being this study a back-to-back evaluation and impact assessment, the main tasks of the study, especially, Task 4 (Data collection) have been carried out in parallel, for both the evaluation and the Impact Assessment (hereinafter “IA”). A logical sequence between the evaluation and the IA have been respected to the maximum possible extent, with the findings of the former constituting the starting point for the assessment performed by the latter. The figure below provides an overview of the task-by-task methodology for the back-to-back evaluation and impact assessment.

Figure 5. Task-by-task methodology for the back-to-back evaluation and impact assessment



Source: ICF

A6.1.1 Task 1: Inception

The inception phase laid the foundations for the study and aimed at promoting a common understanding of the context, priorities and expected results between the Commission and ICF, as well as reaching a common view on the most appropriate method for this back-to-back study. The entire approach to the study is structured in line with European Commission guidelines on impact assessment, as set out in the EC Better Regulation Guidelines (BRG) and Toolbox (updated in November 2021).

A6.1.1.1 Task 1.1: Kick-off meeting (KOM)

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The kick-off meeting was held on 17 February 2022 (14:00-16:00) in the form of a videoconference. Representatives from the ICF study team, DG JUST, DG MOVE, and COM SEC GEN participated to the KOM, a meeting that provided an opportunity for the two project management teams to introduce themselves and to discuss the workplan, explain and clarify the tasks and the approach and discuss the content of the Reports. The meeting provided an opportunity to discuss the following official agenda:

Items of the agenda

1. JUST team introduction
2. PPT presentation of ICF offer, including detailed presentation of the methodology and the main changes proposed:
 - a. Background, legal and policy context
 - b. Objectives and scope
 - c. Presentation of the study tasks, and discussion on the method of approach
 - d. Study team
3. Further understanding of where DG JUST would like to go with the IA (strategic objectives)
4. Coherence with MOVE initiative
5. Selection of countries for the focused research
6. Stakeholder engagement plan
 - a. Scoping interviews
 - b. Consultation strategy
7. Timeline for the study
 - a. Overall timing
 - b. Deliverables
8. Communication and management arrangements between JUST and ICF
 - a. Primary points of contact
 - b. Shared collaborative space.
 - c. What to be exchanged via email and what via Teams
 - d. Bi-weekly meetings
 - e. On-going progress monitoring

The minutes for the meeting, including the relevant supporting PowerPoint presentations were provided after the meeting took place, and included in the Inception Report and, thus, not replicated in this Annex. The minutes of the meeting were approved by DG JUST after rounds of comments (approval of 18 March 2022).

A6.1.1.2 Task 1.2: Research framework

In Task 1.2, ICF reworked and refined the research frameworks presented in the Technical Offer and reiterated in the Inception Report. For the finalised version of the research frameworks see Annex 8. The research frameworks constitute the guiding principle of each studies carried out for the Commission services and, thus, requiring careful design at inception phase. In this phase, ICF refined the study questions, the indicators to be used for the assessment of the questions, the success criteria, and the methods to be applied for data collection and analysis and, where relevant, the foreseeable risks and the related mitigation measures. As part of the revision of the research frameworks, the study team, *inter alia*, provided a reasoned restyle of the main clusters of research questions, suggesting amendments to the original research questions as included in the ToR, Technical Offer, and Inception Report.

ICF submitted three main research frameworks, namely (a) Background study research frameworks, (b) Evaluation framework, (c) Impact Assessment framework, and a draft template for the legal research in date 29 February 2022 (ICF uploaded the documents on Teams and confirmed this with DG JUST via email). DG JUST enabled the ISSG group for the revision of the research frameworks, resulting in several rounds of revisions, and an extensive mole of

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comments received from all Commission services part of the ISSG. This resulted in 7 versions of the research frameworks that were finally validated by DG JUST only in July 2022.

A6.1.1.3 Task 1.3: Stakeholder consultation strategy

The stakeholder consultation served to collect information and insights from a wide range of stakeholder groups. See Section 2.2 for the full breakdown of the stakeholder groups consulted as part of the study.

Stakeholders register and stakeholder tracker

From an operational perspective, ICF prepared during the inception phase a list of stakeholders to be consulted, broken down by categories. This list was prepared in the form of an Excel Table named 'Stakeholders register', which has been compiled iteratively, by putting together information stemming from desk research, including contacts from previous studies with DG JUST and the wider European Commission. DG JUST supported ICF by providing, for instance, contacts of the Central Contact Points responsible for insolvency protection systems, upon reception of consent for the transmission of information related to personal data (name, profession, organisation and contact details) to ICF, that DG JUST had obtained beforehand. The register also underwent several rounds of checks, revisions, and refinements, resulting in rounds of exchanges between DG JUST and ICF.

The stakeholder register was maintained throughout the study and updated with new stakeholders, as applicable.

Preparation of the interview topic guides

At inception phase of the study, ICF initiated the design of the interview protocol that have been presented in the Inception Report in full details. A key part of the interview process is represented by the *Topic Guides*, which are tools that guide the interviewers to shape the interviews by following a certain structure, ensuring that appropriate information is collected from each stakeholder. Topic guides focused on the content relevant to the research questions that each stakeholder group is expected to contribute to. The topic guides prepared in the context of the PTD study were three: (i) Member State authorities (for a. regulatory and enforcement bodies, and b. insolvency protection authorities), (ii) Business organisations/associations, (iii) Consumer organisations.

ICF prepared a preliminary list of topics per stakeholder types to be considered in the framework of the topic guides in date 26 May 2022, with the corresponding topic guides that were sent in June 2022. The topic guides underwent several rounds of revisions, resulting in an extensive round of comments, culminating in up to 9 versions of the topic guides. The topic guides were approved, on different dates, across September/October 2022, thus, with a significant delay in relation to the study plan. The overall finalisation of the interview topic guide constituted a bottleneck for the data collection through targeted interviews that ICF does not normally experience in the context of hundreds of study carried out for the Commission services. This situation necessarily delayed the conclusion of the Inception phase of the project.

A6.1.1.4 Task 1.4: Scoping interviews

Scoping interviews allowed ICF to get a better understanding not only of the key issues to be addressed by the evaluation and impact assessment, but also helped flagging any elements that require further clarification and start mapping relevant stakeholders and documentation (see Section 2.2 for additional information).

A6.1.1.5 Task 1.5: Refining the methodological approach

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The aim of this task was to refine the approach to the evaluation and IA study, based on the feedback received at the kick-off meeting, the scoping interviews, and the research framework. The key aspects of the evaluation and study that needed revision included the research questions, intervention logic, the problem statement and policy objectives, as well as the tools for the consultation (including the draft interview guides and survey questions). While this task typically has a duration of weeks and constitutes an effective and efficient operational step of the studies, the abovementioned several revisions that each deliverable went through proved in a significant delay that conditioned, lately, the whole timeline of the study.

A6.2 Task 2: Evaluation

The purpose of this Task was to provide a thorough and clear explanation of how key tasks can support DG JUST's evaluation of the PTD in its Staff Working Document.

A6.2.1 Task 2.1: Develop the intervention logic

The draft intervention logic for the evaluation, was finalised outside the inception report, and underwent several rounds of revisions and discussions upon between the study team and DG JUST. The draft of the intervention logic was used as a dynamic tool that was further refined over the course of the evaluation, in line with the Better Regulation Guidelines.

A6.2.2 Task 2.2: Define the evaluation baseline

As per the Better Regulation Guidelines, the baseline of an intervention should be clearly identified in evaluations of EU legislation, policies and programmes which will allow comparison over time. At sub-task 2.2 the study team defined the baseline period of the evaluation, including the different timeframes around which the analysis would have been organised. Task 1 fed into the definition of the evaluation baseline.

In agreement with DG JUST, the general periodisation of the evaluation (reflected in the data collection tools) was as follows: (a) At the time of 2013 Impact assessment (*baseline*); (b) 2013-July 2018; (c) July 2018-outbreak of COVID-19 in 2020; (d) Since COVID-19 to the present day.

A6.2.3 Task 2.3: Analyse the market practices and developments

Linked to Task 2.2 under this Task, the team carried out a thorough analysis of market practices and developments. The evidence from this task fed both the Baseline part of the evaluation and Annex X. The output of this task fed directly into the evaluation part of the interim and final reports, with a dedicated section on the market situation and developments. In terms of the approach to the research (what kind of information is collected, and how) this is explained in detail in the data collection Task 4, in particular Task 4.1 of the Inception Report.

A6.2.4 Task 2.4: Establish the current state of play in the application of the Directive

This task consisted of two main steps. The first step was to provide an overview of the practical application of the Directive, and the second step was outlining the key issues.

Mapping of the state of play of the Directive.

The mapping covered all EU/EEA Member States. Besides the practical implementation measures adopted in the Member States, the study team mapped guidance and documentation that has been developed to facilitate implementation in each Member State as well as any relevant case-law. The output of this overview has been a comparative overview (see Annex 5), building on the conformity assessment reports.

Analysis of key issues

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The next step aimed to provide a detailed analysis of the extent to which the provisions of the Directive have been implemented in practice. In case a provision of the Directive has in fact not been implemented, we identified the underlying reason/s (e.g., gaps, omissions, ambiguities in the wording of the Directive). In terms of output, the evaluation team added the findings in the reports. The comparative analysis indicated how provisions have been implemented and identified any obstacles or problems, as well as any national implementation strategies and guidelines.

A6.2.1.5 Task 2.5: Review of efficiency and effectiveness of existing insolvency protection systems

Building on the pool of documentation provided to ICF by DG JUST, ICF analysed the baseline features on the efficiency and effectiveness of the insolvency protection systems across the EU/EEA Member States/countries. This resulted in a section added to the Baseline (see Section 2.4.1) that should read in conjunction with the analysis of EQ3 under Effectiveness, in the evaluation.

A6.2.1.6 Task 2.6: Data analysis, synthesis and triangulation

In this task, the study team performed the data analysis, synthesis and triangulation, by following the methodology indicated in the inception report. The completion of this crucial step of the study occurred only in the Draft Final Report/Final Report stage, due to the overall delays in the validation of the data collection tools. The delayed launch of the survey questionnaires and consumer survey also pushed back the analysis and synthesis of data.

A6.2.1.7 Task 2.7: Answer the evaluation questions

Following the synthesis and triangulation of the evidence, ICF built a structured and clear elaboration of responses to each evaluation question. The main findings emerging from this exercise are reflected in the First Interim Report, Second Interim Report, Draft Final Report, and Final Report. The approach will follow the standards set out by the Better Regulation Guidelines (see Inception Report for a detailed breakdown of the methodology).

A6.3 Task 3: Impact Assessment

The aim of Task 3 was to go through the logical steps of an Impact Assessment and how this could feed directly into DG JUST's impact assessment. This was done through a series of tasks that follow the outline of the impact assessment by defining the problem, policy objectives, assessing the EU's right to act, develop the policy options, assess the impacts and compare.

A6.3.1.1 Task 3.1: Finalise the intervention logic and the problem tree

As part of Task 3.1, the study team finalised the intervention logic of the PTD, and its problem tree listing the main problems (general and specific problems, at times also operational problems), which are linked to consequences if left unaddressed. The consequences are then visually directed to the policy objectives (at strategic/general, specific and possibly operational level). This helped to sketch the problems, their consequences and how the Commission aims to address them. A preliminary problem tree was discussed and approved with DG JUST in the early stage of the study at inception phase. A final version of the problem tree was then discussed with the stakeholders from the sector in occasion of ICF WS1 of the PTD (26 October 2022).

A6.3.1.2 Task 3.2: Develop the problem definition

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In this task, the study team set out the problems and their drivers and the objectives of the intervention, thereby covering Steps 1 and 3 of the IA process according to the BRG. The problem definition was initially based on Commission's detailed information already provided in the ToR, the Roadmap/IIA⁶⁶⁵ and the preliminary problem tree shared with ICF at the inception stage of the study. The analysis carried out in the problem definition has been stabilised and completed in the Draft Final Report.

A6.3.1.3 Task 3.3: Develop the policy objectives

At sub-task 3.3., the study team defined the objectives, in order to inform the design of the proposed policy options and the selection of key criteria to be used in assessing their impacts. In this case, the general objective of the intervention had already been specified in the Commission's Roadmap, which states that the general objective "is to contribute to the proper functioning of the internal market and to better ensure a high level of consumer protection including in times of crisis".

A6.3.1.4 Task 3.4: Assess the EU right to act

In this task, we confirmed the legal basis, including as regards any further element of EU action envisaged when reviewing this legislation to address the problem and problem drivers identified, following the approach described in the BRG (Tool #5). This included (i) verifying whether the Union has exclusive competence or not, (ii) performing the necessity/relevance test and (iii) performing the added value test. The task has been supported by ICF's legal experts.

A6.3.1.5 Task 3.5: Develop the policy options

The process of identifying and defining the options began with a long list of all the possible measures that could be introduced to address the identified problem drivers and contribute to the achievement of the desired objectives, that the study team shared with DG JUST in date 6 of May 2022. The development of the policy options was done as an iterative process of screening and narrowing down the options, with the final choice of measures and options finalised by Commission before assessing their impacts. As specified in the Inception Report ICF commits typically to assess options number 3 to 5, while the number of measures would not exceed 9 to 15.

Further discussions took place on the policy measures throughout the period of April 2022 to January 2023. The process was completed following the end of the consultations process in 2022.

A6.3.1.6 Task 3.6: Assess the impacts of the options

Under Task 3.6 ICF assessed the social, economic, fundamental rights and environmental impacts of the policy options for the possible revision of the PTD. For the detailed method of approach of this task, please see Technical Offer, and Inception Report.

With regards to the cost assessment, the study team developed the costs for public administration (EU and MS-level) as assessments for industry and consumers were not possible within the remit of the study given the large variety of variables at play.

⁶⁶⁵ See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13117-Package-travel-review-of-EU-rules_en

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Detailed calculations are included in a separate spreadsheet shared with DG JUST (Annex 6).

The study considered both one-off and recurring costs.

The following cost types were considered:

- EU costs: transposition (one-off); monitoring (recurring)
- Member State costs: Transposition, alignment, guidance, training, monitoring and reporting (one-off); Monitoring costs; Reporting to the EU

For costs transposing the Directive, monitoring compliance and reporting to the EU as three main cost types we considered the following:

- Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved
- Total cost = Unit cost X 27 Member States

Transposing the Directive

We used the following assumptions:

- 2 official per MS
- 5 to 10 days of their time on this activity per month
- Time period of 6 months

Additional 20 FTE equivalent days spent per year for preparatory activities across the EC in the period prior to the start of the PTD

Monitoring compliance

We used the following assumptions:

- 1 official per MS
- 1 to 2 days per official per month to monitor compliance

Reporting to the EU

We used the following assumptions:

- 1 official per MS
- 2 to 3 days per official per year

For FTE costs we used data from Eurostat (Average daily wage of Public sector professional [in Euros], 2014). For ease of comparison data was kept constant for the time period 2023-2032.

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A6.3.1.7 Task 3.7: Compare the policy options

In this step we assessed all significant impacts that were not considered in the cost-benefit analysis of the baseline scenario nor of each other option, and we will do so quantitatively wherever possible and, if not, then qualitatively. For the detailed method of approach of this task, please see Technical Offer, and Inception Report.

A6.4 Task 4: Data collection

The detailed analysis of this task has been included at Section 2.2. of the methodology in the main body of this report. This section is rather focussed on procedural aspects of the data collection, where relevant.

A6.4.1.1 Desk research

See section 2.2.

A6.4.1.2 Task 4.2: Consumer survey

In this task ICF and Dynata worked closely with DG JUST to design and launch the consumer survey part of the study, whose methodological bases have been presented in the Inception Report and are not replicated here. The first draft of the consumer survey was sent to DG JUST in date 16 of June via email, and validated in late September. The consumer survey was completed in January 2023.

A6.4.1.3 Task 4.3: Public consultation

See section 2.2.4 and separate report provided (see Annex 9).

A6.4.1.4 Task 4.4: Targeted surveys

ICF developed four targeted surveys:

- ✓ Businesses (companies, and associations);
- ✓ Consumer organisations;
- ✓ Member State authorities responsible for enforcement and regulatory affairs;
- ✓ Member State authorities responsible for insolvency protection.

See section 2.2 and Inception report for the methodology.

ICF submitted the draft surveys for Businesses (companies and associations) and consumer organisations in date 18 May 2022, and the draft surveys for Member States authorities on 16 June 2022. DG JUST, in turn enabled the ISSG. The revision of the draft questionnaires required several rounds of revisions, delayed the launch of the questionnaires in a significant and critical way. The approval of the final documents of the draft survey occurred only in date 3 October 2022. ICF timely launched the questionnaires in date 14 October 2022. This delay resulted in stakeholders having to participate in two considerable consultation activities as, in the meantime, DG MOVE IA on passengers' rights kicked-off with the data collection.

A6.4.1.5 Task 4.5: Interviews

See section 2.2 and inception report.

A6.4.1.6 Task 4.7: Consultation synopsis report

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As recommended by the Better Regulation Guidelines⁶⁶⁶, a synopsis report summarising the outcomes of all the consultation activities has been drafted and submitted together with this Final report (see Annex 10).

⁶⁶⁶ Better Regulation Guideline Tool #54. Analysing data and informing Policymaking, 2.2. The Synopsis Report.

Annex 7 Evaluation framework

Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
I. Effectiveness				
1	To what extent do the observed effects correspond to the PTD objectives and which are the elements that have contributed to improve consumer protection including in the areas which were previously not explicitly covered by the Directive?	<p>Are there gaps or uncertainty in the legislation, as possibly demonstrated by changes in business practices or experiences from travellers/consumers that can be identified, and is the level of harmonisation now appropriate or should further harmonisation be envisaged?</p> <p>Do travellers receive clear and correct information on the kind of service they are purchasing and the associated level of protection, and if so, have the grey areas been removed completely or are there possibly new grey areas (i.e. have they possibly shifted)?</p> <p>Do travellers understand correctly the role of different parties involved in the marketing and the performance of package (organiser, retailer, service provider)?</p> <p>Are there typical borderline cases that may cause problems in practice, regarding the border between package and LTAs and the border between LTAs and single services?</p>	<p>Evidence from the mapping of objectives and the extent of their progress</p> <p>Harmonisation level among transposed provisions in Member States' legislation on areas considered as grey areas</p> <p>Case examples of where the difference between package and LTA may be unclear</p> <p>Degree of correct transposition of the PTD (considering, content and scale of problems in the transposition) to the PTD objectives</p> <p>Estimates on outputs/ results / impacts in the field of consumer rights achieved by the PTD, including estimates on the number of consumers provided with appropriate information, support, services, as per the PTD provisions</p> <p>Stakeholders' opinions on the extent to which the PTD has achieved its objective of ensuring a high level of consumer protection across the Union</p> <p>Stakeholders' opinions on the extent to which there is now effective protection of consumers in the areas that were previously considered grey areas, and extent to which previously grey areas have been reduced/removed</p>	<p>Desk research including: results from the Overall report on the transposition of the PTD, country reports on the transposition of the PTD, compliance assessment reports, the existing transposition study, consumers organisations reports (e.g., BEUC – Comments on the PTD), ECA 15/2021 Special Report</p> <p>Public consultation</p> <p>Targeted surveys</p> <p>Interviews</p> <p>Workshops</p>

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
		<p>Do consumers / stakeholders see any gaps in the PTD? Is the filling of those gaps essential or at least useful, or is it something that could at least to some extent be addressed by guidance?</p> <p>Are there any aspects / means / actors that render certain aspects of the Directive more or less effective than others and if there are, what lessons can be drawn from this?</p> <p>What are, if any, the consequences or effects (either positive or negative) that were not originally planned?</p>		
2	How has the still growing role of online intermediaries (in a broad sense, including organisers) and other novel business models affected the effectiveness of the PTD?	<p>One of the objectives of the 2015 PTD was to take into account online booking models that had developed at the time.</p> <p>Have the business models of operators changed and is there any data suggesting that traders or certain categories of traders have changed their business model in order not to be considered as package organisers?</p> <p>Do they possibly interpret the definitions/provisions of the PTD narrowly in order to claim that they are not covered by the rules on packages or LTAs?</p> <p>How are any new trends in demand affecting supply side business models?</p>	<p>Evolution in the share of the travel products market held by online intermediaries and other novel business models</p> <p>Number and typology of differences between actions taken by “traditional” actors and novel business models (i.e. developed since 2015).</p> <p>Evidence in the literature, case examples, and stakeholders’ opinions on the extent to which the PTD reaches its objectives in light of the growing role of online intermediaries and other novel business models</p>	<p>Desk research, information emerging in particular from Commission staff working document</p> <p>Scenarios towards co-creation of transition pathway for tourism for a more resilient, innovative and sustainable ecosystem, EC</p> <p>Behavioural study on advertising and marketing practices in</p>

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
		<p>How can the rules on package travel facilitate the successful digital transformation of the tourism sector?</p> <p>Do travellers receive clear information about the scope of their rights when purchasing LTAs from (online) intermediaries?</p>		<p>travel booking websites and apps</p> <p>Public consultation</p> <p>Targeted surveys</p> <p>Interviews</p> <p>Workshops</p>
3	How effective are the PTD rules on insolvency protection and the national insolvency protection systems based on those rules?	<p>Are there many differences in the standards applied in different Member States concerning specifically the scope of protection and the cost for businesses? Do these differences pose problems for travellers or travel businesses or lead businesses to organise this protection under less strict rules of some Member States, or do they distort competition within the internal market?</p> <p>Does it remain appropriate to give Member States the choice between different kinds of insolvency protection systems, in particular the choice between an insurance-based system and a guarantee fund, as well as other appropriate systems, depending possibly also on certain categories of packages?</p> <p>Are there gaps in the current scope of protection that can still lead to material exposure of travellers in case of insolvency of organizers?</p>	<p>Estimates on number of businesses and consumers who resorted to insolvency protection</p> <p>Estimates on business/consumers who were/were not protected</p> <p>Estimates on number of businesses and consumers who resorted to insolvency protection in extraordinary circumstances (e.g., Covid-19) that were/were not protected</p> <p>Main differences in the standards of insolvency protection applied in the EU Member States, and result emerging from comparing them</p> <p>Stakeholders' opinions on the effectiveness of the PTD rules on insolvency protection and the national insolvency protection systems based on those rules</p>	<p>Desk research, evidence emerging in particular from country reports on the insolvency of protection schemes</p> <p>Public consultation</p> <p>Targeted surveys</p> <p>Interviews, especially with organisations involved in insolvency protection</p> <p>Workshops</p>

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
		Is the continuation of packages referred to in Article 17(1), first sub-paragraph, third sentence relevant in practice and to what extent is it the preferred solution of travellers, organisers and insolvency protection bodies?		
4	Is there clarity for traders facilitating an LTA on the insolvency protection cover they have to obtain, and, for consumers, on the fact that they are entitled to insolvency protection, where the conditions under Art. 19 PTD are satisfied?	<p>What kind of evidence do travellers receive showing that they are entitled to insolvency protection in the case of LTA, if any?</p> <p>Do traders understand the rules on insolvency in relation to LTA?</p> <p>Do travellers understand their rights in relation to LTAs?</p> <p>In how many cases have travellers received refunds and repatriation in cases where a travel service was not performed because a facilitator of an LTA went bankrupt?</p>	<p>Estimates on traders facilitating LTAs who were obliged to take out insolvency protection cover, in terms of number of traders and volume of protected amounts</p> <p>Traders facilitating LTAs who indicate they are sure about the insolvency protection cover required for them</p> <p>Views from insolvency protection bodies on the extent to which traders are sure about the insolvency protection cover</p> <p>Estimate on number of travellers who are aware that they are entitled to insolvency protection under Art 19(1) PTD in relation to (a) LTAs in general and (b) in relation to specific LTAs they have book.</p> <p>Number of travellers who benefited from insolvency protection under Art. 19(1) PTD a) in relation to potential to LTAs in general and b) in relation to actual insolvencies of traders facilitating LTAs</p> <p>Stakeholders (particularly consumer organisations) views on the extent to which travellers are aware that they are entitled to insolvency protection under Art 19 PTD</p> <p>Types of evidence most frequently used by travellers to show that they are entitled to insolvency protection</p>	<p>Desk research, evidence emerging in particular from country reports on the insolvency of protection systems, ECA Special Report 15/2021, reports from consumers organisations</p> <p>Public consultation</p> <p>Consumer survey</p> <p>Targeted surveys</p> <p>Interviews</p> <p>Workshops</p>

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
			Number of cases in which travellers have received refunds or repatriation because facilitators of LTAs became bankrupt Number / value of refunds given	
5	How effective is the PTD in ensuring effective and efficient reimbursement of pre-payments under Article 12(4) even in times of crisis?	/	Number of travellers who received reimbursement of pre-payments (under Art 12(4)) Number of travellers who received reimbursement of pre-payments because of the Covid-19 pandemic Case examples of problems experienced by travellers during the Covid-19 pandemic and numbers of travellers affected in each case Average time for reimbursement (days) during and outside of a major crisis , e.g. COVID-19 Stakeholders' views on the extent to which the PTD is well adapted to ensure the effective and efficient reimbursement of pre-payments even during a major crisis	Desk research, in particular Commission recommendation on vouchers, ECA special report 15/2021, BEUC – Evaluation of MS implementation of the Commission recommendation on vouchers Public consultation Consumer survey Targeted surveys Interviews Workshops
6	How effective has the liability for booking errors introduced in Article 21 PTD been in practice?	/	Number / proportion of travellers who have experienced a booking error as a result of a technical defect in the booking system Number / proportion of such travellers who received compensation because of a booking error caused by a technical error in the booking system Case examples of where Art 21 has been used in practice	Desk research Public consultation Consumer survey Targeted surveys Interviews Workshops

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
			Stakeholders' opinions on the extent to which the liability for booking errors introduced in Art 21 PTD remains relevant in practice	
II. Efficiency				
1	What are the regulatory (including administrative) costs of the PTD for the different stakeholders involved (Member States authorities, businesses, consumers) and for society overall? What are the benefits?	<p>To what extent are these costs proportionate to the benefits?</p> <p>Are there opportunities to simplify the legislation or reduce unnecessary regulatory costs without undermining the intended objectives of the intervention (i.e. could similar effectiveness levels be achieved at lower costs)?</p>	<p>Category of cost (direct, indirect, enforcement)</p> <p>Type of cost (one-off or recurring), and the timeframe over which it has arisen or will arise</p> <p>Estimates on number of stakeholders group affected, organised per group (e.g., national legislators, businesses, consumers)</p> <p>Numbers of new jobs required for monitoring the implementation of the Directive</p> <p>Number of new administrative procedures concluded for ensuring the enforcement of the PTD's provisions and for monitoring their correct implementation</p> <p>Category of benefit (direct, indirect)</p> <p>Type of benefit (one-off or recurring), and the timeframe over which the benefit is expected to arise or have arisen</p> <p>Estimates on number of stakeholders group affected, organised per group (e.g., national legislators, businesses, consumers)</p> <p>Cost-benefit ratio between achieved benefits and spending</p> <p>Proportion of stakeholders who agree that the costs of the PTD are justified and proportionate with the benefits</p>	<p>Desk research, statistics from Eurostat, data in marketing monitoring survey</p> <p>Public consultation</p> <p>Targeted surveys</p> <p>Interviews</p> <p>Workshops</p> <p>Cost-benefit analysis</p> <p>Multi-criteria analysis</p>
2	What is the economic cost for businesses and Member State authorities to comply	Are there important differences in the compliance costs depending on the business model – e.g. purely online v/s, purely off-line	<p>Category of cost (direct, indirect)</p> <p>Type of cost (one-off or recurring), and the timeframe over which it has arisen or will arise</p>	Desk research, including: statistics from Eurostat, data in

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N	Research questions (final)	Sub-questions (final)	Indicators	Sources
	with the PTD? What are the benefits?	<p>or hybrid sales, guarantee fund v/s insurance mechanism, package vs. LTA (for many LTAs only info requirements and liability for booking errors, in some cases insolvency protection and never contractual liability, no rules on cancellations and refunds etc.)?</p> <p>What was, in particular, the cost of state intervention to guarantee travellers' refunds and repatriation (including, for instance, in cases of insolvency of package travel organisers or insuring/guaranteeing refunds/vouchers issued in connection with cancellations connected to COVID-19) which occurred in times of crisis (such as the Thomas Cook bankruptcy and the COVID-19 pandemic)?</p> <p>To what extent are these costs proportionate to the benefits?</p>	<p>Estimates on number of stakeholders group affected, organised per group (e.g., national legislators, businesses, consumers)</p> <p>Category of benefit (direct, indirect)</p> <p>Type of benefit (one-off or recurring), and the timeframe over which the benefit is expected to arise or have arisen</p> <p>Estimates on number of stakeholders group affected, organised per group (e.g., national legislators, businesses, consumers)</p> <p>Cost-benefit ratio between achieved benefits and spending</p> <p>Proportion of stakeholders who agree that the costs of the PTD are justified and proportionate with the benefits</p> <p>Total cost of state intervention to guarantee travellers' refunds and repatriation during the Covid-19 pandemic, Thomas Cook bankruptcy, etc.</p>	<p>marketing monitoring survey, evidence from the Commission reports (2019 and 2020) on the application of the PTD; Commission State aid's decision on the subject; national State aid measures on the subject</p> <p>Public consultation</p> <p>Targeted surveys</p> <p>Interviews</p> <p>Workshops</p> <p>Cost-benefit analysis</p> <p>Multi-criteria analysis</p>
3	What factors influenced the efficiency of reaching the objectives set by the PTD?	<p>How proportionate were the costs of the intervention borne by different stakeholder groups (e.g. burden on organisers and service providers), taking into account the distribution of the associated benefits? How can this be established?</p> <p>If there are significant differences in costs (or benefits) between Member States what is causing them? Did some MSs practice "gold plating"?</p>	<p>Stakeholders' opinions on the factors that influenced the efficiency of reaching the objectives set by the PTD</p> <p>Cost-benefit ratio per stakeholder group and across Member States (distributional impact)</p>	<p>Desk research, ECA special report 15/2021, Commission report on the application of the PTD</p> <p>Targeted surveys</p> <p>Interviews</p> <p>Workshops</p> <p>Cost-benefit analysis</p> <p>Multi-criteria analysis</p>

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
III. Relevance				
1	To what extent do the initial objectives of the PTD still correspond to the current needs?	<p>How well adapted is the PTD to market trends, including in particular due to the constant expansion of sales by online intermediaries and the constant expansion of bookings on mobile devices?</p> <p>How well adapted is the PTD to crisis situations (taking into account the lessons learned from the Thomas Cook bankruptcy and the COVID-19 pandemic)?</p>	<p>Main market trends, including trends in the proportion of sales made by online intermediaries, proportion of bookings made on mobile devices, etc.</p> <p>Current needs and comparison to needs at the time the Directive was adopted</p> <p>Case examples of where the objectives of the PTD no longer correspond to current needs</p> <p>Timeline of changing needs since the introduction / implementation of the Directive</p> <p>Stakeholders' opinions on the extent to which the initial objectives of the PTD still correspond to the current needs</p> <p>Stakeholders' opinions on the extent to which the PTD is well adapted to market trends, in particular to the expansion of sales by online intermediaries and the expansion of bookings on mobile devices</p> <p>Stakeholders' opinions on the performance of the PTD in time of crisis (e.g., during the Covid-19 pandemic and following the bankruptcy of Thomas Cook)</p>	<p>Desk research, evidence from Commission reports on the application of the PTD (2019 and 2021), JRC study on Behavioural changes in tourism in times of COVID-19, information from Commission recommendation on vouchers, ECA Special Report 15/2021, European Parliament resolution on the negative impact of the bankruptcy of Thomas Cook on EU tourism, BEUC report on the evaluation of the MS implementation of the Commission recommendation on vouchers, data on tourism from Eurostat, National authorities for</p>

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
				statistics, industry organisations Public consultation Targeted surveys Interviews Workshops
2	To what extent are key concepts of the PTD still fit for purpose?	Do travellers understand the distinction between packages and LTAs and its effects on their rights and degree of protection? Has the category of LTA provided benefits that justify the complexity of the rules and uncertainty regarding its application? Are the conditions for application of the cancellation rights for packages clear in practice, including in case of crisis?	Proportion of stakeholders who agree that there is a need to clarify certain concepts and definitions set out in the Directive Estimates on the number of conceptual/definitional issues that have been encountered in the practical application of the PTD, and their consequences Case examples on conceptual/definitional issues encountered and their consequences (including examples from case law, where available)	Desk research, information from Commission reports on the application of the PTD (2019 and 2021), major evidence from the overall report on the transposition of the PTD Public consultation Targeted surveys Interviews Workshops
IV. Coherence				
1	Are there any discrepancies and/or inconsistencies/ lack of coherence between the provisions of the PTD? [internal coherence]	/	Proportion of stakeholders who agree that the provisions of the PTD are internally coherent Stakeholders' opinions on any discrepancies or inconsistencies between the provisions of the PTD Evidence from qualitative (legal) analysis – identification of provisions that conflict or contradict	Desk research Public consultation Targeted surveys Interviews Workshops

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Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
			Evidence from qualitative (legal) analysis – identification of provisions that may give rise to legal uncertainty Number of complementary issues spotted	
2	To what extent is the PTD coherent with wider EU policies, such as rules on free movement of services, fundamental rights, consumer rights, mutual recognition, competition, industrial policy, transport and mobility, environmental protection (sustainability), health and trade, digital policies [external coherence]??	<p>To what extent is PTD coherent with other interventions in the transport and mobility sector in particular insofar as any incoherence could be addressed through changes in the PTD?</p> <p>Are there overlaps and/or complementarities between the PTD and any other Union legislation with similar objectives, in particular regarding passenger rights, travel services, and also other Union legislation such as the E-commerce Directive and the proposed Digital Services Act?</p> <p>Are there opportunities to contribute to the minimisation of the environmental impacts of travel and tourism?</p>	<p>Proportion of stakeholders who agree that the PTD is coherent with wider EU policy such as rules on free movement, mutual recognition, competition, etc</p> <p>Stakeholders' opinions on any discrepancies or inconsistencies between the PTD and wider EU policy such as rules on free movement, mutual recognition, competition, etc (that could be addressed through changes to the PTD)</p> <p>Stakeholders' opinions on any discrepancies or inconsistencies between the PTD and other EU interventions in the transport and mobility sector (that could be addressed through changes to the PTD)</p> <p>Evidence from analysis of the elements of the PTD which complement or overlap with other EU legislation with similar objectives</p> <p>Number of complementary issues spotted</p>	Desk research, in particular the Commission's Smart and Sustainable Mobility Strategy, Commission working programme 2022 – make Europe stronger together, information from Commission staff working document Scenarios towards co-creation of transition pathway for tourism for a more resilient, innovative and sustainable ecosystem, evidence from EU travellers' rights legal acquis literature and implementation reports, Commission communication on new consumers' agenda

STUDY TO SUPPORT THE PREPARATION OF AN EVALUATION OF
THE PACKAGE TRAVEL DIRECTIVE BACK-TO-BACK WITH AN IMPACT
ASSESSMENT ON ITS POTENTIAL REVISION

Final				
N	Research questions (final)	Sub-questions (final)	Indicators	Sources
				Public consultation Targeted surveys Interviews Workshops
V. EU added value				
1	What is the added value resulting from the application of the PTD, compared to what could reasonably have been expected from Member States acting at national and/or regional levels? What would be the most likely consequences of withdrawing the PTD?	How would it affect the functioning of the Single Market and the rights of travelling consumers?	Proportion of stakeholders who agree that the PTD has provided added value beyond what could have been achieved unilaterally by the Member States, or through bi-lateral or multi-lateral agreements between countries Proportion of stakeholders who agree that the PTD has provided added value beyond what could have been achieved by the Commission through voluntary or other non-legislative action Examples identified through consultation with key stakeholders and literature review of where the Directive has provided added value compared to what could have been achieved by Member States acting on their own	Desk research, including information from Commission report on the application of the PTD Public consultation Targeted surveys Interviews Workshops
2	To what extent do the issues addressed by the PTD continue to require action at EU level?	What are the consequences of the Commission not revising the PTD?	Proportion of stakeholders who agree that the issues addressed by the PTD continue to require action at EU level Proportion of stakeholders who agree that problems would continue in the absence of further EU action	

Annex 8 Multi-criteria analysis

Submitted as separate Annex. See separate spreadsheet.

Annex 9 Factual summary report of the public consultation

Submitted as separate Annex.

Annex 10 Consultation Synopsis Report

Submitted as separate Annex.

Annex 11 Workshop documents

Submitted as separate Annex.

Annex 12 Targeted surveys summary report

Submitted as separate Annex.

Annex 13 Cost-Benefit table for Efficiency (Evaluation)

Annex 14 One-in one-out cost calculator

Submitted as separate Annex.

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