

OFFICIAL GAZETTE

GRAND-DUCHY OF LUXEMBOURG



MEMORIAL A

No 308 of 25 April 2018

Law of 25 April 2018 amending the Consumer Code in relation to package travel and linked travel arrangements, and amending the amended law of 2 September 2011 governing access to occupations in craft trades, business and industry, and to certain liberal professions.

We, Henri, Grand-Duke of Luxembourg, Duke of Nassau,

Having consulted our Council of State;

In view of the assent of the Chamber of Deputies;

In view of the decision of the Chamber of Deputies of 17 April 2018 and the decision of the Council of State of 24 April 2018, to the effect that a second vote is not required;

Have ordered and hereby order:

Article I.

The Consumer Code is amended as follows:

1. Book 2, Title 2, Chapter 5 of the Consumer Code shall read as follows:

Chapter 5 - Package travel and linked travel arrangements

Section 1 - Scope and definitions

Sub-section 1 - Scope

Article L. 225-1.

- (1) This Chapter shall apply to packages offered for sale or sold by traders to travellers and to linked travel arrangements facilitated by traders for travellers.
- (2) This Chapter shall not apply to:
 - a) packages and linked travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;
 - b) packages offered, and linked travel arrangements facilitated, occasionally and on a not-for-profit basis and only to a limited group of travellers;
 - c) packages and linked travel arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to their trade, business, craft or profession.

Sub-section 2 - Definitions

Article L. 225-2.

For the purpose of applying this Chapter:

1. 'Travel service':

- a) the carriage of passengers;
- b) accommodation which is not intrinsically part of carriage of passengers and is not for residential purposes;
- c) rental of cars, other motor vehicles within the meaning of Article 3(11) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, or motorcycles requiring a Category A driving licence;
- d) any other tourist service not intrinsically part of a travel service within the meaning of points (a), (b) or (c);

2. 'Package': a combination of at least two different types of travel services for the purpose of the same trip or holiday, if:

- a) those services are combined by one trader, including at the request of or in accordance with the selection of the traveller, before a single contract including all services is concluded;
- b) or irrespective of whether separate contracts are concluded with individual travel service providers, those services are:

- (i) purchased from a single point of sale and have been selected before the traveller agrees to pay;
- (ii) offered, sold or charged at an inclusive or total price;
- (iii) advertised or sold under the term 'package' or under a similar term;
- (iv) combined after the conclusion of a contract by which a trader entitles the traveller to choose among a selection of different types of travel services; or
- (v) purchased from separate traders through related online booking processes where the traveller's name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

A combination of travel services where not more than one type of travel service as referred to under point 1(a), (b) or (c) is combined with one or more tourist services as referred to under point 1(d) is not a package if the latter services:

a) do not account for a significant proportion of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or

b) are selected and purchased only after the performance of a travel service as referred to under point 1(a), (b) or (c) has started;

3. 'Package travel contract': a contract relating to the package as a whole or, if the package is provided under separate contracts, all contracts covering travel services included in the package;

4. 'Start of the package': the beginning of the performance of travel services included in the package;

5. 'Linked travel arrangement': when at least two different types of travel service are purchased for the purpose of the same trip or holiday, but not constituting a package that results in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates:

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

b) the targeted procurement of at least one additional travel service from another trader where a

contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

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

6. 'Traveller': any person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded;
7. 'Trader': any person as defined under Article L. 010-1(2) acting in the capacity of organiser, retailer, trader facilitating a linked travel arrangement, or as a travel service provider.
8. 'Organiser': a trader who combines and sells, or offers for sale, packages, either directly or through another trader or together with another trader, or a trader who transmits the traveller's data to another trader in accordance with point 2(b)(v);
9. 'Retailer': a trader other than the organiser who sells or offers for sale packages produced by an organiser;
10. 'Establishment': the establishment defined under Article 2(f) of the amended law of 24 May 2011 on services in the internal market;
11. 'Durable medium': any instrument that enables a traveller or trader to store information addressed personally to them in a way easily accessible for future reference for a period of time adequate for the purposes of the information and that allows the unchanged reproduction of the information stored.
12. 'Unavoidable and extraordinary circumstances': a situation beyond the control of the party that invokes such a situation and the consequences of which were unavoidable even if all reasonable measures had been taken;
13. 'Lack of conformity': a failure to perform or the improper performance of the travel services included in a package;
14. 'Point of sale': any retail premises, whether movable or immovable, or a retail website or similar online sales facility, including where retail websites or online sales facilities are presented to travellers as a single facility, including a telephone service.
15. 'Repatriation': the traveller's return to the place of departure or to another place the contracting parties agree upon.

Section 2 – Information obligations and content of the package travel contract

Sub-section 1 – Pre-contractual information

Article L. 225-3.

(1) The organiser, and the retailer if the packages are sold through a retailer, shall provide the traveller, before they are bound by any package travel contract or any corresponding offer, where applicable to the package, with the following information using the standard form determined by Grand-Ducal Regulation:

a) the main characteristics of the travel services:

- (i) the travel destination(s), itinerary and periods of stay, with dates and, where accommodation is included, the number of nights included;
- (ii) the means, characteristics and categories of transport; the points, dates and time of departure and return; the duration and places of intermediate stops and transport connections. Where the exact time is not yet determined, the organiser and, where applicable, the retailer shall inform the traveller of the approximate time of departure and return;
- (iii) the location, main characteristics and, where applicable, tourist category of the accommodation under the rules of the country of destination;
- (iv) the meal plan;
- (v) visits, excursions or other services included in the total price agreed for the package;

- (vi) where it is not apparent from the context, whether any of the travel services will be provided to the traveller as part of a group and, if so, where possible, the approximate size of the group;
 - (vii) where the traveller's benefit from other tourist services depends on effective verbal communication, the language in which those services will be provided; and
 - (viii) whether the trip or holiday is generally suitable for persons with reduced mobility and, at the traveller's request, specific information on the suitability of the trip or holiday taking into account the traveller's needs;
- b) the trading name and geographical address of the organiser and, where applicable, of the retailer, as well as their telephone number and, where applicable, e-mail address;
 - c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance of the conclusion of the contract, an indication of the type of additional costs which the traveller may still have to pay;
 - d) the arrangements for payment, including any amount or percentage of the price which is to be paid as a deposit and the timetable for payment of the balance, or the financial guarantees to be paid or provided by the traveller;
 - e) the minimum number of persons required for the package to take place and the time-limit, referred to Article L 225-10(3)(a), before the start of the package for possible termination of the contract if that number is not reached;
 - f) general information on passport and visa requirements, including approximate periods for obtaining visas and information on health formalities in the destination country;
 - g) a statement that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate termination fee, or, where applicable, the standardised termination fees requested by the organiser, in accordance with Article L. 225-10(1);
 - h) information on optional or compulsory insurance to cover the cost of termination of the contract by the traveller or the cost of assistance, including repatriation, in the event of accident, illness or death.

For package travel contracts concluded by telephone, the organiser and, where applicable, the retailer shall provide the traveller with the standard information using the standard form determined by Grand-Ducal Regulation, and with the information set out in points (a) to (h) of the first subparagraph.

- (2) With reference to packages as defined in Article 225-2(2)(b)(v), the organiser and the trader to whom the data are transmitted shall ensure that each of them provides, before the traveller is bound by a contract or any corresponding offer, the information set out in points (a) to (h) of the first subparagraph of paragraph 1, in so far as it is relevant for the travel services they offer. At the same time the organiser shall also provide the standard information using the standard form determined by Grand-Ducal Regulation.
- (3) The information referred to in paragraphs 1 and 2 shall be presented in a clear, comprehensible and prominent manner. Where such information is provided in writing, it shall be legible.

Sub-section 2 - Binding character of pre-contractual information and conclusion of the package travel contract

Article L. 225-4.

- (1) The information provided to the traveller pursuant to points (a), (b), (c), (d), (e) and (g) of the first subparagraph of Article L. 225-3(1) form an integral part of the package travel contract and cannot be altered unless the contracting parties expressly agree otherwise. The organiser and the retailer shall communicate all changes to the pre-contractual information to the traveller in a clear, comprehensible and prominent manner before the conclusion of the package travel contract.
- (2) If the organiser and the retailer fail to comply with the information requirements on additional fees, charges or other costs as referred to in point (c) of the first subparagraph of Article L. 225-3(1) before the conclusion of the package travel contract, the traveller shall not bear those fees, charges

or other costs.

Sub-section 3 - Content of the package travel contract,
documents to be supplied before the start of the package and burden of proof

Article L. 225-5.

(1) Package travel contracts shall be in plain and intelligible language. Contracts in writing shall be legible. At the conclusion of the package travel contract or without undue delay thereafter, the organiser or retailer shall provide the traveller with a copy or confirmation of the contract on a durable medium. The traveller shall be entitled to request a paper copy if the package travel contract has been concluded in the simultaneous physical presence of the parties.

With respect to off-premises contracts as defined in point 2 of Article L. 222-1(1), a copy or confirmation of the package travel contract shall be provided to the traveller on paper or, if the traveller agrees, on another durable medium.

(2) The package travel contract or confirmation of the contract shall set out the full content of the agreement, including all the information referred to in points (a) to (h) of Article L. 225-3(1) and the following information:

a) special requirements of the traveller which the organiser has accepted;

b) a statement that the organiser is:

(i) responsible for the proper performance of all travel services included in the contract in accordance with Article L. 225-11; and

(ii) obliged to provide assistance if the traveller is in difficulty in accordance with Article L. 225-14;

c) the name of the entity in charge of the insolvency protection and its contact details, including its geographical address, and, where applicable, the name of the competent authority designated by the Member State concerned for that purpose and its contact details;

d) the name, address, telephone number, e-mail address and, where applicable, the fax number of the organiser's local representative, of a contact point or other service which enables the traveller to contact the organiser quickly and communicate with them efficiently, request assistance if the traveller is in difficulty or complain about any lack of conformity perceived during the performance of the package;

e) a statement that the traveller shall be required to communicate any perceived lack of conformity during the performance of the package in accordance with Article L. 225-11(2);

f) where minors, unaccompanied by a parent or other authorised person, travel on the basis of a package travel contract that includes accommodation, information enabling direct contact with the minor or the person responsible for the minor at the minor's place of stay;

g) information on available in-house complaint handling procedures and on alternative dispute resolution ('ADR') mechanisms pursuant to Book IV of the Consumer Code and, where applicable, on the ADR entity by which the trader is covered and on the online dispute resolution platform pursuant to 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);

h) information on the traveller's right to transfer the contract to another traveller in accordance with Article L. 225-7.

(3) With reference to packages as defined in Article L. 225-2(1)(2)(b)(v), the trader to whom the data are transmitted shall inform the organiser of the conclusion of the contract leading to the creation of a package. The trader shall provide them with the information necessary to comply with their obligations as an organiser.

As soon as the organiser is informed that a package has been created, the organiser shall provide the traveller on a durable medium with the information referred to in points (a) to (h) of paragraph 2.

(4) The information referred to in paragraphs 2 and 3 shall be presented in a clear, comprehensible and prominent manner.

(5) In good time before the start of the package, the organiser shall provide the traveller with the necessary receipts, vouchers and tickets, information on the scheduled time of departure and, where applicable, the deadline for check-in, as well as the scheduled times for intermediate stops, transport connections and arrival.

Article L. 225-6.

The burden of proof of compliance with the information requirements shall be on the trader.

Section 3 - Amendment of the package travel contract before the start of the package

Sub-section 1 - Transfer of the package travel contract to another traveller

Article L. 225-7.

(1) A traveller may, after giving the organiser reasonable notice on a durable medium before the start of the package, transfer the package travel contract to a person who satisfies all the conditions applicable to that contract. Notice given at the latest seven days before the start of the package shall in any event be deemed to be reasonable.

(2) The transferor of the package travel contract and the transferee shall be jointly and severally liable for the payment of the balance due and for any additional fees, charges or other costs arising from the transfer. The organiser shall inform the transferor about the actual costs of the transfer.

Those costs shall not be unreasonable and shall not exceed the actual cost incurred by the organiser due to the transfer of the package travel contract.

(3) The organiser shall provide the transferor with proof of the additional fees, charges or other costs arising from the transfer of the package travel contract.

Sub-section 2 - Alteration of the price

Article L. 225-8.

(1) After the conclusion of the package travel contract, prices may be increased only if the contract expressly reserves that possibility and states that the traveller is entitled to a price reduction under paragraph 4. In that event the package travel contract shall state how price revisions are to be calculated. Price increases shall be possible exclusively as a direct consequence of changes in:

- a) the price of the carriage of passengers resulting from the cost of fuel or other power sources;
- b) the level of taxes or fees on the travel services included in the contract imposed by third parties not directly involved in the performance of the package, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports; or
- c) the exchange rates relevant to the package.

(2) If the price increase referred to in paragraph 1 exceeds 8 % of the total price of the package, paragraphs (2) to (5) of Article L 225-9 shall apply.

(3) Irrespective of its extent, a price increase shall be possible only if the organiser notifies the traveller clearly and comprehensibly of it with a justification for that increase and a calculation, on a durable medium at the latest 20 days before the start of the package.

(4) If the package travel contract stipulates the possibility of price increases, the traveller shall have the right to a price reduction corresponding to any decrease in the costs referred to in points (a), (b) and (c) of paragraph 1 that occurs after the conclusion of the contract before the start of the package.

(5) In the event of a price decrease, the organiser shall have the right to deduct actual administrative expenses from the refund owed to the traveller. At the traveller's request, the organiser shall provide proof of those administrative expenses.

Sub-section 3 - Amendment of other terms of the package travel contract

Article L. 225-9.

(1) Before the start of the package, the organiser may not unilaterally amend the terms of the package travel contract other than the price in accordance with Article L. 225-8, unless:

- a) the organiser has reserved that right in the contract;
- b) the change is insignificant; and
- c) the organiser informs the traveller of the change in a clear, comprehensible and prominent manner on a durable medium.

(2) If, before the start of the package, the organiser is constrained to alter significantly any of the main characteristics of the travel services as referred to in point (a) of the first subparagraph of Article L. 225-3(1) or cannot fulfil the special requirements as referred to in Article L. 225-5(2)(a), or proposes to increase the price of the package by more than 8 % in accordance with Article L. 225-8(2), the traveller may, within a reasonable period specified by the organiser:

- a) accept the proposed change; or
- b) terminate the contract without paying a termination fee.

If the traveller terminates the package travel contract, the traveller may accept a substitute package where this is offered by the organiser, if possible of an equivalent or a higher quality.

(3) The organiser shall inform the traveller without undue delay in a clear, comprehensible and prominent manner on a durable medium of:

- a) the proposed changes referred to in paragraph 2 and, where appropriate in accordance with paragraph 4, their impact on the price of the package;
- b) a reasonable period within which the traveller has to inform the organiser of their decision pursuant to paragraph 2;
- c) the consequences of the traveller's failure to respond within the period referred to under point (b); and
- d) where applicable, the substitute package offered and its price.

(4) Where the changes to the package travel contract referred to in the first subparagraph of paragraph 2 or the substitute package referred to in the second subparagraph of paragraph 2 result in a package of lower quality or cost, the traveller shall be entitled to an appropriate price reduction.

(5) If the package travel contract is terminated pursuant to point (b) of the first subparagraph of paragraph 2 and the traveller does not accept a substitute package, the organiser shall refund all payments made by or on behalf of the traveller without undue delay and in any event not later than 14 days after the contract is terminated. Paragraphs (2), (3), (4) and (5) of Article L. 225-12 shall apply.

Sub-section 4 - Termination of the package travel contract
and the right of withdrawal before the start of the package

Article L. 225-10.

(1) The traveller may terminate the package travel contract at any time before the start of the package. Where the traveller terminates the package travel contract, the traveller may be required to pay an appropriate and justifiable termination fee to the organiser. The package travel contract may specify reasonable standardised termination fees based on the time of the termination of the contract before the start of the package and the expected cost savings and income from alternative deployment of the travel services. In the absence of standardised termination fees, the amount of the termination fee shall correspond to the price of the package minus the cost savings and income from alternative deployment of the travel services. At the traveller's request the organiser shall provide a justification for the amount of the termination fees.

(2) Notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination. In the event of termination of the package travel contract under this paragraph, the traveller shall be entitled to a full refund of any payments made for the package, but shall not be entitled to additional compensation.

(3) The organiser may terminate the package travel contract and provide the traveller with a full refund of any payments made for the package, but shall not be liable for additional compensation, if:

a) the number of persons registered for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination of the contract within the period fixed in the contract, but not later than:

- (i) 20 days before the start of the package in the case of trips lasting more than six days;
- (ii) seven days before the start of the package in the case of trips lasting between two and six days;
- (iii) 48 hours before the start of the package in the case of trips lasting less than two days;

or

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

(4) The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package minus the appropriate termination fee. Such refunds or reimbursements shall be made to the traveller without undue delay and in any event not later than 14 days after the package travel contract is terminated.

Section 4 - Performance of the package

Sub-section 1 - Responsibility for the performance of the package

Article L. 225-11.

(1) The organiser shall be 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.

(2) The traveller shall inform the organiser without undue delay, taking into account the circumstances of the case, of any lack of conformity which they perceive during the performance of a travel service included in the package travel contract.

(3) If any of the travel services are not performed in accordance with the package travel contract, the organiser shall remedy the lack of conformity, unless that:

- a) is impossible; or
- b) entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the travel services affected.

If the organiser, in accordance with points (a) or (b) of subparagraph 1, does not remedy the lack of conformity, Article L. 225-12 shall apply.

(4) Without prejudice to the exceptions laid down in paragraph 3, if the organiser does not remedy the lack of conformity within a reasonable period set by the traveller, the traveller may do so themselves and request reimbursement of the necessary expenses. It shall not be necessary for the traveller to specify a time-limit if the organiser refuses to remedy the lack of conformity or if immediate remedy is required.

(5) Where a significant proportion of the travel services cannot be provided as agreed in the package travel contract, the organiser shall offer, at no extra cost to the traveller, suitable alternative arrangements of, where possible, equivalent or higher quality than those specified in the contract, for the continuation of the package, including where the traveller's return to the place of departure is not provided as agreed.

Where the proposed alternative arrangements result in a package of lower quality than that specified in the package travel contract, the organiser shall grant the traveller an appropriate price reduction.

The traveller may reject the proposed alternative arrangements only if they are not comparable to what was agreed in the package travel contract or the price reduction granted is inadequate.

(6) Where a lack of conformity significantly affects the performance of the package and the organiser fails to remedy it within a reasonable period set by the traveller, the traveller may terminate the package

travel contract without paying a termination fee and, where appropriate, request, in accordance with Article L. 225-12, a price reduction and/or compensation for damages.

If it is impossible to offer alternative arrangements or the traveller rejects the proposed alternative arrangements in accordance with the third subparagraph of paragraph 5, the traveller, where appropriate, shall be entitled to a price reduction and/or compensation for damages in accordance with Article L. 225-12 without terminating the package travel contract.

If the package includes the carriage of passengers, the organiser shall, in the cases referred to in the first and second subparagraphs, also provide repatriation of the traveller with equivalent transport without undue delay and at no extra cost to the traveller.

(7) Where it is impossible to ensure the traveller's return as agreed in the package travel contract because of unavoidable and extraordinary circumstances, the organiser shall bear the cost of necessary accommodation, if possible of equivalent category, for a period not exceeding three nights per traveller. Where longer periods are provided for under the European Union passenger rights legislation applicable to the relevant means of transport for the traveller's return, those periods shall apply.

(8) The limitation of costs under paragraph 7 shall not apply to persons with reduced mobility, as defined in point (a) of Article 2 of Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, and any person accompanying them, pregnant women and unaccompanied minors, as well as persons in need of specific medical assistance, provided that the organiser has been notified of their particular needs at least 48 hours before the start of the package. The organiser may not invoke unavoidable and extraordinary circumstances to limit the liability under paragraph 7 if the relevant transport provider cannot rely on such circumstances under the applicable European Union legislation.

Sub-section 2 - Price reduction and compensation for damages

Article L. 225-12.

(1) The traveller shall be entitled to an appropriate price reduction for any period during which there was lack of conformity in the services provided, unless the organiser proves that the lack of conformity is attributable to the traveller.

(2) The traveller shall be entitled to receive appropriate compensation from the organiser for any damage which the traveller sustains as a result of any lack of conformity. Compensation shall be made without undue delay.

(3) The traveller shall not be entitled to compensation for damages if the organiser proves that the lack of conformity is:

- a) attributable to the traveller;
- b) attributable to a third party unconnected to the provision of the travel services included in the package travel contract and is unforeseeable or unavoidable; or
- c) due to unavoidable and extraordinary circumstances.

(4) Insofar as international conventions binding the European Union limit the extent of or the conditions under which compensation is to be paid by a provider carrying out a travel service which is part of a package, the same limitations shall apply to the organiser. In other cases, the package travel contract may limit compensation to be paid by the organiser as long as that limitation does not apply to personal injury or damage caused intentionally or with negligence and does not amount to less than three times the total price of the package.

(5) Any right to compensation or price reduction under this Chapter shall not affect the rights of travellers under 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; Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations; Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; 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; 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; and under international conventions. Travellers shall be entitled to present claims under this Chapter and under those Regulations and international conventions. The compensation or price reduction granted under this Chapter and the compensation or price reduction granted under those Regulations and international conventions shall be deducted from each other in order to avoid overcompensation.

Sub-section 3 - Possibility to contact the organiser via the retailer

Article L. 225-13.

The traveller may address messages, requests or complaints in relation to the performance of the package to the retailer through which the package was purchased. The retailer shall forward those messages, requests or complaints to the organiser without undue delay.

For the purpose of compliance with time-limits or limitation periods, receipt of the messages, requests or complaints referred to in the first subparagraph by the retailer shall be considered as receipt by the organiser.

Sub-section 4 - Obligation to provide assistance

Article L. 225-14.

The organiser shall provide appropriate assistance without undue delay to the traveller in difficulty, including in the circumstances referred to in Article L. 225-11(7), in particular by:

- a) providing appropriate information on health services, local authorities and consular assistance; and
- b) assisting the traveller to make distance communications and to find alternative travel arrangements.

The organiser shall be able to charge a reasonable fee for such assistance if the difficulty is caused intentionally by the traveller or through the traveller's negligence. That fee shall not in any event exceed the actual costs incurred by the organiser.

Section 5 - Insolvency protection

Sub-section 1 - Effectiveness and scope of insolvency protection

Article L. 225-15.

(1) The organiser established in the Grand-Duchy of Luxembourg shall provide security for the refund of all payments made by or on behalf of travellers in so far as the relevant services are not performed as a consequence of the organiser's insolvency. If the carriage of passengers is included in the package travel contract, organisers shall also provide security for the travellers' repatriation. Continuation of the package may be offered.

Paragraph 1 shall also apply to an organiser not established in a Member State of the European Union but selling or offering for sale packages in the Grand-Duchy of Luxembourg or who by any means directs such activities to the Grand-Duchy of Luxembourg.

(2) The security referred to in paragraph 1 shall be effective and shall cover reasonably foreseeable costs. It shall cover the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between down-payments and final payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency.

The organiser established in the Grand-Duchy of Luxembourg shall provide the Minister with responsibility for the Economy with a certificate issued by the guarantor and containing the following information:

- a) the information referred to in Article L. 225-5(2)(c);
- b) the telephone number and an email address allowing the guarantor to be contacted;
- c) the extent of coverage referred to in paragraph 1.

The organiser's identity and the additional information referred to in points (a) and (b) of the second

subparagraph shall be public. The information referred to in point (c) of the second subparagraph shall be communicated upon request to the contact points of other Member States.

The organiser shall notify without delay any changes to the information communicated under the second subparagraph and, where applicable, a new certificate containing the updated information.

The detailed arrangements for notification and the documents to be produced shall be specified by Grand-Ducal Regulation.

(3) An organiser's insolvency protection shall benefit travellers regardless of their place of residence, the place of departure or where the package is sold and irrespective of the Member State where the entity in charge of the insolvency protection is located.

(4) When the performance of the package is affected by the organiser's insolvency, the security shall be available free of charge to ensure repatriations and, if necessary, the financing of accommodation prior to the repatriation.

(5) For travel services that have not been performed, refunds shall be provided without undue delay after the traveller's request.

Sub-section 2 - Mutual recognition of insolvency protection and administrative cooperation

Article L. 225-16.

(1) Any insolvency protection an organiser provides under such measures of the Member State of their establishment shall be regarded as in accordance with the obligations under Articles L. 225-15 and L. 225-17.

(2) The Minister with responsibility for the Economy shall be the central contact point in order to facilitate administrative cooperation and the supervision of organisers and traders.

(3) The Minister with responsibility for the Economy shall make available to the other contact points all necessary information on their national insolvency protection requirements.

The Minister with responsibility for the Economy shall respond to requests from other Member States as quickly as possible taking into account the urgency and complexity of the matter. In any event a first response shall be issued at the latest within 15 working days from receiving the request.

(4) If there are doubts concerning the insolvency protection of an organiser established in another Member State, the Minister with responsibility for the Economy can ask for clarification from the Member State of that organiser's establishment.

Sub-section 3 - Insolvency protection and information requirements for linked travel arrangements

Article L. 225-17.

(1) Traders established in the Grand-Duchy of Luxembourg and facilitating linked travel arrangements shall provide security for the refund of all payments they receive from travellers in so far as a travel service which is part of a linked travel arrangement is not performed as a consequence of their insolvency. If such traders are the party responsible for the carriage of passengers, the security shall also cover the traveller's repatriation.

Paragraph 1 shall also apply to the traders facilitating the travel arrangements not established in a Member State of the European Union but selling or offering for sale packages in the Grand-Duchy of Luxembourg or who by any means direct such activities to the Grand-Duchy of Luxembourg.

(2) The security referred to in paragraph 1 shall be effective and shall cover reasonably foreseeable costs. It shall cover the amounts of payments made by or on behalf of travellers in respect of the linked travel arrangements referred to in paragraph 1.

The trader shall provide the Minister with responsibility for the Economy with a certificate issued by the guarantor and containing the following information:

- a) the information referred to in Article L. 225-5(2)(c);
- b) the telephone number and an email address allowing the guarantor to be contacted;
- c) the extent of coverage of the security referred to in paragraph 1.

The trader's identity and the additional information referred to in points (a) and (b) of the second

subparagraph shall be public. The information referred to in point (c) of the second subparagraph shall be communicated upon request to the contact points of other Member States.

The trader shall notify without delay any changes to the information communicated under the second subparagraph and, where applicable, a new certificate containing the updated information.

The detailed arrangements for notification and the documents to be produced shall be specified by Grand-Ducal Regulation.

(3) Before the traveller is bound by any contract leading to the creation of a linked travel arrangement or any corresponding offer, the trader facilitating linked travel arrangements, including where the trader is not established in a Member State but, by any means, directs such activities to a Member State, shall state in a clear, comprehensible and prominent manner that the traveller:

a) will not benefit from any of the rights applying exclusively to packages under this Chapter and that each service provider will be solely responsible for the proper contractual performance of their service; and

b) will benefit from insolvency protection in accordance with paragraph 1.

In order to comply with this paragraph, the trader facilitating a linked travel arrangement shall provide the traveller with that information by means of the relevant standard form set out by Grand-Ducal Regulation, or, where the particular type of linked travel arrangement is not covered by any of the forms set out in that Regulation, provide the information contained therein.

(4) Where the trader facilitating linked travel arrangements has not complied with the requirements set out in paragraphs 1 and 3, the rights and obligations laid down in Articles L. 225-7 and L. 225-10 and in Section 4 shall apply in relation to the travel services included in the linked travel arrangement.

(5) Where a linked travel arrangement is the result of the conclusion of a contract between a traveller and a trader who does not facilitate the linked travel arrangement, that trader shall inform the trader facilitating the linked travel arrangement of the conclusion of the relevant contract.

Section 6 - Specific provisions and penalties

Sub-section 1 - Specific obligations of the retailer where the organiser is established outside the European Economic Area

Article L. 225-18.

Where the organiser is established outside the European Economic Area, the retailer established in the Grand-Duchy of Luxembourg shall be subject to the obligations laid down for organisers in Section 4 and in Articles L. 225-15 and L. 225-17, save where they provide proof that the organiser meets the conditions set out in those provisions.

Sub-section 2 - Liability for booking errors

Article L. 225-19.

A trader shall be liable for any errors due to technical defects in the booking system which are attributable to them. Where the trader has agreed to arrange the booking of a package or of travel services which are part of linked travel arrangements, they shall be liable for the errors made during the booking process

A trader shall not be liable for booking errors which are attributable to the traveller or which are caused by unavoidable and extraordinary circumstances.

Sub-section 3 - Right to compensation

Article L. 225-20.

In cases where an organiser or, in accordance with Article L. 225-18, a retailer pays compensation, grants a price reduction or meets the other obligations incumbent on them under this Chapter, the organiser or retailer may seek redress from any third parties which contributed to the event triggering compensation, price reduction or other obligations.

Sub-section 4 - Mandatory provisions

Article L. 225-21.

(1) A declaration by an organiser of a package or a trader facilitating a linked travel arrangement that they are acting exclusively as a travel service provider, as an intermediary or in any other capacity, or that a package or a linked travel arrangement does not constitute a package or a linked travel arrangement, shall not absolve that organiser or trader from the obligations imposed on them under this Chapter.

(2) Travellers may not waive the rights conferred on them under this Chapter.

(3) Any contractual arrangements or statements by the traveller which directly or indirectly waive or restrict the rights conferred on travellers pursuant to this Chapter or aim to circumvent the application of this Chapter, shall not be binding on the traveller.

Sub-section 5 - Penalties

Article L. 225-22.

Non-compliance with one or more of the key information obligations referred to in this Chapter may result in the annulment of the package travel contract. However, only the passenger may invoke that annulment.

Article L. 225-23.

(1) Fines of between EUR 251 and EUR 15 000 shall be imposed on:

1. an organiser who fails in their obligation to provide pre-contractual information under Article L. 225-3(1) and (2);
2. an organiser who fails in their obligation to communicate changes in relation to the pre-contractual information under Article L. 225-4(1);
3. an organiser who fails to issue the traveller in good time before the start of the package with the documents and information referred to in Article L. 225-5(5);
4. an organiser who fails in their obligation to provide information under Article L. 225-9(3);
5. a trader who fails in their obligation to provide pre-contractual information under Article L. 225-3(1);
6. a trader who fails in their obligation to communicate changes in relation to the pre-contractual information under Article L. 225-4(1);

(2) Fines of between EUR 500 and EUR 75 000 shall be imposed on:

1. an organiser who fails to provide the traveller with a copy or a confirmation of the contract on a durable medium in accordance with the first subparagraph of Article L. 225-5(1) and the second subparagraph of Article L. 225-5(3) or on paper in accordance with the second subparagraph of Article L. 225-5(1);
2. an organiser who fails to provide appropriate assistance to the traveller in difficulty in accordance with Article L. 225-14;
3. an organiser who fails to provide the security required under Article L. 225-15 or who does not meet the reporting obligations in the same article. An organiser who provides incomplete or false information shall face similar penalties;
4. a trader who fails to provide the traveller with a copy or a confirmation of the contract on a durable medium in accordance with the first subparagraph of Article L. 225-5(1) or on paper in accordance with the second subparagraph of Article L. 225-5(1);
5. a trader referred to in Article L. 225-5(3) who fails to inform the organiser of the conclusion of the contract leading to the creation of a package;
6. a trader who fails to provide the security required under Article L. 225-17 or who does not meet the reporting obligations in the same article. A trader who provides incomplete or false information shall face similar penalties.

(3) Any failure to comply with the provisions contained in paragraphs 2(1)(b) and 5 of Article L. 225-9, paragraphs 1, 2 and 4 of Article L. 225-10, and paragraph 6 of Article L. 225-11 will be punishable by a fine of EUR 500 to EUR 50 000.

(4) A trader referred to in Article L. 225-18 who fails to meet the obligations under Article L. 225-11(6) shall be liable for a fine of EUR 500 to EUR 50 000.

A trader referred to in Article L. 225-18 who fails to provide the security required under Article L. 225-15 and Article L. 225-17 or who does not meet the reporting conditions in the same articles shall be liable for a fine of EUR 500 to EUR 75 000. A trader who provides incomplete or false information will face similar penalties.

'2. In Article L. 122-8 of the Consumer Code, a new paragraph 3 is inserted, which reads as follows:'

(3) A trader who, through the design or the presentation of the communication, gives the impression that the consumer has won a lottery prize shall provide that prize to the consumer.

'3. Under Article L. 320-7(1) of the Consumer Code, the reference to articles 'L. 225-1 to L. 225-20' is replaced by a reference to articles 'L. 225-1 to L. 225-21'.

Article II.

The amended law of 2 September 2011 governing access to occupations in craft trades, business and industry, and to certain liberal professions, is amended as follows:

'1. After Article 4, Article 4a is inserted as follows:

Article 4a.

The manager of an undertaking whose main or secondary activity is to organise package travel within the meaning of Article L. 225-2(7) or offer related travel services within the meaning of Article L. 225-2(5) of the Consumer Code shall ensure that the undertaking has available at all times the security referred to in Article L. 225-15 and Article L. 225-17 of the Consumer Code.

'2. Article 6(4) is supplemented by a letter (f), which reads as follows:

f) any breach of the obligation under Article 4a.'

Article III.

This Law shall enter into force on 1 July 2018.

We require and instruct that this Law be inserted in the Official Gazette of the Grand-Duchy of Luxembourg so that it may be implemented and observed by all those concerned.

The Minister for the Economy,
Étienne Schneider

Palais de Luxembourg, 25 April 2018.
Henri

(Parliamentary document No 7136; ordinary session, 2016-2017 and 2017-2018. Directive 2015/2302/EU.)

