

# FIT FOR FUTURE Platform Opinion

<b>Topic title</b>	Directive on package travel and linked travel arrangements
	<a href="#">2021 AWP</a>
	<a href="#">Directive (EU) 2015/2302</a>
	<i>Legal reference</i>
<b>Date of adoption</b>	22 March 2022
<b>Opinion reference</b>	2021/SBGR3/15
<b>Policy cycle reference</b>	<input type="checkbox"/> Contribution to (ongoing) legislative process  <i>Commission work programme reference:</i>  <input type="checkbox"/> Contribution to the (ongoing) evaluation process  <i>Title of the ongoing evaluation:</i>  <i>Please specify</i>  <input type="checkbox"/> Included in Annex VI of the Task force for subsidiarity and proportionality  <i>Please specify</i>  <input type="checkbox"/> Other  <i>Please specify</i>
<b>Have your say: Simplify!</b>	<i>No relevant suggestions on this topic were received from the public.</i>
<b>Commission follow up</b>	REFIT Scoreboard: <a href="#">Package travel</a> Have your say portal: <a href="#">Package travel – review of EU rules</a> Annual Burden Survey: <a href="#">The EU's efforts to simplify legislation</a>

## SUGGESTIONS SUMMARY

**Suggestion 1:** Better information on the identity of the contractual partners and on contact details and better enforcement of rules

**Suggestion 2:** Clarification of scope and simplification of the definitions of package and Linked Travel Arrangement

**Suggestion 3:** Clarification of pre-contractual information requirements (Art 5)

**Suggestion 4:** Clarification of uncertainties regarding insolvency protection

**Suggestion 5:** Clarification 'other tourist services'

## SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

Directive (EU) 2015/2302 on package travel and linked travel arrangements ('the PTD') was adopted on 25 November 2015. It replaced [Council Directive 90/314/EEC](#) on package travel, package holidays and package tours. The Member States had to transpose the Package Travel Directive by 1 January 2018.

The PTD builds on the key features of the 1990 Directive, including information requirements, provisions on contract changes and liabilities, as well as the protection of consumers in case of the organiser's insolvency. The PTD significantly extends the level of consumer protection, taking into consideration new online booking models for combinations of travel services. Under the PTD, the organiser of a package is responsible for the performance of all services forming part of the package, irrespective of whether those services are to be performed by the organiser – including traditional tour operators, online or off-line travel agencies, airlines and hotels - itself or by other service providers.

The main elements of the PTD are:

- wide definition of 'package';
- introduction of the concept of Linked Travel Arrangement (LTA), which is a looser combination of two or more travel services for the same trip or holiday than a package;
- enhanced information requirements;
- security for refunds and the repatriation of travellers in case organisers go bankrupt;
- strict rules on liability;
- stronger cancellation rights;
- assistance to travellers.

## Further sources of information

[Legislation framework webpage](#)

[Factsheet](#)

[REFIT Scoreboard](#)

[Package Travel Directive Click-Through Report \(COM/2019/270\) + Annex](#)

[Report from the Commission](#) on the application of Directive (EU) 2015/2302, (COM/2021/90)

## PROBLEM DESCRIPTION

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*Existing evidence suggests the following issues:*

In 2017, packages represented around 9% of all tourism trips of EU27 residents and had a share of around 21% of the total tourism expenditure<sup>1</sup>. According to a [Market Monitoring Survey](#) on packaged holidays and tours, in 2020, 81% of EU27 consumers trusted providers of package holidays or tours (or just ‘packages’). This figure varies to some extent by Member State, from a high of 90% (in Croatia and Portugal) to a low of 60% (in Poland). A large majority (91%) report positive experiences, with few notable differences between countries or sociodemographic subgroups. 11% of consumers experienced problems with the services they purchased, or with operators, which 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. Of all those who experienced problems, the majority (62%) filed a complaint. Just over half (54%) reported being satisfied with the outcome of the complaint, while 42% reported being dissatisfied.

A conformity assessment study of the national transposition measures conducted by an external contractor was finalised at the beginning of 2021. According to that study, there may be, to various degrees, potential non-conformity issues in all Member States, e.g. as regards 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 problems identified do not show a general trend, except for the fact that the proper transposition of the provisions on insolvency protection, notably its effectiveness, may not be fully guaranteed in many Member States.

Since the application of the Directive in July 2018, different issues have been raised, including regarding ‘click-through’ bookings and ‘linked travel arrangements’. When the traveller books different travel services from different websites (different points of sale), but the bookings are related through links provided from website to website, this is considered a ‘click-through’ booking. However, depending on the characteristics of such bookings, they can either lead to the creation of a package with full protection, a linked travel arrangement with limited protection or stand-alone services, not covered by the Directive. According to the first report on the PTD published on 21 June 2019, ‘click-through packages’ within the meaning of the specific definition in Article 3(2)(b)(v) of the Directive, are rarely offered, if at all, by those business operators which contributed to the consultation carried out in the context of the report. However, nothing could be concluded on the practices of airlines and large travel booking platforms. The report outlines that further assessment of business practices, in particular of airlines and large travel booking platforms, in relation to click-through bookings, are therefore necessary. According to the report, stakeholders and authorities raised the need to continue to work on the effective and uniform application of the new rules of the Directive, including guidance to ensure unified implementation. In relation to linked travel arrangements, stakeholders pointed to, inter alia, the lack of clarity regarding the meaning of “facilitation in a targeted manner” and the criteria for determining whether a second trader has concluded a contract with a traveller within 24 hours after the first contract. Furthermore, the distinction between packages and linked travel arrangements seemed to remain challenging for all travel operators, including hotels. Finally, stakeholders considered that consumers need to be better aware of the extended protection brought by the PTD.

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<sup>1</sup> All tourism trips in 2017: around 1.1 billion; total expenditure during those trips was around 444 billion EUR; 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];

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The Report from the Commission on the application of Directive (EU) 2015/2302 (COM/2021/90) adopted on 26 February 2021, mentions challenges concerning the broad scope of the definition of a package, the interpretation and implementation of the concept of 'linked travel arrangements, information requirements, and the effectiveness of the insolvency protection systems. The report also presents the challenges which emerged in the context of the COVID-19 pandemic, namely: the respect of travellers' right to reimbursement, including aspects related to vouchers; difficulties for businesses in respecting the PTD requirements; the legal value of official travel warnings or advice; difficulties to ensure insolvency protection, including because risks related to pandemics are often excluded from insurance policies.

(Source: [Package Travel Directive Click-Through Report](#) (COM/2019/270) + [Report from the Commission](#) on the application of Directive (EU) 2015/2302, (COM/2021/90)), Fit for Future Platform)

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## SUGGESTIONS

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### **Suggestion 1: Better information on the identity of the contractual partners and on contact details and better enforcement of rules**

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**Description:** In light of the COVID-19 crisis, it became clear that there is a notable lack of transparency regarding the role of different parties. When signing a contract, it has been reported that travellers are not always fully aware about who are the organiser, retailer and service provider in relation to a package. This problem even increases when the involved travel companies are similar in name or make part of larger travel agencies with often non-transparent corporate structures. Consumers risk being confused and sent back and forth between the companies, especially with regard to refunds for cancelled trips. These problems have been identified despite the fact that in the mandatory standard information forms in Annex I to the PTD referred in Article 5(1) PTD, the party responsible for the performance of the package (i.e. the organiser) has to be identified, and that the contact details of the organiser and retailer, where applicable, have to be provided (Article 5(1)(b)). Furthermore, according to Article 7(2)(b), the contract has to specify that the organiser is responsible for the proper performance of the package, and, according to Article 12(4) PTD, the organiser is responsible for refunds. As the current provisions may have been insufficient in practice, the Commission could assess the pre-contractual information obligations in regards to the following issues, which should however not translate into unnecessary burden for travel companies:

- ▶ informing travellers on the name and the role (organiser/service provider/retailer) of all companies with which or through which the traveller is about to conclude a contract or which carry out the relevant services, before a booking is made in a clear and prominent manner. In this way, all parties would be clearly visible;
- ▶ information obligations about the identity and the role of the involved travel companies in a clear and correct manner, in particular the identity of retailer and organiser and the respective responsibility for the performance of the package;
- ▶ in addition to providing a telephone number (Article 5(1)(b)), organisers and, where the case, retailers should *always* provide an email address. Furthermore, where the trader provides other means of online communication which guarantee that the consumer can keep any written correspondence, including the date and time of such correspondence, with the trader on a

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durable medium, the information should also include details of those other means; all those means of communication provided by the trader should enable the consumer to contact the trader quickly and communicate with him efficiently. Similar provisions were inserted in Article 6(1) of the Consumer Rights Directive 2011/83/EU by the Directive (EU) 2019/2161 on better enforcement and modernisation of Union consumer protection rules.

**Expected benefits:** Increased clarity for travellers and better enforcement of the Directive.

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**Suggestion 2: Clarification of scope and simplification of the definitions of package and Linked Travel Arrangement**

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**Description:** Currently, the Directive raises some clarity issues.

First, the definition of LTAs is complex and not easily understandable for all stakeholders. Furthermore, this definition falls short and allows for abuse to consumers' detriment. As a result, as highlighted by the report on the application of the Directive, it is very difficult, if not impossible, for consumers and enforcement authorities to prove whether a package or an LTA was concluded.

Depending on the nature of the booking, the same travel services booked might warrant vastly different legal requirements, depending on whether they were booked as stand-alone travel services, LTAs or packages, which should not lead to confusion of travellers. Further coherence with Regulation 261/2004 could be analysed, including by taking into account the protection of travellers, for example their cancellations rights (Article 12(2) PTD).

Therefore, a simplification and clarification of several concepts should be made in the event of a review of the Directive or in case that the Commission would adopt Guidelines on the implementation of Directive (EU) 2015/2302.

Second, the differentiation between LTA and packages has led to difficulties. In case of LTA contracts, the Directive merely prescribes provisions relating to the pre-contractual information to be given to consumers and insolvency protection provisions. However, contractual obligations resulting from LTA contracts are currently not defined in the text. This lack of prescription of a liability regime for the performance of LTA contracts under the PTD has led some companies to create or adapt their business models based on LTAs, when in reality they are selling packages. This is done to avoid the stricter liability regime applicable to package travel organisers to consumers' detriment.

Since the Directive is in force, there are indications that some traders have been using the definitions of package and Linked Travel Arrangement (LTA) to bypass the PTD requirements for organisers. Many entities operating in the so-called "grey area" have emerged.

The Commission should analyse definitions and could consider the following potential solutions and aspects:

- a) The definition of package is sufficient and reflects the realities of the market; however, albeit considering that consumers need to benefit from the same high level of protection regardless of the size of the operator, an assessment of its impact on SMEs activities is suitable in the context of the evaluation in particular to assess whether or not and how SMEs comply with the requirements and at what costs;

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- b) The definition of LTA: in some Member States' experience, few entities register as LTA only<sup>2</sup>. Assessing the definition of LTA should be therefore considered based on the experiences of other Member States, but without reducing the current level of consumer protection. A change in the definition of LTA must not, however, lead to a liability regime comparable with packages.
- c) The equal access between online and offline traders to LTA sales should also be assessed.

**Expected benefits:** more legal clarity for travellers, entrepreneurs and authorities. A higher degree of legal certainty and a reduction in legal costs would be achieved by clarifying the scope of the Directive. Consumers will be more able to understand whether they have entered a package holiday contract or an LTA, and to be able to understand the extent of traders' obligations, and the exact scope of the protection they should benefit from. An evaluation from the Commission of the effects on businesses, in particular SMEs, could help the companies to understand the full range of implications. A review of chapter VI on other obligations resulting from LTA contracts will avoid the practices aiming to circumvent the more protective regime of package travel contracts and increase - or guarantee – the appropriate level of protection the consumers are entitled to.

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### **Suggestion 3: Clarification of pre-contractual information requirements (Art 5)**

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**Description:** Pre-contractual information requirements should be clarified where needed, maybe via guidance, and bureaucratic burdens need to be alleviated without, however, reducing the level of consumers' protection.

In the case of linked travel arrangements, the selection of the right standard information form is complex given the number of options available. Furthermore, they are considered "technical" and difficult to read, especially on mobile devices.

Such simplification and clarification of several concepts should be made in the event of a review of the Directive or should the Commission consider adopting Guidelines on the implementation of Directive (EU) 2015/2302. In any case, changes should not translate into additional information requirements, which could lead to unnecessary administrative burden on travel companies and could even jeopardise the goal of achieving more clarity and certainty for consumers. The Commission should consider the manner by which specific information requirements could be made easier to handle in practice for consumers and companies (Article 5).

**Expected benefits:** Reduction of bureaucratic burden and more clarity and certainty for consumers.

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### **Suggestion 4: Clarification of uncertainties regarding insolvency protection**

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**Description:** This notably includes further precision on the scope of insolvency protection. Lack of clarity on this point turned out to be particularly relevant in a crisis such as the COVID- pandemic, as

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<sup>2</sup> E.g. in Poland's experience, few entities register as LTA only - **around 0.58%** of all entities entered into the [Central Register of Tourism Organizers and Entrepreneurs Facilitating the Purchase of Related Tourist](#). The statistics are as follows: in 2021 out of 4316 entries: 3,518 were tour operators (IT providers), i.e. 81.42%; 777 were entrepreneurs who are also tourism organizers and entrepreneurs facilitating the acquisition of LTA - 18%; 25 entrepreneurs were facilitating the acquisition of LTA - 0.58%  
Source. Table no. 6 Statistics of tourist entrepreneurs by voivodeships and type of activity, broken down by years; <https://ewidencja.ugf.pl/ewidencja/obywatel/statystyki>

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package travel contracts were cancelled on a large scale.

Further uncertainties include for example insolvency protection in case of re-bookings, respectively of vouchers and a possible difference between a voucher for a package as opposed to a voucher just stating an amount of money.

**Expected benefits:** Legal clarity.

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#### **Suggestion 5: Clarification 'other tourist services'**

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**Description:** By means of the PTD, the legislator has identified four categories of travel services: passenger transport, accommodation, car rental etc. and other tourist services that are not intrinsically part of one of the other categories of travel services. The legislator has not given a further definition of 'touristic', but has included a non-exhaustive list of examples of other tourist services, such as: tickets for concerts, sports events, excursions or event parks, guided tours, ski passes and rental of sports equipment or wellness treatments.

In practice, there is a lot of uncertainty when it comes to defining a particular service as "other tourist service". This particularly applies to single travel service providers who offer *another tourist service* and become therefore organisers within the meaning of the PTD, without being aware. The term of "other tourist services" should be clarified, and the Commission should assess best manner to achieve this, for example if appropriate to achieve this through guidance or legal provisions.

**Expected benefits:** Improved legal certainty for the benefit of consumers and companies.

## ABSTENTIONS

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- 1 Member State