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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESMENT

Accompanying the document

on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU and repealing Council Directive 90/314/EEC

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Contents

| | | |
|----------------------|---|----|
| <u>1.</u> | <u>INTRODUCTION</u> | 2 |
| <u>1.1.</u> | <u>Policy context</u> | 2 |
| <u>1.2.</u> | <u>Organisation and timing</u> | 2 |
| <u>1.3.</u> | <u>Different categories of travel products- definitions</u> | 3 |
| <u>1.3.1.</u> | <u>Consultation and expertise</u> | 4 |
| <u>1.4.</u> | <u>Consultation of the Impact Assessment Board</u> | 6 |
| <u>1.5.</u> | <u>Specific characteristics of the package travel and the legal framework in place</u> | 6 |
| <u>2.</u> | <u>PROBLEM DEFINITION</u> | 8 |
| <u>2.1.</u> | <u>Context of the problem definition- changes in the travel market</u> | 8 |
| <u>2.1.1.</u> | <u>The EU travel market</u> | 8 |
| <u>2.2.</u> | <u>The travel market has outgrown the existing legislation – an introduction to the problems in the existing package travel market</u> | 10 |
| <u>2.3.</u> | <u>Key problems faced by businesses</u> | 11 |
| <u>2.3.1.</u> | <u>Absence of a level playing field</u> | 11 |
| <u>2.3.2.</u> | <u>Unnecessary/unjustified compliance costs</u> | 12 |
| <u>2.3.3.</u> | <u>Legal discrepancies between the Member States leading to additional costs and obstacles to cross-border trade</u> | 14 |
| <u>2.4.</u> | <u>Key problems faced by consumers</u> | 17 |
| <u>2.4.1.</u> | <u>Consumer detriment suffered by users of combined travel arrangements</u> | 17 |
| <u>2.4.2.</u> | <u>Specific problems of consumers detriment stemming from unclear and outdated rules</u> | 18 |
| <u>2.5.</u> | <u>Baseline scenario</u> | 20 |
| <u>2.6.</u> | <u>Does the Union have the right to act?</u> | 20 |
| <u>3.</u> | <u>POLICY OBJECTIVES</u> | 21 |
| <u>4.</u> | <u>POLICY OPTIONS</u> | 22 |
| <u>4.1.</u> | <u>Identified policy options</u> | 22 |
| <u>4.2.</u> | <u>Discarded policy options</u> | 26 |
| <u>4.2.1.</u> | <u>Option 8 “Travel Directive”</u> | 26 |
| <u>5.</u> | <u>ASSESSMENT OF IMPACTS</u> | 27 |
| <u>5.1.</u> | <u>Assessment of Option 2 - Guidelines and Better Enforcement of Existing Legislation (PO2)</u> | 27 |

| | | |
|---|--|----|
| <u>5.2.</u> | <u>Assessment of Option 3 – Introduction of a "Package Travel Label" (PO3A) and/ or "This is not a package" disclaimer (PO3 B)- add-on option to other policy options</u> | 28 |
| <u>5.2.1.</u> | <u>Sub-option A: Package Travel Label</u> | 28 |
| <u>5.2.2.</u> | <u>Sub-option B: "This is not a package" disclaimer</u> | 29 |
| <u>5.3.</u> | <u>Assessment of Option 4 – Repeal of the Directive</u> | 30 |
| <u>5.4.</u> | <u>Assessment of Option 5 – Modernisation of the Directive and coverage of "one trader" packages (PO5)</u> | 32 |
| <u>5.5</u> | <u>Assessment of Option 6 - Graduated approach- modernisation of the Directive and coverage of both "one trader" and "multi trader" packages while applying a lighter regime to "multi-trader" assisted travel arrangements (PO6)</u> | 38 |
| <u>5.6.</u> | <u>Assessment of Option 7 - Modernisation of the Directive and coverage of both "one trader" packages and "multi-trader" travel arrangements (PO7)</u> | 41 |
| <u>6.</u> | <u>COMPARATIVE ASSESSMENT OF POLICY OPTIONS</u> | 42 |
| <u>6.1</u> | <u>Preferred Policy option</u> | 46 |
| <u>7. MONITORING AND EVALUATION</u> | | 46 |
| <u>ANNEX 1</u> | | 48 |
| <u>THE MAIN REQUIREMENTS OF THE PACKAGE TRAVEL DIRECTIVE</u> | | 48 |
| <u>1.</u> | <u>Information requirements</u> | 48 |
| <u>2.</u> | <u>Binding prices</u> | 50 |
| <u>3.</u> | <u>Right to transfer the package</u> | 50 |
| <u>4.</u> | <u>Cancellation or change of contract terms</u> | 50 |
| <u>5.</u> | <u>The organiser's responsibility and complaint handling</u> | 50 |
| <u>6.</u> | <u>Insolvency protection</u> | 51 |
| <u>ANNEX 2</u> | | 52 |
| <u>1.</u> | <u>Problem definition-data tables and graphs</u> | 52 |
| <u>2.</u> | <u>Estimation of the travel market segments</u> | 59 |
| | <i><u>Estimation of the pre-arranged packages segment</u></i> | 60 |
| | <i><u>Estimation of the combined travel arrangements segment</u></i> | 61 |
| | <i><u>Estimation of the market segments</u></i> | 61 |
| | <i><u>Estimation of the total volume of the market</u></i> | 62 |
| | <i><u>Business trips</u></i> | 62 |

| | | |
|--------------------|--|----|
| <u>3.</u> | <u>Overview of applicable legislation and rights</u> | 64 |
| <u>4.</u> | <u>Gaps in the current legal framework for packages</u> | 65 |
| | <u>ANNEX 3</u> | 67 |
| | <u>SCOPE AND DEFINITIONS</u> | 67 |
| <u>1.1.</u> | <u>Definition of "package"</u> | 67 |
| <u>1.2.</u> | <u>Definition of "consumer"</u> | 70 |
| <u>1.3.</u> | <u>Definitions of "retailer" and "organiser"</u> | 71 |
| | <u>INFORMATION REQUIREMENTS</u> | 71 |
| | <u>Requirements for the brochure</u> | 71 |
| | <u>How to provide the required information</u> | 72 |
| | <u>Last minute bookings</u> | 72 |
| | <u>Lack of sanctions for non-compliance with the information requirements</u> | 72 |
| | <u>CONTRACT CHANGES BEFORE THE DEPARTURE</u> | 73 |
| | <u>Price revisions</u> | 73 |
| | <u>Significant alterations of essential terms before departure</u> | 73 |
| | <u>Significant price alterations</u> | 74 |
| | <u>Cancellations of the contract before departure</u> | 74 |
| | <u>Cancellations before departure on the ground that there are too few participants</u> | 75 |
| | <u>Cancellations before departure due to force majeure</u> | 75 |
| | <u>Transfer of the package before departure</u> | 76 |
| | <u>ALTERATIONS OF THE CONTRACT AFTER DEPARTURE</u> | 76 |
| | <u>Cancellations after departure due to force majeure</u> | 76 |
| | <u>Interplay with the APR Regulation</u> | 77 |
| | <u>PROBLEMS RELATED TO PERFORMANCE, LIABILITY AND OBLIGATION OF THE</u> <u>PROFESSIONAL PARTIES</u> | 78 |
| | <u>Who is the responsible party?</u> | 78 |
| | <u>Compensation for damages</u> | 78 |
| | <u>Type of liability</u> | 79 |
| | <u>Conditions for liability</u> | 79 |
| | <u>NOTIFICATIONS</u> | 79 |

| | |
|--|-----|
| <u>TIMING OF REPAYMENT</u> | 80 |
| <u>INSOLVENCY PROTECTION</u> | 80 |
| <u>PRESCRIPTION PERIODS</u> | 81 |
| <u>ANNEX 4</u> | 82 |
| <u>1. Introduction</u> | 82 |
| <u>2. Proposed legislative measures in option 5 - Modernisation of the Directive and coverage of "one trader" packages (PO5)</u> | 82 |
| <u>2.2.1. Including other (modern) channels of marketing communication</u> | 85 |
| <u>2.4.2. Liability for the proper performance of the contract</u> | 90 |
| <u>2.4.3. Responsibility for providing prompt assistance if the consumer is in difficulty (for other reasons than the organiser's improper performance)</u> | 91 |
| <u>2.4.5. Obligation to provide alternative arrangements</u> | 92 |
| <u>2.4.6. Insolvency protection</u> | 93 |
| <u>3. Proposed legislative measures in option 6 - Graduated approach- modernisation of the Directive and coverage of both "one trader" and "multi trader" packages while applying a lighter regime to "multi-trader" assisted travel arrangements (PO6)</u> | 95 |
| <u>4. Proposed legislative measures in option 7 – Modernisation of the Directive and full coverage of both "one trader" packages and "multi-trader" travel arrangements (PO7)</u> | 97 |
| <u>ANNEX 5</u> | 98 |
| <u>Detailed assessment of policy options</u> | 98 |
| <i><u>2.1.2. Compliance costs for businesses</u></i> | 107 |
| <i><u>2.1.3. Administrative costs for businesses</u></i> | 108 |
| <i><u>2.1.4. Impact on SMEs</u></i> | 108 |
| <i><u>2.1.5. Impact on consumers and households</u></i> | 108 |
| <i><u>2.1.6. Impact on public authorities</u></i> | 108 |
| <i><u>3.1.4. Impact on consumers</u></i> | 110 |
| <u>ANNEX 6</u> | 153 |
| <u>ANNEX7</u> | 158 |

1. INTRODUCTION

1.1. Policy context

The travel market plays a central role in the European economy of today. It significantly contributes to prosperity and growth within the single market. Travel and tourism represent 7.8% of the EU GDP, supporting 18 million jobs, and their contribution into it is expected to increase to 8.1% by 2021.¹ The European Union remains the world's No 1 tourist destination, with 384.8 million international arrivals in 2011.²

A key task for the European Union is to create a modern legal framework that offers the best possible conditions for the travel market to grow further, for the benefit of both businesses and 500 million consumers in Europe. This regulatory framework must provide sufficient protection for consumers so that they can confidently buy their holidays anywhere in the Union. At the same time, a level playing field for travel businesses must be ensured to increase competition in the market. The adoption of the Package Travel Directive (PTD)³ in 1990 made a significant contribution to the development of a single market for an important part of the travel market, and created important guarantees for European travellers.

The PTD applies to pre-arranged packages, typically consisting of transport and accommodation (and/or other significant tourism services) sold together:⁴ Nowadays, an increasing number of consumers, in addition to buying pre-arranged packages at their travel agent's, put together their trips themselves according to their own needs based however on specific offers coming from one or more, commercially linked, traders. The applicability of the Directive to all these new travel products has become uncertain; in particular to those products sold on-line, while some are clearly not covered by the current scope of the Directive.

A modernisation of the PTD has repeatedly been asked for by the industry as well as consumer organisations. The revision of the PTD is also explicitly envisaged in the European Consumer Agenda⁵ and is mentioned in Annex II to the Single Market Act II.⁶

1.2. Organisation and timing

¹ World Travel & Tourism Council, Travel and tourism economic impact, 2011

² UNWTO World Tourism Barometer, September 2012. <http://media.unwto.org/en/press-release/2012-09-12/international-tourism-track-hit-one-billion-end-2012>

³ Council Directive 90/314/EEC of 13 June 1990 on package travel package holidays and package tours, OJ L 158, 23.6.1990.

⁴ See Annex 1 for the detailed description of the PTD main requirements.

⁵ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A European Consumer Agenda – Boosting confidence and growth, 22.5.2012, COM(2012) 225 final.

⁶ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Single Market Act II- Together for new growth, COM (2012)573 final.; ANNEX II: "Single Market Act I: Status of Actions"

Lead DG: DG JUST. DG JUST liaised with relevant services through the Impact Assessment Steering Group (IASG), which was first convened in June 2009 and met twice afterwards (March 2010 and July 2012): The following services participated in the group: DG ENTR, DG MARKT, DG SANCO, DG CNECT, DG MOVE, DG TRADE, DG BUDG, the SG and the SJ. The legislative proposal is included in the 2012 Agenda Planning and Commission Work Programme (CWP), with reference 2010/JUST/273.

1.3. Different categories of travel products- definitions

Independent travel arrangements - a travel service, such as a flight, accommodation or car rental that is purchased as a stand-alone product, i.e. purchased separately and not offered in combination with other tourist services, even if the traveller uses several travel services for the same trip or holiday.

Pre-arranged package - a combination of travel services bundled in advance by an organiser and consisting of at least two of the following services: (1) carriage of passengers, (2) accommodation and (3) other tourist services not ancillary to passenger transport or accommodation and accounting for a significant proportion of the package (e.g. car rental).

Combined travel arrangements⁷ - combinations of travel services where at least two of the above mentioned services, such as flights, hotel stays or car rental, are purchased for a single trip or holiday either from the same supplier or from suppliers that use assisted booking processes and where the buyer can put together the relevant travel services according to his preferences (tailor-made). Combined travel arrangements are, contrary to pre-arranged packages, dynamic by nature and can be divided into two main sub-categories:

"One-trader packages": Consumers can customise the content of the trip or holiday according to their needs on one website or at one high street travel agent, while being free throughout the booking process to choose separate travel components. These travel arrangements are put together by one trader (including at the request of the traveller) and are offered or sold in a manner that is typical for packages, e.g.:

offered, sold, or charged at an inclusive price,

sold within the same booking process,

covered by one contract, or

advertised or sold under the term "package" or under a similar term;

"Multi-trader" travel arrangements:

"Multi-trader packages": the difference between a "multi-trader package" and a "one-trader package" is that a "multi-trader package" is put together by

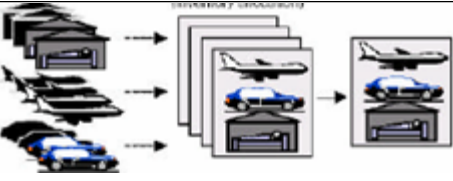
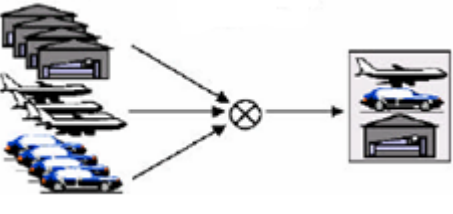
⁷ Combined travel arrangements are often referred to by the industry as dynamic packages. The term combined travel arrangements is therefore a synonym to dynamic packages and will be used interchangeably throughout the document in particular when referring to the results of Study on Consumer Detriment in the area of Dynamic Packages.

several traders and the arrangement has **at least one of the characteristics that are typical for packages**, as indicated above under "one-trader packages", or when the traveller's name or particulars needed to conclude a booking transaction are transferred between the traders at the latest when the booking of the first service is confirmed;

"Multi-trader assisted travel arrangements": are 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 (see above) are present.**

See also annex 8 for a glossary of abbreviations used in the text.

Figure 1 Distinction between combined travel arrangements and pre-arranged packages

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|  | <p>Pre-arranged packages:</p> <p>Pre-packaged arrangements by tour operators</p> <p>Little flexibility as to the dates and prices; multiple choices but limited customisation ability</p> |
|  | <p>Combined travel arrangements:</p> <p>Packaging is done by the customer in real-time on basis of available components;</p> <p>Enhanced customisation ability of the customer;</p> <p>Real-time availability and real-time booking;</p> |

Source: E-Business Watch, ICT and e-Business in the Tourism Industry, Sector Report No .8/2006

1.3.1. Consultation and expertise

In the first public consultation in 2008, the Commission received more than 80 contributions to its 2007 working document from all relevant parties (business stakeholders, consumer organisations, lawyers, academics and 14 MS). In January 2009, it launched the "Consumer Detriment⁸ Study in the area of Dynamic Packages" (Consumer Detriment Study). The study covered 17 EU countries and was based on interviews with a sample of 500 consumers. Against this background, the Commission initiated the formal impact assessment process in June 2009. The consultation dialogue and evidence gathering was carried out with the assistance of an external contractor, the Risk & Policy Analysts (RPA) in consortium with London Economics and You Gov.

In October 2009, a second public consultation was published, consisting of five on-line questionnaires targeted at different stakeholders (consumers, consumer organisations, businesses, industry associations and MS authorities). The Commission received 161

⁸ Consumer detriment is defined as negative outcomes for individual consumers, relative to some benchmark such as reasonable expectations. It focuses on ex post outcomes for those consumers who have a negative experience. It may comprise both financial and non-financial detriment, with the latter including loss of time. More information about the methodology for assessing the consumer detriment can be found at: http://ec.europa.eu/consumers/strategy/docs/study_consumer_detriment.pdf.

contributions from a wide range of respondents. 89% of MS authorities, 70% of business associations, 64% of businesses and 96% of consumer organisations supported a revision of the Directive.⁹

A full-day Member States' workshop was organised on 27 October 2009 to discuss problems and policy options. 16 Member States and one EEA State attended it¹⁰.

The Commission also set up a subgroup within the framework of the European Consumer Consultative Group (ECCG) comprising representatives of consumer organisations. It adopted its opinion on 21 April 2010¹¹.

A one-day stakeholders' workshop was organised on 22 April 2010 to discuss the impacts of the identified policy options. Almost 100 stakeholders took part in it¹².

More than 15 interviews with key industry representatives were conducted from September 2009 to October 2010.

In March 2012 the Commission outsourced to an external contractor, TNS European Behaviour Studies Consortium, a study to test a Package Travel Label and consumer behaviour when purchasing dynamic packages. The results of this study contribute to the assessment of policy option 3.

In June 2012 the Commission organised a workshop for Member States and a stakeholders' conference to further discuss the revision process and the main pending issues, as well as to present the results of the behavioural study¹³.

It can be concluded that stakeholders (including Member States authorities):

- are in favour of clarifying and updating the Directive to address new market developments;
- are mostly in favour of extending the scope of the Directive to cover combined packages as well as streamlining and modernising the information requirements;
- are divided as to which party should be liable for the proper performance of the contract and for assisting a consumer in difficulty;
- are strongly against setting up a pan-European insolvency fund and support instead flexibility for Member States to decide what kind of insolvency scheme they set up, as long as there is mutual recognition of the different schemes across the EU;
- are also divided on the idea of introducing a Package Travel Label. Some consumer organisations and businesses originally strongly supported it, provided there are strict and clear rules for its use. On the other hand, some consumer organisations argued that

⁹ The Commission Working Document, summary of responses and individual stakeholders contributions are published on the following website: http://ec.europa.eu/consumers/rights/travel_en.htm.

¹⁰ The Summary of the Workshop is published on the following website: http://ec.europa.eu/consumers/rights/docs/sum_report_27102009_en.pdf.

¹¹ The ECCG opinion on the revision of the PTD is published on the following website: http://ec.europa.eu/consumers/empowerment/eccg_en.htm.

¹² Due to the ash cloud, only 50 stakeholders participated physically in the workshop. The rest could follow the workshop via web-streaming. The recordings of the workshop are published on the following website http://ec.europa.eu/consumers/rights/travel_en.htm

¹³ Web-streaming of the stakeholder's conference is available at: <http://scic.ec.europa.eu/streaming/index.php?es=2&sessionno=6a4d5952d4c018a1c1af9fa590a10dda>

more labels might confuse consumers. After seeing the results of the study (see assessment of policy option 3), most stakeholders have shown scepticism. Furthermore, the vast majority¹⁴ stated that it is important to further harmonise EU rules on the scope, definitions, information requirements, liabilities of the professional parties and contract changes. Furthermore, the revision has also been requested from or been supported by the co-legislators and the EESC.¹⁵

1.4. Consultation of the Impact Assessment Board

The IA report was examined by the Commission's Impact Assessment Board (IAB) on 21st November 2012. The IAB evaluated the IA report positively and considered the assessment to be thorough. The IAB recommended several aspects to be improved, in particular by providing a more complete overview of Member States' legal framework, simplifying presentation of options, improving coherence of options and specific objectives as well as including more stakeholders' views. All these recommendations have been addressed. For instance, the existing legal framework was presented in more detail in this report and Annex 2, presentation of options was simplified and only the assessment of retained sub-options was kept in the main report, specific objectives were reformulated to make them more measurable, more stakeholders views were added to the main report and the annexes.

1.5. Specific characteristics of the package travel and the legal framework in place

Travel services are to some extent regulated at EU level in sector-specific legislation e.g. in the transport sector, where different regulations safeguard passengers rights¹⁶ depending on the mode of transport (e.g. travel by ship, bus, rail or air). Travel services are also covered by horizontal EU consumer protection legislation such as the Unfair Contract Terms Directive¹⁷, the Unfair Commercial Practices Directive¹⁸ and the Consumer Rights Directive¹⁹, as well as the contract law of the Member States.²⁰ Travel services also fall within the scope of the Services Directive²¹ and, when provided online, of the E-Commerce Directive²².

¹⁴ Based on the results of the 2009 public consultation, 89% of MS' authorities, 74% of industry associations and 79% of companies were in favour of harmonising the rules concerning scope and definitions, 82% of MS' authorities and 88% of companies were in favour of harmonising the rules concerning information requirements, 89% of MS' authorities and 88% of companies were in favour of harmonising the rules concerning the liabilities.

¹⁵ E.g. Council conclusions on consumer Affairs on the 2255th Council meeting, European Parliament resolution of 16 January 2002 (2001/2136(INI)), ECCG opinion of 21 April 2010, Opinion of the European Economic and Social Committee of 11.05.2011 (Official Journal C 132)

¹⁶ Regulation (EC) No 261/2004 (air passenger rights), OJ L 46/1 of 17.02.04; Regulation (EC) No 1371/2007 on rail passengers' rights and obligations, OJ L 315/14 of 03.12.07; Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport, OJ L 55/1 of 28.02.11, to be applied from 1 March 2013; Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway, OJ L 334/1 of 17.12.2010, to be applied from 18 December 2012.

¹⁷ Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

¹⁸ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the Internal market.

¹⁹ Directive 2011/83/EU of 25 October 2011, whose rules shall be applied from June 2014.

²⁰ The table in Annex 2 gives an overview on traders' obligations and how different categories of travellers are protected by existing legislation and on how they will be protected under the proposal for a new package travel directive.

²¹ Directive 2006/123/EC on services in the internal market.

When purchasing travel products (e.g. accommodation, transport and car rental), consumers are protected against unfair, i.e. misleading or aggressive marketing practices. Traders must always display the full price of the product including any unavoidable charges such as local fees, taxes and handling fees. The advertising of travel products may not be misleading and may not, in particular, contain false information or omit important information to entice consumers to purchase a travel product they would not have bought otherwise.

For online purchases of travel products, sellers must give detailed information, including their contact details and a description of the main characteristics of the product. They cannot use pre-ticked boxes to induce consumers to buy additional services²³. Furthermore, contracts for travel products must not contain unfair terms. For example, the seller may not impose terms which the consumer had no real opportunity to read before signing the contract.

The passenger rights regulations lay down specific rights for travellers in relation to carriers with regard to transport services, but not in relation to the actual combination of different tourist services.

Although as summarised above, some horizontal consumer protection rules apply to package travel contracts as well, they do not regulate specific aspects associated with them, thus leaving important gaps for consumers. These gaps include specific information obligations, such as on the travel itinerary, the definition of liability in the event of problems in the performance of the included services and mandatory insolvency protection requirements.. A detailed overview of legislation and rights applicable to different travel services and a table showing legal gaps in the area of packages are included in Annex 2.

Package travel contracts normally represent a rather complex and atypical contractual relationship:

- the customer expects to be able to rely on one single interlocutor who guarantees the overall quality of the package;
- a package normally involves several service providers (separate sub-contractors providing different travel services, e.g. hotel accommodation, charter flights, car rental and excursions);
- the customer does not have a contract with the individual service providers and is often not even aware of the identity of all the involved service providers, who may be often based abroad and not share his/her language;
- a problem with one travel service has often consequences for other services included in the package;
- pre-payments are very common, thus exposing the customer to a financial risk;
- the packages often involve travelling considerable distances and travellers can be at risk of being stranded far away from their place of residence if the organiser goes bankrupt;

²² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

²³ As from June 2014 when Directive 2011/83/EU becomes applicable (see above).

- there is a commercial link between different service providers and the organiser of the package.

2. PROBLEM DEFINITION

The Package Travel Directive has worked well throughout the years creating its own market. However, with the increasing trend towards on-line travel purchases, its scope has become unclear and outdated. As a consequence, businesses across the Internal Market are no longer competing on an equal footing and are facing obstacles to expand their operation cross-border. Its outdated scope is a source of significant detriment for consumers who often purchase unprotected travels under the impression that they are protected. Other outdated and unclear provisions of the current Directive generate unnecessary costs for businesses and consumers.

2.1. Context of the problem definition- changes in the travel market

2.1.1. The EU travel market

The EU travel market comprises approximately 90,000 tour operators and travel agencies.²⁴ It is estimated that 80% of them sell packages (72,000 businesses).²⁵ SMEs constitute 99% of these businesses, of which micro enterprises represent 92%. In the EU there are also 200,000 hotels²⁶ (99% SMEs, 73% of which are micro enterprises), 13,000 car rentals²⁷ (99% SMEs, out of which 94% are micro enterprises), 300 airlines (50% large and 50% medium sized businesses) and 58,000 businesses operating in the transport sector other than airlines and car rentals (99% SMEs, about 90% micro enterprises).²⁸

2.1.2. Development of Internet distribution

Almost 70% of EU citizens use the Internet at least once a week. More than half of the Internet users are "regular users" surfing the Internet every day or almost every day. 73% of EU households had access to the internet in 2011, with the Netherlands posting the highest access rate (94%) and Bulgaria the lowest (45%)²⁹. Together with the growing number of Internet users, the travel market has significantly shifted on-line. Gross online travel bookings across Europe account for 35% of the total bookings in 2011, now measuring €83.6 billion compared to €238 billion for the entire (on- and off-line) market, having increased by 21% since 2006.³⁰ Travel services are the most popular category purchased on-line. Stand-alone air tickets account for more than 50% of the total online sales value of travel services, followed by stand-alone hotel bookings (19%) and packages (14%)³¹.

²⁴ Eurostat structural business statistics, see also Annex 7.

²⁵ According to ABTA estimates there are 45% retailers, 35% tour operators/retailers, 20% tour operators.

²⁶ Hotels, apartment hotels, motels, roadside inns, beach hotels, residential clubs, rooming and boarding houses, tourist residences and similar accommodation.

²⁷ See also Annex 5.

²⁸ Eurostat structural business statistics, last available data 2009. See also Annex 5 Section 6 and Annex 7 for extra details.

²⁹ Eurostat, Data in focus, 66/2011.

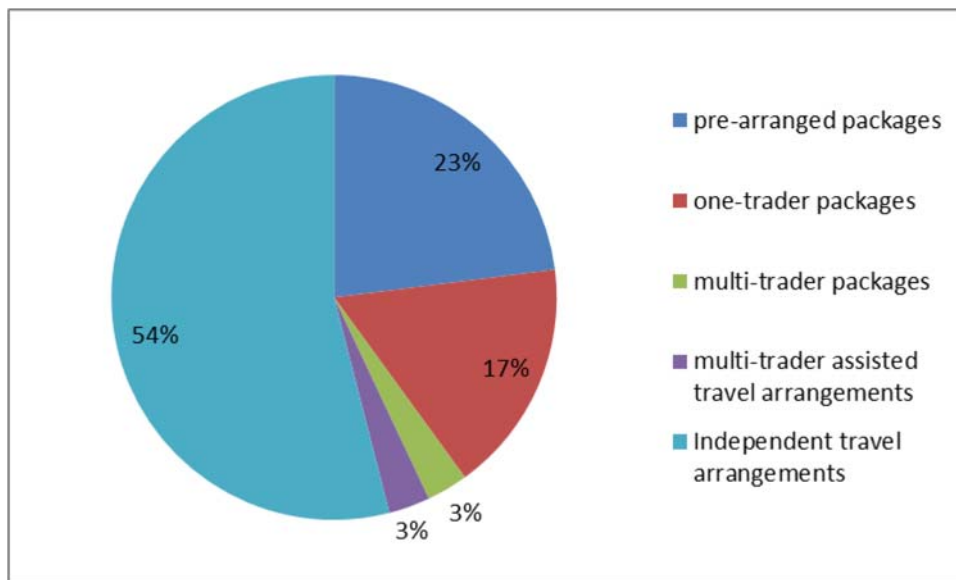
³⁰ <http://www.newmediatrendwatch.com/regional-overview/103-europe?start=2>, See also Annex 2

³¹ <http://www.crt.dk/uk/staff/chm/trends.htm>.

2.1.3. Different categories of trips

Estimates based on the Consumer Detriment Study and Eurostat (tourism database)³² indicate that, out of a total number of trips of about 580 million every year in the EU (excluding short domestic trips which are generally not purchased as a package), there are 500 million holidays and 80 million business trips. For holidays, pre-arranged packages currently account for about 23% of the total market volume (i.e. about 118 million trips), combined travel arrangements for another 23% (i.e. also about 118 million trips, of which 87 million are “one trader” packages and 31 million are "multi trader" travel arrangements (50% of which are "multi-trader" packages and 50% are "multi-trader" travel arrangements) and independent travel arrangements for 54% of the travel market volume (i.e. roughly 277 million trips).³³ Combined travel arrangements are on the rise³⁴: data shows that 23% of EU citizens buy them every year but the figures are substantially above average for Ireland (46%), Sweden (44%), Italy (36%) and Slovenia (42%)³⁵ (see also Annex 2 Figure 5).

Figure 2 Holiday travel market- different categories of holiday trips



Concerning business trips, 80%-85% (64-68 million) of trips are arranged by travel management companies (TMCs)³⁶. Taking into account the specificities of such trips, it is

³² <http://epp.eurostat.ec.europa.eu/portal/page/portal/tourism/data/database>.

³³ Estimates based on Eurostat tourism database, Study on Consumer Detriment in the area of Dynamic Packages, Flash Eurobarometer 258. These data have been recently confirmed by 2011 figures provided by European Travel Agents and Tour Operators Association (ECTAA); see Annex 2 for a detailed methodology of estimates.

³⁴ The Study on Consumer Detriment in the area of Dynamic Packages confirms that there is a positive correlation between the incidence of use of combined travel arrangements and the internet penetration. Together with the growing number of Internet users, the market is expected to shift towards combined travel arrangements. The data provided by business stakeholders (see figure 6, annex 2) show that the share of "protected" pre-arranged packages has been decreasing steadily.

³⁵ Study on Consumer Detriment in the area of Dynamic Packages, DG SANCO, London Economics, 2009.

³⁶ Based on information provided by the Guild of European Business Travel Agent (GEBTA)

considered that most business travellers do not use pre-arranged packages, but rather prefer more customised solutions, better tailor-made to the needs of their work-related journey³⁷. Therefore, out of the 80 million business trips carried out annually in the EU, it is assumed that around 24 million trips are combined travel arrangements (out of which 16 million are "one trader" packages organised by TMCs), while independent travel arrangements have been estimated at around 56 million trips (out of which 50 million trips are booked by TMCs).³⁸

Table 2 *Market of Business- different categories of business trips*

| Business trips Market segment | % share | Number of business trips (millions) | Number of business trips arranged by TMCs (millions) | Number of business trips NOT arranged by TMCs (millions) |
|------------------------------------|---------|-------------------------------------|--|--|
| "One-trader" packages | 22% | 18 | 16 | 2 |
| "Multi-trader" travel arrangements | 8% | 6 | 0 | 6 |
| Independent travel arrangements | 70% | 56 | 50 | 6 |
| TOTAL | 100% | 80 | 66 | |

2.2. The travel market has outgrown the existing legislation – an introduction to the problems in the existing package travel market

The main underlying drivers of the problems related to the Package Travel Directive are its outdated scope and the presence of outdated and unclear provisions.

2.2.1. The outdated and unclear scope of the Directive

The current Directive refers to "pre-arranged" combinations of travel services and does, therefore, not explicitly cover packages which are combined at the consumer's request. Still, in the Club Tour-Case³⁹, the Court of Justice of the European Union clarified that the combination of tourist services by a "bricks and mortar" travel agency at the specific request of the consumer falls within the scope of the Directive if the consumer pays an inclusive price and there is a contract between the consumer and a travel agent,. However, the practical impact of this ruling has led to litigation at national level, and failed to provide full clarity on

³⁷ The assumption taken forward is that business trips arranged by TMCs tend to fall in the category of "one-trader" packages or "multi-trader" linked travel arrangements or independent travel arrangements.

³⁸ It is reasonable to assume maintaining the same ratio as for holidays' trips among "one-trader" packages and "multi-trader" travel arrangements and independent travel arrangements. See estimates based on Eurostat in Annex 2.

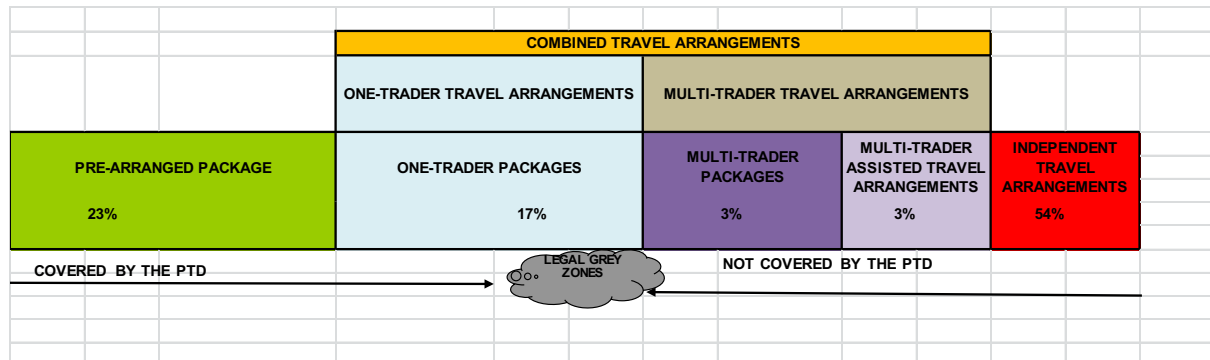
³⁹ Case C-400/00

the applicability of the package travel legislation. See Annex 3 for details how the term package is interpreted in different Member States.

In particular, it remains unclear whether, in the light of that ruling, the current Directive also applies to "one-trader" packages sold on-line, 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.

The figure below illustrates the scope of the Directive in relation to different travel arrangements.

Figure 3 Scope of the Directive



2.2.2. Outdated and unclear provisions of the Directive

Several provisions of the Directive lack clarity (for instance, provisions on the liability, contract changes) and some provisions are outdated (for example, the rules regarding information requirements or lack of termination rights for consumers). See annex 3 for further details.

In a nutshell, most of the problems with the current legislation can be categorised into two main groups:

Business problem, i.e. absence of a level playing field, unjustified compliance costs and obstacles to cross-border trade within the Internal Market (see Chapter 2.3), as well as Consumer problems, i.e. detriment suffered by consumers (see Chapter 2.4).

2.3. Key problems faced by businesses

2.3.1. Absence of a level playing field

The described changes in the market have led to a situation where the market players covered by the PTD are at a competitive disadvantage compared with those which are not covered or, at least, do not consider themselves to be covered, although both are competing for the same customers and although the combinations they sell can include exactly the same components.

Consumers are often unaware that different protection applies to such competing products (i.e. pre-arranged as opposed to "one trader" or "multi traders" packages). However, businesses selling such competing products are subject to different obligations and thus bear different costs. In particular, the average cost of businesses for complying with the PTD

requirements has been estimated at €10.5-€12.5 per package. When considering 160 million holiday packages currently covered by the Directive⁴⁰, aggregate annual compliance costs amount to about 1.7 – 2 € billion.

The breakdown of costs for complying with the PTD is provided in Annex 5, section 1.1.1.

Such average cost accounts for about 1.4%-1.6% of the average price of a pre-arranged package (777€⁴¹). Even if it is small, this percentage contributes to the difference in the average price as compared with combined travel arrangements (741€⁴²). It can be argued that this difference in price, to a large extent, reflects an unjustified difference in regulatory treatment among traders selling competing products in the same market segments.

Box 1 Example of differences in the market playing field

Happy Flight, an airline, sells online a ticket to Malaga to a consumer in Finland. In the booking process Happy Flight offers hotel accommodation through the website of a business partner which has a similar website layout. After selecting the flight and the hotel, the consumer is charged for the two services at one inclusive price. In parallel, Happy Holidays, a Finnish tour operator, sells a pre-arranged package consisting of exactly the same flight and accommodation in the same hotel. To sell this package, Happy Holidays has to provide insolvency protection and comply with the information requirements of the PTD. Additionally, he will be liable for the proper performance of all the services included in the package. This costs him on average €10.5-€12.5 per package. Happy Flight, which in fact offers the same travel services but presents them differently, does not incur such costs.

2.3.2. Unnecessary/unjustified compliance costs

With the development of the Internet and other changes in the market, some of the above mentioned compliance costs do not seem justified:

- **Outdated information requirements**

According to the current rules, if an organiser provides consumers with a public brochure, it must contain prices and other information, for instance about the itinerary, the meal plan, the destination and the means, characteristics and categories of transport. The particulars in the brochure are, as a general rule, binding on the organiser/retailer, including prices. These rules have led to businesses complaining that, in order to minimise litigation risks, they do reprint the brochures in case of changes in prices, accommodation, etc., which costs them around €400 million annually.⁴³ This gives an amount of approximately 2.5€ per package, when divided by the number of packages covered by the Directive.⁴⁴ In today's Internet world, the continued need for specific printed information seems less justified than 23 years ago.

- **Unjustified costs for package travel organisers in case of delays, cancellations, force majeure events and accidents related to transport due to insufficient redress mechanisms**

⁴⁰ See Annex 2: 118 million pre-arranged packages +an estimated 50% of the 87 million "one-trader" packages= 160 million trips are already covered by the PTD

⁴¹ Consumer Detriment Study, *ibidem*.

⁴² Consumer Detriment Study, *ibidem*.

⁴³ For this reason, the administrative burden estimated in this Impact Assessment as results of re-printing brochures should be considered as a high estimate. See Annex 6.

⁴⁴ 160 million of packages when 50% of "one-trader" packages are assumed to be covered, see Annex 6.

Where transport is included in the package, in most cases, both the package organiser and transport carriers are obliged to provide compensation and assistance in case of delays, cancellations or accidents to passengers under EU rules on passenger rights. Thus, consumers may in many situations choose whom to turn to: the carrier or the organiser. This situation where several parties (i.e. transport provider and a package travel organiser) are obliged to provide assistance and possibly pay compensation for the same situation (e.g. cancellation or delays), might lead to unjustified cost for certain organisers (double compensation paid to travellers).

- **Lack of coherence with EU passenger rights rules - unlimited liability in case of force-majeure events**

Currently there are no limitations to the organiser's liability to provide alternative arrangements for the continuation of the package in case of events which prevent the consumer from returning home according to the planned schedule. This is clearly a burdensome rule for businesses and, due to its unlimited character, difficult to insure against. For example, ECTAA estimated that, during the 2010 volcanic ash crisis, tour operators had to provide care and assistance to the stranded passengers, including their repatriation, for an overall cost of € 380 million.⁴⁵ The EU rules on passenger rights provide for a limitation of the carrier's duty to provide accommodation for cancelled/delayed trips in the case of bus and maritime transport and a similar limitation is foreseen, also for force majeure events, in the review of APR⁴⁶.

The PTD rules lack a similar limitation to the organisers' liability to provide alternative arrangements for the continuation of the package, which would seem particularly appropriate in long lasting force majeure events.

- **Duplication of protection for business trips**

The current PTD protects "consumers" purchasing packages. However, the definition of "consumer" encompasses anyone taking the package, thereby including business trips and granting full protection also to business travellers purchasing a package (B2B contracts).

It is considered burdensome and unnecessary that the protection applies also to travellers going on business trips organised by specialised Travel Management Companies (TMCs)⁴⁷. This cost amounts to € 10.5 – € 12.5 per package leading to a total of € 30-114 million⁴⁸ annually for the industry. Business travellers have specific demands, they know exactly when and where they have to go and give specific instructions to their travel agencies. Also, the contracts are usually rather long-term ones, concluded between the agency and the travellers' employer, are usually very detailed and address the handling of possible disputes or problems. For these reasons, business travellers are far less exposed to problems which might occur during their journey and have no personal financial risk or damage. In practice, business

⁴⁵ Vice-President Kallas' information note to the Commission, The impact of the volcanic ash cloud crisis on the air transport industry, 2010. SEC(2010) 533

⁴⁶ The Commission's proposal for a Regulation amending Regulation (EC) 216/2004, COM (2013) 130 limits the liability to 3 days and €100 per night.

⁴⁷ The Guild of European Business Travel Agents (GEBTA), the European Travel Agents and Tour Operators Association (ECTAA) are in favour of excluding B2B trips from the scope of the PTD.

⁴⁸ Depending on the assumption (25% or 75%) of "one-trader" business trips organised by TMC are currently covered by the PTD.

trips organised by TMCs, even if not covered by the directive, provide a similar level of protection as under the PTD.

Business trips arranged by TMCs account for 80%-85% of all business trips in the EU. However, especially micro and small enterprises often do not have specific contractual agreements with specialised TMCs and hence procure their travel arrangements in a similar way as an average consumer would do.

2.3.3. Legal discrepancies between the Member States leading to additional costs and obstacles to cross-border trade

The current Directive is based on minimum harmonisation, and this has resulted in legal discrepancies between Member States. This fragmentation generates additional compliance costs for businesses wishing to trade cross-border as recently signalled in the performance checks of the internal market in the tourism sector carried out in 2012⁴⁹. Businesses that trade across borders have to pay about € 375 to research information about the Member State in which they want to get active. They also have to bear recurring costs of adapting their information materials to the requirements of different Member States. Taking into account the average number of EU companies which make cross-border sales, this translates into about additional €2 per package out of which €1.7 is a one-off cost⁵⁰. The overall baseline administrative burden associated with cross-border trade has been estimated at € 26 million (out of which €21m are one-off costs for researching Member States' differing national legal requirements and legal advice; €5.1m are recurring annual administrative costs).

| | |
|---|--------------------|
| Administrative costs associated with cross-border trade | €2 per package |
| Total costs for export-oriented businesses | €12.5-€14.5 |

The Eurobarometer study has shown that **more than 70% of EU retailers, including (but not limited to) the travel industry, would be interested in making cross-border sales if laws regulating consumer transactions were the same across the EU and half of retailers that made cross-border sales would be interested in selling their products in more than ten Member States.**⁵¹ One third of businesses stated in the public consultation that their level of cross-border trade would increase if the rules regarding package travel were to be harmonised across the EU. This could be one of the reasons explaining the current low amount of cross-border sales by travel agents and tour operators (less than 10% according to 2009 data).

The following examples of legal discrepancies in the package travel sector are particularly likely to cause barriers to cross-border trade:

⁴⁹ The Commission staff working document on the result of the performance checks of the internal market for services (construction, business services and tourism) (SWD(2012) 147 final).

⁵⁰ The calculations underlying these figures are provided in the SCM spread-sheets (see Annex 6) and section 1.1.1.2 of Annex 5.

⁵¹ Flash EB 300, Retailer's attitudes towards cross-border trade and consumer protection, 2011. The sample excludes micro-retailers.

- **Divergent insolvency protection schemes and lack of mutual recognition**

Under the Directive, the organiser/retailer must provide sufficient evidence of security for the refund of all money paid over and the repatriation of the consumer in the event of insolvency⁵². The Directive does not set out any explicit requirement for the actual method of insolvency protection as long as it is effective⁵³. As a result, there are diverging methods of insolvency protection in the Member States, e.g. insurance policies, bank guarantees, national insolvency funds or a combination of these methods. This, combined with the lack of explicit rules on mutual recognition, have resulted in a situation where some retailers or organisers who are trading cross-border had to pay several times for insolvency protection which they had already secured in their Member State of establishment⁵⁴.

More than 58% of enterprises consider the variety of insolvency schemes as an important obstacle to cross-border trade and ask for increased harmonisation. Even though the performance checks of the internal market for the tourism sector carried out in 2012 showed that a number of Member States recognise the protection awarded by funds established in other Member States⁵⁵, a systematic mutual recognition in the sector-specific legislation is sometimes missing.

Some Member States also appear to impose national insurance and guarantee obligations on cross-border service providers legally established in other Member States in order for them to access and exercise their activity occasionally in their territory⁵⁶.

This situation is detrimental to the Internal Market and can block competition among these insolvency protection providers. It can also cause that businesses have to insure themselves locally while they may obtain a better price somewhere else.

Data provided by a large EU tour operator show that among Member States (even belonging to the same geographical area) differences in the average insolvency protection cost per package can be very significant⁵⁷.

- **Divergent information requirements⁵⁸**

⁵² Article 7.

⁵³ See joined cases C-178/94, C-179/94, C-189/94 and C-190/94 and later followed up in C-410/96 and C-140/97.

⁵⁴ The case-law of the Court of Justice on the Package Travel Directive established that the Treaty freedoms allow a service provider that has furnished the security required by one Member State's legislation to make use of that security for its establishment in another Member State. This case-law was also explicitly reflected in Article 14, paragraph 7, of the Services Directive, which explicitly prohibits that a Member State requires a service provider to provide or participate in a financial guarantee or to take out insurance from a provider or body established in their territory. Furthermore, Article 23, paragraph 2 of the Services Directive also clarifies that in cases of secondary establishment, a Member States may not require professional liability insurance or a guarantee from the provider where he is already covered by a guarantee which is equivalent, or essentially comparable as regards its purpose and the cover it provides in another Member State in which the provider is already established. Where equivalence is only partial, Member States may require a supplementary guarantee to cover those aspects not already covered.

⁵⁵ See the Commission Staff Working document on the result of the performance checks of the internal market for services (construction, business services and tourism) (SWD(2012) 147 final), Tourism Background Paper, Section 2.2.

⁵⁶ Ibidem; Section 2.4

⁵⁷ The differences in costs also reflects lack of effectiveness of insolvency schemes in some MS. The Commission has launched several infringement procedures against Member States where the national insolvency protection turned out to be insufficient to provide adequate protection for consumers.

Some Member States introduced additional information requirements to be included in the brochure or contract. There are also stricter formal requirements in some Member States with regard to the method of providing information, e.g. the requirement that information must be in writing.

As a result, traders who want to produce common brochures for several Member States have to check the specific information requirements applicable in the different Member States concerned. A majority of stakeholders (82% of MS' authorities, 67% of businesses and 59% of consumer organisations) stated in the public consultation that differences in information requirements across the EU are a problem.⁵⁹

Box 2 Example of cross-border obstacles related to information requirements

Sunny summer, a package travel organiser based in Luxembourg, wants to expand his business into the French speaking part of Belgium. He wants to send out brochures to consumers in Belgium. However, he learns that he cannot use the same brochures, as in Belgium the brochure must also provide information concerning financial security in the event of insolvency. Therefore, in order to avoid any risk of litigation, he reprints the brochures especially for the Belgian market.

- **Different scope of the protection rules⁶⁰**

Member States have different rules and practices in relation to the scope of protection under the PTD (e.g. trips of less than 24 hours, occasionally organised trips or certain types of combined travel arrangements⁶¹). Businesses wishing to sell cross-border hence have to carry out careful legal checks to verify which rules apply on every national market.

79% of enterprises consider the different scope of the protection rules as an important obstacle to cross-border trade. Moreover, almost 80% of business stakeholders and MS authorities asked for harmonisation of the PTD scope and definitions.⁶²

- **Different national rules concerning liability and obligations of the contractual parties⁶³**

The current Directive uses the wording "organizer and/ or retailer" and thereby does not designate one particular party as being responsible⁶⁴. This wording was apparently chosen to leave the choice to the Member States. At present, France is the only Member States where the liability rests with the retailer and different sorts of joint liability exists in Belgium, Bulgaria, Cyprus, Denmark, Greece, Hungary, Luxembourg, Lithuania, Malta, Portugal, Romania, Slovakia and Sweden.⁶⁵

This has led to diverging national rules in relation to who is liable towards the consumer: the retailer, the organiser or both. More than 80% of enterprises consider the different national

⁵⁸ Consumer law compendium, page 257-285.

⁵⁹ Results of the public consultations 2009.

⁶⁰ Consumer law compendium, page 238-244.

⁶¹ For instance, Germany and Sweden apply package travel protection to products that consumer perceive as packages.

⁶² Ibidem.

⁶³ Consumer law compendium, page 333-339.

⁶⁴ E.g. Article 4, 5, 6 and 7.

⁶⁵ Consumer Law Compendium,

rules concerning liabilities as an important obstacle to cross border trade and 70% is of opinion that this aspect requires harmonisation across the EU.⁶⁶

Box 3 Example of cross-border obstacles related to different rules on liability

Voyage, a travel agency based in Strasbourg, France, sells package holidays organised by ZX travels. Under French law, it is Voyage who is liable for the proper performance of the package. On the German side of the border, the travel agency Reisen is selling the same types of packages organised by ZX travels. However, under German law, Reisen is not liable for the proper performance of the package, as this liability lies with ZX travels. Such discrepancies in liability rules discourage both travel agencies to sell cross border, as this would cause additional costs and would require changes to their business models.

2.4. Key problems faced by consumers

2.4.1. Consumer detriment suffered by users of combined travel arrangements

An increasing number of holidays booked by consumers are not protected as they fall outside the scope of the PTD⁶⁷.

The Consumer Detriment Study confirmed that problems concerning combined travel arrangements happen more often and are on average more detrimental than problems concerning pre-arranged packages. The main conclusions are:

- Problems are more likely to arise if the package was purchased using the Internet;
- 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%);
- The incidence of problems for combined travel arrangements (8.2%) is much higher than for pre-arranged packages (3.1%) and independent travel arrangements (1.6%) and;
- Combined travel arrangements cause more detriment than any other type of travel arrangements. On average, the gross detriment per problem for pre-arranged packages was estimated at €191 (i.e. 25% of the average costs of the package) compared to €593 for combined travel arrangements (i.e. 80% of the average cost of such travel arrangements).

The highest level of detriment was experienced in the UK, DE and FR (see Figures 7 and 8 in Annex 2).

⁶⁶ Results of the public consultations 2009.

⁶⁷ According to data provided by business stakeholders, taking the UK market as an example, in 1998 more than 98% of leisure travel bookings were made subject to regulatory protection, while by 2007, the proportion had dropped to 57%. Today it is estimated to be less than 50%. In Denmark and the Netherlands, the share of pre-arranged packages (under the scope of the PTD or national provisions) was estimated in 2008 at 43% and 38% respectively. In Finland and Sweden the percentage of holidays protected by the PTD and additional MS' provisions in 2007 dropped to around 30%. See also figure 6 in annex 2.

The most common problems and the main source of detriment for consumers as identified in the study are provisions of incorrect or incomplete information, problems with transport delays or cancellations, as well as problems with services not being provided or being of a lower standard than expected.

The insolvency of an organiser or a service provider can be particularly detrimental to consumers. It is often difficult for consumers to understand whether combined travel arrangements which they bought with the assistance of a trader are protected or not. Indeed, 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. This confusion could lead to significant detriment, particularly when consumers only realise that they are not protected once their travel company has failed and are left stranded abroad or unable to get their money back. For example, an estimated 1.4-2.2 million air passengers were impacted by an airline insolvency between 2000 and 2010, of these, 12% were stranded away from home incurring the average costs of over €796⁶⁸.

As a whole, the Consumer Detriment Study estimated a yearly personal consumer detriment for users of combined travel arrangements in the EU27 at more than € 1 billion net (i.e. after compensation)⁶⁹ compared to only € 159 million for pre-arranged packages. This comprises both financial and non-financial detriment, including loss of time and moral damages (see example in Box 3 below)⁷⁰.

Box 3 Examples of consumer detriment

Margus, an Estonian, booked a holiday in Rome (flight and four night accommodation) from an Internet website enabling him to tailor his holidays by combining different travel services. When he arrived at the hotel, he found out that the bathroom had no water. He complained at the reception desk, but he was told that the water problem could not be solved and no further rooms were available. Margus then phoned the call centre of the on-line operator where he made the booking, and was told that he had to solve this problem with the hotel himself. He eventually had to leave and find another hotel. He hence lost 3 hours in trying to solve the problem, €3 for phone calls and paid an additional €200 for a room in another hotel. Had his holiday been a package travel covered by the EU Directive, the organiser would have been liable to offer Margus assistance, e.g. by providing him with an alternative room or hotel.

Thomas, a UK citizen, booked a flight to Thailand directly from the website of the XX airline. After choosing the preferred flight, he was offered an attractive hotel at a discount price, which he decided to purchase (assisted travel arrangements). His friend James had in the meantime bought accommodation at that same hotel and flight with that same airline via a pre-arranged package offered by the XY Leisure Group. While being in Thailand, the XX airline went bankrupt and therefore their return flight was cancelled. However, James told Thomas not to worry, as the XY Leisure Group holds an ATOL licence and would have therefore taken care of repatriating them at no additional costs. However, soon afterwards Thomas learnt that, as he had bought separate travel components directly from the XX airline, he did not, contrary to James, enjoy bankruptcy protection. As a consequence, he had to make his own travel arrangements to get home, which cost him €700 on top of the cost for his original ticket.

2.4.2. Specific problems of consumers detriment stemming from unclear and outdated rules

⁶⁸ Communication on Passenger protection in case of airline insolvency, COM(2013) 129 final

⁶⁹ Consumers purchasing unprotected combined travel arrangement can indeed claim and receive compensation in case of non-conformity of the services with the contract based on national contract law. In the study, the difference among gross and net detriment is however very small, i.e. € 60 million.

⁷⁰ For more detailed data and explanation of the consumer detriment methodology see also Annex 2 (Figures 9-13).

As noted above, and although to a lesser extent than the "unprotected" combined travel arrangements, also those buying the "protected" pre-arranged packages suffer detriment.

This is due to the fact that some provisions of the Directive lack clarity, some are outdated or do not meet the reasonable expectations of today's consumers, whilst failing to take due account of legislative developments at EU level in terms of increased consumer protection, for example thanks to passenger rights rules now covering all transport modes.

- **Uncertainties in relation to prices**

Under the current PTD, businesses are allowed to revise the price of the package due to certain increased costs, including increased fuel prices or changes in the currency exchange rates, although it is possible for businesses to hedge at least against the risk of currency fluctuations. There is no cap for the possible price increase and as a consequence consumers lack certainty in relation to the final price of their package. Consumers may cancel the contract if the price change is significant. However the term "significant change" is open to interpretation. Some Member States have introduced more specific rules. For instance, Italy has introduced a 10% cap, whereas Germany specifies that travellers may cancel the contract if the price increase exceeds 5%. Moreover, while extra costs are practically always passed on to consumers, the PTD does not specify that consumers are entitled to a discount in the event of cost savings.

- **Uncertain liability**

Divergences in national rules concerning who is the responsible party (organiser, retailer or both) can be detrimental to the consumer as it can be unclear which party is liable for the performance of the contract⁷¹ and has to procure insolvency protection, especially if the package holiday is purchased cross-border or where the retailer and the organiser are established in different Member States or where the organiser is based outside the EU (enforcement against a trader based outside the EU might be difficult). It can lead to situations where the organiser and the retailer refer the consumer to the other party neither of them taking responsibility.

- **Lack of a right to termination**

Consumers sometimes have a legitimate need to cancel the contract before departure, which is not reflected in the current PTD. For example, today, unless the organizer decided to cancel the trip, consumers cannot unilaterally terminate the contract if they do not wish to embark on a holiday in the event of a serious situation at the place of destination such as a violent conflict, an ecological disaster or a dangerous and contagious disease. Several Member States have introduced a general termination right against compensation (for example BE, CZ, DE, DK, EE, EL, FI, HU, LT, LV, PT, NO), whilst others allow for termination even without

⁷¹ See also section 2.2.3 where the differences in MS are presented

compensation in force majeure events (for example in DK, FI)⁷². Therefore, the current rules are unclear, vary considerably across the EU and are not always satisfactory for consumers.

- **Uncertainty as to the right to compensation for non-material damages**

The Directive does not explicitly state that the consumer has a right to compensation for non-material damage and, in particular, that such compensation can arise from the loss of enjoyment which the consumer has suffered because of improper performance of the travel contract. However, this right was confirmed by the Court in the Simone Leitner-case⁷³.

- **Cumbersome access to justice**

European consumer associations have reported that a large number of the complaints received are within the area of travel services. For instance, data provided by the European Consumer Centres (ECCs) show that the most frequent type of consumer complaint, out of the 552 cross-border complaints related to the PTD in 2011, concerns packages not performed at all or not in conformity with the booking.

The current PTD does not set up any contact points for complaints, minimum prescription periods or mechanisms for out of court dispute resolutions, which have been criticized by and called for by various consumer organisations/bodies, e.g. the ECCG opinion of 21 April 2010⁷⁴. It should be noted that following the adoption of the ADR/ODR proposal⁷⁵, the PTD would benefit of an extension of ADR procedures in case of conflicts between consumers and businesses.

2.5. Baseline scenario

Without additional public intervention, the problems identified (unfair competition, unnecessary compliance costs, obstacles to cross-border trade, consumer detriment) would remain.

Member States might also take action at local level to protect their citizens by extending their national legislation to cover more types of travel arrangements. For example, the UK extended the bankruptcy protection for "flight plus" travel arrangements in April 2012. This will result in an increased regulatory fragmentation and additional obstacles to cross-border trade.

As consumers get more Internet savvy, they are expected to self-package or purchase combined travel arrangements falling outside the protection of the PTD. As the result, unfair competition between different market players would continue or even increase.

The compliance costs for the industry might decrease along with a lower number of travel arrangements subject to the PTD requirements. However, the consumer detriment would increase as more consumers would be travelling unprotected and buying travel arrangements under the wrong perception that they are protected.

⁷² Member States' replies to questionnaires as a preparation to Member States' Workshop 5 June 2012

⁷³ CJEU 168/00.

⁷⁴ ECCG opinion of 21 April 2010 on the review of the package travel directive (PTD), http://ec.europa.eu/consumers/empowerment/docs/20100421eccg_opinion.pdf

⁷⁵ COM(2011) 793 final and COM(2011) 794 final

Consumers and businesses would also continue to bear unjustified costs related to outdated and unclear provisions of the Directive.

2.6. Does the Union have the right to act?

The legal basis for EU action is Article 114 of the Treaty, which provides that "*the European Parliament and the Council shall [...] adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the Internal Market.*" Furthermore, Article 114 (3) specifies that "*the Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts.*"

The proposal shall therefore eliminate internal market fragmentation causing obstacles to cross-border trader and distortions of competition, as well as enhance the protection of consumers, taking into account new market developments. This objective cannot be sufficiently achieved by the Member States, given the disparities between national legislations that are the reason for internal market barriers and distortions of competition. If the Member States addressed new market developments as well as regulatory gaps and inconsistencies in EU law in an uncoordinated manner, this would create even more fragmentation in the Internal Market and exacerbate the problem. Moreover, there is currently no EU legislation that can replace the detailed regulations of the existing Package Travel Directive.

3. POLICY OBJECTIVES

In accordance with Article 114 of the Treaty, the overall general objective is to contribute to the better functioning of the Internal Market and achieve a high level of consumer protection

| | |
|---|---|
| <p>General objective 1</p> <p>Improve the functioning of the Internal Market in the package travel sector.</p> <p>Related specific objectives</p> <ul style="list-style-type: none"> • Ensure a more competitive and fairer level playing field for the businesses operating in the travel market; • Increase the cross-border offer of package travel services by reducing costs and obstacles to cross-border trade in the package travel market; • Reduce unjustified compliance costs for businesses in the package travel market. <p>Operational objectives</p> <p>Reduce unnecessary cost related to the application of the Directive in the B2B segment</p> <ul style="list-style-type: none"> • Reduce cost related to outdated information requirements • Lower the costs for companies by clarifying rules on liability between the involved professional parties • Reducing cost for organisers related to double compensation under the PTD and passenger rights • Streamlining the interplay with passenger rights regulations and reduce costs for businesses by including limiting the liability of the organiser in force majeure events. • Decrease costs for businesses in connection with insolvency protection | <p>General objective 2</p> <p>Achieve a high level of consumer protection in the package travel market</p> <p>Related specific objectives</p> <ul style="list-style-type: none"> • Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; • Reduce consumer detriment stemming from unclear and outdated provisions. <p>Operational objectives</p> <p>Increase transparency of information provided to consumers to ensure that they receive correct and complete information when purchasing packages</p> <ul style="list-style-type: none"> • Clarify rules on liability of the involved professional parties, so that consumers know who is the liable party if something goes wrong when going on a package holiday • Increase certainty in relation to the price of the package by providing a limitation of price increases, • Introduce a possibility for consumers to terminate the contract in certain situations • Codify that consumers can be entitled to non-material damages • Introduce a minimum prescription period for claims for damages and price reduction |
|---|---|

4. POLICY OPTIONS

4.1. Identified policy options

Eight policy options have been identified. These options reflect the suggestions made by various stakeholders throughout the consultation process. They include legislative and non-legislative measures, which can be combined to maximise their effectiveness.

- **Option 1 – Maintaining the status quo – baseline scenario (PO1)** PO1 entails maintaining the PTD in its present form. It is the ‘do-nothing’ baseline against which any potential changes under other policy options and their impacts will be assessed.
- **Option 2 – Guidelines (PO2)**

Option 2 entails maintaining the PTD in its form and preparing guidelines. These would include CJEU rulings and some clarifications on the scope and on the liabilities, addressing the lack of clarity issues notably outlined in Annex 3, for:

- providing information (pre-contractual, before departure, last minute bookings);
- performing the contract properly;
- providing prompt assistance if the consumer is in difficulty, and
- sufficient evidence for security in the case of insolvency.

Option 2 recognises that certain aspects of the Directive require clarification and may deliver some improvements for stakeholders by providing guidance.

- **Option 3 – Introduction of a "Package Travel Label" and/ or requirement for traders to state that the services in question do not constitute a package- so called "This is not a package" disclaimer (add-on option to other policy options) (PO3)**

This option covers two sub-options:

Sub-option A entails the introduction of a "Package Travel Label" – an obligatory logotype to be presented to consumers when purchasing a package. Such Package Travel Label would be:

- a mandatory pan-European logotype ;
- aimed at clarifying whether a package is covered or not and which are the key rights of it;
- available in both off-line and on-line transactions;
- backed up by verification and surveillance by national enforcement authorities, and
- introduced as add-on to other policy options and not as a stand-alone measure.

Sub-option B entails the introduction of an obligation for traders, when they are offering combined travel arrangements which are not packages as defined in the PTD, to inform travellers that individual service providers are solely responsible for their contractual performance.

- **Option 4 – Repeal of the Directive and self-regulation (PO4)**

This option entails a repeal of the current PTD and the adoption of self-regulation by the industry. Self-regulation would include specific information requirements and clarification on the liability for proper performance of the travel contract. This option takes account of

the fact that there are several pieces of legislation⁷⁶ which, to some extent, apply also to package travel, as well as industry codes of conduct.

- **Option 5 – Modernisation of the Directive and coverage of "one trader" packages (PO5)**

Option 5 involves a revision of the current PTD in which the main legal structure of the existing Directive is kept, but which includes addressing the problems outlined in section 2 and in Annex 3 (while Annex 4 provides a detailed description and justification for the legislative measures proposed). The table below provides a summary of the proposed policy measures and their correspondence with the identified problems.

| DRIVERS OF THE PROBLEM | SPECIFIC PROBLEMS | PROPOSED POLICY MEASURES |
|---|---|---|
| OUTDATED AND UNCLEAR SCOPE OF THE DIRECTIVE | <p>Consumer detriment for users of combined travel arrangements</p> <p>Absence of a level playing field</p> | <p>Measures clarifying existing legal framework are highlighted in black whereas those introducing new measures are highlighted in red</p> <p>Modernising the scope to cover "one trader" packages (the Directive would be modernised to cover "one-trader" packages sold online and would clarify that "one-trader" packages sold at high street are legally subject to all PTD requirements).</p> |
| OUTDATED AND UNCLEAR PROVISIONS resulting in consumer detriment | Uncertainties in relation to prices | <p>-Sub-option 0: status quo i.e. package travel contracts can allow for price increases due to certain increased transportation costs, including increased fuel prices or changes in the taxes or currency exchange rates;</p> <p>-Sub-option 1: introducing a cap of a maximum price increase of 10%;</p> <p>-Sub-option 2: clarifying that consumers have a right to terminate the contract if the price increases more than 5%, while requiring that possible cost decreases have to be passed on to the consumer as well;</p> <p>-Sub-option 3: making prices in the contract binding, except for price increases caused by unforeseeable increase in taxes or fees imposed by third parties for the performance of the services (e.g. tourist taxes or landing/embarking fees).</p> |
| | Uncertain liability | <p>-Sub-option 0: status quo i.e. liability of retailer and/or organiser</p> <p>-Sub-option 1: contractual liability of the seller/retailer;</p> <p>-Sub-option 2: contractual liability of the organiser and joint liability in case the organiser is based outside the EEA; and</p> <p>-Sub-option 3: joint contractual liability of the seller/retailer and the organiser (consumer can seek redress from either of them);</p> |

⁷⁶ E.g. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the Internal market, as well as EU rules on passenger rights.

| | | |
|---|--|---|
| | Lack of right to termination | Introduction of termination rights for travellers against compensation and in force majeure cases without compensation |
| | Uncertainty as to the right to compensation for non-material damages. | Clarification of right to compensation for non-material damages. |
| | Cumbersome access to justice | Introduction of a minimum one-year prescription period for claims for damages or price reduction |
| UTDATED AND UNCLEAR PROVISIONS resulting in unjustified/unnecessary costs | Outdated information requirements | Pre-contractual information requirements replacing the current mandatory requirements for the content of brochures; |
| | Unjustified costs for package travel organisers in case of delays, cancellations, force majeure events and accidents related to transport | Clarified rules on the possibilities to seek redress from the transport carrier in case of costs related to delays, cancellations, assistance or accidents regulated by the EU Passenger Rights. Consumers would continue to be able to choose whom to seek compensation and assistance from (transport carrier or the organiser of the package). |
| | | Clarified rules that travellers do not have a right to double compensation for the same event from a carrier and a package organiser. |
| | Unlimited liability for the travellers' continued stay if the return journey cannot be provided in force-majeure situation | Setting a time limit for the organiser's obligation to ensure accommodation for the continued stay (e.g. for maximum 3-4 days). |
| | Duplication of protection for business trips | Exclusion from the scope of business trips organised by TMCs. |
| | Legal discrepancies leading to costs and obstacles to cross border trade (different scope, different information requirements, different rules concerning liabilities) | Increased harmonisation of rules concerning the scope of the Directive, information requirements, liabilities and obligations of the contractual parties |
| | Divergent insolvency protection schemes and lack of mutual recognition | Flexibility of Member States as to the method of providing insolvency protection, whilst adding explicit rules on the effectiveness of the national insolvency protection scheme and, the mutual recognition of security provided under the law of the Member State of establishment. |

- **Option 6 – Graduated approach- modernisation of the Directive and coverage of both "one trader" and "multi trader" packages while applying a lighter regime to "multi-trader" assisted travel arrangements (PO6)**

This option includes Option 5 (all proposed policy measures) supplemented with an extension of the scope of the PTD with a graduated approach:

- "multi-trader" packages would be subject to the same regime as pre-arranged packages (including full liability for the performance of the package and the obligation to procure insolvency protection),

- "multi-trader" assisted travel arrangements do not display typical features of a package and are hence less likely to mislead consumers. They would be subject to a lighter regime, limited to insolvency protection and an obligation to state in a clear and prominent manner that each service provider will be solely contractually responsible for the performance of its service(s) (policy option 3B).

As mentioned above, in case of "multi-trader" travel arrangements, the different components of the trip are purchased from different traders, often under legally distinct contracts and as a consequence the distinction between seller and organiser is often blurred. Therefore the following sub-options concerning the liabilities are considered:

Sub-option 1: the liability is placed on a single provider (a trader selling the first component who links to facilitate the purchase of the other components) who would be considered as an "organiser";

Sub-option 2: liability is placed on each involved provider for the service segment they offer;

Sub-option 3: joint liability of all traders unless the parties designate only one trader to be liable.

- **Option 7 – Modernisation of the Directive and coverage of both "one trader" packages and all "multi-trader" travel arrangements (PO7)**

This option includes PO 5 and 6 whilst subjecting also all "multi-trader" assisted travel arrangements to all PTD requirements. This means that all obligations and liabilities also would apply to "multi-trader" assisted travel arrangements. Annex 4 provides a detailed description and justification for the legislative measures proposed in Options 5 and 6, based on the results of the public consultation.

- **Option 8 – “Travel Directive” (PO8)**

This option includes Option 7 supplemented with an extension of the scope also to all independent travel arrangements (stand-alone individual travel services, e.g. car rental, accommodation or flight tickets). The market of independent travel arrangements accounts for 54% of all trips (about 277 Million trips annually). This option would in principle apply the same set of rules to all travel services irrespective of whether the product is offered/purchased as part of a package or as a stand-alone product.

The proposed legislative policy options (PO5-PO8) are based on strengthened targeted harmonisation. The aspects which require leaving flexibility to Member States include prescription periods and method of insolvency protection.

For these provisions the minimum harmonisation is proposed while other provisions are based on maximum harmonisation.

4.2. Discarded policy options

The Impact Assessment does not consider a regulation since a directive allows the Member States a margin of manoeuvre when incorporating the contractual rules in their national contract law system. A regulation would not allow for such flexibility and could therefore badly interplay with national contract laws in the Member States

4.2.1. Option 8 “Travel Directive”

PO8 is discarded because the majority of the most common consumer problems with independent travel arrangements can, provided that appropriate enforcement exists at national level, be successfully dealt with in the framework of existing rules such as national contract law, the Unfair Contract Terms Directive, the Unfair Commercial Practices Directive, the Consumer Rights Directives well as the Regulations in the area of Passenger Rights. In contrast to complex and atypical contractual relationship in case of packages, the contracts for independent travel arrangements do not involve several service providers which identity is often unknown to consumer. Therefore, such contracts can be more easily managed by consumers in case of any problems. Moreover, this option would entail additional costs for the industry, in particular for SMEs. These additional costs would most likely result in unjustifiable higher prices for consumers.

5. ASSESSMENT OF IMPACTS

This section presents the most relevant impacts of each of the policy options on key target audiences, i.e. consumers, businesses and MS authorities, in the form of a cost/benefit analysis. All the impact of each policy options will be assessed against the baseline scenario(BS). The estimate of the BS compliance and administrative costs, provided in section 2, will therefore be used to assess the impact of the policy options redefining the scope of the PTD (PO5, PO6 and PO7). The detailed analyses of all the impacts are presented in Annex 5.

5.1. Assessment of Option 2 - Guidelines and Better Enforcement of Existing Legislation (PO2)

Meeting the objectives: this option would only very partially meet the policy objectives. Indeed, unfair competition between different market players is likely to continue. The regulatory fragmentation would remain. By clarifying the current rules, this option may however lead to a certain reduction of detriment as the result of better implementation of the PTD by businesses and Member States. However, as guidelines per definition are not a binding tool, these benefits would depend on their actual use by national authorities.

Economic impacts

Compliance costs for businesses: There should be no overall change in costs incurred by industry as a result of guidelines being issued, as they would relate to clarifications of the existing PTD rules.

Administrative costs for businesses: Similarly to compliance costs, there would be no overall change in administrative costs incurred by businesses as a result of guidelines.

Impact on SMEs: very little change compared to the BS.

Competition in the Internal Market: A clarification of some of the definitions in the PTD could, in theory and to some extent, lead to a clearer segmentation between travel arrangements which are covered or not covered by the PTD and, thereby, lead to somewhat fairer competition. However, confusion might remain in particular in the area of "multi-trader" travel arrangements and also for online "one-trader" packages.

Impact on consumers: Consumers may gain some clarity and may also be better protected due to better implementation and enforcement of the PTD. However, some of the loopholes stemming from the content of the PTD provisions would remain (e.g. lack of minimum prescription period to claim damages in cross-border situations).

Impact on EU budget: no change compared to the BS

Impact on competitiveness: no change compared to the BS

Impact on public authorities: no change compared to the BS.

Social impacts: no change compared to the BS

Impact on fundamental rights: no change compared to the BS as the guidelines are not legally binding.

Environmental impacts: no change compared to the BS

Stakeholders' views: Issuing guidance was supported by the minority of stakeholders. Only 28% of companies, 32% of business organisations and 11% of consumer organisations were in favour in issuing the guidance.

Distribution of impacts by Member States: All Member States will be equally impacted by this PO.

5.2. Assessment of Option 3 – Introduction of a "Package Travel Label" (PO3A) and/ or "This is not a package" disclaimer (PO3 B)- add-on option to other policy options

5.2.1. Sub-option A: Package Travel Label

Meeting the objectives: this option would only partially meet the policy objectives.

Indeed, the label could reduce consumer detriment by enabling consumers to take better informed decisions and it could result in fairer competition among the different market players. However, the expected amount of consumer detriment reduction would not off-set costs incurred by businesses for the implementation of the label.

Economic impacts

Compliance costs for businesses: Companies selling packages would need to get familiar with new information requirements and adapt their web-pages and promotional materials to display the Package Travel Label. The average one-off cost for adapting a company's website

and /or printed materials has been estimated at €500⁷⁷. These costs would potentially affect 72,000 companies selling packages at present with the overall one-off costs amounting to €36 million. As this is an add-on option, the final costs would depend on the policy option chosen.

Administrative costs for businesses: Administrative costs coincide with compliance costs, see Annex 6.

Impact on SMEs: SMEs would absorb most of the costs in absolute values. However these costs are one-off and relatively small.

Competition in the Internal Market: Competition may become fairer, as the label would help to distinguish packages which are inside or outside of the scope of the Directive.

Impact on consumers: The impact of a label is expected to be relatively small. Indeed, data coming from the 2012 behavioural study dedicated to the introduction of a "package travel label" show that only 3.1% of consumers would click on the label to find out more about their rights. However, out of those who clicked on the logo, 80% felt knowledgeable about their rights. Also those who noticed the logo but did not click on it felt better informed. It is estimated that detriment would decrease by about € 3 million every year (see details in Annex 5). As the compliance costs related to the introduction of the logo are one-off, no price increases for consumers are expected.

Impact on public authorities: MS would be responsible for the enforcement of the rules.

Impact on EU budget: the European Commission would have to ensure to have the copyright on the logo and its registration as a trade mark. This would represent a small cost for the institution of the order of a few thousand Euros.

Social impacts: This option is not expected to have specific and significant impacts on employment.

Impact on fundamental rights: This option would result in slightly higher consumer protection in Europe in the area of package travel and, hence, is likely to have a positive impact on the rights protected by the EU Charter of Fundamental Rights, notably and foremost Article 38 on consumer protection. Article 16 on the freedom to conduct business would on the contrary be somewhat negatively impacted, as the expected small consumer benefits would most likely not compensate the significantly higher costs this option would create for businesses.

Environmental impacts: No environmental impacts are expected.

Simplification potential: no impact

Stakeholders' views: MS Authorities highly ranked the effectiveness of the label in terms of greater clarity for consumers. However, most of consumer and business organisations were sceptical about the benefits of the label if it is not accompanied by an awareness raising campaign and quality control procedures.

Distribution of impacts by Member States: Member States with the highest share of consumers buying traditional packages (i.e. UK, MT, NL) are likely to be impacted more. As this is an add-on option, the distribution of impacts will depend on the preferred policy option.

⁷⁷The Impact Assessment for the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law estimated the one-off cost for adapting a company's website to display a disclaimer informing a consumer about the application of the European contract law has been estimated at €500.

5.2.2. Sub-option B: "This is not a package" disclaimer

Economic impacts

Compliance costs for businesses: Mainly companies selling on-line "one-trader" packages and "multi-trader" travel arrangements are likely to be affected by this option. Travel service providers (e.g. hotels, car rental companies, airlines, and other transport carriers) marketing their services on the Internet and providing links to other websites would have to adapt their websites to display a clear disclaimer stating that the product is not a package. Similarly as for the Sub-option A, the average one-off cost for adapting a company's website has been estimated at €500⁷⁸. As this is an add-on option, the total cost could amount to maximum €34.5 million depending on the policy option chosen⁷⁹.

Administrative costs for businesses: Administrative costs coincide here with compliance costs, see Annex 6.

Impact on SMEs: SMEs would absorb most of the costs. The impact would be however limited as these are one-off and small costs.

Competition in the Internal Market: the same impact as Sub-option A

Impact on consumers: As the costs related to the introduction of the disclaimer are one-off, companies would rather quickly absorb them and consumers would hence benefit from more transparency and clearer information at virtually no additional cost.

The reduction of consumer detriment is expected to be higher than under Sub-option A (Package Travel Label) as a negative information would warn consumers who otherwise might purchase unprotected travel under the wrong impression that it is protected (as already indicated this is the currently case for 67% of users of combined travel arrangements).

Impact on public authorities: the same impact as Sub-option A

Impact on EU budget: no impact

Social impacts: the same impact as Sub-option A

Impact on fundamental rights: the same impact as Sub-option A

Environmental impacts: the same impact as Sub-option A

Stakeholders' views: **All stakeholders underlined the importance of the transparency on the market i.e. clear information for consumers whether they are buying a "non-protected" travel.**

Simplification potential: no impact

Distribution of impacts by Member States: IR, SE, IT and SL where the share of consumers buying combined travel arrangements is significantly above the EU average (Annex 2, Figure 5) and UK, DE and FR which are the biggest online travel markets (Annex2, Figure 3) are likely to be the most impacted by the additional compliance costs linked with the introduction of the "This is not a package" disclaimer.

⁷⁸The Impact Assessment for the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law estimated the one-off cost for adapting a company's website to display a disclaimer forming a consumer about the application of the European contract law has been estimated at€500.

⁷⁹ 500€* (36,000 companies selling "one-trader" packages with an online presence + 34,000 companies selling "multi-trader" travel arrangements). For the detailed methodology of estimate see annex 5.

5.3. Assessment of Option 4 – Repeal of the Directive

Meeting the objectives: In theory, this option could ensure a more competitive and fairer level playing field and reduce unjustified costs for businesses.

However, deregulation at EU level would most likely increase legal fragmentation, since MS would be able to maintain and create rules in an uncoordinated manner. This would be harmful to the Internal Market.

In case of the repeal of EU legislation, the number of unprotected consumers and an amount of consumer detriment would increase.

Economic impacts

Compliance costs for businesses: The repeal of the Directive might result in decreased compliance costs for businesses of up to €10.5-€12.5 per package. However, the cost savings for businesses would depend entirely on the willingness of MS to repeal their national legislation protecting consumers. It is likely that many MS would maintain and further develop their legislation in this area.

Administrative costs for businesses: Similarly to compliance costs, this PO might result in lower administrative costs for businesses of up to €409 million depending on the number of MS that decide to repeal their national legislation (the remaining baseline administrative costs are considered business as usual).

Competition in the Internal Market: This option might increase legal fragmentation within the Internal Market since MS would be able to maintain and create rules in an uncoordinated manner.

Impact on SMEs: The repeal of the Directive might in theory lead to fairer competition since nobody (and hence also no SMEs) would be any longer subject to the EU package travel requirements and the related compliance costs, provided however that all MS would be ready to repeal their own national legislation in this area.

Impact on businesses from third countries: this option could in theory facilitate organisers outside the EU to sell packages in the EU as they would not have to comply with the PTD requirements. However, as it is likely that MS decides to keep their national rules, the organisers outside the EU will have to comply with national rules of each MS they sell packages to.

Impact on consumers: The repeal of the Directive is likely to increase gross consumer detriment (estimated at more than €159 million annually for traditional packages and more than €1 billion for combined travel arrangements every year). In theory, a lower cost burden for industry could lead to lower end-prices to the consumer. The average price per package could go down by about €10.5-€12.5, but only if MS decided to repeal their national legislation.

Impact on public authorities: MS would be free to decide whether to maintain their national legislation unchanged, repeal their national legislation or update their legislation. If legislation is repealed, consumers being stranded when on holiday due to the insolvency of the tour organiser might more often turn to embassies to receive necessary assistance and financial support to be repatriated.

Impact on EU budget: no impact.

Impact on competitiveness: See Annex 7 for detailed analysis. Quantifications are presented in this report under the other economic impacts.

Social impacts: Only small social impacts expected. For instance, consumers being stranded due to the insolvency of the tour organiser would not receive the necessary assistance and financial support to be repatriated, thus possibly causing delays to their professional activities.

Impact on fundamental rights: This option would result in lower consumer protection in Europe in the area of package travel and, would hence have a negative impact on the rights protected by the EU Charter of Fundamental Rights, notably and foremost Article 38 on consumer protection. Article 16 on the freedom to conduct business might positively be impacted, depending on the number of MS which would repeal their national legislation.

Environmental impacts: Businesses would not be required to re-print brochures as a result of the PTD and its indirect effect in practice (see section 2)

Simplification potential: Deregulation could result in simplification of the legal framework for businesses. However, the impact will depend on MS actions that might revise their legislation leading to more fragmentation with reverse effect on simplification.

Distribution of impacts by Member States: All MS will be equally impacted by the Repeal of the Directive.

5.4. Assessment of Option 5 – Modernisation of the Directive and coverage of "one trader" packages (PO5)

Meeting the objectives: This option meets well the policy objectives, both improving the Internal Market functioning and achieving a high level of consumer protection. Indeed, it would eliminate legal fragmentation and provide for a more level playing field for operators. As more packages would be brought under the scope of the PTD (this option would cover about 40% of all holiday trips) and certain rules would be clarified, the consumer detriment would decrease.

Economic impacts

Compliance costs for businesses: In some MS, national legislation already covers some online "one-trader" packages (e.g. DE and partly SE) and some large operators based in these countries may be assumed to already comply with package travel requirements across all countries in which they operate. However, it cannot be assumed that even in those MS all traders selling "one-trader" packages online comply, in practice, with all PTD-requirements, including the bankruptcy protection. The results of the Consumer Detriment Study suggest that at least 50% of these travel arrangements are sold at high street travel agents' and thus in most of the cases are already subject to the PTD. It is therefore assumed that 50% of "one-trader" packages that are currently not covered would now be covered. Hence, approximately 44 million "one-trader" holiday packages and 1 million B2B trips would be brought under the scope of the PTD, while 8 million of "one-trader" B2B trips organised by TMCs would be excluded from the scope of the PTD.

The following table presents the impact of Option 5 (PO5) on costs of companies (detailed calculations are provided in Annex 5)

| Savings on costs | Monetised values |
|--|---|
| Administrative costs- elimination of the brochure requirement (only big companies, currently under the scope of the PTD can benefit) | €390 million euro annually ⁸⁰ (almost €3 euro per package) |
| Exclusion of business trips organised by TMC (only companies currently under the scope of the PTD can benefit) | - €60-€76 million euro annually -€9.5 – 10.5 per package ⁸¹ |
| Elimination of differences in provisions hampering cross-border trade (Only companies trading cross-border can benefit) | €5 million annually |
| Clarified rules on possibilities of redress for package travel organisers from transport carriers in case of costs related to delays, cancellations, assistance or accidents regulated by the EU Regulations on passenger rights | Not possible to quantify |
| The introduction of a limitation (in days) to provide alternative arrangements in case of long lasting force majeure events | Not possible to quantify |
| Improved mutual recognition of insolvency funds and improved competition between insolvency schemes. Businesses might seek to subscribe to the most efficient scheme. | Not possible to quantify |
| New costs | |
| Bringing new travel arrangements in the scope | €335-€424 million annually -€7.5 - €9.5 per package |

The overall impact on the industry would be a benefit of €42-€115 million annually (low €7.5 and high €9.5 estimate of compliance costs per package).

Impact on SMEs: Mainly SMEs selling on-line "one-trader" packages brought under the scope of the PTD (and which currently have been treated as to be outside the scope) would incur increased compliance costs. Those costs would amount to a maximum of €7.5 - €9.5 plus €0.15 of administrative costs per package. Most SMEs which are selling "one-trader"

⁸⁰ €421 of administrative costs under the BS (see section 5.1) - €31.1 million of administrative costs under PO5 (see Annex 5 and Annex 6).

⁸¹ TMCs are unlikely to produce brochures and therefore do not incur thereof related administrative costs.

packages at high street (bricks and mortar travel agencies) are already subject to all the PTD requirements, even though these rules are not always properly enforced. The additional costs would therefore affect mostly online sellers of these travel arrangements. SMEs would also benefit from increased harmonisation and clarity of rules across the EU as they would be able to rely on one set of rules across the EU.

Micro-enterprises account for 92% of all travel agencies and tour operators (79,000 companies). The exclusion of micro and small businesses from the scope of the Directive would not be therefore a viable option. Firstly, it would result in unfair competition between businesses selling competing products whilst having different regulatory regimes and hence facing uneven compliance costs. Secondly, it would significantly increase consumer detriment, as consumers would not be able to easily determine the rights they enjoy, as these would depend on the size of the business they are purchasing from. Overall, excluding or applying a lighter regime for small and/or micro enterprises would be contrary to the objectives of the revision process, i.e. achieving a high level of consumer protection and improving the functioning of the Internal Market⁸².

Competition in the Internal Market: Businesses would benefit from a fairer level playing. Competition is likely to improve as a result of the harmonisation of legislation (and the ensuing reduction in obstacles to trade).

Impact on businesses from third countries: this option would facilitate organisers outside the EU to sell packages in the EU as they would have to comply with the same requirements in all MS. Organisers outside the EU selling packages to consumers in the EU, will face the same obligations as the EU organisers i.e. they would face an increase of costs for packages newly brought under the scope of the Directive.

Impact on consumers: PO5 would reduce the detriment associated with "one-trader" packages, especially in the on-line environment. Indeed, also these package travellers would be entitled to refunds of advance payments and repatriation in the event of insolvency, redress in the event of non-performance of contracts and spend less time and effort in seeking compensation. It could be assumed that the detriment per package and incidence of problems for "one-trader" packages brought under the scope of the Directive would be the same as for pre-arranged packages. The estimated reduction of consumer detriment would be therefore up to 88%⁸³, i.e. the baseline level of detriment associated with combined travel arrangements would decrease by €348 million assuming that 50% of one-trader packages are newly brought under the scope of the PTD.⁸⁴ For detailed calculations see Annex 5. Some consumers may experience an increase in the price of "one-trader" travel arrangements, up to € 9.5, as businesses may pass on to them the increased compliance costs. This impact will depend on supply and demand elasticity, but in any case this is likely to be less than 2% of the total price of the package and broadly comparable with the cost of obtaining commercial travel insurance and, as such, unlikely to be detrimental to consumers. In a

⁸² see Annex 7, where an assessment of possible specific sub-options aiming to reduce the burden for SMEs is presented.

⁸³ The consumer detriment for 100 pre-arranged packages amounts to €592 (100*3.1% incidence of problems *€191 average cost of problem) compared to €4,862 for 100 combined travel arrangements (100*8.2% incidence of problems* €593 average cost of problem).

⁸⁴ It should be noted that the figures on the incidence of problems and average cost per problem cover all combined travel arrangements i.e. some "one-trader" packages where some of them are already compliant with the PTD and some "multi-trader" travel arrangements for which the level of incidence of problems and an average cost of problem are likely to be higher.

competitive market, price increases on the end product tend to get minimised to the possible extent.

Impact on public authorities: all MS would be affected, as this option would require some changes in the domestic legislation. MS would bear the usual cost which accompanies the implementation of EU legislation.

Impact on EU budget: no impact, the European Commission would bear the usual cost which accompanies the implementation of new EU legislation.

Impact on competitiveness: More competition is expected in the sector, due to the increased level playing field. See Annex 7 for detailed analysis. Quantifications are presented in this report under the other economic impacts.

Social impacts: Businesses selling "one-trader" packages would incur additional costs, however as these costs will be passed on consumers, they are not expected to have any negative effect on employment. In the longer term, as business models would adjust, there would be more transparency and more competition that might lead to job creation.

Impact on fundamental rights: This option would ensure a high level of consumer protection in areas which are currently unregulated by EU legislation. It fully complies with the provisions of the EU Charter of Fundamental Rights, notably and foremost Article 38 on consumer protection. Article 16 on freedom to conduct business would not be significantly impacted since, even if there would be higher compliance costs, there would also be a significant reduction in administrative burden.

Environmental impacts: The main effects of this policy options would relate to the printing of brochures as undesirable environmental impacts linked to it would no longer occur.

Stakeholders' views: The inclusion of "one-trader" packages was supported by the overwhelming majority of stakeholders in the public consultation (93% of MS' authorities, 78% of industry associations, 64% of businesses and 96% of consumer organisations).

Simplification potential: For businesses, this option would simplify the regulatory environment, eliminating the need to research of different national laws. Moreover, this option would simplify some of the current unclear provisions of the Directive, in particular rules on liabilities and streamline the information requirements.

Distribution of impacts by MS: FR will be the MS that probably will be the most impacted regarding rules on liability. In several other respects, such as regards the insolvency protection, FR will be less impacted. In this area, for instance, the UK will be significantly impacted, since the UK will have to amend their recently adopted rules which extend their insolvency protection scheme also to cover the so called "Flight-Plus packages".

IR, SE, IT and SL where the share of consumers buying combined travel arrangements is significantly above the EU average (Annex 2, Figure 5) and the UK, DE and FR which are the biggest online travel markets (Annex2, Figure 3).

These countries are therefore likely to be the most impacted by the additional compliance costs stemming from extension of the scope of the Directive.

Assessment of sub-options

- **Sub-options concerning the liability for proper performance of the contract**

The results of the public consultation about who should be responsible for the proper performance of the contract are widely divided. The largest number of respondents favoured the package organiser as the liable party or joint liability.

Based on the assessment (see annex 5 for details), sub-option placing the liability on the organiser is the preferred solution as it is the least burdensome for businesses while providing for sufficient protection of consumers. Only in one MS (FR) there would be a shift of liability from retailers to organisers.

- **Sub-options concerning the revision of prices following the signature of the contract**

Industry stakeholders argue that the existing rules on price revisions should be maintained, while consumer organisations say that there is a need for increased foreseeability of expenses and that the current possibilities of price revisions should be abolished.

Sub-option 1 (maximum increase capped at 10%) and sub-option 2 (price increase above 5% giving the right to cancel the contract) are less costly for businesses while safeguarding consumer interests.

The preferred measure could be therefore one of these sub-options or a combination thereof.

See annex 5 for detailed assessment.

Impacts of other substantive provisions

| Substantive provision | MS impacted | Impact of the provision |
|--|--|--|
| Introduction of termination rights for travellers against compensation, as well as without compensation for force majeure events | All MS would be impacted, but less impact in MS such as CZ, DE, BE, DK, EE, EL, FI, HU, LT, LV, PT and ES where variations of such termination rights already exist. | <p>In serious unavoidable and extraordinary situations (force majeure cases), the majority of businesses act reasonably and, in order to maintain their reputation, cancel trips themselves. However, organisers and travellers might have different opinions as to the implications of extraordinary situations for the trip. Consumers would benefit from gaining the right to cancel holiday in the event of a force majeure situation, such as for example the outbreak of violent conflict or an ecological disaster, even if the organiser refuses to do so. This may result in some increase of compliance costs for businesses.</p> <p>If a termination right against compensation is introduced, consumers would be able to terminate the contract at any time paying a fee to businesses. If the fee is proportionate, businesses would face a very limited impact as the compensation</p> |

| | | |
|--|---|--|
| | | paid by consumers is supposed to cover these costs. |
| Clarification of right to compensation for non-material damages | All MS except for AT, BE and EE that already explicitly provide for compensation for loss of enjoyment. | The consumer would be entitled to compensation for both material and non-material (moral) damages (e.g. loss of holiday enjoyment) in cases of non-performance or improper performance of the contract. For businesses the clarification should not bring significant costs, since this is an existing possibility, although not often used by consumers. |
| Flexibility of MS as to the method of providing insolvency protection whilst adding explicit rules on the effectiveness of the national insolvency protection schemes, the mutual recognition of security provided under the law of the MS of establishment, as requesting the well as establishment of central contact points (minimum harmonisation rule). | Limited effect on Member States. They will have to establish central contact points to facilitate the mutual recognition. | No additional compliance costs for companies. Businesses would benefit from mutual recognition of schemes across the EU, as increased competition among funds in the internal market is likely to drop the insurance costs. Businesses offering services cross-border would particularly benefit from reduced costs through mutual recognition as they would not need to provide the insolvency protection in each MS they operate. Consumers would get access to more offers at competitive prices. |
| Reinforced rules on the possibilities to seek redress from the transport carrier in case of costs related to delays, cancellations, assistance or accidents regulated by the EU Passenger Rights. Consumers would continue to be able to choose whom to seek compensation and assistance from (transport carrier or the organiser of the package). | All Member States | Package travel organisers could have some savings as it would be easier for them to recuperate at least part of the compensation paid to travellers in case of delays, cancellations, assistance or accidents regulated by the EU Passenger Rights. The extent of this saving is however unknown as two of these Regulations ⁸⁵ have only recently entered into force and the APR is currently under review. At present, the possibility of seeking redress often depends on the specific arrangements between two business parties ⁸⁶ . |

⁸⁵ Regulation 181/2011 concerning the rights of passengers in bus and coach transport has entered into force in March 2013, whereas Regulation 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway entered into force in December 2012.

⁸⁶ Impact Assessments accompanying different proposals for the EU passenger rights provide an estimate of the maximum costs related to different provisions not excluding package travellers.

| | | |
|--|---|--|
| <p>The liability of the organiser to provide alternative arrangements for the continuation of the package in case of force majeure events would be limited (e. g. to a maximum number of three or four days). This provision would reflect the rules set out in EU Passenger Rights Regulations.</p> | <p>This would require legislative amendments in all Member States.</p> | <p>Compared to the legal situation today, this would mainly result in a cost reduction for organisers⁸⁷. Consumers would in most instances not be significantly affected, but would incur increased detriment in situations where it is not possible for the traveller to return immediately to the place of destination within four days after the return. It can also be expected that such a cap on the liability to provide assistance would make it easier for organisers to insure this risk.</p> |
| <p>Introduction of minimum one year prescription period for claims for damages or price reduction (minimum harmonisation rule).</p> | <p>Member States will not be affected by such a minimum requirement</p> | <p>Overall, this provision would bring slightly increased legal certainty for consumers, but since most Member States already have at least one year prescription periods, no major cost or impacts are expected.</p> |

5.5 Assessment of Option 6 - Graduated approach- modernisation of the Directive and coverage of both "one trader" and "multi trader" packages while applying a lighter regime to "multi-trader" assisted travel arrangements (PO6)

Meeting the objectives: Compared to PO5, this option would further contribute to the better functioning of the Internal Market in the package travel sector, eliminating legal fragmentation and levelling the playing field for operators. Making "multi-trader" assisted travel arrangements subject exclusively to the obligations to declare that they do not constitute a package and to procure insolvency protection, would increase transparency for consumers and ensure fair competition, while avoiding unnecessary costs associated with all obligations applying to packages.

Compared to PO5, this option would further increase the number of consumers protected by the PTD and would significantly decrease the consumer detriment.

Economic impacts

There are 31 million "multi-trader" holiday travel arrangements and 6 million business "multi-trader" travel arrangements sold annually. However, the exact share of "multi-trader" assisted travel arrangements and "multi-trader" packages is not known.

The "lighter regime" provided by PO6 would be particularly beneficial for SMEs currently selling "multi-trader" and "one-trader" packages as it could be difficult for them to cover liability for the performance of all services provided by different traders. These companies would be able to adapt their business activities so as to face only some PTD requirements (insolvency protection and an obligation to display the "This is not a package" disclaimer). It is impossible to quantify precisely how many businesses would do this.

⁸⁷The Impact Assessment on the possible review of Air Passenger Rights Regulation estimated that the assistance costs in case of travel disruption in case of force majeure events would reduce by 40% with a 3-day cap and by about 20% with a 4-day cap.

High-street travel agents selling "one-trader" packages in most cases have to already comply with the current PTD, as interpreted by the CJEU. A change of the business model would imply inconvenience for their customers, i.e. a need to make separate payment transactions. Online traders selling "one-trader" packages (for which it is less clear to what extent they are covered under the current PTD as interpreted by the ECJ, although they covered by national legislation in a number of Member States) would have to ensure that the services they offer are no longer booked within one booking process (i.e. no longer put in a single "shopping basket" by consumers). The additional services would have to be offered after the booking of the first travel service is confirmed, which would imply some redesigning of their websites and, sometimes, a clarification of their commercial agreements with other traders. Sellers of "multi-trader" packages could adapt their websites more easily, but they would have to stop charging an inclusive or total price for packages: this might imply the risk of losing those customers who might find the separate payment transactions less convenient. It is therefore assumed that only around 25% of "one-trader" packages⁸⁸ and roughly 50% of multi-trader packages would in the future be sold as "multi-trader" assisted travel arrangements.

Compliance costs for businesses: the same savings as in PO5 are expected. Under PO6, traders selling "one-trader" and "multi-trader" packages not covered by the current rules would incur additional compliance costs estimated at €7.5-€9.5 per package. Traders selling "multi-trader" assisted travel arrangements would incur one-off administrative costs (see below) related to displaying the "This is not a package" disclaimer and the cost for the insolvency protection. The current estimated cost of insolvency protection for packages amounts to roughly €3 per package. Based on the available figures and in particular on the experience of the UK "Flight Plus" scheme, which is a very similar model, the assumption is that this cost would remain roughly the same also for "assisted travel arrangements".

Given the above, the total additional compliance cost for the industry of PO6 could be estimated at €528-€654 million annually (low-€7.5 and high-€9.5 estimate of compliance costs per package).⁸⁹

However, using the above assumptions that some traders might adapt their business models and no longer sell packages, the additional yearly compliance costs of PO6 could be estimated at €386-€444 million annually (low- €7.5 and high- €9.5 estimate of compliance costs per package)⁹⁰.

Administrative costs for businesses: Same savings as in PO5. Some additional administrative costs for businesses brought under the scope of the PTD: -€2.8million annually⁹¹. Providers

⁸⁸ At present, around 50% of "one-trader" packages are sold in brick and mortar shops.

⁸⁹ 50% of "one-trader" packages (PO5) and all "multi-trader" packages, i.e. 63 million holiday and business trips*€ 7.5-€9.5 (low and high estimate of compliance cost per package excluding administrative costs) + all assisted travel arrangements i.e. 18,4 million holiday and business trips* €3 (cost of insolvency protection).

⁹⁰ Compliance costs of PO6 calculated above minus reduced costs by €4.5-€6.5 for 25% of "one-trader" packages and 50% of "multi-trader" packages i.e.29.5 million trips that might in the future be sold as multi-trader assisted travel arrangements thus incurring average costs of €3 per packages instead of €7.5-€9.5 per package.

⁹¹ 18.5 million packages brought under the PTD x € 0.15 = € 2,775,000 (see Annex 5 for more details). The cost per package estimate (based on option 5) has been used to estimate recurring administrative costs for providing information as it is impossible to determine the exact number of companies which would be responsible for providing particular pieces of information. Under sub-option 1 (contractual liability only on the initial service provider), even though the legal responsibility lies with the initial web page, in practice the detailed information about a specific travel component is likely to be provided by the service provider. Similarly, under sub-option 2 (each service provider responsible for the service they offer), each of the service provider will be responsible for

of "multi-trader" linked travel arrangements, subject only to the lighter information regime, would incur one-off administrative costs of €500 per company (€17 million for the whole industry⁹²) to state in a clear and prominent manner that each service provider will be solely responsible for the performance of its services ("This is not a package" disclaimer).

Impact on SMEs: Similarly to PO5, this option would increase compliance costs for businesses including SMEs selling "multi-trader" packages. However, PO6 provides for a lighter regime which would be particularly beneficial for SMEs currently selling "one-trader" and "multi-trader" packages which might find it difficult to assume liability for the performance of different services included in the travel combination. These companies would be able to adapt their business model and face only some PTD requirements (insolvency protection and the obligation to display the "This is not a package disclaimer") thus incurring lower compliance costs (on average €3 per package) compared to sellers of packages (on average €7.5-€9.5 per package).

PO6 would impact hotels, car rentals, airlines and businesses operating in the transport sector other than airlines and car rentals. Most of these businesses, excluding airlines, are SMEs/micro businesses (99%/73% for hotels, 99%/94% car rentals, 99%/90% other transport services)⁹³. For this reason, the goals which option 6 aims to reach would be hampered if such businesses were to be excluded from the scope.

Competition in the Internal Market: Businesses would also benefit from a more level playing field compared to PO5. "This is not a package" disclaimer would bring transparency on the market and travel arrangements which have similar characteristics would be subject to the same requirements. Consequently, competition is also likely to improve correspondingly better than in PO5.

Impact on businesses from third countries: similar effects as PO5.

Impact on consumers: Compared to PO5, this option would bring additionally around 31 million "multi-trader" travel arrangements within the scope of the Directive, bringing additional protection for consumers purchasing combined travel arrangements.

As estimated under PO5, the baseline detriment for 15.5 million "multi-trader" packages is expected to be reduced by 88%. For "multi-trader assisted travel arrangements", given that the most prevalent problems causing detriment concern provisions of information (22% of EU-17 problems with combined travel arrangements) and services not provided at all or of lower standard (17% of problems), it is assumed that the reduction of detriment would be 30% lower compared to the decrease of detriment for packages.

The yearly consumer detriment could be reasonably estimated to decrease by €508 million.

However, using the same assumptions as above, i.e. that some traders might adapt their business models and no longer sell packages, the total reduction of yearly consumer detriment could be estimated at €430 million⁹⁴.

their respective part of the package (e.g. an airline will be responsible for providing information on the time of departure, but not on the classification of accommodation included in the linked travel arrangements).

⁹² This option is likely to impact hotels, car rental and transport providers with on-line presence and linking to other websites. Based on Eurostat data and number of assumptions (for details see annex 5), it has been estimated that there are 34,000 companies like this.

⁹³ Eurostat Structural Business Statistics, 2009.

⁹⁴ The same approach is applied as in PO5. Therefore, the same methodological constraints apply to these estimations. For detailed calculations see annex 5.

Moreover, the "This is not a package"- disclaimer would enable consumers to make informed choices. On the other hand, some consumers may experience an increase in the prices of "multi-trader" and "one-trader" packages of around €7.5-9.5 per packages and of around €3 for "multi-trader" assisted travel arrangements if businesses pass on their increased compliance costs. But, similarly to PO5, such possible price increase case would be less than 2% of the total price of the package.

It is interesting to note, in this context, that 68% of surveyed consumers were willing to pay additionally €3 for insolvency protection for standalone airline tickets⁹⁵, which shows that consumers would be similarly likely to accept the potential increased prices for "multi-trader" assisted travel arrangements offering them protection against insolvency.

Impact on public authorities: similar effects as PO5.

Impact on EU budget: similar effects as PO5.

Impact on competitiveness: See Annex 7 for detailed analysis.

Social impacts: similar effects as PO5. No negative impacts on employment are expected. In the longer term, the transparency and increased competition might have some positive impacts on employment.

Impact on fundamental rights: similar effects as PO5.

Environmental impacts: similar effects as PO5.

Simplification potential: similar effects as PO5.

Stakeholders' views: The inclusion of "multi-trader" travel arrangements was supported by the majority of stakeholders in the public consultation (67% of MS' authorities, 57% of industry associations, 64% of businesses and 96% of consumer organisations).

Assessment of sub-options

Sub-option 3 (joint liability unless the parties designate one liable trader) is the preferred solution as it provides for the highest benefits to consumers while imposing liabilities on a reasonable number of companies (dependant on B2B arrangements).

For the detailed assessment see annex 5.

Distribution of impacts by Member States: the same distribution of impacts as under PO5.

5.6. Assessment of Option 7 - Modernisation of the Directive and coverage of both "one trader" packages and "multi-trader" travel arrangements (PO7)

Meeting the objectives: Similarly to PO6, this option would contribute to the better functioning of the Internal Market in the package travel sector by eliminating legal fragmentation. However, by extending the scope to "multi-trader" assisted travel arrangements, it would generate disproportionate and unfair costs for these companies. Compared to PO6, this option would further increase the number of consumers protected by the PTD (covering 46% of all holiday trips) and would significantly decrease the consumer detriment.

⁹⁵ YouGov survey of 2500 consumers carried for the Impact Assessment Study on the Review of the Package Travel Directive, Risk&Policy Analysts, 2010

Economic impacts

Compliance costs for businesses: Same savings as in PO5. However, by extending the scope to all "multi-trader" travel arrangements and by making them subject to all PTD obligations, this option would generate disproportionate and unfair costs for companies acting merely as intermediaries, since they might not be able to guarantee the performance of all services included in the travel combination.. The additional compliance costs could be estimated at €610-€773 million annually⁹⁶ (low-€7.5 and high-€9.5 estimate of compliance costs per package).

Administrative costs for businesses: Same savings as in PO5. Some additional administrative costs for businesses brought under the scope of the PTD: €5.6million annually⁹⁷.

Impact on SMEs: Similarly to PO5 and PO6, mostly SMEs would be impacted by increased compliance costs. Compared to PO6, this option does not provide for any lighter regime. All travel companies with online presence and linking to other travel providers would be subject to all PTD requirements which could be considered as disproportionate burden.

Competition in the Internal Market: Businesses selling packages (pre-arranged, "one-trader" and "multi-trader" packages) would benefit from a more level playing field similarly to PO6. However, as this option would also impose all the PTD obligations on "multi-trader" assisted travel arrangements, it would put traders selling these products in an unjustified competitive disadvantage compared to traders selling independent travel arrangements.

Impact on businesses from third countries: similar effects as PO5 and PO6.

Impact on consumers: This PO would further increase the number of consumers protected by the PTD and would significantly decrease the yearly consumer detriment by €593 million. For combined travel arrangements brought under the scope of the PTD, consumers could face price increases of up to 2%.

Impact on public authorities: similar effects as PO5 and PO6.

Impact on EU budget: similar effects as PO5 and PO6.

Impact on competitiveness: See Annex 7 for detailed analysis.

Social impacts: This PO might have some negative impacts on employment compared to PO5 and PO6 as this option places additional compliance costs on micro enterprises linking to other service providers for purely informative purposes. The impact is not expected to be significant as these companies can cease linking and avoid the compliance costs.

Impact on fundamental rights: similar effects as PO5 and PO6.

⁹⁶ 31 million "multi-trader" travel arrangements and 43.6 million "one-trader" packages *€ 7.5-€9.5 (low and high estimate of compliance cost per package excluding administrative costs). See Annex 5.

⁹⁷ 37 million "multi-trader" travel arrangements brought under the PTD x € 0.15 = € 4,650,000 (see Annex 5 for more details). The cost per package estimate (based on option 5) has been used to estimate recurring administrative costs for providing information as it is impossible to determine the exact number of companies which would be responsible for providing particular pieces of information. Under sub-option 1 (contractual liability only on the initial service provider), even though the legal responsibility lies with the initial web page, in practice the detailed information about a specific travel component is likely to be provided by each concerned service provider. Similarly, under sub-option 2 (each service provider responsible for the service they offer), each of the service provider will be responsible for their respective part of the package (e.g. an airline will be responsible for providing information on the time of departure, but not on the classification of accommodation included in the linked travel arrangements).

Environmental impacts: similar effects as PO5 and PO6.

Simplification potential: similar effects as PO5 and PO6.

Stakeholders' views: The industry stakeholders have questioned the feasibility of this option and argued that the inclusion of all "multi-trader" travel arrangements is disproportionately burdensome.

Distribution of impacts by Member States: the same distribution of impacts as under PO5&PO6

6. COMPARATIVE ASSESSMENT OF POLICY OPTIONS

Comparison of rating vs. objectives

| | Option 1 (Status quo) | Option 2 (Guidelines) | Option 3 A (Package Label)- add-on option ⁹⁸ | Option 3 B- "This is not a package"- disclaimer-add-on ⁹⁹ option | Option 4 (Repeal) | Option 5 Modernisation of the Directive and coverage of "one trader" packages (PO5) | Option 6 Graduated approach- | Option 7 covering all "multi-trader" travel arrangements |
|--|---|--|---|---|--|--|--|--|
| Objective 1: Improve the functioning of the Internal Market in the package travel sector | Without EU action, the regulatory fragmentation would remain and so would the excessive administrative costs for businesses. With the growing popularity of customised travel arrangements, unfair competition is likely to continue and possibly increase. | Unfair competition between different market players is likely to continue. The regulatory fragmentation will remain. The guidelines might however clarify the current rules. | As consumers increasingly recognise that the same label applies across the EU, this option is likely to result in fairer competition between different players and could therefore strengthen the functioning of the Internal Market. | Similarly to PO3 A (label), businesses would be able to compete on fairer grounds as the non-protected products without protection would be clearly labelled. | Whilst not fully eliminating obstacles to cross-border trade, the PTD has reduced legal fragmentation. Deregulation at EU level would most likely again increase legal fragmentation since MS would be able to maintain and create rules in an uncoordinated manner. This would be harmful to the Internal Market, as well as to businesses and consumers. | This option would contribute to the better functioning of the Internal Market in the package travel sector, eliminating legal fragmentation and levelling the playing field for operators. Some unjustified compliance costs, e.g. eliminating special rules for brochures, will be removed. There would be however an increase of compliance costs for new customised travel arrangements brought under the scope of the PTD. | This option would further contribute to the better functioning of the Internal Market in the package travel sector compared to PO5, eliminating legal fragmentation. This option would provide for a more level playing field for operators than PO5. Some unjustified compliance costs would also be removed. | Similarly to PO6, this option would contribute to the better functioning of the Internal Market in the package travel sector, eliminating legal fragmentation. However, by extending the scope to "multi-trader" arrangements it would generate disproportionate and unfair costs for these companies, |
| Reduce costs and obstacles to cross-border trade in the package travel market | 0 | 0 | 0/+ | 0/+ | -- | ++ | ++ | ++ |
| Ensure a more competitive and fairer level playing field for the businesses operating in the travel market | 0 | 0/+ | 0/+ | 0/+ | - | + | ++/+++ | ++ |
| Reduce unjustified compliance costs for businesses in the package travel market | 0 | 0 | -- | -(increased administrative costs) | + | ++ | ++ | ++ |
| | | | | | | (- for compliance costs for new packages brought under the scope) | (- for compliance costs for new packages brought under the scope) | (- for compliance costs for new customised travel arrangements brought under the scope) |

⁹⁸ The effectiveness of this option would be higher if combined with policy options 5 or 6.

⁹⁹ Similarly to PO3 A, the effectiveness of this option would be higher if combined with policy options 5 or 6.

| | Option 1 (Status quo) | Option 2 (Guidelines) | Option 3 A (Package Travel Label)- add-on option ⁹⁸ | Option 3 B- "This is not a package" disclaimer-add-on option ⁹⁹ | Option 4 (Repeal) | Option 5 Modernisation of the Directive and coverage of "one trader" packages (PO5) | Option 6 Graduated approach- | Option 7 covering all "multi-trader" travel arrangements |
|---|---|---|--|--|---|---|---|---|
| <p>Objective 2: Achieve a high level of consumer protection in the package travel market,</p> | <p>Consumers are likely to purchase more customised travel arrangements falling outside the scope of the PTD in future. This might further deteriorate the consumer understanding of the applicable protection rules and result in an increase of consumer detriment.</p> | <p>This option may lead to a reduction of detriment as the result of better implementation of the PTD by businesses and MS. However, as guidelines per definition are not a binding tool, these benefits will depend on the actual use by national authorities.</p> | <p>The label could reduce consumer detriment as consumers would be able to take informed decisions. However, the amount of this reduction would not off-set costs incurred by businesses for the implementation.</p> | <p>"This is not a package" disclaimer is expected to be more effective in reducing the consumer detriment than PO3A as a negative information might warn consumer who otherwise might purchase unprotected travel under the wrong impression that they are protected</p> | <p>In the absence of EU legislation, there is likely to be a significant decrease in the number of protected consumers and an increase in consumer detriment.</p> | <p>As more packages will be brought under the scope of the PTD, the consumer detriment will decrease. Consumers would also benefit from clarification of certain rules.</p> | <p>Further decrease of consumer detriment than in PO5 as more travel arrangements would be brought under the scope. Moreover, consumers would benefit from clarity and transparency avoiding confusion as to whether a customised travel arrangement is protected or not.</p> | <p>Compared to POA, this option would further increase the number of consumer protected by the PTD and would significantly decrease the consumer detriment.</p> |
| <p>Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments;</p> | 0 | 0 | 0/+ | + | -- | + / ++ | ++ / +++ | +++ |

| Option 1 (Status quo) | Option 2 (Guidelines) | Option 3 A (Package Label)- add-on option ⁹⁸ | Option 3 B- "This is not a package" disclaimer- add-on option ⁹⁹ | Option 4 (Repeal) | Option 5 Modernisation of the Directive and coverage of "one trader" packages (PO5) | Option 6 Graduated approach- | Option 7 covering all "multi-trader" travel arrangements |
|--|-----------------------|---|---|-------------------|---|------------------------------|--|
| 0 | 0 | 0/+ | 0/+ | -- | ++ | ++ | ++ |
| Reduce consumer detriment stemming from unclear and outdated provisions. | | | | | | | |

Comparison of cost and benefits for businesses and consumers

| Option 1 (Status quo) | Option 2 (Guidelines) | Option 3 A (Package Label)- add-on option | Option 3 B- "This is not a package" disclaimer- add-on option | Option 4 (Repeal) | Option 5 (covering "one-trader" packages) | Option 6 Graduated approach- | Option 7 (cover all "multi-trader" travel arrangements) |
|---|-----------------------|---|--|--|--|---|---|
| €1.6-€2.4 billion ¹⁰⁰ | No change | See administrative costs. | See administrative costs. | In theory, no costs | Additional compliance costs of €335-€424 million annually ¹⁰¹ | Additional compliance cost for the industry of €528-€654million annually ¹⁰² if the market structure remains unchanged. Additional yearly estimated compliance costs of at €386-€444 million annually if businesses adapt their business models. ¹⁰³ | |
| €409 million + €26 million for cross-border trade | No change | Additional costs of € 75/16 million one-off and €58/26 million recurring costs. | Additional administrative costs of €500 per company (with maximum total cost of €3,5million depending on the policy option. ¹⁰⁴ | In theory, no costs; potentially significant increase in administrative costs for cross-border trade | The administrative burden decrease by €390 million annually (due to the removal of the brochure requirement). Elimination of administrative costs for cross-border trade € 26million (€ 5 million annually). | Some additional administrative costs for businesses brought under the scope of the PTD -€2.8millionannually ¹⁰⁵ Additional one-off administrative costs of €17 million (€500 per company) ¹⁰⁶ to display "This is not a package disclaimer" | Some additional administrative costs for businesses brought under the scope of the PTD compared to PO5: €5,6 million ¹⁰⁷ |

¹⁰⁰ €10.5-€12.5 per package x 162 million packages (i.e. 118 million pre-arranged packages+ an assumed 50% of the "one-trader" packages being already covered by the PTD).

¹⁰¹ Low-€7.5 and high-€9.5 estimate of compliance costs per package, assuming that 50% of one-trader packages are already covered by the current PTD. See also assessment of PO5.

¹⁰² Low and high estimate of compliance cost * € 7.5-€9.5 per package and cost of insolvency protection €3 for "multi-trader" assisted travel arrangements. See also assessment of PO6.

¹⁰³ Compliance costs of PO6 calculated above minus reduced costs by €4.5-€6.5 for 25% of "one-trader" packages and 50% of "multi-trader" packages See also assessment of PO6.

¹⁰⁴ 36,000 companies selling "one-trader" packages and 34,000 companies selling "multi-trader" travel arrangements See assessment of option 3.

¹⁰⁵ "multi-trader" packages * €0,15 administrative cost.

¹⁰⁶ See assessment of option 6.

¹⁰⁷ All "multi-trader" travel arrangements x €0,15 administrative cost.

| | Option 1 (Status quo) | Option 2 (Guidelines) | Option 3 (Package Label)- Travel add-on option | Option 3 B- not a disclaimer- option | Option 4 (Repeal) | Option 5 (covering "one-trader" packages) | Option 6 Graduated approach- | Option 7 (cover all "multi-trader" travel arrangements) |
|---------------------------------------|--------------------------|--------------------------|---|---|--------------------------------|--|--|--|
| Consumer (traveller) detriment | €1 billion | No change | Small reduction of consumer detriment (€ 3 million per year) ¹⁰⁸ . | Reduction of detriment expected to be higher than in sub-option 3A. | Increase in consumer detriment | The level of detriment would decrease by €348 million if 50% of one-trader packages are newly brought under the scope of the PTD. ¹⁰⁹ | The yearly consumer detriment could be estimated to decrease by €508 million. However if some traders adapt their business models not to sell packages the total reduction of yearly consumer detriment could be estimated at €430 million. ¹¹⁰ | The yearly reduction of consumer detriment estimated at €593 million. ¹¹¹ |

¹⁰⁸ Based on data from a behavioural study. See assessment of option 3.

¹⁰⁹ See assessment of option 5 for details.

¹¹⁰ See assessment of option 6 for details.

¹¹¹ See assessment of option 7 for details.

6.1 Preferred Policy option

Option 6 "graduated approach", including sub-option 3B, has a number of advantages over other POs. Indeed, it meets the stated policy objectives as it would level the playing field whilst ensuring that compliance costs will be reasonable for the new players falling under its revised scope. This option also provides for a lighter regime that would be particularly beneficial for SMEs and micro-enterprises, which might find it difficult to assume liability for the performance of different services included in the travel combination. For consumers, PO6 would bring a significant reduction of consumer detriment due to the widening of its scope, ensuring insolvency protection for all types of combined travel arrangements, clarification of certain outdated and unclear rules of the current Directive and increased transparency of the information provided to consumers. It achieves a fair balance between business and consumer interests by tackling only those situations where there are concrete elements indicating to the consumer that he/she is purchasing a package, while applying a "lighter regime" with only some PTD requirements (insolvency protection and information obligations) to situations where the link between the offered services is less prominent.

7. MONITORING AND EVALUATION

The monitoring and evaluation process should focus on the three specific objectives determined by the problem definition.

Concerning the reduction of obstacles to cross-border trade in the package travel market, the focus should be on:

Increase in cross-border trade in the package travel market;

Concerning the establishment of a level playing field for the businesses operating in the travel market, the focus should be on:

costs for businesses and competitiveness of the package travel market, including an active debate with business stakeholders, e.g., a panel of traders established to review the costs and competitiveness of the package travel market.

Concerning costs for businesses and detriment for consumers stemming from unclear and outdated rules:

Costs for businesses, including an active debate with business stakeholders,

Number of consumer complaints concerning the identified problems as submitted to the national consumer organisations and ECC-net.

Concerning the reduction of consumer detriment and making consumers aware of the applicable rules, focus should be on:

increase in the number of consumers protected when going on holidays;

increased consumer awareness of the applicable protection rules when purchasing package holidays;

decrease in the number of consumers experiencing problems for different types of travel arrangements;

The following tools could be used to gather the necessary evidence and evaluate the proposal:

- Monitoring the proper transposition of the Directive by Member States;
- Consultation of stakeholders to review the costs and competitiveness of the package travel market;
- Preparation of a Eurobarometer study on tourism and consumer protection;

- Monitoring consumer complaints submitted through ECC-Net and national consumer organisations.

A report on the application of the Directive should be submitted to the European Parliament and the Council no later than five years after the transposition deadline.

ANNEX 1

THE MAIN REQUIREMENTS OF THE PACKAGE TRAVEL DIRECTIVE

The Directive protects the interests of consumers buying a package holiday by defining a range of the organiser's and retailer's duties and obligations and some specific consumer rights. Below is the summary of the key provisions. They all represent minimum consumer rights, and EU countries have been free to add more stringent rules to protect consumers in their national laws.

1. Information requirements

The organiser/retailer is obliged to provide the consumer with information at the following steps of the contractual relationship: before the contract is concluded, in the contract itself and before departure.

The Directive also contains special requirements for brochures.

If a brochure is made available to the consumer, it must not be misleading and must contain clear, comprehensible and accurate information on:

- (a) price;
- (b) destination;
- (c) transport: means of transport, type, and category;
- (d) accommodation: its type, location, category, degree of comfort; its main features, its approval and tourist classification;
- (e) meal plan;
- (d) itinerary;
- (e) passport and visa requirements as well as health formalities;
- (f) details of the payment schedule;
- (g) whether a minimum number of people is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation.

The details contained in the brochure are binding on the organizer (or retailer, as the case may be), unless the consumer was clearly informed of any changes before signing the contract (this must then be clearly stated in the brochure) or if the changes were agreed between the two parties later.

In addition, the consumer must be informed about the following **in good time before the start of the journey**:

(h) the times and places of intermediate stops and transport connections, and details of the place to be occupied by the traveller, e.g. cabin or berth on a ship, a sleeper compartment on a train;

(i) contact details of the local representative or a local agency which can provide assistance; when these do not exist, at least an emergency phone number or other means to contact the organiser or retailer when in difficulty;

(j) information on optional insurance to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.

Furthermore, **the contract** must contain at least the following as long as relevant for the particular package:

(a) the travel destination(s) and, where periods of stay are involved, the relevant periods, with dates;

(b) the means, characteristics and categories of transport to be used, the dates, times and points of departure and return;

(c) where the package includes accommodation, its location, its tourist category or degree of comfort, its main features, its compliance with the rules of the host Member State concerned and the meal plan;

(d) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing¹¹² the consumer in the event of cancellation;

(e) the itinerary;

(f) visits, excursions or other services which are included in the total price agreed for the package;

(g) the name and address of the organiser, the retailer and, where appropriate, the insurer;

(h) the price of the package, an indication of the possibility of price revisions under Article 4(4) and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at ports and airports, tourist taxes) where such costs are not included in the package;

(i) the payment schedule and method of payment;

(j) special requirements which the consumer has communicated to the organiser or retailer when making the booking, and which both have accepted;

(k) periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract

The terms of the contract must be communicated to the consumer before the conclusion of the contract. The consumer must also receive a copy of the contract.

¹¹² Limitation to deadline.

2. Binding prices

The price of the package agreed in the contract is binding, with some limited exceptions¹¹³.

Price increase is only possible if the contract expressly provides for it and states precisely how the revised price is to be calculated, and is only allowed for the revision in limited situations due to variations in: (a) transportation costs (including fuel costs), (b) taxes and fees, such as airport taxes, and (c) currency exchange rates on which the price of the package is based.

No price increase is allowed during the last 20 days before departure.

3. Right to transfer the package

Where the consumer is prevented from proceeding with the package, s/he may transfer his/her booking. The transferor of the package and the transferee will be jointly and severally liable to the organiser or retailer party to the contract for payment of the balance due and for any additional costs arising from such transfer.

4. Cancellation or change of contract terms

If any of the essential elements of the package (such as the price) agreed in the contract is significantly changed or if the organiser cancels the package, the consumer has the right to withdraw from the contract and get a full refund. Alternatively, s/he may accept a substitute package. If the substitute is of lower quality than the original one, s/he is entitled to receive the price difference. If the package is cancelled by the organiser, the consumer may also have the right for compensation in addition to the full refund (with some exceptions, e.g. if the package was cancelled due to a *force majeure* situation).

5. The organiser's responsibility and complaint handling

The organiser and/or retailer is liable for damages if the contract is not properly performed (with some exceptions, e.g. if the reason for the improper performance is caused by a *force majeure* situation). They are also required to provide prompt assistance if the consumer is in difficulty, even though it is a *force majeure* situation or the problem is caused by a third party not connected to the package.

Consumers are entitled to compensation for damages if the contract is not performed properly (though the amount of the compensation can be limited by international conventions and to some extent by national laws). The rule on liability, Article 5, is to be interpreted as conferring, in principle, a right also for compensation for non material damages¹¹⁴. A consumer is not entitled to compensation for damages in certain situations, e.g. if the reason for the improper performance is caused by himself or a *force majeure* situation. If the service

¹¹³ See Article 4 (4).

¹¹⁴ C168/00 (Simone Leitner).

offered on the spot does not correspond to what was agreed in the contract, the consumer must make a complaint as soon as possible. The organiser (or their local representative) must try promptly to find a satisfactory solution. Where, after departure, a significant proportion of the services is not or will not be provided, the organiser must make suitable alternative arrangements to the consumer, at no extra cost, for the continuation of the package. If there is a difference between the services contracted for and those supplied, the consumer is entitled to compensation. In cases where it is impossible to make such alternative arrangements (or these are not accepted by the consumer for good reasons) the organiser shall, where appropriate, provide the consumer, at no extra cost, with equivalent transport back to the place of departure (or to another return-point to which the consumer has agreed) and shall, where appropriate, compensate the consumer.

6. Insolvency protection

The organiser and/or retailer must provide sufficient evidence of security for the refund of the money paid and for the repatriation of the consumers in the event of insolvency of the organiser. This means that the consumer must be fully protected against loss of money and in the event the insolvency occurs while on holiday that he is repatriated.

ANNEX 2

1. Problem definition-data tables and graphs

Figure 1 *Travel and tourism economic impact*

| |
|--|
| <p>2011 Key Facts</p> <p>GDP: Direct Contribution</p> <p>The direct contribution of Travel & Tourism to EU GDP is expected to be €356 bn (2.9% of total GDP) in 2011, rising by 2.9% per year to €474 bn (3.1%) in 2021 (in constant 2011 prices).</p> <p>GDP: Total Contribution</p> <p>The total contribution of Travel & Tourism to EU GDP, including its wider economic impacts, is forecast to rise by 2.4% per year from €960 bn (7.8% of GDP) in 2011 to €1215bn (8.1%) by 2021.</p> <p>Employment: Direct Contribution</p> <p>Travel & Tourism is expected to support directly 7,062,000 jobs (3.2% of total employment) in 2011, rising by 1.5% per year to 8,218,000 jobs (3.7%) by 2021.</p> <p>Employment: Total Contribution</p> <p>The total contribution of Travel & Tourism to employment, including jobs indirectly supported by the industry, is forecast to rise by 0.9% per year from 18,382,000 jobs (8.4% of total employment) in 2011 to 20,066,000 jobs (8.9%) by 2021.</p> |
|--|

Source: World Travel & Tourism Council, Travel and tourism economic impact, 2011

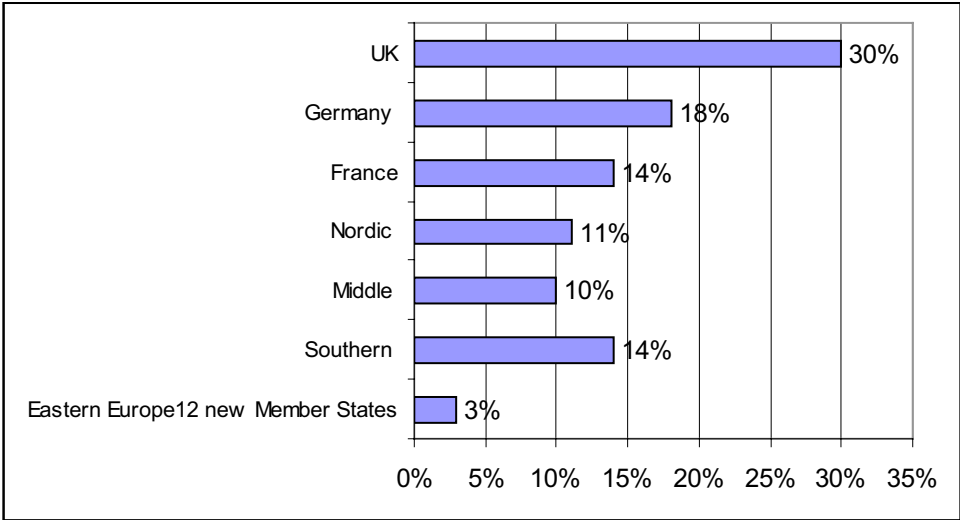
Figure 2 *Trends in overall online travel market size - Europe 1998-2008 with projections to 2009*

| Year | Market (€ billion) | Internet sales (€ billion) | Internet sales (% of the market) |
|------|--------------------|----------------------------|----------------------------------|
| 1998 | 200 | 0.2 | 0.10% |
| 1999 | 212 | 0.8 | 0.40% |
| 2000 | 227 | 2.5 | 1.10% |

| | | | |
|------|-----|------|--------|
| 2001 | 223 | 5 | 2.30% |
| 2002 | 221 | 8.9 | 4.00% |
| 2003 | 215 | 14 | 6.50% |
| 2004 | 220 | 21.2 | 9.60% |
| 2005 | 235 | 30.4 | 12.90% |
| 2006 | 247 | 40.3 | 16.30% |
| 2007 | 254 | 49.8 | 19.60% |
| 2008 | 260 | 58.4 | 22.50% |
| 2009 | 254 | 65.2 | 25.70% |

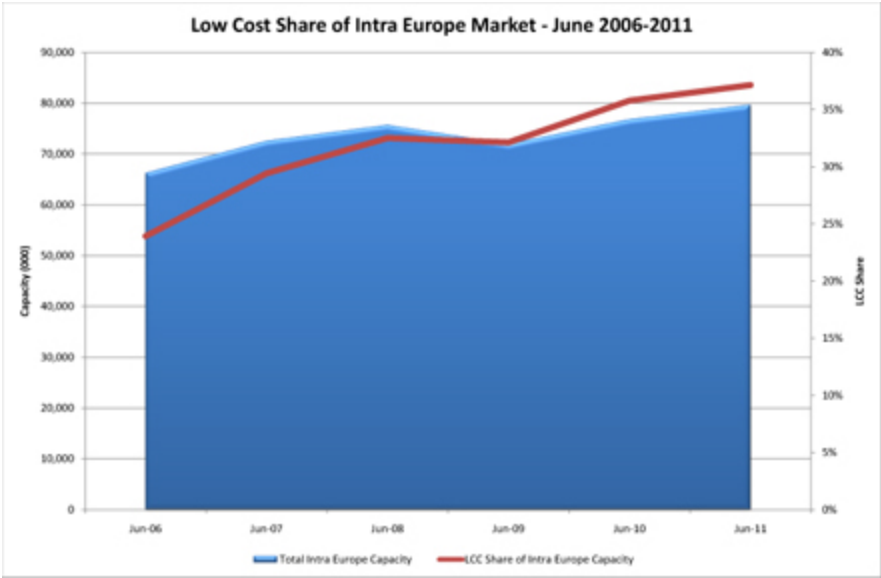
Source: Carl H. Marcussen, *Trends in European Internet distribution of travel and tourism services*, Centre for Regional and Tourism Research, Denmark, updated 23 March 2009

Figure 3 Geographic status for the European online travel market 2008



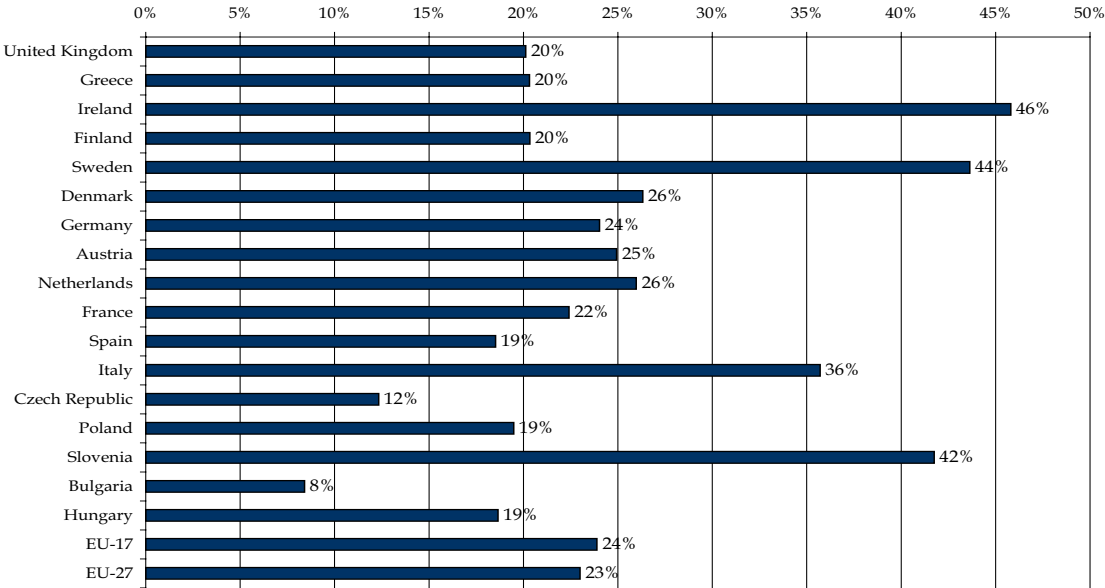
Source: Source: Carl H. Marcussen, *Trends in European Internet distribution of travel and tourism services*, Centre for Regional and Tourism Research, Denmark, updated 23 March 2009. Nordic: Denmark, Finland, Iceland, Sweden, Norway; Middle: Belgium, Netherlands, Luxembourg, Switzerland, Austria, and Ireland; Southern: Italy, Spain, Portugal, and Greece.

Figure 4 Evolution of Low Cost Carriers capacity on intra European routes



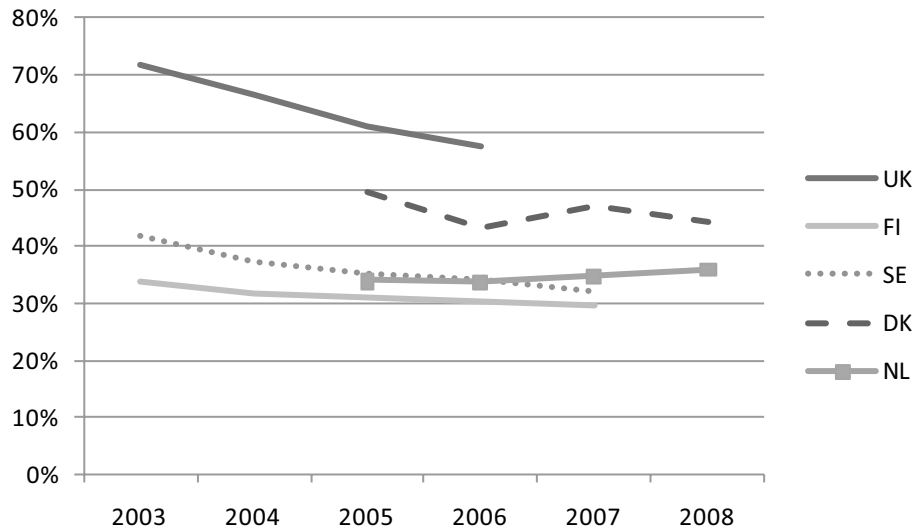
Source: OAG FACTS Executive Summary June 2011, <http://www.oagaviation.com/OAG-FACTS-June-2011-Executive-Summary>

Figure 5 Incidence of use of combined travel arrangements in the population within the last 2 years



Source: Study on Consumer detriment in the area of dynamic packages, The European Commission, Health and Consumers DG, prepared by London Economics, November 2009

Figure 6 Percentage of holidays protected by PTD and additional MS provisions



Source: TUI, estimates provided on the request of the Commission

Figure 7 *Estimated gross personal detriment for combined travel arrangements*

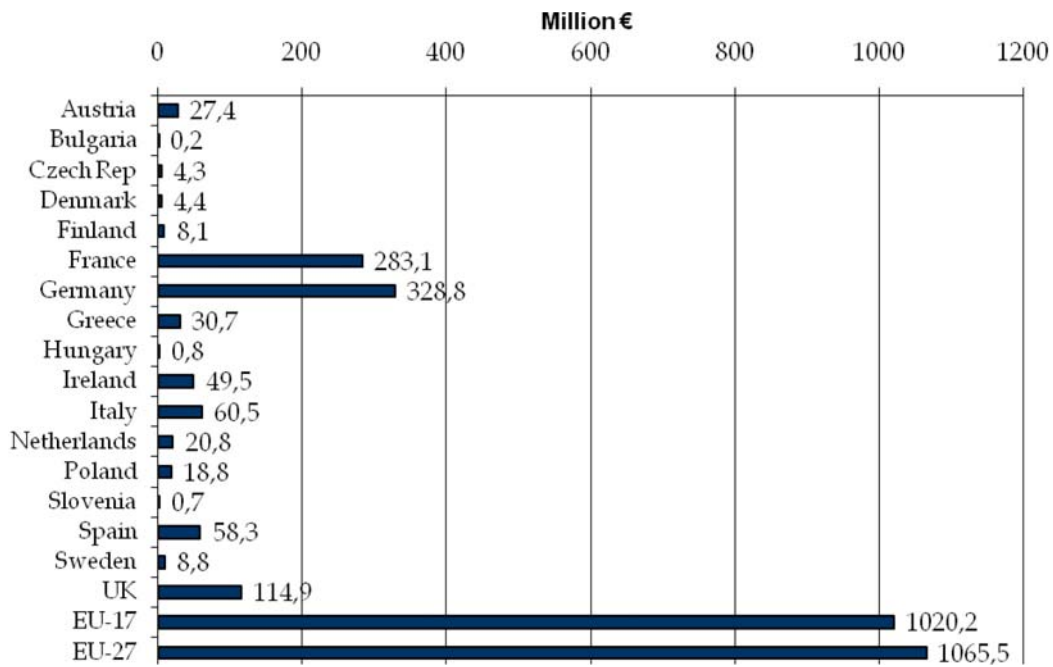
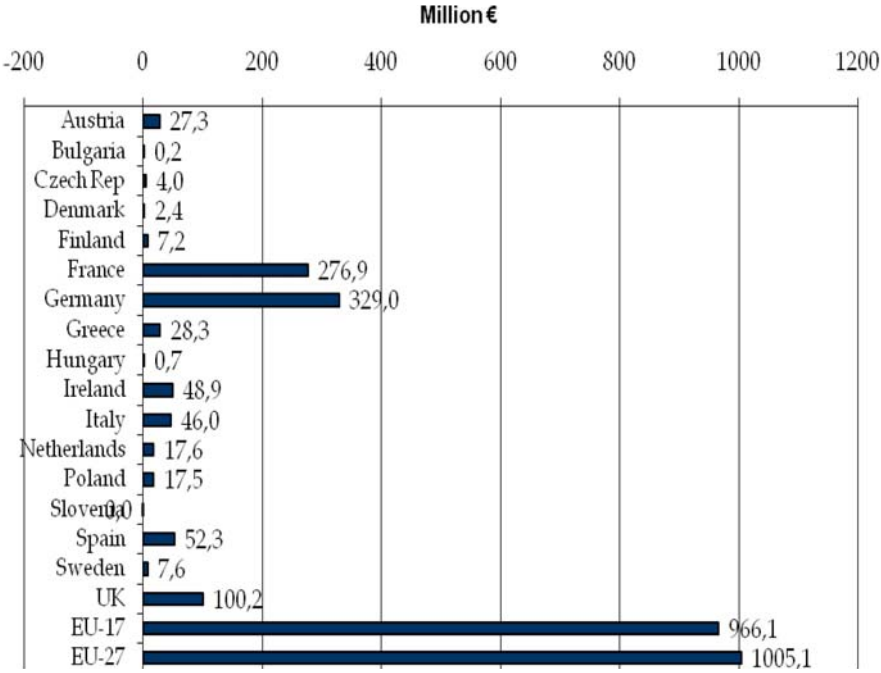


Figure 8 *Estimated net personal detriment for combined travel arrangements (i.e. gross detriment minus compensation)*



Source: Study on Consumer detriment in the area of dynamic packages, The European Commission, Health and Consumers DG, prepared by London Economics, November 2009

Figure 9 *Methodology for the estimation of personal detriment*

Gross personal detriment in sample =

Gross personal detriment per problem x Total number of problems in sample

where

Gross personal detriment per problem =

Average cost of problem + average time spent complaining x value of time

Total number of problems in sample =

Number of respondents in sample with problems x

Average number of problems experienced by individuals with problems

Net personal detriment in sample =

Gross personal detriment in sample – Compensation in sample

where

Compensation in sample = Total number of problems in sample x

Share of respondents with problems who received compensation x

Average value of compensation received

Annual personal detriment in population =

Personal detriment in sample/ share of households surveyed/ 2 years

where

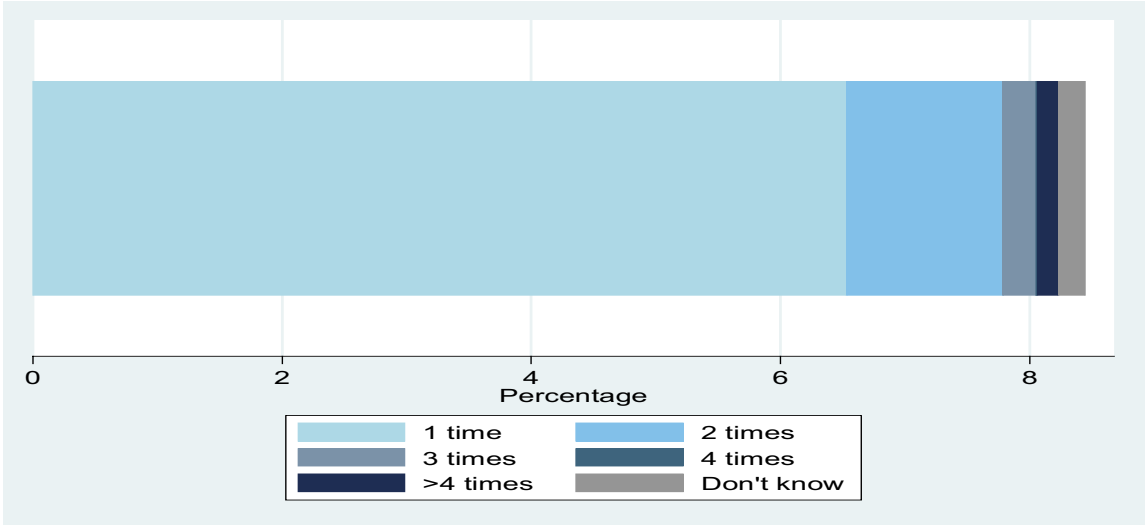
Share of household surveys=

Number of participating interviewees above 15 years/

(Population/ average household size)

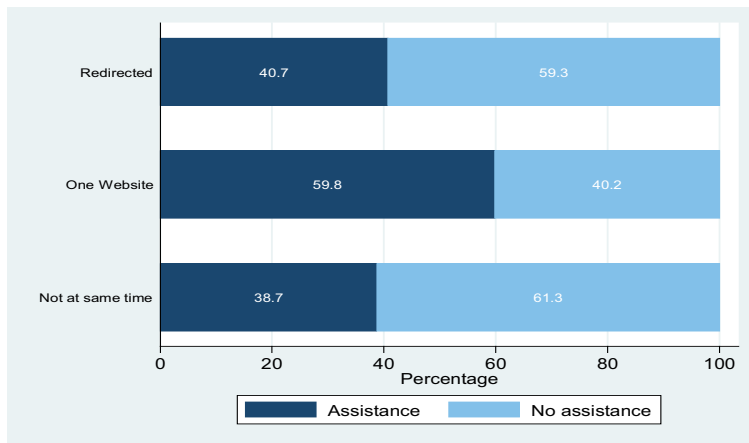
Source: Study on Consumer detriment in the area of dynamic packages, The European Commission, Health and Consumers DG, prepared by London Economics, November 2009

Figure 10 Incidence of problems with combined travel arrangements in the last 2 years by number of problems



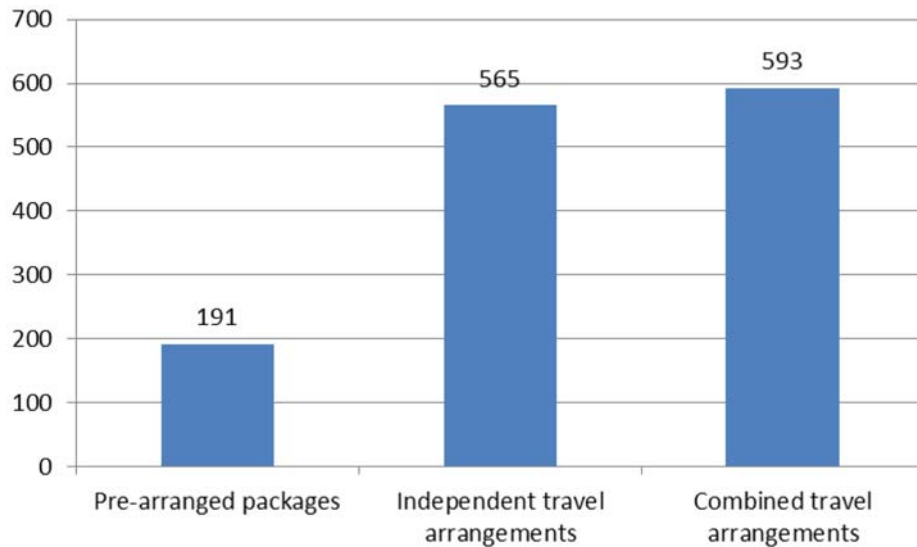
Source: Study on Consumer detriment in the area of dynamic packages, The European Commission, Health and Consumers DG, prepared by London Economics, November 2009

Figure 11 Availability of assistance by type of presentation – weighted average for EU-17



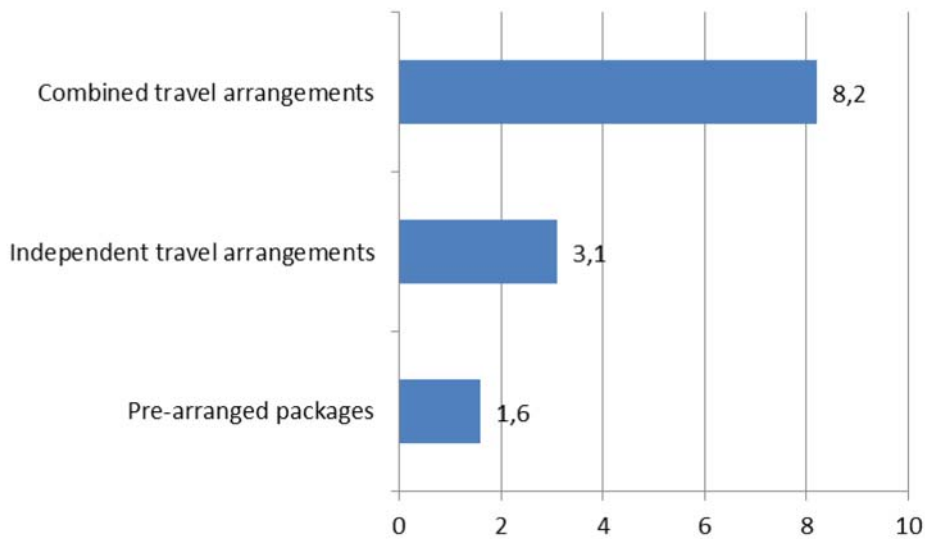
Source: Study on Consumer Detriment in the area of Dynamic Packages, The European Commission Health and Consumers DG, prepared by London Economics, November 2009

Figure 12 *Gross detriment per problem by type of travel arrangements*



Source: Study on Consumer detriment in the area of dynamic packages, The European Commission, Health and Consumers DG, prepared by London Economics, November 2009

Figure 13 *Incidence of problems by type of travel arrangements (number of trips with problems per 100 trips)*



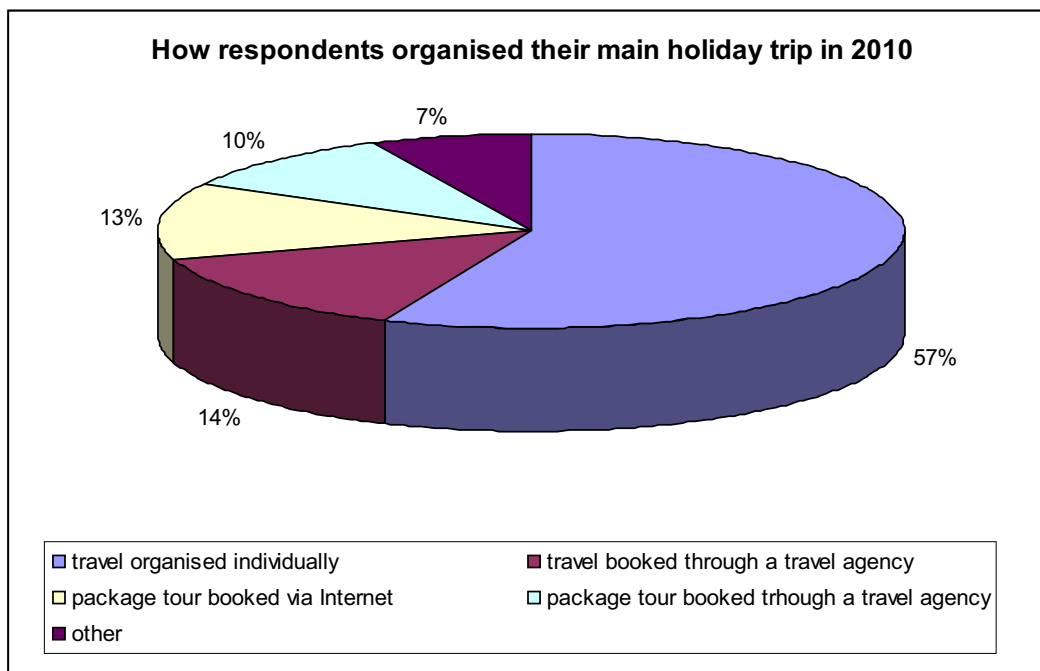
Source: Study on Consumer detriment in the area of dynamic packages, The European Commission, Health and Consumers DG, prepared by London Economics, November 2009

2. Estimation of the travel market segments

Estimation of the pre-arranged packages segment

This estimation relies on data from Eurobarometer 328 (Q10) which provides data on how EU citizens organised their main holiday trips in 2010 distinguishing four categories of trips.

Figure 14



Source: Flash Eurobarometer 328, 2011

We assume that the purchase habits of consumers remain unchanged and even if citizens take 2-3 holidays per year, they purchase it the same way as they do for their "main" holidays. These statistics do not correspond directly with the market segments of interest for the present study. However, some analysis can be made in relation to whether certain arrangements fall under the scope of the PTD and to which market segments certain categories could be assigned.

| | PTD protected/ PTD not protected | Study category |
|---|---|---|
| Travel or accommodation organised individually | Unprotected | - independent travel arrangements - "multi-trader" travel arrangements - "one-trader" travel arrangements |
| Travel or accommodation booked through a travel agency | Protected or unprotected | - independent travel arrangements - "one-trader" travel package |
| Package tour or all inclusive holiday booked via Internet | Protected | - pre-arranged packages |
| Package tour or all inclusive holiday booked | Protected | - pre-arranged packages |

| | | |
|-------------------------|-------------|---|
| through a travel agency | | |
| Other and no answer | Unprotected | <ul style="list-style-type: none"> - independent travel arrangements - "multi-trader" travel arrangements |

Based on the chart above, it can be assumed that on an EU average pre-arranged packages account for 23% of the holiday trips (package tour/ all inclusive holiday booked via Internet (13%) + package tour/ all inclusive holiday booked through a travel agency (10%)).

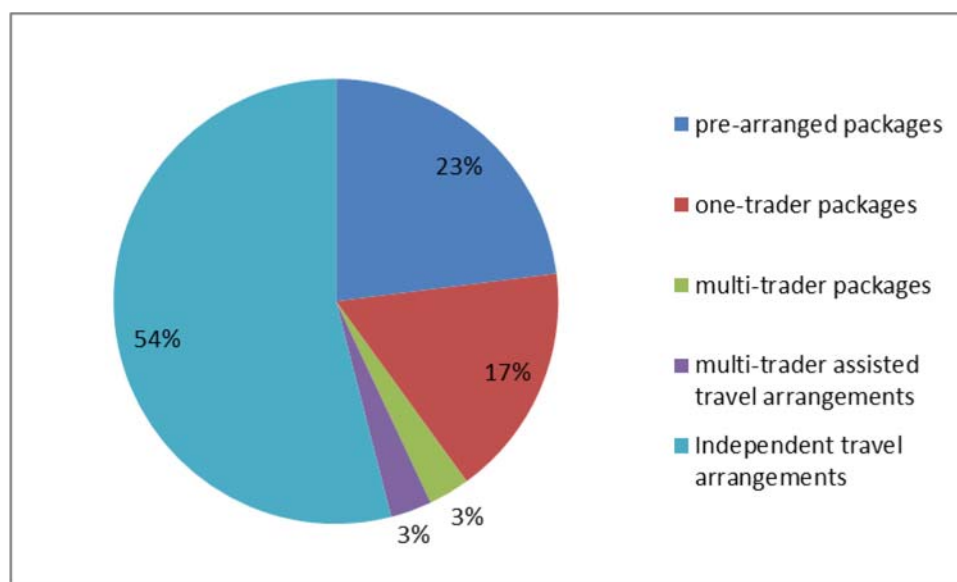
Estimation of the combined travel arrangements segment

According to the Consumer Detriment Study¹¹⁵, 23% of EU citizens purchased combined travel arrangements in the last two years. Given the lack of other sources of data concerning these travel arrangements, we assume that this figure can be an approximation of the shares of combined travel arrangements. Based on this study it can be also estimated that "multi-trader" travel arrangements account for 25% of the total number of combined travel arrangements and therefore for 6% of the holiday trips (25% x 23% = 5,75%) sold annually. Furthermore, based on empirical data observations, it is assumed that, at present around 50% of "multi-trader" travel arrangements are sold in a similar manner as package travel and fall under the category of "multi-trader" packages.

Estimation of the market segments

Based on the above estimation of shares of combined travel arrangements and pre-arranged packages, the market structure would be as follows:

Figure 15: *Travel Market Structure*



Source: Own estimates based on Flash Eurobarometer 328 and Study on Consumer Detriment in the area of dynamic packages.

¹¹⁵ http://ec.europa.eu/consumers/rights/docs/study_consumer_detriment_dyna_packages_en.pdf.

Estimation of the total volume of the market

In 2010, EU27 residents (excluding Malta) made 1.0 billion holiday trips, of which more than three-quarters were domestic trips, within the country of residence, and around one quarter were outbound trips outside the country of residence. Considering the duration of these trips, as would be expected domestic holiday trips are mainly of short duration, lasting 1 to 3 nights, and outbound trips are more often long trips of 4 nights and more.¹¹⁶

| | Number of holiday trips (in thousands) | | | Share by type of trip (%) | | | |
|-------|---|---------------------------|---------------------------|---------------------------|------|----------|------|
| | All holiday trips | Domestic holiday trips | Outbound holiday trips | Domestic | | Outbound | |
| | | | | Short | Long | Short | Long |
| EU27* | 1 046 804 | 801 575 | 245 229 | 51 | 26 | 5 | 18 |

We can assume that short domestic trips are not a substitute to packages and exclude them from the total market estimate. We would get the estimate of the total market of 513 million trips.

| Market segment | % share | Number of trips (millions) |
|------------------------------------|---------|----------------------------|
| Pre-arranged packages | 23% | 118 |
| "One-trader" packages | 17% | 87 |
| "Multi-trader" travel arrangements | 6% | 31 |
| Independent travel arrangements | 54% | 277 |

ECTAA¹¹⁷ estimated that 170 Millions packages are covered by the PTD (covering pre-arranged packages and some of "one-trader" packages). As it has been estimated, between 25%-75% of "one-trader" packages comply with the PTD. This would mean that, according to the estimates presented in the table above, between 140 and 183 million packages are compliant with the PTD which is in line (concerning the highest estimates) with the estimates of ECTAA.

Business trips

In 2010, business trips were 172 million.¹¹⁸ This data relates to the EU-27 without Belgium, Estonia, Cyprus, Malta, the Netherlands and Slovenia. We can assume henceforth that, in the EU-27, business trips are about 200 million. They split as in the following table:

¹¹⁶ http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/4-27092011-AP/EN/4-27092011-AP-EN.PDF.

¹¹⁷ European Travel Agents and Tour Operators Association, estimates provided on the request of the Commission.

¹¹⁸ Eurostat business trips by duration, 2010.

| | Number of business trips (in thousands) | | | Share by type of trip (%) | | | |
|------|---|-------------------------|-------------------------|---------------------------|------|----------|------|
| | All business trips | Domestic business trips | Outbound business trips | Domestic | | Outbound | |
| | | | | Short | Long | Short | Long |
| EU27 | 200 000 | 152 400 | 47 600 | 60 | 17 | 14 | 9 |

60% of these trips are domestic and with short duration. The remaining 40%, i.e. 80 million of trips, could be eligible to be purchased as a travel package.

It is nonetheless very unlikely that business trips can be booked as a pre-arranged package travel, as businessmen have a very precise schedule to respect and solutions need to be tailor-made. Guild of European Business Travel Agents estimates that 80%-85% of business trips (64-68 million trips)¹¹⁹ are arranged by travel management companies (TMCs)¹²⁰. As there is a direct and bilateral relationship between TMC and its business customers, it is assumed that the business trips arranged by TMCs most likely fall in the category of "one-trader" packages or independent travel arrangements.

Concerning the typology of trips, it is reasonable to assume maintaining the same ratio as for holiday's trips among "one-trader" packages, "multi-trader" travel arrangements and independent travel arrangements (i.e. 17 – 6 – 54), in a way they add to 100% (i.e. 22 – 8 – 70). As indicated above, TMCs are unlikely to sell "multi-trader" travel arrangements. In order to estimate number of business trips arranged by TMCs the same ratio of independent travel arrangements and "one-trader" packages is applied. The results of this assumption are shown in the following table.

| Market segment | % share | Number of business trips (millions) | Number of business trips arranged by TMCs (millions) |
|------------------------------------|---------|-------------------------------------|--|
| "One-trader" packages | 22% | 18 | 16 |
| "Multi-trader" travel arrangements | 8% | 6 | 0 |

¹¹⁹ In the assessment of options, an estimate of 66 million business trips annually is taken forward

¹²⁰ Travel agencies which are specialised in providing services for corporate clients

| | | | |
|---------------------------------|------|----|----|
| Independent travel arrangements | 70% | 56 | 50 |
| TOTAL | 100% | 80 | 66 |

3. Overview of applicable legislation and rights

| Product | Single services | | | | | | Packages | | |
|--|----------------------------------|----------------------------------|--|--|--|--|---|------------------|-------------|
| | Accommodation | Car rental | Transport | | | | Other tourists services (e.g. excursions, events) | PTD | Revised PTD |
| | | | Air | Rail | Bus, coaches | Waterborne transport | | | |
| Specific/sectoral EU legislation applies? | No, only if part of a package | No, only if part of a package | Regulation 261/2004 | Regulation 1371/2007 | 181/2011 (into force in March 2013) | Regulation 1177/2010 (into force in December 2012) | No, only if part of a package | Directive 90/314 | n/a |
| Information requirements: | | | | | | | | | |
| -In horizontal EU legislation ¹²¹ | Yes (UCPD; CRD for online sales) | Yes (UCPD, CRD for online sales) | Yes (UCPD, Art. 8(2)CRD on internet cost traps for online sales) | Yes (UCPD, Art. 8 (2) CRD on internet cost traps for online sales) | Yes (UCPD, Art. 8 (2) CRD on internet cost traps for online sales) | Yes (UCPD, Art. 8 (2) CRD on internet cost traps for online sales) | Yes (UCPD, CRD for online sales) | Yes, UCPD, | Yes, UCPD, |
| -In sectoral/specific EU legislation | No | No | Yes (including ASR ¹²² Article 23) | Yes | Yes | Yes | No | Yes, PTD | Possible |
| Contractual liability: | | | | | | | | | |
| - for non-performance ¹²³ | No, only national contract law | No, only national contract law | Yes, via the Montreal convention | Standardised compensation scheme | Standardised compensation scheme | Standardised compensation scheme | No, only national contract law | Yes | Possible |

¹²¹ The CRD will be applicable as of 13 June 2014 for single services (and not for package travels falling under the PTD). Up to this date, the following directives apply: the Distance Selling Directive 97/7/EC with general information requirements; the Doorstep Selling Directive 85/577/EEC with information requirements on the particulars of the contract and the right of withdrawal

¹²² Air Services Regulation 1008/2008

¹²³ Until 13 June 2014, Art. 7 (2) of the Distance Selling Directive continues to apply. It requests that the trader informs the consumer if the service is unavailable and provides for a right to reimbursement as soon as possible and the latest within thirty days.

| | | | | | | | | | |
|--|--|--|----------------------------|----------------------------------|-----------------------------|----------------------------|--|------------|---|
| - denied boarding | n/a | n/a | yes | No, (only national contract law) | Yes | No, | n/a | yes | Possible |
| -cancellations | No, only national contract law | No, only national contract law | yes | Yes | Yes | Yes | No, only national contract law | yes | Possible |
| -delays | n/a | n/a | yes | Yes | Yes | Yes | n/a | yes | Possible |
| - lost luggage | No, only national contract law | No, only national contract law | yes | yes | Yes | No | No, only national contract law | yes | Possible |
| - personal injury | No, only national contract law/tort law | No, only national tort law | yes | yes | yes | yes | No, only national tort law | yes | Possible |
| Insolvency protection | No | No | No | No | No | No | No | yes | Possible |
| Unfair contract terms | Yes (UCTD; Art. 19,21,22 CRD) | Yes (UCTD, Art. 19,21,22 CRD) | Yes (UCTD, Art. 19,21 CRD) | Yes (UCTD; Art. 19, 21 CRD) | Yes (UCTD, Art. 19, 21 CRD) | Yes (UCTD; Art. 19,21 CRD) | Yes (UCTD; Art. 19, 21 CRD) | Yes (UCTD) | Yes (UCTD) |
| Misleading/unfair commercial practises | Yes (UCPD) | Yes (UCPD) | Yes (UCPD) | Yes (UCPD) | Yes (UCPD) | Yes (UCPD) | Yes (UCPD) | Yes (UCPD) | Yes (UCPD) |
| Withdrawal right ¹²⁴ | No | No | No | No | No | No | No | No | Possible with a limited withdrawal right, e.g. for breach of information requirements |
| Apply to B2B contracts | None of the EU legislation apply, only national contract law | None of the EU legislation apply, only national contract law | Yes | Yes | Yes | Yes | None of the EU legislation apply, only national contract law | Yes | Possible |

4. Gaps in the current legal framework for packages

| Legal requirements | CRD | UCPD | PASSENGER RIGHTS REGULATION | SERVICES DIRECTIVE | Comment |
|--------------------|-----|------|-----------------------------|--------------------|---------|
|--------------------|-----|------|-----------------------------|--------------------|---------|

¹²⁴ For single services under the conditions set out in Art. 16 (1) of the CRD. Until 13 June 2014, the Doorstep Selling Directive continues to apply; it provides for a right of withdrawal.

| | | | | | |
|---|----------------|--|--|--|--|
| Pre-contractual information | Does not apply | Applies, but is not targeted towards travel relevant information | Some information requirements, but limited to the transport element | Applies, but is not targeted towards travel relevant information | <u>GAP</u> ¹²⁵ |
| Rules on marketing of packages | Does not apply | Applies | Some limited rules relating to the transport element, e.g. Air services Directive article 23 | Only very limited general rules | No gap |
| Rules on content of contract | Does not apply | No requirements | Some limited rules relating to the transport element, e.g. Air services Directive article 23 | Only very limited general rules, e.g. non-discrimination etc. | <u>GAP</u> ¹²⁶ Unfair clauses is governed by the Directive on Unfair Contract Terms |
| Rules on cancellations before departure | Does not apply | No rules | Rules relating to the transport element | No rules | <u>GAP</u> |
| Rules on transfer of bookings | Does not apply | No rules | No rules | No rules | <u>GAP</u> |
| Rules on remedies if something goes wrong | Does not apply | No rules | Rules only relating to the transport element | No rules | <u>GAP</u> |
| Rules on liability for damages | Does not apply | No requirements | Rules only relating to the transport element | No requirements | <u>GAP</u> |
| Rules relating to force majeure situations | Does not apply | No requirements | Rules only relating to the transport element | No requirements | <u>GAP</u> |
| Rules on insolvency protection | Does not apply | No requirements | No direct requirements protecting consumers in the event of insolvency | No requirements | <u>GAP</u> |

¹²⁵ E.g. no rules on: itinerary, intermediate stops, rating under hotel classification system, if a minimum number of persons are required for the package to take place, health and visa requirements, meal plans, etc.

¹²⁶ E.g. no rules on cancellation or termination rights, special requirements of the traveller which the organiser has accepted, name of the entity providing the insolvency protection and its contact details, the minimum number of persons are required for the package to take place, etc.

ANNEX 3

SPECIFIC PROBLEMS WITH THE PACKAGE TRAVEL DIRECTIVE

SCOPE AND DEFINITIONS

The scope of the Directive is closely related to the definitions in the Directive, especially the definitions of "package", "organiser" and "consumer" in Article 2(1), (2), and (4).

The overwhelming majority of stakeholders in the public consultation considered the clarification/ updating of definitions as well as a clarification/extension of the scope as important.

1.1. Definition of "package"

The definition of the term "package" is of particular importance for the Directive's scope.

The current description of what falls within the definition does not fully take the reality of today's travel market into account.

This includes, in particular, the growing popularity of the so-called "combined travel arrangements" ("tailor-made"), where different travel services are combined at the demand of the consumer and are sold to a large extent over the Internet.

In the Club Tour-case¹²⁷ the CJEU clarified that the combination of tourist services carried out by a travel agency to the specific requests of the consumer up to the moment of conclusion of the contract is covered by the Directive. In this respect the term "pre-arranged", which is currently included in the definition, seems superfluous and can create unnecessary confusion.

The main problem in practice has been to adapt the current definition of a "package" to new purchasing methods, notably to the "combined travel arrangements", especially in the on-line environment.

Whether the product is under the scope will depend on a rather complex case-by-case assessment¹²⁸.

Furthermore, it is often unclear to the consumer that different levels of protection apply for more or less equivalent travel arrangements, depending on how they are sold. In addition, the transposition of the Directive and the corresponding interpretation varies in the Member States.

¹²⁷ C-400/00.

¹²⁸ See also the related point in 1.3 concerning the definition of the "organiser".

This leads to a different scope of protection granted within the Internal Market and affects competition and consumer protection.

The public consultation confirmed that both business and consumer stakeholders have problems in distinguishing which travel arrangements fall under the definition of a "package".

Table 1: Interpretation of the term "package" in different Member States

| MEMBER STATE | Cover one shop travel package sold in the high street | Covers one-shop travel packages sold on-line* | Covers multi-shop travel arrangements* | Covers B2B contracts |
|---------------------------|--|---|---|--|
| AUSTRIA | x | x | | x |
| BELGIUM | x | x | | x |
| BULGARIA | x | x | | x |
| CYPRUS | | | | x |
| CZECH REPUBLIC | x | x | | x |
| GERMANY | x | x | If the product is perceived as a package | x |
| DENMARK | x | x | | x |
| ESTONIA | x | x | | Partly, as "legal persons" are outside the scope |
| FINLAND | Only in cases where services are not available separately | Only in cases where services are not available separately | | x |
| FRANCE | x | x | | x |
| GREECE | x | | | x |
| HUNGARY | x | X | | x |
| ITALY | Unclear reply | In theory, but no case-law yet | | x |
| LITHUANIA | x | x | | X |
| LUXEMBOURG | x | x | | x |
| LATVIA | x | x | In theory, but no case law yet | x |
| POLAND | x | x | | x |
| MALTA | x | | | x |
| PORTUGAL | Unclear reply | Unclear reply | | |
| SWEDEN | x | x | | x |
| SLOVENIA | | | | |
| SLOVAKIA | Unclear reply | | | |
| UNITED KINGDOM | x | Only in some cases, following the results of court decisions. | Only some (Flight plus – insolvency protection) | x |
| THE NETHERLANDS | x | x | | x |
| SPAIN | | | | x |
| ROMANIA (no reply) | | | | |
| IRELAND (no reply) | | | | |

Source: Member States' replies to questionnaires as a preparation to Member States' Workshop 5 June 2012, according to which the coverage appears to depend on a case by case assessment.

In the Member States, there are currently significant differences in the definitions and interpretation of the Directive's term "package". Some Member States have, for instance, broadened the definition of a "package" and covered, e.g., travel products containing only one element, trips of less than 24 hours or without overnight accommodation. A few Member States have not included the requirement of other tourist services to account for "a significant proportion" of the package¹²⁹. Other EEA states, such as Sweden and Norway, have also incorporated travel products that significantly resemble travel packages. Germany found another solution whereby the consumer's perception of what he is offered (whether it is a package) plays a role when determining if a product is within the scope of the national package travel law.

Another expression used in the definition of a 'package' that has created confusion is "other tourist services not ancillary to transport and accommodation and accounting for a significant proportion of the package".

Some stakeholders have asked for a clarification of "significant proportion", possibly by expressing the concept explicitly, e.g. in a percentage of the value of the package. Additionally, it is neither indicated nor explained what kind of services could be regarded as "other tourist services", which might also cause confusion or litigation¹³⁰.

Cruises are a special case of a package holiday, since the maritime transport service coincide with the accommodation. Thus, it would be useful to remove any remaining doubt and clarify that cruises are within the scope of the Directive¹³¹.

Similarly, we find that transportation which includes accommodation, e.g. overnight ship/train trips which include accommodation, causes difficulties in determining whether it falls under the definition of a "package"¹³². In this "grey zone" area; it can be unclear if it should be considered to be a combination of transport and accommodation services, creating problems for both consumers and traders as to whether products are falling within the scope, including whether such products should have protection against bankruptcy.

1.2. Definition of "consumer"

The Directive defines the consumer as "the person who takes or agrees to take the package ("the principal contractor"), or any person on whose behalf the principal contractor agrees to purchase the package ("the other beneficiaries") or any person to whom the principal contractor or any of the other beneficiaries transfers the package ("the transferee)". Consequently, the definition of "consumer" in the Directive is significantly broader than the definition of consumer in the rest of the Consumer Acquis, since there is not a requirement

¹²⁹ The Consumer Law Compendium, page 243.

¹³⁰ E.g. see reference for a preliminary ruling, pending Case C-32/10 (Semerdzhiev) and judgement in C-237/97 AFS Intercultural Programs Finland.

¹³¹ See also Case C-585/08 Pammer.

¹³² Case C-585/08 Pammer.

that the consumer is acting for purposes which are outside his trade, business, craft or profession. However, this solution is in line with other EU transport legislation where the "passenger"¹³³ is the protected party, irrespective of the purpose of the travels. The problem in defining the consumer in this way is that the term "consumer" does not fit with what the definition actually includes.

1.3. Definitions of "retailer" and "organiser"

The notion of "retailer" and "organiser" is not in line with the definition of a "trader" or a "seller" and similar terms describing professional parties in the Consumer Acquis. While it is required elsewhere that a trader/seller is acting for purposes relating to his trade, business, craft or profession, such a requirement is absent in the Directive. The existing definitions of "retailer" and "organiser" therefore also include private persons. This means that, under certain circumstances, consumer-to-consumer contracts (C2C) come under the scope of the Directive. Thus, the rules which are created on the basis that there is an imbalance between the contractual strength of the two parties (consumer and trader) do not fit in C2C cases.

In the increasing trend of offering customised/combined travel arrangements, suppliers do not necessarily offer contracts for different travel services in their own name. This has created legal grey zones, where both businesses and consumers are often uncertain as to whether such packages are covered by the PTD and whom is liable for the performance of the contracts. The coverage has, as indicated above, to be determined on a case-by-case basis and will often lead to complex judicial decisions and court proceedings, both in determining if the components qualify as a package and whether the seller qualifies as an "organiser" of the package. In several recent national court cases¹³⁴, the courts have not considered sellers of combined travel arrangements as "organisers" when they have been offering several travel components in a combination, but not in their own name ("one-shop" travel packages). This has led to an increasing number of customised combined travel arrangements not being considered as under the scope of the Directive, resulting in fewer consumers going on holiday being protected and creating an un-level playing field for the traders selling packages.

INFORMATION REQUIREMENTS

The Directive contains several obligations to provide information for the professional party(ies) to the contract. Article 3 and 4 prescribe the minimum information that must be given to the consumer at different stages in the conclusion of a contract, including mandatory rules on what should be included in a brochure that is made available to consumers. The general feedback from stakeholders is that the current information requirements work rather well. However, some problematic issues are explained below.

¹³³ E.g. Regulation 2004/261 (air passenger's rights) and Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

¹³⁴ E.g., CAA vs Travel Republic (UK), BGH Judgement of 30. September 2010 – Xa ZR 130/08 (DE), Judgement of 11 June 2010 Erste Kammer, 08/04611, SGR vs ANVR (NL).

Requirements for the brochure

According to the current rules, if a brochure is made available for the consumer, it must contain prices and other information, such as about the itinerary, the meal plan, the destination and the means, characteristics and categories of transport used. The particulars in the brochure are, as a general rule, binding on the organiser/retailer, including the mentioned prices. These rules have led to businesses complaining that they may be forced to reprint the brochures in cases of changes in prices, accommodation, etc., which they consider to be very costly and unnecessary, since the consumer always would be able to get the updated price before he concludes a contract.

Furthermore, they have complained that this rule indirectly makes prices for packages less dynamic and flexible, which they see as a competitive disadvantage compared to companies selling travel products falling outside the scope of the Directive.

How to provide the required information

The formal requirements for the pre-contractual information in Article 4(1) a) are unclear, as the Directive uses the wording "in writing or any other appropriate form" and thereby leaves it open to interpretation what should be considered as "appropriate". The same problem occurs if the information has to be provided before the start of the journey as described in Article 4(1) b). Even the formal requirements for the information to be provided in the contract (see Article 4(2)) are unclear as the requirement is: "in writing or such other form as is comprehensible and accessible to the consumer". However, according to the same provision, the consumer is entitled to receive a "copy of these terms", which normally in practice implies that the consumer receives a paper copy of the contract. As a result, the way in which information has to be provided is transposed or interpreted differently across the Member States¹³⁵ creating a legal framework with national difference that can make it more difficult and cumbersome for traders to provide services in several Member States.

Furthermore, instead of communicating in writing by post, consumers and professionals may nowadays prefer other means of communication, such as e-mails, and in the Member states it can be unclear whether this should be considered to be in "an appropriate form". There is no reference to "durable medium" in the Directive, something which is common in the more recent consumer legislation.

Last minute bookings

The current Directive is considered to be unclear when describing the information and contractual requirements for last minute bookings. It has been questioned¹³⁶ whether the exemptions from the information requirements in the case of last minute bookings are applicable only with regard to the requirement of having a written contract whose terms are communicated to the consumer before the conclusion of the contract¹³⁷ or also with regard to other information duties, in particular the requirements of Article 4(1), i.e. the general

¹³⁵ Consumer law compendium, page 257-285.

¹³⁶ Consumer law compendium page 265.

¹³⁷ Article 4(2)(b).

information on passport and visa requirements, etc. The Directive does not give any directions as to what is a "last minute" booking.

Lack of sanctions for non-compliance with the information requirements

The current Directive does not provide for sanctions for traders who do not comply with the information rules. This has been criticized as a shortcoming by several stakeholders¹³⁸, since rules without sanctions can be difficult to enforce.

CONTRACT CHANGES BEFORE THE DEPARTURE

The package travel market has traditionally been characterized by consumers booking packages a long time before the departure and making pre-payments. While it has become easier to purchase last minute tickets, especially via the Internet, the amount of holidays being booked months in advance is still significant. Since the contracts are often concluded a long time before the departure, certain circumstances, including costs incurred by organisers, may change. The existing rules on contract changes vary depending on the gravity of and the reason for the contract change. The main problems related to these rules are explained below.

Price revisions

Article 4(4) (a) regulates price revisions: The prices laid down in the contract shall not be subject to revision unless the contract expressly provides for the possibility of upward or downward revision and states precisely how the revised price is to be calculated. Such revision is only possible until 20 days prior to departure and on the grounds of actual variations in:

- transportation costs, including the cost of fuel,
- dues, taxes or fees chargeable for certain services, such as landing taxes or embarkation or disembarkation fees at ports and airports,
- the exchange rates applied to the particular package.

Stakeholders, especially from the consumer side and from Member States, have argued that there is a need to further restrict the possibilities of price revisions since the financial risk for fluctuation is put on the consumer after the conclusion of the contract, even if the price has been agreed in the contract. Furthermore it is argued that traders normally would be able to hedge against such fluctuations and also that the nature of fluctuations would involve that in the longer run the traders do not bear a big financial risk. The limitations suggested by stakeholders include a complete prohibition on price revisions, specified percentage caps or an increase of the existing 20-day cut-off period. The rules relating to price revisions vary significantly in the Member States (see below under point 3.3), again creating a legal

¹³⁸See Summary of responses to the public consultation in 2007 http://ec.europa.eu/consumers/rights/summary_responses_publication_final_30012007.pdf and in 2010 http://ec.europa.eu/consumers/rights/docs/20100430_summary_responses.pdf.

framework with national difference that can make it more difficult and cumbersome for traders to provide services in several Member States. Furthermore, the interplay between this Article and Article 4(5) on significant alteration of essential terms is unclear (see point 3.3) which is creating an ambiguity whether and when the consumer should have a withdrawal right in cases of price increases.

While the Directive contains provisions on additional charges, which may be imposed on the consumer in precise circumstances, it does not spell out whether the contract may stipulate that the organiser's administrative costs connected to price increases, e.g. due to altering fuel prices, may be passed on to consumers, creating a legal ambiguity which can lead to unnecessary disputes and/or litigation.

Significant alterations of essential terms before departure

If before the departure, the organiser finds that he is constrained to alter significantly any of the essential terms, such as the price, the consumer has, according to Article 4(5), the choice either to withdraw from the contract without penalty or to accept a rider to the contract specifying the alterations made and their impact on the price.

The Article is, however, unclear as to what changes in the contract qualify as a "significant alteration", or what should be considered as an "essential term" (except for the price). This can create uncertainties both for consumers and businesses and therefore also be a source of unnecessary litigation costs. A majority of both Member States and consumer stakeholders asked for a clarification of "essential terms" in the 2007 consultation¹³⁹.

Furthermore, Article 4(5) uses the term "withdraw", which in other pieces of legislation is related to the "cooling-off period". Therefore, on grounds of consistency, the term "terminate" should be used instead.

Finally, the Directive is silent when it comes to how changes to the essential contract terms which are not considered as significant should be treated. This creates legal ambiguities which can lead to unnecessary disputes and/or litigation.

Significant price alterations

While Article 4(4) a) regulates price revisions, Article 4(5) sets out the organiser's obligations and the corresponding rights for the consumer in case the organiser is forced to make significant alterations to the essential terms of the contract before departure, including changes in prices.

The wording of the Directive is criticized for being too vague as the meaning of "significant" alterations of the price is not specified. This can be a problem both for consumers and businesses, as it is unclear when the consumer should have a withdrawal right in case of price increases which, again, can result in unnecessary disputes and litigation costs. Some Member States, e.g. Slovenia and Romania, specify in the laws transposing the Directive that the consumer may withdraw from the contract in case the agreed price increases more than 10%.

¹³⁹ See Summary of responses (2007).

Other Member States have used the minimum harmonisation approach to grant consumers more protection by putting a cap on the possibilities for price increases, such as Italy, where the price increase can never exceed 10 %.

It is, furthermore, unclear whether Art. 4(4) ("upward" or "downward revision") deals with both possibilities, hence the word "or" instead of "and" should be used in order to make it clear that it should apply to both possibilities. Finally, the internal relationship between Article 4(4) and 4(5) is open for interpretation, in the sense that it is unclear whether Article 4(5) also applies to price revisions, or if Article 4(4) in such cases should be regarded as *lex specialis*.

Cancellations of the contract before departure

According to Article 4(6), in the event of cancellation of the package, the right to compensation is limited if:

"(i) cancellation is on the grounds that the number of persons enrolled for the package is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period indicated in the package description; or

(ii) cancellation, excluding overbooking, is for reasons of force majeure, i.e. unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care had been exercised."

Cancellation of the package caused by other reasons than the fault of the consumer or the above mentioned reasons entitles the consumer to compensation "if appropriate". However, it is not specified in the Directive when compensation could be appropriate (or inappropriate). Thus, there is most likely not a homogenous interpretation of this term in the Member States. Several Member States have introduced a general termination rights against compensation (for example BE, CZ, DE, DK, EE, EL, FI, HU LT, LV, PT), whilst others allow for termination even without compensation in force majeure events (for example DK, FI)¹⁴⁰.

Consequently, it can also be unclear for both businesses and consumers when compensation is appropriate or not.

Cancellations before departure on the ground that there are too few participants

At present the organiser is entitled to cancel the package if the number of participants is less than the minimum number required and the consumer has been informed about the possibility of cancellation on this ground in the contract.

The deadline for such cancellations is determined by the organiser and has to be specified in the contract. In both public consultations, consumer stakeholders and some Member States argued that there should be a time limitation to the possibilities of cancelling the package on the grounds that there are too few participants. This is supposed to prevent circumstances

¹⁴⁰ Member States' replies to questionnaires as a preparation to Member States' Workshop 5 June 2012

where the consumer receives such information only a few days before the scheduled departure at a time when it can be difficult or at least very expensive to find other alternative offers or otherwise reschedule the holiday.

Cancellations before departure due to force majeure

On the one hand, 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.

On the other hand, the consumer does not have a similar right to cancel in the event of force majeure, something that has been criticised by consumer advocates and there are examples of organisers refusing to cancel the package even though national travel advices advised against travelling to the destination.

They are arguing that the consumer can have a legitimate need for an option to cancel the contract¹⁴¹ if there is a force majeure situation in the area of 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. Such events would often not be covered by travel insurances the traveller might purchase. Similarly, some consumer advocates have argued that there also should be a possibility to terminate the contract if there is a force majeure situation in relation to the traveller, e.g. serious illness or death in close family, which prevents the traveller from leaving for the holiday. Such events are, however, often covered by travel insurances the traveller might purchase.

Transfer of the package before departure

Where the consumer is prevented from proceeding with the package, he may transfer his booking to a person who satisfies all the conditions applicable to the package, having given reasonable notice of his intention before departure to the organiser or to the retailer. From the wording of the Directive it is unclear if the Member States are free to regulate whether the organiser or the retailer should receive the notice from the consumer or if the consumer is entitled to choose which of them to notify. Furthermore, the Directive does not specify the content of "reasonable notice" in the Directive, which has resulted in several different solutions in the various Member States¹⁴². In some Member States the consumer's notice has to be in writing or even by a recorded delivery. The term "reasonable notice" should also be clarified, at least in order to point out that it is the timing of the notice that should be reasonable and not the notice itself.

ALTERATIONS OF THE CONTRACT AFTER DEPARTURE

Also after the departure circumstances might occur which can make it difficult, or even impossible, to provide the services as foreseen in the contract. Article 4(7) regulates the situation where a significant proportion of the services are not being provided or the organiser

¹⁴¹ Given that the organiser does not cancel the contract despite this situation.

¹⁴² Consumer law compendium page 292.

perceives that he will be unable to procure a significant amount of the services. Normally, the consumer will have a right to get compensation for damages in such situations. The main regulatory problems related to these situations are set out below.

Cancellations after departure due to force majeure

Article 4(7) provides that, where, after departure, a significant proportion of the services contracted is not provided, the organiser has to make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package. If it is impossible to make such arrangements, the organiser shall provide the consumer with equivalent transport back to the place of departure, alternatively to another return point to which the consumer has agreed.

Furthermore, under Article 5(2) the organiser is obliged to provide prompt assistance to consumers in difficulty, e.g. in cases of force majeure. The Directive does not specify what kind of assistance the organiser is obliged to provide and for how long, but it states clearly that the organiser is not responsible for damages. However, as long as the content of the obligation to provide assistance is not specified, it can be difficult to decide what should be provided as assistance and what costs should be covered by the organiser. The rules relating to Article 4(7) and 5(2) are transposed differently in the Member States.

The incident starting 15 April 2010 with the closure of air space and airports in Europe due to volcanic activities in Iceland had huge impacts on the travel market. A significant number of European consumers, airlines and package tour organisers were heavily affected. Estimations from ECTAA (the European association of travel agents and tour operators) showed that more than 1.2 million travellers were stranded at the same time and that tour operators spent more than € 388 million on care and assistance to the stranded passengers as well as their repatriation. This situation revealed several problems with the interpretation of the Directive, namely Articles 4(7) and 5(2) and also to some extent its interplay with the Air Passengers' Rights Regulation¹⁴³ (APR Regulation), see section 4.2 below. Furthermore, it is unclear if Article 4(7) second paragraph applies in situations where the package does not contain any transport services. There is obviously a need for clearer rules in order to remove any remaining doubts that the obligation to provide suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package (Article 4(7)) also applies in force majeure situations. Legal ambiguities can lead to unnecessary and costly disputes and/or litigation which also were reported in the event of the ash cloud in 2010.

However, in order to have proportional and balanced rules, and to prevent too heavy responsibilities on the organiser, it might also be necessary to introduce certain limitations for the liability of the organiser in situations where the force majeure situation is preventing consumers to return to their home for a long time period, e.g. introducing a cap to the liability, for instance 3 or 4 days (which is the case in several of the Passenger rights regulations). However, the most important aspect will be to remove any doubt that organisers are obliged to take care of travellers/consumers and make arrangements for the continuation of the package.

Interplay with the APR Regulation

Even though the APR Regulation states that it shall not affect the rights of passengers under the PTD, the relationship between the APR Regulation and the Directive is not fully

¹⁴³ (EC) No 261/2004, see especially Article 3(6) and Articles 6, 8, 9.

streamlined. As long as the package contains air transport, there is an overlap between the two different legislations as both pieces of legislation apply and give rights to the passenger towards both the airline (APR regulation) and the organiser (PTD). In practice this overlap has created confusing situations for the consumer, e.g. where the air carrier has been telling him to contact the tour operator in order to escape the burden to provide assistance and vice versa.

Article 8 (2) of the APR Regulation states that (contrary to the right to reimbursements) the right for a return flight to the first point of departure, at the earliest opportunity, also applies to passengers whose flights form part of a package. In many circumstances, e.g. if the flight is cancelled, the passenger is entitled to choose either to direct his claim (e.g. for continuation of the package and assistance) towards the organiser (through the PTD) or he can directly claim his rights under the APR Regulation towards the airline.

However, neither of the two pieces of legislations explicitly mentions that passengers are not entitled to "double assistance" or "double compensation" for the same incident (both from the air carrier and the tour operator). This should be clarified in order to prevent potential abuse in the future as well as simplifying the organiser's right to seek redress from the service providers, the latter which the industry today claim not to work well enough. It should, at the same time, be underlined that both the PTD and the Passenger Rights regulations apply where such transport is included in the package.

PROBLEMS RELATED TO PERFORMANCE, LIABILITY AND OBLIGATION OF THE PROFESSIONAL PARTIES

The current rules regarding the retailer's and organiser's liabilities and obligations relate mainly to the obligation to provide information (Article 4), to proper performance/liability for improper performance (Article 5), and to provide evidence of security for refund of money/repatriation (Article 7).

Who is the responsible party?

A common feature of the rules regulating performance, liability and obligation of the professional parties is that the Directive uses the wording "organizer and/or retailer" and thereby does not designate one particular party as being responsible¹⁴⁴.

This wording was chosen to leave the choice to the Member States to decide who should be the responsible/liable party when transposing the Directive into national law. Consequently, this solution has led to diverging national rules on who is liable towards the consumer: the retailer, the organiser or both. These divergences can be detrimental to the consumer as it can be unclear which party is responsible, especially if the package holiday is purchased cross-border. It can also lead to situations where the organiser and the retailer are blaming each other without anyone of them taking the responsibility. Furthermore, differences between Member States' legislation and the possibility for the consumer to claim his rights may be problematic in particular in cases where the retailer and the organizer are established in

¹⁴⁴ E.g. Article 4, 5, 6 and 7.

different Member States. The situation can also be an obstacle to cross-border trade since legal fragmentation can deter traders from selling travel packages cross-border.

Compensation for damages

Article 5 covers the liability for damage suffered by the consumer due to non-performance or improper performance of the services contracted for. The consumer can be entitled to compensation for both material and non-material (moral) damages (e.g. loss of holiday enjoyment) in cases of non-performance or improper performance of the contract.

The rule does not explicitly state that the consumer has a right to compensation for non-material damage and, in particular, that such compensation can arise from the loss of enjoyment which the consumer has suffered because of improper performance of the travel contract. However, this right was confirmed by the CJEU in the Simone Leitner-case¹⁴⁵. It is highly questionable whether this right is known to the average consumer as this right is not explicitly mentioned in the Directive or most national laws transposing the Directive.

In parallel with the general rule on compensation for damages in Article 5(2), Article 4(7) refers to a right to compensation for consumers "where appropriate". It is unclear if the rule in Article 4(7) thereby is an independent liability rule or if it merely refers to the rule in Article 5(2). Moreover, it is not indicated in what situations compensation could be "appropriate". In Czech Republic and France this is specified to situations where the substitute service is of lower quality. Such legal ambiguities can lead to unnecessary and costly disputes and/or litigation.

Moreover, as a result of substantial differences in national laws concerning the possibility to limit compensation in the case of damages resulting from non-performance or improper performance of services included in the package, organisers and retailers who want to directly market package tours in several Member States have to engage in thorough legal checks on the possibility to limit compensation in other Member States or they are compelled, in practice, to refrain from agreeing any limitation on compensation if they want to act lawfully. This can be a barrier to cross border trade.

As an example, a trader established in Belgium would like to direct sales of packages also to consumers in Germany. However, since he does not know if he can impose the same limitation to his liability as he can lawfully do in Belgium, i.e. two times the costs of the travel package, he might refrain from directing sales cross border. If he would engage in legal checks regarding this issue, he would find out that he will not be able to use the same contract terms, since in Germany you cannot limit the liability to less than three times the costs of the travel package.

Type of liability

It is not totally clear from the wording of Article 5 what type of liability it imposes. Most Member States seem to have interpreted Article 5 as imposing a "strict liability"- like rule,

¹⁴⁵ ECJ 168/00.

though including certain exceptions to the liability, such as force majeure or where the damage is caused by the consumer himself or a third party not connected to the contract.

However, in at least two Member States (Ireland and the UK) the courts seem to interpret Article 5 as imposing only a fault-based liability as regards personal injury claims. In several Member States the organiser is not liable if he can prove that he did not act intentionally or negligently¹⁴⁶. Legal ambiguities can lead to unnecessary and costly disputes and/or litigation and the difference of the interpretation of the rules can constitute an obstacle to cross border trade and also represent a barrier for the consumer to buy cross border if he is uncertain whether he would have less legal protection if buying from a foreign trader.

Conditions for liability

The Directive does not set up clear conditions for the liability, for instance the burden of proof and the need for a causal link are not touched upon, leaving it to Member States to interpret this. The consequence is that the practice and conditions relating to the liability for proper performance in Member States deviates.

NOTIFICATIONS

There are currently no requirements to the form to which the parties must stick for notifying each other, e.g. in Article 4(3) the only requirement is to give "reasonable notice" and in Article 4(5) the notice must be given "as soon as possible". Similarly, according to Article 4(6) the consumer must inform the organiser about his decision to either withdraw or accept a rider to the contract "as quickly as possible". The lack of clarity regarding deadlines can lead to unnecessary and costly disputes and/or litigation. However, some Member States have transposed this rule by specifying certain time limits (from two working days to eight calendar days).

According to Article 5(4), the consumer must communicate any failure in the performance of a contract which he perceives on the spot to the supplier of the services concerned and to the organiser and/or retailer in writing or any other appropriate form at the earliest opportunity. There are several ambiguities or unclear aspects related to this duty; notably who should receive the notification (the organiser and/or the retailer?), the form of the notification ("in writing or any other appropriate form") and the timing of the notification ("at the earliest opportunity"). Legal ambiguities can lead to unnecessary and costly disputes and/or litigation.

In general, the vague regulation of the parties' notifications has created different rules in the Member States. It can also give rise to disputes between the parties to the contract, e.g. related to the timing of the notification, the proof of having sent the notification and whether the notification was sent in an acceptable form.

¹⁴⁶ Consumer law compendium page 321.

TIMING OF REPAYMENT

The retailer/organizer is obliged to repay the consumer in certain circumstances, e.g. if the consumer uses his right to terminate the contract if the tour organiser has made significant changes to essential terms¹⁴⁷. However, these rules lack a deadline for when the reimbursement/refund must be executed at the latest.

INSOLVENCY PROTECTION

Under the Directive the organiser/retailer must provide sufficient evidence of security for the refund of all the money paid and the repatriation of the consumer in the event of insolvency¹⁴⁸. The Directive itself does not set out any explicit requirement for the actual method of insolvency protection. Nevertheless, the CJEU has outlined in numerous rulings¹⁴⁹ that the insolvency protection must be effective, i.e. it must guarantee the consumers' repatriation and the refund of money that they have paid. As a result, there are numerous diverging methods for providing insolvency protection in the Member States, e.g. insurances, bank guarantees, national insolvency funds or a combination of these methods. Some Member States have a wider scope of protection than merely insolvency protection for services included in the package. Consequently, there seems to be significant differences in the level of consumer protection in the Member States¹⁵⁰. Furthermore, the vague wording of Article 7 has led to several court cases, with subsequent referrals to the ECJ¹⁵¹.

The performance checks exercise in 2012 showed 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.¹⁵²

The Commission has also understood that there have been problems with the sharing of information between the different protection schemes in the Member States as there is not established any forum for such exchanges, e.g. information concerning fraudulent traders who are operating in several Member States, possibly causing unnecessary economic losses. The administrative cooperation system foreseen by the Services Directive, the Internal Market Information system, can and is, however, used by some authorities for this purpose though.

¹⁴⁷ Article 4(6).

¹⁴⁸ Article 7.

¹⁴⁹ See joined cases C-178/94, C-179/94, C-189/94 and C-190/94 and later followed up in C-410/96 and C-140/97.

¹⁵⁰ E.g. according to Belgian law, travel services, including stand-alone products, sold by travel agents should be covered. Since 1 January 2010, a new Danish law is requiring that consumers are offered the possibility to purchase insolvency protection also for stand-alone air tickets and car rental outside Denmark.

¹⁵¹ E.g. C-178/94, C-179/94, C-189/94, C-190/94, C-410/96 and C-140/97.

¹⁵² The Commission staff working document on the result of the performance checks of the internal market for services (construction, business services and tourism) (SWD(2012) 147 final)

PRESCRIPTION PERIODS

The PTD does not regulate prescription periods, leaving this to Member States. Consumer organisations report that this can cause consumer detriment especially in cross border situations where consumers are rarely aware of prescription periods in other Member States. With the expected increase in cross border trade due to harmonisation of rules, at least the minimum length of the prescription periods should be regulated in a new Directive.

ANNEX 4

LEGISLATIVE MEASURES PROPOSED IN OPTIONS 5, 6 AND 7

1. Introduction

A legislative approach is widely supported; the majority of stakeholders in the public consultation indicated a more up-to-date directive as the preferred option. Furthermore, the revision has also been requested from or supported by the co-legislators and international bodies.¹⁵³

Table 1: Preferred way of ensuring consumer protection in the field of package travel

| | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|---|-----------------------|------------------------------|------------------|-------------------------------|
| A more up-to-date EU Directive | 89% | 70% | 64% | 96% |
| Repeal of the Directive and use of other existing legislation | 7% | 9% | 20% | 0% |
| Industry self-regulation | 19% | 37% | 36% | 4% |
| Issuing of detailed guidance for businesses | 37% | 30% | 32% | 11% |
| Undertaking awareness campaigns | 44% | 28% | 32% | 19% |
| None of the above | 0% | 2% | 4% | 0% |
| Other | 19% | 7% | 8% | 0% |

Source: Public consultations on the revision of the Package Travel Directive, 2010

2. Proposed legislative measures in option 5 - Modernisation of the Directive and coverage of "one trader" packages (PO5)

2.1. Update of definitions

2.1.1. 'Package'

The definition in the existing PTD would be clarified to **include "one-trader"** packages. This reflects not only the principles of the CJEU ruling in the Club Tour case¹⁵⁴, but also the views from stakeholders, who in the majority favour the need to clearly include more

¹⁵³ E.g. Council conclusions on consumer Affairs on the 2255th Council meeting, European Parliament resolution of 16 January 2002 (2001/2136(INI)), ECCG opinion of 21 April 2010, Opinion of the European Economic and Social Committee of 11.05.2011 (Official Journal C 132)

¹⁵⁴ C-400/00 Club Tour.

combined travel arrangements and cruises within the scope of the Directive. However, the "multi trader" travel arrangements would not be covered by policy option 5.

The majority of respondents indicated that a combination of travel services should not necessarily have to be sold or offered for sale "at an inclusive price" to qualify as a 'package'. It is planned to define as a "package" those combinations of not fewer than two different types of travel services for the purpose of the same trip or holiday fulfilling at least one of several criteria which are "typical" for the sale of packages, e.g. where such services are (a) put together by one trader, including at the request of the traveller before one contract on all services is concluded, (b) sold, offered or charged at an inclusive or total price, (c) sold within the same booking process from a single point of sale or one single trader, (d) 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 (travel package gift box), (e) advertised or sold under the term "package" or under a similar term, or (f) purchased from separate traders through linked online booking processes where the traveller's name or particulars needed to conclude a booking transaction are transferred between the traders at the latest when the booking of the first service is confirmed;

Option 5 would also clarify that car rental would be considered as a travel service which, if sold together with another travel service, can create a package.

Furthermore, in relation to tourist services other than accommodation, transport and car rental, the current requirement, according to which it needs to represent a "significant proportion of the package", would be maintained, in line with the views of many stakeholders, while specifying in a recital that such additional tourist services should account for more than 20% of the total price or otherwise represent an essential feature of the trip.

2.1.2. Consumer

The current definition of a "consumer" in the PTD deviates from the rest of the consumer acquis since it does not require that the consumer is acting for purposes which are outside his trade, business, craft or profession.

Some stakeholders argue that the original definition in the existing PTD should be updated to fall in line with the definition of 'consumer' in other consumer legislation. This change would, however, have an impact on the scope of protection, by excluding all business travel packages and package travels bought for mixed business- and leisure purposes.

Table 2 Travel arrangements that should be covered by the PTD

| Travel-related Arrangements | Products or | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|---|--------------------|-----------------------|------------------------------|------------------|-------------------------------|
| Packages purchased for solely business purposes | solely | 41% | 28% | 32% | 59% |
| Packages purchased for solely leisure purposes | solely | 89% | 74% | 48% | 81% |

| | | | | |
|---|-----|-----|-----|-----|
| Packages purchased for mixed purposes (private& business) | 63% | 46% | 60% | 74% |
|---|-----|-----|-----|-----|

Source: Public Consultations on the Revision of the Package Travel Directive, 2010

The potential inclusion in the scope of packages that are solely for business purposes received a relatively low level of support from most stakeholder groups. This is confirmed by the fact that, across stakeholder groups, respondents commented that business-to-business trade does not require the same level of protection as business-to-consumer trade and that, in general, there is little evidence of detriment in B2B contracts. However, it was noted by key industry association respondents that there may be difficulties in determining the precise purpose of every trip, particularly in relation to trips involving both business and leisure elements. Industry stakeholders representing SMEs also argued that SMEs should continue to be protected under the scope of the PTD, since SMEs in many instances are as vulnerable as consumers.

Under option 5, the protected party would be the "traveller". This concept corresponds largely to the current definition of the "consumer" in the PTD. However, packages purchased on the basis of a framework contract between the traveller's employer and a trader specialising in the arrangement of business travel (so-called "managed business travel") would be excluded from the Directive.

2.1.3. Organiser

Option 5 would introduce some changes to the definition of an organiser, in the sense that only traders can be organisers (and never consumers) and that all traders who combine, including at the request of a traveller, travel services into a travel package and sell or offer them for sale, either directly or through another trader or together with another trader, would be considered to be an organiser.

An essential feature of option 5 is that at least one trader should always be responsible as an organiser for the package as a whole. Therefore, only in cases where another trader is acting as the organiser of a package, should a trader, typically a high-street or on-line travel agent, be able to act as a mere retailer or intermediary and not be liable as an organiser.

2.1.4. Occasional organiser

Stakeholders have been divided regarding the question of whether to keep the current exemption for occasional organisers.

Many stakeholders have pointed to the need to clarify this concept. To increase consumer protection and create fairer competition, Option 5 would narrow the existing exemption for occasional organiser by limiting it to traders who do not have the sale of travel packages as one of their main business activities and who do not organise travel packages more than twice a year.

Table 3 Whether certain travel arrangements put together by occasional organisers should be covered by the PTD

| Travel-related Products or Arrangements | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|--|----------------|-----------------------|-----------|------------------------|
| Packages occasionally organised by a <u>company</u> which normally does not organise packages (e.g. package travel to Oktoberfest in Germany organised and sold by a bank for best clients once a year) | 52% | 54% | 68% | 63% |
| Packages occasionally organised by a <u>non-business organisation</u> (or not-for-profit organisation) which normally does not organise packages (e.g. package travel to Vatican for Christmas celebration organised and sold by the local church) | 41% | 48% | 56% | 63% |

Source: *Public Consultations on the Revision of the Package Travel Directive, 2010*

2.2. Update of Information Requirements and adaptation to the Consumer Rights Directive (CRD)

The current specific rules on brochures, which have created administrative burden, will be abolished. Traders may still use brochures, but option 5 would contain no mandatory requirements for its actual content.

No major problems have been identified in relation to the content of the existing list of information requirements. However, option 5 would include strengthened requirements for the timing of the information and its clarity, such as "prior to the conclusion of the contract" the pre-contractual information should be provided "in a clear and prominent manner". Furthermore, option 5 would require that the contract shall be "in plain and intelligible language and, in so far in writing, be legible". To improve the readability, the information requirements would be divided into three clear-cut sections:

- pre-contractual information,
- information in the contract and,
- information before departure.

There will be detailed requirements for the pre-contractual information, mainly in line with the information the consumer will have to receive today.

The main change would be that the traveller must also be informed that the product sold or offered for sale is a package and that, as a consequence, the traveller will benefit from legal protection for travel packages under EU law. Furthermore, in line with the Consumer Rights

Directive, option 5 would also include a rule stating that, if the information requirements on additional charges, fees or other costs for services included in the package have not been complied with, the traveller shall not bear those costs.

Option 5 would adapt Article 8(2), Article 19, Article 21 and Article 22 of the CRD, so that these rules also apply to packages.

2.2.1. Including other (modern) channels of marketing communication

Many stakeholders complain about current special rules for the brochures and their binding nature. Given that for 40% of Europeans the internet is the most important source of information when making a decision about holiday¹⁵⁵, special rules on what must be included in brochures seem no longer to be crucial. Moreover, the financial and environmental costs of reprinting brochures due to the existing legal requirements are large. Therefore, the existing rules regulating the content of the brochure would be removed. This means that all the sale channels would be treated in the same fashion and would have to adhere to the same requirement to provide the consumer at least with the specified key information about the travel package before conclusion of the contract (pre-contractual information). Furthermore, this would remedy the complaints from the side of industry that still produces brochures, namely that they have a disadvantage compared to the part of the industry which only operates online.

Thus, it would contribute to creating a level playing field and remove a significant administrative burden for industry.

2.2.2. Durable medium

Currently, information is widely available on the internet from a variety of sources, and it may be too prescriptive to impose the form in which information should be provided at the pre-contractual stage. Therefore, the form in which information and notices primarily should be provided to consumers would be specified only for the contract and the departure stages, namely on a durable medium for both stages. This is consistent with the approach used in other recent legislation.

2.2.3. Last minute bookings

The pre-contractual information requirements would specify what information should be provided by consumers before concluding the contract. Most stakeholders (including those in industry) did not see a need for this aspect to be regulated. Also, with the advantages of electronic transactions - which have been a major driver in the increase in last minute bookings - consumers are able to receive electronic copies of documents on "durable medium" almost immediately upon booking. Therefore there would be no special rules regarding information requirements for last minute bookings.

¹⁵⁵ Flash Eurobarometer 334, 2011

2.3. Contract changes and other issues

2.3.1. Price revisions

The industry stakeholders have argued that the existing regime (see PTD article 4(4)), for price revision is appropriate, while consumer organisations mainly argue that there is a need for increased foreseeability of expenses and, thus, that the current possibilities to revise the agreed price should be abolished.

Member State authorities, industry associations and operators coincide in that the highest percentage of respondents opted for the current time limit in the PTD of 20 days. Consumer organisations and consumers predictably were mostly in favour of prices in contracts being binding.

Table 4: Time limit for price changes

| | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|--------------------------|-----------------------|------------------------------|------------------|-------------------------------|
| 8 weeks before trip | 4% | 4% | 8% | 11% |
| 6 weeks before trip | 0% | 2% | 0% | 7% |
| 4 weeks before trip | 15% | 11% | 8% | 0% |
| 20 days before trip | 56% | 48% | 52% | 11% |
| Prices should be binding | 7% | 4% | 8% | 52% |
| Other | 15% | 13% | 12% | 15% |

Source: Public Consultations on the Revision of the Package Travel Directive, 2010

As regards the maximum acceptable level of price changes, Member States, industry associations and companies selected a limit to price revisions of between 5% and 10%. However, unsurprisingly, the highest number of industry respondents selected "It should not be specified". Again, the majority of consumer organisations indicated that prices should be binding.

Table 5: Acceptable level of price revision

| | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|--|-----------------------|------------------------------|------------------|-------------------------------|
|--|-----------------------|------------------------------|------------------|-------------------------------|

| | | | | |
|---------------------------|-----|-----|-----|-----|
| <1% | 0% | 2% | 0% | 0% |
| 2-5% | 26% | 2% | 16% | 15% |
| 5-10% | 33% | 26% | 20% | 11% |
| 15-25% | 0% | 4% | 0% | 0% |
| >25% | 0% | 2% | 4% | 0% |
| It shouldn't be specified | 26% | 39% | 48% | 11% |
| Prices should be binding | 15% | 11% | 4% | 67% |

Source: Public consultations on the revision of the Package Travel Directive, 2010

Against this background, the following sub-options have been analysed:

- Sub-option 0: status quo i.e. package travel contracts may allow for price increases due to certain increased transportation costs, including increased fuel prices or changes in the taxes or currency exchange rates;
- Sub-option 1: introducing a cap of a maximum price increase of 10%;
- Sub-option 2: clarifying that consumers have a right to terminate the contract if the price increases more than 5%, while requiring that cost decreases have to be passed on to the consumer as well;
- Sub-option 3: making prices in the contract binding, except for price increases caused by unforeseeable increase in taxes or fees imposed by third parties for the performance of the services (e.g. tourist taxes or landing/embarking fees).

2.3.2. Essential terms of the contract

The current PTD does not stipulate which terms of the contracts, other than the price, are considered as essential and which may not be altered significantly without enabling the consumer to accept an amendment to the contract or cancellation of the contract.

The results of the consultation show that, in general, most of the terms indicated are considered to be essential by most of the respondents. The terms that are in general considered to be the least essential are changes to components of additional services and changes in itineraries of those additional services. As might have been expected, consumer organisations and consumers were slightly more in favour of considering them as essential terms (slightly over 50%), companies and industry associations least in favour (slightly under 50%), and Member State authorities in the middle.

Table 6: Essential terms of the contracts

| | Member States | Industry Associations | Companies | Consumer Organisations |
|--------------------------|---------------|-----------------------|-----------|------------------------|
| Changes in overall price | 96% | 89% | 100% | 100% |

| | | | | |
|--|-----|-----|------|-----|
| Change in carrier (air-line, train service provider etc.) | 78% | 24% | 63% | 89% |
| Changes in travel times and/or dates | 96% | 85% | 96% | 96% |
| Changes in travel/holiday destination | 96% | 96% | 100% | 96% |
| Change in accommodation (e.g. different hotel) | 93% | 74% | 88% | 93% |
| Changes in components of additional services (e.g. sightseeing tours, entertainment packages) | 59% | 24% | 46% | 74% |
| Changes in itinerary of additional services | 56% | 24% | 54% | 63% |
| Change in the payment schedule | 74% | 76% | 79% | 85% |
| Change in special requirements which both parties accepted (e.g. facilities for disabled person) | 85% | 89% | 83% | 96% |
| Other | 19% | 17% | 4% | 37% |

Source: Public consultations on the revision of the Package Travel Directive, 2010

Based on the above, there would be a list of terms that, if they have to be amended significantly, would give rise to a right for the consumer to terminate the contract without paying compensation (or accept the amendment). The list would include what would be considered to be the main characteristics of the travel package:

- (i) the travel destination(s), the itinerary and, where periods of stay are involved, the relevant periods, with dates;
- (ii) if transport is included, the means, characteristics and categories of transport, the points, dates and time of departure and return or, where the exact time is not yet determined, the part of the day (morning, afternoon, evening or night) of departure and return, the duration and places of intermediate stops and transport connections;
- (iii) if accommodation is included, the location, main features and tourist category including, where available, the rating under a national or international hotel classification system applicable in the host state;
- (iv) whether any meals are provided and, if so, the meal plan;
- (v) visits, excursion(s) or other services which are included in the total price agreed for the package;
- (vi) the language(s) in which the activities will be carried out and

- (vii) special requirements which were previously agreed by both parties (e.g. special facilities for disabled persons)

2.3.3. Introduction of special rules on termination rights

According to the PTD, 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, Article 4(6).

On the other hand, the consumer does not have a similar right to cancel in the event of force majeure, something that has been criticised by consumer organisations. There are examples of organisers refusing to cancel the package even though national travel advices warned against travelling to the destination. Thus, consumer representatives have been arguing that the consumer can have a legitimate need to cancel the contract without paying compensation if there is a force majeure situation in the area of 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 the initiative to cancel the package. Such events would often not be covered by travel insurances the traveller might purchase.

In addition, in several Member States, consumers currently have a possibility to terminate the contract against paying reasonable compensation. Consumer organisations have requested that this should also be a European rule.

Policy option 5 will introduce rules which will allow travellers to cancel the contract before the departure by paying a reasonable compensation to the organiser.

Furthermore, where there is a force majeure situation (such as natural disasters, warfare, contagious and dangerous diseases or similar circumstances) at the place of destination or its immediate vicinity, travellers would also be able to terminate the contract before the departure without paying any compensation.

Lastly, the existing rules relating to the organisers' possibility to cancel the contract if a minimum number of travellers have not signed up for a certain trip, have been criticized by consumer representatives, e.g. the ECCG opinion of 2010 where it is argued that this rule should be deleted. On the other hand, the industry argues that this rule is very important for their business model. In order to protect the traveller better than today against last minutes cancellations, which can put him in difficult situations in relation to holidays plans and difficulties in finding substitute trips, such cancellations will only be allowed until 20 days before departure if a the minimum number specified in the contract is not met.

2.4. Clarification of obligations and liabilities

The Directive uses the term "the organiser and/or retailer" which has given the Member States the opportunity to choose which of the parties, or both, should be responsible. However, this solution has led to diverging national rules on who is liable towards the consumer: the retailer, the organiser or both.

These divergences can be detrimental to the consumer as it can be unclear which party is responsible and it can also lead to situations where the organiser and the retailer are blaming each other for not fulfilling the responsibilities. It can also be an obstacle to cross-border trade since legal fragmentation can deter traders from selling packages cross-border.

2.4.1. Responsibility for providing information

Under option 5, the responsibility for providing information (pre-contractual, before departure) would lie with the organiser or anyone acting on his behalf. This means that the responsibility rests with the organiser, but where the package is sold through a retailer, the retailer is jointly liable for providing the traveller with the relevant information. In practice, it would normally be the seller/retailer who would provide information to consumers before the contract is signed. Insofar as one of these traders has complied with this obligation, this has effect also for the other party.

2.4.2. Liability for the proper performance of the contract

The results of the public consultation on who should be responsible for the proper performance of the contract are widely divided. The largest number of respondents selected the package organiser as the party responsible for the proper performance of the contract. However, many stakeholders favoured the joint responsibility of the retailer and the organiser.

Table 7: Party responsible for the proper performance of the contract

| | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|--|-----------------------|------------------------------|------------------|-------------------------------|
| Seller of the package (the party who receives the payment directly e.g. travel agency) | 44% | 15% | 16% | 67% |
| The provider of the service where the difficulty arises (who may receive the payment indirectly, e.g. airline or hotel which is not organising the package) | 33% | 57% | 80% | 56% |
| The organiser of the package (tour-operator) | 89% | 89% | 72% | 89% |
| Other | 11% | 2% | 4% | 7% |

Source: Public consultations on the revision of the Package Travel Directive, 2010

To clarify the obligations of the professional parties involved in the performance of the package travel contract, the liable party and its obligations would be specifically defined. This means that the party would be liable to the traveller for the proper performance of the travel services included in the package, irrespective of whether the obligations under the contract are to be performed by the organiser or by other service providers.

In case of improper performance of the package travel contract, the liable party would be obliged to remedy any lack of conformity, provide alternative arrangements, reduce the price and/or grant compensation for damages.

Given the above, the Impact Assessment analyses the following sub-options:

- Sub-option 1: contractual liability of the seller/retailer;
- Sub-option 2: contractual liability of the organiser and joint liability in case the organiser is based outside the EEA; and
- Sub-option 3: joint contractual liability of the seller/retailer and the organiser (consumer can seek redress from either).

2.4.3. Responsibility for providing prompt assistance if the consumer is in difficulty (for other reasons than the organiser's improper performance)

Discussions with stakeholders confirm that all key actors have an interest in ensuring that travellers do not get into difficulty. The stakeholders' views on who should be liable for assisting the traveller in difficulty are divided.

In the public consultation, the majority of stakeholders in all groups favoured the responsibility of the organiser. The seller of the package was selected by the lowest number in each of the stakeholder groups. Some respondents said that the individual service providers should be responsible in such a case. This presumably reflects the fact that they are usually the closest and most immediately available party when things go wrong.

Table 8: Responsibility for providing prompt assistance if the consumer is in difficulty

| | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|--|-----------------------|------------------------------|------------------|-------------------------------|
| Seller of the package (the party who receives the payment directly e.g. travel agency) | 44% | 22% | 20% | 56% |
| The provider of the service where the difficulty arises (who may receive the payment indirectly, e.g. airline or hotel which is not organising the package) | 52% | 67% | 72% | 70% |
| The organiser of the package (tour-operator) | 93% | 85% | 72% | 74% |
| Other | 4% | 9% | 4% | 7% |

Source: Public consultations on the revision of the Package Travel Directive, 2010

Even though service providers are often at the site at which difficulties arise, the traveller has no direct contractual relationship with them and may also face some communication problems, especially if the service provider is based abroad. For this reason, under option 5, the liability for providing prompt assistance to travellers in difficulty would be placed on the organiser. The fact that the organiser may in practice require the assistance of the service provider in providing immediate assistance is a separate issue. Similarly option 5 would also entail that nothing in the revised Directive shall affect the rights travellers have as "passengers" against the air or other carriers or other liable parties as defined in Regulations (EC) No. 2004/261, (EC) No. 1371/2007, (EC) No. 1177/2010 or (EC) No. 181/2011.

2.4.4. Type of liability for proper performance of the contract (strict or fault based liability) and waivers of liability

There is a strong preference of Member State authorities and consumer stakeholders for a strict liability approach. 78% of MS authorities opted for holding the responsible party liable simply for non-performance against what was promised in both contract and marketing materials. Therefore, the option would ensure a model based on a strict liability approach with limitations where the organiser proves that the lack of conformity or the improper performance is attributable to the traveller or to a third party unconnected with the provision of the services contracted for and is unforeseeable or unavoidable, or due to unavoidable and extraordinary circumstances. With the exception of damages caused intentionally or with gross negligence as well as damages for personal injuries, option 5 would allow that the contracts may limit compensation to be paid by the organiser. However, such limitation would not be allowed to be unreasonable and would only be valid if it does not limit damages to an amount less than three times the total price of the travel package. Insofar as international conventions binding the Union limit the extent or the conditions under which compensation is to be paid by a service provider, the same limitations would apply to the organiser.

2.4.5. Obligation to provide alternative arrangements

Where transport is included in the package, in most cases also carriers are obliged to provide compensation and assistance in case of delays, cancellations or accidents to passengers under EU rules on passenger rights¹⁵⁶.

These rights of passengers are in parallel to the right consumers have towards organisers if a contract is not performed as agreed. Thus, consumers may in many situations choose whom to turn to: the carrier or the organiser. This situation where several parties (i.e. transport provider and a package organiser) are obliged to provide compensation and assistance, might lead to unjustified cost for certain businesses, in particular in cases where it is difficult for an organiser to obtain redress from the service provider (e.g. a transport provider) who is the party closest to the problem (delay, cancellation, etc.). For consumers, the choice on whom to seek assistance from depends on the situation (e.g. when a flight is cancelled, it is probably easier to contact the tour organiser, who normally has an overview of all the components of the package and who can, for instance, contact the hotel if one or more nights will be missed, than for the consumer to address such problems to the air carrier). The extent of the claim might also differ depending on whether it is directed against the service provider or the

¹⁵⁶ E.g. Regulations (EC) No. 2004/261, (EC) No. 1371/2007, (EC) No. 1177/2010 or (EC) No. 181/2011.

organiser. (EU passenger rights provide for a flat rate compensation whereas under the PTD a consumer may also claim other damages).

Currently there is no limitation to the organiser's liability to provide alternative arrangements for the organiser's duty to provide for the continuation of the package in case of force majeure events of long duration which prevents the consumer from returning home according to the planned schedule. This is clearly a burdensome rule for businesses, since such situations are per definition beyond the control of organisers or transport providers. ECTAA estimated that, during the 2010 volcanic ash crisis, tour operators had to provide care and assistance to the stranded passengers, including their repatriation, for an overall cost of €380 million. The EU rules on passenger rights provide for a limitation of such assistance in case of bus, rail or maritime transport. In its proposal for an amendment to the Air Passenger Rights Regulation the Commission proposes to limit the carrier's liability to EUR 100 per night and three nights per traveller. The PTD lacks a similar limitation of the organiser's liability in such situations.

Several industry stakeholders have argued that the current rules (Article 4(7)) put a disproportionate burden on the organiser, since the liability to provide alternative arrangements is not capped or limited. Furthermore, it is argued that the organiser's possibility to seek redress from the service provider, have been obstructed by contractual clauses in the contract between the organiser and the service provider.

To remedy this problem, option 5 would provide that, where it is impossible, for reasons of unavoidable and extraordinary circumstances, to ensure the traveller's transport back to the place of departure within the time set out in the contract, the organiser must provide appropriate arrangements for the traveller's continued stay at the place of destination. However, the obligation would be limited to three days and to EUR 100 per night and traveller.

2.4.6. Insolvency protection

The responsibility for providing evidence of security should lie with the organiser. Information on the insolvency protection obligation as well as the name of the entity providing the insolvency protection and its contact details should be included in the package travel contract.

The 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.

Option 5 would entail an introduction of a principle of mutual recognition of insolvency protection schemes among Member States, in order to prevent instances where traders are required to have "double" insolvency protection¹⁵⁷ if selling packages in more than one Member State. To reinforce the insolvency protection schemes in the Member States as well as consumer protection, option 5 will also oblige Member States to establish adequate and

¹⁵⁷ As reported in the Commission staff working document on the result of the performance checks of the internal market for services (construction, business services and tourism) (SWD(2012) 147 final)

effective means to control that organisers are fulfilling the requirements in paragraph and that national enforcement authorities cooperate in this respect.

2.4.7. Method of insolvency protection

The idea of a pan-European insolvency fund was widely rejected by the overwhelming majority of stakeholders in the public consultation. Moreover, industry and MS are likely to be reluctant to lose control of their national schemes.

There are currently three main types of national schemes i.e. national guarantee funds, bank guarantees and insurance schemes. 60% of the MS authorities indicated that the schemes operating in their MS were effective or very effective. However, the problem of different insolvency schemes was highlighted as one of the obstacles for cross-border trade.

The IA would therefore analyse two sub-options:

- mandatory national insolvency funds in all MS
- the current system, giving flexibility as to the method of providing insolvency protection.

Member States would still have to ensure that their national insolvency protection schemes are effective and are able to guarantee the prompt repatriation or the refund of all travellers affected by the organiser's insolvency. In cases where insolvency protection may be provided in the form of a guarantee or an insurance policy, it would be clarified that such security cannot be limited to attestations issued by credit institutions and insurers established in a particular Member State.

To solve the cross-border problems both sub-options would ensure that there is a non-discriminatory treatment of foreign traders or mutual recognition of foreign based traders which can prove that they have provided efficient and full security for their packages in another Member State.

Thus, in order to facilitate the free movement of services, Member States would be explicitly obliged to mutually recognise an organiser's insolvency protection existing under the law of the Member State of establishment.

To facilitate the supervision of organisers operating cross-border and the mutual recognition mechanism option 5 would also lay down rules on the cooperation between relevant national authorities, including the creation of central contact points.

2.5. Access to justice

European consumer associations have reported that a large number of the complaints received are within the area of travel services. For instance, data provided by the European Consumer Centres (ECCs) show that the most frequent type of consumer complaint, out of

552 cross-border complaints related to the PTD in 2011, is related to package travels not performed at all or which are not in conformity with the booking. The current PTD does not set up any contact points for complaints, minimum prescription periods or mechanisms for out of court dispute resolutions, which have been criticized by and called for by various consumer organisations/bodies, e.g. the ECCG opinion of 21 April 2010 158. See Annex 3 for further details. Against this background, option 5 will entail the introduction of a contact point for the traveller, namely a right for the traveller to address messages, complaints or claims directly to the retailer through which the package was purchased if he chooses not to address the organiser directly as well as a minimum prescription period of one year.

3. Proposed legislative measures in option 6 - Graduated approach- modernisation of the Directive and coverage of both "one trader" and "multi trader" packages while applying a lighter regime to "multi-trader" assisted travel arrangements (PO6)

This option includes all the legislative measures of Option 5 supplemented with an extension of the scope of the PTD to cover "multi trader" travel arrangements.

3.1. Scope of the Directive

There is a clear indication that stakeholders are in favour of extending the scope of the current Directive to include not just pre-arranged packages, but also most of the so-called tailor made combined travel arrangements, including the "multi-trader" travel arrangements. The inclusion of transport and tourist activities where the service covers a period of less than 24 hours received was supported only by consumer organisations.

Table 7: Travel arrangements that should be covered by the PTD

| Travel-related Arrangements | MS Authorities | Industry Associations | Companies | Consumer Organisations |
|--|----------------|-----------------------|-----------|------------------------|
| Accommodation, transport and/or other tourist services purchased as a package for an inclusive price (i.e. current definition of a package travel under the PTD) | 89% | 93% | 100% | 96% |
| Accommodation, transport and/or other tourist services purchased <u>on the internet from the same site</u> where consumers can assemble the content of the package | 93% | 78% | 64% | 96% |
| Accommodation, transport and/or other tourist services purchased on the internet <u>from different sites</u> which are clearly <u>linked</u> on their web pages | 67% | 57% | 64% | 93% |

Source: Public consultations on the revision of the Package Travel Directive, 2010

¹⁵⁸ http://ec.europa.eu/consumers/empowerment/docs/20100421eccg_opinion.pdf

This inclusion of "multi-trader" travel arrangements has been supported by a high number of stakeholders in the public consultation¹⁵⁹, including stakeholders from the travel industry and Member States. 64% of companies, which might be expected to be the stakeholder group least in support of including combined travel arrangements within the scope of the legislation, indicated that they thought tailor-made combined travel arrangements bought from a single website ("One-trader" packages) as well as combined travel arrangements bought from interlinked websites ("multi-trader" travel arrangements) should be included in the scope of the Directive.

This figure was higher for MS authorities (93% for packages from a single site, or 67% for linked sites) and, as might have been expected, the options gained significant support from consumer organisations, with support for both options ranging from 88% to 96%.

The main arguments from these stakeholders are that the "multi-trader" travel arrangements should be covered in order to create a level playing field, to protect consumers going on holiday and to avoid that consumers are misled (believing that they are purchasing a protected package while they are not).

However, it is clear that the option of covering all "multi-trader" travel arrangements raises several legal and technical issues, given that traders acting solely as intermediaries might not be able to guarantee the performance of all services included in the travel combination.

Based on the above, option 6 includes Option 5 (all proposed policy measures) supplemented with an extension of the scope of the PTD with a graduated approach:

- "multi-trader" packages would be subject to the same regime as pre-arranged packages (including full liability for the performance of the package and the obligation to procure insolvency protection),

- "multi-trader" assisted travel arrangements that do not display typical features of packages, would be subject to a lighter regime, i.e. the obligation to provide a security for their own insolvency and that of service providers combined with policy option 3 B (obligation to state in a clear and prominent manner that each service provider will be solely responsible for the correct contractual performance of its service and that the traveller will not benefit from the rights granted to package travellers except for insolvency protection. In practice, to determine whether "multi-trader" travel arrangements display typical features of a package would have to be based on an assessment of how the travel arrangement was offered for sale. The objective and alternative criteria for this assessment would be that a combination of travel services is:

- (i) purchased from a single point of sale within the same booking process,
- (ii) offered or charged at an inclusive or total price,
- (iii) advertised or sold under the term 'package' or under a similar term,

¹⁵⁹ http://ec.europa.eu/consumers/rights/docs/20100430_summary_responses.pdf

- (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 linked online booking processes where the traveller's name or particulars needed to conclude a booking transaction are transferred between the traders at the latest when the booking of the first service is confirmed.

In situations where a website provides no targeted offer for additional travel services for the same trip or holiday or only "editorial links" or pure "advertising links" no particular rules seem to be required.

3.2. Obligations and Liabilities

Under Option 6 three sub-options concerning the obligations of the professional parties involved in "multi-trader" packages are examined with regard to:

- providing information;
- proper performance of the contract and
- providing insolvency protection.

In the case of "multi-trader" packages, the different components of the trip are sold from different traders, often under legally distinct contracts and as a consequence the distinction between seller/retailer and organiser would be blurred. Therefore the following sub-options concerning the above mentioned liabilities/obligations are considered:

Sub-option 1: the liability is placed on a single provider (a trader selling the first component who links to facilitate the purchase of the other components) who would be considered as an "organiser";

Sub-option 2: liability is placed on each involved provider for the service segment they offer;

Sub-option 3: joint liability of all the involved traders unless the parties designate only one trader to be liable.

4. Proposed legislative measures in option 7 – Modernisation of the Directive and full coverage of both "one trader" packages and "multi-trader" travel arrangements (PO7)

This option includes Option 5 and 6 whilst subjecting also all "multi-trader" assisted travel arrangements to the full liability regime under the revised PTD. This means that "multi-trader" assisted travel arrangements would be subject to the same regime as pre-arranged

packages, "one trader" packages and "multi-trader" packages, including full liability for the performance of the services included in the travel arrangement and the obligation to procure insolvency protection.

ANNEX 5

Detailed assessment of policy options

1. Policy option 1 (Status Quo) - Baseline scenario (BS)

1.1. Baseline compliance costs for industry

Option 1 is effectively the baseline against which any potential changes under the other policy options and their impacts will be assessed. It is therefore important to clearly set the baseline compliance costs for the industry. This estimate will be particularly used to assess the impact of the policy options which change the scope of the PTD (PO4, PO5 and PO6).

There has not been sufficient quantitative information provided by various stakeholders (at the level of detail required) or otherwise available to enable a wholly quantitative baseline to be developed. Furthermore, there are significant differences across Member States concerning the transposition of the PTD and the market structure. Therefore, it was necessary to make a series of assumptions to provide the basis for the analysis. A series of “average” costs per business have thus been developed - most of which have been based on qualitative data provided by various stakeholders.

The uncertainty around these averages means that, for the impact assessment, relatively wide ranges have been provided for most variables and a sensitivity analysis has been undertaken by developing ‘high’, ‘medium’ and ‘low’ estimates, where possible, in order to reflect the possibility of costs varying from the average.

The following compliance costs have been identified and estimated:

- obtaining insolvency protection

The insolvency protection of customers may take different forms: participation in a guarantee fund (e.g. Belgium, Netherlands, etc.), individual insurance (e.g. Germany) or bank guarantees. The cost of the insolvency protection is based on the credit standing/credit worthiness of the tour operator. Guarantee funds, insurance businesses/banks will carry out a financial/risk evaluation of the balance sheets of the tour operators and determine their level of risk.

For example, in the UK, the basic cost of participation in the insolvency scheme amounts to £2.50 (€2.9) per passenger. In addition to this basic cost, many package organisers are also required to supplement the security of the scheme by way of bonding.¹⁶⁰ Information provided by a large tour operator at the European market suggests that the insolvency

¹⁶⁰ UK Department for Transport, Regulating Air Transport: Consultation on Proposal to Update the Regulatory Framework for Aviation, December 2009.

protection costs around €3-€3,50 per package. Therefore this range has been taken forward in the estimates. This figure includes also indirect administrative costs currently associated with obtaining insolvency protection (e.g. providing information to audit inspections).

- Providing information to consumers (including making changes to brochure)

See section on administrative costs and annex 6 for administrative cost calculations.

- Proper performance of the contract

In order to cover the liability for the proper performance of the contract, tour operators usually contract specific liability insurances. Their costs vary depending on the country where the tour operator is based, the type of risks to be insured, deductible per loss and limits of compensation per damage. Based on the information provided by industry stakeholders¹⁶¹ the total costs related to the performance of the contract have been estimated at €2.50 (see box 1).

Box 1 Examples of costs relating to the performance of the contract

1. Liability Insurance concerning Personal or Material Damages under the Contract

This insurance cover personal or material damages that are incurred during the course of the travel which are the fault of the tour operator or his contractual service providers caused by his or their acts (negligence/intent) or omissions.

Insurance costs for the tour operator (plus any taxes):

- Average premium per customer: €0.50

- Minimum premium per contract: €300

Extra costs for insuring special risks such as diving, trekking, skiing etc.

- Average premium per customer: €1.30¹⁶²

- Minimum premium per contract: €1200

2. Liability Insurance concerning Financial Damages under the Contract

This insurance covers financial damages that the customer incurs during the course of travel (e.g. loss of earnings, loss of vacation time or unnecessary expenditures for a travel that was not performed due to overbooking) which are the fault of the tour operator or his contractual service providers caused by his or their acts or omissions.

Insurance costs for the tour operator (plus any taxes):

- Average premium per customer: €0.50

- Minimum premium per contract: €300

¹⁶¹ European Travel Agents and Tour Operators Association (ECTAA), German Travel Association (DRV) and Association of British Travel Agents (ABTA).

3. Liability Insurance concerning rescue or extra costs as well as abatement costs

This insurance covers:

a) costs for rescue measures or alternative services that might become necessary e.g. in case a contractual partner/agent terminates services because of insolvency and the tour operator has to make new arrangements in order to fulfil his contract with the customer

b) cases where the consumer makes use of his right to claim a compensation for non-performance of the contract (e.g. no warm water in the shower or a construction site near the hotel etc.)

Insurance costs for the tour operator (plus any taxes):

- Average premium per customer: €0.70

- Minimum premium per contract: €2,500

In summary, if a tour operator makes use of all of these insurance options he will face the following costs:

- Average premium per customer: €3.00

- Minimum premium per contract: €4,000

- As the insurance covering special risks such as diving, trekking, skiing etc. only applies to some packages, an assumption of the average cost of **€2.50** has been taken forward in the IA.

- Assisting consumers in difficulty

Assuming costs of €100 to €200 per case and a 1% pay out rate (1 in 100 cases requiring assistance), dividing the costs by 100, give per package costs of €1 - €2.

- Cross border (due to the differences in national legislations)

See section on administrative costs and the SCM sheet (annex 6) developed for cross-border administrative cost calculations. These costs are not incurred by all businesses and could indeed be higher depending on assumptions made (see table 4).

- Contract changes - essential terms (and other)

A nominal figure of €1 - €1.5 has been used for aspects where industry will clearly carry out these activities.

Table 1 Baseline compliance costs incurred per package to comply with the PTD

| Costs associated with: | |
|---------------------------------|------------------|
| | Compliance Costs |
| Obtaining insolvency protection | €3 - €3.5 |

| | |
|---|-------------------|
| Administrative costs- providing information to consumers (including making changes to brochure) | €3 ¹⁶³ |
| Assisting consumers in difficulty | €1- €2 |
| Proper performance of the contract | €2.5 |
| Contract changes - essential terms (and other) | €1- €1.5 |
| Total | €10.5-€12.5 |

For the impact assessment, an average cost of €10.5 - €12.5 per package will be taken forward, out of which €3 represents administrative costs. It is recognised that businesses trading cross-border would incur the additional administrative costs of €2 associated with cross border trade (out of which €0:50 is recurring cost).

1.1.1. Baseline administrative costs for businesses

The Table below sets out the information requirements under the existing PTD, separating out the “business as usual” costs from the actual burden resulting from the PTD requirements.

Table 2 PTD information requirements

| | PTD requirements | Business as usual | Additional burden |
|---------------------|--|-------------------|-------------------|
| Pre-contract | When a brochure is made available to the consumer, it shall indicate in a legible, comprehensible and accurate manner both the <u>price</u> and adequate information concerning: | | ✓ |
| | (a) the destination and the means, characteristics and categories of transport used | ✓ | |
| | (b) the type of accommodation, its location, category or degree of comfort and its main features, its approval and tourist classification under the rules of the host Member State concerned | ✓ | |
| | (c) the meal plan | ✓ | |
| | (d) the itinerary | ✓ | |
| | (e) general information on passport and visa requirements for nationals of the Member State or States concerned and health formalities required for the journey and the stay; | | ✓ |
| | (f) either the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance | ✓ | |

¹⁶³ See annex 6 for the detailed calculation of administrative costs.

| | PTD requirements | Business as usual | Additional burden |
|--|--|--------------------------|--------------------------|
| | (g) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation. | ✓ | |
| | (h) possibility to revise (prior to concluding contract) any of the particulars set out in brochures must be stated therein if later wish to revise things such as price | | ✓ |
| In the contract | (a) the travel destination(s) and, where periods of stay are involved, the relevant periods, with dates; | ✓ | |
| | b) the means, characteristics and categories of transport to be used, the dates, times and points of departure and return; | ✓ | |
| | (c) where the package includes accommodation, its location, its tourist category or degree of comfort, its main features, its compliance with the rules of the host Member State concerned and the meal plan | ✓ | |
| | (d) whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation; | ✓ | |
| | (e) the itinerary; | ✓ | |
| | (f) visits, excursions or other services which are included in the total price agreed for the package; | ✓ | |
| | (g) the name and address of the organizer, the retailer and, where appropriate, the insurer; | | ✓ |
| | h) the price of the package, an indication of the possibility of price revisions (and how they should be calculated) under Article 4 (4) and an indication of any dues, taxes or fees chargeable for certain services (landing, embarkation or disembarkation fees at ports and airports, tourist taxes) where such costs are not included in the package; | Partial | |
| | (i) the payment schedule and method of payment; | ✓ | |
| | (j) special requirements which the consumer has communicated to the organizer or retailer when making the booking, and which both have accepted; | ✓ | |
| (k) periods within which the consumer must make any complaint concerning failure to perform or improper performance of the contract. | ✓ | | |
| Before departure | (a) the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the traveller, e.g. cabin or berth on ship, sleeper compartment on train; | ✓ | |

| | PTD requirements | Business as usual | Additional burden |
|--|--|--------------------------|--------------------------|
| | (b) the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call. Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contract the organizer and/or the retailer; | | ✓ |
| | (c) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay; | ✓ | |
| | (d) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness. | | ✓ |

Information requirements identified as representing an additional burden in the right hand-column involve:

researching the insurance market and providing details to travellers;

researching local agencies and providing telephone numbers of those who might provide assistance in the event a traveller gets into difficulty;

researching information on passport and visa requirements and providing information to travellers;

reprinting of brochures when prices or other (adequate) information changes;

providing details of retailer/organiser and insurer; and

setting out in brochures the possibility for changing any particulars laid out (incl. price).

Table 3 provides the total sum of the administrative costs associated with the existing PTD information requirements. The total baseline administrative costs have been estimated at €421 million of which €409 million are administrative burden (the remaining costs are business as usual costs i.e. the costs that businesses would incur anyhow, even in the absence of legal obligations e.g. information about the destination or price of a package). The detailed calculations are presented in the SCM spread-sheets (see annex 6). See also Box 2 explaining the assumptions of the calculation.

Table 3 Summary of administrative costs associated with information requirements

| | |
|-----------------------------|---------------|
| Total administrative costs | ~€421 million |
| Total administrative burden | ~€409 million |

| | |
|---------------------------|--------------|
| Total business as usual | ~€12 million |
| Average cost per business | ~€4,700 |
| Average cost per package | ~€2.63 |

Box 2 Methodology and assumptions for calculations of administrative costs

- There are approximately 90,000 tour operators/travel agents in the EU and these are split between 45% retailers, 35% tour operators/retailers, 20% tour operators. The information is provided at the point of sales. It is therefore assumed that 80% of the businesses (retailers and tour operators/retailers) will bear these costs;
- A wage rate of €15 per hour is used for a “clerk” to adapt information materials for compliance with the PTD;
- Changes to materials/templates are assumed to take around 10 hours (based on a breakdown of the specific tasks required);
- The activities are done for every sale but it is assumed that software is adapted to import information from the booking process into the contract. Therefore the frequency of 3 times a year has been assumed;
- It has been assumed that only large tour operators use brochures (0.5% of all tour operators). Therefore, 250 businesses will bear the costs of preparing and printing the brochures.
- The cost of reprinting brochures is based on estimate calculated from UK figures on reprints (€ 1 per reprint) and consistent with Dutch business cost estimate of approximately € 1.7million. However, they are very different to German estimate of € 5.63 to 6.25 per brochure for some businesses.

These assumptions were developed by the Consultant and verified by selected industry stakeholders (European Travel Agents and Tour Operators Association (ECTAA), German Travel Association (DRV) and Association of British Travel Agents (ABTA)).

1.1.2. Baseline cross-border administrative costs for businesses

An attempt has been made to quantify the costs that may be arising for businesses in order to trade cross border, where these costs are driven primarily by the different information requirements which are applicable in different Member States. Table 4 provides the administrative costs relating to cross border trade. The baseline administrative burden in a cross-border context (due to the minimum harmonisation of the current Directive, the businesses have to get acquainted and comply with various different national rules) have been estimated at of € 26 million (€21 million of one-off costs and €5 million of recurring costs). A detailed explanation of the assumptions is presented in Box 3. The calculations underlying these figures are provided in the SCM spread-sheets (see annex 6).

Table 4 Summary of administrative costs associated with cross border trade

| | Baseline Cost/€ |
|--|-----------------|
| One off administrative costs for researching MS requirements and legal advice: | 21 million |
| Recurring administrative costs: | 5.1 million |

| | |
|--|--------------|
| Recurring administrative burden: | 0 |
| Recurring business as usual costs | 5.1 million |
| Total administrative costs | 26,1 million |
| Average cost per business involved in cross-border trade | 1469 |
| Average cost per package | 1.65 |

Box 3 Methodology and assumptions for calculations of cross-border administrative costs

- The number of businesses trading cross border in different Member States is based on the figures estimated in Eurobarometer Flash 278 (2009) which carried out a survey into business attitudes towards enforcement and redress in the internal market and collected information on the extent to which businesses engaged in cross border trade. The survey did not focus specifically on the travel sector. Estimates were that 14% of businesses engaged in cross border trade in 4 or more Member States (4 used for estimates), 6% in 2-3 (3 used in estimates) and 5% in one other Member State (suggesting a total of 25% of businesses being involved in cross border trade);
- There are approximately 90,000 tour operators/travel agents in the EU which sell package travels¹⁶⁴ and these are split 45% retailers, 35% tour operators/retailers, and 20% tour operators. Not all travel agents and tour operators will be responsible for providing information at the same time as retailers and tour operators work together. We therefore assume 80% of the businesses will be responsible, based on figures for retailers and tour operator/retailers;
- 10% of businesses' sales are cross-border sales (based on responses to the public consultation) and this % is applied to the market for pre-arranged packages);
- Four key tasks are identified with regard to trading cross border:
 - *Researching requirements in each Member State where a business wishes to sell.* This is assumed to take five hours per Member State at a wage rate of €75 per hour;
 - *Adapting pre-contractual information to meet requirements in each Member State:* This is assumed to take four hours per Member State at a wage rate of €15 per hour per Member State;
 - *Adapting contract materials to meet requirements in each Member State:* This is assumed to take one hour per Member State at a wage rate of €15 per hour per Member State;
 - *Adapting pre-departure material to meet requirements in each Member State:* This is assumed to take one hour per Member State at a wage rate of €15/hour per Member State.

These assumptions were developed by the Consultants and verified by the selected industry stakeholders European Travel Agents and Tour Operators Association (ECTAA), German Travel Association (DRV) and Association of British Travel Agents (ABTA)

1.1.3. Functioning of the Internal Market and competitions

As consumers get more internet savvy, the sales of combined travel arrangements are likely to increase. This would further negatively impact on the functioning of the internal market and

¹⁶⁴ Eurostat structural business statistics: 90,000 businesses, an assumption of 80% selling package travels is taken into account.

competition where businesses selling similar products have to comply with different rules. The compliance costs have been estimated at €10.5 - €12.5 on the price of a package.

Similarly, businesses wishing to sell cross-border would continue to bear significant costs. They would need to check the relevant national regulations in place in different Member States and ensure compliance of their travel products with the various regulatory requirements in these countries. This results in additional costs per business for selling cross border of €1469. However, it is likely that Member States take action at local levels to protect their citizens (e.g. by extending their national legislation to cover more types of packages/products). This would result in further regulatory fragmentation and further distortion of the Internal Market.

1.1.4. Impact on SMEs

In the absence of action at EU level, micro, small and medium sized businesses would continue to suffer disproportionately from the absence of fair competition on the market and costs stemming from unclear and fragmented rules. The costs of clarifying legal provisions and finding out about the rules applicable to cross-border contract, weigh more heavily, in relative terms, on micro and small businesses.

1.1.5. Impacts on consumers and households

There will be no direct costs to consumers from retaining the status quo. However, consumers would continue to suffer further detriment as combined travel arrangements get more popular.

According to the Consumer Detriment Study in the area of dynamic packages¹⁶⁵, combined travel arrangements cause more detriment than any other types of travel arrangements. Not only is the incidence of problems for combined travel arrangements (8.2%) much higher than for pre-arranged packages (3.1%) and independent travel arrangements (1.6%) but also the gross detriment per problem associated with combined travel arrangements is much higher (€593 per package) than that associated with pre-arranged packages (€191 per package). This could be partially remedied if Member States decide to enhance the protection at national level. On the other hand, the increased regulatory fragmentation could lead to higher prices and limited choice for consumers as more businesses would refrain from cross-border operations.

1.1.6. Impact on public authorities

No impact expected.

1.2. Assessment of relevant social impacts

This option is not expected to result in specific impacts in the employment and labour markets (i.e. new job creation, loss of jobs, etc.)

¹⁶⁵ http://ec.europa.eu/consumers/rights/docs/study_consumer_detriment_dyna_packages_en.pdf.

1.3. Assessment of relevant environmental impacts

The continued re-printing of brochures, where this is solely the result of the Directive, would continue to impact on the environment.

Limited information provided by industry suggests that around 1.7 million brochures for one large business or 30 million brochures for one country (Netherlands) are re-printed solely to ensure compliance with the Directive. Extrapolating these figures across the numerous businesses across the EU involved in printing brochures would result in a significant amount of brochures being re-printed. The impact on these re-printed brochures on water resources, energy, emissions of VOCs, etc. are some of the undesirable environmental impacts which would continue to occur.

However, it should be borne in mind that the environmental impact of these brochures is likely to be insignificant when compared to the overall environmental impacts of the travel industry.

1.4. Assessment against objective

| Policy Objectives | Option Rating* | Comments |
|--|----------------|---|
| Objective 1: To improve the functioning of the Internal Market in the package travel sector, by: | | |
| Reduce costs and obstacles to cross-border trade; | 0 | With no action at EU level, Member States may take action at local levels to protect their citizens (e.g. extending their national legislation to cover more types of packages/products). This would result in an increased regulatory fragmentation and additional costs for businesses. |
| Ensure a more competitive and fairer level playing field for the businesses operating in the travel market. | 0 | Unfair competition between different players in the travel sector is likely to continue and possibly increase (e.g. with the growing popularity of combined travel arrangements). |
| Reduce unjustified compliance costs for businesses in the package travel market; | 0 | With no EU action, the unjustified costs for businesses stemming from different provisions of the PTD would remain unchanged. |
| Objective 2: To achieve a high level of consumer protection in the package travel sector, while respecting the freedom to conduct business, by: | | |
| Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; | 0 | As consumers get more internet savvy, they may be expected to self-package or purchase combined travel arrangements falling outside the protection of the PTD. This is likely to result in more consumers mistakenly buying unprotected holidays believing that they purchase a protected package travel. |
| Reduce consumer detriment stemming from unclear and | 0 | With no EU action, consumers will continue to bear costs stemming from some unclear or outdated provisions such as |

| Policy Objectives | Option Rating* | Comments |
|----------------------|----------------|--|
| outdated provisions. | | for example lack of foreseeability in relation to prices or uncertain liabilities of the retailer/organiser. |

*Option Rating from -3 (extremely poor) to +3 (very highly effective)

2. Policy option 2: Guidelines

2.1. Assessment of relevant economic impacts

2.1.1. Functioning of the Internal Market and competition

A clarification of some of the definitions in the PTD could, in theory, result in a clearer segmentation between PTD covered and non-PTD covered packages and thereon lead to fairer competition. However, guidelines are by definition "non-legally binding" and hence it cannot be guaranteed that these clarifications will indeed be taken up by businesses and Member State authorities.

Similar to BS, there is likely to be increased regulatory fragmentation as Member States may take action at local levels to protect their citizens (e.g. extending the protection rules to cover more types of travel arrangements).

Overall, PO 2 is unlikely to significantly enhance the functioning of the internal market; in particular, as it fails to sufficiently address the potential for future regulatory fragmentation which impacts on the functioning of the internal market or provide a fair competitive environment for businesses operating in the travel market.

2.1.2. Compliance costs for businesses

There should be no overall change in costs incurred by industry as a result of the guidelines being issued. This is because the guidelines essentially relate to clarifications of the existing PTD, thus any costs arising are those which should have been incurred already as part of the BS.

The main benefits to businesses of introducing guidelines will arise from increased regulatory clarity. However, the effects of clarification will depend on the actual use that national authorities and courts make of it.

2.1.3. Administrative costs for businesses

The guidelines do not impose additional information requirements on businesses, but clarify the existing PTD. Hence, there is no actual administrative burden associated with PO 2, as the above costs would have been incurred anyway. While some businesses may need to change their current practices in order to adjust to clarifications set out in the guidelines, the extent of

these changes is not known and these costs should in theory also have been incurred in the status quo situation.

2.1.4. *Impact on SMEs*

Very little change compared to the BS.

2.1.5. *Impact on consumers and households*

Public consultation with stakeholders indicates that most of them show low support for the option of issuing guidelines to businesses (percentage in favour across all stakeholders ranging from 11% - 37%, where the 11% was from consumer organisations)¹⁶⁶. This suggests that the introduction of guidelines is not perceived as resulting in increased consumer protection. Of course, it is possible that consumers may gain some clarity from guidelines and also be better protected due to better implementation (by businesses) and enforcement (by Member State Authorities) of the PTD; however, these are broadly indirect benefits which are not quantifiable and which would not allow to durably tackle the lack of legal clarity at EU level, concerning a number of combined travel arrangements.

2.1.6. *Impact on public authorities*

No change compared to the BS.

2.2. Social impacts

PO2 is not expected to result in any specific impacts in the employment and labour markets (e.g. new job creation, loss of jobs, etc.)

2.3. Environmental Impacts

The continued re-printing of brochures – as an indirect result of the Directive - would continue to impact on the environment as under status quo.

2.4. Assessment against objective

| Policy Objectives | Option Rating* | Comments |
|---|----------------|--|
| Objective 1: To improve the functioning of the Internal Market in the package travel sector, by: | | |
| Reduce costs and obstacles to cross-border trade; | 0 | While it cannot be stated for certain to what extent Member States would make use of the guidelines, it is reasonable to expect that their introduction might result in fewer Member States taking independent regulatory actions to protect their citizens compared to the baseline scenario. |

¹⁶⁶ http://ec.europa.eu/consumers/rights/docs/20100430_summary_responses.pdf.

| Policy Objectives | Option Rating* | Comments |
|--|-----------------------|--|
| Ensure a more competitive and fairer level playing field for the businesses operating in the travel market. | 0/+ | Unfair competition between different players in the travel sector is likely to continue. |
| Reduce unjustified compliance costs for businesses in the package travel market; | 0 | There should be no overall change in costs incurred by industry as a result of the guidelines being issued. However, some clarification of existing rules might bring some minor savings for the industry, |
| Objective 2: To achieve a high level of consumer protection in the package travel sector by: | | |
| Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; | 0 | Similarly to the baseline scenario, as consumers get more internet savvy, they may be expected to self-package or purchase combined travel arrangements falling outside the protection of the PTD. |
| Reduce consumer detriment stemming from unclear and outdated provisions. | 0 | Guidelines may slightly increase the clarity of the current rules. |

**Option Rating from -3 (extremely poor) to +3 (very highly effective)*

3. Policy option 3: Package Travel Label (PO3A) and/or "This is not a package" disclaimer (PO3B), add-on option to other policy options

Two sub-options have been envisaged:

- Sub-option A: Introduction of a Package Travel Label
- Sub-option B: Introduction of a disclaimer "This is not a travel package"

3.1. Assessment of sub-option A - Package Travel Label

3.1.1. Functioning of the Internal Market and competition

The introduction of the PTD label is likely to increase cross border trade as consumers increasingly recognise that the same logo (and legislation) applies across Member States.

It would also contribute to a more even playing field amongst the different businesses in the travel sector. Sellers of pre-arranged packages whose services offer high levels of protection should have reduced trouble competing with sellers of combined travel arrangements that offer little or no protection.

3.1.2. Compliance and administrative costs for businesses

Companies selling packages would need to get familiar with new information requirements and adapt their web-pages and promotional materials to display the Package Travel Label. The average one-off cost for adapting a company's website and /or printed materials has been estimated at €500¹⁶⁷. These costs would potentially affect 72,000 companies selling packages at present with the overall one-off costs amounting to €36 million. As this is an add-on option, the final costs would depend on the policy option chose.

3.1.3. Impact on public authorities

Public authorities will be responsible for proper enforcement of the rules and monitoring the correct use of the label. This does not require setting up a designated certification body. This task could be done by the national bodies enforcing the marketing and other rules in this sector.

The European Commission would have to ensure to have the copyright on the logo and its registration as a trade mark. This would represent a small cost for the institution of the order of few thousands of euros.

3.1.4. Impact on consumers

The study on consumer detriment in the area of dynamic packages shows that 67% of consumers who used a combined travel arrangement that was not covered by the PTD wrongly believed that they were protected.¹⁶⁸ There is henceforth a large share of consumers which would substantially benefit from a better understanding of their key rights, as this would help to reduce the consumer detriment estimated as approximately € 1 billion per year. The introduction of the label may help consumers in having a better vision of their rights concerning package travels.

The Commission ran an independent behavioural study with the main purpose to understand the potential effectiveness of such a label, hereunder to which extent consumers would click on the label in an Internet booking process and how the reading of the key rights connected to the label would help consumers to better understand their rights and avoid detriment.

¹⁶⁷The Impact Assessment for the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law estimated the one-off cost for adapting a company's website to display a disclaimer forming a consumer about the application of the European contract law has been estimated at €500.

¹⁶⁸ Study on Consumer Detriment in the area of Dynamic Packages, The European Commission Health and Consumers DG, prepared by London Economics, November 2009.

The main results of the study are not positive in this sense. Consumers¹⁶⁹ went through a virtual booking process in which they were asked to book a flight and a hotel. Different scenarios were tested, in which consumers at some point were presented with no label or with different sizes and positions of different possible labels. A click on the label brought the consumer to a list of 10 key rights which stem from the provisions of the PTD. The best result was obtained when the label was flashy and dynamic: 3.1% of the respondents clicked on it. Consumers who clicked on the label had a better understanding of each of the 10 key rights compared to consumers who did not click on the label. Asked to select the right answer, consumers who clicked on the label selected the right answer from 4.4% to 19.2% more often than the other consumers. The average for the 10 key rights is 11.4%.

Given these results, and knowing that about 25% of the market is online, the maximum impact (assuming that an improvement in the knowledge of the rights would prevent the share of consumers who wrongly believe they are protected to suffer detriment) that the label can have on reduction of consumer detriment is $25\% \times 3.1\% \times 11.4\% \times \text{€ } 1 \text{ billion} = \text{€ } 883,500$ per year.

There is also a difference among consumers who noticed the logo during the booking and consumers who did not.

Asked to declare if they think they are protected by European legislation, consumers who noticed the logo (53.6% of the total) selected the correct answer 7.5% more often than consumers who did not notice the logo. Conservatively assuming that 5% of these consumers will check their actual rights and will avoid possible detriment, and assuming that this result also holds for consumers who will see the label in print when purchasing packages in brick-and-mortar situations, further reduction in detriment is $53.6\% \times 7.5\% \times 5\% \times \text{€ } 1 \text{ billion} = \text{€ } 2,010,000$.

Overall, benefits for consumers stemming from the label are of the order of € 3 million every year. It is straightforward to see that it would be impossible to off-set the costs for businesses (€ 75 million one-off and € 58 million every year), even in the case of 100% of consumers clicking on the label.¹⁷⁰

There may some benefits if an awareness campaign would promote the label and would also improve knowledge of key rights for the consumers clicking on the label (i.e. an increase not only in the 3.1% of those who actually clicked on the logo, but also of those just 11.4% who correctly understood their key rights). It may also be that consumers would progressively become more familiar with the label and that these percentages might hence increase. This would indeed take some time.

3.1.4. Assessment of relevant social impacts

¹⁶⁹ From 10 representative MS: Austria, Czech Republic, France, Germany, Ireland, Italy, Poland, Spain, Sweden and the United Kingdom.

¹⁷⁰ $25\% \times 11.4\% \times \text{€ } 1 \text{ billion} + \text{€ } 2,010,000 = \text{€ } 30,510,000$ per year, which is less than € 58,000,000.

Although, there would be some minor creation of (temporary) jobs (e.g. IT, printing, etc), Option 3 is not expected to result in specific impacts in the employment and labour markets (i.e. new job creation, loss of jobs, etc.).

3.1.5. Assessment of relevant environmental impacts

No environmental impacts are expected.

The re-printing of brochures – as an indirect result of the Directive - would continue to impact on the environment as under Option 1.

3.2. Assessment of sub-option B - "This is not a package" disclaimer

3.2.1. Functioning of the Internal Market and competition

This option would contribute to a more even playing field amongst the different businesses in the travel sector.

Sellers of non-protected packages pre-arranged packages whose services offer high levels of protection should have reduced trouble competing with sellers of combined travel arrangements that offer little or no protection.

3.2.2. Compliance costs for businesses

Travel services providers (hotels, car rentals, airlines, other transport companies) operating on the Internet and linking to booking process at other websites (that offer additional travel services) in a targeted manner in order to facilitate for the procurement of additional travel services before the initial booking process is finalised, would need to adopt their websites to display a disclaimer "This is not Package".

The average one-off cost for familiarising with new requirements and adapting a company's website has been estimated at €500¹⁷¹.

¹⁷¹ The Impact Assessment for the Proposal for a Regulation of the European Parliament and of the Council on a Common

Companies selling "one-trader" packages and ""multi-trader" travel arrangements" are likely to be affected by this option.

As it has been estimated, there are 72,000 companies selling pre-arranged packages. These companies are likely to sell also "one-trader" packages. It could be assumed that 50% of these companies i.e. 36,000 companies are selling their products online and could be impacted by this sub-option.¹⁷²

In relation to "multi-trader" travel arrangements" this option is likely to capture online booking processes which are linked to facilitate in a targeted manner the procurement of additional travel services before the initial booking process has been completed, in particular:

- websites of airlines or other transport providers (including car rentals) from which a traveller has been redirected to purchase other travel components relating to accommodation and/or car rentals on linked/partner's websites; and
- websites of hotels from which a traveller has been redirected to purchase other components relating to transport (including car rentals) on linked/partner's websites.

Table 5 determining the number of businesses selling ""multi-trader" travel arrangements"

| | % Assumed | Number of Businesses |
|---|------------------|-----------------------------|
| HOTELS | | |
| Total number of hotels and other accommodation across the EU-27 from which a package could, in theory, originate | | 200,000 |
| Number of hotels and other accommodation with an online presence | 50% | 100,000 |
| Number of hotels and other accommodation with an online presence and linking to other websites | 25% | 25,000 |
| CAR RENTALS | | |
| Total number of car rentals across the EU-27 | | 13,000 |
| Number of car rentals with an online presence | 50% | 6,500 |
| Number of car rentals with an online presence and linking to other websites | 25% | 1,625 |

European Sales Law estimated the one-off cost for adapting a company's website to display a disclaimer forming a consumer about the application of the European contract law has been estimated at€500.

¹⁷² Eurostat indicates that 41% of businesses with over 10 employees in the accommodation sector (NACE Rev 1.1 H551-H552 and NACE Rev 2 I55) received orders on-line in 2009. No data is provided for other companies in the tourism/travel sector. It has been therefore assumed that 50% of tour operators/ travel agencies are selling packages online.

| AIRLINES | | |
|--|-----|----------------|
| Total number of airlines across the EU-27 from which a package could, in theory, originate | | 300 |
| Number of airlines with an online presence | 80% | 240 |
| Number of airlines with an online presence and linking to other websites | 75% | 180 |
| ALLOTHER TRANSPORT (EXCEPT AIRLINES AND CAR RENTALS) | | |
| Total number of all other transport across the EU-27 from which a package could, in theory, originate | | 57,900 |
| Number of other transport with an online presence (assume 50%) | 50% | 28,950 |
| TOTAL number of companies with an online presence and linking to other websites | | 34,043 |
| Overall TOTAL of Businesses | | 271,200 |

Box 4 Methodology and assumptions for estimating the number of affected businesses

- Based on Eurostat data, there were 201,802 hotels and similar establishments (this includes hotels, apartment hotels, motels, roadside inns, beach hotels, residential clubs, rooming and boarding houses, tourist residences and similar accommodation). This number does not, however, include “other collective accommodation establishments” which include holiday dwellings, tourist campsites, youth hostels, tourist dormitories, group accommodation, school dormitories and other similar accommodation - numbering around 237,000 across the EU-27.
- The estimate of the number of car rental businesses (13,000) is based on the basis the data in Eurostat’s Structural Business Statistics database¹⁷³.
- The estimate of 300 airlines is based on Eurostat values; and
- 57,900 transport businesses in addition to airlines and car rentals is based on the number of railway businesses (887) plus number of businesses involved in other passenger land transport¹⁷⁴ (37,000) plus number of businesses involved in water transport (includes freight)¹⁷⁵ (20,000).

Estimates of the number of businesses that would be affected are based on the following assumptions:

- businesses with an online presence: it has been assumed that 50% of hotels, other accommodation establishments, car rental and transport businesses (with the exception of airlines) sell their products online, while 80% of airlines have an online presence. The assumption on the proportion of hotels that sell their services via the internet broadly corresponds with Eurostat data¹⁷⁶, the relevant percentages for

¹⁷³The most recent data classed under NACE Rev 1.1 are used where available and for the remaining MS (with the exception of Malta for which no data are available), estimates are derived on the basis of NACE Rev 2 data using an assumption that car rental businesses account for 20% of the total number of businesses renting and leasing all motor vehicles. This assumption is based on the average value for MS for which data are available.

¹⁷⁴Extrapolated on the basis of national GDP from Member State data in the Eurostat Structural Business Statistics Database. This includes NACE Rev 1.1 codes I6021 and I6023 (other scheduled passenger land transport and other passenger land transport) and, as such, includes land passenger transport excluding railways and taxis.

¹⁷⁵Based on data from the Eurostat Structural Business Statistics Database (NACE Rev 1.1 code I61).

¹⁷⁶Eurostat indicates that 41% of businesses with over 10 employees in the accommodation sector (NACE Rev 1.1 H551-H552 and NACE Rev 2 I55) received orders on-line in 2009 (down from 48% in 2007 according to NACE Rev 1.1). 50% therefore seems a reasonable assumption.

other stakeholders are based on guesstimates as Eurostat does not provide data to sufficient level of detail¹⁷⁷;

- businesses with an online presence and linking to other websites: it has been assumed that 25% of businesses with online presence link to other websites. However, in the case of airlines, it has been assumed that 75% of airlines with online sales link to other websites; and

As estimated above, this option is likely to affect 36,000 companies selling "one-trader" packages and about 34,000 companies selling "multi-trader" travel arrangements. The total maximum cost of this policy option would therefore amount to maximum €35 million depending on the policy option chosen.¹⁷⁸

3.2.3. Administrative costs for businesses

Administrative costs coincide here with compliance costs, see Annex 6.

3.2.4. Impact on SMEs

SMEs would absorb most of the costs, both in absolute values and relatively to their turnover, even though this percentage would be very small (0.2% and 0.01% respectively).

3.2.5. Competition in the Internal Market

The same impact as Sub-option A.

¹⁷⁷For the rental sector, Eurostat data on businesses trading online are only available for the broad category of NACE Rev 1.1 K which relates to 'Real estate, Renting and Business activities' (possibly including sub-sectors such as R&D, consultancy, industrial cleaning, etc.) and the proportion of businesses with more than 10 employees trading online was 9% in 2009 (down from 15% in 2007). However, this figure is unlikely to be representative of the car rental sector. The proportion of businesses with over 20 employees in the NACE Rev 2 data for the transport and storage sector (H49-H53) which received on-line orders was 11%. However, these data include irrelevant sub-sectors, such as transport by pipeline, removal services, postal services, warehousing and storage, etc. for which we expect the proportion of businesses trading online to be much smaller than in personal transport.

¹⁷⁸ Based on the Eurostat data and certain assumptions it has been estimated that a number of companies impacted could amount to 34,000. See annex 6.

3.2.6. Impact on consumers

As the costs related to the introduction of "This is not a travel package" disclaimer are one-off, it is expected that companies will absorb these costs.

Consumers would benefit from clear information.

The reduction of consumer detriment is expected to be much higher than under Sub-option

A as a negative information would warn consumers who otherwise might purchase unprotected travel under the wrong impression that it is protected (as indicated before this is the case for 67% of users of combined travel arrangements).

3.2.7. Impact on public authorities

MS would be responsible for the enforcement of the rules. The same impacts as sub-option A.

3.3. Social impacts

The same impact as Sub-option A.

3.3.1. Impact on fundamental rights

The same impact as Sub-option A.

3.4. Environmental impacts

The same impact as Sub-option A.

3.5. Assessment against objective

| Policy Objectives | Option Rating* | Comments |
|---|----------------|--|
| Objective 1: To improve the functioning of the Internal Market in the package travel sector, by: | | |
| Reduce costs and obstacles to cross-border trade. | 0 | The introduction of a PTD label and/or "This is not a package" disclaimer is likely to slightly strengthen the functioning of the internal market and increase cross border trade as consumers increasingly recognise that the same label/disclaimer (and legislation) applies across Member States. |

| Policy Objectives | Option Rating* | Comments |
|--|-------------------|---|
| Ensure a more competitive and fairer level playing field for the businesses operating in the travel market. | 0/+ | The introduction of a PTD label and/or "This is not a 1 package" disclaimer is likely to result in fairer competition between different players in the travel sector - especially as there will be a clear distinction between products which are covered by the PTD and those which are not.. Sellers of non-protected packages and traders selling pre-arranged travel packages whose services offer higher level of protection, should be able to compete for the customers which are more enlightened as to the level of protection they will enjoy for the different products. |
| Reduce unjustified compliance costs for businesses in the package travel market; | -- and – for 3B | The introduction of a PTD label and/or disclaimer as such would reduce unjustified compliance costs for businesses stemming from unclear and outdated provisions. Both sub-options would increase administrative costs for businesses. These would be mostly one-off costs except of the certification scheme (sub-option A 2) where companies would need to bear verification costs annually. |
| Objective 2: To achieve a high level of consumer protection in the package travel sector, while respecting the freedom to conduct business, by: | | |
| Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; | 0 and + for PO3 B | As consumers get more internet savvy, more consumers may be expected to self-package or purchase combined travel arrangements. The label itself would not increase the number of consumers protected, however, it could reduce consumer detriment. This reduction is not expected to be high. Sub-option B is likely to be more effective as a negative information would warn consumers who otherwise might purchase unprotected travel under the wrong impression that it is protected. |
| Reduce consumer detriment stemming from unclear and outdated provisions. | 0/+ | The introduction of the label and/or disclaimer would not as such contribute to any reduction of detriment stemming from unclear/outdated provisions. However, some benefits are expected in relation to the current unclear scope of the protection rules and especially the introduction of a disclaimer could prevent travellers from purchasing unprotected travels while wrongly believing that the product is a travel package. |

Option Rating from -3 (extremely poor) to +3 (very highly effective). The effectiveness of this option would be higher if combined with policy options 5 or 6.

4. Policy Option 4 – Repeal of the Directive (PO4)

4.1. Functioning of the Internal Market and competition

The repeal of the Directive might in theory eliminate obstacles to cross-border trade and would result in more even market playing field.

Since it is likely that at least some MS maintain their legislation and others take action at national level to strengthen consumer protection, the Internal Market would be more fragmented and there would be more obstacles to cross-border trade.

4.2. Compliance costs businesses

The repeal of the Directive might result in decrease of compliance costs for businesses (up to €10.5-€12.5 per package). However, the cost savings for businesses will depend on the willingness of MS to repeal their national legislation protecting consumers. It is likely that many MS would maintain and further develop their legislation in this area.

4.2.1. Administrative costs for businesses

Similarly to compliance costs, this PO might result in decrease of administrative costs for business up to €409 million depending on the number of MS that decide to repeal their national legislation.

4.3. Impact on SMEs

The repeal of the Directive might in theory lead to fairer competition and decrease of compliance costs which impact, in relative terms, more heavily on micro and small enterprises. The impact will however depend on the willingness of MS to repeal their national legislation.

4.4. Impact on consumers and households

The repeal of the Directive is likely to increase consumer detriment (estimated at more than €159 million annually for pre-arranged packages compared to more than €1 billion for combined travel arrangements). In theory, a lower cost burden to the industry could lead to lower end-prices to the consumer.

4.5. Impact on public authorities

MS would be free to decide whether to maintain their national legislation unchanged, repeal their national legislation or to update their legislation. If legislation is repealed, consumers being stranded when on holiday due to the insolvency of the tour organiser might more often turn to embassies to receive necessary assistance and financial support to be repatriated.

4.6. Assessment of relevant social impacts

Only small social impacts expected. For instance, consumers being stranded due to the insolvency of the tour organiser will not receive necessary assistance and financial support to be repatriated. Thus, consumers may be stranded for longer periods, which in return can have an impact on employers (their employees do not return back in time after their holidays).

4.6.1. Impact on fundamental rights

This option would result in a lowering of consumer protection in Europe in the area of package travel and, hence, is likely to have a negative impact on the rights protected by the EU Charter of Fundamental Rights, notably and foremost Article 38 on consumer protection. Article 16 on the freedom to conduct business is positively impacted, but depending on the number of MS repealing their national legislation.

4.7. Assessment of relevant environmental impacts

Businesses would not be required to re-print brochures solely as the result of the PTD obligations and its application in practice.

4.8. Assessment against objectives

| Policy Objectives | Option Rating* | Comments |
|--|----------------|---|
| Objective 1: To improve the functioning of the Internal Market in the package travel sector by: | | |
| Reduce costs and obstacles to cross-border trade; | -- | The repeal of the Directive might in theory eliminate obstacles to cross-border trade. However, it is likely that Member States maintain their legislation and take action at national level to strengthen consumer protection. This would result in further fragmentation of the Internal Market and would create more obstacles to cross-border trade. |
| Ensure a more competitive and fairer level playing field for the businesses operating in the travel market. | - | In theory, the repeal of the Directive would result in fairer competition between different players in the travel sector. However, this does not take into account the possibility of national legislation being retained with would lead to even greater national differences for businesses operating in the travel market (both between businesses on the domestic market and between businesses established in different Member States). |
| Reduce unjustified compliance costs for businesses in the package travel market; | + | The repeal of the Directive might reduce and eliminate some unnecessary compliance costs. The extent of this reduction will however depend on number of Member States that decide to repeal or revise their national legislation in this field. |
| Objective 2: To achieve a high level of consumer protection in the package travel sector, by: | | |
| Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; | -- | In the absence of EU legislation, there is likely to be a significant decrease in the number of protected consumers and an increase of consumer detriment. This could, however, be remedied at national level. |
| Reduce consumer detriment stemming from unclear and | -- | The repeal of the Directive might in theory reduce the detriment stemming from unclear and outdated provisions. Any such reduction would however, be offset by an increase |

| Policy Objectives | Option Rating* | Comments |
|----------------------|----------------|---|
| outdated provisions. | | of detriment for consumers travelling without protection. |

Option Rating from -3 (extremely poor) to +3 (very highly effective)

5. Policy Option 5 – Modernisation of the Directive and coverage of "one-trader" packages (PO5)

PO 5 introduces a number of legislative changes compared to the current PTD in relation to:

- definitions and scope;
- information requirements;
- clarification of obligations and liabilities;
- contract changes and other issues.

The detailed description of changes proposed measures of PO 5 is presented in Annex 4.

The impact of each of these changes is assessed in depth and presented in a separate sub-sections. The assessment ends up with an overall summary of key impacts of this policy option.

5.1. Update of definitions and clarification of the scope of Directive

5.1.1. Functioning of the Internal Market and competition

A clear inclusion of "one-trader" packages under the scope of the Directive would result in a levelling of the market playing and in an improvement in competition. In several Member States today, two traders may sell essentially the same services, but only one of them incurs costs of complying with the Directive. Since all businesses selling pre-arranged travel package and "one-trader" packages under this option would be incurring the same compliance costs, businesses would compete on more equal terms. The strengthened harmonisation of legislation would eliminate obstacles to cross-border trade and enhance the competition.

5.1.2. Competitiveness, trade and investment flows

It is unlikely that any costs incurred will result in a change from the current situation in terms of the global competitive position of EU firms or productivity. There is a possibility that some businesses may try to relocate their websites outside of the EU in order to avoid compliance with the Directive. However, since they would be obliged to comply with the EU laws if they

sell packages on the EU market, it is not expected that there would be a significant relocation of economic activity.

5.1.3. Compliance costs for businesses

Inclusion of "one-trader" packages in the definition of a travel package

The exact number of businesses selling "one-trader" packages that are not subject to the PTD is not known.. In some MS, national legislation already covers some online "one-trader" packages (e.g. DE and SE¹⁷⁹) and some large operators based in these countries may be assumed to already comply with package travel requirements across all countries in which they operate. However, it cannot be assumed that even in those MS all operators who create the perception of selling packages comply, in practice, with all PTD-requirements, including bankruptcy protection. Furthermore, feedback from stakeholders confirms that not all "one-trader" packages sold in high street comply with all PTD requirements. In order to quantify this number, the following assumptions have been made:

- the market of combined travel arrangement market is estimated at 23% of the EU travel market, accounting for 118 million packages. For business trips, this market represents the 30% of the total, i.e. 24 million packages;¹⁸⁰
- the market for "one-trader" holiday packages is estimated at 17% of the travel market and amounts to approximately 87 million trips, for business trips this is 22% i.e. 18 million packages;
- business trips organised by TMCs account for 80-85% of all business trips. Therefore, it is considered that most business travellers do not use pre-arranged packages, but rather prefer more combined solutions. The business trips arranged by TMCs tend to fall in the category of "one-trader" packages or independent travel arrangements. In light of such assumptions, the market of combined travel arrangements for business purposes has been estimated at around 24 million trips (out of which 16 million are "one-trader" packages organised by TMCs) while independent travel arrangements have been estimated at around 56 million trips (out of which 50 million trips are arranged by TMCs).¹⁸¹

It has been assumed that 50% of "one-trader" packages are subject to the current PTD.

¹⁷⁹ Consumer Law Compendium, p.241-244.

¹⁸⁰ See Annex 2 for explanations.

¹⁸¹ It is reasonable to assume maintaining the same ratio as for holidays' trips among "one-trader" packages, "multi-trader" travel arrangements and independent travel arrangements. See estimates based on Eurostat in Annex 2.

This is based on stakeholders' feedback and the result of the Consumer Detriment Study, which seem to suggest that at least 50% of these travel arrangements are sold in high street and therefore are already subject to the PTD.

Hence, under PO5, approximately 44 million "one-trader" holidays packages and 1 million of B2B trips would be brought under the scope of the PTD while 8 million of "one-trader " B2B trips organised by TMC will be excluded from the scope.

The impact of this change would be that businesses selling such products would be required to comply with the Directive's requirements, including making provisions for insolvency protection, providing all information stipulated to travellers, becoming liable in the event of non-performance of the contracts, etc.

TMCs selling business trips excluded from the scope which would no longer need to comply with the Directive's requirements will have reduced compliance costs. These costs and savings are assessed below in the appropriate sections.

Businesses would benefit from increased regulatory clarity (regarding which travel arrangements are covered by the PTD and which are not) and this should result in a decrease in litigation costs

For cruises, the clarification is not expected to bring additional businesses or packages within the scope of the Directive.

5.1.4. Impact on consumers and households

It is possible that some consumers may experience an increase in the price of "one-trader" packages, as businesses might pass on the additional costs of ensuring compliance. This impact will depend on supply and demand elasticity. However, in any case, this is likely to be less than 2% of the total price of the package¹⁸² and broadly comparable with the cost of obtaining commercial travel insurance and, as such, unlikely to be detrimental to consumers. In a competitive market, price increases on the end product are normally minimised to the extent possible.

Inclusion of "one-trader" packages would result in reducing consumer detriment. Travellers would receive refunds of advance payments and assistance with repatriation costs in the event of insolvency, redress in the event of non-performance of contracts and spend less time and effort in seeking compensation.

The Table below shows estimates of the level of consumer detriment resulting from combined travel arrangements¹⁸³ on an annual basis. It should be noted that the value of detriment for combined travel arrangements covers both "one-trader" packages and "multi-trader" travel arrangements where some of "one-trader" packages are already compliant with the Directive.

¹⁸² Dividing the average price of a combined travel arrangement (€741) by the cost of compliance per package of €10.5 - €12.5 puts the compliance cost at between 1.4% and 1.7% of the overall cost of the package.

¹⁸³ Study on Consumer detriment in the area of dynamic packages, *ibidem*.

Table 6 Detriment associated with combined travel arrangements not currently under scope of the PTD

| | Number of combined travel arrangements | Value of purchased combined travel arrangements(€)¹⁸⁴ | Value of net detriment in population (€) |
|--|---|---|---|
| EU-27 | 118 million holidays | 87 billion | 1,065 billion |
| % of "one-trader" packages to be made compliant | Number of "one-trader" packages to be made compliant | Value of trips to be made compliant (€) | Value of net detriment associated with products to be made compliant (€)¹⁸⁵ |
| 50% | 43,6 million | 32,3 billion | 395 million |

The value of net detriment associated with 44 million of “one-trader” packages (with a value of €32 billion) brought under the scope of the PTD, has been estimated €395 million.

Bringing these trips under the scope of the Directive would not necessarily mean that the detriment would disappear completely but would significantly decrease. The incidence of problems with pre-arranged packages is 3.1% compared to 8.2% for combined travel arrangements and that the average cost per problem with pre-arranged packages amounts to €191 compared to €592 for combined travel arrangements. It could be assumed that the detriment per package and incidence of problems for "one-trader" packages brought under the scope of the Directive would be the same as for pre-arranged packages. The estimated reduction of traveller's detriment would be up to 88%¹⁸⁶ i.e. the level of detriment ", would decrease up to €348 million if 50% of "one-trader" packages are brought under the scope of the PTD.¹⁸⁷

5.2.Update of information requirements

5.2.1. Functioning of the Internal market and competition

¹⁸⁴ Number of combined travel arrangements multiplies by the average cost of combined travel arrangement i.e. €741.

¹⁸⁵ Figures in this column are calculated by multiplying the figures in the previous column by the ratio of net detriment for all combined travel arrangements e.g. 395 million = 32,3 billion x (1 billion (net detriment for all combined travel arrangements)/87 billion (value of all combined travel arrangements) i.

¹⁸⁶ The consumer detriment for 100 pre-arranged l packages amounts to €592 (100*3.1% incidence of problems *€191 average cost of problem) compared to €4,862 for 100 combined travel arrangements (100*8.2% incidence of problems* €593 average cost of problem). (€4,862-592)/€4,862 = 88%.

¹⁸⁷ It should be noted that the figures on the incidence of problems and average cost per problem cover all combined travel arrangements i.e. some "one-trader" packages where some of them are already compliant with the PTD and some "multi-trader" travel arrangements for which the level of incidence of problems and an average cost of problem are likely to be higher.

Changes in requirements for brochures

Repealing provisions that apply solely to brochures is expected to result in fairer competition between the different businesses in the travel sector since the current Directive places an extra burden on businesses that issue brochures (in terms of having to issue updated versions to reflect changes in prices as well as requiring different information in different Member States resulting from the fact that the Directive is based on minimum harmonisation).

Changes to information requirements

There are currently wide variations in the stipulations of different Member State's legislations regarding the information that should be provided. This constitutes a barrier to cross-border trade (harmonisation of information requirements was rated as either "important" or "very important" for over 60% of businesses responding to the public consultation). PO5 would remove this barrier enabling businesses to produce the same information (albeit in different languages) across EU and may assist in streamlining the collection and distribution of information.

5.2.1.1. Administrative costs for businesses

Changes to information requirements

The proposed set of information requirements is set out in the table below, separating the "business as usual" information from the administrative burden.

Table 7 Information Requirements for PO 5

| | PTD requirements | Business as usual | Additional burden |
|---------------------|--|--------------------------|--------------------------|
| Pre-contract | a) the identity such as the trading name, the geographical address of the organiser and, where applicable, the retailer, as well as their telephone number and e-mail address | | ✓ (very limited) |
| | b) the total price (including all taxes and additional applicable fees and charges), the arrangements for payment and, where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the traveller | ✓ | |
| | (c) the travel destination(s), the itinerary and, where periods of stay are involved, the relevant periods, with dates; | ✓ | |
| | d) if transport is included, the means, characteristics and categories of transport, the points, dates and time of departure and return or, where the exact time is not yet determined, the part of the day (morning, afternoon, evening or night) of departure and return, the duration and places of intermediate stops and transport connections; | | ✓ (very limited) |

| | PTD requirements | Business as usual | Additional burden |
|------------------------|--|--------------------------|--------------------------|
| | e) if accommodation is included, the location, main features and tourist category including, where available, the rating under a national or international hotel classification system applicable in the host state; | ✓ | |
| | f) whether any meals are provided and if so, the meal plan; and visits, excursion(s) or other services which are included in the total price agreed for the package | v | |
| | g) whether a minimum number of persons is required for the package to take place and, if so, the deadline before departure for informing the traveller in the event of cancellation | ✓ | |
| | h) general information on passport and visa requirements in order to participate in the package tour for nationals of the Member State or States concerned and in particular on the periods for obtaining visa and, if any, health formalities required for the travel package | | ✓ |
| | i) that the product is a travel package and, as a consequence, the traveller will benefit from legal protection for travel packages under EU law | | ✓ |
| In the contract | The contract would contain the pre-contractual information listed in a) – j) above, plus: | - | - |
| | a) special requirements which the traveller has communicated to the trader and which both have accepted | ✓ | |
| | b) if different from the contact details provided earlier, the contact details of the organiser or the person who is acting in his name or on his behalf whom the traveller can contact to complain about any improper performance which he perceives on the spot | ✓ | |
| | c) information that the traveller may terminate the contract at any time before departure against compensation without stating any reason | | ✓ |
| | d) the possibility of having recourse to an amicable dispute settlement, where applicable | | ✓ |
| | e) information that the organiser <ul style="list-style-type: none"> - is responsible for the proper performance of all included travel services - is obliged to provide assistance if the traveller is in difficulty - is obliged to procure insolvency protection to guarantee a refund of all payments made by the traveller, and, where passenger transport is included in the package, his repatriation, as well as the name of the entity providing the insolvency protection and its contact details, including its geographical address | | ✓ |

| | PTD requirements | Business as usual | Additional burden |
|-------------------------|--|---------------------------------|--------------------------|
| Before departure | a) the name, address and telephone number of the organiser's local representative or, failing that, of a local agency whose assistance a traveller in difficulty could request. Where no such representatives or agency exist, the traveller must in any case be provided with an emergency telephone number or any other information that will enable him to contract the organiser; | | ✓ |
| | b) in the case of journeys or stays abroad by minors that include accommodation, information enabling direct contact to be established with the minor or the person responsible at the minor's place of stay. | ✓ | |
| | c) the necessary receipts, vouchers or tickets, including the precise times of departure, intermediate stops, transport connections and arrival. | ✓ (even though new requirement) | |

* new requirements

The majority of the requirements are essentially the same as in the current Directive. The introduction of a limited number of new information requirements are not considered to be considerable burdensome for business. The impacts of the new information requirements are also reduced by the fact that compared to the existing PTD, the information requirements are simplified and some are also scrapped (e.g. mandatory information on insurances.) Furthermore, some of the new information requirements are contain information that most traders anyway would provide (e.g. necessary tickets, email address, etc.) Thus they are not expected to have a significant impact on the administrative burden on businesses.

Changes in requirements for brochures

The changes in requirements for brochures would significantly reduce the administrative costs for businesses.

The number of businesses using brochures and the number of brochures that they re-issue as a result of the Directive's requirements is not exactly known. However, based on a number of assumptions and information provided by stakeholders (see Table 8)¹⁸⁸, it has been estimated that the annual saving would amount to €400 million.

Table 8 Assumptions regarding cost of brochure reprinting

| Item | Assumption |
|--|--|
| Number of businesses reprinting brochures as a result of the Directive | 250 - This is based on 90,000 travel agents/tour operators in the EU, of which large businesses only produce brochures (0.5%) and of these, only tour operators and tour operators acting also as retailers (total 55% of the market as estimated by ABTA). |
| Cost of reprinting per | €1.6m - This is calculated by using an estimate of approximately €1 per reprint as estimated by ABTA. It is estimated that approximately 30m reprints are made as a |

¹⁸⁸ DRV, ABTA.

| | |
|----------|---|
| business | result of the Directive in UK at a cost of €30m. An estimated 6,826 travel agents/tour operators existed in UK in 2008 and applying 0.5% to calculate the number of large businesses and 55% of those to calculate the number of tour operators and those tour operators who also act as retailers gives a total of approximately 19 businesses. Dividing €30m by 19 businesses gives approximately €1.6m per business. |
|----------|---|

Overall, PO5 will result in a decrease in administrative burden from €409 to €18.5 million.

This is mostly due to the removal of the requirement for brochures (approximately €400m). There is, however, an increase in administrative costs due to the fact that an increased number of businesses and products will be brought under the scope of the Directive ("one-trader" packages), but this is clearly offset by the reduction in costs to those businesses required to re-print brochures. The table below presents the comparison of administrative costs of PO 5 and baseline scenario.

Table 9 Comparison of administrative costs

| | BS Cost/€ | PO 5 Cost/€ |
|-------------------------------|--------------|---------------|
| Total administrative costs | €421 million | €31.1million |
| Total administrative burden | €409 million | €18.5 million |
| Total business as usual | €12 million | €12.6 million |
| | | |
| Average cost per business | €4,683 | €346 |
| Average cost per package | €2.63 | €0.15 |
| Average administrative burden | €2.56 | €0.09 |

Removal of special rules regarding information requirements for last minute bookings

This aspect is expected to place some additional burden on businesses in Member States where exemptions from information requirements for last minute bookings have been established. This burden is not expected to be significant since many consumers and businesses already make use of electronic communications.

Changes to form in which information should be provided

There are potential reductions in administrative costs arising from the fact that businesses would be able to provide information to customers in a durable medium. It is, however, not possible to quantify the amount of savings this represents. Still, the savings are not expected to be significant since many businesses already make use of electronic communications.

5.2.1.2. Cross-border administrative costs for businesses

In the baseline scenario, it has been calculated that the cross border requirements (associated with differing information requirements) result in total costs of €26 million for the industry. The businesses wishing to sell cross-border need to check the relevant national legislation in place in different Member States.

PO5 would eliminate these costs and represent savings to businesses in the EU of over €5 million annually with an additional approximate one-off saving of €21 million. The Table below sets out the administrative costs associated with information requirements under the baseline scenario for businesses engaging in cross border trade. PO5 which is based on full harmonisation of information requirements would eliminate these costs.

Table 10 Administrative costs associated with cross-border aspects of information requirements

| | Baseline Cost/€ | Option 5 Costs/€ |
|---|------------------------|-------------------------|
| One off costs for researching MS requirements and legal advice: | 21 million | 0 |
| Recurring administrative costs: | 5.1 million | 0 |

5.2.2. Impacts on consumers and households

The proposed elimination of specific information requirements related to brochures would not have any overall negative effect. PO 5 maintains the information requirements that should be necessary in order to make an informed transactional decision. Therefore, the abolishment of additional information requirements in some Member States, due to fully harmonised information rules, is likely to only have a minimal effect, if any, on the overall level of consumer detriment.

There should also be little or no increase in detriment associated with allowing businesses to provide information in a durable form, since, in theory, the same information should be available to them regardless of the form.

The removal of the obligation to provide prices in the brochures is not expected to have major impacts on the marketing of package travel. Since prices are often crucial in order to have effective marketing and with the experience from other sectors (where no obligation in this regard exists) tour operators are still likely to indicate prices in their brochures. However, there would probably be more use of price lists in annexes or indicative prices with a reference to updates published on the Internet. As a consequence, for consumers not having access to the Internet, price comparisons might become more cumbersome.

New information requirements are to be introduced under PO5. They include information:

- that the product is a travel package and, as a consequence, the traveller will benefit from legal protection for packages under EU law (pre-contract)
- that the organiser:
 - is responsible for the proper performance of all included travel services
 - is obliged to provide assistance if the traveller is in difficulty

-is obliged to procure insolvency protection to guarantee a refund of all payments made by the traveller, and, where passenger transport is included in the package, his repatriation, as well as the name of the entity providing the insolvency protection and its contact details, including its geographical address (contract); and

- information that the traveller may terminate the contract at any time before departure against compensation without stating any reason (contract).

The Consumer Detriment Study found out that 68% of consumers purchasing "unprotected travels" mistakenly thought that they were protected.¹⁸⁹ Therefore, the fact that consumers would be informed whether they are purchasing a protected package would be particularly beneficial to consumers.

5.3. Clarification of the liabilities and obligations of the professional parties

5.3.1. Functioning of the Internal market and competition

Strengthened harmonisation of rules concerning the liabilities of the professional parties will contribute to a levelling of the market playing field and would eliminate some obstacles to cross-border trade.

For example, in Member States where retailers can be held responsible for the performance of the package contract (e.g. France), foreign retailers may be discouraged from selling packages here. The harmonised approach of PO5 would eliminate such disincentives to cross-border operation.

5.3.2. Compliance costs for businesses

Providing information

Making the organiser or anybody acting on his behalf responsible for providing information is not expected to increase compliance costs for businesses. In the majority of the Member States the organiser and/or the retailer is/are currently liable for providing information to the consumer. In practice, the organisers are often generating the necessary information which is then provided by the seller (who has a direct contact with consumers).

Performing the contract properly

The party having liability for the contract performance is responsible for the provisions of all the services included in the contract, also those provided by sub-contractors.

If the contract is not properly performed, the liable party may have to pay compensation to the consumer. In most cases, businesses take out liability insurance for this purpose which usually covers:

¹⁸⁹ http://ec.europa.eu/consumers/rights/docs/study_consumer_detriment_dyna_packages_en.pdf.

- material damages;
- body injuries or death of customers; and
- in some cases, specific liability insurances (e.g. covering special risk such as diving)

The specific liability insurances vary greatly in cost between operators and depend on a variety of factors. The premium rates for such insurance vary from 0.5% to 1.5% of a business's annual turnover¹⁹⁰.

Sub-option 1 - responsibility rests with retailers/sellers

Under this sub-option, only in two Member States (France and the Czech Republic)¹⁹¹ would the situation regarding the liability of the professional party for the proper performance of the contract not change. Hence, in a majority of Member States there would be a transfer of liabilities and associated costs from the organiser to the retailer/seller. A number of industry and Member State Authority stakeholders consulted during the impact assessment have stressed the fact that organisers generally have a much closer relationship with service providers than sellers/retailers do. As a result, if responsibility is transferred to retailers who do not have such control, there may be an increase in the number of business-to-business claims from sellers/retailers against the organiser of the contract, in the event that contracts are not performed correctly. Making sellers/retailers responsible for the performance of contracts is also likely to affect SMEs to a greater extent than the other two sub-options. SMEs are much more represented in this sub-group of businesses, with organisers tending to be larger businesses. In essence, all sub-options under PO5 represent a transfer of liabilities and associated costs between businesses rather than an increase in overall burden. However, as sellers may face increased costs in setting up additional contracts with a potentially large number of service providers, it is possible that this sub-option may result in an increase in overall costs for the travel sector.

Sub-option 2 – responsibility rests with organisers and joint liability between the organiser and retailer in case the organiser is based outside the EEA;

In the majority of Member States, the organiser is responsible for the performance of the contract. Consequently, this sub-option would leave the situation in practice mostly unaltered. Only in the Czech Republic and France¹⁹², where the consumer can turn with his claim to the trader (even though the organiser should be liable), there is likely to be a small change with a shift in responsibility from retailers/sellers to organisers being required. Under this option, there may be also a slight decrease in consumer protection in all countries with joint liability and a decrease of costs for some businesses in those MS where there is joint responsibility. The fact that organisers generally have a closer relationship with service providers than retailers/sellers could suggest that making them responsible for the performance of the contract may contribute to a reduction in problems experienced by consumers. Retailers

¹⁹⁰ Information provided by ECTAA, see also section 1.1.

¹⁹¹ Consumer Law Compendium, p,318-321.

¹⁹² Ibidem.

selling packages organised by companies outside the EEA could be impacted as consumers might seek redress from them. This impact is, however, expected to be minor.

Sub-option 3 – joint responsibility

Joint responsibility already exists in Belgium, Cyprus, Slovakia, Greece, Denmark, Spain and some variations of joint liability also exist in Bulgaria, Ireland, Austria, Malta, Lithuania, Luxembourg, Portugal, Romania, Italy and France¹⁹³. This sub-option would therefore represent no change (and consequently no costs and benefits) for businesses operating in these Member States. Under the joint-responsibility sub-option, the traveller can essentially choose who to make a claim against (the retailer or the organiser) in the event of non-performance of the contract. The cost impacts of this are likely to be higher for sellers/retailers than for organisers. This is partly due to the fact that it is likely that travellers would in most cases approach the sellers/retailers (they are the main point of contact when concluding the contract, rather than organisers who may be named on the contract but with whom the traveller has had no previous direct contract¹⁹⁴). Therefore any transfer of the ensuing costs to organisers would need to be done on a business-to-business basis with reference to contracts concluded between the retailer and the organiser. Another potential cost increase which has been highlighted by stakeholders relates to the possibility for double costs (i.e. where both organiser and retailers have to purchase extensive liability insurances) and by that "double" consumer protection (which should be redundant unless one of the parties goes bankrupt).

Providing prompt assistance if the consumer is in difficulty

PO5 envisages amending the Directive to clearly make the organiser responsible for providing such assistance. This is only a minor clarification as compared to the status quo as currently there is not a single Member State where the retailer/seller is specifically stated to be solely responsible. In practise, large tour operators often take it upon themselves to assist consumers in difficulties, as much as part of providing a service (and therefore maintaining their reputation and competitive edge) as being due solely to the requirements of the Directive. They usually have representatives on site to assist with any problems that might arise for their customers. The business model of combined travel arrangement providers tends to involve a wider range of service providers at lower volumes than the pre-arranged travel package holiday organisers. Therefore, it does not then make the same financial sense to have representatives in all destinations. There would probably be an increase in the number of help centres which are not localised at the holiday spots. The organiser of "one-trader" packages might also need assistance of other service providers to help consumers in difficulty.

A strict liability for proper performance of the contract

The Directive does not specify what kind of liability it imposes. In a majority of the Member States, the liability is interpreted rather strictly. Thus, there would be no increase of compliance costs expected in a majority of Member States for pre-arranged packages.

¹⁹³ Ibidem.

¹⁹⁴ The consumer detriment study found that approximately 49% of consumers making complaints regarding combined travel arrangements complained to the seller, whereas only 10% made complaints to the holiday representative onsite.

However, for instance, in the UK (which seems to imply "culpa liability" for personal damages) the revised provisions may lead to an increase in compliance costs.

Providing evidence of security/insolvency protection

PO5 involves making the organiser or anyone acting in his name liable for providing evidence of security/insolvency protection. In practice this would mean that the seller, who is the one having contact with the consumer, would then have to show proof of that the package is secured against insolvency. The organiser would financially be responsible for providing the bankruptcy protection. This only represents a small change to the current situation and will normally require sellers to ask the organisers for evidence of having taken out the relevant protection for their products. Whilst there may be some issues over the extent of proof that sellers are expected to obtain, this aspect is not expected to impose any significant costs on sellers/retailer, nor organisers for that matter.

With regard to financial liability for providing the protection, most of Member States have adopted the Directive's wording and oblige the "organiser and/or retailer" to provide security in the event of insolvency. Specifying that it is the organiser that would be financially liable would, therefore, shift this burden to the organiser. Thus, some benefits in terms of clarifying the business to business costs may occur. In this regard, sellers can avoid incurring double costs where both organiser and sellers/retailers take out insolvency protection.

5.3.3. Impact on SMEs

Most of the sub-options are not expected to result in any significant burden for SMEs. However, shifting responsibility for performance of contracts to retailers/sellers (sub-option 1) would place a significantly higher burden on those businesses compared with the current situation. Given that SMEs are represented to a higher degree among travel agents than organisers, the sub-option 1 would imply that SMEs would be more likely to be impacted negatively than larger businesses. However, this would affect only online travel agents as brick and mortar travel agencies selling "one-trader" packages are already subject to all the PTD requirements.

5.3.4. Impacts on consumers and households

For the liability for the proper performance of the contract, travellers would benefit from clarity over which party they should approach regarding non-performance of the contract under each of the sub-options. The sub-option that makes sellers/retailers responsible for the performance of the contract is compatible with the fact that travellers tend to make more complaints directly to the seller of the product. This should also prevent them being passed around between sellers/retailers and organisers. The joint responsibility would appear to be the easiest sub-option for the traveller since they can choose to which party they are going to direct their complaint. This party would then be responsible for dealing with the complaint or claim. However the joint-responsibility might result in slight increase of prices for consumers as there is a risk of double costs (i.e. where both organiser and retailers will take insurances for the same liabilities).

Travellers would also benefit from the clarification of the liability rules. They would also be more assured and confident in making purchases if they are provided with evidence that their travel package is protected against insolvency.

The clarification of liabilities for providing information and assisting consumers in difficulties is not expected to have any significant impact on consumers.

5.4. Contract changes and other issues

5.4.1. Functioning of the internal market and competition

The harmonisation of rules and extension of scope to cover "one-trader" packages equal the treatment of businesses selling similar products and improve the competition. Currently, due to divergent rules in Member States on price revision or essential terms of the contract, businesses are not able to compete on an equal footing with those in other Member States. For example, in the UK and Cyprus, national legislation requires that businesses incur the first 2% of price increase before passing on to consumers and in Italy businesses are currently not able to charge price increases higher than 10%.

5.4.2. Compliance costs for businesses

Price revision

Although comprehensive data regarding price changes (the size and frequency) made by businesses for the reasons permitted in the Directive are not available, consultation with businesses participating in the public consultation provided some limited information on their incidence and scale.

Figure 1 Amount, on average, by which each reason tends to increase the price

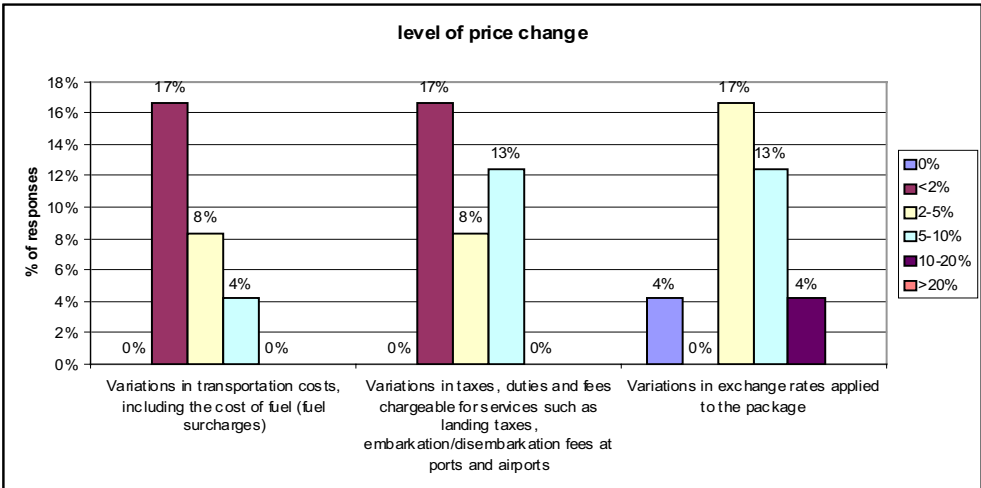


Table 11 Price changes in the contract

| Reason for Price Change | Number of respondents ticking % | | | | | |
|---|---------------------------------|------|-------|--------|--------|------|
| | <1% | 1-4% | 5-10% | 11-20% | 21-50% | >50% |
| Percentage of total annual sales subject to a price increase (due to reasons below) | | | | | | |
| Variations in transportation costs, including the cost of fuel (fuel surcharges) | 17% | 0% | 4% | 0% | 13% | 4% |
| Variations in taxes, duties and fees chargeable for services such as landing taxes, embarkation/disembarkation fees at ports and airports | 8% | 8% | 8% | 4% | 8% | 4% |
| Variations in exchange rates applied to the package | 8% | 4% | 13% | 8% | 0% | 0% |

The results presented in the table and figure above are not sufficiently robust to draw quantitative conclusions regarding the overall levels and incidence of price increases, since the sample was small and not all respondents answered the relevant question but illustrative conclusions can be drawn.

For example, almost 60% of those that actually provided information on the level of price increases due to variations in transport costs indicated that price increases were less than 2% of the price; 45% of those responding also indicated that this was a reason for price increases in respect of less than 1% of annual sales.

PO5, by including "one-trader" packages in the scope of the PTD, would enable a greater number of businesses to make price revisions (currently providers of non-compliant "one-trader" packages rarely revise the prices after conclusion of the contract).

This would be of particular relevance to SMEs which are represented to a greater extent in the "one-trader" packages market than in the pre-arranged travel package sector

Table 12 Price changes in the contract- comparison of sub-options

| Stakeholder | Sub-option 1 (Maximum increase capped at 10% percentage) | Sub-option 2 (Clarifying that increase of price above 5% entitles consumer to cancel a contract) | Sub-option 2 (Making prices in the contract binding, with exceptions) |
|-----------------------------------|--|---|---|
| Businesses (larger + SMEs) | No significant costs for businesses as there are only limited number of cases in which there would be a real necessity to increase prices more than 10%. ¹⁹⁵ Businesses would gain clarity that, if they increase the price | Businesses would gain clarity that if they increase the price above 5%, consumers would be able to cancel a contract without penalty. | Higher costs than sub-option 1, as businesses would not be able to increase the price due to changes in the transportation costs or exchange rates.. Businesses might increase the general prices before the conclusion of the contract in order to "insure" themselves |

¹⁹⁵ The only 'price-rise reason' which was indicated by consultation to result in increases of above 10% was due to variations in exchange rates.

| | | | |
|--|---|--|--|
| | above 5%, consumers would be able to cancel a contract without penalty. | | against the cases in which they would need to increase prices after the signature of the contract. |
|--|---|--|--|

Essential terms of the contract

It is expected that specifying in the Directive what is regarded as the essential terms of the contract would have only a small impact on costs incurred by businesses.

The majority of stakeholders already view most of the terms mentioned in the Directive's annex as essential terms. Consequently, it is not expected that their behaviour would change significantly.

However, a specification of what should be regarded as the essential terms may be more burdensome for businesses than today. For example currently businesses do not have to provide a name of the carrier in the pre-contractual information.

If this was changed, this might lead to more consumers asking for termination of their contracts. Similarly, consumers would be also able to terminate the contract if the price of the package increases. This would result in an increase of compliance costs for businesses. However, it is unlikely that consumers will terminate their travel arrangements if the price increase is minor or unless the consumer has justified reasons not to be transported by that particular carrier.

Termination rights for travellers

In serious unforeseen and extraordinary situations (force majeure cases), the majority of businesses act reasonably and, in order to maintain their reputation, cancel trips themselves. However, perceptions may differ between the organisers and the travellers as to the implications for any travels (not just in terms of safety, but also in terms of enjoyment of the trip e.g. in the case of an ecological accident such as a nearby oil spill which might prevent access to a key part of the travel). Consumers would be able to terminate a contract against compensation for any reasons.

As businesses would get the compensation, this right would not generate additional costs.

5.4.3. Impacts on consumers and households

Price revision and essential terms

For the majority of travellers whose travels are already within the scope of the Directive, no additional costs concerning price revision are anticipated. However, full harmonisation may increase costs, for instance for those travellers in the UK and in Cyprus¹⁹⁶ who are faced with a price increase below 2% of the package price (this would be the case under both sub-options).

¹⁹⁶ Consumer Law Compendium, pages 285-290.

However, travellers purchasing "one-trader" packages brought into the scope of the Directive would potentially face additional costs as suppliers of such packages would now be able to amend the price and charge the increase to the consumer.

The potential costs for consumers would be, however, offset by giving them the right to terminate the contract if the price was increased above 5% (sub-option 2).

In case of minor price increases (majority of price increases are below 5%) consumers would most likely accept it. Capping maximum price increases at 10% (sub-option 1) would additionally protect consumers which may otherwise face price increases above this threshold.

Table 13 Price changes in the contract- comparison of sub-options

| Stakeholder | Sub-option 1 (Maximum increase capped at 10% percentage) | Sub-option 2 (Clarifying that increase of price above 5% entitles consumer to cancel a contract) | Sub-option 2 (Making prices in the contract binding, with exceptions) |
|--------------------|--|---|--|
| Consumers | Consumers would see price increases capped at 10% even in those cases where actual variation in costs is higher. Consumers would benefit as business would be obliged to pass on the reduction of costs on the price of a package. | Consumers would gain clarity that they can cancel a contract without penalty if a price is increased by 5% or more. | It is possible that, in order to compensate for uncertainty, businesses would increase the prices before the signature of the contract. However, consumers would enjoy a higher protection as prices would be more stable. |

Termination rights for travellers

It is clear that consumers would benefit from gaining the right to decide for themselves whether they wish to embark on a holiday in the event of a force majeure situation, such as for example the outbreak of violent conflict or an ecological disaster.

5.5. Summary of key impacts

5.5.1. Economic impacts

5.5.1.1. Compliance costs for businesses

Under the baseline scenario, it has been estimated that businesses selling PTD-covered packages currently incur compliance costs of around €7.5 - €9.5 per package and €3 of administrative costs.

Assuming that 50% of one-trader packages are already covered by the current PTD, the additional compliance costs would amount to €335-€424 million (low-€7.5 and high-€9.5 estimate of compliance costs per package). These additional compliance costs for the industry will be offset (at least partially):

Table 14: Compliance costs for businesses under PO5

Additional yearly compliance costs for businesses

| Number of trips to be made compliant | Low estimate of compliance costs (€7.5 per package) | high estimate of compliance costs (€9.5 per package) |
|--------------------------------------|---|--|
| 43,6 million holiday trips | €327 million | €414,2 million |
| 1 million B2B trips | €7,5 million | €9,5 million |
| Total | €334,5 million | €423,7 |

Annual savings for business trips

| Number of trips to be excluded from the scope | Low estimate of savings of compliance costs (€7.5 per package) | high estimate of savings of compliance costs (€9.5 per package) |
|---|--|---|
| 8 million B2B trips | €60 million | €76 million |

These additional compliance costs for the industry will be offset (at least partially under the medium and high estimate of "one-trader" packages to be made compliant with the PTD) by the reduction of administrative costs and cost savings stemming from the exclusion of business trips organised by TMCs from the scope of the Directive.

The reduction of administrative costs would stem mostly from the removal of requirements for brochures and is estimated at €390 million¹⁹⁷. In addition, businesses trading cross-border would save €5 million of recurring administrative costs.

Exclusion of business trips arranged by TMCs would bring savings between €60-€76 million assuming that 50% of B2B trips organised by TMCs are subject to the current PTD.¹⁹⁸

The overall impact on the industry would be a benefit of €51-€123 million annually (low-€7.5 and high-€9.5 estimate of compliance costs)

These figures have to be considered as a high estimate. Firstly, package travel organisers would have some savings as it would be easier for them to seek redress from transport carriers, in case of costs related to delays, cancellations, assistance or accidents regulated by the *EU Passenger Rights*. The introduction of a limitation to provide alternative arrangements in case of long lasting force majeure events, would, furthermore, save costs for the industry. Secondly, it is also likely that the *mutual recognition of insolvency funds* would imply a reduction in the costs. As already noted, the difference between costs of insolvency protection for traders established in different MS can be very significant. Competition between various insolvency protection schemes may bring significant savings to businesses, since it can be expected that they would seek to subscribe to the most convenient fund once the mutual recognition system is in force across the EU.

5.5.1.2. Impact on SMEs

SMEs selling "one-trader" packages newly brought under the scope of the PTD would incur increased compliance costs.

Those costs would amount to a maximum of €7.5 - €9.5 plus €0.15 of administrative costs per package. SMEs which are selling "one-trader" packages at high street (brick and mortar travel agencies) are already subject to all the PTD requirements. The additional costs would therefore affect mostly online sellers of these travel arrangements. SMEs would also benefit from increased harmonisation and clarity of rules across the EU as they would be able to rely on one set of rules across the EU.

Micro-enterprises account for 92% of all travel agencies and tour operators (79,000 companies). The exclusion of micro and small businesses from the scope of the Directive would not be therefore a viable option.

Firstly, it would result in unfair competition between businesses selling competing products whilst having different regulatory regimes and hence facing uneven compliance costs.

¹⁹⁷ €421 of administrative costs under the BS- €31,1 million of administrative costs under PO5.

¹⁹⁸ TMCs are unlikely to produce brochures and therefore do not incur thereof related administrative costs of €3 per package.

Secondly, it would significantly increase consumer detriment, as consumers would not be able to easily determine the rights they enjoy, as these would depend on the size of the business they are purchasing from.

Overall, excluding or applying a lighter regime for small and/or micro enterprises would be contrary to the objectives of the revision process, i.e. achieving a high level of consumer protection and improving the functioning of the Internal Market¹⁹⁹.

5.5.1.3. Impacts for consumers

Travellers would experience the following impacts:

- a reduction in the overall detriment: the estimated reduction of the detriment would be up to 88%²⁰⁰ i.e. the level of detriment would decrease up to €348 million if 50% of "one-trader" packages were brought under the scope of the PTD.
- full harmonisation may lead to an increase of the level of consumer protection in a few Member States as more packages would be covered.

In addition consumers could expect some savings/ benefits due to:

- Increased transparency. Consumers will know when or when not they are buying a protected travel package. Significant information must always be presented to the traveller before the contract is signed;
- More contractual flexibility. In addition to the right to transfer the contract, consumers will be able to cancel the contract before the departure by paying a reasonable compensation to the organiser. In force majeure situations at the place of destination or in instances where a significant breach of contract can be anticipated, consumers can before the departure terminate the contract without paying any compensation;
- Clear rules on liability. The travellers will have one interlocutor if something goes wrong with the performance of the contract. Due to his liability for the performance of the services, the organiser will have incentives to be diligent when choosing his sub-contractors;
- Clearer remedies if the travel package contract is not properly performed.

5.5.1.4. Impacts for public authorities

¹⁹⁹ see Annex 7, where an assessment of possible specific sub-options aiming to reduce the burden for SMEs is presented

²⁰⁰ The consumer detriment for 100 pre-arranged packages amounts to €592 (100*3.1% incidence of problems *€191 average cost of problem) compared to €4,862 for 100 combined travel arrangements (100*8.2% incidence of problems* €593 average cost of problem).

All MS would be affected as this option would require some changes in the domestic legislation. MS would bear the usual cost which accompanies the implementation of EU legislation.

Requiring Member States to set up mandatory insolvency is likely to result in additional costs which are estimated to be around €22 million.

5.6. Impacts of key provisions

In the light of consumer and business problems described in chapter 2 of the report, the following changes to the substantive provisions of the Directive have been proposed and assessed:

Table 15: Assessment of key provisions

| Substantive provision | MS impacted | Impact of the provision |
|--|--|---|
| Introduction of termination rights for travellers against compensation | All MS would be impacted, but less impact in MS such as CZ, DE, BE, DK, EE, EL, FI, HU, LT, LV, PT and ES where variations of such termination rights already exist. | <p>In serious unforeseen and extraordinary situations (force majeure cases), the majority of businesses act reasonably and, in order to maintain their reputation, cancel trips themselves. However, organisers and travellers might have different opinions as to the implications of extraordinary situations for the trip. This may result in some increase of compliance costs for businesses however the compensation paid by consumers is supposed to cover these costs. Consumers would benefit from gaining the right to decide for themselves whether they wish to embark on a holiday in the event of a force majeure situation, such as for example the outbreak of violent conflict or an ecological disaster.</p> <p>If termination right against compensation is introduced, consumers would be able to terminate the contract at any time paying a fee to businesses. If the fee is carefully proportionate, then businesses would face a very limited impact.</p> |
| Clarification of right to compensation for non-material damages | All MS except for AT, BE and EE that already explicitly provide for compensation for loss of enjoyment. | The consumer would be entitled to compensation for both material and non-material (moral) damages (e.g. loss of holiday enjoyment) in cases of non-performance or improper performance of the contract. For businesses the clarification should not bring significant costs, since this is an existing possibility, although not often used by consumers. |

| | | |
|---|--|--|
| <p>Flexibility of MS as to the method of providing insolvency protection whilst adding explicit rules on the effectiveness of the national insolvency protection schemes, the mutual recognition of security provided under the law of the MS of establishment, as requesting the well as establishment of central contact points (minimum harmonisation rule).</p> | <p>Limited effect on Member States. They will have to establish central contact points to facilitate the mutual recognition.</p> | <p>No additional compliance costs for companies. Businesses would benefit from mutual recognition of schemes across the EU, as increased competition among funds in the internal market is likely to drop the insurance costs. Businesses offering services cross-border would particularly benefit from reduced costs through mutual recognition as they would not need to provide the insolvency protection in each MS they operate.</p> <p>Consumers would get access to more offers at competitive prices.</p> |
| <p>Reinforced rules on the possibilities to seek redress from the transport carrier in case of costs related to delays, cancellations, assistance or accidents regulated by the EU Passenger Rights. Consumers would continue to be able to choose whom to seek compensation and assistance from (transport carrier or the organiser of the package).</p> | <p>All Member States</p> | <p>Package travel organisers could have some savings as it would be easier for them to recuperate at least part of the compensation paid to travellers in case of delays, cancellations, assistance or accidents regulated by the EU Passenger Rights. The extent of this saving is however unknown as two of these Regulations²⁰¹ have not yet entered into force and the APR is currently under review. At present, the possibility of seeking redress often depends on the specific arrangements between two business parties²⁰².</p> |
| <p>The liability of the organiser to provide alternative arrangements for the continuation of the package in case of force majeure events would be limited (e. g. to a maximum number of three or four days). This provision would reflect the rules set out in EU Passenger Rights Regulations.</p> | <p>This would require legislative amendments in all Member States.</p> | <p>Compared to the legal situation today, this would mainly result in a cost reduction for organisers²⁰³. Consumers would in most instances not be significantly affected, but would incur increased detriment in situations where it is not possible for the traveller to return to immediately the place of destination within four days after the return. It can also be expected that such a cap on the liability to provide assistance would make it easier for organisers to insure this risk.</p> |
| <p>Introduction of minimum one year prescription period for claims for</p> | <p>Member States will not be affected by such a</p> | <p>Overall, this provision would bring slightly increased legal certainty for</p> |

²⁰¹ Regulation 181/2011 concerning the rights of passengers in bus and coach transport entered into force in March 2013, Regulation 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway entered into force in December 2012.

²⁰² Impact Assessments accompanying different proposals for the EU passenger rights provide an estimate of the maximum costs related to different provisions not excluding package travellers.

²⁰³ The Impact Assessment on the possible review of Air Passenger Rights Regulation, estimated that the assistance costs in case of travel disruption in case of force majeure events would reduce by 40% with a 3-day cap and by about 20% with a 4-day cap.

| | | |
|--|---------------------|---|
| damages or price reduction (minimum harmonisation rule). | minimum requirement | consumers, but since most Member States already have at least one year prescription periods, no major cost or impacts are expected. |
|--|---------------------|---|

5.7. Social Impacts

Limited effects are also expected to result from the implementation of PO5.

Businesses selling combined travel arrangements brought under the scope of the PTD would incur additional costs and this might have a limited negative effect on employment. PO5, by making the retailers responsible for the performance of the contract (under sub-option 1) might have implications for the financial viability for some SMEs (who would have to a greater extent take out liability insurance with possible knock on effects to employment).

However, fairer competition for those businesses which are already subject to the PTD may provide opportunities for absorbing any job losses.

5.7.1. Impact on fundamental rights

This option would ensure a high level of consumer protection in areas which are currently unregulated by EU legislation.

It fully complies with the provisions of the EU Charter of Fundamental Rights, notably and foremost Article 38 on consumer protection. Article 16 on freedom to conduct business is not significantly impacted as, on one hand, there would be more compliance costs, but on the other one, there would be significant reductions in administrative burden.

5.8. Environmental impacts

The environmental impacts identified under the baseline scenario (need reprint the brochures) would be eliminated. However this savings are likely to be insignificant when compared to the overall environmental impacts of the travel industry.

5.9. Assessment against objective

| Policy Objectives | Option Rating* | Comments |
|---|----------------|--|
| Objective 1: To improve the functioning of the Internal Market in the package travel sector, by: | | |
| Reduce costs and obstacles to cross-border trade; | ++ | The full harmonisation of option 5 would contribute to the better functioning of the Internal Market in the package travel sector , eliminating legal fragmentation and obstacles to cross-border trade. |
| Ensure a more competitive and fair level playing field for the businesses operating in the travel | + | This option would result in fairer competition between different market players in the travel sector as sellers of pre-arranged packages and sellers of "one-trader" packages would need to comply with the same legal |

| Policy Objectives | Option Rating* | Comments |
|--|---|--|
| market. | | requirements. |
| Reduce unjustified compliance costs for businesses in the package travel market; | ++ (- for compliance costs for new packages brought under the scope) | This option would significantly reduce unjustified costs for businesses by excluding business trips organised by TMCs from the scope of the Directive, eliminating special requirements for information to be provided in the brochures and limiting organisers obligation to assist consumers in force majeure events. |
| Objective 2: To achieve a high level of consumer protection in the package travel sector., by: | | |
| Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; | + / ++ | "One-trader" packages would be brought under the scope of the PTD. Reduction of traveller's detriment is estimated to up to €326 million (assuming 50% of "one-trader" packages would be brought under the scope of the PTD). The transparency would also increase as under the pre-contractual information, consumers would be also informed whether they are buying a protected package. |
| Reduce consumer detriment stemming from unclear and outdated provisions. | ++ | This option would update and clarify some of the PTD provision. Clarification of responsibilities of the professional parties would enhance consumers' ability to seek redress in case something goes wrong. Consumers would also benefit from a right to termination the contract if they made mistakes and would gain more certainty as to the prices of the package. |

6. Policy Option 6 - - Graduated approach- modernisation of the Directive and coverage of both "one trader" and "multi trader" packages while applying a lighter regime to "multi-trader" assisted travel arrangements

Assessment of relevant economic impacts

6.1. Functioning of the Internal market and competition

PO6 would result in a more even playing field and competition between sellers of combined travel arrangements and pre-arranged packages. This option is also likely to strengthen the harmonisation of the internal market and increase cross border trade as consumers increasingly recognise that these products are covered under the PTD and the same legislation applies across Member States. Making "multi-trader" assisted travel arrangements subject exclusively to the obligations to declare that they do not constitute a package and to procure insolvency protection, would increase transparency for consumers and ensure fair

competition, while avoiding unnecessary costs associated with all obligations applying to packages

6.2. Compliance costs for businesses

There are 31 million "multi-trader" holiday travel arrangements and 6 million business "multi-trader" travel arrangements sold annually. However, the exact share of "multi-trader" assisted travel arrangements and "multi-trader" packages is not known.

The "lighter regime" provided by PO6 would be particularly beneficial for SMEs currently selling "multi-trader" and "one-trader" packages as it could be difficult for them to cover liability for the performance of all services provided by different traders. These companies would be able to adapt their business activities so as to face only some PTD requirements (insolvency protection and an obligation to display the "This is not a package" disclaimer). It is impossible to quantify precisely how many businesses would do this.

High-street travel agents selling "one-trader" packages in most cases need to already comply with the current PTD, as interpreted by the ECJ. A change of the business model for them would imply inconvenience for their customers, i.e. a need to make separate payment transactions. Online traders selling "one-trader" packages (for which it is less clear to what extent they are covered under the current PTD as interpreted by the ECJ, although they are covered by national legislation in a number of Member States) would need to ensure that the services they offer are no longer booked within one booking process (i.e. no longer put in a single "shopping basket" by consumers). The additional services would need to be offered after the booking of the first travel service is confirmed, which would imply some redesigning of their websites and, sometimes, a further clarification of their commercial agreements with other traders. Sellers of "multi-trader" packages could adapt their websites more easily but they would need to stop charging an inclusive price for packages: this might imply the risk of losing those customers who might find the separate payment transactions less convenient. It is therefore assumed that only around 25% of "one-trader" packages²⁰⁴ and roughly 50% of multi-trader packages would in the future be sold as "multi-trader" assisted travel arrangements.

With regard to the number of businesses affected by PO 6, it has been estimated that sub-option 1 on liability would potentially impact on 6,565 businesses and sub-option 2 on 24,043 businesses (see table 16 and box 4)

This option is likely to capture travel products which resemble a package, in particular:

- websites of airlines or other transport providers (including car rentals) from which a traveller has been redirected to purchase other travel components relating to accommodation and/or car rentals on linked/partner's websites; and

²⁰⁴ At present, around 50% of "one-trader" packages are sold in brick and mortar shops.

- websites of hotels from which a traveller has been redirected to purchase other components relating to transport (including car rentals) on linked/partner's websites.

Capturing the full range of "other tourists services" (e.g. spas, cafes, restaurants) is not the intention of PO6 and is therefore not included in these estimates.

Table 16 Determining the number of businesses likely to be affected by option 6.

| | % Assumed | Number of Businesses |
|---|------------------|-----------------------------|
| HOTELS | | |
| Total number of hotels and other accommodation across the EU-27 from which a package could, in theory, originate | | 200,000 |
| Number of hotels and other accommodation with an online presence | 50% | 100,000 |
| Number of hotels and other accommodation with an online presence and linking to other websites | 25% | 25,000 |
| Number of above hotels and other accommodation which would sell "multi-trader" travel arrangements and would qualify under Option 6 as the initial web site - and hence, be treated as an organiser of the package - | 20% | 5,000 |
| CAR RENTALS | | |
| Total number of car rentals across the EU-27 | | 13,000 |
| Number of car rentals with an online presence | 50% | 6,500 |
| Number of car rentals with an online presence and linking to other websites | 25% | 1,625 |
| Number of car rentals with online presence which would qualify under Option 6 as the initial web site - and hence, be treated as an organiser of the package - | 5% | 81 |
| AIRLINES | | |
| Total number of airlines across the EU-27 from which a package could, in theory, originate | | 300 |
| Number of airlines with an online presence | 80% | 240 |
| Number of airlines with an online presence and linking to other websites | 75% | 180 |
| Number of airlines with an online presence and linking to other websites which would qualify under Option 6 as the initial web site - and hence, be treated as an organiser of the package - | 20% | 36 |
| ALLOTHER TRANSPORT (EXCEPT AIRLINES AND CAR RENTALS) | | |
| Total number of all other transport across the EU-27 from which a package could, in theory, originate | | 57,900 |
| Number of other transport with an online presence (assume 50%) | 50% | 28,950 |

| | | |
|--|-----|----------------|
| Number of other transport with an online presence and linking to other websites (assume 25%) | 25% | 7,238 |
| Number of other transport with an online presence and linking to other websites which would qualify under Option 6 as the initial web site - and hence, be treated as an organiser of the package - | 20% | 1,448 |
| TOTAL (initial service providers) | | 6,565 |
| TOTAL (service providers with an online presence and linking to other websites) | | 34,043 |
| Overall TOTAL of Businesses | | 271,200 |

Box 4 Methodology and assumptions for estimating the number of affected businesses

- Based on Eurostat data, there were 201,802 hotels and similar establishments (this includes hotels, apartment hotels, motels, roadside inns, beach hotels, residential clubs, rooming and boarding houses, tourist residences and similar accommodation). This number does not, however, include “other collective accommodation establishments” which include holiday dwellings, tourist campsites, youth hostels, tourist dormitories, group accommodation, school dormitories and other similar accommodation - numbering around 237,000 across the EU-27.
- The estimate of the number of car rental businesses (13,000) is based on the basis the data in Eurostat’s Structural Business Statistics database²⁰⁵.
- The estimate of 300 airlines is based on Eurostat values; and
- 57,900 transport businesses in addition to airlines and car rentals is based on the number of railway businesses (887) plus number of businesses involved in other passenger land transport²⁰⁶ (37,000) plus number of businesses involved in water transport (includes freight)²⁰⁷ (20,000).

Estimates of the number of businesses that would be affected under PO6 are based on the following assumptions:

- businesses with an online presence: it has been assumed that 50% of hotels, other accommodation establishments, car rental and transport businesses (with the exception of airlines) sell their products online, while 80% of airlines have an online presence. The assumption on the proportion of hotels that sell their services via the internet broadly corresponds with Eurostat data²⁰⁸, the relevant percentages for other stakeholders are based on guesstimates as Eurostat does not provide data to sufficient level of detail²⁰⁹;

²⁰⁵The most recent data classed under NACE Rev 1.1 are used where available and for the remaining MS (with the exception of Malta for which no data are available), estimates are derived on the basis of NACE Rev 2 data using an assumption that car rental businesses account for 20% of the total number of businesses renting and leasing all motor vehicles. This assumption is based on the average value for MS for which data are available.

²⁰⁶Extrapolated on the basis of national GDP from Member State data in the Eurostat Structural Business Statistics Database. This includes NACE Rev 1.1 codes I6021 and I6023 (other scheduled passenger land transport and other passenger land transport) and, as such, includes land passenger transport excluding railways and taxis.

²⁰⁷Based on data from the Eurostat Structural Business Statistics Database (NACE Rev 1.1 code I61).

²⁰⁸Eurostat indicates that 41% of businesses with over 10 employees in the accommodation sector (NACE Rev 1.1 H551-H552 and NACE Rev 2 I55) received orders on-line in 2009 (down from 48% in 2007 according to NACE Rev 1.1). 50% therefore seems a reasonable assumption.

²⁰⁹For the rental sector, Eurostat data on businesses trading online are only available for the broad category of NACE Rev 1.1 K which relates to ‘Real estate, Renting and Business activities’ (possibly including sub-sectors such as R&D, consultancy, industrial cleaning, etc.) and the proportion of businesses with more than 10 employees trading online was 9% in 2009 (down from 15% in 2007). However, this figure is unlikely to be representative of the car rental sector. The proportion of businesses with over 20 employees in the NACE Rev 2

- businesses with an online presence and linking to other websites: it has been assumed that 25% of businesses with online presence link to other websites. However, in the case of airlines, it has been assumed that 75% of airlines with online sales link to other websites; and
- businesses with interlinked websites which could qualify as initial website: assumed to be 20% of businesses with interlinked websites for hotels, airlines and other transport, with the exception of car rentals where this is assumed to be 5% (in other words, it is considered rather unlikely (and counter-intuitive) that many car rentals would qualify as an initial service provider in that a consumer would first purchase car rental and then get redirected to another website to purchase other travel components relating to accommodation and/or or other transport on linked/partner's websites).

It is considered that travel agents and tour operators are unlikely to sell "multi-trader" travel arrangements, rather focussing on standalone products or "'one-trader" packages".

Under PO6, traders selling "one-trader" and "multi-trader" packages would incur additional compliance costs estimated at €7.5-€9.5 per package. Traders selling multi-shop assisted travel arrangements would incur one-off administrative costs (see below) related to displaying "This is not a package" disclaimer and a cost of insolvency protection. The current estimated cost of insolvency protection for packages amounts to roughly €3 per package. Based on the available figures and in particular on the experience of the UK "Flight Plus" scheme which is a very similar model, the assumption is that this cost would remain roughly the same also for "assisted travel arrangements".

Given above the total additional compliance cost for the industry of PO6 could be estimated at €528-€654million annually (low-€7.5 and high-€9.5 estimate of compliance costs per package).²¹⁰

Table 17 Additional compliance costs incurred per package to comply with the PTD - PO6

| Number of trips to be made covered as packages | Low estimate of compliance costs (€7.5 per package) | high estimate of compliance costs (€9.5 per package) |
|--|---|--|
| 15,4 million holiday trips | €115,5 million | €146,3 million |
| 3 million B2B trips | €22,5 million | €28,5 million |
| Total | €138 million | €174,8 million |

data for the transport and storage sector (H49-H53) which received on-line orders was 11%. However, these data include irrelevant sub-sectors, such as transport by pipeline, removal services, postal services, warehousing and storage, etc. for which we expect the proportion of businesses trading online to be much smaller than in personal transport.

²¹⁰ 50% of "one-trader" packages (PO5) and all "multi-trader" packages i.e. 60 million trips*€ 7.5-€9.5 (low and high estimate of compliance cost per package excluding administrative costs) + all assisted travel arrangements i.e. 15 million trips* €3 (cost of insolvency protection)

| | |
|---|---|
| Number of trips to be covered as assisted travel arrangements | Low estimate of compliance costs (€3 per package) |
| 15,4 million holiday trips | €46,2 million |
| 3 million B2B trips | €9 million |
| Total | €55,2 million |

However, using the above assumptions that some traders might adapt their business models and no longer sell packages, the additional yearly compliance costs of PO6 could be estimated at €386-€444 million annually (low- €7.5 and high- €9.5 estimate of compliance costs per package)²¹¹.

Table 18 Reduced compliance costs for "one-trader" and "multi-trader" packages sold which could be sold as assisted travel arrangements in the future

| Number of trips to be made compliant | Low estimate of "savings" (€4.5 per package) | high estimate of compliance costs (€9.5 per package) |
|--------------------------------------|--|--|
| 22,3 million "one-trader" packages | €100,4 million | €145 million |
| 9,2 million "multi-trader" packages | €41,4 million | €59,8 million |
| Total | €141,8 million | €423,7 |

6.2.1. Administrative costs for businesses

Some additional administrative costs for businesses brought under the scope of the PTD: - €2.8million annually²¹². Providers of "multi-trader" travel arrangements, subject only to the

²¹¹ Compliance costs of PO6 calculated above minus reduced costs by €4.5-€6.5 for 25% of "one-trader" packages and 50% of "multi-trader" packages i.e.29.5 million trips that might in the future be sold as multi-shop assisted travel arrangements thus incurring average costs of €3 per packages instead of €7.5-€9.5 per package.

²¹² 918.5 million packages brought under the PTD x € 0.15 = € 2,775,000 The cost per package estimate (based on option 5) has been used to estimate recurring administrative costs for providing information as it is impossible

lighter information regime, would incur administrative costs of €500 per company (€17 million for the whole industry²¹³) to provide the message "this is not a package" in a durable medium to their customers.

6.3. Impacts on SMEs

Similarly to PO5, this option would increase compliance costs for businesses including SMEs selling "multi-trader" packages. However, PO6 provides for a lighter regime which would be particularly beneficial for SMEs currently selling "one-trader" and "multi-trader" packages which might be ill-placed to assume liability for the performance of different services included in the travel combination. These companies would be able to adapt their business activities and face only some PTD requirements (insolvency protection and an obligation to display the "This is not a package disclaimer") incurring lower compliance costs (on average €3 per package) compared to sellers of packages (on average €7.5-€9.5 per package).

PO6 would impact hotels, car rentals, airlines and businesses operating in the transport sector other than airlines and car rentals. Most of these businesses, excluding airlines, are SMEs/micro businesses (99%/73% for hotels, 99%/94% car rentals, 99%/90% other transport services)²¹⁴. For this reason, the goals which option 6 aims to reach would be hampered if such businesses were to be excluded from the scope.

6.4. Impact on consumers and households

Compared to PO5, this option would bring additionally around 31 million "multi-trader" travel arrangements within the scope of the Directive, bringing additional protection for consumers purchasing combined travel arrangements. As estimated under PO5, the baseline detriment for 15.5 million of "multi-trader" packages is expected to reduce by 88%. Given that the most prevalent problems causing detriment concern provisions of information (22% of EU-17 problems with combined travel arrangements) and services not provided at all or of lower standard (17% of problems) that would be to an extent tackled by the "lighter protection",

The yearly consumer detriment could be reasonably estimated to decrease by €508 million. However, using the same assumptions as above that some traders might adapt their business models and no longer sell packages the total reduction of yearly consumer detriment could be

to determine the exact number of companies which would be responsible for providing particular pieces of information. Under sub-option 1 (contractual liability only on the initial service provider), even though the legal responsibility lies with the initial web page, in practice the detailed information about a specific travel component is likely to be provided by the service provider. Similarly, under sub-option 2 (each service provider responsible for the service they offer), each of the service provider will be responsible for their respective part of the package (e.g. an airline will be responsible for providing information on the time of departure, but not on the classification of accommodation included in the "multi-trader" travel arrangements).

²¹³ This option is likely to impact hotels, car rental and transport providers with on-line presence and linking to other websites. Based on Eurostat data and number of assumptions, it has been estimated that there are 34,000 companies like this.

²¹⁴ Eurostat Structural Business Statistics, 2009.

estimated at €430 million²¹⁵. it is assumed that the detriment for "multi-trader" assisted travel arrangements would be 30% lower compared to the decrease of detriment for packages.

Moreover, the "This is not a package"- disclaimer would enable consumers to make informed choices.

On the other hand, some consumers may experience an increase in the prices of "multi-trader" and "one-trader" packages of around €7.5-9.5 per packages and of around €3 for "multi-trader" assisted travel arrangements if businesses pass on their increased compliance costs. But, similarly to PO5, such possible price increase case would be less than 2% of the total price of the package.

It is interesting to note, in this context, that 68% of surveyed consumers were willing to pay additionally €3 for insolvency protection for standalone airline tickets²¹⁶ which shows that consumers would be similarly likely to accept the potential increased prices for "multi-trader" assisted travel arrangements offering them protection against insolvency.

Table 19 Detriment associated with "multi-trader" travel arrangements

| | Number of combined travel arrangements | Value of purchase of combined travel arrangements (€) | Value of net detriment in population (€) |
|-------|--|--|--|
| EU-27 | 118 million | 87 billion | 1,065 billion |
| | Number of "multi-trader" travel arrangements to be made compliant | Value of trips to be made compliant (€) | Value of net detriment associated with products to be made compliant €) |
| PO5 | 43,6 million "one-trader" packages | 32,3 billion | 395 million |
| PO6 | 15,5 million "multi-trader" packages | 11,4 billion | 139,6 million |
| PO6 | 15,5 million | 11,4 billion | 139,6 million |

²¹⁵ The same approach is applied as in PO5. Therefore, the same methodological constraints apply to these estimations. For detailed calculations see annex 5

²¹⁶ YouGov survey of 2500 consumers carried for the Impact Assessment Study on the Review of the Package Travel Directive, Risk&Policy Analysts, 2010

| | | | |
|--|---|--|--|
| | "multi-trader" assisted travel arrangements | | |
|--|---|--|--|

6.5. Impact on public authorities

Similar effects as PO5.

6.6. Social impacts

Similar effects as PO5.

6.6.1. Impact on fundamental rights:

Similar effects as PO5.

6.7. Environmental impacts

Similar effects as PO5.

6.8. Assessment of sub-options

| Stakeholder/ Impact | Sub-option 1 (liability of a single service provider) | Sub-option 2 (liability of each of the involved service providers) | Sub-option 3 (joint liability of all traders unless the parties designate only one trader to be liable) |
|---------------------------------|--|--|--|
| MS impacted | All MS impacted. | All MS impacted. | All MS impacted |
| Impact on businesses | Around 6,500 businesses are likely to be impacted by compliance costs- they could be liable for services provided by different companies. | Around 34,000 businesses (which include the 6,500 businesses under Sub- option 1) are likely to bear the compliance costs. | Depending on the business arrangement, between 6,500-34,000 companies would be impacted. If one liable party is not designated, then any company could be liable for services provided by different companies. |

| | | | |
|----------------------------|---|--|--|
| Impact on consumers | Greater clarity as to who is responsible for compliance with the PTD and from whom travellers can seek assistance or redress. | Where travellers wish to seek assistance or redress, there could be a number of parties that they would have to interact with. | One interlocutor for consumers to seek assistance and redress. In cases where parties do not designate one trader, consumer could decide who to turn to. |
|----------------------------|---|--|--|

6.9. Assessment against objective

| Policy Objectives | Option Rating* | Comments |
|--|---|--|
| Objective 1: To improve the functioning of the Internal Market in the package travel sector, by: | | |
| Reduce costs and obstacles to cross-border trade; | ++ | Similarly to PO5, the strengthened harmonisation would contribute to the better functioning of the Internal Market, eliminating legal fragmentation and obstacles to cross-border trade. Making "multi-trader" assisted travel arrangements subject exclusively to the limited obligations would ensure fair competition, while avoiding unnecessary costs associated with all obligations applying to packages |
| Ensure a more competitive and fair level playing field for the businesses operating in the travel market. | ++/+++ | This option would result in fairer competition between different market players in the travel sector compared to PO5 as more competing products would be brought under the scope of the PTD levelling the market playing field. |
| Reduce unjustified compliance costs for businesses in the package travel market; | ++ (- for compliance cost for travels brought under the scope) | Similarly to PO5, this option would significantly reduce unjustified costs for businesses by excluding business trips organised by TMCs from the scope of the Directive, eliminating special requirements for information to be provided in the brochures and limiting organisers obligation to assist consumers in force majeure events. PO6 also provides for a lighter regime which would be particularly beneficial for SMEs currently selling "one-trader" and "multi-trader" packages which might be ill-placed to assume liability for the performance of different services included in the travel combination. These companies would face only some PTD requirements. |
| Objective 2: To achieve a high level of consumer protection in the package travel sector, by: | | |
| Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; | ++/+++ | The number of consumers protected by the PTD would increase. Bringing "multi-trader" packages under the scope of the PTD will reduce the consumer detriment associated with these products. The total reduction of consumer detriment could be estimated at €508 million or €430 million if some companies change their business models. |

| Policy Objectives | Option Rating* | Comments |
|--|----------------|--|
| Reduce consumer detriment stemming from unclear and outdated provisions. | ++ | Similarly to PO5, this option would update and clarify some of the PTD provision reducing consumer detriment. Consumers, among others, would benefit from increased foreseeability in relation to prices, more clear liabilities and a right to terminate the contract against compensation. |

7. Assessment of Option 7 - Modernisation of the Directive and coverage of both "one trader" packages and "multi-trader" travel arrangements (PO7)

7.1. Functioning of the Internal market and competition

This option is also likely to strengthen the harmonisation of the internal market and increase cross border trade as consumers increasingly recognise that all combined travel arrangements are covered under the PTD and the same legislation applies across Member States. However, by extending the scope to "multi-trader" travel arrangements which are not directly competing with "packages" it would generate disproportionate and unfair costs for these companies.

7.2. Compliance costs for businesses

Compared to PO5, PO7 extends the scope of the PTD to cover 31 million "multi-trader" travel arrangements and 6 million business trips.

However, by extending the scope to all "multi-trader" travel arrangements and by making them subject to all PTD obligations, this option would generate disproportionate and unfair costs for companies acting merely as intermediaries, since they might not be able to guarantee the performance of all services included in the travel combination.

The total additional compliance costs of PO7 could be estimated at €610-€773 million annually²¹⁷ (low-€7.5 and high-€9.5 estimate of compliance costs per package).

Additional costs for the industry are likely to be partially offset in the medium term by increased competition and transparency in the sector bringing reduced costs for traditional package providers benefitting from lower compliance costs (see assessment of PO5).

Table 20 Additional compliance costs incurred per package to comply with the PTD

²¹⁷ 31 million "multi-trader" travel arrangements and 43.6 million "one-trader" packages *€ 7.5-€9.5 (low and high estimate of compliance cost per package excluding administrative costs). See Annex 5.

| | | |
|--|---|--|
| Number of trips to be brought under the scope of the PTD | Low estimate of compliance costs (€7.5 per package) | high estimate of compliance costs (€9.5 per package) |
| 74,4 million holiday trips | €558 million | €706,8 million |
| 7 million B2B trips | €52 million | €66,5 million |
| Total | €610 million | €773million |

7.3. Impacts on SMEs

Similarly to PO5 and PO6, mostly SMEs would be impacted by increased compliance costs. Compared to PO6, this option does not provide for any lighter regime. All travel companies with online presence and linking to other travel providers would be subject to all PTD requirements which could be considered as disproportionate burden.

7.4. Impact on consumers and households

Compared to PO5, PO7 would bring 31 million travel arrangements, representing a value of approximately €23 billion, within the scope of the Directive. Using the same approach as under PO5, the table below shows estimates of the level of consumer detriment resulting from combined travel arrangements brought under the scope of the PTD. It could be estimated that the yearly consumer detriment would decrease by €593 million.

Table 20 Detriment associated with "multi-trader travel arrangements

| | Number of combined travel arrangements | Value of purchase of combined travel arrangements(€) | Value of net detriment in population (€) |
|-------|---|--|--|
| EU-27 | 118 million | 87 billion | 1,065 billion |
| | Number of combined travel arrangements to be brought under the scope of the PTD | Value of trips to be made compliant (€) | Value of net detriment associated with products to be made compliant (€) |
| PO5 | 43,6 million | 32,3 billion | 395 million |
| PO7 | 31 million | 22,8 billion | 279 million |

It is possible (and likely) that some consumers may experience an increase in the price of "multi-trader" travel arrangements as businesses may pass on the increased compliance costs. This will however depend on supply and demand elasticities. However, any price increase per package is likely to be around 1% (i.e. €7,65 - €9.65€ - /€741) of the total price of the package.

7.5. Impact on public authorities

Similar effects as PO5 and PO6.

7.6. Social impacts

Similar effects as PO5 and PO6.

7.6.1. Impact on fundamental rights:

Similar effects as PO5 and PO6.

7.7. Environmental impacts

Similar effects as PO5 and PO6.

| Policy Objectives | Option Rating* | Comments |
|--|--|---|
| Objective 1: To improve the functioning of the Internal Market in the package travel sector, by: | | |
| Reduce costs and obstacles to cross-border trade; | ++ | Similarly to PO5, the strengthened harmonisation would contribute to the better functioning of the Internal Market, eliminating legal fragmentation and obstacles to cross-border trade. However, by extending the scope to "multi-trader" travel arrangements which are not directly competing with "packages" it would generate disproportionate and unfair costs for these companies |
| Ensure a more competitive and fair level playing field for the businesses operating in the travel market. | ++ | This option would result in fairer competition between different market players in the travel sector compared to PO5. |
| Reduce unjustified compliance costs for businesses in the package travel market; | ++ (-- for compliance costs for new multi-trader travel arrangements brought under the scope) | Similarly to PO5, this option would significantly reduce unjustified costs for businesses by excluding business trips organised by TMCs from the scope of the Directive, eliminating special requirements for information to be provided in the brochures and limiting organisers obligation to assist consumers in force majeure events. |
| Objective 2: To achieve a high level of consumer protection in the package travel sector, by: | | |
| Reduce consumer detriment and increase transparency for travellers who buy combinations of travel services currently not covered by the PTD by addressing new market developments; | +++ | The number of consumers protected by the PTD would increase. Bringing "multi-trader" travel arrangements under the scope of the PTD will reduce the consumer detriment associated with these products. The total yearly reduction of detriment could be estimated at €508 million. |
| Reduce consumer detriment stemming from unclear and | ++ | Similarly to PO5, this option would update and clarify some of the PTD provision reducing consumer |

| Policy Objectives | Option Rating* | Comments |
|----------------------|----------------|---|
| outdated provisions. | | detriment. Consumers, among others, would benefit from increased foreseeability in relation to prices, more clear liabilities and a right to terminate the contract against compensation. |

ANNEX 6

CALCULATION OF ADMINISTRATIVE COSTS

SPREADSHEET 4- ADMINISTRATIVE COSTS OF OPTION 3 A

| Component 1: Administrative costs on package travel, package holidays and package tours | | | | | | | | | | | | | | | | |
|---|-----------|------------|---|---|---------------------|-------------|----------------------|-----------------|-----------------|----------------------|---------------------------------------|---|---------------------------|-----------------------------------|--|--|
| No. | Ass. Art. | Orig. Art. | Type of obligation | Description of required action(s) | Tariff (€ per hour) | Time (hour) | Price (€ per action) | Freq (per year) | Nbr of entities | Total nbr of actions | Equipment Costs (per entity per year) | Outsourcing costs (per entity per year) | Total Administrative cost | Business as Usual Costs (% of AC) | Total Administrative Burden (AC - BAU) | |
| 1 | | | Non-labelling information for third parties | Submitting the information required to the designated recipient | | 6 | 500,0 | 1,00 | 72,000 | 72,000 | | 0 | 36,000,000 | 0% | 36,000,000 | |
| Total administrative costs (€) | | | | | | | | | | | | | | | | |
| <i>Administrative costs by origin (€)</i> | | | | | | | | | | | | | | | | |
| Total one off administrative costs | | | | | | | | | | | | | | | | |
| 36,000,000 | | | | | | | | | | | | | | | | |

| Council Directive 90/314/EEC on package travel, package holidays and package tours | | | | | | | | | | | | | | | | |
|--|-----------|------------|---|---|---------------------|-------------|-----------------------------|-----------------|-----------------|----------------------|---------------------------------------|---|---------------------------|-----------------------------------|--|--|
| No. | Ass. Art. | Orig. Art. | Type of obligation | Description of required action(s) | Tariff (€ per hour) | Time (hour) | Price (€ per action (equi)) | Freq (per year) | Nbr of entities | Total nbr of actions | Equipment costs (per entity per year) | Outsourcing costs (per entity per year) | Total Administrative cost | Business as Usual Costs (% of AC) | Total Administrative Burden (AC - BAU) | |
| 1 | | | Non-labelling information for third parties | Submitting the information (sending it to the designated recipient) | | | 500,0 | 1,00 | 36,000 | 36,000 | | 0 | 18,000,000 | 0% | 18,000,000 | |
| 2 | | | Non-labelling information for third parties | Submitting the information (sending it to the designated recipient) | | | 500,0 | 1,00 | 34,000 | 34,000 | | 0 | 17,000,000 | 0% | 17,000,000 | |
| Total administrative costs (€) | | | | | | | | | | | | | | | | |
| <i>Administrative costs by origin (€)</i> | | | | | | | | | | | | | | | | |
| Total one off administrative costs | | | | | | | | | | | | | | | | |
| 35,000,000 | | | | | | | | | | | | | | | | |

Annex 7

COMPETITIVENESS AND IMPACTS ON THE TOURISM SECTOR

Effective policy options for a possible revision of the Package Travel Directive²¹⁸ (PTD) should ensure a high level of business competitiveness.

Assessing impacts on competitiveness requires particular attention within the Commission impact assessment process, as Article 173 (1) of the TFEU states that "The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist".

When policy initiatives are likely to impact particular sectors of the economy, twelve consecutive steps are necessary in order to assess competitiveness.²¹⁹

1. Specific analysis for sectoral competitiveness

Policy options 4, 5, 6 and 7 have the potential to affect the competitiveness of the tourism sector, for the following reasons (a summarising table is also proposed below). Option 1 is the baseline scenario, while options 2 (non binding guidelines) and 3 (a label/disclaimer) are not expected to significantly affect sectoral competitiveness.

Option 4: The repeal of the Directive might result in decrease of compliance costs for businesses by €10.5-12.5 per package, hence affecting the sector's capacity to produce the services at a lower cost, and potentially to offer them at a lower price. However, this effect would be largely mitigated as MS would have to independently decide if repealing or not their consumer law: repeals of all national pieces of legislation across the 27 MS is unlikely. Furthermore, option 4 would not reduce the administrative burden associated to cross-border trade and the research of national provisions, € 2 per package, as MS would be free to legislate in this area. It is hence unclear to what extent such option might increase competitiveness, levelling up in some cases the playing field among businesses currently regulated under the PTD and businesses which operate outside the scope of the Directive.

Option 5: If "one-trader" packages were brought within the scope of the Directive, there would be an impact on the costs to provide travel services for those businesses that would be brought under the scope of the Directive and which today offer travel arrangements which in the Member States are currently not considered to be within its scope. See the report and Annex 5 for more details. The result would likely be fairer competition between sellers of combinations of travel services sold as traditional packages or single-point of purchase travel arrangements.

Option 6: Impacts go in the same direction as option 5, where the main difference is the addition of "multi trader" travel arrangements within the scope of the Directive. See the report and Annex 5 for more details. Fairer competition would take place between sellers providing combinations of travel services be it as pre-arranged packages, as "One trader"-packages or "multi-trader" travel arrangements. Thanks to the graduated approach, excessive costs related to "multi-trader" assisted travel arrangements are avoided,

²¹⁸ Directive 1990/313/EEC.

²¹⁹ According to the Operational Guidance for assessing impacts on sectoral competitiveness within the Commission Impact Assessment System – A "Competitiveness Proofing" Toolkit for use in Impact Assessments, 27.1.2012, SEC(2012) 91 final.

Option 7: Impacts go in the same direction as option 6, but are more extreme since the full inclusion of "multi-trader" assisted travel arrangement would entail significant additional compliance costs due to the full extension of the scope for these travel arrangements. Furthermore, mostly SMEs would be impacted by increased compliance costs.

Thus, option 7 is considered to add disproportionate costs by extending the scope to travel arrangements which are not directly competing with "packages". See the report and Annex 5 for more details.

Is a revision of the Package Travel Directive likely to have a significant impact on enterprise competitiveness in terms of:

| Cost and price competitiveness | PO4 | PO5 | PO6 |
|---------------------------------------|---|--|--|
| Cost of inputs | No | No | No |
| Cost of capital | No | No | No |
| Cost of labour | No | No | No |
| Other compliance costs | Slightly positive, levelling the playing field but only if all MS repeal their provisions | Negative (only for those businesses which would be covered and are not currently covered), but levelling the playing field | Negative (only for those businesses which would be covered and are not currently covered), more costly than PO5, but levelling the playing field more incisively |
| Cost of production or distribution | No | No | No |

| | | | |
|---|--|--|--|
| Price of business outputs | No | Slightly negative, but prices of travel arrangements brought under the scope would increase in the short term, while in the long term more competition may lead to price reduction | Slightly negative, possibly increasing prices of more travel arrangements in respect to PO5, but prices of travel arrangements brought under the scope would increase in the short term, while in the long term more competition may lead to price reduction |
| Capacity to innovate | | | |
| Capacity to produce and bring R&D to the market | No | No | No |
| Capacity for product innovation | No | Positive, due to expected increased competition in the internal market which will drive innovation. The level playing field would encourage businesses to innovate their business model to emerge. | Positive, due to expected increased competition in the internal market which will drive innovation. Compared to PO5, innovation is expected to increase in particular concerning the "multi-trader" travel arrangement providers' business model |
| Capacity for process innovation | No | No | No |
| Access to risk capital | No | No | No |
| International competitiveness | | | |
| Market shares (single market) | Negative, consumers will have less protection and will be less confident in purchasing | Positive, increased consumer confidence will make consumers purchase more safely and maybe | Positive, increased consumer confidence will make consumers purchase more safely and maybe more within the internal market. |

| | | | |
|----------------------------------|--|---|---|
| | travel arrangements, especially cross-border | more within the internal market. Harmonisation of provisions will also bring more trade | Harmonisation of provisions will also bring more trade. Compared to PO5 this effect is stronger as involving more combined travel arrangements. |
| Market shares (external markets) | Slightly negative | Slightly positive | Slightly positive – attracting customers from outside the EU for all covered combined travel arrangements. |
| Revealed comparative advantages | No | No | No |

Policy option 7 is likely to have the similar impacts on enterprise competitiveness as option 6, but the main difference is the additional compliance costs related to this option. Consumer confidence is also expected to be increased, so is the levelling of the market playing field, but these positive effects will not outweigh the negative effects caused by the additional compliance costs. Thus, option 7 is considered to be impacting the competitiveness in a more negative manner than option 6.

2. Proportionality of the analysis

There are two main policy objectives for a revision of the Package Travel Directive: (a) improving the functioning of the internal market in the package travel sector and (b) achieving a high level of consumer protection in the package travel market.

It is clear that in order to achieve a high level of consumer protection in the package travel market, the competitiveness of this sector will be partly impacted. The negative impacts identified in the table above and originated by the compliance costs necessary in order to achieve policy objective (b) get compensated by achieving policy objective (a), which aims to make easier cross-border trade reducing non necessary administrative costs, such as the costs to re-print brochures (see report and annex 5).

A quantitative analysis of the impacts concerning compliance costs (negative impacts on enterprise competitiveness which are generated by a policy goal other than enterprise competitiveness, such as consumer protection) is thoroughly presented throughout the impact assessment and in particular in Annex 5. For the remaining identified impacts on competitiveness, such as price of outputs, increased innovation and market shares, a qualitative approach seems proportionate as impacts will clearly depend by the single characteristics of affected enterprises (e.g. the level of propensity to innovate of enterprises in the package travel market once competition would increase due to a better level playing field), which are difficult and disproportionate to quantify.

3. Affected sectors

Impact on the sectors directly affected by the policy initiative

All considered policy options have direct competitiveness impacts only on the package travel market, i.e. on businesses which are involved in the sale of pre-arranged and/or combined travel arrangements, or their single components (independent travel arrangements).

Indirect impacts on sectors outside the supply chain

The travel market other than the package travel market may be indirectly affected. If consumer protection for combined travel arrangements is reinforced (PO 5, 6 and 7), the ratio of consumers going on holiday with a package / consumers going on holiday with independent arrangements is likely to increase. This would negatively impact the direct purchasing of independent travel arrangements of a holiday, even though the extent of this effect is not known.

Indirect impacts on sectors in the supply chain of the affected sectors

See the effect on sectors outside the supply chain, as holiday with independent arrangements can also be components of packages. If packages acquire more popularity when consumer protection is reinforced, then the negative impact for this industry which is mentioned in the paragraph above would be mitigated, as providers of packages' components would be able to sell their products more often to packages' organisers than to the final consumers.

4. SME competitiveness

As SMEs are the overwhelming majority of all businesses in Europe (99% according to last data from Eurostat, 2009), achieving a high level of consumer protection in the package travel field would be impossible without keeping them within the scope of the revision of the Directive. There are 86,000 tour operators and travel agencies in the European Union.²²⁰ On average, they have 7 employees each²²¹.

Micro-enterprises (businesses with less than 10 employees) account approximately for 79,000 businesses, i.e. the 92% of the total. As they are the overwhelming majority of all tour operators and agencies, it does not seem justified to exclude them from the scope of the policy options. In excluding them, under policy option 5 the policy goal of achieving a high level of consumer protection would most likely fail.

Under policy option 6 and 7, all relevant travel service providers operating on the Internet selling travel arrangements falling within the scope of the PTD would have to oblige to its requirements (see Annex 5). Following the assumptions described in Annex 5, Section 6.1.1.1, this would directly impact between 5,000 and 25,000 hotels, up to 1,600 car rentals, up to 180 airlines and between 1,400 and 7,000 businesses operating in the transport sector other than airlines and car rentals, out of the total number of enterprises outlined in the main report, Section 1.3. Most of these businesses, excluding airlines, are SMEs/micro businesses (99%/73% for hotels, 99%/94% car rentals, 99%/90% other transport services)²²². For this

²²⁰ Eurostat Structural Business Statistics, 86,000 tour operators and travel agencies in the EU27, last data available: 2009.

²²¹ <http://www.ectaa.org/Portals/0/MOM11-002-448.pdf>, number of employees/number of tour operator.

²²² Eurostat Structural Business Statistics, 2009.

reason, the goals which option 6 aims to reach would be very much deterred if such businesses are excluded from the scope.

Furthermore, the compliance costs which would provide more burden for businesses are estimated per package. As a smaller business would most likely sell fewer packages than a larger one, it would face compliance costs proportionate to its overall turnover. In the consultation process, UEAPME, the European association of craft, small and medium-sized enterprises, did not ask or provide particular reasoning for SMEs to be exempted from the Directive.²²³

PO6 with its "graduated approach" also provides for a lighter regime that would be particularly beneficial for those SMEs and micro enterprises who are currently selling combined travel arrangements, but do not want to compete on the package travel market as such. These companies would be able to adapt their business activities for a relatively low cost by simply clarifying to consumers that they do not offer packages display a disclaimer on their websites stating that "This is not a travel package".

A possible sub-option which could be part of both option 5, 6 and 7 would be exempting micro and small firms which organise packages within their country of origin. However, this would be detrimental to competition, even among small businesses and could also be detrimental to consumers. Businesses organising packages within and out of their country of origin would have to comply with the Directive, thus being at competitive disadvantage with the ones which only organise domestically. This would also be a disincentive to start organising packages across border. For consumers, the protection would then depend on the size of the company, a factor which is not always known to the consumer. Thus, such a rule can create an unclear situation regarding whether the rules apply, leading to legal uncertainty. If nevertheless consumers are aware that they would get lower protection from SMEs, such a rule could turn out to be a disincentive to purchase from these businesses, which is a scenario that should be avoided. Furthermore, seen from the consumer perspective, the need for protection, and especially insolvency protection, can be the same both for domestic travels and travels abroad. For instance, in Italy, a package travel to the Italian Alps can contain the same risks and have as high price as a package travel across the border to the French Alps (this also applies to those Member States which have outer territories, e.g. U.K citizens going on package holidays to Gibraltar/Falklands islands or French citizens travelling to Ile de la Reunion). For more details by policy option, please refer to the main text of the impact assessment or to Annex 5.

5. Effect on cost and price competitiveness

Policy option 4 would cut compliance costs in the package travel sector only provided that individual MS repeal their existing national provisions. This is however deemed unlikely to happen in practice. Policy options 5, 6 and 7 would increase compliance costs for the combined travel arrangements (respectively "one-trader" packages and "multi trader" travel arrangements), and by consequence businesses, which would be brought within the scope. The change in compliance cost is foremost connected to the inclusion of "multi-trader" travel arrangements, since, in respect of "one-trader" packages, it is mostly a matter of clarifying the existing scope of the Directive, see Annex 3 point 1.1.

²²³ UEAPME position on review of the Package Travel Directive, 2010, and letter to the European Commission, 2012.

The main report, Annex 5 and Annex 6 provide further details on compliance costs and their calculations. It has to be noted that the extra compliance costs would remove the disadvantages which create an uneven playfield in the market, asking businesses selling customised travel arrangements to comply with the same provisions as businesses selling traditional packages.

None of these policy options have impacts on prices and cost of intermediate consumption or on cost of capital, labour or energy.

The policy options may have an effect on consumer's choice and prices. In particular, prices on certain products currently not covered by the Directive and which now will be covered may rise, up to € 7.5 – 9.5 per package (i.e. the compliance costs without the costs linked assisted to the brochures and to cross-border trade, about 1% of the price of an average package according to the Consumer Detriment Study²²⁴), if businesses decide to pass on the cost to consumers with a 1:1 ratio. This depends from the level of competition in the market and the elasticity of the demand to prices, which are unknown. **In any case this is likely to be less than 2% of the total price of the package and broadly comparable with the cost of obtaining commercial travel insurance and, as such, unlikely to be detrimental to consumers. In a competitive market, price increases on the end product are normally minimised to the possible extent.** As the playing field would be levelled, increased competition may also bring lower prices to consumers.

The policy options may have just a very limited impact on the possible restructuring of enterprises' operations, and mainly concerning the provision of the new required information to consumers (e.g. reorganising the duties of the staff).

6. Effect on capacity to innovate

Improved competition in a market would lead to lower prices and/or more innovation. Businesses, asked to compete more fiercely, may decide to innovate their services in order to stay in the market.

This is expected to happen especially among the providers of combined travel arrangements, which may desire to improve their business models in order to capture more consumers. This would have, at the end of the day, a positive effect for the sectorial economy as a whole.

7. Effect on sector's international competitiveness

With respect to non-EU competitors, the policy options are not expected to have any negative impact as effect. Potential price increases for certain travel products are not expected to trigger a change in the behaviour of European consumers concerning the choice to buy a package travel from a tour operator outside Europe. It is true that the rise of the Internet allows consumers to buy packages everywhere, but the expected innovation driven by policy options 5 and 6 would likely push businesses selling customised travel arrangements to think about new business models, which may be more attractive for consumers than what it is sold overseas.

²²⁴ Study on Consumer Detriment in the area of Dynamic Packages, DG SANCO, London Economics, 2009.

Consumers from outside Europe may have an interest to purchase their holidays from a European business, as packages will grant high consumer protection. This may bring a positive effect also on international trade.

Steps 8-12 in the Operational Guidance ask for, if assessed as proportionate, quantification of all impacts described in the previous steps. In this Annex are presented some data, especially concerning SMEs, while in the main text and mostly in Annex 5 and 6 all calculations on compliance and administrative costs, as well as other impacts are provided. Referring to the table at the beginning of this Annex, for most of the impacts concerning sectorial competitiveness a qualitative analysis has been considered sufficient and proportionate.