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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

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

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1. INTRODUCTION

1.1. Policy context

The travel market plays a central role in the European economy of today.

A key task for the European Union is to create a regulatory framework that provides 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) in 1990 made a significant contribution to the development of a single market for an important part of the travel market, and created important rights for European travellers. However, with the development of the internet and the popularity of new ways in which consumers purchase their holiday, the applicability of the Directive to all these new travel products has become uncertain.

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 Agenda and is mentioned in Annex II to the Single Market Act II.

1.2. 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 arrangements**¹ - 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 travel 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 several traders/ and the arrangement has **at least one of the characteristics that are typical for packages** indicated above under "one-trader" packages, including 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.

1.3. Consultation and expertise

The Commission held two public consultations (in 2008 and 2009) and a number of stakeholder workshops (in 2009, 2010 and 2012). DG JUST also liaised with relevant services through the Impact Assessment Steering Group (IASG), which was first convened in June 2009 and met three times.

¹ 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

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

Although some horizontal consumer protection rules apply to package travel contracts as well, they do not regulate specific aspects associated with them, such as information obligations on the travel itinerary, the definition of liability in the event of problems in the performance of the package and mandatory insolvency protection requirements. The passenger rights regulations lay down specific rights for travellers only with regard to transport services, but not in relation to the combination of different tourist services.

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 operations 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

73% of EU households had access to the Internet in 2011. Almost two-thirds of EU citizens use the Internet at least once a week. More than half of Internet users are "regular users" surfing the Internet every day or almost every day. Travel services are the most popular category purchased on-line.

The Internet has changed the way in which consumers organise their holidays. Combined travel arrangements are on the rise: data show that 23% of EU citizens have bought them but the figures are substantially higher for Ireland (46%), Sweden (44%), Italy (36%) and Slovenia (42%).

2.2. Key problems faced by businesses

2.2.1. Absence of a level playing field

The market changes have led to a situation where businesses covered by the PTD are subject to different rules and costs compared with those that are not or do not see themselves as being covered by the PTD, although they are competing for the same customers. The average compliance cost for businesses has been estimated at €10.5-12.5 per package.

2.2.2. Unnecessary/ unjustified compliance costs

Some provisions of the Directive have become outdated or otherwise create unnecessary burden for companies. This applies in particular to outdated information requirements (e.g. special requirements for brochures or last-minute bookings), the lack of a limitation of the organiser's liability in cases where, through force-majeure events, the return journey cannot be provided as scheduled, and the duplication of costs for business trips organised by Travel Management Companies (TMCs, where those companies provide a similar level of protection as under the PTD).

2.2.3. Legal discrepancies in the Member States leading to 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 (€2 per package, meaning that such businesses end up paying €12.5-€14.5 per package) stemming from different information requirements, a different scope of the protection rules, differences in insolvency protection schemes, combined with a lack of mutual recognition, and different national rules on the liability of different parties.

2.3. Key problems for consumers

2.3.1. Consumer detriment suffered by users of combined travel arrangements

The Consumer Detriment Study estimated the yearly personal consumer detriment for users of combined travel arrangements in the EU27 at more than €1 billion net (i.e. after compensation). This is due to the fact that problems concerning combined travel arrangements are more frequent and, on average, more detrimental than problems related to pre-arranged packages. The insolvency of an organiser or a service provider could be particularly detrimental to consumers. It is often difficult for consumers to understand whether the 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.

2.3.2. Consumer detriment stemming from unclear and outdated rules

To a certain extent also those buying "protected" pre-arranged packages suffer detriment. This is due to the fact that some provisions of the Directive lack clarity, are outdated or do not meet the reasonable expectations of today's consumers. This applies in particular to uncertain rules on liability, uncertainties in relation to prices, lack of a right to termination and cumbersome access to justice.

2.4. Status Quo - Baseline scenario (BS)

Without additional public intervention, the problems identified would remain. In the longer run, they are likely to increase, given the growing popularity of the internet and combined travel arrangements.

2.5. 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 objective of enhancing consumer protection while eliminating legal fragmentation and distortions of competition in the Internal Market cannot be sufficiently achieved by the Member States.

3. POLICY OBJECTIVES

The general objectives are to contribute to the better functioning of the Internal Market in the package travel sector and achieve a high level of consumer protection in this sector.

4. POLICY OPTIONS

4.1. Identified policy options

- **Option 1 - Maintaining the status quo – baseline scenario (PO1)**
- **Option 2 - Guidelines (PO2)**
- **Option 3 - Package Travel Label (sub-option A) and/ or requirement on traders selling assisted travel arrangements to state that the services in question do not constitute a package – so-called "This is not a package" disclaimer (sub-option B) (PO3)**
- **Option 4 - Repeal of the Directive and self-regulation (PO4)**
- **Option 5 - Modernisation of the Directive and coverage of "one-trader" packages (PO5)**

PO 5 involves a revision of the current PTD clarifying its scope through the explicit inclusion of "one-trader" travel packages and updating and improving several provisions.

- **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 PO5 (all proposed policy measures) supplemented with an extension of the scope of the PTD with a graduated approach:

- "multi-trader" packages i.e. all "new 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 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 services (policy option 3B),

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

This option includes PO5 and 6 whilst subjecting also all "multi-trader" assisted travel arrangements to all PTD requirements. This means that all obligations and liabilities would apply to "multi-trader" assisted travel arrangements as well.

- **Option 8 – "Travel Directive" (PO8)**

This option includes PO 7 supplemented with an extension of the scope to all independent travel arrangements. This option would in principle apply the same rules to all travel services irrespective of whether the product is offered/purchased as part of a package or as a stand-alone product.

4.2. Discarded policy options

It is proposed to discard PO8 because the majority of the most common consumer problems with independent travel arrangements can, provided appropriate enforcement exists at national level, be successfully dealt with in the framework of existing horizontal legislation.

5. ASSESSMENT OF IMPACTS

5.1. Assessment of PO2 - Guidelines

This PO entails maintaining the PTD in its current form and preparing guidelines. It could to some extent increase regulatory clarity for businesses and consumers. Compared to the baseline, this option may lead to a very small reduction of consumer detriment as the result of better implementation of the PTD by businesses and stricter enforcement by Member States. However, as guidelines are, by definition, not legally binding, these benefits are uncertain.

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

As consumers would increasingly recognise that the same label applies across the EU, PO3 A is likely to result in fairer competition between different market players and could therefore strengthen the functioning of the Internal Market. The label could reduce consumer detriment as consumers would be able to take informed decisions. The disclaimer (PO3 B) is expected to be more effective than the Package Travel Label because negative information would warn consumers who otherwise might purchase unprotected travel arrangements under the wrong impression that they are protected. The compliance cost for businesses under this PO are limited to one-off average estimated expense of €500 per company.

5.3. Assessment of PO 4 – Repeal of the Directive

The repeal of the Directive might reduce the compliance and administrative costs for businesses by €10.5-€12.5 per package, which could in theory lead to lower prices for consumers. These benefits would however depend on the willingness of Member States to repeal their national legislation. However, most Member States are likely to maintain consumer protection in the area of package travel. Therefore, this PO can also result in more fragmentation of the Internal Market.

5.4. Assessment of PO5 – Modernisation of the Directive and coverage of "one-trader" packages

PO5 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. those related to rules for brochures, will be removed. There would be however an increase of compliance costs for new "one-trader" packages brought under the scope of the PTD between. 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):

- by the reduction of administrative costs (€395 million)
- cost savings stemming from the exclusion of business trips organised by Travel Management Companies from the scope of the Directive between €60 and €76 million (low-€7.5 and high-€9.5 estimate of compliance costs per package);
- mutual recognition of insolvency protection;
- the introduction of a limitation (in days) to provide alternative arrangements in case of long lasting force majeure events.

Since more "one-trader" packages would be brought under the scope of the PTD (this option would cover about 40% of holiday trips) and certain rules would be clarified, consumer detriment would decrease by €348 million if 50% of one-trader travel packages are newly brought under the scope of the PTD.

5.5. Assessment of PO6 - 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

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. The total additional compliance cost could be estimated at €528-€654 million annually (low-€7.5 and high-€9.5 estimate of compliance costs per package).

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.

This lighter regime 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. However, assuming that 25% of "one-trader" and 50% of "multi-trader" packages would in the future be sold as assisted travel arrangements, the total 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).

For consumers, as more packages would be brought under the scope of the PTD, 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 estimated at €430 million. Moreover, the "This is not a package"- disclaimer would enable consumers to make informed choices.

5.6. Assessment of PO7 – Modernisation of the Directive and coverage of both "one trader" packages and all "multi-trader" travel arrangements

Similarly to PO6, this option would contribute to the better functioning of the Internal Market in the package travel sector. 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 annually (low-€7.5 and high-€9.5 estimate of compliance costs per package). This PO would further increase the number of consumer protected by the PTD and would decrease the yearly consumer detriment by €593 million.

6. COMPARISON OF OPTIONS

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 be ill-placed 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 objectives determined by the problem definition. 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.