

Statement of the Verband Internet Reisevertrieb e.V. (VIR) on the combined evaluation roadmap for the revision of the Package Travel Directive

Munich, 17th of September 2021

1. Introduction

We are pleased to submit our fact- and experience-based assessment of the Package Travel Directive 2302/2015 to the consideration of the DG JUST. We have limited our remarks to the in our view most pressing issues and areas of the directive that require addressing. These considerations are not only based on the experience of the COVID-19 pandemic, but also on the experience of our more than 50 members in the online travel industry since the implementation of the Package Travel Directive.

We also refer to our statement on the revision of the Directive (EU) 2015/2302 on Package Travel and Linked Travel Arrangements (PTD) in December 2020.

2. Linked travel arrangement

We severely doubt the usefulness of the category of linked travel arrangements.

The information supplied to the customer does not enhance or in any other way influence the decision of the customer, as the information is only submitted once the customer conducted a first booking. The institution of the linked travel arrangement has rather led to excessive costs in terms of structuring bookings, both online and offline, and has also deterred choice for customers: Numerous organizers or suppliers have limited the choice for customers since they consider the additional effort of not contradicting the regulations of linked travel arrangements too onerous and therefore have effectively quit the market, leaving customers with a reduced range of choice.

Other organizers and suppliers of travel services have implemented systems to comply with the linked travel arrangement regulations, but report that customers rarely read the relevant information and do find it to be distractive or not useful.

The legislative intent to establish a third category between the mere intermediation of travel services and the organization of packages in our view has failed and should be reconsidered. The existent definition of package travel and the inclusion of click-through bookings has already led – despite some ambiguity – to an environment in which customers can make informed choices on whether they wish to procure organized packages or rather individual travel services that they combine on their own. The linked travel arrangement

falls short of adding information to the customer at a sensible time in the booking process and simply provides more effort for all organizers, without tangible customer benefits.

3. The definition of unavoidable and extraordinary circumstances

Enhanced by the COVID-19 pandemic, but nonetheless also an issue regardless of the pandemic, the definition of unavoidable and extraordinary circumstances does not take into account any knowledge on part of the traveller regarding such circumstances.

Numerous countries, especially Germany, up to the transposition of the EU Package Travel Directive into national law, had used definitions that included a knowledge element, thereby excluding cost-free cancellations by travellers if they booked holidays in full knowledge of existing circumstances.

The COVID-19 pandemic has exacerbated this problem. Despite full knowledge of the COVID-19 pandemic and its repercussions in the travel industry, customers in 2021 booked holidays and then on short notice decided to cancel, if a risk assessment was upgraded or further lockdowns were installed that affected the traveller. In this situation, tour operators were effectively burdened alone with the risk of repayment, whilst the consumer could effectively conduct bookings despite knowledge of the risk associated with the booking at a certain time and decide to cancel cost-free. It should therefore be considered an important element of unavoidable and extraordinary circumstances that such unavoidable and extraordinary circumstances do only allow a cost-free cancellation, if they are unknown to the consumer. This is a fair and equitable distribution of risks. It simply takes the situation into consideration that a customer, despite being fully aware of the risks associated with the booking, should not be able to offload all risks on the tour operator. We also believe that such change to the definition is not overly burdensome, as the element of knowledge of the customer is one which had been used for a long time with fair and equitable results for instance in the German definition of “force majeure”.

4. Risk allocation

The COVID-19-pandemic has shown that tour operators are burdened with an immense amount of risks that leave them on the brink of bankruptcy, in need of state aid or simply financially unable to comply with their obligations.

Tour operators essentially carry all risks associated with travel vis-à-vis the consumer, while the suppliers of tour operators, depending on their market position and strength, can deny to participate in any risk.

Even today, tour operators are seeking reimbursement from flights cancelled for the reason of the COVID-19 pandemic from airlines; even today, tour operators are seeking reimbursement from hoteliers that required advance payment for trips that never were taken due to the COVID-19 pandemic. This uneven distribution of risks is obviously based on the fact that whilst the tour operator is a party to a highly regulated contract with the consumer, he also is party to a non-regulated contract with other suppliers. It has however to be considered where such extreme risk allocation with one party serves a purpose. Especially for the consumer, the allocation of risk to only one party may seem comfortable

at first, but it also means that the consumer carries the risk of bankruptcy of a tour operator, as he/she has no direct claim against the suppliers of the tour operator.

To address this issue, we believe that the European Union should look at a solution for extreme cases and broad-based market disturbances, such as the COVID-19 pandemic. Numerous EU member states have resorted to grant vouchers to customers – in probable violation of European Union law – as they saw the financial health of the travel industry more important than compliance with European Union law. The situation should be avoided for similar market disturbances which may occur in the future, not only based on health issues, but, considering climate change, might also occur through environmental risks. We therefore propose that the Commission be given the right to declare a broad-based market disturbance and in such cases limits claims for refunds, stretches payment times and also forces suppliers to also make contributions to repayments to customers. The declaration of such a market disturbance to the European Commission leaves aside the need to find a definition, which will be difficult to arrange and to agree on, whilst giving the Commission the right, in situations of massive market disturbances, to find a solution that does not require immense amounts of state aid to be provided to tour operators and then to be repaid to customers to keep tour operators off bankruptcy.

We further believe that the European Commission needs to consider whether burdening the tour operator with the full risk of repayment, regardless of his/her own repayments from suppliers, is a sensible approach. Whilst we do understand that the tour operator in theory may be free to agree with his/her suppliers on certain payment terms, in fact – if at all – only very few of the largest tour operators are in a position to dictate terms to their suppliers. The very large number of SMEs that are tour organizers find themselves at the mercy of airlines and larger hotel chains.

5. Individual travel services

Especially in view of individual travel services, the evaluation of the Package Travel Directive should take into consideration that an increasingly large part of the travel industry is booked by consumers directly and outside of the scope of the Package Travel Directive. Especially for those areas where the consumer does not find himself interacting with SMEs, with whom a level playing field exists, a more inclusive approach seems to be warranted. Especially in view of airlines, the individual consumer may have certain rights available through the EU Regulation 261/04, but otherwise will find himself/herself at a distinct disadvantage. The same applies to intermediaries and tour operators. It should therefore be taken into consideration to also address systemic imbalances regarding the airline industry.

6. Distinction between intermediation and package travel

Despite the intention to make the distinction between an intermediary and a tour operator objective and not based on customer impressions, there still remains doubt and ambiguity regarding their definitions. A further streamlining of the definitions is advised, to also allow the further creation of new and innovative business models, that in our experience often fail to be implemented, as the risk for entrepreneurs to be considered an organizer is too burdensome. If the advice on how to judge a business model is fraught with insecurity and ambiguity, innovations in the travel industry will materialize to a lesser degree in the European Union.

About VIR

The Verband Internet Reisevertrieb e.V. (VIR) is the industry association of the German digital travel industry and as such represents the sector of digital tourism, which, according to figures of the Research Community Vacation & Travel (FUR) from 2019, accounts for around 67 percent of holiday trips that include one night or more with pre-booked services. The members of the VIR include more than 90 companies active in the area of digital tourism. They are divided into the four clusters of OTAs, Suppliers & Tour Operators, Service & Travel Technology and Start-ups. The VIR acts as a point of contact for consumers, the media, politics and the industry itself on all topics related to digital tourism.

With kind regards,



Michael Buller

Chairman

Verband Internet Reisevertrieb e.V. (VIR)
