# Key messages on the Package Travel Directive (PTD)

## Insurance Europe's position in a nutshell

European insurers fully support the EU's objectives of making the protection of travellers more effective and to simplify and clarify certain aspects of the original Directive. This is especially relevant in the wake of the numerous challenges facing the travel industry after the bankruptcy of the travel group Thomas Cook, and during the COVID-19 pandemic. These events illustrated that it is important to ensure that the rules regarding insolvency protection are clear, unambiguous, and allow flexibility for national specificities. However, it is crucial that the final revision strikes the right balance between the reinforcement of passenger rights and the protection of travel organisers from bankruptcy.

In summary, the insurance industry's concerns are:

- the revision of the regime of the insolvency protection of travellers could disrupt the stability of the current well-functioning regime;
- Member States could be able to require mandatory insurance cover for travel organisers which would have adverse effects on organisers and travellers alike; and
- The legal requirements for vouchers do not ensure enough legal certainty to allow insurers to effectively provide insolvency protection for vouchers.

## Extension of the insolvency protection

### European Commission's proposal

The insolvency protection of organisers must cover all payments made by, or on behalf of, travellers.

### Insurance Europe's assessment

On the insolvency protection regime:

- The current insolvency protection regime should not be amended. Indeed, making unnecessary changes to the existing regulatory framework of the insolvency protection for travellers would disrupt the current stable status quo for organisers, retailers, and consumers alike.
- Ensuring legal certainty for economic operators and a harmonised implementation of the Directive is of paramount importance. The definitions of insolvency and the covered costs for refunds, repatriation and accommodation prior to repatriation give rise to many legal uncertainties.

On the insolvency protection of refunds and vouchers:

- The insurance of a guarantee in the event of bankruptcy of a travel agency is classified under insurance sector No 15 of non-life insurance according to Directive 2009/138/EC (Solvency II). This classification of risks is particularly important in view of the fact that guarantees are issued for a limited period of time and always up to a specific amount.
- Neither the EC's proposal, nor the Council's negotiating mandate, take this situation into account when it comes to the insolvency protection of refunds and vouchers. Indeed, the insolvency protection of refunds and vouchers is the only provision that specifies a time limit of 3 months (in the EC's proposal). If adopted, those approaches could significantly undermine claims handling as

it would not take into account the principles of the specific insurance claim of the bankruptcy of a tour operator. This claim in question not only affects the tour operator but also many individuals – customers of the tour operator. For this purpose, it is crucial for the insurance company to assess if there is a real bankruptcy – own investigation or state authority decision – which could take longer than the 3-month time frame proposed in the EC's proposal.

On the insolvency protection of retailers:

- As retailers may sell products in Member States other than the one they reside in, it would be important to ensure that organisers and consumers alike have clarity in terms of the retailers' insolvency protection.

On mandatory insurance coverage:

- Article 1 of the PTD leaves the door open for Member States to require mandatory insurance cover. While the consequences of insolvency can be grave, mandatory insurance is not the solution. Indeed, imposing mandatory insurance requirements will imply higher premiums, costs that will ultimately have to be paid by travellers, but will not increase protection, notably because exceptional and unforeseeable macroeconomic circumstances, such as the COVID-19 pandemic, are typically not covered by insurers. A risk can only be insured if the potential claim associated with it remains within certain limits and can be estimated, which is not the case for pandemics due to their exceptional and unforeseeable nature.
- National retailers are oftentimes smaller entities than organisers and insurers do not typically provide cover for these types of entities because of their poor credit ratings.
- Other solutions than insurance for the insolvency protection of travel agency customers, such as surety bonds, are also functional.
- If insurance was the only option, there is no guarantee that insurance companies would always be able to satisfy 100% of the risks involved and provide insurance to all applicants. As mentioned above, many smaller entities may not be able to conclude insurance contracts.
- The consumer protection system would also be significantly more expensive.

## Key messages

**On the insolvency protection regime:**

- The existing regulatory framework on insolvency protection for travellers sufficiently addresses the need to cover all payments made by, or on behalf of, travellers. It is unnecessary to strengthen the requirements regarding insolvency protection.

**On the insolvency protection of refunds and vouchers:**

- To ensure that the Solvency II classification of non-life insurance risks is reflected in provisions on insolvency protection and that insurance companies have enough time to assess the bankruptcy of tour operators, Article 1(9)(6) could be replaced by the following: "Refunds of payments affected by the organiser's insolvency shall be provided without undue delay after the traveller's request and at the latest within three months after the traveller has submitted the documents necessary to examine the request. The passenger shall make the request within three months of the organiser's insolvency. If an investigation necessary to identify the event of the organiser's insolvency, the extent of payments or the person entitled to receive the refund of all payments cannot be completed within three months from the date of request, the investigating person shall inform the traveller of the reasons why the investigation cannot be completed."

- If insolvency protection is extended to refunds, it must be clarified that it only covers undisputed monetary claims in connection with the non-execution of the trip.

**On the insolvency protection of retailers:**

- The PTD should define a common approach that provides for clarity regarding retailers' insolvency protection to enable national specificities of the travel industry to coexist within the single market. This would allow for the necessary clarity, as well as the necessary flexibility in terms of how the Directive is implemented at national level.

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**On mandatory insurance coverage:**

- Leveraging from the experience of the COVID-19 pandemic, efforts should be focused on prevention and availability of data, rather than mandatory coverage.
- New article 17(7) of the PTD, which would enable Member States to require insurance for retailers, should be removed because it is not implementable in practice in many markets.

# Limitation of downpayments

## European Commission's proposal

The organiser/retailer shall not request downpayments exceeding 25% of the total price of the package and shall not request the remaining payment earlier than 28 days before the start of the package. The downpayments may cover advance payments to providers of services included in the package and costs incurrent by the organiser/retailer, as long as it is necessary to cover those costs at the time of booking.

## Insurance Europe's assessment

- Setting a maximum amount for downpayments gives necessary legal certainty to providers.
- It is also essential to ensure that the remaining payment may not be requested earlier than 28 days before the start of the package. It allows enough clarity and predictability to providers, organisers and retailers to know the amount of liquidity they will have available at any given time.
- However, limiting downpayments could prove to be counterproductive for small and medium-sized travel agencies. Once a client purchases a certain package, these travel agencies have to pay the full price of the flight ticket at once (most economy tickets are non-refundable), and likewise pay large deposits upfront to accommodation providers, very often earlier than six months in advance. If the client subsequently cancels the trip, the travel agencies charge them for the costs exceeding the downpayments.
- There is thus a real risk of unenforceability and related litigation, which could in turn significantly affect the liquidity of small and medium-sized travel agencies.
- Moreover, apart from negatively affecting the cash flow of these smaller travel agencies, this will not reduce the amount of the negotiated limits of insurance claims.

## Key messages

- It will be important to strictly limit the right to demand higher pre-payments to cases where they are absolutely necessary because the organiser has to pay its service providers in advance. The text should be amended accordingly.
- The exemption from the obligation to collect downpayments should be amended to include small and medium-sized travel agencies (Recital 12 and Article 5a).

## Limitation to issue refunds

### European Commission's proposal

The revision introduces a limit of 7 days for organisers to receive a refund if a paid travel service contained in a package is cancelled or not performed and the right for organisers or retailers to seek redress from any third party which contributed to the event triggering compensation, price reduction or other obligations.

### Insurance Europe's assessment

- Ensuring organisers have a right to seek redress is key in making sure that they have enough liquidity to keep themselves from bankruptcy in the event of a large number of cancellations in a short period of time.
- However, such a solution will not be enforceable against entities based outside the EU. Many service providers of the travel industry are not based in the EU. As such, it is likely that the system will not work in practice.

### Key messages

- It will be important to ensure the limitation of 7 days for organisers to receive a refund is respected. Such provision, is crucial to ensure that retailers have enough liquidity.
- Article 1(12) should be amended to ensure that organisers have an enforceable right to seek redress from any third party they contracted with, whether the third party is established inside or outside the EU.

## Insolvency protection of linked travel arrangements

### European Commission's proposal

*"Member States shall ensure that traders which invite travellers to conclude a contract on a different type of travel service shall provide security for the refund of all payments they receive from travellers. If such traders are responsible for the traveller's return journey, the security shall also cover the traveller's repatriation" – Article 1 11).*

### Insurance Europe's assessment

- The surety bond covering the initial travel service should not be transferrable to another travel service sold afterwards, even if such travel services become a linked travel arrangement (LTA).
- An insurance company providing cover for the initial travel service sold cannot adequately develop and price an insurance product tailored to traders if they are not fully aware of the type of travel services they are covering, nor if they cannot know in advance the number of travel services they will be covering eventually.

### Key messages

- Article 1(11) should be amended to ensure that the financial coverage of the travel service initially sold cannot be transferred to the other travel services which will eventually form a linked travel arrangement (LTA).