

Insurance Europe response to the European Commission's consultation on proposal amending the Package Travel Directive

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Referring to:	Proposal amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive		
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Introduction

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 faced by 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. It is important that the final revision strikes the right balance between the reinforcement of passenger rights and the protection of travel organisers from bankruptcy.

While the proposal is a step in the right direction, the following key aspects should be considered to fully realise the objectives of the revision of the Directive:

■ Extension of the insolvency protection

Insurance Europe recognises that the insolvency protection of organisers must cover all payments made by, or on behalf of travellers. However, as the existing regulatory framework and insolvency protection for travellers sufficiently addresses this need, it is unnecessary to strengthen the requirements regarding insolvency protection. Making unnecessary changes 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. Insurance Europe therefore believes that the definitions of insolvency and the covered costs for refunds, repatriation and accommodation prior to repatriation should be further clarified. 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.

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. Therefore, the Package Travel Directive (PTD) should define a common approach that provides for this clarity, thereby enabling 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.

Article 1 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. Leveraging from the experience of the COVID-19 pandemic, efforts should be focused on prevention and availability of data, rather than mandatory coverage.

The new article 17(7), which would enable Member States to require insurance for retailers, should be removed because, in many markets, this is not possible in practice. 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.

■ **Limitation of pre-payments**

Insurance Europe welcomes the clarification on the limitation of pre-payments. It will also 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.

■ **Limitation to issue refunds**

Insurance Europe welcomes the limit of 7 days for organisers to receive a refund if a paid travel service contained in a package is cancelled or not performed. Insurance Europe also supports 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. 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.

■ **Protection of vouchers**

It is key to take note of the differences between Member States in terms of the approach taken to the insolvency protection of vouchers.

For Member States that do not already ensure an insolvency protection of vouchers, further clarification is needed. Indeed, it is unclear which legal consequences would arise if vouchers do not meet the formal requirements under Article 12 a. If insolvency protection is extended to vouchers, it should be limited to vouchers that meet the legal requirements.

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