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P7_TA(2014)0222

Package travel and assisted travel arrangements *I**

European Parliament legislative resolution of 12 March 2014 on the 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, Directive 2011/83/EU and repealing Council Directive 90/314/EEC (COM(2013)0512 — C7-0215/2013 — 2013/0246(COD))

(Ordinary legislative procedure: first reading)

(2017/C 378/62)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0512),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0215/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 11 December 2013 ⁽¹⁾,
 - after consulting the Committee of the Regions,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Transport and Tourism and the Committee on Legal Affairs (A7-0124/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0246

Position of the European Parliament adopted at first reading on 12 March 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council on package travel, *package holidays, package tours and assisted linked* travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC [Am. 1]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

⁽¹⁾ OJ C 170, 5.6.2014, p. 73.

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Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Council Directive 90/314/EEC ⁽³⁾ lays down a number of important consumer rights in relation to package travel, in particular with regard to information requirements, the liability of traders in relation to the performance of a package and protection against the insolvency of an organiser or a retailer. However, it is necessary to adapt the legislative framework to market developments, in order to make it more suitable for the internal market, remove ambiguities and close legislative gaps.
- (2) Tourism plays an important role in the economies of the Union and **package travel, package holidays and package tours** ('packages') represent a significant proportion of that market. The travel market has undergone considerable changes since the adoption of Directive 90/314/EEC. In addition to traditional distribution chains, the Internet has become an increasingly important medium to offer travel services. Travel services are not only combined in the form of traditional pre-arranged packages, but are often combined in a customised fashion. Many of these travel products are either in a legal grey zone or are clearly not covered by Directive 90/314/EEC. This Directive aims to adapt the scope of protection to those developments, enhance transparency and increase legal certainty for travellers and traders. [**Am. 2**]
- (3) Article 169 of the Treaty on the Functioning of the European Union (TFEU) provides that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU.
- (4) Directive 90/314/EEC gives broad discretion to the Member States as regards transposition and, therefore, significant divergences between the laws of the Member States remain. Legal fragmentation leads to higher costs for businesses and obstacles for those wishing to operate cross-border, thus limiting consumers' choice.
- (5) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The harmonisation of ~~certain aspects of~~ **the rights and obligations arising from** package contracts and ~~assisted linked~~ **linked** travel arrangements is necessary for the creation of a real consumer internal market in ~~this that~~ **that** area, striking the right balance between a high level of consumer protection and the competitiveness of businesses. [**Am. 3**]
- (6) The cross-border potential of the package travel market in the Union is currently not fully exploited. Disparities in the rules protecting travellers in different Member States are a disincentive for travellers in one Member State from buying packages and ~~assisted linked~~ **linked** travel arrangements in another Member State and, likewise, a disincentive for organisers and retailers in one Member State from selling such services in another Member State. In order to enable consumers and businesses to benefit fully from the internal market, while ensuring a high level of consumer protection across the Union, it is necessary to further approximate the laws of the Member States relating to packages and ~~assisted linked~~ **linked** travel arrangements.

⁽¹⁾ OJ C 170, 5.6.2014, p. 73.

⁽²⁾ Position of the European Parliament of 12 March 2014.

⁽³⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

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- (7) The majority of travellers buying packages are consumers in the sense of Union consumer law. At the same time, it is not always easy to distinguish between consumers and representatives of ~~small~~ businesses or professionals who book trips related to their business or profession through the same booking channels as consumers. Such travellers often require a similar level of protection. In contrast, ~~larger~~ companies or organisations often make travel arrangements for their employees, **members and representatives** on the basis of a framework contract for business travel ~~which specialise in the arrangement of business travel~~. The latter type of travel arrangements do not require the level of protection designed for consumers. Therefore, this Directive should apply to business travellers only insofar as they do not make travel arrangements on the basis of a framework contract. To avoid confusion with the definition of the term 'consumer' **used** in other **Union** consumer protection ~~directives~~ **legislation**, persons protected under this Directive should be referred to as 'travellers'. [Am. 4]
- (8) Since travel services may be combined in many different ways, it is appropriate to consider as packages all combinations of travel services that display features which travellers typically associate with packages, in particular that separate travel services are bundled together into a single travel product for which the organiser assumes responsibility for proper performance. In accordance with the case law of the Court of Justice of the European Union ⁽¹⁾, it should make no difference whether travel services are combined before any contact with the traveller or at the request of or according to the selection made by the traveller. The same principles should apply irrespective of whether the booking is made through a high street travel agent or online.
- (9) For the sake of transparency, packages should be distinguished from ~~assisted~~ **linked** travel arrangements, where online or high street agents assist travellers in combining travel services leading the traveller to conclude contracts with different travel service providers, including through linked booking processes **in a targeted manner**, which do not contain those features and in relation to which it would not be appropriate to apply all obligations applying to packages. [Am. 5]
- (10) In light of market developments, it is appropriate to further define packages on the basis of alternative objective criteria which predominantly relate to the way in which the travel services are presented or purchased and where travellers may reasonably expect to be protected by the Directive. That is the case, for instance where different travel services are purchased for the same trip or holiday within the same booking process from a single point of sale or where such services are offered or charged at an inclusive or total price. It should be considered that travel services are procured within the same booking process if they are selected before the traveller has agreed to pay.
- (11) At the same time, ~~assisted~~ **linked** travel arrangements should be distinguished from travel services which travellers book independently, often at different times, even for the purpose of the same trip or holiday. Online ~~assisted~~ **linked** travel arrangements should also be distinguished from **linked websites which do not have the objective of concluding a contract with the traveller and from** links through which travellers are simply informed about further travel services in a general way **and not in a targeted manner**, for instance where a hotel or an organiser of an event includes on its website a list of all operators offering transport services to its location independently of any booking or if cookies or ~~meta-data~~ **metadata** are used to place advertisements on websites **related to the travel destination or travel period specified for the first travel service chosen**. [Am. 6]
- (12) The purchase of an air travel service on a stand-alone basis as a single travel service constitutes neither a package nor ~~an assisted~~ **a linked** travel arrangement.

⁽¹⁾ See Judgment of the Court of Justice of the European Union of 30 April 2012 in Case C-400/00 *Club Tour, Viagens e Turismo SA v. Alberto Carlos Lobo Gonçalves Garrido and Club Med Viagens Ld*, 2002 ECR, I-04051.

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- (13) Specific rules should be laid down **in this Directive** for both high street and on-line retailers which assist travellers, on the occasion of a single visit or contact with their own point of sale, in concluding separate contracts with individual service providers ~~and for~~ **where the traveller selects and agrees to pay for each travel service separately. Such rules should also apply to** online retailers which, through linked online booking processes, facilitate the procurement of additional travel services from another trader in a targeted manner, **where at least the traveller's name or contact details are transferred to the other trader and such additional services are procured** at the latest ~~when~~ **24 hours after** the booking of the first service is confirmed. ~~These rules would apply for example, where, along with the confirmation of the booking of a first travel service such as a flight or a train journey, a consumer receives an invitation to book an additional travel service available at the chosen travel destination, for instance hotel accommodation, with a link to the booking site of another service provider or intermediary. While those arrangements do not constitute packages within the meaning of this Directive as there can be no confusion that a single organiser has assumed the responsibility for the travel services, such assisted linked travel arrangements constitute an alternative business model that often competes closely with packages. [Am. 7]~~
- (14) In order to ensure fair competition and to protect consumers, the obligation to provide sufficient evidence of security for the refund of pre-payments and the repatriation of travellers in the event of insolvency should also apply to ~~assisted~~ **linked** travel arrangements.
- (14a) **Practices have appeared online whereby traders facilitating the procurement of linked travel arrangements have not clearly and unambiguously provided the option of booking only the main service and not choosing any further services. Such practices should be regarded as misleading for travellers. As the existing legal framework has not yet allowed for their elimination and given that they are specific to linked travel arrangements, those practices should be banned under this Directive. [Am. 8]**
- (15) To increase clarity for travellers and enable them to make informed choices as to the different types of travel arrangements on offer, it is appropriate to require traders to state the nature of the arrangement clearly and inform travellers of their rights. A trader's declaration as to the legal nature of the travel product being marketed should correspond to the true legal nature of that product concerned. The enforcement authorities should intervene where traders do not provide accurate information to travellers.
- (15a) **Before making the payment, travellers should be made aware of whether they are choosing a package travel or a linked travel arrangement, and of the corresponding level of protection. [Am. 9]**
- (15b) **Traders facilitating the procurement of a linked travel arrangement should clearly advise a traveller before the traveller is bound by any contract or any corresponding offer for a linked travel arrangement, that, to secure the benefits of the Directive applying to linked travel arrangements, all other contracts which make up the linked travel arrangement must be confirmed within the following 24 hours. Where consumers are not advised of this information or where this information is incorrect, deceptive or omitted, this may constitute an unfair commercial practice. [Am. 141]**
- (16) ~~Only~~ The combination of different travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as rental of cars, other vehicles or other means of transport, should be considered for the purposes of identifying a package or ~~an assisted~~ **a linked** travel arrangement. **Hotel nights with added packages, such as tickets for musicals or spa treatments, should be excluded when that package is not specifically marketed to the traveller as a significant proportion of the trip or the ancillary service clearly does not constitute the essential feature of the trip.** Accommodation for residential purposes, ~~including~~ **which is clearly not for the purpose of tourism, such as** for long-term language courses, should not be considered as accommodation within the meaning of this Directive. [Am. 11]
- (16a) **Carriage of passengers by bus, rail, water or air which includes accommodation, for example ferry crossings in cabins or railway journeys in sleeper cars, should be considered as single travel services, if the main component of that carriage is clearly transport and such carriage is not combined with another travel service. [Am. 12]**

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- (17) Other tourist services, such as admission to concerts, sport events, excursions or event parks are services that, in combination with either carriage of passengers, accommodation and/or rental of cars, other vehicles or other means of transport, should be considered as capable of constituting a package or ~~an assisted~~ **a linked** travel arrangement. However, such packages should only fall within the scope of this Directive if the relevant tourist service accounts for a significant proportion of the package. Generally, the tourist service should be considered as a significant proportion of the package if it **is specifically marketed to travellers as such, clearly represents the reason for the trip**, accounts for more than ~~20%~~ **25 %** of the total price or otherwise represents an essential feature of the trip or holiday. Ancillary services, such as, **in particular**, travel insurance, **transport between the station and the accommodation, transport at the beginning of the trip and as part of excursions**, transport of luggage, meals and cleaning **services** provided as part of accommodation, should not be considered as tourist services in their own right. [Am. 13]
- (18) It should also be clarified that contracts by which a trader entitles the traveller after the conclusion of the contract to choose among a selection of different types of travel services, such as in the case of a package travel gift box, should constitute a package. Moreover, a combination of travel services should be considered as a package where the traveller's name ~~or particulars~~ **and other personal data, such as contact details, credit card details or passport details, which are** needed to conclude the booking transaction are transferred between the traders at the latest ~~when~~ **24 hours after** the booking of the first service is confirmed. ~~Particulars needed to conclude a booking transaction relate to credit card details or other information necessary to obtain a payment.~~ However, the mere transfer of particulars such as the travel destination or travel times should not be sufficient. **Cruises and multi-day train journeys including accommodation should also be considered as package, as they combine transport, accommodation and catering.** [Am. 14]
- (19) Since there is less need to protect travellers in cases of short-term trips, and in order to avoid unnecessary burden for traders, trips lasting less than 24 hours which do not include accommodation ~~as well as occasionally organised packages~~, should be excluded from the scope of this Directive. **Packages and linked travel arrangements that are occasionally offered or put together by natural or legal persons, such as non-profit organisations, including charitable organisations, football clubs and schools, where no direct or indirect financial gain is made from the sale of such packages or the facilitation of such linked travel arrangements, should also be excluded from the scope of this Directive.** [Am. 15]
- (19a) **Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to all or some of the provisions of this Directive in relation to contracts that fall outside the scope of this Directive. For example, Member States may apply the provisions of this Directive to packages and linked travel arrangements that are occasionally offered or put together by natural or legal persons where no direct or indirect financial gain is made from the sale of those packages or the facilitation of those linked travel arrangements, and to packages and linked travel arrangements covering a period of less than 24 hours and which do not include accommodation.** [Am. 16]
- (20) The main characteristic of package travel is that at least one trader is responsible as an organiser for the proper performance of 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. Whether a trader is acting as an organiser for a given package should depend on its involvement in the creation of a package as defined under this Directive, and not on the denomination under which it carries out its business. Where two or more traders meet a criterion which makes the combination of travel services a package and where those traders have not informed the traveller which of them is the organiser of the package, all relevant traders should be considered as organisers.

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- (20a) **Directive 90/314/EEC has given discretion to the Member States to define if retailers, organisers or both retailers and organisers should be liable for the proper performance of a package. That flexibility has led to ambiguity in some Member States as to whether traders involved in a package were liable for the performance of the relevant services, in particular in the online booking process. Therefore, it is appropriate to clarify in this Directive that organisers are responsible for the performance of the travel services included in the contract, unless the national legislation also provides expressly for the possibility for the organiser or the retailer to be held liable. [Am. 17]**
- (21) In relation to packages, retailers should be responsible together with the organiser for the provision of pre-contractual information. At the same time it should be clarified that ~~they~~ **retailers** are liable for booking errors, **where they make mistakes in the booking process**. To facilitate communication, in particular in cross-border cases, travellers should have the possibility of contacting the organiser also via the retailer through which they bought the package. [Am. 18]
- (22) The traveller should receive all necessary information before purchasing a package, whether it is sold through means of distance communication, over the counter or through other types of distribution. In providing that information, the trader should take into account the specific needs of travellers who are particularly vulnerable because of their age or physical infirmity, which the trader could reasonably foresee.
- (23) Key information, for example on the main characteristics of the travel services or the prices, provided in advertisements, on the organiser's website or in brochures as part of the pre-contractual information, should be binding, unless the organiser reserves the right to make changes to those elements and unless such changes are clearly and prominently communicated to the traveller before the contract is concluded. ~~However, in light of new communication technologies, there is no longer any need to lay down specific rules on brochures, while it is appropriate to ensure that, in certain circumstances, changes impacting the contract performance are communicated between the parties on a durable medium accessible for future reference. It should always be possible to make changes to that information where both parties to the contract expressly agree on that.~~ [Am. 19]
- (23a) **However, in light of new communication technologies which can help to ensure that travellers have access to up-to-date information at the time of booking and the growing trend to book travel packages online, there is no longer any need for specific rules requiring printed brochures. [Am. 20]**
- (23b) **Flight times should be a fixed part of the contract and one of the main characteristics of a travel service. They should not differ significantly from the times indicated to travellers in the pre-contractual information. [Am. 21]**
- (24) The information requirements laid down in this Directive are exhaustive, but should be without prejudice to the information requirements provided for in other applicable Union legislation ⁽¹⁾.

⁽¹⁾ See, 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) (OJ L 178, 17.7.2000, p. 1) and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36), as well as Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p. 15), Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1), Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14), Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3), Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1) and Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

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- (25) Taking into account the specificities of package travel contracts, rights and obligations of the parties should be laid down, for the time before and after the start of the package, in particular if the package is not properly performed or if particular circumstances change.
- (26) Since packages are often purchased a long time before their performance, unforeseen events may occur. Therefore the traveller should, under certain conditions, be entitled to transfer a package to another traveller. In such situations, the organiser should be able to recover his expenses, for instance if a sub-contractor requires a fee for changing the name of the traveller or for cancelling a transport ticket and issuing a new one. Travellers should also have the possibility of cancelling the contract at any time before the start of the package against paying appropriate compensation, as well as the right to terminate the contract without paying compensation where unavoidable and extraordinary circumstances like warfare, **including terrorism**, or a natural disaster **including hurricanes and earthquakes, or political instability, which puts travellers' safety at risk** will significantly affect the package, **when those events have occurred after the conclusion of the travel contract**. Unavoidable and extraordinary circumstances should in particular be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities, advise against travelling to the place of destination. [Am. 22]
- (27) In specific situations, ~~also~~ the organiser should **also** be entitled to terminate the contract before the start of the package without paying compensation, for instance if the minimum number of participants is not reached and where that possibility has been reserved in the contract. **In such a situation, the organiser should adequately inform travellers who may be impacted by that contract clause.** [Am. 23]
- (28) In certain cases organisers should be allowed to make unilateral changes to the package travel contract. However, travellers should have the right to terminate the contract if the proposed alterations significantly change any of the main characteristics of the travel services. Price increases should be possible only if there has been a change in the price of passenger transport services resulting from the cost of fuel for the carriage of passengers, in taxes or fees imposed by a third party not directly involved in the performance of the included travel services or in the exchange rates relevant to the package and if the power to revise the price both upwards and downwards is expressly reserved in the contract. **Travellers should have the right to terminate the contract without any obligation to pay compensation or to accept an alternative equivalent travel package offered by the organiser if the price increase should be limited to 10% exceeds 8% of the original price of the package.** [Am. 24]
- (28a) **Price increases should always be justified on a durable medium. If the price is increased by more than 8%, the traveller should be offered on a durable medium the possibility of terminating the contract or accepting an alternative travel package equivalent in price to that booked. If the traveller does not take advantage of that possibility, the travel package at the higher price should be considered as accepted. The burden of proof regarding receipt of the notification on a durable medium should remain with the organiser.** [Am. 25]
- (29) It is appropriate to set out specific rules on remedies as regards the lack of conformity in the performance of the package travel contract. The traveller should be entitled to have problems resolved and, where a significant proportion of the services contracted for cannot be provided, the traveller should be offered alternative arrangements. Travellers should also be entitled to a price reduction and/or compensation for damages. Compensation should also cover any immaterial damage, in particular in case of a spoilt holiday, and, in justified cases, expenses which the traveller incurred when resolving a problem himself.
- (30) In order to ensure consistency, it is appropriate to align the provisions of this Directive with international conventions covering travel services and with the Union legislation on passenger rights. Where the organiser is liable for failure to perform or improper performance of the services included in the package travel contract, the organiser

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should be able to invoke the limitations of the liability of service providers set out in such international conventions as the Montreal Convention of 1999 for the Unification of certain Rules for International Carriage by Air ⁽¹⁾, the Convention of 1980 concerning International Carriage by Rail (COTIF) ⁽²⁾ and the Athens Convention of 1974 on the Carriage of Passengers and their Luggage by Sea ⁽³⁾. Where it is impossible, because of unavoidable and extraordinary circumstances, to ensure the traveller's return to the place of departure, the organiser's obligation to bear the cost of the travellers' continued stay at the place of destination should be aligned with Regulation (EU) No .../2014 of the European Parliament and of the Council ⁽⁴⁾ (*).

- (31) This Directive should not affect the rights of travellers to present claims both under this Directive and under any other relevant Union legislation, so that travellers will continue to have the possibility to address claims to the organiser, the carrier or any other liable party, or, as the case may be, to several parties. It should be clarified that they may not cumulate rights under different legal bases if the rights safeguard the same interest or have the same objective. ~~The organiser's~~ **However, the need to ensure that travellers receive an appropriate and timely compensation in cases where the contract is not performed fully by one of the parties should not impose an unreasonable and disproportionate burden on organisers and retailers. In addition to their obligation to remedy any lack of conformity or to compensate travellers, organisers and retailers should also have the right to seek redress from any third party which contributed to the event triggering compensation or other obligations. The organiser and retailer's liability is therefore without prejudice to the that right to seek redress from third parties, including service providers. [Am. 27]**
- (32) If the traveller is in difficulty during the trip or holiday, the organiser should be obliged to give ~~prompt~~ **appropriate** assistance **without undue delay**. Such assistance should consist mainly in providing, where appropriate, information on aspects such as health services, local authorities and consular assistance, as well as practical help, for instance with regard to distance communications and **the procurement of** alternative travel arrangements. [Am. 28]
- (33) In its Communication of 18 March 2013 entitled 'Passenger protection in the event of airline insolvency', the Commission set out measures to improve the protection of travellers in the event of an airline insolvency, including better enforcement of Regulation (EC) No 1008/2008, of Regulation (EC) No 261/2004 of the European Parliament and of the Council ⁽⁵⁾ and engagement with industry stakeholders, failing which a legislative measure could be considered. That Communication concerns the purchase of an individual component, namely air travel services, and therefore is without prejudice to existing rules on packages and does not prevent the legislators to provide for insolvency protection also for buyers of other modern combinations of travel services.

⁽¹⁾ Council Decision 2001/539/EC of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (OJ L 194, 18.7.2001, p. 38).

⁽²⁾ Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (OJ L 51, 23.2.2013, p. 1).

⁽³⁾ Council Decision 2012/22/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof (OJ L 8, 12.1.2012, p. 1).

⁽⁴⁾ Regulation (EU) No .../2014 of the European Parliament and of the Council of ... amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L ...).

(*) Number of the Regulation (2013/0072(COD)) in the recital and the number, date of adoption and publication reference of the Regulation in footnote 4.

⁽⁵⁾ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

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- (34) Member States should ensure that travellers purchasing a package or ~~an assisted~~ **a linked** travel arrangement are fully protected against the insolvency of the organiser, of the retailer having facilitated the ~~assisted linked~~ travel arrangement or of ~~any of the service providers~~ **a business involved in the linked travel arrangement**. Member States ~~in which package organisers and retailers facilitating assisted travel arrangements are established~~ should ensure that traders offering such combinations of travel services provide security for the refund of all payments made by travellers and for their repatriation in the event of insolvency. While retaining discretion as to the way in which insolvency protection is granted, Member States should ensure that their ~~national~~ insolvency protection schemes are effective and able to guarantee prompt repatriation and the **immediate** refund of all travellers affected by the insolvency. **Where a traveller would prefer to complete their package or linked travel arrangement rather than obtain a full refund, the insolvency protection may, where appropriate, provide for the fulfilment of existing contracts, in order to enable the package or linked travel arrangement to continue at no additional cost to the traveller.** The required insolvency protection should take into account the actual financial risk of the activities of the organiser, relevant retailer or ~~service provider~~ **of a business involved in the linked travel arrangement**, including the type of combination of travel services they sell, foreseeable seasonal fluctuations as well as the extent of pre-payments and the way in which these are secured. In accordance with Directive 2006/123/EC ~~12 December 2006 on services in the internal market~~, in cases where insolvency protection may be provided in the form of a guarantee or an insurance policy, such security may not be limited to attestations issued by financial operators established in a particular Member State. [Am. 29]
- (35) In order to facilitate the free movement of services, Member States should be obliged to recognise insolvency protection under the law of the Member State of establishment. To facilitate the administrative cooperation and supervision of businesses which are active in different Member States with regard to insolvency protection, Member States should be obliged to designate central contact points.
- (36) As regards ~~assisted linked~~ travel arrangements, beyond the obligation to provide insolvency protection and to inform travellers that individual service providers are solely responsible for their contractual performance, the relevant contracts are subject to general Union consumer protection legislation and sector-specific Union legislation.
- (37) It is appropriate to protect travellers in situations where a retailer arranges the booking of a package or ~~an assisted~~ **a linked** travel arrangement and where the retailer makes mistakes in the booking process.
- (38) It is also appropriate to confirm that consumers may not waive rights stemming from this Directive and organisers or traders facilitating ~~assisted linked~~ travel arrangements may not escape from their obligations by claiming that they are simply acting as a travel service provider, an intermediary or in any other capacity.
- (39) It is necessary that Member States lay down penalties for infringements of national provisions transposing this Directive and ensure that they are enforced. Those penalties should be effective, proportionate and dissuasive.
- (40) The adoption of this Directive makes it necessary to adapt certain consumer protection acts. Taking into account that Directive 2011/83/EU of the European Parliament and of the Council ~~of 25 October 2011 on consumer rights~~ ⁽¹⁾ in its current form does not apply to contracts covered by Directive 90/314/EEC, it is necessary to amend Directive 2011/83/EU to ensure that it ~~applies to assisted~~ **continues to apply to individual travel services that form part of a linked travel arrangements arrangement, insofar as those individual services are not otherwise excluded from the scope of Directive 2011/83/EU** and that certain consumer rights laid down in that Directive also apply to packages. [Am. 30]

⁽¹⁾ Directive 2011/83/EU of the European Parliament and the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

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- (41) This Directive should be without prejudice to Regulation (EC) No 593/2008 of the European Parliament and of the Council ⁽¹⁾ and national contract law for those aspects that are not regulated by it. Since the objectives of this Directive, namely to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (42) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (Charter). This Directive, in particular, respects the freedom to conduct a business laid down in Article 16 of the Charter, while ensuring a high level of consumer protection within the Union, in accordance with Article 38 of the Charter.
- (43) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽²⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

Subject matter, level of harmonisation, scope and definitions

Article 1

Subject matter

The purpose of this Directive is to contribute to the proper functioning of the internal market and to the achievement of a high **and as uniform as possible** level of consumer protection ~~by approximating certain aspects~~ **in respect** of the laws, regulations and administrative provisions of the Member States in respect of contracts on package travel and ~~assisted~~ **linked** travel arrangements concluded between travellers and traders. [Am. 31]

Article 1a

Level of harmonisation

Unless otherwise provided for in this Directive, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions which would ensure a different level of consumer protection. [Am. 32]

⁽¹⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

⁽²⁾ OJ C 369, 17.12.2011, p. 14.

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Article 2

Scope

1. This Directive shall apply to packages offered for sale or sold by traders to travellers, with the exception of Articles 17, 17a and 17b and to ~~assisted~~ **linked** travel arrangements with the exception of Articles 4 to 14, Article 18 and Article 21(1).
2. This Directive shall not apply to:
 - (a) packages and ~~assisted~~ **linked** travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;
 - (aa) *packages and linked travel arrangements that are occasionally offered or put together by natural or legal persons where no direct or indirect financial gain is made from the sale of those packages or the facilitation of those linked travel arrangements and where the traveller has been duly informed by the responsible trader that this Directive shall not apply to such package or travel arrangement; [Am. 33]*
 - (b) *ancillary contracts covering travel services provided in addition to the package and booked without the involvement of the organiser or ancillary contracts covering financial services; [Am. 34]*
 - (c) packages and ~~assisted~~ **linked** travel arrangements purchased on the basis of a framework contract ~~between the traveller's employer~~ **for business travel between a business on whose behalf the traveller is travelling** and a trader specialising in the arrangement of ~~business travel~~; [Am. 35]
 - (d) packages where not more than one travel service as referred to in points (a), (b), and (c) of point 1 of Article 3 is combined with a travel service as referred to in point (d) of point 1 of Article 3 if ~~this~~ **the latter** service does not account for a significant proportion of the package **or clearly does not represent the reason for the trip or the ancillary service is clearly not marketed as the main element of the trip**; or [Am. 36]
 - (e) stand-alone contracts for a single travel service;
 - (ea) *carriage of passengers by bus, rail, water or air which includes accommodation, if the main component of that carriage is clearly transport and such carriage is not combined with another travel service as referred to in points (b), (c) or (d) of point 1 of Article 3. [Am. 37]*

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'travel service' means:
 - (a) carriage of passengers;
 - (b) accommodation ~~other than~~ for residential **purposes, provided that such accommodation clearly serves a touristic** purpose; [Am. 38]
 - (c) ~~car~~ rental **of cars, other vehicles or other means of transport**; or [Am. 39]
 - (d) any other tourist service not ancillary to carriage of passengers, accommodation or ~~car~~ rental **of cars, other vehicles or other means of transport** [Am. 40]

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- (2) 'package' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, if:
- (a) those services are put together by one trader, including at the request or according to the selection of the traveller, before a contract on all services is concluded; or
 - (b) irrespective of whether separate contracts are concluded with individual travel service providers, those services are:
 - (i) purchased from a single point of sale within the same booking process, **and all of those services have been selected by the traveller before the traveller has agreed to pay; or [Am. 41]**
 - (ii) offered or charged at an inclusive or total price; **or [Am. 42]**
 - (iii) advertised or sold under the term 'package' or under a similar term; **or [Am. 43]**
 - (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~~ **and other personal data, such as contact details, credit card details or passport details**, needed to conclude a booking transaction are transferred between the traders at the latest ~~when~~ **24 hours after** the booking of the first service is confirmed; **[Am. 44]**
- (3) 'package travel contract' means a contract on the package as a whole or, if the package is provided under different contracts, all contracts covering services included in the package;
- (4) 'start of the package' means the beginning of the performance of the package;
- (5) '~~assisted~~ **linked** travel arrangement' means a combination of at least two different types of travel services for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if **one of the providers involved or** a retailer facilitates the combination: **[Am. 45. This amendment applies throughout the text]**
- (a) ~~on the basis of separate bookings~~ **where the traveller selects and agrees to pay for each travel service separately** on the occasion of a single visit or contact with the point of sale; or **[Am. 46]**
 - (b) through the procurement of additional travel services from another trader in a targeted manner through linked online booking processes **where at least the traveller's name or contact details are transferred to the other trader and such additional services are procured** at the latest ~~when~~ **24 hours after** the booking of the first service is confirmed; **[Am. 47]**
- (6) 'traveller' means any person who is seeking to conclude or is entitled to travel on the basis of a contract concluded within the scope of this Directive, including business travellers insofar as they do not travel on the basis of a framework contract for business travel between a business on whose behalf the traveller is travelling and a trader;
- (7) 'trader' means any person, who is acting for purposes relating to his trade, business, craft or profession;
- (8) 'organiser' means a trader who combines and sells or offers for sale packages, either directly or through another trader or together with another trader **or who facilitates the combination and procurement of such packages**. Where more than one trader meets any of the criteria referred to in point (b) of point 2, all of those traders are considered organisers, unless one of them is designated as organiser and the traveller is informed accordingly; **[Am. 48]**

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- (9) 'retailer' means a trader other than the organiser who:
- (a) sells or offers for sale packages **put together by the organiser**; or [Am. 49]
 - (b) facilitates the procurement of travel services which are part of ~~an assisted~~ **a linked** travel arrangement by assisting travellers in concluding separate contracts for travel services with individual service providers, **one of whom may be the retailer himself**; [Am. 50]
- (10) 'durable medium' means any instrument which enables the traveller or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (11) 'unavoidable and extraordinary circumstances' means ~~a~~ **an unforeseeable** situation beyond the control of the trader, the consequences of which could not have been avoided even if all ~~reasonable measures~~ **due care** had been ~~taken~~ **exercised**; [Am. 51]
- (12) 'lack of conformity' means lack of ~~and~~ **or** improper performance of the travel services included in a package; [Am. 52]
- (12a) '**ancillary services**' means **a non-stand-alone touristic service in the context of the provision or supplementing of travel services such as, in particular, travel insurance, transport between a station and the accommodation or to the airport of departure and in the context of excursions, transport of luggage, meals and cleaning services provided as part of accommodation**. [Am. 53]

Chapter II

Information obligations and content of the package travel contract

Article 4

Pre-contractual information

1. Member States shall ensure that, before the traveller is bound by any package travel contract or any corresponding offer, the organiser ~~and, where the package is sold through a retailer, also the retailer~~ shall provide the traveller with the following information where applicable to the package: [Am. 54]

- (a) the main characteristics of the travel services:
 - (i) the travel destination(s), itinerary and periods of stay, with dates, **and the number of nights included**; [Am. 55]
 - (ii) 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 approximate time of departure and return~~, the duration and places of intermediate stops and transport connections;

Where the exact time is not yet determined, the trader shall inform the traveller of the approximate time of departure and return.

Where no indicative time can be determined, the retailer shall inform the traveller accordingly; [Am. 56]

- (iii) the location, main features and ~~tourist~~ **official** category of the accommodation **assigned by the competent body in the place in which the accommodation is located**; [Am. 57]

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- (iv) whether meals are provided and, if so, the meal plan;
 - (v) visits, excursion(s) or other services included in the total price agreed for the package;
 - (va) whether any of the travel services shall be provided to the traveller as a part of a group and, if that is the case, how many people are expected to participate; [Am. 58]**
 - ~~(vi) the language(s) in which the activities will be carried out and [Am. 59]~~
 - (vii) upon request from the traveller, whether access for persons with a certain degree of reduced mobility is guaranteed throughout the trip or holiday; [Am. 60]**
 - (b) the trading name and geographical address of the organiser and, where applicable, of the retailer, as well as their telephone number and e-mail address;
 - (c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance, the fact that the traveller may have to bear such additional costs **and the nature of such costs; the total price must be presented in the form of a detailed invoice setting out all the costs of the travel service in a transparent manner; [Am. 61]**
 - (d) the arrangements for payment and, where applicable, the existence and the conditions for deposits or other financial guarantees to be paid or provided by the traveller;
 - (e) **where appropriate**, the minimum number of persons required for the package to take place and ~~a~~ **the time-limit of at least 20 days referred to in point (a) of Article 10(3)** before the start of the package for the possible cancellation if that number is not reached; [Am. 62]
 - (f) general information on passport and visa requirements, including approximate periods for obtaining visas, for nationals of the Member State(s) concerned and information on health formalities;
 - (fa) information on the optional conclusion of an insurance policy to cover the costs of cancellation by the traveller or the cost of repatriation in the event of accident or illness; [Am. 63]**
 - (g) confirmation that the services constitute a package;
 - (ga) information that, in accordance with Article 10, the traveller or the organiser may terminate the contract at any time before the start of the package and upon the payment of an applicable reasonable standardised termination fee, if any; [Am. 64]**
 - (gb) the possibility of transferring the package travel contract to another traveller, and possible limitations on, and consequences of, such transfer. [Am. 65]**
- 1a. Where a package is sold through a retailer, the retailer shall provide the traveller without delay with the full information referred to in paragraph 1. [Am. 66]**
2. The information referred to in paragraph 1 shall be provided in a clear, **comprehensible** and prominent manner. [Am. 67]
- 2a. Where a travel contract is concluded by electronic means, the organiser shall make the traveller aware in a clear and prominent manner, and directly before the traveller places his order, of the information provided for in points (a)(i), (ii), (iii), (iv), (v), (c), and (d) of paragraph 1 of this Article. The second subparagraph of Article 8(2) of Directive 2011/83/EU shall apply accordingly. [Am. 68]**
- 2b. As regards compliance with the information requirements laid down in this Chapter, the burden of proof shall be on the trader. [Am. 69]**

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Article 5

Binding character of pre-contractual information and conclusion of the contract

1. Member States shall ensure that the organiser may not change the information made known to the traveller pursuant to points (a), (c), (d), (e) ~~and, (f), (g) and (ga)~~ of Article 4(1), **which shall form an integral part of the package travel contract and shall not be altered** unless the organiser reserves the right to make changes to that information and ~~communicates any contracting parties expressly agree otherwise. All changes to the pre-contractual information shall be communicated~~ to the traveller in a clear and prominent manner before the conclusion of the contract. [Am. 70]
2. If the information on additional charges, fees or other costs referred to in point (c) of Article 4(1) is not provided prior to the conclusion of the contract, the traveller shall not bear those fees, charges or other costs. [Am. 71]
3. At or ~~immediately~~ **without delay** after the conclusion of the contract, the organiser shall provide the traveller with a copy of the contract or a confirmation of the contract on a durable medium. [Am. 72]

Article 6

Content of the package travel contract and documents to be supplied before the start of the package

1. Member States shall ensure that package travel contracts are in plain and intelligible language and, in so far as they are in writing, legible. [Am. not concerning all languages]
2. The **text of the contract or the confirmation of the contract shall include all set out the full content of the contract and in particular** the information ~~referred to in pursuant to Article 4. It~~ **which has become an integral part of the contract. The text of the contract or confirmation of the contract shall include the following additional information:** [Am. 74]
 - (a) special requirements of the traveller which the organiser has accepted;
 - (b) information that the organiser is:
 - (i) responsible for the proper performance of all travel services included in the contract;
 - (ii) obliged to provide assistance if the traveller is in difficulty in accordance with Article 14;
 - (iii) obliged to procure insolvency protection for refund and repatriation in accordance with Article 15, as well as the name of the entity providing the insolvency protection and its contact details, including its geographical address;
 - (c) ~~the details of a contact point where the traveller can complain about any lack of conformity which he perceives on the spot;~~ [Am. 75]
 - (d) ~~the name, geographical address, telephone number and e-mail address of the organiser's local representative or contact point whose assistance a traveller in difficulty could request or, where no such representative or contact point exists, an emergency telephone number or the indication of other ways of contacting the organiser;~~ [Am. 76]
 - (e) ~~information that the traveller may terminate the contract at any time before the start of the package against payment of an appropriate compensation or a reasonable standardised termination fee if such fees are specified in accordance with Article 10(1);~~ [Am. 77]
 - (f) where minors travel **unaccompanied by their parents or guardians** on a package that includes accommodation, information enabling direct contact with the minor or the person responsible at the minor's place of stay **by a parent or guardian;** [Am. 78]

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(g) information on available ***in-house complaint handling procedures and alternative dispute resolution mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council*** ⁽¹⁾ and online dispute resolution mechanisms ***pursuant to Regulation (EU) No 524/2013 of the European Parliament and of the Council*** ⁽²⁾. [Am. 79]

3. The information referred to in paragraph 2 shall be provided in a clear, ***comprehensible*** and prominent manner. [Am. 80]

4. In good time before the start of the package, the organiser shall provide the traveller with the ~~necessary receipts, vouchers or tickets, including information on the precise times of departure, intermediate stops, transport connections and arrival.~~ ***following information:***

(a) ***necessary receipts, vouchers or tickets, including information on the precise times of departure, intermediate stops, transport connections and arrival;***

(b) ***all relevant contact details in case the traveller perceives any lack of conformity, and details of how the traveller should proceed;***

(c) ***the name, geographical address, telephone number and e-mail address of the organiser's local representative or contact point whose assistance a traveller in difficulty could request or, where no such representative or contact point exists, an emergency telephone number or the indication of other ways of contacting the organiser.*** [Am. 81]

Chapter III

Changes to the contract before the start of the package

Article 7

Transfer of the contract to another traveller

1. Member States shall ensure that a traveller may, after giving the organiser ~~reasonable~~ ***or the retailer*** notice on a durable medium ***within a maximum of seven days*** before the start of the package, transfer the contract to a person who satisfies all the conditions applicable to that contract. [Am. 82]

2. The transferor of the contract and the transferee shall be jointly and severally liable for the payment of the balance due and for any additional fees, charges or other costs, ***if any***, arising from the transfer. ~~Those costs~~ ***The organiser shall inform the transferor and the transferee about the possible costs of such transfer, which in any case*** shall not be unreasonable and ~~in any case~~ shall not exceed the actual cost ~~borne~~ ***incurred*** by the organiser. [Am. 83]

The organiser shall be responsible for providing proof of the additional fees, charges or other costs arising from the transfer of the contract. [Am. 84]

Article 8

Alteration of the price

1. Member States shall ensure that prices are not subject to revision, unless the contract expressly reserves the possibility of an increase and obliges the organiser to reduce prices to the same extent as a direct consequence of changes:

(a) in the ***price of passenger transport services resulting from the*** cost of fuel for the carriage of passengers; [Am. 85]

⁽¹⁾ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

⁽²⁾ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1).

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- (b) in the level of taxes or fees on the included travel services imposed by third parties not directly involved in the performance of the package, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports; or
- (c) in the exchange rates relevant to the package.

1a. A price reduction pursuant to paragraph 1 of 3 % or more shall be passed on to the traveller. A price increase pursuant to paragraph 1 may be passed on to the traveller only if the price changes by 3 % or more. In the event of a price reduction of 3 % or more, the organiser may charge a lump sum of EUR 10 per traveller for administrative expenses. [Am. 86]

2. If the price increase referred to in paragraph 1 shall not exceed 10 % exceeds 8 % of the price of the package, Article 9(2) shall apply. [Am. 87]

3. The price increase referred to in paragraph 1 shall be valid only if the organiser, without undue delay, clearly and comprehensibly notifies the traveller of it with a justification and calculation on through a durable medium at the latest 20 days prior to the start of the package. [Am. 88]

Article 9

Alteration of other contract terms

1. Member States shall ensure that, before the start of the package, the organiser may not unilaterally change contract terms other than the price in accordance with Article 8, unless: [Am. 89]

- (a) the organiser has reserved that right in the contract;
- (b) the change is insignificant **in particular with regard to the elements set out in points (a) and (d) of Article 4(1); and [Am. 90]**
- (c) the organiser informs the traveller in a clear and prominent manner on a durable medium.

1a. A change in the terms of a contract shall in particular be considered to be significant within the meaning of paragraph 2 of this Article if the time of departure and return provided in accordance with point (a)(ii) of Article 4(1) diverges by more than three hours from the actual time of departure or return or, if it is not within the part of the day indicated in the pre-contractual information. [Am. 91]

2. If, before the start of the package, the organiser is constrained to alter significantly any of the main characteristics of the travel services as defined in point (a) of Article 4(1) or special requirements as referred to in point (a) of Article 6(2) or to increase the price of the package by more than 8 % of the contractual price in accordance with Article 8(2), the organiser shall without undue delay inform the traveller in a clear and prominent manner on a durable medium of: [Am. 92]

- (a) the proposed changes **and their impact on the price of the package; [Am. 93]**
- (b) the fact that the traveller may terminate the contract without penalty within a specified reasonable time-limit ~~and that otherwise the proposed alteration will be considered as accepted.~~ **or accept an alternative equivalent travel package offered by the organiser; and [Am. 94]**

(ba) the fact that the proposed change to the contract shall be deemed to have been accepted if the traveller has not exercised the right of termination or accepted an alternative equivalent travel package offered by the organiser. [Am. 95]

3. Where the changes to the contract or the alternative equivalent travel package offered as referred to in paragraph 2 result in a package of lower quality or cost, the traveller shall be entitled to an appropriate price reduction. [Am. 96]

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4. If the contract is terminated pursuant to point (b) of paragraph 2 of this Article, the organiser shall refund all payments received from the traveller within ~~fourteen~~ **14** days ~~after of the termination of the contract is terminated,~~ **including payments for ancillary services booked through the organiser, such as travel insurance, cancellation insurance or additional activities on the spot booked in advance.** The traveller shall, where appropriate, be entitled to compensation for damages in accordance with Article 12. [Am. 97]

Article 10

Termination of the contract before the start of the package

1. Member States shall ensure that the traveller may terminate the contract before the start of the package against payment of an appropriate compensation to the organiser. The contract may specify reasonable standardised termination fees based on the time of the termination and the customary cost savings and income from alternative deployment of the travel services. In the absence of standardised termination fees, the amount of the compensation shall correspond to the price of the package minus the expenses **proved to have been** saved by the organiser **which cannot be recovered from the travel service providers or through alternative deployment of those services. Fees due for the termination of the contract, including administrative fees, shall not be disproportionate or excessive. The organiser shall provide a justification for the calculation of the amount of the compensation or the standardised termination fees. The burden of proof that the compensation is appropriate shall be on the organiser.** [Am. 98]

2. **Once the travel contract has been concluded,** the traveller shall have the right to terminate the contract before the start of the package without compensation in the event of unavoidable and extraordinary circumstances occurring at **or on the way to** the place of destination or **in** its immediate vicinity and significantly affecting the package **which mean that the organiser has to make significant alterations to the essential elements of the package travel contract. Such unavoidable and extraordinary circumstances shall be deemed to exist, for example, if the package is significantly affected by warfare or a natural disaster. Unavoidable and extraordinary circumstances shall in particular be deemed to exist where reliable and publicly available reports, such as recommendations issued by Member State authorities, advise against travelling to the place of destination.** [Am. 99]

3. The organiser may terminate the contract without paying compensation to the traveller, ~~if~~ **only in the following cases:** [Am. 101]

(a) the number of persons enrolled for the package is smaller than the minimum number stated in the contract and the organiser notifies the traveller of the termination within the period fixed in the contract ~~and~~ **but** not later than: ~~20 days before the start of the package; or~~

(i) 20 days before the start of the package in the case of trips lasting more than six days,

(ii) seven days before the start of the package in the case of trips lasting between two and six days,

(iii) 48 hours before the start of the package in the case of one-day trips, or [Am. 102]

(b) the organiser is prevented from performing the contract because of unavoidable and extraordinary circumstances and notifies the traveller of the termination without undue delay before the start of the package.

4. In cases of termination under paragraphs 1, 2 and 3, the organiser shall reimburse any undue payment made by the traveller within 14 days.

Chapter IV

Performance of the package

Article 11

Liability for the performance of the package

1. Member States shall ensure that the organiser is responsible for the performance of the travel services included in the contract, irrespective of whether those services are to be performed by the organiser or by other service providers.

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2. If any of the services are not performed in accordance with the contract, the organiser shall remedy the lack of conformity, ~~unless this is~~ **where such lack of conformity is reported by the traveller to the organiser or is clear to the organiser and remedying it would not be** disproportionate, ~~unless the lack of conformity is attributable to the traveller.~~ [Am. 103]

3. Where a significant proportion of the services cannot be provided as agreed in the contract, the organiser shall make suitable alternative arrangements, at no extra cost to the traveller, for the continuation of the package, **with service quality at least equivalent to that specified under the contract**, including where the traveller's return to the place of departure is not provided as agreed. [Am. 104]

4. If it is impossible for the organiser to offer suitable alternative arrangements or the traveller does not accept the alternative arrangements proposed because they are not comparable to what was agreed in the contract, the organiser shall, insofar as the package includes the carriage of passengers, provide the traveller at no extra cost with equivalent transport to the place of departure or to another place to which the traveller has agreed and shall, where appropriate **the services agreed in the contract have not been provided**, compensate the traveller in accordance with Article 12. **Compensation shall be made within 14 days.** [Am. 105]

4a. Where paragraph 4 applies, the traveller may terminate the contract where the lack of conformity is significant and subsequent performance is not possible or is unsuccessful. [Am. 106]

5. As long as it is impossible to ensure the traveller's timely return because of unavoidable and extraordinary circumstances, the organiser shall not bear the cost for the continued stay exceeding ~~EUR 100 per night and three~~ **five** nights per traveller. **The organiser shall arrange accommodation consistent with the category of hotel originally booked. The traveller may book accommodation himself only if the organiser expressly states that he is unwilling or unable to do so. In such cases, the organiser may limit the cost of accommodation to EUR 125 per night per traveller.** [Am. 107]

6. The limitation of costs referred to in paragraph 5 of this Article shall not apply to persons with reduced mobility, as defined in point (a) of Article 2 of Regulation (EC) No 1107/2006 ~~of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air~~, and any person accompanying them, pregnant women and unaccompanied children, as well as persons in need of specific medical assistance, provided the organiser has been notified of their particular needs **at the time of conclusion of the package travel contract or, if that is not possible**, at least 48 hours before the start of the package. The organiser may not invoke unavoidable and extraordinary circumstances to limit the costs referred to in paragraph 5 of this Article if the relevant transport provider may not rely on such circumstances under applicable Union legislation. [Am. 108]

7. If the alternative arrangements result in a package of lower quality or cost, the traveller shall be entitled to a price reduction and, where appropriate, compensation of damages in accordance with Article 12.

7a. Member States may maintain or introduce provisions which provide that the retailer is also liable for the performance of the package and therefore bound by the obligations arising from this Article and point (b) of Article 6 (2), Article 12, Article 15(1) and Article 16. [Am. 109]

7b. Any right to compensation of the traveller under Regulation (EC) No 261/2004 is independent of any right to compensation of the traveller under this Directive. If the traveller is entitled to compensation under both Regulation (EC) No 261/2004 and this Directive, the traveller shall be entitled to present claims under both legal acts, but may not cumulate rights under both legal acts in relation to the same facts if the rights protect the same interest or have the same objective. [Am. 110]

Article 12

Price reduction and compensation for damages

1. Member States shall ensure that the traveller is entitled to an appropriate price reduction for:

(a) any period during which there was lack of conformity; or

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(b) where the alternative arrangements as referred to in paragraphs 3 and 4 of Article 11 result in a package of lower quality or cost.

2. The traveller shall be entitled to receive compensation from the organiser for any damage, including non-material damage, which the traveller sustains as a result of any lack of conformity.

3. The traveller shall not be entitled to price reduction or compensation for damages if:

(a) the organiser proves that the lack of conformity is:

(i) attributable to the traveller;

(ii) attributable to a third party unconnected with the provision of the services contracted for and is unforeseeable or unavoidable; or

(iii) due to unavoidable and extraordinary circumstances; or

(b) the traveller fails to inform the organiser without undue delay of any lack of conformity which the traveller perceives on the spot if that requirement to inform was clearly and explicitly set out in the contract and is reasonable, taking into account the circumstances of the case.

4. Insofar as international conventions binding the Union limit the extent of or the conditions under which compensation is to be paid by a provider carrying out a service which is part of a package, the same limitations shall apply to the organiser. Insofar as international conventions not binding the Union limit compensation to be paid by a service provider, Member States may limit compensation to be paid by the organiser accordingly. In other cases, the contract may limit compensation to be paid by the organiser as long as that limitation does not apply to personal injury ~~and or~~ damage caused intentionally or with gross negligence and does not amount to less than three times the total price of the package. **[Am. 111]**

5. Any right to compensation for damages or price reduction under this Directive shall not affect the rights of travellers under Regulation (EC) No 261/2004, Regulation (EC) No 1371/2007, Regulation (EU) No 1177/2010 and Regulation (EU) No 181/2011. Travellers shall be entitled to present claims under this Directive and under those Regulations, ~~but may not, in relation to the same facts, cumulate,~~ **in particular claims for additional compensation.** Rights under different legal bases ~~if the rights safeguard the same interest or have the same objective~~ **which relate to the same facts may not be cumulated.** **[Am. 112]**

6. The prescription period for introducing claims under this Article shall not be shorter than ~~one year~~ **three years.** **[Am. 113]**

Article 13

Possibility to contact the organiser via the retailer

Member States shall ensure that the traveller may address messages, complaints or claims in relation to the performance of the package directly to the retailer through which that package was purchased. The retailer shall forward those messages, complaints or claims to the organiser without undue delay. For the purpose of compliance with time-limits or prescription periods, receipt of the notifications by the retailer shall be considered as receipt by the organiser.

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Article 14

Obligation to provide assistance

Member States shall ensure that the organiser gives ~~prompt~~ **appropriate** assistance **without undue delay** to the traveller in difficulty, in particular by: [Am. 114]

- (a) providing appropriate information on health services, local authorities and consular assistance; and
- (b) assisting the traveller ~~in making~~ **to make** distance communications and **helping the traveller to source** alternative travel arrangements. [Am. 115]

The organiser shall be able to charge a reasonable fee for such assistance if the situation is caused by the traveller's negligence or intent. **That fee shall not in any case exceed the actual costs incurred by the organiser.** [Am. 116]

Chapter V

Insolvency protection

Article 15

Effectiveness and scope of insolvency protection

1. Member States shall ensure that organisers **of packages** and retailers **of linked travel arrangements** facilitating the procurement of ~~assisted linked~~ travel arrangements established in their territory obtain a security for the effective and ~~prompt immediate~~ refund of all payments made by travellers and, insofar as carriage of passengers is included, for the travellers' effective and prompt repatriation in the event of insolvency. **Where that is possible, continuation of the trip shall be offered.** [Am. 117]

2. The insolvency protection referred to in paragraph 1 shall take into account the actual financial risk of the relevant trader's activities. It shall benefit travellers regardless of their place of residence, the place of departure or where the package or ~~assisted linked~~ travel arrangement is sold.

Article 16

Mutual recognition of insolvency protection and administrative cooperation

1. Member States shall recognise as meeting the requirements of their national rules transposing Article 15 any insolvency protection obtained by an organiser or a retailer facilitating the procurement of ~~assisted linked~~ travel arrangements under the rules of its Member State of establishment transposing Article 15.

1a. Member States shall allow organisers of packages, retailers facilitating the procurement of linked travel arrangements and passenger carriers established outside of their territory or outside the Union to obtain insolvency protection under their national insolvency protection schemes. [Am. 118]

2. Member States shall designate central contact points to facilitate the administrative cooperation and supervision of organisers and retailers facilitating the procurement of ~~assisted linked~~ travel arrangements operating in different Member States. They shall notify the contact details of those contact points to all other Member States and the Commission.

3. The central contact points shall make available to each other all necessary information on their national insolvency protection schemes and the identity of the body or bodies providing insolvency protection for a particular trader established in their territory. They shall grant each other access to any inventory listing organisers and retailers facilitating the procurement of ~~assisted linked~~ travel arrangements which are in compliance with their insolvency protection obligations.

4. If a Member State has doubts about the insolvency protection of an organiser or of a retailer facilitating the procurement of ~~assisted linked~~ travel arrangements which is established in a different Member State ~~and is operating on its territory~~, it shall seek clarification from the Member State of establishment. Member States shall respond to requests from other Member States at the latest within 15 working days of receiving them. [Am. 119]

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Chapter VI

~~Assisted~~ **Linked** travel arrangements

Article 17

Information requirements for ~~assisted~~ **linked** travel arrangements

Member States shall ensure that, before the traveller is bound by any contract or any corresponding offer for ~~assisted~~ **linked** travel arrangements, the trader facilitating the procurement of ~~assisted~~ **linked** travel arrangements shall state in a clear and prominent manner that:

- (a) each service provider will be solely responsible for the proper contractual performance of its service;
 - (b) the traveller will not benefit from any of the rights granted by this Directive exclusively to package travellers, but will benefit from the right to a refund of pre-payments and, insofar as carriage of passengers is included, to repatriation in case the retailer or any of the service providers becomes insolvent; and
- (ba) the traveller will, however, benefit from the rights granted by Directive 2011/83/EU except where that Directive provides otherwise. [Am. 120]**

Where the trader facilitating the procurement of linked travel arrangements has not complied with the requirements set out in point (b) of paragraph 1, the traveller shall enjoy all the guarantees and the rights granted by this Directive in respect of package. [Am. 121]

Article 17a

Informing the retailer of additional travel services booked in the framework of linked travel arrangements through linked online booking processes

Traders providing additional travel services in the framework of linked travel arrangements, shall ensure that the retailer concerned is properly informed of the confirmed booking of additional travel services, which shall, when taken together with the first travel service booked, constitute a linked travel arrangement, thereby triggering the liability and obligations of the retailer incumbent on it under this Directive. [Am. 122]

Article 17b

Traders facilitating the procurement of linked travel arrangements online

Traders facilitating the procurement of linked travel arrangements online shall not hide or provide in an unclear, unintelligible or ambiguous manner the option of not booking any further services or ancillary services. Such option shall always be pre-selected by default. [Am. 123]

Chapter VII

General provisions

Article 18

Specific obligations of the retailer where the organiser is established outside the EEA

Where the organiser is established outside the EEA, the retailer established in a Member State shall be subject to the obligations laid down for organisers in Chapters IV and V, unless the retailer provides evidence that the organiser complies with Chapters IV and V. **Where an organiser, which is established outside the EEA, acts as retailer, existing liability for compensation in respect of the breach of other aspects of the contractual duty of care shall apply. Those provisions shall be without prejudice to other national retailer liability rules. [Am. 124]**

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Article 18a

Obligations of organisers or retailers established outside the EEA

Member States shall ensure that an organiser of packages or a retailer facilitating the procurement of linked travel arrangements established outside the EEA and directly selling in a Member State territory shall be subject to the obligations laid down in this Directive. [Am. 125]

Article 18b

Formal requirements for contracts

- 1. Member States shall ensure that all contracts covered by this Directive are in plain and intelligible language and, insofar as they are in writing, legible. The language of the contract shall be the same as that of the pre-contractual information.*
- 2. The contract shall be provided on a durable medium. With respect to off-premises contracts, the contract shall be provided also on paper.*
- 3. If the contract is concluded by telephone, the trader shall confirm the offer to the traveller through a durable medium and the traveller shall only be bound by it when he signs it or sends his written agreement through a durable medium. [Am. 126]*

Article 19

Liability for booking errors

Member States shall ensure that a retailer who has agreed to arrange the booking of a package or ~~assisted~~ linked travel arrangements or who facilitates the booking of such services, shall be liable for ~~any failure to provide with the information provided by the organiser pursuant to Article 4(1), for providing incomplete information or for making~~ errors occurring in the booking process, ~~unless in case they are actually occurred in the booking process~~. A retailer shall not be held liable where such errors are attributable to the traveller or to unavoidable and extraordinary circumstances. In the context of linked travel arrangement based on the procurement of additional travel services from another trader in a targeted manner through linked online booking processes as referred to in point (b) of point 5 of Article 3, the retailer shall not be liable for booking errors resulting from errors committed by that trader. In that case, Member States shall ensure that the trader providing the additional travel services shall be liable for the errors occurring in the booking process of such services. [Am. 127]

Article 20

Right of redress

- 1. In cases where an organiser or, in accordance with Article 15 or 18, a retailer pays compensation, grants price reduction or meets the other obligations incumbent on ~~it~~ ~~him or her~~ under this Directive, ~~no provision of this Directive or of national law may be interpreted as restricting its~~ Member States shall ensure that the organiser or retailer has the right to seek redress from any third parties which contributed to the event triggering compensation, price reduction or other obligations obligation.*
- 2. The right to seek redress referred to in paragraph 1 of this Article shall also include the right of organisers and retailers to seek redress from travel services providers where an organiser or retailer is obliged to pay a compensation to a traveller under this Directive and the traveller at the same time has a right to compensation under other applicable Union law, including but not restricted to Regulation (EC) No 261/2004 and Regulation (EC) No 1371/2007. That right to seek redress may not be restricted in a contract.*
- 3. Member States shall ensure that any restrictions on the right to seek redress referred to in paragraph 1 are reasonable and proportionate, in accordance with the applicable national law. [Am. 128]*

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Article 21

Imperative nature of the Directive

1. A declaration by an organiser that he or she is acting exclusively as a travel service provider, as an intermediary or in any other capacity, or that a package within the meaning of this Directive does not constitute a package, shall not absolve the organiser from the obligations imposed on organisers under this Directive.
2. Travellers may not waive the rights conferred on them by the national measures transposing this Directive.
3. Any contractual arrangement or any statement by the traveller which directly or indirectly waives or restricts the rights conferred on travellers pursuant to this Directive or aims to circumvent the application of this Directive shall not be binding on the traveller.

Article 22

Enforcement

Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

Member States shall furthermore ensure that adequate mechanisms are in place to ensure that no misleading practices from traders or organisers are in place, in particular creating an expectation on the part of consumer of rights and guarantees that are not provided for in the relevant contract. [Am. 129]

Article 23

Penalties

Member States shall lay down the rules on penalties which enforcement bodies may impose on traders for infringing the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 24

Reporting by the Commission and review

By ... (*), the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. That report shall be accompanied, where necessary, by legislative proposals to adapt this Directive to developments in the field of traveller rights.

Article 25

Amendment of Regulation (EC) No 2006/2004 and Directive 2011/83/EU

1. Point 5 of the Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council ⁽¹⁾ is replaced by the following:

‘5. Directive .../.../EU of the European Parliament and of the Council (*).

(*) Directive .../.../EU of the European Parliament and of the Council of ... on package travel, **package holidays, package tours** and ~~assisted~~ **linked** travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L ...) (+).’.

2. Point (g) of Article 3(3) of Directive 2011/83/EU is replaced by the following:

(*) Five years after the entry into force of this Directive.

(¹) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

(+) Number, date of adoption and publication reference of this Directive.

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(g) on packages as defined in point 2 of Article 3 of Directive .../.../EU of the European Parliament and of the Council (*), with the exception of Article 8(2), Article 19, Article 21 and Article 22.

(*) Directive .../.../EU of the European Parliament and of the Council of on package travel, **package holidays, package tours** and ~~assisted linked~~ travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L ...) (++)).'.

Chapter VIII Final provisions

Article 26 Repeal

Directive 90/314/EEC is repealed with effect from ... (**). [**Am. 130**]

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex to this Directive.

Article 27 Transposition

1. Member States shall adopt and publish, by ... (**), the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those ~~provisions~~ **measures**. [**Am. 131 and Am. not concerning all languages**]

2. They shall apply those ~~provisions~~ **measures** from ... (**). [**Am. 133**]

3. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 28 Entry into force

This Directive shall enter into force on the [twentieth day following that of its publication in the *Official Journal of the European Union*].

(++) Number, date of adoption and publication reference of this Directive.

(**) 24 months after the entry into force of this Directive].

(***) 24 months after the entry into force of this Directive].

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Article 29

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

For the Council

The President

Wednesday 12 March 2014

ANNEX

Correlation table

Directive 90/314/EEC	This Directive
Article 1	Article 1
Article 2(1)	Point 2 of Article 3 and point (a) of Article 2(2)
Article 2(2)	Point 8 of Article 3
Article 2(3)	Point 9 of Article 3
Article 2(4)	Point 6 of Article 3
Article 2(5)	Point 3 of Article 3
Article 3(1)	—
Article 3(2)	Articles 4 and 5
Article 4(1)	Article 4(1), Article 6(2) and 6(4)
Point (b)(iv) of Article 4(1)	—
Point (a) of Article 4(2)	Article 6(2)
Point (b) of Article 4(2)	Article 5(3) and Article 6(1) and (3)
Point (c) of Article 4(2)	—
Article 4(3)	Article 7
Article 4(4)	Article 8
Article 4(5)	Article 9(2)
Article 4(6)	Article 9(3) and (4) and Article 10(3) and (4)
Article 4(7)	Article 11(3), (4) and (7)
Article 5(1)	Article 11(1)
Article 5(2)	Article 12(2), (3) and (4) and Article 14
Article 5(3)	Article 21(3)
Article 5(4)	Point (c) of Article 6(2) and point (b) of Article 12(3)

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Directive 90/314/EEC	This Directive
Article 6	Article 11(2)
Article 7	Article 15 and Article 16
Article 8	—
Article 9(1)	Article 27(1), (2) and (3)
Article 9(2)	Article 27(4)
Article 10	Article 29