A Revised Package Travel Directive

Imbalance between consumer protection and hotel viability

Position paper | May 2024

Executive summary

HOTREC supports the European Commission's efforts to simplify the Package Travel Directive (PTD). However, the current proposal lacks fairness between consumer protection and hotel viability.

We must ensure economic sustainability for hotels while safeguarding consumer rights. Otherwise, this could undermine competitiveness and disproportionately impact small businesses.

We urge EU co-legislators to address liability and enforcement concerns as well as minimise the administrative burden on SMEs, especially insolvency protection requirements.

This paper highlights HOTREC's main concerns on the revised PTD proposal, as follows:

- The proposed 3-hour package rule fails to bring clarity.
- Downpayment regulations should remain under B2B contracts to avoid cash flow constraints.
- Requiring hoteliers to refund cancelled services within 7 days is impractical. We advocate to reconsider this B2B obligation.
- Vouchers can be a viable alternative to refunds, yet it is unreasonable to demand automatic reimbursement after the validity period expires.

Following the bankruptcy of the travel group Thomas Cook in 2019, tens of thousands of hotels bookings were cancelled across Europe[1]. The COVID-19 pandemic led to 90% drop in revenues for hospitality businesses[2]. These events led to reconsider the relationship between segments of the tourism value chain. To that extent, we welcome the European Commission's (EC) decision to revise the Package Travel Directive (PTD).

We believe, however, that the EC's proposal published in November 2023 falls short of its objectives to simplify and clarify the PTD. It fails to strike a balance between consumer protection and and the viability of operators across the travel industry supply chain. Holiday packages represent a significant share of European hoteliers' revenues. A study conducted by the Greek Research Institute for Tourism in September 2023 shows that in Greece, more than 50% of hotels cooperate with Tour Operators (TO) in the context of the PTD[3], rising to 66% for seasonal hotels.

We believe the PTD's proposal for revision could jeopardise the competitiveness of European package holiday services and negatively impact the entire value chain affecting small hospitality businesses the most. A revised PTD would lead to rising prices for packages and increased costs for travellers.

A European Parliament study[4] emphasises that the PTD has already had an impact on prices through additional costs borne by package organisers (passed on to consumers through increased prices). Package organisers and service providers will need to decide whether to absorb the costs increase, affecting their already narrow profit margins, or to pass it on to consumers, potentially making them less competitive.

As a result, consumers could further refrain from booking package holidays and favour self-made holiday packages at their own risk. The ever-decreasing share of package travel compared to other travel products validates this analysis[5].

This paper highlights HOTREC's primary concerns in relation to the PTD proposal.

Most hotels in our membership act as service providers part of a package travel, yet others act as package organisers.

1. Greek hotels reported €1 billion loss (2019/2020 HOTREC annual report).
2. The Italian tourism sector experienced a loss of €60 billion worth of revenues (2019/2020 HOTREC annual report).
3. Greek Research Institute for Tourism, survey, September 2023.
4. EP IMCO Study, September 2023.
5. German touristic associations position on PTD, February 2024.

COMBINATION OF ACCOMODATION & TRAVEL SERVICES

Individual travel services like hotel stays should continue to be excluded from the PTD scope. The risks associated with package travel, which require consumer protection measures like insolvency insurance, do not apply to individual travel services like a hotel night.

Extend list of services intrinsically part of a hotel in recital (17)[6]

HOTREC believes that extending the list of travel services intrinsically sold with a hotel room should not constitute a package. A list of such travel services could be defined in an annex to the Directive.

HOTREC suggests adding sports and cultural activities, e.g. ski pass, opera tickets, golf courses, spa treatments, bike rental and similar activities. This would build on an existing Italian law that provides an extended list of tourist services that are considered intrinsically part of accommodation, including: entertainment, sports activities, bicycles, skiing equipment and other facilities, access to the beach, and any other typical service according to local habits. HOTREC considers this would contribute to harmonise practices in the EU.

Raise the 25% threshold to at least 30%

HOTREC supports the inclusion of the threshold value of 25% for travel services sold in combination with accommodation from recital (18) into article 3(1)(d). We believe this change would bring legal certainty as differences in interpretation from various national transpositions have arisen since 2018, leading to inconsistencies and legal uncertainties, especially when a package involves multiple countries[7].

HOTREC has, however, long been calling to raise the threshold allowing to sell travel services with a room **without** constituting a package under the PTD.

We call for raising the 25% to **at least** 30% as we believe the current threshold is too low for services sold in the hotel industry. For instance, a simple wine tasting (50€) sold together with a hotel room (150€) easily exceeds 25% of the total value and then falls under the scope of the PTD even if not representing an essential feature of the combination. In addition, the exact same travel service (in our example, a wine tasting), sold in combination with 2 hotel nights will not constitute a package under the PTD.

DEFINITIONS: Article 3

Clarify the definition of a package travel

HOTREC strongly opposes the extension of the definition of a package travel as outlined in Article 3(2)(b)(i). We believe it lacks clarity and could lead to legal uncertainty. It complexifies the relationship between consumers and our business operators making it unworkable for the latter.

Extending the definition of a package to travel services booked **within 3 hours** from the first travel service does not help to simplify situations for consumers, service providers or package organisers. Rather, it prompts several problems and leaves numerous questions unanswered:

- **Time limit**: The formulation "within 3 hours after the traveller agreed to pay for the first travel service" fails to provide clarity on when the 3-hour period begins or ends. In addition, we wonder whether the choice of a 3-hour period is arbitrary or based on justified evidence.
- **Contract**: This 3-hour period will affect the terms of the contract on the first travel service agreed upon by a traveller and a service provider. It will require replacing the terms of this first contract with a second contract on combined package travel services between a traveller and a package organiser. Changing a contract is neither automatic nor easy. Finding out retroactively what a customer has booked when and whether it was for him/her or someone else will not be possible. This provision will result in legal inconsistencies and administrative burdens, potentially resulting in unsuccessful liability claims.
- **Liability**: In practice, this 3-hour period poses a problem of **liability obligation**. For example, services in a travel booking chain (e.g. a connecting flight that does not work and is booked to a hotel) that the consumer has selected himself can become a liability case for the travel provider without his option to object. This 3-hour period is also likely to create increased technical inspection efforts and added administrative burden.

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6. In Directive (EU) 2021/2302.

7. EP IMCO Study, September 2023.

- **Pre-contractual information**: With the new 'package' definition including consecutive sales of two travel services within 3h and 24h, it will not be possible to provide accurate precontractual information on the first travel service as neither the service provider nor the traveller will know what kind of service is purchased (package or standalone service) until eventually a second sale is concluded or the time limit has passed.

PAYMENTS: Article 5 a
Do not limit downpayments to 25%

HOTREC opposes the limitation of downpayments to 25% of the total price of the package. Although derogations are foreseen when organisers or retailers require a higher share of prepayments "to ensure the organisation and proper performance of the package", it remains unclear how organisers or retailers will need to justify themselves.

HOTREC also questions the 28-day provision preventing organisers or retailers from requesting payment of the remaining amount earlier than 28 days before the start of the package. The choice of 28 days lacks justification and seems arbitrary. We call for both the amount of the deposit and the prepayment deadlines to be left to the free market.

The limitation of prepayments within the scope of the PTD is **widely contested by all segments of the tourism industry including HOTREC**. Pre-payments are essential for hoteliers whether they act as package organisers or service providers within a package travel. Hotels should handle their own deposit policy, agreed upon in B2C or B2B contracts. Payment practices are subject to local customs of each country and region.

In a situation (1) where a hotel is a package organiser, limiting the percentage of prepayments to 25% of the total price won't allow the hotel to secure appropriate travel services for its guests (see infographic below). In a situation (2) where a hotel is a service provider, the limitation of prepayments will be reflected by package organisers on service providers leading to reduce their cash flows during low seasons when required to service their bank repayments, operational expenses such as salaries, and invest in renovations or infrastructure upgrades.

Prepayments help secure fair prices and attractive products for consumers, including for low-income consumers often benefiting from early bird deals. Prepayments also incentivise hotels to provide lower prices, which are often sought for by low-income consumers that seek to benefit from early bird deals.

Limiting prepayments would create distortions in the internal market while it will primarily affect countries working with package organisers the most. For instance, in Greece, 53% of hotels' turnover are linked to package travels and hotels in Greek islands are more dependent on these packages.

Travel payments experts stress that creating a single regulatory regime in the EU, through a revised PTD, with restricted prepayments while other regulatory regimes including the UK do not limit prepayments in package travels, would create a commercial rift where some markets have a benefit over others.

CANCELLATION OF A PACKAGE: Article 12 Paragraph 2
Delete the extension of the right of withdrawal

HOTREC opposes the **extension of the right of withdrawal for travellers without a fee** due to unavoidable and extraordinary circumstances at the place of origin or departure.

Hotels as package organisers cannot be held responsible for all unexpected events and be the only ones to bear the risks. Terms of the contract must be respected and consumers should consider taking up an insurance policy should they wish to be protected for all types of travel-related risks.

VOUCHERS: Article 12a
Delete the refund of expired vouchers

HOTREC welcomes the **normalisation of vouchers as an alternative to refund** for cancelled travel packages. However, we are **concerned by (paragraph 7) the obligation to automatically reimburse the traveller of the amount of the voucher** if not redeemed within its validity period without the need of any prior request by the traveller.

In practice, refunding expired vouchers under no extraordinary circumstances would create significant financial and administrative burdens. Vouchers are recorded in hotels cash flow. Allowing the reimbursement of customers as they see fit would jeopardise the liquidity of small and medium-sized companies. No other industry is subject to automatic payout of vouchers when expired.

INSOLVENCY PROTECTION: Article 17
Reconsider insolvency protection obligations for SMEs

Article 17 generates high costs for small and medium-sized (SME) enterprises in hospitality. Since the 2019 bankruptcy of the travel group Thomas Cook followed by the COVID-19 pandemic, insolvency protection insurance or bank guarantees for hotels in a PTD context are difficult to find on the European market or unaffordable for SMEs.

It is to be feared that insolvency protection will become even more expensive with the current PTD revision for package organisers, especially as services are protected against insolvency that are not covered in any other sector.

B2B REFUND WITHIN 7 DAYS: Article 22
Reconsider the 7-day B2B refund obligations

HOTREC urges legislators to reconsider the introduction of a new obligation for hotels acting as service providers to **refund package travel organisers if a travel service is cancelled/not performed within 7 days**. The foreseen limitation of downpayments will make this 7 day-refund impossible.

This provision is likely to affect the freedom of B2B negotiations, distort the internal market and favour large companies financially capable to refund in the given time. Tour operators negotiate deposit and cancellation policies with hotels based on booking volume and rates, considering low and high seasons. These discussions are formalised in B2B contracts. In cases of unforeseeable and extraordinary events, service providers and organisers can contractually regulate repayment obligations.

This 7-day B2B refund obligations will, moreover, create unfair competition for SMEs operating in the EU versus international travel service providers not subject to this new PTD requirement.

TRANSPOSITION TIME
At least 24 months to transpose the directive into national law

The Directive foresees that Member States must transpose the Directive 18 months after it enters into force. We believe this is far too short to make the necessary adjustments to national law and prepare the industry for the changes to its legal requirements. To ensure that companies have sufficient time to adapt their business model to the new provisions, we urge legislators to consider a transposition time of 24 months after entry into force of the directive.