



## **Joint Industry position on the revision of Council Directive 90/314/EEC on package travel, package holidays and package tours**

February 2015

According to European Commission figures, the travel and tourism sector represents over 10% of EU GDP and about 9.7 million direct jobs. EU legislation should seek to create the right regulatory environment to support the business conditions that underpin this substantial economic contribution to Europe. In addition if Europe is serious about unlocking the benefits of the Digital Single Market – a proclaimed and welcome priority of the new Commission - then it has a responsibility to ensure that future legislation encourages innovation to thrive and new product offerings to develop, in particular when such innovation can further enhance travel and tourism.

Today's consumers are increasingly independent travellers. They focus on price and flexibility and take full advantage of the freedom of choice that online and offline channels offer to travellers. It is the strong view of the signatories of this paper that these facts have been overlooked in the debate on the revised Package Travel Directive and that this freedom of choice could be lost, in particular by the introduction of conditions related to the 'Assisted Travel Arrangements'. Today the European institutions are discussing a text which introduces complexity for travel businesses to the point of threatening the viability of existing digital tools (the so called "click-through" operations) but offers very little in the way of genuine enhanced protection for consumers.

The signatories acknowledge that the process of adopting a revised text is already well advanced but we urge the Council, the Parliament and the Commission to consider the following suggestions for amendment, otherwise they risk missing an opportunity to create a balanced and workable legislation which supports growth in the travel sector by ensuring that consumers continue to have wide choice while being better protected and informed.

This paper takes into account the positions so far adopted by the institutions but gives suggestions for improving the final legal text in the best interests of consumers, business and the European economy. It is presented by the following organizations representing a cross-section of the European travel industry.

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## Definition of a travel service

Article 3.1 (b)The supply of private/residential accommodation for short or medium term rental is a growing section of the travel market. If residential accommodation is clearly for touristic purposes then it should be considered as in scope if combined with other travel services. We support the Parliament's amendment 38, which largely achieves this but needs further clarification.

Commission	European Parliament	Council	Workable compromise
(b) accommodation other than for residential purpose,	<b>AM 38</b> (b) accommodation for residential <i>purposes</i> , <i>provided that such accommodation clearly serves a touristic purpose</i> ,	(b) accommodation other than for residential purposes <u><b>and if it is not ancillary to carriage of passengers</b></u> ,	(b) accommodation, <i>including accommodation</i> for residential <i>purposes</i> , <i>provided that such accommodation clearly serves a touristic purpose</i> ,

### Article 3.1 (c)

We support the Commission and Council's restriction of this category of travel service to car rental. Widening the scope to include any means of transport as a separate travel service under art 3.1 (c) instead of including it under other travel services under (d) is a disproportional expansion of the scope. For example, the combination of a hotel room and rental bicycle could be considered a package under the European Parliament's amendment which is clearly not the intention of the original Directive.

Any significant "other tourist services" are already covered under art 3.1 (d), which would have then to be aligned by taking either the Commission's or Council's proposal.

We see no reason to include an explicit mention of other modes of transport in this article. It adds nothing to the overall protection offered in the Directive.

Commission	European Parliament	Council	Workable compromise
(c) car rental or	<b>AM 39</b> (c) rental <i>of cars, other vehicles or other means of transport</i> , or	(c) car rental or	(c) car rental or

## Recital 17

All-inclusive hotel nights which actually represent a stand-alone travel service e.g. hotel accommodation and breakfast, full or half board or all-inclusive (food, drink, services) should not be considered package unless combined with other travel services. Often these hotels provide standalone all-inclusive bookings only which should not be qualified as a combination of accommodation and other tourist services as they are actually one stand-alone product provided by one supplier. Consumers pay one hotel rate for the accommodation. Moreover, it will be impossible to determine the value of the individual components. Given that the purpose of the package travel directive is the protection of packages and not stand-alone products of service providers, “all-inclusive” hotels should be treated as such. The same reasoning will have to apply to cruises which should be considered as standalone products and will only become a package when combined in a package with transportation to and from the port of departure (which is usually the case).

Under the existing Package Travel Directive the combination of accommodation with “other tourist services” is indeed left out of the scope of application provided these other services do not represent a “significant portion of the package”. The Commission decided to clarify what is meant by “significant” in Recital 17 of the proposed Directive, by considering that “significant” stands for more than 20% of the total price. In light of the above, the percentage suggested is too low as it would lead to include many services that are currently not covered under the existing Directive, with the risk that many providers will stop offering such additional services as an optional supplement, because of the costly obligation to contract insolvency protection.

We therefore suggest to amend the threshold used in Recital 17, by raising the percentage indicated, and to keep amendments 11 (under Recital 16, see below) and 13 of the European Parliament.

Commission	European Parliament	Council	Workable compromise
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 car rental, should be considered as capable of constituting a package or an assisted travel arrangement. However, such packages should only	<b>AM 13</b> (17) Other tourist services, such as	17) Admission to concerts, sport events, <u>excursions</u> or event parks, <u>excursions,</u> <u>guided tours,</u> <u>ski passes and rental of sports equipment such as skiing equipment,</u> are services that, in combination with either carriage of passengers, accommodation and/or car rental,	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 car rental, should be considered as capable of constituting a package or an assisted travel arrangement. However, such packages should only

<p>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 accounts for more than 20% of the total price or otherwise represents an essential feature of the trip or holiday. Ancillary services, such as travel insurance, transport of luggage, meals and cleaning provided as part of accommodation, should not be considered as tourist services in their own right.</p>	<p>admission to concerts, sport events, excursions or event parks are services that, in combination with either carriage of passengers, accommodation and/or car rental, should be considered as capable of constituting a package or <i>a linked</i> 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 <i>specifically marketed to travellers as such, clearly represents the reason for the trip</i>, accounts for more than 25% of the total price or otherwise represents an essential feature of the trip or holiday. Ancillary services, such as, <i>in particular</i>, travel insurance, <i>transport between the station and the accommodation</i>,</p>	<p>should be considered as capable of constituting a package or an assisted travel arrangement. However, such packages <b><u>services</u></b> should be <b><u>relevant for the constitution of a package only</u></b> if they <u>relevant tourist service</u> accounts for a significant proportion of the package. Generally, the tourist service should be considered as a significant proportion of the package if it accounts for more than 20% of the total price or otherwise represents an essential feature of the trip or holiday. <b><u>It should be clarified that, where other travel services are added, for instance, to hotel accommodation, booked as a stand-alone service, after the traveller's arrival at the hotel, this should not constitute a package.</u></b></p>	<p>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 <i>specifically marketed to travellers as such, clearly represents the reason for the trip</i>, accounts for more than 25% of the total price or otherwise represents an essential feature of the trip or holiday. Ancillary services, such as <i>transport between the station and the accommodation, transport at the beginning of the trip and as part of excursions</i>, transport of luggage, meals and cleaning provided as part of accommodation, should not be considered as tourist services in their own right.</p> <p><b><u>In addition all-inclusive hotel nights where the accommodation also offers other services which constitute the all-inclusive deal (i.e. no separate choice or</u></b></p>
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	<p><i>transport at the beginning of the trip and as part of excursions, transport of luggage, meals and cleaning</i></p>	<p><u>Ancillary Contracts on financial services, such as travel insurance, or contracts on travel services, for instance transport to or from the airport, arranged by a service provider or an intermediary independently of the organiser, should be outside the scope of this Directive.</u></p> <p><u>transport of luggage, meals and cleaning provided as part of accommodation, should not be considered as tourist services in their own right.</u></p>	<p><u>payment by the consumer) should be considered a stand-alone travel service that is capable of constituting a package only in combination with other travel services but is not in itself a package in the meaning of Article 3 of this Directive.</u></p>
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## Recital 16

Commission	European Parliament	Council	Workable compromise
<p>16) Only the combination of different travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as car rental, should be considered for the purposes of identifying a package or an assisted travel arrangement.</p> <p>Accommodation for residential purposes, including for long-term language courses, should not be considered as accommodation within the meaning of this Directive.</p>	<p><b>AM 11</b></p> <p>16) The combination of different travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as car rental, should be considered for the purposes of identifying a package or <i>a linked travel arrangement</i>.  <i>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.</i>  Accommodation for residential purposes 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.</p>	<p>16) Only the combination of different travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as car rental, should be considered for the purposes of identifying a package or an assisted travel arrangement.</p> <p><u>Services which are merely ancillary to other travel services, in the sense that they are intrinsically part of another service, should not be considered as travel services in their own right. This means that, for instance, transport of luggage provided as part of carriage of language courses, should not be considered as accommodation</u></p>	<p>16) The combination of different travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as car rental, should be considered for the purposes of identifying a package or a linked travel arrangement.  <b>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.</b>  Accommodation for residential purposes 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.</p>

		<p><u>within the meaning of this Directive.</u></p> <p><u>passengers, or meals and cleaning provided as part of accommodation,</u>  <u>should not be considered as tourist services in their own right.</u> This also means that in cases where, unlike in the case of a cruise, overnight accommodation is provided as part of passenger transport by road, rail, water or air, accommodation should not be considered as a travel service in itself.</p>	
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#### Article 2.2 (d)

In addition to the above on the combinations with non-significant services, we support European Parliament's amendment 36, but we also recommend to use the words "travel service" in plural in order to maintain the possibility to combine more than one "other tourist service" when these services are not significant enough to constitute a package.

Commission	European Parliament	Council	Workable compromise
d) packages where not more than one travel service as referred to in points (a), (b), and (c) of Article 3(1) is combined with a travel service as referred to in point (d) of Article 3(1) if this service does not account for a significant proportion of the package; or	<b>AM 36</b> <p>(d) packages where not more than one travel service as referred to in points (a), (b), and (c) of Article 3(1) is combined with a travel service as referred to in point (d) of Article 3(1) if <i>the latter</i> service does not account for a significant proportion of the package; or</p>	<p><del>(d) packages where not more than one travel service as referred to in points (a), (b), and (c) of Article 3(1) is combined with a travel service as referred to in point (d) of Article 3(1) if this service does not account for a significant proportion of the package; or</del></p>	d) packages where not more than one travel service as referred to in points (a), (b), and (c) of Article 3(1) is combined with a travel services as referred to in point (d) of Article 3(1) if the latter service does not account for a significant proportion of the package <b>or</b> clearly does not represent the reason for the trip or the

	proportion of the package <i>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</i> ; or		<b>ancillary service is clearly not marketed as the main element of the trip; or</b>
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### Article 3.12a (new)

To better differentiate what constitutes a stand-alone product from what actually is part of an optional supplement, we support amendment 53 of the European Parliament.

Commission	European Parliament	Council	Workable compromise
	<b>AM 53</b> <p>(12a) '<i>ancillary services</i>' 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.</p>		<p>(12a) '<i>ancillary services</i>' 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.</p>

## Definition of a package

### Article 3.2 (b) (i)

It is critical that the scope is limited to purchases within the same booking process otherwise separately concluded transactions, which are clearly not packages and which may now also fall into scope of the ATA definition, could be brought into scope. We are happy to support the Parliament's amendment in respect of this article as it retains this limitation.

Commission	European Parliament	Council	Workable compromise
(i) purchased from a single point of sale within the same booking process,	<b>AM 41</b>  (i) purchased from a single point of sale within the same booking process, <i>and all of those services have been selected by the traveller before the traveller has agreed to pay, or</i>	(i) purchased from a single point of sale <b><u>and at least two different travel services have been selected before the traveller agrees to pay,</u></b> within the same booking process	(i) purchased from a single point of sale within the same booking process, <b><u>and all of those services have been selected by the traveller before the traveller has agreed to pay, or</u></b>

### Article 3.2.(b) (v)

Since means of payment are a necessary part of any booking transaction we propose to amend Article 3.2 (b) to make it clear that a transfer of credit card details is necessary for the transaction to fall into the scope of a package. We would also increase the scope beyond 24 hours as we cannot see a reasonable rationale to limit it to this period. If credit card details are transferred between traders then it should be considered in scope. This would clearly bring into scope the arrangements where two traders are working together across the booking process and where the first trader shares the booking data (at minimum name, contact details and payment details) with another trader.

Commission	European Parliament	Council	Workable compromise
(v) purchased from separate traders through linked online booking processes where the traveller's name or particulars needed to conclude a booking transaction are	<b>AM 44</b>  (v) purchased from separate traders through linked online booking processes where the traveller's name <b><u>and other</u></b>	(v) purchased from separate traders through linked online booking processes where the traveller's name or particulars needed to conclude a booking transaction are	(v) purchased from separate traders through linked online booking processes where the traveller's name, contact details <b><u>and means of payment, such as or</u></b>

transferred between the traders at the latest when the booking of the first service is confirmed;	<i>personal data, such as contact details, credit card details or passport details,</i> needed to conclude a booking transaction are transferred between the traders at the latest <b>24 hours after</b> the booking of the first service is confirmed;	transferred between the traders at the latest when the booking of the first service is confirmed.	particulars needed <i>credit card details</i> , needed to conclude a booking transaction are transferred between the traders.
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## Assisted Travel Arrangements

### Article 3.5 (b)

The extension of the scope of the Directive to include the category of assisted travel arrangements (ATAs) creates serious legal uncertainty and, as widely defined in the current Council general approach, would lead to a significant decrease of consumer choice and protection. Indeed it could lead to the withdrawal of these arrangements by businesses such as airlines.

ATAs can only exist and be protected if the separate traders involved have knowledge of a customer's transactions on separate web sites. This is not currently the case in the definitions of the Commission and the Council. Simply facilitating that a customer clicks from one web site to the other is not enough to know whether that customer has actually purchased anything on that other web site and therefore whether the transaction eventually constitutes an ATA. Indeed, a customer can click through but then not conclude a transaction and the first trader will never know whether this is the case or not. Secondly, the consumer who decides not to conclude a transaction with the second trader after clicking through would have been misinformed by the first trader in the transaction, of the existence of the ATA. Thirdly, the first trader will not secure insolvency protection until the ATA is actually constituted.

The European Parliament attempted to address this issue during its first reading by adopting Amendment 47 of its report. It requires an assisted travel arrangement to include the transfer of customer data between the two traders in order to be within scope of this category. We support this with a further amendment to make it clear that this has to be obtained with the customer's consent, to make this consistent with data protection requirements.

Commission	European Parliament	Council	Workable compromise
(b) through the procurement of additional travel services from another trader in a targeted manner through linked online booking processes at the latest when the booking of the first service is confirmed;	<b>AM 47</b>  (b) through the procurement of additional travel services from another trader in a targeted manner through linked online booking processes <i>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 24 hours</i>	(b) <u>in a targeted manner, through</u> the procurement of additional travel services from another traders <u>where contracts with such other traders are concluded not more than 48 hours after the confirmation of the first travel service</u> <del>in a targeted manner through linked online booking processes at the latest when the booking of the first</del>	<b>AM 47</b>  (b) through the procurement of additional travel services from another trader in a targeted manner through linked online booking processes <i>where at least the traveller's name or contact details are transferred to the other trader with the traveller's consent and such additional services are</i>

	<p><i>after</i> the booking of the first service is confirmed;</p>	<p>service is confirmed;</p>	<p><i>procured</i> at the latest <b>24 hours after</b> the booking of the first service is confirmed;</p>
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## Insolvency protection

### Articles 15 and 17

We support the Council's proposal to separate insolvency protection for packages and ATAs into Articles 15 and 17. The last paragraph as proposed by the Council however is confusing. When including non EU-organisers that offer packages in a Member State through a retailer, this should not conflict with the obligations already laid down in article 18. Moreover it should be clarified that organisers not established in a Member State will have access to the Member State's national insolvency protection scheme or to an EEA-wide cover in pan-European insurance in order to comply with the obligations under articles 15 and 17. Otherwise it would constitute a barrier to trade in the EU internal market and under WTO obligations.

Commission	European Parliament	Council	Workable compromise
1. Member States shall ensure that organisers and retailers facilitating the procurement of assisted travel arrangements established in their territory obtain a security for the effective and prompt 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.	<b>AM 117</b> <p>1. Member States shall ensure that organisers <i>of packages</i> and retailers <i>of linked travel arrangements</i> facilitating the procurement of <i>linked</i> travel arrangements established in their territory obtain a security for the effective and <i>immediate</i> 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.</p> <p><i>Where that is possible, continuation of the trip shall be offered.</i></p>	<p>1. Member States shall ensure that organisers <u>of packages and retailers facilitating the procurement of assisted travel arrangements established in their territory obtain provide</u> security for the effective and <u>prompt</u> refund of all payments made by travellers <u>insofar as the relevant services are not performed as a consequence of their insolvency.</u> and, if as <u>If</u> the carriage of passengers is included, organisers <u>shall provide</u> <u>security also for</u> the travellers' effective and prompt repatriation. <u>in the event of insolvency.</u></p> <p><u>Organisers not established in a</u></p>	<p>1. Member States shall ensure that organisers <u>of packages and retailers facilitating the procurement of assisted travel arrangements established in their territory obtain provide</u> security for the effective and <u>prompt</u> refund of all payments made by travellers <u>insofar as the relevant services are not performed as a consequence of their insolvency.</u> and, if as <u>If</u> the carriage of passengers is included, organisers <u>shall provide</u> <u>security also for</u> the travellers' effective and prompt repatriation. <u>in the event of insolvency.</u></p> <p><u>Organisers not established in a</u></p>

		<p><u>Member State which sell or offer for sale packages in a Member State or which by any means direct such activities to a Member State shall be obliged to provide the security according to the law of that Member State.</u></p>	<p><u>Member State which sell packages in a Member State or which by any means direct such activities to a Member State shall be obliged to provide the security according to the law of that Member State.</u></p> <p><u>Member states shall allow organisers of packages established outside of their territory or outside the EEA to obtain insolvency protection under their national insolvency protection schemes or alternatively allow for pan EEA insolvency protection in order to comply with their obligations under this Directive.</u></p>
		<p><u>0. Member States shall ensure that traders facilitating the procurement of assisted travel arrangements within the meaning of Article 3 (5) shall provide security for the refund of all payments they receive from travellers insofar as a travel service which is part of an assisted travel arrangement is not performed as a consequence of their insolvency. If such traders are the party</u></p>	<p><u>0. Member States shall ensure that traders facilitating the procurement of assisted travel arrangements within the meaning of Article 3 (5) shall provide security for the refund of all payments they receive from travellers insofar as a travel service which is part of an assisted travel arrangement is not performed as a consequence of their insolvency. If such traders are the party</u></p>

	<p><u>responsible for the carriage of passengers, the security shall also cover the traveller's repatriation. Article 15 (1) second subparagraph, paragraphs (2) to (2c) and Article 16 shall apply accordingly.</u></p>	<p><u>responsible for the carriage of passengers, the security shall also cover the traveller's repatriation. Article 15 (1) second subparagraph, paragraphs (2) to (2c) and Article 16 shall apply accordingly.</u></p> <p><u>Member states shall allow traders facilitating the procurement of assisted travel arrangements within the meaning of Article 3 (5), established outside of their territory or outside the EEA to obtain insolvency protection under their national insolvency protection schemes or alternatively allow for pan EEA insolvency protection in order to comply with their obligations under this Directive</u></p>
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## Performance of the package

### Article 11

Article 11 (5) should be in line with respective passenger rights regulations applicable to the different modes of transport.

Also revisions of those regulations should be taken into account.

Commission	European Parliament	Council	Workable compromise
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 nights per traveller.	<p><b>AM 107</b></p> <p>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 <i>five</i> nights per traveller. <i>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.</i></p>	<p>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 nights per traveller.</p>	<p>5. As long as it is impossible to ensure the traveller's timely return because of unavoidable and extraordinary circumstances, the <i>liability of the organiser shall be limited.</i> <del>not bear the cost for the continued stay exceeding EUR 100 per night and three nights per traveller.</del> <i>The maximum number of nights for which the organiser shall bear the cost, and the maximum amount per night, shall be those prescribed by the respective passenger rights regulations applicable to the mode of transport included in the package.</i></p>

