

Proposal to amend the EU Package Travel Directive

The Bundesverband Deutscher Omnibusunternehmen (bdo) e.V. is the umbrella organisation of the German bus industry and represents the interests of around 3,000 private and medium-sized companies from the fields of local passenger transport, bus tourism and long-distance bus transport vis-à-vis politicians and the public.

The bdo comments as follows on the *Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive (COM(2023) 905 final)*:

I. Initial situation

The private bus and coach industry, and coach tourism in particular, were hit hard by the COVID-19 pandemic and the associated travel restrictions. Coach tourism slumped by 70 per cent. The main problem here was the countless cancellations by customers who booked trips during and in the knowledge of the pandemic situation and then withdrew from the trip with reference to paragraph 651h (3) BGB. Although customers knew or should have known about the pandemic situation and possible restrictions at the time of booking, tour operators were obliged to refund the full travel price in accordance with paragraph 651h (3) BGB. To make matters worse, coach tour operators often still had to pay their service providers, e.g. if coach travel or Christmas markets were banned in a federal state by a coronavirus ordinance, but overnight stays in hotels were not. This resulted in numerous court cases, but the courts usually ruled in favour of the consumer. This is despite the fact that such an extraordinary life risk cannot be borne by coach tour operators alone and certainly cannot be knowingly exploited by travellers. The current draft amendment to the Package Travel Directive does not create fair conditions, but instead aims to further increase the liability risk for tour operators. Avoiding a one-sided burden on tour operators in times of crisis, such as the mass cancellations during the COVID-19 pandemic, must be taken into account in the directive.

Furthermore, the current draft relates solely to the traveller's perspective and does not provide for any improvements for tour operators, e.g. by reducing unnecessary bureaucracy.

II. Statement

Art. 12 Unavoidable, extraordinary circumstances: create fair cancellation rules

Art. 12 para. 2 should be amended to the effect that travellers would be able to cancel their trip free of charge not only in the event of unavoidable, exceptional circumstances at the destination or in its immediate vicinity, but now also at the traveller's place of residence or departure. An extension of the free cancellation options must be strictly rejected. The countless cancellations due to unavoidable, exceptional circumstances have led to an existential burden for tour operators during the COVID-19 pandemic. The reason is that, despite the long-standing global pandemic, travellers invoked unavoidable, extraordinary circumstances, even though the general population was aware of the risks and incalculable circumstances of the pandemic and the resulting possible travel restrictions or legal restrictions in the range of services. The proposed directive aims to extend these cancellation rights even further without protecting tour operators from abusive cancellation behaviour. Such extraordinary

and unforeseeable risks cannot be borne by tour operators alone, especially in the case of well-known and long-standing situations and official orders.

The financial risk and general life risk must be shared fairly between travellers and tour operators in exceptional situations. This is particularly the case if the travellers were aware or should have been aware of the exceptional situation at the time of booking.

Art. 5a Payments: No limit on advance payments or specification of payment deadlines

a) No limit on advance payments

The proposed directive stipulates that advance payments for package holidays should be limited to a maximum of 25 per cent of the total price. Such market intervention would lead to a considerable additional financial burden for tour operators. At the same time, tour operators already have to pay their service partners such as hotels, airlines and restaurants. Their payment deadlines are not regulated uniformly within the EU. Many service partners are imposing increasingly strict payment terms on coach tour operators with earlier and higher payments. Added to this are fixed costs such as offices, personnel and IT. The receipt and procurement of additional liquid funds results in higher liquidity costs, which would inevitably have to be borne by travellers through higher costs for package tours. The draft directive does stipulate that higher advance payments are permissible if "the organisation or performance of the package tour" requires this. However, the criteria are not clearly defined as to when exactly higher advance payments can be demanded and whether, for example, the entire advance payments for service providers can be added to the advance payment. As is usual in other consumer transactions, full payment must also be possible for package holidays at the time of purchase. After all, when buying a television or a car, it is also common for the entire purchase price to be due directly, even though both services are more expensive than standard package holidays, are also not always consumed directly and customers' payments are not additionally secured (especially when booking package holidays, customers have the advantage that their (full) down payments are additionally secured against insolvency). Competition on the free market will nevertheless ensure offers with advance payment models.

b) No specification of payment deadlines

The draft stipulates that tour operators cannot demand final payment earlier than 28 days before the start of the trip, unless the trip was booked less than 28 days before the start of the trip. Such a restriction would lead to the same additional liquidity costs and more expensive holidays as described under a). This is because tour operators make early advance payments to their service providers, especially for trips booked well in advance, for which considerable liquidity reserves would have to be held in the overall business. Like advance payments, payment terms must be left to the free market.

The limitation of the down payment and the specification of a payment deadline should be cancelled.

Art. 3 Definitions: Impracticable, bureaucratic definition of a package holiday

The proposed new version of Art. 3 No. 2 lit. b) No. i) extends the definition of a package holiday:

a) Booking period up to three hours: Bureaucratic allocation, time recording and identification

Additional travel services booked up to three hours after booking an individual travel service should be defined as a package holiday. In practice, this unclear definition would lead to serious additional work and enormous bureaucracy. Tour operators would have to carry out laborious and labour-intensive checks to determine whether both bookings involve the same customers

and the same trip. After all, the same person could book another trip for themselves or another person. The effort involved would be immense, especially in the case of favoured online bookings. It also remains unclear which point in time should be used as the basis for the three-hour deadline: For example, does the time of booking or the booking confirmation apply? All in all, tour operators would have an enormous amount of work to do to identify the person making the booking and the travellers, allocate the bookings to one or more trips and determine the relevant times. Added to this is the technical and financial effort involved in converting and linking the booking systems. The three-hour deadline option should be cancelled.

b) Additional travel services within 24 hours: bureaucratic allocation

For the booking of further travel services up to 24 hours after the booking of the first travel service, reference can be made to the explanations under a). The variant of the 24-hour deadline should be cancelled.

It is clear that individual services and linked travel services may not fall within the scope of the Package Travel Directive under any circumstances.

Art. 12a Vouchers: Voucher redemption in the event of liquidity risks

The newly proposed Art. 12a gives travellers the right to choose between a travel voucher or a refund. In practice, most travellers will opt for a refund. This leads to the problem that tour operators are confronted with a high economic and existential burden in the event of a high number of travel prices to be refunded, e.g. due to a pandemic or an environmental disaster. The COVID-19 pandemic has shown the serious impact on the travel industry. It must therefore be possible for tour operators to issue vouchers in order to secure their liquidity and existence in the event of an excessive economic burden through refunds. In this case, the vouchers would be refunded to customers within a reasonable period of time, e.g. up to 6 months, if the travellers request a refund. The proposal contained in the draft directive to increase the attractiveness of vouchers by charging higher amounts is hardly an option for medium-sized tour operators in particular, as they would have to pay dearly for their liquidity and economic existence.

Art. 22 Reimbursement rights of tour operators: advance payment by service providers to be welcomed

According to Art. 22 Para. 2, service providers should return the advance payments they have received to the tour operator within 7 days so that the tour operator can refund the customer's money within 14 days. The service providers' obligation to make advance payments is to be welcomed, as it ensures the tour operators' liquidity and does not cause any unnecessary financial burdens. It is questionable to what extent this payment deadline is adhered to in practice by service providers from third countries.

III. Amendments

1. Cancellations due to unavoidable, exceptional circumstances

Art. 12 para. 2 is to be amended as follows:

„Notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the travel destination or its immediate vicinity, ~~at the place of the traveller's residence or departure or affecting the journey to the destination~~, where such circumstances significantly affect the performance of the package. The traveller may terminate the contract where it can be reasonably expected that the performance of the package travel contract will be significantly affected by unavoidable and extraordinary circumstances. If the package travel contract is terminated in accordance with this paragraph, the traveller shall be entitled to a full refund of any payments made for the package but shall not be entitled to additional compensation. “

Art. 12 para. 3a is to be amended as follows:

„Official warnings against travel to a particular destination issued by the authorities of the Member State of departure or traveller's residence or the country of destination, or the fact that travellers will be subject to serious restrictions at the travel destination or in the Member State of residence or departure after returning from the trip or holiday, shall be important elements to be taken into account in the assessment of whether a termination of the contract based on paragraph 2 and paragraph 3, point (b), is justified.

The rights referred to in Article 12 (2) sentences 1 to 3 shall not apply if the circumstances were known or should have been known to the traveller at the time of booking. This applies in particular to official travel warnings in accordance with Article 12 (3a). “

2. Advance payments and payment terms

Art. 5a is to be deleted:

~~**„Member States shall ensure that, except for packages as defined in Article 3, point (2)(b)(iv), and packages booked less than 28 days before the start of the package, the organiser or, where applicable, the retailer shall not request downpayments exceeding 25% of the total price of the package and shall not request the remaining payment earlier than 28 days before the start of the package. The organiser, or where applicable, the retailer may request higher downpayments where this is necessary to ensure the organisation and the performance of the package. The downpayments may cover advance payments to providers of services included in the package and costs incurred by the organiser, or where applicable the retailer, specifically in relation to the organisation and performance of the package insofar as it is necessary to cover these costs at the time of booking.“**~~

3. Definitions

Art. 3 No. 2 lit. b) No. i) is to be amended as follows:

„ (i) those services are purchased from a single point of sale and
- have been selected before the traveller agrees to pay, ~~or~~
~~- other types of travel services are booked within 3 hours after the traveller agreed to pay for the first travel service, or~~
~~- other types of travel services are booked within 24 hours after the traveller agreed to pay for the first travel service and if, before the traveller agreed to pay for the first travel service, the trader invited the traveller to subsequently book one or more additional types of travel services, or~~“

4. Vouchers

Art. 12a is to be amended as follows:

1. Member States shall ensure that, where a contract is terminated pursuant to Articles 10, 11 or 12, the organiser **has the choice may to** give the traveller ~~the choice to accept~~ a voucher which can be used for a future package instead of a refund.

2. Before the traveller accepts the voucher, the organiser shall inform the traveller clearly and prominently in writing about:

~~(a) the fact that the traveller is entitled to a refund within 14 days and is not obliged to accept a voucher,~~

~~(b) the validity period of the voucher and the rights of travellers in relation to vouchers as laid down in this Article,~~

3. The value of the voucher offered shall correspond at least to the amount of the traveller's refund right. The organiser may offer a voucher on a higher amount.

~~4. Travellers shall lose their right to a refund during the validity period of the voucher only if they accept the voucher instead of a refund explicitly and in writing.~~ The parties may at any time agree on a full refund before a voucher is redeemed or expires.

5. Vouchers shall have a validity period of a maximum of 12 months from the day a traveller accepts a voucher in accordance with paragraph 4. That period may be extended once for up to 12 months with the explicit and written agreement of both parties.

7. If the voucher is not redeemed within its validity period, the organiser shall refund the amount specified in the voucher as soon as possible and at the latest within 14 days after the end of the validity period without the need of any prior request by the traveller.

8. Vouchers shall be transferable to another traveller without any additional cost.

9. Vouchers shall be covered by insolvency protection to be arranged by the organiser under Article 17 for the amount of the payments received from the traveller.

Alternatively, the following paragraph 10 should be inserted:

“If the tour operator's liquidity or economic existence is at risk, it shall be entitled to issue the traveller with a voucher instead of a refund. The voucher shall have the same validity as in paragraph 5 and shall be refunded in accordance with paragraph 7.”

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