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Remissyttrande över EU-kommissionens förslag till ändringsdirektiv om paketresor och sammanlänkade researrangemang

Expedia Group

Expedia Sweden AB

Expedia Sweden AB har av Justitiedepartementet fått EU-kommissionens förslag till ändringsdirektiv om paketresor och sammanlänkade researrangemang på remiss. För Expedia Group:s räkning får vi härmed avge följande yttrande.

Stockholm och London, 25 mars 2024

Vänliga hälsningar,

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Expedia Group uppskattar möjligheten att framföra sina synpunkter till Sveriges regering på EU-kommissionens förslag.

Expedia Group är en av världens största onlineresebyråer. Vi äger och driver över 200 resebokningssajter och är verksamma i 75 länder. Vår verksamhet innefattar bokningssajter, reseprisaggregatorer och metasökmotorer samt varumärken som Expedia, Hotels.com, MrJet, Vrbo och Trivago. Vi har över 500 flygbolag knutna till våra globala plattformar och bokar miljontals hotellrum, paket, semesterboenden och hyrbilar årligen.

Våra synpunkter återfinns nedan på engelska.



Expedia Group position on the review of the Package Travel Directive (PTD)

Introduction

Expedia Group welcomes the Commission's initiative to review Directive 2015/2302 on package travel and linked travel arrangements (PTD) almost four years on from the outset of the COVID-19 pandemic. This global crisis presented package travel organisers with an extraordinary decline in travel demand and an unprecedented number of change and cancellation requests from consumers in a short period of time¹. This experience exposed fundamental shortcomings in the existing regulatory framework which put consumers at a disadvantage and simultaneously placed a disproportionate burden on organisers of package travel.

While previous crises, such as volcanic ash or terrorist attacks, led to airlines cancelling flights known as "involuntary cancellations," the COVID-19 crisis involved "voluntary cancellations" by consumers. This was because many airlines resumed operations despite the movement restrictions imposed on European citizens. This situation highlighted the significant mismatch between the PTD and the Air Passenger Rights Regulation which only allows for passenger refunds in cases of an involuntary cancellation, leaving package organisers to bear the financial burden resulting from voluntary cancellations. This has proven to be unsustainable for package organisers and consumers alike.

With its revision of the PTD, the Commission has regrettably failed to address the challenges of a major crisis situation. It has failed to resolve the real source of risk in a package (the air component) and has placed all of the burden on the organiser – leading to an imbalance between extended consumer rights and sustainable business operations. Furthermore, the Commission has created market entry barriers for start-ups and smaller tour operators. Instead of delivering on its stated intention of clarifying aspects of the Directive, the Commission's amendments have resulted in additional complexity.

This paper sets out observations on the shortcomings of the proposed amendments and makes recommendations for an improved legal framework that protects consumers and ensures the continued availability of travel packages on the market.

Limiting prepayments poses significant risks to the sector and jeopardises the package product.

Through the introduction of Article 5(a) in the revised PTD, the European Commission has limited consumer prepayments to 25% of the total price of the package in order to protect consumer money and limit the risk of delayed refunds. However, introducing such restrictions on prepayments for organisers

¹ The European Commission, in its Recommendation on vouchers offered to passengers and travellers published on 13 May 2020 (EU) 2020/648, refers to an estimated reduction in travel bookings of 60% to 90% compared to 2019 and a Q1 loss of 30 billion euros and a Q2 loss of 46 billion euros.

would impose untenable liquidity pressure on package organisers and fails to address the real source of risk to consumers' funds. The entire tourism ecosystem depends heavily on the availability of working capital to meet costs in addition to the requirements to prepay suppliers to secure the bookings. As such, the limitation of prepayments in one part of the eco-system will have financial repercussions for many businesses and, in turn, have a negative impact on the pricing of packages. Prepayments are a fundamental necessity to give suppliers the required working capital to provide and deliver the necessary travel services. The Commission has proposed a degree of flexibility in the prepayment limitation by allowing for higher prepayments where a need to pre-pay suppliers exists. However, this will still result in financial pressure on organisers, and may also result in confusion for consumers who will, in most cases, pay a prepayment well in excess of 25%. For example, the flight component of the package will always be a significant proportion of the overall value of the package (i.e., the flight component could make up approximately 50% of the overall cost of a package on average). The Commission creates unclear messages for consumers through its stated intention to limit prepayments to 25%, which the Commission also foresees to be higher in most cases due to the flight component. This may lead to frustration for consumers while failing to address the real risk to the consumer's funds – the same flight component of the package!

KEY ASKS

Remove any limitation of prepayments to ensure the liquidity of actors within the travel

Due to expected price increases, a limitation on prepayments jeopardises the future of the package travel product. Expedia Group expects that the number of packages sold would significantly decline - given the price sensitivity of consumers - if packages were made more expensive as a result of increased capital/financing costs, additional transaction costs, and other cost increases for organisers in administering prepayments. Expedia Group foresees a prepayment limitation of 25% adding 3-4% to the current cost of a package. This excludes the additional transaction costs for the second payment transaction and fixed costs incurred by the travel organiser in administering packages paid by instalments. Additionally, the consumer chargeback mechanism will likely become more complex, with a high risk of double chargeback rates, as well as issues surrounding the collection for a second transaction (i.e., credit card has expired, technical challenges, issuing bank does not approve transaction). This may lead to loss of the package booking, resulting in increased workload for the ticket vendor and potential loss of revenue for service providers. Consumers would gain little from such a limitation of prepayments because it leaves the issue of refund delays unresolved, as the airline (service provider of the flight component) would still request and receive the total amount of their ticket cost in advance. Given the refund issue is generally linked to the flight component of a package and not to other components, such as lodging or car rental, the issue of refund delays in the event of a crisis would remain. **Therefore, Expedia Group calls for the removal of a limitation on prepayments in favour of the alternatives outlined below.**

The real source of risk for consumers – the air component – remains unresolved.

As a means to replace the proposal for a limitation on prepayments, protect consumers, and ensure working capital for organisers, **Expedia Group proposes that the flight component of a package be ringfenced through an escrow arrangement and for this obligation to be imposed directly on the airlines through the IATA BSP (Billing and Settlement Plan) (or through a bespoke escrow arrangement for flights outside of the IATA BSP).** Under this scenario, IATA would release funds to the airline at the travel date and, where necessary, pay out refunds to consumers. This scenario would require a legislative change in

the PTD to prevent airlines from receiving full access to pre-paid funds until the travel departure date. Likewise, a solution with a similar logic already exists as a 'settle as you fly' arrangement in commercial air travel and could be further developed towards an arrangement which ensures that the funds are released as the plane disembarks. The BSP would still be able to provide airlines with access to working capital on the basis of these escrow accounts.

These options offer alternatives to the prepayment solution put forward by the Commission, while safeguarding consumer money, facilitating a seamless B2B refund process, and ensuring a fairer and more progressive solution for all. This approach aims to address the significant delays consumers faced in obtaining refunds from airlines, particularly evident during the COVID-19 pandemic. These delays resulted in substantial setbacks for consumers seeking to recover their money. In the early stages of the pandemic, organisers had to issue refunds themselves as an interim measure for consumers, while pursuing airlines for reimbursement of consumers' money that had already been paid to the airline pre-flight through the IATA BSP. This put a significant burden on organisers and effectively meant that they were acting as a bank for the airlines. The escrow solution would provide an effective tool to address the real source of risk – the air component of a package - by ensuring consumer funds are protected and package organisers are not exposed to unacceptable levels of financial risk.

In addition to this, it is regrettable that the European Commission has failed to include any measures to ensure mandatory insolvency protection for airlines in the passenger mobility package². Such protection would also be an effective means to protect consumers' prepayment. Under EU law, passengers do not enjoy any legal protection in case of airlines insolvency and such protections do not feature in the Commission's review of the Air Passenger Rights Regulation. Conversely, under the PTD, package travel organisers are responsible for the performance of the package travel contract regardless of whether these services can or cannot be performed by the transport operator. This not only creates unequal protections for different categories of passengers (package travellers versus travellers purchasing their flight ticket as a standalone service) but has also created numerous challenges for travel organisers. Airline insolvencies pose a real risk and adequate legal protections need to be introduced to protect passengers from the losses and risks passengers may face during an insolvency. Data shows that the number of passengers impacted by airline insolvencies is substantial. According to the European Commission's study on the current level of protection of air passenger rights in the EU, even in pre-pandemic times - between 2011 and October 2019 - **5.6 million passengers were affected by airlines insolvencies**. In addition to the misalignment between the PTD and Air Passenger Rights regarding insolvency protection, the scope and standards of insolvency protection under the PTD for organisers varies from one EU Member State to another. Such inconsistencies include the type of guarantee accepted and the method for calculating the required amount of guarantee, all of which may lead to fragmented levels of consumer protection.

KEY ASKS

Address the real source of risk for consumers by amending the PTD to include an obligation for airlines to ringfence consumer money through an escrow account for the flight component of package.

Include mandatory insolvency protection in amended Reg 261 and align the PTD and Air Passenger Rights Regulation with regard to mandatory insolvency protection.

Introduce in Article 17 a de minimis level of insolvency protection standards that would apply uniformly across all EU/EEA Member States.

² https://transport.ec.europa.eu/news-events/news/passenger-mobility-package-2023-11-29_en

As such, **Expedia Group calls for the introduction of mandatory insolvency protection in the review of the Air Passenger Rights Regulation (Proposal 2023/0437 to amend Regulation 261/2004) to truly protect consumer prepayments irrespective of the type of services purchased (package or standalone flight), and also to help consumers to better understand their rights. In addition to this, the Commission should introduce in Article 17 a de minimis level of insolvency protection standards that would apply uniformly across all EU/EEA Member States ensuring a greater degree of consistency within the internal market than the present situation.**

The definitions of a package and linked travel arrangements are more convoluted than ever before.

Despite its stated objective to *simplify* the definition of a package and the concept of a linked travel arrangement (LTA), the Commission has added many more layers of complexity. The Commission has adapted and expanded the definition of a package in Article 3(2) to include 'type A' LTAs. For example, when there is a combination of at least two different travel services from a single point of sale, and when the second purchase of a travel service is booked within 3 hours after the traveller agreed to pay for the first travel service, a package is formed. This gives the consumer the ability to combine individual services to make a package while the trader, rather unintentionally, has to assume the role of an organiser. The scope is also expanded to include arrangements where other additional types of travel services are booked within 24 hours after the traveller agreed to pay for the first travel service and where the trader invited the traveller to book this additional service before the traveler agreed to pay for the first travel service. The expansion of the definition to cover these various circumstances poses a number of problems, not least requiring package travel organisers to track consumer search and purchasing behaviour within a 3-hour or 24-hour timeframe, in addition to the legal uncertainty and confusion this causes in the travel market. **These provisions would be unworkable, create consumer (and organiser) confusion, and place a serious burden on package organisers. They should therefore be removed from the proposal.**

Additionally, the Commission extended this added complexity to the concept of 'click-through' packages by expanding the scope to include – in addition to the traveller's name, payment details, e-mail address – instances where the traveller's '*other personal data*' has been transmitted to another trader. The 24-hour window for this transfer of data is also removed in the revised text. In addition, the requirement to always include payment details is removed thus creating a "click-through" in any situation that personal data is shared. This poses serious problems for package organisers that share customer details with a third party and link booking processes, because this would constitute a package, regardless of the timeframe or the personal data shared. Clear guidance is needed to understand what constitutes the sharing of a traveller's '*other personal data*', what a "linked booking process" actually is and what it would mean for multi-brand online travel agents for which a traveller may have a single user account. **As such, Expedia Group calls for the reintroduction of the 24-hour limit for**

KEY ASKS

Remove the 3-hour and 24-hour windows for bookings to be considered a package under Article 3(2) in the definition of a package.

Provide clarification on what constitutes a 'click through booking'.

Provide clear guidance will be needed to understand what constitutes the sharing of a traveller's '*other personal data*' in a click-through package.

Amend Article 3(2)(b)(v) to replace 'or' with 'and' regarding the transfer of '*personal data*' to another trader to qualify as a click-through package.

Reinstate the 24-hour limit for

‘click-through’ packages, and for Article 3(2)(b)(v) to be amended to ensure that the scope of package only covers the transfer of travellers’ ‘other personal data’ when it is in addition to the transfer of the traveller’s name, payment details and email address to another trader.

Similarly, the Commission, under Article 3(5), has adapted the definition of a Linked Travel Arrangement with the aim of clarifying and simplifying the concept. However, many things remain unclear. Certain aspects of the definition provide little certainty. Ill-defined concepts have, in the past, resulted in fragmented interpretations of the rules. Furthermore, to ensure that travellers fully benefit from the protections provided by LTAs, and for traders to know that they are subject to this obligation, the Commission advises travellers to record the ‘invitation’ and the ‘additional booking’ through screenshots. Consumers would then have to inform the trader via email that a contract on an additional type of travel service has been concluded for the same trip within 24 hours. This added layer of complexity fails to achieve the desired goal of simplifying concepts. In fact, it imposes more burdens on consumers and traders alike. **Expedia Group believes consumers and tour operators would benefit from the removal of linked travel arrangements entirely from the text.**

The misalignment of refund and termination rights is a source of consumer confusion and risk.

During the COVID-19 pandemic, the inconsistency between the PTD and Air Passengers Rights Regulation forced travel organisers to act as creditor for airlines. This was due to travel organisers and consumers facing large-scale refund delays as well as airlines not reimbursing tickets in case of the consumer cancelling the flight. Travel organisers had to bear the costs of reimbursing customers within the 14-day legal requirement under the PTD even if they themselves were not reimbursed by other service providers. In normal circumstances, the IATA BSP provides an effective way to handle all requests and transactions between travel organisers and IATA airline members. However, it remains a voluntary system based on industry relationships and trust, and its suspension during the pandemic proved that disruptive events can put established relationships under pressure at the expense of the passengers.

Frustratingly, the European Commission has decided not to amend the pillar relating to voluntary cancellations of flights by consumers in case of major crises in the review of the passenger rights package. The liability gap between package travel rules and air passenger rights (Regulation 261) is a source of consumer harm and unfairness in the supply chain and must be addressed. For example, due to the enormous financial burden placed on Expedia Group resulting from a high number of consumer refunds during the pandemic, the company was forced to recapitalise. This emergency measure was needed to give Expedia Group the financial ability to pay out refunds to consumers and then pursue the airlines for payment. However, it constitutes an informal credit line to suppliers which is not sustainable in the long term and is not an option available to all companies, particularly smaller players. There needs to be a clear alignment of obligations so that package organisers are not unfairly exposed to financial risk for consumer refunds, risks that should in fact be borne by the suppliers. The lack of consistency between PTD and the Air Passenger Rights Regulation regarding termination and refund rights

KEY ASKS

Amend the Package Travel Directive and Air Passenger Rights Regulation to ensure a B2B refund right in the case of voluntary cancellations as a result of unavoidable and extraordinary circumstances.

Amend Article 22(2) to ensure refund obligations only begin to apply when the package organiser has been refunded by the air service provider.

for “unavoidable and extraordinary circumstances” presents a major hurdle in protecting the rights of consumers and fair competition and leads to a moral hazard abuse by suppliers.

The European Commission has attempted to address this issue by proposing to add a limited B2B refund right in Article 22(2) in the review of the PTD as well as in the revision of the Air Passenger Rights Regulation. Despite this being a step in the right direction, it is not enough to address the liability gap. A B2B refund right would only apply if the service provider cancels or fails to provide the service. Airlines can easily sidestep this obligation by only allowing organisers to bundle fully refundable flights in packages. Since the cost difference between refundable and non-refundable flights is significant, this would make packages unattractive for consumers. As such, both the PTD and Air Passenger Rights Regulation must be amended further and aligned to ensure packages remain an attractive option for consumers. **Expedia Group calls on the European Parliament and Council to amend both the PTD and Air Passenger Rights Regulation to ensure B2B refund rights in the case of voluntary cancellations as a result of unavoidable and extraordinary circumstances. Additionally, to address the unacceptable financial risk placed on tour operators, Expedia Group calls for the inclusion of wording to ensure that the timeframe for refund obligations only begins to apply when the package organiser has been refunded by the air service provider.**

The ‘foreseeability’ of an event and the legal weight of travel warnings remain vague.

Expedia Group believes that there should be an alignment between the refund rights in the PTD and the Air Passenger Rights Regulation regarding the concept of “unavoidable and extraordinary circumstances”. However, **Article 12(2) of the PTD should also be amended to clarify the circumstances that trigger the right of termination and a full refund as there is no single definitive criteria for triggering “unavoidable and extraordinary” circumstances.** As such, clarifying the concept of “unavoidable and extraordinary circumstances” must be adapted to be workable in a post-COVID world. This point has been made by a study carried out on behalf of the IMCO Committee, which argues that the review of the PTD must reconsider what constitutes exceptional circumstances and, the circumstances under which operators are responsible.³ In Article 12(3)(a) the Commission adds new wording with a view to clarifying the extent to which official travel warnings issued by authorities should be used to qualify an unavoidable and extraordinary circumstance and justify the cancellation of a package. However, the wording is vague and would benefit from clarifications on which government travel advice is definitive. Organisers should not bear 100% of the cancellation costs where the event is foreseen or continuing, and the consumer has been warned about the risks involved. If consumers are provided with clear information before completing their booking, then they should be given the option to book ‘non-refundable’ packages without recourse if the foreseeable event

KEY ASKS

Decisive guidance should be incorporated into the PTD on: Government official travel warnings and the extent to which such warnings should trigger refund rights for travellers; and foreseeability of an event and its impact on a traveller’s right to terminate and expect a full refund.

Penalty-free cancellations should be limited to events that are genuinely unforeseen.

Establish under the Package Travel Directive a central European database on which authorities must update travel advice.

³ The performance of the Package Travel Directive and broader consumer protection issues in the implementation of passenger rights, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, September 2023 (p46)

occurs. **Therefore, Expedia Group calls for a clear understanding on the foreseeability of an event and its impact on a consumer's right to terminate and get a trigger penalty-free cancellation right.** Without clear guidance on the legal weight of travel advice and the foreseeability of an event, consumers may be encouraged to be less risk averse when booking with the knowledge that they will be refunded by tour operators, adding to the risk borne by tour operators.

In Article 12(2), the Commission's proposal also broadens the right for cancellation without termination fees by applying "unavoidable and extraordinary circumstances" not just to the point of destination, but also to the point of departure or a travellers' place of residence, affecting the travellers' journey to the destination. This cancellation right applies "where it can be reasonably expected" that these unavoidable and extraordinary circumstances will impact the performance of the package. This is not helpful in the case of contradictory travel advice from authorities in different jurisdictions. It does not provide any additional legal certainty for package organisers and fails to address the risk being solely placed on the organiser, as a B2B refund right would only apply in the case of unexpected and extraordinary circumstances where the travel service did not take place. Furthermore, in the case of a pandemic occurring, similar to COVID-19, the extension of cancellation rights poses some challenges for package organisers. The cost associated with the constant monitoring of changing travel advice for every point of departure, point of arrival and place of residence would be significant. **Expedia Group believes that the EU would benefit from a central database ("Traffic Light System"), hosted by the European Commission, for authorities to regularly update their travel advice. This database would provide legal certainty to package organisers and consumers alike and would act as an official reference point within the EU.**

Summary

It is in everyone's interest to promote transport and tourism in Europe⁴ and encourage consumer confidence in future bookings. However, the current structure places all the financial burden on one party in the operating chain, the organiser, and this approach is not sustainable. A clear, simplified, and coordinated approach to the revision of the PTD and related guidance is urgently needed to provide a system where burdens are shared equally and fairly among participants.

Expedia Group calls on policymakers to ensure an equitable outcome in the revision of the PTD and secure the healthy continuation of the package travel ecosystem. Without urgent action, we could see a negative impact on the package offering and on consumer rights in turn. Package travel in the EU has traditionally been a success story, contributing significantly to the EU economy and enhancing consumer protection and satisfaction. However, it is now necessary to revise the Commission's proposals, as they have the potential to undermine package travel and ultimately lead to its decline.

Expedia Group urges policymakers to review and consider the options outlined above and to take swift action to protect consumers and organisers of package travel.

⁴ In the Communication from the Commission on 13 May 2020 – "Tourism and transport in 2020 and beyond", it was stated that directly and indirectly the European tourism ecosystem contributed close to 10% of EU GNP