

# The New Package Travel Directive

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# Contents

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**Causa and Consideration in Tourism Contracts in the frame of the UE 2015/2302 Directive**

2

- 1) The world since the 1990 Directive and the notion of contract
- 2) Tourism and contracts
- 3) The raising of a “travel contract” as a mixed contract
- 4) The '90 Directive
- 5) The 2015 Directive. A mixed contract: from three to four
- 6) Tourism contracts and the formation of Tourism Law
- 7) A first element: a tourist contract as a consumer contract
- 8) The raising of a “tourism contract” as a mixed contract.  
And the research for a definition
- 9) From travel contract to tourism travel contract
- 10) Causa and tourist contracts
- 11) A tentative definition of the Italian Supreme Court: the “finalità turistica” (touristic purposes)
- 12) Reference to tourism in the 2015 Directive
- 13) Causa and motive
- 14) Causa turismi
- 15) Causa turismi and art. 5 of the 1990 Directive
- 16) Travelers and tourists
- 17) Business travelers and tourists
- 18) All tourists are travelers, but not all travelers are tourists
- 19) A Tourist Directive or a general Travel Directive?

1. Performance of the package: Private international law aspects
  2. Insolvency protection: Private international law aspects
- V. Corrective measures of imbalance between retailers and travelers

*Julio Facal*

**Relevant aspects of international liability for tourism service providers**

213

- 1) Tourism law and liability of the provider
- 2) The travel agency and the design of the tourism product
- 3) Criteria for attribution of liability
- 4) Liability regime of the provider in the Rio de la Plata region (Argentina and Uruguay)
- 5) Considerations on the new 2015/2302 Travel Directive of the EU
  - a) Scope of application
  - b) Pre-contractual information, clauses, and evidence
  - c) Termination of the contract and withdrawal
  - d) Performance and liability
  - e) Guarantee scheme in insolvency Tourism police
  - f) Conclusions

*Diego Raul Gonzalez*

**Tourism and airports: travelers & consumers right to information?**

229

1. The airport juridical relation and tourism
2. The airport service. Consumer and airport operator
3. The obligation to provide information to the airport user. Questions
4. The airport and the obligation of information in Directive UE 2015/2302 of the European Parliament and of the Council
5. The case of strike in airports. Security (AVSEC)
6. Conclusion

*Gianluca Rossoni*

**New Package Travel Directive (2015/2302/EU):**

**Specific obligations of the retailer where the organiser is established outside the European Economic Area**

243

- II. Practical issues on how to reach the burden of the proof in order to prove the retailer
- III. Early conclusions related to the Italian legal framework

*Jacqueline Tanti Dougall*

**The Package Travel Insolvency Fund Regulations – the Maltese Perspective**

1. Introduction
2. The Malta Travel and Tourism Services Act
3. Definition of a ‘tourism operation’ under article 2 of the Main Act
4. Subsidiary Legislation 409.01: Package Travel, Package Holidays and Package Tours Regulation
5. Bankruptcy of Golden Travel Club Ltd.
6. The enactment of the Package Travel Insolvency Fund Regulations
7. Prescription
8. Conclusion

*Ana Branca Soeiro de Carvalho*

**Liability for error and the right of repair – consequences of a legal imperative**

- 1 – Introduction
- 2 – Liability for booking errors
  1. Benefits for consumers
  2. Benefits for businesses
- 3 – Right of redress
- 4 – Conclusions

*Manuel David Masseno*

**On the relevance of Big Data for the formation of contracts regarding package tours or linked travel arrangements, according to the New Package Travel Directive**

1. When the internet became the main distribution channel for travel services
2. Meanwhile, the Big Data wave swept the travel and tourism industries
3. Protecting travellers from Big Data empowered traders

Indeed, when the system becomes operative, a consumer could present the said certificate in case the *'contributor to the insolvency fund'* becomes insolvent. The law does not contemplate situations if the consumer becomes insolvent to misappropriation or fraud on the part of the travel agent/contributor. Any traveller who purchases packages from a travel agent who does not contribute to the insolvency fund, and consequently does not issue any certificate, would not be protected by these regulations, and would not be able to present any claims to the Board for a refund.

## 7. PRESCRIPTION

However, although article 10 of the regulations stipulate that should a contributor becomes insolvent, the consumer *'must file a claim with the Board and provide full details of payments received and services which are not performed as a consequence of the organiser's insolvency'*, yet the same Regulations do not include a prescriptive period of when such a claim should be brought to the Board's attention. Should prescription be a few days of when the consumer returns to Malta, or possibly two years as contemplated in Article 2149 of the Civil Code (Chapter 16 of the Laws of Malta)?

## 8. CONCLUSION

Indeed, it can be concluded that the Package Travel Insolvency Fund Regulations have been enacted, however, this paper shows that there are still some major issues which should be addressed by the Maltese legislator.

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## Liability for error and the right of repair – consequences of a legal imperative

Ana Branca Soeiro de Carvalho<sup>1</sup>

### ABSTRACT

THE DIRECTIVE (EU) 2015/2302 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 on Package Travel and 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.

Only the combination of different types of travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as rental of motor vehicles or certain motorcycles, should be considered for the purposes of identifying a package or a linked travel arrangement.

The Directive 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. Speaking of the dynamics of the law, driven by the one of the society, obviously they have developed a real research lab of the liability, culminating (at European level) with concerns to find a common denominator through the establishment of the liability of the European law resulting from primary and derivative law of the European Union. The approach is not at all easy and not too soon achievable. Those forms are dominated also by the common idea of repairing the caused damage (ANTUNES 2011).

The liability of economic agents, reducing bureaucracy, facilitating access to the activity in order to be more competitive services and new markets, the introduction of faster and dematerialized procedures and tacit approval, are especially set out objectives in the preamble to the Directive.

Using content analysis, through documentary descriptive research and rich analysis of the specialized literature, this study aims at identifying the contents of the above-mentioned concepts, presenting a point of view on the regarded issue.

## 1 – INTRODUCTION

Tourism plays an important role in the economy of the Union, and package travel, package holidays and package tours ('packages') represent a significant proportion of the travel market. That market has undergone considerable changes since the adoption of Directive 90/314/EEC.

Only the combination of different types of travel services, such as accommodation, carriage of passengers by bus, rail, water or air, as well as rental of motor vehicles or certain motorcycles, should be considered for the purpose of identifying a package or a linked travel arrangement.

From a legislative point of view, the companies need an adjustment in important to have a more favourable environment for doing business. The evolution of the market is induced by new consumer behaviour and also with widespread use of the Internet and the global competition.

The majority of travellers buying packages or linked travel arrangements are consumers within the meaning 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.

Travel services are not limited to combinations as traditional pre-package travel, often combined in a personalized way. Many of these travel services combinations are in a 'grey zone' in law or are clearly outside the scope of Directive 90/314/EEC. This Directive aims to adapt the scope of protection to take account of these developments, increasing transparency and enhancing legal certainty for travellers and operators.

In accordance with the case-law of the Court of Justice of the European Union, it should make no difference whether travel services are combined with any contact with the traveller or at the request of or in accordance with the selection made by the traveller. The same principles should apply irrespective of the time consumers

The information requirements laid down in this Directive are exhaustive, but should be without prejudice to the information requirements laid down in other applicable Union legislation.<sup>2</sup>

Member states have to transpose the Directive by 1 January 2018, and ensure its implementation from 1 July of that year (Article 28). The new Directive will enter into force on 31 December, 20 days after its publication.

There will always be protection where travel services are advertised as a package or where they are offered at a total or inclusive price

The new Directive broadens the concept of 'package' and now will apply to 3 different sorts of travel combinations<sup>3</sup>:

- pre-arranged packages – ready-made holidays from a tour operator made up of at least 2 elements: transport, accommodation or other services, e.g. car rental;
- customised packages – selection of components by the traveller and bought from a single business online or offline;
- linked travel arrangements – if the consumer, after having booked one travel service on one website, is invited to book another service through a targeted link or similar, the new rules offer some protection – provided that the second booking is made within 24 hours

However, fall outside the scope of the new policy – business travel, trips lasting less than 24 hours (unless the stay is included), travel services purchased as stand-alone products, such as a flight or a room hotel.

<sup>2</sup> 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 Recommendation of a Community list of air carriers subject to an operating ban within the Community and on the 2004/60/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 1831/2006 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation and of 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