THE NEW PACKAGE TRAVEL DIRECTIVE: INFORMATION OBLIGATIONS AND CONTENT OF THE
PACKAGE TRAVEL CONTRACT

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This article considers the agreed text of the new Package Travel Directive, with a specific focus on
information obligations, the content of the package travel contract and how these provisions reflect the
primary aim of the new Directive to enhance transparency for both the traveller and traders. This article
also considers the extent to which these requirements will level the playing field between different types of
traders within the industry and across Member States.

The text of the new Package Travel Directive was published in its final form in the Official Journal on 25
November 20151. Member States have until 1 January 2018 to transpose the Directive into national
law, with it being applicable from 1 July 2018. With it the new Directive brings an expanded definition of
‘Package’, bringing into scope of the full protection of the Directive flight-plus type arrangements and click
through sales. In addition, the Directive also provides some further limited protection to travellers
purchasing a ‘linked travel arrangement’2.

It will be of little surprise to those who have followed the negotiation and co-decision process that the more
simplistic structure of the new Directive reflects the primary aim of all three of the European legislative
arms to “enhance transparency, and to increase legal certainty for travellers and traders”3 alike.

With clarity however does not unfortunately come brevity. Due in large part to the increasingly disparate
approach of national courts to the interpretation of the current Directive across Member States, the new
Directive pursues maximum harmonisation, striving in article 1 for:

“as uniform as possible level of consumer protection by approximating certain aspects of the laws,
regulations and administrative provisions of the Member States in respect of contracts between
travellers and traders relating to package travel and linked travel arrangements”

In pursuit of this aim there is a much more prescriptive approach to information requirements and perhaps
axiomatically an inevitable increase in the volume of text within the new Directive, with an impressive
move from just 10 articles in the current directive to 31 articles and three annexes in the new Directive.

Form and Structure

Unlike the complicated format (one refrains purposely from referring to any form of ‘structure’) of the
current directive (which dates back to 1990)4 which sees the information requirements spread throughout
a series of untitled articles with no apparent logic as to order or position within the text, the new Directive
adopts a more formalised structure, tending rather more helpfully (at least wherever logical and possible)
to be set out in a chronological order, following the traveller throughout the booking process, to pre-
departure, to the holiday itself and to the unfortunately ever more inevitable consequences of the post-
holiday grievance.

The information requirements can be found neatly collected together in Chapter II, in Articles 5 to 8 under
the heading “Information obligations and content of the package travel contract”.

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2 A ‘linked travel arrangement’, will be formed either (1) where on the occasion of a single visit a trader facilitates the separate selection and separate payment of two or more travel services or (2) facilitates in a targeted manner the separate procurement of at least one additional travel service within 24 hours (e.g. through a website/email link where the travellers details are not transferred).
3 See Preamble, Paragraph (2)
Articles 5 and 6: Pre-contractual Information

The Preamble to the new Directive makes clear that the traveller should receive all necessary information prior to purchasing a package. It is perhaps then predictable that the pre-contractual information requirements under the new Directive should be more prescriptive in nature.

Pre-contractual information requirements can be found in Article 5 of the new Directive. Unlike Article 3 of the current directive, which only requires an organiser to adhere to the prescribed information requirements where a brochure is made available, Article 5 of the new Directive goes further and states that:

“Member States shall ensure that, before the traveller is bound by any package travel contract or any corresponding offer, the organiser and, where the package is sold through a retailer, also the retailer shall provide the traveller with the standard information by means of the relevant form as set out in Part A or Part B of Annex I, and, where applicable to the package, with the following information...”

In what appears to be an initial attempt to level the playing field between those traders who continue to use this more traditional method of marketing and those that have moved towards an increasingly digital strategy, Article 5 requires the significantly more detailed prescribed information to be given to the traveller prior to formation of the contract in all circumstances. In addition, although somewhat akin to closing the stable door after the horse has bolted, in recognition of the unique nature of bookings made by telephone, Article 5 also lays down specific information requirements for bookings made through these channels.

In a further move towards complete transparency, Part A and Part B of Annex I, include with them proscribed ‘notices’ that must be displayed throughout the booking process, making it clear whether the traveller is purchasing a package or a linked travel arrangement.

For packages, one of the following notices must be displayed:

“Standard information form for package travel contracts where the use of hyperlinks is possible

The combination of travel services offered to you is a package within the meaning of Directive (EU) 2015/2302.

Therefore, you will benefit from all EU rights applying to packages. Company XY/companies XY will be fully responsible for the proper performance of the package as a whole.

Additionally, as required by law, company XY/companies XY has/have protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation in the event that it becomes/they become insolvent.

More information on key rights under Directive (EU) 2015/2302 (to be provided in the form of a hyperlink).”

“Standard information form for package travel contracts in situations other than those covered by Part A

The combination of travel services offered to you is a package within the meaning of Directive (EU) 2015/2302.

Therefore, you will benefit from all EU rights applying to packages. Company XY/companies XY will be fully responsible for the proper performance of the package as a whole.
Additionally, as required by law, company XY/companies XY has/have protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation in the event that it becomes/they become insolvent.”

“Standard information form where the organiser transmits data to another trader in accordance with point (b)(v) of point 2 of Article 3 ['click-through sales']

If you conclude a contract with company AB not later than 24 hours after receiving the confirmation of the booking from company XY the travel service provided by XY and AB will constitute a package within the meaning of Directive (EU) 2015/2302. Therefore, you will benefit from all EU rights applying to packages. Company XY will be fully responsible for the proper performance of the package as a whole.

Additionally, as required by law, company XY has protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation in the event that it becomes insolvent.

More information on key rights under Directive (EU) 2015/2302 (to be provided in the form of a hyperlink)."

And for linked travel arrangements:

“Standard information form where the trader facilitating an online linked travel arrangement within the meaning of point (a) of point 5 of Article 3 is a carrier selling a return ticket

If, after selecting and paying for one travel service, you book additional travel services for your trip or holiday via our company/XY, you will NOT benefit from rights applying to packages under Directive (EU) 2015/2302.

Therefore, our company/XY will not be responsible for the proper performance of those additional travel services. In case of problems please contact the relevant service provider.

However, if you book any additional travel services during the same visit to our company's/XY's booking website, the travel services will become part of a linked travel arrangement. In that case XY has, as required by EU law, protection in place to refund your payments to XY for services not performed because of XY's insolvency, and, where necessary, for your repatriation. Please note that this does not provide a refund in the event of the insolvency of the relevant service provider.

More information on insolvency protection (to be provided in the form of a hyperlink)

Following the hyperlink the traveller will receive the following information:

XY has taken out insolvency protection with YZ (the entity in charge of the insolvency protection, e.g. a guarantee fund or an insurance company).

Travellers may contact this entity, or where applicable, the competent authority (contact details, including name, geographical address, email and telephone number) if the services are denied because of XY’s insolvency.

Note: This insolvency protection does not cover contracts with parties other than XY, which can be performed despite XY’s insolvency.

Directive (EU) 2015/2302 as transposed into the national law (hyperlink)."

Article 6 dictates the character of this pre-contractual information. Following the theme of certainty for the traveller (and following the lead of its generic consumer rights counterparts⁵) pursuant to Article 6 this pre-

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⁵ See Consumer Rights Act 2015 as to the binding nature of pre-contractual information/representations
contractual information receives a heightened status and will be binding unless the trader expressly preserves the right to make changes – in which case, any such changes must (of course) be communicated in a “clear, comprehensible and prominent manner” prior to the conclusion of the package travel contract.

It is clear that whilst Article 6 enhances the level of protection afforded to the traveller by creating a greater level of certainty around marketing material that might induce a traveller to contract with a particular trader made at the pre-contract stage, it will also somewhat level the playing field between traders, with those who may previously have attracted travellers with marketing ‘claims’ that they never intended to be bound by, now expressly prevented from doing so (or suffer the consequences).

Article 7: Content of the package travel contract and documents to be supplied before the start of the package

In an attempt to consolidate the information requirements laid down in the Directive, and continuing along the lines of certainty for the traveller, Article 7 adopts the pre-contractual information requirements laid down in Article 5 as a starting point for the information that ought to be contained in the package contract itself. Whilst these arguably more onerous requirements may ultimately come at additional cost to the trader, it is assumed that this more prescriptive approach ought to lead to a more uniform offering by traders, which should ultimately enhance competition across member states, with some traders who may in the past have benefited from a more flexible approach under their national laws/according to the interpretation of different national courts, now forced to adopt this prescribed format.

In terms of the content of the contract itself, in addition to the ‘main characteristics’ of the travel service Article 7 goes further, requiring the rights that are enshrined within the latter part of the Directive to be expressly set out in the package contract, again wholly in line with the underlining message of the new Directive, being one of transparency, clarity and therefore certainty for both the traveller in terms of what they are getting and the trader, in terms of what they are expected to provide and the consequences of failing to do so.

Conclusion

The extent to which the more prescriptive nature of the pre-contractual and contractual information requirements within the new Directive will in reality level the playing field between traders of different types and across Member States remains to be seen and will ultimately come down to the extent to which the national legislators and courts are prepared to embrace the philosophy of maximum harmonisation.

In terms of transparency and clarity for the traveller however, the level of prescription within Chapter II leaves significantly less room for any contractual ambiguity in favour of the trader and at least in terms of information requirements, the new Directive can already be said to have gone some way to achieving its primary aim.