



Transposition of Directive (EU) 2015/2302 on package travel and linked travel arrangements

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1. Executive Summary

- 1.1 The new Directive aims to achieve a robust level of consumer protection for package travel and linked travel arrangements and will apply from 1st July 2018. In May 2017, we commenced work to identify arrangements that can be applied to meet the requirements of the Directive and highlight options that may be accommodated under existing licensing. We published a draft report, for consultation, in late 2017 and held a number of industry meetings. The key points, below, are a summary of this paper and our advice to the Department of Tourism, Transport and Sport in relation to the introduction of laws and regulations necessary to comply with this Directive.

Scope of the Directive

- 1.3 The Directive has changed the scope of consumer protection in a number of ways. These include extending the definition of packages to include dynamic packaging and introducing the concept of linked travel arrangements.
- 1.4 The Directive does not require protection for packages and linked travel arrangements that are: (a) < 24 hours (unless overnight accommodation is included); (b) occasional, not-for-profit and for a limited group of travellers; and (c) for business travel. These are currently covered by Irish protection arrangements and the question is should they now remain in place. Some respondents to the consultation suggested that the existing protections should remain.
- 1.5 The concept of linked travel arrangements is new and is not addressed by existing legislation. Companies who offer these arrangements are called traders. This means some companies can be both an organiser and a trader. This may impact on the level of security that such companies have to put in place.
- 1.6 The terms organiser, retailer and trader are defined by the combination of travel services offered. The calculation of insolvency protection is also carried out by reference to revenue and estimated repatriation costs related to travel services. Under current rules, travel agents and tour operators put in place security arrangements for overseas travel contracts that commence in Ireland. However, the Directive refers to travel services which is not limited to ex-Ireland sales. The definition of an overseas travel contract may need to be revised as the reference to travel departing from within the State seems to be incompatible with the text of the Directive.

Maximum Harmonisation Nature of Directive

- 1.9 Ireland cannot maintain or introduce provisions that diverge from the Directive but can retain current provisions for activities listed in 1.4 above. The Directive also allows Member States give travellers the right to cancel a contract within 14 days and also allows Member States provide for the concurrent liability of the retailer of a package (in addition to the liability of the organiser). Respondents to our consultation thought that care should be taken in introducing any of the discretionary provisions in the directive. We tend to agree with this view given the time constraints for implementation.

Insolvency Arrangements

- 1.10 Organisers must put in place security to allow for refunds of consumer payments and the estimated cost of repatriations in the event of insolvency. Traders need to provide security for refunds where a travel service which is part of a linked travel arrangement is not performed as a consequence of their insolvency. If traders are responsible for the carriage of passengers, the security must also cover the traveller's repatriation.

- 1.11 Under current legislation, licenced travel agents and tour operators put in place bonds to provide insolvency protection for travel ex-Ireland. This scheme also covers repatriation costs. Under current legislation, all overseas packages sold in Ireland must be covered by the Irish protection regime. However, the Directive requires protection for all packages and linked travel arrangements sold by an Irish company in any Member State.
- 1.12 Current bonding arrangements do not exactly mirror the requirements of the Directive. For example, air carriers may now be regarded as organisers or traders and thus be required to put in place insolvency protection. This is a new concept that is not part of the existing legislation.
- 1.13 Currently travel agents and tour operators put in place bonds for 4% and 10% respectively as they are treated as having different levels of risk. Under the Directive, these may both be viewed as organisers which may have implications for the calculation of bonds.
- 1.14 Some respondents raised queries about the difficulty of knowing when turnover should be categorised as linked travel arrangements. .

Central Contact Point

- 1.15 The Directive requires each Member State to nominate a central contact point for co-operation and supervision of organisers between Member States. Our view is that we should be that point of contact.

Compliance and Penalties

- 1.16 Articles 24 and 25 state there needs to be adequate and effective arrangements in place to ensure compliance with the Directive and rules on penalties for infringements. The Commission considers that one option would be to replicate the rules which are already in place under the 1982 and 1995 Acts. During the consultation period, a number of respondents queried the Commission's ability to monitor and enforce these arrangements for firms from every other Member States operating in Ireland.

Transposing the Directive

- 1.17 The wording of the Directive is clear and the main provisions must precisely mirror those of the Directive. There are, however, different options which may be feasible for transposing the Directive; by way of primary or secondary legislation. The Commission is of the view that whatever approach is taken needs to result in clear and consistent legislation. Many respondents shared this view. Parties also expressed a view that Government, in transposing the Directive, should update Irish legislation in this area to reflect market and technological developments.

2. Introduction to Regulation of Package Travel

- 2.1 The Commission is responsible for licensing travel agents and tour operators, it also administers a scheme of protection for consumers of these companies. In 2017, we licenced 261 companies which had a projected licensable turnover of €1.35bn.
- 2.2 All tour operators and travel agents trading in the State are required by law to be licensed and bonded to buy or sell overseas travel originating in the State to destinations outside the State or Northern Ireland unless they qualify for exemption being a retailer or organiser established in another Member State who has provided the Commission with sufficient evidence of security for the protection of consumers.
- 2.3 All licensees are required to provide a bond. The current bond required from travel agents and tour operators is 4% and 10% (respectively) of projected annual licensable turnover.
- 2.4 The Commission has five main roles under the broad heading of travel trade licensing:
- Licensing travel agents and tour operators buying and selling overseas travel.
 - Administering a bonding scheme for travel agents and tour operators.
 - Administering the Travellers' Protection Fund (which was built up with a levy on passengers of tour operators between 1983 and 1987).
 - Processing claims for refunds and repatriation in the event of a licensed travel agent or tour operator going out of business.
 - Investigating instances of alleged illegal trading and, when necessary, prosecuting illegal traders.
- 2.5 These arrangements have been in place since the early 1980s. In 2015, a Directive on package travel and linked travel arrangements was finalised (2015/2302/EU). This Directive applies in Ireland from 1st July 2018. Prior to that Ireland is required to adopt and publish the laws, regulations and administrative measures necessary to comply with the Directive by 1st January 2018.
- 2.6 Having regard to its role as economic regulator in the sector, the Commission engaged consultants, Indecon, to identify issues and options, in consultation with industry stakeholders, on matters arising from the introduction of the new Directive. This work forms the basis of advice from the Commission to the Department of Transport, Tourism and Sport.
- 2.7 The Commission then published a report in November 2017 seeking representations from industry on it and responses to consultation questions published with the report. We met with representatives of industry to discuss the contents and issues raised in Dublin, Cork and Athlone in December 2017 and January and February 2018.

3 Consultation Process

- 3.1 In May 2017, the Commission engaged economic consultants, Indecon to work with the Commission to (a) identify, in consultation with travel sector stakeholders, arrangements that can be applied to meet the relevant requirements of the Directive and (b) highlight those options that may be accommodated under the existing licensing and bonding legislative framework.
- 3.2 Over the course of summer 2017, Indecon sought to identify the views of the travel trade sector about appropriate future bonding arrangements having regard to the definitions of linked travel arrangements, package and travel services in the Directive and the provisions in relation to compensation, refund and repatriation. In addition, Indecon sought to identify administrative arrangements having regard to the provisions of the Directive relating to non-performance of agreed travel services and insolvency or cessation of trading of travel service providers.
- 3.3 Extensive stakeholder engagement took place in the months since May 2017, including with Irish Travel Agents Association who organised a round table discussion with Indecon including representatives from their sector. In addition, insights have been provided by airlines including Aer Lingus, Ryanair, CityJet and Aer Arann. A range of other contributors have also engaged with Indecon in relation to this topic including Travel Centres, Sunway Travel, Club Travel, Topaz Travel, Joe Walsh Tours, Travel Savers and agency managers.
- 3.4 Indecon produced a draft report that includes a high level overview of the requirements of the Directive as they relate to Ireland and existing statutory provisions in this area, currently administered by the Commission for Aviation Regulation.
- 3.5 The aim of the draft report and public consultation was to set out an assessment of the aspects of the current arrangement that may be amended to comply with the Directive and options for consideration.
- 3.6 We published the report (for consultation); seeking submissions by 23rd November 2017. The Commission met with representatives of industry in Dublin, Cork and Athlone in December 2017 and January and February 2018. We received written responses from a range of contributors including Aer Lingus, the International Air Transport Association, the Irish Travel Agents Association, Justsplit.com, Ryanair and United Airways. In addition over fifty travel agents and tour operators attended the meetings to give us their views.
- 3.7 WE would like to thank all those who have made submissions and given their views at the various meetings all of which have informed this report, the objective of which is to identify areas for the Department of Transport, Tourism and Sport where changes need to be made to the current regulatory framework to comply with the new Directive and to also identify areas where Ireland has discretion in its approach to transposition.

4 Report on impact of Directive (EU) 2015/2302 on Irish legislation

Background to the Package Travel and Linked Travel Arrangements Directive

- 4.1 The new Package Travel and Linked Travel Arrangements Directive (Council Directive 2015/2302/EU) was published in 2015. The Directive aims to achieve a high and uniform level of consumer protection, across Member States, for package travel and linked travel arrangements. Over time, consumers increasingly combine their own holiday components (so-called dynamic packaging) instead of purchasing pre-arranged packages. As a result different levels of consumer protection have applied to travel arrangements that are sold differently and this has not been clear to consumers.
- 4.2 Member States are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive and to apply those measures from 1st July 2018.
- 4.3 The new Directive, repeals and replaces its predecessor, Council Directive 90/314/EEC which 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 package, and protection against the insolvency of an organiser or a retailer. Please note that the enforcement of much of the Directive rests with the Competition and Consumer Protection Commission and the comments set out below relate principally to elements of the Irish travel trade regime for which the Commission is responsible.
- 4.4 Following consultation with travel trade industry stakeholders, the Commission has prepared this note as an aide to the Department in relation to the introduction of the laws, regulations and administrative provisions necessary to comply with this Directive.
- 4.5 As stated in their report, Indecon believes any options for implementation of the Directive should be guided by the need for regulation and the costs involved. It is important to evaluate the extent of any consumer problems which exist. The rationale of the Directive is to provide travellers with adequate consumer protection. This is highlighted in Article 1 which states that the objective is to contribute “to the achievement of a high...level of consumer protection”. Indecon has taken account of this objective in formulating advice on complying with the Directive and are supportive of the aspects of the Directive which introduce stronger consumer protection.
- 4.6 Some respondents said the majority of Irish consumers (estimate 80% +) now buy their travel products on the basis of individual components rather than in a pre-packaged format. Due to the range of shopping channels and platforms offering flights and accommodation and other travel products, consumers are likely to purchase their flights from one supplier and the remaining travel components from other unrelated suppliers. They are also likely to make those purchases at different times, not least because on-line purchases usually need to be paid for at time of purchase. In order to manage cash flow, consumers will confirm and pay for travel products at different times. A variation of this comment has been made to the Commission on a number of occasions as it met with representatives from over fifty travel trade firms in December 2017 and January and early February 2018.

Scope of the Directive

- 4.7 The Directive has widened the scope of consumer protection in a number of important ways. These include extending the definition of packages to include dynamic packaging and introducing the concept of linked travel arrangements. As the definition of package set out in Article 3 now includes dynamic packaging, it means travel agents may now be considered as *organisers* where previously they were regarded as *retailers*.
- 4.8 Article 2 states that the Directive applies to packages offered for sale or sold by traders to travellers and to linked travel arrangements facilitated by traders for travellers. It does not apply to:
- (a) Packages and linked travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;
 - (b) Packages offered, and linked travel arrangements facilitated, occasionally and on a not-for-profit basis and only to a limited group of travellers; and
 - (c) Packages and linked travel arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is acting for purposes relating to his trade, business, craft or profession.
- 4.9 The concept of linked travel arrangements is new and is not addressed by existing Irish legislation. According to the Directive, persons who offer packages for sale are defined as *organisers* while those that offer Linked Travel Arrangements are defined as *traders*. The same person may be both an organiser and a trader depending on what different types of business they are transacting.
- 4.10 It is notable that the types of package described in Article 2 are covered by the current Irish licensing and bonding scheme if the package include a travel component commencing within Ireland to a destination outside of Ireland. The existing legislation also provides insolvency for single travel services, which involves a contract for carriage. One question to be addressed is whether or not existing legal consumer protections measures for single travel services or short duration trips, which are not covered by the Directive, should remain in Irish legislation?
- 4.11 Excluded from the Directive are trips lasting under 24 hours not including overnight accommodation and trips occasionally operated on a non-profit basis and to a limited group of travellers (e.g., school trip).¹ Travel Agent representatives said that consumers should be offered effective protection irrespective of the type of organisers and that this should include travel arrangements facilitated occasionally and on a not-for-profit basis and only to a limited group of travellers.
- 4.13 Central to the understanding of both *package* and *linked travel arrangement* within the meaning of the Directive is that they both are a combination of at least two types of travel service. A travel service is defined in Article 3(1) as meaning:
- (a) carriage of passengers; or
 - (b) accommodation which is not intrinsically part of carriage of passengers and is not for residential purposes; or

¹ EU 2015/2302 (19)

- (c) rental of cars, other motor vehicles within the meaning of Article 3(11) of Directive 2007/46/EC of the European Parliament and of the Council, or motorcycles requiring a Category A driving licence in accordance with point (c) of Article 4(3) of Directive 2006/126/EC of the European Parliament and of the Council; or
- (d) any other tourist service not intrinsically part of a travel service within the meaning of points (a), (b) or (c).

However, a combination of travel services where not more than one type of travel service as referred to in point (a), (b) or (c) is combined with one or more tourist services as referred to in point (d) above is not a package if the latter services:

- (a) do not account for a significant proportion of the value of the combination and are not advertised as and do not otherwise represent an essential feature of the combination; or
- (b) are selected and purchased only after the performance of a travel service as referred to in point (a), (b) or (c) of point 1 has started.²

- 4.14 The activity carried on by both organisers, retailers and traders is defined by reference to combinations of travel services and the calculation of their required insolvency protection is also done by reference to revenue and estimated repatriation costs related to trade in *travel services*.
- 4.15 The key concept in the current Irish legislation is an *overseas travel contract*. This is defined as a contract for the carriage of a party to the contract (with or without any other person) by air, sea or land transport commencing in the State to a place outside the State or Northern Ireland, whether the provision of the carriage is the sole subject matter of the contract or is associated with the provision thereunder of any accommodation, facility or service.³ The activity carried on by a tour operator or travel agent is defined by reference to this concept and their bond level is calculated as a percentage of projected revenue from overseas travel contracts.
- 4.17 There is significant overlap in the subject matter of the contracted services whether they are described as *overseas travel contract* or *travel service*. An important difference is the fact that *overseas travel contract* relates to contracts with a travel component that commences within the State and terminates at a destination outside of Ireland. There is no such restriction in scope regarding *travel services*.
- 4.18 The insolvency protection afforded to consumers who purchase travel services arises when they purchase a combination of two or more travel services. Similar protection occurs for consumer who buy an overseas travel contract which may also include two or more travel services. However, such consumers are also protected for carriage alone when that carriage commences in Ireland and terminates at a destination outside the island Ireland.
- 4.19 A number of respondents said the definition of overseas travel contract or its use in current legislation would need to be revised. For example, under current arrangements the level of the bond is based on a percentage of projected licensable turnover for overseas travel

² Article 3(1) of Directive (EU) 2015/2302 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.

³ Section 2 of the Transport (Tour Operators and Travel Agents) Act, 1982 as substituted by section 27 of the Package Holidays and Travel Trade Act, 1995.

contracts that start in Ireland. The reference to travel departing from within the State may not be compatible with the text of the Directive.

- 4.20 There are a number of important areas where a degree of discretion is permitted to Member States. These include:
- Whether Member States wish to extend their national legislation beyond the scope of the Directive to regulate areas of the travel trade not required by the Directive;
 - Cooling-off periods and rights to cancellation;
 - Whether the requirement for insolvency protection should be extended to retailers; and
 - The manner in which the insolvency requirements are implemented.
- 4.21 Many respondents suggested the Directive should be introduced with minimum use of discretion and that the State should avoid extending the scope of the 2015 Directive beyond the mandatory requirements.
- 4.22 Some respondents suggested that certain types of contract should not be covered in legislation as they are not included in the Directive; e.g. some stand-alone contracts for single travel services, or for packages/linked travel arrangements offered or facilitated occasionally on a not-for-profit basis to a limited group of travellers, or to packages/linked travel arrangements covering less than 24 hours and which do not include accommodation. Current legislation covers those areas. For example, current legislation requires insolvency protection for travel agents and tour operators in relation to single travel services (excluding airlines).

Maximum Harmonisation Nature of Directive

- 4.23 It is important to recognise that this is a maximum harmonisation Directive and Member States do not have any flexibility on how they implement most of its provisions. Article 4 states that unless otherwise provided for, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in the Directive, including more or less stringent provisions which would ensure a different level of traveller protection. This limits the ability of Government to adapt the Directive to suit the Irish market should it wish to do so. However, there are a number of areas where there are choices.
- 4.27 The provisions of the Directive apply to those types of travel arrangements which fall within the scope of the Directive as set out in Article 2(1). Key to understanding those arrangements is the definition of the word *traveller* as defined in the Directive. According to the Directive, you are a traveller if you are trying to conclude, or have concluded, a package or linked travel arrangement within the scope and meaning of the Directive.
- 4.28 A person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, which equates to one of the following does not fall within the scope of the Directive:
- (a) packages and linked travel arrangements covering a period of less than 24 hours unless overnight accommodation is included;
 - (b) packages offered, and linked travel arrangements facilitated, occasionally and on a not-for-profit basis and only to a limited group of travellers;
 - (c) packages and linked travel arrangements purchased on the basis of a general agreement for the arrangement of business travel between a trader and another

natural or legal person who is acting for purposes relating to his trade, business, craft or profession.

These types of travel arrangements have been excluded from the scope of the Directive by Article 2(2). For the purposes of the Directive you are not a *traveller* if you are trying to enter into one of these arrangements as they are expressly outside the scope of the Directive.

- 4.29 Arguably if Ireland was to maintain or introduce legal provisions in relation to the above types of travel arrangements, it would appear to be entitled to do so as they would be in relation to types of travel that are not within the scope of the Directive. The harmonisation measure in Article 4 appears to be in relation to protection for travellers as defined in Article 3.
- 4.30 Ireland may retain its provisions in relation to the activities listed in 4.28 above. They are not within the scope of the Directive, but are within the scope of the 1982 Act. A number of respondents commented on this point. Some thought that requiring traders to bond business Travel Packages would seem at odds with the maximum harmonisation nature of the 2015 Directive. Irish corporate travel businesses would be placed at a competitive disadvantage, in what is increasingly a global business, as Irish traders would include such sales when calculating an insolvency bond under prevailing Irish rules, whilst EU Member State counterparts would not.
- 4.32 The point was also made that the requirement for travel agents or tour operators to have a licence to sell or offer for sale packages may be a more stringent provision in relation to the sale of packages than provided for in the Directive. This is particularly given that the licence is only in relation to selling for travel that commences within Ireland to destinations outside Ireland. The Directive foresees a common internal market for packages with traders selling with departures from more than one Member State.
- 4.33 A similar point was also made that due to the fact that it seems clear from Article 4 that Member States have limited discretion in terms of its implementation, Ireland in the transposition should stay close to the letter and spirit of the legislation as to do otherwise would be in breach of the Directive and may put travel companies licensed in Ireland at a commercial disadvantage vis-a- vis travel companies licensed in other Member States.
- 4.34 A separate point was made in the consultation which is that Ireland should introduce an extra provision, namely definitions in the case of *linked travel arrangements* and the concept of facilitation of travel services in a *targeted manner*. Some suggested the definition of linked travel arrangement in the Directive is not clear. A clear definition would provide clarity to businesses on the extent to which their offerings establish obligations to consumers under the Directive.
- 4.35 The suggestion is that Ireland further define *linked travel arrangements* must be read in light of the fact that it is already defined in Article 3(5). In addition, a linked travel arrangement is defined as not constituting a package, which is itself defined in Article 3(2).
- 3.36 Clearly, it is necessary for Ireland to evaluate the options in the Directive. One means of evaluation could be to consider other Member States' implementations. Respondents pointed to the German transposition as an example.

Cooling-off Periods and Rights to Cancellation

- 4.37 The Directive provides significant mandatory consumer protection via cooling-off periods and rights to cancellation. Article 12(5) of the Directive indicates that Member States have an

option to require travel contracts to provide the traveller with the right to cancel the contract within 14 days for no reason with respect to *off-premises* contracts.⁴

- 4.38 Indecon's assessment is that the implementation of a cooling-off period as per Article 12(5) would likely result in higher costs, albeit for a small portion of the industry. In their judgment the added requirement would not be justified in terms of the balance of costs and benefits. In addition, they state they have not seen any evidence of there being an appreciable level of consumer detriment.
- 4.39 The sentiment was echoed by the ITAA and others. The implementation of Article 12(5), would result in the imposition of a disproportionate burden on organisers, in the absence of any evidence of there being an appreciable level of consumer detriment in this regard.
- 4.40 Others thought that given the very short time available for transposition, care should be taken in introducing any discretionary provisions.

Concurrent Liability of Retailers for Performance

- 4.41 The new Directive allocates liability for the performance of the package to the organiser. Article 13(1), however, permits Member States to provide for the concurrent liability of the retailer of a package, in addition to the liability of the organiser.
- 4.42 The fact that Irish legislation suggests that policymakers have previously decided to allocate responsibility for the performance of such contracts to the organiser and not to the retailer was highlighted to Indecon. Their assessment is that on balance, taking into account of existing Irish legislation and our evaluation of consumer detriment, not requiring retailers to be concurrently responsible for the performance of the contract would be the appropriate option.
- 4.43 Respondents agreed that the discretionary option for Government to impose concurrent liability on retailers along with organisers should not be implemented. This reflects the position as set out in article 13(1).
- 4.44 An important issue linked to the notion of liability is that limits may be applied to compensation to be paid, subject to certain qualifications. One option would be to follow the position of the German transposition. In this context we understand that the German transposition permits certain limitation of liability to three times the travel costs for selected delays. Other options could include more details regarding the cost and cost per day, such as three times the average cost per day for a maximum number of days.
- 4.45 Respondents who addressed this issue expressed support for the introduction of limitations on liability aligned with the German model. The ITAA's colleagues in the DRV provided an unofficial translation of the new § 651 para. 1 BGB (German Civil Code) as follows: *"The travel organiser may, by agreement with the traveller limit his liability for such damage to three times the package price which does not constitute bodily injuries and which was caused without fault (intentional or negligent)."* The introduction of limitations aligned to the German model is provided for in Article 14(4) of the 2015 Directive.

Insolvency Arrangements

- 4.46 Insolvency arrangements for packages and linked travel arrangements are dealt with in Articles 17, 18 and 19 of the Directive. As stated above, Article 17 requires organisers to put in place

⁴ EU 2015/2302 Art 12 (5)

insolvency protection. Article 17(2) requires this protection be calculated by reference to the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between down payments and final payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency.

- 4.47 Article 19 requires that traders facilitating linked travel arrangements shall provide security for the refund of all payments they receive from travellers insofar as a travel service which is part of a linked travel arrangement is not performed as a consequence of their insolvency. If such traders are the party responsible for the carriage of passengers, the security shall also cover the traveller's repatriation.
- 4.48 Under current legislation, licenced travel agents and tour operators use a bonding system to provide insolvency protection where the amount bonded is a percentage of projected licensable turnover; the estimated total of receipts from overseas travel contracts departing from Ireland. This scheme also covers refunds and repatriation in the case of insolvency. However, the method of calculating insolvency protection under the 2015 Directive is slightly different and is to be by reference to both payments received from customers *and* also an estimate for costs of repatriation. There is also no geographic restriction in relation to travel contracts taken into account for the estimate of turnover.
- 4.49 Some respondents made the point that, under the 1982 Act, the definition of an overseas travel contract is linked to travel commencing in Ireland. This is not compatible with the provisions of the 2015 Directive. It is difficult to see how the current bonding arrangements can be maintained without adjustments to reflect the requirements of Article 17(3) in order to remove reference to a traveller's place of residence, place of departure or where the package is sold.
- 4.50 The point was also made that, under current legislation, all overseas packages sold in Ireland must be covered by the Irish protection regime. However, Article 18 requires protection to be provided for all packages and linked travel arrangements sold by an Irish company in a Member State. Similarly, any company established in another Member State which sell packages or linked travel arrangements in Ireland must be covered by the insolvency protection of that Member State. Thus the Irish Government must either amend or replace the current scope of protection.
- 4.51 Current bonding arrangements are more restrictive than that required under the Directive and should amended to reflect Articles 17, 18 and 19. For example, air carriers may now also be regarded as traders (where facilitating linked travel arrangements) and thus be required to put in place insolvency protection. This is a new concept that is not part of the existing legislation. Potentially, if amendments were made to the 1995 Act of the types illustrated in the Indecon report, then air carriers may be covered by the current insolvency protection regulations in place under the 1995 Act that apply to undertakings that are not travel agents or tour operators. These provisions set out a 10% or 15% bond, depending on how the insolvency protections is structured.
- 4.52 Some respondents suggested the calculation of the bonded amount should be amended to take into account the financial stability of the trader in question and the risk of insolvency.
- 4.53 The Commission notes that the current calculation of the appropriate level of insolvency protection is by reference to estimated payments received from customers departing from Ireland. The bond level of 4% of projected licensable turnover for travel agents and 10% for tour operators allows for refunds, repatriation and reimbursement of related expenses

occasioned by the relevant collapse. The travel services covered by the bond are travel alone, travel plus accommodation, travel plus other ancillary services and packages as defined in the 1990 Package Travel Directive. Under the new definition of organiser, travel agents may be regarded as an organiser engaged in selling packages. Previously, it was mainly tour operators who were regarded as organisers as they pre-arranged the various combinations of travel services (transport/accommodation etc.) for sale directly by themselves or through a retailer. The implication of these changes is that the calculation of the bond may need to change.

- 4.54 A number of respondents raised queries on the definition of linked travel arrangements:
- (a) How can a consumer prove they have concluded a second contract within the context of a linked travel arrangement? In case of an insolvency, how will a consumer prove to the bankrupt airline's trustee that they bought a linked travel arrangement and therefore should benefit from the security?
 - (b) If a consumer buys an airline ticket, clicks-through and then books a hotel, a linked travel arrangement is created. But what if that person later cancels the hotel reservation? If the linked travel arrangement no longer exists, how will the airline be informed that the security no longer covers this consumer?
 - (c) It is difficult to understand how purchases can be differentiated based on the timing of a booking; e.g. where a purchase is made more than 24 hours after the time of original booking. It would be easier to protect all such purchases.
- 4.55 On a practical note, one air carrier made the point that they were not aware of the availability in Irish markets of insurance products covering airline insolvency (i.e. products which offer sufficient security to reimburse consumer payments made to airlines to cover the repatriation of passengers in the event of the bankruptcy of the airline). They suggested that where such products become available, they could potentially prove to be prohibitively expensive to new airline industry entrants.

Central Contact Point

- 4.46 A requirement of the Directive is to nominate a central contact point in accordance with Article 18 (2) to (4) of the Directive in order to facilitate co-operation and supervision of organisers between Member States.
- 4.57 Indecon believes there are three main options which could be considered for this as follows:
- Department of Justice.
 - Commission for Aviation Regulation.
 - Department of Transport, Tourism and Sport.
- 4.58 At present under the 1982 Act, the Commission for Aviation Regulation is the state organisation which deals with licensing, claims by passengers in the case of insolvency, repatriation and the monitoring of appropriate bonding by entities that trade in Ireland. Therefore, it would be appropriate to designate that body as Central Point of Contact for contacts from other Member States as the information to be provided by the Central Contact Point is information that the Commission already provides to the public or relates to its statutory mandate. Respondents who addressed this issue all expressed support for stated view of the Commission for Aviation Regulation that it be designated Central Contract Point.

Compliance and Penalties

- 4.59 A further issue which needs to be decided is the basis for compliance and penalties. Articles 24 and 25 of the Directive requires that Member States must ensure that adequate and effective means exist to ensure compliance with the Directive and provide for rules on penalties for infringements of the national provisions adopted pursuant to the Directive. One option would be to replicate the rules on compliance and penalties which are already in place under the 1982 and 1995 Acts.
- 4.60 All respondents who expressed a view on this issue agreed that would seem to make sense that the compliance and penalties should be aligned with those in place in the 1982 and 1995 Acts.
- 4.61 A core objective of the Directive is to create an internal market in the EU for packages and linked travel arrangements. A number of industry participants, in recent meetings held by the Commission, asked how the State would monitor whether traders established outside the State were correctly and appropriately bonded. At present the Commission focuses on firms licensed and trading in the Irish market. Consideration would need to be given to organisational requirements in relation to establishing a monitoring and enforcement role in relation to the potential trading by firms from every other EU Member State who carry on business in Ireland without the need to first get an Irish bond or licence.

Transposing the Directive

- 4.62 Indecon point out the uncertainties on the interpretation of the definitions in the Directive but form the opinion is that there is no option for Member States other than to transpose the positions and definitions in a manner which precisely mirrors the Directive. Questions of interpretation of definitions may subsequently be for the Courts to decide. Another aspect which should be considered in transposing the Directive is that given the short time available before transposition, care is required in introducing any of the discretionary provisions. In addition, the decision on how to transpose the Directive should be guided by the easiest and most effective manner to meet the timescale required.

- 4.63 The wording of the Directive is clear and, given the maximum harmonisation nature of the Directive, any transposition must precisely mirror the provisions of the Directive. There are, however, different options which may be feasible for transposing the Directive. The Directive could be transposed by way of primary legislation or by amending the current regime or by introducing secondary legislation.
- 4.64 In considering approaches to the transposition, respondents agreed that Ireland does not have the option of relying on Article 29 of the new Directive and the text of the 1995 Act to apply the new Directive. Respondents agree that the use of secondary legislation was possible. The view was that any approach taken must result in clear, consistent legislation and these objectives should not be compromised for the sake of expediency.
- 4.65 Parties also expressed a view that Government, in transposing the Directive, should update Irish legislation in this area to reflect market and technological developments. Government should replace relevant existing pieces of primary legislation with a new Act that transposes the Directive and make provision to retain the elements of the previous legislation that are consistent the provisions of the new Directive. There is a unique opportunity for a rationalisation, consolidation and updating of the existing legislation.

5. Impact of Directive (EU) 2015/2302 on Existing Arrangements

5.1 Section 3 of this report examines the impact of the new Directive on existing legislation. This Section highlights those points that should be taken into consideration in the Commission's stage 2 thinking of adequate consumer protection arrangement that should be in place in Ireland.

Existing Consumer Protection Arrangements

5.2 Ireland already has an insolvency protection scheme in place where tour operators and travel agents are licensed and bonded. If a licensed company becoming insolvent, affected consumers can make claims for a refund for the costs of trips not yet taken and for repatriation costs in the event that the collapse occurs while they are abroad. The costs of claims are paid from the bond. If the bond does not cover all claims, the shortfall is covered by the Travellers' Protection Fund. This fund was originally financed by a levy on tour operators, but this levy was stopped in 1987. To date, the levy has not been reintroduced.

5.3 The original legislation dates back to 1982, and it is almost a decade since the last consultation with stakeholders on possible changes to the travel-trade legislation. Moreover, the collapse of Lowcostholidays.ie in summer 2016 has depleted most of the remaining money in the Travellers' Protection Fund. In short, there was a need to review the effectiveness of current arrangements.

5.4 In 2017, the Commission established two work projects. One project looked at the adequacy of current consumer protection arrangements and the other looked at the implementation of the Package Travel Directive. Clearly there is a link between both projects as the requirements of the Directive will impact on the structure of Irish insolvency protection arrangements. In 2017 we decided to run the two projects in parallel because of the uncertainty over the likely timing for the transposition of the Directive into Irish legislation and the need to ensure the adequacy of current protection arrangements.

5.5 In December 2017, we published an update paper on our thinking about insolvency protection arrangements and decided to pause further work until the conclusion of our consultation on the transposition of the Package Travel Directive.

Bonding

5.6 The definition of a package now includes dynamic packaging. This means a travel agent will be defined as an organiser if it sells dynamic packages (this probably covers most Irish travel agents). The Directive also defines a tour operator as being an organiser. This needs to be taken into consideration when looking at the level of bonds that need to be in place in the Irish insolvency protection model. Currently travel agents put in place a bond for 4% of projected licensable turnover while tour operators put in place a 10% bond.

5.7 According to the Directive, companies that sell packages are defined as organisers while those that selling linked travel arrangements are traders. The same company can be both an organiser and a trader depending on their business model. The activity carried on by organisers, retailers and traders is defined by reference to combinations of travel services. The Directive requires insolvency protection to be calculated by reference to the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between down payments and final payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency. Consideration needs

to be given to the costs included in and the calculation of security arrangements for retailers, organisers and traders.

- 5.8 Current insolvency protection arrangements require tour operators and travel agents put in place bonds for overseas travel contracts. These contracts are related to travel ex-Ireland. The Directive speaks of travel services and there is no such geographic restriction in its definition. This needs to be addressed in the review of current arrangements.
- 5.9 Under the Directive, a Member States can decide if insolvency protection should be extended to retailers. Existing legislation does not require retailers to be licensed and bonded. If the transposition of the Directive into Irish legislation changes this position, it needs to be reflected in existing arrangements.

Licensing

- 5.10 The Directive does not require a licensing regime to be in place. If its transposition into Irish legislation changes the existing legal position, it needs to be taken into consideration in the review of current arrangements.
- 5.11 Existing Irish insolvency protection arrangements relate to retailers and organisers. The directive introduces a new category of activity where businesses called traders can sell linked package arrangements. The position of trader selling linked travel arrangements in Irish insolvency protection arrangements requires careful consideration.

Exclusions

- 5.12 Excluded from the Directive are trips < 24 hours not including overnight accommodation, trips occasionally operated on a non-profit basis and to a limited group of travellers and business trips. These are covered under existing legislation. If this changes when the Directive is transposed, it need to be taken into consideration.

Transposing the Directive

- 5.13 In Ireland, the transposition of the Directive may be by way of primary or secondary legislation. Respondents to the consultation held the view that any approach taken must result in clear, consistent legislation and these objectives should not be compromised for the sake of expediency. When the Directive is transposed, the Commission must review its proposed future consumer protection measures against the then legislative background to ensure it remains robust.

6. Participants in the Consultation Process

Aer Arann
Aer Lingus,
Atlantic Sky Team Tours Limited
Atlas Travel Services Ltd
Bernard Kavanagh & Sons Ltd
Cassidy Travel
Carlson Wagonlit Ireland Limited
Celtic Horizon Tours Ltd
Centre Travel (Dundalk) Ltd.
CityJet
Click N Go
Clonmel Travel Ltd
Club Travel
CTM Travel Limited
Dawson Travel Cork Limited
Derek Keogh Tours Ltd.
Derval Keenan T/a DK Travel
Des Abbott Travel Limited
Expedia Inc (W/A)
Fahy Travel Ltd
Flight Centre Travel Group (Ireland) Limited
Freedom Travel Ltd
Go Hop
Grenham Travel Ltd
Guy Tominaga
Hello France Ltd
Homi Ltd
Independent Travel Consultants Ltd
International Air Transport Association
Internet Leisure & Corporate Ltd
Irish Travel Agents Association
Islamic Foundation of Ireland
ITS Travel Bureau Ltd
Jeka Holidays Ltd.
JMG Travel Ltd
Joe Walsh Tours
Joe Walsh Pilgrimtours Limited
John Moran T/A E.U. Tours
Just Split
Keller's Travel Limited
Killiney Travel Centre Ltd.
Lee Travel Ltd
Liberty Travel Ltd
Linevana Ltd
L O'Callaghan Travel Ltd
Lorraine Cunningham Travel Limited
M Delmar Travel Ltd
McGuill Travel Ltd.
Navan Travel Ltd.
Neenan Travel Ltd.
Newbridge Travel & Tours Limited

O'Leary Travel Agency Ltd
Oroko Travel Ltd
Ramedora DAC
Riviera Tours Limited
Robert Kilkelly Travel Limited
Ryanair
Sindaco Ltd
SM Tech Service Supply DAC
Sonas Travel Ltd
Specialist Holiday Group IRE Ltd
Spiral Hill Ltd.
Sunway Travel Topflight
Topaz Travel
Topflight for Schools Ltd.
Travel Centres
Travel Counsellors (Ireland) Limited
Travel Focus Ltd.
Travel Republic Limited
Travel Savers
United Airways
Wecanbookit Ire Ltd
Westport Travel
Worldchoice
World Travel Centre Limited