



**Consultation on the transposition of Directive (EU) 2015/2302 on package travel and
linked travel arrangements**

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1. Introduction to regulation of package travel

- 1.1 The Commission is responsible for licensing travel agents and tour operators, it also administers a scheme of protection for consumers of these companies. In 2016, we licenced 290 companies which had a projected licensable turnover of €1.2bn.
- 1.2 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.
- 1.3 All licensees are required to provide a bond. The current bond required from travel agents and tour operators is a percentage of projected annual licensable turnover, 4% and 10% respectively.
- 1.4 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.
- 1.5 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 1 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 1 January 2018.
- 1.6 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 will form the basis of advice from the Commission to the Department of Transport, Tourism and Sport.

2. Consultation process

- 2.1 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.
- 2.2 Indecon have 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 have 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.
- 2.3 Extensive stakeholder engagement that has taken 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.
- 2.4 Indecon have produce 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.
- 2.5 The aim of the draft report and public consultation is 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.
- 2.6 The Commission now seeks to further engage with the travel trade stakeholders to take into account their points of view in relation to the contents of that draft report and the consultation questions that arise having regard to the contents of the Package Travel Directive (2015/2302/EU).
- 2.7 Following this process, Indecon will work with the Commission to update their report as required (providing summaries of the travel industry views). This work will form the basis of advice from the Commission to the Department of Transport, Tourism and Sport in relation to their role regarding the transposition of the Directive into Irish law.
- 2.8 Set out in the next section is a summary of the principal issues to be considered in the transposition as presented in the Indecon report.

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

- 3.1 The new Directive applies in Ireland from 1 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 1 January 2018. Following consultation with travel trade industry stakeholders, Indecon has developed proposals for consideration on the matters arising from the introduction of the new Directive.

Background to the Package Travel and Linked Travel Arrangements Directive

- 3.2 The new Package Travel and Linked Travel Arrangements Directive (Council Directive 2015/2302/EU) was published in the Official Journal of the European Union on 11 December 2015. One of the reasons for the new Directive is to provide consumer protection taking account of the reality in Ireland and in other EU countries that there is an increasing likelihood that consumers combine their own holiday components (so-called dynamic packaging) instead of purchasing packages pre-arranged by an organiser or retailer. As a result of these market developments, and in the absence of updated legislation, different levels of consumer protection have applied to travel arrangements that are sold differently, but this may be unclear to consumers to whom the various arrangements may be indistinguishable.
- 3.3 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.

Maximum Harmonisation Nature of Directive

- 3.4 In considering the options for consultation on the Directive, it is important to recognise that as the Directive is a maximum harmonisation Directive. Member States do not have any flexibility on how they implement most of the provisions of the Directive. Unless otherwise provided for by the Directive, 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.
- 3.5 The maximum harmonisation nature of the Directive limits the ability of the Irish Government to adapt the Directive to suit the Irish market should it wish to do so. Notwithstanding the maximum harmonisation nature of the Directive, there are a number of enabling clauses in the Directive which afford various choices for Ireland and other Member States.
- 3.6 It is necessary for Ireland to evaluate the options in the Directive. One means could be to consider other Member States’ implementations. However, it appears at the time of writing that only Germany has implemented legislation. Indecon’s analysis has therefore identified a number of areas where a degree of discretion is permitted to Member States. These include:
- The manner in which the insolvency requirements are implemented
 - 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

Insolvency Arrangements

- 3.7 As stated above, Article 17 of the new Directive requires organisers to put in place insolvency protection. Article 17(2) then requires that the insolvency 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.
- 3.8 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.
- 3.9 Of note is that the current insolvency protection scheme in Ireland and the Directive foresee the insolvency cover being used to refund or repatriate travellers and to finance accommodation of travellers prior to repatriation if necessary. Therefore, the desired outcome of both the current insolvency protection scheme and the scheme in the new Directive is essentially the same. Thus, the current bonding arrangements are not inconsistent with the Directive, although as discussed below they do not cover the position of carriers and others facilitating linked travel arrangements.
- 3.10 The current Package Travel Directive only applies to packages as defined in that 1990 Directive. This was transposed by the Package Holidays and Travel Trade Act, 1995. Licenced travel agents and tour operators in Ireland have in place insolvency protection of the type set out in section 22(2)(b) of the Package Holidays and Travel Trade Act, 1995 and consequently rely on bonds put in place as licence holders under the 1982 Transport (Tour Operators and Travel Agents) Act, as either travel agents or tour operators. At present the insolvency protection in place for tour operators and travel agents in Ireland is calculated by reference to projected licensable turnover, i.e., the total of receipts estimated by a licence applicant in respect of overseas travel contracts departing from Ireland for the relevant future period. That method of calculation is by way of secondary legislation and may be changed in the same manner. The insolvency protection under current legislation is also to provide refunds and repatriation in the case of insolvency. However, the method of calculation of insolvency protection under the 2015 Directive, as described above, is slightly different and is to be by reference the length of time between down payments and final payments and 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. The potential therefore, is for a change in the underlying amount by which any bond is calculated.
- 3.11 The Commission notes that the calculation of the appropriate level of insolvency protection in Ireland at present is by reference to estimated payments received from customers departing overseas from within the State. The bond level of 4% of projected licensable turnover for travel agents and 10% of projected licensable turnover for tour operators provides insolvency protection for customers that allows for refunds of payments made, 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. In addition, it is possible that the combination of some travel services by airlines via the booking process on their websites may also fall within

the new definition of organising.

- 3.12 Air carriers, and others may now also be regarded as traders facilitating linked travel arrangements. This is a new concept that is not part of the existing Irish legislative framework. This raises the possibility that such air carriers may need to put in place insolvency protection in the same manner as other traders facilitating linked travel arrangements to protect against their insolvency. Carriers, specifically, must put in place such insolvency protection which not only provides for refunds of payments they receive, but also repatriation of the traveller. Under current Irish legislation, air carriers engaged in selling tickets for transport on their own airplanes are not regarded as tour operators or travel agents. Potentially, if amendments were made to the Package Holidays and Travel Trade Act, 1995 of the types illustrated in the Indecon report, such air carriers may be covered by the current insolvency protection regulations in place under the 1995 Act applying to undertakings that are not travel agents or tour operators. These provisions set bonds at 10% or 15%, depending on how insolvency protections are structured.

Scope of the Directive

- 3.13 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.
- 3.14 There is also the issue of whether existing Irish domestic legislative consumer protections in bonding and licencing for travel services, such as for single travel services or by short duration trips, which are not covered by the Directive, should remain in Irish legislation. 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 It was suggested to Indecon by representatives of the travel agents 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. The sale or purchase of such overseas travel in currently falls within the consumer protection offered by existing Irish travel trade legislation.

Cooling-off Periods and Rights to Cancellation

- 3.15 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.²
- 3.16 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. They state they have not seen any evidence of there being an appreciable level of consumer detriment in this area.

Concurrent Liability of Retailers for Performance

- 3.17 Directive (2015/2302/EU) allocates liability for the performance of the package to the organiser. Article 13(1), however, permits Member States to provide for the concurrent

¹ EU 2015/2302 (19)

² EU 2015/2302 Art 12 (5)

liability of the retailer of a package, in addition to the liability of the organiser.

3.18 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.

3.19 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 Indecon understands 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.

Central Contact point

3.20 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.

3.21 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.

3.22 At present under the 1982 Transport (Tour Operators and Travel Agents) 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.

Transposing the Directive

3.23 One issue relevant to the transposing of the Directive is that the wording of the Directive is clear, and given the maximum harmonisation nature of the Directive, the main provisions must precisely mirror those of the Directive and this lends itself to direct transposition. 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.

3.24 In deciding how to transpose the Directive, the Indecon report attached illustrates in Figure 8.1 the areas where significant amendments would be required to Irish legislation to align it with the contents of the Directive.

3.25 A further issue which needs to be decided in the drafting of the Irish legislation or other arrangements to transpose the Directive is the basis for compliance and penalties. Article 24 of the Directive requires that Member States must ensure that adequate and effective means exist to ensure compliance with the Directive. One option for the Irish Government would be

to replicate the rules on compliance and penalties which are already in place under the 1982 and 1995 Acts.

- 3.26 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.
- 3.27 Indecon point out the uncertainties on the interpretation of the definitions in the Directive but from the opinion is that there is no option for Member States including Ireland other than to transpose the positions and definitions in a manner which precisely mirrors the Directive. Issues regarding interpretation of the definition of linked travel arrangements and other such aspects may subsequently be issues for the Courts to decide.

4. Questions for consultation

- 4.1 The question for consultation set out below are grouped by theme for ease of cross reference with the Indecon report and the text of the Directive.

Maximum harmonization Nature of the Directive

1. Is the requirement for travel agents or tour operators to have a licence to sell or offer for sale packages a more stringent provision in relation to the sale of packages than provided for in the Directive? Does the Irish Government have an option to retain this element of the current system as set out in the Transport (Tour Operators and Travel Agents) Act, 1982?
2. Is it an option for Ireland to rely on the definitions of "overseas travel contract", "tour operator" and "travel agent" as set out in the Transport (Tour Operators and Travel Agents) Act, 1982, to use that 1982 Act to transpose the new Directive? In essence, is there then an option for Ireland to rely on interpreting those pre-existing definitions to include organisers and retailers of packages or traders facilitating linked travel arrangements? If that is so, can Ireland then provide for the necessary insolvency arrangements by way of secondary legislation as provide for in Section 14 of the 1982 Act?
3. Alternatively, does Ireland have the option of relying on Article 29 of the new Directive and the text of the 1995 Package Holidays and Travel Trade Act to apply the new Directive? If that is so, can Ireland then provide for insolvency and other arrangements by way of secondary legislation as provided for by Sections 23 and 24 of the 1995 Act?

Insolvency Arrangements

4. Should Ireland maintain the specific insolvency mechanisms in force for the 1990 Package Travel Directive to ensure compliance with the additional requirements of the 2015 Directive?
5. Does the Government have the option to maintain in force the current bonding arrangement set out in Section 22 of the Package Holidays Act, 1995 and Section 13 of the Transport (Tour Operators and Travel Agents) Act, 1982? Is this approach consistent with the provisions of the new Directive?
6. If that is the case, should the current bonding regulations, introduced by secondary legislation, be amended to expressly provide for a new method of calculation of the bond by reference to the text of article 17 and 19 of the new Directive?

Scope of the Directive

7. Should the Irish Government maintain existing legislation which provides bonding and other protection for single travel services and for trips lasting under 24 hours which are not covered by the new Directive?
8. Should the provision of S.I. of 271 of the 1995 Act Package Holidays and Travel Trade Act should be amended to apply to occasional and not for profit organisers with similar effect to packages and Linked Travel Arrangements?
9. Does the Government have the option to continue to make the protection of overseas travel contracts alone, to destinations outside the island of Ireland, the subject of regulation? Is this consistent with Article 4 of the new Directive?
10. Is there agreement or not that the scope of the Directive should not be extended beyond the mandatory requirements?

Cooling off Periods and Rights to cancellation

11. Is there agreement that the additional right to withdraw from a contract, entered into off-premises, within 14 days for no reason, should not be introduced given the other protections for termination permitted under the Directive?

Concurrent Liability of retailers for performance

12. Is there agreement that the discretionary option for the Irish Government to impose concurrent liability on retailers along with organisers should not be implemented?

Central Contact Points

13. Which of the following should be nominated as Central Contact Point?
- a. Department of Justice.
 - b. Commission for Aviation Regulation.
 - c. Department of Transport, Tourism and Sport.
 - d. Other

Transposing the Directive

14. Is there agreement or not that the compliance and penalties should be aligned with those in place in the 1982 - 1995 Acts?
15. Is there support for the introduction of limitations on liability aligned with the German model?
16. Should the Government use this as an opportunity to update Irish legislation in this area to reflect market and technological developments and thus replace both 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?

5. Responses

- 5.1 The Commission welcomes the views of interested parties on the consultation questions set out above.
- 5.2 Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. Ordinarily we place all submissions received on our website. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided.
- 5.3 Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.
- 5.4 Responses should be titled "*Directive (EU) 2015/2302 on package travel and linked travel arrangements*" and sent by email to info@aviationreg.ie or by post to: Commission for Aviation Regulation, 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin, D02 W773.
- 5.5 The deadline for responses to this consultation is **5pm, Friday, 29 December 2017**.