



Project Update:

Travel Trade Consumer Protection Measures

Commission Paper 1/2018

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Commission for Aviation Regulation

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1. Executive Summary

- 1.1 This paper provides an update on the Commission's examination of the consumer protection arrangements in the travel trade industry. In August 2017, we published consultation paper and alongside that a report by advisors to the Commission.¹ In October, we held a number of consultation meetings with the travel trade in Athlone, Cork and Dublin.
- 1.2 In October we received 42 written responses to the consultation. We have assessed the content of those responses and updated our thinking as appropriate. In addition our advisors have reviewed the responses and provided summaries in a report. The responses and the report are published alongside this paper.²
- 1.3 At the outset, we established two separate work projects. One project looked at the adequacy of current consumer protection arrangements (this project) and the other looked at the implementation of the Package Travel Directive.³ The requirements of the Directive may impact on the structure of the consumer protection arrangements that need to be in place in Ireland. We were aware of the link between these two projects. However, at that time the Commission decided to run the two projects in parallel because of the uncertainty over the likely timing for the transposition of the Package Travel Directive into Irish legislation and the need to ensure the adequacy of current customer protection arrangements.
- 1.4 At this time, we have decided to publish this paper as a Stage 1 report setting out initial views and to pause the start of Stage 2 for a number of reasons:
- (a) We are concluding our consultation on the Package Travel Directive and will shortly be in a position to determine if aspects of the current protection arrangements need to be amended or augmented;
 - (b) We are working on the assumption that the Directive will be transposed into Irish legislation by July 2018; and
 - (c) Any current preferred options to reform customer protection arrangements would require legislative changes which take time.
- 1.5 We intend to commence Stage 2 after we have reviewed stakeholder responses to the Package Travel Directive consultation paper. At that time we will publish a terms of reference for the Stage 2 work.
- 1.5 At this Stage 1 conclusion, the Commission's view is that the current scheme is no longer effective. Without remedial action it could not pay-out fully if there was a significant collapse. The scheme needs to be reformed to be able to continue to offer the level of protection expected by consumers of the travel trade industry.

¹ Consultation Paper CP8/2017: <https://www.aviationreg.ie/fileupload/Travel%20trade/CP8%20Travel%20Trade%20Consumer%20Protection%20Measures.pdf>

Advisors Report: <https://www.aviationreg.ie/fileupload/Travel%20trade/TTConsumerProtectionMeasuresReport.pdf>

² Responses to Consultation Paper CP8/2017: <https://www.aviationreg.ie/fileupload/2018/18-1-10%20Responses%20to%20Consultation%20Travel%20Trade%20Consumer%20Protection%20Measures%20CP8-2017.pdf>
Summary of Responses: <https://www.aviationreg.ie/fileupload/2018/Europe%20Economics%20Final%20Report.pdf>

³ Project on the Implementation of the Package Travel Directive: [https://www.aviationreg.ie/fileupload/Consultation%20on%20the%20transposition%20of%20EU%20Directive%202015%20on%20Package%20Travel%20and%20Linked%20Travel%20Arrangements\(3\).pdf](https://www.aviationreg.ie/fileupload/Consultation%20on%20the%20transposition%20of%20EU%20Directive%202015%20on%20Package%20Travel%20and%20Linked%20Travel%20Arrangements(3).pdf)

- 1.6 Having considered all responses to our consultation paper, the Commission intends to include the following items in Stage 2 of the analysis:
- (a) Options C, D, and E as set out in the consultation paper.
 - (b) Variations of these options relating to:
 - a. Business specific or risk assessed bonds
 - b. Definition of licensable turnover
 - c. A passenger levy to replenish the Travellers' Protection Fund
 - d. A levy/use the Traveller' Protection Fund to purchase insurance to protect against the high impact low likelihood events.
 - (c) Any additional areas highlighted in our consultation paper on the implementation of the Package Travel Directive relevant to consumer protection arrangements.

2. Current Thinking

Effectiveness of Scheme

- 2.1 The majority of respondents agreed that the current scheme is not effective. That said, one respondent noted that the current scheme has performed well to date, with the exceptions of Failte Travel and Lowcostholidays. However, another stakeholder noted that moving forward the scheme cannot cope with a catastrophic loss against the Travellers' Protection Fund. Many respondents were of the view that the scheme is no longer effective because it covers no more than 20% of travel bookings made.
- 2.2 Having reviewed responses to our consultation paper, the Commission remains of the view that the current scheme needs reform if it is to remain effective. To date, it has been effective in the sense that consumers who have bought overseas travel covered by the current regime from licensed and bonded Irish travel agents or tour operators have enjoyed financial protection. Those needing repatriation have been repatriated, and those with valid claims have been refunded in full.
- 2.3 Without remedial action the current scheme could not pay-out fully in another collapse where the shortfall of the bond is of the scale of Lowcostholidays. In addition, taking the average value of decline per year over the 1998 to 2016 period and simply projecting this value forward suggests that the Travellers' Protection Fund would only last for a short number of years. The scheme needs to be reformed to be able to continue to offer the level of protection expected by consumers of the travel trade industry.

Efficiency of Scheme

- 2.4 There were few responses made in relation to the efficiency of the present protection scheme. One respondent said the current scope of the scheme is anticompetitive as many large companies operate in the market (such as airlines) without any bonding and licensing requirements. It was suggested that if the scope of the scheme was broadened then it would become more cost effective to provide traveller protection through a per passenger levy. Another respondent claimed there was some potential for cost reduction while maintaining the current level of consumer protection, due to the fact that money collected by travel agents on behalf of tour operators currently results in an unnecessary double bonding.
- 2.5 After considering the responses received, we remain of the view that to date the scheme has been efficient. The fund collected in the 1980s has been sufficient to cover the shortfall of bonds in collapses for 30 years. While the bonds themselves do place a cost on the industry, the bonds are priced accordingly based on risk in the various markets where the industry procure bonds.

Reform of the Current Customer Protection Scheme

- 2.6 Respondents provided a number of suggestions regarding how the scheme should be reformed to best protect consumer interests. There can be grouped under the headings of (a) assessing the financial viability of the company, (b) approach to bonding and (c) replenishing the Travellers' Protection Fund. Table 1 below provides a summary of the suggestions submitted together with the Commission's observations. We will further consider suggestions that are highlighted in Table 1.

Table 1: Respondents' Suggestions and Commission's Observations

Assessing Financial Viability	Commission's Observations
<p>(a) Better police companies</p> <p>(b) Identify companies most at risk and impose regulations on them to pre-empt such an outcome</p> <p>(c) Use legislative tools to pursue those that breach existing legislation, to deter others from being under bonded.</p> <p>(d) Avoid imposing additional reporting requirements on larger agencies that will not fail and focus on the actual risk.</p> <p>(e) Require all firms with turnover over €10m submit audited statements or abbreviated audited management accounts to allow the Commission to take an informed view on its financial viability.</p> <p>(f) Focus more on retained earnings, the applicant's bank position and cash flow - a better guide to how prudent a company was as it incorporated future planning (and moreover, turnover does not determine profitability).</p>	<p>The Commission has reviewed its licensing process and has introduced increased reporting requirements on licensees.</p> <p>It is difficult to determine, in advance, which companies are most at risk but will further review our processes to determine what additional reporting is required for particular businesses.</p> <p>The Commission does pursue cases of unlawful trading and welcomes the opportunity to further discuss with industry and suggestions.</p> <p>There is no correlation between company size and the risk of failure.</p> <p>The Commission has introduced requirements for companies on a case by case basis but will consider this suggestion as we continue to assess our procedures.</p> <p>In assessing the financial strength of a company we do look at these (and other) factors.</p>
Approach to Bonding	
<p>(a) Raise bonding levels for companies deemed to be as more risky according to set criteria (to level about the current 4% and 10%)</p> <p>(b) Grade companies as high, medium or low risk and set bonding requirements accordingly.</p> <p>(c) Evaluate the different business models and do not apply a one size fits all approach to licensing and bonding.</p> <p>(d) Given the difficulty in generating an accurate forecast of projected licensable turnover, use actual turnover (possibly with a mark-up).</p> <p>(e) Have a tiered approach to setting bonding rising from 2% of projected licensable turnover for</p>	<p>The Commission will consider the option of risk assessed bonds in the next stage of the project.</p> <p>The Commission will consider the option of risk assessed bonds in the next stage of the project.</p> <p>The Commission will consider the option of risk assessed bonds in the next stage of the project.</p> <p>Actual turnover in one period is no measure of what the turnover will be in the next. However, when an existing licensee has applied for a new licence, we do query projections where they are out of line with historic actual turnover.</p> <p>The Commission will consider the option of business specific bonding levels in the next stage of the project.</p>

<p>companies projecting less than €2m, rising to 6% for turnover above €6m.</p> <p>(f) Redefine turnover when setting the bonding level, e.g. exclude turnover related to visas, passport applications, insurance and boarding-pass fees.</p> <p>(g) Charge a fee per passenger booked as opposed to requiring the licensee to pay a considerable premium to an insurance company to fulfil bonding requirements.</p>	<p>It may be a challenge for tour operators and travel agents to provide reasonable estimates for the redefined turnover. However we will consider redefining licensable turnover in Stage 2.</p> <p>This appears similar to the approach taken in the UK and one we will consider in the next stage of the project.</p>
<p>Replenishing the Travellers’ Protection Fund</p>	
<p>(h) Introduce a travel levy to boost its staff numbers and ensure licences are well monitored.</p> <p>(i) Introduce a levy that can be used to purchase insurance and gradually top-up the Travellers’ Protection Fund.</p> <p>(j) Use the current Fund to purchase insurance or secure a line of bank credit to cover against the possibility of future collapses generating claims in excess of the company’s bond.</p> <p>(k) Take no action now and introduce a levy only after it has been exhausted, borrowing from the government or banks to make good a temporary shortfall.</p> <p>(l) Levy all passengers leaving Ireland.</p>	<p>The Commission is funded by way of a levy and does not required a separate travel levy.</p> <p>The Commission will consider the use of a levy to purchase insurance in the next stage of the project.</p> <p>The Commission will consider using the current Travellers’ Protection Fund to purchase insurance in the next stage of the project.</p> <p>In the Commission’s view, this is not consistent with operating an adequately resourced customer protection arrangement as the Commission is not in a position to borrow from government and does not have the remit to fund the scheme through bank borrowings.</p> <p>While this option is favoured by many respondents, in the view of the Commission is goes beyond the protection of travel agents’ and tour operators’ passengers and as such is not a viable option.</p>

2.7 In summary, following our recent consultation process, the Commission sees merit in further considering the following suggestions (in addition to our own proposals):

- (a) Business specific or risk assessed bonds
- (b) Redefine licensable turnover
- (c) Introduce a passenger levy to replenish the Travellers’ Protection Fund
- (d) Introduce a levy/use the Traveller’ Protection Fund to purchase insurance to protect against the high impact low likelihood events, such as the collapse of Failte Travel or Lowcostholidays.

It is important to note that some of these options would require legislative changes and cannot be considered short-term solutions.

Proposed Options

2.10 Table 2 below summarises the options considered in our consultation paper. As outlined in that paper, Options A and B below do not require legislative change. Under Option A we would rely *only* on increasing bond levels and under Option B, we would introduce a levy on tour operators only to replenish the Travellers' Protection Fund. In our consultation paper, we formed the view that neither of these options are sustainable. Having reviewed the responses to the consultation paper, the Commission remains of this view and will not consider these options in Stage 2 of this project.

Table 2: Summary of Options in Consultation Paper

Item	Option A	Option B	Option C	Option D	Option E
Bonding, travel agent	200%	4%	4%	8%	8%
Bonding, tour operators	100%	10%	10%	20%	20%
PLTO definition	No change	No change	No change	Excludes payments passed onto supplier immediately and bills paid in arrears	Excludes payments passed onto supplier immediately and bills paid in arrears
One-off levy	No	2.5%, TO only	0.35%, TA and TO	0.35%, TA and TO	0.25%, TA and TO
On-going levy	No	0.2%, TO only	0.03%, TA and TO	0.03%, TA and TO	0.02%, TA and TO
Other	-	-	-	-	Firms cannot exceed PLTO. Firms must identify at point of sale to consumer whether eligible to claim.
No legislative change	✓	✓	✗	✗	✗
Impact on effectiveness	✓✓✓	✓✓	✓✓	✓✓	✓✓
Impact on efficiency	✗✗	✗	~	✓	✓

2.11 In Stage 2 of this project we will continue to examine Options C, D and E together with respondents' suggestions outlined in paragraph 2.7 above.

3. Scope of Current Review and the Package Travel Directive

- 3.1 A common theme in the responses to the consultation was the timing of this review given that reform of the regulation of the industry to comply with the Package Travel Directive is likely in the short term. The industry expressed concerns that they would experience two changes to how they are regulated in quick succession.
- 3.2 We agree that making one change rather than two is preferential. However, this comes with the risk that a collapse in the near future is not afforded the level of protection expected. At this time, we have concluded Stage 1 of this project and pause the start of Stage 2 work for a number of reasons:
- (d) We are concluding our consultation on the Package Travel Directive and will shortly be in a position to determine if aspects of the current customer protection arrangements need to be amended or augmented.
 - (e) We are working on the assumption that the Directive will be transposed into Irish legislation by July 2018.
 - (f) At the moment, any preferred options to reform customer protection arrangements would require legislative changes which would take time.
- 3.3 In practical terms, this means the Commission will commence Stage 2 when we have concluded work on the implications of the Package Travel Directive on the protection arrangements that are presently in place. This approach should address the concerns raised by a number of industry respondents.
- 3.4 At that time, we will publish terms of reference for Stage 2 and this will concentrate on:
- (a) Options C, D and E of our consultation paper;
 - (b) Respondents' suggestions set out in paragraph 2.7 of this paper; and
 - (c) Any additional areas highlighted in our consultation paper on the implementation of the Package Travel Directive.