Consultation: Travel Trade Consumer Protection Measure-Phase 2

Commission Paper 5 2019

7th August 2019

Commission for Aviation Regulation

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1. INTRODUCTION TO REGULATION OF PACKAGE TRAVEL

1.1. The Commission of Aviation Regulation (the "Commission") is responsible for the licensing of travel agents, tour operators and airlines, as well as administering a scheme for the protection of consumers of package holidays and linked travel arrangements in Ireland.

1.2. In 2017, we initiated work to review the bonding arrangements and the operation of the Travellers' Protection Fund that had been in place since the early 1980s, to ensure they continue to efficiently meet the objectives of the scheme and provide the travelling public with an appropriate level of protection.

1.3. In August 2017, we published a consultation paper[1] and a report[2] that examined aspects of the protection arrangements at that time. We held three consultation meetings with the travel trade and received 42 written responses. Following the consultation, we published a project update[3] in January 2018, setting out our view of what needs to be further considered in arriving at a final set of insolvency arrangements. Alongside this, we published a summary of responses received[4] and a final report from our external advisors.[5]

1.4. At that time, we decided that we would not complete this work until Directive (EU) 2015/2302 on package travel and linked travel arrangements (the "Directive")[6] had been transposed into Irish law.

1.5. The Directive has since been transposed into Irish legislation by the Department through Statutory Instruments No.80 and No.105 of 2019. Under the new legislation, all travel organisers established in Ireland are required by law to provide sufficient security to cover refunds and repatriation in the event of an insolvency in respect of packages and linked travel arrangements. Travel organisers established outside the EU are required to provide the Commission with sufficient evidence of security for the protection of their consumers with package travel or Linked Travel Arrangements originating in Ireland. Travel organisers established outside Ireland but within the EU are required to provide the Commission with sufficient evidence of security for the protection of their consumers with package travel or Linked Travel Arrangements originating in Ireland.

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[1] Consultation: Travel Trade Consumer Protection Measures. Commission Paper 8/2017. August 24, 2017. Available here:
http://www.aviationreg.ie/_fileupload/Travel%20trade/CP8%20Travel%20Trade%20Consumer%20Protection%20Measures.pdf

[2] Europe Economics. Bonding of the Irish travel trade industry. Interim Report. August 2017. Available here:
http://www.aviationreg.ie/_fileupload/Travel%20trade/TTConsumerProtectionMeasuresReport.pdf

[3] Project Update: Travel Trade Consumer Protection Measures. January 10, 2018. Available here:
http://www.aviationreg.ie/news/project-update-travel-trade-consumer-protection-measures.828.html

[4] Responses to Consultation Travel Trade Consumer Protection Measures CP8/2017. Available here:
http://www.aviationreg.ie/_fileupload/2018/18-1-10%20Responses%20to%20Consultation%20Travel%20Trade%20Consumer%20Protection%20Measures%20CP8-2017.pdf

[5] Europe Economics. Bonding of the Irish travel trade industry. Final Report. December 2017. Available here:
http://www.aviationreg.ie/_fileupload/2018/Europe%20Economics%20Final%20Report.pdf

[6] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015. Available here:
http://www.aviationreg.ie/_fileupload/Directive%20(EU)%20No%202302%20of%202015%20on%20package%20travel%20and%20linked%20travel%20arrangements.pdf

1.6. In January 2019, the Department requested the Commission to provide information on:

a. appropriate means to ensure travel providers provide sufficient security, including consideration of bonding levels;

b. appropriate means for the replenishment and continued operation of the TPF in an equitable manner;

c. detailed implementation plans for preferred options; and

d. any other matters deemed relevant to ensuring continued effective consumer protections.

1.7. We engaged external consultants to identify issues and options for reforming the consumer protection scheme, in consultation with industry stakeholders, and with consideration of the new Directive. The Stage 2 consultation and CEPA's final report will form the basis of our advice to the Department.

1.8. Excluded from the scope of the consultation are flight only purchases from airlines and package holidays and Linked Travel Arrangements not involving travel.

2. CONSULTATION PROCESS

2.1. In March 2019, work commenced to determine (a) measures that should be put in place to ensure consumers are provided with a sufficient level of financial security, (b) the appropriate means of replenishment and continued operation of the Travellers' Protection Fund in an equitable manner, and (c) other matters that are relevant to ensuring continued effective consumer protections.[7]

2.2. CEPA have analysed industry data, reviewed legislation, regulations, the Stage I reports and consultation responses and have sought to identify the views of the travel trade sector regarding appropriate options for the reform of the consumer protection scheme. This has taken account of the definitions of Linked Travel Arrangements and Package Travel under the Directive, as well as the provisions relating to compensation, refund and repatriation in the event of an insolvency. The findings of this analysis are included in an interim report that the we have, today, published alongside this consultation paper.[8]

2.3. The purpose of this public consultation is to present an assessment of options to reform current arrangements and to gather the views of the travel industry on the proposed reform. We will then review all comments received before finalising our advice to the Department.

2.4. Section 3 sets out a summary of the options for scheme reform (more detail is set out in the interim report), while Section 4 summaries the proposed approach and Section 5 provides a list of consultation questions.

2.5. 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.

2.6. 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.

2.7. 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.

2.8. Respondents should specify the type, size and name of their company, as well as the nature of their arrangements offered that are covered under EU PTD II in the response provided. The deadline for responses to this consultation is 5pm, Wednesday, 18th September 2019.

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[7] Insolvency Protection Arrangements for Linked Travel Arrangements and Packages in Ireland: Development of consumer protection arrangements. SRFT 1/2019. January 23, 2019.

[8] Insolvency Protection Arrangements for Linked Travel Arrangements and Packages in Ireland-Development of consumer protection arrangements. CEPA Interim Report August 2019.

3. OPTIONS FOR REFORM

3.1 Under the current legislation, travel organisers are required to provide security in the form of a deposit in a bank or financial institution under the sole name of the Commission, a guarantee with an insurance company/ bank or an insurance policy. The former two options are considered bonding arrangements under the current licensing regime for travel agents and tour operators. Their bonding levels are 4% and 10% of projected licensable turnover respectively, where projected licensable turnover is defined as the total receipts expected to be paid over on overseas travel contracts over the course of the licence period.

3.2 The Travellers' Protection Fund acts as a back-up when bonding is insufficient to cover all claims in the event of an insolvency. It has not been replenished since 1987 and has been depleted by almost 80% in the last decade.

3.3 Linked Travel Arrangement providers such as airlines are unable to access the Travellers' Protection Fund under current legislation and have obtained insurance to comply with legislation.

3.4 The 2017 consultation resulted in three possible reforms chosen by the Commission to be taken forward into this stage of work: Options C, D and E. These have been re-assessed in light of the Directive. Four additional options for reform have been proposed by CEPA and are also under consideration. All options now under consideration include all package holidays and Linked Travel Arrangements that fall under the scope of EU PTD II and which include a travel component, and all options will require legislative change.

3.5 Impacts on *efficiency, effectiveness* and *travel trade* have been assessed, along with *cost and ease of implementation and ongoing operation*. A scheme is considered effective if it is expected to fully protect customers against all future insolvencies. The travel trade assessment looks at the impacts on cost and competitiveness of the proposed scheme on industry. Efficiency has been considered based on the option's ability to provide protection relative to the costs of the proposed scheme to both the industry and the Commission. Ease of implementation considers the practicality and straightforwardness of implementing the proposed structure, including the legal aspects, while ease and cost of ongoing operation assesses the overall cost of administering the scheme.

3.6 The proposed options are intended to provide protection that is sufficient to meet all claims should there be two significant collapses within a short period of time, comparable to the two largest collapses in Ireland in the last 10 years.

3.7 The costs are based on historic turnover data of the participants of the current protection scheme only, as well as estimates provided by insurers. As such, the figures for levies and cost per holiday are illustrative at this stage, presented in order to provide an indicative measure of relative impact. They are subject to change by the time of implementation.

Table 3-1: Options for reforming the consumer protection scheme

Item	Bonding and back-up					Firm level insurance	Pooled insolvency protection
	Option C	Option D	Option E	Option F	Option G	Option H	Option I
Bonding with reference to	4% - 10% of PLTO	8% - 20% of eligible turnover	8% - 20% of eligible turnover	8% - 20% of eligible turnover	65% of turnover at risk	✗	✗
Reference definition	No change to current PLTO definition	Eligible turnover: PLTO excluding payments passed onto supplier immediately and bills paid in arrears	Eligible turnover: PLTO excluding payments passed onto supplier immediately and bills paid in arrears	Eligible turnover: PLTO excluding payments passed onto supplier immediately and bills paid in arrears	Turnover at risk: the maximum amount of payments for holidays yet to be fulfilled, excluding payments passed onto suppliers	N/A	N/A
TPF	One-off levy of 0.39% of LTO On-going levy of 0.06% of LTO	One-off levy of 0.39% of LTO On-going levy of 0.06% of LTO	One-off levy of 0.25% of LTO On-going levy of 0.04% of LTO	10-year levy of 0.12% of LTO for the purchase of excess insurance On-going levy of 0.06% of LTO thereafter	10-year levy of 0.04% of LTO for the purchase of excess insurance On-going levy of 0.02% of LTO thereafter	N/A	10-year levy of 0.26% of LTO for the purchase of excess insurance 0.12% thereafter
Other			Firms cannot exceed PLTO	Bonding can rise to 25% of eligible turnover at CAR discretion If projected eligible turnover is less than previous year, firms must be bonded to previous years' figures		Firm-level insurance	Firms can be bonded to 25% of LTO at CAR discretion
Expected cost for an average holiday of €550 [9]	€0.55 - €2.55	€0.55 - €2.55	€0.45 - €2.45	€0.90 - €2.90	€0.45 - €2.45	Firm-dependent	€1.65 - €3.65

[9] This cost includes both the cost of bonding and TPF levy. For Options F, G and I, the costs lower after 10 years as insurance is phased out. For Options C, D and E, the costs do not reflect the higher cost in the first year of the scheme.

4. PROPOSALS

4.1 Based on CEPA's assessment of the evidence, there is no clear preferred option, and there are trade-offs with any option. However, on balance the assessment favours Option F. This involves bonding to eligible turnover, allowing the Commission to adjust bonding requirements and purchase insurance to supplement the Travellers' Protection Fund in the short term. As with all options, the scope of the scheme will be extended to include all package holidays and Linked Travel Arrangements covered by the Directive. Firms who wish to operate outside of Option F can purchase insurance coverage (Option H: firm level insurance). The report argues that this option provides the most benefits with the least disruption to the industry compared to the other options.

4.2 Travel organisers will be bonded based on their eligible turnover. As this is a reduced version of projected licensable turnover higher bonding levels are required. It is proposed that bonds will be calculated at 20% for tour operators and 8% for travel agents and Linked Travel Arrangement providers in order to maintain similar levels of bonding protection relative to the current scheme. It is proposed that bonding must be at least as high as the previous year and can be increased at the Commission's discretion if a firm is considered to be at a higher risk of insolvency.

4.3 The Travellers' Protection Fund would cover any claims that exceed bonding, but it requires replenishment. To avoid a high up-front cost to industry, a levy of 0.12% of licensable turnover would aim to replenish the Travellers' Protection Fund over ten years. It is proposed that the remaining amount in the Travellers' Protection Fund is used to purchase excess insurance to avoid a long period of risk exposure. This insurance product provides cover in the event that claims exceed both firm bonds and the remaining funds in the Travellers' Protection Fund within a given licensing period. A portion of the levy would contribute to the purchase insurance until the Travellers' Protection Fund is fully replenished. This assumes that such insurance will be available in the market at a reasonable price.

4.4 The use of reasonably priced insurance in the shorter term avoids a large up-front cost for travel organisers, but the levy will be slightly higher than other bonding options in the short term. With an initial levy of 0.12% of licensable turnover, enough funds should be raised in ten years to replenish the Travellers' Protection Fund. After this period, insurance cover would no longer be needed, and the on-going levy could be reduced to 0.06% of licensable turnover.

4.5 The cost of insurance at this stage is based on estimates provided by the insurance industry, and therefore the length of time for which the premium and associated levies remains subject to change. Alternatives to insurance, once existing Travellers' Protection Funds are used up, would be for the government to provide a short-term guarantee, loan or the levy could be temporarily increased to accelerate replenishment.

4.6 The report proposes that Option F provides the Commission with more discretion to scrutinise firms and their bonding levels, enabling the Commission to react to and manage potential insolvency risks, thus **increasing the effectiveness** and **resilience of the scheme** without significantly increasing the overall cost of bonding to the industry. Although Option F may cost more than other bonding options in the long run, it provides full cover in the short term at moderate cost to industry. However, it does introduce minor subjectivity into the bonding rules and imposes higher administrative costs on the Commission. It may have a small impact on firm competitiveness and introduce some additional administrative requirements for travel organisers relative to the existing scheme. This option is also subject to the appropriate insurance product being made available by an insurance provider at an acceptable cost.

4.7 In all cases further changes to legislation would be required. Under Option F, legislation would be needed to (a) change the basis of bonding to eligible turnover, (b) allow the Commission to levy travel agents and Linked Travel Arrangement providers to fund the Travellers' Protection Fund, (c) require firms to set bonds to the maximum of either 8-20% of projected eligible turnover or the previous year's actual eligible turnover, (d) allow the Commission to use Travellers' Protection Funds to pay for insurance and (e) allow the Commission to increase bonding requirements for firms up to a cap of 25% of eligible turnover.

4.8 Based on stakeholder feedback we expect parts of the industry to be attracted to Option I (a scheme similar to ATOL). We acknowledge that the analysis places this close in the round to Option F. However, Option I is likely to impose greater up-front set up costs on the Commission and new reporting requirements on the travel industry i.e. the current regulatory burden is unlikely to be reduced.

4.9 Under Option I, the Commission may be required to closely monitor a large number of firms as pooled insurance of this nature tends to encourage riskier behaviour, whereas in Option F, most firms would be adequately covered by the bonding rules once they have been vetted by the licensing process. On balance we consider that Option F is also likely to be more stable in the longer-term relative to Option I, with less likelihood of the Commission needing to increase the levy in future.

4.10 According to our advisors, there is some evidence to suggest that ATOL like schemes may become more expensive as they evolve. The ATOL levy increased by 250% in the UK after four years and there is at least anecdotal evidence that this negatively impacted sales. However, an ATOL-like scheme has the advantage that it could probably be expanded to cover a larger portion of the travel trade should Government policy towards insolvency protection change in future.

4.11 The impact assessment of Option F relative to the other proposed options is provided in more detail in the accompanying report.[10]

[10] Insolvency Protection Arrangements for Linked Travel Arrangements and Packages in Ireland-Development of consumer protection arrangements. CEPA Interim Report August 2019.

5. QUESTIONS FOR CONSULTATION

Broadening the scope of insolvency protection following the introduction of EU PTD II

5.1 Do you agree that providers of Linked Travel Arrangements are included in the same insolvency protection regime as organisers of package travel holidays? If not, what protection arrangements should be in place for customers of Linked Travel Arrangements?

5.2 Should the licensing and bonding regime be extended to include all package travel and Linked Travel Arrangements within the scope of the new EU Directive? If not, what do you believe would be the most appropriate arrangement for these sales?

Proposed options for reform

5.3 Are there other reforms that you think should have been considered that would ensure appropriate levels of protection for consumers of package travel/Linked Travel Arrangements?

5.4 Which reform options do you think the Department of Transport, Tourism and Sport should pursue? Do you agree with the proposal to pursue Option F? Why and if not why not? If you consider another option to be preferable, why?

5.5 Do you agree with the proposal in options D, E and F to base bonds on eligible turnover, which excludes immediate supplier payments bills paid in arrears, rather than projected licensable turnover? Do you agree that it is then appropriate to increase bonding to double the current proportion?

5.6 Do you agree that an insurance policy with a higher levy for the first ten years is the most appropriate way to avoid a gap in protection, as presented in Option F? If not, what alternative(s) would you suggest?

5.7 Do you agree that the Commission should be able to increase bonding for firms they perceive to be at a higher risk of insolvency/ under-bonding? Why? Do you agree with the guidelines for bonding increases set out in Option F? Are there other guidelines that should be considered?

Impact of options on travel trade industry

5.8 The report has assessed that Option F has a lower impact on the travel industry than Options C, D and E because the cost of replenishing the Travellers' Protection Fund is spread over several years, rather than concentrated into a short period. What impact does this have on your business? Would you prefer to pay a higher levy over a shorter period?

5.9 Options D, E and F base bonding on eligible turnover. This requires firms to provide data on both *projected* and *realised* supplier payments and payments in arrears. Do you agree with the report's view that the *additional* burden of providing such information is limited?

5.10 Do you agree with the report's assessment that Option I is too administratively costly (for both industry and the Commission) given the current scope of consumer protection arrangements? Why and if not why not?