

# The European Package Travel Directive

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In 2018, the new European Package Travel Directive came into force. This directive protects European travellers' rights when booking package holidays. It applies to both European tour operators and foreign parties selling travel products directly to European travellers. As a travel organiser who is active on the European market, you should inform yourself about the Package Travel Directive and take the necessary precautions.

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## 1. What is the Package Travel Directive?

The [Package Travel Directive \(2015/2302/EU\)](#) protects European travellers' rights when booking package holidays, for example in terms of cancellation, liability, repatriation and refunds. It applies to both European and foreign traders selling travel packages to European travellers, be it directly or via a retailer.

This means that even if you don't sell your travel products directly to European travellers, you should be familiar with the Package Travel Directive. European tour operators may translate their requirements into demands on you, especially as the Directive makes them responsible for all services in the packages they sell.

### New ways of travelling require new rules

In 1990, tourism was one of the first sectors to introduce specific Europe-wide consumer protection legislation through the first Package Travel Directive. Back then, this legislation covered about 98% of European travellers' holidays. Nowadays, this has become less than 50% through for example the rise of online booking. The definition of what does and doesn't constitute a package clearly required an update. Because of this, a new Directive was needed.

On July 1st 2018, the new Package Travel Directive came into effect. This update strives to give the consumer (or 'traveller') clear information, as well as create a level playing field and a fair internal market. It includes both leisure and business travellers. The details per country vary, although several countries such as the Netherlands have fairly literally translated the European Directive into national legislation. Focusing on specific countries doesn't make sense, as differences aren't that significant.

Because this Directive is new and the exact implementation varies between countries, its concrete implications are not yet certain. Future legal challenges may be needed to interpret the Directive and create clarity. This study presents a general overview, along with some preliminary interpretations and predictions of several

industry experts.

## 2. What's new in the 2018 Package Travel Directive?

The previous Package Travel Directive wasn't harmonised across Europe, so the exact differences between the old and new legislation vary per country. The most important change is the extended definition of 'package travel'. Almost anything is package travel now, if it combines at least two of the following types of travel services:

- transport of passengers
- accommodation
- car and motor rental
- other travel services, like excursions, guided tours, or museum visits

Some services that are part of another travel service should not be considered as travel services in their own right. Examples are short distance transport as part of a guided tour, or access to on-site facilities such as a hotel swimming pool.

### Six types of package travel

There are now six types of package travel. The first situation is identical to the old Directive:

1. a combination of two or more travel services, within one contract by one organiser  
Example: one organiser offers a combination of accommodation, transport and excursions within one contract. It doesn't matter whether the package is pre-arranged or combined at the request of the traveller.

There are five new situations that form a package even if there are two or more separate contracts with individual travel service providers, if:

1. multiple travel services are bought at a single point of sale and selected before the traveller agrees to pay  
Example: on a travel website, a traveller has a hotel room in their shopping basket and then adds excursions. The traveller then books these services together.
2. a combination of travel services is offered, sold or charged at an inclusive or total price
3. a combination of travel services is advertised or sold under the term "package" (or similar)
4. a traveller can choose from a pre-selection of travel services after concluding the contract  
Example: a gift certificate
5. after selling a travel service, the first trader links the traveller to a second trader and transmits their name, e-mail and payment details. The traveller must book the second travel service within 24 hours of confirmation of the first. This is an online click-through package.  
Example: an airline sells a flight ticket. After the booking is made, the airline links the traveller and transmits their details to a hotel booking website where the traveller makes this second booking within 24 hours.

There is no package if the combination covers a period of less than 24 hours and does not include an overnight accommodation. For 'other travel services' such as tours and activities to form a package, they must make up at least 25% of the package value or be an essential feature of the package.

### Linked travel arrangements

The Package Travel Directive also introduces a new concept called a 'linked travel arrangement'. These are business models which strongly compete with 'packages', but deviate from the definition.

Like a package, a linked travel arrangement requires at least two different types of travel service purchased for the purpose of the same trip or holiday. In case of a linked travel arrangement, they will result in at least two separate contracts with different travel service providers.

There are two types of linked travel arrangement:

1. during a single visit or contact with their point of sale, a trader facilitates the separate selection and separate payment of each travel service.

Example: an airline sells a flight ticket. After the conclusion of this contract, the website of the airline presents an option to select a hotel, noting that the traveller will have a contract for this service directly with that travel service provider. The traveller then concludes the contract on the website of the airline.

The difference between this type of linked travel arrangement and a 'Type 2 - package' is that the additional travel service is chosen after the booking of the first travel service (which essentially requires booking multiple times), whereas with a Type 2 - package the travel services are first chosen and then booked (which requires booking only one time).

2. a trader facilitates (in a targeted manner) the booking of at least one additional travel service from a second trader, where the second contract is concluded within 24 hours after the confirmation of the first.

Example: an airline sells a flight ticket. After the booking is made, the airline links the traveller (without transmitting their name, e-mail and payment details) to a hotel booking website where the traveller makes this second booking within 24 hours.

## Organisers and retailers

Another key change, especially in the Netherlands, is the shifted focus from travel agents and tour operators to 'organisers' and 'retailers'. Organisers are responsible (and in case of malperformance, liable) for the packages they combine, regardless of their official business model. Retailers are traders that sell the package of the organiser, without combining it with other travel services.

Whether you are acting as an organiser for a given package depends on your involvement in the creation of the package, and not on how you describe your business. When in doubt, the legitimate expectation of the traveller might be of influence: who do they think they are concluding their package travel agreement with? This doubt should be avoided by clearly indicating who the organiser is, before concluding the agreement.

### Tips:

- Study the [Package Travel Directive](#) and its new rules and definitions. The [practical guide to package travel and linked travel arrangements](#) and [summary of the Package Travel Directive](#) provide an overview.
- For more information, the European Union's factsheet on [stronger protection for package holidays](#) explains how the Directive works in practice. It also illustrates the differences between the old and new version.
- See the [national transposition measures](#) for an indication of the legislation per European source country.
- Keep track of developments, as the outcomes of legal challenges may provide more clarity on the exact effects of the new Directive.
- Traders often have multiple types of offers. Some offers might be a package and other offers might not. Assess per type of offer whether there is a package and inform the traveller correspondingly.

## 3. Who does the Package Travel Directive affect and why is it important?

### Who does it apply to?

The scope of the Package Travel Directive is not limited to European organisers or travellers residing within Europe. It also applies to you if you directly sell to European travellers.

The Directive handles specific definitions for the parties involved in tourism:

- 'traders' are persons acting in relation to packages and linked travel arrangements for commercial purposes (and other purposes relating to their trade)
- 'organisers' are traders who combine and sell/offer packages directly or through another trader

- ‘retailers’ are traders other than organisers, who sell/offer packages combined by an organiser
- ‘travellers’ are persons seeking to conclude a contract or entitled to travel on the basis of a contract concluded (including business travellers, unless they are acting on the basis of a general agreement)

The effects of these new definitions on Destination Management Companies (DMCs) and local suppliers are not yet known. A lot more travel arrangements are included in the new definition of packages.

## What does it affect?

Some of the most important issues affected by the new Package Travel Directive are:

### Liability

To protect European travellers, organisers are responsible for the travel packages they sell. This means they are (financially) liable in case of malperformance and need to be insured. With the extended definition of package travel, organisers have become responsible for more types of travel arrangements than before. This affects you both in the role of organiser and of supplier, as European partners you supply to may require you to have liability insurance in place to protect their interests.

### Insolvency

Similarly, European travellers must also be protected against insolvency. This means that travellers must be refunded in case of bankruptcy. To ensure this, organisers may have to insure for insolvency protection. Again, this also affects you in the role of supplier, as European partners you supply to may require you to have liability insurance in place to protect their interests.

This study further explores your options to comply with these requirements in the coming sections.

## When does it apply?

### Sales through a European organiser or retailer

The Package Travel Directive creates different dynamics, depending on the size and power of the European organiser and of the local DMC or supplier. If both the organiser and the supplier are strong players, they are likely to make clear arrangements to divide the risks and capitalise the risk division. In an unequal partnership, the risks tend to be forced onto the weaker party. If both parties are relatively small-scale businesses, they usually don't make extensive contractual arrangements.

Figure 1: The effect of size and power of organisers and suppliers

Source: [Kompas Juristen](#)

European retailers of packages combined by non-European organisers must have insolvency protection, unless they can provide evidence that the organiser has sufficient protection. European countries may also require retailers to contract insolvency protection.

Retailers of non-European organisers are also responsible for the proper performance of the package and are liable in case of malperformance, unless they can prove the organiser complies with those obligations. How this proof is to be given is unclear, but it could include a statement from the non-European organiser. Retailers might still be liable if they are operating in a country where national law makes both organisers and retailers responsible. How retailers will manage these risks is unclear.

### Tips:

- Make sure to have clear arrangements in place and be aware of the contents of these agreements. What are you liable for?
- It will be an advantage for European retailers to sell your packages if you provide a statement that you are

responsible for the performance of the package and that you comply with all local conditions, regulations and legislation.

- It will be an advantage for European retailers to sell your packages if you offer sufficient insurance for insolvency to the traveller.

## Direct online sales on the European market

The Directive also applies to direct online sales on the European outbound tourism market. In these cases, you (as the organiser) are responsible for the package.

## In-destination sales through representatives of European organisers

Another option is to sell a secondary tourism product on location, on the recommendation of a local representative of the European organiser (such as a tour guide). If this representative merely mediates between the traveller and a local supplier, the organiser will not become party to the contract, nor will this travel service become part of the travel package. The organiser will generally not be liable for faults of the local supplier.

However, if the representative doesn't (make it clear they) merely act as a mediator, then it is likely the organiser is responsible for the actions of the local supplier. This isn't specifically related to the Package Travel Directive, but due to general contract law rules on responsibility for subcontractors. There might be exceptions depending on the applicable law.

## Choice of law

In a Package Travel Contract, a clause could determine the choice of law to govern the contract. There generally is free choice of law, meaning you could potentially choose to comply with your national legislation rather than the Package Travel Directive.

However although there is no legal precedent as of yet (October 2018), provisions from the Directive might constitute so-called 'overriding mandatory rules' due to their imperative nature. This means that if your activity is directed to a European country, the obligations stemming from the Directive most likely apply even if you have chosen your national law to govern the contract.

If you, as a non-European organiser, sell packages (or linked travel arrangements) in Europe, the provision in the Directive to provide insolvency protection for travellers certainly applies. Regardless of the choice of law.

According to public law, if you direct activities to Europe you must provide insolvency protection. European countries can require organisers to provide travellers with a certificate documenting a direct entitlement against the provider of the insolvency protection. For example Germany requires this type of certification. In addition, European countries may also require retailers to contract insolvency protection.

### Tip:

- If you are making an effort to attract European customers, you can expect that you are directing your activities to Europe. See the summary of this [European court judgment](#) for more detailed criteria.

## What are the rights and obligations regarding package travel agreements?

There are many obligations for you and rights for the traveller when you are offering a package. These include information requirements, the use of a [standard information form](#), contractual rights of the traveller, responsibility for performance and protection when you go bankrupt.

### Tip:

- For more information, watch the UK European Consumer Centre's [video on travellers' rights](#).

## Responsibility for performance and liability

As an organiser, you are responsible for the performance of your package. If the package is not performed as contracted, you must remedy this unless that is impossible or brings disproportionate costs.

In case of malperformance, you are (financially) liable. To protect your business, you may need to contract liability insurance. Similarly, if you are a supplier to a European organiser, this European partner may require you to have liability insurance in place so they can forward potential claims to you.

## Insolvency protection

If you sell (or offer for sale) packages or linked travel arrangements in Europe, you must provide insolvency protection. This should contain the refund of all payments made by travellers insofar as the travel services are not performed due to your insolvency.

If the transport of passengers is included in the package, the protection should also provide for the travellers' repatriation. Continuation of the package may be offered. European countries can require you to provide travellers with a certificate, documenting a direct entitlement against the provider of the insolvency protection. For example Germany requires this type of certification.

There are various types of insolvency protection. Some of the options are a travel guarantee fund, a bank guarantee, insurance, a trust, an [escrow construction](#) or combinations of these measures. These service providers often require you to have an establishment in a European country.

New initiatives are being developed that may offer you alternative options to obtain insolvency protection. For example, Dutch commercial firm [STO Garant](#) now offers a guarantee without the requirement of a European establishment, provided either the trader or the traveller is based in the Netherlands. This type of arrangement could also be made available in other countries in the future.

### Tip:

- If the package does not include transport, you can also fulfil the obligation to provide travellers protection against your insolvency by letting them pay after the performance of the package. Of course this poses a risk, which you have to weigh against the advantage.

## 4. What are the rights and obligations regarding a linked travel arrangement?

When a combination constitutes a linked travel arrangement, you have to provide insolvency protection for the payment you receive. However, you are not responsible for the whole package and the rights and obligations for a package travel agreement do not apply.

You must inform travellers via a standard information form ([Annex II](#)) that the combination constitutes a linked travel arrangement and that they do not have the same rights as under a package travel agreement. If you fail to do so, the Directive prescribes that most rights will apply. This means you are not only obligated to provide insolvency protection for payments received, but are also responsible for the proper performance of all travel services and liable for malperformance.

## 5. What options do you have as a travel organiser that sells directly on the European market?

According to CBI, tourism SMEs (small and medium-sized enterprises) in developing countries are doing more and more direct business on the European market, up to 60%. If you decide to trade directly with European travellers, you are responsible for the package travel products you sell them. So what options are there for direct trade within the new Directive?

## Liability and insolvency insurance within your own country

Although in many developing countries the appropriate insurance isn't available, some companies do offer you coverage. Local insurance companies often use an international name, but that doesn't mean they provide the same standard of services as the international company. Obtaining this type of insurance could be sufficient to comply with European requirements, but how much the insurance really covers in practice may be unclear.

### Tips:

- Determine whether you can obtain insurance from a company within your country.
- Contact your national travel association (and become a member if you aren't yet) and ask what options they know of and/or would recommend.

## Liability insurance in another country

If liability insurance isn't available within your country, you may be able to contract insurance abroad. Insurance companies from for example Hong Kong, China or Australia often accept clients from other countries as well. Again, whether these policies cover what you need is uncertain, but they do allow you to meet the European requirements.

### Tips:

- If you can't contract the appropriate insurance within your country, study your options with foreign insurance companies. For example via the [Insurance Council of Australia](#).
- In this case too, contact your national travel association for advice and/or recommendations.

## Establishing a European entity

For some suppliers from developing countries, it can be a good option to establish a European entity. This is a division of your company based in a European country. Through your European entity, you can arrange corporate liability/insolvency insurance in Europe. It may also allow you to benefit from other facilities in the European country in question, such as a national travel guarantee fund (like the Dutch [SGR](#) or Danish [Rejsegarantifonden](#)) or trade association (like the British [ABTA](#) or German [DRV](#)).

This is a good option, but doesn't work for everyone. Establishing a European entity involves considerable costs, which shouldn't outweigh your potential gains. In addition, you need a European representative on your team who is based in the European country and speaks the local language. Otherwise, this strategy isn't particularly feasible for you.

### Tips:

- If you have a suitable representative on your team or in your network, study the options for establishing a European entity in their country. In some countries, membership of the national travel guarantee fund may be mandatory.
- For more information on European travel guarantee funds, see the ECTAA-presentation [A Travel Guarantee Fund: how does it work?](#) using the Belgian [GFG](#) as an example.

## Additional measures

Regardless of how you have arranged your liability and insolvency insurance, you should require your travellers to have travel insurance in place. Although you continue to be liable for malperformance, you can avoid some claims because travellers generally turn to their travel insurance first.

In addition, you shouldn't include flights from and to traveller's home country in your package offer. If you do, you are responsible for various issues such as repatriation and accommodation in case of disruptions under the Package Travel Directive. By excluding these products you avoid these responsibilities, which in practice pose a high risk for organisers.

## Tips:

- Require your travellers to have travel insurance. For example by making them tick a box confirming they have travel insurance or enter their policy number in the booking process.
- Don't offer flights from and to traveller's home country.

## 6. What options do you have as a travel supplier to European organisers?

As European travellers become increasingly aware of the risk of disruptions, the new Directive may drive them towards professional travel agents and tour operators. This emphasises the importance of partnering with European players.

Although the Package Travel Directive makes European organisers responsible for the products they sell in a package, this won't make them stop working with developing country suppliers. It does mean they have to make better agreements with their partners, and protect themselves in terms of conditions of purchase and insurance requirements.

## Tip:

- You are not obliged to accept the demands of the European organiser or retailer. Big companies tend to impose unfavourable purchase conditions upon you. Your negotiating position depends on what their alternatives are.

## Liability and insolvency insurance

The new Directive makes it increasingly common for European organisers to demand that their suppliers have liability and insolvency insurance. For example, [TUI](#) already requires potential new suppliers to indicate the extent of their coverage. Some organisers take care of the liability and/or insolvency insurance of their developing country suppliers if this is unavailable their home market. For a (potentially considerable) fee, they can expand the coverage of their own insurance policy.

## Tip:

- If the required insurance isn't available in your country, inquire with your (potential) European partners whether they can arrange this for you.

## Flexibility

European organisers need their local suppliers to be more flexible under the new rules. Now that travellers have the right to demand a solution or be reimbursed if there are changes to their package, you must have the flexibility to provide solutions. European organisers favour those suppliers that are best able to adapt to unexpected changes. This creates a need for stricter protocols, clear communication and good solid agreements with your European organiser(s) and your suppliers.

## Tip:

- Create flexibility by negotiating favourable cancellation conditions in purchase contracts with your service providers, including a cancellation possibility in case of force majeure.

## Online travel platforms

Travel platforms like [Evaneos](#) or [kimkim](#) might become an interesting option if you aren't able to ensure compliance yourself. That is, if these platforms decide to monetise on this business opportunity and are successful in finding ways to tackle compliance issues. Suppliers from around the world can offer packages on these platforms, but until now they often work with only 1 local DMC per destination.

So far travel platforms try to deflect any legal responsibility, but with the introduction of the concept of 'organisers' they may need to step up. How exactly they will develop in terms of liability arrangements and the number of partners per destination is currently unclear.



## 7. What should you do in response to the Package Travel Directive?

To summarise, for now the most important tips are:

- Study the Package Travel Directive and stay up to date on new developments. Useful sources of information can be the official [Package Travel Directive documentation](#), national and international travel trade associations, and travel trade platforms such as [Skift](#), the [International Forum of Travel and Tourism Advocates](#). You can also keep up with new updates of this study by subscribing to our [CBI newsletter](#).
- Research your own business model to determine whether you are considered an organiser, retailer or supplier. This may vary per offer.
- Assess per type of offer if it constitutes a package, to determine if the Directive applies.
- Study what rights travellers have in the Package Travel Directive and the European Consumer Centre's [video on travellers' rights](#).
- Protect yourself and your travellers by studying your options to contract liability and insolvency insurance and making the necessary arrangements. Inquire with, for example, your national travel association, your (potential) European buyers and with national and/or foreign insurance companies. You can also ask your fellow (local) travel suppliers what their arrangements are.
- Be flexible to appeal to European buyers, for example by negotiating favourable cancellation conditions in purchase contracts with your service providers.

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