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## ***b-solutions***

### **FINAL REPORT BY THE EXPERT**

**Advice Case:** Cross-border tourism package

**Advised Entity:** QuattroPole e.V. - Luxembourg, Metz, Saarbrücken, Trier, LU, DE, FR

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## I. Description of the Obstacle

The concerning obstacle was announced by the “QuattroPole e.V.”, an association under German law, registered in January 2015 at the District Court Saarbrücken. This institution for cross border cooperation is a network consisting of four public institutions in the border region between the three EU countries Luxembourg, France (Metz) and Germany (Saarbrücken und Trier). The objectives of the association QuattroPole are to enhance the cooperation of the four cities, develop innovative cross-border projects and give structure to the central area of the cross-border Greater Region.

One of those objectives is also to enhance the touristic attractiveness of the four cities by offering cross-border packages. The “QuattroPole tourism package” allows tourists to book a variety of services, such as accommodation, guided city tours, sightseeing, etc., on either side of the borders (e.g. accommodation in Trier, guided city tour in Luxembourg, dinner in Metz).

This cross-border QuattroPole tourism package has so far been retailed by the local tourism agencies Luxembourg City Tourist Office, Office de tourisme – Inspire Metz, City Marketing Saarbrücken and Trier Tourismus und Marketing GmbH.

As the European Union Directive 2015/2302 concerning the package travel and linked travel arrangements has become applicable some of the local agencies signalled that through the implementation into the national laws a new legal obstacle has been created.

In some cases the tourism agencies have already stopped the sale of the cross-border packages. These new national regulations have, in particular, tightened information requirements and increased liability risks for travel agencies and tour operators.

The problem in this specific context seems to be that the four local tourism agencies come under three different national legal frameworks, thus compromising the existing cross-border cooperation in respect of the QuattroPole tourism package. The comprehensive information requirements and high liability risks pertaining to the new provisions may not be sustained by the tourism agencies. As a consequence, the tourism agencies will cease to market the – up to now- very positively received – cross-border tourism packages.

It has to be verified, if the Directive or (one of) its national translations causes such high levels of information requirements and increased liability risks that the agencies will not be capable to offer a cross-border package. It also has to be verified, if this supposed problem is a “legal problem” and whether it is caused by failures in coordination in the cross-border area between the cities of Luxembourg, Metz, Saarbrücken and Trier.

## II. Indication of the Legal/Administrative Dispositions causing the Obstacle

The first legal disposition presumed to cause an obstacle is **the Directive (EU) 2015/2302 package travel and linked travel arrangements**. The Directive aims to introduce a high uniform level of consumer protection in relation to contracts for travel packages and linked travel



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arrangements taking into account the increasing use of internet booking. The Directive has become applicable since the first of July 2018 and should be incorporated into the national law.

In fact, the Directive is now incorporated in the different national laws (France, Germany and The Grand-Duchy of Luxembourg) so that those national implementations could also be a source of obstacle:

**The French** legal texts are:

- « Ordonnance n° 2017-1717 du 20 décembre 2017 portant transposition de la Directive (UE) 2015/2302 du Parlement européen et du Conseil du 25 novembre 2015 relative aux voyages à forfait et aux prestations de voyage liées ».
- « Décret n° 2017-1871 du 29 décembre 2017 pris pour l'application de l'ordonnance n° 2017-1717 du 20 décembre 2017 portant transposition de la Directive (UE) 2015/2302 du Parlement européen et du Conseil du 25 novembre 2015 relative aux voyages à forfait et aux prestations de voyage liées ».
- « Arrêté du 1er mars 2018 fixant le modèle de formulaire d'information pour la vente de voyages et de séjours ».

**The German** legal document is:

The law „Drittes Gesetz zur Änderung reiserechtlicher Vorschriften“ from the 17th July 2017.

**The Luxembourgian** legal texts are:

A Law and a decree from the 25th April 2018 (Loi du 25 avril 2018 portant modification du Code de la consommation en ce qui concerne les voyages à forfait et les prestations de voyages liées, et modifiant la loi modifiée du 2 septembre 2011 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales.)

### III. Description of a Possible Solution

The main goal of the Directive (EU) 2015/2302 is to introduce a high and uniform level of protection for the consumers in relation to contracts for travel packages and linked travel arrangements.

The Directive lays down a number of important consumer rights in relation to travel packages, in particular with regard to information requirements, the liability of trader in relation to the performance of a package, and protection against the insolvency of an organizer or a retailer.

The previous Directive 90/314/ECC has been leaving broad discretion to the Member States as regards transposition. Therefore, significant divergences between the laws of the Member States remained. Legal fragmentation leads to higher costs for business and obstacles for those wishing to operate cross-border, thus limiting consumers' choice. It was necessary to harmonise the rights and obligations to create a real consumer internal market.

The main indented measures of the Directive are:

- Introduction of a **duty to provide information** before travellers sign the contract. It has to be clear whether the travel arrangement is a package or a linked travel arrangement.



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- Norm the possible arrangements for the **payment and the case of price change**
- **Improvement of traveller protection in case of the organiser's insolvency**, which at the same time increase the responsibilities of the retailer and the organiser.

Intermediate result:

**The Directive does not constitute a legal obstacle.** The main goal of the Directive is to facilitate the internal EU market. It is right that professionals have now more duties and responsibilities but those obligations are the same in all Member States.

When problems appear anyway through the application of the Directive, it's existing an expert group of the Commission<sup>1</sup> which supports its application and identifies the potential challenges in its application from the perspective of different stakeholders and advice the Commission.

The Directive has been translated into the national laws of the Member States of the EU. The French and the Luxemburgish texts are very close to the text of the Directive and even the German text contains the same definitions and mainly the same regulations as the Directive.

As it is the main objective of the Directive, the main focus of the national law is to specify the rights of the consumers in any case of trouble with the booked arrangement.

In none of the national laws there are regulations concerning specific cross-border arrangements, there is no distinction made between them and arrangements that take place in only one state. Each of the national texts defines the rights of consumers against the organiser and the seller of the booked arrangements. It fixes also the content of a form, which has to be used in order to inform the consumer. The national laws didn't even make a difference between a "national" travel package and a cross-border travel package.

Intermediate result:

The **national transpositions** of the Directive do also **not** constitute a (new) **legal obstacle that** restrains the tourism agencies to evolve and sell the cross-border tourism packages.

As we could not find out which regulation or which obligation determined by the Directive is causing the problem for the continued offer of the cross-border package, we asked the four agencies, where they determine the problem, or which duty seems so high, that they could not comply with.

The answers were surprising: one of the agencies clarified, that they do not have enough personal and financial capacities to offer any kind of travel arrangements (they do not sell any trips at all

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- <sup>1</sup> (Stakeholder expert group to support the application of the Package Travel and linked Travel arrangements Directive; [JUST-E2-Communication@ec.europa.eu](mailto:JUST-E2-Communication@ec.europa.eu) )



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but only give information). This also includes the cross-border packages, however it has no (legal) relation to the implementation of the Directive.

Two other agencies explained that they do not have any problems in relation to the implementation of the new Directive; they still offer the cross-border package and do not see any reason to change this handling or to stop the offer. They explained that they are working on the transposition of the new duties, mostly the new obligations to inform, what they have to include and how it has to look like, but it has no effect on the offer of the cross-border package, because the obligations are always the same. There is no difference between cross-border arrangements and national arrangements.

Only one agency declared to have problems by selling a cross-border package in relation to the release of the Directive. The employee of this agency explained that because of the new obligations implemented by the Directive, there is a new responsibility for the selling agency in case of cancellation or fault of any part of the arrangement. Only because of an agreement with another city in the same state, they can offer national packages between two cities. In this case, they have the guaranties to offer the same quality standards, but they do not know the standards defined in the other law systems even not in the EU or the greater-region. They expressed that they do not have any knowledge about the other law-systems and fear questions concerning the liability in cases auf faults. They also fear the application of different tax systems, to pay taxes in other countries or to charge the taxes from the consumers to the other state, and how to calculate the prices with different tax rates.

These worries are not caused by the regulation of the Directive and its national transpositions. However all questions are determined in the different national laws and in the international private law, for example in the Rome I and Rome II- decrees of the EU. There is even a possibility to choose the law of one state and its application for the whole contract.

But these worries also show that there is a fundamental fear of unknown law systems. Even in a region with a huge network like QuattroPole e.V. and other institutions of the Greater region.

**Result:**

Conclusion N°1: There is no legal obstacle caused by the Directive or its implementation that prevents the agencies to offer that cross –border tourism package.

Conclusion N°2: There is no legal obstacle at all that prevents the agencies to offer the cross-border package. It is still possible and two of four agencies are still working successfully with it.

Conclusion N°3: There is a huge barrier to work with contract partners across the border because of the missing knowledge of different law systems, even in partner regions with partner cities and even in frames a European directive is existing and aiming for harmonisation of the consumer rights and the obligations of the providers for those travel packages.



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#### **IV. Pre-Assessment of whether the Case could be solved with the European Cross-Border Mechanism**

The European Cross-Border Mechanism is the possibility to apply in a given Member State, the legal provisions from the neighbouring Member States if applying its own laws would present a legal obstacle to implementing a joint project. In the present case there is neither legal obstacle nor a joint project. That's why the ECBM wouldn't help to solve the mentioned problem in this case.

As we mentioned before, there is no legal obstacle because the Directive and its national transpositions do not contain any regulation concerning specific cross-border packages.

Furthermore, the cross-border packages are planned by every single agency and not in a common frame. They sell and organise the packages their self and have no contract relations with the other agencies or the Quattropole e.V.. That's the reason why we cannot qualify these packages as a joint project.

#### **V. Other Relevant Aspects to this Case**

We realized, that there was first of all a problem to identify and qualify the supposed obstacle. This results of the fact, that none of the agencies or the Quattropole network has the necessary knowledge of the law systems of the other member states.

If the Quattropole is seen as an "initiator" as defined in Article 3 (5) of the ECBM-Directive, it would have to describe the problem, identify the law which avoid the realisation of the common project and propose which legal text from the neighbouring Member States could solve the problem. The people composing the Quattropole were not able (knowledge, capacity) to present a full initiative document.

We 've found out in our function as Expert in this case for b-solutions that an important point is the faculty to examine open minded the different regulations (EU legislations, all involved national law).

The cross border coordination points as it's previewed in the ECBM directive could be a possibility for example as an institution to exercise those functions. Such a cross-border institution could unify the knowledge of the law systems for one border region like the Greater region or of two neighbour states and have an overview of the local circumstances (responsibilities, structures, actors and politic willing). For the moment it is neither planned, that this cross border coordination point synergises all these functions nor acting as a real cross-border institution. It is only previewed to join the ECBM procedure as a national institution which is in contact with other national institutions.

#### **VI. References and Appendix/Appendices if any**

- Proposal for a regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in cross-border context COM (2018) 373 final
- Schaffung eines Mechanismus zur Überwindung rechtlicher und administrativer Hindernisse in einem grenzübergreifenden Kontext, February 2019 <https://www.tf->



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