Transposition of Directive (EU) No 2015/2302 on Package Travel and Linked Travel Arrangements Workshop with Member States on 25 October 2016

Chair: Ms Veronica MANFREDI, Head of Unit, DG JUST E2, Consumers and Marketing Law.
Other participants from DG JUST: Peter BISCHOFF-EVERDING (Deputy Head of Unit), Robert MATHIAK, Marlene MELPIGNANO, Egelyn BRAUN (all from DG JUST E2).
Agenda: See agenda attached.

Disclaimer: While the Commission services are trying to assist Member States as much as possible in the transposition process, a binding interpretation of Directive (EU) No 2015/2302 can only be provided by the Court of Justice of the European Union.

*Whenever these minutes refer to articles and recitals without identifying a specific Directive, reference is made to Directive (EU) No 2015/2302. References to "the Commission" or "**COM**" indicate statements made by the relevant service in DG Justice and Consumers and do not necessarily reflect the official position of the Commission.*

Welcome – purpose and objectives of the meeting

Ms. Veronica MANFREDI welcomed the delegates from the Member States to the third expert meeting on the transposition of the new Package Travel Directive (PTD). She also gave a short update on the ongoing REFIT exercise and the European Consumer Summit that had taken place on 17 October 2016.

I. Insolvency protection – establishment of an effective and efficient insolvency protection system in conformity with the new PTD

Ms. Signe ERIKSEN, the General Manager of Norwegian *Reisegarantifondet (RGF)*, gave a presentation on the Norwegian insolvency protection system.

In Norwegian Law the Directive's insolvency requirements are implemented through RGF; there are no alternative/competing bodies. RGF supervises the package tour market in Norway to ensure that organisers comply with the insolvency requirements. As a general rule, all marketing and sale of packages on the market will require a membership in RGF.

RGF combines a system of, on the one hand, individual bank or insurance guarantees (on demand bonds) calculated for each operator and, on the other hand, a fund filled through annual fees paid by the members. The members are free to choose among all banks and insurance companies within the EU/EEA to comply with the guarantee requirements. The guarantee documents shall be issued in favour of RGF. The fund will be drawn on when the individual guarantee is proven to be insufficient. A third option is a pledged bank deposit.

Ms. Eriksen considered that the Fund has worked effectively to date and that the current

Norwegian rules are already broadly in line with Directive 2015/2302: e.g. travellers are fully refunded within 30 days, protection is granted irrespective of the traveller's residence, the place of departure etc. and insolvency protection procured under the rules of another Member State is recognised if the trader provides a certificate. The main changes will relate to the enlarged scope, particularly through the inclusion of LTAs, bringing in new types of operators such as airlines and other carriers. At the same time, insolvency protection for business travel involving a general agreement will be removed. In terms of personnel, the Fund has a very lean structure: one quasi-full time general manager and one secretary.

Repatriation is organised by the Fund, usually by asking carriers to make bids. Planned packages may proceed as planned by involving relevant members to take over the arrangements. The procedures require that RGF has to evaluate bids from at least 3 organizers. There were two bankruptcies in 2016, both of which led to refunds. One of them involved new organisers taking over planned trips.

Expanding on her explanations regarding the calculation of the guarantee, **Ms Eriksen** has informed the COM that, according to the Regulations to the Package Tour Law Section 5, RGF shall calculate the guarantee as follows:

1. For small or medium size members (monthly turnover less than EUR 1,1 mill) the guarantee sum shall reflect an average peak month (in the month of departure). If the peak month is July, we add the month before and the month after and divide by three, i.e. an arithmetic average. That is not a perfect but an efficient method. In low season the guarantee will be too high and in high season too low. However, a member will seldom file for bankruptcy ahead of peak season because that is its most solvent period. A member can also apply for “adjustments” of the guarantee sum in low season.
2. For the larger members (monthly turnovers exceed EUR 1,1 mill) and members who for different reasons represent a higher risk than “average”, the guarantee amount shall reflect RGF’s exposure at any time i.e. the guarantee can be too high but never too low! The individual guarantee sum is determined by factors such as the monthly turnover in the month of departure (thereby taking into account fluctuations in the course of a business year), the extent of pre-payments (e.g. if payment is requested two months before departure, the turnover of those two months is taken as a basis), including down payments/deposits, number of travellers and estimated repatriation costs. Formula:

X (multiply) (N/30)+(M-N)/30 multiply A multiply D + X multiply 0,25 = guarantee sum

X=budgeted package tour turnover for the peak season month (repeat for all months)
N=average number of days between final payment and departure
M=average number of days between payment or deposit and departure
A=budgeted number of travellers of the peak season moth
D= average deposit payment
Repatriation costs: ¼ package price

Ms. Renata KRÁLOVÁ, the Head of Tourism Department of the Czech Ministry of Regional Development, gave a presentation on the Czech impact assessment (IA) regarding the reform of the insolvency protection system in connection with the transposition of Directive 2015/2302, which had almost been completed at the time of the workshop. The IA was conducted to compare and analyse the impacts (risks, advantages, disadvantages, costs, impact on different stakeholders) of different solutions, e.g. a pure insurance or bank guarantee system possibly complemented by rules on down and pre-payments , a system exclusively based on a Guarantee Fund, or combinations of individual insurance policies or bank guarantees with a Fund that could be set up by financial institutions, by the travel industry or by the State. Criteria were, for instance, whether the required cover can be effectively ensured, costs for travel businesses and administrative burden. As a result of the IA, the Czech Republic is likely to implement a system of insurance and bank guarantees (current system) supplemented by a guarantee fund set up by the travel industry, with contributions being collected by the State. The insurance (or bank guarantee) cover must correspond to a minimum of 30% of the total annual turnover in packages (as it is currently the case). Traders need to obtain a licence to sell packages and LTAs and will have to report to the insurance company or bank on their current turnover on a monthly basis to ensure that the cover corresponds to actual needs. If the insurance company or bank does not receive those reports it has to inform the Ministry. A failure to comply with insurance obligations can lead to sanctions for an administrative offence, ranging from fines to the revocation of the licence.

Replying to questions from other MS, Ms Králová indicated that the contributions to the Fund were still being calculated, but has in the meantime informed the Commission that there will be a maximum of 0.25% of the turnover in packages (LTAs). She also explained that, in principle, banks and insurance companies will have to deal with repatriations.

Estonia, **Latvia** and **Lithuania** presented a **joint proposal for cooperation between contact points**. Firstly, they proposed that a list of contact points be established, updated and circulated among Member States already before the date of application of the national rules transposing the new Directive. Secondly, they proposed to establish general procedures for communicating with other contact points (use of languages, time-limits etc.). For example, it should be agreed that, in case of cross-border insolvencies, information on the insolvency and instructions for the travellers should be sent to the authorities of the affected Member States. Thirdly, they proposed to establish regular meetings of the contact points for information-sharing and joint action purposes.

France supported the Baltic initiative and considered that the text of the Directive already provided some elements for the cooperation which could be complemented through practical arrangements, e.g. functional mailboxes, regular meetings etc. Imposing a language for exchanges between experts could be more problematic. **Luxembourg** also supported the initiative, but suggested that more use could be made of existing cooperation networks. **Portugal** found it inopportune to adopt the proposed measures in the Joint Statement for the time being, considering that there is already the Internal Market Information System (IMI), which allows the different bodies and organizations from Member States to identify

their counterparts in other countries and exchange information using pre-translated questions and answers, as well as the Consumer Protection Cooperation (CPC) Network under which the competent authorities of each Member State cooperate to ensure the protection of consumers in situations of cross-border disputes.

Spain and **Germany** highlighted the difficulties with establishing a single contact points in federal States and that no decision on the national contact points had yet been taken in their countries. **COM** welcomed the pragmatic approach of the Baltic initiative, while acknowledging the more difficult position of federal States. The use of shared online platforms, including a translation facility, as well as the use of existing cooperation networks could be explored further, in line with the proposed ideas.

Lithuania presented an overview of a problematic cross-border package travel insolvency case. A Portuguese tour operator had offered packages to Lithuanian consumers since October 2015, the relevant package travel contracts apparently being drafted in Lithuanian. In 2016, the tour operator cancelled three flights scheduled from Vilnius to Madeira and on 6 June 2016 declared that it does not have sufficient funds to reimburse Lithuanian consumers and referred them to the Portuguese Guarantee Fund. The approximate number of affected tourists is around 200. Lithuania asked the Portuguese authorities for assistance via different channels regarding the most effective ways for Lithuanian travellers to obtain refunds, but experienced communication problems with the Portuguese authorities and deplored that they had not received a reply to their requests. At the same time it was reported that "Turismo de Portugal" had been sending emails in Portuguese to Lithuanian travellers stating that they had to go through an Arbitration Commission whose application forms and procedures are in Portuguese. **Portugal** responded that it provided information to the Lithuanian Government through the Internal Market Information System (IMI) between May and August 2015, translated into Lithuanian, regarding the company Qualipresença and the proceedings regarding the Portuguese Guarantee Fund and provided further information in October 2015 and since June 2016. Portugal specified that the Guarantee Fund can be triggered in four ways: through a judicial court, an arbitration court, the Customer Ombudsman or an Arbitral Commission, which communicates with the costumers and the travel agencies. Once there is a decision, the clients are informed individually. All processes are confidential.

COM considered that the cooperation between national authorities clearly needed to be improved and called for a quick resolution of this case.

Insolvency protection – Questions from Member States

1) Whilst Article 17(1) uses the term "as a consequence of", in Article 17(2) and recitals 14 and 39 the words "in the event of" are used. "In the event of" is also used in Article 7 of the Directive 90/314/EEC. In Case C-134/11 *Blödl* the CJEU decided that Article 7 also covers a situation where the insolvency is attributable to the organiser's fraudulent conduct. In Case C-140/97 the CJEU ruled that the Member State's liability for breach of Article 7 cannot be precluded by imprudent conduct on the part of the organiser. In such

cases is the non-performance of the travel services a consequence of the organiser's insolvency and did the legislator intend to use the phrase “as a consequence” in Articles 17 and 19(1) to "overrule" this case law so that the protection does not cover fraudulent or imprudent conduct by the organiser?

COM – It was not the legislator's intention to narrow the guarantee through the term "as a consequence of". The parallel use of "in the event" confirms that no change was intended compared to Directive 90/314. Furthermore, even if insolvency is caused by fraudulent or imprudent conduct, the money is still lost as a consequence of the organiser's insolvency. Like Article 7 of Directive 90/314 (see point 21 of Case C-134/11), Article 17(1) of Directive 2015/2302 does not attach to the guarantee any specific conditions regarding the causes of the organiser's insolvency.

2) If a Member State introduces/maintains liability for the performance of the package also for retailers in accordance with Article 13(1) 1st subparagraph, what does the phrase "the provisions of Chapter V, which are applicable to the organiser, shall apply mutatis mutandis to the retailer" imply?

Does it automatically mean that the retailer must take out insolvency protection? If so does this mean that both the retailer and the organiser must have insolvency protection for the same amount, even if the retailer forwards prepayments to the organiser?

COM explains that the Directive is based on the idea that if a MS makes a retailer liable for the performance of the contract, then the retailer should also be obliged to take out insolvency protection. The *mutatis mutandis* phrase would then mean that insolvency protection for retailers has to follow the same principles as those applying to organisers, e.g. taking as a reference the amounts of pre-payments received by the trader, while taking into account the specific situation of retailers. This implies, for instance, that MS may take into account the period from the time when retailers receive the money from travellers until the moment they pass it on to the organiser, given that as of that moment the payments will be covered by the organiser's insolvency protection. The purpose is not to impose unnecessary double-burden on traders.

3) If a MS does not choose liability for retailers, may it still impose insolvency protection on retailers for the period before they forward payments to the organiser?

COM - Recital 41 seems to suggest that MS may oblige retailers to obtain insolvency protection for the period during which they hold money from travellers, even if under the relevant national law they are not liable for the performance of the package.

4) Should insolvency protection cover contracts concluded that had been terminated (either by the customer or by the trader) before the trader’s insolvency and where the traveller did not receive a refund before the insolvency occurred? Here, strictly speaking, the insolvency was not the reason for the non-performance of the package, but rather for the failure to refund the payments following termination of the contract.

COM - The wording of Article 17(1) suggests that, if the contract was terminated before the insolvency occurs, the performance was no longer due at the time when the insolvency occurred, meaning that the insolvency did not cause the lack of performance of the travel services. Under Article 17 (1), insolvency protection seems to cover only loss of money due to lack of performance, but not claims for refunds which existed already at the time of insolvency. If MS would like to help such travellers, they might consider strengthening their position in bankruptcy proceedings.

5) Is it correct that in the case of hotel accommodation plus excursion which does not represent a significant proportion of the combination, travellers will not be protected and have to rely on general insolvency proceedings regarding any refund claims?

COM agrees, unless the excursion was an essential feature of the combination or was advertised as such (Article 3(2) second sub-paragraph).

6) Does a MS fulfil its obligations under Article 17(1) ("Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers …") if:
- it lays down acceptable options for providing security for refund and repatriation, but does not interfere with the choice of form and its execution other than checking whether traders are able to provide such refund? Or, alternatively, if:
- it directly orders the use of specific combinations of options for such refund and at the same time also specifies and regulates the amount of fees in order to secure the refund for all payments made by consumers?

COM stresses that the insolvency protection system has to be effective. There are different ways of achieving effectiveness. In general, effectiveness will depend on substantive rules, as well as on reporting, control systems and enforcement. Effectiveness will have to be assessed on a case-by-case basis. However, if the parameters are very vague, it seems less likely that the protection will be effective and that the MS has fully implemented Article 17(1).

7) Would a state guarantee fund with state contributions and guarantees be incompatible with Article 17(1) or EU state aid rules?

COM - Article 17(1) states that organisers have to provide the security. Therefore, a guarantee system fully provided by the State may be questionable. Insofar as the guarantee system leads in fact to subsidies for specific companies, this may raise issues of state aid and a need to notify such subsidies. Whether or not such funds may constitute state aid depends on the specific structure of the proposed guarantee scheme. If doubts persist MS should contact the COM services.

8) Recital (40) of the Directive states that „effective insolvency protection should not have to take into account highly remote risks, for instance the simultaneous insolvency of several of the largest organisers, where to do so would disproportionately affect the cost

of the protection, thus hampering its effectiveness. In such cases the guarantee for refunds may be limited".

- **If a Member State gives traders the option to establish a private guarantee fund, is it correct that the fees for/ contributions to this fund do not need to take into account such remote risks?**
- **Does such improbable scenario constitute an exception from the obligation to provide security for the refund all payments made by consumers?**

COM – Under Article 17 (2) the security "shall be effective and cover reasonably foreseeable costs"; recital 40 explicitly states that national insolvency protection systems do not have to guarantee full refunds for highly remote risks. The objective is to avoid insolvency protection which is excessively expensive or very difficult to obtain. While it may be debatable what is a highly remote risk in specific cases, the principle is clear. Recital 40 gives as an example the simultaneous insolvency of several of the largest organisers.

9) Is it correct that Article 19 covers only the insolvency of the traders facilitating linked travel arrangements and not, in addition, the insolvency of the other service providers?

Example: a person buys transportation and a ticket to a concert as an LTA facilitated by the transport company. If the concert is cancelled due to the insolvency of the concert venue, is the transport company obliged to refund the money for the concert?

COM - The question is whether the "facilitator's" insolvency protection has to cover the risk that the concert organiser may become insolvent. During the legislative negotiations it was very important for many MS to limit the insolvency protection obligation to the facilitator's own insolvency and to cases where the facilitator receives money from travellers for the relevant services. In the trilogues the EP agreed. For the **COM**, this is reflected in the wording of Article 19(1) ("as a consequence of their insolvency") and recital 43, and is expressed unequivocally in the standard information forms in Annex II ("Please note that this does not provide a refund in the event of the insolvency of the relevant service provider." and "Note: This insolvency protection does not cover contracts with parties other than XY, which can be performed despite XY's insolvency." Furthermore, Article 19(2), recital 43 and the information forms in Annex II clearly state that each service provider is solely responsible for the performance of his service. In the example the transport company is, therefore, not responsible for the performance of the concert and does not have to arrange insolvency protection for the insolvency of the organiser of the concert.

10) Where a trader facilitating the purchase of an LTA becomes insolvent there is no evidence documenting the traveller's entitlement to insolvency protection (refund of the payments and possibly repatriation). Is it possible for MS to introduce the requirement that the facilitating entity concludes a contract with the traveller or the requirement for the facilitating entity to provide the traveller with a confirmation of the booking of the LTA so that the traveller can actually benefit from the protection?

COM - In the late phase of the negotiations the idea of a confirmation to be given to the traveller by one of the traders was raised, but was not included in the final text. If individual Member States were to lay down such information or certification obligation unilaterally this would constitute an additional requirement for traders not laid down in the Directive and may, therefore, be problematic in particular for traders operating cross-border, even if the relevant Member State(s) might argue that this is a practical arrangement to make the existing substantive obligations work in practice. In sum, the COM considered that such solution is probably not compatible with the Directive, but invited also other MS to reflect on this question.

11) A website which is established in a country *outside* the EU, sells a package or LTA, which includes a flight and a hotel to a consumer in the EU. If the airline goes bankrupt, who is responsible for the repatriation of the consumer? Do Article 17(1) 2nd subparagraph and Article 19(1) apply in such cases?

COM agrees that Article 17(1) 2nd subparagraph applies in those cases, directly in the case of packages or via Article 19(1) 3rd sentence in the case of LTAs. If there is a package put together on that website the trader responsible for the website will be the organiser and will have to provide insolvency protection. If the trader responsible for the website facilitates an LTA and receives money from the traveller, that trader has to provide insolvency protection, whether it is an online travel agency or an airline.

12) It is not entirely clear how MS can enforce insolvency protection obligations in relation to online traders who are not established in a MS and how the insolvency protection system will look in such cases. Could Member States oblige the parent company to establish a firm?

COM As stated at previous workshops and during the legislative negotiations, enforcement may be more difficult in case of online sales from a third country without assets in the EU or without going through a retailer in the EU, but it is not completely impossible, taking into account softer tools, e.g. bad publicity. The Directive obliges third country organisers to take out insolvency protection, but does not regulate the question of whether a MS could oblige third country operators to establish a subsidiary in the MS. The COM invited the MS to reflect together how best to ensure that third country operators comply with the Directive.

13) After the first workshop, which was held on 25 February 2016, MS sent to the Commission the existing national provisions on insolvency. Would it be possible, after the workshop on 25 October 2016, for MS to send to the Commission the basic provisions on insolvency protection that they are planning to adopt as their new national legislation and then for the Commission to share this information with the rest of MS?

COM agrees that that would be a good idea and will ask all MS to provide information on the planned new rules in a structured and concise fashion.

II. Packages and linked travel arrangements, in particular in the online world

Examples from Member States submitted prior to the workshop

Member States presented several online screenshots in order to discuss the practical application of the 'package' and 'LTA' definitions. Please refer to the Annex attached to this document for a selection of those screenshots, including some comments from the Commission**.** Unfortunately it was not always possible to see the actual booking paths in the static examples.

Packages and linked travel arrangements – Questions from Member States

1) What is the meaning of the term "holiday" as used in the Directive? Why are the terms "trip" and "holidays" indicated separately?

COM notes that "holiday" is not defined in the Directive but is also used in Directive 90/314/EEC and should not lead to interpretation problems. Since "holiday" implies a leisure element, "trip" is used in addition (covering also business trips). "Trip or holiday" has to be read in one breath and has a broad meaning. It has its main relevance through the phrase "the same".

2) A package or LTA requires at least 2 different services for the same trip or holiday. If you buy a flight to one destination and accommodation in another destination, is this still the same trip?
Example A: a one-way air ticket to destination A and accommodation in destination B in another country several days later and there are no flights between those two destinations
Example B: a flight ticket to destination A on Monday, return flight on Sunday, accommodation in destination B from Tuesday till Wednesday.

COM states that whether it is still the same trip or holiday will have to be assessed on a case-by-case basis and there may, of course, be border-line cases that will have to be decided by the courts. The idea is to avoid that bookings for different trips or holidays are considered as a package or LTA simply because they are booked at the same time.
In example B this is likely to be the same trip or holiday. The fact that destination A and destination B are in different countries does not matter. It is not necessary that there is accommodation booked for the whole period between the outbound and return flight. In example A it is less clear that the booked services are part of the same trip or holiday.

3) According to the definition of 'package', the travel services should be purchased together (selected within the same booking process). Does that mean that additional travel services purchased later, e.g. weeks later, cannot form a package together with the previously purchased package?

Example: Traveller has purchased a package (flight tickets + accommodation) in September. In October he/she wishes to buy an additional travel service (e.g. an excursion at the travel destination) for the same trip which has not begun yet. Can the Commission confirm that the later purchased travel service does not constitute a package with the previously purchased package? Even in the case where the description of the package refers to the possibility of buying additional travel services?

COM notes that this question is not directly regulated in the Directive. The Directive establishes whether or not a package has been formed, giving the relevant guarantees to travellers. Whether other services purchased as a complement to an *existing* package (before departure or even while at the travel destination), is a matter of contract law and the question of whether the parties explicitly or implicitly amended the package travel contract to include additional travel services and will have to be assessed in light of the circumstances of the case. Circumstances such as a reference in the description of the package to the possibility of adding services or the involvement of the organiser in the additional booking may be relevant. The Directive does not exclude the possibility that the package travel contract is amended/ complemented through the addition of travel services.

4) Is only the carriage of passengers by bus, rail, water or air included and is the enumeration in recital 17 exhaustive? What about carriage of passengers by car or covered wagon?

COM - Article 3(1) (a) does not limit the type of passenger transport. Recital 17 gives only examples and is not exhaustive ("such as"). The purpose of recital 17 is not to narrow the broad definition in Article 3(1)(a). For instance, passenger transport by car or even on the back of a motor bike is covered as well.

5) Is the PTD applicable to carriage of passengers in regular liner traffic? On ferries between Finland, Sweden, Estonia and other Baltic countries passengers often book a cabin for a night. For passengers there are various services on the ferries, such as restaurants, bars, shops and saunas, sometimes even entertainment. Travellers usually stay a few hours at the destination and then they return by the same or the following ferry. The shipping companies often market these voyages as "cruises" even though they are actually only round trips mainly for shopping purposes.

COM considers that such roundtrips are comparable to cruises and would, therefore, appear to be packages. They seem to have a touristic purpose in themselves, which is somehow confirmed by the companies calling them "cruises". They can be distinguished from normal overnight ferry journeys referred to at the end of recital 17, where the main purpose is clearly transport, i.e. getting from point A to point B (even if accommodation, food and entertainment on board is included). If somebody takes an overnight ferry and then returns a day or more later following business meetings, a visit of family or friends, or a city visit which is organised separately from the ferry journey, then the two overnight ferry journeys should not constitute a package.

6) Are sightseeing tours carriage of passengers and thereby a 'travel service' in the sense of Article 3(1)(a) or an 'other tourist service' as referred to in Article 3(1)(d)? Is the combination of accommodation and sightseeing tours (as 'carriage of passengers') always a package (or possibly an LTA) or rather, is it a package only if the value of the sightseeing tour exceeds 25% of the total value as 'other tourist service'?

COM notes that sightseeing tours often include carriage of passengers but are not 'carriage of passengers' in the sense of letter (a) as such. They are therefore 'other tourist services' in the sense of letter (d). Recital 17 mentions transport services as being intrinsically part of a guided tour. Recital 18 lists "excursions" amongst the examples of other tourist services. The 25% threshold will therefore matter.

7) Do city cards including free public transport constitute 'carriage of passengers' in the sense of Article 3(1)(a) or a 'tourist service' in the sense of Article 3(1)(d)?

COM notes that one may have to look at the precise content of the different city cards. If transport is only one element of a city card, it seems more appropriate to consider it as 'another tourist service' so that such city card can lead to the creation of a package only if it constitutes a significant proportion or an essential feature of the combination. According to recital 17, minor transport services such as hotel transfers would be considered as intrinsically part of hotel accommodation, so that courtesy public transport tickets should not even be considered as a separate travel service. However, city cards may go beyond that.

8) Can the Commission confirm whether access to on-site facilities such as a swimming pool, sauna, spa or gym included for hotel guests should be considered as being an intrinsic part of accommodation and not as a travel service in its own right, even if these services are not provided to all hotel guests and are charged separately?

COM explains that amongst the examples of services that are intrinsically part of another service recital 17 mentions access to on-site facilities for hotel guests. Therefore, if access to on-site facilities is part of the room rate, it should not count as a travel service in its own right. Although the list of examples in recital 17 is not exhaustive, one would probably have to consider that where such access is available against an additional charge it would constitute an additional service. However, it would not lead to the creation of a package, for instance, where its value does not constitute a significant proportion of the value of the combination (Article 3 (2) second sub-paragraph (a) and recital 18) or if access to on-site-facilities is added during the hotel stay (Article 3 (2) second sub-paragraph (b)).

9) The current Danish Package Travel Act considers entry and accommodation at Disneyland Paris as a package, as it contains accommodation and other tourist services representing a significant part of the trip. However, the Danish travel guarantee fund does not qualify this as a package because it considers entry to the park as an accessory to accommodation, as long as both services are provided by the same legal entity. Is this a package and includes an insolvency protection obligation?

COM - If it is a package, then there has to be insolvency protection. In light of recitals 17 and 18, entry and accommodation at Disneyland Paris appears to be a package, given that entry to Disneyland could not be considered as a service that is intrinsically linked to (or subordinate to) accommodation. It is the main reason for staying at the hotel/resort and it is possible to visit Disneyland Paris without staying at the hotel/resort. It is not comparable to meals provided at the hotel or access to the hotel swimming pool or sauna (see recital 17). Entry to the park will constitute a significant proportion of the package and represent an essential feature of the combination.

10) Another example of entry and accommodation involves renting a holiday house in Resort Lalandia, which automatically gives access to the waterpark situated in the resort. The access to the waterpark is included in the rent for the holiday house and it is not possible to deselect access to the waterpark and it is not priced separately. Is access to the waterpark intrinsically part of accommodation at the resort?

COM - On the basis of the information provided, it seems that access to the water park is intrinsically part of accommodation in the given example (see also recital 17), which would be different from the Disneyland example. There will obviously be borderline-cases, but in general, by following a reasonable approach inspired by the examples in recitals 17 and 18, appropriate solution can be found. In any event, the rules are clearer than under the 1990 Directive.

11) Can the Commission clarify what is meant by "value" in Article 3 (2) second subparagraph (a) – is it the purchase price, the sale value or a comparative value?

COM explains that the value will often coincide with the purchase price. However, in order to prevent circumvention of the Directive, the intrinsic value of the relevant services will have to be considered where the price of the main service is artificially high and the price of the other tourist services is artificially low in order to bring the other tourist service below the significance-threshold (25%). In the transposition the term "value" should be used in order to avoid different interpretations.

12) Since the percentage of 25% (see recital 18) - regarding the "significant proportion of the value" - is not clearly stated in the text of the Directive, is it left to the discretion of MS to freely determine the exact percentage when transposing the Directive into national law?

COM - MS may not lay down different percentages. They may lay down "significant proportion" as in Article 3(2)(b), or "25% or more", given that the legislator clearly indicated in recital 18 that "significant proportion" means "25% or more". Different national percentages would be incompatible with the Directive.

13) Can the Commission provide a concrete example of Article 3(2)(b)(v)? Do 'payment details' signify only the traveller's credit card number or do they also include the concrete

sum due and also the traveller's authorisation to make the payment? Is a single payment while using the transmitted payment details a pre-condition for applying point (v)?

COM stated that the term "payment details" is not defined in the Directive. The typical example that people had in mind was a credit card number. One could also imagine an account number. In any event it should be information that points to a given person. In the transposition the MS should use the term "payment details" as in the Directive. A single payment is not required.

14) Can the Commission clarify the practical difference between 'packages' according to Article 3(2)(b)(v) and 'LTAs' according to Article 3(5)(b), considering recital 9 of the Directive?

COM clarifies that recital 9 refers to LTAs as combinations "which do not contain the features of a package". The decisive feature of a package under Article 3(2)(b)(v) is the transfer of specific data: name, payment details and e-mail address. If those data are transferred there is a package, if not, there may be an LTA (provided the other requirements of Article 3(5)(a) or (b) are met). According to the definition of LTA, it first has to be checked that the combination does not constitute a package.

15) Is the element of separate payment essential for a linked travel arrangement within the meaning of Article 3(5)(a) or is this criterion redundant so that MS do not have to transpose it? Can there be an LTA with a single payment (absence of separate payment)?

Example A: Different travel services are selected separately by the traveller and the traveller concludes the contract for the first travel service and only then selects the second service. At the end the traveller pays for all services with a single credit card charge at the travel agent's and then leaves the travel agency.

Example B: Same situation. However, the traveller receives different invoices, leaves the travel agency but, after returning home, chooses to make a single bank transfer to pay for all booked services.

Example C: Several travel services booked during the same visit in different booking processes and without an inclusive or total price being charged, without there being separate payments. Could it be neither a package nor an LTA?

The underlying issue of the above questions and examples is whether, under particular circumstances, there can be a LTA and not a package in spite of a single payment for different travel services. From the outset the COM noted that in the examples provided by two Member States it is unfortunately not possible to establish what actually happened at the travel agent's and wondered to what extent the given examples are relevant in practice. In any event, for the assessment of individual cases, the specific circumstances of each case have to be assessed against the criteria first in Article 3 (2) and then, if there is no package, Article 3 (5).

As stated at the previous workshops, there is a package under **Article 3(2)(b)(i)** if different travel services are part of a single booking process so that there is not yet an agreement to pay for at least one service before the next service is selected (i.e. the different travel services are collected in a shopping basket). Furthermore, there is a package under **Article 3(2)(b)(ii)** if the services are sold or charged at an inclusive or total price. In both cases there can be a package even if separate contracts are concluded with individual service providers.

At the same time, the reference to "separate selection and separate payment" in Article 3(5)(a) could suggest that the legislator assumed that a single payment for all services normally implies the creation of a package, although a 'single payment' is not as such part of the definition of 'package', which rather refers to 'agreement to pay' (i.e. the creation of a contractual obligation) after the traveller has selected at least two different travel services or to an 'inclusive or total price'. The traveller's agreement to pay may coincide with the actual payment, but the notion of "agrees to pay" does not necessarily require actual payment.

The compulsory standard information forms in Annex II Part A, B and C appear to be based on the idea that, where bookings are made during a single visit or contact with a single point of sale, there is no package (only) where the traveller first pays for one service and then books the next travel service.

Regarding the **transposition** of Article 3 (5) (a), the COM considered that Member States should not omit the reference to "separate payment" as this would remove an element from this provision which was added during the legislative negotiations and which may be important also for the overall interpretation of the national rules transposing the Directive.

The COM also considered that, if one were to conclude, in light of the circumstances of a specific case, that there is no package despite a single payment, the fact of a single payment should not be an obstacle for considering that the combination is an LTA. Given that a single payment suggests a close link between the travel services and the fact that it can be assumed that the legislator did not want to leave a gap between packages and LTAs, it would not be appropriate if this element could lead to the result that there are only stand-alone services. By way of an *a fortiori*-interpretation, one would therefore have to consider that the reference to separate payments in Article 3 (5) (a) has to be read as "even if there are separate payments".

Regarding the assessment of situations like in examples A, B and C, it will in any event be decisive whether, in light of the specific facts of each case, the criteria of Article 3 (2) are met, for instance whether or not the traveller had selected at least two different travel services before he/she agreed to pay (concluded a contract) at least for one travel service. If none of the alternatives of Article 3 (2) is met, those cases are likely to be LTAs.

Given the significance of these questions, the COM will further examine them and invites the MS to provide any comments they may have, possibly after discussions with businesses concerned and consumer associations.

16) Is it possible to interpret the term "to facilitate" in Article 3(5) as “to intermediate” or would this be too narrow?

COM considers that "to facilitate" encompasses the notion of acting as an intermediary. "To facilitate" is a broad notion, which is, however, narrowed through the term "in a targeted manner". In any case the national transposition laws should use the same terminology as the Directive.

17) Can the Commission provide some practical examples how a trader facilitates "in a targeted manner" the procurement of the travel service according to Article 3(5)(b)?

COM notes that one example is given in recital 13: "Those rules would apply, for example, where, along with the confirmation of the booking of a first travel service such as a flight or a train journey, a traveller receives an invitation to book an additional travel service available at the chosen travel destination, for instance, hotel accommodation, with a link to the booking website of another service provider or intermediary." For additional examples, see the screenshots sent by MS in the Annex.

18) Definition of "in targeted manner" in Article 3 (5) (b)

Example A: Links on an airline company´s website such as "book your car rental now" (link to another service provider booking system) or "book your hotel now" (link to booking.com) – are they facilitation in a targeted manner or simply informative links? Travellers may have the impression that a second service is also purchased via the airline.

Example B: Can there be facilitation „in a targeted manner" if the initiative to buy another travel service comes from a traveller (a phone call to the same trader within 24 hours of confirmation the 1st travel service)?

Example C: The traveller has concluded first a contract on a travel service and then receives a link to another service provider's booking system and subsequently concludes a second contract within 24 hours but the second service is not for the same trip (e.g. flight to Brussels, car rental in Amsterdam)?

Example A: the answer depends on the circumstances of the bookings. If the two bookings are made during the same visit there will be an LTA under Article 3(5)(a). For Article 3(5)(b), whether there is a targeted invitation to book an additional travel service depends on how the traveller's attention is drawn to the additional services. This likely to be the case where a traveller, in connection with the booking of a travel service, the traveller is sent a link, is redirected to the booking page where those invitations appear (e.g. "book your hotel now") or is invited to go back to the booking page to check additional services, or possibly even if he is invited, before booking the flight, to check other travel services offered after booking the flight etc. However, if the traveller goes back to the booking page with links to other booking facilities completely on his own initiative, this will not be facilitation in a targeted manner. However, there may still be an LTA within the meaning of Article 3 (5) **(a)** in such cases.

Example B: If the phone call happens completely on the traveller's initiative without any prior invitation/prompting by the trader, this is unlikely to be a targeted facilitation.

Example C: If it is not for the same trip or holiday, there is no LTA, according to the chapeau of Article 3 (5). However, for "the same trip or holiday" it is not necessary that the car is rented exactly at the place where the plane lands.

19) A traveller purchases an airline ticket and with the confirmation e-mail about the purchase there is extra information sent for options to book hotels. However, when clicking on the provided link for hotels, no data is transferred to the booking page and the traveller has to insert the information about the flight and destination manually. If the traveller books a hotel via this provided link within 24 hours of purchasing the air ticket – is that an LTA?

COM services agree that this is an LTA. No transfer of booking data, such as the destination, departure or arrival times and number of travellers, is required under Article 3(5) (a) and (b).

20) A traveller purchases an air ticket directly through the airline's website. Then, still within the same visit of the website, he sees another tab called "other services", clicks on a link to a hotel bookings site and is redirected to it, but has to insert all booking data manually. Is that an LTA?

COM: Whether there was a targeted facilitation in the sense of Article 3 (2) (b) depends on how the traveller's attention is drawn to the additional services (see above). However, there is an LTA as defined in Article 3 (5 (a) if the two bookings were made within one visit of a website regardless of whether there was a targeted facilitation.

21) Article 19(4) provides that the second trader shall inform the trader facilitating the linked travel arrangement of the conclusion of the relevant contract. The fulfilment of this information duty entails the transfer of personal data of the traveller. Recital 49 clarifies that the rules on the protection of personal data laid down in Directive 95/46/EC have to be observed. Is it correct that Article 7(c) of Directive 95/46/EC applies, which means that the traveller's consent to the transfer of his personal data is not necessary?

COM agrees. If the second trader fulfils its duty under the PTD, Article 7(c) of the Data Protection Directive would seem to apply. Article 7(c) states: "Member States shall provide that personal data may be processed only if: […] (c) processing is necessary for compliance with a legal obligation to which the controller is subject;"

22) Can the Commission confirm that price comparison websites, which do not propose the conclusion of a contract and merely refer to partner websites, are outside the scope of the Directive and neither offer packages nor LTAs?

COM services confirm their view that price comparison websites not offering booking facilities and not prompting travellers to make a second booking after or while concluding a first contract do not offer packages or LTAs.

23) Are advertisements placed by companies who do not directly offer travel services (e.g. Google) to be considered as not covered by Article 3(5)? If they are considered to be an LTA, how can it be ensured that the first trader is informed that an LTA has been formed? How can the transfer of information and follow-up of LTAs between the two traders be organised?

COM notes that advertisements sent independently of actual booking processes do not meet the requirements of Article 3(5)(b). However where, for instance, a link is sent/placed as a consequence of the conclusion of the first contract there is likely to be a targeted facilitation. If there is an LTA, it is for the traders to ensure the flow of information between them. If they do not do that, it would be for the enforcement authorities to step in.

24) Is it possible to define in a *vademecum* in an exhaustive manner the kind of models that would be packages or LTAs in order to ensure legal certainty?

COM services are sceptical about the feasibility of an exhaustive list. Since business models keep changing, it would be dangerous to establish an exhaustive list of business models that are covered. In any event, some guidance is given in the minutes of the workshops.

Packages and linked travel arrangements – Other questions/comments

Regarding the incorporation of Directive 2015/2302 into the EEA, participants were informed that the EEA Joint Committee is likely to deal with it only at the beginning of 2017 due to parliamentary elections in Iceland on 29 October 2016.

Poland asked Member States whether MS could use the terminology traditionally employed in their country even if it deviates from the Directive. The Commission considered that MS should use the terminology of the Directive as this could otherwise lead to confusion and different application in the Member States. If there are doubts in individual cases MS can contact the COM services.

The UNWTO's work on an international convention on tourism, including an annex on package travel

COM reminded participants of the main features of this initiative and provided an update:

Following exploratory discussions a Working Group has prepared a draft Convention on the Protection of Tourists and the Rights and Obligations of Tourism Service Providers containing **three annexes**:

- Annex I concerns assistance obligations for host countries for tourists affected by emergency situations
- Annex II covers package travel issues and
- Annex III relates to accommodation services.

Even though the EU is not a member of the UNWTO, the draft Convention contains provisions allowing the Union to sign and ratify it. When signing the Convention, each party will have to accept at least one of its annexes. The annexes contain legally binding standards, as well as mere recommended practices. The current draft of Annex II is largely inspired by Directive 2015/2302, whereas the provisions on pre-contractual information in Annex III are inspired by Directive 2011/83/EU on consumer rights, although one would, of course, have to make sure that there is full compliance with relevant EU instruments.

Given broad EU competences in the areas covered by the Convention, including exclusive competences for Annex II and parts of Annex III, the Commission services are preparing a recommendation for a Council decision authorising to negotiate on behalf of the EU. The recommendation is likely to be submitted to the Council at the beginning of 2017. A negotiation mandate would not prejudge the subsequent decision whether EU should sign or accede to the Convention.

The UNWTO had launched a general consultation of its members on the draft Convention in August 2016, which the Commission forwarded to participants prior to the meeting. Although the original deadline was end of October, comments could still be provided in November. The Commission asked those MS which were going to reply directly to the UNWTO to refer to EU competences and the need for a coordinated EU-position. The Commission intends to send only a general reply to the consultation, while continuing to informally provide technical comments so as to ensure compatibility with EU law. The Commission invited participants to send any comments by 8 November 2016 and stated that it would keep them informed on further developments.

According to the current time-table of the UNWTO-Secretariat, the UNWTO-Working Group would finalise the text of the draft convention in March/April 2017 so that it could be submitted to the UNWTO's General Assembly in China in September [1]2017.

[1] At the meeting reference was made to October 2017, although based on more recent information the envisaged date is September 2017.

Questions/comments during the workshop

FR considered that the timeline is too tight and that obtaining a "negotiating mandate" from the Council will also take time. COM agreed that UNWTO's time-table is very ambitious, but that the time needed for obtaining a "mandate" from the Council would also depend on the interest of the MS in this initiative.
MT stressed that the EU should act in a coordinated manner.

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Closing remarks

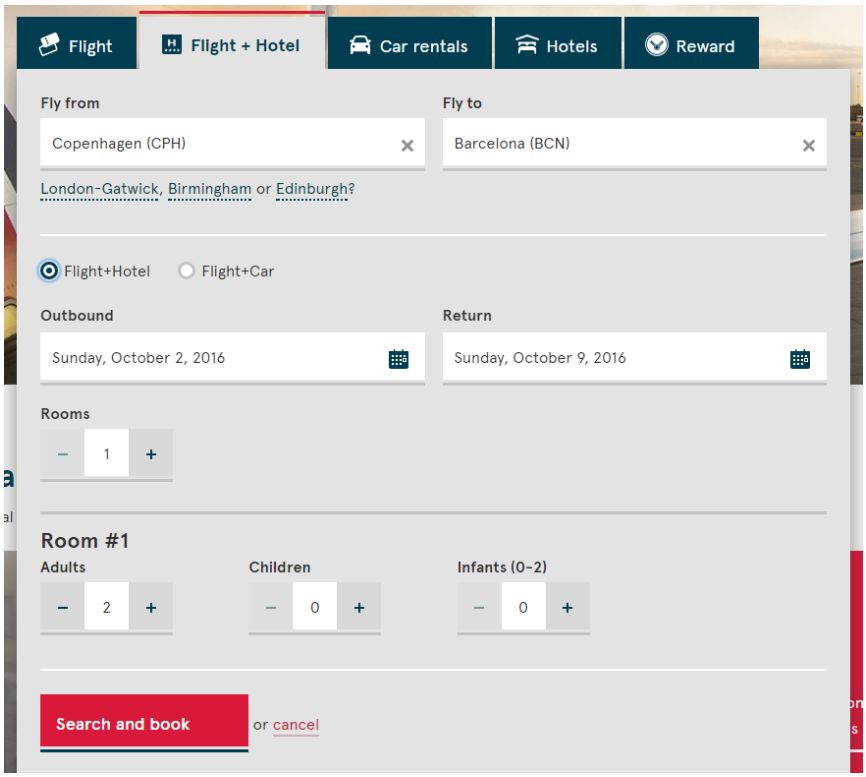
COM thanked the Member States for their participation at the meeting, and their contributions and feedback on the tables on the insolvency protection systems. The next workshop is likely to be held in February 2017.

Annex: screenshots sent by the Member States to illustrate 'packages and LTAs' in the online world

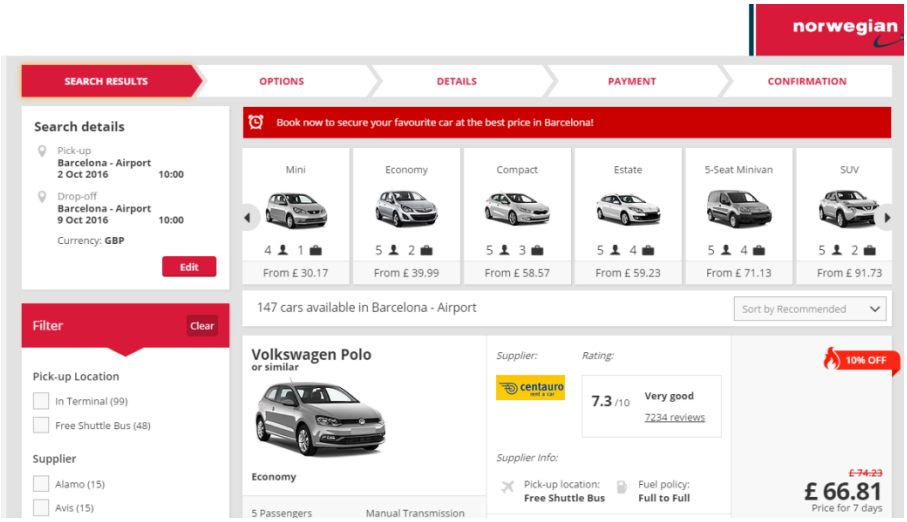
1) Norwegian Airlines

The search engine on the main webpage has the "Flight + Hotel" tab, offered by Norwegian Holidays, and provides the option to book either flight and hotel, or flight and car rental.

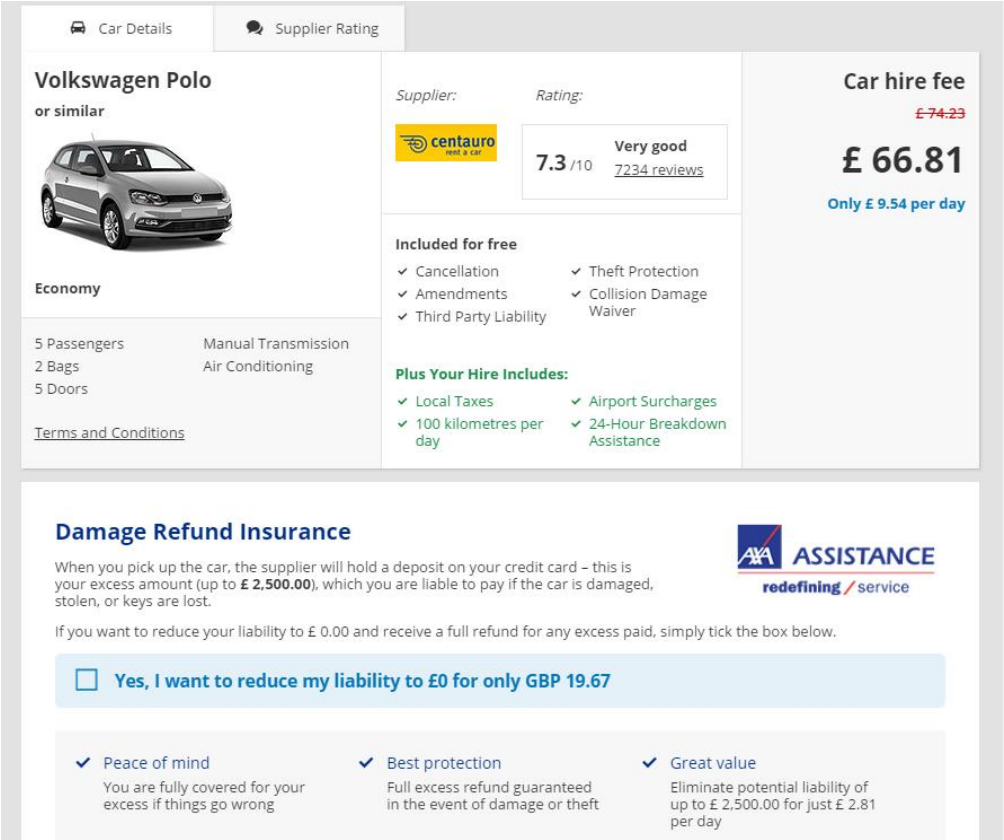
According to the discussion, both options are considered to be packages under Article 3(2)(a) or (b), depending on the precise booking arrangements.



However, if flight and car rental are purchased separately, the flight ticket is purchased from Norwegian Airlines, while the process regarding car rental is the following:



After the selection of the relevant vehicle is complete, a page displays the vehicle and insurance options, after which driver and payment details are entered:



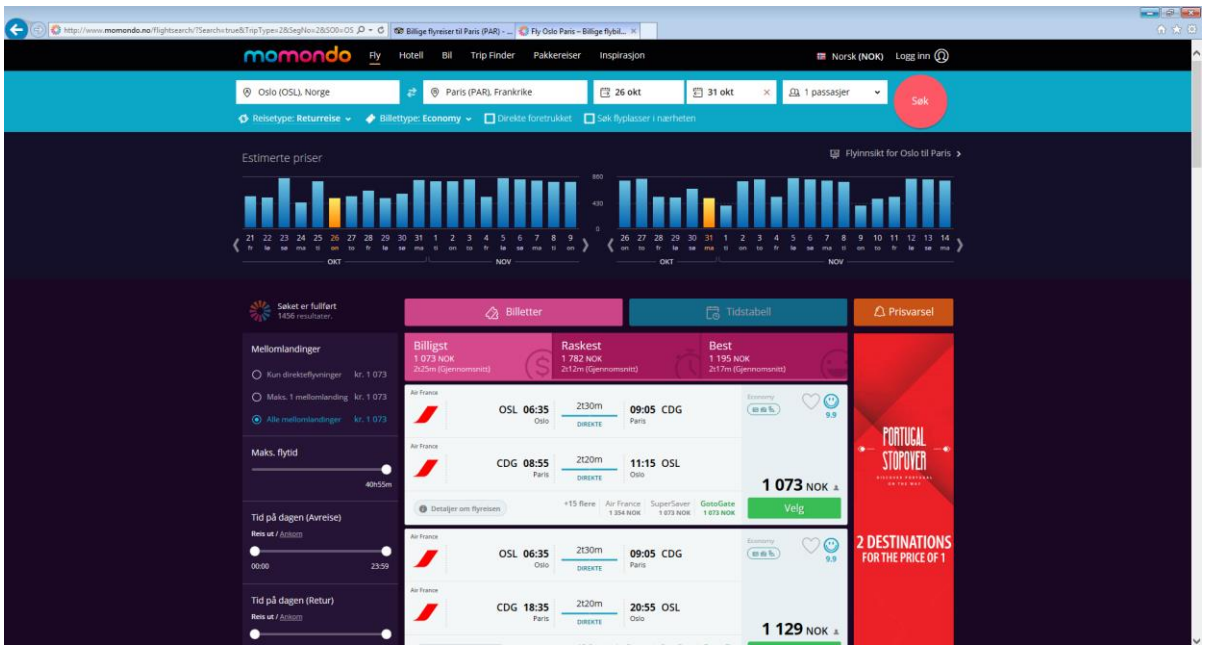
Terms and conditions stipulate that the car rental contract is solely between the traveller and the car rental company. The web address changes during the search to "cars.cartrawler.com" - Norwegian logo still appears on all pages, and the layout of the Norwegian website seems to be used throughout the process.

If a traveller purchases flight ticket and car rental separately, will the subsequent product constitute a package, an LTA or are the products considered to be stand-alone travel services, and therefore not within the scope of the Directive?

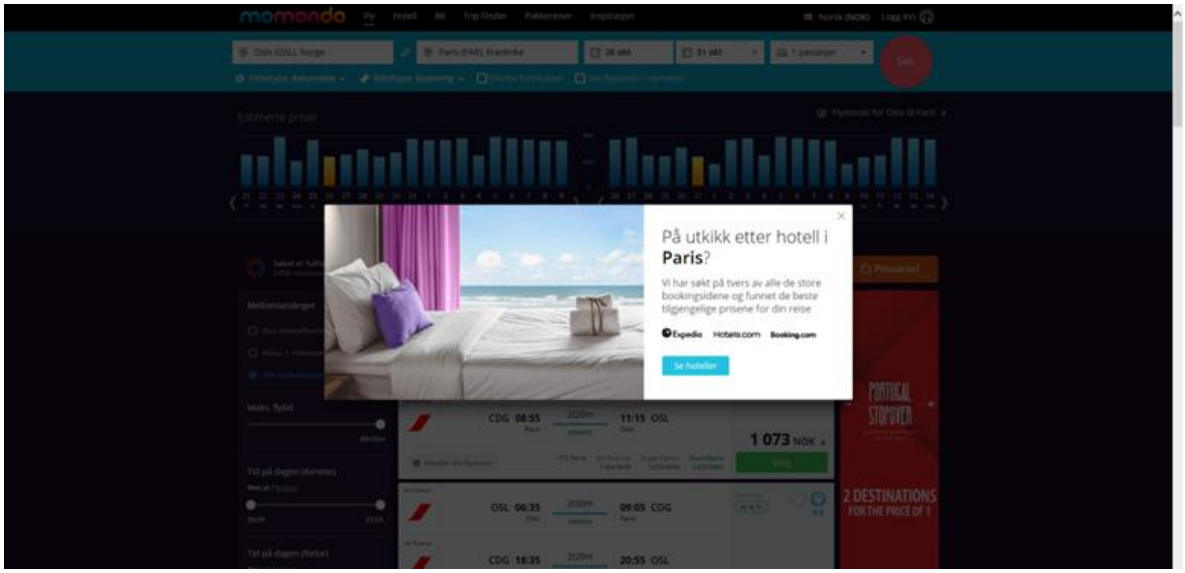
According to the discussion, where car rental and a flight are booked in completely different booking processes, as it seems to be the case in the given example, there would not be a package. If a flight plus car rental is booked, it will depend on different circumstances whether those bookings constitute an LTA.

2) Momondo - LTA?

The website in a flight-search from Oslo to Paris:



Trying to escape the search a pop-up ad for hotels at the destination of the flight search appears:



If a booking is carried out through the link in the pop-up and later flight tickets are chosen and purchased from the search, is this an LTA under Article 3(5)(b), or is this outside the scope of the Directive?

If the link is provided without a booking process concerning the flight having at least been started, this is unlikely to constitute a targeted facilitation in the sense of Article 3 (5) (b) (recital 17).

3) Hotels.com – LTA?

Targeted marketing for rental car in the confirmation e-mail of a hotel booking.

Takk for din betaling med AmericanExpress, som slutter på 3033. Bestillingen er garantert.
Dersom det oppstår ekstra avgifter i løpet av oppholdet ditt vil du betale dette til hotellet i deres lokale valuta. Hotellet vil be deg om å betale en lokal skatt på 10,00€ ved innsjekking eller utsjekking.

Merci d'avoir réglé en utilisant votre carte AmericanExpress dont le numéro se termine par 3033. Votre réservation est garantie.
Les frais supplémentaires que votre séjour pourrait occasionner seront à régler directement sur place en devise locale. L'hôtel vous demandera aussi de régler la somme de une taxe locale de 10,00€ à l'arrivée ou au départ.

Avbestillingsregler — **Spesialpris (ikke-refunderbar)**
Denne spesialprisen er ikke-refunderbar. Hvis du ønsker å endre eller avbestille denne reservasjonen vil du ikke få refundert noe av betalingssummen.

Dine kontaktdetaljer — Sma@virke.no, 004791768366

Har du et spørsmål?

Ta kontakt med Le Pigalle på +330148783714 dersom du allerede har sjekket inn eller har spørsmål om hotellet

For andre spørsmål kan du sjekke våre ofte stilte spørsmål eller ringe vårt kundeservice-team:

Norge:
Ring gratis fra fasttelefon 800 331 24 eller 23 02 48 90 fra mobiltelefon (vanlig takst).

Du kommer til å trenge ditt **Hotels.com-bekreftelsesnummer 131017748950.**

Trenger du en leiebil?
Sammenlign 1200 leverandører

Vis tilbud

Levert av cartrawler

Firefly AVIS Budget Europcar Alamo Thrifty

Hvis du har tid, vil vi gjerne stille deg 2 spørsmål om bestillingen din.

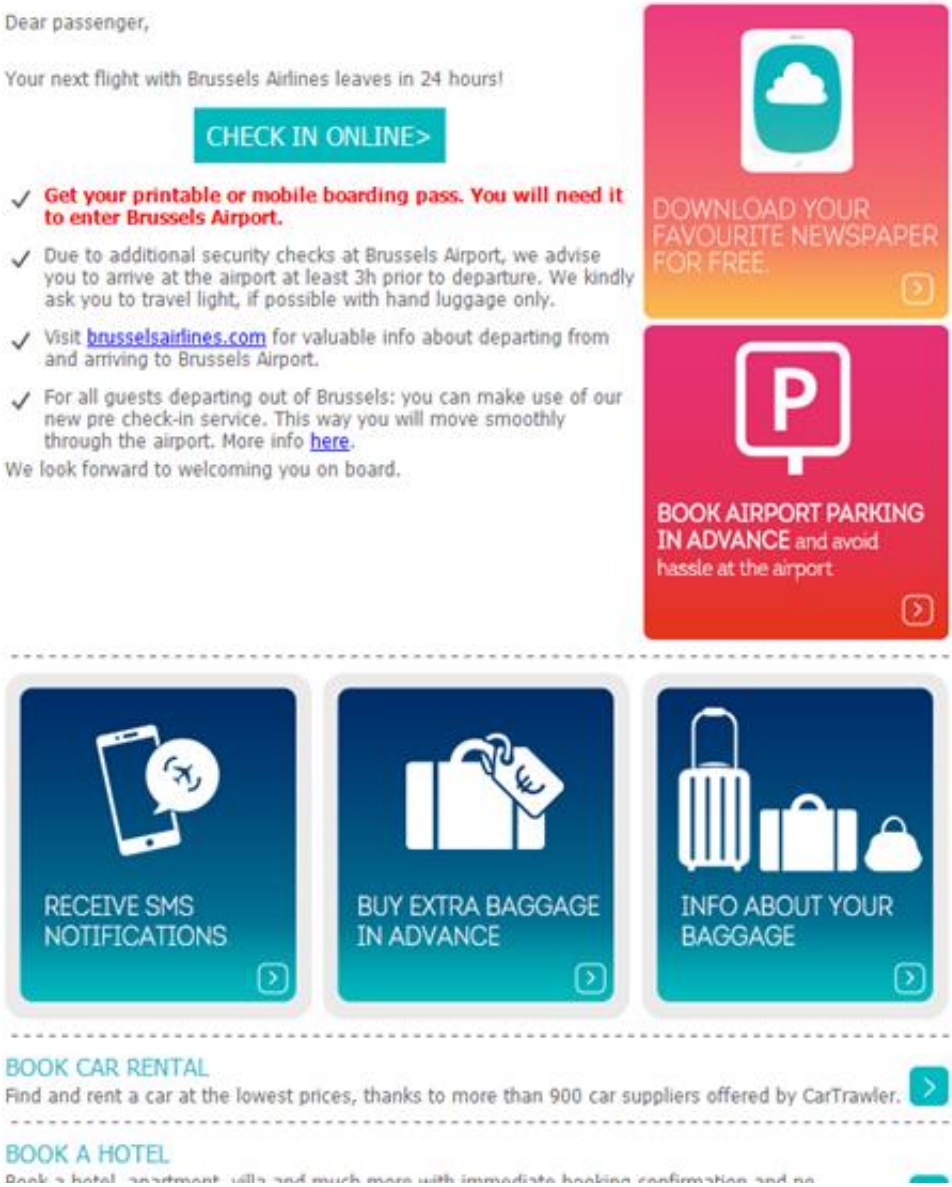
Meld deg på nyhetsbrevet vårt for å motta våre seneste tilbud, kupongkoder og spesialtilbud

Se våre Vilkår og Personvernerklæring som gjelder for din bestilling. Husk å skrive ut en kopi til fremtidig

As far as the COM services can see from this example, there would be an LTA within the meaning of Article 3 (5) (b) if the traveller uses the link to the car rental website and completes the booking of a rental car within 24 hours.

4) Brussels Airlines - LTA?

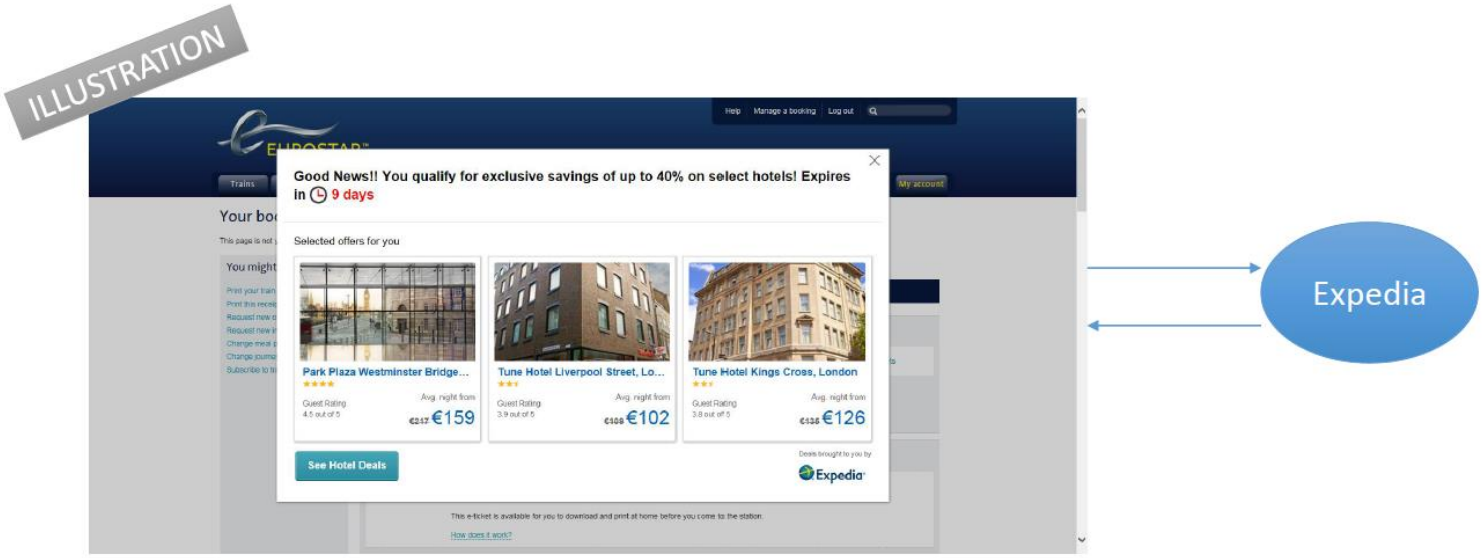
Targeted offer of hotel and rental car in a "check-in" e-mail from the airline. If the tickets are purchased less than 24 hours before the journey, is it a LTA?



If the invitation to check-in for the flight is sent within a short period after the confirmation of the flight reservation and the booking of the hotel or the rental car occurs within 24 hours after the booking confirmation via the offered links, this would constitute an LTA within the meaning of Article 3(5)(b).

5) A travel agent advertising with a supplier – LTA?

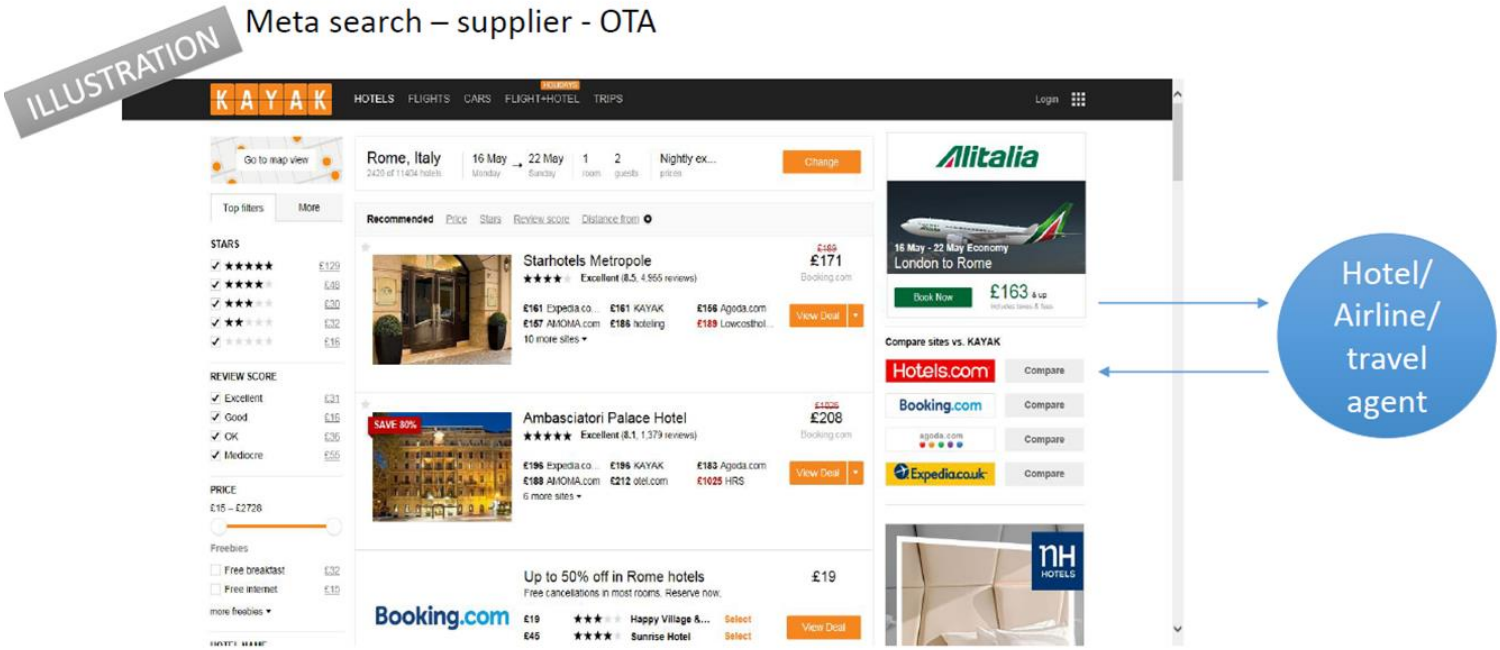
Advertiser pop-up after the (first) booking on the supplier site is concluded



Note: These illustrations are theoretical examples of the ambiguity of the LTA definition and are not intended to provide an assessment of whether any of the examples actually is an LTA or not

This would appear to be an LTA under Article 3 (5) (b) if a hotel is booked via the link within 24 hours.

6) A supplier and/or travel agent advertising on meta-search – LTA?



Note: These illustrations are theoretical examples of the ambiguity of the LTA definition and are not intended to provide an assessment of whether any of the examples actually is an LTA or not

Whether there is an LTA will depend on the booking processes. Pure price comparison based on meta searches will generally not be facilitation of LTAs if no actual booking takes place on such websites.