

B. Package Travel Directive (90/314)

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Executive Summary

1. Transposition deficiencies

Although the Directive has been transposed in all member states, the analysis has revealed many transposition deficiencies with regard to some of the details. The following examples could constitute potentially significant transposition deficiencies:

- No duty to include in the brochure the deadline for informing the consumer in the event of cancellation where the minimum number of participants is not reached in SWEDEN (Art. 3(2)(g)).
- Duty to provide information about passport and visa requirements only for own citizens (CZECH REPUBLIC), citizens or residents (CYPRUS), citizens of the member state where the package is offered (AUSTRIA, GERMANY). This is contrary to Art. 4(1)(a) of the Directive, which requires this information with regard to all nationals of the member state(s) concerned.
- No formal requirement regarding the information to be given before the start of the journey (Art. 4(1)(b)) in ESTONIA and GERMANY.
- No requirement for details to be provided about the place to be occupied by the traveller (Art. 4(1)(b) no. (i) in CZECH and ITALIAN law.
- Delaying the point at which the necessary elements of the contract must be communicated in AUSTRIAN and GERMAN law (instead of “before conclusion of the contract” as stated in Art. 4(2)(b), the confirmation document including certain elements must be handed over to the traveller “at or immediately after conclusion of the contract”).
- Several member states still have limitations on the insurance sum to be paid despite the ECJ ruling in the *Rechberger* case.

2. Enhancement of protection

a. Extension of scope

Some national laws provide for a wider scope in the field of package travel, for example by broadening the:

- Notion of ‘organiser’ (Art. 2(2)); e.g. inclusion of persons operating occasionally.
- Notion of ‘package’ (Art. 2(1)); e.g. extension to travel contracts containing only one service, extension to combined trips of a duration of less than 24 hours or without overnight accommodation.

b. Use of minimum clause

Most member states made use of the minimum clause. Key examples are listed below:

- Art. 3(2): additional requirements concerning the brochure (e.g. manifold additional information to be included, compulsory provision of a brochure).
- Art. 4(1)(a): additional information requirements before conclusion of the contract (e.g. optional insurance, price of the package, security for money paid in the event of insolvency).
- Art. 4(1)(b): increase in information requirements before the start of the journey.
- Additional information requirements (e.g. details of the package).
- Setting a time limit for provision of this information (e.g. at the latest 7 calendar days before departure).
- Art. 4(2): additional elements to be included in the contract (e.g. conditions for cancellation by the traveller or organiser and/or retailer, maximum amounts for possible claims by the agency); stricter formal requirements for the contract (e.g. only “in writing” instead of also “such other form as is comprehensible and accessible to the consumer”).
- Art. 5: liability (e.g. extension of compulsory cover for the organiser/retailer, direct insurance claim for the consumer against the insurer in cases of improper performance or non-performance of the contract, even where the organiser/retailer is not insolvent).
- Art. 5(4): no transposition of the provision requiring that the consumer communicate any failure in the performance.
- Art. 7: additional refund (e.g. other needs resulting from non-performance).

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3. Use of options

The majority of member states made use of the options provided for in the Directive:

- Art. 5(2) sent. 4 (scope for limiting compensation in accordance with international conventions) has been transposed by the vast majority of member states (21).
- Art. 5(2) sent. 4 (scope for limiting compensation under the terms of the contract for damages other than personal injury) has also been transposed by the majority of member states (18), but with great variations in detail.

4. Inconsistencies or ambiguities

Some potentially significant inconsistencies or ambiguities in the Directive are:

- The use of the term ‘pre-arranged’ in the definition of ‘package’ (Art. 2(1)) is misleading because the ECJ (C-400/00 – *Club-Tour*) has clarified that combinations of tourist services tailored by a travel agency to the specific requests of the consumer are also covered.
- The notion of ‘organiser’ (Art. 2(2)) does not tally with the commonly used definition of “acting professionally in the course of his business” and also includes private persons and not-for-profit organisations; the exact meaning of acting “occasionally” is unclear.
- The notion of ‘consumer’ (Art. 2(4)) deviates substantively from the definition in the other consumer protection directives.
- By using the wording “organiser and/or retailer”, the Directive did not clearly decide whether the organiser, the retailer or both carry obligations vis-à-vis the consumer. This decision is left to the member states’ discretion. They have to ensure that at least one of the two is liable in any case. The member states’ transposition laws do not only show great differences, but have also created many uncertainties. Especially in those member states that provided for a different and separate liability for the organiser and the retailer (with each of them being liable for problems occurring in their respective spheres), it may be rather unclear who is liable for what.
- Unclear formal requirements for the information due under Art. 4(1)(a) and (b) (“in writing or any other appropriate form”).

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- Unclear formal requirements for the contract in Art. 4(2) (“in writing or such other form as is comprehensible and accessible to the consumer”; “copy of these terms”).
- It is unclear whether exemptions from information requirements in the case of last-minute contracts are applicable only with regard to Art 4(2)(b), or also with regard to other information duties (in particular Art. 4(1)).
- The wording in Art. 4(3) (“having given the organiser ‘or’ the retailer reasonable notice”) does not clarify whether the member states or the consumer may choose the addressee. Moreover, it is unclear whether “reasonable notice” just refers to a reasonable period of time, and indeed how long such a period should be.
- It is unclear whether Art. 4(4) (“upward ‘or’ downward revision”) requires transposition to deal with both possibilities (and not only with the possibility to increase [and not to decrease] the price).
- The use of the term “withdrawal” in Art. 4(5) and (6) may be confused with the ‘cooling-off periods’ provided for in other Directives, which are commonly described as a “right of withdrawal”.
- In Art. 4(7), it is unclear whether the duty to compensate the consumer “where appropriate” constitutes an independent specific liability rule or just refers to the general rule in Art 5(2) of the Directive.
- Article 5 does not explicitly state that – according to the ruling of the ECJ in the *Simone Leitner* case – the consumer must also have a right to compensation for non-material damage and, in particular, that such compensation can arise from the loss of enjoyment the consumer has suffered because of the improper performance of the travel contract.

5. Gaps in the Directive

The analysis of the way in which the Directive has been transposed in member states did not reveal substantial gaps. Although some member states broadened the scope of their travel laws in different respects, these findings do not lead to the conclusion that there is an urgent need to extend the scope of the Directive. However, some contributors suggested some extensions to the scope (e.g. one-day trips, conferences, flights) or new protection instruments

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(e.g. the insertion of general rules on cancellation fees if the consumer cancels without a justified reason).

6. Potential barriers to (cross-border) trade

The following examples are quite likely to cause barriers to trade in the European market:

- Additional elements to be included in the brochure (Art. 3(2)) or the contract (Art. 4(2)) diverging across different member states.
- Additional information to be provided before the contract is concluded (Art. 4(1)(a)) and before the start of the journey (Art. 4(1)(b)).
- Stricter formal requirements in member states with regard to the information due under Art. 4(1) (e.g. information must solely be “in writing”).
- Stricter formal requirements in member states with regard to the contract pursuant to Art. 4(2)(b) (e.g. contract must solely be set out “in writing”).
- Substantial differences in member states’ laws concerning the possibility to limit compensation in the case of damages resulting from non-performance or improper performance of services included in the package. These differences leave organisers and retailers who want to market package tours in several member states practically no choice other than to refrain from agreeing any compensation limits.
- Substantial differences in the obligations for retailers in member states. These mean, on the one hand, that, in some member states, all the organiser’s duties are imposed upon retailers who sell packages for foreign organisers and, on the other hand, that a consumer who purchases a package organised by a foreign organiser in his home country might only have the right to claim against the foreign organiser (although, under Art. 5 of the Rome Convention, this is generally governed by the law of the country in which the consumer has his habitual residence).

7. Conclusions and recommendations

In order to remove ambiguities, inconsistencies or barriers to trade, the following issues could be considered:

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- Definition of ‘package’: inclusion of tailor-made packages offered by travel agencies according to the ECJ ruling in *Club-Tour*. This would mean deleting the misleading term “pre-arranged”; should there be a political decision to extend the scope, this could, in particular, include packages with a duration of less than 24 hours or without overnight accommodation.
- Definition of ‘consumer’: bringing the definition into line with other definitions in EC consumer law.
- Definition of ‘organiser’: bringing the definition into line with other definitions of “professional” or “supplier” in EC contract law, thereby also deleting the phrase “other than occasionally”.
- Clarification that the organiser is obliged and liable in all cases and that it is left to member states to determine whether the retailer is jointly liable.
- Definition of the terms “in writing” or “any other appropriate form” in Art. 4(1)(a) and (b), as well as of “in writing or such other form as is comprehensible and accessible to the consumer” and “copy of these terms” in Art. 4(2), thereby possibly making use of the definition of “another durable medium” as per Art. 2(f) of Directive 2002/65. This would also adapt the Directive to the requirements of e-commerce.
- Clarification of whether, in the case of last-minute contracts, exemptions from information requirements may also be permissible with regard to Art. 3(2) (brochure) and Art. 4(1)(a) (information to be provided before conclusion of contract).
- Clarification that the wording in Art. 4(3) (“having given the organiser ‘or’ the retailer reasonable notice”) leaves the choice of addressee to the consumer (and not to the member states); moreover, clarification of whether “reasonable notice” just refers to a reasonable period for giving notice, and of how long such a period should be; finally, clarification that member states do not have to introduce a formal requirement (e.g. in writing) for the notice.
- Clarification that the transposition of Art. 4(4) (“upward ‘or’ downward revision”) must deal with both possibilities (replacement of ‘or’ by ‘and’).
- Clarification of whether in Art. 4(7) the duty to compensate the consumer “where appropriate” constitutes an independent specific liability rule or just refers to the general rule in Art. 5(2) of the Directive.

- Clarification that Art. 5 also grants a right to compensation for non-material damage, in particular, that such compensation can arise from the loss of enjoyment (*Simone Leitner*).
- Regulation of the possibility to contractually limit compensation in the case of damages resulting from non-performance or improper performance of services included in the package in Art. 5(2).
- Insertion of a general provision obliging member states to ensure that adequate and effective means exist to ensure compliance with the Directive in the interests of consumers.

In order to ensure that the member states can no longer introduce or maintain additional protection instruments and thereby create barriers to trade, it might be worth considering full harmonisation in the most sensitive areas like pre-contractual information duties, brochures and formal requirements for information duties. This might also cover contractual exclusion clauses.

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I. Member state legislation prior to the adoption of the Package Travel Directive

Prior to the adoption of Directive 90/314, only a few European countries had directly legislated in the field of travel contracts. Of course, general rules and principles of contract law (e.g. with regard to the quality of the goods or services provided, information duties, doctrine of misrepresentation) were applicable to package travel agreements, *inter alia*, in AUSTRIA, DENMARK, FINLAND, IRELAND, LATVIA,¹ MALTA,² the NETHERLANDS, POLAND, SLOVAKIA and the UNITED KINGDOM.

Some member states had individual acts regulating travel contracts. However, national rules in this area differed substantially, both in terms of coverage and detail. In 1973 and 1977, ITALY ratified the International Convention on Travel Contracts (CCV). This convention provided comparable consumer protection to that afforded under the Directive with regard to the travel organiser's liability.³ In BELGIUM, travel contracts were also regulated by the CCV and, in certain respects, by the Trade Practices Act.⁴ The latter banned misleading information and listed in detail the information the consumer had to be provided with. In FRANCE, there were some regulations comparable those in Directive 90/314 concerning information duties, pricing, reimbursement requirements, organiser's liability and the travel guarantee fund.

In BULGARIA a Law on Tourism was adopted first in 1998. It regulated travel contracts only cursorily. In fact the did not provide special provisions on package travel contracts. Only general contract law and special regulations on train, motorway, shipping and air traffic were applicable. In ROMANIA, Government Ordinance 107/1999 implementing Directive 90/134 came into force in 1999. Before 1999 general contract law was applicable.

¹ Until the adoption of the 'Tourism Law' on 17 September 1998, no special regulation existed regarding tourism and package travel contracts. Thus, the Civil Law "Law of Obligations" applied as general legal rules for the particular contractual relationships.

² Prior to the Package Travel Regulations enacted in 2000 in order to transpose Directive 90/314, no specific rules existed and the primary rules of contract law in the Maltese CC were applicable.

³ Directive 90/314 was initially implemented by Decree 111 of 17 March 1995 concerning "all-inclusive" travel packages, holidays and excursions. The field of package travel is now regulated in Art. 82 et seq. of the Consumer Code.

⁴ Trade Practices Act of 14 July 1991.

Before the Directive was transposed, SLOVENIAN law had, in general, similar provisions to those currently in force. The current “Code of Obligations” is based on the former Law of Obligations and only minor insertions were needed in order to achieve compliance with the Directive. Whereas GREEK legislation obliged travel agencies to provide the consumer with a minimum level of information, which had to be signed by both contractual parties, HUNGARIAN law only regulated the financial aspects of package travel in two decrees. These included provisions for cover in the event of the organiser’s insolvency to be provided via insurance payments or cash deposits.

PORTUGUESE law had already had for some time specific rules dealing with travel organised within its borders,⁵ although these did not give any definition of a ‘consumer’, but used the term “client” instead. In SPAIN, before the introduction of the Directive, administrative regulations governing package travel contracts were in place, but no private law existed in this field. Nevertheless, the administrative regulations had some impact in private law, since they were included in travel contracts concluded under the general rules governing contracts for accommodation, transport or service hire.

In 1979, GERMANY introduced a sub-chapter on package travel contracts in §§ 651a-k of the Civil Code (CC). However, these provisions did not afford the same standard of consumer protection as the Directive because, for instance, they did not lay down many information requirements, nor any effective security provisions should the tour organiser become insolvent.

Non-binding guidelines in the field of package travel existed in AUSTRIA, DENMARK, FINLAND and SWEDEN. The Austrian “general travel conditions”, partially regulating the Directive’s content (e.g. information duties, conditions for a price revision), received the status of “soft law” and could be voluntarily respected by travel agencies and organisers. Moreover, a legal duty to indicate the acceptance of all or some of the conditions was imposed on the organiser. In Denmark, guidelines on travel advertisements were issued by a Consumer Ombudsman under the Marketing Practices Act, while problems could be brought before the Travel Arbitration Court, a private complaints board. The Finnish Consumer

⁵ Rules amended by the time of accession by Decree-Law 264/86.

Agency produced non-binding guidelines concerning the marketing of package travel, which included especially detailed provisions on information brochures and pre-contractual information. Despite its non-binding character, any marketing material contravening the guidelines could be deemed an unfair commercial practice as defined in Chapter 2 of the Consumer Protection Act.⁶ Moreover, the Consumer Protection Act was also applicable to travel packages, thus meaning that the general marketing provisions also applied to the regulation and amendment of contract terms. In Austria, a “Travel Guarantee Fund” was created in 1986 and could be joined on a voluntary basis. In Denmark, a comparable fund was established by an Act of Parliament in 1979, and in Finland, under the Travel Agency Regulation, travel agencies were obliged to pledge collateral in order to refund customers in the event of insolvency. Sweden indirectly protected consumers via general agreements on package travel negotiated by the Swedish Consumer Agency with the major Swedish travel organisations. Any violation of these agreements by a professional was deemed unfair, meaning that the provisions on unfair consumer contracts were applicable.

⁶ Consumer Protection Act 20.1.1978/38.

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II. Scope of application

1. Consumer

The definition of a ‘consumer’ in Directive 90/314 deviates substantively from the definition commonly used in other consumer protection directives.⁷ The consumer is usually characterised as a “natural person acting for purposes outside his/her professional activity”. The definition of ‘consumer’ used in Art. 2(4) of the Directive is, however, divided into three parts: any “person who takes or agrees to take the package ('the principal contractor') (...) any person on whose behalf the principal contractor agrees to purchase the package ('the other beneficiaries') or any person to whom the principal contractor or any of the other beneficiaries transfers the package ('the transferee)’”.

Unusually, the notion of ‘consumer’ is not explicitly limited to “natural” persons, but includes any person taking the package. Thus, the Directive’s notion of a “consumer” seems to encompass legal persons as well as tradesmen concluding a contract for business purposes.

a. Transposition in general

In transposing the Directive, the vast majority of member states integrated the definition into a special Act. Only some countries included the definition in existing legislation, namely GERMANY and the NETHERLANDS in their Civil Codes and ITALY in its Consumer Code.

The majority of member states adopted the structure of the Directive’s definition. However, about a quarter of member states have not used any definition, but refer only to the main contracting party.

⁷ For more detail, see Part 3.A.

Table: Use of the definition's elements

Tripartite definition	AT, BG, CY, CZ, ⁸ DK, EL, ES, FI, IE, IT, MT, NL, PL, RO, SE, SK, UK (15)
Bipartite definition (main contract partner and other beneficiaries)	BE, LV (2)
Single definition (main contract partner)	HU, LT (2)
No legal definition at all	EE, FR, DE, LU, PT, SL (6)

The term 'consumer' has only been used in some member states (e.g. BULGARIA, CYPRUS, GREECE, IRELAND, MALTA, SPAIN and the UNITED KINGDOM⁹). Two thirds of member states have used a different term in implementing the Directive. The terms used in lieu of "consumer" vary from 'traveller' (e.g. AUSTRIA, ESTONIA, GERMANY, the NETHERLANDS, SWEDEN), 'purchaser' (FRANCE, LUXEMBOURG, SLOVAKIA), and 'customer' (the CZECH REPUBLIC, DENMARK, POLAND¹⁰), to 'client' (LATVIA, PORTUGAL) and 'tourist' (LITHUANIA) .

It is evident that many member states have tried to avoid the term 'consumer' in the field of Package Travel in order not to contradict the commonly used notion of consumer. EC law apparently uses the notion of 'consumer' inconsistently and leaves it up to member states to find a solution for transposing the different content of the term. Sometimes, national legislation therefore also uses the 'consumer' definition inconsistently. As such, it is not easy to identify a general scheme or principle throughout the EU determining who is actually protected in the field of Package Travel.

⁸ Seemingly, some changes have been made in the regulation of package travel. This may lead to some amendments with regard to the information about the CZECH REPUBLIC.

⁹ Regulation 2(2) of the Package Travel, Package Holidays and Package Tour Regulations 1992 modifies the meaning of 'consumer' (i.e. different for the definition of 'contract') and is also used as shorthand ("as the context requires").

¹⁰ In the latest version of the Act on Tourist Services of 29 August 1997 in force since 1 January 2006, there is still no definition of 'consumer'. Instead, the Act uses three notions: 'tourist', 'visitor' and 'customer', the latter being defined as a person who enters into a contract that is not part of his economic activity (Art. 3(11): a person who, acting outside the scope of his business, is willing to conclude, or has concluded, a contract for tourist services in his own name or on behalf of another person; a person for whom such a contract has been concluded or a person to whom the rights to use the tourist services under the contract concluded previously have been transferred).

Table: Use of terms

Consumer	BG, CY, EL, ES, IE, IT, MT, RO ^{11*} , UK (7)
Traveller	AT, BE, EE, DE, FI, HU, NL, SE, SL (9)
Purchaser	FR, LU, SK (3)
Customer	CZ, DK, PL (3)
Client	LV, PT (2)
Tourist	LT, RO* (2)

* *more than once*

b. Transposition in particular

Despite variations in the wording, the majority of national laws seem to mirror largely the content of the Directive's definition and especially, seem to include its second and third parts. About one third of member states have not legally defined the notion of "consumer", but rather refer only to the contracting party ('traveller', 'purchaser' or 'passenger') without further clarification (e.g. GERMANY, FRANCE, LUXEMBOURG, SLOVENIA).

Table: Transposition method

	The principal contractor	The other beneficiaries	The transferee
Substantively equivalent to the Directive	AT, ¹² BE, BG, CY, CZ, DK, EL, ES, FI, ¹³ HU, IE, IT, LV, MT, NL, RO, SE, SK, UK (19)	AT, BE, BG, CY, CZ, DK, EL, FI, IE, IT, MT, NL, RO, SK, SE, UK (16)	AT, BE, BG, CY, CZ, DK, EL, FI, IE, IT, MT, NL, RO, SK, UK (15)
Variations	LT, PL (2)	ES, PL (2)	ES, PL (2)
Not explicitly		HU, LT, LV (3)	HU, LT, LV, SE (4)

¹¹ The definition in Art. 2(4) Law 631 of 16 November 2001 uses the term 'consumer' while other regulations, e.g. Art. 15 of the same law, mention the term 'tourist'.

¹² Consumer Protection Act, § 31b(2)(3). Furthermore, § 2 no. 4 and no. 5 of the Regulation on travel agencies implementing Art. 7 of the Directive 90/314 explicitly limits the notion of traveller to persons who make the booking.

¹³ According to the explanatory memorandum of the law, the definition of 'traveller' covers all three parts of the definition.

transposed			
No legal definition at all	EE, FR, DE, LU, PT, ¹⁴ SL ¹⁵ (6)		

aa. The principal contractor

In contrast to the Directive, POLAND excludes professionals from the definition, thus possibly contradicting the Directive's definition. GERMAN law¹⁶ only mentions the 'traveller' as one of the contracting parties, i.e. a person concluding a travel contract in his/her own name, even though he/she does not make use of the travel service his/herself. This is essentially the same in the CZECH REPUBLIC and the NETHERLANDS,¹⁷ where the 'traveller' is simply the other party to the contract. In FRANCE¹⁸ and LUXEMBOURG,¹⁹ the law only mentions the notion of 'purchaser', whereas HUNGARIAN²⁰ and ESTONIAN²¹ law opt for the term 'traveller'. In SLOVAKIA, the 'purchaser' is a person who concludes a contract with the travel bureau. LITHUANIA introduces a new definition, which deviates significantly from the 'consumer' definition in the Directive. Lithuanian law²² uses the term 'tourist', defined as "a natural person who, for family, professional, business, ethnic, cultural, recreational, health, religious or special reasons, travels within a country or other countries and remains for at least one night, but no longer than one year, outside his permanent place of residence if this is not for the purposes of study or paid work".

Table: National transposition

¹⁴ Portuguese law uses exclusively the term 'client'.

¹⁵ In Slovenian law, no explicit definition of a 'consumer' is given; it only mentions the rights and obligations of the "passenger/traveller" without further explanation. It is accepted, that, under the Code of Obligations, the traveller might be any person (therefore the traveller-organiser relationship is not limited to the consumer-professional relationship).

¹⁶ CC § 651a(1).

¹⁷ CC Book 7 Art. 500(1)(a).

¹⁸ Tourism Code, Art. L 211-11.

¹⁹ Package Travel Act, Art. 8.

²⁰ In Hungarian legislation, the principal contractor is referred to as the 'traveller'.

²¹ Law of Obligations Act, Art. 866(1).

²² Law on Tourism, Art. 2(14).

Substantively equivalent to the Directive	AT, BE, ²³ BG, CY, CZ, DK, EL, ES, ²⁴ FI, HU, IE, IT, LV, MT, NL, RO, SE, SK, UK (19)
Variations: exclusion of professionals	PL (1)
Variations: concept of tourist	LT (1)
No legal definition at all	EE, FR, DE, LU, PT, SL ²⁵ (6)

bb. The other beneficiaries

About half of member states have introduced a similar notion of ‘the other beneficiaries’ into their concept of consumer. Again, POLISH law explicitly excludes professionals, whereas SPANISH law deliberately omitted legal persons from the definition. LATVIAN law uses a different expression from the one in the Directive: anyone who purchases a package tourism service on behalf of a third person is protected instead of “on whose behalf the principal contractor agrees to purchase the package” as per the Directive’s definition.²⁶ In a number of member states (ESTONIA, FRANCE, GERMANY, LUXEMBOURG, PORTUGAL, SLOVENIA), there is no legal transposition of this part of the definition. In Germany, only persons with their own claim are explicitly mentioned. Nevertheless, because the concept of a contract for the benefit of a third party is applied, even those without their own rights (such as travelling relatives), are protected. SWEDISH law²⁷ defines “anyone who purchases a package tour, either directly or through a third party” as a ‘traveller’. Thus, persons on whose behalf the traveller purchases a package tour are also indirectly included in the definition. In SLOVAKIA, a person for whose benefit the tour contract is concluded is also included in the definition.

Table: National transposition

²³ In Belgian law, there is no explicit reference to “agrees to take the package” as per the Directive.

²⁴ The legal text explicitly mentions natural and legal persons.

²⁵ Only the term ‘traveller’ is mentioned in Slovenian law (indirectly defining it as the person to whom the organiser is obliged to supply a package) whereas principal contractor, transferee and beneficiaries are not mentioned.

²⁶ It is unclear whether this definition also covers the beneficiary of a travel package purchased by a third person.

²⁷ § 3(3) Package Tours Act 1992:1672.

Substantively equivalent to the Directive	AT, BE, BG, CY, CZ, DK, EL, FI, IE, IT, MT, NL, RO, SK, SE, UK (16)
Variations: exclusion of legal persons	ES (1)
Variations: exclusion of professionals	PL (1)
Not explicitly transposed	HU, LT, LV (3)
No legal definition at all	EE, FR, DE, LU, PT, SL (6)

cc. The transferee

The notion of the ‘transferee’ has been introduced into national legislation by the vast majority of member states, though with different methods. In those member states that have not explicitly transposed this notion, it is possible that the transferee is indirectly covered under general rules of contract law. For instance, under GERMAN and SLOVAKIAN law, the rules governing assignment or transfer of a contract ultimately mean that the transferee is considered as the traveller and therefore protected as such. BELGIAN law indirectly covers the transferee by including “everyone who benefits from the contract (...) whether or not he concluded the contract himself”.²⁸ FINNISH law²⁹ also indirectly includes this third part of the Directive’s definition by characterising the ‘traveller’ as a person “who has the right to participate in a holiday on the basis of a contract that some other person or corporate body has concluded”. Again, the SPANISH legislator opted to omit legal persons from the definition. The SLOVAKIAN definition of ‘purchaser’ includes the person to whom the tour is transferred according to the terms of the CC. In CZECH law, the ‘transferee’ is a person who takes the package instead of the primary customer – he becomes the ‘customer’ himself from the date on which the travel agency receives notification of the transfer.³⁰

Table: National transposition

²⁸ Article 1, sent. 1(5) of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

²⁹ § 3(2) Package Travel Regulation 28.11.1994/1079.

³⁰ CC sec. 852f(1).

Substantively equivalent to the Directive	AT, BE, BG, CY, CZ, DK, EL, FI, IE, IT, MT, NL, RO, SK, UK (15)
Variations: exclusion of legal persons	ES (1)
Variations: exclusion of professionals	PL (1)
Not explicitly transposed	HU, LT, LV, ³¹ SE ³² (4)
No legal definition at all	EE, FR, DE, LU, PT, SL (6)

2. Organiser

According to Art. 2(2) of the Package Travel Directive, an ‘organiser’ is a person who, other than occasionally, organises packages and sells or offers them for sale, whether directly or through a retailer”.

It should be noted that this definition refers to the definition of ‘package’ and that the ECJ, in its ruling in C-400/00 – *Club-Tour*, held that, with regard to this definition, the term must be interpreted so as to include holidays organised by travel agents at the request of, and in accordance with, the specifications of a consumer. This ruling explicitly includes combinations of tourist services put together at the moment the contract is concluded between the travel agency and the consumer. As such, the term ‘organiser’ does not only cover the typical tour operators selling pre-arranged packages via travel agencies and other retailers. Travel agencies or internet platforms which, at the specific request of the consumer, spontaneously combine several tourist services, such as flights and hotel accommodation, offered by different service providers and thereby fulfil the definition of ‘package’, are covered by the notion of ‘organiser’.

Unlike other consumer protection directives where the term “trader” (or similar) is used - defined as the person acting within his/her professional activity - the definition of ‘organiser’ in the Package Travel Directive comprises all persons not acting ‘occasionally’. Thus, on the one hand, its scope covers both natural and legal persons. On the other hand, not only

³¹ It is unclear whether the definition of ‘client’ also covers the transferee of a travel package purchased by a third person.

³² It is unclear whether the definition of ‘traveller’ also covers the transferee of a package tour purchased by a third person.

tradesmen, but also individuals or non-commercial organisations not acting occasionally meet the requirements of the definition. This interpretation has been confirmed by the ECJ in the C-237/97 – *Afs intercultural* case, in which a non-commercial entity, the ‘AFS Intercultural Programs Finland ry’, was regarded as an ‘organiser’ pursuant to Directive 90/314. The Directive itself does not offer any explanation as to the content of the term ‘occasionally’ and could thus be considered imprecise. In the course of a review of the Consumer Directives, it may also be worth considering whether the term ‘organiser’ should be harmonised with the definitions of ‘trader’ (etc.) in the other consumer Directives.

a. Transposition in general

The majority of member states transposed the term ‘organiser’ with slight variations in wording, such as ‘travel/tour organiser’. BULGARIA, ESTONIA and LATVIA introduced the notion of ‘tour/tourism operator’. In Bulgarian Law³³ the scope of the term tour-operator is broader than that of organiser. Whereas an organiser only offers and sells packages, a tour-operator also offers individual tour services. Moreover, Latvian law uses the generic term of ‘undertaking (company)’ in its two transposition laws³⁴ when mentioning the consumer’s counterparty. According to the Regulations on Package Tourism Services,³⁵ the “services are prepared by the tourism operator or the package tourism undertaking”. The Latvian Tourism Law defines the ‘package tourism undertaking’ as “an undertaking (company) that carries out the functions of both a tourism operator and a tourism agency”,³⁶ whereas the ‘tourism agency’ acts as an intermediary.³⁷ Thus, in using the different terms and defining a ‘tourism agency’ as an intermediary and yet part of the definition of ‘organiser’, the legislative texts are clearly inconsistent and are likely to cause confusion. POLISH law contains three main categories of trader: the ‘tourism organiser’, the ‘tourism intermediary’,³⁸ and the ‘tourism agent’.³⁹ The term ‘tourism organiser’, defined as a trader organising tourist events, is in line with the Directive’s definition.⁴⁰ Although it is not explicitly stated in Polish law that the

³³ Law on Tourism, Additional provisions no. 8 in conjunction with no. 7.

³⁴ Cabinet Regulation No. 163 “Regulations regarding Package Tourism Services”.

³⁵ Cabinet Regulation 163, Art. 2.

³⁶ Tourism Law, § 1(1)(6).

³⁷ Tourism Law, § 1(1)(19).

³⁸ A trader who, at the request of a customer, conducts any legal or material acts concerning the conclusion of contracts for tourist services.

³⁹ The closest definition to the one of ‘retailer’ in the Directive. ‘Tourism agent’ is a trader who permanently acts as an intermediary in concluding contracts for tourist services in the name of tourism organisers.

⁴⁰ Article 3(5) of the Act on Tourist Services.

organiser sells package tours, it seems logical that, in interpreting the rule according to Community law, this is also part of the organiser's activities.

IRELAND uses the Directive's definition of 'organiser',⁴¹ but also the term 'package provider' as a catch-all for the organiser, or both the organiser and retailer if the retailer is also party to the contract.⁴² FRENCH⁴³ and LUXEMBOURG⁴⁴ law do not stipulate the nature of the consumer's counterparty, but only mention a "natural or legal person".

Terms related to the business of travel agencies are used in the CZECH REPUBLIC, PORTUGAL, ROMANIA and SLOVAKIA. Portuguese law uses the notion of 'travel or tourism agency' (*agência de viagens e de turismo*⁴⁵), defined as a company exercising activities listed in the transposition law which are typically associated with travel agencies.⁴⁶ Czech law generally refers to a 'travel agency operator' who must be a licensed trader. In Romanian law, the 'tour operator travel agency' is defined as "any travel agency (being itself "any specialised agency, legal person, ..."47) who organises and sells package travel or component parts of these under a proper name, directly or through intermediaries".⁴⁸ Slovakian law "applies to services provided by travel bureau operators (...)"⁴⁹ The travel bureau is considered to be a qualified trader, licensed to conclude package travel contracts (in contrast to the 'travel agency' (retailer)). However, it remains somewhat unclear whether – besides the term 'travel bureau' – the term 'travel agency' may also define the organiser.

Thus, many national transposition laws do not distinguish as clearly as the Directive between 'organiser' and 'retailer'. This seems to be due to the fact that travel agencies/bureaus may carry out different roles, i.e. that of an organiser and that of a retailer (cf. also ECJ C-400/00 –

⁴¹ S. 2(1) 11th indent, sent. 3 of the Package Holidays and Travel Trade Act, 1995.

⁴² S. 2(1) 13th indent of the Package Holidays and Travel Trade Act, 1995.

⁴³ Tourism Code, Art. L 211-1 and Art. L 211-2.

⁴⁴ Package Travel Act, Art. 1.

⁴⁵ Article 1(1) of the Decree-Law 209/97.

⁴⁶ Arts. 1(2), 2 (1) of the Decree-Law 209/97. According to Portuguese legislation, the concept of company/undertaking includes, *inter alia*, limited liability one-person establishments (e.g. European Economic Interest Groupings), cooperatives or commercial corporations – c.f. Art. 1(2) of Decree-Law 209/97. Before the amending Decree-Law 12/99, individuals with unlimited liability could also be considered as a company/undertaking.

⁴⁷ Article 2 no. 3, sent. 1 of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

⁴⁸ Article 2 no. 3 lit. a sent. 1 of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

⁴⁹ § 1 of the Package Travel Act 281/2001.

Club-Tour). The Directive's definition shows that the acting party's function takes precedence, and not any general classification as a 'travel agency'. A travel agency may either act as an 'organiser', combining different elements of a trip, or as an agent (hence a 'retailer'), selling packages combined by other organisers. The Directive itself could make clearer who is bound by the duties imposed by the Directive and state unequivocally that a travel agency has to be considered as an 'organiser' if it meets the relevant criteria. The ECJ has given some guidance for making this distinction in the cases C-400/00 – *Club-Tour*, and C-237/97 – *AFS Intercultural*.

Table: Use of terms

Organiser	AT, BE, CY, DE, DK, EL, ES, FI, IE, IT, LT, MT, NL, PL, SE, UK (16)
Operator	BG, EE, LV* (3)
Undertaking	LV* (1)
Package provider	IE (1)
Travel organiser	SL (1)
Travel agency	CZ, PT (2)
Tour operator travel agency	RO (1)
Travel bureau	SK (1)
Travel company	HU ⁵⁰ (1)
No mention of any term	FR, ⁵¹ LU (2)

* more than one term

b. Transposition in particular

⁵⁰ Government Decree 213/1996 uses the term 'travel company', which covers 'organisers' and 'retailers' according to the other relevant decree to which it refers in the definition.

⁵¹ Article L 211-1 of the Tourism Code states, however, that it applies to "any natural or legal person involved in the organisation or selling of travel".

aa. Overview

About one third of member states have transposed the content of the Directive’s definition of ‘organiser’. The vast majority of EU countries have, however, introduced variations in the definition (for more details, see point bb. below). GERMAN law does not offer an explicit definition of who should be considered an organiser. The relevant provisions simply use the term ‘organiser’ when addressing the person obliged to provide the package to the traveller. It is commonly recognised, that, in principle, any individual or legal entity who/which is responsible for organising and offering a trip can be an organiser.⁵²

Table: National transposition

No substantive deviation	AT, DK, IE, ⁵³ MT, SE, UK (6)
Variations	BE, BG, CY, CZ, FI, EE, EL, ES, ⁵⁴ HU, IT, LV, LT, NL, PL, PT, RO, SK, SL ⁵⁵ (18)
No legal definition	DE (1)
Not transposed	FR, LU (2)

bb. Variations

Variations exist in several aspects of the definition. About two thirds of member states have omitted the requirement that the person act “other than occasionally”. Thus, one could draw the conclusion that a person acting occasionally as a travel organiser also has to comply with the provisions of the relevant national law on package travel. However, many of these member states restrict the definition to persons acting professionally (which should also exclude most occasional activities), though CYPRIOT and ITALIAN law seem to include organisers operating occasionally in the definition. BULGARIAN law⁵⁶, for example, requires

⁵² E.g. BGH (German Supreme Court) judgment of 24 November 1999, I ZR 171/97.

⁵³ However, it is down to legal interpretation as to when a person is not acting “occasionally”.

⁵⁴ A slight variation in the wording exists as “natural and legal person” are explicitly mentioned in Law 21/1995 regulating package travel. Cf. No. 2 of the Additional Provision of the same law, which stipulates that the organiser must be a ‘travel agent’ according to administrative legislation.

⁵⁵ It should be noted that the Code of Obligations does not define the notion of ‘organiser’, but only explains that the seller of package travel arranged by an organiser headquartered in another state is deemed to be an organiser as well. A definition of organiser/tourism agent is contained in the Promotion of Tourism Development Act: i.e. a sole trader or a legal person.

⁵⁶ Law on Tourism, Additional provisions no. 8.

the tour-operator to be a person who is registered to carry out tour-operator activity. From this definition it may be concluded that a tour-operator must be part of a registered tour-operator system and therefore cannot simply act on occasion. ROMANIAN law has the particularity that a travel agency as part of the definition of the ‘tour operator travel agency’ is “any specialised agency, legal person, which organises, provides and sells travel packages or component parts of them”.⁵⁷ The term ‘specialised’ implies that at least some expert knowledge is given which rarely emerges from (only) occasionally acting agencies. Moreover, if the definition were only, as it seems, to include legal persons, this would possibly not conform to the Directive. GERMAN legislation applies neither the provisions requiring security funds in the event of insolvency nor the regulations concerning information duties to occasional organisers.⁵⁸

There is, on the whole, no further explanation in national laws as to what is meant by ‘occasionally’. IRELAND, however, provides interpretation guidelines by classifying groups whose members may be regarded as acting ‘occasionally’ (e.g. schools and educational institutions, religious groups).⁵⁹ Moreover, the GERMAN legislator, in the relevant explanatory memorandum, stated that a person not organising trips more than twice shall be regarded as acting occasionally.⁶⁰

According to CZECH law, the definition of ‘travel agency’ is restricted to the nature of the business it carries out (i.e. providing travel agency services).⁶¹ In SPAIN, the organiser must be a ‘travel agent’ in accordance with the corresponding administrative legislation.⁶²

In HUNGARIAN law, the scope of the transposing Decree (No. 213/1996) only covers economic operators established in Hungary normally undertaking activities as domestic and international tour operators and agencies, and to Hungarian branch offices of companies registered abroad.⁶³ Furthermore, the Hungarian Decree explicitly excludes from its scope

⁵⁷ Article 2 no. 3, sent. 1 of the Government Ordinance 107/1999 on package travel.

⁵⁸ § 11 of the Regulation on duties to supply information in civil law, CC § 651k(6)(1).

⁵⁹ S. 3(2) of the Package Holidays and Travel Trade Act, 1995.

⁶⁰ In the explanatory memorandum setting out the legal rationale, the German legislator stipulated that 1 or 2 events per year do not exceed occasional actions, Bundestag Publication 12/5354, p. 13.

⁶¹ CC, sec. 852a(1).

⁶² No. 2 of the Additional Provision of Law 21/1995 regulating package travel.

⁶³ § 1(2) lit. (a), lit. (c), lit. (d), lit. (g) of the Government Decree No. 213/1996.

travel arrangements made by educational institutions for students in the form of a scholarship (including accompanying guides). It equally does not apply to travel arrangements made by non-commercial associations and not-for-profit organisations and provided to members at cost price, without generating any profit.

The LITHUANIAN Law on Tourism⁶⁴ states that an ‘organiser’ only means “a legal person who is regularly engaged in the business of tourism...”. However, the Lithuanian Civil Code⁶⁵ does not limit the definition of organiser only to legal persons, but refers purely to a ‘person’ and does not include the requirement of ‘regularly’ or ‘other than occasionally’ providing the services.

Table: Variations

No (explicit) requirement of acting other than occasionally	BE, CY, CZ, DE, EE, EL, FI, HU, IT, NL, PL, PT, ⁶⁶ RO, SK, SL ⁶⁷ (15)
Classification guidelines on the term ‘occasionally’	IE, DE (2)
Restriction to commercial persons	BE, ⁶⁸ CZ, EE, EL, ES, FI, ⁶⁹ FR, ⁷⁰ HU, LT, NL, PL, PT, ⁷¹ SK, SL (14)
Restriction to specialized agency	RO (1)
Explicit mention of natural and legal persons	EL, ES, FR, LU (4)
Qualified exclusion of not-for-profit organisations	HU ⁷² (1)

⁶⁴ Article 2(5) of the Law on Tourism.

⁶⁵ CC Art. 6.747(3).

⁶⁶ Some specific provisions exist for natural or legal persons who run tours occasionally and on a not-for-profit basis.

⁶⁷ The Code of Obligations does not define who an organiser is. However, the Promotion of Tourism Development Act defines who may be an organiser/seller of tourism: a sole trader or a legal person.

⁶⁸ According to Belgian law, commercial persons are defined as persons engaged in an economic activity which constitutes an act of commerce as per Art. 2 and 3 of the Commercial Code (Art. 1(2) of the Trade Practices Act).

⁶⁹ § 1 of the Package Travel Act states that the scope shall encompass packages which are offered for consideration “by a trader who organises or procures tourist services other than occasionally”.

⁷⁰ Article L.212-1 of the Tourism Code specifies that the activities referred to in Art. L 211-1 of the same Code can only be exercised by natural or legal persons who are ‘traders’ possessing a ‘travel agent licence’. According to Art. 212-3 of the Tourism Code, the holder of such a ‘travel agent licence’ established in France may not exercise other activities.

⁷¹ Some provisions exist with respect to social solidarity institutions or public administrative institutions.

⁷² Article 1(4) of the Government Decree No. 213/1996.

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Transposition not entirely clear	LU (I)
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cc. Trade licence requirement

In addition to the requirements laid down in Directive 90/314, some member states stipulate that the organiser must have a licence or authorisation for his activity. For instance, the CZECH regulations⁷³ require that the travel agency hold a concessionary trade licence, for which a security fund is mandatory. In the recently adopted ITALIAN Consumer Code, the licensing requirement is not stipulated in the definition of organiser, but is listed in Art. 86(1)(b) according to which, *inter alia*, the terms and conditions as well as the licence of the organiser (or retailer) signing the contract become mandatory elements of the contract. The main competences for the licence and authorisation procedure, however, have been transferred to the Italian regions.⁷⁴ In HUNGARY,⁷⁵ travel companies have to be registered in the statutory public register maintained by the Hungarian Trade Licensing Office. Individual traders may pursue their activities as one-person companies. According to ESTONIAN law, an “undertaking” has to be listed in the commercial register. Further examples of licensing requirements can be found in BULGARIA, FRANCE, PORTUGAL and SLOVAKIA. In the UNITED KINGDOM, a licensing system exists in the field of packages involving flights,⁷⁶ requiring persons (not acting as a ‘retailer’) to hold an Air Travel Organiser’s Licence (ATOL) issued by the Civil Aviation Authority (CAA). In POLISH law, organisers are required to enrol in the register for tourism organisers and tourism intermediaries.⁷⁷ Whilst the MALTESE Package Travel Regulations do not explicitly require a licence from organisers or retailers, the Malta Travel and Tourism Services Act states that a ‘travel agent’ needs to be licensed by the Malta Tourism Authority.⁷⁸ Accordingly, ‘organisers’ are also required to be licensed as ‘travel

⁷³ Under sec. 2(1) of the Act No. 159/1999 on conditions of business operation in the tourism industry, the travel agency must have a licence as a prerequisite for trading in package travel (excursions). The conditions for such a licence are listed in sec. 5 of the same Act.

⁷⁴ Article 11(6) of the Law of 29 March 2001 No. 135 on the reform of national tourist law.

⁷⁵ Article 2-6 of the Government Decree No. 213/1996.

⁷⁶ The Civil Aviation Regulations 1995.

⁷⁷ Article 4(1) of the Act on Tourist Services.

⁷⁸ Article 27 of the Malta Travel and Tourism Services Act. Under Art. 2 of this Act, a ‘travel agent’ means any person who advises or undertakes to provide travel arrangements including accommodation for outgoing travel.

agents' under the aforementioned Act. In SLOVENIA, organisers and sellers of tourism have to obtain a licence issued by the Chamber of Commerce.⁷⁹

The ROMANIAN Government Ordinance 107/1999 implementing the Directive does not expressly provide that the organiser has to have a license or authorisation for their activity. However, (i) Romanian Government Ordinance 107/1999 provides that the organiser has to be a specialised legal person and (ii) in accordance with the general rules applicable to legal persons, all companies must be authorized in order to carry out the relevant activity and be registered with the Romanian Trade Registry.

SPANISH law stipulates that the organiser (and retailer) must be qualified 'travel agents' according to the corresponding administrative legislation.⁸⁰ According to LITHUANIAN legislation, the organiser must be engaged in the business of tourism in accordance with the procedure and terms laid down in law.

3. Retailer

Article 2(3) of Directive 90/314 defines a 'retailer' as "the person who sells or offers for sale the package put together by the organiser". It should be noted that the Directive nearly always uses the term 'retailer' in a formula like "the organiser and/or retailer". This legislative technique gives discretion to member states to determine whether the organiser or the retailer (or both) is obliged to fulfil the duties imposed by the Directive. Thus, if a member state decides that only the organiser shall bear the obligations towards the consumer, this member state does not really need the definition. It should also be borne in mind that, because of the broad definitions of 'organiser' and 'package' given by the ECJ in the C-400/00 – *Club-Tour* judgement, travel agents that organise holidays at the request of a consumer, and in accordance with his specifications (thereby combining tourist services as per the definition of 'package'), will often be considered as 'organisers' and not just as 'retailers'.

⁷⁹ Article 35 of the Promotion of Tourism Development Act.

⁸⁰ Second Additional Provision of the Law 21/1995 regulating package travel.

a. Overview

Most member states have transposed the definition of ‘retailer’ in their special act on package travel. Some – like HUNGARY and SLOVENIA – have further definitions in other laws or decrees. By contrast, FINLAND, FRANCE, GERMANY, LUXEMBOURG and PORTUGAL do not provide any definition of ‘retailer’ in their laws.

Table: Definition of Retailer – Transposition Method

Special act on package travel	BE, ⁸¹ BG, ⁸² CY, ⁸³ DK, ⁸⁴ EL, ⁸⁵ ES, HU, IE, LT, LV, MT, PL, ⁸⁶ RO, SE, SK, UK (<i>16</i>)	
General regulation	Civil Code	LT, NL (<i>2</i>)
	Consumer Code	IT (<i>1</i>)
	Law of Obligations	EE, SL (<i>2</i>)
Government decree	AT, ⁸⁷ HU ⁸⁸ (<i>2</i>)	
Not transposed	FI, FR, ⁸⁹ DE, LU, ⁹⁰ PT (<i>5</i>)	
Transposition not entirely clear	CZ (<i>1</i>)	

Whereas most member states with a definition use the term ‘retailer’, some also use terms like ‘agent’ (DENMARK), ‘travel agent’ (LITHUANIA, POLAND and SLOVENIA) or ‘travel arranger’ (BELGIUM). As the definitions are close to the Directive, such variations do not seem to be problematic.

Table: Use of terms

Retailer	AT, ⁹¹ CY, EE, DE, EL, HU, IE, IT, LV, MT, ES, UK (<i>12</i>)
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⁸¹ Article 1(4) of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

⁸² Law on Tourism, Additional provisions no. 10 in conjunction with no. 9.

⁸³ Article 2 of the Package Travel, Holidays and Tours Law of 1998.

⁸⁴ § 3(2) of the Act No. 472/1993 on Package Travel; § 3(2) of Act No. 315/1997 on the Travel Guarantee Fund.

⁸⁵ Article 2(1)(3) of the Decree No. 339/96 on package travel.

⁸⁶ Article 3(7) of the Act on Tourist Services.

⁸⁷ § 2(3) of the Regulation on travel agencies implementing Art. 7 of the Package Travel Directive.

⁸⁸ Article 1(2)(b) of the Government Decree No. 213/1996.

⁸⁹ Even though there is no specific definition of the term ‘retailer’, the distinction between the latter and the organiser exists: e.g. Art. L 211-11 of the Tourism Code mentions the ‘organiser’ and the ‘vendor’; with respect to liability, Art. 211-17 of the same Code prescribes joint liability for all persons participating in the organisation or selling of package travel.

⁹⁰ In Art. 1 of the Package Travel Act, the obligations of an organiser are extended to retailers.

Agent	DK (1)
Travel agent	LT, SL (2)
Travel agency	CZ, SK (2)
Retailer travel agency	RO (1)
Tourist agent	BG, PL (2)
Travel arranger	BE (1)
Intermediary	NL (1)
No use of a specific term	FI, FR, LU, PT ⁹² (4)
Transposition not entirely clear	SE (1)

b. Transposition in particular

The Directive's definition can also be found in CYPRUS, ESTONIA, GREECE, IRELAND, LATVIA, MALTA, SPAIN and the UNITED KINGDOM. DENMARK⁹³ and POLAND⁹⁴ use a seemingly similar definition by not requiring a package "put together by the organiser" but a sale "on behalf of the organiser".

In LITHUANIA, the definition is slightly different: a travel agent acts as an intermediary in selling organised tourist trips and/or various tourist services.⁹⁵

In AUSTRIA⁹⁶ and BELGIUM,⁹⁷ only persons who act commercially⁹⁸ can be retailers. Similarly, in SPANISH law, the retailer must be a qualified 'travel agent' according to the corresponding administrative regulation.⁹⁹

⁹¹ Only the two implementing Decrees (Regulation on travel agencies, Regulation on travel agencies implementing Art. 7 Package Travel Directive) use the term "retailer"; it is not mentioned in the Consumer Protection Act.

⁹² The law sometimes uses the term 'travel agent' without specific clarification. Portuguese law seems to have merged the concepts of 'organiser' and 'retailer' to some extent.

⁹³ § 3(2) of Act No. 472/1993 on Package Travel; § 3(2) Act No. 315/1997 on the Travel Guarantee Fund.

⁹⁴ Article 3(7) of the Act on Tourist Services.

⁹⁵ Article 2(7) of the Law on Tourism.

⁹⁶ § 2(3) of the Regulation on travel agencies implementing Art. 7 of the Package Travel Directive.

⁹⁷ Article 1(4) of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

⁹⁸ In BELGIUM, commercial persons are characterised as being engaged in an economic activity which constitutes an act of commerce as per CommC Art. 2 and 3 (Art. 1(2) of the Trade Practices Act).

⁹⁹ No. 2 of the Additional Provision of the Law 21/1995 regulating package travel.

Under HUNGARIAN¹⁰⁰ law, only retailers acting on behalf of a Hungarian tour organiser fall within the scope of the transposition law. This restriction results from an amendment on 13 May 2005. Because of a possible infringement of Art. 49 EC Treaty, persons acting as commission agents for foreign tour organisers are no longer considered as ‘retailers’. DUTCH law, however, contains no definition, but a provision stating that a retailer (known as an ‘intermediary’) acting on behalf of a foreign organiser is to be considered as the organiser. BULGARIAN law provides a rather broad definition. The tourist agent is “a person registered under this Law to carry out tourist agent activity”. Tourist agent activity is in turn defined as “acting as an intermediary (agent) with sales of package tours, air, water and bus transportation of passengers, with the rendering of reservation services, visa, tourist guide and other additional tourist services, as well as insurance in connection with travel”.¹⁰¹ Member states like FINLAND, GERMANY and PORTUGAL do not provide a definition at all. Nonetheless, the term is mentioned in German law with respect to the regulations concerning the refund of money in the case of insolvency.¹⁰² The implementing provisions of the German Civil Code generally focus on the contractual relationship between the organiser and the traveller. The relationship between the traveller and the retailer is not explicitly regulated. According to the rules of general contract law, this relationship is usually covered by an agency agreement. Thus, the traveller can make the retailer liable only in exceptional cases (e.g. wrongful advice).

The transposition laws in FRANCE¹⁰³ and LUXEMBOURG¹⁰⁴ do not, as already mentioned above, use a specific term for retailers, but lay down uniform regulations for organisers and persons which Art. 2(3) of the Directive defines as retailers.

Several member states have supplemented their provisions on retailers with administrative requirements. For instance, the SLOVAKIAN¹⁰⁵ transposition laws require certain qualifications from the retailer (e.g. special training or foreign language skills). It should also be noted that some member states require package tour retailers to hold a trade licence.¹⁰⁶

¹⁰⁰ Article 1(2)(b) of the Government Decree No. 213/1996.

¹⁰¹ Law on Tourism, Additional provisions no. 10 in conjunction with no. 9.

¹⁰² CC § 651k (3), sent. 4, (4).

¹⁰³ In Art. L 211-1 of the Tourism Code, the obligations of an organiser are extended to retailers.

¹⁰⁴ In Art. 1 of the Package Travel Act of 14 June 1994, the obligations of an organiser are extended to retailers.

¹⁰⁵ § 4(1), § 3(2)(a)-(e) of the Act No. 281/2001 on Package Travel.

¹⁰⁶ This has not been systematically scrutinised; one of several examples would be Italy: Art. 83(1)(b) of the Consumer Code.

Table: National transposition

No substantive deviation	CY, EE, EL, IE, IT, LV, LT, MT, UK (9)
No legal definition	DE, FI, NL, PT (4)
Restriction to commercial persons	AT, BE, ES, SK (4)
Agent of domestic tour organiser	HU (1)
Offer or sale of a package tour on behalf of an operator	DK, PL (2)
Offer or sale of travel packages on behalf of an tour operator travel agency	RO (1)
Agent of sale of packages and other tourist services	BG (1)
Uniform rules for organisers and retailers	FR, LU (2)
Qualified to provide services	SL, ¹⁰⁷ SK (2)
Transposition not entirely clear	CZ, SE (2)

4. Package

According to Article 2(1) of Directive 90/314, a ‘package’ means the pre-arranged combination of no fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

- (a) transport;
- (b) accommodation;
- (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package

¹⁰⁷ Article 37 of the Promotion of Tourism Development Act regulates conditions for travel agents to obtain a licence. Travel agents must e.g. provide documentary proof that their activity is recorded in the relevant register, of their opening hours, of the existence of their own office (which must not be in an apartment and must be accessible to customers during clearly displayed opening hours), that the person in charge of the activity has not been found guilty of a criminal trading offence and that this person has carried out legal transactions and is not prohibited from exercising travel agent activities, that the person in charge of the activity has at least a post-school education (i.e. in Slovenia 2 years after high school) and 3 years of work experience in the field.

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The separate billing of various components of the same package shall not absolve the organiser or retailer from the obligations under this Directive”.

With regard to the notion of package, the ECJ held in its ruling C-400/00 – *Club-Tour*, that the term must be interpreted so as to include holidays organised by travel agents, at the request of, and in accordance with the specifications of, a consumer. According to the same ruling, the requirement that the package be ‘pre-arranged’ also includes combinations of tourist services put together when the contract is concluded between the travel agency and the consumer.

a. Transposition in general

Some member states have created a special law on package travel in which the definition of package can be found. Others have included the definition of package into an existing, more general law, for example the Civil Code (the NETHERLANDS and LITHUANIA), a Consumer Protection Act or Consumer Code (AUSTRIA, ITALY) or a Tourism Act (BULGARIA, ESTONIA, FRANCE, LATVIA, LITHUANIA). The GERMAN legislator has kept an existing definition of travel contract, which can be found in the Civil Code. In POLAND, there is no specific legislative transposition of the definition of package. In Austria, the Directive’s definition is transposed in three different legislative acts, each with varying content. Similarly, in SLOVENIA, different expressions are used in the Code of Obligations and the Promotion of Tourism Development Act.

Table: Transposition Method

In a special act on package travel	BE, CY, CZ, ¹⁰⁸ DK, EL, ES, FI, HU, ¹⁰⁹ IE, LU, MT, ¹¹⁰ PT, RO, SK, SE, UK (16)	
In a general regulation	Civil Code	DE, ¹¹¹ HU, ¹¹² NL, LT (4)
	Consumer Protection Act / Consumer Code	AT, IT (2)
	Tourism Act	BG, EE, FR, LV, LT (5)
	Other	AT, ¹¹³ EE, ¹¹⁴ SL ¹¹⁵ (3)
No specific legislative transposition	PL (1)	

The majority of member states seem to use the term ‘package’ (some with slight amendments, e.g. package travel) as proposed in the Directive. FRENCH law, for example, uses the term ‘tourist package’.¹¹⁶ GERMAN and DUTCH law, on the other hand, simply refer to ‘travel contracts’. The BELGIAN legislator opts for the term ‘travel organisation contract’ and the LITHUANIAN legislator uses the term ‘contract for the provision of tourist services’. In the POLISH regulation, the term ‘tourist event’ is used. The AUSTRIAN legislator used the term ‘package’ in the Consumer Protection Code, whereas the term ‘travel event’ is used in the Decree on travel insurance.¹¹⁷

¹⁰⁸ Definition of package; further regulations on package travel can be found in the CC.

¹⁰⁹ § 2 sec. (1) and sec. (2) of the Government Decree No. 214/1996, § 1(2)(f) of the Government Decree No. 213/1996.

¹¹⁰ Article 2 of the Travel and Tourism Services Act.

¹¹¹ There are two slightly different definitions used in the German CC. The wording is identical, but the scope is different: CC, § 651a(1) (concerning the rights of the traveller) is also applicable to trips with a duration of less than 24 hours or without overnight accommodation, whereas, in § 651k(6) (concerning security in the event of insolvency), only services with a duration of at least 24 hours or with an overnight stay are included.

¹¹² CC § 415.

¹¹³ § 2(1) of the Regulation on travel agencies implementing Art. 7 Package Travel Directive, § 2(1) of the Regulation on travel agencies .

¹¹⁴ § 866 sec. (2) and sec. (3) of the Law of Obligations.

¹¹⁵ Article 33 of the Promotion of Tourism Development Act, Art. 883(1) of the Code of Obligations.

¹¹⁶ Article L 211-2 of the Tourism Code.

¹¹⁷ Regulation on travel agencies implementing Art. 7 Package Travel Directive.

Table: Use of terms

Package	AT, CY, DK, EE, EL, ES, FI, FR, HU*, IE, IT, LT, LU, LV, MT, PT, RO, SE, SL, ¹¹⁸ UK (20)
Tourist travel with general price	BG (1)
Travel event	AT (1)
Tourist event	PL (1)
Travel contract	BE, DE, NL, HU, ¹¹⁹ * LT (5)
Excursion	CZ, SK (2)

* *more than once*

b. Transposition in particular

About half of the member states have transposed the definition of ‘package’ as stated in the Directive, whereas the other member states’ definitions deviate from the Directive. Deviations in transposition mainly concern the need for overnight accommodation and duration of at least 24 hours on the one hand and the significant proportion of other travel services on the other. In AUSTRIA, the definitions of ‘package’ vary across the different legislative acts. In the two legislative decrees,¹²⁰ the original text of the Directive is used. On the contrary, in the Consumer Protection Act, the definition is wider, not stipulating the need for a duration of at least 24 hours or overnight accommodation. Moreover, the other services do not need to be a significant proportion of the package. The GERMAN legislator has not specifically transposed the definition, but decided to keep the existing definition of a ‘travel contract’ in the Civil Code, as it was believed that it should be cast wider than the Directive. The definition does not refer to a combination of certain elements. However, it is considered that the form of words used (‘entirety of travel services’) means the combination of at least two services. Concerning the duration of at least 24 hours and overnight accommodation, different provisions exist. § 651a(1) CC (concerning the rights of the traveller) is also applicable to trips with a duration of less than 24 hours or without overnight accommodation, whereas, in

¹¹⁸ The Promotion of Tourism Development Act uses the term ‘tourism arrangement’, whereas the Code of Obligations uses a descriptive term ‘package of services comprising transport, accommodation and other connected services’.

¹¹⁹ Government Decree No. 214/1996 uses the term ‘travel contract’ when transposing the definition of ‘package’, in contrast to the definition in Decree No. 213/1996.

¹²⁰ Regulation on travel agencies implementing Art. 7 Package Travel Directive, Regulation on travel agencies.

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§ 651k(6) CC (concerning security in the event of insolvency), only services with a duration of at least 24 hours or with an overnight stay are included. On the whole, the same level of consumer protection as laid down in the Directive must be afforded.

In PORTUGAL, the definition was transposed as per the Directive. Additionally, there are examples given for ‘other services’. These are “in particular those connected with sporting, religious or cultural events, as long as they represent a significant part of the trip”. SLOVAKIAN law makes use of the term ‘excursion’. This is also a previously arranged stay including accommodation only; the duration must be at least three nights and the accommodation must be in a single establishment including tents, caravans or private lodgings.¹²¹ According to the new amendment, in order for a combination of services to be viewed as ‘previously’ arranged, it is sufficient that they are arranged at the moment the contract is concluded.¹²² Furthermore, the notion also includes a combination of services based on individual requirements. On the other hand, insurance for package travellers is explicitly excluded from being a service in that sense.

In the UNITED KINGDOM, the scope is wider than what is laid down in the Directive as the UK regulation explicitly states that the fact that a combination is arranged at the request of the consumer and in accordance with his specific instructions (whether modified or not) shall not of itself cause it to be treated as other than pre-arranged. On the other hand, e.g. in the CZECH REPUBLIC and GERMANY, a combination arranged at the request of the consumer has not historically been regarded as a package. This might change in the wake of the ECJ ruling in C-400/00 – *Club-Tour*. According to the HUNGARIAN definition, a package requires a combination of transport, accommodation or other services. Examples of other services (meals, guided tours, cultural programmes) are given in the CC, as well in the Government Decree. The other services do not need to be a significant proportion of the package.¹²³ In the CZECH Republic, the definition is very similar to the one in the Directive. Only with regard to the proportion of the other tourist services is it stated that they need to constitute a significant part of the package or that their price must be at least 20 % of the overall package price. In the following paragraph, certain contracts are explicitly excluded from being a package, such as

¹²¹ Article 2(2) of the Act No. 281/2001 on Package Travel. Art. 2(3) of Act No. 281/2001 after entry into force of Amending Act No. 186/2006 on 1 January 2007.

¹²² § 2(2) of the Act 281/2001 amended by Act 186/2006 (entry into force on 1 January 2007).

¹²³ Examples of other services contained in Government Decree 214/1996.

those governing combinations arranged on individual request.¹²⁴ The POLISH Law on Tourism refers to tourist services, defined as services like tour guiding, accommodation and all other services offered to tourists or visitors. Tourist events¹²⁵ are characterised as a combination of at least two tourist services to create one programme and covered by an inclusive price, where these services include sleeping arrangements or have a duration of at least 24 hours or if the programme contains a change of place. Thus, this deviates from the Directive insofar as a duration of at least 24 hours or an overnight stay are not necessary if the package includes a change of place.

Table: Content of the definition

Substantively equivalent to the Directive	AT, ¹²⁶ BE, ¹²⁷ BG, CY, DK, EE, ¹²⁸ EL, ES, FR, IE, LT, LU, MT, NL, UK (15)
No explicit transposition of which tourist services need to be combined	DE, LV (2)
No requirement of an inclusive price	RO (1)
No need to cover a period of more than 24 hours or to include overnight accommodation	AT, ¹²⁹ FI, DE, PL ¹³⁰ (4)
‘Other tourist services’ do not need to be a significant proportion of the package	PL, DE, HU, LV (4)
No definition except of ‘package of travel services’	DE ¹³¹ (1)

¹²⁴ § 1(2) of the Act 159/1999 on conditions of business operation in the tourism industry.

¹²⁵ Article 3(2) of the Act on Tourist Services.

¹²⁶ Only in § 2(1) of the Regulation on travel agencies implementing Art. 7 Package Travel Directive and in the Regulation on travel agencies; not in § 31b(2) of the Consumer Protection Act.

¹²⁷ Article 1(1), sent. 1(c) of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

¹²⁸ The only deviation is the use of ‘passenger service’ instead of ‘transport’ in Art. 7 sec. (1) and sec. (2) of the Tourism Act.

¹²⁹ Only in § 31b(2) of the Consumer Protection Act; not in § 2(1) Regulation on travel agencies implementing Art. 7 Package Travel Directive or in the Regulation on travel agencies.

¹³⁰ It is sufficient that the package contains one change of place; Art 3(2) of the Act on Tourist Services.

Additional examples of other services	HU, IT, PT, ¹³² SK, SL ¹³³ (5)
List of other services	RO ¹³⁴ (1)
Further regulations	CZ, ¹³⁵ SK, SL, UK ¹³⁶ (4)
Transposition not entirely clear	SE (1)

Table: Separate billing

No transposition of regulation on separate billing	AT, ¹³⁷ EE, FI, FR, DE, IE, LV, NL, PL (9)
Regulation on separate billing explicitly transposed	AT, ¹³⁸ BE, ¹³⁹ BG, CZ, CY, DK, EL, ES, HU, ¹⁴⁰ IT, LT, LU, MT, PT, RO ¹⁴¹ , SE, SK, SL, UK (19)

¹³¹ CC § 651a(1), sent. 1.

¹³² Article 17(2) of the Decree-Law No. 198/93.

¹³³ Article 33(2) of the Promotion of Tourism Development Act states that a trip which includes a pre-arranged combination of two or more services (transfer and other tourist services) when sold or offered for sale at an inclusive price – and to which all provisions of this act apply – is deemed to be a travel arrangement.

¹³⁴ Article 2 no. 1 of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001 lists other services of the package (...): alimentation, balnear treatment, leisure and other likewise.

¹³⁵ § 1(1) of the Act No. 159/1999 on conditions of business operation in the tourism industry.

¹³⁶ Regulation 2(1) of the Package Travel, Package Holidays and Package Tour Regulations 1992.

¹³⁷ Not mentioned only in § 2(1) of the Regulation on travel agencies implementing Art. 7 of the Package Travel Directive, though it is mentioned in § 31b(2) of the Consumer Protection Act.

¹³⁸ Only in § 31b(2) of the Consumer Protection Act; not mentioned in § 2(1) of the Regulation on travel agencies implementing Art. 7 of the Package Travel Directive.

¹³⁹ Article 1(1), sent. 2 of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

¹⁴⁰ § 1(5) of the Government Decree No. 213/1996.

¹⁴¹ Article 4 of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

5. Contract

According to Art. 2(5) of Directive 90/314, a ‘contract’ means the agreement linking the consumer to the organiser and/or the retailer”.

a. Transposition in general

Fourteen member states have transposed the definition of contract in a special act on package travel, whereas, in six member states, the definition can be found in an existing more general act. In the SLOVAKIAN transposition law,¹⁴² reference is made to the definition of a travel contract in the Consumer Code. GERMANY continues to use an already existing definition of travel contract. Eight member states have not specifically transposed the definition of contract. This seems to be due to the fact that the general definition of contract in many national laws is considered to be sufficient.

Table: Transposition method

In a special act on package travel	BE, BG ¹⁴³ , CY, EL, ¹⁴⁴ ES, ¹⁴⁵ HU, IE, ¹⁴⁶ LT, ¹⁴⁷ LV, ¹⁴⁸ LU, MT, RO, SE, UK ¹⁴⁹ (14)	
In a general regulation	Civil Code	CZ, DE, LT, NL, SK ¹⁵⁰ (5)
	Code of Obligations	SL (1)
Only general definition of ‘contract’ with no specific reference to travel contracts	EE, ¹⁵¹ FR, ¹⁵² PT (3)	
No specific legislative transposition	AT, DK, FI, IT, PL (5)	

¹⁴² Article 6 of the Act No. 281/2001 on Package Travel.

¹⁴³ Article 30(1) of the Law on Tourism.

¹⁴⁴ Article 2(1)(5) of the Decree No. 339/96 on package travel.

¹⁴⁵ Article 2 of the Law No. 21/1995 regulating package travel.

¹⁴⁶ Article 2(1) of the Package Holidays and Travel Trade Act, 1995.

¹⁴⁷ Article 2(17) of the Law on Tourism.

¹⁴⁸ Article 1(1) of the Cabinet Regulation No. 163.

¹⁴⁹ Regulation 2(1) of the Package Travel, Package Holidays and Package Tour Regulations 1992.

¹⁵⁰ The Package Travel Act 281/2001 cross-refers to the CC §52-60 (consumer contracts), 741a-741k (package travel contract).

¹⁵¹ Article 8(1) of the Law of Obligations.

¹⁵² CC Art. 1101.

Several member states (e.g. BELGIUM, HUNGARY, LITHUANIA, the NETHERLANDS) have combined the definition of ‘contract’ with that of ‘package’ by defining a contract in the transposition law with reference to the definition of a ‘package’. Alternatively, others, such as LUXEMBOURG, SLOVENIA and SWEDEN, refer to the term ‘package’ as the content of the contract under consideration.

Table: Contract/Package

Single definition for ‘contract’	BG ¹⁵³ , CY, CZ, ¹⁵⁴ DE, EL, ES, IE, LV, MT, RO, SK, ¹⁵⁵ UK (12)
Combined definition of ‘contract’ and ‘package’	BE, HU, ¹⁵⁶ LT, NL (4)
‘Package’ used in definition of contract	LU, ¹⁵⁷ SL, SE ¹⁵⁸ (3)
No specific legislative transposition	AT, DK, EE, FI, FR, IT, PL, PT (8)

b. Transposition in particular

The CZECH and MALTESE legislators have made an adjustment to the definition, encompassing the notion that it “depends on the circumstances”. These adjustments seem to have no major impact on the content of the definitions. In ROMANIAN law, the content of the ‘contract of marketing the travel packages’ is such that the tourist shall buy the travel package and the travel agency shall issue the payment and travel documents.¹⁵⁹ The BULGARIAN definition comprises the parties to the contract, its content as well as the mutual obligations of the parties.

¹⁵³ Article 30(1) of the Law on Tourism.

¹⁵⁴ CC Art. 852a-852k regulate the travel contract. The CC refers to the definition of package in Act 159/1999 on conditions of business operation in the tourism industry.

¹⁵⁵ Use of the notion of ‘package travel contract’.

¹⁵⁶ § 415-416 of the CC contains general rules with respect to travel contracts; Government Decrees No. 213/1996 and 214/1996 establish special rules.

¹⁵⁷ Article 8 of the Package Travel Act.

¹⁵⁸ § 3(4) of the Package Tours Act 1992:1672.

¹⁵⁹ Article 2(2) of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

Table: National transposition

Substantively equivalent to the Directive	CZ, DE, EL, HU, IE, LV, LU, ES, SE, SK, UK (11)
Precise content of the contract	BG, RO (2)
“Except where circumstances otherwise require” or similar adjustment	CY, ¹⁶⁰ IE, ¹⁶¹ MT ¹⁶² (3)
Combination with definition of ‘package’	BE, LT, NL, SL (4)
No special legislative transposition	AT, DK, EE, FR, IT, PL, PT (7)

In GERMANY, LITHUANIA, LUXEMBOURG, the NETHERLANDS, SLOVAKIA¹⁶³ and SLOVENIA, the definition only refers to the ‘organiser’ as the liable contract party and omits the ‘retailer’. This is not an infringement of EC law as the wording of the Directive is ‘organiser and/or retailer’. In Germany, the decision is due to the fact that the definition of a ‘travel contract’ in the German Civil Code already existed before the Directive was transposed. The question of which party the rights may be exercised against is sometimes solved by general contract law (e.g. in Germany) or by regulations detailing the persons who may be liable (see chapter on the definition of the ‘organiser/retailer’). In HUNGARY, the consumer’s counterparty is termed the ‘travel company’ and LATVIAN law also refers to the ‘undertaking’ (company). Under CZECH law, the ‘travel agency’ is the liable party.

¹⁶⁰ Article 2 of the Package Travel, Holidays and Tours Law of 1998.

¹⁶¹ Article 2 (1) of the Package Holidays and Travel Trade Act, 1995.

¹⁶² Article 2(1) of the Package Travel, Package Holidays and Package Tours Regulations, 2000.

¹⁶³ CC § 741a uses ‘organiser (travel bureau)’.

Table: Liable parties

Organiser and Retailer	BE, ¹⁶⁴ CY (or both), IE, EL, MT (or both), ES, SE, UK (8)
Organiser	BG, DE, LT, NL, ¹⁶⁵ SL, SK (6)
Travel agency	CZ, RO ¹⁶⁶ (2)
'Companies' (or similar)	HU, LV (2)
No special legislative transposition	AT, DK, EE, FR, IT, PL, PT (7)
Transposition not entirely clear	LU (1)

¹⁶⁴ There is a separate definition of travel intermediation contracts in Art. 1(2) of the Act of 16 February 1994 regulating package travel contracts and the travel intermediation contracts.

¹⁶⁵ An 'organiser' is also a 'retailer' of an 'organiser' outside the territory of the Netherlands, cf. CC Art. 500(2).

¹⁶⁶ Being the 'tour operator travel agency' or the 'retailer travel agency', Art. 2 no. 3 lit. a, b of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

III. Consumer protection instruments

1. Information Duties

a. Travel Brochure

Art. 3(2) sent. 1 of Directive 90/314 regulates the content of an information brochure when it is made available to the consumer. The brochure must indicate in a legible, comprehensible and accurate manner both the price and adequate information concerning details of the destination and transport, accommodation, the meal plan, the itinerary as well as general information on passport and visa requirements, payment aspects and the deadline for informing the consumer should the minimum number of participants not be reached.

aa. Transposition in general

Some countries seem to have considered a detailed list of information as unsuitable for transposition in a legislative act. As a result, the laws in several countries, including AUSTRIA, GERMANY and DENMARK, refer to a list of information duties which can be found in a government decree.

Table: Transposition law of information list

Special act on package travel	BE, ¹⁶⁷ BG, ¹⁶⁸ CY (annex ¹⁶⁹), CZ, ¹⁷⁰ EL, ¹⁷¹ ES, ¹⁷² IE, ¹⁷³ LT, MT, ¹⁷⁴ PL, ¹⁷⁵ RO, SE, ¹⁷⁶ SK, ¹⁷⁷ UK (schedule) (14)
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¹⁶⁷ Article 5 of the Act of 16 February 1994 regulating package travel contracts and the travel intermediation contracts.

¹⁶⁸ Article 28(2) of the Law on Tourism.

¹⁶⁹ Article 5(1)-(2) of the Package Travel, Holidays and Tours Law of 1998.

¹⁷⁰ The travel contract is part of the CC, while other aspects are regulated in Act No. 159/1999 on conditions of business operation in the tourism industry.

¹⁷¹ Article 3(2) of the Decree No. 339/96 on package travel.

¹⁷² Law 21/1995 regulating package travel.

¹⁷³ Article 10(1) and (2) of the Package Holidays and Travel Trade Act, 1995.

¹⁷⁴ Article 5(1) of the Package Travel, Package Holidays and Package Tours Regulations, 2000.

¹⁷⁵ Article 12(1) 1st-10th indent of the Act on Tourist Services.

¹⁷⁶ Article 5 of the Package Tours Act 1992:1672.

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General regulation	Civil Code	CZ, LT (2)
	Consumer Code	IT ¹⁷⁸ (1)
	Law of Obligations	EE, ¹⁷⁹ SL (2)
Government decree	AT, ¹⁸⁰ DK (annex ¹⁸¹), DE, ¹⁸² FI, HU, ¹⁸³ LV, ¹⁸⁴ LU, ¹⁸⁵ NL, ¹⁸⁶ PT ¹⁸⁷ (9)	
No specific legislative transposition	FR ¹⁸⁸ (no list) (1)	
Transposition not entirely clear	LV, SE (2)	

In SLOVENIAN law, the content of a brochure (travel programme, travel itinerary) is not further defined. It is only stated that, before the travel confirmation is issued, the traveller shall be given a travel programme containing all the requisite information for the travel confirmation, which itself may refer only to the programme.¹⁸⁹

Table: Use of terms

Brochure	BE, DK, FI, DE, EL, IE, IT, MT, PL, UK (10)
Brochure or other written form	CZ, ¹⁹⁰ ES, ¹⁹¹ HU, LT, ¹⁹² NL, PL, SE, SK (8)
Package description	EE (1)
Programme of services	LV (1)
Advertising material	AT, CY ¹⁹³ (2)

¹⁷⁷ § 8(1) lit. (a) - lit. (j) of the Act No. 281/2001 on Package Travel.

¹⁷⁸ Article 85(1) of the Consumer Code.

¹⁷⁹ § 867 sec. (1) - sec. (3) of the Law of Obligations.

¹⁸⁰ § 2 of the Regulation on Travel Agencies.

¹⁸¹ Annex to Regulation No. 776/1993 on Package Travel.

¹⁸² § 4 of the Regulation on duties to supply information in civil law.

¹⁸³ Government Decree No. 214/1996.

¹⁸⁴ Article 3 of the Cabinet Regulation No. 163.

¹⁸⁵ Article 2 of the Decree of 4 November 1997 on pre-contractual information and contract conditions of package travel contracts.

¹⁸⁶ Decree of 15 January 1993 containing rules concerning information that organisers of package travel must notify in the interest of travellers.

¹⁸⁷ Article 20 sec. (1) – sec. (2), Art. 22 of the Decree-Law No. 198/93.

¹⁸⁸ Article L.211-9 of the Tourism Code.

¹⁸⁹ Article 884(3) of the Code of Obligations.

¹⁹⁰ Article 10 of the Act No. 159/1999 on conditions of business operation in the tourism industry used the wording ‘brochure or some other demonstrable form’.

¹⁹¹ Article 3(1) of the Law 21/1995 regulating package travel refers to a “programme or information brochure which contains in writing ...”.

¹⁹² Lithuanian law refers to “descriptive material concerning the services offered and advertised by the tour organiser (travel brochures or other official information)”, CC Art. 6.748(1); “travel brochures, catalogues or other descriptive material concerning the tourist’s trip”, Art. 6(2) of the Law on Tourism.

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Pre-contractual information	LU, PT (2)
Travel programme	SL (1)
Written information	BG, FR, RO (3)
Transposition not entirely clear	SE (1)

bb. Transposition in particular

(1) Transposition of the Directive's information requirements

In AUSTRIA, DENMARK, ESTONIA, GERMANY, GREECE, LATVIA, LUXEMBOURG and SWEDEN, the national legislators have adopted the list of information as laid down in the Directive.

In SWEDEN, the information duties do not go beyond the requirements stipulated in the Directive and are specified in less detail than in the Directive. For example, instead of 'passport and visa requirements' and 'health formalities', the Swedish legislator uses the term 'immigration'. As member states are obliged to interpret legislative acts in accordance with EC Directives, it can be assumed that this term covers the elements listed in the text of the Directive. Deviating from the Directive, the Swedish regulation obliges the organiser to mention only the minimum number of participants required for the package to take place, but not the deadline for informing the consumer in the event of cancellation.

The LATVIAN legislator has transposed the list of information as laid down in the Directive. Furthermore, a general clause is added, stipulating that the organiser has to provide other information if necessary. Sometimes, the information duties are rendered in a more abridged form than in the Directive. For example, Latvian law refers to payment procedures where the wording of the Directive explicitly mentions the sum of money or the percentage of the price to be paid on account.

FRENCH law¹⁹⁴ refers to "written information" which must describe the transport and accommodation services, the price and payment conditions, cancellation options and visa

¹⁹³ In some cases, the term 'informative material' is used, e.g. Art. 4(1) of the Package Travel, Holidays and Tours Law of 1998.

¹⁹⁴ Article L 211-9 of the Tourism Code.

information. Nevertheless, it must be given only to the interested parties (“les intéressés”), which implies that it is not obligatory in every situation.

In FINLAND, it is not compulsory to provide a brochure. If it is provided, it must contain the general conditions applying to the package travel contract and essential information in relation to the contract.¹⁹⁵

Under BULGARIAN law, “written information” must be given to the consumer. The list of information this document has to contain slightly deviates from the requirements of the Directive. Article 3(2)(d) of Directive 90/314 prescribes that information about the itinerary has to be given to the consumer. Bulgarian law requires information about the dates and places of the beginning and the end of the package as well as the number of places of accommodation. Nevertheless, it seems that it is not obligatory to provide precise information about the itinerary.¹⁹⁶ Furthermore, Art. 3(2)(c) of the Directive states that the accommodation has to be specified. In contrast, Bulgarian law requires specific information about the touristic destination of the package.¹⁹⁷ However, the information requirements stated in the Bulgarian law on Tourism exceed the Directive’s content.

Table: Transposition of the Directive’s information requirements

Substantially equivalent to the Directive	AT, DK, DE, EE, EL, LU (6)
Information going beyond the Directive’s content	BE, BG, CY, ES, FI, HU, IE, ¹⁹⁸ IT, LT, MT, NL, PL, PT, RO, SK, UK (16)
Deviations from the Directive’s requirements	FR, SE (2)
Transposition not entirely clear	CZ, LV, SL (3)

Some member states have made it compulsory for the organiser/retailer to provide a brochure, thus making use of the minimum clause in the Directive. These member states are SPAIN¹⁹⁹ and, partially, GREECE.²⁰⁰

¹⁹⁵ § 6 of the Package Travel Act of 28 November 1994/1079.

¹⁹⁶ Article 28(2) no. 3 – 6 of the Law on Tourism.

¹⁹⁷ Article 28(2) no. 5 of the Law on Tourism.

¹⁹⁸ Article 10(1) lit. (h)-(j) of the Package Holidays and Travel Trade Act, 1995.

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(2) Additional information duties

The transposition laws of other member states stipulate additional information to be included in the brochure.

Sometimes, there are additional information duties above and beyond those listed in the Directive. In CYPRUS, for example, going beyond the requisite information on meals, an estimate is required of how many meals not included in the price may be necessary. Another difference is that the total price may be given in an attached price list accompanying the brochure.

For the most part, the list of required information is expanded by adding further information duties. The organiser is obliged to give his name and address in FINLAND, HUNGARY, the NETHERLANDS, PORTUGAL and SPAIN. In the Netherlands, the telephone number and, in Portugal, the licence number must also be given. In Hungary, the organiser is also obliged to give information on his domicile, registration number and telephone number.

Information on the representative in the destination country is obligatory in IRELAND, MALTA, SPAIN (name, address) and in HUNGARY (name, address, telephone hotline). In Hungary, if the organiser has no representative in the destination country, he has to give the number of a Hungarian-language telephone hotline via which the traveller can get help and contact the travel organiser.

Most member states that have added information duties also require the organiser to inform the traveller about security/guarantee provision in the brochure. In BELGIUM, HUNGARY, MALTA, the NETHERLANDS and the UNITED KINGDOM, the organiser must give information concerning security in the event of insolvency, as well as information concerning the security for sums paid over. In Hungary, information on the credit institution must also cover the

¹⁹⁹ Article 3(1) of Law 21/1995 regulating package travel.

²⁰⁰ It is not compulsory for the organiser/retailer to provide a travel brochure. However, it is compulsory for travel agencies responsible for general and national tourism as per Law 393/1976, as well as for their intermediaries. Previously, these intermediaries have already had to give a detailed program of the trip or excursion, which now has to contain the details in Art. 3(2) of Decree 339/96 (e.g. general information concerning passport and visa requirements, health formalities important for the trip and the stay).

possibility to obtain information on protection in the event of insolvency directly from the security provider. Additionally, the organiser must provide information about how to contact the insurance company or institution should the organiser fail to provide the return trip or to fulfil his duty to reimburse any relevant fees (including those paid in advance). IRISH law has one information category relating to the security arrangements for money paid over and, where applicable, for the repatriation of the consumer²⁰¹ in the event of the organiser's insolvency. Moreover, in Belgium, the organiser must give information concerning cancellation and travel insurance. Under BULGARIAN law, information about the insurance company must be provided.

In PORTUGAL and SLOVAKIA, the national regulations also lay down special information duties in connection with the liability of the organiser. In Slovakia, the brochure must contain information about instances in which the traveller would be liable for contractual penalties, as well as about the amount of these penalties. In Portugal, it must contain the identity of the bodies which underwrite the organising agency's liability. Furthermore, the organiser must inform the traveller about the maximum amounts of liability for the agency and the complaints procedure in the event of a failure of performance.

In some member states, the brochure must contain information on the legal basis of the contract. In SPAIN, the brochure has to give information on clauses with respect to possible liability, cancellations and other terms of the package. In POLAND, there must be information concerning the legal basis for the travel agreement and the legal consequences arising from it. In HUNGARY, the organiser has to display his general terms and conditions. He does not, however, need to inform the traveller about the general contract conditions used by the retailer. In LITHUANIA, the procedure and terms governing performance of the tour contract have to be stated in the brochure, catalogues or other descriptive material.

Another large field of information concerns the programme and the services comprised in the package, as against those services which are not included in the package and which must be paid for additionally. In six member states (BELGIUM, HUNGARY, the NETHERLANDS, POLAND, PORTUGAL and SLOVAKIA), the brochure must contain information on the programme and/or other services. In Poland, information on the sight-seeing programme and

²⁰¹ Article 10(1)(j) of the Package Holidays and Travel Trade Act, 1995.

tourist attractions is required and, in Slovakia, the organiser must provide information concerning the programme in situ and concerning the scope and nature of all other elements which are part of the package. In Portugal, visits, excursions or other services included in the price must be mentioned. In Hungary, the organiser is obliged to give information on the conditions for participation in optional programmes.

According to the BELGIAN regulation, the brochure must contain information on the nature of the trip and its target group. This information is likely to comprise information on the trip programme. In the NETHERLANDS, there is a more general rule. According to the Dutch transposition law, the organiser is obliged to give information on other services which are a significant part of the trip.

Another area of information concerns taxes and additional charges. In IRELAND, MALTA and PORTUGAL, the organiser is obliged to provide information about these. HUNGARIAN law requires information on visits, excursions and other services which are not included in the package price but need to be paid for additionally. According to LITHUANIAN law, the terms and conditions for the currency exchange have to be stated.

In some member states, legislative acts contain clauses stipulating that the organiser must provide other relevant information in the brochure. Such a general clause can also be found in SPAIN (concerning the nature of the package offered) and in LATVIA. Spanish law also provides for information on the “estimated price of the optional excursions” and “the financing conditions if offered”.

Finally, there are further special information duties in some member states. A peculiarity in HUNGARY is the need to give information on the weather conditions and local traditions and rules in the destination countries, where these are different from Hungarian traditions and rules and are important for the trip. Moreover, the brochure must also contain information on health formalities and visa requirements.²⁰² In SLOVAKIA, the organiser has to inform the traveller about the conditions governing a replacement traveller and the deadline by which the traveller must communicate to the organiser that a substitute will replace him in the package. In ITALY, one further information duty is added to the list in the Directive. The organiser is

²⁰² Cf. Part. 3.B.III.1.b.(4).(a). Information requirements in the Directive.

obliged to provide information about deadlines, procedures and parties in relation to which the right of withdrawal may be exercised, where the contract was concluded away from business premises and at a distance (negotiation). In the NETHERLANDS, the brochure must contain the deadline by which the traveller must inform the organiser that the trip does not meet his expectations. In the UNITED KINGDOM, the brochure must contain information on the arrangements (if any) that apply if the travellers are delayed at the outward or homeward points of departure. In PORTUGAL, the organiser must inform the traveller about the periods in which changes to the price are legally admissible.

It is self-evident that such additional requirements with regard to the content of the brochure may be useful for the consumer in many cases. However, such additional requirements may also cause a barrier to trade because they force organisers to adapt their brochures to the respective national laws of the member states where they want to market their packages. The huge variety of national variations makes it rather difficult, if not impossible, to draft brochures which can be used throughout the EU. In any case, such an endeavour would be rather costly and could therefore deter organisers from making use of the internal market.

Table: Additional information duties

Name, address	ES, FI, HU, NL, PT (5)
Representative	ES, HU, IE, MT (4)
Security in the event of insolvency	BE, HU, IE, MT, NL, PT, SK, UK (8)
Security for sums paid	HU, IE, ²⁰³ MT, NL, UK (5)
Liability	PT, SK (2)
Cancellation- and travel insurance	BE, BG, RO ²⁰⁴ (3)
Legal basis of the contract	ES, HU, LT, PL (4)
Programme and services	BE, HU, NL, PL, PT, SK (6)
Taxes and additional charges	FI, HU, IE, MT, PT (5)
Terms and procedures of currency exchange	LT (1)
“General clause”; other relevant information	ES, LV (2)

²⁰³ Part of the information category with respect to the insolvency of the organiser.

²⁰⁴ Article 7 lit. j of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001: possibilities to conclude optional insurances for assistance in case of illness, accidents and others.

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Other (special) information	CY, ES, FI, HU, IT, NL, PT, RO, SK, UK (10)
No farther-reaching information duties	AT, DK, DE, EE, EL, FR, LV, LU, SE (9)
Transposition not entirely clear	CZ, SL (2)

b. Pre-contractual information duties

Article 4(1)(a) of Directive 90/314 determines some general pre-contractual information duties with regard to health formalities and to passport and visa requirements applicable to nationals of the member state(s) concerned and, in particular, on the periods for obtaining them.

aa. Transposition in general

Almost all member states have transposed these pre-contractual information duties, though with some variations. SPAIN is the only country not to have implemented the Directive provision as such. Art. 4(2) of the Law 21/1995 of July 6 regulating package travel²⁰⁵ contains a reference to the fact that the consumer must be informed before conclusion of the contract via receipt of a copy of the contractual terms. However, the required contractual terms do not mirror the content of the pre-contractual information duties, but rather transpose the minimum elements to be contained in the contract,²⁰⁶ as listed in the Directive's Annex. Information duties on passport and visa requirements or health documents are only mentioned as part of the mandatory brochure in Art. 3(1)(e) of the same law, which transposes Art. 3(2) of Directive 90/314. The Spanish legislator probably felt that, as it is mandatory to supply the brochure, this Directive rule on pre-contractual information duties had been entirely complied with.

²⁰⁵ Law 21/1995 of July 6 regulating package travel.

²⁰⁶ Cf. Transposition of Art. 4(2)(a) in Part 2.B.III.1.d. of the analysis.

bb. Transposition in particular

(1) The obligated party

At Community level, these duties are imposed on the organiser and/or retailer. In transposing this Directive provision, many member states have chosen to impose the pre-contractual obligation on both the organiser and the retailer, although they are individually mentioned. By contrast, some member states opted for the organiser as the (only) obligated party. CYPRUS and the UNITED KINGDOM used general terminology ('the other party to the contract'), which leaves it to the content of the contract to determine whether the organiser, the retailer or both carry obligations. This also seems to be the case in AUSTRIAN, FRENCH and LATVIAN law, which use the terms 'professional', 'seller' and 'undertaking' (which can be either the organiser or the retailer according to the circumstances). In SWEDEN, there is no reference to a specific party bound to fulfil the pre-contractual information duties; it is only stated that "the traveller shall be informed". This implies that the contractual party, the organiser or the retailer depending on the individual contract, will have to inform the traveller. LUXEMBOURG, PORTUGAL and SLOVAKIA use the term 'travel agency'²⁰⁷ when determining the person responsible for performing the information duties. LITHUANIAN legislation has adopted two different legal texts regulating information duties before conclusion of the contract for the organiser²⁰⁸ and the retailer.²⁰⁹

There is an interesting feature in FRANCE and LUXEMBOURG. The applicable law requires that the information be provided only if the counterpart is an interested party. Regarding this wording, the logical conclusion to draw is that, in order to be viewed as an interested party, the consumer would have to demonstrate his involvement somehow. Such a requirement is not explicitly laid down in the Directive. However, it can be assumed that Art. 4(1) of Directive 90/314 only stipulates that a consumer must be informed if he has expressed an interest in a certain package.

²⁰⁷ Luxembourg: travel agent, Portugal: travel agency, Slovakia: travel bureau.

²⁰⁸ Duties for the organiser are transposed in the CC (Art. 6.748(2)) and the Law on Tourism (Art. 6(4)).

²⁰⁹ Duties for the retailer are transposed only in the Law on Tourism (Art. 6(4)).

Table: Obligated party

Organiser and/or retailer	AT, BE, BG, CY, EL, FI, FR, ²¹⁰ HU, IE, IT, LV, LT, LU, MT, PL, PT, RO, SE, SK, UK (20)
Organiser	EE, DE, DK, NL, SL (5)
Travel agency	CZ (1)
Not transposed	ES (1)

(2) Time for providing information

The majority of national laws require that pre-contractual information duties be fulfilled before conclusion of the contract. Variations exist in AUSTRIA and GERMANY, where the information has to be provided before the statement of intent (e.g. the booking). Under DUTCH law, the point at which the travel agreement is concluded is key in terms of providing the information. In ITALY, the consumer must be provided with information during negotiations and, in any event, prior to the conclusion of the contract.²¹¹ HUNGARIAN legislation stipulates that, if a brochure has not been made available, all the information normally provided in a brochure has to be given in writing before the contract is concluded.²¹²

Table: Time for providing information

Before conclusion of the contract	BE, BG, CY, CZ, ²¹³ DE, DK, EE, EL, FI, FR, HU, IE, IT, LV, LT, MT, PL, PT, RO, SE, SK, SL, UK (23)
Before statement of intent (booking)	AT, DE (2)
When the travel agreement is concluded	NL (1)
During negotiations (in any event prior to	IT (1)

²¹⁰ Article L 211-9 of the Tourism Code uses the general term “seller”, which can be either an organiser or a retailer.

²¹¹ Article 87(1) of the Consumer Code.

²¹² § 4(1) of the Government Decree No. 214/1996.

²¹³ The Czech CC does not use the term “pre-contractual information” and refers only to prerequisites for the travel contract (sec. 852b); i.e. a draft (offer) of the travel contract has to be presented by the travel agency (sec. 852a(2)). However, Act 159/1999 requires the travel agency to provide information prior to the conclusion of the travel contract in a brochure or some other demonstrable form (sec.10).

conclusion of the contract)	
Not transposed	ES (1)

(3) Method for providing information

About half of the member states have transposed the method for providing pre-contractual information as per the Directive (“in writing or in any other appropriate form”). Certain member states (e.g. FINLAND, POLAND²¹⁴) have opted to require exclusively a written format. Moreover, no special formal requirements exist in GERMANY or DENMARK. CZECH²¹⁵ and SLOVAK²¹⁶ law similarly require a brochure or some other written form (‘proved (established) form’ in the Czech Republic / “as the case may be” in the Slovak text), whereas HUNGARIAN²¹⁷ law states that the information shall be provided in writing if it is not included in any brochure.

Table: Method for providing information

In writing or any other appropriate form	AT, CY, EL, IE, LV, LU, MT, ²¹⁸ NL, PT, RO, SL, UK (12)
Written form	BE, BG, FI, FR, IT, LT, PL (7)
Format which can be reproduced in writing	EE (1)
In a brochure or in other written form	CZ, HU, SK (3)
In an appropriate manner	SE (1)
No special form	DE, DK (2)
Not transposed	ES (1)

Such differences in formal requirements very probably hinder the marketing and performance of travel contracts for consumers in different member states. The organiser has to examine

²¹⁴ Article 13(3a) of the Act on Tourist Services.

²¹⁵ § 10(1) of the Act No. 159/1999 on conditions of business operation in the tourism industry.

²¹⁶ § 8(1) of the Act No. 281/2001 on Package Travel.

²¹⁷ § 4(1) of the Government Decree No. 214/1996.

²¹⁸ Until now, there has been no interpretation in the courts as to what is meant by “some other appropriate form”. The duty to pass on the information to the consumer is ultimately incumbent on the organiser. If he fails to do so, it constitutes a breach of the regulation .

carefully which national law is applicable and, if it is foreign law, which formal requirements are relevant. Moreover, it must be admitted that the wording of the Directive is unclear with regard to the question of what is meant by “any other appropriate form”. In the course of the review of the Directive, consideration should be given to clarifying this – possibly with reference to a definition of the “durable medium” along the lines of Art. 2(f) of Directive 2002/65.

(4) Content of pre-contractual information

(a) Information requirements in the Directive

The transposition of the Directive’s pre-contractual information requirements is inconsistent across EU member states. For example, FRANCE²¹⁹ has implemented the information duty on passport and visa requirements, though neither the duty regarding the period for obtaining the documents nor that on health formalities. About one third of member states, having implemented the obligation to provide information about passport and visa requirements, refrain from demanding further information on the period for obtaining the relevant documents (e.g. DENMARK, LUXEMBOURG, SLOVENIA *inter alia*). BELGIAN legislation requires general information on passports and visas, which does not necessarily include the deadlines for their receipt. In HUNGARY, passport and visa requirements are described in general terms.²²⁰ French law shifts away from the terminology of ‘passport and visa requirements’ by demanding information on conditions for crossing borders.²²¹ Slovenian law uses the term “border formalities”. Under DUTCH law, the organiser has to provide any relevant general information on travel documents and health formalities necessary for the journey and stay.²²² Such wording leaves it to national courts to determine whether, for instance, the organiser also has to provide information about the period for obtaining the necessary documents. Finally, the Danish and LATVIAN legislators chose to use different terminology when introducing the duty to provide information about health formalities in their legislation.²²³ In

²¹⁹ Article L 211 – 9 of the Tourism Code.

²²⁰ § 3(1)(k) of the Government Decree 214/1996.

²²¹ « Conditions de franchissement des frontières » in Art. L 211-9 of the Tourism Code.

²²² Article 1(c) of the Decree of 15 January 1993 containing rules concerning information that organisers of package travel must notify in the interest of travellers.

²²³ Denmark (§ 6 of Act No. 472/1993 on Package Travels): “information on requirements as regards (...) vaccination and similar prerequisites”; Latvia (Art. 5 of Cabinet Regulation No. 163): “other requirements (health insurance, vaccination and other issues related to medicine)”.

SLOVAKIA and the CZECH REPUBLIC, information requirements exist concerning the period for obtaining details on health formalities.

Especially with regard to travel documents, different national legislation varies on one point: the citizen's nationality according to which the information on passports and visas may differ. The Directive stipulates that information on passport and visa requirements for nationals "of the Member State or States concerned" must be made available. This implies that travellers from all EU countries should be informed about the requirements applicable. ITALIAN, MALTESE and SWEDISH law explicitly mention the requirements for EU citizens (the latter two also for European Economic Area nationals). The CZECH REPUBLIC, on the other hand, only includes the formalities for its own citizens, while CYPRUS adds residents. GERMANY and AUSTRIA have adopted regulations only applying to nationals / citizens (Austria) of the country in which the trip is offered. These regulations might be deemed to be too narrow and therefore to infringe Community law.

In GERMANY, the Federal Supreme Court (BGH)²²⁴ ruled recently that a travel agency was not liable for damages resulting from the fact that the claimant had not been allowed to travel on the grounds that he did not have a valid passport. The court held that it was not up to the travel agency to provide information about passport and visa requirements. On the other hand, it is possible that the organiser must inform the traveller in this respect. Another case was heard before the Audiencia Provincial de Barcelona in March 2001. The court reasoned that it was the consumer's duty and not that of the agency to ensure that he was in possession of a valid passport. The requirement for valid travel documents was regarded as general knowledge. The information duty on passports, visas and health formalities must, however, be complied with in the mandatory brochure.²²⁵

Additionally, the ROMANIAN Government Ordinance No. 107/1999 provides, with a view to conclude the contract, that the tourism agency is obliged to provide the tourists with information in writing regarding the place of destination, the travel route, the means of transportation, the types of accommodation, the catering services, the amount of the advance

²²⁴ BGH judgment of 25 April 2006, NJW 2006, 2321.

²²⁵ Article 3(1)(e) of the Law 21/1995 regulating package travel.

payment, and if is the case, the minimum number of persons required for the programme and the duration of the tourist offer.

Table: Information requirements in the Directive

Passport and visa requirements	AT, BE, BG, CY, ²²⁶ CZ, DE, DK, EE, EL, ES*, FI, FR, HU, IE, IT, LT, LV, LU, MT, NL, PL, PT, RO, SE, SK, SL, UK (27)
Period for obtaining a passport and visa	AT, BG, CY, CZ, DE, EE, EL, IE, IT, LT, LV, MT, PL, PT, SK, UK (16)
Health formalities	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES*, FI, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, SL, UK (26)

* as part of the mandatory brochure

(b) Additional information requirements

Some member states have introduced additional requirements for information to be provided before conclusion of the contract. The following table shows some examples:

Table: Additional information requirements

Parties to the contract	FI, FR (2)
Optional insurance	AT, BE, CZ, EL, ²²⁷ PL, RO, SK (7)
Details of minimum insurance cover where consumer is required to take out insurance	IE (1)
General terms and conditions	AT, BE, ²²⁸ BG, FI, HU (5)
Content of the package	CZ, FI, FR, HU, PT, SK (6)
Price of the package	CZ, FR, HU, LT, NL, PT, SK (7)

²²⁶ Article 7(a) of the The Package Travel, Holidays and Tours Law of 1998 also includes information concerning the time the consumer will need to obtain a suitable passport or visa.

²²⁷ According to Art. 4(1) of the Decree 339/96, the organiser/retailer is obliged to inform the consumer in writing or in any other appropriate manner before conclusion of the contract of his/her (the consumer's) obligation to cover the risk of improper or non-performance of his/her contractual obligations by taking out a liability insurance.

²²⁸ Article 7(1)(b) of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

Security for money paid over in the event of insolvency	CY, EL, IE, MT, UK (5)
Repatriation in the event of insolvency	CY (1)
Specific threats to life or health	PL ²²⁹ (1)
Documentation for medical or hospital assistance	PT (1)
Currency exchange conditions	LT (1)
Procedure and terms for performing travel contract	LT (1)
Contractual penalties for the consumer in the case of cancellation	CZ, SK (2)
Programme in situ	CZ, HU, PT, SK (4)
Period for the consumer to provide information about a substitute replacing him in the package	CZ, SK (2)
Other	SL ²³⁰ (1)

(c) Exemptions from information requirements

Some countries have adopted exemptions from the requirements where the information has already been made available to the consumer in some way and is not subject to subsequent changes: AUSTRIA (in advertisement or confirmation document), ESTONIA (brochure), FINLAND²³¹ (brochure), GERMANY (brochure), the NETHERLANDS (brochure or any other publication), SLOVENIA²³² (travel itinerary).

²²⁹ Article 13 (2) of the Act on Tourist Services.

²³⁰ According to Art. 884(2) of the Code of Obligations, the travel information must contain detailed information, e.g., place and date of issue, the travel organiser's logo and title, the traveller's name, the location and dates of the beginning and end of the travel package, the number of days of accommodation, the necessary information on timetables, prices and conditions for transport and the quality of the means of transport, the necessary information on the accommodation (including the location of the accommodation and type and category of the accommodation facilities), and information on the number of meals (e.g. full board, half board, bed and breakfast).

²³¹ The information (terms of a contract) must be given in writing, unless they have been published in a brochure to which the traveller has access (§ 7(1) of the Package Travel Act of 28 November 1994/1079).

²³² Article 884(3) of the Code of Obligations.

Exemptions also exist in the case of last-minute contracts in the following member states: BULGARIA (at the time of conclusion), DENMARK (derogation possible if the contract is entered into shortly before the package tour is due to begin), FINLAND²³³ (some other suitable form), HUNGARY (at the latest at the time of conclusion), ITALY (information at the same time as conclusion if the contract is concluded just before departure), the NETHERLANDS²³⁴ (if the travel agreement is made less than 72 hours before the trip begins).

None of these exemptions is mentioned in SPANISH law. As such, according to legal doctrine, the information duties to be fulfilled in the brochure (cf. points above) must also be performed in the case of last-minute contracts in order to enhance consumer protection.

It is questionable whether such exemptions for last-minute contracts are in line with the Directive. As Art. 4(2)(c) of the Directive only allows for exceptions from the formal requirements in the case of a last-minute contract, it could be concluded, by an *argumentum e contrario*, that such exemptions from the duties stipulated in Art. 4(1)(a) are contrary to the Directive. In the course of the planned review, it could be clarified whether exemptions from information duties in the case of last-minute contracts should also be allowed with regard to Art. 4(1).

c. Information before the start of the journey

Art. 4(1)(b) of Directive 90/314 details the information to be provided in good time before the start of the journey, i.e. details of transport connections, contact details for the organiser's or retailer's local representatives and, as the case may be, an emergency telephone number, special information for minors staying abroad and information on the option of taking out an insurance policy (no. i – iv).

Seemingly all member states have transposed the Directive's rules concerning the information to be provided in good time before the start of the journey, though with some variations.

²³³ If a contract is entered into immediately before the journey and it would therefore be unreasonably inconvenient to provide the contract conditions in written form, they may be supplied to the traveller in some other suitable form (§ 7(2) of the Package Travel Act of 28 November 1994/1079).

²³⁴ CC Art. 7:501(3).

aa. The obligated party

Again, the majority of member states impose information duties on the organiser and/or the retailer. Despite the use of different terms in national legislation (e.g. AUSTRIA: ‘professional’, CYPRUS and the UNITED KINGDOM: ‘the other party to the contract’, LUXEMBOURG: ‘travel agent’, PORTUGAL: ‘travel agency’, SLOVAKIA: ‘travel bureau’), if you interpret these terms according to the Directive, then they must be treated as equivalents.²³⁵ SPANISH legislation states that the duty lies first with the retailer and only “as the case may be, with the organiser”.²³⁶ ITALIAN law imposes pre-journey information duties on both the organiser and the retailer.²³⁷ ESTONIA and SWEDEN only state that the information shall be provided, without naming any obligated party. The information has to be provided by the organiser in DENMARK, GERMANY, the NETHERLANDS, POLAND and SLOVENIA. In MALTA, the organiser has to provide the information, either directly or through a retailer.²³⁸

Table: The obligated party

Organiser and/or retailer	AT, BE, BG, CY, EE, EL, ES, HU, IE, IT, LT, LU, PT, RO, SE, SK, UK (17)
Organiser	DK, DE, FI, MT, NL, PL, SL (7)
Travel agency	CZ (1)
No specific transposition	FR, ²³⁹ LV (2)

bb. Timeframe for providing information

Half of the member states chose to require that the information be supplied “in good time before the start of the journey”, as per the Directive. Seven countries (see table below) only require that the information be provided “before the start of the journey”, without further

²³⁵ Cf. Part 2.B.III.1.b.bb.(1).

²³⁶ Article 6 of the Law 21/1995 regulating package travel.

²³⁷ Article 87(2) of the Consumer Code.

²³⁸ Article 7.1 of the Package Travel Regulations, 2000.

²³⁹ Article L 211-11 of the Tourism Code specifies that the information shall be provided in the contract between the ‘seller’ and the ‘buyer’.

specifying the time period. This can, however, be so close to departure that consumers are not really fully aware of the information or able to react to it. Therefore, such a transposition cannot possibly be considered in line with the Directive. Only three countries, BELGIUM, the CZECH REPUBLIC and SLOVAKIA, specify the last point at which information is provided “in good time before the start of the journey” as seven calendar days prior to departure. Similarly, in HUNGARY,²⁴⁰ the information has to be provided “at least seven calendar days” before the start of the journey or at the time the contract is concluded if this occurs less than 7 days before departure. The same applies to BULGARIA except that the period is calculated in seven working days.²⁴¹ LATVIA does not provide for any specific transposition measures in its legislation. Nevertheless, Latvian law includes all the information duties in Art. 4(1)(b) of the Directive in the requirements to be fulfilled before the contract is concluded.²⁴² France also requires that some of the information due under Art. 4(1)(b) be given prior to concluding the contract (for the content cf. III. 1. d., pages 60 et seq).

Table: Timeframe for providing information

In good time before the start of the journey	AT, CY, DE, EE, EL, ES, FI, IE, LT, MT, PL, ²⁴³ SE, UK (13)
Before the start of the journey	DK, FR, ²⁴⁴ IT, LU, NL, PT, SL (7)
7 calendar days ²⁴⁵	BE, CZ, ²⁴⁶ HU, SK (4)
7 w-days ²⁴⁷	BG (1)
No specific transposition (but information duties to be fulfilled before conclusion of contract)	LV (1)

²⁴⁰ § 5 of the Government Decree No. 214/1996.

²⁴¹ Article 32 of the Law on Tourism.

²⁴² Article 5 of the Cabinet Regulation No. 163.

²⁴³ Article 13(3) of the Act on Tourist Services states “in good time before the start of the tourist event”.

²⁴⁴ Article 211-11 of the Tourism Code specifies “before start of the journey or stay”.

²⁴⁵ Calendar days.

²⁴⁶ CC sec. 852d(1).

²⁴⁷ Working days.

cc. Method for providing information

The majority of member states have adopted the formal requirement that the information be provided “in writing or any other appropriate form” or at least “in writing”. The SPANISH transposition law specifies that it must be “in writing or any other documentary form”.²⁴⁸ SWEDEN has opted for the wording “in an appropriate manner”.²⁴⁹ The Directive’s wording “any other appropriate form” implies that the information must be either in writing or in a form equivalent to the written form. Based on this interpretation, the Swedish transposition law should be understood as “an appropriate form equivalent to a written form”. In the NETHERLANDS, the information must be given “in writing or in any other understandable and accessible way” before an agreement is reached.²⁵⁰ The CZECH REPUBLIC, ESTONIA and GERMANY have not introduced any formal requirement governing the format in which the information should be provided. This could be considered as a shortcoming in transposition. However, the wording of the Directive (“in writing or any other appropriate form”) is rather vague. In the course of a review, the Directive could make clearer what is meant by the “other appropriate form”. In this context, use might be made of the definition of a “durable medium” in other directives, in particular in Art. 2(f) of Directive 2002/65.

Table: Method for providing information

In writing or any other appropriate form	AT, CY, DK, EL, ES, ²⁵¹ IE, MT, NL, PT, SL, UK (11)
In written form	BE, BG, FI, HU, IT, LT, LU, PL, RO, SK (10)
In an appropriate manner	SE (1)
No special form	CZ, DE, EE (3)
No specific transposition	FR, LV (2)

²⁴⁸ Article 6 of the Law 21/1995 regulating package travel.

²⁴⁹ § 6(2) of the Package Tours Act 1992:1672.

²⁵⁰ CC Art 7:501(2) refers to the formal requirement for information, which are listed in a separate government decree. Art. 3 of the ‘Decree of 15 January 1993 containing rules concerning information that organisers of package travel must notify in the interest of travellers’ lists the information to be given without mentioning a formal requirement.

²⁵¹ Taken literally, there is no requirement for a ‘documentary form’, but a written form “or any other form that gives evidence”, e.g. a recorded voice message.

dd. Content of the information requirements

(1) Items of information listed in Art. 4(1)(b)

The majority of member states have transposed the information items as listed in Art. 4(1)(b) of the Directive. In some cases, member states have deviated with regard to the point of time at which certain information has to be provided. For instance, with regard to the information about the option to take out an insurance policy (No. iv), AUSTRIA, BELGIUM, the CZECH REPUBLIC (partially), LATVIA, POLAND and SLOVAKIA stipulate that this information must be provided before conclusion of a contract. Furthermore, the Czech Republic requires that transport details be provided before conclusion of the contract, but not details of the place to be occupied by the traveller. This may be seen as an infringement of the Directive. In FRANCE, the relevant information requirement (before conclusion of the contract) is even more general, as the consumer must only be given information pertaining to the transport services provided.²⁵²

There are many further examples of deviations from the Directive's text. With respect to the details of transport connections, ITALIAN law does not require any information on the place to be potentially occupied by the traveller; LUXEMBOURG law requires a reservation reference for boat or train travel and SWEDISH law uses the general term "travel arrangements". Most legislation does not refer to the examples listed in the Directive, "e.g. cabin or berth on ship, sleeper compartment on train".

Moreover, SWEDEN also opted for a general transposition of the provisions requiring information on the organiser's or retailer's local representatives and on the local agencies by simply requiring information enabling the traveller to contact the organiser or retailer during the tour. Thus, the transposition law adopts the aim of the Directive's provisions, though leaves it up to the organiser or retailer to decide on the level of detail they will provide in order to enable possible contact. ESTONIAN law explicitly mentions the address and phone number of a local agency that can be contacted, but not the name of the local agency. In PORTUGAL, the law requires information on the "means of contacting the local representative of the agency or the bodies that may assist the customer in the event of difficulties or, failing

²⁵² Article L 211-9 of the Tourism Code.

that, the means of contacting the agency itself”.²⁵³ In ITALY, the organiser’s or retailer’s telephone number is to be given for use in the event of difficulties and in the absence of local representatives.²⁵⁴ In the case of minors abroad, the Italian transposition law refers to “journeys overseas”, which would imply a trip to another continent. However, the Directive aims to ensure adequate information and protection for minors travelling to foreign countries, even within Europe. With respect to insurance contracts, SPANISH law includes repatriation in the event of death.²⁵⁵ ROMANIAN law states the possibility to sign an optional insurance policy to cover the costs of the tourist’s transfer or the possibility of an assistance contract to cover the costs of repatriation in case of accidents or illness.²⁵⁶ However, it does not require information on an optional conclusion of an insurance policy to cover the cost of cancellation by the consumer.

Table: Information requirements

Details of transport connections (incl. place to be occupied by the traveller)	AT, BE, <i>BG</i> , CY, (<i>CZ</i>), DE, DK, EE, EL, ES, FI, <i>FR</i> , LV, (<i>HU</i>), IE, IT, LT, LU, MT, NL*, PL, PT, RO, SE, SK, SL, UK (27)
Contact details for the organiser’s / retailer’s local representatives	AT, BE, <i>BG</i> , CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, SL, UK (26)
Contact details for local agencies	AT, BE, <i>BG</i> , CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SK, UK (23)
Emergency telephone number	AT, BE, <i>BG</i> , CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LV, MT, NL, RO, SK, SL, UK (22)
Special information in the case of minors abroad	AT, BE, <i>BG</i> , CY, CZ, EE, EL, ES, DE, DK, FI, HU, IE, IT, LT, LU, LV, MT, NL*, PL, PT, RO, SE, SK, SL, UK (24)
Option to take out an insurance policy	<i>AT, BE, BG</i> , CY, (<i>CZ</i>), DK, EL, ES, FI, (<i>HU</i>),

²⁵³ Article 23 of the Decree-Law No. 198/93.

²⁵⁴ Article 87(2)(c) of the Consumer Code.

²⁵⁵ Article 6 of the Law 21/1995 regulating package travel.

²⁵⁶ Article 10 lit. d of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

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	IE, IT, LT, LU, LV, MT, NL, <i>PL</i> , PT, RO, SE, SK, SL, UK (24)
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Member states in italics stipulate that information must be provided before conclusion of the contract

Member states in italics and brackets stipulate that information must be provided in the brochure

* if necessary

(2) Additional information requirements

BELGIUM, ESTONIA, MALTA, PORTUGAL and SLOVAKIA introduced additional requirements for information to be provided before departure. In Estonia and Slovakia, detailed information on the package must be given (e.g. in Estonia, when (dates, times) and where the package will begin and end). Maltese law additionally requires the e-mail address of local representatives or local agencies.

Table: Additional information requirements

Fax number	BE, BG, RO (3)
Details of the package	EE, HU, SK ²⁵⁷ (3)
Information about provision of security	BG, HU (2)
E-mail address	MT (1)
Documentation for medical or hospital assistance	PT (1)
Procedure to follow in the specific case of illness or accident	BG, PT (2)
Documents for additional services	HU, SK (2)
Insurance contract in case of withdrawal	BG, CZ (2)
Contact details of the consulate office	BG, CZ (2)

²⁵⁷ E.g. when and where the package will begin and end, new § 8(1)(d) of Package Travel Act 281/2001, as amended by Act 186/2006 (entry into force 1 January 2006).

(3) Exemptions from information requirements

AUSTRIA, ESTONIA and GERMANY provide for exemptions from the information requirements if the information has already been made available in a brochure or travel confirmation and no changes have subsequently taken place. SLOVAKIAN law states that the information has to be provided unless already contained in the contract or the brochure given to the traveller.

The time limit of seven days before departure for providing the information does not apply to last-minute bookings in BELGIUM,²⁵⁸ BULGARIA, the CZECH REPUBLIC²⁵⁹ and Slovakia.²⁶⁰ The latter three then require that the information be provided when the contract is concluded. In ITALY, general information must be supplied at the same time as the contract is concluded when this takes place just before departure.²⁶¹

d. Elements to be included in the contract

Art. 4(2)(a) of the Directive states that the contract shall contain at least the elements in the annex, depending on the particular package.

aa. Inclusion of the elements

According to the Directive, the contract must contain the elements listed in the annex. The AUSTRIAN, ESTONIAN, GERMAN and SLOVENIAN legislators have adopted a different approach. The organiser is obliged to provide the traveller with a confirmation document for the travel contract, which must contain all the necessary information. In Slovenia, if the confirmation is not issued, the contract must be in writing and contain the same information as the confirmation. The duty is considered to have been fulfilled in Austria if the professional makes reference to an advertising document available for the consumer that includes all the

²⁵⁸ Article 7 of the Decree of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

²⁵⁹ CC sec. 852(2).

²⁶⁰ If the contract is concluded less than 7 days before departure.

²⁶¹ Consumer Code, Art. 87 sec. (3) and sec. (1).

elements.²⁶² In BELGIUM, the same list of obligations applies to both the organiser and the retailer.²⁶³

Table: Where the elements are to be included

Travel contract	BG, CY, CZ, EL, ES, FI, ²⁶⁴ FR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SK, SL, UK (<i>21</i>)
Travel confirmation document	AT, EE, DE, SL ²⁶⁵ (<i>4</i>)
Travel contract and order form	BE (<i>1</i>)
Brochure or any other publication available	NL (<i>1</i>)
Description of the package in brochure or other similar material made available to travellers	EE (<i>1</i>)

bb. Timing for inclusion of the elements

Art. 4(2)(b) of Directive 90/314 states that the terms and conditions of the contract must be communicated to the consumer before its conclusion. However, AUSTRIAN and GERMAN law stipulate that, “at or immediately after conclusion of the contract”, a confirmation document including certain elements must be handed over to the traveller. This approach contradicts the above-mentioned provision in the Directive.

According to the ROMANIAN Government Ordinance No. 107/1999, the contract is concluded when the tourist receives written confirmation of the reservation which is transmitted by the organiser or retailer of the travel. Prior to this written confirmation, the travel agency will have provided the necessary information for concluding the contract as mentioned above.

²⁶² § 4(3) of the Regulation on travel agencies.

²⁶³ Article 10 (organiser) and Art. 23 (travel intermediary) of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts. A slightly different list of obligations applies when the travel organiser is not acting as a retailer (Art. 23 of the same Decree).

²⁶⁴ Written travel contract or brochure.

²⁶⁵ Equally possible in a travel programme.

The SLOVENIAN Code of Obligations states that the travel organiser must issue the traveller with a travel confirmation at the latest by the point at which the contract is concluded. Alternatively, he must conclude a contract in written form that contains all the mandatory components of the travel confirmation.

cc. Elements of the contract

(1) Elements in the annex (and some variations in detail)

The elements in the annex have been implemented as obligatory elements of the contract by most member states. Some amendments have, however, been introduced. In AUSTRIA, the name and address of the organiser, but not of the retailer, have to be provided. This is similar in the NETHERLANDS (where the organiser's phone number also has to be provided). The BELGIAN legislator has specified a time limit for cancellation by the organiser where the minimum number of participants is not reached (15 days before departure). LUXEMBOURG even requires a period of 21 days before departure. Moreover, in Belgium, where there is a travel mediation contract relating to a travel organisation contract, the name and address of the travel agent and his role as agent acting on behalf of the travel organiser have to be stated. In CYPRUS, the number of meals not included in the agreed package price and the excursion programme must be mentioned, as well as the name and address of the licensed insurer or the financial institution underwriting the security if required by the consumer. ESTONIAN law only requires the travel destination to be included in the contract and not the relevant periods and dates where a stay is involved. Furthermore, the contract must state only the operator's right to cancel the contract if the minimum number of participants has not been reached. In this case, the tour operator must have previously and explicitly reserved this right and must not have informed the consumer after the deadline. In ITALY, there is no requirement to give the insurer's name, but the name, address, telephone number and business licence details of the organiser or retailer signing the contract must be supplied. In the context of accommodation information, the accommodation's suitability for disabled people, if appropriate, must be detailed. In addition, the balance payment must not, under any circumstances, exceed 25 % of the price to be paid upon booking. In Luxembourg, the contract term concerning any instalment must also include reference to the fact that the last partial payment by the buyer may not be less than 30 % of the overall price and is payable upon delivery of the travel documents. PORTUGUESE law not only requires details of the deadlines for lodging a

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complaint concerning failure to perform the contract or improper performance thereof, but also the procedure to be followed. SWEDISH law only uses headings to describe the elements to be included in the contract.

BULGARIAN law requires information about the place and date of the conclusion of the contract. Moreover, not only are the name and address of the tour organiser, the agent and, if appropriate, the insurer required, but also their licence number. In Bulgaria information about modalities of cancellation by the consumer and the maximum amount of compensation the consumer has to pay if the contract is not cancelled within a certain period is also required.

The LITHUANIAN transposition provision does not stipulate the inclusion of the following elements in the contract: travel destination, means, characteristics and categories of transport, details of accommodation, the meal plan, the deadline for informing the consumer in the event of cancellation where a minimum number of participants is not reached or special requirements which the consumer communicated to the organiser or retailer when making the booking (and which both accepted). However, Lithuanian law requires the contract to include personal details and the traveller's place of residence, what happens in the event of amendments to the contract or the cancellation thereof, health insurance formalities and financial guarantees, the contract number and the date of its conclusion.

In HUNGARY, certain information elements in the table below already have to be contained in the brochure, which automatically becomes an integral part of the contract via a reference in the contract and following signature by the traveller.

Table: Information to be included

Travel destinations and relevant periods	AT, BE, BG, CZ, CY, EE, EL, ES, DE, DK, FI, (HU), IE, IT, LU, LV, MT, NL*, PL, PT, RO, SE, SK, SL, UK (25)
Transport details	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, (HU), IE, IT, LU, LV, MT, NL*, PL, PT, RO, SE, SK, SL, UK (25)
Dates, times and points of departure and return	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LU, LV, NL*, PL, PT, RO, SK, SL, UK (24)
Accommodation details	AT, BE*, BG, CY, CZ, DE, DK, EE, EL, ES, FI, (HU), IE, IT, LU, LV, MT, NL*, PL, PT, RO, SE, SK, SL, UK (25)
Meal plan	AT, BE*, BG, CY, CZ, DE, DK, EE, EL, ES, FI, (HU), IE, LU, LV, MT, NL*, PL, PT, RO, SK, ²⁶⁶ SL, ²⁶⁷ UK (23)
Minimum number of participants; deadline for information in the event of cancellation because the minimum number is not reached	AT, BE*, BG, CY, CZ, DE, DK, EE, EL, ES, FI, (HU), IE, IT, LU, LV, MT, NL*, PL, PT, RO, SK, SL, UK (24)
Itinerary	AT, BE*, BG, CY, CZ, DE, DK, EE, EL, ES, FI, (HU), IE, IT, LT, ²⁶⁸ LU, LV, MT, PL, PT, RO, SE, SK, SL, ²⁶⁹ UK (25)
Services included in the package price	AT, BE*, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, ²⁷⁰ (HU), IE, IT, LT, LU, LV, MT, NL*, PL, PT, RO, SE, SK, SL, UK (27)
Name and address of the organiser, retailer and, where appropriate, the insurer	BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, ²⁷¹ (HU), IE, IT, LT, LU, LV, MT, NL, RO, PL, PT, SL, ²⁷² UK (24)

²⁶⁶ If the meal plan is a component of the package.

²⁶⁷ Information on the number of meals (e.g. full board, half board, bed and breakfast).

²⁶⁸ CC Art. 6.749(2) 3rd indent includes the places or countries to be visited as well as the dates of arrival and departure.

²⁶⁹ A detailed itinerary is required.

²⁷⁰ Article L 211-9 of the Tourism Code requires information on the transport and accommodation services before conclusion of the contract.

Package price	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, (<i>HU</i>), IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SK, SL, UK (26)
Possibility of price revision	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SK ²⁷³ , UK (24)
Additional fees not included in the package	BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LU, LV, MT, PL, PT, RO, SK, UK (20)
Schedule and method of payment	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, UK (25)
Special requests from the consumer which have been accepted	AT, BE*, ²⁷⁴ BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LU, LV, MT, PL, PT, RO, SE, SK, UK (23)
Deadlines for lodging a complaint because of improper or non-performance	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, SL, UK (26)

* if relevant to the particular contract

Member states in italics and brackets provide for the information duty in the brochure

(2) Additional elements

Additional elements to be included in the contract have, for example, been introduced by the following member states:

- BELGIUM (1. place and date of signature; 2. name and address of traveller or other beneficiaries; 3. conditions for cancellation by the traveller or organiser and / or retailer; 4. conditions for cancellation insurance, medical assistance insurance and / or any other insurance; 5. differences in accommodation classifications and current

²⁷¹ Article L 211-11 of the Tourism Code states that the names and addresses of the organiser, seller, guarantor and insurer have to be provided in the contract before the start of the journey or the stay.

²⁷² Only the name and address of the organiser.

²⁷³ Contract parties may entitle the travel bureau to increase the price of the package, though not within twenty days of departure.

²⁷⁴ The provision relating to the organiser does not state explicitly that special requests must have been accepted.

standards in the member states; 6. special requirements communicated by the traveller when making the booking);

- BULGARIA (1. place and date of signature; 2. licence number of the organiser and / or the tour agent; 3. amount of compensation for the organiser if the consumer cancels the contract);
- CYPRUS (indication of whether there is a stop-over in another city);
- the CZECH REPUBLIC (1. names of the contract parties; 2. amount of compensation for the organiser if the consumer cancels the contract);
- FRANCE (1. possibility of withdrawing from the contract; 2. possibility of assigning the contract to a third party; 3. information to be conveyed to the purchaser before the journey or stay);
- GREECE (1. number of kilometres travelled per day; 2. operating permit for the accommodation; 3. other services (besides meal plan) offered in the accommodation; 4. insurance policy number and amount of insurance cover; existence of other guarantees);
- HUNGARY (1. deadline for the traveller to cancel without any requirement to reimburse the costs incurred; 2. name and address of traveller; 3. name of insurance company or financial institution responsible for financial security; 4. premium for any insurance policy included in the package; 5. traveller is liable for cancellation costs if contract is concluded within 35 days of departure or within a given contractual period);
- IRELAND (nominated agent with an address in the case of packages sold by an organiser (whether dealing directly with the consumer or through a retailer) who has no place of business in the State);
- ITALY (1. any costs arising for the traveller in the case of contract transfer; 2. requirements and procedures for use of the guarantee fund; 3. details of insurance cover and any additional policies agreed with the traveller);
- LATVIA (1. the deadline for opting out of services and the percentage sum consequently forfeited; 2. the type of insurance chosen by the client; 3. right of withdrawal for the consumer in the case of a distance contract or contract concluded outside the company's usual business premises);
- LITHUANIA (1. name and address of traveller; 2. details of permissible contract alterations or cancellation; 3. health insurance formalities; 4. financial guarantees; 5. contract number and date of conclusion);

- LUXEMBOURG (1. rights and duties of the travel agent and traveller in the case of price revision, cancellation or transfer of the package; 2. assignor has to inform the travel agent via a letter sent by recorded delivery at least 21 days before departure; 3. signature of the travel agent and purchaser; 4. guarantee certificate (details of potential repatriation costs must be attached to the contract);
- MALTA (indication of whether there is a stop-over in another city);
- the NETHERLANDS (visa and passport requirements, health formalities);
- POLAND (1. legal basis of the agreement and legal consequences; 2. deadline for informing the client about procedures for assigning rights and assuming obligations);
- PORTUGAL (1. maximum amounts for any possible claims from the agency; 2. optional services to be paid for by the consumer; 3. copy of the insurance policy or policies sold by the travel agency as part of the contract);
- ROMANIA (1. conditions for modifying or cancelling the contract; 2. possibility and requirements of transferring the contract to a third party; 3. possible modification of the services by the agency after conclusion of the contract; 4. responsibility of the agency in case of breaching or cancelling the contract and the tourist's compensation);
- SLOVAKIA (1. identification of the contractual parties; 2. amount of compensation for the organiser if the consumer cancels the contract; 3. conditions a participant must meet and a notification period if a substitute takes the package);
- SLOVENIA (1. place and date of issue of the travel confirmation; 2. name of the traveller; 3. conditions under which the traveller may demand annulment of the contract; 4. necessary information on border and customs formalities, health, financial and other administrative regulations, 5. other information deemed to be useful if included in the travel confirmation);
- SPAIN (1. consumer's duty to give notice in writing or any other demonstrable form in the event of improper or non-performance; 2. cut-off date for these claims; 3. period in which the consumer may request confirmation of the reservation; 4. means of contacting organiser or retailer during the tour).

The broad spectrum of provisions shows that it will be very difficult for organisers to fulfil the information obligations where the law of another member state is applicable. This may constitute a barrier to trade.

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(3) Exemptions

In BELGIUM, the contract may simply refer to a programme, brochure or voucher which contains the necessary elements and then only highlight any subsequent changes. Equally, provided that there is a precise reference to the relevant page in the brochure where the name and address of the insurance company are detailed, the organiser or retailer is no longer bound to indicate them in the contract. In GERMANY, the organiser may also fulfil his duties by referring to the information contained in the brochure.²⁷⁵ Similar rules exist in DENMARK,²⁷⁶ where the information in brochures and other marketing material as well as the contractual confirmation constitute part of the contract.²⁷⁷ These exemptions seem to be problematic as the Directive does not provide for any such derogations. In HUNGARY, it is sufficient to refer to the brochure in the contract if such a brochure was prepared for the traveller. AUSTRIAN law states that, in the case of a booking made within 7 days of departure, a travel confirmation document with the obligatory elements only has to be provided if it is reasonable to expect this of the professional. The traveller, however, has to be informed about deadlines for lodging complaints for inadequate or non-performance and further details must be provided at the latest by the time of departure.²⁷⁸ SLOVAKIAN law rules that the description of the package may be replaced by the package reference number or other reference in the brochure if relevant and provided that the brochure has been handed over to the consumer. In SLOVENIA, if a travel itinerary with the necessary information is delivered before the travel confirmation, it is sufficient for the confirmation document simply to refer to the itinerary.²⁷⁹

e. Information requirements with regard to all terms of the contract

Art. 4(2)(b) of Directive 90/314 imposes on the member states the obligation to ensure that all contract terms are set out in writing or such other form as is comprehensible and accessible to the consumer. These terms must be communicated to the consumer before conclusion of the contract and he must be given a copy of these terms. It is clear from the wording (“all the

²⁷⁵ § 6(4) of the Regulation on duties to supply information in civil law.

²⁷⁶ § 6-8 of the Act 472/1993, Annex I and II of Regulation No. 776/1993.

²⁷⁷ § 5 subs. 2 of the Act 472/1993, Annex I no. 11 of Regulation No. 776/1993.

²⁷⁸ As laid down in § 31e(2) of the Consumer Protection Act.

²⁷⁹ Article 884(1), (3) of the Code of Obligations. For the relationship between the contract and travel confirmation, cf. Art. 885 et seq.

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terms of the contract”) that this obligation does not only refer to the standard terms and conditions, but includes all particulars of the contract. Most member states have transposed this provision.

POLAND, however, has not fulfilled its duty because, in the relevant Act, there is no provision regulating the communication of the terms before conclusion of the contract. Only the obligation to provide a copy of the written contract is regulated. SLOVENIAN law does not require the contract terms according to the Directive’s annex to be communicated to the traveller prior to the conclusion of the contract, since it states that the travel confirmation with this information shall be issued upon conclusion of the contract at the latest; otherwise, there must be a written contract containing all the mandatory components of the travel confirmation.

IRELAND transposed the relevant article almost literally. SWEDISH law substitutes the Directive’s term “in writing“ with the expression “in an appropriate matter”. CYPRUS added that the traveller must receive the copy in good time. MALTA has provided for an exemption where a consumer makes a proposal to the organiser or the retailer not more than fourteen days before the date of departure. DANISH law lists passports, visas and vaccinations as examples of the information required. In the UNITED KINGDOM, the obligation is deemed to be an implied condition with the effect that a failure to comply with it permits the consumer to terminate the contract.

Several countries have stipulated that the contract must be in writing (e.g. ITALY), going beyond the Directive’s provisions. In SPAIN, for example, any information and the contract itself must be provided in written form. The sanction for non-compliance with such formal requirements need not lead to the contract’s being declared null and void. In Spain, case law states that the absence of a contract in written form does not render the contract invalid if its existence can be proved in some other way. The Directive itself does not stipulate that the consequence of non-compliance with the formal requirement must necessarily be that the contract is null and void. Such a sanction may be laid down in national law, but other sanctions are possible as well. LUXEMBOURG has devised an intermediary solution. Violation of the relevant provisions leads to the contract’s being declared null and void, though the traveller is not entitled to lodge a claim.

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Some member states (e.g. BELGIUM, BULGARIA, FRANCE, HUNGARY,²⁸⁰ LATVIA, LITHUANIA, LUXEMBOURG) also omitted the alternative in the Directive of providing the contract in another form that is comprehensible and accessible to the consumer as per the Directive. In French law, the requirement for the contract to be a written document arises from other legal duties.²⁸¹ GREEK law likewise contains such a rule. There is some controversy over whether this is a mandatory condition for legal transactions which may lead to the contract's being declared null and void or not, in accordance with the legislator's intention to simply guarantee that information is provided. ITALY has an even stricter formal requirement because the contract must be in writing and a copy of the contract has to be signed or stamped by the organiser / retailer. In ROMANIA, the contract may also be presented in the form of a catalogue, folder or other written form.²⁸²

Several member states have made use of Art. 4(2)(c) and allow exemptions in the case of last-minute bookings. For instance, in the UNITED KINGDOM and CYPRUS, when the period between the booking and departure is so short that it is impracticable to provide written terms, it is not necessary to provide the essential terms of the contract. In SLOVAKIA, confirmation with the relevant information also has to be provided up to 7 days before the beginning of the package. Otherwise, it must be provided upon conclusion of the contract. AUSTRIAN law prefers not to apply the rules when the booking is made less than 7 days before departure. This is because it would be unreasonable to do so and the information is of little importance given the nature of the trip. In that case, the consumer must be given notice only at the time of departure. Under GERMAN law, the organiser is also disavowed of any duty to provide a written contract and to hand it to the consumer if the booking is made less than 7 working days before departure. Nevertheless, in such an instance, some core information must be given to the consumer by departure at the latest.

²⁸⁰ § 2(4) of the Government Decree No. 214/1996 rules that the contract must be in writing.

²⁸¹ Cf. Art. 98 of the Decree No. 94-490 of 17 June 1994. This principle was reinforced in a CA Paris ruling that the traveller cannot be asked to pay for services provided in the agreement if there is no written contract (Judgment of 29 June 2001, *Petites affiches* of 1 July 2003).

²⁸² Article 12(4) of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

f. General prohibition of misleading information

Art. 3(1) of Directive 90/314 states that, as a rule, “any descriptive matter concerning a package and supplied by the organiser or the retailer to the consumer, the price of the package and other conditions applying to the contract must not contain any misleading information”.

It should be noted that such an unspecified ban on misleading information could be considered superfluous because the general rules on unfair commercial practices in member states should prohibit misleading practices anyway. There are manifold general rules outlawing misleading advertising and other misleading commercial practices in EC law. As such, the law would not change if this Directive provision were omitted. Thus, the grouping of ‘no legal definition’ in this regard does not necessarily mean that the provision has not been (correctly) transposed.

Nevertheless, several member states did explicitly transpose this provision. In ITALY, the provision of any misleading information about services offered, the price and other elements of the contract is always prohibited, irrespective of the method used to communicate such information to the consumer.²⁸³ LATVIAN, as well as LUXEMBOURG law, only stipulate that the information given must be accurate, complete, clear and precise. The same can be found in SLOVAKIAN and CZECH law where there is a requirement that the organiser provide the consumer with exact, clear, correct and truthful information before the contract is concluded (in the brochure as well). SWEDISH law is less detailed than the Directive’s text as the information must purely be clear and understandable. Several countries (e.g. AUSTRIA, DENMARK, FINLAND,²⁸⁴ GERMANY,²⁸⁵ the NETHERLANDS, SPAIN) have not specifically transposed this provision, but provide for a general rule in their contract law,

²⁸³ Article 87(4) of the Consumer Code.

²⁸⁴ The general clause in the Consumer Protection Act (*lex generalis*) applies.

²⁸⁵ Especially unfair trade practices law.

Table: No misleading information

Substantively as per the Directive	BE, BG, CY, CZ, EL, HU, IE, IT, LT, MT, ²⁸⁶ PL, PT, RO, UK (14)
Variations	EE, LU, LV, SE, SK (5)
Not specifically transposed	AT, DE, DK, ES, FI, FR, NL, SL (8)

g. Sanctions for non-compliance with information duties

Directive 90/314 does not contain many provisions on sanctions for non-compliance with the various information duties stipulated in Art. 3 and Art. 4(1) and (2). The only explicit provision can be found at the end of Art. 3(2). This states that the particulars contained in the brochure are binding on the organiser or retailer, unless changes have been clearly communicated to the consumer or agreed between the parties to the contract. However, it could be argued that this provision just states the obvious. If a brochure has been made available to the consumer and subsequently a package travel contract is concluded on the basis of this brochure, the general rules on the conclusion and interpretation of a contract should already mean that the particulars contained in the brochure become part of the contract. Thus, the effect of this provision is rather limited. It is a mere reminder that the rules of general contract law provide for sanctions in many cases of non-compliance with information obligations.

A further sanction provided for in EC law follows from the Injunctions Directive (98/27/EC). Directive 90/314 is listed in the annex to this Directive. Therefore, consumer protection instruments in national laws transposing the Injunctions Directive apply to the law on package travel. This means that qualified entities ensure that consumers' collective interests are also met by the law on package travel.

Finally, the general rule of "effet utile" obliges member states to provide for effective sanctions. In this respect, member states have considerable leeway to determine which sanctions they provide for. Besides private law sanctions, such as remedies covered in the

²⁸⁶ In the case of any infringement of this provision, the organiser or retailer is liable to compensate the consumer for any loss due to false or misleading information and is obliged to pay a (criminal) fine, cf. Art. 4.1, 4.2 and 16.1 of the Package Travel Regulations.

contract, member states may equally lay down various public law sanctions. Examples are fines or other administrative sanctions, which are found, for instance, in AUSTRIA, BELGIUM, CYPRUS, FRANCE, GREECE, SPAIN and SWEDEN. In many countries (GREECE, HUNGARY and MALTA, *inter alia*), the competent authorities can also revoke an operator's licence to run a travel agency. On the other hand, under CZECH law for example, there are no special sanctions, though the general system governing improper performance and damages applies.

The broad variety of sanctions provided for by member states does not seem to constitute a barrier to trade. The differences might even be regarded as having a positive effect on organisers' and retailers' compliance with information duties in cross-border cases, because such differences make it more difficult to calculate the costs of infringements committed abroad. Therefore, it should suffice to tackle the more substantial differences in the material information obligations applicable in member states. This would indeed facilitate compliance when packages are marketed and performed under the laws of different member states.

According to Art. 31 of the ROMANIAN Government Ordinance No. 107/1999, non-compliance with the information duty represents a contravention and is subject to fines from 400 Lei to 1.000 Lei or penal crime if the conditions applicable are met.

Nevertheless, EC law must also ensure that member states provide for effective sanctions. Although, under the principle of "effet utile", member states already have such a duty, consideration might be given to inserting a general reminder into the Directive, which could follow the model of Art. 11(1) of Directive 97/7.²⁸⁷

2. Restrictions on price revision

Art. 4(4) of Directive 90/314 regulates the circumstances under which it is permissible to agree a price revision in the package travel contract. The prices laid down in the contract can only be subject to revision if the contract explicitly provides for the possibility of upward or downward revision and states precisely how the revised price is to be calculated. Besides,

²⁸⁷ "Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive in the interests of consumers."

only variations in transport costs, fees, taxes or fees chargeable for certain services and the exchange rates can be taken into account.

a. Legislative transposition technique

The transposition of the rules in Art. 4(4) of Directive 90/314 into national law differs throughout the member states.

Table: Transposition laws for Art. 4(4)

Special act on package travel	BE, ²⁸⁸ BG, ²⁸⁹ CY, ²⁹⁰ DK, ²⁹¹ EL, ²⁹² ES, ²⁹³ FI, ²⁹⁴ FR, ²⁹⁵ IE, ²⁹⁶ LU, ²⁹⁷ MT, ²⁹⁸ PL, ²⁹⁹ PT, RO, SE, ³⁰⁰ UK ³⁰¹ (16)	
General regulation	Civil Code	CZ, ³⁰² DE, ³⁰³ HU, ³⁰⁴ LT, ³⁰⁵ NL, ³⁰⁶ SK ³⁰⁷ (6)
	Consumer Code	AT, ³⁰⁸ IT ³⁰⁹ (2)
	Law of Obligations	EE, ³¹⁰ SL ³¹¹ (2)
Government decree	HU, ³¹² LV ³¹³ (2)	

²⁸⁸ Article 11 of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

²⁸⁹ Article 34 para 1 no. 1-3 of the Law on Tourism.

²⁹⁰ Article 11(1)-(3) of the Package Travel, Holidays and Tours Law of 1998.

²⁹¹ Article 13 of the Act No. 472/1993 on package travel.

²⁹² Article 4(4) of the Decree No. 339/96 on package travel.

²⁹³ Article 7(1)-(3) of the Law 21/1995 regulating package travel.

²⁹⁴ Article 14 of the Package Travel Act of 28 November 1994/1079.

²⁹⁵ Article L 211-13 of the Tourism Code, Article 99 of Decree No. 94-490.

²⁹⁶ Article 17 of the Package Holidays and Travel Trade Act, 1995.

²⁹⁷ Article 13 of the Package Travel Act.

²⁹⁸ Article 11(1)-(2) of the Package Travel, Package Holidays and Package Tours Regulations, 2000.

²⁹⁹ Article 17 sec. (1) - sec. (2) of the Act on Tourist Services.

³⁰⁰ Article 11 of the Package Tours Act 1992:1672.

³⁰¹ Regulation 11 of the Package Travel, Package Holidays and Package Tour Regulations 1992.

³⁰² CC Art. 852c.

³⁰³ CC § 651a(4).

³⁰⁴ § 415-416 of the CC constitute general provisions on travel contracts.

³⁰⁵ CC Art. 6:752(3).

³⁰⁶ CC Art. 7:506.

³⁰⁷ CC § 741c(1).

³⁰⁸ § 31c(1) of the Consumer Protection Act.

³⁰⁹ Article 90(1), (4) of the Consumer Code.

³¹⁰ § 871(1)-(3) of the Law of Obligations.

³¹¹ Article 900 of the Code of Obligations.

b. Transposition in particular

aa. Increase “and” decrease in price

Art. 4(4)(a) of the Directive provides for a revision of the prices laid down in the package travel contract. According to the wording, the prices laid down in the contract shall not be subject to revision unless the contract explicitly provides for the possibility of upward or downward revision. While all member states restrict an increase in the price, only the transposition laws of AUSTRIA, BELGIUM, BULGARIA, CYPRUS, DENMARK, FINLAND, FRANCE, GREECE, IRELAND, ITALY, LATVIA, LUXEMBOURG, MALTA, PORTUGAL, SLOVENIA,³¹⁴ SPAIN, SWEDEN and the UNITED KINGDOM contain provisions governing the possibility to decrease prices where a term on downward revision is laid down in the package travel contract. In contrast, the national laws of the CZECH REPUBLIC,³¹⁵ ESTONIA,³¹⁶ GERMANY,³¹⁷ HUNGARY,³¹⁸ LITHUANIA,³¹⁹ the NETHERLANDS,³²⁰ POLAND³²¹ and SLOVAKIA³²² cover only price increases. Moreover, Hungarian law only allows a price increase if a term governing a price increase is part of the package travel contract. On the basis of the wording of the Directive, it is unclear whether transposition dealing only with the possibility of a price increase is an infringement of EC law. Art. 4(4) requires explicit provision in the contract for the possibility of upward “or” downward revision. There is good reason to assume that the “or” must be read as an “and” because otherwise it makes no sense that both upward and downward revisions are explicitly mentioned.³²³ In this case, transposition in these countries is not in line with EC law. This should be clarified when reviewing the Directive.

³¹² Article 8 of the Government Decree No. 214/1996.

³¹³ Article 10, 11 of Cabinet Regulation No. 163.

³¹⁴ Slovenian law similarly allows for an increase or decrease in the price if the changes take place after conclusion of the contract and the calculation method was set out in the travel confirmation.

³¹⁵ CC Art. 852c.

³¹⁶ Article 871(1) of the Law of Obligations.

³¹⁷ CC § 651a(4).

³¹⁸ Article 8(1) of the Government Decree No. 214/1996.

³¹⁹ CC Art. 6:752(3).

³²⁰ CC Art. 7:505(3).

³²¹ Article 17 of the Act on Tourist Services.

³²² CC § 741c(1).

³²³ *Howells/Wilhelmsson*, EC Consumer Law, 238 (see also note 35).

Table: Increase and decrease in price

Regulations for price increase and decrease	AT, BE, BG, CY, DK, EL, ES, FI, FR, IE, IT, LU, LV, MT, PT, RO ³²⁴ , SE, SL, UK (<i>19</i>)
Only increase covered	CZ, DE, EE, HU, LT, NL, PL, SK (<i>8</i>)

bb. Conditions for price revision

Art. 4(4)(a) of the Directive states that a price revision is possible only for variations in transportation costs (including the costs of fuel), dues, taxes or fees chargeable for certain services (such as landing taxes or embarkation or disembarkation fees at ports) and the exchange rates applied to the particular package.

Almost all member states transposed these provisions literally or almost literally. In DUTCH law, the transportation costs, such as fuel, tax and exchange rates may justify a price increase.³²⁵ Only the FINNISH legislator used a significantly broader form of words for the transposition of Art. 4(4)(a) 2nd indent. A price revision is possible if “changes in transport costs beyond the tour organiser’s control or which he could not have taken into account when the contract was concluded” have to be offset.³²⁶ A literal interpretation of the transposition laws in the CZECH REPUBLIC and SLOVAKIA indicate a narrower form of words than in EC law. In the Czech Republic,³²⁷ an increase in the package price is possible only as a result of an increase in “payments connected with transportation, e.g. airport and port taxes, included in the price of the package”. Furthermore, a price increase due to variations in the exchange rate of the Czech crown is solely possible if the exchange rate increases by more than 10 % on average.³²⁸ No alterations are possible less than 21 days before the package begins. Additionally, an agreement between the parties may state that the travel agency is entitled to increase the package price unilaterally if the revision method is precisely set out.³²⁹ A similar provision can be found in the Slovakian transposition law, which states that a change in the exchange rate of the Slovak crown can only be taken into account if the exchange rate

³²⁴ Article 14(1) of the Government Ordinance 107/1999 on package travel .

³²⁵ CC Art. 7:505(3).

³²⁶ Article 14 of the Package Travel Act.

³²⁷ CC § 852c(2).

³²⁸ CC § 852c(2)(c).

³²⁹ CC § 852c(1).

increases by more than 5 % on average.³³⁰ As a restriction, this increase in the exchange rate must equally be registered at least 21 days before departure. The customer has to be notified in writing about the price increase at least 21 days before departure. Otherwise, the travel bureau does not have any right to claim the difference in price. In SLOVENIA, only changes in the currency exchange rate or changes in the carriers' tariffs affecting the price of the tour are mentioned.

In ITALY, alongside the possibility of a price revision, detailed calculation methods for the different variations mentioned in the Directive must be provided.³³¹

Table: Conditions for price revision

Similar to the Directive	AT, BE, BG ³³² , CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO ³³³ , SE, SL, UK (25)
Deviations	CZ, SK (2)

cc. Period

According to Art. 4(4)(b) of the Directive, the price stated in the contract must not be increased less than 20 days prior to departure. While most member states transposed this 20-day period,³³⁴ some national laws provide for a longer period. Whereas the CZECH³³⁵ legislator established a period of 21 days, the transposition laws in FRANCE³³⁶ and the UNITED KINGDOM³³⁷ lay down a period of 30 days.

³³⁰ CC § 741c(2)(c).

³³¹ Article 90(1) of the Consumer Code.

³³² Article 34(1) of the Law on Tourism.

³³³ Article 14(1) of the Government Ordinance 107/1999 on package travel.

³³⁴ In Romania: Art. 14(2) of the Government Ordinance 107/1999 on package travel.

³³⁵ CC Art. 852c(2).

³³⁶ Article L 211-13 of the Tourism Code.

³³⁷ Regulation 11(3) of the Package Travel, Package Holidays and Package Tour Regulations 1992.

dd. Other deviations

Furthermore, the transposition laws in CYPRUS³³⁸ and the UNITED KINGDOM³³⁹ provide for an additional restriction on any price revision. According to the laws in these member states, there may be no price increase for an individual consumer liable under the package travel contract where such an increase would be less than 2% or greater than the percentage laid down in the package travel contract. ITALIAN law stipulates that a price increase may never exceed 10% of the original price.³⁴⁰ In SLOVENIA and ROMANIA³⁴¹, if the increase in the agreed price exceeds 10%, the traveller may withdraw from the contract without being obliged to reimburse any damages and retaining the right to a refund of all payments made. BULGARIAN law obliges the organiser or retailer, additionally, to inform the consumer immediately about all substantial changes of the contractual terms to which the increase of the original price by more than 5 % is relevant.³⁴²

3. Consumer Rights

a. Right to transfer the booking

Art. 4(3) of Directive 90/314 entitles the consumer to transfer his booking if he is prevented from proceeding with the package. Member states again chose different techniques to transpose this provision, as the following table shows.

³³⁸ Article 11(3) of the Package Travel, Holidays and Tours Law.

³³⁹ Regulation 11(3)(ii) of the Package Travel, Package Holidays and Package Tour Regulations 1992.

³⁴⁰ Article 90(2) of the Consumer Code.

³⁴¹ Article 14(3) of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

³⁴² Article 35 of the Law on Tourism.

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Table: Transposition method

Special act on package travel	BE, ³⁴³ BG, ³⁴⁴ CY, ³⁴⁵ DK, ³⁴⁶ EL, ³⁴⁷ ES, ³⁴⁸ FI, ³⁴⁹ FR, ³⁵⁰ IE, ³⁵¹ LU, ³⁵² MT, ³⁵³ PL, ³⁵⁴ PT, RO, SE, ³⁵⁵ UK ³⁵⁶ (16)	
General regulation	Civil Code	CZ, ³⁵⁷ DE, ³⁵⁸ HU, ³⁵⁹ LT, ³⁶⁰ NL, ³⁶¹ SK ³⁶² (6)
	Consumer Code	AT, ³⁶³ IT ³⁶⁴ (2)
	Law of Obligations	EE, ³⁶⁵ SL ³⁶⁶ (2)
Government decree	HU, ³⁶⁷ LV ³⁶⁸ (2)	

With regard to the content of national transposition laws, the following aspects may be highlighted.

aa. Party to which notice must be given

Art. 4(3) of the Directive stipulates that notice of the transfer has to be given to the package organiser or retailer. The national laws in BELGIUM, BULGARIA³⁶⁹, DENMARK, ESTONIA,

³⁴³ Article 12 of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

³⁴⁴ Article 37 of the Law on Tourism.

³⁴⁵ Article 10 sec. (1)-(2) of the Package Travel, Holidays and Tours Law of 1998.

³⁴⁶ Article 12 of the Act No. 472/1993 on Package Travel.

³⁴⁷ Article 4(3) of the Decree No. 339/96 on package travel.

³⁴⁸ Article 5 sec. (1)-(3) of the Law No. 21/1995 regulating package travel.

³⁴⁹ Article 10 of the Package Travel Act of 28 November 1994/1079.

³⁵⁰ Article L 211-12 of the Tourism Code, Art. 99 of Decree No. 94-490.

³⁵¹ Article 16 sec. (1)-(2) of the Package Holidays and Travel Trade Act, 1995.

³⁵² Article 12 of the Package Travel Act.

³⁵³ Article 10(1)-(2) of the Package Travel, Package Holidays and Package Tours Regulations, 2000.

³⁵⁴ Article 16(1)-(3) of the Act on Tourist Services.

³⁵⁵ Article 9, Art. 10 of the Package Tours Act 1992:1672.

³⁵⁶ Regulation 10 of the Package Travel, Package Holidays and Package Tour Regulations 1992.

³⁵⁷ CC Art. 852b.

³⁵⁸ CC § 651b.

³⁵⁹ CC §§ 415-416.

³⁶⁰ CC Art. 6.753(1)-(2).

³⁶¹ CC Art. 7:506 contains a special rule for travel agreements, whereas Book 6 contains a general rule.

³⁶² CC § 741f(1), § 741d(2).

³⁶³ § 31c(3) of the Consumer Protection Act.

³⁶⁴ Article 89 sec. (1)-(2) of the Consumer Code.

³⁶⁵ § 873 sec. (1)-(2) of the Law of Obligations.

³⁶⁶ Article 899 of the Code of Obligations.

³⁶⁷ Government Decree No. 214/1996.

³⁶⁸ Article 9 of Cabinet Regulation No 163.

GREECE, IRELAND, ITALY, MALTA,³⁷⁰ SPAIN and SWEDEN stipulate that notice has to be given to the organiser or the retailer. According to the national laws of CYPRUS³⁷¹ and the UNITED KINGDOM,³⁷² notice to “the other party” is required. Other member states’ laws make a choice, indicating whether notice has to be given to the organiser or the retailer. In AUSTRIA,³⁷³ GERMANY,³⁷⁴ FINLAND,³⁷⁵ HUNGARY,³⁷⁶ LITHUANIA,³⁷⁷ the NETHERLANDS³⁷⁸ and POLAND,³⁷⁹ notice has to be given to the package organiser. On the other hand, FRANCE,³⁸⁰ LUXEMBOURG³⁸¹ and PORTUGAL³⁸² require notice to be given to the retailer. In SLOVAKIA,³⁸³ notice has to be given to the travel bureau and, in the CZECH REPUBLIC,³⁸⁴ to the travel agency. SLOVENIAN³⁸⁵ law does not contain any provision stating explicitly that notice is required.

Table: Party to which notice must be given

Organiser or retailer	BE, BG, DK, EE, EL, ES, IE, IT, MT, SE (<i>10</i>)
The other party	CY, UK (<i>2</i>)
Organiser	AT, CZ, DE, FI, LT, NL, PL (<i>7</i>)
Retailer	FR, LU, PT (<i>3</i>)
Travel agency	CZ, RO ³⁸⁶ (<i>2</i>)
Travel bureau	SK (<i>1</i>)
Travel company	HU (<i>1</i>)
No specific provision on notice	SL (<i>1</i>)

³⁶⁹ Article 37(1) of the Law on Tourism.

³⁷⁰ Regulation 10.1 of the Package Travel Regulations states that notice has to be given to the organiser or retailer acting on the instructions of the organiser.

³⁷¹ Article 10(1) of the Package Travel, Holidays and Tours Law.

³⁷² Regulation 10 sec. 1 of the Package Travel, Package Holidays and Package Tour Regulations 1992.

³⁷³ § 31c(3) of the Consumer Protection Act.

³⁷⁴ CC § 651b.

³⁷⁵ Article 10 of the Package Travel Act of 28 November 1994/1079.

³⁷⁶ Article 9(1) of the Government Decree No. 214/1996.

³⁷⁷ CC Art. 6.753(2) .

³⁷⁸ CC, Art. 7:506.

³⁷⁹ Article 16(2) of the Act on Tourist Services.

³⁸⁰ Article 99 of the Decree No. 94-490.

³⁸¹ Article 12 of the Package Travel Act.

³⁸² Article 24 (1) of the Decree-Law 198/93.

³⁸³ CC § 741f(1).

³⁸⁴ CC Art. 852b (f).

³⁸⁵ Article 899 of the Code of Obligations.

³⁸⁶ Being the ‘tour operator travel agency’ or the ‘retailer travel agency’, Art. 2 no. 3 lit. a, b of the Government Ordinance 107/1999 as approved and amended by Law 631 of 16 November 2001.

Transposition not entirely clear	LV (1)
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The Directive is unclear at this point because the wording in Art. 4(3) (“having given the organiser ‘or’ the retailer reasonable notice”) can have two different meanings with regard to the addressee of the notice:

(1) Member states are free to decide to whom the consumer must address the notice – either the organiser or the retailer, or both. If the consumer addresses the notice to the wrong person, then no notice is deemed to have been given (unless the wrong person is regarded as an agent of the other person).

(2) The consumer may give notice to either the organiser or the retailer, and, in either case, has complied with the notice requirement.

It is obvious that the latter interpretation would be more consumer-friendly. If this interpretation is correct, several member states are in breach of the Directive. The question should therefore be clarified in the course of the review.

bb. Timeframe for giving notice

Art. 4(3) of the Directive states that the consumer has to give the organiser or the retailer “reasonable notice” of his intention to transfer the booking. The national laws in AUSTRIA, BELGIUM, DENMARK, ESTONIA, GERMANY, IRELAND, LUXEMBOURG, MALTA, the NETHERLANDS, SWEDEN and the UNITED KINGDOM do not lay down a specific period. They merely require that notice be given within a reasonable time before departure and some even allow notice to be given by departure (e.g. German law). Dutch law clarifies that notice given 7 days before departure is to be considered early enough. BULGARIA, the CZECH REPUBLIC, LATVIA, POLAND and SLOVAKIA³⁸⁷ stipulate that notice has to be given within the period agreed in the package travel contract. In CYPRUS, the transposition law stipulates that notice has to be sent within the period specified in the contract or in the advertising material or, where no such period is specified in either of the documents, within a reasonable time before departure.

³⁸⁷ The Package travel contract has to include a notice period if a substitute takes a package.

In contrast, the transposition laws in FRANCE, GREECE and PORTUGAL set a fixed period of time, whereby the length of the period may depend on the type of the package. In France,³⁸⁸ the normal period covers 7 days. In the case of a cruise, this period is extended to 15 days. In Greece,³⁸⁹ the transferor has to give notice 5 working days before departure. In the case of sea journeys, the period for giving notice increases to 10 days. Under Portuguese³⁹⁰ law, information has to be given at least 7 days before departure. If the trip involves long-haul flights and sea cruises, the period is extended to 15 days. Other member states' legislators provided for a specific period in their transposition laws without drawing any such distinction. In FINLAND,³⁹¹ notice of the transfer has to be given no later than 48 hours before departure. In HUNGARY,³⁹² notice has to be given without delay as soon as there is an intention to transfer the contractual rights. In ITALY,³⁹³ this period is 4 working days. SPANISH³⁹⁴ law sets a period of 15 days before the start of the package, unless the parties have agreed to a shorter period in the contract.

In LITHUANIA, where no specific period is set, the tourist is entitled to transfer the trip to a third person who must agree to all the terms of the contract.³⁹⁵ As already mentioned above, under SLOVENIAN law, no notice is required.

The meaning of "reasonable notice" is unclear. In the course of a review of the Directive, it could be clarified that it is really a reasonable period and not reasonable notice that is meant, and this period could perhaps be specified. It should also be decided whether the fixed periods provided for by member states are in line with EC law. The longer periods might plausibly deprive consumers of their right to transfer the booking.

³⁸⁸ Article 99 of Decree 94-490.

³⁸⁹ Article 4(3) of the Decree 339/96 on package travel.

³⁹⁰ Article 24 sec. (1)-(2) of the Decree-Law 198/93.

³⁹¹ Article 10 of the Package Travel Act of 28 November 1994/1079.

³⁹² Article 9(1) of the Government Decree 214/1996.

³⁹³ Article 89(1) of the Consumer Code.

³⁹⁴ Article 5(2) of the Law 21/1995 regulating package travel.

³⁹⁵ CC Art. 6.753(1).

Table: Timeframe for giving notice

(Within a reasonable time) Before departure	AT, BE, DE, DK, EE, IE, LU, MT, NL, RO, SE, UK (12)	
Other solutions	Specific period before departure	ES, FI (48h), HU (without delay), IT (4 working days) (4)
	Differentiation	CY, EL, FR, PT (4)
	Contractual agreement	BG, CZ, ES, LV, PL, SK (6)
	No specific period	LT (1)
No notice required	SL (1)	

cc. Form for giving notice

Art. 4(3) of the Directive does not require the transferor's notice to appear in a specific form. In AUSTRIA, BELGIUM, CYPRUS, DENMARK, ESTONIA, FINLAND, GERMANY, GREECE, HUNGARY, IRELAND, LATVIA, LUXEMBOURG, MALTA, POLAND, SWEDEN and the UNITED KINGDOM, the transferor does not have to meet any formal requirement for his notice. As already mentioned, SLOVENIAN law does not require notice in order to transfer the rights of the package. In contrast, the transposition laws in the CZECH REPUBLIC, ITALY,³⁹⁶ LITHUANIA,³⁹⁷ the NETHERLANDS,³⁹⁸ PORTUGAL,³⁹⁹ SLOVAKIA⁴⁰⁰ and SPAIN⁴⁰¹ stipulate that notice has to be given in writing. FRENCH⁴⁰² law even requires a letter sent by recorded delivery. It is questionable whether these formal requirements are in line with the Directive. In the course of the review, it could be clarified that the consumer does not need to meet any formal requirement for the notice.

³⁹⁶ Article 90(1) of the Consumer Code.

³⁹⁷ CC, Art. 6:753(2).

³⁹⁸ CC, Art. 7:506(2).

³⁹⁹ Article 24(1) of the Decree-Law 198/93.

⁴⁰⁰ CC, § 741f(1).

⁴⁰¹ Article 5(2) of the Law 21/1995 regulating package travel.

⁴⁰² Article 99 of the Decree No. 94-490.

Table: Form for notice given by traveller

No specific form	AT, BE, BG, CY, DE, DK, EE, FI, EL, HU, IE, LU, LV, MT, PL, RO, SE, UK (18)
Written form	CZ, ES, IT, LT, NL, PT, SK (7)
Recorded delivery	FR (1)
No notice required	SL (1)

dd. Liability

According to Art. 4(3) of the Directive, the transferor of the package and the transferee shall be jointly and severally liable to the organiser or retailer who is party to the contract for the balance due and for any additional costs arising from the transfer of rights. Most member states transposed this provision almost literally into their national laws (AUSTRIA, BELGIUM, BULGARIA, CYPRUS, DENMARK, ESTONIA, FINLAND, FRANCE, GERMANY, GREECE, IRELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MALTA, the NETHERLANDS, POLAND, PORTUGAL, SLOVAKIA, SPAIN, SWEDEN and the UNITED KINGDOM). Similarly, under HUNGARIAN law,⁴⁰³ the transferor and the transferee are jointly liable for contractual obligations and additional costs arising in the period before the transfer. In SLOVENIA,⁴⁰⁴ it seems that only the transferor is liable.

Table: Liability of transferor and transferee

Joint and several liability	AT, BE, BG, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, UK (25)
Deviations	SL (transferor) (1)
Transposition not entirely clear	CZ (1)

⁴⁰³ Article 9(1) of the Government Decree 214/1996.

⁴⁰⁴ Article 899 of the Code of Obligations.

b. Consumer rights in the case of significant alterations

aa. Legal environment for consumer rights granted under the Directive

Directive 90/314 does not provide for a general rule governing cancellation of the booking by the consumer. The Directive only deals with consumer rights in the case of a significant alteration to the essential terms by the organiser (Art. 4(5)). For the sake of clarification, it should be noted that the rights granted to the consumer under the Directive are embedded in other rules of national law concerning the consequences in the event of cancellation by the consumer. As such, a consumer may have different rights with regard to cancelling the booking. Firstly, the applicable national law may allow the consumer to cancel the contract without any reason. This is the case in GERMANY, HUNGARY, SPAIN and many other member states. It goes without saying that, in such a case, the consumer is liable to compensate the organiser. National laws may stipulate rules for the calculation of compensation if the consumer cancels without reason.⁴⁰⁵ For instance, recent Spanish case law had to deal with this very question,⁴⁰⁶ i.e. of how to calculate a different percentage of compensation depending on the timing of cancellation if a consumer cancels without due reason.⁴⁰⁷ In Hungarian law, compensation must not exceed the price paid. The right of cancellation can be exercised for reasons other than price increase or alteration to the terms or to the programme.

There is a second type of cancellation right under national laws, allowing the consumer to terminate the contract when there is a good reason even if this reason is beyond the organiser's control. According to FINNISH law, for example, the consumer may cancel the contract if he has sufficient reasons for not participating in a trip to a dangerous region – even if the organiser is not going to cancel it.⁴⁰⁸ SPANISH law sometimes even excludes compensation if the consumer cancels for compelling reasons.⁴⁰⁹ GERMAN law allows the consumer to cancel the booking if the trip is endangered by unforeseen *force majeure*. In this case, the consumer is partly freed from the obligation to pay the price. Additional costs must be partially shared

⁴⁰⁵ Spain: Art. 9(4) of Law 21/1995 regulating package travel; Hungary: Art. 11(3) Government Decree No. 214/1996.

⁴⁰⁶ A.P. Jaén judgment of 4 March 2002; A.P. Pontevedra judgment of 29 October 2001.

⁴⁰⁷ Cf. Art. 9(4) of Law 21/1995 regulating package travel.

⁴⁰⁸ § 15(1) of the Package Travel Act.

⁴⁰⁹ A.P. Malaga judgment of 29 September 2004: consumer depression; A.P. Salamanca judgment of 7 September 2001: NATO bombing in Yugoslavia.

by the parties, i.e. they are to be borne partially by the consumer (e.g. cost for return travel).⁴¹⁰

According to the ROMANIAN Government Ordinance No. 107/1999 the tourist may cancel the contract at any time. In case the tourist cancels the contract for reasons of his own fault, the tourist shall pay damages to the tourism agency for the prejudice created as a result of the cancellation. The damages might rise to the maximum price of the trip.

A third type of cancellation right – very probably – exists in all national laws when the organiser is in (usually severe) breach of contract. This case is partially regulated by Art. 5 of the Directive, so will not be dealt with here in the context of Art. 4.

bb. Consequences of an alteration to the terms by the organiser

Art. 4(5) sent. 1 of Directive 90/314 sets out the organiser's obligations in the case of significant alterations to the essential terms and the rights of the consumer. The organiser must notify the consumer as quickly as possible about any important change in order to enable the consumer to either cancel⁴¹¹ the contract without penalty (1st indent) or to accept a rider to the contract specifying the alterations made and their impact on the price (2nd indent). The consumer may therefore choose between these two possibilities. Should he opt to cancel, Art. 4(6)(a) and (b) of the Directive again offers two possibilities for the consumer: he may either take a substitute package of equivalent or higher quality or be refunded with respect to all sums paid under the contract. In this case, the consumer may be compensated according to the applicable law of the relevant Member State, unless the trip is cancelled due to an insufficient number of participants or *force majeure* (Art. 4(6)(b) no. i and ii).

With regard to the terms used, the Package Travel Directive consistently uses “withdrawal” when referring to the consumer’s right to terminate the contract and “cancellation” when the organiser terminates. Nevertheless, consideration should be given to avoiding the notion of “withdrawal” in this context, because this may be confused with the very different ‘cooling

⁴¹⁰ CC § 651j.

⁴¹¹ Although Directive 90/314 uses the term “withdrawal”, “cancellation” is used here instead in order to avoid confusion with the withdrawal rights granted in Directives 85/577, 97/7 and 94/47.

off periods' provided for in other Directives, which are commonly known as "withdrawal rights". As such, in this study, "withdrawal" is only used for cooling-off periods, while "cancellation" is used for both termination of the contract by the consumer and termination of the contract by the organiser. In the German version of the Directive, this linguistic problem does not occur.

The vast majority of member states have transposed the provisions in Art. 4(5) and (6) by closely following the system in the Package Travel Directive. LITHUANIA is the only country not to have explicitly transposed these provisions; rather, it simply grants the tour organiser a right to waive the contract for compelling reasons, though he is still obliged to inform the tourist of this decision.⁴¹²

(1) Requirements for the right of cancellation

(a) Significant alteration to the essential terms

The Directive requires a significant alteration to the essential terms by the organiser and gives as an example a price increase. Member states have transposed this prerequisite with only slight variations. For instance, GERMAN law regards any price increase of more than 5 % as a significant alteration to the essential terms.⁴¹³ HUNGARIAN law sets a threshold of 10 %. It cannot be argued that such variations, which aim at clarifying whether an alteration is "significant", constitute a shortcoming in transposition. Further variations are displayed in the following table.

Table: Alteration to terms

Significant alteration to the essential terms	AT, BE, BG, CY, DE, DK, ⁴¹⁴ EE, EL, ⁴¹⁵ ES, FI, FR, ⁴¹⁶ HU, IE, LV, MT, NL, SL, ⁴¹⁷ UK (18)
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⁴¹² CC Art. 6.751(1).

⁴¹³ CC § 651a(5).

⁴¹⁴ § 16 of the Act 472/1993 refers to an 'anticipated significant breach of contract'.

⁴¹⁵ The only regulatory gap in the Directive commented on in Greek legal literature is that no rules exist where the consumer is compelled to cancel the trip after conclusion of the contract, but before the beginning of the trip. In Greek law, those who identify the travel contract as a service contract apply CC Art. 700, which stipulates that the traveller may cancel the contract at any time, though he remains obliged to pay the agreed price, minus the amount saved as a result of non-performance of the contract.

⁴¹⁶ Article 101 of the Decree No. 94-490.

Alteration to the essential terms	RO, SK (2)
Significant alteration to any term	IT (1)
Alteration to essential terms for reasons beyond the organiser's control	PL (1)
Impossible to perform an essential term due to incidents beyond the organiser's control	CZ, ⁴¹⁸ FR, ⁴¹⁹ LU, PT (4)
Impossible to fulfil the contractual obligations	SE (1)
Not explicitly transposed	LT (1)

(b) Obligation to notify the consumer

Art. 4(5) of the Directive places obligations on the ‘organiser’ as the party who, where essential terms are notified, must notify the consumer as quickly as possible.

In the transposition laws, variations in the wording exist: e.g. FRANCE (seller), the CZECH REPUBLIC (travel agency), ITALY (organiser and retailer), LATVIA (undertaking), LUXEMBOURG (travel agent), PORTUGAL (travel agency) and SLOVAKIA (travel bureau). Although in some cases not very clear, such a choice of wording leads to the conclusion that both the organiser and the retailer are obliged to inform the consumer. If this is correct, the consumer's position is strengthened in comparison with the Directive, which places obligations only on the organiser. SLOVENIAN law does not contain any specific provision, but only a general provision stipulating that the organiser must provide the traveller with the services described in the contract, as well as a confirmation or travel itinerary, and act in accordance with the traveller's rights and best interests.

There is another feature particular to CZECH law. There is no obligation specified, but only a provision stipulating that the travel agency may suggest a contractual change without any time limit.⁴²⁰

⁴¹⁷ Article 903 of the Code of Obligations refers to ‘significant changes in the travel itinerary’.

⁴¹⁸ CC sec. 852e(1) states that, as a result of reasons beyond the organiser's control, the terms of the travel contract may be changed before departure if necessary.

⁴¹⁹ Article L 211-14 of the Tourism Code.

⁴²⁰ CC sec. 852e(1).

Table: Party obliged to inform the consumer about the need for alteration

As per the Directive	AT, BE, BG, CY, DE, DK, EE, EL, ES, FI, HU, IE, LV, MT, NL, PL, RO, SE, UK (19)
Variations	CZ, FR, IT, LU, PT, SK (6)
Not explicitly transposed	LT, SL (2)

Moreover, the organiser must notify the consumer “as quickly as possible” in order to enable him to take appropriate decisions. SLOVENIA has not transposed this notification duty for the organiser at all. FRANCE⁴²¹ and ITALY, on the other hand, go beyond the Directive's requirements by demanding that the consumer receives written notification from the organiser. As to the timeframe for giving notice, the majority of member states have adopted the same formulation as the Directive. Whereas LUXEMBOURG grants the organiser a 3-day period for fulfilling his obligation, CZECH and SLOVAKIAN law do not have any regulations with regard to the timeframe for notifying the consumer. This no longer seems to be in line with the Directive’s formulation “as quickly as possible”. The Italian regulation uses the term ‘immediately’.⁴²² In ROMANIA, the organiser shall notify the tourist at least 15 days before departure.⁴²³

The majority of member states require information about any significant alteration to the essential terms. Additionally, the organiser must inform the consumer about a price increase in ESTONIA. In PORTUGAL, the organiser has to inform the consumer if the contractual obligations cannot be met. In HUNGARY, no notification duty is laid down in any special law, but the general rules of civil law apply, demanding immediate notification if it appears that it might be impossible to perform the contract.

⁴²¹ Cf. Art. L 211-134 of the Tourism Code and Art. 101 of Decree 94-490.

⁴²² Article 91(1) of the Consumer Code.

⁴²³ Article 15 of the Government Ordinance No. 107/1999 on package travel as approved and amended by Law No. 631 of 16 November 2001.

Table: Time period for notification duty

As quickly as possible	AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, IE MT, NL, PT, SE, SK, UK (17)
Immediately	BG, IT (2)
Without delay	LV, PL (2)
3 calendar days	LU (1)
15 days before departure	RO (1)
No time limit	CZ, HU (2)
Not explicitly transposed	LT, SL (2)

Table: Content of notification

Information about any alteration	AT, BE, CY, DE, EE, EL, ES, FI, FR, IE, IT, LU, LV, MT, PL, RO, SE, UK (18)
Information about right to choose	AT, FR, LU, PL (4)
Information about right of cancellation	BE, DK, SE (3)
Suggestion of alteration to contract	CZ, SK (2)
Information about any price increase	EE (1)
Cancellation of the journey	EE (1)
Information if contractual obligations cannot be fulfilled	PT (1)
Not explicitly transposed	LT, SL (2)

(2) Consumer rights after notification of a significant alteration

The consumer may subsequently either cancel the contract without penalty or accept a rider to the contract specifying the alterations made and their impact on the price. Some member states only grant the consumer the right of cancellation without explicitly mentioning the possibility of accepting a rider to the contract, e.g. DENMARK, ESTONIA, FINLAND, GERMANY and SWEDEN. The reason for this may be the fact that the parties can, as a matter of course, agree on a contract amendment.

Table: Consumer rights after notification of an alteration

Right of cancellation	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LU, LV, MT, NL, PL, PT, RO, SE, SK, SL, UK (26)
Not explicitly transposed	LT (1)

The possibility for the consumer to “accept a rider to the contract specifying the alterations made and their impact on the price” has not been transposed into GERMAN law as such. Instead, the traveller has a right to another journey or equivalent if there is an essential alteration to the services and the organiser is able to offer an alternative trip.⁴²⁴ Thus, Art. 4(5), 2nd indent of Directive 90/314 has probably not been correctly transposed. Moreover, in HUNGARY, the traveller is allowed to demand an equivalent or higher standard service. If the organiser is not able to offer such a service or the traveller does not accept such an offer, the price can be reduced by 20 % where the organiser's decision to cancel the contract does not stem from the traveller.⁴²⁵

In BELGIUM, if the consumer accepts amendments to the initial agreement, the change must be laid down in a rider or a new contract. The parties are, however, free to decide which method is appropriate.

Alteration of contract	Rider	BE*, BG, CY, EL, ES, FR, IE, LV, MT, NL, UK (11)
	Acceptance of alteration to contract	AT, CZ, FI, HU*, IT, LU, PL, PT, RO ⁴²⁶ , SK (10)
	New contract	BE* (1)
Replacement with equivalent or higher standard services	DE, DK, ⁴²⁷ EE, ⁴²⁸ HU*, LV (5)	

⁴²⁴ CC § 651a(5), sent. 3.

⁴²⁵ § 10(2) of Government Decree 214/1996.

⁴²⁶ Article 15 lit. b of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2000: acceptance of the new conditions of the contract.

Transposition not entirely clear	SE, SL (2)
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* *more than once*

(3) Duty of the consumer to give notice of his decision

Generally, all member states have transposed this duty for the consumer to give notice of the remedy he/she wishes to select. There are variations in the deadline by which this information has to be notified to the other contract party. This period varies from “as soon as possible” (or similar) in most member states to a fixed period of differing length in the CZECH REPUBLIC,⁴²⁹ ITALY,⁴³⁰ LUXEMBOURG, PORTUGAL and SPAIN. Moreover, Portuguese law even demands written acceptance of any change to the contract and of any potential price revision.

Table: Time limit

As soon as possible	BE, CY, DE, EE, EL, FR, HU, IE, MT, UK (10)
2 working days	IT (1)
3 calendar days	BG ⁴³¹ , ES (2)
5 calendar days	CZ, RO ⁴³² (2)
7 calendar days	LU (1)
8 calendar days	PT (1)
Without delay	FI, PL, SL ⁴³³ (3)
Established by the travel bureau	SK (1)

⁴²⁷ § 16 of Act 472/1993 gives the consumer the right to withdraw from the contract or to choose a substitute package without causing disproportionate costs or loss to the organiser where it is anticipated that there will be a significant breach of contract before departure.

⁴²⁸ According to § 872(2) of the Law of Obligations, the traveller may, instead of withdrawing, demand a substitute package of equivalent or higher cost (if the tour operator is able to offer such a substitute), or a substitute package of lower cost and a refund of the difference in price between the packages.

⁴²⁹ CC sec. 852e(2).

⁴³⁰ Article. 91(2) of the Consumer Code states that the consumer shall inform the organiser or retailer of his decision within two working days from the date on which he received notice concerning the alteration.

⁴³¹ Article 35(3) of the Law on Tourism.

⁴³² Article 15 of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001: the tourist shall take an appropriate decision within 5 days from receipt of notice.

⁴³³ No specific transposition exists, but the general rules governing contract avoidance require that a creditor cancelling a contract due to the non-performance of a debtor's obligation must notify the debtor without delay.

Reasonable time	DK, SE (2)
Not explicitly transposed	LT (1)

(4) Effects of the cancellation by the consumer or by the organiser

If the consumer withdraws from the contract pursuant to Art. 4(5) or if the organiser cancels the package for reasons other than the fault of the consumer, Art. 4(6) of Directive 90/314 gives the consumer the right either to take a substitute package (a) or to be repaid as soon as possible (b).

Overall, member states have adopted these provisions, although, in some cases, have supplemented them with additional rules (e.g. rules about other reasons for cancellation, cf. above under point III.3.b.aa.). In most member states, the consumer is entitled to take a substitute package as stated in the Directive, as the following table shows.

Table: Consumer's entitlement to take a substitute package

Substitute package of equivalent or higher quality	AT, BE, BG, CY, CZ, DE, EL, EE, ES, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SE, SK, UK (22)
Refund of the difference in the case of lower quality package	AT, BE, BG, CY, CZ, ⁴³⁴ DK, EE, EL, ES, FI, HU, IE, IT, LU, MT, PL, PT, RO, SE, SK, UK (21)
Substitute package	FR (1)
Another package without any undue expense or financial loss for the organiser	DK (1)
Substitute package at the original price, compensation for unnecessary costs incurred	FI (1)

⁴³⁴ The special regulation on travel contracts specifies an obligation to pay the price difference between the original and substitute package, CC Art. 852g(3).

Some member states have also specified a deadline for refunding the difference if the substitute package is cheaper (for instance, BELGIUM (“as soon as possible”), CZECH REPUBLIC (“with undue delay”) and SLOVAKIA (“forthwith”).

Where the consumer is not offered, or does not take, a substitute package, most member states explicitly regulate the reimbursement of all sums paid.

Table: Obligation to reimburse all sums paid

Reimbursement of all sums paid	AT, BE, BG, CY, CZ, ⁴³⁵ DE, ⁴³⁶ DK, EL, ES, FI, FR, IE, IT, LT, LU, MT, NL, PL, PT, RO, SE, SK, SL, UK (24)
Immediate repayment of the full price paid	HU (1)

FINLAND additionally stipulates that the consumer must be compensated for any unnecessary costs incurred.

Several member states also explicitly transposed the provision on the timeframe for repayment (“as soon as possible”).⁴³⁷ FRENCH⁴³⁸ law requires, for instance, the “immediate” refund of all sums paid if the buyer does not take the substitute package.

Table: Time of repayment of all sums paid under the contract

As soon as possible	BE, EL, IE, MT, RO, SE, UK (7)
Immediately	FR, HU, PL, PT (4)
Upon cancellation of contract	CY (1)
Without delay	FI (1)
When contract is cancelled	ES (1)
7 working days after cancellation by the consumer or the organiser	BG, IT (2)

⁴³⁵ General provisions governing unjust enrichment apply without any time limit.

⁴³⁶ CC § 346.

⁴³⁷ As an example for the other member states, LATVIA does not provide for any particular deadline for repayment of all sums.

⁴³⁸ Article 101 of the Decree 94-490.

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10 days after cancellation by the consumer	LU (<i>I</i>)
No time limit	CZ (<i>I</i>)

Some national laws also contain cancellation penalties for the organiser if he cancels the package. If the organiser cancels less than 20 days prior to the date on which the package begins, he is obliged to pay the consumer 10 % of the package price in the CZECH REPUBLIC and to reasonably compensate any damages suffered by the consumer in SLOVAKIA. In HUNGARY, the organiser must pay interest of 20 % per annum on the price to be repaid.

(5) Compensation under member states' laws governing non-performance

Article 4(6) of the Directive also states that the consumer shall be entitled to compensation for non-performance of the contract, except in one of the cases listed in i) (minimum number not reached) or ii) (*force majeure*).

Most member states have explicitly transposed the duty to compensate the consumer. The others seem to rely on their general rules on compensation in the case of a breach of contract. Again, CZECH law differs in imposing on the travel agency a penalty of 10 % of the package price in the consumer's favour if the trip is cancelled within 20 days of departure.⁴³⁹ In addition, the customer is entitled to damages.⁴⁴⁰

Table: Compensation for non-performance

As per the Directive	AT, BE, BG, CY, CZ, ⁴⁴¹ DE, DK, EL, ES, HU, IE, IT, LT, ⁴⁴² LU, LV, ⁴⁴³ MT, NL, PL, PT, RO, SE, SK, ⁴⁴⁴ SL, UK (24)
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⁴³⁹ CC § 852g(4).

⁴⁴⁰ CC § 852g(4) last sent.

⁴⁴¹ CC Art. 852j.

⁴⁴² CC Art 6.751(3) 1st indent explicitly transposed a compensation duty for the organiser who, on waiving the contract, must compensate the tourist for any material damage and reimburse the money already paid by the consumer.

⁴⁴³ As compensation for non-performance, any monies paid must be reimbursed, and, additionally, the customer has a right to claim losses under Civil law on the grounds of a breach of contract.

Cancellation penalty	CZ ⁴⁴⁵ (1)
Not explicitly transposed	EE, FI, FR (3)

There are some variations with regard to the two exemptions from the duty to compensate the consumer (ie if the minimum number is not reached (n° i) or in the case of *force majeure* (n° ii)).

Some member states have introduced a time limit for cancellation where the minimum number of participants is not reached. For instance, in SLOVENIA, the organiser must cancel at the latest 5 days before the scheduled departure. In BELGIUM and ROMANIA, the period is 15 days and in ITALY 20 days.

With regard to exemptions on the grounds of *force majeure*, the definition of this notion seems to differ across member states. For instance, under FINNISH law, the organiser is entitled to cancel the package because of an act of war, a natural catastrophe, a strike or similar situation at or near the package destination, or because, on the grounds of other unforeseen circumstances, the package cannot be performed without risk to the traveller's life or health.⁴⁴⁶ *Force majeure* is not defined in GERMAN legislation, though it has been more closely defined in a number of rulings in the German courts as an "external event that is not in any way connected to the company and could not, even with due care and attention, have been avoided".⁴⁴⁷ In contrast, the Directive's definition is wider, covering internal events rooted in the company's business operations, such as staff strikes affecting the travel agency/trip organiser, where such an event was not foreseeable or its consequences could not have been avoided. Since the definition adopted by German courts limits the opportunities for the trip organiser to cancel, German case law actually works in the consumer's favour.

Some differences also exist in SPAIN as regards the exemption on the grounds of *force majeure*. These differences exist in various administrative rules that some Autonomous Communities (Catalonia, the Balearic Islands etc.) have enacted to bring their rules into line

⁴⁴⁴ If the organiser cancels less than 20 days prior to departure, he is obliged to pay the consumer reasonable compensation .

⁴⁴⁵ CC § 852g sec. (4), (5).

⁴⁴⁶ Article 12 of the Package Travel Act of 28 November 1994/1079.

⁴⁴⁷ Cf. BGH judgment of 16 April 2002, X ZR 17/01.

with the Directive. The administrative (though not civil) liability of retailers (travel agencies) is therefore slightly different depending on the Spanish region in which they operate.

In FRENCH law, there are no explicit exemptions.⁴⁴⁸ In the CZECH REPUBLIC, exemptions from liability for damages (not for compensation) are similar to the provisions in the Directive.⁴⁴⁹

Additionally, according to ROMANIAN law the consumer may not be compensated if he is held responsible for the cancellation.⁴⁵⁰

The following table indicates further variations across member states.

Table: Exemptions from the obligation to compensate the consumer

As per the Directive		AT, BE, BG, CY, CZ, DK, EL, ES, HU, IE, IT LT, LU, MT, NL, PL, PT, RO, SE, SL, UK (21)
Examples of variations with regard to i) (minimum number)	Explicit right to cancel	EE, FI, SK (3)
	Not explicitly transposed	FR, DE (2)
Examples of variations with regard to ii) (<i>force majeure</i>)	Explicit right of cancellation	DE, EE, FI (3)
	Not explicitly transposed	FR (1)
	Definition of <i>force majeure</i>	EE, ⁴⁵¹ FI (2)

⁴⁴⁸ Neither in Art. L 211-15 of the Tourism Code nor in Art. 102 of the Decree 94-490.

⁴⁴⁹ CC sec. 852g(5)(b). This is a technical problem as the regulation in CC sec. 852g(5) duplicates the provision in sec. 852j (1).

⁴⁵⁰ Article 18 lit. c of the Government Ordinance No. 107/1999 on package travel as approved and amended by Law No. 631 of 16 November 2001.

⁴⁵¹ Article 103(2) of the Law of Obligations.

	No explicit use of the term ‘ <i>force majeure</i> ’	CY, CZ, DK, MT ⁴⁵² (4)
	No explicit exclusion of over-booking	CY, CZ, DK, HU, IE, LT, MT, PL, SE, SK (10)
Transposition not entirely clear		LV (1)

4. Additional duties for the organiser

a. Obligation to make alternative arrangements

The first sentence in Art. 4(7) of Directive 90/314 lays down an obligation for the organiser to make alternative arrangements without extra cost and to compensate the consumer, where appropriate, should a significant proportion of the services not be provided after departure. It is unclear whether the duty to compensate the consumer “where appropriate” constitutes an independent specific liability rule or – more plausibly – merely refers to the general rule in Art 5(2) of the Directive.⁴⁵³ According to the latter scenario, the organiser could cite the reasons provided for in Art. 5(2), e.g. force majeure. This question could be clarified when reviewing the Directive.

Many member states have transposed these provisions by closely following the Directive. The following table shows the general picture.

Table: Obligation to make alternative arrangements

Substantively as per the Directive	BE, BG, ⁴⁵⁴ CY, EL, FR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SE, SK, UK (17)
Variations	AT, CZ, DE, DK, EE, ES, FI, LU (8)
Additional requirements	FR, HU, PL, PT (4)

⁴⁵² Regulation 13.3.2 of the Package Travel Regulations uses the wording “on the grounds of unusual and unforeseeable circumstances beyond the control of the organiser, the retailer or other supplier of services, the consequences of which could not have been avoided even if all due care had been exercised” instead of the term ‘*force majeure*’.

⁴⁵³ Cf. *Howells/Wilhelmsson*, EC Consumer Law, 243 (see also note 55).

⁴⁵⁴ Article 41(3) of the Law on Tourism.

Not explicitly transposed	SL ⁴⁵⁵ (I)
Transposition not entirely clear	LV(I)

There is a relatively broad spectrum of – in most cases slight – variations across member states. For instance, in AUSTRIA, although the travel agent is obliged to assist the traveller in any possible way, the Austrian Consumer Protection Act does not mention any obligation for the travel agent to compensate the traveller where alternative arrangements are impossible. As such, Austria relies on the general provisions in the Austrian Civil Code concerning compensation (e.g. § 1042). In LUXEMBOURG, the transposition law does not oblige the travel agent to make alternative arrangements when due justification is provided that it is impossible to meet the contractual obligations.

The FINNISH legislator, in the first instance, provides for any defect in performance to be remedied. If, however, the traveller suffers material inconvenience, he may refuse such a remedy. If it is not possible to remedy the defect or if it is not remedied without delay, the traveller is entitled to a price reduction in accordance with the scale of the defect. CZECH law obliges the travel agency to provide a consumer in difficulty with prompt assistance if damage was caused by a third party or unforeseeable circumstances.⁴⁵⁶ Where all services or a significant part are not provided or the travel agency perceives that it will be unable to provide the services laid down in the contract, the travel agency must take appropriate measures without undue delay and free of charge.⁴⁵⁷

The Directive lays down a duty to compensate for the difference between the services offered and those supplied “where appropriate”. CZECH law and FRENCH law⁴⁵⁸ clarify that compensation is appropriate when the service supplied is of lower quality.

Some countries (for instance DENMARK) provide for a right of cancellation in the situation regulated in Art. 4(7) of the Directive. In the event of cancellation, the operator has to refund any payments made, but is therefore entitled to a sum corresponding to the value which the

⁴⁵⁵ Article 903 of the Code of Obligations only regulates when changes in the travel programme are permitted.

⁴⁵⁶ CC sec.852k(1).

⁴⁵⁷ CC § 852k(2).

⁴⁵⁸ Article L 211-16 of the Tourism Code.

package tour may be considered to have had for the customer. Cancellation or alternatively a price reduction is excluded if the operator offers to remedy the shortcoming without extra cost or significant inconvenience and within a reasonable period of time. Besides, compensation is granted both for any shortcoming and - unlike ordinary rules on damages - for any subsequent significant inconvenience, such as a “ruined holiday“, unless the breach is due to *force majeure*.

ESTONIAN law offers the traveller the right to cancel the contract if an essential travel service is changed significantly. Instead of cancelling, the traveller may demand a substitute package of equivalent or higher cost if possible. Otherwise, the difference in price between the packages must be refunded. A replacement service can be provided in HUNGARY and LUXEMBOURG, too. In ESTONIA, the consequences of breaching a contractual obligation are also specified in detail. Firstly, the traveller has to notify the tour organiser or retailer who must then take all reasonable steps in order to provide immediate assistance to a traveller in difficulty - unless the traveller has caused the breach himself. In SLOVAKIAN law, the travel bureau is liable to the customer and must take action without undue delay in order to ensure that the tour may begin and to refund the customer in accordance with the price difference between the services offered and provided.

There is no right to compensation in POLAND if the reason it is impossible to make alternative arrangements is due either solely to the actions or failings of third parties not involved in the alternative arrangements (if their conduct was not foreseeable and preventable), or to *force majeure*. Moreover, the client may seek a proportional price reduction provided that the replacement service is of lower quality than the service described in the tourist event programme.

GERMAN law offers the traveller a wide range of remedies. Compared to the Directive, there is a higher standard of liability. One special feature relates to what is termed a travel defect, meaning that when the trip does not meet the specifications or necessary quality standards, German law regards it as unsatisfactory. In the case of an infringement, the organiser may, in the first instance, either rectify the defect or provide an equivalent replacement service. If he fails to do so, the traveller is entitled to a price reduction in line with the duration of the inconvenience, provided that he has informed the organiser about the defect. If there is a fundamental breach, the consumer may also cancel the contract. It is important to note that

these remedies do not depend on establishing the organiser's fault. This is only a requirement when the consumer additionally seeks damages, including recompense for wasted holiday time.

SPANISH law adds that when the consumer continues the trip under the alternative arrangements, this is deemed tantamount to acceptance of the proposal. PORTUGAL includes an obligation to communicate to the agency any deficiency in the performance of the contract in respect of services provided by third parties within the period stipulated in the contract or, failing that, as soon as possible, either in writing or another appropriate form.

SLOVENIAN law does not contain any specific provision. The substance of Art. 4(7) of the Directive can rather be found in several different articles of the Code of Obligations. It is stated that the agreed accommodation may only be replaced with accommodation facilities of the same category or of a higher category at the travel organiser's expense, and only in the agreed location. This seems stricter than the Directive's "suitable alternative arrangements". In the event of substantial alterations without justified reasons, the organiser must return everything obtained from the traveller, who is allowed to cancel the contract.

b. Duty to provide equivalent return transport and compensation

If an alternative arrangement according to Art. 4(7) sent. 1 of the Directive is either impossible or not accepted by the consumer for good reasons, the organiser has to provide equivalent return transport to the place of departure or to another return point to which the consumer has agreed. He must also compensate the consumer where appropriate (Art. 4(7) sent. 2).

Once again, most member states, (e.g. BELGIUM, BULGARIA, CYPRUS, FRANCE, GREECE, ITALY, LITHUANIA, LUXEMBOURG, MALTA, PORTUGAL, SPAIN, SWEDEN and the UNITED KINGDOM) have implemented this provision in a similar way or even word-for-word.

Examples of variations or more detailed provisions can be found in several member states. For instance, AUSTRIA does not have a specific provision on compensation. Nevertheless the consumer is entitled to compensation under the general rules in the Austrian Civil Code.

Whereas SLOVAKIA omits the term “for good reasons” as per the Directive, IRISH law replaces it with “on reasonable grounds” and the ITALIAN legislator chooses the term “in good faith”.

The CZECH REPUBLIC regulates the question of transport in detail. The return journey includes any necessary replacement accommodation and catering. Furthermore, if there is any price difference, this has to be reimbursed.⁴⁵⁹ In SLOVAKIA, return transport to the point of departure or such other point of return as agreed by the consumer also includes any necessary replacement board and lodging. In HUNGARY, if an alternative arrangement is either impossible or not accepted by the consumer for good reasons, the organiser has to arrange equivalent transport back to the place of departure, cover its costs and reimburse the fees minus the price of services already provided.⁴⁶⁰ ESTONIAN law also clarifies that all additional expenses are to be borne by the operator.

According to DANISH, ESTONIAN and GERMAN law, the consumer must be returned, free of charge, to his point of departure or to another location specified in the contract using a means of transport corresponding to that specified in the contract if he *Cancels* the contract and not if he *does not accept* the organiser’s arrangements as per the Directive. In POLAND, the rules apply if he *either cancels or does not accept* the replacement service.

SLOVENIAN law has only very indirectly implemented the EU provision as it contains a general provision requiring the organiser to do everything to safeguard the traveller's interests.⁴⁶¹

Similarly, in the NETHERLANDS, there is a general rule stating that help and assistance must be provided, though “return transport and compensation” are not specifically mentioned.⁴⁶²

Table: Duty to provide equivalent return transport and compensation

Substantively as per the Directive	BE, BG, CY, EL, ES, FI, FR, HU, IT, LT, LU, LV, MT, PT, RO, SE, UK (<i>17</i>)
Variations	AT, CZ, DE, DK, EE, IE, SK, PL (<i>8</i>)

⁴⁵⁹ CC sec. 852k(4).

⁴⁶⁰ Article 12(3) of Government Decree 214/1996.

⁴⁶¹ Cf. Art. 890 of the Code of Obligations covering the organiser's general liability for damages.

⁴⁶² CC Art. 7:507(3)

Indirectly transposed	NL, SL (2)
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c. Duty to make prompt efforts in cases of complaint

According to Art. 6 of Directive 90/314, in cases of complaint, the organiser and/or retailer or his local representative (if there is one) must make prompt efforts to find appropriate solutions.

The BELGIAN, DUTCH, FRENCH, LATVIAN, LITHUANIAN, POLISH and SLOVENIAN legislators have not transposed this provision. This may be due to the fact that the obligation is considered to be part of general contract duties in these countries.⁴⁶³

Table: Explicit transposition of the duty to make prompt efforts in case of complaints

Substantively equivalent to the Directive	As per the Directive	BG, CY, DK, ES, HU, IE, MT, ⁴⁶⁴ PT, RO, SE, SK, UK (12)
	In relation to the consumer's rights	AT (1)
	Following the consumer's duty	EE, IT (2)
Possibility to refuse in the case of unreasonable expense or inconvenience	FI, DE (2)	
Indirectly transposed	EL (1)	
No specific legislative transposition	BE, FR, LT, LV, NL, PL, SL (7)	
Transposition not entirely clear	CZ, LU (2)	

In some member states, the national laws use a slightly different wording or legislative technique than the Directive. For instance, in AUSTRIA, ESTONIA, GERMANY, FINLAND and

⁴⁶³ With regard to the Netherlands cf. CC Art. 6:248.

⁴⁶⁴ See Reg. 8.3 Package Travel Regulations, which states that, in cases of complaint, the organiser or his local representative shall make prompt efforts to find appropriate solutions.

HUNGARY, the organiser must make prompt efforts to help not in the case of complaints, but in the case of a failure in performance. In BULGARIA, CYPRUS, ITALY⁴⁶⁵ and the UNITED KINGDOM, the national regulations refer to complaints about failures in performance. The SWEDISH regulation refers to a “justified complaint”. In IRELAND, the organiser must help if the consumer is in difficulty. According to the Greek regulation, a written complaint is needed. Where the organiser, retailer or local representative receives such a complaint or is called upon by the supervisory authorities, he must be able to provide explanations and show that he is endeavouring to find appropriate solutions. Thus, a duty to give prompt assistance is not explicitly mentioned, but covered by the obligation to document attempts to find a solution. A peculiarity in Italy⁴⁶⁶ is that the duty to help the consumer is “hidden” in a regulation that obliges the consumer to make complaints about failures in performance. In Estonia, the duty to try immediately to find suitable solutions is also connected to the consumers’ duty to notify the travel provider in the case of a failure in performance. In Finland⁴⁶⁷ and Germany,⁴⁶⁸ the consumer's counterparty is not obliged to take measures which cause unreasonable inconvenience.

Table: Cases in which the organiser/retailer must make prompt efforts to find a solution

Complaints	ES, DK, IE, MT, PT (5)
Complaints about failure in performance	BG, CY, ⁴⁶⁹ HU, IT, RO, UK (6)
Justified complaint	SE (1)
Written complaint	EL (1)
Failure in performance	AT, DE, EE, FI (4)
Called upon by supervisory authority	EL (1)
No specific legislative transposition	BE, FR, LT, LV, NL, PL, SL (7)
Transposition not entirely clear	CZ, LU (2)

⁴⁶⁵ The consumer shall inform the organiser or retailer of his decision within two working days from the date on which he received notice about the alteration to the contractual conditions.

⁴⁶⁶ Article 98(1) of the Consumer Code.

⁴⁶⁷ § 19 of the Package Travel Act of 28 November 1994/1079.

⁴⁶⁸ CC § 651c.

⁴⁶⁹ Art 15(8) of the Package Travel, Holidays and Tours Law of 1998 refers not to ‘failures in performance’, but to ‘deficiencies’ in contractual performance.

The provision in Art. 6 is often integrated into the regulations governing consumers' rights. Consequently, some member states place obligations on the consumer's counterparty, whether the organiser or retailer. The local representative is mentioned in CYPRUS, GREECE, ITALY, MALTA, PORTUGAL, SWEDEN and the UNITED KINGDOM. In HUNGARY, the traveller must inform the representative of a problem without delay who, in turn, is obliged to act and inform the travel company without delay. If there is no representative, a travel agency previously indicated by the travel company must be informed.

Table: Obligated party

Organiser	AT, BG*, DE, EL, ES, ⁴⁷⁰ FI, IE, IT, MT, RO*, SE (11)
Retailer	EL, ES, IE (3)
Agency	HU*, PT (2)
Other party to the contract	CY, UK (2)
Organiser and service provider in question	DK ⁴⁷¹ (1)
Service supplier	RO* (1)
Representative	HU* (1)
Local representative mentioned	BG*, CY, EL, IE, ⁴⁷² IT, MT, PT, SE, UK (9)

* more than once

5. Liability

a. Liability of organiser and/or retailer

Art. 5(1) of the Directive obliges member states to ensure that the organiser and/or the retailer is liable to the consumer for the proper performance of any obligations under the package travel contract, irrespective of whether the organiser, the retailer or others service suppliers were to fulfil the relevant obligations. The provision therefore does not specify possible remedies. Its main function is to make the organiser and/or retailer liable where another

⁴⁷⁰ Article 10(3) of Law 21/1995 regulating package travel refers to the "retailer or, depending on the case, the organiser".

⁴⁷¹ § 25 of Act 472/1993.

⁴⁷² Article 14(4) of the Package Holidays and Travel Trade Act, 1995 states that, in the case of complaints, either the 'organiser' or the 'local representative' shall make prompt efforts in order to find appropriate solutions.

supplier is responsible for improper performance. In particular, this provision reveals the overriding problem of the Package Travel Directive, i.e. that it did not clearly decide whether the organiser, the retailer or both are liable to the consumer. This decision is left to member states' discretion. They have to ensure that at least one of the two is liable in all cases.

In the course of a review of the Directive, consideration might be given to clarifying this rather vague situation. The most consumer-friendly solution would be joint and several liability for both the organiser and the retailer.⁴⁷³ However, this could be a rather radical solution for some member states, where travel agencies are commonly just small retailers with low profit margins. A less invasive solution could be to make the organiser liable in all cases and to leave to member states' discretion whether the retailer should be jointly liable.

IRELAND has transposed the provisions in the Directive concerning the liability of the retailer and the travel organiser almost literally. In BULGARIA,⁴⁷⁴ MALTA, LITHUANIA, LUXEMBOURG, PORTUGAL and ROMANIA⁴⁷⁵ the rules concerning liability are also the same as in the Directive. Thus, the organiser and/or the retailer can be either separately or jointly responsible.

In FRANCE, this system of broad liability, which includes liability for other suppliers of services, is regarded as a new departure. It is explicitly stated in French law that "each natural or legal person who organises or sells package travel...is strictly liable to the buyer for proper performance thereof...".⁴⁷⁶

In AUSTRIA, the Consumer Protection Act exclusively uses the term 'organiser',⁴⁷⁷ comprising, on the one hand, a travel organisation providing the services itself or through an auxiliary and, on the other hand, a travel agency brokering contracts between the travel organisation and the traveller. Thus, the question of separate or joint liability for the travel organisation and travel agency depends on each individual case. If the travel agency commits to providing the travel services (i.e. it acts as an intermediary for the travel organisation⁴⁷⁸),

⁴⁷³ Suggested by *Howells/Wilhelmsson*, EC Contract Law, 242.

⁴⁷⁴ Article 39(1) of the Law on Tourism.

⁴⁷⁵ According to Art. 20 of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001 the travel agency (e.g. tour operator travel agency or retailer travel agency) is liable.

⁴⁷⁶ Article L 211-17 of the Tourism Code.

⁴⁷⁷ Definition in § 31b(2)(2) of the Consumer Protection Act.

⁴⁷⁸ According to CC § 1313a.

both are jointly liable.⁴⁷⁹ If the travel agency only pledges to broker a corresponding travel contract with the travel organisation, it is only liable where it infringes a contractual duty (e.g. by knowingly commissioning an unreliable organisation). Otherwise, claims arising from improper performance of the contract can only be made against the travel organisation. Any claim lodged by a consumer on the grounds of loss of enjoyment as a result of non-performance of a considerable part of the contract must be underpinned by clear evidence that the organiser is at fault. It is also based on the degree, gravity and duration of the defect, the purpose of the trip and the price.⁴⁸⁰

CZECH legislation imposes liability on the travel agency. One particular feature is that the consumer has to enforce his rights without undue delay, and at the latest within 3 months. Moreover, in SLOVAKIA, the travel bureau (the ‘organiser’) is liable to the consumer for proper performance of the contract. In POLISH law, the organiser is liable for non- or improper performance of the contract for tourist services.⁴⁸¹

As FINNISH law only refers to the concept of ‘organiser’, the latter is solely liable, even for other persons he uses when providing services. The traveller is entitled to compensation for personal injury and material and property damage caused by a defect in performance if the organiser acted negligently.⁴⁸² According to DUTCH law, the organiser is liable.⁴⁸³ In LATVIA, the undertaking (company) is liable for the provision of services in line with the contract.

In BELGIUM, both are also liable for non- or improper performance, irrespective of whether they, their agents, assignees or representatives are at fault. This is similar in CYPRUS and SLOVAKIA. In GREECE, any service provider (i.e. the organiser as well as the retailer) is generally liable for faults to the detriment of the consumer. The legislators in Cyprus and the UNITED KINGDOM decided to hold the consumer's contractual partner responsible for the whole performance of the contractual obligations.

A different legislative technique is used in HUNGARY, achieving the same result. The organiser is liable for every person he uses to fulfil his duties, irrespective of fault. Moreover,

⁴⁷⁹ Joint liability is regulated in CC § 1302.

⁴⁸⁰ CC § 31e(3), § 31f.

⁴⁸¹ Article 11a of the Act on Tourist Services.

⁴⁸² § 23(1) of the Package Travel Act of 28 November 1994/1079.

⁴⁸³ CC Art. 7:507(2).

a retailer who sells trips on behalf of a foreign organiser, is liable in the same way as the organiser. Price reduction applies where performance is not in line with the Directive. Besides, the consumer is entitled to compensation for damages unless the organiser acted with the intention of correctly performing the services and in a manner, which, under the circumstances, would generally be expected of him.

In ITALY, both the organiser and the retailer have to pay damages according to their respective liabilities unless it is impossible to perform the services due to circumstances beyond their control. Liability can be avoided when the tour is cancelled because of *force majeure* or an insufficient number of participants, though overbooking does not constitute a good reason. SWEDEN has also included a possibility for the organiser or retailer to escape liability. They are liable for any faults unless they can prove that the damages were caused by circumstances beyond their control. Another exception can be found in SLOVENIA, where the organiser is essentially responsible. He is also liable for damages caused by third persons involved in any travel services unless the organiser proves that he chose the service provider concerned with due diligence. The Slovenian legislator specifically refers only to non- or partial performance. However, under the general principle of liability for non-performance/improper performance, the organiser is liable for improper performance.

In DENMARK, the concept of joint liability applies. The retailer is liable to the consumer for all his financial claims against the organiser. In SPAIN, although the wording of the legislative regulations provides for separate liability as a rule (i.e. the organiser and the retailer are only liable for faults they committed themselves), joint liability applies exceptionally if there are several retailers and organisers. However, in order to enhance consumer protection, case law tends to assume that the organiser and retailer are jointly liable.

In contrast to the Directive, which uses the terms “non-performance”, “failure to perform”, and “improper performance”, GERMAN law, reflecting the peculiarities of the German system, prefers the more general term "travel defect". As a consequence of this broad definition, liability and guarantees are extended, so that the traveller is afforded a higher level of protection. The trip organiser (though not the retailer) is liable for the trip's success (irrespective of who is at fault) and essentially carries the risk. Thus, remedial action (§ 651c BGB), price reduction (§ 651d BGB) and cancellation on the grounds of an unsatisfactory trip (§ 651e BGB) do not require the trip organiser to be at fault. According to case law, these

rules apply to any cases where the service has been disrupted even if this does not impinge directly on the traveller. With regard to compensation claims, the German Civil Code is broadly aligned with the Directive.

b. Liability for damages and exemptions

According to Art. 5(2) of the Directive, the organiser and/or retailer is/are not liable for damages if

- (1) the failures are attributable to the traveller,
- (2) the failures are unforeseeable, unavoidable and attributable to a third party with no relation to the performance of any contractual services and provisions,
- (3) the failures are due to a case of force majeure, or
- (4) the failures are due to an event that the organiser and/or retailer or the supplier of services could not foresee and forestall with all due care.

Up to a certain degree, it remains unclear whether this provision regulates a classic ‘culpa liability’ or follows the more modern pattern of ‘strict liability’ with some exceptions.

The four reasons for excluding liability listed in Art. 5(2) of the Directive are transposed by BELGIUM, BULGARIA, CYPRUS, the CZECH REPUBLIC, DENMARK, FRANCE, GREECE, IRELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MALTA, the NETHERLANDS, PORTUGAL, SLOVAKIA, SPAIN and the UNITED KINGDOM. POLAND⁴⁸⁴ has only transposed numbers (1), (2) and (3). ROMANIA seems to have transposed only N° (1) and (3).⁴⁸⁵

Instead of adopting the four exceptions, GERMANY preferred to refer to its general rules.⁴⁸⁶ The organiser is not liable if he is able to prove that he acted neither intentionally nor negligently (‘culpa liability’).⁴⁸⁷ Under FINNISH law, the travel agent also has to prove that he did not act carelessly. It is unclear if transposition using the ‘culpa liability’ model constitutes a false implementation of Art. 5(2) of the Directive. In principle, there is a difference between

⁴⁸⁴ Article 11a, 1st - 3rd indent of the Act on Tourist Services.

⁴⁸⁵ Article 20(2) of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

⁴⁸⁶ CC § 651f(1), § 276.

⁴⁸⁷ For case law, see BGH judgment of 11 January 2005, X ZR 118/03, BGH judgment of 9 November 2004, X ZR 119/01, BGH judgment of 15 October 2002, X ZR 147/01, OLG Munich judgment of 24 January 2002, 8 U 2053/01.

the exceptions listed in the Directive and culpa liability, but it is difficult to find cases that illustrate different results. In particular, if the burden of proof lies with the organiser/retailer who has to prove that he did not act negligently, legal practice will very probably come to the same results.

In SLOVENIA,⁴⁸⁸ the organiser is exempted from any contractual liability in circumstances that the organiser was not able to prevent, remedy or avoid. In SWEDEN,⁴⁸⁹ the organiser is not liable only if he can prove that non-performance is due to circumstances beyond his control, which he cannot reasonably be expected to have foreseen and/or to have avoided. In AUSTRIA, ESTONIA and HUNGARY, there seems to be no explicit transposition of Art. 5(2) sent. 1 part 2 of the Directive. In Hungarian law, exemptions cover failures in performance of the contract that are attributable to the consumer or to a third person who is not connected to the performance of the contractual obligation. Furthermore, there is an exemption if the company could not have foreseen or avoided the defect with due care, as well as in cases of *force majeure*, which is defined as an unforeseeable, unusual circumstance that runs counter to the travel company's intentions and the consequences of which cannot be foreseen with due care.

Table: Exemptions from liability

As per the Directive	BE, BG, CY, CZ, DK, FR, EL, ES, IE, IT, LT, LU, LV, MT, NL, PT, SK, UK (18)
Deviations	FI, DE, PL, RO, SE, SL (6)
Not explicitly transposed	AT, EE, HU (3)

c. Limitation on amount of damages to be paid

aa. According to international conventions

Under Art. 5(2) sent. 3 of the Directive, member states may provide for limitations on the organiser's and/or retailer's liability in accordance with international conventions governing such services. Most member states have made use of this option. In BELGIUM, BULGARIA,

⁴⁸⁸ Article 240 of the Code of Obligations.

⁴⁸⁹ § 16 sec. (2), (3) of the Package Tours Act 1992:1672.

CYPRUS, CZECH REPUBLIC,⁴⁹⁰ DENMARK, ESTONIA, FINLAND,⁴⁹¹ GERMANY, GREECE, HUNGARY,⁴⁹² IRELAND, ITALY, LUXEMBOURG, MALTA, the NETHERLANDS, PORTUGAL,⁴⁹³ SLOVAKIA, SPAIN, SWEDEN⁴⁹⁴ and the UNITED KINGDOM, liability is limited according to international conventions. Although LITHUANIAN law has not directly transposed this provision, this principle follows from general contract law. As a rule, the parties are free to determine the terms and conditions of a contract, except when they are set by mandatory rules of law.⁴⁹⁵

AUSTRIA has signed various international conventions on flight liability (the Warsaw Convention 1929/1955, the Guadalajara Convention 1961 and the Montreal Convention 1999) though the legislator did not transpose this provision into Austrian law. Furthermore, FRANCE, LATVIA and SLOVENIA have equally not transposed Art. 5(2) sent.3 of Directive 90/314.

Table: Option to allow limitations on liability according to international conventions

Use of Option	Member States
Yes	BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LU, LT, MT, NL, PL, PT, SE, SK, UK (22)
No	AT, FR, LV, RO, SL (5)

bb. Limitations on damages other than personal/physical damages

Except for personal injury, Art. 5(2) sent. 4 of the Directive permits member states to provide for contractual limitations on compensation for damages that result from the non-performance

⁴⁹⁰ The two possible limitations on damages covered in Art. 5(2), sent. 4 and 5 of the Directive are transposed in CC sec. 852j(3), i.e. damages (including personal) can be limited if an international convention provides for such a limitation and it is included in the travel contract.

⁴⁹¹ Article 24 of the Package Travel Act of 28 November 1994/1079. This article also refers directly to national statutes like the Maritime Act (674/94), the Act concerning Transportation in an Aircraft (289/37), the Air Transportation Contracts Act (45/77) or Air Transportation Act (387/86), the Railway Transport Act (1119/00), which seem to reflect the conventions, and to Regulation 2027/97 on Air Carrier Liability in the Event of Accidents.

⁴⁹² Since 13 May 2005.

⁴⁹³ Article 40(1) of the Decree 209/97.

⁴⁹⁴ § 18 of the Package Tours Act 1992:1672. This refers to the Maritime Act, the Air Transport Act, the Rail Transport Act and the International Rail Transport Act.

⁴⁹⁵ CC Art. 6.156(4).

or improper performance of services included in the package, provided that the reduction is not unreasonable.

Most member states (AUSTRIA, BELGIUM, BULGARIA, CYPRUS, CZECH REPUBLIC,⁴⁹⁶ DENMARK, GERMANY, ESTONIA, FINLAND, GREECE, IRELAND, ITALY,⁴⁹⁷ LITHUANIA, LUXEMBOURG, MALTA, the NETHERLANDS, POLAND, PORTUGAL,⁴⁹⁸ SLOVAKIA,⁴⁹⁹ SLOVENIA⁵⁰⁰ and the UNITED KINGDOM⁵⁰¹) have made use of this option, while FRANCE, HUNGARY, LATVIA, SPAIN and SWEDEN have not. Furthermore, such a contractual term limiting compensation for damages other than personal damages would be invalid under French law.

Even in those countries which do generally allow limitations on compensation as per Art. 5(2) sent. 4 of the Directive, the individual solutions vary considerably. For instance, DENMARK has a special regulation concerning this case. Under DANISH law, an agreement limiting compensation can only be made if it is in accordance with rules in international conventions applicable to travel contracts.⁵⁰²

In AUSTRIA,⁵⁰³ the tour organiser cannot limit his liability for death or personal injury, nor his liability for intentional and gross negligence. In BELGIUM⁵⁰⁴ and ROMANIA,⁵⁰⁵ the organiser can limit his compensation to double the travel costs, but only where the organiser does not provide the services himself. However, in Belgium and Romania, the tour organiser cannot limit his liability for death or personal injury, nor his liability for intentional and gross negligence. This is the same in ESTONIA,⁵⁰⁶ where compensation in other cases may be limited to three times the price of the package. There can also be no limitation in the event of death or

⁴⁹⁶ The two possible limitations on damages covered in Art. 5(2), sent. 4 and 5 of the Directive are transposed in CC sec. 852j(3), i.e. damages (including personal) can be limited if an international convention provides for such a limitation and it is included in the travel contract..

⁴⁹⁷ Article 94 and 95 of the Consumer Code.

⁴⁹⁸ See also Art. 40 of Decree 209/97.

⁴⁹⁹ This rule existed before transposition of Directive 90/314.

⁵⁰⁰ Article 894(2), (3) of the Code of Obligations.

⁵⁰¹ Regulation 15(4) of the Package Travel, Package Holidays and Package Tour Regulations 1992.

⁵⁰² § 24 of Act 472/1993.

⁵⁰³ § 31f(1) of the Consumer Protection Act.

⁵⁰⁴ Article 19 sec. (2), (4), (5), Article 28 of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

⁵⁰⁵ Article 21(1) of the Government Ordinance 107/1999 on package travel as approved and amended by Law 631 of 16 November 2001.

⁵⁰⁶ § 878(3) of the Law of Obligations.

personal injury, or in cases of intentional and gross negligence. Under German⁵⁰⁷ law, non-material damages can also be limited by agreement between the organiser and the traveller to three times the price of the package, either in the case of minor negligence or if a service provider is solely responsible for the damage. In IRELAND,⁵⁰⁸ it is double the amount of the fully inclusive package price for adults and an amount equal to the inclusive price for a minor. Again, there can be no limitation in the event of death or personal injury, or in cases of intention and gross negligence. In POLAND,⁵⁰⁹ it is double the price of the package with respect to each customer. In BULGARIA the upper limit of liability agreed between the parties may not exceed three times the price of the package. This is said to be a rather doubtful provision as it seems to prevent the tour operator from setting an upper limit for his liability higher than triple the size of the package price, which is hardly in the interest of consumers.

The PORTUGUESE⁵¹⁰ legislator implemented a minimum scheme for damages. The sums applicable to travel organisers vary from ESC 220,000⁵¹¹ for damage to baggage arising from damage to a motor vehicle up to ESC 88,5000,000 in the event of death or personal injury. Travel agencies' liability for damage to, or destruction or removal of, baggage or other articles can be limited to ESC 280.000 in all, or ESC 90.000 per article.

In HUNGARY, there is no provision for any limitation on compensation for damages other than personal damages. However, two general provisions concerning limitations are applicable instead. There can be no limitation on compensation for death and physical damages, or for any damages caused intentionally or by gross negligence. There can be a limitation on compensation for property damages and physical damages caused by normal negligence if this limitation can somehow be offset by another benefit.

The FINNISH⁵¹² and CYPRIOT⁵¹³ legislators introduced the option to reduce damages as long as the reduction is not unreasonable. Moreover, such a reduction is only possible if the package is not booked for private purposes. In SLOVAKIA,⁵¹⁴ the court is entitled to limit

⁵⁰⁷ CC § 651h(1).

⁵⁰⁸ S. 20(3), (4) of the Package Holidays and Travel Trade Act.

⁵⁰⁹ Article 11b(3), (4) of the Act on Tourist Services.

⁵¹⁰ Article 40 sec. (2), (3), (5) of the Decree-Law 198/93.

⁵¹¹ 1€ = 200.482 ESC.

⁵¹² § 25 of the Package Travel Act of 28 November 1994/1079.

⁵¹³ Article 15(4) of the Package Travel, Holidays and Tours Law of 1998.

⁵¹⁴ CC § 450.

compensation. GREEK⁵¹⁵ law contains a regulation similar to the one in the Directive allowing a contractual limitation on liability for non-physical damages. The scope, however, is narrow because several other regulations apply. The organiser's or retailer's liability for intentional and gross cannot be excluded or limited. Liability for third party service providers appointed by the organiser or the retailer and acting with intentional or gross negligence cannot be excluded or limited in advance. Liability for minor negligence cannot be limited if this limitation is not negotiated individually. Above all, according to the Greek Consumer Protection Act, any agreement with a consumer that excludes or limits the liability of the service provider towards the consumer is null and void.

In ITALY,⁵¹⁶ the parties to the contract can agree in writing to limit compensation for damages other than physical injuries. If there is no such agreement, compensation for damages is permitted within the limits laid down in Art. 13 of the 1970 International Convention on Travel Contracts. In LITHUANIA,⁵¹⁷ there is no explicit reference to any possibility to contractually limit compensation for damages other than physical damages, though this can justifiable be provided for.

Such differences in national laws concerning the possibility to limit compensation in the case of damages resulting from non-performance or improper performance of services included in the package show the difficulties inherent in agreeing on a limitation that is valid in several or all member states. Organisers and retailers who want to market package tours in several member states are compelled, in practice, to refrain from agreeing any limitation on compensation if they want to act lawfully. Depending on your political point of view, this may be seen as a barrier to trade or as a – not undesirable – incentive for businesses to offer a high standard of consumer protection.

Table: Use of option provided for in Art. 5(2) 4th indent of the Directive

Use of Option	Member States
Yes	AT, BE, BG, CY, CZ, DE, DK, EE, EL, FI, IE, IT, LT, LU, MT, NL, PL, PT, RO, SK, SL, UK (22)

⁵¹⁵ Article 5(2)(d) of the Decree-Law 339/96.

⁵¹⁶ Article 95 of the Consumer Code.

⁵¹⁷ CC Art. 6.755(2).

No	ES, FR, HU, LV, SE (5)
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d. Loss of enjoyment

The ECJ made clear in case C-168/00 – *Simone Leitner*,⁵¹⁸ that Art. 5 of the Directive is to be interpreted as, in principle, conferring on consumers a right to compensation for non-material damage resulting from the non-performance or improper performance of the services constituting a package holiday. In particular, such compensation for non-material damage can arise from the loss of enjoyment the consumer has suffered as a result of improper performance of the travel contract.

Only some member states (e.g. AUSTRIA, BELGIUM and ESTONIA) explicitly provide for compensation for loss of enjoyment. The DANISH Act – contrary to ordinary rules on damages – allows the customer to be compensated for "considerable inconvenience" (which should include a "ruined holiday"). In the NETHERLANDS and HUNGARY, the organiser may need to compensate for non-material damages as well. GERMANY only awards damages if the trip has been *significantly* disrupted. In view of the ECJ case C-168/00, it could be argued that this additional pre-requisite may result in an infringement of EU law. In SPAIN, according to general law and specific case law on package travel covering all 'damages', the organiser/retailer is also liable for non-material damages.

Most member states have not explicitly regulated compensation for non-material damage in their package travel laws. Member states that have literally transposed Art. 5(2) of the Directive will have to apply their law in the light of the C-168/00 judgment. Other member states, where the calculation of damages in the case of travel contracts follows general rules on damages must also take the ruling into account when applying these general rules. It will have to be seen whether all member state courts also award non-material damages to consumers in the case of non-performance or improper performance of travel contracts.

⁵¹⁸ ECJ judgment of 12 March 2000, C-168/00 – *Simone Leitner*.

In ROMANIA the Government Ordinance No. 107/1999 does not expressly stipulate the compensation for non-material damage. However, such damages might be obtained in accordance with the general rules on damages.

e. Communication of any shortcomings in performance

According to Art. 5(4) of Directive 90/314, the consumer has to communicate any perceived failure in the performance of a contract to the supplier of the services concerned *in situ*, and to the organiser and/or retailer in writing or any other appropriate form at the earliest opportunity. It should be noted that this provision is one of the few exceptional cases where the Directive seeks to impose an obligation on the consumer. Thus, because of the minimum clause, the member states are free to define a notification duty that is more favourable to the consumer or not to transpose this provision at all (e.g. SPAIN). However, it is questionable whether they may impose a notification duty that is stricter with regard to formal requirements or time limits than the Directive's provisions dictate.

Some member states, such as IRELAND, LATVIA, MALTA and the UNITED KINGDOM, have transposed the provision almost literally. In DENMARK,⁵¹⁹ FINLAND⁵²⁰ and SWEDEN,⁵²¹ similar provisions can be found, except that no specific period has to be complied with where the organiser is guilty of dishonest or grossly negligent behaviour. Furthermore, in Denmark,⁵²² a complaint has to be filed in the case of personal injury. GREEK⁵²³ law also contains a provision comparable to Art. 5(4) of the Directive, but, in Greece, the communication has to be given in writing, so that there is a stricter formal requirement than the Directive provides for. Under PORTUGUESE⁵²⁴ law, only the travel agency has to be informed. In POLAND, the organiser and the service provider ought to be informed by the 'client' without delay about any defects in the performance of the contract. Furthermore, the form in which such information should to be given depends on the kind of service involved.⁵²⁵ The wording is more favourable to the consumer ("ought") as it does not indicate an obligation, but rather a

⁵¹⁹ § 26, § 27 of Act 472/1993.

⁵²⁰ § 18 of the Package Travel Act of 28 November 1994/1079.

⁵²¹ § 19 of the Package Tours Act 1992:1672.

⁵²² § 26, § 27 of the Act No. 472/1993 on Package Travels.

⁵²³ Article 5(4) of the Decree 339/96 on Package Travel.

⁵²⁴ Article 30 sec. (4), (5) of the Decree-Law 198/93.

⁵²⁵ Article 16b of the Act on Tourist Services states that the client should give notice "in a manner appropriate for this type of service".

recommendation. As indicated above, in making use of the minimum clause, such a formulation does not contradict the Directive's provision.

Under BULGARIAN law, the consumer is obliged to inform the supplier of the service and the tour organiser or the tour agent.⁵²⁶

The laws in AUSTRIA⁵²⁷ and the CZECH REPUBLIC⁵²⁸ state that the traveller is obliged to give notice to the provider immediately after any shortcomings are detected. Furthermore, according to Czech legislation, the contract must set out how the consumer has to lodge his claim that the travel agency is in breach of its legal duties.⁵²⁹ In HUNGARY,⁵³⁰ an official complaint must be made immediately to the tour guide and to the organiser's local representative. ESTONIAN law lays down a notification duty for the traveller, who must inform the immediate provider of the travel services and the tour operator or retailer of any breach of contract.⁵³¹ CYPRUS has indirectly imposed a notification duty on the consumer by obliging the supplier or the other party to the contract to include information concerning the conditions for compensation in the contract. The contract must stipulate that the supplier or the other party to the contract is bound to provide a clear indication that, in order for a compensation claim to be processed, the supplier of the relevant services or the other party to the contract must be notified of any problem, either in writing or any other appropriate manner.⁵³²

In BELGIUM,⁵³³ the traveller has to complain immediately about shortcomings and, additionally, has to send the complaint to the organiser or the travel agent by recorded delivery within one month of the end of the trip at the latest. A similar regulation can be found in SLOVAKIAN law.⁵³⁴ Initially, the traveller has to inform the local travel agent and also has to give written notification at the earliest opportunity after detecting the shortcoming. The traveller subsequently has to inform the organiser in writing about the failure no later than 3

⁵²⁶ Article 38(1) of the Law on Tourism.

⁵²⁷ § 31e(2) of the Consumer Protection Act.

⁵²⁸ CC Art. 852b.

⁵²⁹ CC sec. 852b(2)(a).

⁵³⁰ § 12(5) of the Government Decree 214/1996.

⁵³¹ § 875(1) of the Law of Obligations.

⁵³² Article 15(9) of the Package Travel, Holidays and Tours Law of 1998.

⁵³³ Article 20 and art. 29 of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

⁵³⁴ CC § 741i sec. (1), (2). According to § 19 of the Consumer Protection Act, the organiser is obliged to ensure that the representative (agent) is available and qualified to deal with complaints throughout the whole excursion.

months after departure and produce the written notification (first step). According to ROMANIAN law, the tourist has to make his complain promptly and in writing.⁵³⁵ In ITALY,⁵³⁶ the consumer must complain about partial or total failures to the organiser (or his local representative or the group guide) without delay to allow these problems to be remedied. The consumer can also send the organiser or retailer a letter of complaint (by recorded delivery) within 10 days of returning to the place of departure. Such formal requirements (e.g. letter sent by recorded delivery, in writing) may be contrary to the Directive, which only requires notification in writing or any other appropriate form.

GERMAN⁵³⁷ law even lays down a second obligation to communicate any shortcomings after the end of the trip, in addition to the primary duty to inform the tour operator or his local representative. This requirement may not be in line with EC law.

According to FRENCH law,⁵³⁸ the purchaser may lodge a claim against the seller for non- or improper performance of the contract by sending a letter by recorded delivery as soon as possible.

In LITHUANIA and LUXEMBOURG, there is no reference to a need to lodge a formal complaint, but simply to the general principle of due performance of a contract. In the NETHERLANDS, there is no duty to notify under statutory law. If the organiser stipulates such a duty in the contract, he must inform the traveller about any deadline for exercising it.⁵³⁹ In SLOVENIA, no specific provision exists, therefore the general rule governing the notification of defects applies.⁵⁴⁰

Table: Registering complaints about shortcomings

As per the Directive	IE, LV, MT, UK (4)
Deviations	AT, BE, BG, CY, CZ, DE, DK, EE, EL, FI, FR, HU, IT, PL, PT, RO, SE, SK (18)

⁵³⁵ Article 22 of the Government Ordinance No. 107/1999 on package travel as approved and amended by Law No. 631 of 16 November 2001.

⁵³⁶ Article 98 sec. (1), (2) of the Consumer Code.

⁵³⁷ CC § 651d(2), § 651g(1).

⁵³⁸ No explicit transposition, but covered in Art. 98 of Decree No. 94-490.

⁵³⁹ Article 1(e) of the Decree of 15 January 1993 containing rules concerning information that organisers of package travel must notify in the interest of travellers.

⁵⁴⁰ Article 461 of the Code of Obligations, applicable to all types of contracts (Art. 100 of the same Code).

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Not explicitly transposed	ES, LT, LU, NL, SL (5)
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f. Assistance to consumer in difficulty

According to Art. 5(2) sent. 2 of Directive 90/314, the organiser is obliged to give prompt assistance to a consumer in difficulty in cases referred to in Art. 5(2) 2nd and 3rd indent of the Directive. The legislators in GREECE, IRELAND, PORTUGAL, SLOVAKIA, SPAIN and the UNITED KINGDOM transposed this provision. In SWEDEN, a similar provision can be found as well.⁵⁴¹

In AUSTRIA,⁵⁴² BELGIUM,⁵⁴³ ESTONIA⁵⁴⁴ and MALTA,⁵⁴⁵ the tour operator must take all reasonable steps in order to provide immediate assistance to a traveller in difficulty. In Austria, Estonia and Malta, this duty does not exist if the traveller has caused the difficulties himself. However, according to Belgian law, the tour operator is still obliged to provide assistance in this case, but may charge the traveller for the costs of assistance. The POLISH⁵⁴⁶ legislator makes clear that the tourism organiser is never free from his or her duty to provide assistance to a client in difficulty during the trip, even though he has duly excluded liability.

Moreover, in FINLAND,⁵⁴⁷ the obligation to assist the consumer is wider and more detailed than in the Directive. It also applies if the consumer has caused the difficulties himself. It is argued that, in a foreign country, it is very difficult to get the right treatment or help without assistance from the organiser. In LITHUANIA⁵⁴⁸ and the NETHERLANDS,⁵⁴⁹ the tour organiser is equally obliged to give help and support to the consumer even if the tourist is ultimately responsible for the improper performance. In that case, it is possible that the costs for providing assistance are charged to the consumer. ITALIAN⁵⁵⁰ law states that the organiser or retailer must make every effort to help the customer in continuing his journey, though the

⁵⁴¹ § 16(4) of the Package Tours Act 1992:1672.

⁵⁴² § 31e(1) of the Consumer Protection Act.

⁵⁴³ Arts. 18(3), 27 of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

⁵⁴⁴ § 877(4) of the Law of Obligations.

⁵⁴⁵ Article 15(7)(2) of the Package Travel, Package Holidays and Package Tours Regulations.

⁵⁴⁶ Article 11a(2) of the Act on Tourist Services.

⁵⁴⁷ § 16 Package Travel Act of 28 November 1994/1079.

⁵⁴⁸ CC Art. 6.754(3) 1st indent stipulates that the tour organiser, depending on the specific circumstances, has a duty to give all possible help and support to the tourist if the contract does not meet his expectations.

⁵⁴⁹ CC Art. 7:507(3).

⁵⁵⁰ Article 96(2) of the Consumer Code.

consumer must compensate for damages where he is responsible for improper performance of the contract.

In DENMARK,⁵⁵¹ the organiser only has to provide assistance to the consumer if the consumer suffers personal injury. In SLOVENIA, Art. 887 of the Code of Obligations only lays down a very broad obligation for the organiser to safeguard the rights and interests of the passengers in accordance with good customs. The GERMAN legislator has not explicitly transposed this provision of the Directive. However, under § 651c Civil Code (BGB), the organiser must remedy any defects in performance. In practice, this should lead to the same results as the Directive requires.

In FRANCE,⁵⁵² the contract must give contact details for the seller's local representative or, where there is no representative, for the local authorities which are likely to assist the consumer in the case of difficulty or, failing that, an emergency telephone number. Likewise in BULGARIA, where such information has to be given to the consumer before departure. Besides, all kinds of measures have to be taken to help the consumer immediately.⁵⁵³

In CYPRUS, the organiser is still obliged to assist a consumer in difficulty in the case of *force majeure* (Art. 5(2), 4th indent of the Directive).

Table: Assistance to consumer in difficulty

As per the Directive	CZ, EL, ES, HU, IE, PT, SK, UK (8)
Deviations	AT, BE, BG, CY, DK, EE, FI, FR, IT, LT, LV, MT, NL, PL, SE, SL (16)
Not explicitly transposed	DE, RO (2)
Transposition not entirely clear	LU (1)

⁵⁵¹ § 23(2) of the Package Travel Act.

⁵⁵² Article 98(19) of the Decree 94-490.

⁵⁵³ Articles 32(1) and 38 of the Law on Tourism.

6. Security in the event of insolvency

According to Art. 7 of Directive 90/314, “the organiser and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency”.

Most member states have adopted the Directive’s wording and oblige the organiser and/or retailer to provide security in the event of insolvency. Again, different wording exists. FRANCE, for example, uses the term “agent de voyage” and IRELAND “package provider”, which could be either the retailer or the organiser as per the Directive. SPAIN is slightly different insofar as all the Autonomous Communities have developed a security system with detailed regulations and, to some extent, with varying requirements.⁵⁵⁴

Table: Obligated party

Organiser	AT, BG, CZ, DE, FI, LT, LV, ⁵⁵⁵ PL, SL (9)
Retailer	(0)
Organiser and/or retailer	BE, CY, DK, EE, EL, ES, FR, HU, IE, IT, LU, MT, NL, PT, RO, SK, UK (17)
Transposition not entirely clear	LV, SE (2)

The formulation “sufficient evidence in the case of security” is quite open and leaves it up to member states to choose appropriate measures. Nevertheless, the goal of the provision has been clearly explained by the ECJ in several cases. In the *Dillenkofer* case,⁵⁵⁶ the court applied its rulings on state civil liability to the field of consumer law for the first time. The case hinged on damages owing to the claimant because of Germany’s incomplete transposition of Directive 90/314. The central question was whether Art. 7 of Directive 90/314 grants a qualified right to the traveller insofar as it meets the first requirement of state

⁵⁵⁴ Et al: Art. 46(4) of Law 6/2003 of 27 February on Tourism in Aragón (and Art. 13 of the Regulation on travel agents in Aragón), Art. 163 of the Regulation on Tourism in La Rioja (Decree 111/2003 of October 10), Arts. 11 and 12 of Decree 301/2002 of December 17 on Travel Agents in Andalucía, Art. 31 of Law 2/1999 of March 24 on Tourism in the Balearic Islands (and Art. 13 of Decree 60/1997 of May 7).

⁵⁵⁵ Undertakings that market package tourism services shall provide a safety guarantee.

⁵⁵⁶ ECJ judgment of 8 October 1996, C-178/94 – *Dillenkofer*.

liability. The ECJ ruled that this was the case, on the grounds that consumer protection is an independent goal of the Directive.⁵⁵⁷ Furthermore, the court argued that any regulation allowing the tour organiser to require an unsecured deposit payment would contradict the purpose of Art. 7. Thus, it was evident that there should be a third party, independent from the organiser and responsible for maintaining sufficient funds, to act as guarantor.

In this context, it is questionable whether DUTCH transposition is in line with the Directive. Art. 7:512 of the Dutch CC states that the organiser shall take the necessary measures to ensure that, in the event of insolvency, his debts are covered by a third party or that the price under the travel agreement will be repaid or other specific measures taken in line with this article. The organiser is also bound to make these measures public. This regulation does not state the requirements governing the appointment of a guarantor who himself is not exposed to the risk of insolvency because of his internal structures and policies.

Table: Evidence of security

Financial guarantee	AT, DE, DK, EE, EL, ES, FI, FR, HU, LU, LV, PL, PT, RO*, SK, SL ⁵⁵⁸ (16)
Insurance policy	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, ⁵⁵⁹ LT, LU, MT, PL, PT, RO*, SE, SK, ⁵⁶⁰ UK (23)
Security fund	DK, EL, ⁵⁶¹ HU, IE, IT, ⁵⁶² LU, MT, NL, ⁵⁶³ SK, UK ⁵⁶⁴ (10)
Bond provided by authorised institution	CY, IE, UK (3)

⁵⁵⁷ Line 39 of Judgement C-178/94.

⁵⁵⁸ Or security. It is unclear whether this means an insurance policy or a security fund.

⁵⁵⁹ Article 99(1) of the Consumer Code.

⁵⁶⁰ The organiser is obliged to conclude an insurance contract with an insurer and to provide the consumer with an insurance certificate together with one copy of the contract.

⁵⁶¹ Only if the organiser or retailer is a travel agency. According to Art. 5(5)(b) of Decree 339/96, the organiser/retailer (i.e. travel agencies for general national tourism, shipping charter companies, tourist accommodation) is obliged to conclude an insurance contract concerning professional indemnity insurance for faults and omissions in exercising his profession. The insurer has to be a properly registered insurance company authorised to operate in Greece or in a member state of the EU.

⁵⁶² The Ministry of Productive Activities is responsible for this. On financing, see Art. 100 of the Consumer Code on the total compulsory insurance premium paid into the national budget.

⁵⁶³ On a voluntary basis only (repeats only the wording in the Directive).

⁵⁶⁴ Trustee for the consumer.

or insurance company	
Necessary measures ⁵⁶⁵	NL (<i>I</i>)

In the ECJ case *Verein für Konsumenteninformation*,⁵⁶⁶ the court held that all risks possibly arising from insolvency of the tour organiser must be fully covered. In this regard, member states have a variety of regulations. The vast majority stipulate that any money paid or repatriation costs must be refunded as per the Directive. Additionally, in FRANCE, equivalent services are to be reimbursed if the consumer agrees to this. DANISH law provides for reimbursement of the intermediary who paid the customer's claims on behalf of the insolvent organiser. ITALIAN law also ensures that immediate financial help is available if tourists are forced to return from non-EU countries in the event of an emergency, for which the organiser may or may not be responsible. In SLOVAKIA, the difference between the package prices in the case of a substitute package or the difference in the case of a package only partially provided may be refunded. PORTUGUESE law explicitly states that any medical assistance and medicines necessary in the event of accident or illness may be refunded.

Table: Refund

Payments (including partial payments) made	AT, BE, BG, CY, CZ, DE, DK, EE, ⁵⁶⁷ EL, ⁵⁶⁸ ES, FR, HU, IE, IT, ⁵⁶⁹ LT, LU, LV, MT, PT, RO, SK, SL, ⁵⁷⁰ UK ⁵⁷¹ (23)
Repatriation costs	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ⁵⁷² ES, FR, HU, ⁵⁷³ IE, IT, LT, LU, LV, MT, PT, ⁵⁷⁴ RO, SL, SK, UK ⁵⁷⁵ (23)

⁵⁶⁵ Either his debts are covered by a third party, or the price under the travel agreement will be repaid or other specific measures taken.

⁵⁶⁶ ECJ judgment of 5 May 1998, C-354/96 – *Verein für Konsumenteninformation*.

⁵⁶⁷ Or compensation for the cancelled part of the tour.

⁵⁶⁸ Generally, the third party (traveller/consumer) has a direct claim against the insurer (Art. 26 of the Act 2496/1997) if the insurance contract has been stipulated in law. There is a valid claim up to the indemnity limit for compulsory insurance, irrespective of the real insurance sum. The insurer is not allowed to raise an objection against the third party on the basis of anything contained in the insurance contract.

⁵⁶⁹ "To reimburse consumers in the event of financial failure".

⁵⁷⁰ The refund obligation comes into force two years after the entry into force of the Promotion of Tourism Development Act on 30 January 2004.

⁵⁷¹ The sum must be reasonably expected to cover all monies paid by consumers.

⁵⁷² According to Art. 7(2) of Decree 339/1996, the insurance contract must state the method for immediate reimbursement of repatriation costs.

Accommodation	DK, EE (2)
Equivalent service	FR (1)
Other needs resulting from non-performance	DK, EL, ⁵⁷⁶ HU, PT, SL ⁵⁷⁷ (5)
Others	DK, IT, SK, PT (4)

The European Court of Justice further had to rule on Art. 7 of Directive 90/314 in the *Rechberger*⁵⁷⁸ and *Ambry*⁵⁷⁹ cases. In the *Rechberger* case, the court found no indication in the Directive's text that the guarantee mentioned in Art. 7 might be limited. Therefore, it seems problematic that some European legislators have opted for a certain limitation on the insurance sum. According to GERMAN law, the guarantor may limit his liability to 110 million euro per year for all potential refunds. Should refunds exceed this maximum amount, individual refund claims diminish in line with the proportion of the total individual sum to the maximum amount.⁵⁸⁰ PORTUGUESE law sets a 50-million euro limit.⁵⁸¹

In AUSTRIA, BELGIUM, CYPRUS, DENMARK, ESTONIA, HUNGARY, IRELAND, LITHUANIA and the UNITED KINGDOM, legislation sets a minimum insurance sum. For example, in Austria, the minimum amount depends on the different elements of a package and is approximately 10 % of the company's annual turnover.⁵⁸² In Belgium, it is 15 % of assets.⁵⁸³ Cypriot law sets a minimum insurance sum if the 'other party to the contract' opts for a bond provided by an authorised institution or insurance company, instead of an insurance policy. This minimum sum is equivalent to 20% or more of the payments received by the other party to the contract during the 12-month period preceding the start date of the bond or equivalent to the maximum amount of all payments "which the other party to the contract expects at any moment to be in his possession, pursuant to contracts which have not yet been fully performed, or whichever

⁵⁷³ "Actions to be taken in the interest of travellers who face an emergency after starting the tour" (e.g. return trip) and costs of the enforced stay abroad.

⁵⁷⁴ And assistance.

⁵⁷⁵ The sum must be reasonably expected to cover all monies paid by consumers.

⁵⁷⁶ Or improper performance; cf. Art. 5(5)(b) of Decree 339/1996.

⁵⁷⁷ Damage caused to consumers as a result of a breach of contract.

⁵⁷⁸ ECJ judgment of 15 June 1999, C-140/97 – *Rechberger*.

⁵⁷⁹ ECJ judgment of 1 December 1998, C-410/96 – *Ambry*.

⁵⁸⁰ CC, § 651k(2).

⁵⁸¹ Article 45(2) of Decree-Law 198/93.

⁵⁸² § 4 Regulation on travel agencies implementing Art. 7 of the Package Travel Directive.

⁵⁸³ At least the equivalent of 1 000 000 BEF. Art. 3 of the Royal Decree of 25 April 1997 implementing Art. 36 of the Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts.

amount is greater”.⁵⁸⁴ In Denmark, the regulation only applies to foreign organisers who have set up a business in Denmark and the minimum sum depends on the business’s turnover.⁵⁸⁵ Hungarian law specifies a sum of at least 12 % of the travel company’s net revenue.⁵⁸⁶ LITHUANIAN law⁵⁸⁷ distinguishes between cases where the tour organiser’s annual revenue is over/under 4 million LTL. In the first case, the sum insured ranges from LTL 100 000 to LTL 200 000, while, in the second instance, it constitutes 5 % of the tour organiser’s annual revenue. In LATVIAN law, the security must cover the money the customer has paid over a period of not less than one year and a sum of 50 % of the forecast turnover for the following year, but not less than 20 000 lats. In the *Rechberger* case, the ECJ did not express a view as to whether a national system that stipulates a “minimum insurance sum” can be considered in line with the Directive. An argument in favour would be that such a regulation is designed to effectively support consumers by ensuring that the guarantor maintains sufficient funds.

In GERMANY, LUXEMBOURG and SLOVAKIA, a guarantee certificate has to be provided before payment. This can be requested by the consumer. In BELGIUM, it is compulsory to publish a list of organisers who provide insurance, thus enabling the consumer to collect necessary information. MALTESE law stipulates that information on insurance has to be provided in the travel brochure, whereas POLISH law demands written confirmation. BULGARIAN law sets out an obligation for the tour-operator (organiser) to enter annual liability insurance in the event of inability to pay damages due to the consumer, insolvency, here, is also included. Presenting such an insurance contract is a condition for the mandatory registration of tour-operators as well as for the conclusion of the package travel contract.⁵⁸⁸

In the *Ambry* case, the court held that any national legislation requiring the insurer to have a registered office or branch on its territory pursues a legitimate aim insofar as it ensures immediate payment in the event of repatriation. Nevertheless, it was regarded as contrary to the EC Treaty. It does not seem that any member state has adopted or maintained any such regulation.

⁵⁸⁴ Article 18(4) of the Package Travel, Holidays and Tours Law of 1998.

⁵⁸⁵ Between 300 000 DKK and 30 million DKK.

⁵⁸⁶ Article 8(2) of Government Decree 213/1996.

⁵⁸⁷ Article 7(3) of the Law on Tourism. The calculation must take the previous year into account and cover all contracts concluded for the supply of tourist services abroad.

⁵⁸⁸ Articles 41 and 43 of the Law on Tourism.

Table: Special requirements

Limitation on insurance sum	DE, PT (2)
Minimum insurance sum	AT, BE, CY, DK, EE, HU, IE, LT, LV, PT, UK (11)
Guarantee certificate	DE, LU, SK (3)
Information duty	BE, BG, MT, PL (4)
Security as condition for licence	BG, CZ, FR, HU, PL, PT, SK, SL (8)

Some member states provide for exemptions from the obligation to guarantee security in the event of insolvency. The GERMAN provisions do not apply if the organiser only operates occasionally and not within his professional capacity, if the trip does not last longer than 24 hours, does not include an overnight stay and does not cost more than 75 euro and, finally, if the tour organiser is a public legal entity that cannot be subject to insolvency proceedings.⁵⁸⁹

In DANISH law, exemptions exist where a not-for-profit association operates travel activities that constitute only a minor part of its activities and an intermediary acting on behalf of a foreign organiser complies with the scheme approved by another EU member state. Finally, the UNITED KINGDOM provides for exemptions from the requirements to provide security where the person with whom the consumer has concluded a contract is established in a member state other than the United Kingdom and the package is subject to the rules implementing Art. 7 in that member state. The same applies where the contract party is subject to specific civil aviation regulations.⁵⁹⁰

In the light of the ECJ rulings in *Centros*,⁵⁹¹ *Überseering*⁵⁹² and *Inspire Art*,⁵⁹³ one might wonder whether, for example, an organiser headquartered in member state A may transfer the security system established under its rules to member state B, where it may not comply with B's laws. A preliminary assessment of this question suggests that the organiser will have to comply with the rules of member state B. However, this question may need further

⁵⁸⁹ CC § 651k(6).

⁵⁹⁰ The Civil Air Regulations 1995 require a person (not acting as 'retailer') who sells a package involving flights to hold an Air Travel Organiser's Licence (ATOL), issued by the Civil Aviation Authority (CAA). ATOL holders must lodge a bond with the CAA to protect their customers against insolvency.

⁵⁹¹ ECJ judgment of 9 March 1999, C-212/97.

⁵⁹² ECJ judgment of 5 November 2002, C-208/00.

⁵⁹³ ECJ judgment of 30 September 2003, C-167/01.

(empirical) research. This requirement to transfer into a new security system may constitute a barrier to trade. This would be particularly true if an organiser wishing to set up branches or offices in several member states had to comply with each of the respective national rules governing security systems.

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	B. Package Travel Directive (90/314)	

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