

When the carrier becomes a package travel organiser

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Dr Laurent Chassot

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PLAN

- I. Situations where the rules on package travels apply to carriers
- II. The carrier's obligations as a travel organiser
- III. How can carriers mitigate the consequences/risks

I. SITUATIONS WHERE THE RULES ON PACKAGE TRAVELS APPLY TO CARRIERS



- The carrier who sells a "package" and hence qualifies as a travel **organiser**

the "organiser" (i.e. the person responsible to discharge most obligations under the PTD) is defined as:

"... a trader who combines and sells or offers for sale packages, either directly or through another trader or together with another trader, or the trader who transmits the traveller's data to another trader ..."

- In case of a linked travel arrangement, the carrier who does not comply with the requirements of Art 19(2) PTD

A. The carrier who sells a package

See definition of package, Art 3(2) PTD

-> combination of travel services, if

- one contract
- single point of sale and selection of services before traveller agrees to pay
- inclusive/total price
- sold as "package"
- contract entitling traveller to combine travel services subsequently ("gift box") ; or
- **traveller's contact and payment details transmitted between traders and another contract is concluded within 24 hours from the first booking**

Examples:

- Flights & hotel sold as a package




Hoteles Globales Reina Cristina

Algeciras, Costa de la Luz, Spain

02 Jul 2018 for 7 nights

 1x Double or twin, standard

 Room only

 **5.0** TripAdvisor Rating

★★★★★

Price per person **£393.00**

Includes flight & hotel
Excludes baggage & transfers

✈ **London Gatwick** on Mon 02nd Jul 2018 **Gibraltar** on Mon 02nd Jul 2018


✈ **Gibraltar** on Mon 09th Jul 2018 **London Gatwick** on Mon 09th Jul 2018

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- Flight & hotel, for an inclusive price




Basket CHF 272.60
Subject to [hotel exchange rate](#)
[Price breakdown >](#)

Basel to Thessaloniki
EZS1109  _____
Departure 12:30 **Thu 3rd May**
Arrival 15:50


Your fares

Adult	1 x CHF 80.70 
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Your flight options

Extra Legroom seat	1 x CHF 33.95 
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Your travel extras

Hotel 

[About book now, pay now](#)
Electra Palace Thessaloniki
From 14:00 - 3rd May to 12:00 - 4th May
1 night stay
1 x Classic Single Room - Non Refundable
Total **approx CHF 157.95** 135.00 €

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B. The carrier who does not comply with its obligations in case of LTA



Art 19(3) provides that

"Where the trader facilitating linked travel arrangements has not complied with the requirements set out in paragraphs 1 and 2 of this Article, the rights and obligations laid down in **Articles 9 and 12** and **Chapter IV [i.e. Art 13-16]** shall apply in relation to the travel services included in the linked travel arrangement"

Pro memoria, under Art 19 (1) and (2) the trader is required to

- provide security for the refund of payments received
- provide information to the travellers (standard forms of Annex II)

II. THE CARRIER'S OBLIGATIONS AS A TRAVEL ORGANISER



- [Chapter II: information obligation and content of the contract - *only if carrier is an organiser strictly speaking, but not in the case of Art 19(3 PTD)*]
 - Art 9 PTD: traveller's right to transfer the contract
 - Art 12 PTD: traveller's right to withdraw from the contract
 - Art 13 PTD: responsibility for the performance of the package
 - Art 14 PTD: price reduction and compensation for damages
- + any further requirement by the national law of the relevant Member State (eg travel operator licence)

A. Right to transfer the contract (Art 9 PTD)



- The traveller may, after giving the organiser reasonable notice (7+ days deemed reasonable), transfer the contract to a person satisfying all the conditions applicable to the contract
- Transferor and transferee jointly and severally liable
- Transfer fee shall not exceed actual costs

NB: "package travel contract" means a "contract on the package as a whole or, if the package is provided under separate contracts, **all contracts covering travel services included in the package**", see Art 3(3) PTD

B. Right to withdraw from the contract (Art 12)



- Traveller may at any time withdraw from the package travel contract, subject to an appropriate and justifiable termination fee
 - The contract may specify standardised termination fees, based on the time of termination, taking into consideration expected cost savings and alternative incomes
 - If no standardised fee, price of package minus cost savings and alternative incomes
- In case of **unavoidable and extraordinary circumstances at destination**, unconditional right to terminate -> no fee, full refund
 - Recital 31: warfare, serious security problems (eg terrorism), significant risks to human health (eg serious disease), natural disasters or weather conditions affecting safety

C. Responsibility for the performance of the package (Art 13 and 14)



- The organiser is responsible/liable for the proper performance of all the services included in the travel package, even if it does not provide them itself (vicarious liability)
- It has to **remedy lacks of conformity** (unless impossible/disproportionate costs), if necessary by providing alternative arrangements
- The traveller is entitled to self-remedy if the organiser fails to remedy, at organiser's expense
- If the (unremedied) lack of conformity is substantial, the traveller may **terminate** the package and claim a full refund

[Cont'd]

- The traveller is entitled to **price reduction and/or compensation** of losses for any unremedied lack of conformity, unless attributable to the traveller. Furthermore, there is no obligation to compensate, if the organiser proves that
 - The lack of conformity is attributable to an unconnected third party and is unforeseeable or unavoidable
 - The lack of conformity is due to unavoidable and extraordinary circumstances
- **Obligations under EU Regulation 261/2004 remain unaffected** (i.e. for flight cancellations, compensation is exclusively governed by Art 5 of Reg 261)

III. How can carriers mitigate these consequences/risks?

- "Contracting-out" of obligations impossible, see Art 23 PTD
 - Waivers of travellers' rights not enforceable
 - Clauses such as "... acting solely as an intermediary ..." or "... is not a travel package..." are of no avail
- Specific travel organiser insurance coverage needed (or required, as the case may be) if carrier acts as an organiser, as aviation policies would normally not cover non-aviation risks
- Inclusion of indemnity clauses in agreements with travel service providers may be advisable (see also Art 22 PTD)

Many thanks for your attention!

Laurent Chassot
Partner
PhD, LLM air & space law McGill

gbf
Attorneys-at-law

P.O. Box 1661
Hegibachstrasse 47
8032 Zurich
Switzerland

T +41 43 500 48 50
F +41 43 500 48 60

P.O. Box 1911
Route de Pré-Bois 20
1215 Geneva Airport
Switzerland

T +41 22 533 48 50
F +41 22 533 48 54

contact@gbf-legal.ch
www.gbf-legal.ch