

GUIDELINE OF THE SCOPE AND DEFINITIONS OF THE REGULATION OF THE PACKAGE TRAVEL AND LINKED TRAVEL ARRANGEMENTS

Competence

Pursuant to § 14 (10) of the Statute of the Consumer Protection Board, the Board has the right to issue, within the limits of its competence, recommended guidelines for compliance with consumer protection requirements arising from legislation.

Purpose

The purpose of this guideline is to clarify and specify the scope of the package travel and linked travel arrangements, scope exclusions and definitions of travel undertaking, package travel and linked travel arrangements set out in Tourism Act (hereinafter referred to as TurS) and Law of Obligations Act (hereinafter referred to as VÖS). Tourism Act and Law of Obligations Act have transposed the Package Travel and Linked Travel Arrangements Directive nr 2015/2302 (hereinafter also referred to as the Directive), which aims to bring the scope of protection into line with market trends, to harmonize the requirements for package travel and linked travel arrangements and to improve consumer protection.

Legal basis

The following legal acts have been used to prepare the guideline:

- Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC
- Tourism Act
- Law of Obligations Act

1. The scope of regulation of package travel and linked travel arrangements

TurS § 5 (1) defines that travel undertaking is an undertaking which operates as a tour operator, travel retailer or undertaking which facilitates the conclusion of contracts on linked travel arrangements for the purposes of economic or professional activities relating to packages and linked travel arrangements.

TurS § 5 (2) specifies that tour operator is a travel undertaking which combines packages and offers them or enters into package travel contracts itself or through another travel undertaking or together with another travel undertaking, or which transmits the traveller's data to another undertaking according to TurS § 7 (2) 5.

TurS § 5 (3) specifies that a travel retailer is a travel undertaking which offers packages combined by a tour operator or enters into package travel contracts on behalf of a tour operator. A travel retailer which offers packages combined by a travel undertaking established outside the European Economic Area or enters into package travel contracts on behalf of such a travel undertaking is subject to the requirements provided by Tourism Act for tour operators.

Although the definition of an undertaking facilitating the conclusion of contracts on linked travel arrangement is not specifically defined by law, it can be derived from TurS § 5 (1) in conjunction with TurS § 6 (6), according to which an undertaking facilitating the conclusion of contracts on linked travel arrangement is a travel undertaking that provides linked travel arrangements or facilitates the conclusion of contracts on linked travel arrangement.

As a result of above, one is travel undertaking when concluding package travel contracts and facilitating the conclusion of contracts on linked travel arrangement as well as providing/offering packages and linked travel arrangements. The offer means both an offer within the meaning of VÖS 16 (1) as well a proposal to make an offer within the meaning of VÖS 16 (3), and the offer may be personal (for example, sent to the e-mail address of the traveller) or public (for example, on the website of the travel undertaking).

Although Tourism Act uses terms "offer" and "conclusion of package travel contract", the guideline refer to them as "offering" and "selling".

This means that one is travel undertaking when offering and selling packages or linked travel arrangements. Depending on whether travel undertaking is offering or selling his/her own packages or packages combined by another travel undertaking, travel undertaking is considered as tour operator or travel retailer. An undertaking is considered facilitator when facilitating the conclusion of contracts on linked travel arrangement when offering and selling linked travel arrangement. However, one undertaking can be a tour operator, travel retailer and undertaking facilitating the conclusion of contracts on linked travel arrangements depending which role it is currently playing.

If undertaking offers and sells its own packages itself or through another travel undertaking or together with another travel undertaking, it is considered as tour operator. If undertaking offers

and sells packages combined by another travel undertaking, doing it on behalf of it, it is considered as travel retailer.

A package always requires the existence of a tour operator: whether the tour operator concludes the package travel contract itself or it is concluded in his/her name on behalf of tour operator by travel retailer. However, the travel retailer has the right to offer and sell packages only by these tour operators, who has given him/her the right to sell it and it should be also taken into account that mediating is only carried out if the travel retailer mediates the package exactly in a way the tour operator has combined it.

For example, if travel retailer adds additional travel service to the package what is combined by tour operator and offer and sells it as part of package, travel retailer could become tour operator. However, if travel retailer advertises, offers and sells additional travel service separate from package, it could not become tour operator. It is extremely important that traveller knows and understands which contracts he/she is offered and which contracts he/she will conclude and which legal consequences will incur.

Following questions are decisive on this example.

Firstly, whether package and additional travel service are selected before the traveller agrees to pay, that is within the same booking process, or where such services are offered, sold or charged separately so there will be conclude separate contract, and it will not be charged at an inclusive or total price, as well as whether such services are advertised or sold under the term 'package' or under a similar term indicating a close connection between the travel services concerned. Such similar terms could be, for instance, 'combined deal', 'all-inclusive' or 'all-in arrangement'. For example, may travel retailer become a tour operator when retailer adds ski passes to package which already include flight tickets and hotel accommodation and advertise such as ski package.

In order to define and classify travel undertaking one must notice, whether its own packages or packages combined by another travel undertaking are offered and sold. Also, package and linked travel arrangements regulation will apply, if travel services, which are offered and sold, comply with characteristics of package or linked travel arrangement and it is not relevant how the undertaking describes or defines its business, but how he/she travel services advertises, offers and sells. It means that accommodation establishments or carriage of passenger's or other travel service provider can become travel undertaking.

Since undertaking acts as travel undertaking while offering and selling packages and linked travel arrangements, packages and linked travel arrangements must not sell nor offer before all the requirements for this activity are met, that is submitting a notice of economic activities and providing a sufficient security. These requirements must be fulfilled on the first advertisement provide of offering package or linked travel arrangements, even if there has been no real sale.

It is important to notice that obligation to submit a notice of economic activities and provide sufficient security lies on those travel undertakings which areas of activity are mentioned in TurS § 6:

- 1) organisation of packages which include travel services provided in Estonia;
- 2) organisation of packages which include travel services provided outside of Estonia and charter flights;
- 3) organisation of packages which include travel services provided outside of Estonia and scheduled flights;
- 4) organisation of packages which include travel services provided outside of Estonia, except for charter flights or scheduled flights;
- 5) intermediation of packages combined by a travel undertaking of a state outside the European Economic Area;
- 6) offer of linked travel arrangements and facilitation of entry into contracts

It means that travel retailer does not have an obligation to submit a notice of economic activities and provide sufficient security, unless if travel retailer offers and sells packages combined by a travel undertaking established outside the European Economic Area. In that case travel retailer is considered as tour operator and must fulfill all the requirements that are intended for this activity, as submit a notice of economic activities and provide a sufficient security.

2. Exclusions of the scope

Tourism Act and Law of Obligations Act provide exclusions from the scope, which define and specify the circumstances in which the requirements and conditions for package travel and linked travel arrangements are excluded entirely and not applicable.

2.1 Offering packages occasionally, on a non-profit basis and only to a limited group of travellers

Tourism Act is not applied if packages are offered or the entry into contracts on linked travel arrangements is facilitated only occasionally, on a not-for-profit basis and only to a limited group of travellers, without offering these to the public (TurS § 1 (2)).

Chapter 44. from Law of Obligation Act is not applied if a person offers packages or facilitates entry into contracts for linked travel arrangements only occasionally, on a not-for-profit basis and only to a limited group of travellers without offering them to the public (VÕS § 866¹ lg 2).

Directive has provided examples for these cases as trips that charities, sports clubs or schools organize for their members not more than a few times a year without being offered to the general public.

explanatory memorandum added to the project of changing the Tourism Act, Law of Obligation Act and Consumer Protection Act (hereinafter also referred to as the Explanatory Memorandum) has also referred to these examples but added that this applies to both members and their family members.

In order this exclusion would apply, all three presumption must be fulfilled at the same time:

- 1) packages are offered or the entry into contracts on linked travel arrangements is facilitated only **occasionally**

The term 'occasionally' is not specifically defined in the Directive, but it is more specifically defined in recitals of the Directive. According to the example cited above, occasional trips have been considered trips that are organized couple of times of a year. Packages and linked travel arrangements that are offered and facilitated regularly or more frequently, are not covered by this exclusion and are therefore covered by the regulation of package travel and linked travel arrangements. This is even in the case when such trips are organized for a limited group of travellers and on a not-for-profit basis.

- 2) these must be on a **not-for-profit basis**

The definition of a travel undertaking must be based on the specific nature of the undertaking's activities and the status of the travel undertaking does not depend on the type of legal entity or the size of the sale, nor if and how big profits it gets. Thus, the mere fact that the undertaking's goal of the economic activity is not gain profit, it not decisive, and non-profit associations can also be the travel undertakings.

Although, packages and linked travel arrangements offered on a not-for-profit basis and only occasionally and which are offered to a limited group of travellers without offering them to the public, should be excluded from the scope of this regulation.

It can be an undertaking whose whole activity is structured and organized in a way that its goal is not to make profit. For example, if a non-profit sports club organizes once a year a training trip for its own members. But also, an undertaking who usually operates commercially and profitably purpose, but occasionally organize on non-profit-basis trips to limited group of travellers. For example, if a company organizes training trips twice a year to its employees.

Thus, the consideration of the application of this exclusion cannot be based on the whole economic activity of the undertaking, but on the basis of specific trip, assessing the application of this exclusion based on a trip.

- 3) packages are offered or linked travel arrangements are facilitated **only to a limited group of travellers, without offering these to the public.**

This means that packages or linked travel arrangements which offers are available for public, do not belong under that exclusion. Offers that are publicly available and thus targeted to the public assume fulfilling the requirements which is required from Tourism Act and Law of obligation Act comes from package travel and linked travel arrangements regulation and otherwise there is no right to offer packages and linked travel arrangements.

Also, excluded from this exclusion are situations where package and linked travel arrangements are offered in a way that they are not publicly available (for example closed group in a Facebook), but all persons wishing to purchase this trip are granted immediate access to the group. Although the term 'limited group' is not defined in the Directive, the European

Commission has explained “limited group” as a smaller, more secure and more structured group. Therefore it should be group which does not change over time and expand. For example, trips that are organized by an employer to its employees, trips organized by schools for its students.

Therefore, this exclusion must be interpreted narrowly.

2.2 General agreement

Tourism Act is not applied to package travel contracts or contracts on linked travel arrangements that have been concluded on the basis of a general agreement under which the undertaking arranges business travel for another person engaged in economic or professional activities (TurS § 1 lg 3).

The provisions of Chapter 44 from Law Of Obligation Act do not apply to package contracts and contracts for linked travel arrangements which are entered into on the basis of a general agreement for the arrangement of business travel between a trader and another natural or legal person who is engaged in economic or professional activities (VÖS § 8661 lg 3).

The term „general agreement“ is not defined in Directive. However, the recitals of the Directive refer to general agreement as travel arrangements between companies or organisations, often concluded for numerous travel arrangements for a specified period.

The general agreement by its nature is preliminary contract concluded between the undertaking and person engaged in economic and professional activities which contents are packages and linked travel arrangements offered and organized in the future, in other words, business trips. It is not resell on the name of tour operator (mediation) nor resell in its own name (B2B business model), but sale to a person engaged in economic or professional activity, who himself or persons legally associated with him, travel. Such persons may be, for example, members of the board or employees of the undertaking.

If the tour operator gives other travel undertaking the right to offer and sell their packages, it is a mandator type contract between a tour operator and a travel retailer, usually agency contract. Where the travel retailer offers and sells packages on behalf of the tour operator and his interests, the package contract is deemed to have been concluded between the traveller and the tour operator. General agreement does not however, give other party the right to sell packages or linked travel arrangements on behalf of another undertaking.

Also in the situation where a travel undertaking offers and sells packages, linked travel arrangements or single travel services to another undertaking in a way that latter offers and sells them on its own behalf, acting thus forming packages as a tour operator, is not covered by this regulation and requirements laid down in Directive and transposed into the relevant national law are fulfilled by the person who conclude package contract with the traveller and thus acts as a travel undertaking.

It is also important that the general agreement would be aimed at organizing several trips and general agreement is therefore not for example, if it is concluded only for the purpose of organizing one trip. Therefore, general agreement also assumes a certain period of a time as the duration of the contract.

2.3 Trips that last less than 24 hours

Tourism Act is not applied to packages or linked travel arrangements that last less than 24 hours unless overnight accommodation is included (TurS § 1 lg 4).

For the purposes of § 7¹ of the Travel Act, the provisions of this Chapter 44 from Law Of Obligation Act do not apply to packages and linked travel arrangements of less than 24 hours, unless overnight accommodation is included (VÖS § 866¹ lg 1).

This is an exclusion of the scope, which also applied to earlier redactions.

In order this exclusion would apply, two assumptions must be fulfilled. Firstly, the trip lasts less than 24 hours, and secondly, it does not include accommodation. For example, different trips involving carriage of passenger and other tourist services such as theater plays or concerts, excursions or guided tours.

2.4 Single travel services

As the definition of a travel undertaking is related to package travel and linked travel arrangements, there is no action as a travel undertaking when only single travel services are offered and sold, for example air tickets.

3. Definition of package according to TurS § 7 (1)

According to TurS § 7 (1) *a package means a combination of at least two different types of travel services for the purpose of the same trip if the travel services are combined by one tour operator, including at the request of or in accordance with the selection of the traveller, before a single contract on all services is concluded.*

In order to be a package according to TurS § 7 (1), all the following requirements must be fulfilled at the same time:

3.1 combination of at least two different types of travel services

Travel services are mentioned in TurS § 3:

- 1) carriage of passengers;
- 2) accommodation which is not intrinsically part of carriage of passengers and is not for residential purposes;
- 3) rental of a car, another motor vehicle for the purposes of Article 3(11) of Directive 2007/46/EC of the European Parliament and of the Council establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate

technical units intended for such vehicles (OJ L 263, 09.10.2007, pp. 1–160), or a motorcycle requiring a category A driving licence under Article 4(3)(c) of Directive 2006/126/EC of the European Parliament and of the Council on driving licences (OJ L 403, 30.12.2006, pp. 18–60);

4) any other tourist service not intrinsically part of the travel services referred to in clauses 1) through 3) of this section.

3.1.1 carriage of passengers

Directive has referred to carriage of passengers by bus, rail, water or air. At the same time the directive does not define the means of transport and carriage of passenger can be performed by any means of transport.

Carriage of passengers is an independent travel service when it is not intrinsically part of another travel service. According to the Directive intrinsically part of another travel services are for example minor transport services such as carriage of passengers as part of a guided tour or transfers between a hotel and an airport or a railway station.

3.1.2 accommodation which is not intrinsically part of carriage of passengers and is not for residential purposes

As Directive does not limit the types of means of transport, the Directive does not limit it to accommodation. Accommodation that is intrinsically part of carriage of passenger is covered by clarification of exclusion of package in TurS § 7 (4).

Directive has said that accommodation for residential purposes, including for long-term language courses, should not be considered as accommodation within the meaning of this Directive. Although the term "long-term" is left unspecified at the level of the Directive and its assessment must be done case-by-case taking into account the circumstances of the case, it can be assumed that a longer trip than usual has been considered.

3.1.3 rental of a car, a motorcycle or another motor vehicle

This is a new type of travel service which before 01.07.2018 was considered other travel service.

3.1.4 other tourist service not intrinsically part of the beforementioned travel services

Directive has said that other tourist services which are not intrinsically part of carriage of passengers, accommodation or the rental of motor vehicles or certain motorcycles, may be, for instance, admission to concerts, sport events, excursions or event parks, guided tours, ski passes and rental of sports equipment such as skiing equipment, or spa treatments. However, if such services are combined with only one other type of travel service, for instance accommodation, this should lead to the creation of a package or linked travel arrangement only if they account for a significant proportion of the value of the package or linked travel arrangement or are advertised as or otherwise represent an essential feature of the trip or holiday. If other tourist

services account for 25 % or more of the value of the combination, those services should be considered as representing a significant proportion of the value of the package or linked travel arrangement.

This regulation is handled by the clarification and explanation of exclusion of package in TurS § 7 (3) 1. It is important to note that given exception only applies if the other tourist service or other tourist services are combined with one of the following travel services: carriage of passengers, accommodation or rental of a motor vehicles. It means that if part of combination of travel services are two or more travel services listed in TurS § 3 (1)- 3, given exception will not apply.

Services which are intrinsically part of another travel service should not be considered as travel services in their own right. Directive states that such services are, for instance, transport of luggage provided as part of carriage of passengers, minor transport services such as carriage of passengers as part of a guided tour or transfers between a hotel and an airport or a railway station, meals, drinks and cleaning provided as part of accommodation, or access to on-site facilities such as a swimming pool, sauna, spa or gym included for hotel guests.

In conclusion of combination of travel services, it can be noted that package is concluded of at least two different types of travel services, such as accommodation with carriage of passenger, rental of motor vehicle or any other tourist service. If the package includes accommodation, forming a package does not depend on duration of the trip. However, if the combination of travel services does not include accommodation, package is formed if the trip lasts 24 hours or more. Therefore, day trips with excursions and museums passes are no considered as packages. However, two or more days long trips with excursions and museum tours can be considered as package.

As package is combined by at least two different travel services, a package is not combined if the combination of travel services is formed by two or more same type of travel services, such as flights and boat tickets or hotel accommodation and hostel accommodation. A single travel service is not package as well. For example, if only flight tickets are offered and sold.

In regulatory part of Directive has not mentioned exceptions of services that are not considered travel services. However, Directive has mentioned that for example financial services (such as travel insurance), should not be considered as a travel service.

3.2 travel services for the purpose of the same trip

The purpose of this criterion is to avoid situations where package is formed solely because of two different types of travel services, but they are purchased for different trips. Thus, in order to form a package, travel services must be purchased for the same trip. Whether these are for the same trip must be assessed case by case, taking into account specific circumstances of the purpose, duration, destination, etc. of the trip.

The clearest example of travel services for the purpose of the same trip is situation where the date of the beginning and ending of carriage of passenger match with the dates of beginning

and ending of accommodation. However, the same trip can also be if accommodation is purchased for a shorter period than the duration of carriage of passenger. Accommodation can also be purchased and booked to another location. It does not form a package, for example, when flight tickets are purchased for summer and accommodation is purchased for winter, when the first trip is over. Regardless the same destination.

3.3 travel services are combined by one tour operator, including at the request of or in accordance with the selection of the traveler

A classic example of a package is a pre-arranged trip by tour operator with its exact circumstances for travel time, duration, destination, cost and other important conditions of the trip. At the same time, a package is also formed if combination of travel services is not pre-arranged by tour operator but formed by the request of or in accordance with the selection of the traveler. For example, if traveller can choose two or more different types of travel services for the purpose of the same trip offered by one travel undertaking and one contract is concluded.

3.4 a single contract on all services is concluded

Conclusion of a single contract on all travel services means the connection of travel services and acknowledges the fact that one is considered a package. But package can also be formed if separate contracts are concluded on different travel services in accordance with to TurS § 7 (2).

4. Definition of package according to TurS § 7 (2)

According to TurS § 7 (2) *a package also means a combination of at least two different types of travel services for the purpose of the same trip if irrespective of whether separate contracts are concluded with individual travel service providers:*

- 1) the traveller selects the travel services from a single point of sale before agreeing to pay;*
- 2) the tour operator makes an offer, enters into a contract or charges for these services at an inclusive or total price;*
- 3) the tour operator advertises, makes an offer or enters into a contract under the name “package” or alike;*
- 4) the tour operator combines the travel services after the conclusion of a contract by which it entitles the traveller to choose among a selection of different types of travel services; or*
- 5) the traveller chooses travel services from separate undertakings through linked online booking processes where the traveller’s name, payment details and e-mail address are transmitted from the undertaking with whom the first contract is concluded to another undertaking and a contract with the latter undertaking is concluded within 24 hours after the confirmation of the booking of the first travel service.*

There are alternative criteria which do not have to comply at the same time. It means that package is already formed if one criteria is complied. Directive has explained that package is formed, for instance, where different types of travel services are purchased for the purpose of the same trip or holiday from a single point of sale and those services have been selected before the traveller agrees to pay, that is to say within the same booking process, or where such services

are offered, sold or charged at an inclusive or total price, as well as where such services are advertised or sold under the term ‘package’ or under a similar term indicating a close connection between the travel services concerned.

If points 1 to 4 apply irrespective to point of sale (according TurS § 7 (5), a point of sale means an undertaking’s premises, website or similar online sales facility and phone. If websites and similar online sales facilities are presented to a traveller as a single facility, they constitute a single point of sale), then point 5 applies only for online booking processes.

4.1 Acceptance to pay

That is, for instance, where different types of travel services are selected from a single point of sale and within the same booking process and two or more travel services for the purpose of the same trip or holiday have been selected before the traveller agrees to pay. On the Internet it can happen while visiting a website two or more different types of travel services are added to the shopping cart and paid according to the displayed total price. In travel agency, this can happen in a single point of sale when flight tickets are selected and before traveller agrees to pay (it means that the first transaction has not yet been completed), the request purchasing accommodation is also made.

Acceptance to pay means a binding declaration of intent by the traveler, including the agreement to pay later and the actual payment itself.

4.2 Inclusive or total price

This means that a package is formed when tour operator offers, conclude a contract or charges travel services at an inclusive or total price.

The explanatory memorandum refers to inclusive price as a total price per package. This is normal way to publish the price, where tour operator has published a total price for package, without publishing prices of all travel services forming a package separately.

However, package can also be formed at a total price. This is where the prices of travel services forming a package are listed separately, but the offer of the package, concluding a contract or charging is based at the total price.

As a result, a package is formed when one invoice is issued for travel services, but also then, if separate invoices have been issued for different travel services but traveller can buy for them by one payment or transfer. Thus, a package is formed, when one invoice has been issued for travel services or travel services are charged at inclusive or total price. It means, that separately issued invoices do not automatically exclude forming a package.

In practice, points 1 and 2 often occur together, the traveller selects different travel services and before payment, traveller will be informed of the price, either at inclusive or total price which on that the traveller makes a payment or transfer.

4.3 using the name “package” or alike

Directive has specified that package is also formed, if travel services are advertised or sold under the term ‘package’ or under a similar term indicating a close connection between the travel services concerned. Such similar terms could be, for instance, ‘combined deal’, ‘all-inclusive’ or ‘all-in arrangement’.

Thus, package can be formed by the mere fact that an undertaking offers or sells travel services under the term “package” or under similar term, such as a "holiday package", "spa package", "cruise".

4.4 traveller is entitled to choose among a selection of different types of travel services

These are so-called gift cards, which are meant for purchasing a package.

An important criterion is that it must be a gift card for a package. Here are not included the general gift card for which the purchased (travel) services are not specified. In these cases, it is important to notice that when the general gift card is realized and used for the package, the undertaking, who will conclude these services, will become the tour operator and all the requirements of such activities for the tour operator will apply. These requirements must already be complied by offering the package.

4.5 choosing the travel services from separate undertakings through linked online booking processes

Package is formed, when the traveller’s name, payment details and e-mail address are transmitted from the undertaking with whom the first contract is concluded to another undertaking and a contract with the latter undertaking is concluded within 24 hours after the confirmation of the booking of the first travel service.

For example, a package is formed when the traveller purchases flight tickets from the website of airline company and through linked online booking process selects accommodation by the other undertaking, so the airline company has transferred the traveller’s data mentioned above to another undertaking and the contract with the other operator is concluded within 24 hours. Directive does not specify what is specifically meant by payment details, but European Commission has explained that this should be primarily information of credit card.

This point is distinguished from TurS § 7¹ (1) p 2 because in this case the traveller's data is given to another undertaking, but for the linked travel arrangements, the first undertaking invites traveller to book and buy an additional travel service from the other undertaking, but do not transfer the traveller's data to the other company.

5. Exception of package according to TurS § 7 (3)

TurS § 7 (3) provides exceptions, in which cases different types of travel services do not form a package, namely *a package is not deemed to be a combination of travel services in the case*

of which only one type of travel service referred to in § 3 (1) through (3) of this Act has been combined with one or several other tourist services set out in clause 4) of the same section, if the latter service or services:

5.1 does or do not account for no less than 25 per cent of the total value of the travel services and is or are not advertised as and does or do not otherwise represent an essential feature of the combination of the travel services; or

If other tourism service is travel service in its own right (it means it is not intrinsically part of other travel service), package is not formed if other tourism service does not account less than 25 per cent of the total value of the travel services and is not advertised as or does not otherwise represent an essential feature of the combination of the travel services.

However, it is important to notice that this exception applies, if other tourism service or other tourist services has or have been combined with only one of the following travel services: carriage of passengers, accommodation or rental of a car, motorcycle or another motor vehicle. It means that if combination of travel services if combined by two or more travel services listed in TurS § 3 p 1-3, this exception does not apply.

A monetary criteria 25 percent means the value of other tourist service from the total value of travel services. The explanatory memorandum explains that the total value of travel services means foremost the total price of services, but the word 'total value' also include cases where the prices of services are not defined or attempted to show it below reality.

If other tourist service accounts for 25 percent or more of the combination of travel services, this exception does not apply. Regardless whether other tourist service is an essential feature of combination of travel services or not.

An essential feature is not regulated at Directive level. Therefore, it must be assessed in case-by-case. If other tourist service is an essential feature of the combination of travel services, this exception does not apply. Regardless of how big or small is the value of other tourist service from the total value of combination of travel services. travel services. For example, if a ski trip, which includes accommodation and ski passes, is purchased, it can be assumed that the main purpose of the trip is skiing and it is considered a package, regardless that the accommodation constitute more than 75% of the total value of travel services.

5.2 is or are selected and the provision thereof is agreed upon only after the performance of the travel service referred to in § 3 (1) through (3) of Tourism Act has started.

Directive has clarified that for example where other tourist services are added, for instance, to hotel accommodation, booked as a stand-alone service, after the traveller's arrival at the hotel, this should not constitute a package. This should not lead to circumvention of Directive, with organizers or retailers offering the traveller the selection of additional tourist services in advance and then offering conclusion of the contract for those services only after the performance of the first travel service has started.

6. Exception of package according to TurS § 7 (4)

According to TurS § 7 (4) *a package is not deemed to be accommodation service and catering service offered simultaneously with carriage of passengers in a means of transport providing regular carriage of passengers, provided the carriage of passengers is the basic service.*

Directive has pointed out that in cases where, unlike in the case of a cruise, overnight accommodation is provided as part of passenger transport by road, rail, water or air, accommodation should not be considered as a travel service in its own right if the main component is clearly transport.

The explanatory memorandum explains that carriage of passenger is main service if the purpose of the trip is getting from point A to B, even if it includes accommodation, meals and entertainment in the vehicle. Package can also be formed if carriage of passenger is not the main purpose of the trip (for example, if the main purpose of the trip is entertainment) or additional travel services are offered to traveller (such as hotel accommodation, excursions). The explanatory memorandum has said that carriage of passengers is not the main purpose of a trip, for example, on a cruise as in this point the cruise directed to Entertainment (for example, a multi-day cruises with the sole purpose of entertainment throughout the whole trip).

European Commission has also clarified that package is not formed if the purpose of the carriage of passengers by water is getting from point A to B and accommodation is its ineluctable part. However, package is formed if the on-board stay has a tourist purpose.

7. Definition of linked travel arrangements (TurS § 7¹ (1))

According to TurS § 7¹ (1) *linked travel arrangements mean at least two different types of travel services for the purpose of the same trip, not constituting a package, and for which the traveller concludes separate contracts with the individual travel service providers if the travel undertaking facilitates:*

7.1 on the occasion of a single visit or contact with the point of sale, the separate selection and separate payment of each travel service by travellers; or

7.2 in a targeted manner, the conclusion of at least one additional travel service contract with another undertaking if the contract with such other undertaking is concluded within 24 hours after the confirmation of the booking of the first travel service.

Both points apply regardless of the point of sale.

To find the answer to the question whether package or linked travel arrangement are formed, two-step evaluation system must be followed. Firstly, must assess whether the travel services comply with the feature of package and therefore form a package. If they do, package is formed. If travel services do not comply with the feature of package, it must assess whether linked travel arrangements might form.

Linked travel arrangements are forming if:

- **It includes at least two different types of travel services for the purpose of the same trip;**
- **Travel services do not constitute a package;**
- **traveller concludes separate contracts with the individual travel service providers and one travel undertaking facilitates:**

7.1 on the occasion of a single visit or contact with the point of sale, the separate selection and separate payment of each travel service by travellers; or

For linked travel arrangements, the selection and payment of each travel service is carried out separately. It means that selection of one travel service is completed so that the transaction is completed and that is binding to the both parties and only then the next travel service will be selected. Thereat it is important that each travel service is paid separately. It is also important that the separate selection and separate payment of each travel service is facilitated on the occasion of a single visit or contact with the point of sale.

European Commission has clarified that a single visit should be assessed in case-specific circumstances. A single visit will continue until it is interrupted. At the same time a single visit to a point of sale might also occur if the parties agree, that traveller will return later to book another travel service.

Linked travel arrangements are formed, for example, if during a visit to a single website or travel agency traveller choose and pay for accommodation (meaning that the first transaction is completed) and before leaving, air tickets, which are selected and paid separately, are also purchased.

Unlike point 2, selection and payment of additional travel service do not have to be done in a targeted manner by the undertaking. It means that the traveler may select additional travel service and pay for it in its own initiative and linked travel services are formed according to this point.

7.2 in a targeted manner, the conclusion of at least one additional travel service contract with another undertaking if the contract with such other undertaking is concluded within 24 hours after the confirmation of the booking of the first travel service.

Directive has explained that this point will apply for example, where, along with the confirmation of the booking of a first travel service such as a flight or a train journey, a traveller receives an invitation to book an additional travel service available at the chosen travel destination, for instance, hotel accommodation, with a link to the booking website of another service provider or intermediary.

Whether it is done in a targeted manner, depends on how the traveller's attention is drawn to the additional travel services. The Explanatory Memorandum explains that the targeted manner is primarily if the undertaking offers traveller or encourages the traveller to enter into contract

on additional travel service. Offering additional travel service must be linked to the primary booking, such as destination and dates of specific trip.

Directive has explained that online linked travel arrangements should also be distinguished from linked websites which do not have the objective of concluding a contract with the traveller and from links through which travellers are simply informed about further travel services in a general way, for instance where a hotel or an organizer of an event includes on its website a list of all operators offering transport services to its location independently of any booking or if 'cookies' or meta data are used to place advertisements on websites.

It means that in a situation, where general information is provided and traveller selects and purchases an additional travel service in its own initiative without being specifically invited to do so, linked travel arrangements do not form. At the same time, it is important to notice that the targeted manner is an assumption for only TurS § 7¹ (1) p 2. It means that if a traveller selects two or more different types of travel services on a single point of sale, linked travel arrangements will form according to TurS § 7 (1) p 1 regardless of whether an additional travel service has been selected and purchased in a targeted manner or not.

8. Exception of linked travel arrangements (TurS § 7¹ lg 2)

TurS § 7¹ lg 2 provide an exception in which cases linked travel arrangements will not form, namely, *where a traveller enters into a contract for only one type of travel service referred to in § 3 (1) through (3) of Tourism Act and for one or several other tourist services set out in clause 4) of the same section, they do not constitute linked travel arrangements if the other tourist service or services does or do not account for no less than 25 per cent of the total value of the travel services and is or are not advertised as, and does or do not otherwise represent, an essential feature of the trip.*

Given exception applies similarly to the exception of package in accordance with Guidance point 5.1 (TurS § 7 (3)).