



30.1.2015

NOTICE TO MEMBERS

Subject: Petition No 1608/2013 by Olaf Vollmer (German) on airline bankruptcy insurance for travellers

1. Summary of petition

The petitioner refers to a practice followed by package tour companies regarding airline bankruptcy insurance for travellers. A flat-rate amount is paid by travellers for all accommodation and transport, as well as 20% of the bankruptcy insurance policy taken out by the organiser. However, airline cost calculations are based on figures for the previous year and make no provision for insurance, thereby shifting bankruptcy risks to travellers and organisers. The petitioner is accordingly seeking equal treatment for organisers and airlines, requiring both to provide insurance cover, each paying 20%.

2. Admissibility

Declared admissible on 4 June 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 January 2015

The petition

The petitioner basically asks the EU to extend the protection of consumers against the insolvency of organisers of packages to passengers buying stand-alone air tickets.

The principle of insolvency protection for organisers of package tours or holidays is laid down in Article 7 of Council Directive 90/314/EEC on package travel, package holidays and

package tours¹. Under Article 7 of Directive 90/314/EEC organisers² of packages are obliged to "provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency."

The petitioner refers specifically to the obligation of organisers and retailers to provide travellers with a document certifying the insolvency protection provided by an insurance company or bank ("Sicherungsschein"), as well as the prohibition from asking travellers to make a down payment of more than 20% of the total price, which are particularities of the German transposition of Directive 90/314/EEC and the case law of the German courts.

He stresses that airlines selling stand-alone tickets are not subject to those rules and charge the full price of the ticket up to one year before the date of the flight without having to take out any insolvency protection. He points out that, if a package tour includes a flight, organisers have to pay airlines the price of the ticket early, but may charge their customers only a down payment not exceeding 20% and have to cover the risk of the airline's insolvency.

In the petitioner's view, on grounds of consumer protection and in order to remove the discrimination of package organisers as compared with airlines, the concept of a "Sicherungsschein", i.e. basically the obligation to take out insolvency protection, and the prohibition from charging down payments in excess of 20% should also apply to airlines.

The Commission's observations

Directive 90/314/EEC covers pre-arranged combinations of different travel services, for instance a flight and hotel accommodation, but not stand-alone flights. It includes an obligation for organisers "and/or retailers party to the contract" to take out insolvency protection so that travellers will receive a refund of their payments and will be brought home ("repatriation") if the travel services included in the package are not performed as a consequence of that trader's insolvency or bankruptcy. This protection was introduced in 1990 to protect consumers against the risk of insolvencies in the package travel sector.

Whereas the Directive lays down the principle of insolvency protection, the details of the insolvency protection regime are set out in the laws of the Member States transposing the Directive. The Directive does not as such prescribe the concept of a "Sicherungsschein" and does not contain rules on pre-payments. The Commission understands that the prohibition from requesting down payments of more than 20% results from the application by the German courts of the German rules on unfair contract terms, transposing Council Directive 93/13/EEC on unfair terms in consumer contracts³.

In its recent proposal for a modernised directive on package travel⁴ the Commission proposed to extend the protection applicable to pre-arranged packages under Directive 90/314/EEC to the new forms of packages which travellers typically purchase on-line. In addition, the

¹ OJ L158 of 30.6.1990, page 59.

² Some Member States also require retailers (travel agents) to take out insolvency protection.

³ OJ L 95, 21.4.1993, p. 29–34

⁴ Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC, COM(2013)512 final.

Commission proposed to grant a minimum level of protection to so-called "assisted travel arrangements", where there is a looser connection between different travel services as compared with packages. If adopted by the co-legislator, this proposal would introduce the obligation for airlines which facilitate the procurement of additional travel services for the same trip or holiday, e.g. the booking of a hotel or car rental at the travel destination, to take out insolvency protection.

The Commission proposal is currently being considered by the European Parliament, which voted on it in first reading on 12 March 2014¹, and the Council, which adopted a general approach on 4 December 2014.

As for "stand-alone" airline tickets, it must be stressed that consistency between the legislation on package travel and on airline tickets does not necessarily imply that "flight only" travellers must enjoy exactly the same rights as "package travellers". It is rather the aim of EU law to better protect "package travellers" as package travel involves a more complex and atypical contractual relationship, involving several service providers, covering longer time spans, with often higher amounts pre-paid in advance.

Although the proportion of passengers affected by airline insolvencies is very small, the impact of insolvencies on individual passengers can be considerable, in particular for those stranded far from home. However, given the significant cost and the practical difficulties of airline insolvency protection, before considering to propose new legislation in this area, the Commission proposed in its Communication on passenger protection in the event of airline insolvency, (COM(2013)129 final) to first strengthen licensing oversight of EU air carriers under Regulation (EC) No 1008/2008 and to engage with EU airlines' associations in order to develop voluntary arrangements (e.g. provision of "rescue fares" and accompanying measures as offering reduced airport charges in such situations).

On 25 November 2014, the International Air Transport Association (IATA) announced an agreement to formalise rescue fares. An IATA voluntary agreement on behalf of its members flying to, from and within Europe will cover the repatriation of passengers unable to return home due to an airline ceasing operations as a result of financial failure (please see IATA's press release at: <http://www.iata.org/pressroom/pr/Pages/2014-11-25-01.aspx>).

Furthermore in its proposal for a revision of Regulation (EC) No 261/2004 (COM(2013)130 final), the Commission has proposed the creation of contingency plans that would be triggered in situations of multiple flight cancellations such that airport, airlines and ground-handling companies are coordinated in view of effectively helping stranded passengers. Such contingency plans would also cover situations where these cancellations were triggered by an airline's insolvency.

¹ European Parliament legislative resolution of 12 March 2014 on the proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC (COM(2013)0512 - C7-0215/2013 – 2013/0246(COD)) (Ordinary legislative procedure: first reading).