



24.7.2020

NOTICE TO MEMBERS

Subject: Petition No 1123/2019 by H.J.F. (German) on the bankruptcy of Thomas Cook and losses caused to consumers

1. Summary of petition

The petitioner explains the financial damage he and other consumers have suffered as a result of the insolvency of the Cook/Oeger group. He booked a package holiday in August 2019, which was covered only to the extent of 10-20% by the cancellation guarantee. The government has not set about increasing the guarantee fund. This is a breach of the Package Travel Directive 2015/2302.

2. Admissibility

Declared admissible on 6 March 2020. Information requested from Commission under Rule 227 (6).

3. Commission reply, received on 24 July 2020

The petition

The petition concerns financial damage sustained by the petitioner and other travellers in connection with the insolvency of the Thomas Cook group, including its German subsidiaries, e.g. Oeger Tours GmbH.

The petitioner had booked a package with Oeger in August 2019 and paid for it completely at the beginning of September 2019. According to the insurance company in charge of this organiser's insolvency protection, the petitioner was likely to receive only 10-20% of his money back.

This is linked to the relevant German provisions, which the petitioner considers to be in breach

of the 2015 Package Travel Directive¹. The petitioner also wonders about the liability of the German state.

The Commission's observations

Under Article 17 of Directive (EU) 2015/2302 on package travel and linked travel arrangements, organisers of package tours (packages) are obliged to take out insolvency protection so that travellers affected by their insolvency obtain a refund of all their payments for unperformed travel services. The insolvency protection also has to cover the repatriation of travellers stranded at their holiday destination.

Member States were obliged to transpose this Directive into their national laws by 1 January 2018 and to apply it from 1 July 2018.

According to the German transposition of Directive (EU) 2015/2302, organisers of packages have to obtain an insurance policy or a bank guarantee protecting travellers against the risk of the organiser's insolvency. However, the German provisions allow entities providing insolvency protection to limit their liability to EUR 110 million per business year. Directive (EU) 2015/2302 contains no such cap.

According to information provided in the media, in the case of the insolvency of the German subsidiaries of Thomas Cook in 2019, after the insurance company had paid for the repatriation of travellers stranded at their holiday destination, the remaining insurance cover was insufficient to cover also all refunds to those travellers who had made payments but had not yet started their holiday.

There is case law from the Court of Justice of the European Union (CJEU) on the liability of Member States for the inadequate transposition of the insolvency protection requirement under Article 7 of the Package Travel Directive from 1990 (Council Directive 90/314/EEC²). The petitioner is referred in this respect to Cases C-140/97 *Rechberger* and C-430/13 *Ilona Baradics*. The same principles must apply in relation to the transposition of Directive (EU) 2015/2302.

Faced with the risk of claims by travellers based on the incorrect transposition of Directive (EU) 2015/2302, in December 2019, the German government announced to compensate travellers, on a voluntary basis, insofar as they did not receive full refunds of their payments from the insurance company³.

At the same time, the German government started considering changes to the German insolvency protection rules.

Since 6 May 2020, it is possible for travellers to register compensation claims against the

¹ 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, OJ L 326, 11.12.2015, p. 1–33.

² Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59–64.

³ Press release No 417 of 11.12.2019 from the press and information office of the German Government: <https://www.bundesregierung.de/breg-de/aktuelles/bundesregierung-laesst-thomas-cook-kunden-nicht-im-regen-steinen-1705836>.

German state related to the Thomas Cook insolvency also online. Claims can be made until 15 November 2020. Further information is available at the following website of the Ministry of Justice:

https://www.bmjv.de/SharedDocs/Artikel/DE/2019/121119_ThomasCook.html

Furthermore, on 10 June 2020, the German government adopted key points for the reform of the German rules on insolvency protection for packages and linked travel arrangements. According to those key points, the existing cap of EUR 110 million will be abolished and the new system will be based, in particular, on the idea of a mandatory guarantee fund. The relevant press release and further information can be found at the following website:

https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/061020_Insolvenzversicherung_Reiserecht.html

The Commission is closely monitoring progress in this matter in connection with the ongoing checks on the correctness of the transposition of Directive (EU) 2015/2302 in all Member States.

Conclusion

Based on information from the German government, all travellers affected by the insolvency of the German Thomas Cook subsidiaries will be fully compensated by the German state. Furthermore, the German government has announced detailed plans for an amendment of the German rules on insolvency protection for package travellers to bring them in line with Directive (EU) 2015/2302. The Commission will closely monitor progress on the envisaged legislative amendment in the framework of the ongoing transposition checks for Directive (EU) 2015/2302.