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## FINANCIAL SECURITIES FOR TOUR OPERATORS IN CASE OF INSOLVENCY RESULTING FROM THE DIRECTIVE 2015/2302 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL WHICH ARE IN FORCE IN POLAND

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### Abstract

The insolvency of travel agencies is dealt with in a special way by the EU legislator. European Union law introduces legal solutions for the benefit of consumers insofar as the relevant services are not performed by organizers as a consequence of its insolvency. The current 2015/2302 Directive provides much more comprehensive protection than 90/314/EEG Directive for travelers in the event of insolvency of a tour operator. However, in the past, in the practical functioning of travel agencies, it has repeatedly turned out that the Polish legislation has not been able to guarantee full protection provided for in EU law. This situation has changed. In Poland, since August 1, 2018 the system of security and financial guarantees in the event of insolvency of organizers and traders facilitating linked travel arrangements consists of two pillars. If Pillar I funds are exhausted, the costs of actions taken by the Marshal of the Province related to the repatriation of the customers of an insolvent tour operator will be covered from Pillar II, which is created from contributions to the Tourist Guarantee Fund. Due to the COVID pandemic, another form of security was introduced in Poland from January 1, 2021 - Tourist Assistance Fund. The fund is designed to support tourism entrepreneurs in the event of extraordinary circumstances. The aim of the paper is to present the legal regulations in force in Poland in the field of financial security of tour operators in the event of their insolvency and to analyze whether these solutions sufficiently protect the interests of travelers. Conclusions included in the paper justify the statement that the extension of the security system by Pillar II make the full protection possible. The two-pillar solution should be sufficient in case of insolvency of a travel agency and that it fully implements the EU recommendations.

**Keywords:** Package Travel Directive, Financial Securities, Insolvency, Package Travel Contract, Travel Market

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### 1. Introduction

The purpose of this publication is to present financial securities for tour operators in case of insolvency resulting from European Union law which are in force in Poland. The paper will also present an analysis aimed at assessing whether the insolvency regulations in force in Poland for several years are sufficient and whether they protect travelers in the event of insolvency of travel agencies.

Tourist services carry a higher risk for the customer when concluding a contract with a professional. This risk concerns both potential property damage as well as personal injury. The customer pays the price in advance, but the contract is to be performed by the contractor in the future, under different and unknown conditions, often in a location which is geographically distant from the customer's usual place of residence.

The consumer is therefore exposed to financial losses due to non-performance of the contract or inadequate quality of the services provided. Moreover, there is a risk of personal injury caused by various circumstances, but mostly due to improper organization of the package. In the area of tourist services, there are also extraordinary situations, such as terrorist threats (Demir *et al.* 2019). They result in a massive withdrawal of travelers from those destinations where terrorist attacks have occurred and, as a result, they may quickly lead to the bankruptcy of the travel agency (Kirant Yozcu and Cetin, 2019).

The insolvency of one tour operator may lead to the bankruptcy of the entrepreneurs which have cooperated with it, i.e. other travel agencies, hoteliers and carriers. Insolvency and then bankruptcy of a large travel agency with branches in other countries will also lead to their bankruptcy, even if they are financially sound themselves. For example: the well-known British travel agency Thomas Cook declared insolvency on 23 September 2019. Two days later, on 25 September 2019, the Polish branch of the company (called Neckermann Polska) also had to declare insolvency. Thomas Cook GMBH held 100% of the shares in Neckermann Polska. The Polish branch of the company, despite its stable financial condition, cannot function independently without its parent company. Just like in Poland, the German branch in Germany (called Neckermann Reisen) declared itself insolvent. The situation was similar in other countries where the travel agency had its branches. The insolvency also applied to the aviation industry (Thomas Cook Airlines declared insolvency on 23 September 2019), the hotel industry (especially in Spain). The problems of the owner of a travel agency on the British market were therefore the cause of the closure of operations in many global markets.

For the average consumer, there are not many transactions for which they are required to hand over large sums of money so far in advance of receiving the goods or services as they do with a holiday. In the event of bankruptcy of a travel agency, travelers can be left without accommodation, meals or any means of transport to their usual place of residence. The dangers are obvious and the holiday industry, which enjoys a high media profile, has often found itself the center of attention when a holiday company collapses (Grant *et al.* 2008). These factors give rise to the conclusion that the provision of tourist services is subject to increased risk.

It should be stressed that the legal measures relating to financial securities concern consumer protection and protect only travelers. The European Union law does not provide legal regulations protecting subcontractors of travel agencies, such as other travel agencies, hoteliers and carriers.

The paper presents the legal regulations in force in Poland in the field of financial security of tour operators in the event of their insolvency and to analyze whether these solutions sufficiently protect the interests of travelers. Conclusions included in the paper justify the statement that the extension of the security system by Pillar II make the full protection possible. The two-pillar solution should be sufficient in case of insolvency of a travel agency and that it fully implements the EU recommendations.

The analyses carried out in the article have a legal comparative value. They can be used by other researchers who will conduct analyses on the financial security system in force in other countries and will give recommendations and look for the best legal solutions for the best protection of travelers.

## **2. Legal solutions of the European Union in case of insolvency of tourism entrepreneurs**

In the European Union two directives have been successively issued, which have already played and continue to play a very important role in the harmonization of tourism law. The first directive is Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours [the 1990 Directive]. The second is Directive 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 Directive 2015/2302. This standard replaced the long-standing Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours [the 2015 Directive or the Directive] (Hesselink, 2016). These legal acts regulate the obligations of tour operators with regard to financial security in the event of their insolvency (Grant *et al.* 2018).

The protection of customers of tourist services has long been part of the consumer protection policy within the European Union (Schulte-Nölke *et al.* 2009). It should also be noted that increased protection for this group of consumers is also determined by the protection of the common market. The EU legislator already draws attention to this aspect in the preamble to the 2015 Directive in points 5 and 6.

In its predecessor, the 1990 Directive, Article 7, already required tour operators to provide security in the event of insolvency. Yet, the current 2015 Directive provides much more comprehensive protection for travelers in the event of the insolvency of the tour operator than before. These rules are contained in a separate chapter (Chapter V of the Directive entitled "Insolvency Protection", Articles 17-19 of the Directive).

Article 17 sets out the effectiveness and scope of protection in the event of insolvency. This protection must cover: refund of all payments made by or on behalf of travelers, security for the travelers' repatriation and refunds for travel services that have not been performed. Whereas organizers not established in a Member State, which sell or offer for sale packages in a Member State, shall be obliged to provide the security in accordance with the law of that Member State.

Article 18 of the Directive concerns the mutual recognition of insolvency protection and administrative cooperation by the Member States. This cooperation includes the provision of all necessary information on their national insolvency protection requirements and the entities providing such protection. According to Article 18(4), Member States shall respond to requests from other Member States as quickly as possible and in any event the first response shall be issued at the latest within 15 working days from receiving the request.

Article 19 of the Directive concerns insolvency protection and information requirements for linked travel arrangements. Traders facilitating linked travel arrangements shall provide security for the refund of all payments they receive from travelers insofar as a travel service which is part of a linked travel arrangement is not performed as a consequence of their insolvency. The definition of linked travel arrangements is contained in Article 3(5) of the Directive and is rather complicated. In general, it can be noted that linked travel arrangements are tourism services purchased for the same journey or holiday which are bought from different traders on the basis of separate contracts. They are classified as linked when, firstly, they are purchased for the same journey or holiday and, secondly, one trader facilitates the reservation and purchase of another service or services from another trader, e.g. by including a direct link to another trader's offer on its website. A combination of one tourism service, such as accommodation, with another (e.g. car rental, guided tours) may be referred to as a linked tourism service if the additional services represent a significant proportion of the total value of the service; in practice it means at least 25% of the total value of the trip. Traders facilitating linked travel arrangements must have financial security in the event of insolvency, but they shall not be liable for the proper performance of particular services they are facilitating. The traveler in this case is not entitled to such rights and such extensive protection as when purchasing a package travel contract.

Financial protection of travelers in case of tour's operator insolvency is also a problem in other EU Member States (Álvarez de Sotomayor, 2017; Dougall, 2017; Grant *et al.* 2008; Manson, 2017).

### **3. Solutions applied in Polish law - Pillar I - financial securities**

In Poland, the Directive was transposed through the adoption of the Act of 24 November 2017 on package travel and linked travel arrangements (Package Travel Act, 2017). In this article, the provisions of the Package Travel Act (2017) will be analyzed in relation to financial securities for tour operators, together with their implementation in Poland.

Under Polish law, in accordance with Article 7(2)(1) and (2) Package Travel Act (2017) in the event of insolvency, the tour operator is obliged to provide travelers with: coverage of the costs of continuation of the tourist event or the costs of their return to the home country (including, in particular, transport and accommodation costs), as well as to ensure reimbursement of all (or part, as appropriate) payments made as fees for the tourist event or any paid service of an entrepreneur facilitating the acquisition of related tourist services, in case the tourist event or any paid service was not or will not be provided.

The system of security and financial guarantees in the event of insolvency of tour operators and traders facilitating the purchase of related tourist services consists of two pillars. A reservation should be expressed here about the term "financial securities" used in this paper. For the sake of accuracy, only Pillar I collateral is referred to as "financial securities" in accordance with the definitions set out in Article 4(4) of the Package Travel Act (2017). Mind you, Pillar II, i.e., the Tourist Guarantee Fund, is not referred to as "financial securities" in the Polish legislation. It constitutes a special fund from which money is disbursed only after the money from Pillar I is depleted.

Pillar I relates to financial security measures which have been in force in Poland since 1997, i.e. since the Act of 29 August 1997 on tourist services (Tourism Services Act, 1997) came into force. A trader may choose one of four financial securities: bank guarantees, insurance guarantees, insurance for customers or acceptance of customer payments into a trust account, but the latter only in the case of tourist events in Poland. The administrative body which has been granted statutory powers to mobilize funds from the Pillar I and II is the Marshal of the Province. If Pillar I funds are exhausted, the costs of actions taken by the Marshal of the Province related to the repatriation of the customers of an insolvent retailer will be covered from Pillar II. It also covers the payments of those customers who did not leave for the event due to the retailer's insolvency. The above-mentioned Pillar II is created from contributions to the Tourist Guarantee Fund.

Within the first pillar, the most popular form of security is an insurance guarantee. Insurance companies are more inclined than banks to accept tasks that are unusual for a guarantor. The design of an insurance guarantee is based on the principle of freedom of contract, as it is not regulated in insurance law. The insurance guarantee is considered to be the most flexible form of security and is most frequently used in tourism, especially by larger tour operators (Orzechowska, 2018). The bank guarantee is strictly regulated by Banking Law (1997). Banks rigorously comply with the principles established in the regulations and, as a result, they are reluctant to grant bank guarantees to tourist entrepreneurs, and their participation in the security system is marginal. In the case of an insurance policy covering travelers, the insurer has to grant a down payment to the Marshal of the Province to cover the costs of bringing the customers of the insolvent agency to their home country and then, from the remaining amount, pay the due benefit to each insured traveler. The procedure is quite complicated and time-consuming. Due to the above, this insurance agreement (similarly to the bank guarantee) is offered mainly to small travel agencies, in which it is possible to predict the number of insured individuals who might possibly suffer damage).

Meanwhile, the security in the form of the travel escrow account serves the purpose of accepting payments made by travelers only to that account, if the tourist entrepreneurs offer tourist events or facilitate the purchase of linked travel arrangements provided exclusively on the territory of the Republic of Poland. Table 1 shows the statistics of tourist entrepreneurs by form of financial security.

**Table 1. Statistics of tourist entrepreneurs by form of financial security**

Year	Bank guarantees		Insurance guarantees		Travel trust account		Insurance for customers		Securing a foreign entrepreneur		Together
	Number of entrepreneurs	%	Number of entrepreneurs	%	Number of entrepreneurs	%	Number of entrepreneurs	%	Number of entrepreneurs	%	
2018	54	1.56%	3348	96.48%	0	0.00%	68	1.96%	0	0.00%	3470
2019	47	1.16%	3924	97.03%	0	0.00%	73	1.81%	0	0.00%	4044
2020	49	1.25%	3798	96.54%	0	0.00%	87	2.21%	0	0.00%	3934
2021	51	1.36%	3602	96.23%	0	0.00%	90	2.40%	0	0.00%	3743

Source: Republic of Poland (2022)

The content of a bank guarantee, insurance guarantee or travel insurance contract shall include an authorization for the Marshal of the Province or an entity authorized by the Marshal to issue an advance payment order for the costs of continuation of the tourist event or return to the home country (Article 14(2) Package Travel Act, 2017).

In case of insolvency of the tour operator, when the tour operator is not able to carry out the agreements concluded with the travelers, the Marshal of the Province takes appropriate measures and passes the documents to the entity providing financial security.

The entity (insurer or bank) covers the costs of the continuation of the holiday or the return of the travelers to their home country and, after being informed of the detailed calculation of the amounts due to travelers who have contributed to the price of the event, reimburses these contributions (Art. 13-19 Package Travel Act, 2017). If financial security is insufficient to cover the costs of the event and to reimburse the travelers, the entity shall provide the relevant information to the relevant Marshal of the Province and to the Insurance Guarantee Fund. It shall also forward the applications of travelers who have not received full coverage of costs and reimbursement of payments, and the fund shall pay the travelers the amounts due (Art. 20-21 Package Travel Act, 2017).

The amount of guarantee sums was specified in the executive regulations to the Act. On 27 December 2017 the Minister of Development and Finance issued several separate regulations, in which he specified in great detail how high the sums of financial security should be. The amount of minimum insurance guarantees, bank guarantees and the sum insured for travelers is based on the annual income earned from the activity of a tourist entrepreneur and depends on many factors, e.g. the country to which the trip is organized (further destinations require higher amounts of security), and the type of transport (charter flights require higher security than coach transport), the time during which advance payments are made is also important (the longer the time to the start of the package travel, the higher the premium). Tour operators pay higher contributions than businesses facilitating the acquisition of related tourism services. As a consequence, the minimum amount of insurance guarantee or bank guarantee varies greatly. On average, it amounts to a few percent of the entrepreneur's annual gross income and a maximum of several dozen percent.

Previously, until the 1990 Directive was in force, premiums paid to insurance companies or banks for guarantees were a heavy financial burden on tour operators. And yet, where organizers declared that they were insolvent, it generally turned out that the guarantees and insurance cover were too low and insufficient to bring the customers of insolvent travel agencies back into their home country, and not enough to return money to those customers who had not even started their holidays. The main reason for this was that entrepreneurs, whose financial situation was already bad, were lowering their guarantee sums so that they could pay lower premiums.

Tourism Services Act (1997), which had been in force in Poland for almost 20 years, did not provide consumers with an adequate level of protection in terms of Article 7 of the 1990 Directive, despite attempts to tighten up the financial security system (Joined Cases, 1996). The insolvency of tour operators and the lack of proper implementation of the 1990 Directive in terms of creating sufficient financial security by the state led to numerous suits for damages. The aggrieved clients made their claims and sued the State Treasury in connection with the incorrectly implemented the 1990 Directive and Article 7. Initially, such claims were not taken into account by Polish courts. The judgment of the District Court in Warsaw of 28 November 2014 had a precedential character. The Court upheld a claim by the clients of the insolvent travel agency for damages against the State Treasury for incorrect implementation of the 1990 Directive and insufficient financial securities. But still, as in the case of any suit for damages against the State Treasury, this is not a straightforward way (Cybula, 2019).

Actions to recover funds had been taken not only by consumers (many times and, as a general rule, effectively), but also by provincial self-governments (several times and ineffectively). This was the case before the introduction of the second pillar of security. The Marshal of the Province fulfilled his duty in the event of insolvency of a tour operator, i.e. after the financial security funds were disbursed, he brought the customers of the insolvent tour operator to Poland. However, the amounts disbursed from the collateral turned out to be insufficient (too low) and the Marshal of the Province, acting as the body of the self-governing province, financed the return of the customers of the insolvent travel agency with the funds coming from the budget of the province. As a result, the provincial government demanded the return of the funds from the State Treasury. The Marshals of the Provinces have tried to seek reimbursement for the costs they have incurred to bring the clients of insolvent travel agencies to Poland on several occasions, without any success (Dolniak, 2017).

According to the Supreme Court judgment of 15 October 2015. (II CSK 836/14): "The State Treasury is not obliged to reimburse the Marshal of the Province for the costs incurred in ensuring the return to the country of the insolvent tour operator's customers (...) in case of an insufficient guarantee amount".

Similarly, in yet another case, according to the judgment of the Supreme Administrative Court of 24 September 2014 Case (2014): "The Marshal of the Province does not have the power to conclude that the provincial government is burdened with the task of financing the return of tourists of insolvent travel agencies to Poland (in excess of the amounts resulting from bank and insurance guarantees). When the security funds were not sufficient to bring back all the aggrieved holidaymakers, the Marshals of the provinces were put in a difficult position. They had to decide whether to bring the clients of the bankrupt tour operator to Poland at the expense of the Province's budget or leave them abroad without help, after the guarantee amounts have been exhausted. Meanwhile, the reimbursement of the price of the trip to individual clients of the bankrupt travel agency, for which the consumers paid and did not leave, was usually not taken into account at all. In the first place, the Marshal of the Province allocated the funds from the guarantees to bring the agency's clients to Poland and only then, if the funds were sufficient, were the payments returned to those clients who did not manage to go on their trips. In practice, the securities were too low and were not sufficient to reimburse the price of the trip, and even if they were sufficient, they were distributed only proportionally, e.g. in the amount of 30-40% of the price paid for the trip by the clients of a given agency.

In the past, under the previous Act of 1997, clients of an insolvent travel agency could not apply individually to the providers of financial security. Nowadays, under the Act of 2017, persons who return on their own, pay for their stay to the end or provide their own transport to the starting point of the tourist event, can present their bills to the Marshal and the guarantor (insurance company or bank) on their return and claim reimbursement of the costs incurred on their own in connection with the insolvency of the tour operator. The resolution of the Supreme Court of 19 May 2016 was very important in this respect. The Supreme Court stated that "a client of an insolvent travel agency is entitled to claim reimbursement of payments made by way of payment for a tourist event from an insurer obliged under the insurance guarantee" Case (2016).

This is now regulated by the Act (Article 16), according to which the entity providing financial security in any case of insolvency of the tour operator or the entrepreneur facilitating the

purchase of linked travel arrangements shall accept applications from travelers who have not received reimbursement in full or in part of the payments made for the tourist event or related travel arrangements, as well as applications from travelers for reimbursement of the costs of return to their home country, if the travelers organize this return by themselves (Nesterowicz, 2018).

#### **4. Solutions adopted in Polish law - Pillar II - Tourist Guarantee Fund**

Eventually, after many years of hesitation and discussion, the Polish legislator decided to introduce a second pillar of security and the Tourist Guarantee Fund was established. The Tourist Guarantee Fund is a separate account in the Insurance Guarantee Fund (Article 33 Package Travel Act, 2017). The contribution to this fund is charged in the amount not higher than PLN 30 (about 7 EUR) per each traveler for a concluded agreement on participation in a tourist event or for each service provided by an entrepreneur facilitating the acquisition of related tourist services and paid for by the traveler. The resources of the fund are used to cover the costs and reimbursement of travelers' payments for participation in tourist events in case the resources from financial security are insufficient.

The exact amount of the premium for the Tourist Guarantee Fund is specified in the Regulation of the Minister of Development, Labor and Technology on the amount of the contribution to the Travel Guarantee Fund of December 22, 2020 (Journal of Laws of 2020, item 2372).

The premium is currently collected in various amounts and depends on many factors, including the means of transport (air transport, charter transport, etc.), European or non-European country. Moreover, the entrepreneurs pay higher premiums for the concluded contract for participation in a tourist event than for facilitating the purchase of linked travel arrangements.

The efficient functioning of the financial security system on the tourism market is currently supported by the provisions on administrative and criminal liability of tour operators and travel agencies. The administrative responsibility is reflected in the possibility of issuing an administrative decision on the removal from the register and banning the business activity by the Marshal of the province, who is the authority keeping the register of tour operators (Marak, 2016). Moreover, the tour operator or entrepreneur facilitating linked travel arrangements who operates in contravention of the obligations or conditions laid down in the regulations of Package Travel Act (2017) shall be liable to a financial penalty of up to PLN 50,000.

The Polish legislator introduces criminal liability for persons who act as a member of the management or supervisory board or conduct business activity on their own account in the field of organizing tourist events or facilitating the purchase of linked travel arrangements. Any such persons shall be subject to a fine, penalty of restriction of liberty or imprisonment for up to 3 years. Lowering the amount of contribution due to TFG also means criminal liability. Pursuant to Article 58 Package Travel Act (2017), anyone who lowers the amount of the premium due in the declaration submitted to the Insurance Guarantee Fund is subject to a fine, restriction of liberty or imprisonment of up to 3 years. The regulation is therefore intended to deter such acts.

The financial condition of the Tourist Guarantee Fund is worth mentioning, as it is currently very good. Statistical data useful for even a rough analysis is provided by the TFG report - from the beginning of the fund's operation - available on the website of the Ministry of Sport and Tourism "Report on the 2018 Tourist Guarantee Fund." The sub-title of this document: "Safe travel with Polish tour operators in 2018" already explains a lot.

Revenues to the Fund in 2018, PLN 55,926,941, which on average involved the payment of about PLN 12,500 to the fund's account from one entrepreneur. The obligation to pay the contribution was fulfilled by 98.4% of enterprises. However, the most important thing seems to be that in 2018 the return of money from the fund as a result of the insolvency of the tour operator was made only five times for the total amount of PLN 62,429. It means that in 2018 TFG accumulated almost 56 million PLN, of which less than 62.5 thousand PLN was paid out.

Tourist Guarantee Fund (2018) shows that in 2018, among tourist entrepreneurs who concluded contracts with travelers and paid contributions to TFG because of that, as many as 99.98% were tour operators, while entrepreneurs facilitating the acquisition of related tourist

services constituted only 0.2%. This proves that the number of contracts concluded within the framework of related tourist services is still marginal.

However, it should be pointed out that no major travel agency collapsed in Poland in 2018. Admittedly, in 2019, the travel agency Thomas Cook and its Polish branch Neckerman Poland went bankrupt, but this report is about the past until 2018. Hence, the financial condition of the fund is very good.

In the years from 06/2018 to 12/2021, only 10 tourist entrepreneurs were declared bankrupt (Tourist Guarantee Fund, 2022). However, these were small enterprises and their bankruptcy did not affect the condition of the fund or the stability of the entire financial security system.

### **5. Additional financial security introduced in connection with the COVID pandemic**

The SARS-CoV-2 coronavirus pandemic was announced by the World Health Organization on March 11, 2020. In Poland, the state of epidemic emergency was introduced two days later, on March 13, 2020, and was in force throughout the country from March 14 to March 20, 2020, and then on March 20, 2020, it was replaced for many months by the state of epidemic.

Due to the outbreak of the epidemic, widespread and far-reaching restrictions have been introduced. In relation to the tourism industry, depending on the period, either restrictions or bans on conducting activities have been introduced, e.g., crossing the border of the Republic of Poland related to automatic referral to a 14-day quarantine, closure of hotels and other hotel facilities, closure of catering facilities, ban on air transport. It should be added that all these restrictions were introduced overnight, without the possibility for tourist entrepreneurs to prepare and take measures to minimize their financial losses.

Tourist entrepreneurs received financial aid from the state, on general terms, and a little later increased aid for the tourism industry. This aid, known as the "shield", was assessed as insufficient. However, discussing these "shields" for the tourism industry is beyond the scope of this publication.

On the legislative grounds, an attempt to limit the negative effects of the pandemic was the adoption of the Act of March 2, 2020 on special solutions related to the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them, which entered into force on March 8, 2020 (COVID-19 Act, 2020). The Act was amended several times, with the greatest importance for the tourism industry in the light of the obligations of tour operators was the amendment of this Act of 17.9.2020, on the basis of which (ad hoc) the Tourist Refund Fund and (then and long term) the Tourist Assistance Fund were established.

From the beginning of the epidemic, it became clear to everyone that the impossibility of implementing contracts for tourist events due to the restrictions introduced by the authorities of our country, as one of the ways to fight the spread of an infectious disease, will become the reason for the bankruptcy of travel agencies. The bankruptcy of many tour operators in a short time would contribute to the insolvency of entrepreneurs in other industries, as the economy is a system of connected vessels, and would also cause financial problems for the Tourist Guarantee Fund, which would lack funds to refund all affected customers. This would mean a return to the situation before 2016 and the activities of TFG, when financial security was too low and, therefore, our country would be accused of improper implementation of the directive and failure to create legal and factual mechanisms that allow travelers to receive a refund of the amounts paid for a package party. It was necessary to remedy this situation and prevent the collapse of tourist entrepreneurs.

In March 2020, the legislator introduced, pursuant to art. 15k KoronawirusU two solutions to help tourist entrepreneurs and their clients. Firstly, it extended the deadline for returning payments made by travelers for tourist events by 180 days. Secondly, he proposed the possibility of offering the traveler a voucher allowing him to use another package in the future. The first solution - as incompatible with EU law - met with widespread criticism. The second - is also a half-measure, because customers did not receive a cash refund (Marak, 2020).

In September 2020, another amendment to the KoronawirusU introduced additional countermeasures. Based on Article. 15ka-15kc KoronawirusU. The Tourist Refund Fund (TRF)



and the Tourist Assistance Fund (TAF) were established. The TRF was to provide emergency assistance and limit the effects of the current SARS-CoV-2 virus epidemic. Using the resources of this fund was paid and mandatory for the organizer, and is initiated by submitting an application by the entrepreneur and the traveler. On the other hand, TAF is a kind of development of the Tourist Refund Fund and is intended as a long-term aid, a fund that can be used in extraordinary situations that may happen in the future.

Therefore, from January 1, 2021, customers of travel agencies are protected by the Tourist Aid Fund. The main task of this fund is to support travel agencies and tourists themselves, in the event of extraordinary circumstances in Poland or in the country where the tourist event takes place, preventing the implementation of this event, e.g., pandemic, war, cataclysm (volcanic eruption, earthquake, flood). The funds accumulated in the Fund come from i.a. contributions paid by tour operators. The principle of collecting contributions and their amount is similar to the procedures applied in the case of the Tourist Guarantee Fund. Pursuant to the Act, its amount cannot be higher than PLN 30. In most cases, the amount of the TFP contribution is analogous to the contribution to the Tourist Guarantee Fund.

The Tourist Assistance Fund operates alongside the Tourist Guarantee Fund, and participation in both funds by paying contributions is obligatory. TAF will enable payment in the event of extraordinary circumstances affecting a larger number of entrepreneurs, it serves to save the tourism industry.

Payments from the Tourist Aid Fund have been launched, among others, due to the war in Ukraine. It was decided by the Minister of Sport and Tourism, in consultation with the Minister of Finance. Due to the occurrence of extraordinary and unavoidable circumstances - i.e. the state of war in Ukraine - all tourist events that were to take place in this country from February 24, 2022 were covered. Travelers had the right to withdraw from the contract for participation in a tourist event before its completion start without incurring any termination fee in the event of unavoidable and extraordinary circumstances occurring at the destination or its immediate vicinity, which significantly affect the implementation of the package. The ministers recognized that this was the case in Ukraine and from March 8, 2022, applications for reimbursement of funds paid to the Tourist Aid Fund could be submitted in electronic form by both tourist entrepreneurs and travelers. The tour operator is obliged to reimburse the funds in 72 different installments (Ministry of Sport and Tourism, 2022).

It is worth citing the judgement of the Court of Justice of the European Union of 12 January 2023, according to which travelers whose package travel has been affected the COVID-19 wireless solution may be eligible for a reduction in tour prices.

Operative part of the judgment: "Article 14(1) of Directive (EU) 2015/2302 package travel and linked travel arrangements (...), must be interpreted as meaning that a traveler is entitled to a reduction in the price of his or her package holiday where a lack of conformity of the travel services included in the package is due to restrictions that have been imposed at the travel destination to fight the spread of an infectious disease and such restrictions have also been imposed in the traveler's place of residence and in other countries due to the worldwide spread of that disease. In order for that price reduction to be appropriate, it must be assessed in the light of the services included in the package concerned and must correspond to the value of the services for which a lack of conformity has been found" (Case 2023). Directive on package travel presenting liability beyond the fault of the organizer and the traveler has the right to demand a reduction in the price of the package from the organizer, also in a situation where all travel services have not been provided due the threat of COVID-19.

## **6. Conclusion**

In the practical functioning of travel agencies over the past years, it has repeatedly turned out that the Polish legislation has not been able to guarantee full protection provided for in EU law. Currently, one can hope that the extension of the security system by Pillar II, i.e. the Tourist Guarantee Fund and the Tourist Assistance Fund established a few years later, will make it possible.

The idea of creating a Tourist Guarantee Fund is worth approving. Due to the non-commercial and not-for-profit nature of the Fund, the money deposited in the Fund's bank account is accumulated there with interest and it creates a growing financial reserve. Since its establishment in 2017, the amount of cash has been steadily increasing, as payments to aggrieved customers have so far been insignificant.

The disadvantage of the system applied in Poland is that it is complicated and the procedure is still protracted. Both of these funds involve excessive formalities. TAF increases the costs of tourist events, however, being a kind of copy of the Tourist Guarantee Fund, it has a chance to fulfill the hopes placed in it.

Conclusions included in the paper may justify the statement that the extension of the security system by Pillar II, i.e. the Tourist Guarantee Fund and Tourist Assistance Fund, will make the full protection possible. It seems that the two-pillar solution should be sufficient in case of insolvency of a travel agency and that it fully implements the EU recommendations.

In the last few years, there have been events that no one expected and could not have predicted, such as the Sars-cov-2 virus pandemic or the war in Ukraine, and yet we do not observe mass bankruptcies on the Polish travel market and it can be said that travelers are sufficiently protected.

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## References

- Álvarez de Sotomayor, S. F., 2017. *Package travel and linked travel arrangements: International protection for traders or for travellers?* In: V., Franceschelli, F. Morandi, and C. Torres, eds. 2017. *Sustainable Tourism Law*. Lisbon: ESHT/INATEL, pp. 197-212.
- Banking Law, 1997. Act of 29 August 1997 - Banking law. *Journal of Laws of the Republic of Poland*, No. 939 [online] Available at: <<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971400939/U/D19970939Lj.pdf>> [Accessed on 22 January 2022].
- Case, 2014. The Supreme Administrative Court of 24 September 201. II GSK 1157/13
- Case, 2016. The resolution of the Supreme Court of 19 May 2016, OSNC 2016/11/129. III CZP 18/16.
- Case, 2023. C-396/21 | FTI Touristik GmbH, Judgement of the Court of Justice of the European Union. [online] Available at: <<https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&anguage=en&num=C-396/21&jur=C>> [Accessed on 12 January 2023].
- Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, *Official Journal L 158*. [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31990L0314&from=EN>> [Accessed on 12 November 2022].
- COVID-19 Act, 2020. Act of 2 March 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them. *Journal of Laws of Republic of Poland*, No. 374. [PDF] Available at: <<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200000374/U/D20200374Lj.pdf>> [Accessed on 20 January 2022].
- Cybula, P., 2019. O ewolucji warunków świadczenia usług turystycznych z perspektywy interesu konsumenta [On the evolution of the conditions for the provision of tourist services from the perspective of consumer interest]. *IKAR 2019*, Nr 2, pp. 40-61.
- Demir, E., Gozgor, G. and Paramati, S. R., 2019. Do geopolitical risks matter for inbound tourism? *Eurasian Business Review*, 9(2), pp. 183-191. <https://doi.org/10.1007/s40821-019-00118-9>

- Directive 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, *Official Journal L* 326. [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2302&from=EN>> [Accessed on 12 November 2019].
- Dolniak, P., 2017. Obowiązek zabezpieczenia finansowych interesów klientów biura podróży na wypadek niewypłacalności przedsiębiorcy – uwagi na tle nowelizacji ustawy o usługach turystycznych [The obligation to safeguard financial interests of clients in case of tour operator's insolvency – remarks on the amendments to the Travel Services Act]. *IUSTITIA* 201 Case 7, Nr 1, pp. 26-32.
- Dougall, J. T., 2017. The package travel insolvency fund regulations – the Maltese perspective. In: V., Franceschelli, F., Morandi, and C., Torres, eds. 2017. *Sustainable tourism law*. Lisbon: ESHTE/INATEL. pp. 253-262.
- Grant, D., Mason, S. and Bunce, S., 2018. *Insolvency and security*. In: *Holiday Law. The law relating to travel and tourism*. 6<sup>th</sup> ed. London: Sweet & Maxwell.
- Hesselink, M. W., 2016. Private law, regulation, and justice. *European Law Journal*, 22(5), pp. 681-695. <https://doi.org/10.1111/eulj.12195>
- Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-90/94, 1996. *ECR I-04845 Dillenkofer and Others v Bundesrepublik Deutschland*. [online] Available at: <<http://curia.europa.eu/juris/liste.jsf?language=en,T,F&num=178/94>> [Accessed on 12 February 2023].
- Kirant Yozcu O. and Cetin G., 2019. A strategic approach to managing risk and crisis at tourist destinations. In: N., Kozak and M. Kozak, eds. 2019. *Tourist destination management. Tourism, hospitality & event management*. Cham: Springer. pp. 273-287. [https://doi.org/10.1007/978-3-030-16981-7\\_16](https://doi.org/10.1007/978-3-030-16981-7_16)
- Manson, S., 2017. *The future of financial protection in UK and UE*. In: V., Franceschelli, F., Morandi, and C., Torres, eds. 2017. *Sustainable tourism law*. Lisbon: ESHTE/INATEL. pp. 189-196.
- Marak, K., 2016. *Usługi Turystyczne po utworzeniu Turystycznego Funduszu Gwarancyjnego [Tourist services after the establishment of Travel Guarantee Fund]*, In: D., Ambrożuk, and K. Wesółowski, eds. 2016. *Problematyka prawna usług [Legal issues of services]*. Europa Regionum 29, pp. 31-44. <https://doi.org/10.18276/er.2016.29-02>
- Marak, K., 2020. Regulacje prawne wprowadzone w celu przeciwdziałania skutkom epidemii wirusa SARS-CoV-2 w zakresie wykonania umów o udział w imprezie turystycznej oraz skutki tych regulacji dla organizatorów turystyki i podróżnych [Legal regulations introduced in order to control the SARS-CoV-2 pandemic with respect to the performance of package travel contracts and their consequences for organizers and travelers]. *IUSTITIA*, Nr 4, pp. 201-210.
- Ministry of Sport and Tourism, 2022, *Tourist Aid Fund. Questions and Answers on the War in Ukraine, 2022, Ministry of Sport and Tourism, Government website of the Republic of Poland*. [online] Available at: <<https://www.gov.pl/web/sport/turystyczny-fundusz-pomocowy-pytania-i-odpowiedzi-w-zwiazku-z-wojna-w-ukrainie>> [Accessed on 14 November 2022].
- Nesterowicz, M., 2018. *Dochodzenie roszczeń w razie niewypłacalności organizatora turystyki. Turystyczny Fundusz Gwarancyjny [Redress in the event of insolvency of the tour operator. Tourist Guarantee Fund]* In: J. Rajski, ed. 2018. *Prawo zobowiązań. Część szczegółowa [Contract Law. Detailed part]*. Warsaw : C.H. Beck. pp. 1222-1223.
- Orzechowska, R., 2018. Zabezpieczenia finansowe na tle nowej ustawy o imprezach turystycznych i powiązanych usługach turystycznych. Zagadnienia wybrane w zakresie wykonywania gwarancji ubezpieczeniowych [Financial security against the background of the new Act on package traveled and linked travel arrangement. Selected issues in the field of insurance guarantees], *Prawo Asekuracyjne*, Nr 2.
- Package Travel Act, 2017. Act of 24 November 2017 on package travel and linked travel arrangements. *Journal of Laws of the Republic of Poland*, No. 2361. [online] Available at:

- <[https://ec.europa.eu/info/files/pl-act-24-november-2017-package-travel-and-ltas\\_en](https://ec.europa.eu/info/files/pl-act-24-november-2017-package-travel-and-ltas_en)> [Accessed on 24 January 2022].
- Republic of Poland, 2022. *Statistics of tourist entrepreneurs by voivodeships and forms of financial security* [online] Available at: <<https://dane.gov.pl/en/dataset/725/resource/28563,statystyka-przedsiębiorcow-turystycznych-wg-województw-i-form-zabezpieczeń-finansowych-w-podziale-na-lata-2021-2022>> [Accessed on 12 November 2022].
- Schulte-Nölke, H., Twigg-Flesner, C., Ebers, M. eds., 2009. *EC consumer law compendium. The consumer acquis and its transposition in the member state*. München: Sellier, Walter de Gruyter GmbH. <https://doi.org/10.1515/9783866537248>
- Tourism Services Act, 1997. Act of 29 August 1997 on tourism services. *Journal of Laws of the Republic of Poland*, No. 2268. [online] Available at: <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20042232268/U/D20042268Lj.pdf>> [Accessed on 24 January 2022].
- Tourist Guarantee Fund, 2018. *Report on the 2018 Tourist Guarantee Fund* [online] Available at: <<https://www.msit.gov.pl/pl/turystyka/rynek-turystyczny/raporty-turystyczny-fun/8049Raport-dotyczacy-Turystycznego-Funduszu-Gwarancyjnego-za-2018-r.html>> [Accessed on 14 December 2022].
- Tourist Guarantee Fund, 2022. *Announced insolvency – Information of the Tourist Guarantee Fund 2022*. [online] Available at: <[https://tfg.ufg.pl/tresc/15/Ogloszone\\_niwyplacalnosci](https://tfg.ufg.pl/tresc/15/Ogloszone_niwyplacalnosci)> [Accessed on 20 January 2022].