

Guarantees Flowing from Article 7 of Directive on Package Travel, Package Holidays and Package Tours

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ABSTRACT

The article fits current problems in the implementation of EU standards in the subject range. It may be a modest voice in the discussion focused around the lack of compliance with the requirements of some regulations like Art. 7 Directive and also is taken in the topic of changes in the law tourism at internal, EU level and about the same time no stranger to many of the legal systems in the world

Keywords: tourism, case law, consumer, system coherence

Introductory remarks

The importance of tourism in the cross-border movement continues to grow, which undoubtedly determines the necessity of approximation of national standards for the protection of non-professional recipients of tourism products. On this assumption there was based Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and tours¹. It sets common to the Member States the minimum standards of consumer protection. These relate to security equivalent position the parties to such an agreement with the benefit of information on the stage of its string ties (also in the sphere of precontractual) and the performance of the contract. Liquidation information deficit is enable conscious choice market offer² and sovereign decision. This material applies only to fragment the existing regulation, but as practice shows, the issue extremely important to users in different ways shaped in contracts. Statistics clearly shows that most consumer's concerns related to the conclusion of contracts applies to bankruptcy tourism travel agency and risks associated with it³.

Rightly there is pointed out in the literature that the protection of the consumer against the insolvency of the organizer is a sensitive issue across the Directive, since the state of economic weakness providers shall be disclosed in the event of bankruptcy or temporary financial difficulties. In practice, this is not enough, in any case, only formal security interest of the consumer, as the efficiency of the system but therefore whether the financial guarantees are high enough and efficient procedures for compensation appropriate. These issues relate to, among others, national court's doubts, as to the compliance with the requirements of the

¹ OJ 1990, L 158, p. 59, also the Directive and other documents <http://www.iffta.org/eu-directives-and-regulations>.

² See on a differentiated approach to legal binding tender in different legal systems: W. Blair, R. Brent, A Single European Law of Contract?, *European Business Law Review* 2004, No. 1, p. 7.

³ Cf. Commission staff working document impact assesment - accompanying the document on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU and repealing Council Directive 90/314/EEC, SWD/2013/0263 final: Indeed, 67% of consumers who bought combined travel arrangements through an intermediary with billings by different companies wrongly believed that they would receive a refund in case of bankruptcy of one of them (...).

internal system of art. 7 of the Directive, has recently been requested for a preliminary ruling concerning the interpretation of this provision⁴.

A few words about the facts

Application, has been made, remained in a direct relationship with the national main proceedings concerning the dispute between I. Baradics and other clients tour, and QBE Insurance (Europe) Ltd Magyarországi Fióktelepe Minisztérium (QBE Insurance) and the Hungarian state. Its subject was the issue of recovery of the advance or the total price paid by the plaintiffs for a travel package. The plaintiffs in the main proceedings concluded with a tour operator agreement package, on the basis of which paid down a payment and some of them have paid the total price; even before the start of the trip was affirmed by the solvency of the organizer. On the basis of the insurance policy concluded by the insurer, the latter undertook, in the event of an accident insurance for the reimbursement of the costs of bringing tourists to the country or the security measures enforced sojourn, and, insofar as these costs do not exceed the limit of liability for repayment of all the advances and travel prices⁵.

Hungarian law, adopted in order to transpose the Directive, contains a number of safeguards for clients of travel agencies. Among others art. 2 of Government Decree No 213/1996 provides that the activities of package travel organizer or retail distributors in Hungary can only be carried out tourism businesses that meet the requirements laid down in the decree, which appear in the official public register. The condition of registration is to have the guarantee of property, which can take the form of: bank guarantee, insurance policy concluded with an insurer or insurers (it can be concluded, based on the number of travelers also directly on their behalf), or the amount submitted by the tourist credit institution (...). Warranty asset should enable each period covering advances and the price of travel, the costs associated with providing assistance to travelers located in an emergency situation such as to bring them into the country, and the cost of compulsory residence, if such a place. Due to the agreement marked the limit of liability plaintiffs paid only 22% of the total price advances or if it has been paid. As a result of this condition, the plaintiffs I. Baradics with other customers tour brought to the court of first instance the application for an order QBE Insurance supplement unpaid by him of the benefits, and if the impossibility of enforcement, to obtaining them from the Hungarian state. Argued in the proposal that national law and standards of its application violate art. 7 of Directive 90/314 and thus constitute the making by a Member State incorrect, because not guarantee the level of protection it has designated. This is equivalent to the default of the obligation on national legislation the obligation flowing directly from the Treaty.

Discussion on the EU legal status

By way of reminder is enough in the first place to point to art. 5 of the Directive, which requires Member States to take all necessary steps to ensure that the organizer and

⁴ Order of the Court of 16 January 2014 on the proceedings C-430/13 I. Baradics and others (hereinafter referred to as the Hungarian case).

⁵ See M. Valérie, De la limitation des remboursements en cas de faillite de l'organisateur de voyages, Europe 2014, nr 3, s. 31.

distributor of retail sales to consumers for improper performance of the obligations under the contract, regardless of which entity the responsibilities lie. With regard to the damage caused to the consumer as a result of non-performance or improper performance of the contract, Member States should take all necessary measures to ensure accountability professional service provider and the choice of instruments and institutional arrangements within the competence of the national authorities, subject to guarantee the effectiveness of the designated EU law⁶. In the prescribed scope of this law are therefore the standards of performance of contracts. Having direct application of art. 7 of the Directive provides that in the event of insolvency organizer or other professional entity party to the contract shall provide sufficient financial security to enable repayment of overpaid amounts and the return of consumer travel. As aptly noted in the literature, interpretation of this provision has been the subject of many judgments of the Court of Justice, the usually critical of the national implementation of insufficiently protecting consumers against the risk of insolvency of the organizer. Transfer to the level of the Member State interpretation by the Court of Justice shall be here through the courts of the Member States, which shall have as by the use of non-linguistic rules of interpretation to achieve the objectives of EU law.

Protect the security of the consumer

This provision should be interpreted consistently with the art. 8 of the Directive, which specifies that in order to protect consumers, Member States may adopt or maintain more stringent provisions in the field covered by this Directive⁷. It follows that the act was based on a secondary minimum harmonization clause⁸. Member States must secure at least the standards of protection of the recipient, who is a consumer, designated Directive. It however does not prohibit regulation of higher standards subject to the requirements of proportionality, arising directly from the Treaty. In addition, art. 7 should also be bound to the rules of liability for wasted holiday. This issue was not raised in the judgments referred, relating to the material discussed in this recipe, but it is impossible to ignore the fact that the Court of Justice in matters of this kind of responsibility is clearly expressed in its judgment of 12 March 2002⁹. In the light of the discussed judgment should be interpreted as granting consumers the right to compensation for non-pecuniary damages (pecuniary damage) resulting from non-performance or improper performance of the services constituting a package tourist¹⁰. In case

⁶ Punitive damages might be a solution, but are rarely imposed or even available in Europe, so and wider F. Weber, *The Law and Economics of Enforcing European Consumer Law*, Farnham 2014, part. I.5.

⁷ On relationship with the Consumers Rights Directive see http://www.beuc.org/publications/beuc-x-2014-049_nro_revision_of_the_package_travel_directive.pdf

⁸ Measures are also in acts of a different nature as The Unfair Contract Terms Act 1977 of Parliament of the United Kingdom, M. Fisher, D. G. Greenwood, *Contract Law in Hong Kong*, Aberdeen, Hong Kong 2011, p. 199.

⁹ C-168/00, *Simone Leitner v TUI Deutschland GmbH & Co. KG*, ECR 2002, p. I-2631, P. Mengozzi, *Il risarcimento del danno morale da vacanza rovinata dopo la sentenza della Corte di giustizia CE del 13 marzo 2002*, in *Contratto e impresa/Europa*, 2003, n. 1, p. 589, M. M. Karollus, *Entgangene Urlaubsfreude und Reisen "à la carte"* - Zwei EuGH-Entscheidungen zur Pauschalreise-RL, 124 *Juristische Blätter* 2002, p. 566.

¹⁰ in the Staff Working Document (Summary of the impact assessment. Proposal of 9 July 2013 for a Directive of the European Parliament and of the Council on package travel and tourism services arranged amending Regulation of the European Parliament and Council Regulation (EC) No 2006/2004 and Directive 2011/83/EU and repealing Directive 90/314/EEC, SWD/2013/0264 final, paragraph 2.3.1. Damages incurred by consumers who are users of combined travel services) states that in fact, 67% of consumers who bought travel services combined through an intermediary and received bills issued by different companies wrongly believed that in the event of bankruptcy of one of them will receive a refund.

of earlier than indicated by the contract, forced return to the country, we have often wasted leave, hence guarantees under art. 7 of the Directive may not be sufficient¹¹. The background in preliminary rulings discussed here was not undertaken by the parties and, therefore, omitted by the Court of Justice¹². Undoubtedly, a system of cooperation between the national courts of the EU courts have generally served approaching protective standards of the Member States in the fields covered by the acts of the law. Judgments of the Court of Justice issued pursuant to art. 267 TFEU involve not only Member State which has requested a preliminary decision, but also the courts of other states prevail in similar cases. The Court of Justice has consistently assumes that the system established by art. 267 TFEU in order to ensure consistency of interpretation of EU law in the Member States make direct cooperation between the Court and national courts by the procedure running without the initiative of the parties¹³.

In the circumstances the national court dispute Hungarian (Fővárosi Ítéletábla) was uncertain as to the compatibility of Government Decree No 213/1996 of Directive 90/314, decided to stay proceedings and to refer to the Court the following questions: whether the national legislature has correctly transposed art. 7 and 9 of the Directive, and therefore whether provided effective protection units in the event of bankruptcy or insolvency of the organizers (retailers tourist events), providing that the value of the guarantee asset provided by the service provider should be a certain percentage of expected net revenues from the sale of tourist packages or a minimum spend? The extent to which it will be possible to say that the state has committed an infringement, seeking the settlement of the national court wanted to get the answer to the question whether the breach is sufficiently serious for the purposes of determining liability? Since the legal uncertainties close to the reported by the Hungarian court had in the past judicature other Member States applying for initial decision pursuant to art. 267 TFEU could use this law, especially given that the line of this rule is generally consistent. In the proceedings initiated on the basis of the interpretation of a provision of the internal rules, the courts of the Member States and not to the Court, which is designed to provide a useful interpretation of the output fragment here apply EU law. In the first question, the national court seeks essentially to ascertain, whether those provisions of the Directive must be interpreted as meaning that they preclude legislation of a Member State, such as that at issue in the main proceedings, which is limited to determining the amount of the guarantee that the organizer or directly vendor tourist events is required to provide in relation to a specified percentage of net revenues from the sale of tourist packages in the marketing year projected recognized as having relevance to this case or a specific minimum amount.

The Court of Justice first came on the objectives of the Directive, its motives and the function is in practice the implementation to fill with applicable here, art. 7 requires tour operators to have sufficient security allows, in case of insolvency or bankruptcy, repayment of overpaid contributions by the consumer and his return to the country. The objective contained

¹¹ On the margins an important difference between tourism and goods trade is that the elasticity of tourism arrivals with respect to the origin's income is much lower than that of goods trade with respect to the importer's income, A. Culiuc, Determinants of International Tourism, IMF Working Paper No. 14/82, May 2014, p. 13.

¹² In terms of the effects of fragmented solving by way of interpretation of the Directive by the Court of Justice of responsibility immaterial in this type of contract for the broader national agenda M. Machnikowski, assessment of the operation and direction of changes in EU legislation on consumer protection on the example of the directive on travel (in :) Current trends in consumer law, edited by R. Stefanickiego, Wroclaw 2010, p. 108. There is also a diversity of national systems on the scope of information that should be made available to the buyer non-professionals to be able to make a rational choice between competing services; See Proposal for a Council Recommendation on European principles for quality in tourism, COM/2014/085 final.

¹³ Paragraph 62 of the judgment of 21 July 2011 on Kelly C-104/10, ECR 2011, ECR I-6813 and paragraph 28 of the judgment of 18 July 2013 in Case C-136/12 Consiglio nazionale dei geology, unpublished.

in this provision is to protect the security of the consumer, which is the weaker party to the contract, the effects of economic risk, binds to the insolvency or bankruptcy of tour operators¹⁴. Such actual risk was materialized in the test by the court case, ECJ judgment in this established, inter alia, the most frequently appointed by the judiciary and the doctrine of the judgment of 15 June 1999¹⁵. It follows that art. 7 of Directive 90/314 lays down in the event of bankruptcy organizer to achieve the result which consists in giving participants travel, package holidays and package tours powers to secure the return of sums paid and return from the trip, and in order to fulfill these duties is to protect consumers from the effects of the bankruptcy, regardless of its reasons. Indication that the protection is to take place regardless of the cause of the insolvency service standards guarantee is real, the practical effect of the EU agenda. Court - as indeed the line of its previous jurisprudence - confirmed that neither the motives of the Directive, nor with the objectives set out explicitly the art. 1, neither the wording of art. 7 is (not) clear opportunity to reduce by a Member State guarantees provided for in the latter provision. Thus, the Court relied on the interpretation of the language in question, art. 7 enriched with functional and teleological interpretation. Also in the Polish case law increasing importance to the interpretation of the system and the functional and thus to some extent it departs from the concept clarificational for derivational theories of interpretation¹⁶. However, the correct methodological approach does not mean opposing each of the two concepts.

Effective enforcement of judgments

In its interpretation of the Directive in the field covered by a Hungarian court for a preliminary ruling, the Court referred to the important issues that are the transposition into national agendas determined both the content of substantive rules and procedures applicable to them and practice of effective enforcement of judgments. Legislation of a Member State meets the requirement of proper implementation in relation to these art. 7 only if, regardless of the detailed rules for its application, leading to insolvency tour operators to effectively provide the consumer reimbursement of all sums paid by him and his return from the trip at no charge. The Court of Justice of the duties of the transposition of EU law, consistently seen in terms of both implementation of static and dynamic, is expressing the actual standards of judicial practice¹⁷. It should also have regard to the fact that between the time of adoption of the Directive, and taken on its basis (I mean national laws adopted in order to transpose) decision can be a big time gap, which requires the necessity to respond to changes in the legal

¹⁴ Court of Justice in its case law consistently points to weaker consumer items in his relationship with a professional, so in its judgment of 14 November 2013, C - 478/12, not published.

¹⁵ In Case C -140/97 W. Rechberger and Others v. Austria, ECR 1999, ECR I-3499. All the transposition of Directive 90/314 has been assessed through the prism of its failure to meet the requirement of proper implementation in relation to non-compliance with the requirements under art. 7, M. Wathelet, *Du concept de l'effet direct a` celui de l'invocabilité` au regard de la jurisprudence récente de la Cour des justice (w:) A True European: Essays for Judge D. Edward*, ed. D.A.O. Edward, M. Hoskins, W. Robinson, Portland 2004, p. 383.

¹⁶ In a judgment dated 7 December 2006 (III CZP 118/06, OSN IC 2007, No. 9, item. 136) the Supreme Court pointed out that the interpretation of individual expressions and phrases contained in the law should take account of their functions to meet in a particular legal system. Then, in a judgment of 7 February 2007 (III CZP 154/06, OSN IC 2007 z 12, pos. 1811). Supreme Court pointed to the role of the functional interpretation of the argumentation used by the court.

¹⁷ See also P. Biavati, *European Civil Procedure*, Alphen aan den Rijn 2011, p. 43 and next.

environment and the need to search for the "old standards" of new content, as for example in relation to the acceptance of electronic contracting instruments.

In light of its findings, based on the entirety of the data available as to the facts and the law, the first question the Court of Hungarian ECJ answered that art. 7 of Directive 90/314 must be interpreted as meaning that it precludes national legislation in so far as the detailed rules for its application does not lead, in the event of the insolvency of tour operators, to deliver the consumer to reimburse all sums paid and the return from the trip. For the national court to determine whether this situation is the case with national provisions applicable to that pending before it.

The problem of the effectiveness of the national system of protection, even in this sphere, concerns mentioned already the consistency of regulation substantive procedural law and effective enforcement. Failure to comply with this last component to some extent determines that some national standards generally deviate downward from the Western countries. For proper implementation of art. 7 of the Directive, it is necessary that the protective system was tight, sufficiently transparent and compatible with the objectives of regulation, and thus naturally able to prevent abuses of the law. It is undisputed that the Member States in their systems have different security, usually in the form of insurance or guarantee fund in case of fulfillment of the risk of failure, realize accordance with the agreement, benefits compose the travel package provider. Such a fund exists in systems of many countries, including Denmark, France and the UK and the Benelux countries¹⁸. In Polish law desirable changes relate to specify the trustee guarantee funds relating to hedge funds in the total paid by the clients of travel agencies, including an indication of how payments from the state budget amounts for the return to the country where the sum of financial security entrepreneur organizing trip proves to be insufficient.

Due to the efficiency requirements of the EU agenda in this respect noteworthy is judgment of the Court of Justice of 16 February 2012¹⁹. A preliminary decision brought a German court in connection with recognizing the necessity of interpretation of the EU for the purposes of the main proceedings, relating to the implementation of the Directive, and in fact mostly art. 7 claimants customers bought the product tour connected with the insurance contract. The latter contained a clause according to which in case of trip cancellation due to the insolvency of the organizer will be refunded the amount paid by the customer unrealized benefits. In connection with the fulfillment of the insurance risk of the insurer's customers demanded a refund. Meanwhile, the insurer denied benefits, stating that there is no obligation to make such a return due to the fact that established by the art. 7 of Directive 90/314 does not apply in a case in which the cause of trip cancellation depends entirely on having the fraudulent conduct of its organizer. In this situation, the German court requested, pursuant to art. 267 TFEU with the question "Is art. 7 of Directive applies also in the case of the organizer's insolvency due to the fact that all collected from travelers with intent to commit fraud, the funds were misused, and the organizer never intended to hold out?". The Court of Justice held that a provision called in question is unambiguous in its content.

¹⁸ Information on the regulations for the protection of consumers of tourist services and solutions relating to financial guarantees and insurance schemes tourist offices in selected countries of the European Union, the Parliamentary Research Office of the Sejm (BAS-WAP-1912/12), Warsaw, 2012; Summary information about implementing art. 7 of Council Directive 90/314 on package travel, package holidays in the European Union, Ministry of Sport and Tourism, Department of Tourism, Warsaw, 22 June 2010. Consumers may cancel the contract if the organizer attempts to change essential elements of the package - Consumer protection law developments (ed. A. Horvath, J. Villafranco), ABA Section of Antitrust Law 2009, p. 730 - are entitled to reparations if organizer become insolvent.

¹⁹ Judgment in Case C-134/11 Jürgen Blödel-Pawlik against HanseMercur Reiseversicherung AG, hitherto unpublished.

Semantic and teleological directive interpretation

Semantic and teleological interpretation of art. 7 leaves no doubt as to the results, which is expected to bring its implementation. Just as in the present decision of 2014 on the Hungarian, the ECJ established here for current its case, which shows that the protection of the recipient of the tourism product is independent of the cause of the collapse of the provider, the lack of professionalism in the performance or occurrence of ill will. Given the above, argued that circumstances such as careless or dishonest behavior, tour operators can not prevent the provided art. 7 of Directive 90/314 reimbursement of benefits paid and the security of consumers return from the trip. For making such an interpretation of that provision speaks also fact implemented the Directive objective of ensuring a high level of consumer protection. On those grounds, the Court held that art. 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours should be made in such a way that it applies in a situation where insolvency tour is due to his having fraudulent behavior. Therefore, the Member State should introduce such a measure, that consumers should not pay travel agents the negative consequences of a lack of system solutions in the field. From the discussed issues are directly related to issues of State liability for damage suffered by the unit due to a failure of its obligation to properly implement the Directive into internal order²⁰.

The Hungarian court seeking the preliminary decision sought to determine whether, in so far as the art. 7 of Directive 90/314 precludes national legislation is framed in such that the amount of the guarantee provided by the organizer property (retailer tourist events) is determined as a percentage of the anticipated net income from the sale of tourist packages or as specified minimum amount, such legislation qualifies as a material breach Union law giving rise to the lodging of the application by the injured individual for damages arising out of failure by the Member State of its obligation to correct and timely implementation. In the previous jurisprudence of the ECJ that art. 7 of the Directive precludes national legislation which, in the event of the insolvency tour does not guarantee repayment of all sums paid by him and the cost of earlier than was due to the content of the contract, return. In its decision of 16 January 2014, the Court emphasized that Member State does not have any discretion as regards the scope of the risks that should be covered by warranty organizer or other entity to customers. Terms of the object or effect the restriction of the scope discussed guarantees should be considered incompatible with the obligations incumbent on Member States drawn from this instrument of secondary legislation. Constitute a sufficiently serious breach of EU law, which, subject to establishing the existence of a direct causal link could lead to the liability of the Member State concerned. This principle has been shaped in a rich jurisprudence of the Court of Justice²¹. In those judgments, the EU court clarified that the effectiveness of protection, rule of law infringed must confer on individuals rights, violation

²⁰ It is worth mentioning the role of the Directive 2006/123/CE F. J. Melgosa Arcos (in:) *Estudios de turismo rural y cooperación entre Castilla y León y Portugal*, (ed. F. J.J. Moreno, F. J. Melgosa), Salamanca 2010, p. 104.

²¹ In the cases of *Mr Francovich and D. Bonifaci against Italy* C-6/90 and 9/90, ECR 1991, ECR I-5357; *Brasserie du Pecheur SA v Bundesrepublik Deutschland* and *The Queen v Secretary of State for Transport, ex parte Factortame Ltd and others*, joined 46/93, 48/93, ECR 1996, ECR I-1029, *G. Köbler against Austria*, the C-224/01, ECR 2003, ECR I-10239. See either T. Enders, *Grundzüge des Internationalen Wirtschaftsrechts*, München 2013, p. 3.4.4.

of the law (rights) is to be sufficiently serious²². In addition, to be effective, it is the responsibility of the occurrence of a direct causal link between the failure by a Member State in assuming the obligations of the treaty, and a resulting injury.

It is worth mentioning that the Recommendation of 12 July 2004 on the transposition of internal market directives into national law, the European Commission points to the duty of the state citizens aware of the possibility of direct appointment by them for the acts of secondary Community law (now the EU) in the situation failure to timely and correct implementation. On the margins of analysis it is worth noted that the trial court may not apply a national provision, if the content does not give the possibility of obtaining a guaranteed result relevant provision of the Directive. It should be noted that judicial activism permitted in the latter case does not equate with the possibility of takeover by the courts of law prerogatives of the legislator. Responsibility for the shape of legislation, at least in the system of civil law, rests with the legislature.

Normative-axiological coherence

Court of Justice in the case law cited above ruling, brought to a common denominator coherence normative and axiological order of European Union law to its efficacy. The prospect of substantive effects, specific regulation does not allow ignore the interpretation of functional-teleological, strengthening the juridical interpretation. Assignment organizer responsibility for improper performance of its obligation, it shall be finally bound to the protection of consumer's reasonable expectations and shaping its confidence in trading²³. She or he has a right to reasonably expect that the product, which has acquired as a package of tourist services, will allow him to fulfill the essential purpose of the contract. Lack of trust necessary for the professional contractor can be a drag in cross-border activity of the recipient. The changes that have taken place in the market of tourist services in the period that has elapsed since the adoption of the Directive, exaggerated about the inadequacy of some of the solutions contained in them to contemporary social needs and expectations²⁴. It prejudged the need to work on the new directive tourist and regulations related to it²⁵. Contrary to regulatory trends, relating to EU legislation, it should not be over-saturated act casuistry and regulations in a closed, due to the nature of private law and the necessity to keep up with the law for the rate of change and its surroundings. A significant increase in services purchased by means of electronic communication or in conjunction with the traditional way of concluding agreements is undoubtedly a challenge at the level of jurisdiction. It also means the need for

²² See, among others, judgment of 8 October 1996, C-178/94 on Dillenkofer and Others v. the Federal Republic of Germany, ECR 1996, ECR I-4845; *Le droit du tourisme*, Bruxelles 2004, p. 32 and other judgments cited therein.

²³ Specifying that it is the organizer that would be financially liable would, therefore, shift this burden to the organizer. Thus (Commission staff working document impact assesment...) some benefits in terms of clarifying the business to business costs may occur and so sellers can avoid incurring double costs where both organizer and sellers/retailers take out insolvency protection.

²⁴ There is also another question about the practice of law enforcement as some cases where inadequate economic analysis has led to a poor decision, M. Hviid, P. Akman, *A Most-Favoured-Customer Guarantee with a Twist*. CCP Working Paper No. 05-8, *European Competition Journal* 2006, No. 1, p. 24.

²⁵ More often raises questions of legitimacy departing from fragmented regulation at the EU level. The Application of the European Parliament and of the Council on consumer rights (COM/2008/0614 final - COD 2008/0196) emphasizes that a majority of respondents horizontal legislative instrument should be associated with vertical revisions of existing sectoral directives (including the Directive on tourist events), including by introducing common definitions of basic concepts, including consumers, businesses, etc.

further approximation of the rules of jurisdiction in civil and commercial matters and to take action with respect to simplifying the formalities for the recognition and enforcement of judgments from Member States as well as the security interest of the weaker participant contract for travel services. Attention in this respect deserves the already mentioned judgment of the Court of Justice of 14 November 2013. This agreement was concluded by both the traditional as well as via the Internet²⁶. In view of the conflict of jurisdiction of the court to consider a claim for refund of overpaid amounts and to obtain redress for the inconvenience tourist stay organized and to indicate the person responsible for the damage, the Court of Justice ruled that the term "other party" in art. 16 par. 1 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters²⁷ must be interpreted, in circumstances that have occurred in the main proceedings, it also includes the contractor, established in the Member State of residence of the consumer. Summing up the considerations, taken not to mention that some national standards relating to the implementation of the Directive in the field under study differ from the results established its objectives and in particular art. 7, urgent legislative change²⁸ should primarily focus on effective financial security claims for recipients of tourism products in the event of insolvency of the service provider. When specifying of such a guarantee should also have in mind the necessity of balancing the interests of both parties to the contract.

²⁶ The exclusion of non - the European Economic Area organizers also creates an uneven competitive environment where those required to comply with the proposed new Directive (Proposal for a Directive on Package Travel and Assisted Travel Arrangements - Insolvency Implementers' Views. Report on the outcome of a workshop held by implementers and enforcers of the Package Travel Directive, CAP 1147, CAA 2014), p. 6) would be competing for the same business as those outside of the scope of the proposed Directive, and a risk that internet based firms will move their operations outside of the European Economic Area to avoid these obligations.

²⁷ There are no common standards for determining jurisdiction in relation to third State defendants may disrupt the application of EU mandatory provisions, including those relating to consumer protection, the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44 / 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM/2009/0174 final. It is worth noting at this issue of jurisdiction, two other problems: considerations such as tax will play a major part in businesses' decisions to move between jurisdictions and if they choose a jurisdiction outside an EU 'off-shore zone' there are some fears that this will lead to a serious detriment for consumer of all EU Member States, more Government's response to the Call for Evidence on the European Commission's Proposal for a New Directive on Package Travel and Assisted Travel Arrangements by the UK's Department for Business Innovation and Skills, London, September 2014, p. 106, 118.

²⁸ But it seems there is still a long way to go until there is a final text of new directive.