

Insurance contract and protection of travellers against insolvency of package travel organisers

Ugovor o osiguranju i zaštita putnika od insolventnosti organizatora putovanja

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Abstract

Tourism is accompanied by numerous risks which could cause damage not only to travellers, but also to other persons who are directly or indirectly involved in tourism activities. The efficient way to reduce the risk is to transfer the risk to the other party by entering into an insurance agreement. There are different types of insurance in tourism, such as: travel insurance, tour operator liability insurance, public liability insurance, professional indemnity insurance, travel guarantee insurance. The article will provide a comprehensive overview of the concept, constitutive elements and types of insurance contract as well as legal analysis of the specific rules related to travel guarantee and protection of travellers against insolvency of package travel organisers. The aim of the article is to make an overview and assessment of the relevant insurance law rules and consumer protection law rules de lege lata and de lege ferenda, with the particular reference to the rules adopted at the national and EU level, including the on-going revision of the Package Travel Directive 2015/2302/EU.

Key words: insurance, travellers, organiser, insolvency, protection

Sažetak

Obavljanje turističke delatnosti podrazumeva brojne rizike koji mogu prouzrokovati štetu ne samo putnicima, već i drugim licima koja su direktno ili indirektno uključena u turističke aktivnosti. Efikasan način za smanjenje rizika jeste da se zaključivanjem ugovora o osiguranju izvrši prenos rizika na drugu stranu. Postoje različite vrste osiguranja u turizmu, kao što su: putno osiguranje, osiguranje od odgovornosti organizatora putovanja, osiguranje od javne odgovornosti, osiguranje od profesionalne odgovornosti, garancija putovanja. Predmet ovog rada je opšti pregled koncepta, konstitutivnih elemenata i vrsta ugovora o osiguranju, kao i pravna analiza specifičnih pravila koja se odnose na garanciju putovanja i zaštitu putnika od insolventnosti organizatora putovanja. Cilj članka je da se napravi pregled i procena relevantnih pravila u domaćem i komunitarnom pravu, koja se odnose na osiguranje i zaštitu prava potrošača de lege lata i de lege ferenda, sa posebnim osvrtom na aktuelnu reviziju Direktive 2015/2302/EU o putovanjima u paket aranžmanima i povezanim putnim aranžmanima.

Кljučне речи: osiguranje, putnik, organizator, insolventnost, zaštita

1. Introduction

Despite the fact that business activities are carried out in accordance with regulations, standards, customs and rules of the profession, that is still not sufficient to exclude numerous risks, as a result of which both participants and third parties can suffer damage. Tourism, like any other business activity, is accompanied by numerous travel-related risks. According to the World Tourism Organization, there are four main sources of risks in tourism (WTO, 1996, p. 17-18): 1. tourism sector and the related commercial sources (breach of contracts, frauds, insufficient level of hygiene and sanitary protection, fire, earthquake); 2. human and institutional environment outside the

tourism sector (social conflicts, wars, terrorism, organized crime, delinquency and human trafficking); 3. personal risk - individual travelers (poor health, crime, causing conflict with local residents, visiting dangerous places, loss of money and documents, etc.); 4. physical risks from the environment - natural, climatic, epidemics (vaccination, visits to dangerous areas, exposing to dangers during natural disasters and epidemics). Due to aforementioned risks, travellers may suffer physical or material damage, as a result of an event that occurred before or during the trip.

The efficient way to reduce the risk is to transfer the risk to the other party by entering into an insurance agreement (Desak Gde

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Dwi Arin et. al, 2018, p. 36). According to the insurance contract, the insurer undertakes to pay insurance compensation to insured travellers against insured events; provide a travel organiser with necessary insurance forms; and provide him with the necessary information about the conditions and rules of insurance, changes in tariffs, advisory services, etc. (Bakalo et al., 2024, p. 16). There are different types of insurance in tourism, such as: travel insurance, tour operator liability insurance, public liability insurance, professional indemnity insurance, travel guarantee insurance, i.e., insolvency insurance, etc. For example, travel insurance is a type of insurance that covers various risks during travel (Sava, et al., 2019), i.e., a guarantee that the insurer provides for all contingencies related to insured events. This is especially important in a changing international environment, where the lack of insurance can lead to significant financial losses and stress (Bakalo et al., 2024, p. 16), due to cancellations, trip interruptions, emergency medical expenses, lost or stolen luggage/passports, personal accidents, and even liability (Arini et. al, 2018).

While travel insurance generally covers unforeseen events during travel, travel guarantee insurance covers insolvency of travel organisers. The purpose of travel guarantee is to ensure that travellers do not lose their money without receiving any contractual services in case organiser becomes insolvent before the start of the package, or become stranded abroad if the insolvency occurs during the package (Wukoschitz, 2025, p. 149). The protection of travellers who have concluded a package travel contract and have paid the tourist services, in the event of an insolvency procedure initiated against the organiser, is regulated by the establishment of guarantee schemes consisting of: insurance policies, travel package guarantee funds or other legally constituted guarantees that can be used distinctly or associated with one another (Apan, et. al., 2018, p. 19). According to the current Package Travel Directive 2015/2302/EU (PTD), Member States are free to choose the form of financial collateral in the event of the insolvency of the trader, but must provide a legal framework that will guarantee full protection in case of insolvency of the organizer (Dolniak, P., 2018, p. 66). Provided that national insolvency protection systems meet the criteria under Art. 17 and Recitals 39-40 of PTD, these systems can hence be based on (public or private) funds, insurance, or bank guarantees, leading to a landscape of diverse insolvency protection systems across the EU (PTD Proposal, 2023). Therefore, security may be provided under one or more policies of insurance under which the insurer agrees to indemnify consumers, who must be the insured persons under the policy, in the event of the organiser becoming insolvent (Grant, D., et al., 2018, p. 334).

The outbreak of the Covid-19 pandemic (Bareša et al., 2023; Hosain et al., 2020) revealed the shortcomings of the current PTD and difficulties in its application, which are, *inter alia*, related to the difficulties in issuing refunds and effective insolvency protection in a major crisis, including the lack of rules on vouchers and uncertainty about the scope of the insolvency protection coverage. Europe's insurance industry has backed EU plans to revise the PTD which seeks to reinforce both passengers' rights and the insolvency protection of holiday makers given the recent challenges such as the Covid-19 pandemic and bankruptcy of travel companies (Insurance Europe, 2025). The revision of the Directive was proposed by the European Commission in late 2023, followed by the

amendments introduced by the Council of the European Union by the end of 2024.

The article will provide a comprehensive overview of the concept, constitutive elements and types of insurance contract as well as legal analysis of the specific rules related to travel guarantee and protection of travellers against insolvency of package travel organisers. The aim of the article is to make an overview and assessment of the relevant insurance law rules and consumer protection law rules *de lege lata* and *de lege ferenda*, with the particular reference to the rules adopted at the national and EU level, including the on-going revision of the PTD.

2. The concept and constitutive elements of insurance contract

By a contract of insurance, a policyholder assumes the obligation to pay a specific amount to an insurer, while the insurer shall assume the obligation, should an event take place which represents the case covered by insurance, to pay to the insured person, or to a third party, compensation, the stipulated amount, or to do something else (Art. 897 of the Law on Obligations - LO). In terms of determining the insurer's obligation, there are one-element, two-element and three-element definitions (Vitez, M., 2008). LO adopted a three-element definition. In contrast, the Sketch for a Law on Obligations and Contracts (Konstantinović, 1969, Art. 873) and the Preliminary Draft of the Serbian Civil Code (Art. 1162) adopted a two-element definition in relation to the insurer's obligation (to pay a certain amount of money or do something else). Based on the legal definition of an insurance contract, several points should be noted regarding (a) contracting parties and (b) obligations arising from the insurance relationship.

a) When it comes to contracting parties, the definition of a contract implies that it is concluded by the policyholder and the insurer. If the policyholder concludes the contract in his own name and for his own account, then the policyholder himself has the status of the insured person. However, when he does so in his own name and for the account of a third party, then the third party is in the capacity of insured person (if an insured event occurs, the insurance indemnity is paid to the insured, for whose account the contract was concluded, and not to the policyholder).

In certain types of insurance, two more persons may appear: the insured person (the person in relation to whose life, personal integrity or a certain action an insurance contract is concluded; this person does not necessarily have to be the insurance policyholder) and the insurance beneficiary (in relationships arising from the conclusion of an insurance contract in favor of a third party, which most often occurs in connection with insurance in the event of death, the insurance beneficiary appears as the person to whom compensation should be paid if the insured event occurs). Designation of the beneficiary is not an essential element of a life insurance contract in the event of death by its very nature. If the beneficiary is not designated, the insured amount will, when the insured event occurs, belong to the heirs of the policyholder (Perović, et al., 1980, p. 928).

Finally, an injured third party may also be part of insurance relationship in the event that the policyholder has concluded a liability insurance contract. The injured party may directly

request compensation from the insurer for damage suffered as a result of an event for which the insured party is liable.

b) As for the insurer's obligation, it can be threefold. First, when the purpose of the insurance is compensation for damage (property insurance), the insurer pays the insurance indemnity. Second, if the purpose of the insurance is not compensation for damage (personal insurance), the insurer, if the insured event occurs, pays the agreed amount. Third, the insurer will be obliged to "do something else" if it is agreed that it will compensate the damage covered by the insurance in kind or, in the case of liability insurance, that it will take over the defense of the insured against unfounded claims for damages from third parties.

An insurance contract has several constitutive elements. In legal theory, it is debatable what these elements are (the thing or person being insured, the interest in preventing the insured event from occurring, the risk, or the core obligations of the contracting parties, which are, first and foremost, the insurance premium and insurance indemnity), as well as what is meant by each particular element (Kapor & Carić, p. 267; Velimirović, p. 459; Vasiljević, M., p. 133; Salaj, 2006, p. 43). However, in accordance with the legal definition of insurance contract, several constitutive elements may be identified:

1. *Subject of insurance* - the thing being insured, in the case of property insurance, or the person being insured, in the case of personal insurance.

2. *Insurance risk* - a future uncertain event, which must be possible and independent of the will of the insured. If the risk stipulated in the contract materializes, it is considered that an insured event has occurred. While risk implies the possibility of a certain event occurring, an insured event represents a realized event (its occurrence creates the insurer's obligation to pay the insurance benefit) (Salaj, 2006, p. 40).

The rule that insurance only covers a future event is waived in the case of "putative risks". Such a situation exists when the insurance covers a period of time that precedes the insurance. In such a case, the insurer will be obliged to pay compensation for damage that occurred before the conclusion of the insurance contract, but only if the interested party was not aware that the insured event had already occurred.

In the contract, the risks covered by insurance are determined in two ways: by listing and specifying the type of risk, with certain exclusions. They are divided into basic (they are regularly covered by a certain type of insurance and with a single premium) and supplementary (they are covered by insurance with a special premium, if so agreed).

The insurance excludes those events that the policyholder, the insured or the insurance beneficiary caused intentionally or through fraud. In such cases, an uncertain event cannot be considered to have occurred. Also, the insurer is not obliged to compensate for damages arising from defects in the insured property, damages caused by war operations or riots, unless otherwise agreed (Art. 930 and 931 of the LO).

3. *Insurance premium* - the amount of money that the policyholder pays to the insurer. It is the price of insurance or the

price of risk (Velimirović, p. 460). The payment of a premium represents the counterparty of the insurance policyholder against the insurer's obligation. In other words, premium is the amount of money that the policyholder pays as compensation for the insurer's obligation.

4. *Sum insured / sum assured* – Sum assured is a guaranteed fixed monetary amount that is paid when an insured event occurs in the case of personal insurance (given that the insurance sum is the sole criterion for determining the insurer's obligation to pay out insurance, it represents an essential element of the contract), while sum insured is the maximum payable amount in general insurance policies i.e., amount that serves as one of the factors, along with the value of the insured item and the amount of damage, for calculating the insurance indemnity in property insurance. Since the insured sum is only one of the factors on the basis of which the insurer's obligation to pay compensation is determined, it does not represent an essential element of the contract in property insurance. This means that the contract is valid even without it. If the sum insured is not determined by the contract, the insurance compensation will be determined according to the value of the insured item (Salaj, 2006, p. 41).

5. *Duration of insurance* – represents an element according to which termination or cancellation of the insurance contract is resolved. Thus, in the case of short-term insurance (it is concluded for one year, but contracts with a duration shorter or longer than one year are also found), the effect of the contract automatically ceases upon the expiration of the last day of the term for which the insurance was contracted (LO, Art. 922, para. 1). In the case of a long-term contract, which is concluded for a term longer than five years, each party may, upon the expiration of this term, notify the other party in writing with a six-month notice period to terminate the contract (LO, Art. 922, para. 3).

3. Types of insurance

There are numerous types of insurance that can be divided based on various criteria, that are primarily related to: a) the manner in which insurance relationship is established, b) the environment in which the risk occurs; c) the subject of insurance; d) the risks covered by the insurance.

a) The insurance relationship may be established on either voluntary or statutory basis. In principle, the conclusion of an insurance contract is based on the principle of voluntariness. However, in certain cases voluntariness is excluded by law, which means that certain persons are legally required to conclude an insurance contract, i.e. to buy the so-called compulsory insurance. Apart from the liability insurance of travel agencies for the case of insolvency and for damage caused to the traveller (travel guarantee), the example of compulsory insurance in Serbian law is: insurance of passengers in public transport against the consequences of an accident, insurance of motor vehicle owners against liability for damage caused to third parties, insurance of aircraft owners against liability for damage caused to third parties and passengers, insurance of boat owners against liability for damage caused to third parties, insurance of citizens' deposits with banks up to a certain amount. More recently, insurance for the activities of liberal professions (notaries, investment advisors, lawyers) has also been determined as compulsory. In the absence of a mandatory

system, the danger might emerge that it would more particularly be the “bad guys” who would not seek insurance coverage and who therefore continue to externalise their insolvency risk to consumers (Faure & Weber, 2013, p. 429)

b) Based on the environment in which the risks may occur, land, maritime and air insurance are distinguished. The oldest is maritime insurance, which is related to the uncertainties of maritime ventures, and the youngest type of insurance is aviation insurance, which was developed only at the beginning of the twentieth century (Kapor et al., 1993, p. 261).

c) According to the subject of insurance, there is a distinction between personal insurance and property insurance. Personal insurance contracts relate to the life or physical integrity of a specific person. Property insurance contracts relate to certain property values, in the sense that they are intended to compensate for damage suffered by the insured in his property due to the occurrence of an insured event. The insured may suffer damage because some of his property is destroyed or damaged, or because he has become liable for damage suffered by a third party. Therefore, property insurance is further divided into asset insurance and liability insurance. A specific type of insurance within property insurance is credit insurance. A credit insurance contract relates to a creditor's claim against a debtor for goods sold or services performed.

d) According to the risks covered by the insurance, it is possible to distinguish between different types of insurance, such as: asset insurance (fire insurance, burglary and robbery insurance, machinery insurance against breakdown, household insurance, motor vehicle insurance, crop insurance, livestock insurance); liability insurance (liability insurance for damage caused to third parties by the use of a motor vehicle, professional liability insurance, producer liability insurance for damage caused by product defects, contractual liability insurance); life insurance (death insurance, old age insurance); insurance against the consequences of an accident (public transport passenger insurance, driver insurance, insurance for athletes, event visitors, tourists).

4. Travel guarantee and insolvency protection

In the function of performance of tourist activities different legal relations may be established (Gorenc et al., p. 8) which include: mutual relationship between holders of tourism and hospitality activities (e.g. relationship between the tourist service provider and travel agency, on the occasion of concluding and executing one of the typical tourism law contracts - allotment contract or agency contract on hospitality services); relationship between holder of the tourism and hospitality activity and a third person, who performs another activity (e.g. transport or insurance contract); the final relationship, which, unlike the previous ones, must be established in order for the tourism and hospitality service to be realized, and is based between the holder of tourism and hospitality activity and the user of the service (Mićović, 2022, p. 609). The insurance, as an example of the relationship between a holder of the tourism and hospitality activity and a third person, who performs another activity, can be taken out by a tour operator or retailer who is required to provide a guarantee in accordance with the national act implementing the Package

Travel Directive in the country where the tour operator or retailer is established (Vector Nordic AB, 2019, April).

Travel guarantee is of an exceptional importance for the protection of the interests of service users and therefore this condition, which must be met in order to obtain a license, is specified in national laws and by-laws. A license for organizing a package (combination of at least two different types of travel services for the purpose of the same trip or holiday) is a decision issued by the Register of Tourism, based on which a travel agency acquires the status of a travel organizer (Art. 2, para. 1, point 8 of the Rulebook on the type, amount and conditions of the travel guarantee, deposit amount depending on the license category, the manner of activation, the purpose of the funds, as well as other conditions to be met by travel organizers (Rulebook), Off. Gazette RS, No. 88/23).

The rules on travel guarantee were introduced into Serbian legislation under the influence of the solutions contained in the EU Directive 2006/123 on services and EU Directive 2015/2302 on package travel and linked travel arrangements. The Art. 23 of the EU Directive 2006/123 stipulates that the service provider may be obliged to subscribe to professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement if services that are subject to a contract represent:

a) direct and specific risk to the health or safety of the recipient or a third person (a risk must arise directly from the provision of the service, and be of such a nature as to cause death or serious personal injury);

b) a direct and specific risk to the financial security of the recipient (a risk must be of such a nature that it could cause a substantial financial loss or a decline in the value of the service user's property).

This obligation is contained also in Art. 17 of the Package Travel Directive EU 2015/2302 (PTD), according to which Member States shall ensure that organisers established in their territory provide: 1) security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency; security for the travellers' repatriation in case the carriage of passengers is included in the package travel contract (para. 1). Such a security produces effects in two different moments, before the beginning of the package or during the performance of the package, depending on the moment insolvency of organiser occurs (Benavides Velasco, 2017, p. 398). As part of the obligation of the organiser to provide security to traveller, organiser is obliged to provide traveller with the pre-contractual information on optional or compulsory insurance to cover the cost of termination of the contract by the traveller or the cost of assistance, including repatriation, in the event of accident, illness or death (PTD, Art. 5, para. 1, point h).

Protection against trader insolvency is a key provision of the current Directive, and an important protection for consumers who are prepared to pay more to benefit from it (BEUC, 2024, p. 6). However, the insolvency of the travel group Thomas Cook and outbreak of Covid-19 pandemic, made it clear that protection against trader insolvency is also one of the provisions that has been most poorly implemented at national level,

diminishing its effectiveness and therefore consumer protection (BEUC, 2024; European Commission, 2021).

Namely, the outbreak of the Covid-19 pandemic triggered mass cancellations of package holidays and stand-alone transport services, which resulted in liquidity problems of package organisers. Due to non-liquidity, organisers faced severe difficulty to finance their obligations (many travellers did not receive refunds or received them only considerably later than the 14 days as required in the Art. 12, para. 4 of the PTD) and to obtain insurance coverage, which is *conditio sine qua non* to conduct business in some countries (Mićović, 2024, p. 679-680). Some of these liquidity problems resulted in insolvency of organisers which was a consequence of the non-performance of the respective packages (due to pandemic-related reasons such as curfews, flight bans, operating bans etc.), and not the non-performance “a consequence of the organiser’s insolvency”, as suggested by the wording of the Art. 17 PTD (Wukoschitz, 2025, p. 11).

Respectively, such unprecedented situation caused by pandemic created many legal uncertainties as to what was, and what was not, covered by Art. 17 of the current PTD. It was particularly unclear whether: consumers' pending reimbursements were protected in case of bankruptcy (e.g., situations where travellers cancelled their package travel contracts two days before the bankruptcy of a travel agent); vouchers accepted by travellers were covered against insolvency (BEUC, 2024, p. 6). The European Commission's May 2020 Recommendation on vouchers confirmed that under the current PTD, pending refund claims and vouchers were not covered by insolvency protection rules, which demonstrated a serious legal gap in consumer protection. These uncertainties were eventually clarified by European Court of Justice (CJEU), which held that Article 17(1) PTD 2015 had to be interpreted as meaning that the security conferred on travellers against the insolvency of the package travel organiser applies where a traveller terminates his or her package travel contract because of unavoidable and extraordinary circumstances pursuant to Article 12(2) and, after that termination, that travel organiser becomes insolvent, but that traveller has not yet received a full refund of any payments made to which he is entitled under the latter provision (joined cases C-771/22 and C-45/22).

In order to close the gaps identified in the current rules, as well as to clarify and simplify certain concepts and provisions, EU Commission adopted a package of proposals in late 2023 (so-called ‘passenger mobility package’) to improve the experience of passengers and travellers by strengthening their rights. They included a revision of the regulations on passenger rights, a proposal on passenger rights in the context of multimodal journeys, and the revision of the PTD 2015/2302. Among other things, the proposal for a new PTD aims to make insolvency protection more effective and uniform in the EU by adding some clarifications and specifications in terms of effectiveness and scope of insolvency protection (Art. 17) as well as mutual recognition of insolvency protection and administrative cooperation (Art. 18). In particular, proposed text: 1) clarified that refund claims and vouchers are also covered by insolvency protection (Art. 17, para. 1); 2) specified that security should be sufficient to cover costs for refunds and repatriations in cases where an insolvency occurs at a time when an organiser holds the highest sums in a business year and that the security should

take into account changes in the volume of packages sold and of necessary repatriations to be covered compared to the anticipated volume (Art. 17, para. 2); 3) specified that Member States supervise the insolvency protection arrangements of organisers, monitor the market for the provision of insolvency protection, and may require a second level of protection, such as a back-up fund (Art. 17, para. 3); 4) introduces a more specific deadline for refunds in the event of cancellation of the package as a result of insolvency, in addition to the general criterion ‘without undue delay’, which is 3 months after the traveller has submitted the documents needed to examine the request (Art. 17, para. 6); 5) allows Member States to oblige retailers to subscribe to an insolvency protection scheme, where this is justified in light of the risk exposure of travellers (Art. 17, para. 7); 6) clarified that central contact points in the Member States should also exchange information on insolvency protection and related questions, including refunds for terminated package travel contracts (Art. 18, para. 2). Besides that, complementary to the insolvency protection rules, EU Commission proposed limitation of downpayments (advance payments made by traveller at the time of booking the package or shortly thereafter) to 25% of the total price of the package (unless it is necessary to ensure higher downpayments for the organisation and proper performance of the package), while the remaining payment shall not be requested earlier than 28 days before the start of the package (Art. 5a). The purpose of that provision is to prevent the lack of liquidity of organisers when faced with many concurrent refund requests, which was the case during the pandemic.

The above-mentioned possibility of protecting users of risky services is supported by various regulations in a way that provides for mandatory institutional protection of service users or imposes an obligation on the service provider to provide appropriate guarantees to the user. The group of regulations that imposes an obligation on the service provider to provide guarantees to the user also includes Serbian Law on Tourism (Office Gazette of RS, No. 17/19) and Consumer Protection Act (CPA, Office Gazette of RS, No. 88/2021).

A travel guarantee means a bank guarantee and/or insurance contract, with a total coverage limit, depending on the license category and the amount of turnover (Rulebook, Office Gazette RS, No. 88/23). Law on Tourism distinguishes two types of guarantees: a travel guarantee in the event of insolvency of organiser and a travel guarantee for the purpose of compensation for damage.

The first type of travel guarantee, i.e., travel guarantee in the event of insolvency of the organiser specifically covers the costs of necessary accommodation, meals and the repatriation of the traveler (if the package includes the carriage of the passengers), as well as all claims incurred by the traveler, such as: 1) claims for reimbursement of funds paid by the traveller under a package travel contract, which the travel organizer has not realized; 2) claims for reimbursement of funds paid by the traveler, in the event of cancellation of the trip by the traveler, in accordance with the general terms and conditions of travel; 3) claims for the difference between the funds paid under a tourist travel contract and the funds reduced in proportion to the non-performance or incomplete performance of the service included in the

travel program (Law on Tourism, Art. 58, para. 1 in relation to Art. 3. of the Regulation on the type, amount and conditions of the travel guarantee, the amount of the deposit depending on the license category, the method of activation, the purpose of the funds, as well as other conditions that the travel organiser must meet). This means that the protection should be sufficient to cover all foreseeable payments made by or on behalf of travellers in respect of packages in peak season, taking into account the period between receiving such payments and the completion of the trip or holiday, as well as, where applicable, the foreseeable cost for repatriations (PTD, Recital 40).

The second type of travel guarantee i.e., travel guarantee for the purpose of compensation for damage provides compensation for damage caused to the traveler by the non-fulfillment, partial fulfillment or improper fulfillment of the obligations of the travel organizer, which are determined by the general conditions and the travel program. In particular, that includes compensation for the: 1) claims for funds paid by the traveller under the package travel contract, which the travel organizer has not realized; 2) claims for the difference between the funds paid under the package travel contract and the funds reduced in proportion to the non-performance or incomplete performance of the services included in the travel program.

Based on the above-mentioned types of travel guarantee, Serbian legislator identifies the beneficiary of the travel guarantee as a person who is entitled to compensation for costs, namely: 1) a person who has paid the costs of necessary accommodation, meals and the return of the traveller from the trip to the place of departure in the country and abroad; 2) the traveller in the event of non-fulfillment, partial fulfillment or irregular fulfillment of the obligations of the tour organizer, which are determined by the general conditions and the tour program (Law on Tourism, Art. 59).

The organiser must have a travel guarantee, as well as a prescribed deposit depending on the license category, for the entire duration of the license (Law on Tourism, Art. 60). According to the Rulebook, it is determined (Art. 5) that the travel organiser provides a travel guarantee in the minimum amount of the coverage limit, depending on the license category and the amount of turnover. That will generally mean that the guarantee has to cover a sufficiently high percentage of the organiser's turnover in respect of packages, and may depend on factors such as the type of packages sold, including the mode of transport, the travel destination, and any legal restrictions or the organiser's commitments regarding the amounts of pre-payments he may accept and their timing before the start of the package (PTD, Recital 40).

Serbian legislator differentiates two license categories, category A and category B. For category A, a guarantee has to be provided in the minimum amount of the coverage limit, for the following turnover amounts: 1) up to 20.000.000 dinars - the guarantee is contracted in the lowest amount of 30.000 euros; 2) from 20.000.000 to 60.000.000

dinars – the guarantee is contracted in the lowest amount of 50.000 euros; 3) from 60.000.000 to 150.000.000 dinars – the guarantee is contracted in the lowest amount of 100.000 euros; 4) from 150.000.000 to 500.000.000 dinars – the guarantee is contracted in the lowest amount of 250.000 euros; 5) from 500.000.000 to 1.000.000.000 – the guarantee is contracted in the lowest amount of 350.000 euros; 6) over 1.000.000.000 dinars – the guarantee is contracted in the lowest amount of 400.000 euros. The travel organizer for category B provides a travel guarantee in the minimum amount of the coverage limit, for the amount of turnover: 1) up to 5.000.000 dinars – the guarantee is contracted in the lowest amount of 5.000 euros; 2) from 5.000.000 to 10.000.000 dinars – the guarantee is agreed in the lowest amount of 15.000 euros; 3) from 10.000.000 to 20.000.000 dinars – the guarantee is contracted in the lowest amount of 30.000 euros. In the event that the turnover exceeds 20.000.000 dinars, the travel organizer for category B provides a travel guarantee in the amount of the coverage limit determined for category A.

Association of Serbian Travel Agencies (UTAS) has been criticizing the current model of insurance against insolvency of travel organizers by pointing out that travellers are not fully protected because the amount of compensation is limited by the amount of the insured sum (10% of the turnover of the travel agency). Consequently, travellers are compensated only in a certain percentage of that amount. Besides that, if the agencies are left to report turnover without any evidence, it may create gap for potential abuses (tourist inspections do not control turnover, they only control the number of travellers). For the aforementioned reasons, UTAS does not find the current model to be good not only for travellers, but for the reputations of agencies and insurance companies as well. Therefore, UTAS proposes to change the current model with a new guarantee model which would follow the German model of individual policies. If this model were to be applied, there would be no "umbrella policy" with the upper limit. Instead, the limit of the individual policy would be the full price of each package travel arrangement. Such solution would ensure that traveller would be 100% compensated in case of insolvency of the agency, without any exceptions (including fraud, state of emergency, pandemics, etc. – as stipulated in General Insurance Terms and Conditions).

Furthermore, UTAS is proposing that this type of insurance applies not only to package travel, but also to other services (including airline tickets, accommodation, car rental, etc.). That would allow travellers to be protected in the broadest sense by covering all segments of services provided by travel agencies. In addition to this type of insurance, agencies would be obliged to offer other types of insurance to travellers, such as: insurance against the consequences of an accident and illness during the trip; damage and loss of luggage; voluntary health insurance; trip cancellation; costs of assistance during the trip and return to the place of residence (UTAS, 2021).

5. Conclusion

The goal of the on-going revision of PTD is to strengthen the level of consumer protection, at all times, including in the event of a major crisis, while improving the functioning of the internal market in the package travel sector. That is ensured by the harmonisation of the rights and obligations arising from contracts relating to package travel, while striking the right balance between a high level of consumer protection and the competitiveness of businesses (PTD Proposal, 2023).

Taking into account a high degree of fragmentation among different member states with regard to insolvency protection (in terms of scope and standards of insolvency protection for organisers, particularly when it comes to the type of guarantee/security accepted and the method for calculating the required amount of guarantee/security), the following points raised by different stakeholders in the process of the revision of PTD seem to be highly relevant and should therefore be considered:

- a definition of insolvency is completely missing in the PTD which is contrary to the concept of full harmonisation and in practice leads to differences in consumer protection in individual member states (IFTTA, 2024, p. 3);
- introducing a *de minimis* level of insolvency protection standards that would apply uniformly across all EU/EEA member states would ensure mutual recognition of insolvency protection and administrative cooperation, as well as a greater degree of consistency within the internal market (Adigital, 2024, p. 7);
- ensuring the common insolvency protection rules by extending the obligation to subscribe to insolvency protection not only to airlines, but also to all traders selling passenger air transport services in the European airspace, as well as to online platforms offering such services (Superior Council of Independants and SMEs, 2024, p. 6; European Passengers Federation, 2023, p. 2).

When it comes to the PTD amendments related to the insolvency protection which are proposed by the EU Commission, the following points should be taken into account:

- Deadline of three months for providing a refund of payments to the traveller seems questionable, as it may not be sufficient to examine all registered claims in large insolvency cases (Wukoschitz, p. 10). Therefore, the 3-month deadline should be extended or this provision should be modified to either allow for some flexibility and exemption from the proposed refund deadline in truly exceptional circumstances (Nordic Travel Trade Associations, 2024, p. 12) or to remove the deadline and stick to the current approach of a refund “without undue delay”.
- Creation of the potential back-up fund arrangement as a second level of insolvency protection is welcomed provided that it does not further strain finances and increase costs that would ultimately

result in a higher cost of regulated and protected travel services, leaving consumers to seek out cheaper, non-protected, holidays (ABTA, 2024, p. 5-6; TUI Group, 2024, p. 7).

Finally, the proposed limitation of downpayments is one of the provisions that triggered the most controversies and opposing views from different stakeholders. On the one side, travel businesses specifically reject any potential limitation of downpayments, arguing that this provision: would have a direct impact on firms’ liquidity and could therefore undermine their ability to insure against insolvency (Superior Council of Independants and SMEs, 2024, p. 4); places considerable financial strain on organisers while overlooking the primary risk to consumer funds – the flight component of the package (which could make up approximately 50% of the overall cost of a package on average) and the fact that airlines will generally always require full prepayment in order to secure the flight ticket (Expedia Group, 2024, p. 1). It would therefore make much more sense to protect the pre-payments of the vast majority of travellers who book stand-alone services, notably flights (ECTAA, 2024, p. 8). On the other side, consumer organizations welcome the intention to limit the number of pre-payments that tour organisers and travel agencies can request from consumers before the start of the holiday package, but find the current proposal too flexible to achieve its objective (BEUC, 2024, p. 14). In this case, doctrinal views which point out strong co-relation between limitation of downpayments and insolvency protection and suggest that there is no need for limitation as long as payments are covered by insolvency protection, seem to be highly reasonable (Wukoschitz, 2025a, p. 6).

PTD Proposal prepared by EU Commission is currently under co-decision process. Council of the European Union reviewed the proposal in the late 2024 and proposed certain amendments which are also related to insolvency protection (e.g., deadline for providing a refund of payments affected by the organiser’s insolvency to the traveller is extended from three to nine months after the traveller has submitted the all-relevant documents necessary to examine the request). The European Parliament is expected to discuss and vote on the revised directive in the course of 2025. Adoption of the new Package Travel Directive would be an important guideline for Serbian legislator to revise national rules on package travel, including those related to insolvency protection.

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