

Case Details

Case Details

National ID	link
Member State	Belgium
Common Name	Belgium / L. Travel
Decision type	Other
Decision date	14/10/2003
Court	Hof van Beroep (NL)/Cour d'appel (FR) (Appellate court, Mons)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Package Travel Directive, [Article 4, 2](#). Package Travel Directive, [Article 7](#) Package Travel Directive, [ANNEX](#)

Headnote

The duty to be covered by insolvency insurance only applies to travel retailers who are a party to the contract, e.g. in the case a contract has been concluded or is put into effect. The Travel Organisation Act (TOA) does not forbid offering travel contracts without insurance.

Facts

The insurance contract, providing financial guarantees for the refund or repatriation of the consumer in the event of insolvency, of L.T., a travel agency, is terminated on 06/10/2001, because L.T. did not pay its insurance fees. The insurance company informs the economic inspection about the termination of the insurance contract.

On 8/11/2001, L.T. declares to the economic inspection that the travel agency will remain open, but only for handling already concluded contracts. L.T. claims he will not conclude any new contracts until he has subscribed a new insolvency insurance policy.

The Belgian government finds L.T. in violation of the TOA and starts an action for injunction against L.T.

Legal issue

Article 36 of the Act of 16 February 1994 regulating the package travel contracts and the travel intermediation contracts imposes on travel intermediaries "who are a party to the contract" to provide financial guarantees enabling them to refund the consumer or pay for the repatriation costs in the event of insolvency. The Royal Decree of 25/4 /1997 obliges them to subscribe to an insurance policy to this end.

The court is of the opinion that the obligation to refund or repatriate can only occur when a contract has been concluded or is being executed. It therefore finds that a travel intermediary can make a contract offer without providing the financial guarantees required by article 36 TOA, as long as no contract is actually concluded.

Article 23 imposes on travel intermediaries the obligation to include in the contract the name and address of the

institution providing the financial guarantees. In the opinion of the court, this provision is infringed only at the time of the conclusion of the contract. Before the conclusion of the contract, e.g. at the time an offer was made, the lack of insurance cover cannot be considered as constituting a violation of the Act.

Decision

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