

Case law**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, Bergen)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**Package Travel Directive, [Article 7](#)**Headnote**

1. Article 36 of the Act of 16 February 1994 ("Travel Act"), which holds insolvency coverage requirements, only applies to the travel intermediaries who are parties to the contract, at the time of its conclusion or during its execution.

2. The Travel Act does not forbid the offering of travel contracts without being covered against insolvency.

Facts

L.T., the defendant, is a travel agency. L.T. was, in accordance with article 36 of the Travel Act, assured with the "Guarantee fund package tours".

On 16 October 2001 the "Guarantee fund package tours" informed the economic inspection that the insurance contract with L.T. had been terminated as from 6 October 2001.

This was confirmed by L.T. on 8 November 2001, but the travel agency instantly argued that from that date on it was only handling contracts concluded prior to that date and that it had no intention to conclude any new travel contracts.

Nevertheless the economic inspection considered that L.T. was in breach of the law since 6 October 2001, namely with article 23, §2, 3° of the Travel Act which requires the travel intermediary to mention the name and the address of the insolvency insurer.

The first judge concluded that article 23, §2, 3° of the Travel Act only envisages the conclusion of the contract and that the claim had to be referred in absence of any proof that L.T. had concluded contracts since 6 October 2001.

The economic inspection appealed against this decision.

Legal issue

Article 36 of the Travel Act 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 lays down the obligation to subscribe to an insurance policy to this end.

There can only be an infringement of article 36 of the Travel Act if a contract has been concluded or is being executed. Therefore a travel intermediary can make a contract offer without providing the financial guarantees required by article 36 of the Travel Act, as long as no contract is actually concluded.

Consequence thereof is that article 23 of the Travel Act, which imposes on travel intermediaries to mention in the travel contract the name and address of the institution providing the financial guarantees, can only be infringed as from the moment of the conclusion of a travel contract. Before the conclusion of the travel contract, e.g. at the time of the offer, the lack of insurance cover cannot be considered as constituting a violation of the Travel Act.

In the present case the economic inspection did not prove that there was any infringement of articles 36 and 23, §2, 3° of the Travel Act.

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