



Reports of Cases

Joined Cases C-771/22 and C-45/23

Bundesarbeitskammer

v

HDI Global SE

and

A,

B,

C,

D

v

MS Amlin Insurance SE

(Requests for a preliminary ruling from the Bezirksgericht für Handelssachen Wien and from the
Nederlandstalige Ondernemingsrechtbank Brussel)

Judgment of the Court (Second Chamber) of 29 July 2024

(Reference for a preliminary ruling – Directive (EU) 2015/2302 – Package travel and linked
travel arrangements – Article 12 – Right to terminate a package travel contract –
Entitlement to a full refund of any payments made for the package – Unavoidable and
extraordinary circumstances – COVID-19 pandemic – Article 17 – Insolvency of the travel
organiser – Security for the refund of all payments made – High level of consumer protection –
Principle of equal treatment)

*Approximation of laws – Package travel and linked travel arrangements – Directive
2015/2302 – Termination of the package travel contract – Protection against the risk of
insolvency of the organiser – Security for the refund of any payments made pursuant to that
contract – Concept – Termination of the contract because of unavoidable and extraordinary
circumstances, which took place prior to the travel organiser’s insolvency – Included*

(European Parliament and Council Directive 2015/2302, Arts 12(2) and 17(1))

(see paragraphs 56-64, 67, 68, 71, 74, 75, 81-91, operative part)

Résumé

Ruling on requests for a preliminary ruling,¹ the Court of Justice clarifies the scope of the security conferred on travellers in the event of the insolvency of a package travel organiser² and holds that it applies to a traveller who has terminated his or her package travel contract because of extraordinary circumstances,³ such as the COVID-19 pandemic, where the travel organiser became insolvent after that termination but that traveller did not receive a full refund of any payments made for the package prior to the occurrence of that insolvency.

The two sets of proceedings at issue are between a body active, inter alia, in the field of consumer protection, to which a consumer assigned his entitlement to a refund of the price of his package travel which he paid to a package travel organiser (Case C-771/22) and travellers who concluded package travel contracts with a travel organiser (C-45/23), on the one hand, and insurance companies insuring those travel organisers in the event of insolvency, on the other. Those insurance companies refused to refund to those consumers the price paid under the contracts concluded, which were terminated due to the COVID-19 pandemic, arguing that the insurance covered only the risk of non-performance of the package as a consequence of the organisers' insolvency.

The referring courts ask the Court about the scope of the security to be conferred on a traveller in the event of the package travel organiser's insolvency, as provided for in Article 17 of the Directive on package travel. In particular, they seek to ascertain whether that guarantee covers refunds to which the traveller is entitled where that traveller terminates his or her package travel contract because of unavoidable and extraordinary circumstances, such as the COVID-19 pandemic, before the travel organiser is declared insolvent.

Findings of the Court

At the outset, the Court finds that the meaning of Article 17(1) of the Directive on package travel is not absolutely plain from its wording and that it is therefore necessary to examine its context, the objectives of that directive and, where appropriate, its origins.

As regards, in the first place, the context of that article, the Court observes that, having regard to the terms 'when the performance of the package is affected by the organiser's insolvency' and 'travel services that have not been performed' in Article 17(4) and (5) of that directive, those provisions are capable of supporting an interpretation of Article 17(1) of that directive according

¹ From the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna, Austria) in Case C-771/22, and from the Nederlandstalige Ondernemingsrechtbank Brussel (Brussels Business Court (Dutch-speaking), Belgium) in Case C-45/23.

² As provided for in Article 17 of Directive (EU) 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 (OJ 2015 L 326, p. 1; 'the Directive on package travel'). Under that provision: '1. Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers in so far as the relevant services are not performed as a consequence of the organiser's insolvency. If the carriage of passengers is included in the package travel contract, organisers shall also provide security for the travellers' repatriation. Continuation of the package may be offered.

...

2. The security referred to in paragraph 1 shall be effective and shall cover reasonably foreseeable costs. It shall cover the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between down payments and final payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency.'

³ Pursuant to Article 12(2) of the Directive on package travel.

to which the concept of ‘relevant services’ covers only travel services. Thus, the security provided for in that article would apply only where there is a causal link between the non-performance of those services and the insolvency of the travel organiser.

However, Article 17(2) of the Directive on package travel provides that that security is to be effective and is to cover reasonably foreseeable costs. More specifically, it is to cover the amounts of payments made by or on behalf of travellers as well as the estimated cost for repatriations in the event of the travel organiser’s insolvency.

Any refund of payment which the travel organiser must make following the termination of the package travel contract by that organiser or by the traveller is a foreseeable amount of payment which may be affected by the travel organiser’s insolvency.

In the light of the foregoing, Article 17(2) of the Directive on package travel may support an interpretation of paragraph 1 of that article to the effect that the security laid down in that provision applies to any refund owed by the travel organiser to the traveller where the package travel contract has been terminated, in one of the situations referred to in that directive, prior to the occurrence of that organiser’s insolvency.

As regards, in the second place, the objective of that directive, it seeks to adapt the scope of the protection conferred on travellers by Directive 90/314⁴ to market developments, as well as to contribute to the attainment of a high level of consumer protection.⁵ An interpretation of Article 17(1) of the Directive on package travel excluding from the security against the travel organiser’s insolvency refunds owed to travellers following a termination which took place prior to the occurrence of that insolvency would amount to reducing the protection of those travellers as compared with the protection conferred on them by Directive 90/314.

In the light of the foregoing, the Court points out that the wording of Article 17(1) of the Directive on package travel lends itself both to an interpretation that excludes from its scope refund claims that arose following a termination of the package travel contract which took place, in one of the situations referred to in that directive, prior to the occurrence of the travel organiser’s insolvency, and to an interpretation that includes such claims within the scope of that provision. If the wording of secondary EU law is open to more than one interpretation, preference should be given to the interpretation which renders the provision concerned consistent with primary law, including with the principle of equal treatment. In order to assess whether that principle has been observed, the assessment as to whether situations are comparable must be made in the light of the objective pursued by the act in question.

In the present case, the objective of the Directive on package travel is to attain a high level of consumer protection, and Article 17 of that directive contributes to the attainment of that objective by seeking to protect the traveller from the financial risk entailed by the travel organiser’s insolvency. Therefore, in the light of that objective, the point of reference for comparing the situation of a traveller who, after paying all or part of the price of his or her package travel, has terminated his or her package travel contract, but has not received a refund because the travel organiser became insolvent after that termination, on the one hand, and the situation of a traveller whose package travel has not been performed and who has not received a refund as a consequence of that organiser’s insolvency, on the other, must be the risk of financial loss incurred by the traveller concerned. Consequently, the situation of those two travellers is

⁴ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

⁵ As required by Article 169 TFEU.

comparable. In both cases, the traveller is exposed to the financial risk of not being able to obtain, as a consequence of the travel organiser's insolvency, a refund of the sums which he or she has paid to that organiser.

Therefore, in accordance with the principle of equal treatment, both the traveller whose package travel cannot be performed as a consequence of the travel organiser's insolvency and the traveller who has terminated his or her package travel contract⁶ must benefit from the security against the travel organiser's insolvency as regards the refunds owed to them, unless a difference in treatment between those two categories of travellers is objectively justified. In the present case, there appears to be nothing to justify a difference in treatment between those categories of travellers.

⁶ Inter alia, pursuant to Article 12(2) of Directive 2015/2302.