

# VALENCES OF THE INFORMATION OBLIGATION UNDER THE PACKAGE TRAVEL CONTRACT IN THE AGE OF GLOBALISATION VS “THE TRAVEL OF DILETTANTES”?

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## **Abstract**

*One of the areas of regulation at national and European level, which has a great impact, is that of travel services. Having in view the increase of the population's mobility across the entire European Union for interests connected to work, business as well as for pleasure, the norms which regulate the travel services are of particular importance, but the travels for tourism have an even more special relevance for each person.*

*On these grounds, the present paper analyses the development of the package travel contract according to the new national regulation harmonized with the European regulation in the matter, highlighting the aspect of novelty compared to the previous regulation.*

**Keywords:** *travel services, traveler, contract, information obligation, organizing travel agency*

**JEL Classification:** [K 22]

## **1. Sedes materiae**

The package travel contract, on which we count to institute improved protection of travelers in relation to the travel agencies so that the travelers will not remain stuck in the age of „dilettantism”<sup>1</sup>, is currently regulated by the provisions of G.O. no. 2 of 2 August 2018 on package travel and linked travel arrangements, as well as for the amendment of certain normative acts entered into force on 2 September 2018.<sup>2</sup>

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<sup>1</sup> The title of the article adopts the title of the novel ”The travel of dilettantes” by Bulat Okudjava.

<sup>2</sup> G.O. no. 2/2018 was published in the Off. Gazette of Romania, Part I, no. 728 of 23.08.2018, hereinafter called G.O. no. 2/2018.

Until the date of entry into force of the new regulation, the contract for the marketing of the tourist package was regulated by the special rules contained in the G.O. no. 107/1999 regarding the marketing of tourist services packages,<sup>3</sup> as amended and supplemented by the G.O. no. 26/2017 which was approved by Law no. 277/2017.<sup>4</sup>

The special normative framework supplemented with the provisions of the Order of the National Association of Tourism Agencies no. 1387/2015<sup>5</sup> for the approval of the framework contract for the marketing of tourist services packages, adopted by the minister, in force as of 17.02.2016, act with normative power which repealed Order no. 516/2005.<sup>6</sup>

The purpose of the regulation is to harmonize national legislation with that of the Member States of the European Union, (hereinafter called the EU) on package travels and linked travel services sold or offered for sale on the territory of Romania, no matter where they are performed, in order to ensure a high level of protection consumers and, implicitly, the proper functioning of the market.

The G.O. no. 2/2018 establishes the legal framework regarding the package travel contracts, art. 3, pt. 12, as well as the linked travel arrangements, art. 3 pt. 16 of the normative act, concluded between the travelers and traders.

The mentioned legal act transposes the provisions of Directive (EU) 2302/2015 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements,<sup>7</sup> amending Regulation (EC) No 2006/2004 and the 2011 Directive/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.<sup>8</sup>

## 2. Conceptual clarifications

G.O. no. 2/2018 highlights a complex regulation of the issues posed by this type of contract and naturally provides users with a set of legal definitions that explain the notional content of terminology in an approach designed to clarify and facilitate the correct application and effective legal provisions.

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<sup>3</sup> G.O. no. 107/1999 was republished (1) in the Off. Gazette of Romania, Part I, no. 387 of 7.06.2007 and (2) in the Off. Gazette of Romania, Part I, no. 448 of 16.06.2008, hereinafter called G.O. no. 107/1999.

<sup>4</sup> G.O. no. 26/2017 was published in the Off. Gazette of Romania, Part I, no. 706 of 31.08.2017 and was approved by Law no. 277/2017 published in the Off. Gazette of Romania, Part I, no. 8 of 4.01.2018, hereinafter called G.O. no. 26/2017.

<sup>5</sup> Published in the Off. Gazette of Romania Part I no. 122 of 17.02.2016.

<sup>6</sup> Published in the Off. Gazette of Romania Part I no. 334 of 20.04.2005.

<sup>7</sup> Published in the JOCE series L, no. 326 of 11.12.2015.

<sup>8</sup> Published in the JOCE series L, no. 158 of June 23, 1990.

Thus, from article 3, pts.1 – 19 of G.O. no. 2/2018, we propose to select some of the legal definitions that comprehend a comparative look with the legal definitions mentioned previously by the provisions of Ordinance no. 107/1999, presently repealed.

Concepts whose notional content was clarified by art. 2 from G.O. no. 07/1999, and is reproduced by G.O. no. 2/2018, are the following:

(i) ‘*tourist package*’ - represented the pre-arranged combination of not fewer than two of the following three groups of services when the service covers a period of more than twenty-four hours or includes overnight accommodation: (a) transport; (b) accommodation; (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package, such as food, balneary treatment and other such”.

In the meaning of art. 3, pt. 12 of the G.O. no. 2/2018, the *package travel* is the “combination of at least two different types of travel services for the purpose of the same trip or holiday” if it is fulfilled one of the requirements indicated at letters a)-b), namely: those services are combined by one trader, including at the request of or in accordance with the selection of the traveler, before a single contract on all services is concluded (a); those services must fulfill one of the requirements listed at letter b) irrespective of whether separate contracts are concluded with individual travel service providers, more precisely (i) they are purchased from a single point of sale and those services have been selected before the traveler agrees to pay; (ii) they are offered, sold or charged at an inclusive or total price, (iii) they are advertised or sold under the term ‘package’ or under a similar term, (iv) they are combined after the conclusion of a contract by which a trader entitles the traveler to choose among a selection of different types of travel services; (v) they are purchased from separate traders through linked online booking processes where the traveler’s name, payment details and e-mail address are transmitted from the trader with whom the first contract is concluded to another trader or traders and a contract with the latter trader or traders is concluded at the latest 24 hours after the confirmation of the booking of the first travel service”.

(ii) *Contract for the marketing of the tourist package* - represented “the agreement between tourism agency and the tourist, the object of which is the purchase of a tourist package by the tourist and the issue of payment and travel documents by the travel agency”.

According to art. 3 pt. 5 of G.O. no. 2/2018, the *package travel contract* is the agreement “whose object is a package as a whole or, if the package is provided under separate contracts, all contracts covering travel services included in the package”.

(iii) In tight correlation with the phrase defined above, the *travel arrangement* represents – according to the meaning given by art. 3, pt. 15 of GO no. 2/2018 - *carriage of passengers (a); accommodation* which is not intrinsically part of carriage of passengers and is not for residential purposes (b); *rental of cars, other motor vehicles* within the meaning of section 2, chapter I, pt. 3 letter a) of the Regulations on the type homologation and the issue of the identity card of vehicles, as well as the type homologation of the products used by these - RNTR 2, approved through the Order of the Ministry of Public Works, Transports and Housing no. 211/2003<sup>9</sup> subsequently amended and completed, or in the case of motorcycles, in accordance with art. 6, pt. 22 of the Government Emergency Ordinance no. 195/2002 regarding traffic on public roads<sup>10</sup> subsequently amended and supplemented, for which it is required driving license (c); any other tourist service not intrinsically part of a travel service (d).

The *linked travel arrangement* refers to the existence of *at least two different types of travel services purchased for the purpose of the same trip or holiday*, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates one of the options mentioned in art. 3 pt. 16, namely: a) the separate selection and separate payment of each travel service by travelers on the occasion of a single visit or contact with his point of sale; b) in a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

(iv) *Travel agency* – was “Any specialized unit, legal person, which organizes, offers and sells tourist packages or components thereof”. According to art. 2 pt. 3 of G.O. no. 107/1999 travel agencies can be of two types:

- a) tour operator, having as object the organization and sale of tourist packages or their components on their own, directly or through intermediaries;
- b) a retailer travel agency that sells or offers for sale, on the account of a tour operator, a tourist package or parts thereof, contracted with it.

If a travel agency acts *as an intermediary* for a *tour operator that is not established in Romania*, it is considered to be a *tourist travel organizer for the tourist*.

According to art. 3 pt. 1 of G.O. no. 2/2018, the *travel agency* represents a *specialized unit owned by an economic operator holding a valid tourism*

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<sup>9</sup> Published in the Off. Gazette of Romania Part I no. 275 of 18.04.2003, consolidated version of 08.02.2019.

<sup>10</sup> Published in the Off. Gazette of Romania Part I no. 670 of 03.08.2006, consolidated version of 08.02.2019.

*license*, issued under the law, which can carry out the activities mentioned at letters (a)-(b) namely: a) *organizing activity*: the activity by which the agency combines and sells or offers for sale packages either directly or through another trader or with another trader, or the activity of a trader transmitting the traveler's data to another trader in the online booking process, the travel agency that carries out organizing activity and is referred to as the "organizing travel agency"; b) *brokering activity*: the activity by which the agency, other than the organizing agency, sells or offers for sale, as an intermediary, combined packages by an organizing travel agency, and "the travel agency that functions as an intermediary is called an intermediary travel agency".

We therefore observe that the new regulation replaces terminologically the phrase "tour operator travel agency" and respectively "retail travel agency" with the phrases "organizing travel agency" and "intermediary travel agency".

(v). *Travel services consumer* – was defined as being "any person or group of natural persons established in associations who purchase or undertake to purchase the tourist package - principal contractor - or any person on whose behalf the main contractor undertakes to purchase the tourist package - other beneficiaries - or any person in the favor to which the main contractor or other beneficiaries gives up the tourist package - the transferee", according to Art. 2 point 4 of G.O. no. 107/1999.

G.O. no. 2/2018 does not contain a definition of the term "consumer of travel services" instead it defines the "traveler" in art. 3(2) as being "any person wishing to conclude a contract or entitled to travel on the basis of a contract concluded under the terms of this ordinance".

We consider that the mere intent of a person who "wishes to conclude" a contract on travel services cannot attribute to him the status of a traveler or, in the previous terminology, a "tourist".

Previously, the person being provided the tourist services would be called by the term "tourist" who according to the old regulations "is the person defined as a beneficiary under art. 2 pt. 4 or who bought the tourist package or components thereof from the travel agency".

*From this perspective and in comparison with the above-mentioned norm, the legal definition of the tourist is conceptually more correctly formulated because it nominates the tourist as the person who bought the tourist package or components thereof or is the beneficiary of the tourist package.*

G.O. no. 2/2018 contains in art. 2 other legal definitions of concepts and phrases such as: "trader", "inevitable and extraordinary circumstances", "guaranteed claim", "travel package guarantee fund", "insolvency" "start of package", "minor", "lack of conformity", "point of sale", "repatriation",

“establishment”, “Member State”, “durable medium”, on which we will develop in the following.

### 3. The legal characteristics of the contract on tourist packages

(i) Complex contract – has a specific legal configuration encompassing rights and obligations of the parties that combine general elements in the field of contracts with those specific to the business of marketing tourist packages, so that it is not a classic sale or purchase contract or a service contract (Miff, 2012, p. 133);

(ii) Named contract – its name is prescribed by law, the current special normative act in force being G.O. no. 2/2018;

(iii) Consensual contract – is concluded validly by the formation of the parties' simple agreement; the written form of the contract is provided by the law for its probation (*ad probationem*);

(iv) Mutually binding contract – both contracting parties undertake reciprocal rights and obligations;

(v) Commutative contract – the parties know, from the very moment of its conclusion, the extent of the obligations they undertake.

### 4. Particular aspects of the package travel contract

#### 4.1. Concluding the package travel contract

The contract regarding the package travel services is concluded, as a rule, just like any other contract, at the time of the agreement of the parties.

According to the previous regulation, if the contract concerned tourist services that were not part of the travel agency's offer, the travel agency would proceed - according to art. 11 from G.O. no. 107/1999, currently abrogated - to issue an order form for the tourist.

In the aforementioned hypothesis, the contract for the marketing of tourist packages was valid when *the tourist received the written confirmation of the reservation*, which was transmitted by the organizer or the retailer of the trip, acting on behalf of the organizer, *within 60 days calendar days from the date of signature of the order receipt*.

The tour operator or retailer was obliged to provide the tourist with *an order receipt only when requesting tourist packages that are not part of the travel agency's offer*.

If the content of the order receipt differed from the content of the confirmation of the trip *or* if this confirmation was not made within 60 calendar days from the date of the order receipt signing, *the tourist could consider that the voyage was not reserved and is entitled to immediate reimbursement of all amounts already paid*.

Failure to comply with the aforementioned provisions did not prevent the contract of sale of the package from being concluded late, irrespective of the period remaining until departure, *if the parties agreed*.

The purchase order included essential items to be found in the contract, such as: the destination(s) of travel, the duration and dates of arrival and departure; means of transport and their category(s); type and category of receiving structures; food services (full/half board/breakfast); the requested tourist program; the number of people for whom the tourist package is ordered, the number of children, the age and the identification documents; other special requests.

#### *4.2. Concluding the package travel contract; precontractual information and information during the execution of the contract*

Concluding the package travel contract is preceded by a *precontractual phase* - before the traveler signs the contract or any other offer - during which the organizing travel agency or the intermediary travel agency, if the package travel is marketed by the latter, provides the traveler with the *standard information* by means of the relevant form as set out in annex no. 1 part A or B, as well as the *precontractual information* indicated in art. 5 called "Precontractual information", para. 1, letters a)-h), if it is applicable to the package.

The information refers to: (a) the main characteristics of the travel services: (i) the travel destination(s), itinerary and periods of stay, with dates and, where accommodation is included, the number of nights included; (ii) the means, characteristics and categories of transport, the points, dates and time of departure and return, the duration and places of intermediate stops and transport connections.

Where the exact time is not yet determined, the organizer and, where applicable, the retailer shall inform the traveler of the approximate time of departure and return; (iii) the location, main features and, where applicable, tourist category of the accommodation under the rules of the country of destination; (iv) the meal plan; (v) visits, excursion(s) or other services included in the total price agreed for the package; (vi) where it is not apparent from the context, whether any of the travel services will be provided to the traveler as part of a group and, if so, where possible, the approximate size of the group; (vii) where the traveler's benefit from other tourist services depends on effective oral communication, the language in which those services will be carried out; (viii) whether the trip or holiday is generally suitable for persons with reduced mobility and, upon the traveler's request, precise information on the suitability of the trip or holiday taking into account the traveler's needs; (b) the trading name and geographical address of the organizer and, where

applicable, of the retailer, as well as their telephone number and, where applicable, e-mail address; (c) the total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance of the conclusion of the contract, an indication of the type of additional costs which the traveler may still have to bear; (d) the arrangements for payment, including any amount or percentage of the price which is to be paid as a down payment and the timetable for payment of the balance, or financial guarantees to be paid or provided by the traveler; (e) the minimum number of persons required for the package to take place and the time-limit, within which the organizing travel agency must inform the traveler regarding the termination of the contract because the number of persons enrolled for the package is smaller than the minimum number stated in the contract, before the start of the package for the possible termination of the contract if that number is not reached; (f) general information on passport and visa requirements, including approximate periods for obtaining visas and information on health formalities, of the country of destination; (g) information that the traveler may terminate the contract at any time before the start of the package in return for payment of an appropriate termination fee, or, where applicable, the standardised termination fees requested by the organizer, according to art. 13 para. 1 and 2 of G.O no. 2/2018; (h) information on optional or compulsory insurance to cover the cost of termination of the contract by the traveler or the cost of assistance, including repatriation, in the event of accident, illness or death.

For package travel contracts concluded by telephone, the organizer and, where applicable, the retailer shall provide the traveler with the standard information set out in Part B of Annex I, and the information set out above.

With reference to packages purchased from various traders by means of linked online booking as defined in art. 3, pt. 12, letter (b) pt. (v) of G.O. no. 2/2018 the organizer and the trader to whom the data are transmitted shall ensure that each of them provides, before the traveler is bound by a contract or any corresponding offer, the precontractual information in so far as it is relevant for the respective travel services they offer. The organizer shall also provide, at the same time, the standard information by means of the form set out in Part C of Annex I of G.O. no. 2/2018.

The precontractual information shall be provided in a clear, comprehensible and prominent manner and where such information is provided in writing, it shall be legible.

The precontractual information regarding the main characteristics of the travel services, the total price of the package (inclusive of taxes and, where applicable, of all additional fees, charges and other costs), the arrangements for payment, the minimum number of persons required for the package to take

place and the time-limit for the possible termination of the contract if that number is not reached, as well as information on that the traveler may terminate the contract at any time before the start of the package in return for payment of an appropriate termination fee, according to art. 5 para. 1 letter. a), c), d), e) and g) of G.O. no. 2/2018, shall form an integral part of the package travel contract and shall not be altered unless the contracting parties expressly agree otherwise.

The legal text of art. 6 para. 2 of O.G. no. 2/2018 stresses the importance of providing pre-contractual information on additional fees, charges, termination fees or other additional costs, with the consequence of absolving the traveler of the obligation to bear them in the event of failure by the agency to meet the precontractual information requirement.

The obligation to inform the traveler is *an essential duty* of the tourist services or travel services provider, at this point existing an actual “paradigm of information in the European consumer law” (Reich et al, 2014, p. 21).

The obligation to inform is currently established as such mainly by Chapter II, art. 5 of the G.O. no. 2/2018 but also resulting from the previous regulation, art. 6 - art. 10, G.O. no. 107/1999, currently abrogated.

*In this matter, the obligation to provide information has specific content which ultimately highlights the particularities of the contract for the provision of travel services.*

Thus, the tour operator or his intermediary must provide the traveler with a set of information on the package of travel services, its price and all other conditions applicable to the contract, containing *correct and clear indications that do not allow for equivocal interpretations.*

In order to carry out this task, in accordance with the old regulation, *the travel agency* had the obligation to provide tourists, *in writing*, for the conclusion of the contract, with *specific information* on: the destination town; route; the means of transport used, characteristics and category(s) of the means of transport; type of accommodation units, addresses and categories thereof; food services offered and the classification of food units; the duration of the program, indicating the date of arrival and departure; general information on the passport and visa regime, as well as the health insurance required for travel and stay; the amount of the advance, if any, as well as the time limit for payment of the outstanding balance; the minimum number of people required to complete the program and the deadline for informing the tourist in case of cancellation of the tourist trip; the possibilities of concluding voluntary insurance policies for assistance in the event of sickness, accidents and the like; the duration of the tourist offer, according to art. 7 of G.O. no. 107/1999.

Similarly, the corresponding obligations incumbent on the organizing and intermediary travel agency at the *precontractual stage* and the content of

which is part of the package travel contract are currently stipulated, as we have pointed out above, in the provisions of Chapter II of G.O. no. 2/2018.

Information that is communicated to the traveler, in writing or in any other appropriate form, at the pre-contractual stage, also refers to the general indications/references regarding the passport regime, namely the visas and health formalities required for travel and stay. In the current legislation this pre-contractual information is stipulated in art. 5, para. 1, letter h) of G.O. no. 2/2018.

Some components of the obligation to inform, equally in the old regulation and in the law currently in force, explicitly refer to the execution of the contract stage, referring to: timetables, stopovers and the connecting flights and, where appropriate, the place to be occupied by the tourist on each of the means of transport included in the contract; name, headquarters/address, telephone and fax number of the local representative of the organizer and/or the intermediary or, if these are not provided, those of the local authorities that can assist the traveler in case of need; if these local representatives or authorities do not exist, the traveler must have an emergency call number or any other information enabling him or her to contact the organizer and/or the intermediary; for the travel and subsistence of children, information enabling direct contact with the child or the person in charge of the child's place of residence; the possibility of signing an optional insurance contract to cover traveler transfer taxes or a contract of assistance covering the cost of repatriation in the event of injury or sickness, according to art. 5 para. 1 combined with art. 7 from G.O. no. 2/2018 and for the old regulation, art. 10 of G.O. no. 107/1999.

If the travel agency modifies any of the essential clauses of the contract, it has the obligation to inform the tourist at least 15 days before the departure date and the tourist is obliged to inform the travel agency within 5 days of receipt of the notification, its decision *to opt* either for the *termination of the contract* without payment of penalties, or for *the acceptance of the new terms* of the contract, according to art. 15 of G.O. no. 107/1999.

From a wider perspective on contract matters, in general, the obligation to inform, developed in Popescu (Popescu, 2018, p. 79-81), in contracts is a component of the obligation of good faith which must govern the conduct of the contracting parties, the latter being formally enshrined as a general principle of contracts in art. 1170 of the Civil Code.<sup>11</sup>

The breach of this obligation implies the liability of the defaulting party under the provisions of the special law and, in addition, to the extent of compatibility, the rules of the common law in the matter.

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<sup>11</sup> Civil Code, republished in 2011, the version consolidated on 24.03.2017, the V<sup>th</sup> Book “On obligations” hereinafter called the *Civil Code*.

As part of the information that defines the tourist product offered to the potential tourists, consumers of these services, are included in the advertising materials, in the field of promoting tourism products, art. 8 of G.O. no. 107/1999, republished, stipulated that *the information from the tourist advertising materials engage the tour operator or intermediary*, except when: a) any changes in this information have been clearly communicated to the tourist before the conclusion of the contract; (b) the modifications have been made, with the agreement of the Contracting Parties, following the conclusion of the contract.

As stated in the doctrine (Goicovici, 2011, p. 190), according to the Civil Code, Book V on obligations, the rule on the contractual obligation of information provided in advertisements, in the case of the marketing of package travel derogates from the rule of common law that advertising messages “are in principle deprived of a contractual clause, their issuance having the purpose (as a general rule, in civil and commercial contracts) to attract and retain customers, namely to promote products and services and not to engage in contractual obligations.”

The burden of proof as regards compliance with the information requirements shall be on the trader, as provided by art. 8 of G.O. no. 2/2018.

The obligation to provide information is not unilateral in this field because it is not incumbent only on the provider of travel services.

The traveler shall also have a contractual obligation to inform the travel service provider, respectively the organizing and/or intermediary travel agency, taking into account the circumstances, of *any nonconformity found during the performance of a travel service* included in contractual package on travel services, according to art. 14 para. 6 combined with art. 16 of G.O. no. 2/2018. In such a situation the passenger is entitled to send messages, requests or complaints in connection with the performance of the package directly to the intermediary travel agency from which he purchased the package, the latter having the obligation to forward them, without unjustified delays to the organizing travel agency.

The date of receiving the messages, requests or complaints is considered as the date of receipt by the organizing travel agency, clarification which the legal text of art. 16 para. 2 of G.O. no. 2/2018 specifies for a correct interpretation, for compliance with prescription periods, the non-compliance of which is likely to cause negative consequences for the contracting parties.

Article 17 of the referred normative act, formally and distinctly enshrines the obligation of the organizing travel agency to provide assistance to the traveler in difficulty, a duty which is part of the obligation of good faith which must characterize the conduct of the contracting parties. This duty shall be carried out by the travel agency, in particular by providing appropriate

information on health services, local authorities and consular assistance and assisting the traveler to make distance communications and helping the traveler to find alternative travel arrangements.

In performing the obligation to provide assistance, the organizer shall be able to charge a *reasonable fee* for such assistance if the difficulty is caused intentionally by the traveler or through the traveler's negligence. That fee shall not in any event exceed the actual costs incurred by the organizer, the legal text having an imperative character.

## 5. The contents of the package travel contract

5.1. *The minimum set of clauses* specific to this type of contract, currently involve the corroboration of the legal provisions under chapter II-IV of G.O. no. 2/2018 and were mentioned in the previous regulation in art. 12 para. 2 of G.O. no. 107/1999 repealed. These clauses were part of *the framework contract for the marketing of tourist packages*, as set out in the annex to Order no. 1387/2015 for the approval of the contract for the marketing of tourist packages.<sup>12</sup>

Specific rules on this type of contract are to be complemented to the extent that they are compatible with *the rules of the common law on contracts* contained in the Civil Code, namely: art. 1201 (external clauses), art. 1202 (standard clauses), art. 1203 (uncommon clauses), and art. 1272 (content of contract).

Therefore, art. 1272 of the code, entitled "Content of the Contract", states: "(1) The valid contract concluded obliges not only to what is expressly stipulated but also to all the consequences which the established practices between the parties, the customs, the law or equity give the contract, by its nature. (2) The usual clauses in a contract are understood, although not expressly stipulated."

In the context of the *special rules* on the contract for the provision of tourist services, expressed in the provisions of former chapter III, art. 11-art. 23 of G.O. no. 107/1999, presently repealed, the contract is governed by the *principle of contractual freedom and the priority of the parties' will*, as well as by *the principle of availability* developed by the doctrine (Apan, Miff, 2018).

This principle is stated in a global manner and implicitly in art. 11 para. 4 of the normative act invoked, according to which the conclusion of the contract, even with a delay and irrespective of the remaining period until the departure of the tourist, was *possible and allowed if the parties agreed*, notwithstanding the non-observance of the provisions of former art. 11 para. 1 - 3 regarding the obligation of the organizing or intermediary tourism agency

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<sup>12</sup> Published in the Off. Gazette, Part I, no. 122 of 17.02.2016.

to provide the tourist with an *order receipt* when requesting tourist packages that are not part of the travel agency's offer.

The only *limitation of these principles* resulted from *the provisions of the law, public order and good morals*.

In the legal context described by G.O. no. 2/2018, the principles set out are equally present since they are general principles of the law governing private law matters, which integrate also the relations, including contractual ones, generated by the performance of travel services.

The contract for the provision of tourist services included, according to art. 12 para. 2 of G.O. no. 107/1999 presently repealed, *at least clauses referring to*: the destination/destinations of the trip and, in the case of periods of stay, the duration and dates of arrival and departure; the means of transport used; the characteristics and categories thereof, the dates, times and places of departure/arrival, at departure and return; the address and classification category of the tourist reception facilities, in accordance with the regulations of the receiving countries, where the tourist package also includes accommodation; food services provided: full board, half board, breakfast; if the execution of the tourist package requires a minimum number of persons, the deadline for informing the tourist about canceling the ordered trip; the route; visits, excursions or other services that are included in the total agreed package price of the tourist package; the name and headquarters/address of the organizing agency/travel agencies and, where appropriate, of the intermediate travel agency and insurance company; the price of the service package, indicating the circumstances in which it may be modified, and the charges for certain services: landing charges, embarkation/disembarkation at ports and airports, tourist taxes, if not included in the package price of tourist services; terms and method of payment; special tourist requests made known to the organizing or intermediary travel agency at the time of the order and accepted by both parties; the time limits for the tourist to submit a possible complaint for the non-execution or improper execution of the travel contract; the conditions for modification and termination of the contract; the obligations of the travel agency in the event of cancellation of the journey, replacement or non-insurance of certain services; the possibility of transfer of the contract by the tourist to a third person and the way of realization thereof; any changes that the travel agency can bring to the purchased services; liability of the agency and compensation to the tourist in the event of non-compliance with the contractual clauses.

From the legal perspective offered by G.O. no. 2/2018, the *content of the package travel contract*, as described by art. 7, must comprise the full content of the agreement concluded between the travel agency and the traveler, which shall include all the precontractual information as well as clauses that express the information contained by art. 7 para. 3, letters a)-h). More precisely, these

clauses refer to: a) special requirements of the traveler which the organizer has accepted; b) information that the organizer is responsible for the proper performance of all travel services included in the contract, according to art. 14 of the G.O no. 2/2018, and it is obliged to provide assistance if the traveler is in difficulty, according to art. 17 of the G.O no. 2/2018; c) the name of the entity in charge of the insolvency protection and its contact details, including its geographical address, and, where applicable, the name of the competent authority designated by the Member State concerned for that purpose and its contact details; d) the name, address, telephone number, e-mail address and, where applicable, the fax number of the organizer's local representative, of a contact point or of another service which enables the traveler to contact the organizer quickly and communicate with him efficiently, to request assistance when the traveler is in difficulty or to complain about any lack of conformity perceived during the performance of the package; e) information that the traveler is required to communicate any lack of conformity which he perceives during the performance of the package; f) where minors, unaccompanied by a parent or another authorized person, travel on the basis of a package travel contract which includes accommodation, information enabling direct contact with the minor or the person responsible for the minor at the minor's place of stay; g) information on available in-house complaint handling procedures and on alternative dispute resolution ('ADR') mechanisms pursuant to G.O. no. 38/2015<sup>13</sup> on alternative dispute resolution for consumers and traders subsequently amended and completed, and, where applicable, on the ADR entity by which the trader is covered and on the online dispute resolution platform pursuant to Regulation (EU) no. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) no. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR); h) information on the traveler's right to transfer the contract to another traveler, according to art. 10 of G.O no. 2/2018.

5.2. *The price is an essential element* of the contract and the special rules for this type of contract contain *provisions that set the limits* between which the contracting parties may agree on any adjustments or price changes.

Thus, art. 11 of G.O. no. 2/2018 details how the price may be altered and art. 12 refer to the modification of other contractual clauses.

Increasing the price is conditional upon the explicitly stipulating in the contract a corresponding clause as well as the passenger's right to a price reduction in relation to the agency's cost reduction after the conclusion of the contract but before the start of the travel package.

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<sup>13</sup> Published in the Off. Gazette, Part I no. 654 of 28.08.2015, consolidated version of 28.02.2019.

This change must be justified by a price increase as a direct consequence of the changes related to at least one of the aspects specified in art. 11, para. 1, letters a)-c) of the normative act, namely: the price of the carriage of passengers resulting from the cost of fuel or other power sources (a); the level of taxes or fees on the travel services included in the contract imposed by third parties not directly involved in the performance of the package, including tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports (b); the relevant exchange rate for that package (c).

However, the price increase exceeding 8 % of the total price of the package, entitles the traveler either to accept the proposed change within a reasonable period set by the agency or to terminate the contract without paying any penalty.

In addition, another requirement imposed by the law, irrespective of the percentage of price increase, is the obligation of the organizing travel agency to send the traveler a notification clearly indicating the amount and justification of the price increase as well as the method of calculation, on a durable medium, at least 20 days prior to the start of the package.

A durable medium is, in the sense of art. 3 pt. 19 of G O. no. 2/2018, “any instrument enabling the traveler or the trader to store personally-addressed information in an accessible manner for further reference for information purposes for an appropriate period of time and allowing reproduction without changes to stored information”.

If the alteration concerns price reduction, the organizing travel agency is entitled to deduct the actual administrative costs from the reimbursement due to the traveler, while presenting at the request of the traveler, proof of the respective administrative expenses.

In the previous regulation, the *prices* stipulated in the contract could be changed only under the conditions stipulated by former art. 14 paragraph 1 of G.O. no. 107/1999 presently repealed, namely: the contract *explicitly* stipulated the possibility of changing the price, both for the increase and the reduction thereof, as well as the way of its calculation; the change in price *needs to be justified by the variations in*: a) transport costs, including the cost of fuel; (b) royalties and charges for landing, embarkation/disembarkation in ports and airports, and tourist taxes; c) exchange rates for the contracted tourist package.

In the case of a price reduction, the organizing travel agency was entitled to deduct the actual administrative costs from the reimbursement owed to the passenger. At the traveler’s request, the organizing travel agency was required to provide evidence of the respective administrative expenses.

The price increase stipulated in the contract, being a modification of the contract, could not “in any case” take place, (under the terms of art. 14, para.

2, of G.O. no. 107/1999) during the 20 calendar days preceding the departure date of the tourist. We consider that the imperative wording of the legal text invoked only allowed it to be interpreted as restrictive.

However, if the prices set in the contract were increased by more than 10%, *no matter the reasons for the increase*, the tourist could *terminate* the contract without any obligation towards the travel agency; in this case, the travel agency had the obligation to immediately refund to the tourist all the sums related to the trip paid by him, including the commission.

Compared to previous legislation, the minimum limit, by percentage, of the increase in the price of the package travel that may authorize the traveler to decide to terminate the contract is reduced from 10% to 8%, but as regards the length of the period within which the organizing travel agency is obliged to reimburse the payments made by or on behalf of the passenger, the current regulation stipulates a maximum of 14 days, as compared to the previous provision stipulating the immediate refund of the amounts paid by the tourist, including the fee.

5.3. Regarding the *alteration of other package travel contract terms*, art. 12 para. 1 of G.O. no. 2/2018 establishes the *interdiction to unilaterally change* package travel contract terms other than the price – according to art. 11 referred above – or unless the following conditions are cumulatively met: the organizer has reserved that right in the contract (a); the change of the clause is insignificant (b); the organizer informs the traveler of the change in a clear, comprehensible and prominent manner on a durable medium (c).

However, if the organizer proceeds (in the wording of the legal text of art. 12, para. 2, of G.O. no. 2/2018 it is “constrained”) *to altering significantly any of the main characteristics of the travel services* or cannot fulfill the traveler’s special requirements, or intends to increase the price of the package by more than 8 %, before the start of the package, the traveler may within a reasonable period specified by the organizer may either accept the proposed change or terminate the contract without paying a termination fee.

Including changing the accommodation is considered to be a significant change, in which case passengers are offered the closest option of that location of equivalent or higher quality.

If the traveler chooses to *terminate the package travel* contract, the traveler may accept a substitute package where this is offered by the organizer, if possible of an equivalent or a higher quality.

In the above-mentioned situations, the travel agency is *obliged to inform the traveler*, in clear and unambiguous terms, on a durable medium without undue delay, on the proposed changes and their impact on the price, as well as on the reasonable time available to the traveler to make the decision known to

the agency and, last but not least, to the consequences of the traveller's lack of response regarding the substitution package offered and its price.

5.4. *The organizer has the obligation to reimburse* any payments made by or on behalf of the traveler, without undue delay and in any event not later than 14 days after the package travel contract is terminated, when the traveler does not accept another package, the traveler's right to be paid paying compensation being examined under art. 15, para. 2-6 of G.O. no. 2/2018.

Finally, *the traveler shall be entitled to an appropriate price reduction* if the changes to the package travel contract result in a package of lower quality or cost.

5.5. In what concerns the wording of the contractual clauses, *the language used must be plain and intelligible*, the traveler being entitled to request a paper copy if the package travel contract has been concluded in the "simultaneous physical presence of the parties" as stipulated by art. 7 para. 1 of G.O. no. 2/2018. However, it should be noted that the common law norms on contractual matters in Book V of the Civil Code, republished in 2011, consolidated version of 24.03.2017, provides that the contracts concluded by telephone are considered to be contracts concluded in the presence of the parties.

With respect to *off-premises contracts* as defined in art. 2, pt. 8 of the G.O. no. 34/2014 on consumers rights in contracts concluded with professionals, and amending and completing certain regulations, approved with amendments through Law no. 157/2015<sup>14</sup>, a copy or confirmation of the package travel contract shall be provided to the traveler on paper or, if the traveler agrees, on another durable medium.

### Conclusions

By the entry into force of G.O. no. 2/2018, a new regulation of the package travels we are revealed a series of changes by comparison to the previous regulation which, as shown in the doctrine (Dumitru, p. 96-102), presented difficulties of application, but awareness in relation to these new regulations will attract a change of paradigm so that trips do not become true travels of dilettantes.

What can be seen as favourable about the new regulation is a strengthening of the information obligation and the liability regime of the organizing travel agency for insolvency cases.

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<sup>14</sup> Published in the Off. Gazette Part I no. 449 of 23.06.2015, consolidated version of 28.02.2019.

Both aspects attract more effective protection of travelers in relation to organizing travel agencies.

It can be noticed that the legal relationship between the traveler and the travel agency is bivalent, both parties being obliged to inform and advise oneself and each other, both regarding the contract and on the performance of the contract for a mutually beneficial relationship, so as John Steinbeck used to say, “people do not take trips, trips take people”.

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