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“Airline bankruptcy, focus on passenger rights”

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Air transport and insolvencies of air carriers: an introduction

According to a Study carried out in 2011 by Steer Davies Gleave for the European Commission (entitled Impact assessment of passenger protection in the event of airline insolvency), between 2000 and 2010 there were 96 insolvencies of European airlines operating scheduled services.

Of these insolvencies, some were of small airlines, but some were of larger scheduled airlines and caused significant issues for passengers (Air Madrid, SkyEurope and Sterling).



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The Italian market

This trend has significantly affected the Italian market, where over the last eight years, a number of domestic air carriers have experienced insolvencies:

- Minerva Airlines
- Gandalf Airlines
- Alpi Eagles
- Volare Airlines
- Air Europe
- Alitalia
- Myair
- Livingston

An overall, since 2003 the Italian air transport market has witnessed one insolvency per year.



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The Italian Air Transport sector and the Italian bankruptcy legal framework.

- A remedy like Chapter 11 in force in the US legal system does not exist in Italy, where since 1979 special bankruptcy procedures (Amministrazione Straordinaria) have been introduced to face the insolvency of large enterprises (Law. No. 95/1979, s.c. Prodi Law, Legislative Decree No. 270/1999, s.c. Prodi-bis, Law Decree No. 347/2003 enacted into Law No. 39/2004, s.c. Marzano Law, Law Decree No. 134/2008 enacted into Law No. 166/2008, s.c. Alitalia Decree).
- Some of the bankrupt airlines have been admitted to the Amministrazione Straordinaria, namely Minerva Airlines, Alpi Eagles (Prodi-bis), Air Europe, Volare Airlines, Alitalia, and Livingston (Marzano Law and Alitalia Decree).
- Only Alitalia, Volare Airlines and Air Europe have undertaken again their services, while the other air carriers listed above are out of the market.



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The impact of insolvencies on passengers rights

- All these insolvencies impact on passengers, in terms of interruption of services, as well as costs related to:
 - i. Information (cost of phone calls to rebook flights);
 - ii. Care (including additional accommodation);
 - iii. Original flight(s) (reimbursement);
 - iv. Replacement flight(s) (for repatriation or for replacement travel);
 - v. Non-refundable components (such as hotel or car hire deposits).

- In Italy, only Alitalia has experienced no interruption of its services during the transition from the old Company to the new one, while the other insolvencies impacted on passengers.

- Costs of passengers who have booked to travel with an airline ceases operations vary depending on whether it ceased operations before the booked flight, or after an outbound flight but before the inbound flight is completed.



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➤ Operations ceased before the outbound flight.

The passengers must choose between:

- (i) rearranging the trip via other means (paying additional cost for alternative travel, which is likely to be more expensive, particularly if booked at short notice), or
- (ii) forgoing the trip (they forfeit any non-refundable components of the trip (such as accommodation or car hire), as well as the cost of the original air ticket).

➤ Operations ceased after an outbound flight but before the completion of the inbound flight.

In this case, passengers are stranded and will have to find alternative travel in order to return home, which will usually be at very short notice and hence on average much more expensive than the original ticket. Moreover, passengers may have to arrange additional accommodation and other costs.



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- The issue is that the reimbursement of the booked tickets to passengers bears on insolvent airlines. The credit of passengers ends up within the liabilities in the airline's balance sheet, and the credit will be considered as unsecured (“credito chirografario”).
- Interlining Agreements between airlines do not represent a solution, because in case of insolvency of one of the air carriers involved in such an Agreement, this will interrupt itself.



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Existing Remedies

- In recent years, Scheduled Airline Failure Insurance (SAFI) has allowed passengers in some EU member States to insure themselves against some of the costs resulting from the insolvency of an airline on which they are booked.
- The Package Travel Directive (Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours) provides protection for passengers purchasing package tours in the EU. This requires organisers/retailers to be able to refund money paid over and/or cover repatriation of consumer in the event of insolvency. However, this protection is limited to consumers purchasing a package, defined as a pre-arranged combination of transport and at least one other significant tourist service. This excludes purchases of air tickets alone;



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- In some Member States consumers purchase tickets with credit cards (and also some debit cards) are allowed to claim a refund from the card-issuing bank in the event of insolvency of the airline. However, the reimbursement is limited to the cost of the original tickets and in some cases is subject to a minimum value;
- If tickets are purchased via IATA travel agents, the payments for them are held by a central payment mechanism before being passed on to the airline, in settlements at regular intervals (usually monthly). Therefore, if the airline becomes insolvent, passengers whose payments have not yet been passed on to the airline should be able to recover what they paid.



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- Other forms of protection are available in some Member States, namely:
 1. Denmark. A fund (the Rejsegarantifonden), which provides protection under the Package Travel Directive, has been established and recently (2010) extended to offer passengers the option of this protection on all flights from Denmark on carriers established in Denmark.
 2. Belgium. According to a decree entered into force in 2007, airlines registered in Flanders are required to hold an insurance guarantee against insolvency.



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3. In Italy, a Guarantee Fund has been set up for failures related to package tours including transport. The Fund was first envisaged in Legislative Decree No. 111 of 1995, and today is set forth in the Consumer Code (Article 100).

The Fund is proved not to be efficient, as:

(i) it is insufficient (according to Article 100, § 2, Consumer Code, the Fund is fuelled with an annual quota equal to 2 % of the amount of the premium of mandatory insurance policies, set down in Article 99 of the same Code); and

(ii) it only allows, in case of insolvency or bankruptcy of the organizer or any service provider (like the airlines), the repatriation of the consumer in case of a trip abroad, as well as it provides an immediate economic availability in case of forced return of tourists from extra-Community Countries when an emergence occurs (see Article 100, § 1, Consumer Code).



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Possible actions to be taken

A solution which has been envisaged consists of setting up of International Guarantee Funds. Such an option in principle desirable, implies a significant interaction internationally, that is, a strong cooperation among States at global level.

➤ An international Guarantee Fund would be subject to:

(i) standardization procedures and criterion at international level being established;



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(ii) recognition of bankruptcy procedures among States all over the world will be in force. A similar procedure exists within the EU Member States, where the Regulation No. 1346 of 2000 sets down provides for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition means that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member States;

(iii) individuation of:

- who manages the Fund;
- who fuels it; and
- how to obtain the benefits (i.e., inter alia, the reimbursements of ticket prices) of the Fund.

