A journey into the unknown – a fine of over PLN 20 million for Exim

* **Different hotel, no pool and air conditioning in the room – such differences can spoil a dream holiday.**
* **The Exim travel agency made unilateral changes to the terms and conditions of tours without any basis in the contract.**
* **Furthermore, it failed to inform tourists that they are able to terminate the contract without any fees in the event of a material change in contractual provisions.**
* **The President of UOKiK has imposed a fine of over PLN 20 million on Exim.**

**[Warsaw, 17 February 2025]** Exim, known to consumers as Exim Tours, is in the business of organising travel tours. UOKiK has received signals that Exim may be engaging in practices violating collective consumer interests. The investigation showed that the company unlawfully introduced unilateral changes to the terms and conditions of tours, without having any basis for doing so in the contract concluded with the consumer. The modifications included, but were not limited to, changing the hotel, no air conditioning in the facility or no access to the swimming pool. In addition, the company did not inform consumers that they may terminate the contract without any fees and misled them about the conditions for obtaining a justification for the amount of the withdrawal fee.

**Unlawful practices**

When purchasing a tour from a travel agency, the consumer expects that the terms and conditions they have agreed upon will be met by the organiser. In certain situations, the law allows for modification of the terms and conditions of the contract. In order for a tour operator to unilaterally make non-material changes to contractual terms, they must reserve that right in the contract.

Such clause was not included in the contracts used by the Exim travel agency. Therefore, any changes to the contractual terms should have been made by Exim with the consent of the customer, which was not the case. In effect, the consumers who did not agree to changes and cancelled their tours were unfairly charged withdrawal fees.

Furthermore, the travel agency did not provide consumers full information when notifying them of the proposed material modifications to the contract. When the organiser proposes to the consumer a significant modification of the contractual terms (e.g. changing the date of the tour, the place of accommodation), they must at the same time inform the consumer that they have the right to withdraw and to the reimbursement of all funds paid. In addition, the organiser must inform the consumer that failure to respond in a timely manner to the proposal to modify the contract will also result in termination of the contract and reimbursement of the funds paid. The notices sent by Exim lacked this information. Consumers were told that they could either accept the change or cancel the tour and accept a voucher or select another tour from those on offer. This action misled consumers through the use of procedures that encouraged them to accept the proposed change or to choose vouchers instead of receiving a cash refund.

The President of UOKiK also challenged the unlawful practices of Exim against customers who cancelled a tour they had purchased, which included a scheduled flight, on their own. According to the regulations, if a customer withdraws from the contract before the start of the tour, then the tour operator has the right to charge a withdrawal fee. The amount of such fee is either specified in the contract or determined on a case-by-case basis. In the case of a fee calculated on a case-by-case basis, the consumer has the right to request that the organiser justify its amount. Exim held that the consumer must make such request within 7 days after the end of the tour. This had no legal basis and could be burdensome in the event of seeking claims.

**Corrective actions**

“Consumers need to be sure that the terms of the contracts they sign will be respected. When purchasing an organised tour, they must not feel like they are travelling into the unknown. It is unacceptable to make unilateral changes to the terms and conditions of tours without any basis in the contract, and fail to provide reliable information about consumer rights, including the option to terminate the contract without any fees in the event of material changes to its terms. The actions of Exim limited the rights of consumers and undermined their trust in the company,” said Tomasz Chróstny, President of UOKiK.

The company abandoned the practices challenged by the President of UOKiK. The decision is not final, the travel agency has appealed to the Court of Competition and Consumer Protection. Once it becomes final, Exim will inform consumers about the contents of the decision and refund the unlawfully charged withdrawal fees. Customers who did not use the vouchers they received or did not take advantage of substitute events will also be able to request a refund.

**Tips for consumers**

A travel agency may unilaterally amend the contract prior to the commencement of the travel event only if the contract provides for that option, the amendment is non-material in nature, and the agency provides information about the amendment in a clear manner. The aforementioned amendments do not require the approval of the customer.

The case is different for material amendments, in which case you can:

* accept the amendments (recovering the difference in price, if the changes lead to lower quality or reduced costs of the travel event),
* withdraw from the contract without incurring any withdrawal fees.

The choice between these two options is entirely up to the consumer.