

The Consumer Voice in Europe

A COORDINATED STRATEGY FOR THE EXIT AND RECOVERY OF THE AVIATION INDUSTRY FROM THE COVID-19 CRISIS

BEUC's contribution to the roundtable



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EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2020-076 - 28/08/2020

Why it matters to consumers

Consumers across Europe have been significantly affected by the pandemic. One area of serious concern relates to the compliance by Airlines and travel operators with EU passenger rights. As airlines restart their activities after several months of being grounded, BEUC believes that while the pandemic has brought many challenges to our society and economy, it could also be seen as an opportunity to re-build trust in the aviation sector by strengthening consumer protection and making it more sustainable.

Summary

BEUC welcomes the opportunity to contribute to the aviation roundtable for a coordinated strategy for the exit and recovery of the aviation industry from the COVID-19 crisis.

The current pandemic has significantly affected many sectors of our economy, including the aviation sector. Following massive numbers of cancellations of flights due to confinement and travel restrictions, consumers have been struggling to get their rights under the EU passenger legislation respected. The strong lobbying from airlines resulted in many member states adopting measures contravening EU law which lead to recent infringement proceedings initiated by the European Commission.

Further to this, with the loss of income, airlines have turned to the Member States in view of obtaining support in form of State aid to be able to afford the negative financial consequences of the crisis. As a result, the European Commission in the context of the new State Aid Temporary Framework has adopted a significant number of decisions authorising member states to support airlines.

Against this background, from a consumer perspective, we believe that the recovery of the aviation sector should focus on three main areas: first to re-build trust of travellers in the aviation sector by ensuring compliance and where necessary enforcing existing rules and enhancing consumer protection, secondly, to guarantee the safety of travellers during the pandemic and, finally, to push for stronger sustainability commitments from airlines contributing to the decarbonisation of the industry. These areas are also closely related since consumers in the context of the climate crisis should be able to trust that airlines take sustainability seriously.

1. Passenger rights and consumer protection

Consumers' have experienced massive breaches of the APR Regulation and have been exposed to numerous unfair commercial practices conducted by airlines to push consumers to accept vouchers instead or reimbursements of the unused tickets during the Covid-19 lockdown. Moreover, the crisis also highlighted the need for **consumers to be protected against airlines' insolvencies** and on **the necessity for airlines to change the pre-payment business model**. Below we refer to each of them:

1.1. Air passenger rights and consumer protection issues

1.1.1. Enforcement and review of the APR regulation

Even when enforcement of APR was already considered problematic before the crisis as raised by BEUC¹ and by the EU Commission in its recent *DG Move Study on the protection of EU air passenger rights*² published in last January, the COVID-19 leading to the "voucher saga"³ clearly highlighted that enforcement mechanisms of passenger rights, despite the existence of clear and updated guidelines⁴ and recommendations⁵ from the European Commission, are insufficient.

Since the beginning of the crisis, BEUC and its members⁶ denounced industry-wide breaches of APR Regulation and unfair commercial practices conducted by airlines⁷. On 22 July, BEUC and 11 of its members launched a coordinated action against 8 major airlines for breaching passenger rights and for using unfair commercial practices⁸.

To restore passengers' trust in the aviation sector, it is essential that the Commission and relevant national authorities ensure that the APR Regulation is properly applied and must assure that national authorities take the necessary enforcement measures where necessary to stop quickly the infringements (i.e. imposition of dissuasive fines) and to ensure to consumers that they will not be left behind, otherwise, they will be reluctant to book flights again..

¹ BEUC updated position paper on EU Air Passenger Rights and Enforcement, available at

https://www.beuc.eu/publications/beuc-x-2019-083_eu_air_passenger_rights_and_enforcement.pdf

² *DG Move study on the current level of protection of air passenger rights in the EU*, Final Report, available at <https://ec.europa.eu/transport/sites/transport/files/studies/isbn-978-92-76-14244-7-study-on-the-current-level-of-protection-of-air-passenger-rights-in-the-eu.pdf>

³ Including the imposition of vouchers on consumers and the use of misleading or partial information provided to passengers about their reimbursement rights.

⁴ Communication from the Commission, Interpretative guidelines on EU passenger rights regulations in the context of the developing situation with COVID_19, C(2020) 1830 final, 18.03.2020. available at <https://ec.europa.eu/transport/sites/transport/files/legislation/c20201830.pdf>

⁵ Commission Recommendations of 13.5.2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of COVID-19 pandemic, C(2020) 3125 final, available at https://ec.europa.eu/info/sites/info/files/recommendation_vouchers_en.pdf

⁶ As an example, Test-Achats/Test-Aankoop launched on 22/06/2020 a standard complaint forms to collect and to group legally founded consumer complaints in the travel and aviation sector. According to our Belgian member, in less than 2 months, a total of 3,267 cases have been compiled. See Test-Achats/Test-Aankoop [detailed press release](#) for more information.

⁷ See our letter to Ms Adina-Ioana Vălean, European Commissioner for Transport, 'Enforcement of air passenger rights in the COVID-19 context – BEUC Comments, concerns and recommendations, dated on 30/03/2020, available at https://www.beuc.eu/publications/beuc-x-2020-015_letter_to_commissioner_valean_on_apr_in_the_covid.pdf

⁸ BEUC Press release, "BEUC reports major airlines for breaching passenger rights and calls for industry investigations", dated on 22.07.2020, available at <https://www.beuc.eu/publications/beuc-reports-major-airlines-breaching-passenger-rights-and-calls-industry-investigation/html>

Therefore, we consider that the ongoing review of the APR Regulation is a unique opportunity to reinforce consumers trust in the aviation market and to introduce real improvements of the APR enforcement as suggested in BEUC's proposals⁹. A crisis like COVID-19 should not be used as an excuse to reduce passengers' rights. On the contrary, it is precisely in such cases that consumers should be able to rely on strong rights. Thus, **we recommend the Commission and the participants to the roundtable that they consider the revision of the APR regulation as a priority topic to build consumer trust in the aviation sector in the post-COVID crisis.**

1.1.2. Consumers should benefit from a return flight guarantee

In view of the COVID-19 pandemic and the systematisation of testing at airports (sometimes both arrival and departure) it could happen that passengers will not be allowed to enter a Member States or will have to leave earlier the country of destination e.g. due to increased body temperature, a positive COVID-19 test or other circumstances.

In such situation, travellers should benefit from a return flight guarantee. In practice, this would mean that if a consumer is denied entry in a State territory for health restrictions, he/she should benefit from the automatic repatriation to his/her place of departure by the operating carrier, in compliance with any health requirements.. According to our German member *vzbv*, Lufthansa has already announced that such a guarantee will be established but has not yet provided details for its implementation at the time we finalised this document. This type of initiative should be further considered in the context of **guidance to be provided by the Commission or a standard European-wide guarantee should be put forward to avoid fragmentation amongst airlines and risk of confusion or discriminatory treatment amongst consumers.**

1.1.3. Further adaptations of airlines business model are needed

The current crisis also offers an opportunity to **re-consider the practice of airlines and intermediaries to require the full payment of ticket prices in advance.** In this regard, an option is to align the APR Regulation with the Package Travel Directive. For example, it could be envisaged that the consumer should have to pay 20% of the ticket price at the time of booking the flight regardless from where the tickets purchased (e.g. airline or third-party platform) and 80% a few days before the departure.

Such a review of the airline prepayment business model would limit the risk of financial loss for consumers in the event of airline insolvency, but also and more importantly, **it would avoid the risk for consumers of not being reimbursed by Airlines and to struggle for weeks or months to receive their full refund.** Such limitation of advance payments will also help to eliminate the growing issue of "ghost flights"¹⁰ and of the indiscriminatory rescheduling/cancellation of flights.

Finally, on a more global scale, it will be important to rethink the prepayment business model for services in the whole tourism industry (hotel accommodations, event tickets, etc.). In the future, these types of services should no longer be based on long term full pre-financing obligations but, on the contrary, they should also be aligned with the PTD regime i.e. progressive payment.

⁹ BEUC updated position paper on EU Air Passenger Rights and Enforcement, available at https://www.beuc.eu/publications/beuc-x-2019-083_eu_air_passenger_rights_and_enforcement.pdf, points 1 to 4.5.

¹⁰ During the COVID-19 crisis, several unfair and potentially unfair airline practices developed strongly. Among them the so-called "ghost flights". These consist for the companies in selling tickets to cancel them, in order to ensure a quick cash flow. Consumers are harmed by this unfair practice and then have to wait weeks or even months for refunds.

1.1.4. *Mandatory insolvency protection schemes for airlines must be introduced*

For many years, BEUC and its members have been campaigning for the introduction of [insolvency protection schemes](#)¹¹ in the aviation sector. The current crisis is a stark reminder of this urgent need. Since the beginning of 2017 at least 32 airlines went bankrupt. It is therefore essential that the forthcoming negotiations on the APR Regulation **introduce a compulsory protection mechanism, as proposed by the European Parliament in its adopted position**¹².

1.1.5. *Clarification of the insolvency dispositions of the Package Travel Directive (PTD)*

During the COVID-19 crisis, uncertainties emerged when it came to insolvency of travel organisers due to the pandemic. Because of the drafting of the Article 17(1), of the Recital 39 and the leeway granted to Member States during the transposition of the PTD Directive, they have set up divergent systems resulting in a different situations and interpretations across the EU.

In our [position paper on travellers' rights in the COVID-19 crisis](#), we called on the Commission to assess national legislations transposing the PTD to ensure that cancellations related to the COVID-19 are sufficiently covered against insolvency.

The European Commission recommendation on vouchers¹³ published in May 2020 encourages Member States to take the necessary emergency measures to cover organiser's and carriers' vouchers and consumer claims in the event of insolvency (e.g. via the State Aid temporary framework). However, to date only a few have acted in the package holidays sector (i.e. Denmark, Germany) and none of them has taken any measures in the field of air passenger rights. Therefore, BEUC urges the European Commission to follow closely the implementation of the recommendation in the coming weeks and months and to submit a report as soon as possible on the application of the recommendation by Member States.

The recently adopted German guarantee scheme¹⁴ of €840 million aiming to protect and cover vouchers issued by travel operators for cancelled travel packages during the pandemic is a good example and should be implemented by more Member States **to cover both vouchers for cancelled package holidays and stand-alone flights**. For reasons of consistency, an alignment of the two regimes is indispensable. Consumers would not understand why they would be covered for their package holidays but not for their stand-alone tickets.

Another important question that needs to be clarified is whether package travels cancelled due to COVID-19 and not covered by a voucher would benefit from insolvency protection? In other words, if the organiser did not issue a voucher but only delayed the monetary refund, what will be the status of this pending reimbursement? For BEUC, it is only logical that such reimbursements should also be covered by the insolvency protection schemes.

¹¹ BEUC position paper on protection of passengers in case of insolvency of airlines, available at <https://www.beuc.eu/publications/2011-09855-01-e.pdf>

¹² EP proposed a creation of a guarantee fund or a compulsory insurance scheme to ensure that passengers can be reimbursed or repatriated when their flights are cancelled due to the insolvency of an air carrier or the suspension of its operations as the result of the revocation of its operating licence [Am 11]

¹³ Commission Recommendations of 13.5.2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of COVID-19 pandemic, C(2020) 3125 final, available at

https://ec.europa.eu/info/sites/info/files/recommendation_vouchers_en.pdf

¹⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1431

By January 2021, the Commission must present a report on the application of the PTD Directive accompanied, if appropriate, by a legislative proposal. We encourage the European Commission to amend the **PTD directive to ensure that all European consumers benefit from more robust financial protection of prepayments, including for trips cancelled in extraordinary circumstances and for the corresponding vouchers.**

1.1.6. Greater coordination between the various stakeholders of the aviation industry is needed

A greater coordination between aviation market stakeholders (consumer associations, airlines, national authorities, European Commission) is essential.

This co-operation could include:

- Reporting obligations on airlines to national enforcement bodies (NEBs) on the respect of passenger rights.
- Reporting obligations from NEBs to the Commission on passenger rights issues.
- The possibility for consumer associations to access non-commercially sensitive data transmitted by airlines to NEBs,
- The possibility for consumer associations to refer cases of non-compliance with Regulation (EC) No. 261/2004 (article 16) to the NEBs.

1.1.7. Increase price transparency of airlines tickets, luggage policies of airlines and to further control airlines financial health.

Lack of transparency of airlines tickets need to be corrected by a review of Regulation 1008/2008. This instrument deals with price transparency of tickets (article 23) and pricing freedom (article 22). There is also a specific section related to the conditions to grant or withdraw an operating licence and to monitor the “financial health” of airlines which may be particularly relevant in the post COVID-19 situation.

Currently, the lack of transparency in the way airlines break down the taxes, fees and surcharges, the lack of definition of what elements of a ticket price is refundable or not for a consumer in case of cancellation of a ticket by the passenger, but also the different interpretations and practices as to what constitutes a final price or an optional supplement prevents consumers from making fully informed choices and slows down competition between airlines.

Furthermore, airlines are increasingly splitting their offer and unbundling their services into optional services (e.g. paying for a hand baggage despite clear jurisprudence of the CJEU¹⁵).

As there is **no clear list in the Regulation 1008/2008 of „unavoidable and foreseeable costs“** that shall always be included in the total price, there are different practices from one airline to another, but also depending on where the consumer buys the tickets (online comparator, online agency, etc.).

Therefore, a revision of the Regulation 1008/2008 is necessary to improve price transparency and to enable consumers to make a fully informed booking.

¹⁵ C-487/12 - Vueling Airlines SA v. Instituto Galego de Consumo de la Xunta de Galicia, 18 September 2014 – (point 40), available at <http://curia.europa.eu/juris/liste.jsf?&num=C-487/12>.

This lack of transparency needs to be corrected by:

- Inserting **a list in the article 23(1) of "unavoidable" and "foreseeable"** elements which must always be included in the final price and can never be considered as optional.
- **By inserting a list of items that are refundable in case of cancellation by the passenger** e.g. introducing a breakdown of refundable and non-refundable price elements.
- Since current COVID-19 crisis will further weaken airline finances. **It is therefore essential that the authorities in charge of enforcing Regulation 1008/2008 have the necessary resources** to monitor the financial health of airlines and be able to react quickly and effectively to avoid bankruptcies.

1.1.8. Clearer rules are needed for bookings via online intermediaries

During the COVID-19 crisis, numerous BEUC members reported issues related to cancelled bookings made via online intermediaries. The articles 5 and 8 of the Air Passenger Rights Regulation require airlines to reimburse the consumer. However, many airlines refused to do so and instead referred the consumer back to the intermediary, the latter also refused to reimburse the consumer or at least held part of the reimbursement in the form of administrative fees. **The review of the APR Regulation should clearly state that irrespective of whether the flight was booked by an intermediary or the consumer directly, the operating carrier is responsible for the reimbursement to the passenger free of any charge.**

2. Safety of passengers must remain a priority during the pandemic

BEUC members have reported divergency in the measures applied by Member States, airports, and airlines to contain the pandemic and there has been reports of airlines not complying with the safety measures therefore putting the life of passengers at risk¹⁶. It is essential to ensure passengers safety by **adopting the highest possible standards of fight safety and informing consumers about such measures in a clear and consistent manner across airports and airlines, even if the measures differ from Member States to Member State.**

Safety measures must be designed following scientific and medical advice by experts and authorities. In the re-opening Europe's skies and reactivating the sector, consumers safety cannot be put at risk and, most fundamentally, airlines should refrain from engaging in practices that create a false perception of safety. Further to this, it has been noticed some airlines offer middle seats for sale, which would allow to keep distance from other passengers. This would imply consumers having to pay for additional safety measures while this is something that should be guaranteed to all passengers.

BEUC recommends therefore that the European Commission in co-operation with the competent national authorities carefully monitor the effectiveness of the measures in place and consider further measures where appropriate.

¹⁶ <https://www.euronews.com/2020/08/05/italy-threatens-ryanair-with-flight-ban-over-covid-19-safety-rules>

3. Sustainability and aviation: State Aid must be conditioned on strict sustainability and consumer protection criteria

While we understand that State Aid is necessary to support the sectors of the economy that have been severely impacted by the pandemic, including air transport, we believe that such Aid must consider its impact on consumers. Supporting national undertakings cannot be proportionate if the demand side has to bear the costs of such rescue measures. In EU law, there is a constitutional duty on the EU institutions stemming from Article 12 TFEU, most notably the Commission to consider the protection of consumers when implementing its policies, including state aid law and policy¹⁷.

In the context of the current crisis and of the aviation sector, we believe that the incorporation of consumers' interest can be achieved by making State Aid to airlines conditional to sustainability objectives and the fulfilment of their obligations towards passengers¹⁸. More specifically, in order to benefit from state support, airlines should commit to:

- fulfil their obligations under the APR Regulation, including:
 - o providing correct and complete information to consumers about their rights under the Regulation 261/2004,
 - o respect the deadlines for a full reimbursement of cancelled flights for all consumers if they opt for a reimbursement instead of a voucher provided following the Commission's recommendations of 13 May.
- ambitious sustainability objectives and climate targets. This could be done for example by committing to reduce x % of CO2 emissions by a certain date, shifting to alternative fuels (e.g. this could take the form of "blending mandates" requiring airlines to progressively increase the share of alternative fuels to power their planes) or cutting on domestic flights where there is a more sustainable alternative like trains.

Further to this, we believe the COVID19 crisis could be seized an opportunity to re-think the aviation sector as push for structural changes aimed at building a more sustainable future. Aviation is widely seen as the transport sector that is most difficult to decarbonise. This is why the EU and airlines should seriously invest on reducing emissions of the industry by switching to alternative fuels.

The EU should advance on introducing a kerosene tax, ideally at EU level or, if not possible, at least between the most willing Member States as several of them have openly taken position¹⁹ in favour of a EU-wide kerosene tax. The revenues of such a tax should be used to fund sustainable alternatives such as high-speed rail networks and/or night train connections.

The aviation sector will and should continue to play an important role in the EU helping consumer to reach destinations for which no alternative means of transport are available. However, after this crisis consumers trusting the aviation sector again also means that

¹⁷ State Aid and the consumer: lessons from a pandemic, available at

<https://acelg.blogactiv.eu/2020/07/15/eu-state-aid-and-the-consumer-lessons-from-a-pandemic/>

¹⁸ See our letter to Ms Margrethe Vestager, Executive Vice President for A Europe Fit for the Digital Age, and Commissioner for Competition, 'The Consumer's perspective on State aid and COVID-19', dated on 08/04/2020, available at https://www.beuc.eu/publications/beuc-x-2020-020_the_consumers_perspective_on_state_aid_and_covid-19.pdf

¹⁹ <https://www.euractiv.com/section/aviation/news/nine-eu-countries-urge-new-commission-to-tax-aviation-more/>

policymakers and airlines must take seriously into account the challenges posed by this sector to the environment and that they are willing to make structural changes. In particular, policymakers must assess the situation of the aviation sector not in isolation but putting it into perspective vis-à-vis the need to promote and stimulate other more sustainable means of transport in the EU.

For more information about how to ensure a consumer-friendly sustainable transition for the transport sector, see our recently published position paper : [*Breaking out of fossil fuelled Mobility*](#) - *How consumer policy can help clean up transport in Europe.*



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

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