

The Consumer Voice in Europe

BEUC'S POSITION ON TRAVELLERS' RIGHTS DURING THE COVID-19 CRISIS



Contact: Steven Berger – consumer-rights@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • consumers@beuc.eu • www.beuc.eu
EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2020-030 – 27/04/2020

Why travellers' rights matter to consumers during the COVID-19 crisis

Consumers across Europe are being hit hard by the COVID-19 crisis, both in health and economic terms. Concretely, many people, faced with different national containment measures, are losing their jobs and incomes and do not know how to pay their bills at the end of the month¹.

Although we are aware that the travel, tourism and transport industry has been one of the industrial sectors under the most pressure since the crisis began, **our members report a tremendous increase in consumer complaints about travel issues**². In a nutshell, travellers' rights to a refund for pre-payments, as stipulated by EU Passenger rights regulations and the national transposition of the Package Travel Directive, are being violated and consumers are facing a proliferation of potentially unfair practices from travel and tourism operators³. In addition, travellers are confused by the various national measures on vouchers and the postponement of reimbursement, which are **in breach of the above-mentioned European legislations**.

While BEUC and its members praise EU initiatives to facilitate the adoption of national measures to avoid insolvency, protect jobs and support a rapid recovery of the tourism industries, we would like to stress that it is not only businesses that are suffering, but also consumers who are also facing liquidity problems.

In order to find **a balanced solution that maintains a high level of consumer protection during the crisis while allowing businesses to access liquidity quickly**, BEUC has compiled a list of recommendations for travellers' rights in the COVID-19 context.

¹ As we already pointed out in our joint letter to Commissioners Reynders and Vălean, according to our members' calculations, no less than half of European households have already lost money as a result of the crisis.

² Several BEUC members report that up to two-thirds of all consumer complaints they have received in recent weeks have been related to travel problems.

³ See [BEUC's letter sent to Commissioner Vălean on Enforcement of air passenger rights in the COVID-19 context](#).

1. Upholding travellers' rights during the COVID-19 crisis

1.1. Accepting vouchers instead of a refund must remain a choice for consumers

We are living through an unprecedented crisis that is negatively impacting many sectors of the economy, especially the tourism and travel industry.

According to EU consumer and passenger rights, travellers can claim a full reimbursement if their travel is cancelled due to extraordinary circumstances, like the current COVID-19 crisis⁴.

As stipulated in article 12(5) of the Package Travel Directive (PTD), "reimbursements shall be made to the traveller without undue delay and in any event **not later than 14 days** after the package travel contract is terminated".

The same refund period applies in case of cancellation of bus and coach travel under Article 19(5) of the specific EU Regulation⁵.

The air passenger rights Regulation⁶ in its articles 5(1)(a) and 8(1)(a) and the Regulation concerning the rights of passengers when travelling by sea and inland waterway⁷, in its article 18(b), specify that in case of cancellation of the transport services passengers are entitled to a refund **within seven days**. Finally, a period of 30 days is specified in the rail passenger rights regulation⁸.

According to **all** the above-mentioned legislation, **the choice of whether to accept a voucher or not should be left to the consumer and should not be an obligation.**

In the COVID-19 context, this is all the more important for consumers, as for some, making use of their right to a full refund, may be the only way for them to pay their bills at the end of the month.

⁴ Under the package travel Directive, in case of "unavoidable and extraordinary circumstances", the traveller can cancel the trip without penalty and benefit from a full refund - Article 12(2) of the Package Travel Directive. To the contrary, cancellation by the consumer are not covered in all the passenger rights regulations (air, rail, ferry and coach). Thus, in the event of cancellation by the consumer, no refund is due, and the terms and conditions of the cancelled ticket apply. Several our members reported that airlines maintained their flights until the last minute, forcing passengers to cancel their flights and preventing them to benefit from their right to refund granted by all EU passenger rights regulations. See BEUC letters [on enforcement of air passenger rights in the COVID-19 context](#) sent to Commissioner for Transport, Mrs Adina Valean on 30/03/2020.

⁵ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 Text with EEA relevance

⁶ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

⁷ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 Text with EEA relevance

⁸ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations

This right to reimbursement has been reiterated in the updated guidelines published by the European Commission in the Package travel Directive⁹ and in passengers rights¹⁰ regulations¹¹.

In addition, BEUC and its members would like to underline that **consumer confidence in the travel industry and its services is a key issue, especially for the post-COVID-19 period.**

For instance, when consumers have booked their holiday package, they were willing to pay a higher price in order to benefit from additional protection, notably against insolvency. Therefore, applying EU or national measures to retroactively weaken consumer rights as is already the case in several Member States - such as suspending or even eliminating the right to a refund or, obliging consumers to accept mandatory and sometimes not even insolvency protected vouchers - **is not the right way forward and would have significant consequences for consumer confidence in the travel industry.**

Several BEUC members have also stressed a growing number of consumers being affected by the cross-border dimension of the COVID-19 crisis. For example, consumers who have bought package holidays from a retailer in their home country cannot benefit from the refund because the organiser of the package, responsible for the reimbursement, is located in another EU Member State that has already set up derogatory measures. Such situations create frustration for consumers, disparities in treatment and contribute to a lack of confidence in the tourism sector. **The European Commission must ensure that all European consumers are equally protected throughout the EU.**

For BEUC, maintaining passenger rights is essential to ensuring that consumers benefit from the same level of protection throughout the EU. **Any EU or national measures to support the tourism industry must also have the fulfillment of passenger rights obligations as a primary objective.**

Otherwise, without guarantees about their rights, consumers will no longer accept to provide deposits to the travel industry and will be reluctant to book new travel plans, which could have long-term detrimental consequences for the tourism industry.

Finally, we would like to stress that the COVID-19 crisis has further highlighted **the need to create a protection scheme for airline insolvencies. This should** cover the refund, financial protection and potential repatriation of passengers, similar to that what already exists in package travel. BEUC and its members have been advocating for years for such a guarantee system¹². However, consumers are once again being asked to support the industry, while running the risk of ending up out of pocket if an airline goes under. **We encourage EU policy makers to ensure that the ongoing review of Regulation 261/2004 resolves this issue**¹³.

⁹ See : https://ec.europa.eu/info/sites/info/files/coronavirus_info_ptd_19.3.2020.pdf

¹⁰ See : <https://ec.europa.eu/transport/sites/transport/files/legislation/c20201830.pdf>

¹¹ See Mr Didier Reynders' [public statement](#) of 9 April 2020 and his hearings before the IMCO Committee of the European Parliament. For Mrs Adina Vălean, Commissioner for transport see her public declarations in [Euractiv](#) and [Euronews](#).

¹² <https://www.beuc.eu/publications/2011-09855-01-e.pdf>

¹³ https://www.beuc.eu/publications/beuc-x-2019-083_eu_air_passenger_rights_and_enforcement.pdf

BEUC recommendations:

Replacing the air, rail, bus and ship passenger right for reimbursement by vouchers under the Package Travel Directive is not **acceptable**. Where necessary in this unprecedented situation, consumers will understand that certain delays with reimbursement can happen, for example due to the administrative overload facing operators.

We urge the European Commission to make it clear to Member States that national measures that undermine travellers' rights are contrary to European legislation, exposing them to possible infringement procedures.

1.2. BEUC's proposals for a way forward

1.2.1. Ensuring that travel organisers have liquidity, allowing them to quickly reimburse consumer claims and protect in case of insolvency

BEUC supports the call by European Commissioner Didier Reynders to the Member States on 9 April¹⁴, encouraging them to work on solutions for the travel and tourism industry, while respecting the rights of European consumers.

Such measures have already been established, for example in Denmark. There the European Commission approved¹⁵ state aid to expand the existing travel fund temporarily to cover reimbursement claims and vouchers to consumers because of COVID-19 cancellations.

BEUC and its members urge the Commission to continue along this path with the Member States, as **such solutions would be the most practical, sustainable and beneficial for both industry and consumers.**

Such guarantee funds should be used **to protect all vouchers and reimbursement claims from the threat of package travel operator and transport business insolvency caused by the COVID-19 crisis.** The fund should also cover cancellations made **by passengers due to COVID-19 since the beginning of March 2020.** Many airlines decided to maintain their flights, sometimes empty, or waited until the very last moment to cancel them despite the health crisis. These practices forced passengers to cancel their flights by themselves, preventing them from benefiting from the right to a full refund of their tickets. Therefore, BEUC and its members request that all flights cancelled by passengers because of COVID-19 since 1 March 2020 - the date of application of the slot waiver to help airlines¹⁶ - are covered.

As a matter of consistency, vouchers offered *both* for cancelled package holidays and stand-alone tickets (for air, rail, ferries and coaches), should be covered by the same insolvency protection regime. **This is the only way to convince consumers to accept vouchers and to make them more reliable and attractive.**

¹⁴ See : https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=674033

¹⁵ See : https://ec.europa.eu/commission/presscorner/detail/en/ip_20_576

¹⁶ See : <http://data.consilium.europa.eu/doc/document/PE-4-2020-REV-1/en/pdf>

1.2.2. *The creation of an EU travel fund*

Alternatively, BEUC encourages the Commission to assess the feasibility of setting up an **EU Fund**, which would guarantee reimbursement claims and voluntary “COVID-19 vouchers” across the EU against insolvencies in the travel industry.

BEUC recommendations:

Regardless of whether the solution is at national or European level, it is essential that any measures to support the tourism industry, like state aid, are also used to require businesses to fulfil their reimbursement obligation towards European consumers¹⁷.

2. Protection in case of cancellations caused by the COVID-19 crisis should be covered by the Package Travel Directive

In the wake of the COVID-19 crisis and the numerous consumer requests for refunds, questions have been raised by various stakeholders as to the scope of the insolvency protection guaranteed by Article 17(1) of the Package Travel Directive.

The respective article specifies that, “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 insofar as the relevant services are not performed as a consequence of the organiser's insolvency. [...]”

Recital 39 further specifies that, “[...] the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed”.

However, since the Directive gave leeway to Member States to set up different systems (funds, mandatory insurance, combination of both etc.), Member States have established divergent systems resulting in a heterogeneous situation across the EU.

Due to the large number of claims due to COVID-19, and the previous Thomas Cook bankruptcy crisis, many protection systems could suffer from a lack of funding. Making existing systems more robust is therefore essential to cope with the current crisis.

¹⁷See :http://www.beuc.eu/publications/beuc-x-2020-020_the_consumers_perspective_on_state_aid_and_covid-19.pdf

BEUC recommendations:

The Commission should assess national legislation to ensure that COVID-19 cancellations are covered. If not, the Commission should encourage Member States to take appropriate action to protect voluntary vouchers and claims for a refund against insolvency. According to the results, the European Commission should issue a guidance document.

Lastly, the Package Travel Directive's provisions on insolvency payments gives room for interpretation and patchy implementation by Member States. These divergences result in different levels of consumer protection from one Member State to another. By January 2021, the Commission is obliged to submit a general report on the application of the Directive, accompanied where necessary, by a legislative proposal. **We encourage the European Commission to consider amending the Directive to ensure that all European consumers benefit from a broader scope of financial protection of pre-payments, including for cancelled travel in extraordinary circumstances and for respective vouchers. This will benefit both consumers and businesses, who need to re-gain consumer trust.**

3. Any voucher offered to travellers shall provide strong guarantees

All **voluntary** vouchers offered to consumers should be secure and reliable.

To make them a reasonable and attractive option for consumers, **all "COVID-19 vouchers"** (both for package travel **and** passenger rights regulations) should, at least, fulfil the following criteria:

- Benefit from **full insolvency protection**;
- Be **valid for two years**, starting from the moment when travel restrictions are lifted;
- Be **flexible** – be able to be used for other offers/destinations/airlines within the same group;
- Be **'fractionable'** – vouchers should be divisible and usable for several cheaper travels/journeys. If the consumer does not use the full value of the voucher, they should be entitled to the reimbursement of the difference in cash, instead of receiving a new voucher;
- Be **based on the full cost of the trip**, including service charges, booking fees, luggage, etc. Any new reservation should not lead to additional costs for consumers;
- Be **transferable** to another person (i.e. family or friends);
- Be **automatically** reimbursed at the end of the validity period;
- Reimbursement must be possible for consumers who can demonstrate **financial difficulties**, (i.e. unemployment) and need to recover their money quickly ("**hardship clause**").

BEUC recommendations:

To ensure voluntary vouchers are attractive and reliable for consumers, **BEUC encourages the Commission to provide criteria for the validity/acceptability of vouchers.** Such criteria should contain at least the above-mentioned requirements. This should also remind Member States about EU principles, namely that consumers should keep the choice between the right to a refund. If Member States have introduced legislation or recommendations for vouchers with more consumer-friendly features, they should of course be able to keep these.

Finally, the recommendation should also **encourage each airline to provide a "COVID-19 hub" on its website with all relevant information in a single place, in a clear and transparent manner** (rules on cancellations, reimbursement, complaint forms, phone numbers, etc.). This is needed ensure homogeneity in the information provided to consumers across Europe. Indeed, despite clear rules on the right to information in Regulation 261/2004, BEUC¹⁸ and its members¹⁹ regularly report unfair and misleading commercial practices on airline websites²⁰.

Conclusions - COVID-19 crisis must not lead to a downgrading of travellers' rights

European travellers, who are also suffering the full impact of the COVID-19 crisis, should not be forced to provide cheap loans to the travel industry. It is precisely in these troubled times that their rights and protections must be maintained.

BEUC and its members urge the European Commission and Member States to work together for a balanced solution that both consumers and the industry need today, and to ensure that all emergency measures taken are in line with European legislation.

¹⁸See: <https://www.beuc.eu/publications/beuc-x-2020-015-letter-to-commissioner-valean-on-apr-in-the-covid.pdf>

¹⁹See: <https://www.test-achats.be/action/espace-presse/communiqués-de-presse/2020/airlines>

²⁰See: <https://press.which.co.uk/whichpressreleases/uks-biggest-travel-operators-and-airlines-openly-breaking-the-law-on-refunds-for-cancelled-holidays/>



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

The content of this publication represents the views of the author only and it is his/her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.