

The Consumer Voice in Europe

## COMMISSION SURVEY ON THE CONTINGENCY PLAN

### BEUC's contribution



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## About this contribution:

This document is a collection of reactions and comments from our members on practical problems encountered by consumers during the summer. It does not constitute a BEUC position and does not claim to be exhaustive.

During the COVID-19 crisis, BEUC and its members have actively monitored the compliance with travellers rights across member states. BEUC has held regular exchanges with European Commission and published several position papers. Below we provide a summary of all our actions at EU Level with the European Commission:

- *Letters to Commissioners (in chronological order):*
  - [Letter addressed](#) to Commissioner for Transport Mrs Valean on Enforcement of Air Passenger Rights in the COVID-19 context (dated on 30/03/2020),
  - [Joint letter](#) to M. Didier Reynders (European Commissioner for Justice), Mrs Adina Vălean (European Commissioner for Transport) and M. Thierry Breton (European Commissioner for Internal Market) (dated on 02/04/2020) on European Consumer and passenger rights in the COVID-19 crisis.
  - [Letter addressed](#) to M. Didier Reynders (European Commissioner for Justice) on the impact of the implications of the COVID-19 for consumers and BEUC recommendations for policy responses (dated on 03/04/2021)
  - [Letter addressed](#) to Mrs Margrethe Vestager, Executive Vice-President for a Europe fit for the Digital age, and Commissioner for Competition on the consumer's perspective on State aids and COVID-19, (dated on 08/04/2021).
  - [Letter addressed](#) to Mrs Ursula von der Leyen, President of the European Commission calling for European passenger to be upheld in the COVID-19 crisis, (dated on 20/04/2020).
- *Relevant publications for the Commission Survey on Contingency plans (in chronological order):*
  - BEUC's [Position Paper](#) on Travellers Rights during the COVID-19 crisis (published on 27/04/2020).
  - BEUC [Contribution](#) to the aviation roundtable : A coordinated Strategy for the exit and recovery of the Aviation Industry from the COVID-19 crisis (published on 28/08/2020).

- Letter addressed to the CPC-Network and to Mrs Benassi, head of the Enforcement Unit of DG Justice, about the Launch of a CPC external alert against Aegean, Air France, EasyJet, KLM, Norwegian, Ryanair, TAP Portugal, Transavia, for widespread infringements of Unfair Commercial Practices Directive and of Regulation 261/2004 on Air Passenger Rights in the COVID-19 context (dated on 22/07/2020 – see attachment of the email).
- Letter addressed to Mrs Benassi, head of the Enforcement Unit of DG Justice about the state of play of BEUC and its members external alert about airlines widespread practices in breach of travellers and consumer legislation (dated on 22/01/2021 – see attachment of the email).
- BEUC's [report](#) on the Evaluation of the Member States implementation of the EU Recommendation on 'vouchers' (published on 10/12/2020)

## 1. Feedback from our members at national level - examples of difficulties encountered by European consumers.

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BEUC consulted its members on difficulties encountered by consumers when travelling over the summer. The list below is not exhaustive and provides examples and cases faced by travellers during the last months:

- Our members reported that consumers have had, and still have, some difficulties in understanding where travel is allowed and under what conditions.
- Ryanair "denied boarding" practices<sup>1</sup>. Passengers have asked Ryanair for a refund for flights maintained by the airline despite travel warnings and lockdowns. When the airline refused, they activated the chargeback procedure with their bank. Then - for next flights (at a later date) - Ryanair denied boarding to passengers who had requested their refund, until they had reimbursed the airline. According to us, under the Regulation 261/2004 on Air Passenger Rights, we are in the case of an unjustified denied boarding, giving right to refund and compensation.
- A large part of the problems encountered by consumers during the crisis relates to the enforcement of travellers' rights, notably the pace/timing at which consumer travel issues have been dealt with by airlines/tour operators/actors on the travel chain (including online intermediaries). It can take a long time to get a response and even longer to get a refund. If we are talking about being prepared for any future crisis, it is essential that a focus on enforcement is quickly made by the European Commission and the national competent authorities in such situations. As stated in the New Consumer Agenda, *"EU consumers rightly expect transport undertakings and tour operators to respect their right to a full refund of pre-payments"*<sup>2</sup>. It is therefore welcome that the same consumer agenda indicates that an enforcement focus will be made on addressing the impact of COVID-19 on consumer rights, notably travel related issues.
- Our members have also indicated that the greatest difficulties for consumers are related to the fact that Member States may impose certain restrictions on

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<sup>1</sup> [https://www.moneysavingexpert.com/news/2021/10/repay-amounts-won-by-chargeback-or-you-can-t-board-your-upcoming/?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=news&utm\\_source=TWORG-NEWS&utm\\_content=1634027057](https://www.moneysavingexpert.com/news/2021/10/repay-amounts-won-by-chargeback-or-you-can-t-board-your-upcoming/?utm_source=twitter&utm_medium=social&utm_campaign=news&utm_source=TWORG-NEWS&utm_content=1634027057)

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0696>

entry to their territories which vary greatly. This leads to difficulties and the need to constantly check information at destination. Our Portuguese member, *DECO*, informed us that only in Portugal there are different rules depending on whether consumers go to the mainland or to the Portuguese islands. In addition, it is now required to fill in the Passenger Location Form (PLF), and it can be very complex and time consuming to search for information to fill the form. On the other hand, our member analysed the practices of airlines and indicated that, for example, they found that the requirements for the passenger location form also differ from one country to another e.g., to go to Belgium the form has to be filled in 48 hours before the departure, whereas for Portugal or Germany it is sufficient to fill it in before the flight. Our member also indicated that a single trip may require the completion of several travel forms in case of a stopover or even in case of the need to remain isolated. Our member also checked and found that in order to travel to Madeira Island, passengers have to register/create an account, which is not only excessive but also raises other concerns. Such findings spotlight that in the event of future crises, uniform rules and procedures should be defined and harmonised between all Member States.

- With regard to the passenger locator form, our members informed us that several consumers were only informed at the airport, at the time of checking-in or boarding of the need to fill in the form. No prior information was provided by the airlines or the tour operator to consumers.
- Our members also received complaints about problems with the vaccination certificates, notably cases of consumers who had only jab dose and where the certificate was not valid for travel.
- Our members have reported that they have received several complaints from consumers for cases of denied boarding due to the absence of the Passenger Locator Form. Some passengers claimed they had completed the form and were nevertheless denied boarding.
- Our Italian member *Adiconsum* has informed us of several cases of consumers who, on returning to Italy, were denied boarding because they were not vaccinated and did not have a negative Covid test certificate, even though the rules applicable in Italy provide for the possibility to be tested only when consumers arrive at the airport.
- Our members also report that some consumers travel without a smartphone and that they are more likely to be those who do not have a computer as well, i.e., they do not have the ability to print. It is not easy to determine how to facilitate travel for these people. More attention should be paid to people in these situations to ensure that they are not prevented from travelling.
- In July 2021, in Portugal, a handling services strike severely affected flight operations, with around 600 flights cancelled in a single weekend. This had a significant impact on passengers. Currently, in Portugal travellers are required to present a negative Covid-19 test within the previous 48 or 72 hours or should hold an EU digital COVID certificate in order to board the aircraft. However, with the cancellations, many passengers awaiting re-routing had to undergo new tests which, given the delay between cancellation and re-routing, were no longer valid for the journey. As a result, consumers, in addition to the normal losses in these situations (delay to reach the final destination, cancellation of flights without compensation under the Regulation 261/2004), had in many cases to bear the cost of carrying out new tests. This is in addition to the difficulties resulting from the disparity of rules in the countries of destination and the constraints of carrying out mass tests, due to cancellations within a short period of time, often incompatible with the delivery of the test results.

Another related problem has been the loss of flights by passengers who missed the re-routing flight because they did not have the result of the second test in time to board. A clarification should be made by the European Commission to avoid such situation. For example, it could be established that in the event of a situation such as a staff strike which impacts on the operation of an airport or airline, resulting in delayed passenger departures, emergency testing facilities should be deployed at the impacted airports, free of charge for consumers so that they can board their planes.

- Our members have informed us of several difficulties encountered by passengers travelling from France to Malta. For example, a French couple booked a package tour to Malta during the summer. Knowing that Malta only accepts tourists who are already vaccinated, the two French tourists both had the French/European "pass sanitaire". However, what they did not know is that Malta has a different vaccination strategy than France (which only gives one dose to citizens who have already had Covid in the recent months) and did not accept the French certificate of one of the travellers because she only received one dose. As a result, the traveller was not allowed to enter in Malta, was not allowed to take a Covid test at the airport to enter the country and was forced to buy a new ticket back to France the same day. This lack of coordination, mutual recognition of travel passes and vaccination strategies strongly affect European passengers in practice and should be taken into account when drawing up the upcoming emergency plans.

## 2. The Commission Recommendation on vouchers.

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In the mid of the crisis, the Commission adopted the EU Recommendation on vouchers<sup>3</sup>. BEUC welcomed the Commission's Recommendation since it fully took into account BEUC's input, not only on the basic question of whether EU law could be undermined by national measures, but also on the main criteria for issuing of voluntary vouchers etc.

Overall, BEUC supported the European Commission's position during the pandemic encouraging Member States to work on national solutions to support the travel and tourism industry, while respecting the rights of European consumers<sup>4</sup>. BEUC welcomed the Commission's calls on EU member states to comply with EU legislation. We also supported the Commission's call on Member States to quickly establish national schemes to ensure that all COVID-19 vouchers were insolvency protected and to propose criteria to make voluntary vouchers attractive for travellers. However, as BEUC pointed out in its report on the implementation of the recommendation published in December 2020, there are still numerous legal uncertainties for consumers. For instance, the statute of the previously imposed vouchers on consumers during the period of validity of (later on identified as unlawful) national emergency measures in contradiction with EU Law was not clarified for consumers (except in Germany). Are consumers entitled to receive an immediate refund? Furthermore, BEUC suggested on several occasions to the European Commission to publish an *ad-hoc* report on the implementation of the Recommendation but unfortunately this has not been materialised.

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<sup>3</sup> [https://ec.europa.eu/info/sites/default/files/recommendation\\_vouchers\\_en.pdf](https://ec.europa.eu/info/sites/default/files/recommendation_vouchers_en.pdf)

<sup>4</sup> [https://www.beuc.eu/publications/beuc-x-2020-030\\_position\\_on\\_travelers\\_rights\\_in\\_the\\_covid-19\\_context.pdf](https://www.beuc.eu/publications/beuc-x-2020-030_position_on_travelers_rights_in_the_covid-19_context.pdf)

### **3. The guidelines on the Package Travel Directive and the Passenger Rights Regulations.**

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BEUC welcomed the publication by the European Commission, in the first weeks of the pandemic of updated guidelines on the Package Travel Directive and passengers' rights. These guidelines recalled the rights of passengers in terms of information and refunds. Again, it was made clear that passengers should have the choice to be reimbursed in cash or in voucher.

### **4. CPC-Coordinated action against widespread breaches of EU Legislation by airlines.**

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During the COVID-19 crisis, in front of the widespread breaches of the Air Passenger Rights Regulation and the numerous unfair commercial practices conducted against consumers during the crisis, BEUC and 11 of its members launched an external alert against 8 airlines for imposing vouchers, misleading and/or partially informing consumers about their rights, and for massive delays in reimbursement in July 2020.

Following this external alert, in February 2021, the CPC network led by six coordinating authorities and assisted by the European Commission, submitted a coordinated survey to the 16 airlines which appeared generating most complaints from consumers across the Union (notably because of the size of their operations). In the following months, the replies from the airlines were evaluated and discussed within the CPC Network. Following the coordinated survey, the Commission and CPC-Network have called on last June, airlines to improve how they deal with cancellations in the context of the COVID-19 pandemic. Airlines were urged to improve their practices related to consumer assistance and complaints, with a list of measures drafted by the Commission and the CPC network. Following the "formal dialogue" phase between the Commission, the CPC-Network, and the respective 16 airlines, the Commission and the CPC network published on 30 September the final results of their investigations and provided for an overview of airlines commitments. Most airlines committed to better inform passengers about their rights and to improve their reimbursement policies / complaint handling procedures (ex: clear the remaining backlogs, refund imposed vouchers etc.).

While BEUC is satisfied that a coordinated action has been launched and that commitments have been taken by airlines following its complaint:

- There is no mention in the publication by the Commission of possible sanctions in case of non-respect of the agreed commitments.
- Some consumers are still waiting for their cash reimbursement when drafting this contribution.
- Some airlines (Wizzair and Iberia) still refuse to comply with EU law and to reimburse vouchers that - according to the CPC-Network<sup>5</sup> - have been imposed on consumers. The Commission and the CPC-Network must therefore continue their enforcement action against the non-compliant airlines and must ensure that all consumers that were forced to accept vouchers are now reimbursed. If necessary, they should take the appropriate enforcement measures.

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<sup>5</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en)

- The European Commission and the CPC-Network must ensure that airlines swiftly implement the agreed commitments to make sure that all passenger rights are correctly implemented, respected, and enforced. In case of failure, enforcement measures should be taken against the airlines concerned.

## **5. Infringement procedures against the EU Member States introducing national legislations contrary to EU law.**

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During the pandemic, many member states have introduced national measures in contradiction with the EU law. Between July and October 2020, the European Commission launched infringement procedures against 11 Member States concerned. The infringement procedures were welcomed by BEUC, as these unlawful national temporary legislations impacted and continue to impact many consumers throughout the EU.

However, despite the withdrawal of the national unlawful measures following the infringement procedures launched by the Commission, or the expiration of the various illegal national emergency measures, numerous uncertainties remain for consumers (the status of vouchers previously imposed on consumers during the application period of the national emergency etc.). As a result, an important number of consumers are still waiting for their cash refund and will have to wait until the end of validity of their imposed vouchers (sometimes until early 2022). See BEUC's [report](#) on the Evaluation of the Member States implementation of the EU Recommendation on 'vouchers'.

Despite several announcements by the Commission that letters<sup>6 7</sup> have been addressed to the Member States to clarify how they planned to solve the problem of imposed vouchers, none of the answers of the Member States were published, or made public, making de facto, the verification of the implementation of the measures impossible for consumer organisations and maintaining the vagueness/unclear situation for consumers.

## **6. The aviation roundtable for a coordinated strategy for the exit and recovery of the aviation industry from the COVID-19 crisis.**

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BEUC welcomed 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 launched by the European Commission in May 2020, and to provide consumers perspective to the debate. For detailed inputs, see BEUC's [Contribution](#) to the aviation roundtable.

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<sup>6</sup> <https://ec.europa.eu/newsroom/just/items/674033>

<sup>7</sup> [Report](#) from the European Commission to the European Parliament and the Council on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements - COM/2021/90 final – Point 5.1.1.

## 7. The publication of the Sustainable and Smart Mobility Strategy and the New Consumer Agenda

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Following the crisis, the Commission published its "Sustainable and Smart Mobility Strategy" (December 2020) and its new consumer agenda (November 2020). These publications were welcomed by BEUC. Indeed, the Commission has clearly put on its agenda many of BEUC's demands to ensure a high level of consumer protection and which, if implemented, will help regain travellers' confidence after the crisis, such as:

- Recognition that travellers' rights enforcement is lacking and must be a priority<sup>8 9</sup>
- The necessity to look at the possible introduction of a mandatory insolvency protection mechanism scheme in the airline sector<sup>10</sup>
- The necessity to introduce clear rules concerning online intermediaries<sup>11</sup> etc.

END

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<sup>8</sup> Point 3.3 of the New Consumer Agenda.

<sup>9</sup> Points 91 & 92 of the Sustainable and Smart Mobility Strategy.

<sup>10</sup> Point 91 of the Sustainable and Smart Mobility Strategy.

<sup>11</sup> Point 59 of the Sustainable and Smart Mobility Strategy.





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