

Ms Adina-Ioana Vălean
European Commissioner for Transport
European Commission
Rue de la Loi 200

The Consumer Voice in Europe

B - 1049 Brussels

Ref.: BEUC-X-2020-015/MGO/UPA/rs

30 March 2020

Re: Enforcement of air passenger rights in the COVID-19 context - BEUC comments, concerns and recommendations.

Dear Commissioner Vălean,

I am writing to you on behalf of BEUC, the European Consumer Organisation, to share with you the main concerns from the consumer/passenger perspective on the consequences of the unprecedented health crisis linked to COVID-19.

Many sectors of the economy are negatively impacted by this crisis, especially the tourism sector. We understand that faced with this situation, several Member States consider taking temporary measures to support companies, particularly airlines, to avoid the most serious consequences on the sector. Whilst we fully acknowledge the need to support the resilience of the travel sector and to recover as soon as possible, we must underline that many consumers are also severely hit economically by the COVID-19 crisis. Many are losing their regular income, coming under pressure to pay credit instalments they can no longer afford, or are worrying about how to cope with paying their rent and energy bills.

Any consumer- or passenger-relevant emergency measures should be taken only when the consequences on consumers have been assessed and consumer representatives have been heard. Such measures should of course respect European law and passenger rights, as protected under **EU passenger rights regulations**.

European consumer/passenger rights to be upheld:

European regulations on passenger rights are clear. If an airline cancels a flight, the **passenger can ask for a full refund of the services not provided**. This reimbursement can be done in a monetary way or via vouchers with the passenger's agreement.

.../...

BEUC highlights that according to the Air Passenger Rights Regulations¹, **consumers have the choice between a refund and a voucher.**

This choice is all the more important as many consumers, following the COVID-19 crisis are also experiencing liquidity problems and may need the reimbursement. Postponing refunds or forcing consumers to accept vouchers and wait several months for their money as already proposed in different Member States is not only disproportionate but also puts consumers at risk of any insolvency faced by the company in the aftermath of the crisis.

Current national and EU measures to support industry used for airlines facing consumer claims for ticket reimbursement should be provided also for the precise purpose that airlines can fulfil their obligations under EU law.

Regulation 261/2004 is designed to ensure a high level of passenger protection. In times of crisis, these passenger protections should not be suspended and bypassed.

Financial support measures should be used to alleviate the COVID-19 crisis for industry but at the same time with a view to passenger protection. It is not fair to construct emergency measures that financially help the industry but on the other hand pre-empt consumers of their right to get their money back.

We consider that offering vouchers to passengers can be a good option, as long as these vouchers are insolvency-protected, and it remains a **voluntary choice** for the consumer whether to accept it or not.

1. Vouchers offered to European passengers must be guaranteed against insolvency

Several airlines are pushing consumers to accept vouchers. Some even seem to make vouchers compulsory for consumers for a certain period or omit informing passengers about their choice between reimbursement and vouchers.

Unlike package travel where organisers have an obligation to adhere to an insolvency protection mechanism, **airlines have no similar obligation under Regulation 261/2004.**

Without insolvency protection, pushing or even obliging passengers to accept vouchers is not a solution as it may be particularly risky for passengers, in the event of subsequent insolvency due to the COVID-19 crisis.

We therefore urge you and the European Commission, together with Member States, to find solutions to guarantee the vouchers offered by airlines. If this can be achieved, many consumers will accept vouchers for a certain period; such vouchers should however give the right to reimbursement if they cannot be used after a certain period. The acceptance of a voucher must however remain a voluntary choice of the consumer.

.../...

¹ 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 (Text with EEA relevance).

2. Proliferation of potentially unfair practices, unclear rights and the need for complementary guidelines on passenger rights regulations are necessary

BEUC welcomed the new Interpretative Guidelines on EU passenger rights regulations in the COVID-19 situation published by the European Commission on 18 March 2020. However, to date, several of our members have shared with us several practices by airlines that are contrary to Regulation 261/2004 .

Where appropriate, we will also provide DG Justice and the members of the CPC (consumer protection co-operation) Network with this information.

Below you will find **a non-exhaustive list** of the main problems encountered by European consumers when they want to use their rights:

- As mentioned above, some airlines do not offer refunds to consumers but only vouchers or flight postponements, despite that fact that the flights are cancelled **by the airlines**.

Not giving consumers a choice is in breach of Articles 5(1)(a) and 8(1)(a) of Regulation 261/2004.

- Many airlines offer the postponement, free of charge, of flights not cancelled during the COVID-19 crisis, but this deferral sometimes has to take place within a very/too-short time frame (sometimes before December 2020). For many consumers, such short deadlines are unrealistic. Moreover, given the current uncertainties, it is perhaps desirable from an overall health perspective, not to push people to travel during summer 2020.

The Commission should clarify in further guidance that in case of postponement, the proposed period of validity should be at least two years from the normalisation of the situation.

- Many airlines cancel flights at the very last minute in order to push passengers to ask for postponements. In these situations, passengers must pay the difference in fares for the new flight, which is usually more expensive. Conversely, flights that are rescheduled at a later date may be cheaper than the original flights. In the latter case, there is often no provision for airlines to give passengers a refund for the price difference.

The Commission should clarify that in case of a later reservation, the rebooking should not imply any additional costs for the consumer (price increase, additional costs for rebooking, ticket reissuing etc.). If the new booking is at a lower price than the initial one, the consumer should be entitled to a refund of the difference.

- Many airlines ask travellers to contact them before the original flight departure date and to immediately arrange the new flight date. However, for many consumers it is impossible. This is particularly the case when the flight was related to a specific event.

The Commission should clarify in further guidance that passengers should be given a reasonable period of time to choose a new date for travelling (i.e. not less than one year). Faced with this exceptional situation, passengers should also be able to transfer their tickets to another person free of charge.

- Despite clarification in the last updated guidelines², some airlines continue to cancel the return leg of the flight, without cancelling the outbound flight without giving additional information to passengers. Facing this situation, many passengers prefer to cancel their flights and are exposed to sometimes complex and unclear national provisions on *force majeure* and the airlines' goodwill (terms and conditions, "commercial gesture" etc.)

The Commission should re-iterate that **when one of the legs of a flight reservation is cancelled by an airline, the other legs of that reservation should also be considered as cancelled.** Consequently, deferral and reimbursement should be possible for passengers.

- **Several BEUC members informed us about problems of access, transparency and clarity of information on airline websites.** Many passengers have said that they do not understand what they are entitled to (or not) and what steps they need to do to enforce their rights. For example, many airline websites have a section related to the COVID-19 situation but not all the information is available (i.e. complaint forms 'hidden' on the site, phone numbers unavailable or very difficult to reach etc.)

The Commission **should 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.).

A certain homogeneity should be ensured in the information given to consumers all over Europe by all companies.

We urge the Commission to take into consideration the above-mentioned recommendations from BEUC and its members in order to ensure that European consumers, who are also strongly impacted by the situation, can benefit from a high level of protection. BEUC calls on the Commission to co-ordinate with national authorities to closely monitor these airline practices.

It is precisely in these emergency situations that European passengers must be able to rely on strong rights.

We remain at your disposal if you have any questions or wish to receive further information.

Yours sincerely,

Monique Goyens
Director General

C/c: Mr Walter Goetz, Head of cabinet; Mr Pablo Fabregas Martinez, Member of cabinet; Ms Gaëlle Michelier, Member of cabinet; Ms Elisabeth Kotthaus, Head of Unit.

² Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, C(2020) 1830 final.