

The Consumer Voice in Europe

COVID-19 AND EU TRAVELLERS' RIGHTS

Evaluation of the Member States Implementation of the EU
Commission Recommendation on 'vouchers'



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Why it matters for consumers?

Since early March 2020, package holidays and stand-alone transport services have been cancelled due to the pandemic. However, despite EU travel laws giving travellers the right to a monetary refund, numerous Member States have implemented national emergency measures in direct contradiction to this right by forcing vouchers onto consumers and/or by lengthening the statutory deadlines for refund. In May, the European Commission published a Recommendation on vouchers, aiming at making the offer of voluntary vouchers attractive for consumers without depriving them of the right to a refund. The recommendation was strongly welcomed by BEUC and our members, but its benefit for consumers remain limited because Member States have not implemented it sufficiently. To regain the confidence of consumers in the transport and tourism industry, it is essential that EU law is both observed and enforced.

Summary

Travellers enjoy strong EU protection including their rights to a monetary reimbursement and to information in case of travel disruption and cancellation of the stand-alone journey or of their package holidays by the trader.

The COVID-19 crisis, which has impacted both consumers and the travel industry, has led to widespread breaches of consumer rights conducted by the industry. Many Member States also introduced national emergency measures in direct contradiction with EU law allowing airlines and/or tour operators to impose vouchers on consumers or postponing the legal time frame to refund consumers in cash.

These repeated breaches led the European Commission to publish an EU Recommendation on vouchers¹ last May and to launch infringement proceedings against 11 Member States which amended or suspended travellers' rights. It also led BEUC and 11 of its members to launch an external alert of an EU-Wide dimension to the Consumer Protection Authorities Network² last July³.

However, although this Recommendation and these proceedings have been welcomed by BEUC, their concrete effects are limited. Seven months after its publication, our members reported that the implementation of the Recommendation is very poor. Similarly, despite infringement proceedings launched against them, the majority of Member States continued to apply their unlawful legislation until the end of their validity period. This situation impacted thousands of consumers, leading to much frustration among travellers. Worse, some Member States such as Bulgaria, Croatia, Cyprus, Lithuania and Slovakia still have in force national emergency measures harming EU travellers⁴.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020H0648>

² Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

³ <https://www.beuc.eu/publications/beuc-reports-major-airlines-breaching-passenger-rights-and-calls-industry-investigation/html>

⁴ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687

BEUC members also reported that major legal uncertainties are still detrimental for consumers, notably regarding the statute of the previously imposed vouchers. Are consumers who have had vouchers imposed during the period of validity of (later on identified as unlawful) national emergency measures in contradiction with EU laws entitled to receive an immediate monetary refund for vouchers imposed on them under these emergency laws?

Furthermore, to our knowledge, no Member State has created a national protection scheme to protect all “COVID-19 travel vouchers” against insolvency at national level (both cancelled package and stand-alone transport services) as Recommended by the European Commission in its Recommendation. Such protection measures are a *sine qua non* condition for our members to promote voluntary vouchers to consumers.

Finally, our members reported that despite clear encouragements from the European Commission to Member States to cooperate with consumer organisations in the implementation of the Recommendation, at the time of writing this report only very few BEUC members have been contacted by their national governments or competent authorities.

This report is a state of play, in each Member State, of the implementation of the EU Recommendation on vouchers and of the impact of infringements procedures on the Member States concerned. It provides a snapshot of the situation following in December 2020, following reports by our members organisations, based on their and our best knowledge. The report is however not exhaustive when it comes to all 27 countries and potential measures taken.

Finally, this report provides recommendations to ensure the effective implementation of the Recommendation, to regain passenger confidence in the travel industry post-COVID 19 and to avoid a second “*voucher saga*” in case of new travel restrictions.

1. Introduction

EU travellers’ legislations sets out the rules for refunds to consumers in the event of cancellation.

All EU Passenger Rights Regulations provide that in the event of cancellation by the carrier – for whatever reason - passengers must have the choice, between the reimbursement of their tickets and re-routing. All Regulations also stipulate that the reimbursement can be made monetary, within a mandatory timeframe, or in the form of a voucher but only if the passenger agrees⁵.

The EU Package Travel Directive⁶ provides that, if a package holiday contract is cancelled due to ‘unavoidable and extraordinary circumstances’, by the traveller or the organiser, holiday makers have the right to get a full monetary reimbursement of any payments made for the package within 14 days maximum after termination of the contract. The organiser may offer the traveller reimbursement in the form of a voucher, but this possibility does not deprive the travellers of their right to a monetary reimbursement.

⁵ Article 7(3) of Regulation 261/2004; Article 16(1)(a) of Regulation 1371/2007; Article 18(1)(b) of Regulation 1177/2010; Article 19(1)(b) of Regulation 181/2011.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>

In the aftermath of the COVID-19 crisis, numerous Member States had temporarily amended their national legislation transposing the PTD to make vouchers mandatory for consumers or to postpone their right to a monetary refund. Furthermore, a broad coalition of Member States⁷ also called for a temporary amendment of the Air Passenger Rights Regulation (261/2004) to suspend passengers' right to a monetary reimbursement.

Several Member States have also introduced national emergency measures due to the pandemic that were incompatible with EU law. As a result, the European Commission launched several infringement proceedings in July 2020⁸ and October 2020⁹.

In addition to the publication of clear guidance on the implementation of the passenger rights regulations¹⁰ and the PTD¹¹ in early March 2020, the European Commission published a Recommendation¹² on vouchers on 13 May 2020 (hereafter "*the Recommendation*").

The Recommendation, amongst other elements, clearly recalled that travellers' rights to monetary reimbursement shall be maintained and that all "COVID-19" vouchers relating to travel should be protected against insolvency. The Recommendation also provides for minimum criteria to make voluntary vouchers attractive to consumers, including minimum 12 months duration, vouchers should be reimbursed to consumers after the end of their validity period, they should be transferable and usable on all airlines/companies from a same group etc. Finally, the recommendation encourages Member States to closely cooperate with all stakeholders, including consumer associations, and to use the different existing support mechanisms (i.e., "Temporary Framework for State aid") to set up or reinforce national insolvency protection funds, and to allow the industry to keep their liquidity while respecting their obligations toward consumers.

Seven months after the publication of the EU Recommendation on vouchers and, four months after the launch of infringement proceedings against 10¹³ Member States, this report provides an overview on whether Member States, airlines and tour organisers have correctly implemented the (non-binding) Recommendation of the European Commission.

2. Implementation of the Recommendation by Member States which adopted emergency measures in breach of EU travellers' legislation.

The below section is intended to provide an overview of the implementation of the Recommendation by Member States that had already introduced national emergency measures contrary to EU travellers' legislation. Where relevant, we also assess the impact of the infringement procedure on the concerned Member States.

This reporting is based on input from BEUC members and the national state of play is valid as of 1 December 2020.

⁷ <https://www.euronews.com/2020/04/29/a-dozen-eu-states-will-today-call-on-brussels-to-suspend-law-granting-refunds-for-cancelle>

⁸ https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212

⁹ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687

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

¹¹ https://ec.europa.eu/info/sites/info/files/coronavirus_info_ptd_19.3.2020.pdf

¹² https://ec.europa.eu/info/sites/info/files/recommendation_vouchers_fr.pdf

¹³ On 02 July 2020 infringement procedures have been launched against Czechia, Cyprus, Greece, France, Italy, Croatia, Lithuania, Poland, Portugal, and Slovakia. The infringement procedure against [Bulgaria](#) has been launched on last 30 October 2020.

2.1. Belgium

In Belgium, the national emergency measure suspending holiday makers rights to monetary reimbursement was introduced on 19 March 2020. It stated that in the case of cancellation of a travel package, tour organisers were able to impose vouchers on consumers.

The Belgian 'Arrêté Ministériel',¹⁴ introduced a minimum validity period of one year for the imposed vouchers. According to the national emergency measures, the imposed vouchers were insolvency protected.

If consumers have not used their vouchers by the end of their validity period, they can exercise their right to a monetary reimbursement. However, following the end of the validity period, tour operators and organisers were granted an additional six months period to proceed with the monetary reimbursement.

The national measure expired on 19 June 2020, as defined in the text. Consumers whose package holidays have been/are cancelled from this date can now ask for a monetary reimbursement within the 14-day periods after the termination of the contract as provided by the Package Travel Directive in its article 12(4).

However, according to our member Test-Achats/Test-Aankoop, various questions raised by the Belgian national emergency measures remain unresolved:

- *First*, the status of the previously imposed vouchers remains the same. This means that consumers are not entitled to refunds before the end of the period of validity of the vouchers.
- *Second*, Test-Achats/Test-Aankoop informed us that while some tour operators and airlines are now starting progressively to reimburse consumers, this is not the case for all of them. In addition, our member is still receiving new complaints, but to a lesser extent.
- Furthermore, despite a clear recommendation to involve consumer organisations in the implementation of the Recommendation (point 22), our Belgian member has not been consulted despite several requests.

2.2. Bulgaria

In Bulgaria, the national emergency measure was introduced in August 2020, **after** the publication of the Recommendation on vouchers. According to our member Асоциация Активни потребители (The Bulgarian National Consumer Association), this measure will remain in force until 31 December 2021, for trips cancelled before 31 December 2020.

The Bulgarian national emergency measures did not contain any provision imposing vouchers towards consumers. However, in case of refusal of the proposed voucher (and if alternative solutions proposed by the trader such as postponement of the package holiday or replacement are not accepted by the traveller), the organiser must refund consumers within 12 months from the ending date of the state of emergency in Bulgaria.

¹⁴ <http://www.ejustice.just.fgov.be/eli/arrete/2020/03/19/2020040676/moniteur>

Since the publication of the Recommendation, according to our Bulgarian member:

- The national emergency measures contrary to the EU Package Travel Directive and its Bulgarian Transposition legislation were introduced and are still in force despite the ongoing infringement procedure launched by the European Commission against Bulgaria on 30 October 2020¹⁵.
- Despite the Recommendation, no insolvency coverage fund has been set up, although it is being discussed.
- Despite a clear recommendation to involve consumer organisations in the implementation of the Recommendation (point 22), our Bulgarian member has not been consulted.

2.3. Croatia

According to the Croatian emergency measure, consumers had the possibility to terminate their package travel contracts which were supposed to be executed after 1 March 2020.

Consumers can terminate the package travel contracts within the deadline of 180 days from the day the extraordinary circumstances ceased to exist, and a tour operator provided consumers with a voucher. However, if the consumer preferred to receive a monetary refund instead of a voucher, tour operators are granted with a grace period: they should only reimburse consumers within 14 days upon the expiration of 180 days from the day extraordinary circumstances ceased to exist.

According to our Croatian Member Unija potrosaca Hrvatske (The Croatian Alliance of Consumers – CAC):

- The Recommendation has not been implemented by the Croatian government and the national emergency legislation is still in place despite the ongoing infringement procedure launched on 2 July 2020¹⁶.
- The Croatian Government did not provide any clarification on the duration of the national emergency measure nor involved our member.
- As there is no official ending date on the infringing national emergency measure, our member expects the latter to end only at the end of the pandemic.
- CAC is still receiving complaints from consumers.

2.4. Cyprus

According to Cypriot member Kypriakos Sundesmos Katanaloton (CCA - the Cyprus Consumers' Association) a national emergency measure (Law 59(I)/2020)¹⁷ in direct contradiction with the EU law has been adopted in May 2020. The temporary measures states that if an organiser or a consumer cancels a package holiday due to the COVID-19 pandemic, the organiser has the right to provide vouchers to consumers instead of a monetary refund.

Consumers could use the imposed vouchers until 31 December 2021. According to the derogatory text, imposed vouchers for cancelled package holidays are covered against insolvency by the Cypriot Government.

¹⁵ Last update on October 30th, 2020. The European Commission sent a [letter of formal notice](#) to Bulgaria.

¹⁶ Last update on October 30th, The European Commission sent a [reasoned opinion](#) to Croatia.

¹⁷ http://www.cylaw.org/nomoi/enop/non-ind/2020_1_59/full.html

If at the end of the validity period consumers have not used the voucher, they can ask for a monetary reimbursement. However, organisers then have until 31 January 2022 to proceed with the refund.

According to our member:

- The Recommendation has not been implemented by the Cypriot Government and the emergency legislation is still in force, despite the closure of the infringement proceedings against Cyprus by the European Commission on last 30 October 2020¹⁸. This decision to stop the infringement procedure because there was no evidence that the Cypriot emergency legislation was not in conformity with the EU Package Travel Directive is contested by our Cypriot member. This is because consumers are required to accept vouchers, despite the actions by the Cyprus Consumer Protection Authority against tour operators that did not reimburse the full amount to consumers due to the application of fees or, that have only made a partial reimbursement to consumers.
- CCA is still receiving numerous complaints from consumers.

2.5. Czech Republic

The Czech national emergency measures (act no. 185/2020 Sb) stated that if a package travel contract that should be executed in the period from 20 February to 31 August 2020, it is covered by a so called 'protection period'.

This period means that in case of termination of the contract (by the consumer or by the travel agency) due to the pandemic, in this given period of time, travel agencies and tour organisers may choose to issue a voucher instead of a monetary refund.

Therefore, the choice was let to the traders and not to consumers. This means that in practice, vouchers were imposed on consumers.

According to our Czech Member dTest, since its publication:

- The Recommendation has not been implemented by the Czech Government and the national emergency legislation remained in force until the end of its validity, and this despite the European Commission launching an infringement procedure against the Czech Republic¹⁹.
- Our Czech member is still receiving complaints related to the national emergency measure, though at a reduced rate.
- Despite a clear recommendation to involve consumer organisations in the implementation of the Recommendation (point 22), our Czech member has not been consulted.

¹⁸ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687

¹⁹ The infringement procedure against Czech Republic [has been closed](#) by the European Commission on October 30th, 2020 because the national emergency measure has expired.

2.6. France

Under the French derogatory '*Ordonnance du 25 mars*²⁰, in case of cancellation of a package travel, which should have taken place between 1 March 2020 and 15 September 2020, a mandatory voucher with a validity period of 18 months from the date of issue was imposed on consumers by travel organisers.

If the voucher is not used or partially used by consumers, they will be able to ask for the whole monetary reimbursement or the remaining price difference for the unused part at the end of the validity period.

According to our French Member UFC Que Choisir:

- The Recommendation has not been implemented by the French Government and the emergency legislation remained in force until 15 September 2020, and this was despite the European Commission launching an infringement procedure against France.²¹
- At the time of writing this report, according to the French 'Secrétaire d'Etat au tourisme,' €750m worth of vouchers have been imposed on French consumers for cancelled package holidays²². These consumers will remain deprived for many months of their monetary reimbursements.
- Our French member has filed a complaint with the French Council of State to question the aforementioned '*ordonnance*' authorising professionals in the package holiday sector to impose 18-month vouchers on consumers. The '*Conseil d'Etat*' decided that this was not an emergency procedure, the '*ordonnance*' had therefore not been suspended until the end of its validity. The proceedings on the merits of the case are still ongoing.
- In France, many airlines also imposed vouchers on consumers, in direct contradiction with the Air Passenger Rights Regulation 261/2004 and the Recommendation on voucher. UFC Que Choisir alerted its national competent ministries and National Enforcement Body. Unfortunately, no enforcement measures had been taken by the authorities. UFC Que Choisir has therefore started a legal action before the Paris Court against 20 airlines that were denying or obstructing the right to reimbursement of air passengers for cancelled flights²³.

2.7. Greece

In Greece, the Emergency Act (n°84/13-04-2020) made vouchers mandatory for cancelled flights, journeys by ships and package holidays.

Imposed vouchers are valid for 18-months. If the vouchers are not used within 18 months by consumers, traders will be required to refund the initial amount of the bookings in cash.

²⁰ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041755833?r=SNjnUCocta>

²¹ The infringement procedure against France [has been closed](#) by the European Commission on October 30th, 2020 because the national emergency measure has expired.

²² <https://www.vie-publique.fr/discours/276189-entretien-jean-baptiste-lemoyne-01092020-tourisme>

²³ <https://www.quechoisir.org/action-ufc-que-choisir-coronavirus-vols-annules-l-ufc-que-choisir-assigne-20-compagnies-aeriennes-n79519/>

Since 13 May 2020 and its publication, according to our Greek Members EKPIZO and KEPKA:

- The Recommendation has not been implemented by the Greek Government, except that since the 1 September 2020 and the entry into force of the law 4722/2020, imposed vouchers can be transmitted to another traveller, and it has been clarified that “Package Travel vouchers” only are covered against insolvency.
- With these adaptations the above-mentioned, the Greek national emergency measures remained in force until its end of validity²⁴ and this despite the European Commission launching an infringement procedure against Greece²⁵.
- Now from 1 September 2020, travellers are authorised to ask for a monetary refund for travel booked and cancelled after this date.
- However, the statute of the previously imposed vouchers (from 25 February to 31 August 2020) remains the same. Namely, that consumers are not entitled to refunds before the end of the period of validity of the vouchers.

2.8. Lithuania

The Lithuanian national emergency measures did not contain any provisions imposing vouchers on consumers. However, the Lithuanian Civil Code was amended to significantly increase the legal timeframe in which the consumer is entitled to a monetary refund following the cancellation of package holidays because of the COVID-19 pandemic. The timeframe was increased from 14 days as defined in the EU Package Travel Directive to 90 days. Such an amendment is in direct contradiction with EU Law.

According to our Lithuania member Lietuvos vartotojų organizacijų aljansas (LVOA):

- The Lithuanian national emergency legislation is still in force, despite the ongoing infringement procedure against Lithuania launched on 02 July 2020²⁶.
- The Recommendation has been partially implemented by the Lithuanian Government:
 - Vouchers remain voluntary for consumers;
 - They are valid for 12 months from the date of their emission;
 - Emitted vouchers related to cancelled package holidays are protected against insolvency;
 - Vouchers are flexible and transferable to another traveller.

2.9. Italy

In Italy, the article 88bis of the Law n°27/2020, introduced an unlawful national emergency measure.

Under the temporary measures, vouchers were considered as an alternative to a monetary refund to consumers. Carriers and package travel organisers had the right to choose whether to reimburse consumers. Consumers had no choice and vouchers were mandatory for consumers.

²⁴ The infringement procedure against Greece [has been closed](#) by the European Commission on October 30th, 2020 because the national emergency measure has expired.

²⁵ https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212

²⁶ Last update on October 30th, 2020. The European Commission sent a [reasoned opinion](#) to Lithuania.

According to the Italian temporary rule, once the mandatory vouchers have been imposed, the trader's obligation to refund consumers was considered as fulfilled.

According to our Italian members Adiconsum and AltroConsumo:

- Despite the Recommendation, and the European Commission's infringement procedures against Italy, the Italian Government maintained the national emergency measures in contradiction with EU law, granting traders the choice to impose vouchers on consumers. However, our Italian members reported that the national emergency measures were slightly amended in July 2020²⁷. Thus, the end date of the application of national emergency legislation was slightly advanced to 31 July instead of 30 September. Finally, the conditions related to the period of validity of the vouchers were extended from 12 to 18 months, and consumers can now benefit from a monetary refund at the end of the vouchers' validity²⁸.
- The national emergency measure was applicable to cancelled contracts whose execution is carried out before 30 September 2020, and for consumer withdrawals before 31 July 2020.
- Our Italian members are still receiving complaints from consumers.

At the time of writing this report, our Italian members reported that a temporary guarantee fund will be created by the Italian Government. This fund will be established by the Ministry of Tourism (MIBACT) and will be endowed with an amount of €5m for 2020 and €1m for 2021. It will aim to cover vouchers that will not be reimbursed due to the insolvency of the issuing operators and carriers. According to our members, the fund should cover all transport contracts, accommodation service contracts and package holidays. To date, the procedure for accessing the fund has not been defined and the protection is not in force yet. The technicalities and the functioning of the guarantee fund will be defined by a specific national regulation to be adopted in January 2021. Our members consider this guarantee fund is a good start because no such temporary protection exists. However, during the pandemic, thousands of vouchers were imposed on consumers in Italy. Therefore, there are doubts as to whether the temporary scheme has enough funding.

2.10. Luxembourg

The Luxembourgish national emergency measures did not contain any provision imposing vouchers toward consumers. However, reimbursements were suspended and postponed for three months.

According to our Luxembourgish members Union Luxembourgeoise des Consommateurs (ULC):

- The Luxembourgish Government did not extend the suspension for three-months of repayments beyond 24 June 2020, the date of the end of the state of emergency in Luxembourg.
- The Recommendation was not implemented by the Luxembourgish Government.
- Furthermore, ULC indicated that at the time of writing this report, they are still receiving complaints about the delayed reimbursements imposed by the national emergency measures.

²⁷ Art. 182 law n.77/2020.

²⁸ The infringement procedure against Italy [has been closed](#) by the European Commission on 30 October 30th, 2020 because the national emergency measure has expired.

2.11. Malta

The Maltese national emergency measures did not contain any provision imposing vouchers toward consumers. However, it extended the repayment period from 14 days to 6 months for package tours scheduled from 1 March 2020 to 31 May 2020.

According to our Maltese member Ghaqda Tal-Konsumaturi - (CA Malta):

- The national emergency measure ended on 1 June 2020.
- The Recommendation has not been implemented in Malta and the national emergency measure remained in force until the end of its validity.
- In practice, as reported by our member, travel agents, despite being informed of the Recommendation, did not comply with it and only offered vouchers to consumers without informing them of their right to benefit from a monetary refund.
- The criteria of the imposed or proposed vouchers to consumers by some major Maltese traders did not meet the criteria of the Recommendation.
- Our Maltese member is still receiving complaints though at a reduced rate.
- Despite a clear recommendation to involve consumer organisations in the implementation of the Recommendation (point 22), our Maltese member has not been consulted.

2.12. The Netherlands

In the Netherlands, there was no official national emergency legislation in breach of EU law.

However, in April 2020, the Dutch Government formally asked the national enforcement bodies to suspend the enforcement of the Air Passenger Rights Regulation (261/2004). Therefore, in practice, vouchers were mandatory for consumers because travellers did not get another option than to accept vouchers.

Following this suspension of enforcement of traveller legislations for both package travel and standalone tickets, consumers have to wait between six and twelve months to get their monetary reimbursement.

According to our Dutch Member Consumentenbond, right after the publication of Recommendation, the Minister of Infrastructure finally withdrew the suspension of enforcement. So, now the authority should/could enforce traveller's legislation.

According to our Dutch member:

- Following the relaunch of the enforcement by the National Enforcement bodies, the Dutch Authority (ILT) has declared that from 1 October 2020 all airlines shall comply with the seven-day refund period provided by the Air Passenger Rights Regulation (261/2004).
- Our member wrote a letter to all airlines at fault reminding them they should also pay refunds to travellers who were forced to accept a voucher before the publication of the Recommendation. Several airlines (i.e., KLM and Transavia) changed their practices to comply with the law. Unfortunately, several airlines operating in the Netherlands were still breaching the Air Passenger Rights Regulation (261/2004) by not giving the option for a refund.

- Our Dutch member also had the opportunity to meet the national relevant ministries to exchange about the implementation of the Recommendation.
- The Recommendation on vouchers has been partially implemented in the Netherlands. However, vouchers for airline tickets are still not protected against insolvency. Furthermore, our member reported airline ticket retailers do not pay the reimbursement to consumers if the airline has not refunded the money to them.

2.13. Norway

The Norwegian national emergency measure adopted on 24 April 2020 did not contain any provisions imposing vouchers on consumers. However, reimbursements were suspended or postponed.

According to this national measure, travel agencies were given a grace period of 90 days to refund consumers in the event of the cancellation of package travel with a departure date between 14 March and 14 June 2020.

The temporary Regulation was retroactive and was according to our Norwegian Member Forbrukerrådet (The Consumer Council) in breach of the Article 97 of the Norwegian Constitution.

The refund claims on hold based on this temporary regulation were not given insolvency protection. This compounds the risk of losing money since consumers had to wait 90 days at most for a refund.

Since the publication of the Recommendation in May 2020, according to our Norwegian member:

- The national emergency measure remained in force until its end of validity on the 14 June 2020.
- The Recommendation has not been implemented by the Norwegian Government.
- The Norwegian Government granted €20m to the national travel guarantee fund. However, according Forbrukerrådet this provision of the fund is ineffective since the COVID-19 related claims in Norway are not insolvency protected by the fund. An additional €10m will be granted to the fund in 2021.
- The Norwegian Government allowed travel agencies to apply for a loan-grant to ensure and solve their liquidity issues. Furthermore, the VAT rate has been lowered from 12 % to 6 % from 1 April 2020 to 01 July 2021. The air passenger tax will be abolished for the whole of 2021. However, this measure is considered ineffective for our member because there is almost no travel.

2.14. Poland

In Poland, a national emergency measures amending travellers' rights as been introduced on 31 March 2020 (the "Anti-Crisis Shield").

According to our member Federacja Konsumentów ("FK"), this national in-breach legislation amended the rules for travellers to withdraw from package travel contracts and for tour operators to terminate them, provided that such a withdrawal or termination is directly linked to the COVID-19 pandemic.

According to the Polish temporary legislation, withdrawals and terminations became effective after a notice period of 180 days. In practice, such a postponement of the effectiveness of cancellations and withdrawals leads to a breach of the 14-day legal time frame to reimburse consumers established by the Package Travel Directive. As a result, the European Commission launched an infringement procedure on 2 July 2020 against Poland²⁹. The procedure ended on 30 October 2020³⁰.

On 21 September 2020, Poland used the Temporary framework for State aid³¹ to support tour operators and other undertakings active in the tourism and culture sectors. According to the scheme, Poland will reimburse travellers affected by such cancellations on behalf of tour operators. The tour operators will eventually repay the Polish Government in full, including a reduced interest rate. The refund of travellers and repayment of the Polish State takes place via a set-up that involves different entities and funds. Such a scheme could be considered as a good example, however at the time of drafting this report, we do not have an assessment of the mechanism by our national member.

2.15. Portugal

In Portugal, the national derogatory measure adopted was applicable to package travel cancelled between 13 March and 30 September 2020. The measure established that travellers could opt for a voucher valid until 31 December 2021 or rescheduling. Vouchers may be transferred to a third party.

If the voucher is not used or the trip rescheduled within that period, consumers will receive a full refund. Unemployed people could ask for reimbursement until 30 September 2020.

Since the publication of the Recommendation, according to our Portuguese member DECO:

- The Recommendation has not been implemented by the Portuguese Government,
- The European Commission launched an infringement procedure against Portugal on 2 July 2020³².
- The national emergency measure was repealed on 3 September 2020, so the end date of the national emergency legislation was slightly advanced to 3 September 2020 instead of 30 September 2020.

2.16. Slovakia

Slovakia has introduced national legislation amending travellers' rights **after** the publication of the Recommendation on vouchers.

According to the Slovakian temporary legislation, vouchers for cancelled package holidays because of the COVID-19 pandemic are mandatory and consumers must wait until September 2021 to receive their monetary reimbursement. Only exemptions, such as vulnerable groups, can opt for an immediate monetary refund.

²⁹ https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212

³⁰ The infringement procedure against Poland [has been closed](#) by the European Commission on October 30th, 2020 because the national emergency measure has expired.

³¹ https://ec.europa.eu/competition/state_aid/cases1/202039/287812_2191234_87_2.pdf

³² The infringement procedure against Portugal [has been closed](#) by the European Commission on October 30th, 2020 because the national emergency measure has expired.

According to our Slovakian member Spoločnosť ochrany spotrebiteľov (S.O.S.) Poprad:

- The Recommendation has not been implemented by the Slovakian Government and the national emergency legislation is still in force, despite the ongoing infringement procedure against Slovakia launched on 2 July 2020³³.

2.17. Slovenia

According to the Slovenian national emergency measure adopted on 28 April 2020, if consumers refused vouchers for package holidays cancelled between 13 March and 31 May 2020, due to the unavoidable and extraordinary circumstances caused by the pandemic, they can only claim reimbursement after 12 months starting from the day that the end of the pandemic is declared. The measures applied retroactively also for reimbursement of payments made by consumers before the adoption of the emergency measures.

According to the Slovenian temporary measures, vouchers must fulfil the following conditions:

- Be valid for two years;
- Be transferable (can be used by any person);
- If vouchers are not used by consumers within the two years, they can claim the monetary reimbursement. According to our Slovenian member, the temporary measure is unclear whether a claim for partial reimbursement is possible or not if consumers do not use the whole value of the voucher;
- Package holiday vouchers are protected against insolvency.

The criterion above was defined before the publication of Recommendation.

According to our Slovenian member Zveza Potrošnikov Slovenije – (ZPS), since the publication of the Recommendation on vouchers:

- The rights of consumers whose contracts were cancelled during the application period of the national emergency measures and that opted for a cash reimbursement, continue to be violated. They must wait until 31 May 2021 (12 months from official end of epidemic in Slovenia) for reimbursement.
- The conditions for vouchers and reimbursement were established by the Slovenian temporary legislation before the entry into force of the Recommendation on vouchers. Since then, no amendment to the Slovenian temporary legislation has been made and the Recommendation was not further implemented.
- According to our member, the Slovenian Government considers the national temporary measure balanced and necessary to ensure the liquidity of travel organisers and prevent bankruptcies.

2.18. Spain

In Spain, temporary derogatory legislation was introduced on 1 April 2020³⁴. The national emergency measures applied both to Package Travel and Air Passenger Rights Regulation (261/2004).

³³ Last update on October 30th, 2020. The European Commission sent a [reasoned opinion](#) to Slovakia.

³⁴ <https://www.boe.es/boe/dias/2020/04/01/pdfs/BOE-A-2020-4208.pdf>

According to the temporary measure, vouchers were not mandatory, but traders were authorised to largely postpone consumers' monetary reimbursement.

2.18.1. The Spanish temporary measure vs the provisions of the Air Passenger Rights Regulation.

In Spain, for flights cancelled by airlines because of the COVID-19 pandemic, the airline was able to propose a voucher to consumers. The offer of a voucher did not affect the passenger's right to opt for a reimbursement instead.

However, according to the temporary measures, the airline also had the right to propose an alternative flight to consumers (or another solution) and, if within 60 days of the flight cancellation no agreement was found between the airline and the consumer on the alternative offered, the traveller was entitled to a full monetary reimbursement.

2.18.2. The Spanish temporary measure vs the provisions of the Package Travel Directive.

For package holidays cancelled because of the COVID-19 pandemic, if the traveller had contracted a combined trip and if the destination was affected by an extraordinary circumstance as a consequence of COVID-19 or was affected by the specific limitations of movement established as a result of the declaration of the state of emergency, the traveller had the right to cancel the contract before its start, without paying any penalty and was entitled to a full refund of any payment made.

However, according to the national derogatory measures, if the organiser was able to prove that it did not receive the money back from the other service providers included in the trip (such as hotels or airlines), the refund of the corresponding sums, could be made to consumers via vouchers valid for one year after their emission. If the vouchers were not used by consumers, they were/will be entitled to a full monetary reimbursement at the end of the voucher's validity.

In practice, our Spanish member OCU explained that the travel industry mainly offered vouchers as a first solution and very few the other options.

Following the publication of the Recommendation:

- The Spanish emergency measures were amended on 10 June 2020³⁵.
- Since the amendment of the national emergency measures, vouchers are still voluntary, and consumers can ask for a reimbursement. However, according to our Spanish member, major issues remain for consumers:
 - The retroactive character of the new legislation is not established, so previous vouchers imposed on consumers during the application of the Spanish emergency measures should not be covered and consumers previously forced to accept vouchers will not be able to claim their monetary reimbursement until the end of their validity period.
 - Since the publication of the Recommendation, the Spanish Ministry of Consumption announced the launch of proceedings against 17 airlines for breach of the national legislation transposing the Unfair Commercial Practices Directive. The Spanish Ministry considered that the lawsuits were justified for misleading omission of information by the airlines to consumers about their right to a monetary reimbursement that constitutes a violation of air passenger rights regulation and harmed the collective interests of

³⁵ <https://www.boe.es/boe/dias/2020/06/10/pdfs/BOE-A-2020-5895.pdf>

passengers. The injunction action also aims to declare null and void vouchers that were imposed on consumers without having received all the relevant information.

- According to our Spanish member, the Recommendation has not been implemented in Spain.
- Our Spanish member is still receiving complaints related to the period of application of national emergency measures.

Interim conclusions

The recommendation and infringement procedures launched by the European Commission had no significant impact on the Member States that already had national emergency measures in place. Some Member States introduced their own national measures in contradiction with EU Legislation after the publication of the Recommendation and the launching of infringement procedures³⁶.

To our knowledge, only one country, namely Spain fully withdrew its unlawful national emergency measures. The Netherlands lifted their previous order to national authorities to suspend the enforcement of EU travellers' law.

In some cases, Member States slightly amended their laws and ended their validity slightly earlier as initially planned. Potentially the infringement procedures also prevented some Member States to prolong the national measures on mandatory vouchers.

3. Implementation of the Recommendation in the other Member States

In the first section, we have seen that the Recommendation had a very limited impact in the Member States that had already implemented national emergency measures in breach of EU laws before the publication of the Recommendation on May 2020.

The second part of the report will be dedicated to the 11 remaining Member States that decided not to implement national emergency measures thus maintaining the right of travellers *as is*. In such Member States vouchers for cancelled packages and for stand-alone transport services remained voluntary and current legal time frames for cash reimbursements were/are maintained.

According to our members, none of the remaining Member States have fully implemented the Recommendation, leaving sometimes great legal uncertainties for consumers regarding vouchers and the protection they benefit from (insolvency protection etc.)

Below you will find the state of play of the implementation of the Recommendation in these countries and the initiatives that BEUC considers the most interesting for the European Commission to promote among the Member States.

³⁶ Slovakia, Bulgaria.

3.1. Denmark

Denmark was the first Member State to act positively and try to find a balanced solution between both the consumer and the travel industry's interests.

On 26 March 2020, by using the 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak'³⁷, the Danish Parliament adopted a relief package to reinforce the National Travel Guarantee fund ('*Rejsegarantifonden*') via a Danish State loan of DKK 1.5 billion (approximately €200m).

The objective was to ensure that all consumers could benefit from a reimbursement if the package holiday could not be completed because the Ministry of Foreign Affairs of Denmark advises against all unnecessary travel worldwide due to COVID-19 (standalone transport services are excluded from the scheme).

The novelty of the Danish national emergency measures is that ordinary Danish scheme only cover cases where the organiser of the package has gone bust. By the March 2020 measure, the relief package broadened the scope of the legal act established under the Danish Travel Guarantee fund. Under the new temporary protection scheme, in extraordinary circumstances such as the COVID-19 crisis, consumers can benefit from a monetary refund even if the travel organiser has not gone bankrupt, if the travel provider was registered with the Fund at the time of the agreement.

3.2. Germany

In Germany, no national emergency measures amending travellers' rights to a monetary refund or to delay passengers' reimbursement have been introduced. To the contrary, in August 2020, a national regulation on voucher insolvency protection was adopted³⁸. The latter is considered by BEUC as a good example to be followed and implemented by other Member States.

According to this new Regulation – *and in line with the requirements of the Package Travel Directive and the Recommendation* - vouchers remain voluntary for consumers. The value of the respective vouchers should at least be the price paid for cancelled package booked before 8 March 2020, which could not be carried out due to the COVID-19 pandemic. The validity of the vouchers will last until 31 December 2021 at the latest. The travel organiser has to refund the value of the vouchers to travellers immediately, and at the latest within 14 days if the vouchers have not been redeemed within the validity period.

The legislation stipulates, that consumers shall not support any costs for the issue, transmission and redemption of their voucher.

Furthermore, the German legislation aims to guarantee the value of the emitted vouchers in addition to the statutory insolvency insurance up to the full amount by a supplementary state insurance. The rationale behind it was to make voluntary vouchers more attractive for consumers, as encouraged by BEUC since the beginning of the COVID-19 crisis.

³⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_496

³⁸ Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Pauschalreisevertragsrecht und zur Sicherstellung der Funktionsfähigkeit der Kammern im Bereich der Bundesrechtsanwaltsordnung, der Bundesnotarordnung, der Wirtschaftsprüferordnung und des Steuerberatungsgesetzes während der COVID-19-Pandemie".

The provisions of the legislation established that vouchers are valid with regard to the current COVID-19 pandemic and are secured for a certain period of time.

Most interestingly, the German text provides that if consumers have received vouchers instead of immediate reimbursement for trips booked before 8 March 2020 which cannot be carried out due to the COVID-19 pandemic, the unlawful voucher will be adjusted to the requirements of the law.

By doing so, Germany is the first Member State to officially clarify the situation of illegal 'pre-imposed' vouchers. To our knowledge, at the time of writing this report, no other Member State has done so. For BEUC, **this approach should be promoted by the European Commission and followed by other Member States.** This should help to clarify that previously imposed vouchers are illegal and that should be reimbursed within the legal timeframes provided by EU travellers' legislation.

3.3. Finland

According to our Finnish member Kuluttajaliitto-Konsumentförbundet ry ('KK'), the Recommendation was partially implemented into the Finnish national temporary emergency measures³⁹.

The amendments to the Finnish legislation came into force on 26 October 2020 and will be in force until the end of 2022.

According to our local member:

- Vouchers are optional and consumers always have the right to ask for a monetary refund,
- **Vouchers as well as monetary refunds are protected by the state budget in case the travel agency goes bankrupt**, and the original cancellation was due to the COVID-19 pandemic. To our knowledge, Finland is the only Member State which formally indicates in its national emergency measure that pending reimbursements are covered in case of insolvency. For BEUC, this example should be promoted among Member States.
- The claim for reimbursement from the Finnish state must be done within six months (of the bankruptcy decision) to the Finnish Competition and Consumer Authority. The mechanism can only be activated when the company is declared bankrupt and not before,
- Our member was consulted during the whole legislative process and had a good co-operation both with the authorities as well as the Ministry of economic affairs and employment. Our member was also heard by the Finnish Parliament committee on this matter. This example of close cooperation between the consumer organisation and the authorities should be promoted among Member States.

3.4. Latvia

In Latvia, no national emergency measure has been introduced to amend travellers' rights. According to our local member Latvijas Patērētāju interešu aizstāvības asociācija ('LPIAA') the Recommendation was partially implemented and only with regard to package holidays.

³⁹ <https://www.finlex.fi/fi/laki/alkup/2020/20200700>

According to our member:

- Vouchers are voluntary;
- They can be issued if the package travel contract was terminated due to the COVID-19 pandemic,
- The value of the voucher emitted must be equivalent to the amount of the sum paid by the traveller initially;
- By the end of the validity period of the voucher the traveller is entitled to automatic refund of the unused value of the voucher within 14 days:
- Finally, travellers may transfer the voucher to another person if traders so agree.

On the other hand, our Latvian member reported that several important recommendations are missing, unclear and could lead to different legal interpretations. These uncertainties could be detrimental for consumers accepting vouchers:

- First, if a traveller refuses a voucher, the Latvia legislation specifies that the parties can agree on another solution, including the postponement of the refund. If the parties agree to postpone the refund, the latter should be performed at the latest by 10 June 2021. According to our Latvian member, this provision is unclear and could be interpreted as contrary to EU Law and to the Recommendation. Indeed, consumers cannot renounce to their mandatory rights granted by the EU Package Travel Directive. The 14-day timeframe for a monetary refund is fully harmonised by article 12(4) of the PTD and cannot be derogated by contract. We urge the European Commission to clarify this situation with the Latvian Government.
- Point 5 of the Recommendation states that travellers should be able to use vouchers for payments in respect of all new bookings made before their expiry date even if the payment or the service takes place after that date. According to our Latvian member, there is no such provision in the Latvian law. Consequently, it is unclear whether consumers will be able to use vouchers as a payment after their expiry date, even if the booking itself was made before it.
- The Recommendation stipulates that travellers should have the right to use vouchers for a package travel contract with the same type of services or of equivalent quality as the terminated package, without any additional payment. According to our member, such a point was not implemented by the Latvian Government. Therefore, travel organisers are allowed to offer to travellers the same travel as the cancelled trip, but for a higher price.
- For LPIAA, point 9 of the Recommendation indicating that where the cancelled package travel was booked through a travel agency or other intermediary, organisers should allow vouchers to be used for new bookings also through the same travel agency or other intermediary has not been implemented either, and could lead to practical issues for consumers trying to use their vouchers.
- The Recommendation also provides that vouchers should specify all the rights attached to them. According to LPIAA, no such provision has been inserted in the Latvian legislation obliging tour operators to display and clearly inform consumers about all the rights attached to the voucher.
- Finally, according to the Latvian legislation, travellers may transfer the voucher to another person without any additional cost but only if organisers so agree. For our Latvian member, this is in contradiction with the Recommendation, which makes this opportunity dependant on the will of service providers.

3.5. The United Kingdom

In the United Kingdom, despite a limited implementation of the Recommendation⁴⁰, the British Government and regulators made it clear early during the COVID-19 pandemic, that all holiday providers and airlines have to offer a cash reimbursement to consumers who wanted it. Those who opt for a voucher are/were free to do so, if it is not offered as the only option by the trader, and so in conformity with the Package Travel Directive and passenger rights regulations.

Concerning vouchers provided to consumers in case of cancellation of package holidays only, the British Government announced in July 2020, that refund credit notes for cancelled package holidays would be insolvency protected by extending the scope of the British insolvency protection scheme 'ATOL'.

Originally, this protection applied to vouchers issued between 10 March 2020 and 30 September 2020. On 23 October⁴¹, the British Government expanded the scope of the protection to cover any issued voucher between 1 October and 31 December 2020.

According to the latest research our British member published on last 3 November, more than £1bn in refunds is still outstanding from tour organisers. Which? also calls for the UK Government to create a temporary travel guarantee fund to support travel companies that are struggling to fulfil their refund obligations⁴².

In the airline sector, our member has published an article stating that British Airways and EasyJet are ignoring Recommendation and refuse to refund unused vouchers after their validity expires⁴³.

3.6. Five Member States have not introduced national derogatory measures and have not implemented the Recommendation.

To our knowledge, in **Austria, Estonia, Ireland, Romania and Sweden** no national emergency measures in contradiction with EU Travellers' legislations have been implemented. However, our members⁴⁴ reported that the Recommendation has not been implemented as well at national level⁴⁵.

At the time of publication of this report, our members reported that they are still receiving new consumer complaints, and that they still have a large number of pending cases where consumers have been waiting for their monetary reimbursement, sometimes for months.

3.7. Implementation of the Recommendation in the EEA – The Icelandic example

In Iceland, legislation was proposed during the crisis which would have made vouchers mandatory on consumers for cancelled package holidays due to the pandemic. Such temporary legislation was rejected by the Icelandic Parliament.

⁴⁰ See [Competition and Markets Authority guidelines on vouchers](#), published on 28 August 2020.

⁴¹ <https://www.caa.co.uk/News/ATOL-announces-extension-of-protection-for-refund-credit-notes/>

⁴² <https://conversation.which.co.uk/travel-leisure/refund-reform-travel-campaign/>

⁴³ <https://www.which.co.uk/news/2020/11/british-airways-and-easyjet-ignore-eu-guidance-on-voucher-refunds/>

⁴⁴ Arbeiterkammer (Austria), Eesti tarbijakaitse LIIT (Estonia), Fogyasztóvédelmi Egyesületek Országos Szövetsége – FEOSZ (Hungary), Consumers' Association of Ireland (Ireland), Asociația Pro Consumatori – APC (Romania) and Sveriges Konsumenter (Sweden).

⁴⁵ Hungary is not included in the analysis as we do not have a complete overview of the national situation at the moment of drafting the report.

On the contrary, according to our Icelandic Member Neytendasamtökin ('NS'), a government fund was established from which travel agencies could get loans at low rates to reimburse travellers as per their rights⁴⁶.

The fund is accessible for package travel intended to be performed between 12 March and 30 September 2020 but were cancelled due to the COVID-19 pandemic⁴⁷. Agencies and tour organisers had until 1 November 2020 to apply to the temporary fund⁴⁸.

According to the Icelandic measures, those loans are to be repaid by the industry over the next eight to ten years.

4. Main conclusions of the report and BEUC recommendations

4.1. Lessons from the pandemic and the lack of implementation of the Recommendation to the detriment of consumers

BEUC welcomed the Commission's call for EU countries to comply with EU legislation, to quickly establish national schemes to ensure all 'COVID-19 travel vouchers' were insolvency protected and to propose criteria to make voluntary vouchers attractive for consumers. For BEUC, this protection was, and is still a pre-requisite to promoting vouchers and to make them a safe and reliable option for consumers⁴⁹.

However, seven months after the publication of the Recommendation, the first lessons we can draw are that implementation by Member States and the tourism industry stakeholders of the Recommendation is lacking and that numerous legal uncertainties are still pending for consumers.

First, in the direct aftermath of the publication, to our knowledge only two Member States⁵⁰ have withdrawn their unlawful national emergency measures (Spain) or, their order to national authorities to suspend the enforcement of EU travellers' law (the Netherlands). However, the relevant governments did not clarify the status of the previously imposed vouchers on consumers during the application of the infringing national emergency measures on Package Travel and passenger legislations:

- Are vouchers previously issued with a legal basis contrary to EU law valid?
- If not, do consumers have the right to request an immediate monetary refund from traders?

It is important to emphasise that this legal uncertainty relating to the statute of the previously imposed vouchers is relevant for all Member States (except Germany)⁵¹ that had set up national emergency measures that were either amended or came to end. This legal uncertainty is detrimental for consumers, creates *de facto*, important discrimination between them and could lead to numerous court cases at national level.

⁴⁶ www.ferdamalastofa.is/is/leyfi-og-loggjof/ferdaabyrgdasjodur-1/ferdaabyrgdasjodur

⁴⁷ <https://www.stjornartidindi.is/Advert.aspx?RecordID=df016038-8a73-4bb0-89e0-7db1e6d48c9d>

⁴⁸ <https://www.althingi.is/altxt/150/s/2066.html>

⁴⁹ <https://www.beuc.eu/publications/european-travellers-set-retain-right-choose-between-either-reimbursement-or-voucher/html>

⁵⁰ See points 2.12 for the Netherlands and 2.18 for Spain.

⁵¹ See point 3.2 of the Report.

Second, to our knowledge, five Member States - Bulgaria, Croatia, Cyprus, Lithuania and Slovakia - despite the Recommendation on vouchers and the launch of infringement procedures against them⁵², still have in place national measures which are in direct contradiction with EU travellers' legislation on 1 December 2020⁵³.

Third, except Spain and the Netherlands, all the Member States that had previously implemented national emergency measures contrary to EU travellers' rights and that, for some, were subject to infringement proceedings for failure to comply with EU rules protecting travellers' rights, did not withdraw their national measures until the end of their validity. Some Member States, like Italy or Portugal, provided adaptations of the national emergency measures (ex: change of ending dates, conditions of validity of vouchers etc.), however the national unlawful measure continued to apply them until the end of their validity and travellers were still forced to accept vouchers and have therefore been harmed until very recently.

Fourth, most of our members report that, although the trend is downward, they continue to receive consumer complaints. Furthermore, our members reported that they still have thousands of pending cases in relation to the in-breach national emergency measures (previously imposed vouchers, massive delays in monetary reimbursements etc.)

Fifth, to our knowledge, on 1 December 2020, no Member States have **in force** national protection schemes to protect all 'COVID-19 travel vouchers' against insolvency at national level (both cancelled package and stand-alone tickets)⁵⁴. We note, however, that Denmark, Germany, Finland and Iceland have introduced national measures to protect 'PTD vouchers' but not for stand-alone cancelled travel (flights, trains or boat travel, or bus and coach). For BEUC, these national measures, although incomplete, are a step in the right direction and should be promoted among Member States.

Sixth, point 22 of the Recommendation encourages, "*Business, consumer and passenger organisations [and] Member State authorities*" to cooperate at national level to implement the EC Recommendation." At the time of writing this report, despite sometimes several cooperation requests sent to relevant authorities, a very limited number of BEUC members have been contacted by their national government or authorities to implement the Recommendation.

4.2. BEUC's recommendations and possible ways forward

Seven months after the publication of the Recommendation, we note that its implementation **is clearly insufficient** amongst Member States, airlines and tour operators. For example, several airlines are refusing to reimburse consumers at the end of vouchers' validity period⁵⁵.

Moreover, at the time of writing this report, the health crisis is worsening in across the EU. This points to possible new travel restrictions. To avoid a repetition of the "voucher saga" and to regain the consumer confidence that will be essential to boost the transport economy and tourism in general after the crisis, BEUC recommends the following points for action:

⁵² https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212

⁵³ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687

⁵⁴ In Italy, a temporary insolvency protection fund will come into force in January 2021 (see section 2.9). It will aim to cover vouchers that will not be reimbursed due to the insolvency of all carriers, accommodation service providers and tour organisers. However, at the time of publication of the report, the scheme is not in force, the detailed functioning of the fund is unknown, and we cannot say whether it will be effective and sufficiently funded. A specific regulation will be published in January 2021 by the Italian Government to define the modalities of the fund.

⁵⁵ <https://www.which.co.uk/news/2020/11/british-airways-and-easyjet-ignore-eu-guidance-on-voucher-refunds/>

- We urge the Member States that still have in place national emergency measures, to comply with EU law and the Recommendation as soon as possible. And we continue encouraging the European Commission to pursue infringement proceedings against the four⁵⁶ Member States whose national legislation is still not in compliance with EU travel law.
- Furthermore, we encourage the European Commission to reconsider its decision to close the infringement procedure against Cyprus taken on 30 October. The decision was made on the basis that there was no evidence that the Cypriot legislation was not in conformity with the EU Package Travel Directive. However, according to our national member, the national emergency measure is contrary to the provisions of EU law because it grants traders the right to impose vouchers on consumers for package holidays cancelled because of the pandemic.
- Even after the closure of proceedings against several Member States, many legal uncertainties remained unresolved, in particular regarding the status of “pre-imposed” vouchers. This is no longer acceptable and therefore **BEUC urges Member States to clarify the situation of COVID-19 travel vouchers previously imposed on consumers** during the periods of application of their unlawful national emergency measures. These consumers have had their rights denied and will continue to await their monetary reimbursement until the end of validity of the voucher (sometimes until early 2022). This situation should be addressed as done in Germany.
- We **welcome the continued efforts by the European Commission** to convince the respective Member States to take the necessary measures to remedy the situation and to make sure that consumers, who prefer reimbursement in money to a voucher, effectively receive a refund in accordance with EU legislation.
- In this context, BEUC encourages the future Portuguese Presidency to launch a discussion between Member States on how to implement the Recommendation at national level and to clarify the legal uncertainties regarding pre-imposed vouchers on consumers.
- Regarding the insolvency protection of vouchers, a very limited number of Member States have adopted measures to extend the existing protection schemes or to create insolvency protection schemes for all COVID-19 travel vouchers. Furthermore, where such protection has been introduced, only vouchers emitted for cancelled package holidays are covered by the additional protection. For BEUC, the protection of voucher against insolvency is an indispensable condition for promoting voluntary vouchers to consumers. Due to the current state of implementation of the Recommendation, BEUC members cannot encourage consumers to subscribe to voluntary vouchers in most Member States, especially in case of cancellations of stand-alone transport services since there is no guarantee that the vouchers will be protected. We strongly encourage Member States to set up insolvency protection schemes or to expand the scope of the existing scheme to all COVID-19 vouchers. Member States can use in this regard the flexibility granted by the State Aid Temporary Framework to provide funds to create or expand such schemes. In this regard, BEUC welcomes that the Commission in its “Sustainable and Smart Mobility Strategy”⁵⁷ is considers legislative measures to protect passengers against the risk of carriers’ bankruptcies and insolvency. It is worth recalling that the European Parliament proposed in its position on the review of the Air Passenger Rights regulation the 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. This is

⁵⁶ Bulgaria, Croatia, Lithuania, Slovakia.

⁵⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2020:789:FIN&from=EN>

something that both the Council and the Commission should support in the ongoing negotiations.

- We encourage the European Commission to publish a report on the state of play of the implementation of the Recommendation by Member States, including an overview of the infringement procedures launched by the European Commission and the measures they have taken to remedy the shortcomings identified. BEUC's members reiterate their willingness to work closely with national governments and national authorities to find solutions to rapidly implement the Recommendation. We therefore urge Member States to cooperate with all stakeholders of the tourism sector and to consult consumer organisations as suggested by the Recommendation. BEUC also asks the Commission to report on the measures taken by Member States to solve the problem of pre-imposed vouchers.
- On 17 November, 24 stakeholders of the aviation industry published a report on the recovery of European aviation post-COVID-19⁵⁸. Among the measures recommended in the final report, stakeholders highlighted the need to implement the Recommendation, to improve consumer information about passenger rights and, to better enforce the current rules set out in Regulation 261/2004. In addition, the document acknowledges the possibility to the use of State aid to help airlines meet their regulatory obligations (e.g., refunds). Nine months after the beginning of the COVID-19 crisis, over €37 billion in government bailouts have been granted to the aviation industry to cope with the consequences of the pandemic⁵⁹. However, to our knowledge, no Member State granted State Aid to help airlines to comply with their mandatory obligations under travellers' legislation. As it is Member States prerogative to introduce criteria for State Aid, BEUC urges them to use flexibility granted by the "Temporary Framework for State Aid"⁶⁰ to remedy the situation and to ensure that State Aid is used both to help airlines to cross the pandemic situation and, to ensure that consumers can rely on their right to a monetary reimbursement.

END

⁵⁸ <https://a4e.eu/wp-content/uploads/aviation-round-table-report-16-11-2020.pdf>

⁵⁹ <https://www.transportenvironment.org/what-we-do/flying-and-climate-change/bailout-tracker>

⁶⁰ https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html



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