

**REPLIES OF THE EUROPEAN COMMISSION TO THE EUROPEAN COURT OF  
AUDITORS SPECIAL REPORT:  
“AIR PASSENGER RIGHTS DURING THE COVID-19 PANDEMIC:  
KEY RIGHTS NOT PROTECTED DESPITE COMMISSION EFFORTS”**

EXECUTIVE SUMMARY

I. The Commission took action immediately and presented an immediate response to mitigate the socio-economic impact of the COVID-19 outbreak, centred on a European coordinated response.<sup>1</sup> This included targeted legislation to temporarily alleviate airlines from their airport slot usage obligations under EU law, Interpretative Guidelines on passenger rights in the context of COVID-19, and a Temporary Framework to enable Member States to use the full flexibility foreseen under State aid rules to support the economy in the context of the COVID-19 outbreak.

II. The Commission underlined in its Interpretative Guidelines on passenger rights in the context of COVID-19 of 18 March 2020 that passengers have a right to correct information on their rights and to be offered a clear choice between reimbursement in money and reimbursement by means of a voucher in case of cancellations.

Deciding on spending priorities is a Member States' competence. The Commission did remind Member States though that under State aid rules, they can give aid to allow airlines/tour operators to reimburse passengers.

III. The mass cancellations during the COVID-19 pandemic showed the importance of EU-wide rules and their uniform implementation and enforcement. The Commission committed in its Sustainable and Smart Mobility Strategy<sup>2</sup> to consider options and benefits to go further with a multimodal framework for passenger rights that is simplified, more consistent and harmonised as well as crisis- resilient.

IV. a) The Commission considers it of high importance that airlines inform passengers correctly about their rights and that national enforcement bodies, who are responsible for enforcing passenger rights, take action in case airlines fail to do so. While airlines faced indeed an unprecedented number of cancellations and therefore a liquidity crisis, the Commission considers it vital for the trust of the consumers in the transport and travel industry that airlines inform them nevertheless properly about their right to reimbursement in cash. In May 2020, the Commission adopted a Recommendation aiming to make travel vouchers an attractive alternative to cash reimbursement for passengers and package travellers, to ease the liquidity crisis for carriers, and recommended also to protect these vouchers against insolvencies.

An EU-level overview about the situation on the ground is very difficult to obtain due to missing reporting obligations towards the Commission. The Commission used therefore the EU Pilot dialogue procedure to receive information. It also proposed already in 2013

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<sup>1</sup> [https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action\\_en](https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action_en)

<sup>2</sup> COM(2020)789 final

enhanced reporting requirements, but there has been no agreement yet in the Council to proceed with this proposal.

b) Since March 2020, the Commission adopted a number of Guidelines and Communications with the aim of supporting coordination efforts of Member States and safeguarding the free movement within the Union in times of the COVID-19 pandemic.

Deciding on spending priorities is a Member States' competence. It is not the role of the Commission, as a competition enforcer, to invite Member States to set up aid schemes to facilitate reimbursement of passengers.

What the Commission has done is to remind Member States that, under State aid rules, they can grant aid to allow airlines/tour operators to reimburse passengers.

Member States did not grant State aid to all airlines and package organisers. Also those that did not receive state aid started reimbursing passengers, as a result of support and enforcement measures taken by the Commission and the Member States.

c) The website Re-open EU informs about travel restrictions in force in each Member State. The main websites relevant for passenger rights are the website Your Europe and the Coronavirus Response website launched on 1 March 2020.

d) The Commission agrees that the existing legal framework needs to be reviewed as also outlined in the Sustainable and Smart Mobility Strategy. For air passenger rights it has already proposed a review back in 2013, based on the experiences gathered so far and the volcano ash cloud crisis in 2010. This is a priority pending file for the Commission and it reiterates with each Council Presidency the urgent need to proceed with it in the Council.

V. The Commission accepts all recommendations.

## INTRODUCTION

01. EU Passenger Rights are essential for the proper functioning of the internal market and the transport networks as they protect European passengers during the various phases of a journey by air, rail, waterborne, bus and coach transport. The COVID-19 pandemic has recalled their relevance.

02. Passenger Rights are at the heart of the EU transport and consumer policy, or as ECA put it in its 2018 report: “a flagship initiative of the EU”.

03. The proposal for a revision to the Regulation in 2013<sup>3</sup> is a priority pending file under the Commission's Work Programme for 2021.

04. EU passenger rights are enforced in a multi-level governance environment. Against this background, bodies and authorities on national level are involved in their enforcement, while the Commission supports and monitors their actions.

05. Since the beginning of the pandemic, the Commission has sought to foster the cooperation and coordination among Member States. Since March 2020, the Commission adopted a number of Guidelines and Communications with the aim of supporting

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<sup>3</sup> COM(2013) 130 final of 13 March 2013.

coordination efforts of Member States and safeguarding the free movement within the Union in times of the COVID-19 pandemic.<sup>4</sup>

Different measures were adopted, as described in more detail in the timeline of actions on the website of the Commission on the Coronavirus response.<sup>5</sup>

It has to be noted that the right of free movement within the EU is not unconditional and may be restricted for public health reasons. This is laid down in the Treaty (Article 21 TFEU) as well as in secondary legislation (Directive 2004/38).

Member States can thus impose measures limiting the free movement of persons within the EU in response to the pandemic. The measures taken should not go beyond what is strictly necessary (proportionality) and make no distinction between travellers based on their nationality (non-discrimination). The Commission monitored the respect of those principles and was in close contact with Member States.

06. To slow down the transmission of the virus, EU leaders agreed on 17 March 2020<sup>6</sup> on a coordinated temporary restriction of non-essential travel to the EU that was enforced until 30 June 2020. Regarding restrictions to travel within the EU, from May 2020 onwards, borders were gradually re-opened, but sanitary restrictions continued to be applied (such as quarantine rules for people travelling from high-risk regions or testing requirements) and, for public health considerations, there was a general advice not to travel. In June 2020, the Council adopted a Recommendation<sup>7</sup> on temporary restrictions on non-essential travel into the EU and the possible lifting of such restrictions. This Recommendation was updated on 2 February 2021.

07. The Commission presented in October 2020 an additional set of actions to help limit the spread of the coronavirus, save lives and strengthen the resilience of the internal market. The

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<sup>4</sup> See list in footnote 3 to Recital 8 of Council Recommendation (EU) 2020/1475: Commission Guidelines for border management measures to protect health and ensure the availability of goods and essential services (OJ C 86I, 16.3.2020, p. 1), Commission Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (OJ C 102I, 30.3.2020, p. 12), 'Joint European Roadmap towards lifting COVID-19 containment measures' of the President of the European Commission and the President of the European Council, Commission Guidance on free movement of health professionals and minimum harmonisation of training in relation to COVID-19 emergency measures (OJ C 156, 8.5.2020, p. 1), Commission Communication towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls (OJ C 169, 15.5.2020, p. 30), Commission Communication on the third assessment of the application of the temporary restriction on non-essential travel to the EU COM(2020) 399 final, Commission Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak (OJ C 235I, 17.7.2020, p. 1), Commission Communication on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services (OJ C 96I, 24.3.2020, p. 1), Commission Guidelines on Facilitating Air Cargo Operations during COVID-19 outbreak (OJ C 100I, 27.3.2020, p. 1), and Commission Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships (OJ C 119, 14.4.2020, p. 1).

<sup>5</sup> [https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action\\_en](https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action_en)

<sup>6</sup> <https://www.consilium.europa.eu/en/policies/coronavirus/covid-19-travel-and-transport/>

<sup>7</sup> Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction; OJ N° L 208 of 1.7.2020, p. 1.

measures included a common EU digital Passenger Locator Form to help Member States undertake risk assessments of arrivals and enable contact tracing<sup>8</sup>. Throughout the period, the Commission was in contact with Member States to monitor the situation and coordinate travel restrictions, in particular, through a network of national contact points.

13. First indent - The Commission points out that the main duty of information in case of disruption lies with the carriers themselves. In this context, the Commission underlines that National Enforcement Bodies (NEBs) have to monitor regularly the implementation by carriers.

However, the Commission conducts regularly Eurobarometer studies on the awareness of citizens about passenger rights (the latest dates from 2019) which confirm that the level of public awareness should be further improved, and contributes to it through its website 'Your Europe', the information provided via the Europe Direct Contact Centres (EDCC), its support to the European Consumer Centres Network (ECC Net) and its passenger rights campaigns<sup>9</sup>.

Second indent - The Commission agrees that enforcement of the regulations has to be addressed as a priority. The legislation in force provides that it is for the Member States to set up their NEBs and to lay down effective, proportionate and dissuasive sanctions for infringements of passenger rights regulations.

The enforcement by the NEBs varies depending on their competences given to them according to national law (binding decisions, effective sanctioning, handling of individual complaints).

Third indent - The Commission considers that its current role is to monitor the effective application of the existing passenger rights framework.

The Commission does not have a mandate to coordinate the implementation of the passenger rights framework at the Member States level.

## OBSERVATIONS

20. The Commission considers that the awareness of passengers and travellers about their rights is of high importance. This is the reason why it regularly asks for Eurobarometer Surveys on this issue.

The Commission is aware that the level of public awareness should be further improved.

See also Commission reply to the first indent of paragraph 13.

21. The Commission points out that the main duty of information in case of disruption lies with the carriers themselves. National Enforcement Bodies (NEBs) have to regularly monitor whether the carriers implement it. The Commission has provided practical information for all citizens, e.g. on the website 'Your Europe', via its passenger rights information campaign and via the Europe Direct Contact Centres.

23. The Commission adds that under the PTD, package travellers have to be reimbursed if they terminate the contract because of unavoidable and extraordinary circumstances (Article

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<sup>8</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1986](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1986)

<sup>9</sup> [https://ec.europa.eu/transport/themes/passengers/campaign\\_en](https://ec.europa.eu/transport/themes/passengers/campaign_en)

12(2) PTD). In other cases they may be entitled to a partial reimbursement (see Art. 12(1) PTD).

27. The Commission took action in all these cases and, as a result, some Member States did not extend or amended their temporary measures. In the remaining cases, the Commission initiated infringement procedures.

See also ECA's observations in paragraph 65.

32. Member States did not grant State aid to all airlines and package organisers. Also those that did not receive state aid started reimbursing passengers, as a result of support and enforcement measures taken by the Commission and the Member States.

33. Common Commission reply to paragraphs 33-36 and Box 6:

In relation to Regulation (EC) No 261/2004, the Commission proposed in 2013 to clarify the rights and obligations of all relevant parties if intermediaries are involved.

Regarding package travel, which is not directly comparable, the Commission will assess how a fairer sharing of the burden among economic operators along the value chain could contribute to better consumer protection<sup>10</sup>.

The enforcement when intermediaries are involved is also part of the ongoing EU pilot dialogue with all Member States. The Commission and the CPC Network have launched a coordinated survey on airlines' current cancellation practices where this issue is also raised.

38. The Commission points out that the Recommendation on vouchers did not only propose certain characteristics for vouchers such as, e.g. insolvency protection, to make them more attractive to passengers and package travellers. It also underlined that – apart from the aspects of State Aid – Member States and operators should be encouraged to consider the use of the Union schemes available to support the activity and liquidity needs of undertakings.

The Recommendation on vouchers had an effect upon Member States, most of them deciding at that point to monitor more strictly the correct implementation of the existing rules by individual airlines and package organisers.

39. First indent - Regarding air passenger rights as well as package travel, Greece for instance amended its national law after the infringement proceeding had been launched: the rules on the 18 -month validity period for vouchers do not apply any more to claims arising from cancellations of flights as of 1 September 2020.

See ECA's observations in paragraph 65.

41. Third indent - The Commission has proposed to introduce reporting requirements for NEBs in its proposal of 2013.

44. It is the Member States' responsibility to set their spending priorities and to decide for which purposes they wish to provide aid.

The role of the Commission as a competition authority is to examine whether such State aid can be declared compatible on the basis of one of the grounds foreseen in the Treaty.

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<sup>10</sup> see COM(2013)130 final (new Art. 14 (6) and (7)), and COM(2021) 90 final, p. 21

It is not the role of the Commission as a competition enforcer to encourage Member States to make a link between State aid and the reimbursement of passengers.

The Commission, however, noted in its Recommendation (EU) 2020/648 of 13 May 2020 that Member States have the possibility to provide aid to facilitate the reimbursement of passengers and travellers.

48. Common Commission reply to paragraphs 48 and 54:

In order to help ease the impact of the pandemic, the European Commission has not only put forward adoption of ad hoc State aid rules in March 2020, but also targeted legislation to temporarily relieve airlines of their airport slot usage obligations under EU law. In addition, in May 2020, it adopted rules amending the Air Services Regulation to temporarily ease the financial pressure on airlines, allowing those airlines in temporary financial difficulties to keep their operating licence.

58. The amounts of State aid referred to correspond to aids granted by the Member States and approved by the Commission, not necessarily to amounts effectively paid out.

63. The website Re-open EU provides information about travel restrictions in force in each Member State. The main websites relevant for passenger rights are the website Your Europe and the Coronavirus Response website launched on 1 March 2020.

66. Third indent - Actions of the Commission included also proposals for Recommendations of the Council or legislative proposals (e.g. for Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, for a common EU digital Passenger Locator Form, for a Regulation to establish a “Digital Green Certificate”), and many other actions listed on the Coronavirus response website of the Commission<sup>11</sup>.

67. First indent - The Commission proposed already in 2013 rules to be better prepared for a major crisis for air passenger rights (obligatory contingency plans, strengthened enforcement rules, clearer complaint handling). This has been complemented now by Action No 58<sup>12</sup> of the Sustainable and Smart Mobility Strategy, planned for the fourth quarter of 2021.

70. The Commission considers that the contribution of the Member States on their national measures is essential and asks Member States regularly to update their information to keep passengers and travellers well informed.

71. First indent - The enforcement is the competence of the Member States.

As far as Regulation 261/2004 is concerned, the Commission assists the NEBs and offers coordination via NEB meetings, a digital platform (Wiki) to exchange information and clarify problems with the interpretation of the rules, as appropriate. The Commission has also adopted Interpretative Guidelines and publishes regularly an updated summary of the most important case law.

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<sup>11</sup> [https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action\\_en](https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/timeline-eu-action_en)

<sup>12</sup> “Prepare crisis contingency plan(s) for the transport sector, including health-safety and operational measures and setting out essential transport services”.

The Commission has also proposed in 2013 better enforcement tools, the legislative file is a priority pending file.

The Commission considers that the negotiations in the Council on the revision of Regulation (EC) No 261/2004 should be unblocked as soon as possible and it has highlighted the review of air passenger rights as a priority pending file in its Work Programme for 2021. The Commission raises the urgency to take this file back on the agenda with each Presidency of the Council.

Second indent - The Sustainable and Smart Mobility Strategy of the Commission contains already actions in relation to financial protection of the passengers: “Fair mobility also means protection for passengers and their rights. The mass cancellations during the COVID-19 pandemic showed the importance of EU-wide rules and their uniform implementation and enforcement. The EU must help passengers when transport operators go bankrupt or are in a major liquidity crisis as in the context of COVID-19 pandemic. Stranded passengers need to be repatriated and their tickets have to be reimbursed in case of cancellations by carriers. The Commission considers options and benefits of possible means that protect passengers against such events and will, if appropriate, make legislative proposals.”

Third indent - The Commission recalls that it has recommended to Member States to provide for such a protection of vouchers and also mentioned the measures available at EU level to support Member States and enterprises in that endeavour (Recommendation of 13 May 2020 on vouchers).

Fourth indent - The Commission considers that the roles of intermediaries need clarifications and proposed already in 2013 some rules to facilitate the enforcement application and enforcement of air passenger rights when intermediaries are involved.

## CONCLUSIONS AND RECOMMENDATIONS

75. The mass cancellations during the COVID-19 pandemic showed the importance of EU-wide rules and their uniform implementation and enforcement. The Commission committed in its Sustainable and Smart Mobility Strategy<sup>13</sup> to consider options and benefits to go further with a multimodal framework for passenger rights that is simplified, more consistent and harmonised, better enforced as well as crisis resilient.

76. The Commission considers that, in the context of COVID-19, the main problem was the liquidity crisis of the carriers and the travel operators due to the amount of cancellations and, that not all carriers informed the passengers about their choice between a reimbursement in money or by means of a voucher.

The Commission considers that the role of intermediaries regarding air passenger rights needs clarification. It will also assess options for a financial protection scheme to protect the payments of passengers against such crises.

The Commission considers that the absence of a legal reporting requirement for NEBs to the Commission is the main reason why such an overview is not readily available. The Commission has already made a legislative proposal in this regard in 2013.

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<sup>13</sup> COM(2020)789 final

Meanwhile, the Commission has used the instruments available (EU Pilot dialogues, actions under the CPC-Regulation) to receive this information. These processes are ongoing.

**Recommendation 1 – Better protection of, and information on, air passenger rights**

- a) The Commission accepts the recommendation.
- b) The Commission accepts the recommendation.
- c) The Commission accepts the recommendation.
- d) The Commission accepts the recommendation.
- e) The Commission accepts the recommendation.

78. Member States did not grant State aid to all airlines and package organisers. Also those that did not receive State aid started reimbursing passengers, as a result of support and enforcement measures taken by the Commission and the Member States.

**Recommendation 2 – More coordination of national measures and better link State aid to airlines to the reimbursement of passengers**

- a) The Commission accepts the recommendation.
- b) The Commission accepts the recommendation.

79. It is primarily for the Member States and their NEBs to enforce the application of passenger rights by airlines. The Commission's scope for action is limited to monitoring the actions of the NEBs. Already in 2013 the Commission proposed additional tools for a better enforcement. Moreover, as announced in the Sustainable and Smart Mobility Strategy, the Commission will review the passenger rights framework, i.a. regarding its crisis resilience.

**Recommendation 3 – Improved tools and legislation for safeguarding air passenger rights**

- a) The Commission accepts the recommendation.
- b) The Commission accepts the recommendation.
- c) The Commission accepts the recommendation.

**Recommendation 4 – Application to other modes of transport**

The Commission accepts the recommendation.