



We're All Going on a COVID Holiday?

EU Commission recommends vouchers, not reimbursement, for package travel and transport services cancelled by the carrier or organiser due to the pandemic

What's in a Recommendation?

What does the European Commission mean to change by yesterday's Recommendation (13 May 2020) that vouchers should be offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services, made as from 1 March 2020 for COVID reasons?

In a word: culture.

While a Recommendation may have a limited interpretive influence upon domestic laws (*Grimaldi v Fonds des Maladies Professionnelles* (Case C-322/88) [1989] ECR 4407) it hardly needs stating that the instrument's very name betrays its lack of power. Yet, as we have seen from HM Government's own Guidance published throughout the COVID-19 pandemic, the normative force of government suggestions may nevertheless be pronounced.

As It Stands: Passengers Must Agree to Vouchers

As is well known, various EU Regulations ("the Passenger Rights Regulations")¹ provide that, in the event of the cancellation of a journey by a carrier, passengers have a choice between reimbursement for the same or re-routing. Where the passenger was due to be flying or sailing then, upon opting for reimbursement, the full cost of the ticket is due to be refunded within 7 days of their request, with different time periods attaching to different modes of transport.

This is their right. They cannot be bounced into taking a voucher. Therefore, while the granting of vouchers in lieu of reimbursement is possible under the Passenger Rights Regulations, it can only be done where the passenger agrees.

Complementing this regime is Directive (EU) 2015/2302 ("the Package Travel Directive"). It provides that, if a package trip is cancelled due to "unavoidable and extraordinary circumstances", travellers have the right to a reimbursement of any payments which they have made for the package. This is to be done without undue delay and no later than 14 days following termination of the contract. Again, vouchers may be offered in place of the return of monies, but the traveller must still agree.²

¹ Regulations (EC) No 261/2004, (EC) No 1371/2007, (EC) No 1177/2010, and (EU) No 181/2011.

² Travellers also get the benefit of this regime where various changes (such as postponement or substitution) are made to the package, see Article 11, Package Travel Directive.

So what's in this Recommendation?

Well, in short, there's a recognition of the above and an attempt,³ played out at four levels, to make the taking of vouchers more attractive to passengers, the better to protect the travel industry.

The first level is comprised of general suggestions to make the fact of receiving a voucher more appealing and more secure. Amongst other things, these include the suggestion that any vouchers should be protected against the insolvency of the carrier (paragraph 2), that all vouchers ought to have a validity period of 12 months (with automatic reimbursement occurring at the end of a validity period if the voucher has not been redeemed, paragraph 3), and that passengers should be able to use vouchers in respect of any new bookings made before the expiry date of the voucher, even where payment or the service date would be later than that (paragraph 5).

Interestingly, it is suggested that vouchers for transport services should be transferable to another passenger without any additional cost, while vouchers for package holidays should also be so transferable if the providers of services included in the package agree to this (see paragraph 10, albeit it can readily be apprehended that this suggestion may readily lead to inequality of application even between bookings made with the same operator).

The second level is cooperation between stakeholders so that, where a passenger has booked through an intermediary, the carrier should inform the intermediary of a voucher selection and each economic actor should 'cooperate in good faith and strive towards a fair sharing of the burden caused by the COVID-19 pandemic' (paragraph 14).

The third level concerns financial support for the industry. This can be done but it is no free for all. The provision of financial support to business is suggested, in particular, via the European Investment Fund's COSME Loan Guarantee Facility, with Member States being prompted to recommend such schemes to financial intermediaries in order to generate support SMEs (paragraph 19). Further, 'the Commission recommends that Member States consider using support for working capital for travel and transport industry SMEs in the context of the additional flexibility provided under Union cohesion policy by the Coronavirus Response Initiative' with the aim of addressing companies' liquidity needs (paragraph 20).

It is clear, however, that where Member States propose direct financial assistance to operators (such as by guaranteeing vouchers against the insolvency of the issuer, thereby improving the operator's liquidity position) then the standard State Aid rules will apply insofar as such measures fall outside the Temporary Framework for State Aid measures.⁴ Paragraphs 16 to 18 are illuminatingly clear on this.

Culture Again

The final frontier is marketing. It is clear from paragraphs 21 and 22 that the Commission is hoping to swell a tide of encouragement from consumer and passenger organisations with the aim that passengers both learn of and come to value the idea of vouchers given now, to be redeemed later. Persuade them to take their COVID holiday, if you will.

Whether they do so in a time of deep economic insecurity, of course, remains to be seen.

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³ Paragraph 1 provides that the Recommendation applies in the context of the previously identified instruments.

⁴ This aims to remedy liquidity shortages of businesses by allowing, for example, Member States to provide loans of up to EUR 800,000 to companies at 0% interest. Recital 22 of the Recommendation neatly sets out its primary allowances.