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Air passenger rights during the COVID-19 crisis

March 2021

The COVID-19 outbreak brought major travel disruption, leading to the cancellation of around 70 % of all flights and a collapse in new bookings.

Many passengers had their flights cancelled by their airlines, while others no longer wished to travel, due in part to the different national emergency measures taken – often without coordination – by the different countries such as flight bans, closing borders, imposing quarantine requirements or requiring a negative COVID-19 test from passengers shortly before flying.

With airlines facing liquidity problems, EU countries also introduced further emergency measures to support them, by granting state aid or by allowing more flexibility in the way airlines refund passengers. The Commission issued interpretative guidelines and recommendations on vouchers, but passengers whose flights had been cancelled were often pushed by airlines to accept vouchers, instead of receiving a cash refund.

We are carrying out an audit to assess how effectively the Commission has been safeguarding passenger rights during the COVID-19 crisis. We will also examine whether the EU's current legal framework on passenger rights is adequate to deal with such crises.

The audit follows on from a 2018 ECA special report in which we made a number of recommendations on how to better protect passenger rights in the EU.

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Contents

| | |
|--|----------|
| COVID-19 and air passenger rights | 4 |
| Legal framework | 5 |
| Roles and responsibilities | 6 |
| Focus of the audit | 7 |

COVID-19 and air passenger rights

How does the EU safeguard air passenger rights?

The EU aims to provide all air transport users with a uniform level of protection. EU law¹ entitles air passengers to reimbursement, monetary compensation, rerouting and on-the-ground assistance (such as meals and refreshments or hotel accommodation) if their flights are cancelled or significantly delayed, or if they are denied boarding. It also provides protection for people who book package holidays², including money-back guarantees and repatriation if a travel organiser becomes insolvent.

How has the pandemic affected air passenger rights?

The COVID-19 outbreak brought major travel disruption, leading to the cancellation of around 70 % of all flights and a collapse in new bookings.

Many passengers had their flights cancelled by their airlines, while others no longer wished to travel, due in part to different national emergency measures taken – often without coordination – by different countries, such as:

- flight bans,
- closing borders at the last minute,
- imposing quarantine requirements, or
- requiring a negative COVID-19 test from passengers shortly before flying.



With airlines facing liquidity problems due to the pandemic, EU countries also introduced further emergency measures to support the struggling airlines, for example by granting a significant amount of state aid or by allowing more flexibility in the way airlines refund passengers. As a result of the latter, many passengers whose flights had been cancelled were offered vouchers by airlines – and often even pushed to accept them – instead of receiving a cash refund. In other cases, airlines might not have refunded passengers at all, or not on time.

What has the EU done in response?

In guidelines published in March 2020³ shortly after the disruption started, the Commission reminded Member States of passengers' right, under EU law, to choose between a refund or rerouting if the airline cancels their flight. Furthermore, the Commission emphasised that offering a voucher does not affect passengers' entitlement to a cash refund.

Also in March, the Commission announced a temporary framework for state aid measures to support the economy as a whole, thereby enabling Member States to grant financial aid to the struggling travel and transport industry, among other sectors. Numerous airlines, tour operators and travel agents sought this aid in order to be able to keep operating and avoid bankruptcy. Throughout the crisis and up until December 2020, according to some estimates, airlines had obtained or were in the process of obtaining up to €37.5 billion in state aid⁴. Twelve Member States had also notified the Commission of state aid measures to support tour operators and travel agencies to the tune of some €2.6 billion.

In May 2020, due to the continued increase in flight cancellations, the Commission issued a recommendation⁵ to make vouchers more attractive to passengers. The Commission recommended that vouchers (i) should be valid for at least one year, (ii) should be transferable, and (iii) should be refundable if unused. The Commission also reminded Member States that they could use state aid to satisfy passengers' claims for reimbursement arising from COVID-19 travel disruption.

Legal framework

Regulation on Air Passenger Rights⁶

The Regulation on Air Passenger Rights, passed in 2004, established common rules on compensation and assistance for passengers in the event of denied boarding, flight cancellations, or long delays to flights.

The Commission proposed a revision in 2013, having identified grey areas, gaps and other issues in the original regulation, as well as differing enforcement in different Member States, resulting in several disputes between passengers and airlines that needed to be clarified by the European Court of Justice. As of today, the proposal has not yet been adopted because the Council has not yet been able to agree on its position⁷ (the European Parliament did so as long ago as 2014).

Package Travel Directive⁸

This directive is intended to provide a high level of protection on package holidays, including in the event that package travel contracts are terminated, as well as money-back guarantees and repatriation if a travel operator becomes insolvent.

Roles and responsibilities

Member States

The Member States' national enforcement bodies are responsible for enforcing EU Law in the area of air passenger rights.

The Consumer Protection Cooperation (CPC) Network can also play a role in safeguarding passenger rights by responding to complaints received from passengers where consumers' collective interests are harmed.

European Commission

The Commission monitors the implementation of the legal framework on air passenger rights. It can propose changes to the framework and issue recommendations or guidelines to harmonise implementation where needed.

Within the Commission,

- the **Directorate-General for Mobility and Transport (DG MOVE)** is responsible for the EU's overall transport policy, including on passenger rights;
- the **Directorate-General for Justice and Consumers (DG JUST)** is responsible for the Package Travel Directive, as well as cross border enforcement of consumer rights through the CPC Network; and
- the **Directorate-General for Competition (DG COMP)** decides on whether to approve state aid notified by the Member States.

Focus of the audit

This audit aims to assess whether the **EU's air passenger rights have been safeguarded during the COVID-19 crisis**. In particular, we will examine whether:

- the current legal framework is sufficiently resilient to address the challenges posed to air passenger rights by COVID-19;
- the Commission has adequately monitored the application and enforcement of air passenger rights during the COVID-19 crisis; and
- the Commission has taken the necessary action to safeguard air passenger rights.

The audit will also cover whether passenger rights were taken into account when granting state aid to the travel and transport industry.

We intend to publish our report before the main summer holiday season starts, so that our recommendations can contribute to a solid framework supporting air passengers in times of crisis and to supporting a general attempt to restore trust in aviation.

In 2018, we published another [special report on EU passenger rights](#). The current audit will include a follow-up of the recommendations made in that report.

ABOUT ECA SPECIAL REPORTS AND AUDIT PREVIEWS

The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Audit previews provide information in relation to an ongoing audit task. Since we identified the issues underlying these areas of enquiry before the audit work commenced, they should not be regarded as audit observations, conclusions or recommendations. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited.

If you wish to contact the team in charge of this audit, please do so through the following e-mail address:

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- ¹ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.
 - ² Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.
 - ³ Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19 C(2020) 1830 final of 18.3.2020.
 - ⁴ European Federation for Transport and Environment; “Bailout Tracker, Transport & Environment”. This amount also includes non-EU airlines.
 - ⁵ Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic, OJ L 151 of 14.5.2020, p. 10.
 - ⁶ Idem.
 - ⁷ <https://www.consilium.europa.eu/en/policies/air-passenger-rights/>
 - ⁸ Idem.

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