



European travel law – Addressing current issues and challenges in the light of Covid-19

Key points

- Improved information requirements and contact options**
 Consumers are often unaware of their full options, rights and possible claims. As the Covid-19 crisis has clearly shown, even existing obligations to provide information concerning passenger rights (PR) as well as travel packages are often not met satisfactorily. Consumers also have problems contacting companies to receive current information, which is especially essential in the context of urgent dispositions such as during a crisis.
- Access to justice**
 Reimbursements, e.g. due to cancellations, often take substantially longer than required by the Package Travel Directive (PTD) and PR Regulations. Consumers find themselves ignored. There are also specific difficulties with refunds if the booking was made via an online platform – consumers are referred by the actual contract partner to the online platform and vice-versa. National arbitration bodies often do not have sufficient powers.
- End of prepayment – Insolvency protection**
 The predominant practice of payment in advance in travel law means that consumers lose the advance payment if the company goes insolvent. It also fosters uncertainty regarding the application and particular scope of insolvency protection under the current PTD regime.
- Free of charge cancellation in case of extraordinary circumstances**
 The PTD provides the right to terminate the travel contract free of charge for both tour operators and consumers in the event of unavoidable and exceptional circumstances. However, in practice there is legal uncertainty. There is a need for uniform rights to withdraw from the contract free of charge in the case of exceptional circumstances for individual services too.
- Availability, standardisation and minimum requirements for tickets**
 There is a trend emerging for all carriers to charge consumers unexpected extra fees for services. In addition, the limited availability of through tickets hinders multi-modal travel and environment-friendly mobility.

Background

It is well known that the Covid-19 pandemic has hit consumers and companies hard. The field of travel in particular, which has been regulated at the European level chiefly in the form of the [Package Travel Directive \(PTD\)](#) and the [Passenger Rights \(PR\) Regulations](#) for [air](#), [rail](#), [ship](#), [coach and bus](#) travel, experienced another crisis following the Thomas Cook insolvency in 2019. As a result of the crisis, known problems in consumer law have become more evident and a lack of clarity, gaps in legal protection and practical difficulties in

asserting rights have been highlighted. In 2020, the **Austrian Chamber of Labour** alone received over 113,000 enquiries across Austria related to travel. That represents a rise of 237% compared to the corresponding figure in 2019.

The **European Commission** responded to the pandemic in March 2020 by issuing interpretative [guidelines](#) for the EU regulations on passenger rights, [information](#) on application of the PTD with reference to Covid-19 and a [recommendation](#) on travel vouchers in May 2020. In February 2021 the Commission produced a comprehensive [report on](#)

[the application of the PTD](#) strongly considering the pandemic. The **European Court of Auditors** conducted an [audit](#) of the crisis resilience of current air passenger rights and compliance with those rights in connection with Covid-19.

In addition to Covid-19, we are facing a climate crisis that calls for sustainable action. In line with the European Green Deal, the **sustainability of mobility** should be improved and the shift to environment-friendly means of transport should be facilitated within the [Sustainable and Smart Mobility Strategy](#).

Main findings

Improved information requirements and contact options

Overall **travel contracts** can be divided in **three categories: Package, Linked Travel Arrangements (LTA) and stand-alone services**. The distinction between these categories is **vital** due to the resulting rights, protection and possible claims. Furthermore, consumers booking packages benefit with respect to applicable laws (as stated in Rome I-Regulation) and national jurisdiction (Brussels Ia-Regulation). As soon as more than one stand-alone service for the purpose of the same travel is to be booked and all contract options are available, these categories are often **too complicated** for consumers to distinguish and to mind the “very thin lines” separating them. Yet, the PTD provides comprehensive information obligations including standardized forms which only apply to packages and LTA within the specific scope of the PTD. There are, however, no information obligations under the PTD for single services, including combinations of single services out of its specific scope. Thus consumers are **often unaware** of the legal qualification of the services they are about to buy.

The [Commissions flowchart](#) in order to help distinguishing between packages, LTAs and individual travel services, does **not help enough**, since it requires a certain awareness and research initiative by the consumer.

Furthermore, a significant number of complaints handled by the Austrian Chamber of Labour are caused by **ignored information obligations** and **misleading or wrong information**: e.g., PTD-Travel organizers defined themselves as agencies which resulted in a rejection of support and responsibility. Air passengers were also **regularly informed incorrectly or inadequately** about their existing passenger rights. Existing claims to cash refunds were concealed, for example, and the impression was created that the refund can only be given in the form of a voucher – a practice that the

Commission has clearly rejected in its [recommendation](#) on travel vouchers.

There were also massive numbers of complaints regarding **contact issues** when travel companies could not be reached, correspondence on current questions was impossible and no current or sufficient information was provided by companies even on their websites. Especially in crisis situations, irrespective of the type of travel, there is a legitimate need for smooth communication with the contract partner. However, under current law there are gaps in the field of passenger transport and package travel.

Access to justice

The crisis has shown that the **repayment deadlines** provided for in both the PTD and the PR legislation are **regularly not complied with**. Consumers face month-long delays and reimbursements are often made only following intervention or legal action e.g., by consumer protection organisations. It is incomprehensible in this context – as also noted by the European Court of Auditors in its recent report – that state aid was given to airlines and package tour operators without requiring them to make legally compliant refunds to consumers.

Reimbursement issues also occur **beyond the scope of the PTD and PR** in the context of single bookings such as accommodation. Several member states regulated further restrictions on national levels for reimbursement such as the right to fulfill obligations only via a voucher, even against the will of the consumer. There are no particular restrictions against such a practice on EU-level.

There are further problems with bookings via online platforms; in the case of flight bookings in particular, airlines refuse to refund money to consumers directly and refer to the platforms, which in turn consider that it is incumbent on the airline to make the refund. Additionally, in some cases reimbursement fees which are not covered by any legal justification were charged. It is **not appropriate and justifiable** that consumers have to **face such issues regularly**.

Consumers also need **reliable rules** in the case of rail transport. There is urgent need to extend the jurisdiction of the national arbitration bodies to all carriers and their ticket sellers both for local and long-distance travel.

End of prepayment – Insolvency protection

Insolvency protection is a vital scope of the PTD. Consumers are to be reimbursed in the case of the organizers' insolvency. However, the coverage of insolvency protection for **re-bookings** and **vouchers**,

which were widely offered during the Covid-19-crisis, is handled differently: While some companies argued that vouchers are not protected at all, there are further uncertainties if there is a difference between a voucher dedicated for a package, as opposed to a voucher on (just) an amount of money.

Major interpretation disputes occurred in cases when contracts were cancelled **prior to an insolvency** of the organizer, since according to the wording the PTD would actually only provide coverage of cancellations **due to insolvency**, but no other cases. Such an interpretation would be **fundamentally contradictory** to the given scope of comprehensive insolvency protection for packages.

Beyond the scope of the PTD, no particular insolvency protection is given, which leads to significant damage in cases of bankruptcy of travel companies. This significant **difference** in regards of protection between travel contract options is **considered not justifiable**.

The given legal situation in the travel sector, a combination of **prepayment-buisness-models** on one side and a partial or full **lack of protection** on the other, is even more problematic in crisis situations, when numerous bookings have to be cancelled simultaneously and thus a large number of payments have to be refunded within a short time: This evidently poses considerable structural difficulties, thus such **models should be replaced in the long term** – [as already demanded by parts of the industry](#). [Current studies](#) and [new pricing models](#) show that discarding the system of payment in advance would be feasible both in the fields of air travel and package travel.

Free of charge cancellation in case of extraordinary circumstances

The PTD provides the **right for the consumer to terminate the travel contract** without penalty in case of unavoidable and extraordinary circumstances. One of the most common issues during the Covid-19-crisis are disputes about such justified termination before the start of the journey due to related risks, focused on the appropriate time period in which the withdrawal can be declared. Further in question is the relevance and evidence given through government warnings.

Consumers are in a **difficult situation**. On the one hand, they have the burden of proof that the premise for their right to terminate the contract without penalty is given: The shorter the timeframe before the travel date, the more sufficient the information on issues regarding transport or the travel destination. On the other hand, consumers have to stay in the contract up to that short timeframe before the travel date, thus are bound to the contract already unlikely to be consumed and are

insecure on the outcome of the dispute. Nevertheless, the full price has to be paid in advance in any case. The PTD lacks particular details in this regard.

In the field of passenger rights, easier termination conditions are **unilaterally provided for transport companies** in the case of extraordinary circumstances such as “force majeure”. The only passenger rights regulation that did not provide for such an exemption from liability was the [Rail Passenger Rights Regulation \(RPR\)](#). It is therefore particularly disappointing that precisely in 2021, the [Year of Rail](#), exceptional circumstances were [introduced in the RPR](#) as a reason for exemption from compensation payments. It is to be expected that, as in the field of air travel, this change will lead to considerable legal uncertainty with correspondingly long legal disputes.

Although **exceptional circumstances also affect individual travel services**, there is no uniform, EU-wide regulation of consumer rights to withdraw from the contract free of charge. In crisis situations, consumers therefore face great uncertainty concerning the content and assertion of their rights (see “Improved information requirements and contact options”).

Availability, standardisation and minimum requirements for tickets

In the case of cross-border travel, consumers regularly have great difficulty purchasing travel tickets for the whole journey (**through tickets**). Only rail transport companies are obliged to offer through tickets, and they are only required to do so on routes operated by themselves or by 100% subsidiaries. That means that the [recast of the RPR](#) is a missed opportunity to **promote environment-friendly means of transport**, such as rail transport, attractive cross-border and long-distance travel options or multi modal transport-combinations.

Currently in the field of bus and coach passenger rights, there is no obligation to provide a **breakdown** of the various services. Regarding air travel it remains questionable which cost components are considered to be unavoidable and foreseeable and therefore required to be included and itemised in the final price of a flight ticket.

In Particular, low-cost airlines charge **unexpected fees** for supplementary services that are **disproportionately high** compared to the final price of the ticket, such as varied fees for certain check-in types, onboard services and seat reservations. Therefore, a genuine comparability of services and prices is not ensured in practice.

Demands

- Nature of contract: Given the major differences in protection regimes, the introduction of an information obligation for all travel companies about the nature of any contract, package, LTA or single service
- Legal obligations for efficient contact opportunities for all travel options
- Urgent creation of a legal framework for automated refunds and compensation payments without the need to submit a request
- Ensuring that refunds must be paid directly to consumers, also in the case of bookings via booking platforms
- Extension of the jurisdiction of the national arbitration bodies in rail transport
- Urgent clarification of uncertainties regarding definitions and coverage of insolvency protection: Guarantee for sufficient protection for consumers in all cases
- In a long term, a general end of pre-payment obligation for consumers or a uniform and comprehensive insolvency protection regime for all travel services
- Introduction of a uniform right for consumers to terminate the contract free of charge in the case of exceptional circumstances as well as accompanying legal clarifications
- Definition of a basic package of services that is required to be included in the ticket price for air, rail and bus travel (e.g. check-in, i.e. issue of a boarding card in the case of air travel)
- Obligatory introduction of through tickets, regardless of the means of transport and operators, to which passenger rights also apply
- Improvement of all passenger rights (e.g., bus and water transport) at least to the level of rail passenger rights

Literature

[BEUC: BEUC's Position on Travellers Rights during the Covid-19 crisis, April 2020](#)

[BEUC: Covid-19 and EU Travellers Rights – Evaluation of the Member States Implementation of the EU Commission Recommendation on 'vouchers', December 2020](#)

[European Court of Auditors: Special report 15/2021 – Air passenger rights during the Covid-19 pandemic: Key rights not protected despite Commission](#)

[European Court of Auditors: Special report No 30/2018 – EU passenger rights are comprehensive but passengers still need to fight for them](#)

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July 2021

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