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AIR CANCELLATIONS: HOW TO BETTER PROTECT CONSUMERS

POSITION PAPER

No sector has been as heavily impacted by the COVID-19 pandemic as travel, with operations grinding to an almost complete halt in early 2020 and only slowly recovering now with increased testing and vaccination.[1] The pandemic also had very damaging effects on travellers, who inadvertently carried much of the financial burden with their cancelled flights not being adequately refunded by airlines. It has clearly shown the flaws in the existing EU legislation related to passenger rights. This should be considered as an opportunity to improve the framework.[2]

A renewed framework for consumer protection in air travel

Airlines, tourism operators and intermediaries ultimately rely on consumers' willingness to travel and trust in their service providers. This trust should be protected and enhanced by EU policymakers.

In this paper, eu travel tech sets out its vision for a renewed framework for consumer protection in case of air cancellations. It is our belief that the travel & tourism sector should draw lessons from this crisis and re-emerge with a more consumer-focused outlook, guided by relevant changes to EU legislation.

The urgent need for a stronger enforcement of Air Passenger Rights

Although doubts were already raised before the crisis about the efficacy of the enforcement of EU Air Passenger Rights rules[3], the lack of enforcement peaked with the mass cancellations seen during the COVID-19 outbreak. Most airlines plainly refused to refund their passengers, as mandated in the Air Passenger Rights Regulation[4], often by forcing them to accept vouchers, without corresponding action from national enforcement bodies. It laid bare the dire need for a stronger enforcement of the existing framework.

Airlines' practices also had severe impacts on travel intermediaries and their customers.[5] As the extent of the COVID-19 outbreak became clear in 2020, most airlines decided to suspend the usual automatic refund mechanism for travel intermediaries[6], heavily delaying refunds for their customers as a result.

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[1] Data.europa.eu:
[2] See points 63 and 64 of the Annex to Commission's Sustainable and Smart Mobility Strategy Communication
[3] European Commission, DG MOVE: Study on the current level of protection of air passenger rights in the EU
[4] Regulation 261/2004, Art. 7
[5] See Annex for further details
[6] Phocuswire: Travel intermediaries look to regulators for help with airline refunds

In normal times, airlines refund intermediaries through the IATA Billing and Settlement Plan system, which ensures an automatic and swift refund process[7]. When airlines suspended the use of this system, intermediaries were required to manually request and process refunds, leading to delayed refunds for their customers and a significant strain on intermediaries' limited resources.

eu travel tech strongly calls on the National Enforcement Bodies, with the support of the European Commission, to ensure that rules are applied properly and to swiftly dissuade infringements.

In this context, eu travel tech welcomes and actively supports the coordinated action by the Commission and the CPC Network on airlines' cancellation practices.[8] The costs of extraordinary circumstances for the world of air travel should not simply be passed onto consumers; airlines must (be compelled to) respect the applicable legislation.

Furthermore, whenever State aid is granted to airlines, an explicit obligation should be included for airlines to process refunds to travellers for cancelled flights in strict compliance with applicable legislation. National enforcement bodies must monitor compliance with that obligation.

Voluntary and regulated vouchers can be a positive alternative to refunds

With the massive wave of cancellations resulting from the COVID-19 outbreak, the travel sector experienced a severe liquidity crunch, particularly at the start of the pandemic, leading to the equally massive issuance of vouchers to consumers. While issuing such vouchers in lieu of the legally mandated refunds, in case of cancellations, may relieve financial pressure in extraordinary circumstances, it presents disproportionate harm to travellers, who may be used as involuntary and unprotected creditors to transport operators[9], and shall therefore be adequately regulated.

eu travel tech supports the existing consumer protection framework, which affords consumers the right to a refund in case of cancellation by the transport operator. Consumers should nonetheless have the option to choose a voucher instead of a refund, provided such vouchers comply with certain conditions. In this context, eu travel tech calls for a voucher system which:

- is accessible regardless of whichever distribution channel (direct or indirect) has been chosen by the consumer;
- ensures that vouchers are valid for a limited period (e.g. 12 months) and come with a premium attached compared to the regular refund;

[7] IATA Resolution 824r states that airlines are required to refund agents for indirect sales within 2 weeks
[8] European Commission: Coordinated actions
[9] Reuters: European airlines resist mounting coronavirus refund claims

- provides the consumer with a right to obtain a full refund if the voucher cannot be used within the validity period;
- freezes, upon issuance of the voucher, all reimbursement processes based on cash and bank transfer, including chargeback processes under credit card schemes; and
- is fully flexible:
    - usable on all the airlines of a group (if relevant);
    - usable for any passenger, original or new, and for any number of passengers;
    - usable for any route operated by the airline, in any market or country in the EEA.

Long-term trends and the effect of the COVID-19 pandemic necessitate a strong insolvency protection framework in air travel

Paradoxically, the aviation sector has known relatively few airline insolvencies since the beginning of the crisis.[10] However, such insolvencies are simply being postponed by the historic amount of state aid provided to the sector[11]. As governments cannot and should not finance the European airline sector indefinitely, a coming wave of insolvencies is inevitable. Additionally, the more general trend of frequent airline insolvencies is likely to continue.[12]

eu travel tech firmly believes that a strong insolvency protection framework for air travel is necessary to safeguard consumers. A legal framework for airline insolvency protection, as also supported in the European Parliament's position on the Air Passengers Rights Regulation revision[13] and the Commission's Sustainable and Smart Mobility Strategy[14], should be consistent with obligations under the Package Travel Directive to ensure a level playing field. In effect, air travellers' payments and thus their refunds (or vouchers issued in lieu of the refunds) should be fully insured in case of an airline's insolvency (applicable to any ticket sold through both direct and indirect distribution channels). A guarantee fund should be considered for this insolvency protection obligation, as already exists for package travel. Considering the issues around national guarantee funds in the context of the Package Travel Directive over the past years, an EU-wide solution is needed to ensure proper consumer protection and consistency across the internal market.

Drawing lessons from the crisis for the protection of package travel

[10] There were only 13 European airline failures in 2020, down from 15 in 2019 and 2018
[11] CAPA Centre for Aviation: COVID-19 prompts dramatic increase in state aid to (some) European airlines
[12] Since 2017, 51 European airlines went insolvent (incl. names such as Monarch, Air Berlin, Flybe, Adria Airways and Aigle Azur)
[13] A7-0020/2014, Amendment 11
[14] See point 64 of the Annex to Commission's Sustainable and Smart Mobility Strategy Communication

The lessons of the pandemic shall be taken into account in the ongoing evaluation[15] of the Package Travel Directive by the European Commission and its possible revision. Airlines' harmful commercial practices and their negative impact on consumer welfare should be a key consideration.

Specifically, eu travel tech proposes to consider an alignment of the Air Passenger Rights Regulation and the Package Travel Directive, obligating airlines to provide refunds to their travellers under "unavoidable and extraordinary" circumstances, even if the flight is not cancelled (for instance, for those cases when there is a negative Official Government Travel Advice). Additionally, policymakers should consider an amendment of Article 22 of the Package Travel Directive to ensure that suppliers reimburse organisers for customer refunds or face a suspension of full liability of the organiser, in exceptional circumstances such as the COVID-19 pandemic.

[15] European Commission: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:90

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Annex – Further details on refund issues for consumers and intermediaries during the COVID-19 crisis

REFUND ISSUE FOR THE AGENTS

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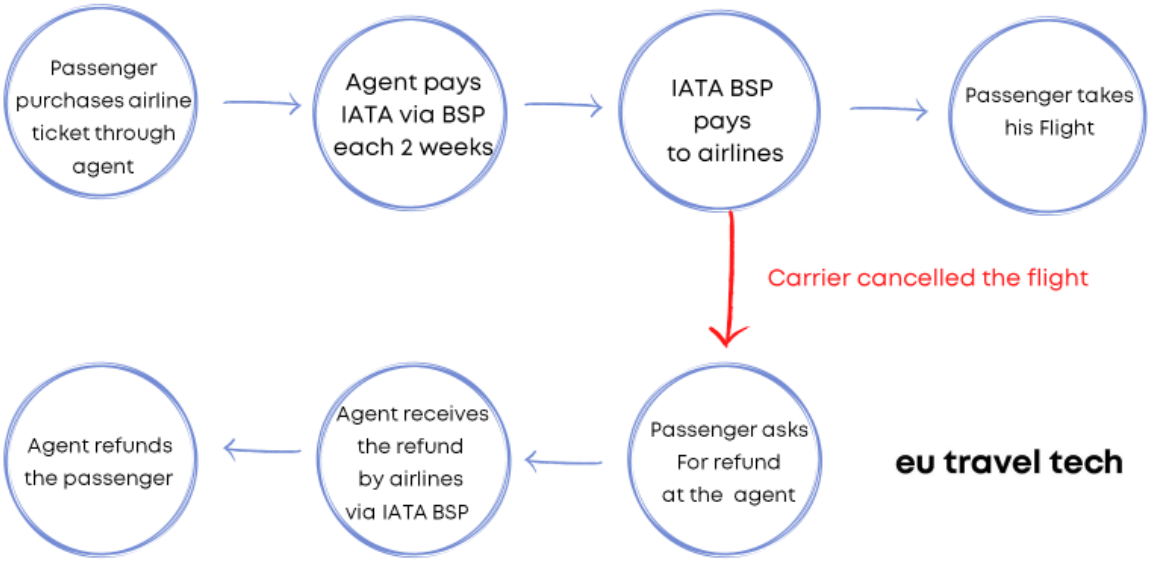
- Regulation 261/2004 passengerrights : airlines arerequired to refundtheir passangersif the flightis cancelled
- IATA Resolution 824r : Airlines arerequiredto refundagents for the indirect saleswithin 2 weeks
- Through *Passenger Agency Programme* IATA allows agents to purchaseairlinetickets anddefinetermsof payment
- Reversal of capitalflows : With the Covid19 crisis, many airlines switchedoff the automatic refundfunctions

WHAT HAPPENS WHEN PASSENGERS PURCHASE AN AIRLINE TICKET VIA AN AGENT



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WHAT HAPPENS WHEN PASSENGER ASKS FOR REFUND TO AGENT

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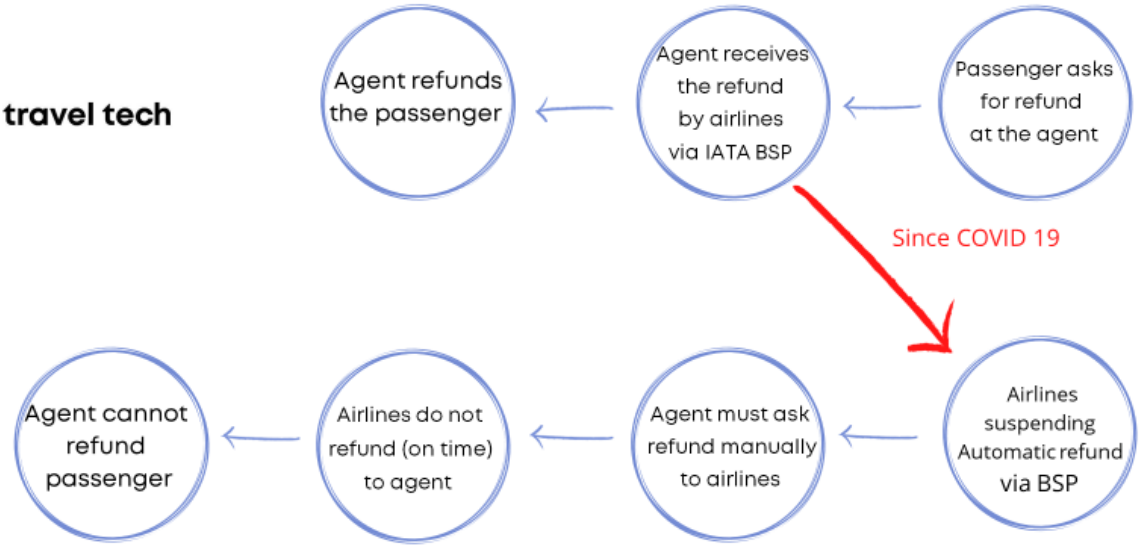

WHO IS RESPONSIBLE ?

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- **Responsibility of governments:** airlines received 36 billion Euro state aid without conditions to refund customers.
- **Responsibility of European Commission**: " Lip service" from Valean, no words from Reynders, Vestager and Von der Leyen despite repeated warning.
- Refund procedures: Airlines organise the non-refunding strategically market by market.

WHAT NEXT ?

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- How could the current refund claims speed up ?
- How to avoid a repetition of this problem ?
- Should a financial protection system be introduced for prepaid services?
- What guarantee system can be established between the travel intermediary and IATA regarding refunds (pay as you fly, guarantee fund ....)?