

COVID-19 CRISIS – TEMPORARY AMENDMENT OF REG. 261/2004

Summary

- European airlines face an unprecedented crisis. Air traffic is down by 80% and some airlines have suspended operations completely. Potential losses from COVID-19 are estimated at €69 billion (\$76 billion).
- Liquidity and operations are under great strain. No new revenue will be generated while fixed costs will still be incurred. Airlines must preserve financial reserves to survive this storm and to support the economic recovery.
- Regulation (EC) 261/2004 was not designed to deal with mass cancellations caused by a global pandemic and travel restrictions that most EU Member States and many countries across the world have put in place.
- A4E recognises the importance of strong consumer protection. In these exceptional times, however, providing cash refunds within 7 days as required by the Regulation will affect airlines' economic viability. That is in nobody's interest, least of all the passengers.
- Potential refund claims for tickets through the end of May amount to €9 billion (\$10 billion) for European airlines. A fair balance must be struck. Passengers should not be out-of-pocket, while airlines should not be forced to take steps that threaten their existence.
- In this unprecedented situation, a fair balance between consumer protection and airlines' operational realities would be the ability to provide refundable vouchers valid until a later date when airlines are able to resume operations again.
- A targeted and time-limited amendment to Regulation EU261 is urgently needed to explicitly allow this option. It offers flexibility and choice to passengers, who would preserve the value of their ticket and could eventually claim a refund.
- This would help cash-strapped airlines to survive and merely defer reimbursement at a time when flights must be cancelled because of border closures. Many passengers would not be able to travel because of health-related restrictions at present and thereby risk losing their ticket altogether.
- A voucher would not be unprecedented or out of step with other jurisdictions. Authorities in Brazil, Canada and the Netherlands, for example, have stated that they consider refundable vouchers for future travel an appropriate approach in the current extraordinary context.

Introduction

Air transport is a major contributor to the socioeconomic development of the EU. European aviation supports an estimated 9.4 million jobs and contributes €624 billion (4%) to EU GDP.¹ The industry is now in an unprecedented crisis caused by the COVID-19 pandemic.

European airlines' liquidity and ability to continue operations is under great strain. In these exceptional circumstances, airlines must preserve financial reserves to stand a chance of weathering the storm and to support the economic recovery eventually. In some cases, these reserves may be depleted before the recovery starts.

The EU institutions' swift action to grant a waiver for airport slots is highly appreciated by the industry. In addition to other relief measures, it will be necessary to take a fair and balanced approach to the obligations under Regulation (EC) 261/2004 on Air Passenger Rights.

The outlook – dark clouds on the horizon

COVID-19 has forced mass cancellations of flights, prompted by EU Member States and countries around the world imposing health-related travel restrictions and/or border controls. Air traffic has decreased by more than 80% across Europe at the end of March 2020. European airlines are operating at 10% capacity or have suspended operations completely until further notice.²

IATA estimates that European aviation faces a potential €69 billion (\$76 billion) loss in passenger revenue for 2020, a decline of 76% on 2019. Demand (measured in revenue passenger kilometers) is expected to fall by 46%. Such a decline puts at risk about 5.6 million jobs and €342 billion (\$378 billion) in EU GDP supported by air transport.³

With European aviation coming to a virtual standstill, airlines will generate little to no revenue in the coming months, while continuing to incur significant unavoidable fixed costs. It is a highly capital-intensive industry with an average 3.6% profit margin.⁴

Despite these severe problems, European airlines are sparing no effort in trying to bring passengers home (often with a costly one-way empty leg) in close cooperation with national governments. They are also

¹ ATAG, Aviation Benefits Beyond Borders, 2018. Available [here](#).

² See latest Eurocontrol traffic figures [here](#).

³ IATA updated impact assessment on COVID-19 of 24.03.20. Available [here](#). This scenario assumes severe travel restrictions for up to three months followed by a gradual economic recovery through the end of 2020.

⁴ IATA, Economic Performance of the Airline Industry, December 2019. Available [here](#).

playing an essential part in continuing to transport essential goods and medical supplies to deal with the immediate crisis and to keep society and the economy functioning.

Air passenger rights – a framework designed for a different context

Regulation 261/2004 was not designed to deal with mass cancellations caused by a global pandemic or wide-ranging travel restrictions and border controls. These measures have a practical effect on airlines' ability to meet the requirements of the Regulation. For example, it is almost impossible to re-route passengers at the "earliest opportunity" at present, as was also recognised by the European Commission's guidance.⁵

The current obligation to refund passengers within 7 days in case of cancellations still stands. The industry fully recognises the importance of strong legal protections for consumers and does not question the obligation to provide refunds during normal times. However, while other sectors are also in financial distress, the critical difference is that they are not subject to the same legally binding obligation to refund their customers within a short time frame.

In these exceptional times, providing immediate cash refunds will affect airlines' economic viability. That is not in anyone's interest, least of all the passengers. The present situation requires a fair and sensible approach to consumer protection and airlines' operational and commercial realities. Passengers should not be out-of-pocket, while airlines should not be forced to take steps that threaten their existence, the jobs and the benefits they generate for the economy.

The need for a targeted and time-limited amendment to Reg. 261/2004

If all eligible passengers were to claim immediately for refunds for the mass cancellations that have taken place and are foreseen to take place, the cost would be prohibitive and unmanageable. This is an unprecedented crisis, one which the airline industry has never faced before to the same extent. Available cash reserves for major European airlines range from approximately €1 to €7 billion, but many small- and medium-sized carriers have much less than that. In view of potential claims for refund of tickets totalling at least €9 billion (\$10 billion) until the end of May 2020, the pressure on finances is enormous.

A fair solution would be to allow refundable vouchers as an alternative to immediate cash refunds, valid for a period of up to 18 months starting from the date of the original flight. The passenger would receive a full refund of the voucher if not used or be reimbursed for the portion of the voucher not used for the purchase of new tickets. If the new ticket cost more than the value of the voucher, the passenger would pay the difference to the airline at the time of purchase.

⁵ EC Interpretative Guidelines on EU passenger rights regulations in the context of Covid-19, 18.03.2020. Available [here](#).

Some airlines might offer additional incentives, such as allowing the voucher to be used for a flight to any destination and discounts on the price of that flight. In that sense, the value of the passenger's purchase might even increase through this option. The value of the passenger's ticket would in all cases be preserved, and any reimbursement would, subject to the passenger's choice, simply be delayed.

This is an extraordinary and unforeseeable situation for all of us. Airlines have cancelled flights because of health-related requirements and travel restrictions. Even if those flights were operated, passengers would not be permitted to travel and would therefore lose their tickets and money. A refundable voucher offers passengers more flexibility and choice during a period of uncertainty. This option would be in line with the spirit, if not the letter, of the air passenger rights framework.

The Commission's guidance does not go far enough. Airlines need legal certainty. A targeted and time-limited amendment to Regulation 261/2004 is urgently needed to explicitly allow for this option. It would help cash-strapped airlines to survive, as the industry works its way through this crisis. With most people unable to travel anytime soon, vouchers for future travel would also help to kick-start transport and tourism once the crisis has passed. The amendment should be time-limited, starting from a date where the mass cancellations began to occur, e.g. 1 March, and be applicable for a few months, e.g. until mid-September. The temporary amendment would be repealed in due course.

Such an amendment would not be unprecedented or out of step with other jurisdictions. The Canadian Transportation Agency – which is considered to uphold a high standard of passenger rights – considers vouchers or credits for future travel to be “an appropriate approach in the current context.”⁶ The Dutch government “considers the temporary use of vouchers to be an acceptable alternative, as it preserves a passenger's right to a refund and prevents airlines from falling into even greater financial distress.”⁷ Brazil has decided to defer reimbursements for 12 months.

The Commission's guidance on the Package Travel Directive also recognises that tour operators' liquidity is strained and states that travellers should therefore consider accepting that their package tour is postponed to a later time. It notes that this could be done through a voucher and that passengers should be able to ask for a full refund if that voucher is not used.⁸ If a corresponding amendment to the Package Travel Directive were to be considered in parallel to EU261, A4E would be supportive thereof.

⁶ CTA, Statement on Vouchers, 25.03.20. Available [here](#).

⁷ Letter from the Dutch Minister of Infrastructure and Water Management to the Dutch House of Representatives, 30.03.20. Available [here](#).

⁸ EC Information on the Package Travel Directive in connection with the COVID-19, 19.03.20. Available [here](#).

Conclusion

European aviation is facing a period of severe crisis. The potential losses are staggering and will be felt for years to come. The short-term pressure on liquidity is immense. In this context, it is necessary and legitimate to ask that regulations which were intended for very different circumstances be reviewed or adapted in a fair and balanced way. For a limited period, and subject to appropriate safeguards, the ability to offer refundable vouchers as an alternative to immediate cash refunds would help Europe's airlines to cope with the COVID-19 crisis. It strikes an appropriate balance between consumer protection and the economic viability of a key industry for Europe, which will be needed to support the economic recovery when it happens. Speed is of the essence and the industry hopes that the same expedited approval procedures that were applied to the slots waiver could be used again. Looking further ahead, this crisis underlines the pressing need for the pending revision of the Regulation to be completed.

About: Airlines for Europe (A4E) is Europe's largest airline association, based in Brussels. The organisation advocates on behalf of its members to shape EU aviation policy to the benefit of consumers, ensuring a safe and competitive air transport market. With more than 720 million passengers carried each year, A4E members account for more than 70 per cent of the continent's journeys and operate more than 3,000 aircraft. Members with air cargo and mail activities transport more than 5 million tons of goods each year to more than 360 destinations either by freighters or passenger aircraft. Members include Aegean, airBaltic, Air France-KLM, Cargolux, easyJet, Finnair, Icelandair, International Airlines Group (IAG), Jet2.com, Lufthansa Group, Norwegian, Ryanair, TAP Air Portugal, Smartwings and Volotea. Beyond airlines, manufacturers such as Airbus, Boeing, Embraer, GE and Thales are also members of A4E.