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Datum

25 mei 2020

Kenmerk**Bijlage(n)**

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beslisnota

Reactie op brief Europese Commissie inzake
aanbevelingen vouchers voor geannuleerde reizen

Inleiding

De Europese Commissie heeft Nederland op 14 mei een brief gestuurd om aandacht te vragen voor de aanbevelingen die het heeft gepubliceerd met betrekking tot vouchers voor geannuleerde vlieg- en pakketreizen. In de brief vraagt de Commissie om een reactie waarin Nederland ingaat op de implementatie van de aanbevelingen.

Ook geeft de Commissie aan dat het signalen heeft dat Nederland Europese wetgeving niet handhaaft, en dat het een ingebrekestelling overweegt wanneer dit niet verbetert. Daarbij verwijst het vooral naar de ACM en de handhaving van de richtlijn Pakketreizen. Uw beslissing om de aanwijzing aan de ILT in te trekken, is positief ontvangen door de Commissie.

Het voorstel is dat 11.1

Geadviseerd besluit

11.1

Beslistermijn

Zo spoedig mogelijk. De Commissie vraagt om een reactie uiterlijk 28 mei.

Politieke context

- In hun brief onderstreept de Commissie dat Europese wetgeving van kracht blijft tijdens de Covid-19-crisis, wat betekent dat passagiers altijd de keuze moeten krijgen tussen terugbetaling en een voucher.
- De Commissie kiest ervoor om passagiers te beschermen door hun rechten te continueren, omdat ook zij (financieel) getroffen worden door de crisis. Aanpassing van passagiersrechten zou bovendien juridische problemen kunnen geven en het vertrouwen van passagiers in de EU en de transportsector negatief kunnen beïnvloeden.

- De Commissie kan Nederland in gebreke stellen als handhaving van een Europese Verordening of Richtlijn niet op orde is (op basis van art. 258, Verdrag betreffende de werking van de EU). Momenteel heeft de Commissie dit instrument niet in overweging, maar de Commissie geeft aan dit wel te zullen doen bij een onbevredigende reactie van Nederland.

Inhoud van de antwoordbrief

- **BRW** [redacted]
[redacted]
[redacted] en 2) uw beleid ten aanzien van luchtvaartvouchers.
- **BRW** [redacted]
[redacted]
[redacted]
[redacted]
- **BRW** [redacted]
[redacted]
[redacted]
[redacted]
- Uw beslissing tot intrekking van de aanwijzing aan de ILT wordt aangehaald, en tevens meldt de brief dat Nederland afziet van verdere lobbyactiviteiten om Verordening (EG) 261/2004 (hierna: "de verordening") tijdelijk aan te passen.
- **11.1** [redacted]
[redacted]
[redacted]
- De ILT gaat handhaven op de keuze die passagiers voorgelegd moeten krijgen tussen terugbetaling en een voucher; dit is input van de ILT zelf.
- Nederland blijft aanbieders van vouchers stimuleren om deze aantrekkelijker te maken, en passagiers aanmoedigen vouchers te accepteren (mits dat financieel kan). Een positief punt in dit verband is dat KLM de waarde van vouchers met 15% heeft verhoogd.
- Ten slotte wijkt het Nederlandse standpunt af van dat van de Commissie waar het gaat om een eventuele garantie op de vouchers. De Commissie legt het initiatief hiervoor bij de lidstaten, terwijl Nederland een Europese aanpak wil. Daarom wordt het voorstel gedaan aan de Commissie om hierover met ons in gesprek te gaan.

10.2.e [redacted]
[redacted]



Didier REYNDEERS
Justice

Adina VĂLEAN
Transport

Brussels, 14.05.2020
Ares(2020) 2900092 s.

Dear Minister,

We would like to draw your attention to the Recommendation of the Commission 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. Please find enclosed a copy of this Recommendation.

While recognising the serious impact that the COVID-19 pandemic has had on carriers, organisers of package tours and providers of tourism services, this Recommendation recalls that the Union's rules under the passenger rights Regulations and the Package Travel Directive remain applicable in the current COVID-19 context. In case of cancellation of transport services or a package tour, passengers or travellers have the right to be reimbursed in money within the prescribed legal timeline (within 7 days to one month for passengers, depending on the transport mode, or 14 days for travellers). If carriers or organisers wish to offer travellers or passengers a voucher as an alternative to reimbursement, they have to clearly indicate to them that they have a choice between the reimbursement in money and the voucher. The Recommendation sets out how vouchers could be made more attractive, through financial guarantees and favourable and flexible terms.

Over the last weeks, we have been listening carefully to the views of Member States, the European Parliament as well as various stakeholders.

A large number of Member States unilaterally adopted specific national rules on package travel, while others requested changes to the EU Package Travel Directive temporarily postponing the deadline for refunds or allowing organisers of package travel to issue vouchers instead of reimbursement in money. Many Member States also requested changes to the EU passenger rights Regulations, temporarily allowing transport service providers to issue vouchers instead of reimbursement in money, irrespective of the preference of the passengers and travellers. Other Member States expressed their opinion against changes to the applicable rules.

The European Parliament adopted Resolution 2020/2616(RSP) on 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, calling on the Commission to ensure that the passenger rights Regulations are properly implemented in the context of COVID-19 pandemic. Both of us also had numerous discussions with Members of the European Parliament on this topic.

We have taken all these positions, including those of business and consumer or passenger associations, carefully into consideration.

The numerous cancellations resulting from the COVID-19 pandemic have indeed led to an unsustainable cash flow and revenue situation for the transport and travel sectors and the Commission understands the need to

support the industry. However, we are convinced that the EU must preserve travellers' and passengers' rights especially in the current COVID-19 context.

Our citizens are deeply hit by the crisis. Many have lost significant revenue. Those who would have chosen to travel before the pandemic might prefer to use the reimbursement of their cancelled travel to cover other more pressing needs. Therefore, it is paramount to support consumers in these challenging times. A limitation of existing rights with retroactive effect would not only raise serious legal concerns, but also undermine citizens' trust in the EU and notably in the transport and travel sectors, thus discouraging future bookings.

It must therefore remain the passengers' or travellers' choice to opt for vouchers instead of reimbursement in money. To make vouchers an attractive and reliable alternative, they should be protected against the carrier's or organiser's insolvency, be refundable within a reasonable period and present certain other flexible characteristics, as described in the Commission Recommendation.

Member States play an important role to ensure an effective and robust insolvency protection system for vouchers that could be set up by the private or the public sector.

The Commission Recommendation also points to instruments available to help easing the uncontested liquidity needs of undertakings in the transport and travel sectors, without compromising consumers' rights. Moreover, the Commission services are at your disposal to advise your authorities with regard to State aid policy issues and other available supporting measures.

We count on your full cooperation to ensure that the Commission Recommendation is implemented and would appreciate receiving information about any measures taken, or envisaged to be taken, as soon as possible and at the latest by 28 May 2020.

Besides this, we urge all Member States to ensure that the Package Travel Directive and the EU passenger rights Regulations are correctly applied and that practices in violation of such rules are detected in a timely manner and effectively sanctioned.

In that respect, we are concerned that, according to the information available to the Commission, in the Netherlands, under the consent of the competent national authority, the ACM, traders offer vouchers instead of reimbursement in money to travellers who have booked a package travel. To this end, on 25 March 2020 it issued a statement on its website with the title "ACM sympathizes with the Dutch travel industry's voucher initiative".

Our understanding is that this practice derogates from the travellers' right to receive reimbursement in money within 14 days after termination of the package travel contract as laid down in Article 12(4) of Directive (EU) 2015/2302 on package travel and linked travel arrangements.

Regarding passenger rights, we welcome that the Minister of Infrastructure and Water Management has reacted immediately to the Recommendation and has withdrawn on 14 May 2020 (IENW/BSK-2020/89850) the instruction issued on 30 March 2020 to the Dutch National Enforcement Body, the ILT (letter dated 30 March 2020, entitled "Aanwijzing aan de ILT inzake handhaving Verordening (EG) Nr. 261/2004" (instruction to ILT on enforcement Regulation (EC) No 261/2004), reference number IENW/BSK-2020/60990), regarding the renunciation of enforcement when airlines issue vouchers for flight cancellations in the light of Covid-19.

We invite your authorities to provide us, as soon as possible and at the latest by 28 May 2020, with further information regarding the above mentioned national measure and to demonstrate how your country will ensure compliance with EU law.

While we hope that these issues can be resolved without recourse to formal infringement proceedings, we would nevertheless like to stress that, if there is no satisfactory follow-up to this letter, the Commission will have to consider the opening of formal infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union (TFEU).

We look forward to a constructive cooperation.

Yours faithfully,

(e-signed)

Didier REYNDERS

(e-signed)

Adina VĂLEAN

Enclosure: Commission Recommendation C(2020)3125 final of 13 May 2020, OJ L 151, 14.5.2020, p. 10–16