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Justice

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Transport

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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