

THE IMPACT OF THE COVID-19 PANDEMIC ON TRAVEL TO AFFECTED COUNTRIES

This Newsletter is intended to explain the impact of COVID-19 on trips bought before the pandemic which have not been used because of it, or because the way in which they may be used has changed.

There are various cases and types of travel which may have been purchased:

PACKAGE TRAVEL

A travel package is the contract taken out with a trader providing a combination of travel services through a website, or in person. A package means a combination of at least two different types of travel services for the same trip, or holiday. Operators selling package travel are obliged to have travel insurance.

Package travel is regulated by EU Directive 2015/2302 Article 3.2.

Article 12 of the aforementioned Directive regulates the **RIGHT OF WITHDRAWAL** as follows:

The traveler may terminate the travel package contract at any time before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or the carriage of passengers to the destination. In this case, the traveler shall be entitled to a full refund of any payments made for the package, but shall not be entitled to additional compensation.

Such refunds or reimbursements shall be made to the traveler without undue delay and in any event not later than 14 days after the travel package contract is terminated.

Considering the exceptional situation we are currently facing in Spain, **Royal Decree law 11/2020 of 31st March adopting supplementary urgent measures in the social and economic field to deal with COVID-19 was declared and comes into force on 2nd April 2020.** Amongst the adopted measures in the case of package travel cancelled due to COVID-19, the organiser may offer the consumer or user a **voucher to be used within a year** after the end of the duration of the declaration of the state of Emergency and its extensions, in an **equal amount to the corresponding reimbursement.**

If the voucher has not been used after the period of validity, the consumer may request a full refund of any payment made.

However, **the organiser shall proceed to make a reimbursement to consumers and users if they have requested the termination of the contract.**



LINKED TRAVEL ARRANGEMENTS

This refers to the purchase for instance of air transport via a website which is linked to another site selling different products such as accommodation, tickets to shows, monument visits, etc. but which are operated by different, unaffiliated traders and booking payments are made to different operators. Such travel is not regulated in the same way as package travel.

In Spain, **AESA - State Air Safety Agency** - is the national body in charge of ensuring the fulfilment of the requirements of all Spanish civil aviation and aeronautical activity This **body analyses whether Passenger Rights Regulation EC 261/2004 are met in case of claims**. When a consumer claim is received, it gathers the relevant information and reports on the result of its investigation. If the report favours the consumer, but the airline does not, said report will constitute a significant piece of evidence in the judicial proceedings.

Possible scenarios related to purchased travel in case of cancellation

FLIGHT CANCELLATIONS

Regulation EC 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights is to be applied.

In case of flight cancellation, the airline must **offer the passenger a choice between one of the three following options**: (Regulation (EC) 261/2004 Article 8.1)

- Reimbursement
- Re-routing at the earliest opportunity
- Re-routing at a later date at the passenger's convenience

In cases of return tickets purchased on the same booking, if the outward trip is cancelled and the traveler chooses to be reimbursed, the return flight should also be reimbursed. If they have been purchased through different bookings, only the cancelled part should be reimbursed.

Right to compensation: when the cancellation occurs due to extraordinary circumstances, unavoidable by the operating air carriers, they **(the airlines) are not obliged to pay compensation to passengers**. In this context, the circumstances causing the cancellation of flights due to prohibitions or restrictions imposed by the authorities in the current COVID-19 are to be considered extraordinary circumstances.

HOW TO CLAIM THE REIMBURSEMENT OF YOUR AIRFARE

A claim must be submitted to the airline. If no reply from the airline is received within the period of a month, or if it is not a satisfactory reply, the claim must be directed

- To AESA - State Air Safety Agency
- To Court, on a private basis if the passenger rights have been violated

The limitation period within which to claim such reimbursement in Spain is **5 years**.

In accordance with Article 7.3 (applicable to reimbursement) the operating air carrier shall make payment in cash, by bank transfer, banker's cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

Therefore, in order to be reimbursed with a voucher, the passenger must have given prior agreement to this option instead of the other offered choices.

The operating air carrier must **make reimbursement within seven days** from the date of the passenger claim, according to the Regulation (EC) 261/2004.



PACKAGE TRAVEL CANCELLATION

The existing regulation concerning package travel obliges operators to take out **cancellation insurance**, and therefore the traveler should make their claim to the package travel operator – where the travel contract was taken out - who must refund the amount of the booking of all products purchased for this package and which are insured.

Since these operators are obliged to take out cancellation insurance, even if the trader is declared insolvent, the insurance company should take charge of these cancellations.

TRAVELERS RIGHTS

In the current situation of COVID – 19, and as concerns transport of passengers, new directives have been dictated within the scope of the European Union.

More precisely, on 18th March 2020 the European Commission dictated new guidelines for the protection of passengers' rights during the COVID-19 pandemic "**COMMUNICATION FROM THE COMMISSION Commission Notice Interpretative Guidelines on EU Passenger rights regulations in the context of the developing situation with Covid-19**".

These interpretative guidelines aim to clarify how certain provisions of the EU passenger rights legislation apply as concerns the rights of passengers travelling by air, train, bus and coach or ship, as well as the corresponding obligations for carriers, notably with respect to cancellations and delays.

AIR PASSENGER RIGHTS (EC Regulation nº 261/2004)

- **Right to choose between reimbursement and rerouting:** Art. 5 of Regulation is clarified in case of cancellation or delay taking into account the circumstances of the COVID-19 outbreak. Passengers must be informed of the delays and uncertainty linked to the choice of re-routing rather than reimbursement, and if the option of re-routing is taken, the operating air carrier will have met his obligation to communicate the available re-routing.
- **Right to assistance:** the operating air carrier shall offer free assistance to passengers affected by flight cancellations, including sufficient food and beverage, hotel accommodation if necessary and transport to their accommodation. The operating air carrier must comply with the obligation to offer assistance even if the cancellation is due to extraordinary circumstances as in the case of COVID-19.
- **Right to compensation:** the Commission considers that there is no right to compensation since the decisions adopted by the competent authorities dealing with the pandemic COVID-19 containment measures are not inheritant in the normal exercise of the activity of air carriers and are outside their own control. (Art.5.3)

TOURIST ACCOMMODATION BOOKINGS CANCELLATION

As stated in the first paragraph of the Order SND/257/2020 of 19th March announcing the suspension of the opening of tourist accommodation establishments to the public following Royal Decree 463/2020 of 14 March 2020 declaring the State of Emergency to fight against the health crisis caused by COVID-19, **it is decreed the closure** of hotels, tourist apartments and any tourist accommodation in Spain **from the aforementioned date 19 March 2020**.

In particular, it is decreed the suspension of the opening to the public of all hotels and tourist accommodation and other short stay lodgings, camping, caravanning parkings and similar, in any part of Spanish territory.

Such prohibition came into effect **on the same 19 March 2020** and will remain in force **until the end of the declaration of the state of Emergency**.



Since tourist activity is not allowed, tourist establishments must reimburse their clients the amounts paid for all bookings made from 19 March 2020 and for as long as the state of Emergency continues.

This is the situation to date, but we must bear in mind that it is so exceptional and anomalous that new regulations may be dictated modifying the ones currently in force. We will have to comply with all the prevailing regulations at all times, and with the legal interpretation of those regulations.

As usual, our legal advice and claims department is at your and your clients' disposal to deal with any eventualities or claims that may arise following travel cancellations as a consequence of the state decreed by COVID-19.