

The fate in France of cancelled trips and flights during the Coronavirus pandemic

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The COVID-19 pandemic has triggered a global health crisis and an economic one too, for years to come. One of its many consequences has been and continues to be the cancellation of booked trips on account of worldwide travel bans still applying. The question that has very quickly arisen is whether travel service providers are required to refund and/or compensate consumers have suffered such cancellations. In answering this question, a distinction must be drawn between holiday packages **(I.)** and what are known as “dry seats” **(II.)**.

I. Fate of holiday packages

In France, an Ordinance n°2020-315 enacted on 25 March 2020 creates an exceptional legal regime, applying to holiday packages¹. This statutory instrument applies essentially to packaged travel and accommodation deals², i.e., packages that include transport and hotel accommodation, typically, an organized tour, booked through a travel agency or tour operator.

If the cancellation of such deals³ is notified between 1 March 2020 and any date before 15 September 2020, either by the customer or the service provider; the service provider may instead of making a refund, choose to offer a voucher for the same value, which the customer may elect to use for a subsequent identical or equivalent service⁴.

The tour operator must inform his customers in writing⁵ if it wishes to use this option within thirty days⁶, Importantly, the customer may neither refuse nor demand an immediate refund. The new offer made for the same monetary value, must be conveyed within three months thereafter and the option remains valid for eighteen months⁷. If the voucher is not consumed by the customer, only then will the tour operator have to make a refund .

¹ Ordinance n°2020-315 dated 25 March 2020 on the financial conditions for terminating certain tourist travel and holiday contracts in the event of exceptional and unavoidable circumstances or force majeure.

² Defined by articles L211-7 to L-211-14 of the French Code of Tourism.

³ Termination of the contract.

⁴ Articles 1, II. and 1 III. of the above-mentioned Ordinance.

⁵ Within the meaning of Article L121-16, 3° of the French Consumer Code – typically, emails.

⁶ Thirty days from the termination of the contract or, if the contract had been terminated before the implementation date of the Ordinance, thirty days from the implementation date - Article 1, III. of the above-mentioned Ordinance.

⁷ Articles 1, III, IV and V of the above-mentioned Ordinance.

The purpose of this exceptional regime is explicitly stated in the Report to the French President of the Republic regarding this Ordinance, is to "*preserve the cashflow*" of travel / tour operators in order to prevent them from "*defaulting*". The intention of the legislator is obvious: to protect travel agencies/ tour operators from bankruptcy⁸. Unfortunately, no exceptional regime has been enacted in favour of air carriers and airlines, in the case of 'dry-seats', ie cancellations of air tickets booked during the pandemic and /or flight closures.

II. Fate of 'dry-seats'

It is no surprise that on 18 March 2020, the European Commission recognized that the COVID-19 pandemic constitutes an extraordinary circumstance within the meaning of the relevant regulations applying to passenger rights for flight cancellations⁹. Airline companies are therefore not required to pay passengers the lump-sum compensation provided under the regulations in the event of flight cancellations.

However, as law stands, airlines are still obliged to refund passengers their cancelled tickets¹⁰ and within just seven days¹¹, even as air traffic has come to an all but complete standstill with a few exceptions and that the IATA which has recently outlined its (mutli-)layered approach for restarting the aviation industry does not expect air traffic to return to pre-crisis levels before 2023 at the earliest¹². The reimbursement must be in full¹³ and would therefore at first glance, need to include airport tax¹⁴, which the airlines pays to the States. The overall cost of these refunds is estimated at 35 billion dollars, for the second quarter of 2020 alone¹⁵.

Evidently all airlines are already suffering significant distress. In order to avoid a nightmarish scenario of bankruptcies in cascade, it is very much hoped that an exceptional regime at least comparable to one established to help package tour operators¹⁶ would be implemented sooner rather than later to deal

⁸ Report to the President of the French Republic relating to Ordinance n° 2020-315 of 25 March 2020.

⁹ European Commission Notice, Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19 2020/C 89 I/01, 18 March 2020, *spec.* §3.4.

¹⁰ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, Article 8.1 (a).

¹¹ *Idem.*

¹² On 19 May the IATA published jointly with the ACI (representing the world's airports) a roadmap for resuming operations intended to reassure the travelling public that health and safety remain the overall priorities.

¹³ Fabienne LOISEAU, « Quels sont les droits des voyageurs ? » 17 avril 2020, 60 millions de consommateurs.

¹⁴ *Idem.*

¹⁵ IATA Press Release n°23, 31 March 2020, "*Airlines' cash reserves are melting fast*".

¹⁶ *Ibid.*

with the fate of dry-seats. Such exceptional measures are also supported by the French union of travel agencies¹⁷ and of course, by the CEO of the International Air Transport Association¹⁸.

The European Commission may well have taken a small first step in this direction on 13 May, noting that *"if (...) carriers become insolvent, there is a risk that many travelers and passengers would not receive any refund at all"*.¹⁹ It therefore recommends increasing the attractiveness of vouchers that airlines can offer to passengers in the stead of a full refund, by setting up a guarantee mechanism against potential insolvency of the airlines and a minimum voucher validity period of twelve months.²⁰ The fact remains that neither the passenger's right to demand a refund nor the all too short seven-day period which airlines have to process the refund have been revisited. This is somewhat regrettable, especially since the Commission itself accepts that the *"numerous cancellations entailed by the COVID-19 pandemic have led to an unsustainable cash-flow and revenue situation for the transport and travel sectors"*.²¹

It is worth restating the obvious to conclude. Exceptional measures to bounce back²² and come out stronger in the aftermath of this pandemic are necessary, of course, to preserve the air transport sector at large allowing airlines to re-start their post-COVID activity by safeguarding as many jobs as possible that directly or indirectly depend on them. Crucially, the interests of passengers themselves is to avoid a situation where their right to an immediate refund gets stalemated by airlines filing for bankruptcy or even worse, precipitates them into such a state. This could ultimately deprive us all of nothing less than one of our fundamental freedoms: that of free movement and circulation. Let us all therefore remind ourselves that patience, more than ever before, is a virtue.

¹⁷ Jean-Pierre MAS, President of the union of French travel agencies *"Les Entreprises du Voyage"*, in Fabrice GLISZCZYNSKI, *"35 billion euros : la facture colossale des billets d'avions à rembourser d'ici à juin "*, 31 March 2020, La Tribune; See also Alexandre de JUNIAC, CEO of the IATA who explains that to *"avoid bankruptcies that would be in nobody's interest, we [IATA] therefore propose credit notes instead of refunds"*, while adding that [IATA] is *"aware of the problem that this may pose for customers, but it is a question of survival for the airlines"*, in Bruno TREVIDIC, *"Coronavirus : L'impossible remboursement des 35 milliards de dollars de billets aériens non utilisés "*, 31 March 2020, Les Echos.

¹⁸ *Ibid*,

¹⁹ Commission Recommendation dated 13 May 2020 on vouchers offered to passengers and travelers, §14, page 4.

²⁰ Commission Recommendation dated 13 May 2020 on vouchers offered to passengers and travelers, articles 1, 2 and 4, pages 6 and 7.

²¹ Commission Recommendation dated 13 May 2020 on vouchers offered to passengers and travelers, §13, page 4.

²² See our new "Rebound" page accessible at : <https://ftpa.com/rebond/>