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Special Report

Air passenger rights during the COVID-19 pandemic:

Key rights not protected despite Commission efforts

EUROPEAN
COURT
OF AUDITORS

Contents

Executive summary

I The COVID-19 pandemic has had a major impact on many sectors of the economy. The travel and tourism sectors in the EU were amongst the first ones directly hit as the pandemic brought on major travel disruption during which many aeroplanes were grounded. This resulted in numerous flight cancellations, followed by requests for reimbursement by passengers who were unable to fly. Airlines and package organisers experienced sudden and serious liquidity problems, and Member States stepped in, providing unprecedented levels of support to allow airlines to continue operating and to survive during and beyond the COVID-19 crisis.

II We analysed how the COVID-19 crisis affected air passenger rights. While focusing on the Commission's role, we assessed whether the right of access to information and the right to reimbursement for air passengers have been safeguarded. We also examined how airlines were supported with State aid, whether this aid was linked to the protection of passenger rights, and whether the deficiencies which existed before the COVID-19 pandemic persisted or were exacerbated by the crisis.

III The resumption of air transport will be an important aspect of the EU's economic recovery following the COVID-19 crisis. This report informs the Commission as it works towards simplifying and strengthening the legal framework, making it more consistent, and better adapted, to ensure the protection of passenger rights in the EU.

IV Overall we found that:

(a) The COVID-19 crisis brought into sharp focus the fact that air passengers were not informed fully about their rights, and that there was a risk that they would consequently lose money to which they were entitled. The crisis also shed light on limitations to Member States' enforcement of air passenger rights: many passengers were not reimbursed in the initial phase of the crisis; many others had no other choice than to accept vouchers. As of June 2020, airlines started reimbursing passengers, albeit with significant delays. At the time of our audit, the ability of passengers to secure reimbursement remained limited both when intermediaries (e.g. travel agencies) were involved, and when vouchers were imposed on passengers. Furthermore, most tickets and vouchers of passengers are not protected against airline insolvency. The lack of an overview due to the absence of reporting requirements, for example on the numbers of passengers claiming their money back and on the number of unsolved cases within the legal

deadlines across the EU is in itself an important part of the problem in enforcing air passenger rights.

(b) National measures to combat the pandemic, often taken in an uncoordinated and unilateral manner, contributed to the collapse of air travel and led to sudden and serious liquidity problems for airlines and package organisers. The Commission's temporary State aid framework facilitated the provision of unprecedented levels of State aid by Member States to airlines and package organisers, amounting to €34.7 billion. While there was a requirement for the Member States to ensure that certain State aid recipients report to the Commission on how this aid was used to support the EU policy objectives related to the green and digital transformation, there was no such requirement in relation to the reimbursement of air passengers. When approving national State aid measures, the Commission cannot impose conditions in the area of passenger rights, but made it clear that Member States could decide to do so. Member States did however not make this link when they provided their aid to airlines. This is one of the reasons why airlines acted differently with regard to how and when they reimbursed travellers.

(c) The Commission's "Re-open.EU" website provides valuable information to prospective travellers in all modes of transport but depends on information from Member States, and this information is not always up to date.

(d) During the pandemic, the Commission acted to safeguard air passenger rights and took steps to mitigate the effects of the crisis, despite the limitations of the existing legal framework. In particular, the Commission has limited powers to enforce the rights of air passengers. A proposal to enhance the Commission's enforcement powers of 2013 has so far not been agreed by the Council.

V In this report we make recommendations to the Commission for:

(1) better protection of, and information on, air passenger rights;

(2) more coordination of national measures and better linking State aid to airlines to the reimbursement of passengers;

(3) improved tools and legislation for safeguarding air passenger rights;

(4) considering the relevance of the recommendations in this report also for other modes of transport.

Introduction

Passenger rights in the EU

01 Over the last 30 years, there has been a boom in travel in Europe[1]. The EU has taken steps to ensure a harmonised level of protection of passenger rights to facilitate mobility for passengers travelling by air, rail, water and bus. These passenger rights are defined at EU level, applied by transport providers and enforced by national bodies.

02 The EU's policy on protecting passenger rights has a direct impact on citizens, making it highly visible. It is also a policy that the Commission considers a success because it empowers consumers by guaranteeing their rights.

03 EU law gives air passengers the right to, for example, reimbursement of flight tickets, rerouting and on-the-ground assistance (such as refreshment or hotel accommodation) if their flights are cancelled or significantly delayed, or if they are denied boarding (see ***Box 1***).

[1] https://ec.europa.eu/transport/themes/passengers_en.

Box 1

EU legislation to safeguard air passenger rights

To ensure a harmonised level of protection for passengers in the four modes of collective transport (air, rail, waterborne and bus), the European Commission updates the relevant legislation regularly in all transport modes[2]. The latest such update is in the rail sector[3].

With regard to the air passenger sector, the air passenger rights regulation, Regulation 261/2004[4] sets out the EU rules on compensation and assistance to passengers in the event of denied boarding and of cancellation, or long delay of flights. This regulation applies to all passenger departures from an airport within a Member State, or from an airport in a country outside of the EU to an airport in a Member State, but only if the operating carrier is an EU carrier.

The Commission proposed a revision to the Regulation in 2013[5] after the travel disruptions caused by the Eyjafjallajökull volcano. This proposal is supported by the Parliament in 2014, but not by the Council[6]. It includes revised procedures aiming to provide better safeguards of passenger rights in times of crisis, such as improved complaint handling procedures, and strengthened means of enforcement, monitoring and sanctioning.

For air travellers using a package (e.g. combining flight and hotel), the Package Travel Directive (PTD)[7], which started applying in 2018, ensures, among other things, money-back guarantees and repatriation if a package organiser becomes insolvent. This Directive replaced the 1990 Package Travel Directive[8].

Both the Regulation and the Directive fall within the scope of the 2017 Consumer Protection Cooperation Regulation (CPC Regulation)[9].

04 There are many bodies involved in the implementation, enforcement and supervision of these rights. Passenger rights have to be applied by the airlines. The

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[2] With regard to rail: Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

With regard to waterborne: Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

With regard to bus: Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

Commission monitors the implementation of the legal framework, can propose changes to it, and issues recommendations or guidelines to harmonise implementation where needed. The Member States' national enforcement bodies (NEBs) are responsible for enforcing EU Law at national level. The Consumer Protection Cooperation (CPC) Network can also respond to complaints received from passengers. We provide an overview of all the organisations involved and their roles, in ***Annex I*** for flight-only passengers, and in ***Annex II*** for package travellers.

Restrictions on travel during the COVID-19 pandemic

05 On 30 January 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a "public health emergency of international concern". However, at the end of February 2020, it issued a recommendation[10] emphasizing the importance of not applying any travel or trade restrictions in relation to the COVID-19 outbreak. In the end of the first quarter of 2020, governments worldwide started to restrict, and later ban, international travel. While initially restrictions were primarily applied to travel from China (where the pandemic started), they rapidly expanded to other zones.

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[3] Regulation (EU) No 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (recast) (OJ L 172 of 17.5.2021, p. 1).

[4] 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 (OJ L 46 of 17.2.2004, p. 1).

[5] COM(2013) 130 final of 13 March 2013.

[6] https://www.consilium.europa.eu/en/policies/air-passenger-rights/.

[7] Directive (EU) 2015/2302 of the European parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326 of 11.12.2015, p. 1).

[8] Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

[9] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004. (OJ L 345 of 27.12.2017, p. 1).

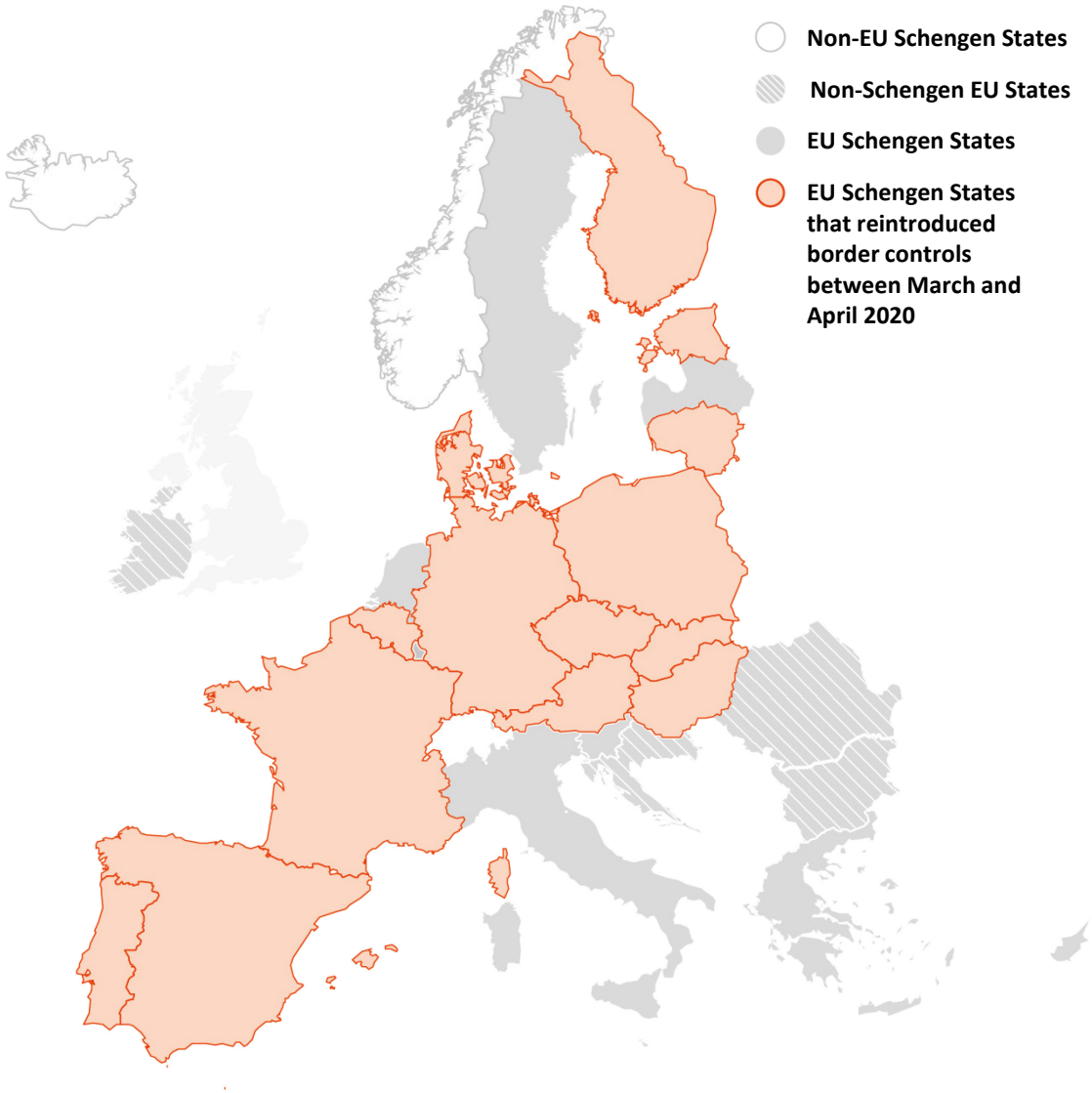
[10] WHO Coronavirus disease 2019 (COVID-19). Situation Report - 39, 28 February 2020.

On 11 March 2020, the WHO characterised COVID-19 as a pandemic[11] and the United States announced the suspension of travel from Europe. One week later, the EU shut its external borders to air passengers[12]. As the pandemic worsened, individual EU Member States also started closing their borders to commercial air traffic from other countries within the EU. By April 2020, 14 Member States in the Schengen area had introduced internal border controls (see ***Figure 1***). By that time, the WHO had also become more nuanced, for example by laying down the need to put in place appropriate and proportionate travel measures, balancing the socio-economic consequences of these measures (or temporary restrictions) against potential adverse public health consequences.

[11] https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen.

[12] Council Decision of 17 March 2020 on a coordinated temporary restriction of non-essential travel to the EU, applicable until 30 June 2020. Followed up by Council recommendation 2020/912 of 30.6.2020 on temporary restrictions on non-essential travel into the EU and the possible lifting of such restrictions, which has been amended by Council Recommendation (EU) 2021/132 of 2 February 2021 (OJ L 41 of 2.2.2021, p. 1).

Figure 1 – Overview of EU Schengen countries having introduced internal border controls to passenger traffic because of the COVID-19 pandemic



Source: ECA.

06 From May 2020 onwards, internal borders were gradually re-opened, but sanitary restrictions continued to be applied (such as quarantine rules for people travelling from high-risk regions or testing requirements) and, for public health considerations, there was a general advice not to travel.

07 In October 2020, based on a Commission proposal, the Council addressed a non-binding Recommendation asking Member States to coordinate travel restrictions better[13]. In particular, it proposed to use a common "EU Traffic Lights" classification[14] of countries and regions so that citizens can plan their travel arrangements better. The Council, in February 2021, discouraged non-essential travel from high-risk areas until the epidemiological situation had improved[15]. Member States continued to decide on travel restrictions unilaterally throughout the time of the audit, often with little prior notice, as illustrated in ***Box 2***.

Box 2

Examples of national measures applied in the 2021 Easter period

Belgium applied its own traffic light system of high, medium and low-risk regions, and continued to ban all "non-essential" international travel (until 18 April 2021) while travelling inside Belgium was allowed.

The Netherlands, also following a national risk assessment, allowed travelling inside its country but strongly advised passengers not to travel abroad.

Italy also adopted its own national classification of risk areas. Travelling authorisations depended on the colour codes of the regions, and it added a quarantine period of five days on top of the obligatory tests for any foreign travellers entering the country.

France, also using a national classification of risk areas, forbad their inhabitants from travelling between regions, while foreign tourists could enter France after obligatory COVID testing.

Spain took similar measures as France (no internal travel allowed but foreign tourists could enter), applying the commonly agreed EU "traffic lights" approach to travel restrictions.

In Germany, travel restrictions were applied based on information underpinning the EU "traffic lights" approach and using a national definition of risk areas.

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[13] Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.

[14] https://www.ecdc.europa.eu/en/covid-19/situation-updates/weekly-maps-coordinated-restriction-free-movement.

[15] Council Recommendation (EU) 2021/132 of 2 February 2021 amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 41 of 4.2.2021, p. 1).

Travelling abroad was possible, for example, to Mallorca (a Spanish island with a low rate of infection) while, inside Germany, it was strongly advised not to travel (and accommodations remained closed).

Effects of COVID-19 related travel restrictions on air passenger transport

08 Although earlier crises slowed the growth of the airline industry, they did not bring it to a standstill. In 2002, for example, following the terrorist attacks in the United States, air traffic in Europe dropped by 2 %. In 2009, the financial recession caused a drop of 6.6 %. In 2010, the eruption of the Icelandic volcano Eyjafjallajökull caused the cancellation of 111 000 flights in April of that year. ***Box 3*** illustrates the importance of air transport to the EU economy.

Box 3

Air transport in the EU economy

Air transport is key to economic development. In 2018, the air transport industry in the EU-28 employed nearly 2 700 000 people, supporting 13.5 million jobs and €840 billion in economic activity. This is equivalent to 3.6 % of employment and 4.4 % of gross domestic product (GDP)[16]. In 2019, 11 million flights[17] carried over a billion passengers[18].

09 The COVID-19 pandemic, however, is unprecedented in its impact and its duration. In the EU, the effect of the travel restrictions on flight numbers and passengers has been even more important than in other parts of the world. This is due to the smaller size of the various EU domestic markets, and the continued national restrictions imposed by Member States on international travel as a means to combat the spread of the pandemic. Close to 7 000 air routes in the European airport network

[16] https://aviationbenefits.org/around-the-world/europe/.

[17] https://www.eurocontrol.int/sites/default/files/2020-06/eurocontrol-prr-2019.pdf.

[18] https://ec.europa.eu/eurostat/databrowser/view/AVIA_PAOC__custom_828232/default/table?lang=en.

were closed[19]. Many planes were grounded as flights were cancelled and the sector virtually came to a standstill.

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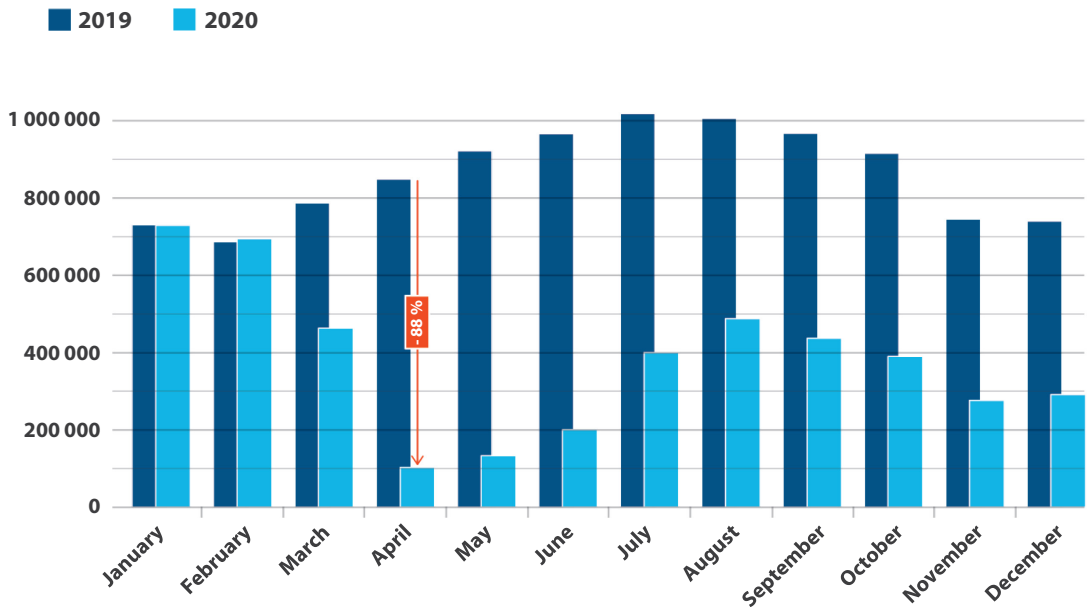
10 In April 2020, there were 88 % fewer flights in the EU than the equivalent month a year earlier (see ***Figure 2***). Moreover, monthly passenger numbers in the EU fell from 70 million in January and February 2020 to only 1 million in April, 99 % fewer than in April 2019 (see ***Figure 3***). The total reduction in passenger numbers was estimated at 346 million for the first six months of the year by Eurostat, and at 800 million, or 67 %, for the full year by the International Civil Aviation Organisation (ICAO). We estimate that roughly 50 million tickets were cancelled between March and May 2020[20].

[19] https://www.aci-europe.org/press-release/307-aci-europe-sounds-alarm-bell-over-the-future-of-regional-air-connectivity.html.

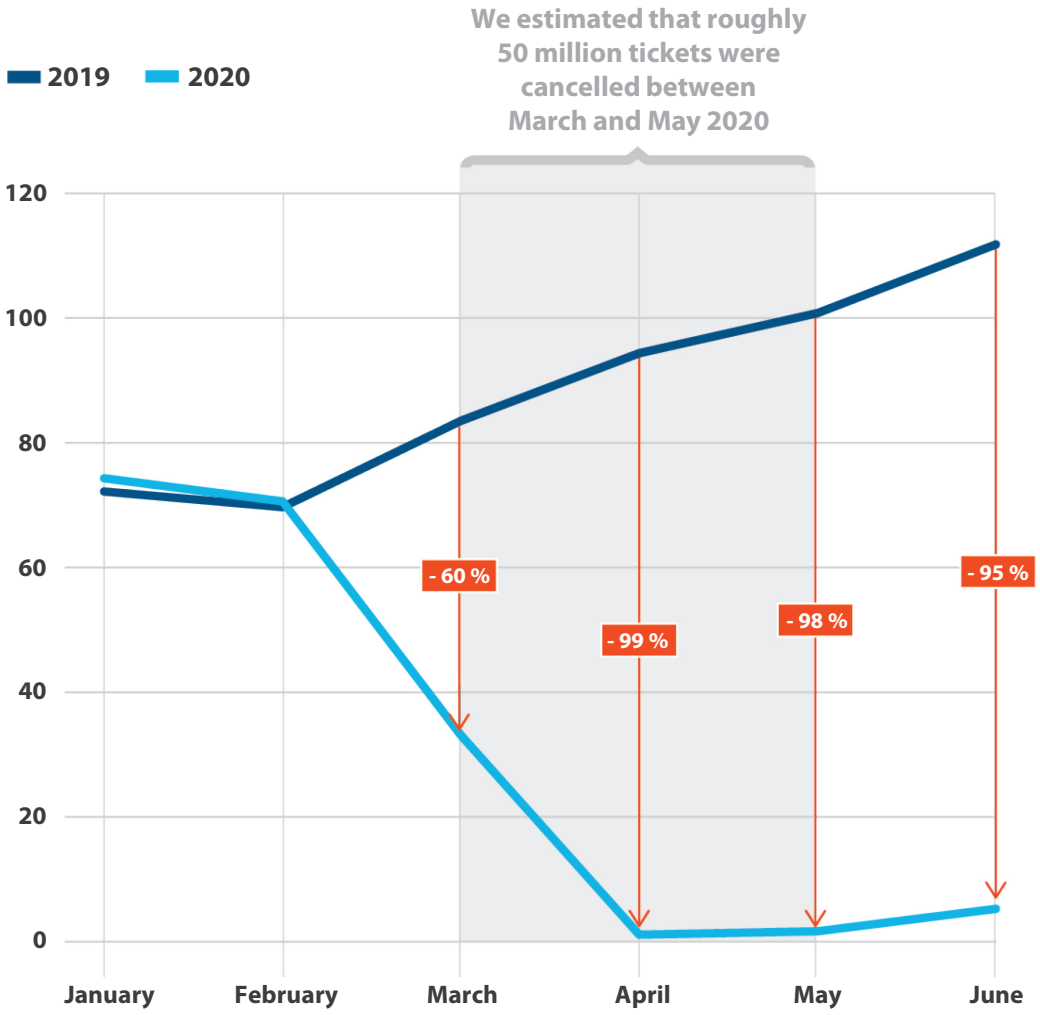
[20] Based on the comparison between the amount of cash reimbursements and an average air ticket price.

Figure 2 – The effect of the pandemic on European air traffic: European air traffic 2019 vs 2020 (in number of flights)



Source: ECA analysis based on data from the Single European Sky Dashboard.

Figure 3 – The effect of the pandemic on air passenger numbers (in million of air passengers)



Source: Eurostat. Data available only until June 2020.

11 As a consequence, at least six million jobs are estimated to be at risk in the EU's tourism and travel industries[21]. Between March 2020 and March 2021, Member States provided over €3 trillion of public support to businesses of all sectors, to mitigate the effects of the COVID-19 crisis on their economies[22].

12 For airlines, the sudden halt in travel caused serious liquidity problems. Since there were virtually no new bookings, airlines found themselves short of cash to pay fixed costs or refund passengers. Airlines became dependent on their cash reserves, or

[21] EP Resolution "EU Strategy on sustainable tourism" (2020/2038(INI)) of 25 March 2021.

[22] Source: ECA using Commission data.

on the willingness of the governments in the Member States to rescue them from potential bankruptcy.

Previous audit on passenger rights

13 In 2018, we published a special report on passenger rights, covering all modes of transport[23]. This report highlighted that, even before the COVID pandemic struck:

— there was a relatively low level of awareness on the existence of passenger rights;

— the enforcement of air passenger rights varied considerably between Member States. This is because the NEBs differ in their structure and apply national law with differing enforcement methods. For example, not all NEBs resolve the individual claims of passengers: some air NEBs consider their role as purely ensuring general enforcement while others also deal with individual complaints;

— the Commission had no mandate to ensure full enforcement of passenger rights regulations.

The report contains also recommendations which were all accepted by the Commission and for which the implementation period is mostly still on going.

[23] Special Report 30/2018 "EU passenger rights are comprehensive but passengers still need to fight for them". See paragraphs 28 to 32.

Audit scope and approach

14 We examined whether the Commission protected passenger rights for air travel successfully during the first year of the COVID-19 pandemic. In particular, we looked at whether:

— the rights of EU air passengers were protected effectively during the COVID-19 crisis, particularly access to information and the right to reimbursement;

— the Commission succeeded in encouraging Member States to link State aid to airlines and package organisers with the protection of passenger rights, and

— the Commission has put the necessary arrangements in place to protect the rights of passengers during the COVID-19 pandemic.

15 As part of our audit work, we:

— analysed the current legal framework, to see the effect of the weaknesses we noted in our 2018 special report during the COVID-19 pandemic;

— analysed documentation on monitoring and enforcement of air passenger rights provided by the Commission;

— analysed the timeliness and reliability of the information contained in the Re-open EU Portal;

— analysed State aid decisions;

— interviewed Commission staff, and

— analysed Eurobarometer data[24].

[24] Eurobarometer 93, summer 2020. See https://data.europa.eu/euodp/en/data/dataset/S2262_93_1_93_1_ENG.

16 We also surveyed the key stakeholders: the NEBs, Consumer Protection Bodies (CPBs) and Airlines Associations (AAs), and assessed their replies and any additional documentation provided. We received 24 replies from the NEBs, and 18 replies from CPC authorities. Based on the content of these replies, we interviewed five NEBs and four CPC authorities. We crosschecked the data with replies from European federations dealing with passenger rights, consumer protection bodies, and airlines associations, and interviewed six of them:

— the European Passenger Federation (EPF),

— the European Consumer Organisation (BEUC),

— the Association of Passenger Rights Advocates (APRA),

— the European Travel Agents' and Tour Operators' Associations (ECTAA),

— the European Travel Tech Organisation (EU TRAVEL TECH), and

— the International Air Transport Association (IATA).

17 The period covered by this audit is March 2020 to March 2021, i.e. the first year of the COVID-19 pandemic in Europe.

18 The resumption of air transport will be an important aspect of the EU's economic recovery following the COVID-19 crisis. This report informs the Commission as it works towards simplifying and strengthening the legal framework, making it more consistent, and better adapted, to ensure the protection of passenger rights in the EU.

Observations

Key air passenger rights in times of COVID-19 overall not respected, and passengers treated differently

19 We assessed whether passengers had been informed of their rights; how these rights were enforced by Member States, and whether the Commission and the Member States had the data necessary for enforcing these rights effectively.

Air passengers have insufficient knowledge of their rights which can result in them not being reimbursed

20 To benefit from the passenger rights framework, including its financial compensations, passengers need to be aware of their rights. However, Eurobarometer data[25] indicate that only 14 % of EU citizens know that air passenger rights exist in the EU; less than half of the respondents who travelled by air are aware of the existence of passenger rights in the EU (49 %).

21 Passengers have the right to be informed about their rights before, during and after their journey. This is particularly important for passengers when there are high levels of disruption. However, Eurobarometer data indicate that only 37 % of those who had experienced a disruption reported that they were satisfied with the way in which they had been informed.

22 Air passengers also have the right to be re-routed or to be reimbursed when a flight is cancelled. However, with regard to reimbursement, different rules apply depending on whether passengers bought an airline ticket only, or a holiday "package" comprising a flight and accommodation:

— "flight-only" passengers should receive from the airline reimbursement of the cost of a ticket for a cancelled flight within seven days from the date of the passenger's request[26];

[25] Eurobarometer 93, summer 2020. See https://data.europa.eu/euodp/en/data/dataset/S2262_93_1_93_1_ENG.

[26] Articles 5(1)(a) and 8(1) of Regulation 261/2004.

— air travellers with a package should be reimbursed by the package organiser within 14 days of the date on which the contract is terminated[27].

23 The COVID-19 crisis also meant that passengers could not, or no longer wished to, travel. However, flight-only passengers who bought a non-refundable ticket and decide to cancel a flight themselves do not have a right to reimbursement under EU law, even under extraordinary circumstances. In these cases, passengers' right to reimbursement is determined by the terms and conditions of their contract with the transport operator, within the relevant national law. By contrast, under the PTD, passengers whose flight is part of a package have to be reimbursed if they cancel the package themselves.

24 ***Table 1*** provides an overview of the various scenarios applicable to flight-only passengers and package travellers, indicating the responsibilities for the disruption, and the scope for reimbursement.

Table 1 – Scenarios applicable to air passengers, and likelihood of reimbursement in case of cancellation

Situations facing flight-only passengers and package travellers	Who is responsible?		Reimbursement likely?
	Member States	Airline/ package organiser	Yes (Y)/No (N)
A. Not possible to fly, because:			
Airline decided not to fly/package organiser cancelled the travel package	N	Y	Y
Travel ban in country of destination (border closure: measure of MS of destination)	Y	N	N[2]
Impossible to reach departure airport (border closed)	Y	N	N[2]
Departure or destination airport closed	Y	N	N[2]
Associated hotel booking in destination country cancelled because of lockdown or other national measures	Y	N	Possible[3]

[27] Article 12.4 of Directive 2015/2302.

B. Passenger chooses not to fly[1], because:			
Obligatory quarantine measures	Y	N	N[4]
Obligatory COVID-19 test, and:			
(a) no possibility to be tested (no test centres open at short notice; waiting queue for reservations too long)	Y	N	N[4]
(b) possibility to be tested available, but too expensive	N	N	N[4]
Personal emotions of fear (e.g. fear of not being able to return home afterwards; fear for COVID contamination in the airport or during travel; fear of getting the disease at place of destination)	N	N	N[4]
Overall unstable situation to travel by air (too many changes at short notice at the place of departure and/or place of destination)	Y	N	N[4]
Higher administrative formalities (e.g. Passenger Locator Form; tracking of private data) and costs	Y	N	N[4]

[1] The assumption is that the flights take off.

[2] Unless the terms and conditions of their contract with the transport operator are flexible and allow for rebooking; if a package organiser/traveller terminates the contract because of unavoidable and extraordinary circumstances, the package traveller is entitled to reimbursement.

[3] Each case will need to be looked at individually (case-by-case assessment). For package travel it matters whether, because of unavoidable and extraordinary circumstances, the package can no longer be carried out. If the hotel booking is part of a package, and the organiser cannot offer a contract change, i.e. a different hotel, the organiser will be forced to terminate the contract, giving the traveller the right to reimbursement of the prepayments (hotel and flight). If the flight and hotel booking are not part of a package, the reimbursement of the flight depends on whether the terms and conditions of their contract with the transport operator are flexible and allow for rebooking, while reimbursement of payments for the hotel will depend on the relevant contract and the applicable contract law.

[4] In all scenarios under B, for a package traveller, the answer is yes, but, depending on the circumstances, a reasonable termination fee may apply. A case-by-case assessment is required to determine whether there is an objective justification beyond the control of the traveller which permits termination without a fee. For a flight-only passenger, reimbursement for a flight which is not cancelled by the airline depends upon the terms and conditions of the ticket (reimbursable or not).

Source: ECA based on own analysis.

Inconsistent enforcement of air passenger rights, with a widespread use of vouchers

25 To assess the situation for citizens with regard to the enforcement of air passenger rights during the COVID-19 crisis, we surveyed all 27 National Enforcement Bodies and Consumer Protection Cooperation authorities.

In the initial period of the crisis, many passengers were not reimbursed, or had no other choice than to accept vouchers

26 Passengers have the right to be reimbursed in seven or 14 days. Airlines may also propose a voucher instead of offering a cash refund, but under EU law, passengers are not obliged to accept a voucher in place of cash reimbursement. Replies to our consultation of NEBs and CPC authorities showed that in the specific context of the COVID-19 pandemic, vouchers had the disadvantage that:

— there are only a limited number of alternative flight connections, or none at all for which they might be used; and

— they are generally not protected against airline insolvency (see paragraph ***71***, ***3rd indent***).

27 15 Member States[28] introduced legislation or adopted measures to allow a derogation from the obligation to reimburse under the PTD. In addition, two Member States (Italy and Greece) introduced legislation to allow such a derogation from the air passenger rights regulation because of the COVID-19 crisis. This is not in line with EU law (see paragraph ***65***). See examples in ***Box 4***.

[28] Report from the Commission to the European Parliament and the Council on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements (COM(2021) 90 final) of 26.2.2021, point 5.1.2.

Box 4

Examples of derogations in three Member States

The **Belgian** government issued a decree (19 March 2020[29]) to suspend the obligation of tour operators to refund cancelled package trips between 20 March and 19 June 2020. Passengers were not allowed to refuse vouchers in that period.

In the **Netherlands**, the transport minister instructed the NEB not to enforce Regulation 261/2004 between 1 March and 14 May 2020 and apply only vouchers in case of a cancelled flight[30].

In **France**, a new law[31] allowed travel agencies to issue vouchers without offering the possibility of a refund for package trips cancelled between 1 March and 15 September 2020, preventing consumers from requesting a refund.

28 Many airlines and package organisers[32] experiencing liquidity problems took advantage of these national laws and:

— put reimbursements to passengers on hold in the initial phase of the crisis (mainly from March 2020 until June 2020), or

— offered vouchers, sometimes as the only possibility and against the will of the passenger.

29 Our consultation showed that some airlines justified their decision to not reimburse passengers for cancelled flights by reference to the exceptional circumstances caused by COVID-19. Other airlines took various steps to encourage passengers to accept vouchers in place of reimbursement, including: the automatic distribution of vouchers; non-operational refund links on websites; limited, or hard to

[29] http://www.ejustice.just.fgov.be/eli/besluit/2020/03/19/2020040676/staatsblad.

[30] https://www.rijksoverheid.nl/documenten/kamerstukken/2020/03/30/aanwijzing-aan-de-ilt-inzake-handhaving-verordening-eg-nr-261-2004.

[31] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041755833/.

[32] These practices also applied in other modes of transport. For example, during the course of our audit, we were confronted with similar cases related to vouchers for cruises and for high-speed rail operations.

access information on the rights of reimbursement. Thereby, vouchers were imposed on passengers.

Reimbursements started as of June 2020, albeit with significant delays, resulting from a combination of factors

30 We assessed the length of time it took for air passengers to be reimbursed by analysing data for 2019 and the first six months of 2020, and analysed the number of complaints received by airlines.

31 We found that the majority of airlines started reimbursing passengers from June 2020. Reimbursements generally took far longer than the seven or 14 days required by the legislation, partly because airlines' systems for processing reimbursements were designed for a low volume of requests. This, together with the absence of staff because of COVID-19, meant that airlines struggled with the sheer volume of such requests. ***Box 5*** provides some illustrative data on the impact of the crisis on the enforcement of passenger rights in Portugal that we obtained as part of our survey of NEBs.

Box 5

The impact of the COVID-19 crisis on air passenger reimbursements in Portugal

5.5 million tickets were cancelled during 2020 by the main carriers operating in Portugal (87 % of passengers flying in or out of Portugal). Of these:

— 60 % (3.3 million tickets) were reimbursed to passengers during the year;

— 28 % (1.6 million tickets) were converted to vouchers, with no assurance that passengers agreed to this;

— 5 % (more than 300 000 tickets) had not been resolved at the end of the year, and

— 7 % (360 000 tickets) included cases where passengers did not pursue reimbursement, or found a re-routing possibility.

The speed of reimbursement was different for each airline. Generally delays in reimbursement:

— grew exponentially after March 2020,

— peaked between June and September (between 31 and 59 days), and

— gradually began to return to normal from September to December.

In February 2021, airlines in Portugal reported to the NEB that they were reimbursing air tickets between 2 and 22 days after cancellation.

32 Airlines started reimbursing due to a combination of factors:

(a) the provision of State aid to support airlines and package organisers (see paragraphs ***55*** to ***61***);

(b) the position of the Commission that no derogation to the passenger rights would be envisaged (see paragraph ***64***); the issuing of the Commission Recommendation of May 2020, and the subsequent transmission of that message by the Member States to airlines via the NEBs, and to package organisers, and

(c) the Commission taking infringement actions on 2 July 2020[33] against national legislation authorising the suspension of reimbursement rights (see paragraph ***65***).

The omission of intermediaries from the air passenger rights legislation hampers passengers' ability to secure reimbursement

33 Air passengers often use intermediary bodies, such as travel agencies, to book flights or purchase them as part of a package. To assess the time for reimbursement when intermediaries are involved, we analysed the current EU legislation, as well as data we obtained from our survey of NEBs and CPC authorities.

34 In almost all Member States, passengers who purchased tickets through an intermediary reported that they were reimbursed partially, late, or not at all. At the start of the COVID-19 crisis in March 2020, many airlines and package organisers delayed the refunds to travellers. For example, airlines stopped the automatic refund mechanism by which they paid travel agencies for reimbursing passengers. Some airlines gave as their reason for not reimbursing intermediaries the fact that the intermediaries did not provide the passenger data needed for the reimbursement (as the passengers did not book directly with the airlines). For their part, some travel agencies did not reimburse passengers until they had received funds from the airlines.

[33] https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1212.

35 These cases, with both parties waiting for information from the other, point to a lack of coordination between airlines and travel agencies. In addition, intermediary bodies are not covered by a single legal framework and need to pursue their right to a refund from an airline under national law, which differs from Member State to Member State.

36 We also found that flight only passengers seeking reimbursement faced the prospect of needing to contact both the airline and the intermediary, neither of which considered itself liable for refunding the ticket. There were also examples of cases where both parties advised passengers to contact the other, with the result that they were "bounced" between airline and travel agency (see a real life case with fake names in ***Box 6***).

Box 6

Passengers "ping-ponged" between intermediaries and airlines

Nicolas bought his airplane tickets on the website of an (online) travel agency in December 2019 for a return trip from Strasbourg to Ile de la Réunion, leaving on 20 March 2020. As the lockdown in France started on 15 March, Nicolas received an email from his travel agency within 24 hours, informing him that his flight had been cancelled by the airline because of the pandemic.

After several weeks of calling and writing to get his money back, in June 2020, the agency replied that they could not do anything because the airline had cancelled the flight, and that he should call the airline directly. In early September, after repeated requests, the airline confirmed that they could not do anything either because the agency needed to ask for the refund. With this reply, Nicolas contacted his agency again, but again with no success. After that, he initiated several procedures: filing a report on a French website for the protection of consumers (*signal.conso.gouv.fr*); applying to another French organisation that helps consumers in trouble; writing to the French mediator; and sending a registered letter to the agency.

In October, the agency confirmed that they would ask the airline for a refund. In March 2021, the agency informed him that the airline had approved a partial refund (half of the price). Nicolas insisted on a full reimbursement for the two flights that had been cancelled. The agency replied that they would ask the airline again, for a total refund this time – a procedure likely to take more months.

After one year pursuing reimbursement, Nicolas has not yet seen any money back.

The Commission's Recommendation on vouchers did not prevent passengers being treated differently

37 Our survey of NEBs and CPC authorities and the documents received from Consumer Protection Bodies (CPBs) provided us with data on the experiences of passengers who were given vouchers.

38 In May 2020, the Commission issued a Recommendation designed to make vouchers for cancelled flights or travel packages a more attractive and safer alternative to cash reimbursement[34], while insisting that vouchers had to be voluntary. The Recommendation was that vouchers should include protection for passengers against the insolvency of airlines or package organisers, and present a number of specific characteristics, including:

— a minimum validity period of 12 months, combined with automatic reimbursement, if the voucher has not been redeemed;

— a possibility for passengers and travellers to use vouchers for all new bookings made before their expiry date, even if the payment or the service takes place after that date, and to use vouchers towards payment of any travel product offered by the carrier or organiser; and

— extending the vouchers for bookings with other businesses in the same group of companies, and making them transferable to other passengers at no extra cost.

However, as Commission Recommendations are non-binding, airlines and package organisers continued to issue vouchers as they saw fit, with the consequence that passengers were treated differently.

39 We found that airlines and Member States applied different practices, which often did not follow the Commission's recommendation:

— while the NEBs signalled that most vouchers were valid for 12 months, some were valid for longer, for example, in Cyprus and Latvia (valid until 31 December 2021), France and Greece (18 months) and Slovenia (24 months). At the same time, in Slovenia, for cancellations between 13 March and 31 May 2020, if package travellers refused to accept a voucher, they would be reimbursed only after

[34] Commission Recommendation (EU) 2020/648 of 13 May 2020 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 (OJ L 151 of 14.5.2020, p. 10).

12 months after the date on which Slovenia declares the end of the pandemic. This is contrary to EU law;

— only three Member States (see paragraph ***60***, ***2nd indent***) used funds out of State aid to protect the vouchers against insolvency of the organisers. This applies for package travel only (flight-only passengers are not covered);

— for the main airlines in Finland, Latvia, Luxembourg and Romania, once a passenger accepted the voucher, they were no longer entitled to ask for the money instead. In Romania, once the deadline of 12 months had expired, an unused voucher could no longer be redeemed;

— transfers of vouchers to other people were not allowed by the main airlines in five Member States (Belgium, Finland, Hungary, Luxemburg and Slovenia).

Lack of an overview due to the absence of reporting requirements

40 To assess the enforcement of air passenger rights, we analysed data from organisations in the Member States.

41 We found that there was a lack of information to allow effective enforcement of passenger rights:

— airlines consider reimbursement delays and the exact numbers of passengers claiming their money back for flights cancelled to be commercially sensitive and they usually do not share such data;

— most National Enforcement Bodies do not have a right to know the number of passenger complaints to airlines. They therefore have to rely on complaints made by passengers or through the European Consumer Centres;

— the Commission relies on voluntary reporting from National Enforcement Bodies; on information from complaints directly transmitted to it by citizens via the Europe Direct Contact Centre, via the European Consumer Centres Network (ECC-Net), and on contacts with stakeholders or the CPC Network. Unlike in other transport modes, there is no reporting requirement for the NEBs to the Commission under Regulation 261/2004.

42 Our analysis indicated a significant increase of complaints related to flight cancellations and requests for reimbursement compared to previous years. For example:

— 24 National Enforcement Bodies reported 80 000 complaints relating to reimbursement for cancelled flights. Not all NEBs were competent to deal with individual complaints, and the sanctioning of air carriers varied significantly from Member State to Member State;

— the European Consumer Organisation (BEUC) reported in three Member States (Germany, Spain and Portugal) 122 000 similar complaints;

— the European Passenger Federation (EPF) reported that in four Member States (Belgium, Germany, Spain and Portugal) 72 500 complaints were sent to national consumer protection organisations;

— the European Consumer Centres Network (ECC-Net) provided assistance in 32 000 cases regarding Regulation 261/2004 and in 12 000 cases related to the Package Travel Directive, and

— the Europe Direct Contact Centre indicated 6 700 incidents in 2020, out of which 70 % concerned complaints related to flight cancellations.

43 There is a risk that this partial data might not give the full picture. This points to the lack of an overview of information on passenger complaints, how they are dealt with, and on how passengers' rights are enforced.

The Commission clarified that Member States could link the protection of air passenger rights to State aid, but this was not done for airlines

44 We examined the Commission's role in approving State aid measures, and whether Member States, when designing such measures in connection with the COVID-19 crisis, made a link between the aid granted and the protection of passenger rights.

The Commission made efforts to support airlines and package organisers, but could not require reimbursing passengers to be a condition for the approval of State aid

45 During the COVID-19 pandemic, many EU airlines were forced to ground most, if not all, of their airplanes at least for some periods. This had considerable effects on their finances.

© Getty Images / Patrick Foto.

46 The International Civil Aviation Organization estimated that, by the end of 2020, the revenues of European airlines had fallen from some €120 billion in 2019 to only €37 billion in 2020, a 69 % reduction[35]. According to IATA[36], in normal times, a typical European airline would hold cash reserves for two months of operations. The collapse of new bookings in March 2020 meant that, in the absence of fresh liquidity injections and/or cost saving measures, the airlines would have had no more cash by May 2020. Among the cash outflows faced by airlines during the period March-May 2020, refunds

[35] ICAO Air Transport Bureau – "Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis", March 2021, https://www.icao.int/sustainability/Documents/Covid-19/ICAO_coronavirus_Econ_Impact.pdf.

[36] IATA – "COVID-19 Cash burn analysis", March 2020.

due to passengers for tickets sold but not used were estimated by IATA and Airlines for Europe (A4E) at €9.2 billion (EU 27 and the UK).

47 There is thus a risk of bankruptcy of airlines and, if that happens, passengers risk losing their money. An external study in January 2020[37] for the Commission listed 87 airline insolvencies in the previous decade and estimated that between 2011 and 2019, 5.6 million passengers were impacted by airline insolvencies in some way. On average, passengers directly affected by insolvencies incurred €431 each in costs, 83 % of which (€357) was not recoverable under one of the protection mechanisms. Overall, around one third of the passengers affected by airline insolvency were not covered by any scheme. This means that some 1.8 million passengers lost money when airlines went bankrupt.

48 The Commission recognised at an early stage the serious impact the COVID-19 crisis was having on the airlines. The key measure put in place by the Commission concerned the adoption of State aid rules, which also benefitted airlines and package organisers. While the design of national support measures is a matter for the Member State concerned, they must notify the Commission when companies qualify for State aid in line with the requirements of the Treaty.

49 The qualification of a measure as State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union requires the following cumulative conditions to be met:

(a) the measure must be imputable to the State and financed through State resources;

(b) it distorts or threatens to distort competition and affect trade between Member States;

(c) the measure must confer an advantage on its recipient; and

(d) that advantage must be selective.

[37] Study on the current level of protection of air passenger rights in the EU, https://ec.europa.eu/transport/themes/passengers/news/2020-01-13-air-passenger-rights-study_en.

50 The Commission's role is to assess the impact of State aid measures proposed on competition and thereby their compatibility with the effective functioning of the internal market. When approving State aid, the Commission can only impose conditions that stem from the Treaty provisions under which aid is notified[38] and are necessary to mitigate distortions of competition caused by national measures. This is not the case for passenger rights.

51 In March 2020, the Commission issued a "Temporary Framework for State aid measures to support the economy in the current COVID-19 crisis"[39] to provide for a harmonised approach across Member States. This framework set out the possibilities Member States had, under EU rules, to provide financial support to businesses. It included temporary criteria on, for example, monetary limits, and the duration and form of the measures, as well as reporting obligations to facilitate review and approval by the Commission.

52 The temporary framework also clarified to Member States that they could use this support to ensure that reimbursement claims related to the COVID-19 crisis are satisfied with a view to ensuring the protection of passenger and consumer rights, and equal treatment of passengers, when granting support to operators in the travel and tourism industry[40]. While there was a requirement for the Member States to ensure that certain State aid recipients (large companies in receipt of recapitalisation aid) report to the Commission on how this aid was used to support the EU policy objectives related to the green and digital transformation[41], there was no such requirement in relation to the reimbursement of air passengers.

53 The temporary framework allowed the Commission to approve State aid in record time: in the air travel sector, 54 State aid decisions were adopted on average within 13 days from the notification, 23 of those within one week.

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[38] Article 107(2) and (3) TFEU.

[39] Communication from the Commission (2020/C 91 I/01) first issued in 20 March 2020 and initially valid until the end of 2020. It was later amended multiple times, and is currently applicable until end of 2021.

[40] Communication from the Commission (2020/C 91 I/01), paragraph 9.

[41] Communication from the Commission (2020/C 91 I/01), paragraphs 44 and 83.

54 In addition, in March 2020, the Commission also proposed a temporary derogation from the long-established common rules for the allocation of departure and landing slots at airports, which have been adopted as a Regulation[42]. This was to avoid carriers flying virtually empty aircraft with the sole purpose of keeping slots at traditionally congested airports, as this would have only made their financial situation worse and had a negative impact on the environment.

Member States provided support for airlines and travel operators but in the case of airlines did not link this to the reimbursement of passengers

55 Member States used various forms of State aid during the COVID-19 crisis to support operators in the travel and tourism industry, generally on the grounds of "natural disasters or exceptional occurrences" or "serious disturbances in the economy of a Member State"[43]. To determine whether there was a link between State aid and passenger rights, we reviewed 38 State aid measures specifically designed to support EU airlines (see ***Annex III***), and 16 State aid measures to support EU package organisers (see ***Annex IV***). These measures were approved by the Commission between March 2020 and April 2021, and amounted to €34.7 billion in State aid. This includes €6 billion of State aid for certain airlines under schemes not specific to the airline sector. Moreover, these amounts refer to the maximum aid that can be made available.

56 The form and value of such support varied significantly: direct loans, guarantees on loans, grants or cash injections in the form of recapitalisations. In terms of value, the amounts approved in individual decisions varied between €0.8 million and €7 000 million, with the bulk of the aid approved in May, June and July 2020 (see ***Figure 4***).

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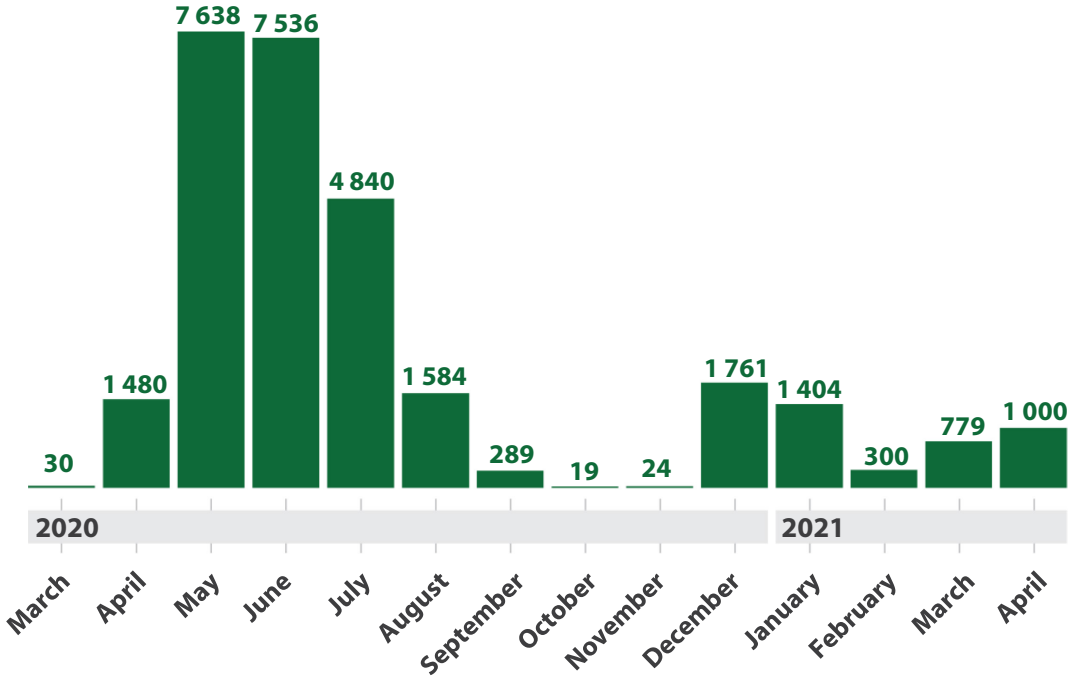
[42] Regulation (EU) 2020/459 of the European parliament and of the Council of 30 March 2020 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (OJ L 99 of 31.3.2020, p. 1).

[43] Treaty on the Functioning of the European Union, Articles 107(2)(b) and 107(3)(b) respectively.

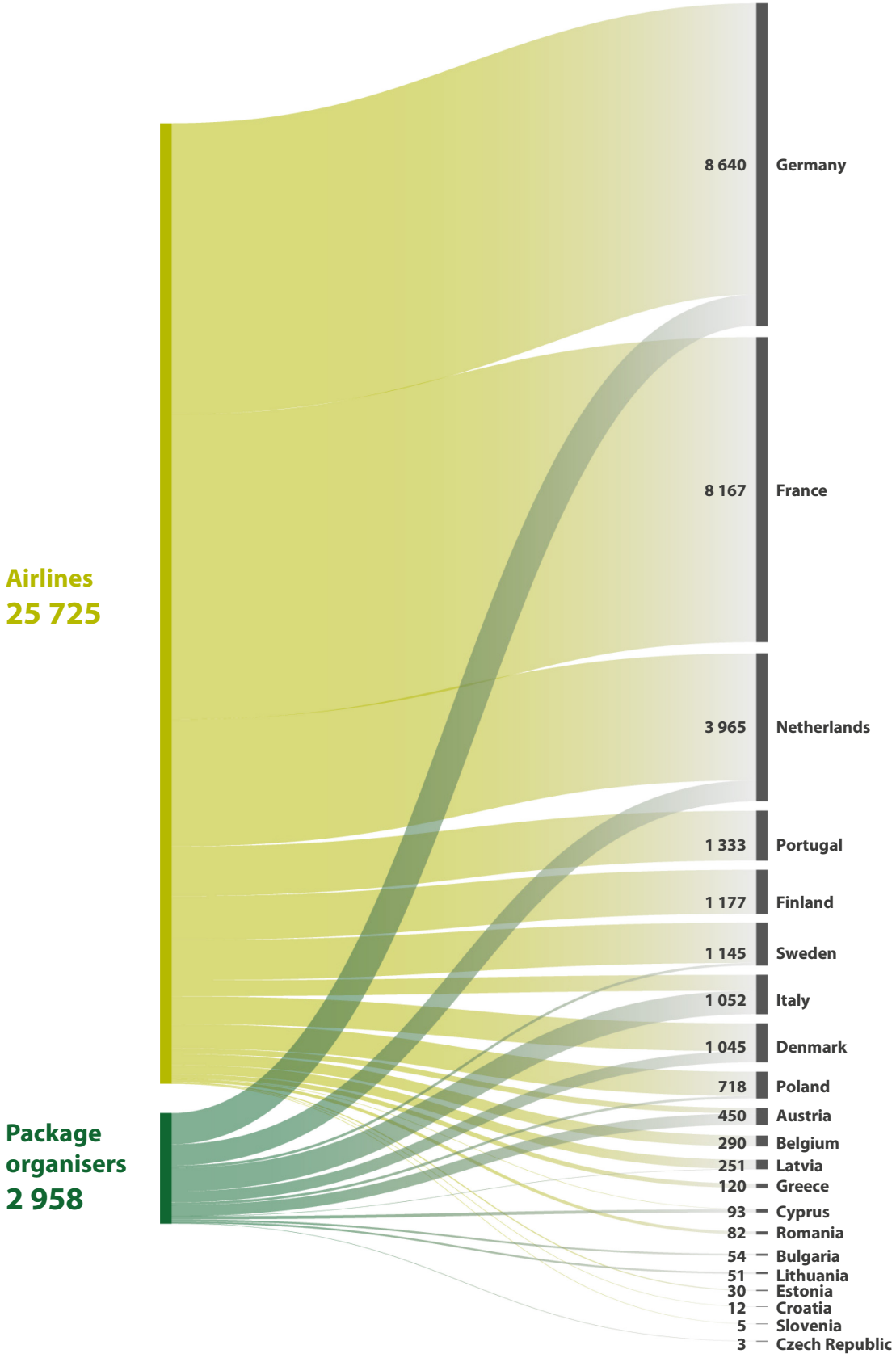
Figure 4 – State aid to airlines and package organisers approved by the Commission (in million euros)



Source: ECA analysis of State aid decisions.

57 State aid also varied significantly between Member States (see ***Figure 5***).

Figure 5 – State aid to airlines and package organisers by Member State (in million euros)



Source: ECA analysis of State aid decisions.

58 Our analysis showed that most of the aid granted by Member States (€31.8 billion, more than 90 % of the total aid provided) went to airlines. This concerns €25.7 billion of State aid to specific airlines and €6.1 billion multi-sectoral aid. While each notification is different, in general they addressed the need to compensate airlines for losses caused by the pandemic, the need to ensure that the airline had sufficient liquidity to continue operating and/or that its capital structure remained adequate during and after the crisis.

59 We also found that, in none of the 38 cases reviewed, Member States explicitly included the reimbursement of passengers as an objective or as a condition for granting the aid, despite the Commission's suggestion to do so[44]. This means, in practice, that Member States left the reimbursement of air passengers solely in the hands of the airlines, which followed their own priorities with regard to the use of the State aid. However, by ensuring the survival of airlines, the liquidity granted through this aid may have contributed indirectly to the reimbursement of passengers (see paragraph ***32(a)***).

60 As regards the State aid measures to support package organisers, the situation is different. Of the 16 measures (providing a total support of €2.9 billion), we found that three cases provided general liquidity support measures. In the remaining thirteen cases we found that:

— for seven of them (€909 million)[45], the objective of ensuring a prompt reimbursement of travellers was explicitly mentioned in the notification;

— for three cases (€1.1 billion)[46], the goal was to increase the attractiveness of vouchers by offering a State guarantee to protect their value in the case of insolvency of the organiser;

— two cases[47] addressed the costs of repatriation, and

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[44] Recital 22 and point 15 of EC Recommendation (EU) 2020/648 of 13 May 2020 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 (OJ L 151 of 14.5.2020, p. 10).

[45] Bulgaria, Denmark (2 cases), Lithuania, the Netherlands, Poland and Sweden.

[46] Cyprus, Germany and the Netherlands.

[47] Latvia and Lithuania.

— in one case[48], the aid was granted to ensure both the repatriation of travellers and the reimbursement of packages cancelled prior to departure.

61 This means that the design of 13 out of the 16 cases reflected a specific and explicit concern with the rights of package travellers. The difference to State aid measures for airlines is due to the requirement of insolvency protection in the PTD, and the fact that the largest cash expense for package organisers during the COVID-19 pandemic was the refund of cancelled packages.

The Commission tried to protect the rights of air passengers but has limited enforcement powers

62 From the beginning of the crisis, the Commission stated that the rights of air passengers must be respected and took a number of initiatives to uphold these rights. A timeline and an overview of these initiatives is provided in ***Annex V***. We analysed whether the different actions that the Commission undertook during the crisis were effective in protecting the rights of air passengers. We also tested the accuracy of the information in the website Re-open.eu, and the timeliness of its updates against official national sources for a sample of 10 Member States, at three specific moments in time (1, 15 and 28 February 2021). Finally, we also analysed whether the existing legal framework is fit for purpose in times of crisis.

The Commission took action to mitigate the effects of the crisis on air passengers

63 On 1 March 2020, the Commission launched the Coronavirus response website, with a dedicated part on transport and travel. This was done in the form of factsheets[49] and links to websites with general information[50], including the website Your Europe[51]. It also adapted its Interpretative Guidelines on passenger rights

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[48] Austria.

[49] https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/travel-during-coronavirus-pandemic_en#passenger-and-traveller-rights.

[50] https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/travel-during-coronavirus-pandemic_en#passenger-and-traveller-rights.

[51] https://europa.eu/youreurope/.

regulations[52] and issued an information note[53] on the PTD in which it reiterated that passengers had the right to choose between reimbursement (money or a voucher) and re-routing (which was often not possible). It also clarified that the offer of a voucher could not waive the passenger's right to opt for cash reimbursement instead, and confirmed that the COVID-19 pandemic was an "unavoidable and extraordinary circumstance" which may exclude the right to compensation.

64 On 17 April 2020, the European Parliament called on the Commission to make sure the Interpretative Guidelines were properly implemented in the context of the developments of the COVID-19 situation[54]. On 29 April 2020, during the informal videoconference meeting of Transport Ministers[55], several Member States asked the Commission to derogate temporarily the reimbursement deadline for airlines to passengers. The Commission did not agree to reduce air passenger rights, but took action by issuing a Recommendation on 13 May 2020 to make vouchers an attractive and safe alternative to cash reimbursements and to promote the acceptance of vouchers by passengers. In doing so, the Commission also aimed to help ease the liquidity problems of airlines and package organisers (see paragraph ***38***).

65 Moreover, in July 2020, it also launched infringement procedures against Member States for:

— adopting national law that does not respect Regulation 261/2004 (against Italy and Greece)[56]. These procedures have been closed in the meantime as the national laws have been brought back in line with EU law[57];

— COVID related measures that contravened the PTD. Eleven Member States were concerned[58]. At the time of the audit, seven procedures had been closed, either

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[52] Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with COVID-19 (C(2020) 1830 final of 18.3.2020).

[53] See https://ec.europa.eu/info/sites/info/files/coronavirus_info_ptd_19.3.2020.pdf.

[54] https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.html.

[55] https://www.consilium.europa.eu/en/meetings/tte/2020/04/29/.

[56] See https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212.

[57] https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en.

[58] Next to Greece and Italy, this concerns Bulgaria, Czechia, Cyprus, France, Croatia, Lithuania, Poland, Portugal and Slovakia. See https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1687.

because national measures had been repealed/amended, or because they had expired and were not renewed. Croatia, Lithuania and Slovakia had not corrected their legislation, and, therefore, the Commission proceeded to the next stage of infringements, a reasoned opinion. Bulgaria received a letter of formal notice because of national rules introduced in August 2020 that infringed the Package Travel Directive[59]. These four procedures remain open at the time of the audit (Bulgaria, Croatia, Lithuania and Slovakia).

66 In addition, there are still ongoing activities:

— In August 2020, the Commission launched an "EU Pilot" exercise on Regulation 261/2004, to assess the state of play with the implementation of passenger rights within all Member States. EU Pilot is a mechanism for informal dialogue between the Commission and the Member State concerned on issues relating to potential non-compliance with EU law. It is used as a first step to try to clarify or resolve problems, so that, if possible, formal infringement proceedings can be avoided.

— Since May 2020 the Commission has also been in regular dialogue with national CPC authorities which monitored the application of air passenger rights. In February 2021, the Commission initiated, together with the CPC Network, a coordinated survey of 16 airlines operating in the EU on their cancellation practices, how they informed consumers about their rights, and how they handled reimbursement requests.

— On 17 March 2021, the Commission proposed a draft Regulation to establish a "Digital Green Certificate". The legislators agreed on a text on 20 May 2021 for an "EU Digital COVID Certificate" consisting of a vaccination, test or recovery certificate to facilitate free movement.

[59] https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687.

67 Looking beyond the current COVID-19 pandemic, the Commission has already set out proposals on how to strengthen the EU's resilience when faced with extensive travel disruptions:

— The New Consumer Agenda[60], launched in November 2020, puts forward priorities and key actions for the next five years. As part of this, the Commission will analyse the extent to which the PTD remains adequate in the light of recent crises, building on a 2021 report on its application[61], and support and facilitate cooperation between the CPC network and other networks and stakeholders.

— The Sustainable and Smart Mobility Strategy[62], launched in December 2020, aims to review the passenger rights regulatory framework, and also to explore the options for financial protection schemes to ensure that there is enough liquidity to pay back passengers and, if needed, to repatriate them, also in times of crisis. In addition, the Commission intends to revise the Air Services Regulation, and the preparation of crisis contingency plans for the transport sector. The Commission also aims to protect EU passenger rights better, make them clearer for both carriers and passengers, offer adequate assistance, reimbursement, and possibly compensation when disruptions arise, and appropriate sanctions if the rules are not properly applied.

The Commission provided information to travellers on the situation on the ground

68 In June 2020, the Commission launched the Re-Open EU website[63], which provides travellers with an overview of the public health situation in European countries, travel information and contact tracing and warning apps. The website uses data from the European Centre for Disease Prevention and Control (ECDC), and from Member States on travel restrictions, with the aim of helping travellers to plan their journeys. As of January 2021 it had received 9 million visits.

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[60] Communication from the Commission to the European Parliament and the Council New Consumer Agenda Strengthening consumer resilience for sustainable recovery (COM/2020/696 final); https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2069.

[61] COM(2021) 90 final of 26.2.2021.

[62] EC Communication on Sustainable and Smart Mobility Strategy – putting European transport on track for the future (COM(2020) 789 final of 9.12.2020), points 91 and 92.

[63] https://reopen.europa.eu/en.

69 We found that the tool provides valuable help to prospective travellers in all transport modes, covering, in a standardized format, useful information on pre-departure testing requirements, quarantine obligations on arrival, and any rules applicable to travellers that are only transiting through a Member State.

70 The website has gone through regular adjustments and improvements since its launch. However, it still depends largely on the timely and accurate provision of information by Member States. The Commission itself warned that late or incomplete information would lessen its usefulness[64]. Our analysis confirmed this as the website:

— was not up-to-date on the restrictions in force in two of the 10 Member States examined (Belgium and Luxemburg);

— did not always reflect restrictions adopted by the Member States and due to enter into force at a later date, and

— sometimes contained information that was incomplete (minimum age for testing, declaration prior to travel) or inconsistent (different sections of the website showing different testing requirements).

The current legal framework for the protection of air passengers air passenger rights is not complete or crisis-proof

71 Our analysis showed that:

— Neither Regulation 261/2004 nor the PTD includes a role for the Commission to supervise the enforcement of the rights of individual air passengers. The Commission proposed tools for better enforcement in Regulation 261/2004 in 2013, and this was a recommendation in our 2018 special report (see ***Box 1*** and paragraph ***13***). This 2013 proposal was also a reaction to problems caused to aviation by the Icelandic volcano ash cloud of 2010 and included solutions that could have helped to better enforce passenger rights in times of crisis, such as better complaint handling procedures, and strengthened enforcement, monitoring and sanctioning to safeguard passenger rights.

  The European Parliament called on the Commission to evaluate and, if necessary, to review the PTD and to unblock the negotiations in Council on the revision of

[64] Communication COM (2020) 687 final, on additional COVID-19 response measures.

Regulation (EC) No 261/2004 to take account of the effects of the recent crisis, prevent future legal uncertainty and ensure the protection of consumer rights[65].

— When flights are cancelled, the legislation does not cover the need for a guarantee against insolvency for flight-only air passengers (this is in contrast to travellers using a package deal where the PTD includes reimbursement guarantees if travel organisers become insolvent). The European Parliament suggested that such a guarantee should also be in place for flight-only passengers in 2014. In 2020 and 2021[66], the Parliament called on the Commission to explore the possibility of elaborating, based on the experience of the COVID-19 crisis and Member States' similar schemes, an EU Travel Guarantee scheme for companies to secure financial liquidity to guarantee refunds to travellers as well as repatriation costs, together with fair compensation for any damages incurred in the event of bankruptcy.

— There is no financial protection for vouchers, which, where re-routing is not possible, are essentially a temporary postponement of reimbursement to the passenger (except for package travel where three Member States explicitly guaranteed such vouchers through the use of State aid (see paragraph ***60***).

— There are no specific provisions on how passengers can enforce their rights when intermediaries are involved in Regulation 261/2004 (see paragraphs ***33*** to ***36***). This led to several cases before the European Court of Justice.

72 We found that also the legal framework for package travel is not fully crisis-proof. The PTD indicates[67] that Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency. This security shall cover "reasonably foreseeable costs".

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[65] European Parliament resolution of 25 March 2021 on establishing an EU strategy for sustainable tourism (2020/2038(INI)), point 66.

[66] European Parliament resolution of 25 March 2021 on establishing an EU strategy for sustainable tourism (2020/2038(INI)), point 67.

[67] Article 17 paragraphs (1) and (2) of Directive (EU) 2015/2302 of the European parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326 of 11.12.2015, p. 1).

73 The Commission reported[68] that:

— Some banks were no longer providing security for organisers and that also some of the already relatively few insurance companies offering insolvency protection are pulling out of the market (e.g. in Austria and Belgium). It is therefore important to find a solid system that effectively protects travellers against the risk of insolvency. Ideas brought forward to address different challenges include multiple security providers for one organiser, or the setting up of a pan-EU guarantee fund as a kind of re-insurance for the first line guarantors.

— Risks related to pandemics are often excluded from insurance policies, in particular travel cancellation insurance[69]. This limits the possibility of travellers to insure themselves against possible losses due to cancellation of a trip caused by a pandemic.

74 There is thus legal uncertainty for package travellers as to whether the national insolvency protection schemes offer full protection for travellers in a pandemic, such as COVID-19, with regard to reimbursement claims or vouchers. This is because these schemes are very different in nature, and interpretation varies across the Member States.

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[68] Report from the Commission to the European Parliament and the Council on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements, COM(2021) 90 final, 26.2.2021, points 4.2.2 and 5.2.6.

[69] See https://www.test-achats.be/argent/assurances-assistance-voyage/dossier/coronavirus.

Conclusions and recommendations

75 Our audit showed that, overall, key passenger rights were not protected in this unprecedented crisis, in particular in the early stages of the COVID-19 pandemic. Reimbursements to air passengers for cancelled flights were put on hold, and passengers were treated differently across the EU. At the same time, Member States provided unprecedented amounts of State aid support for airlines and package organisers. Member States never linked this aid to the reimbursement of passengers for airlines, but most Member States did so for package organisers. The Member States took these decisions for airlines despite the fact that the Commission had made it clear that under State aid rules they could do so. The Commission made efforts to protect air passenger rights and took action to mitigate the effects of the crisis on passengers, but the legal framework means that the Commission had limited power to ensure that Member States enforce these rights.

76 The COVID-19 crisis brought into sharp focus the fact that air passengers were not well informed about their rights, with the associated risk that they may lose money to which they were entitled as a consequence. The crisis also added to the limitations we reported upon in 2018, with regard to the way in which Member States enforce air passenger rights. During the first months of the crisis, many passengers were not reimbursed; many others had no choice but to accept vouchers. As of June 2020, many airlines started reimbursing, albeit with significant delays. However, the passenger's ability to secure reimbursement remains limited both when intermediaries (e.g. travel agencies) are involved, and when vouchers were imposed on passengers. Furthermore, most tickets and vouchers of passengers are not protected against airline insolvency. The lack of an overview due to the absence of reporting requirements, for example on the number of passengers claiming their money back and on the number of unsolved cases within the legal deadlines across the EU is itself an important part of the problem in enforcing air passenger rights (paragraphs ***19*** to ***43***).

Recommendation 1 – Better protection of, and information on, air passenger rights

The Commission should:

(a) take action, for example by preparing guidelines and using social media, and, where appropriate, make legislative proposals to improve information to passengers on their rights, including for periods of significant travel disruption;

(b) take action and, where appropriate, make legislative proposals to enhance the pro-active monitoring by NEBs, e.g. through reporting obligations of the carriers to the NEB or through inspections to check whether airlines inform passengers about their rights in a timely, accurate and complete way;

(c) take action and, where appropriate, make legislative proposals, to give passengers the possibility to submit their requests for reimbursement to airlines by using an EU-wide standardised reimbursement form, similarly to what has been adopted for rail;

(d) take action and, where appropriate, make legislative proposals aiming to ensure that passengers are reimbursed in line with the legal deadlines of seven or 14 days, also in times of crisis. Such measures could include:

— reducing the need for reimbursement of passengers and package travellers by restricting the ability of airlines and package organisers to request prepayments at the moment of booking;

— clarifying that the insolvency protection offered by the PTD also covers reimbursement claims and vouchers, and extending this protection, including repatriation costs, to Regulation 261/2004;

— creating guarantee funds for cancellations of flights and of travel packages containing flights, allowing airlines and package organisers to draw on to reimburse and, if needed, repatriate passengers in times of crisis, or

— setting aside a fixed percentage of the ticket pre-payment (“ring-fencing”) in each airline, to cover claims of travellers;

(e) take action and, where appropriate, make legislative proposals to mitigate the risk of a liquidity crisis or the insolvency of carriers for example by reviewing the rules on the financial fitness of airlines.

Timeframe: By end 2022.

77 National measures to combat the pandemic, such as quarantines or unilateral travel bans, contributed to the collapse of air travel. This lead to sudden and serious liquidity problems for airlines and package organisers. The COVID-19 pandemic has shown that the EU Treaty does not include provisions for the Commission to ensure the effective coordination of national measures. Moreover, the Commission is not competent for setting conditions to be respected by beneficiaries in return for State aid, except where such conditions are necessary to mitigate distortions of competition caused by national measures. This does not apply for the area of passenger rights.

78 The Commission's temporary State aid framework facilitated the provision of unprecedented levels of State aid to airlines. While there was a requirement for Member States to ensure that certain State aid recipients report to the Commission on how this aid was used to support the EU policy objectives related to the green and digital transformation, there was no such requirement in relation to the reimbursement of air passengers. Member States provided State aid support for airlines and travel operators, amounting to €34.7 billion. However, in the case of airlines, Member States did not link this aid to the reimbursement of passengers, even if the Commission had made it clear that they could do so. This is one of the reasons for which airlines acted differently with regard to reimbursements, including their timing (paragraphs ***44*** to ***61***).

Recommendation 2 – More coordination of national measures and better link State aid to airlines to the reimbursement of passengers

The Commission should:

(a) address, with the Member States, ways of improving coordination between them, and of providing timely information on national measures with important consequences for airlines, such as quarantines or unilateral travel bans;

(b) take further action to remind Member States that airlines can also use the State aid granted to them to cover the reimbursement of air passengers. Such action could, for example, include a specific communication or a note on this aspect to Member States.

Timeframe: By end 2021.

79 The Commission's scope for action in times of crisis is limited in the current legal framework for air passenger rights. During the pandemic, the Commission acted to safeguard air passenger rights, and took steps to mitigate the effects of the crisis. The Commission's re-open.EU website provides valuable information to prospective travellers in all transport modes but is dependent on information from Member States and is not always up to date. The current legal framework for air passenger rights gives the Commission limited powers to enforce the rights of air passengers. Proposals that could contribute to remedy this situation were presented in 2013 but so far the Council has not agreed on its position (paragraphs ***62*** to ***74***).

Recommendation 3 – Improved tools and legislation for safeguarding air passenger rights

The Commission should:

(a) take action so that Member States provide timely and reliable information in the Re-open.eu portal for prospective passengers, such as on the application or lifting of future travel restrictions as soon as such changes have been decided;

(b) take action and, where appropriate, make legislative proposals to:

— ensure that it receives reports from NEBs which enable the Commission to monitor the state of play of the application and the enforcement of air passenger rights on a regular basis, and, if appropriate, also on an ad hoc basis, e.g. in times of a crisis;

— provide the NEBs with the necessary means to enforce air passenger rights;

— clarify the roles and responsibilities for ticket reimbursement where intermediaries are involved;

(c) check that Member States ensure that the CPC authorities enforcing passenger and traveller rights have the necessary investigation and enforcement powers as foreseen by the CPC legislation and make effective use of these.

Timeframe: By end 2022.

80 During the course of our audit, we encountered similar cases in which vouchers were used: for cruises and for high-speed rail operations.

Recommendation 4 – Application to other modes of transport

The Commission should consider the relevance of the recommendations in this report for other modes of transport.

Timeframe: By end 2022.

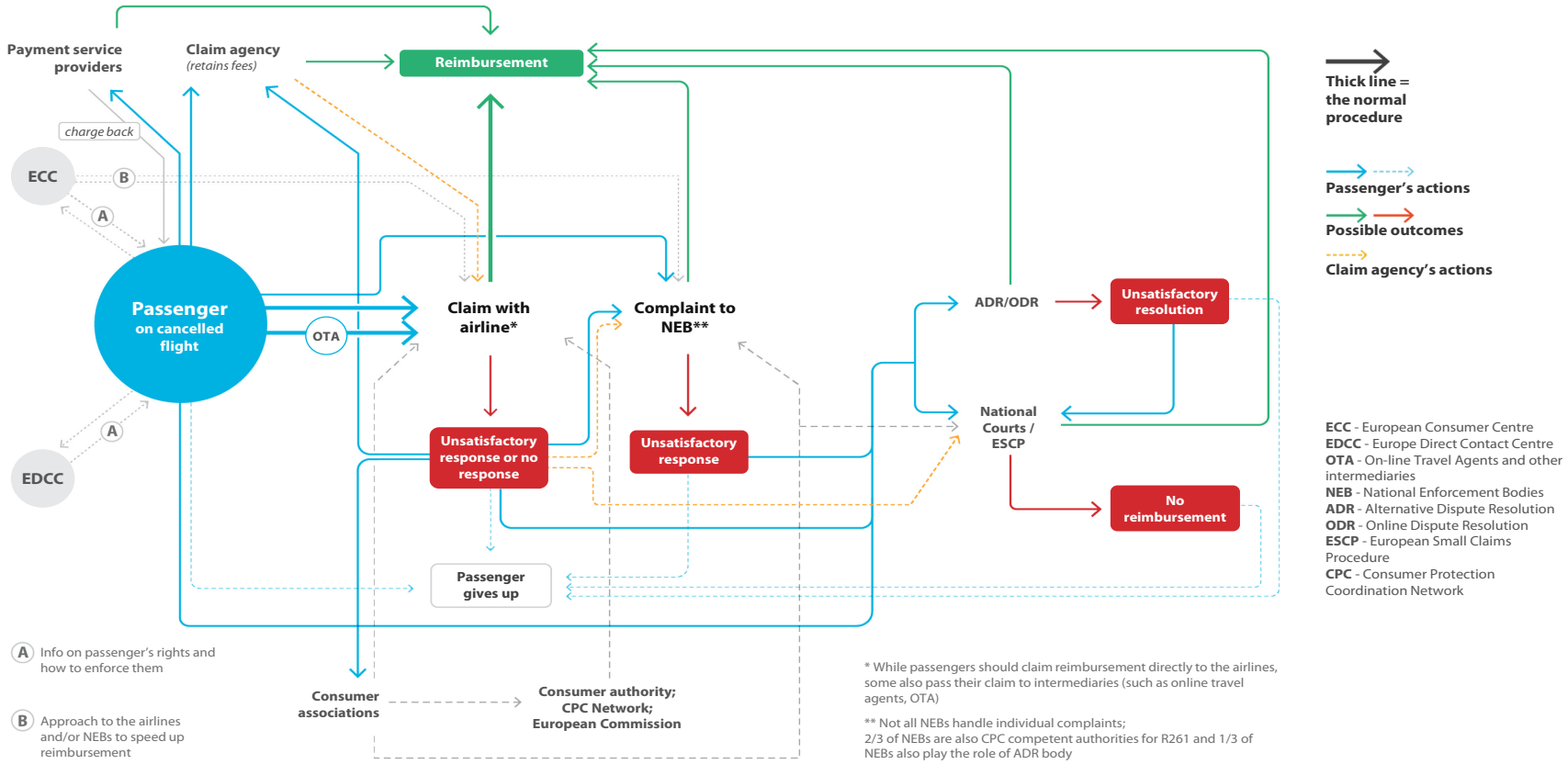
This Report was adopted by Chamber II, headed by Mrs Iliana Ivanova, Member of the Court of Auditors, in Luxembourg on 9 June 2021.

For the Court of Auditors

Klaus-Heiner Lehne
President

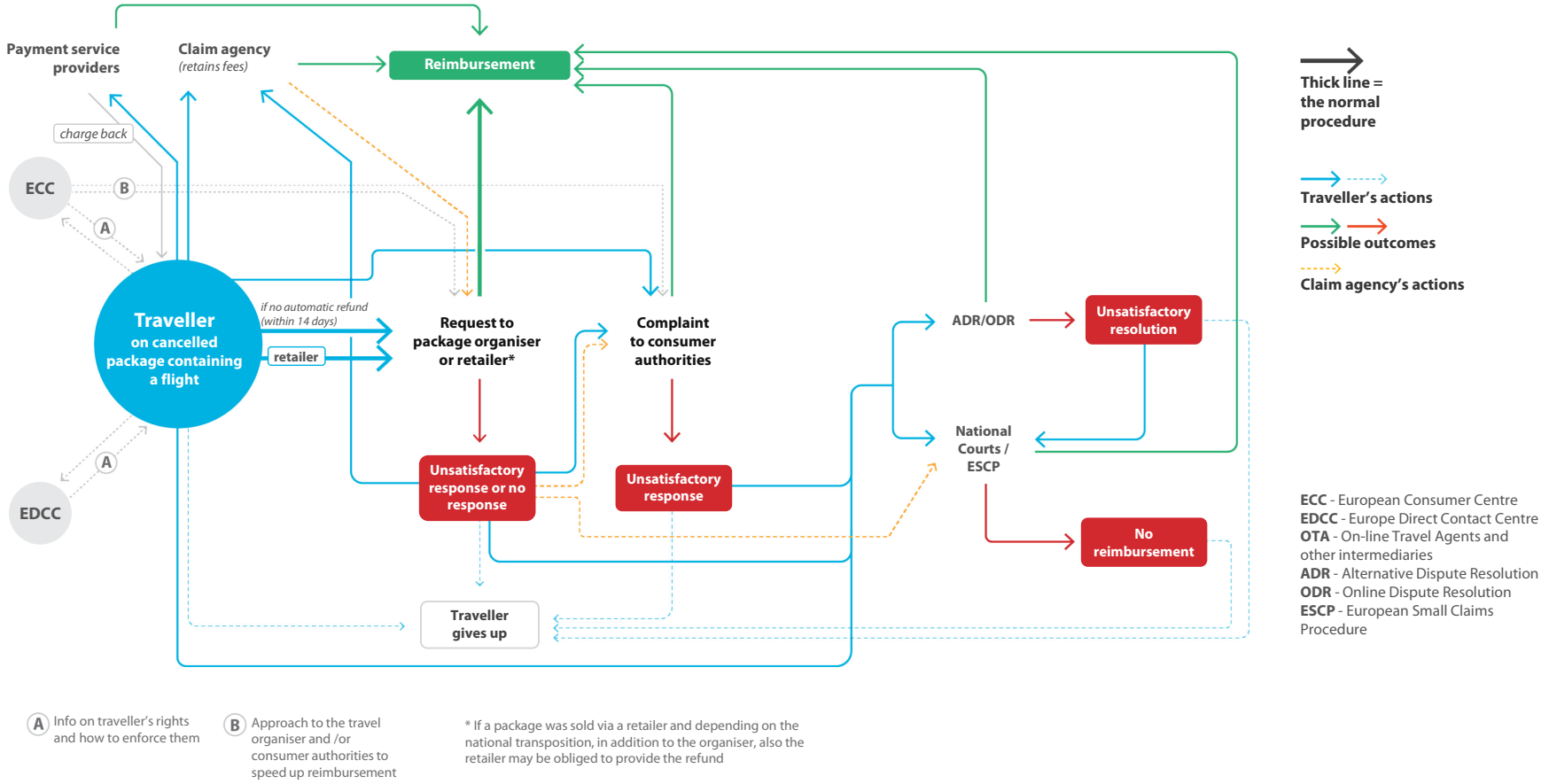
Annexes

Annex I – Reimbursement scheme for flight-only passengers



Source: ECA.

Annex II – Reimbursement scheme for package travellers



Source: ECA.

Annex III – List of State aid decisions to support airlines

Case Nr.	Measure	Member State	Decision date	Budget (in million euros)
SA.55373	COVID-19: Damage compensation to Croatia Airlines	HR	30.11.2020	11.70
SA.56765	COVID-19: Moratoire sur le paiement de taxes aéronautiques en faveur des entreprises de transport public aérien	FR	31.3.2020	29.90
SA.56795	Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines	DK	15.4.2020	137.00
SA.56809	COVID-19: State loan guarantee for Finnair	FI	18.5.2020	540.00
SA.56810	COVID-19: Aid to TAROM	RO	2.10.2020	19.33
SA.56812	COVID-19: Loan guarantee scheme to airlines	SE	11.4.2020	455.00
SA.56867	Compensation for the damage caused by the COVID-19 outbreak to Condor Flugdienst GmbH	DE	26.4.2020	550.00
SA.56943	COVID-19: Recapitalisation of Air Baltic	LV	3.7.2020	250.00
SA.57026	COVID-19: Aid to Blue Air	RO	20.8.2020	62.13
SA.57061	Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines	SE	24.4.2020	137.00
SA.57082	COVID-19: Garantie et prêt d'actionnaire au bénéfice d'Air France	FR	4.5.2020	7 000.00
SA.57116	COVID-19: State loan guarantee and State loan for KLM	NL	13.7.2020	3 400.00

SA.57153	COVID-19: Aid to Lufthansa	DE	25.6.2020	6 000.00
SA.57369	COVID 19: Portugal Aid to TAP	PT	10.6.2020	1 200.00
SA.57410	COVID-19: Recapitalisation of Finnair	FI	9.6.2020	286.00
SA.57539	COVID-19: Aid to Austrian Airlines	AT	6.7.2020	150.00
SA.57543	COVID-19: Recapitalisation of SAS AB	DK	17.8.2020	583.00
SA.57544	COVID-19: Aid to Brussels Airlines	BE	21.8.2020	290.00
SA.57586	COVID-19: Recapitalisation and subsidised interest loan for Nordica	EST	11.8.2020	30.00
SA.57691	COVID-19: Incentive scheme towards airlines	CY	1.7.2020	6.30
SA.57817	COVID-19: Oradea airport support scheme to airlines	RO	27.7.2020	1.00
SA.58101	COVID 19: Portugal Aid to SATA Group - Rescue loan	PT	18.8.2020	133.00
SA.58114	COVID-19: Aid to Alitalia	IT	4.9.2020	199.45
SA.58125	Corsair – Compensation for the damage caused by the COVID-19 outbreak	FR	11.12.2020	30.20
SA.58157	COVID-19: Aid to Danish airports and to airlines that land in and depart from Denmark	DK	3.9.2020	20.00
SA.58342	COVID-19: Recapitalisation of SAS AB	SE	17.8.2020	486.00
SA.58463	Aide à la restructuration de Corsair	FR	11.12.2020	106.70
SA.59029	COVID-19: Compensation scheme for airlines with an Italian operating license	IT	22.12.2020	130.00

SA.59124	COVID-19: Re-establishment of air connectivity of Slovenia	SLO	16.11.2020	5.00
SA.59158	COVID-19: Aid to LOT	PL	22.12.2020	650.00
SA.59188	COVID-19: Aid to Alitalia	IT	29.12.2020	73.02
SA.59370	COVID-19: Temporary Framework/3.1 measure to support airlines holding a Danish air operator certificate	DK	27.11.2020	6.00
SA.59378	Aid of a social character to passengers on domestic flights to and from Bornholm and Sønderborg	DK	30.11.2020	1.30
SA.59462	COVID-19: Damage compensation for Aegean Airlines	GR	23.12.2020	120.00
SA.59812	COVID-19: Recapitalisation of TUI	DE	4.1.2021	1 250.00
SA.59913	COVID-19: Recapitalisation of Air France and the Air France – KLM Holding	FR	5.4.2021	1 000.00
SA.60113	Finland – COVID-19 aid to Finnair	FI	12.3.2021	351.38
SA.61676	Italy – COVID-19: Aid to Alitalia	IT	26.3.2021	24.70
Total amount (in million euros)				25 725.11
Total number of measures				38

Source: ECA using Commission data.

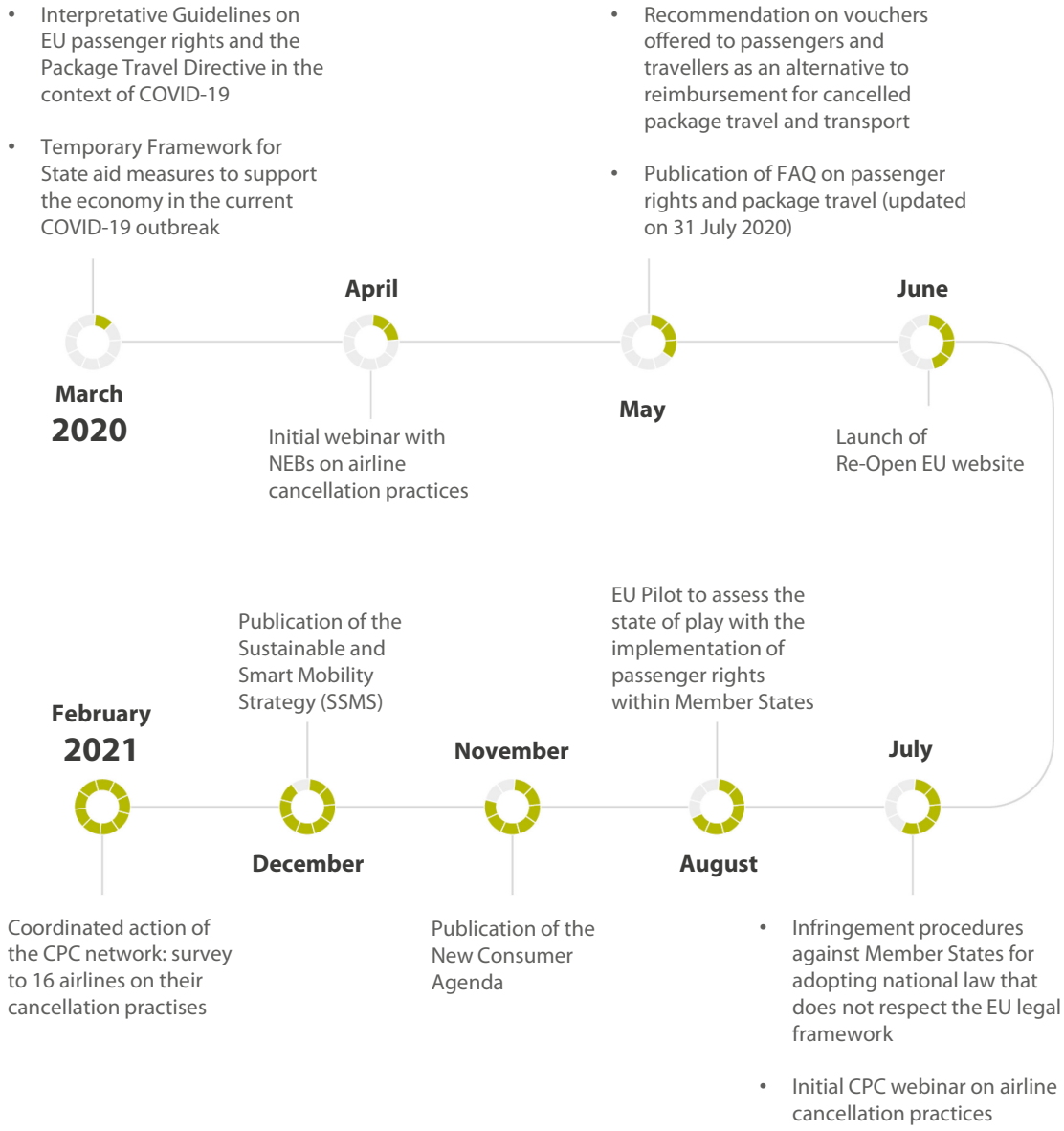
Annex IV – List of State aid decisions to support package organisers

Case Nr.	Measure	Member State	Decision date	Budget (in million euros)
SA.56856	COVID-19: State loan for the Danish Travel Guarantee Fund	DK	2.4.2020	201.00
SA.57352	COVID-19: Compensation scheme to travel operators for losses incurred by cancellations	DK	29.5.2020	97.00
SA.57423	COVID-19: Grants for the benefit of tourism operators	LV	29.5.2020	0.80
SA.57665	COVID-19: Lithuanian guarantees and loans for tour operators, accommodation and catering service providers	LT	25.6.2020	50.00
SA.57741	COVID-19: Aid in the form of guarantees on vouchers issued for package tours	DE	31.7.2020	840.00
SA.57985	COVID-19: State loans for Travel Guarantee Funds	NL	28.7.2020	165.00
SA.58050	COVID-19: State aid for tour operators	BG	24.7.2020	28.10
SA.58102	COVID-19: Support to tour operators	PL	21.9.2020	68.06
SA.58476	COVID-19: Grants to tour operators for the repatriation of travellers	LT	11.9.2020	1.00
SA.59639	COVID-19: Aid scheme for travel agencies and tour operators	SE	28.1.2021	66.90
SA.59668	COVID-19: Aid in the form of guarantees on credit notes	CY	12.1.2021	86.60

	issued for consumers and package travel organisers			
SA.59755	COVID-19: Aid for tour operators and travel agencies	IT	4.12.2020	625.00
SA.59990	COVID-19: State aid scheme for tour operators and travel agents	BG	18.12.2020	26.00
SA.60280	COVID-19: Support to tour operators	CZ	19.3.2021	2.90
SA.60521	COVID-19: State guarantee to package travel organisers and facilitators of linked travel services	AT	4.2.2021	300.00
SA.62271	COVID-19: SGR Voucher credit facility	NL	30.3.2021	400.00
Total amount (in million euros)				2 958.36
Total number of measures				16

Source: ECA using Commission data.

Annex V – Commission's actions to mitigate the effects of the crisis on air passengers: a timeline



Note: - For a more detailed overview of the actions taken by the Commission: see the list of actions on the Coronavirus Response website of the Commission Timeline of EU action | European Commission (europa.eu).

- For actions of the Council: see COVID-19 coronavirus outbreak and the EU's response - Consilium (europa.eu).

- For actions of the European Parliament: see The EU's response to the coronavirus | News | European Parliament (europa.eu).

Source: ECA, based on information received from the European Commission.

Glossary

Airline association: Trade association, such as IATA, that represents air transport companies.

Consumer protection body: A public or private body designated by a Member State to provide consumers with free help and advice on their rights in relation to purchases.

Consumer protection cooperation: Cooperation between the national authorities of two or more countries to address breaches of consumer rules when the trader and the consumer are based in different countries.

Europe Direct Contact Centre (EDCC): General points of contacts to general queries from citizens about the European Union. They provide general advice to consumers but do not intervene with traders or Member States.

European Consumer Centres Network (ECC-Net): A network set up by the Commission in 2005 to strengthen consumer confidence in the Single Market. The network helps consumers across the EU by telling them about their rights when buying goods and services in another EU country; advising them on any problems that arise; helping them with complaints; working with policymakers and enforcement bodies to promote and protect consumer interests. The network is comprised of 30 centres, with one in each EU Member State, Iceland, Norway and the UK; either the national consumer protection authority or a consumer association hosts them.

Linked travel arrangement: Travel booking where, for instance, a trader sells a service and facilitates the booking of one or more additional services for the same trip or holiday, within 24 hours, from other traders under separate contracts.

National enforcement body: Member State authority established to ensure compliance with the EU rules on passenger rights.

Package travel: Trip or holiday where two or more services (transport, accommodation, etc.) are combined while meeting certain criteria e.g. a single contract, or a total or inclusive price.

Abbreviations

AA: Airline Association

CPB: Consumer Protection Body

CPC: Consumer Protection Cooperation

DG COMP: Directorate-General for Competition

DG JUST: Directorate-General for Justice and Consumers

DG MOVE: Directorate-General for Mobility and Transport

NEB: National Enforcement Body

PTD: Package Travel Directive

Replies of the Commission

https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58696

Timeline

https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58696

Audit team

The ECA’s special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber II Investment for cohesion, growth and inclusion spending areas, headed by ECA Member Iliana Ivanova. The audit was led by ECA Member Annemie Turtelboom, supported by Florence Fornaroli, Head of Private Office and Celil Ishik, Private Office Attaché; Pietro Puricella, Principal Manager; Luc T'Joen, Head of Task; Rene Reiterer and Sabine Maur-Helmes, Auditors. James Verity provided linguistic support.

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We analysed how the Commission protected air passenger rights in the EU during the COVID-19 crisis.

We found that air passengers were not informed fully about their rights during the COVID-19 crisis. In the initial period of the crisis, many passengers were not reimbursed, or had no other choice than to accept vouchers. As of June 2020, airlines started reimbursing passengers, albeit with significant delays. Member States did not link State aid to the reimbursement of passengers, even if the Commission had made it clear that they could do so. The Commission acted to safeguard air passenger rights and took steps to mitigate the effects of the crisis, despite the limitations of the existing legal framework. Proposals in this respect that could contribute to remedy this situation were presented in 2013, but so far the Council has not agreed on its position.

We recommend that the Commission should better protect the rights of air passengers and inform them about their rights; enhance the coordination of national measures and better link State aid to airlines to the reimbursement of passengers; and improve the tools and legislation for safeguarding air passenger rights.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.

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