The legal impacts of COVID-19

in the Travel, Tourism and Hospitality Industry

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The Impact of the Coronavirus on the Air Transport and Tourism Sectors under the European and Greek Legal Frameworks



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I. Introduction

Coronavirus has evolved from a regional issue in China into a global "Public Health Emergency of International Concern" with a significant number of cases being recorded at an international and European level[2]. On 11 March 2020, the World Health Organisation has declared the novel coronavirus outbreak (COVID-19) a global pandemic[3]. The COVID-19 has spread to most parts of the world, significantly disrupting public life, including the travel, tourism and aviation industry, which is one of several industry sectors currently under enormous pressure.

The World Tourism Organisation (UNWTO), taking into account the unparalleled introduction of travel restrictions across the world, estimates that international tourist arrivals will be down by 20% to 30%, in 2020, when compared with 2019 figures. Putting this into context, the UNWTO underlines that in 2009, on the back of the global economic crisis, international tourist

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[2] World Health Organisation, *Coronavirus disease 2020. Rolling updates on coronavirus disease (COVID-19)*, 24 April 2020. Available at: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen (accessed on 24/04/2020).

[3] World Health Organisation, *WHO Director-General's opening remarks at the media briefing on COVID-19*, 11 March 2020. Available at: https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (accessed on 14/04/2020).

arrivals declined by 4%, while the SARS outbreak of 2003 led to a decline of just 0.4% that year. However, the UNWTO points out that these numbers are based on the latest developments as the global community faces up to an unprecedented social and economic challenge and should be interpreted with caution, given the extreme uncertain nature of the current crisis[4].

The Organisation of Economic Co-operation and Development estimates a 45% decline in international tourism in 2020, which could rise to 70% if recovery is delayed until September[5]. Domestic tourism is also heavily affected by containment measures. Nevertheless, a quicker recovery is expected with a critical role to play during the recovery phase. The World Travel and Tourism Council predicts that, in 2020, the travel and tourism market could lose 75 million jobs worldwide and 10 million jobs in Europe[6].

One of the economic sectors most affected by the COVID-19 crisis is the aviation and tourism industry. The unavoidable measures to contain the COVID-19 pandemic are severely restricting public life and bringing the aviation and tourism sectors to an almost complete standstill. As far as the aviation industry is concerned, not only the airlines but also the MROs (maintenance, repair and operations), aircraft leasing companies and aircraft manufacturers are affected. The International Air Transport Association (IATA) published an analysis showing that airlines may burn through 61 billion dollars of their cash reserves during the second quarter of 2020, ending 30 June, while posting a quarterly net loss of 39 billion dollars. This means a 61 billion dollar deterioration in the industry's cash position in the second quarter of 2020, in a scenario in which severe travel restrictions last for three months and financial relief is not provided. Airlines are faced with refunding the sold but unused tickets, as a result of massive cancellations resulting from government-imposed restrictions on travel. The second quarter liability for these is a colossal 35 billion dollars[7].

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[4] World Tourism Organisation, *International tourist arrivals could fall by 20-30% in 2020,* 26 March 2020. Available at: https://www.unwto.org/news/international-tourism-arrivals-could-fall-in-2020 (accessed on 10/04/2020).

[5] Organisation of Economic Co-operation and Development, *Tackling coronavirus (COVID-19) - Contributing to a global effort, Covid-19 Tourism Policy Responses*, 17th April 2020. Available at: https://www.oecd.org/coronavirus/en/ (accessed on 25/04/2020).

[6] World Travel & Tourism Council, *Coronavirus Brief,* 8 April 2020. Available at: https://www.wttc.org/-/media/files/wttc-coronavirus-brief-external-0804.pdf?la=en (accessed on 15/04/2020).

[7] International Air Transport Association, *Airlines Facing Rapid Cash Burn, IATA Press Release No: 23*, 31 March 2020. Available at: https://www.iata.org/en/pressroom/pr/2020-03-31-01/?fbclid=IwAR0nm1VaPZ9PimCwXgcAJcSbYbtB-CfuxOg63mheby5ErsnLxCsMHL1LTjw (accessed on 26/04/2020).

The EU tourism industry, which employs around 13 million people, is estimated to be losing around 1 billion euros in revenue per month as a result of the outbreak of COVID-19[8]. The small and medium-sized enterprises (SMEs)[9] most affected by the current COVID-19 pandemic are those in transport due to the demand downfall and then tourism due to the decrease in revenue. Businesses in all branches of the travel and tourism sector are at the forefront of the crisis, and governments all around the world are introducing policy and legal measures to mitigate the economic impact and support recovery of the tourism economy. For the travel and tourism sector, most of the measures taken are financial support, loan guarantees, creation of a new credit line, wage support, deferral of social security contributions, pension payments and tax deferrals (income or VAT).

II. Air Transport

Apart from the economic and commercial impact of the pandemic, the air transport sector faces significant challenges, mostly because governments have implemented flight restrictions as well as travel bans and the airlines are exposed to a huge number of passenger complaints, which fall in the context of Regulation (EC) No. 261/2004[10] (hereinafter referred to as "Air Passenger Rights Regulation"). Moreover, due to the drop in booking numbers, many airlines have voluntarily reduced the frequency of certain flights, while others, on the one hand, have already been driven into technical bankruptcy or, on the other, are, at least, substantially in breach of debt covenants. Demand is drying up in completely unprecedented ways. Cash reserves are running down quickly as fleets are grounded, and the few existing flights operate much lesser than half-full. Cancellations far outweigh forward bookings, and each time there is a new government recommendation it is to discourage flying.

[8] Niestadt Maria, COVID-19 And The Tourism Sector, In: *European Parliamentary Research Service Blog*, 7 April 2020. Available at: https://epthinktank.eu/2020/04/07/covid-19-and-the-tourism-sector/ (accessed on 27/04/2020).

[9] European Commission, *Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises* (OJ L 124, 20.5.2003, pp. 36–41). Available at: https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en (accessed on 20/04/2020).

[10] Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91 (OJ L 46, 17.2.2004, pp. 1–8).

It is not only businesses that are suffering but also passengers who are facing liquidity problems, and many currently need the money spent on travelling expenses urgently. Among the results of the pandemic is the confusion which has been caused to both passengers and airlines.

Several legal issues have arisen since the beginning of the COVID-19 crisis. According to current EU legal framework on passenger rights in all means of transport[11], passengers can claim reimbursement within fourteen (14) days or a short period of time if their trip is cancelled due to extraordinary circumstances, like the current COVID-19 pandemic.

II.1. EU Legal Framework Regarding Passengers' Rights in Case of Flights Cancellations

The Air Passengers Rights Regulation regulates only the cases in which the air carrier cancels the contract. According to the above-mentioned Regulation, the air carriers should compensate passengers if they proceed to cancellation of flights, except when the cancellation occurs in "extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken" (Article 5(3) in conjunction with Article 7 and recitals 12 and 14 of the Preamble of the Air Passenger Rights Regulation). The question one should ask is whether cancellations due to COVID-19 are deemed to have the nature of an "extraordinary circumstance". The outbreak of a pandemic, such as COVID-19, could generally fall under the case of "extraordinary circumstance" since it constitutes a dire global public health emergency that has led to draconian public measures outside of the control of airlines. The list of extraordinary circumstances stated in the Air Passenger Rights Regulation is indicative. Besides, according to Recital 14(2) of the Preamble of the Air Passenger Rights Regulation, "such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier".

[11] Specifically 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, pp. 14–41), 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 Text with EEA relevance (OJ L 55, 28.2.2011, pp. 1–12) and 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, pp. 1–16).

According to EU Commissioner for Transport, Mrs Adina Valean, the assessment of whether the coronavirus falls under the scope of "extraordinary circumstances" and whether an airline is liable to compensate a passenger or is exempted from such duty is made on a case-by-case basis and ultimately under the authority of the Court of Justice of the European Union[12]. A similar case to the current situation was the eruption of the Icelandic volcano Eyjafjallajökull on 20 March 2010, which led to the closure of air space and affected millions of passengers whose flights were cancelled. The CJEU regarded this situation as an "extraordinary circumstance" in its Judgment of 31 January 2013 - Denise McDonagh v Ryanair Ltd (case C-12/11) and pointed out that all circumstances which are beyond the actual control of the airline could be regarded as extraordinary, whatever their nature or gravity. The situation we are currently facing is not identical to the situation of the volcanic eruption since, in the COVID-19 crisis, Governments advise against travel to particular destinations.

For instance, if a flight has been cancelled as a result of a ban imposed in a particular country, the air carrier may be able to argue that no reasonable measures were available to it under the circumstances. This fact might be viewed as an "extraordinary circumstance", and the relative compensation might not be deemed to be payable. Moreover, if the air carrier decides to cancel a flight and proves that this decision was justified on the grounds of protecting the health of the crew, such cancellation may also be considered as caused by extraordinary circumstances. Conversely, if a flight has been cancelled voluntarily and not as a result of a travel ban, i.e. because of a drop in market demand or health issues at the destination, the air carrier might face difficulty in proving that all reasonable measures were taken to avoid the cancellation.

It is clear that general answers cannot be given and that each case does not necessarily fall under the context of "extraordinary circumstance", needing to be examined on its own merits and the relevant facts, as it depends on the specific circumstances.

On the 18 March 2020, the European Commission published interpretative guidelines on how specific provisions of the EU passenger rights legislation should be applied in the context of the

[12] European Commission, *Press conference at the ERCC ECHO by President Ursula von der Leyen, and Commissioners Janez Lenarcic, Stella Kyriakides, Ylva Johansson, Adina Valean, and Paolo Gentiloni on the EU's response to COVID-19*, [video], 2 March 2020. Available at: https://www.youtube.com/watch?v=O2cXDUWz-zE&feature=youtu.be (accessed on 10/03/2020).

COVID-19 pandemic[13]. The guidelines remind us that, regardless of whether compensation is payable, the air passenger is entitled to reimbursement of the ticket price or rerouting to reach his final destination, at the earliest opportunity or a later date at the passenger's convenience, as well as care and assistance, in case his flight has been cancelled. It is clear that the guidelines preserve the passenger's right to choose between monetary refund and rerouting. It is also worth mentioning that if the passenger opts for reimbursement of the full cost of the ticket or for rerouting at a later date at his convenience, the right to care ends (Article 5(1)(b) in conjunction with Article 8(1)(c) of the Air Passenger Rights Regulation); the right to care is without time only if the passenger has to wait for a rerouting at the earliest convenience (*ibidem*). In other words, the claim to care expires only if the passenger opts for a refund and is, otherwise, without time restrictions for as long as the passenger waits for alternative transportation.

Several European airlines follow misleading and unfair commercial practices, such as forcing passengers to accept vouchers for their cancelled flight, instead of allowing them to claim a direct reimbursement. These airlines omit their responsibility, deriving from the Air Passenger Rights Regulation, to adequately inform passengers on their rights, in the event of cancellation of flights, among others, so that passengers can effectively exercise their rights (Article 14 and Recital 20 of the Preamble of the Air Passenger Rights Regulation).

Moreover, some Member States are introducing unlawful measures to force passengers to postpone their reimbursement claim for several months and to accept vouchers instead of a monetary refund. However, the current EU rules on passenger rights in all means of transport are clear[14]: passengers have a right to claim reimbursement if their flight or train or ferry or bus trip is cancelled due to no fault of their own.

II.2. Current Greek Legal Framework Regarding Passengers' Rights in Case of Flight Cancellations

[13] European Commission, *Communication from the Commission - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19*, Brussels, C(2020) 1830 final, 18 March 2020. Available at: https://ec.europa.eu/transport/sites/transport/files/legislation/c20201830_en.pdf (accessed on 26/04/2020).

[14] Sprecher David, Voucher ou remboursement? Les compagnies n'ont aucun droit de modifier cette situation..., *Tourmag.com*, [online], 19 April 2020. Available at: https://www.tourmag.com/Voucher-ou-remboursement-Les-compagnies-n-ont-aucun-droit-de-modifier-cette-situation_a103281.html?fbclid=IwAR1jWlyQwHDmlNnCYwYufmHGWC5ePTfZGeM2OY-M-NmzkD_Wew7XVHilKgg (accessed on 20/04/2020).

On the 13 April 2020, an Act of Legislative Content titled "Measures to confront the ongoing effects of the coronavirus COVID–19 pandemic and other extremely urgent provisions" was published at the Government Official Gazette, issue A, No. 84 (hereinafter referred to as "ALC"). This Act establishes, among other issues, the credit note (the so-called "voucher"), which is introduced in Greece as a substitute for monetary refund in the event of a cancellation of a flight (Article 61 ALC), in the event of a cancellation of a commercial passenger transport service by sea or a cruise (Article 65 ALC), as well as in the event of a cancellation of an individual trip or package travel (Article 70 ALC). What is worth mentioning is that the system of credit notes covers not only B2C (business-to-consumer) air transport and tourism sector, but also B2B (business-to-business) tourism sector, since Article 71 ALC establishes rules on tourism enterprises' rights in case of termination of tourism contracts.

Specifically, according to Article 61 ALC, titled: "Claims arising from flight cancellations", in derogation of the provisions in force, from the 25 February 2020 to the 30 September 2020, the following provisions shall apply: (a) the requests for reimbursement of the cost of air passenger tickets due to flight cancellations, that are provided in EU or national law, are satisfied with the provision to the passenger of a credit note whose value is equal to the price of the ticket for the cancelled flight. The credit note is issued by the air carrier and is valid for eighteen (18) months from its date of issue. During the eighteen-month period, the passenger may - at any time - use the credit note to travel towards any destination of the network of the air carrier with which he had originally booked a flight. Until the expiration of the credit note, the debt does not become overdue or claimable, it only does so eighteen (18) months after the date of issue of the credit note and provided that the credit note has not been used; (b) the above-mentioned provisions shall apply to claims arising from flight cancellations during the period from 25 February 2020 to 30 September 2020; (c) the above-mentioned provisions shall also apply *mutatis mutandis* to agreements to which not only Greek but also foreign law is applicable, given the fact that the relevant rights are provided by EU law; (d) the above-mentioned provisions shall apply to claims of passengers by an air carrier with a valid operating license, which has been granted by the Greek Ministry of Infrastructure and Transport either on the grounds of Council Regulation (EEC) No. 2407/92 of 23 July 1992 on licensing of air carriers or of Regulation (EC) No. 1008/2008 of the European Parliament and of Council of 24

September 2008 on common rules for the operation of air services in the Community and specifically of its 2nd Chapter (Chapter II) on Operating Licence.

III. Package Travel

During these troubling times, the COVID-19 pandemic has caused a number of issues which have a significant impact on the travel industry. The massive cancellations of trips, as result of negative travel advisories and closing of borders, have caused an exorbitant outflow of liquidity, which could lead to the financial ruin of thousands of tour operators and travel agencies in the near future.

The European Travel Agents' and Tour Operators' Association, in its Press Release on the 17 March 2020, focused on the need that the European Commission shall grant exceptional flexibility in the application of the Directive (EU) 2015/2302[15] (hereinafter referred to as "PTD"), to the interest of travel companies, suppliers, governments and consumers[16].

III.1. EU Legal Framework Regarding Travellers' Rights in Case of Termination of the Package Travel Contract

Under the Package Travel Directive rules, the organiser of a package has the right to terminate the package travel contract without penalty if he is prevented from performing it because of "unavoidable and extraordinary circumstances". The organiser shall notify the traveller of the termination of the contract without undue delay before the start of the package. In this case, the organiser shall provide the traveller with a full refund of any payments made for the package, but shall not be liable for additional compensation (Article 12(3)(b) PTD).

Contrary to Air Passenger Rights Regulation in which there is no mention to the case of serious diseases or epidemics, the PTD includes in its indicative list of unavoidable and extraordinary

[15] 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, 11.12.2015, pp. 1–33).

[16] European Travel Agents' and Tour Operators' Association, *Press Release - The European travel agents and tour operators call for pragmatism and flexible application of the refund rules*, 17th March 2020. Available at: https://www.ectaa.org/Uploads/press-releases/Press-release-ECTAA-calls-for-pragmatism-and-flexible-application-of-the-refund-rules.pdf (accessed on 26/04/2020).

circumstances the case of the outbreak of a serious disease at the travel destination (Recital 31(2), Preamble, PTD). Significant risks to human health, such as the outbreak of a serious disease like the COVID-19, at the travel destination or its immediate vicinity usually qualify as unavoidable and extraordinary circumstances. The assessment of whether those circumstances significantly affect the performance of the package must be made on a case-by-case basis.

The traveller, on his side, has the right to terminate the package travel contract without paying any termination fee if unavoidable and extraordinary circumstances occur at the place of destination or its immediate vicinity or significantly affect the performance of the package or significantly affect the carriage of passengers to the destination (Article 12(2) PTD). If the traveller terminates the package travel contract before the start of the package in the event of unavoidable and extraordinary circumstances, he shall be entitled to a full refund of any payments made for the package, within fourteen (14) days after the termination of the contract, but shall not be entitled to additional compensation (Article 12 paragraphs (3) and (4) PTD).

Nonetheless, when it comes to refunds to travellers, what happens in practice is that the above-mentioned rules do not apply in a situation such as the one we encounter with COVID-19 pandemic. The majority of tour operators and travel companies in Europe's major outbound markets disregard the rules of the PTD, especially those regarding traveller refunds. Travellers across the European Union see that their right to reimbursement of a cancelled package is not respected since tour operators and travel agents replace monetary refunds with vouchers or refund credit notes.

Commissioner for Justice and Consumers, Mr Didier Reynders, addressed a letter to all Member States pointing out that appropriate actions are needed at national level which will strike the right balance between consumer protection and support to travel businesses[17]. According to the Commissioner, with regards to cancelled holidays, the traveller's right to be reimbursed under the Package Travel Directive also applies in case of "unavoidable and extraordinary circumstances", such as those caused by the COVID-19 pandemic. Nevertheless,

[17] European Commission, DG Justice and Consumers, *COVID-19: Commissioner Reynders repeats his call for respect of consumer protection and support to travel and tourism businesses for package travel holidays*, 9th April 2020. Available at: https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=674033 (accessed on 16/04/2020).

in light of the extraordinary situation, the Commissioner encouraged travellers to consider accepting a voucher which allows them to postpone their holidays to a later point in time, under certain conditions or be monetarily reimbursed at the expiry of the voucher. Such voucher should be reimbursable if not used and secured against possible insolvency of the tour operator or travel agent.

III.2. Current Greek Legal Framework Regarding Travellers' Rights in Case of Termination of the Package Travel Contract

The Governments of many EU Member States have already confirmed vouchers will suffice in place of cash refunds despite the PTD provisions that require consumers to be refunded within fourteen (14) days. Greece has followed the example of Italy[18], Spain[19] and France[20], which

[18] Based on Article 28(3) through (7) of the Italian Decree-Law No. 9 of 02/03/2020 ("Decreto-Legge 2 marzo 2020, n. 9 - Misure urgenti di sostegno per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19") (GU Serie Generale No. 53 del 02-03-2020), the Italian government relieves Italian tour operators and travel agents from of their obligation to reimburse travellers and authorise them to deliver vouchers instead, for a future trip. The duration of the voucher is twelve (12) months starting from the date of its issue. The above-mentioned Italian Decree-Law provides in Article 28 (8) that the voucher's system is an overriding mandatory provision based on Article 9 of the Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) in order to safeguard Italy's financial stability. In this respect, it seems that travellers are not allowed to refuse the vouchers offered from tour operators/travel agents or from travel service providers. Available at: https://www.assolombarda.it/servizi/lavoro-e-previdenza/documenti/decreto-legge-n-9-del-2-marzo-2020 (accessed on 20/04/2020). The emergency official legislation about Coronavirus is available at: https://www.gazzettaufficiale.it/dettaglioArea/12 (accessed on 20/04/2020).

[19] According to Article 36(4) of the Spanish Royal Decree-Law No. 11/2020, of 31 March, adopting urgent complementary measures in the social and economic field to deal with COVID-19 ("Real Decreto-Ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19") (BOE No. 91, 1 April, 2020 - BOE-A-2020-4208), "in the case of package travel contracts which have been cancelled due to COVID-19, the organiser or, where appropriate, the retailer, will be able to provide the traveller a voucher to be used within one year from the end of the validity of the alarm status and its extensions, for an amount equal to the corresponding refund". Available at: https://www.afial.net/wp-content/uploads/2020/04/RD-11_2020-31-MARZO.pdf (accessed on 20/04/2020).

[20] According to Article 1(II) of the French Ordonnance n° 2020-315 of March 25, 2020 on the financial conditions for the cancellation of certain tourist, travel and accommodation contracts in the event of exceptional and unavoidable circumstances or force majeure ("Ordonnance n° 2020-315 du 25 mars 2020 relative aux conditions financières de résolution de certains contrats de voyages touristiques et de séjours en cas de circonstances exceptionnelles et inévitables ou de force majeure") (prise en application de la loi n°2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de covid-19) (JORF n° 0074 du 26 mars 2020, texte n° 35), "notwithstanding the provisions of the last sentence of II of Article L. 211-14 of the Tourism Code and the first sentence of III of the same article, when a contract mentioned in 1° of I of this article makes the subject to a resolution, the organiser or the retailer may offer, instead of reimbursement of all the payments made, a credit which the customer may use under the conditions provided for in the provisions of III to VI of this article". Available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755833 (accessed on 20/04/2020). An overview of the main points of the French Ordonnance is available at: https://www.lechotouristique.com/article/ordonnance-ce-quil-faut-retenir-selon-lavocate-e-llop (accessed on 20/04/2020).

legislated a system of vouchers. Article 70 ALC, titled "Exceptional provisions on the termination of contracts between tourism enterprises and their customers regarding the provision of tourism services", applies to contracts for the provision of tourism services, either booked individually or in the form of package travel, which have been concluded between tourist enterprises of 1(1) of Law No. 4276/2014 and customers and which have been terminated from the 25 February 2020 to the 30 September 2020 by either contracting party.

Under this legal framework, the reimbursement of the price of the trip may be replaced by a credit note. The tourism enterprise shall inform the customer, in writing, regarding the offer of the credit note within thirty (30) days from the date of termination of the contract or, in the event the contract has been terminated before the commencement of the ALC, within thirty (30) days from its entry into force. In case the tourism enterprise does not inform the customer, in writing, regarding the offer of the credit note within the above-mentioned period, the tourism enterprise shall refund all payments made to the customer. The tourism enterprise shall offer the customer the possibility to use the credit note in order to benefit from the provision of the same or a similar tourism service to the one that was originally paid for.

If a credit note is offered to the customer instead of a refund, its value must be equal to the amount paid by the customer when the booking was made. In other words, the value of the credit note shall not be less than the original price paid by the customer and shall include insolvency protection. If the total value of the tourism service chosen by the customer is less than the value of the credit note, the customer may choose to either receive a new voucher for the amount corresponding to the difference in value, with a duration to be agreed between the parties, or receive the difference in cash when the original credit note expires. If the total value of the tourism service chosen by the customer exceeds the value of the credit note, the difference is paid by the customer to the tourism enterprise.

Travellers who have concluded a package travel contract and fall within the scope of the Presidential Decree No. 7/2018 "Harmonisation of legislation with Directive (EU) 2015/2302 on package travel and linked travel arrangements (EE L 326/11.12.2015)" (Official Gazette A΄ 12/29.01.2018), can benefit from these provisions. Hence, travellers who have booked a package which can no longer be performed due to the measures taken for the prevention of the disperse of COVID-19 pandemic are given a credit note to book a new package or tourism service of the same value. This means that travellers will not lose any money under this

scheme. If the credit note which was issued by the tour operator or travel agent is not used within eighteen (18) months, the tour operator or travel agent is obliged to refund the traveller's original payment in cash.

IV. Conclusion

The idea behind these provisions is purely economic. Vouchers work as an opportunity for the traveller to reschedule his trip or book a new trip at a future date with the same tourism enterprise. Following this practice, the tourism enterprise might be able to protect its current revenues and short-term cash flow as well as to secure jobs and re-establish its activity.

However, from a legal perspective, the tour operators and travel agents' refusal to provide refunds constitutes a breach of their legal obligations. The right of the traveller to a full refund of any payments made for the package within fourteen (14) days after the package travel contract is terminated is clear and non-negotiable. The alternative of a voucher is recognised neither by Article 12(2) PTD nor by Article 11(2) of the Presidential Decree No. 7/2018, which transposed the above-mentioned article of the PTD into Greek law. The Greek legislator has the obligation to effectively implement the PTD and cannot violate European Union law by not applying certain provisions of EU primary and secondary law temporarily. Therefore, the legislative measures adopted by many Member States, including Greece, may be seen as breaching EU secondary law.

In conclusion, legal clarity and certainty are of the utmost importance in the current situation, which is a global health emergency causing an industry emergency. No one benefits from overwhelmed courts, confused and angry passengers and travellers and frustrated airlines, tour operators and travel agents. On the one hand, air passengers and travellers are a very vulnerable group of consumers and their rights should be respected. On the other hand, we are all aware of the huge financial strain put on the aviation and tourism industry due to the COVID-19 crisis.

In order to support the consumers and the industry, the European Commission and the Member States should work together to find solutions that are balanced and fair for both. The best option could be a clear statement by the European Commission to safeguard the interests of industry and consumers instead of the Member States acting on their own – a common

solution should be adopted by all Member States. Different Member States should not interpret the PTD differently and amend their implementing acts differently. The European Commission should intervene and give practical solutions, taking into account and weighing the different legal situations in the various countries as well as the interests of the various groups of stakeholders (airlines, consumer associations, passenger rights associations, etc.).

Lastly, it shall be ensured that the voucher scheme shall not be mandatory, but the consumer shall have the right to choose between the voucher and the right to reimbursement. It is true that, under the voucher system, the tourism industry will benefit as a whole, but an imposed voucher is to the detriment of consumer protection. Consumers should not be forced to accept the vouchers, but encouraged to voluntarily accept those that are insolvency-protected and valid for at least one and a half year, instead of money. Besides, many European consumers are tremendously hit by the crisis, not only because of the health risk but also because of the economic consequences of confinement measures, due to which they have lost jobs and income. As a result, many consumers might not afford any more the trips booked before the beginning of COVID-19 crisis.

