

Ministry of Economic Affairs
and Climate Policy

> P.O. Box 20401 2500 EK The Hague The Netherlands

Didier Reynders (Commissioner for Justice)
Adina Vălean (Commissioner for Transport)
European Commission

Chief Economist
Competition and Consumer
Policy Department

Visit address
Bezuidenhoutseweg 73
2594 AC Den Haag
The Netherlands

Postal address
P.O. Box 20401
2500 EK Den Haag
The Netherlands

Organisation Code
00000001003214369000

T +31 (0)70 379 8911
F +31 (0)70 378 6011
www.rijksoverheid.nl/ezk

Date

Re Reply to your letter of 14 May 2020 regarding the information request
on Package Travel Directive (2015/2302) and Air Passenger Rights
Regulation (261/2004)

Our ref.
CE-MC

Dear Commissioners Reynders and Vălean,

We thank the Commission for its extensive recommendations regarding vouchers for transport and package travel services. They contain useful elements for policymakers as well as for carriers and tour operators. As requested in your letter, ref. (2020)2559372, we are writing to inform you about our compliance with the Package Travel Directive (2015/2302) and the Air Passenger Rights Regulation (261/2004).

We would like first to address the Package Travel Directive. As you correctly noted in this connection, in its press release of 25 March the Netherlands Authority for Consumers and Markets (ACM) discussed the initiative of the Dutch Association of Travel Agents and Tour Operators (ANVR) – the trade association of the Dutch travel industry – to issue ‘corona vouchers’. ACM reviewed this initiative in the light of, among other aspects, the relevant regulations and the current situation arising from the COVID-19 outbreak. ACM based its review on the principle that a balance had to be struck between the rights of consumers and the survival of tour operators, since mass bankruptcies are not in the interests of consumers any more than those of the businesses concerned.

ACM has always emphasised that consumers are entitled to a refund. At the same time, it has never sought to stand in the way of sound (meaning in this context: attractive and reasonable) voucher schemes as an alternative, given the current exceptional circumstances. After certain conditions had been agreed with the ANVR in order to make these vouchers more consumer-friendly, ACM expressed their understanding for this voucher scheme in its press release.¹ These conditions are in line with the guidance issued by the Commission in its Recommendation of 13 May 2020. We refer you to ACM’s press release for more details. The press release also notes that ACM will be keeping a close watch on the practical implementation of this scheme, for example by monitoring submissions to ACM’s

¹ <https://www.acm.nl/en/publications/acm-sympathizes-dutch-travel-industrys-voucher-initiative>

consumer information portal, ACM ConsuWijzer. ACM will not hesitate to take action if the rights of consumers are not properly respected. It should be noted that Dutch consumer organisations have responded positively to the initiative by the travel sector, as well as to ACM's handling of the situation.

It should also be noted that ACM is an independent regulator that sets its own priorities. Currently, ACM is conducting an investigation into the implementation of the voucher system in various sectors. In that investigation, it is looking at the consumer information provided by individual businesses, the terms and conditions, as well as reports on implementation. It goes without saying that ACM will take action in the case of collective violations. ACM expects to publish more information about this investigation in the next few weeks. Moreover, we would like to inform you that, through a special COVID-19 section on its own information portal,² ACM is in touch with consumers every day, and is able to provide them with information. For example, consumers can download model letters which they can use to remind businesses of their statutory obligations.

With regard to the Air Passenger Rights Regulation 261/2004, we have withdrawn the instruction to the national enforcement body (the Human Environment and Transport Inspectorate; ILT) to refrain from enforcement when airlines issue vouchers for flight cancellations in the light of COVID-19. ILT will fully enforce Regulation 261/2004. An essential point is that it is the passengers' choice to opt for vouchers instead of reimbursement in the form of money. Systematic violations of the Regulation will be detected and appropriately sanctioned. ILT uses a step-by-step approach to intervention (which it refers to as 'ladder')³ involving different categories of intervention of increasing severity. The Netherlands is therefore in full compliance with EU legislation. Moreover, we will refrain from advocating a temporary adjustment to Regulation 261/2004 because of the Recommendation.

Furthermore, we will continue to call on carriers and tour operators, as well as their representative bodies, to make vouchers more attractive. Our calls have not gone unheeded. KLM, for instance, has raised the value of its vouchers by 15%. And consumers will be swiftly reimbursed for unredeemed vouchers on expiry. At the same time, we call on consumers to accept vouchers if they are financially in a position to do so. We note, however, that it is primarily the responsibility of carriers and organisers to make vouchers more appealing to consumers.

An important aspect of making vouchers more attractive is the provision of a guarantee, and we welcome the options the Commission has presented in its Recommendation. With respect to Regulation 261/2004, we would prefer an EU initiative regarding a guarantee instead of different national initiatives by individual Member States. An EU initiative would be more effective than national arrangements, since it would safeguard customers in Europe against airline insolvency and maintain a level playing field for airlines. We therefore propose engaging in a constructive dialogue with the Commission (at all levels) to explore the options for both national and EU guarantees.

² <https://www.consuwijzer.nl/coronacrisis> (in Dutch)

³ <https://english.ilent.nl/about-the-ilt/issue-of-permits-and-enforcement/intervention/intervention-ladder>

Chief Economist
Competition and Consumer
Policy Department

Our ref.
CE-MC

Yours sincerely,

Cora van Nieuwenhuizen-Wijbenga
Minister of Infrastructure and Water Management

Mona Keijzer
State Secretary for Economic Affairs and Climate Policy