



# Covid-19 Insights

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## IMPACT ON MARITIME TRANSPORT OF PASSENGERS AND PACKAGE TRAVEL

The outbreak of Covid-19 has strongly affected the transport industry, and, in particular, the transport of passengers and the performance, and the enjoyment, of package travel.

Containment measures established by the authorities, such as travel restrictions, lockdowns and quarantine zones, imply that transport may be one of the sectors most severely affected by this pandemic.

The transport of passengers inside the European Union, and the rights of passengers in case of delay or cancellation of transports, are regulated by specific provisions, directly enforceable in all Member States. The rights of passengers travelling by sea are governed by Regulation (EU) No 1177/2010.

The European Commission, with Notice dated 18th March 2020, provided the "Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19", to clarify how certain provisions of the EU passenger rights legislation apply in the

context of the Covid-19 outbreak, notably concerning cancellations and delays.

With regard to the provisions of Regulation (EU) No. 1177/2010 (articles 16-20), the maritime carriers have the following obligations:

- inform passengers of the situation as soon as possible and, in any event, no later than 30 minutes after the scheduled time of departure, and of the estimated departure time and estimated arrival time as soon as that information is available.
- offer passengers re-routing or reimbursement: where a carrier reasonably expects a passenger service to be cancelled, he must offer passengers a choice between two possibilities: i) re-routing to the final destination under comparable conditions, as set out in the transport contract, at the earliest opportunity and at no additional cost or ii) reimbursement of the ticket price and, where relevant, a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity.

The Commission highlighted that ‘the earliest opportunity’ may, under the circumstances of the Covid-19 outbreak, imply considerable delay, and the same may apply to the availability of accurate information on such ‘opportunity’ given the high level of uncertainty affecting sea traffic. First, passengers should be informed about delays and/or uncertainties when offering them the choice between re-routing and reimbursement. Second, should a passenger choose nonetheless re-routing at the earliest opportunity, the carrier should be considered to have fulfilled its information obligation towards the passenger if the information is provided as soon as the service for rerouting is available.

-assist passengers in case of delay: provide assistance for passenger waiting at port terminals, including snacks and meals and accommodation if passengers where a stay of one or more nights or a stay additional to that intended by the passenger becomes necessary.

- pay compensation: in case of delay, passengers are entitled also to request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract. The minimum level of compensation must be 25 % of the ticket price for varying delays.

However, article 20 of the Regulation provides for exemption from the right to compensation in case of “extraordinary circumstances hindering the performance of the passenger service which could not have been avoided even if all reasonable measures had been taken”.

The Commission considers that the above condition should be considered fulfilled where public authorities either prohibit certain transport services or ban the movement of persons in a manner that excludes, de facto, the transport service in question to be operated, and also where the cancellation occurs in

circumstances where the corresponding movement of persons is not entirely prohibited, but limited to persons benefitting from derogations (for example nationals or residents of the state concerned).

The above obligations, as provided at article 2 of the Regulation, do not apply to cruise operators (for which see below).

Italian authorities have adopted measures to face the consequences of the cancellation of maritime transport of passengers as a consequence of the outbreak of Covid-19 with Law Decree no. 9 of March 2, 2020.

Art. 28 of Law Decree 9th March 2020 No.9 provides the termination for impossibility of performance as per art. 1463 Civil Code of all passengers’ transports contracts stipulated by passengers who are not allowed to travel because of Covid-19 outbreak and/or aimed at destinations that prohibit the transport service to be operated during the outbreak.

In such cases, passengers are entitled to obtain from the maritime carrier, within 15 days from their request, the refund of the ticket price or the issue of a voucher of the same amount with a one year validity.

The outbreak of Covid-19 has strongly affected also the tourism industry and, in particular, the cruise industry. The contract of cruise, which includes obligations of maritime transport of passengers, accommodation and touristic services, is considered a package travel subject to the relevant European and national law provisions.

The regime for package travels and related travel arrangements is currently contained in EU Directive (EU) 2015/2302, that in Italy has been implemented by Legislative Decree 21st May 2018 No. 62 which amended Chapter I of Title VI

of Annex 1 to Legislative Decree 23rd May 2011 No. 79 (the so-called “Code of Tourism”).

Art. 41 of Legislative Decree No. 79/2011 provides that, in case of unavoidable and extraordinary circumstances in the place of destination or that impact on the performance of the package travel (defined by the same law as “a situation beyond the control of the party who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken”):

- the customer shall have the right to withdraw from the package travel contract before its beginning without paying any termination fee and shall be entitled to the full refund of any payments made for the package;
- the tour operator may terminate the contract and provide the customer with the full refund of any payments made, but shall not be liable for additional compensation, if he is prevented from performing the contract because of unavoidable and extraordinary circumstances and notifies the customer of the termination of the contract without undue delay before the start of the package.

Italian authorities have adopted measures to face the consequences of the termination of package travel contracts as a consequence of

the outbreak of Covid-19. These measures are set out in Law Decree No. 9/2020, aiming to protect tour operators, who are forced to cancel travel packages due to the general restrictions on travel implemented worldwide and who are therefore exposed to massive refund claims and reductions the bookings, at the same time also protecting customers’ rights.

With Decree 19th March 2020 No. 125, the Ministry of Infrastructure and Transports suspended all cruise services provided by Italian flagged cruise ships and prohibited cruise ships flying other flags from entering Italian ports, thus preventing the operation of cruise services.

Article 28, §5 of Law Decree No. 9/2020, expressly referring to art. 41 of Legislative Decree No. 79/2011, provides the following alternative obligations for the tour operators:

- to fully refund the ticket price received within fourteen days of the withdrawal notification sent by the customer, or ;
- to issue of a voucher of the same amount as the amount of the terminated package travel to be used within one year, or
- to offer to the customer a replacement package of equivalent or higher quality.



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