

FAQ: PTD AND TRAVEL SCENARIOS RE COVID-19

As countries begin to ease the restrictions on public life introduced in response to the pandemic, question will arise as to the rights of travel consumers and the obligations of travel service providers.

With regard to non-package travel services, those questions will be answered by the application of normal contractual principles and applicable consumer protection legislation.

With regard to package travel services those questions will be answered by the application of the Directive 2015/2302 on Package Travel and Linked Travel Arrangements.

The scenarios detailed in this document are answered from the perspective of package travel contracts existing before the Covid 19 crisis. For new contracts, the scenarios can apply. Nonetheless several issues, notably regarding limited services compared to those agreed in the contract, can be solved with the provision of appropriate information to the customer about what to expect from the package travel before the conclusion of the contract. Advising customer to take a travel insurance covering pandemic situation may be useful.

Disclaimer: These FAQs are intended to provide a general for Travel Agents and Tour Operators and cannot be treated as definitive advice on specific circumstances. The supervisory authorities in each Member State can be approached for more detailed guidance on the specific requirements in each jurisdiction. **If in doubt, it is advisable to approach your supervisory authority to seek further guidance.**

Package travel

The most likely package travel services scenarios will be dealt with by reference to articles 11 (Alteration of other package travel contract terms), 12 (Termination of the package travel contract) and Art 13 (Responsibility for the performance of the package). In addition, the consumer's right to transfer the package to another person under Article 9 and assistance under article 16 may be relevant.

Article 11 deals with alterations of package travel contract terms and, in essence, provides firstly that an organiser can only make changes to the terms of a package travel contract unless the contract allows the organiser to make such changes, the changes are insignificant and the organiser informs the consumer of the changes.

In addition, Article 11 provides that, where an organiser is constrained by circumstances beyond its control to alter significantly any of the main characteristics of the travel services contained in the package travel contract, the organiser must inform the consumer of the proposed changes and of the consumer's right to accept the changes or to terminate the contract and receive a refund of monies paid for the package.

Article 12 deals with situations where the consumer wishes to cancel the package travel contract. The consumer can at all times cancel the package travel contract on payment of an appropriate cancellation fee.

Article 13 deals with compensation and price reduction should the package or services included in the package are not properly performed.

Where unavoidable and extraordinary circumstances occur at the place of destination of the package travel services or its immediate vicinity which significantly affect the performance of the package or the carriage of passengers to the destination, the consumer may terminate the contract and receive a refund of monies paid for the package.

Although It is accepted that advice the relevant authority against all travel to a destination or against all but essential travel to a destination is deemed to significantly affect the performance of a package at that destination.

Article 13 also provides that the organiser is liable to the consumer for the performance of the travel services included in the package travel contract and sets out the process for managing situations where the services are not delivered in accordance with the contract.

Article 9 provides that a consumer may transfer a package travel contract to another person before departure.

Article 16 provides that the organiser should give appropriate assistance without undue delay to the traveller in difficulty, in particular by: providing appropriate information on health services, local authorities and consular assistance; and assisting the traveller to make distance communications and helping the traveller to find alternative travel arrangements.

Package travel scenarios

The travel services to be delivered under the package travel contract can be delivered in accordance with the package travel contract or can be delivered with minor changes where the contract allows the organiser to make such changes.

1. *Relevant national authority is not advising against all or all but essential travel to the destination.*
 - The consumer can cancel the package on payment of a relevant cancellation charge under Article 12(1).
 - The consumer can transfer the package travel contract to another person under Article 9.
2. *Relevant national authority is advising against all or all but essential travel to the destination.*
 - The consumer can cancel the package and receive a full refund of monies paid under Article 12 (2).
 - The consumer is not entitled to additional compensation under Article 13 (3) c).
3. *Relevant national authority is not advising against all or all but essential travel to the destination. However, the consumer's home country requires 14 days quarantine/self-isolation upon return.*
 - The consumer can cancel the package on payment of a relevant cancellation charge under Article 12(1).
 - The consumer can transfer the package travel contract to another person under Article 9.
 - Article 12(2) does not apply to this situation as any unavoidable and extraordinary circumstances are not occurring at the destination, or if they are, they do not significantly affect the performance of the package as FCO is not advising against all or all but essential travel to the destination.
4. *Relevant national authority is not advising against all or all but essential travel to the destination but advises travellers over a certain age or with specific medical conditions not to travel.*

- The consumer can cancel the package on payment of a relevant cancellation charge under Article 12(1).
- The consumer can transfer the package travel contract to another person under Article 9.
- Article 12(2) does not apply to this situation as any unavoidable and extraordinary circumstances are not occurring at the destination, or if they are, they do not significantly affect the performance of the package as relevant national authority is not advising against all or all but essential travel to the destination.

The travel services to be delivered under the package travel contract cannot be delivered in accordance with the package travel contract without a significant change to those services.

1. Relevant national authority is advising against all or all but essential travel to the destination.

- The consumer can cancel the package and receive a full refund of monies paid under Article 12(2).

2. Relevant national authority is not advising against all or all but essential travel to the destination.

- Consumer and organiser can agree changes to the package which can then continue but consumer has the right to cancel the booking and receive a full refund under Article 11.
- Alternatively, the consumer can transfer the package travel contract to another person under Article 9.

The travel services to be delivered under the package travel contract can be delivered in accordance with the package travel contract but local restrictions mean that some facilities at the destination are unavailable or have limited availability customary to COVID restrictions. Relevant national authority is not advising against all or all but essential travel to the destination.

- The consumer can cancel the package on payment of a relevant cancellation charge under Article 12(1).
- If the local restrictions mean that public life is subject to significant limitations so that the package travel contract cannot de facto be performed the consumer can cancel the package and receive a full refund of monies paid under Article 12(2).
- The consumer can transfer the package travel contract to another person under Article 9.

The tour operator can perform the travel services in accordance with the travel agreement and Country of destination requests a recent COVID19 health certificate from all incoming travellers.

- The tour operator can perform the travel agreement. Whether or not to obtain the health declaration lies in the traveller's personal sphere of risk. The customer is not entitled to cancel the package holiday free of charge under the legislation.
- The consumer can cancel the package on payment of a relevant cancellation charge under Article 12(1).

- The consumer can transfer the package travel contract to another person under Article 9.
- It is advisable to inform the traveller of the tests and health procedures to fulfil that may occur during the course of the package travel (art 5.1 PTD)

Local authorities perform COVID19 tests on incoming travellers.

- The tour operator can perform the travel services in accordance with the travel agreement.
- The tour operator can carry out the travel agreement. Whether or not local COVID19 tests are passed is at the personal risk of the traveller. However, the tour operator is obliged to provide assistance. Any costs of (for example) quarantine or alternative transport are at the expense of the traveller.
- It is advisable to inform the traveller of the tests and health procedures to fulfil that may occurs during the course of the package travel (art 5.1)
- Customer should check its insurance policy, as it may cover such situation and entitles them to a full/partial refund.

Cruise company perform COVID19 tests on incoming travellers at boarding.

- The tour operator can perform the travel services in accordance with the travel agreement.
- The tour operator can carry out the travel agreement. Whether or not to pass a COVID19 test at boarding is at the personal risk of the traveller. However, the tour operator is obliged to provide assistance. Any costs of (for example) quarantine or alternative transport are at the expense of the traveller.
- It is advisable to inform the traveller of the tests and health procedures to fulfil that may occurs during the course of the package travel (art 5.1 PTD)
- Customer should check its insurance policy, as it may cover such situation and entitles them to a full/partial refund.

Performance of COVID19 tests on travellers at boarding (airport).

- The tour operator can perform the travel services in accordance with the travel agreement.
- The tour operator can carry out the travel agreement. Whether or not to pass a COVID19 test at boarding is at the personal risk of the traveller. However, the tour operator is obliged to provide assistance. Any costs of (for example) quarantine or alternative transport are at the expense of the traveller.
- It is advisable to inform the traveller of the tests and health procedures to fulfil that may occurs during the course of the package travel (art 5.1 PTD)
- Customer should check its insurance policy, as it may cover such situation and entitles them to a full/partial refund.

The facilities of a hotel or resort are available to a limited extent or limited in time.

- In principle, the tour operator can carry out the travel contract. The fact that some facilities are less available does not automatically lead to the right to cancel free of charge for the consumer. What is important here is the extent to which the tour operator is able to comply with the conformity requirement in the legislation. This must be assessed on a case-by-case basis and depends on, among other things:
 - the degree of availability of the facilities;
 - the extent to which the facilities should be seen as essential parts of the package holiday.
- The consumer can transfer the package travel contract to another person under Article 9.
- If the facilities at the hotel are subject to significant limitations so that the package travel contract cannot de facto be performed as agreed in the package travel contract, the consumer can cancel the package and receive a full refund of monies paid under Article 12(2).

Local authorities impose health restrictions such as (for example) the obligation to wear face masks in public places or social distancing requirements.

- The tour operator can perform the travel contract.
- The additional local requirements do not entitle the customer to cancel the package holiday free of charge under the legislation.
- The consumer can transfer the package travel contract to another person under Article 9.

StopCovid App: A traveller receives a message that he/she has been in contact with somebody infected with COVID 19

Before departure:

- The consumer can cancel the package on payment of a relevant cancellation charge under Article 12(1).
- The consumer can transfer the package travel contract to another person under Article 9.
- Article 12(2) does not apply to this situation as any unavoidable and extraordinary circumstances are not occurring at the destination.
- Customer should check its insurance policy, as it may cover such situation and entitles them to a full/partial refund.

At the destination:

- According to article 16 PTD, the organiser should give appropriate assistance without undue delay to the traveller in difficulty, in particular by: providing appropriate information on health services, local authorities and consular assistance; and assisting the traveller to make distance communications and helping the traveller to find alternative travel arrangements
- Customer should check its insurance policy, as it may cover such situation and entitles them to a full/partial refund.