

New regulation on right to refund for cancelled tickets

20 May 2020 | Contributed by [Augusta Abogados](#)

Passenger rights Spanish measures

The Spanish authorities have issued a number of measures to remedy the impact of COVID-19 on the Spanish aviation industry (for further details please see "[Impact of COVID-19 crisis on Spanish aviation industry](#)"). This article focuses on a specific topic especially relevant in the current circumstances – namely, the provisions and regulations that the Spanish authorities have recently approved in relation to flight cancellations and ticket refunds.

Passenger rights

One of the main consequences of the rapid spread of COVID-19 for airlines and passengers has been the cancellation of a large number of planned flights. At the same time, the aviation industry has expressed its concern about the dramatic financial consequences that airlines would suffer if millions of tickets were to be refunded immediately after the flight cancellations while simultaneously suffering the biggest drop in ticket sales in aviation history.

On 8 March 2020 the EU Commission published its interpretative guidelines on passenger rights in the event of COVID-19. These guidelines are especially relevant in order to limit the right to compensation under the EU Flight Delay Compensation Regulation (261/2004) in situations relating to the pandemic. As pointed out by the EU Commission, all measures taken by national authorities (eg, the Spanish government) in order to contain the COVID-19 pandemic were not inherent in the normal exercise of the activity of air carriers and were beyond their actual control on account of their nature or origin.

The consequences of such measures would therefore not be subject to compensation under the EU Flight Delay Compensation Regulation. The EU Commission stated that this included situations where the movement of persons is not entirely prohibited, but limited to persons benefiting from derogations. The EU Commission also clarified that airlines that decide to cancel a flight on the grounds of protecting the health of its crew would not be subject to compensation obligations under the EU Flight Delay Compensation Regulation. Likewise, the commission's guidelines provide practical guidance for issues that had to be considered at the initial phase of the pandemic (ie, information to passengers, re-routing, the right to care and some minor provisions on the scope of the right to a refund).

However, the guidelines do not cover the relevant aspect of how and when passengers could enforce their right to obtain a refund for a ticket cancelled in connection with COVID-19. As a result, a number of national governments have passed national legislation to regulate this matter.

Spanish measures

On 31 March 2020 the Spanish government approved a specific regime that applies to ticket refunds (Royal Decree 11/2020). Moreover, on 2 April 2020 the Ministry of Consumer Protection issued its own guidelines which establish the issues to be considered regarding passenger rights within the framework of the EU Flight Delay Compensation Regulation. This regulation sets out three possible legal scenarios in relation to flight cancellations and the right of passengers to ticket reimbursement.

The ministry generally accepts that air carriers can offer a travel voucher instead of a reimbursement, although without prejudice to passengers' right to request reimbursement of the flight. This opens up the possibility of negotiated agreements between passengers and airlines.

Conversely, where an airline did not cancel a flight, but rather the passenger decided not to fly, the airline's terms and conditions of carriage will apply to decide whether the passenger has a right to a

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refund (specifically, if such terms and conditions include the possibility of unilateral cancellation by passengers in case of health emergency reasons or similar situations).

Lastly, in the event that the above circumstances are not met and passengers are directly affected by the measures decreed in the state of alarm, the ministry reminds passengers of their right to cancel their flight and obtain a ticket refund. Interestingly, though, the ministry urges the passenger and the airline to try to reach an agreement in order to modify the flight dates. More importantly, in its guidelines the ministry sets out an extended 60-day deadline for the parties to reach such an agreement and only where such agreement is not possible airlines will have to reimburse the flight in the following 14 days.

The above 60-day period for refund or voucher agreements will be relevant for the Spanish aviation industry to tackle the negative effect from the widespread ticket cancellations received for flights scheduled in the coming months. The establishment of this extended deadline is far more realistic and appropriate than the seven-day deadline foreseen in Section 8 of EU Flight Delay Compensation Regulation. Likewise, it grants airlines the opportunity to offer convenient alternatives to passengers once the state of alarm expires in the next weeks.

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