



This collection of papers has been written by the international team of scholars teaching at the Master Course in Planning and Management of Tourism Systems of the University of Bergamo, while the Covid-19 emergency was spreading in all parts of the World and especially in the territory of Bergamo.

The main aim of the work is to face the topic of Tourism in the case of exogenous shocks, like the Covid-19 pandemic, reflecting on their impacts on territories, communities and heritage both during and after the crisis. The papers adopt different disciplinary approaches and methods, trying to give a multi-focused gaze to the complexity of a global phenomenon and to possible forms of recovery.

This collection is addressed to students and researchers studying in the tourism sector, who are in search of answers in this time of change and crisis. We believe that after reading this volume they won't have all the answers to their dilemmas, but they will reflect about them, they will receive proposals for specific approaches, methodologies, sources, references, examples, useful for the future of their own research.

FEDERICA BURINI is Associate Professor of Geography at the Department of Foreign Languages, Literatures and Cultures of the University of Bergamo where she is member of the CST-DiathesisLab. Her primary research interests are participatory processes and collaborative mapping to promote territorial regeneration in a sustainable perspective.

TOURISM FACING A PANDEMIC: FROM CRISIS TO RECOVERY



edited by Federica Burini



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*To our students of the Master Course
in Planning and Management of Tourism Systems
of the University of Bergamo*

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Presentation and executive summary

This collection of papers has been written in April 2020 by the international team of scholars teaching at the Master Course in *Planning and Management of Tourism Systems* of the University of Bergamo, while the Covid-19 emergency was spreading in all parts of the World and especially in the territory of Bergamo.

The main aim of the work is to face the topic of Tourism in the case of exogenous shocks, like the Covid-19 pandemic, reflecting on their impacts on territories, communities and heritage both during and after the crisis. The papers adopt different disciplinary approaches and methods, trying to give a multi-focused gaze to the complexity of a global phenomenon and to possible forms of recovery. The first section is focused on the impacts of global shocks in travel behaviours seen from economic, marketing and legal perspectives (Peter Keller, Greg Richards, Andrea Macchiavelli, Roberta Garibaldi, Andrea Pozzi, Daniela Andreini, Federico Mangiò, Simon Taylor), followed by a second section which analyses territorial and environmental issues related to tourism sustainability and adaptation to global changes (Andrew Holden, Federica Burini, Jennifer Wells, Elena Bougleux). The third section investigates tourism discourses and imageries during and after a pandemic (Rossana Bonadei, Cinzia Spinzi, Stefania Maci, Milos Nacic, Sanja Iguman), followed by a fourth section focusing on behaviours and social impacts (Roberto Peretta, Gabriella Alberti, Domenico Perrotta, Kerstin Heuwinkel). The fifth section analyses survival strategies to a pandemic for art, culture and science (Terry Stevens, Iolanda Pensa, Gemma Tully, Raffaella Pulejo, Patrizia Anesa, Gloria Pastorino). The last section deals with tourism teaching during crisis by analysing the results of a survey (Stephanie Pyne and Federica Burini).

This collection is addressed to students interested in the tourism sector, who are in search of answers in this time of change and crisis. We believe that after reading this volume they won't have all the answers to their dilemmas, but they will reflect about them, they will receive proposals for specific approaches,

methodologies, sources, references, examples, useful for the future of their own research.

I wish to thank the colleagues from the University of Bergamo and the visiting professors from British, Canadian, Dutch, French, German, Italian, Serbian, Swiss, US universities for having accepted with great enthusiasm this challenge in a so difficult period of resistance. Their valuable contributions will undoubtedly be of great interest and demonstrate that a global phenomenon should be always analysed by a global network of researchers. I also thank the anonymous referees from foreign universities who dedicated their time to read and approve this publication.

The book is dedicated to our students of the Master Course in *Planning and Management of Tourism Systems* and to those of them who particularly suffered for Covid-19.

Federica Burini

President of the Master Course in Planning and Management of Tourism Systems, Department of Foreign Languages, Literatures and Cultures University of Bergamo

Flight cancellations and the Covid-19 pandemic: is European Union law on air passenger rights fit for purpose?

Simon Taylor*

Abstract:

The coronavirus pandemic has led to the mass cancellation of flights. This article considers the rights of passengers in the case of flight cancellations in European Union law and reflects on how the EU framework on air passenger rights is currently being placed under considerable strain by the Covid-19 crisis. It also raises the possibility of reform in the wake of the current difficulties.

Keywords: *Coronavirus, EU law, cancellation of flights*

In this short article I will consider the current European Union regulations with respect to passenger rights in the event of flight cancellations before reflecting on how the law is being put under strain by the current coronavirus crisis. I will then examine the possible consequences of the current crisis for reform in this area of the law.

1. The current context

According to the International Civil Aviation Organisation (ICAO) (2020), on 14 April 2020 there were 1,818 flight departures worldwide, compared to 31,260 on January 17 of this year, representing a 94 per cent reduction between the two dates. The organisation estimates a reduction of up to 1,117 million passengers for the first nine months of 2020. Recent figures published by the International Air Transport Association (IATA) (2020) estimate that the airline industry will suffer a \$314 billion revenue loss in 2020. In this extreme context, the EU rules, which impose a significant financial burden on airlines in the case of flight cancellations, become of particular concern to the airline industry. Meanwhile, the current extreme situation also means that passengers are struggling to enforce their rights.

⁷ Simon Taylor, University Paris Nanterre, staylor@parisnanterre.fr.

2. The 2004 EU regulation on passenger rights

The rights of airline passengers in the case of cancellations, delays and denied boarding within the European Union are set out in the 2004 EU regulation on air passenger rights⁸. The regulation covers all flights from an airport within the European Union, and flights to a European Union airport from outside the European Union on a carrier registered in the European Union⁹. Where a flight is cancelled, passengers must be offered a choice between reimbursement of the cost of the flight within seven days or re-routing to the passenger's final destination under comparable transport conditions¹⁰. In the event of cancellation, airlines are also under an obligation of assistance: passengers have a right to meals and refreshments in reasonable relation to their waiting time together with hotel accommodation where an overnight stay becomes necessary. Passengers whose flights are cancelled will also often be entitled to compensation from the airline¹¹. The regulation provides for a fixed sum to be paid by way of compensation: 250 euros for short-haul flights, 400 euros for intra-Community flights of more than 1,500 kilometres and for all other flights between 1,500 and 3,000 kilometres, and 600 euros for long-haul flights. Equivalent rights are available in cases of denied boarding and delays¹². Airlines are under an obligation to inform passengers of these rights and each Member State has to designate a body responsible for enforcing the regulation¹³.

In order to limit the financial impact of compensation on air carriers, the regulations provide that airlines are not obliged to pay compensation to passengers where the cancellation of the flight is due to "extraordinary circumstances that could not have been

⁸ Regulation no. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights, 11 Feb. 2004. On air passenger rights in EU law generally, see M. Colangelo, V. Zeno-Zencovich, 2016.

⁹ Regulation 2004, article 3.

¹⁰ Article 8.

¹¹ Article 5 of the regulation permits airlines to cancel without compensation where they respect a minimum notice period.

¹² The right to compensation for delay was established by the European Court of Justice in *Sturgeon v Condor*, 19 Nov. 2009, C-402/07.

¹³ Article 16.

avoided even if all reasonable measures had been taken”¹⁴. The preamble to the EU regulations explains that such circumstances will include “political instability, meteorological conditions ... security risks, unexpected flight safety shortcomings and strikes”¹⁵. In such circumstances, airlines will still be under an obligation to reimburse passengers or provide re-routing and to assist passengers by, for example, providing hotel accommodation.

The European Commission (2014) estimated that delays and cancellations led to airlines providing care and assistance on 1.23 per cent of all flights. Reimbursement of flight tickets was provided for 1.71 per cent of long-haul flights and less than 0.1 per cent of short-haul flights. Compensation was paid in 1.55 per cent of long-haul and 0.37 per cent of short-haul flights. This led to an average cost of between 0.6 per cent and 1.8 per cent of airline turnover, although the Commission recognised that for certain low-cost airlines this can represent more than 5 per cent of turnover.

3. The impact of the coronavirus crisis

Even before the coronavirus crisis there had been a certain amount of resistance by airlines to the costs imposed on them by the EU regulations. This cost was particularly resented by low-cost airlines where the percentage cost of assistance and compensation compared to ticket prices is much higher. An example of this resistance is the litigation arising from the refusal of certain airlines to pay for assistance for passengers stranded for a number of days due to the closure of European airspace following the eruption of the Eyjafjallajökull volcano in Iceland in April 2010. In a case brought before the Irish courts a passenger sued Ryanair for their refusal to pay for the expenses that she had incurred for meals, refreshments, accommodation and transport as a result of her flight being cancelled. Ryanair argued that the airline was not under an obligation to compensate since the closure of European air space was a “super-extraordinary” circumstance (as opposed to a simply “extraordinary

¹⁴ Article 5.

¹⁵ Preamble paragraph 14.

circumstance”) and the fact that the closure of European airspace constituted a “super-extraordinary” circumstance had the effect of removing not only the airline’s obligation to compensate but also to assist passengers. The case was referred to the European Court of Justice for a ruling on the interpretation of the 2004 regulation.¹⁶ The European court held that “the importance of the objective of consumer protection ... may justify even substantial negative economic consequences for certain economic operators”¹⁷. The court observed that air carriers should foresee costs linked to the fulfilment of their obligation to provide care and that airlines can pass these costs on to consumers through increased ticket prices¹⁸.

The closure of European airspace in April 2010 was clearly a major event and the Commission (2014) has recognised that such events may cause “sudden and significant deviations” in the cost imposed on airlines under the 2004 regulations. However, the events of 2010 clearly pale in comparison to the financial challenges faced by airlines in 2020. The virtual closure of the international airspace over the prolonged period that we are experiencing will obviously qualify as “extraordinary circumstances” for the regulations. However, even though airlines will not be under an obligation to pay compensation to passengers as a result of cancelled flights, they will still, as the Ryanair case confirms, be subject to duties of assistance: paying for hotel accommodation and return flights or re-routing where relevant, and, most commonly, to reimbursement of the cost of the flight ticket within seven days.

However, despite the duty imposed on them by European Union law, airlines are currently refusing to reimburse passengers for cancelled flights within the seven days as required by the regulations and are commonly offering vouchers for future flights as an alternative to reimbursement¹⁹. Refusal to reimburse within

¹⁶ Denise McDonagh v Ryanair Ltd, 31 Jan. 2013, C-12/11.

¹⁷ Ibid., para. 48.

¹⁸ Para. 49.

¹⁹ Patrick Collinson, Airlines are breaking the law on refunds. Should we be sympathetic? The Guardian, 10 April 2020.

seven days as required by article 8 of the regulation clearly puts airlines in breach of their legal obligations. However, airlines argue that in the present circumstances they would be forced into insolvency if they fulfilled their legal obligations to reimburse within such a short period (De Jung, 2020).

4. The prospects of reform: creating a new balance?

The coronavirus crisis therefore tests the stability of the EU rules and raises the issue of whether they achieve an appropriate balance between passengers and airlines in all circumstances. On the one hand, criticisms have been levelled against the regulations on the grounds of lack of compliance by airlines and the weakness of the enforcement regime (Drake, 2020). Such criticisms weigh in favour of a strengthening of the rights of consumers and the European Commission has proposed changes to the 2004 regulations to strengthen enforcement powers (European Commission, 2013). However, other Commission proposals would have the effect of lightening the financial burden on airlines. With respect to delays in flights, the Commission has thus proposed to increase from three to five hours the waiting time triggering the right to compensation for delays. They have also proposed to reduce the cost of assistance for airlines by imposing a two-night cap on the number of nights' accommodation airlines would be expected to pay for, together with a maximum cost of that accommodation of 80 euros. However, these proposals, if they were enacted, would only offer partial protection to airlines from the financial burden imposed in extreme cases such as the coronavirus crisis. The current situation raises the question of whether the EU institutions should amend the regulations to allow greater flexibility in such cases by, in effect, creating a concept of "super-extraordinary circumstances" as imagined by Ryanair in their defence in the Iceland volcano case. In such "super-extraordinary circumstances", the parameters of which would be difficult to draw, it might be possible to provide for reduced obligations along the lines of those currently being proposed by airlines, of delayed reimbursement or vouchers for future travel. Such changes would of course represent a reduction in the rights of passengers and potentially affect consumer confidence in the

airline industry, although they could also provide a degree of improved legal certainty and realism.

Any such change would of course be too late to deal with the current crisis. However, it could also be argued that European Union law already provides a principle that could be used to justify the airlines' current position with respect to reimbursement. The principle of proportionality provides that European Union law should not go further than is needed to achieve the objectives of the legislation in question. Since the objective of the 2004 regulation is stated to be to provide airline passengers with a high level of protection of their rights, a rule which imposes on airlines an obligation to reimburse flight tickets within seven days and pay for assistance in a context as extreme as the current coronavirus crisis could be argued to be detrimental to passenger rights in the long term since it risks having the effect of driving airlines to insolvency, and thus reducing consumer choice and increasing ticket prices. Airlines could therefore try to argue that they are acting lawfully in refusing to reimburse within seven days, since that rule is not proportionate in the current circumstances. Existing case law from the European Court of Justice indicates however that this would be a difficult hurdle to overcome for airlines, since they would have to convince the court that the rule was "manifestly inappropriate having regard to the objective sought to be protected by the regulation" (ie. strengthening the protection of passengers)²⁰.

5. Conclusion

It appears likely that the experience of the current crisis will only encourage the resistance of airlines to the current regulations and reinforce the argument that, in a forthcoming reform of passenger rights, further limits should be placed on the obligations on airlines in such extreme cases. Given that the regulations have also been criticised for not guaranteeing passengers sufficient protection, that studies have shown that only one third of passengers request reimbursement since many are either

²⁰ The Queen, on the application of the IATA v Department of Transport, C-344/04, 10 June 2006, para. 80.

unaware of their rights or do not expect a satisfactory outcome (European Court of Auditors, 2018) and that there are problems in the lack of compliance of airlines with their obligations under the regulations, care must be taken not to swing the balance too far in favour of the airline industry in reaction to the coronavirus crisis.

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