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## **The decision of the European Commission State Aid SA.101979 (2022/N) – a word of commentary, opinion and conclusions**

**Abstract:** This material has been drawn up based on the decision of the European Commission State Aid SA.101979 (2022/N) – Poland COVID-19: Amendments to aid scheme SA.58102, as amended by SA.62231, and aid in the form of limited amounts of aid to tour operators. The main difference compared to the previous changes which consisted in postponing the repayment starting date that was applicable to all cases. In the decision indicated in the title of this article, it concerned the group of enterprises in the most difficult market situation due to a significant decrease in the number of customers. At the article I will show how Tourist Refund Fund worked and show my personal opinion about programme. I believe that programmes of this type, which provide real assistance to enterprises in the greatest need, can serve as a model for general solutions at the European level.

**Key words:** Tourist Aid Fund, Tourist Refund Fund, Tourist Guarantee Fund, Insurance Guarantee Fund, touroperators, European Commission.

This material has been drawn up based on the decision of the European Commission State Aid SA.101979 (2022/N) – Poland COVID-19: Amendments to aid scheme SA.58102, as amended by SA.62231, and aid in the form of limited amounts of aid to tour operators.

At the outset it should be clearly emphasised that the commented decision is a modification of the original decision of the European Commission (EC), which was approved by EC Decision of 21 September 2020 in case SA.58102 (2020/N), OJ C 326, 2.10.2020, p. 13 and amended by a subsequent decision approved by EC Decision of 2 June 2021 in case SA.62231 (2021/NN), OJ C 223, 11.6.2021, p. 16. The original decision of the EC was issued in the conditions of the COVID-19 pandemic and concerned the consequences of termination of /withdrawal from a package travel contract under the procedure set out in Article

47 (5)(2)/Article 47 (4) of the *Act of 24 November 2017 on package travel and linked travel arrangements*, which termination or withdrawal has been directly related to the outbreak of the SARS-CoV-2 epidemic. Due to the fact that such withdrawal entailed the obligation to refund to the traveller, within 14 days<sup>1</sup>, all payments made by them, relevant legislative steps needed to be taken. The main measure taken by the state was the introduction of a specific “notice period” for such contracts’ termination that took effect not on the day of declaration of intent to terminate it, as before, but after 180 days. The situation could be compared to the termination of an employment contract, for which the declaration of intent to terminate it takes effect, by virtue of law, after a certain period (usually from 1 to 3 months, depending on how long the person has been working for a given employer). As a result, the withdrawal from a contract or termination of a contract took effect, by virtue of law, 180 days after the notification of the withdrawal by the traveller or the notification of the termination by the travel organiser (Borek, Świtaj, Zawistowska 2020).

Initially, the epidemic was not expected to last long, hence the six-month period for refunding payments to touroperators’ customers. However, as it turned out in practice, the epidemic has lasted much longer than initially expected and it still continues<sup>2</sup>, although its effects are no longer as dramatic as they were two years ago. The aim of the national regulations was to recognize travellers’ right to the refund of their payments, while striking the right balance between protecting travellers and supporting travel companies. In other words, the main goal was to ensure that travellers’ right to the refund was exercised in a manner making it easier for touroperators to alleviate their problems with financial liquidity. As an alternative to the payment refund upon the expiry of the termination notice period, a traveller could receive a voucher valid for 2 years as from its receipt date. This validity period was an extended one, as initially the national legislator introduced a one-year validity period that turned out excessively optimistic in view of the long-lasting pandemic. In practice, the two-year validity period meant the possibility to conclude, based on the voucher, a package travel contract under new conditions but at the price already paid. In many cases, touroperators offered more favourable conditions, e.g. an additional discount, to travellers who collected the vouchers. Some travellers made use of this possibility and postponed their trips. The others, at the end of the 180-day notice period, were to be refunded all

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1 See: D. Borek, H. Zawistowska (red.), 2020, *Komentarz do ustawy o imprezach turystycznych i powiązanych usługach turystycznych*, ODDK, Gdańsk.

2 Compare: *EC Decision of 25 April 2022 in case SA.101979 (2022/N) – Poland COVID-19*, [https://ec.europa.eu/competition/state\\_aid/cases1/202218/SA\\_101979\\_307F6B80-0000-CC6C-AEC1-ACFCE865C9C2\\_52\\_1.pdf](https://ec.europa.eu/competition/state_aid/cases1/202218/SA_101979_307F6B80-0000-CC6C-AEC1-ACFCE865C9C2_52_1.pdf).

their payments within the following 14 days<sup>3</sup>. In that situation, the Polish state took the decision to propose a solution in the form of Tourist Refund Fund.

The instrument was subject to relevant notification under the EC decision of 21 September 2020 in case SA.58102 (2020/N), OJ C 326, 2.10.2020, p. 13. The mechanism offered preferential “loans” for the refund, to touroperators’ customers, of payments made by them. The loans’ specific feature was the fact that money was transferred directly to travellers with regard to whom the touroperator was in arrears with the refund. It is worth emphasising that the mechanism was voluntary, i.e. the use of the aid was not obligatory.

According to the *Act of 24 November 2017 on package travel and linked travel arrangements*<sup>4</sup>, the touroperator shall be responsible for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the tour operator or by other travel service providers<sup>5</sup>. In the case of termination of or withdrawal from a package travel contract, which termination or withdrawal has been directly related to the outbreak of the SARS-CoV-2 epidemic, a touroperator could seek the refund to a traveller of the money paid by that traveller to the touroperator as an advance payment for a package travel. The rules and procedure of applying for the benefit were set out in the *Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them*<sup>6</sup>.

The payments could be apply only by touroperators, who:

- 1) had received non-cash payments for the package travel;
- 2) were entered in a relevant register of touroperators and entrepreneurs facilitating linked travel arrangements.

An application for the payment refund to travellers was filed by a touroperator with the Insurance Guarantee Fund via the Fund’s IT system. A touroperator could file an application for the refund to more than one traveller. The same procedure had to be followed by travellers who wanted to receive

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3 See: D. Borek, H. Zawistowska (red.), 2021, *Prawo turystyki. Podręcznik*, ODDK, Gdańsk.

4 *Act of 24 November 2017 on package travel and linked travel arrangements* (Dz. U. z 2022 r. poz. 511).

5 Compare: *Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/ EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC* OJ L 326, 11.12.2015, p. 1–33.

6 *Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them* (Dz. U. z 2021 r. poz. 2095, 2120, 2133, 2262, 2269, 2317, 2368, 2459, z 2022 r. poz. 202, 218, 655, 830).

a refund within the system. A traveller to whom the refund was sought by the touroperator filed an application with the Insurance Guarantee Fund, via the Fund's IT system, for the refund to be paid to them. The Insurance Guarantee Fund immediately informed the touroperator of the traveller's application. The traveller's application could be filed solely by the traveller who had concluded the package travel contract. After receiving the touroperator's application and the traveller's application, the Insurance Guarantee Fund assessed their completeness (the data from both applications had to match in the IT system). The Insurance Guarantee Fund, within 14 days of the positive verification result, refunded the payment to the traveller from the Tourist Refund Fund. An additional form of ensuring the touroperator's capacity to pay future refunds was the mandatory initial payment of so-called "handling fees". Within 7 days of filing their application, the touroperator had to pay the following "handling fees" to the Tourist Aid Fund<sup>7</sup>:

- 1) 7.5% of the total value of the refunds covered by the application;
- 2) a fee in the amount of:
  - a) 2.5% of the total value of the refunds covered by the application if it was filed by a micro-, small or medium-sized entrepreneur, or
  - b) 4.1% of the total value of the refunds covered by the application if it was filed by a large-size entrepreneur.

In conclusion it should be pointed out that the interest on the loan had to be paid by the touroperator before the loan had been formally granted. The remaining amount, it is – 7.5% of the requested refund, was to be paid to the traveller as part of the financial assembly. In other words, to that amount, the Tourist Refund Fund added 92.5% of the overall refund value, and transferred the full amount to the applying traveller. The granting of the loan resulted in the touroperator's obligation to repay it in 72 equal instalments, payable by the 21<sup>st</sup> day of each month following March 2021. This originally set date was postponed by the EC decision State Aid SA.62231 (2021/NN) – Poland COVID-19 until the end of December 2021.

Postpone the starting date of the repayment of the first installment of the loans by tourooperators from April 2021 to 31 December 2021. The postponement of the first installment means that the maturity of the loan is extended from six years to six years and eight months. On the other hand The decision of the European Commission State Aid SA.101979 (2022/N) accepted further postpone the starting date of the repayment of the first instalment of the loans by tourooperators from

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<sup>7</sup> D. Borek, 2020, *Turystyczny Fundusz Pomocowy uspokoi również rynek ubezpieczycieli*, „Dziennik Gazeta Prawna”, 09.10.2020.

31 December 2021 to 31 December 2022. The postponement of the first installment means that the maturity of the loan is extended from six years and eight months to seven years and eight months<sup>8</sup>. the abovementioned postponement will only be available to touroperators who have suffered a decrease of 40% or higher in their number of customers in 2021 compared to 2019<sup>9</sup>.

This has been the main difference compared to the previous changes which consisted in postponing the repayment starting date that was applicable to all cases. In the decision indicated in the title of this article, it concerned the group of enterprises in the most difficult market situation due to a significant decrease in the number of customers.

The decision was compatible with the internal market<sup>10</sup> pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Please note that this aid measure was applicable to entities that suffered most due to the COVID-19 pandemic which translated into a drop in the number of customers. The decision is non-discriminatory, takes account of the real needs of the touristic market, and does not distort competition. It is worth pointing out that the decision was taken at the last possible moment because the temporary aid framework approved by the EU makes it possible to adopt aid schemes related to the COVID-19 pandemic until 30 June 2022. The verification of whether the criterion of a decrease in the number of travellers by 40% or more in 2021 compared to 2019 has been fulfilled is a fairly straightforward task. The entity responsible for it is the Insurance Guarantee Fund which has full information on the numbers of travellers in every year. This results from every travel organiser's obligation to submit to the Insurance Guarantee Fund, by the twenty first day of a month, a report containing, among others, information on the number of travellers for whom the contribution to the Tourist Guarantee Fund is due. The reporting obligation also applies to changes in the number of travellers covered by a given contract. This makes it possible to provide aid in a targeted and planned manner, after verifying the actual material and financial situation of the company in question. I believe that programmes of this type, which provide real assistance to enterprises in the greatest need, can serve as a model for general solutions at the European level<sup>11</sup>.

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8 EC Decision of 25 April 2022 in case SA.101979 (2022/N) – Poland COVID-19, [https://ec.europa.eu/competition/state\\_aid/cases1/202218/SA\\_101979\\_307F6B80-0000-CC6C-AEC1-ACFCE865C9C2\\_52\\_1.pdf](https://ec.europa.eu/competition/state_aid/cases1/202218/SA_101979_307F6B80-0000-CC6C-AEC1-ACFCE865C9C2_52_1.pdf).

9 Ibidem.

10 Compare: D. Borek, 2018, *Przedsiębiorca w ustawie o imprezach turystycznych i powiązanych usługach turystycznych – koncepcja przedmiotowego charakteru regulacji*, „Internetowy Kwartalnik Antymonopolowy i Regulacyjny”, UW 4/2018.

11 Compare: EC Decision of 21 September 2020 in case SA.58102 (2020/N), OJ C 326, 02.10.2020, p. 13.

## Bibliography

### Literature:

Borek D., 2018, *Przedsiębiorca w ustawie o imprezach turystycznych i powiązanych usługach turystycznych – koncepcja przedmiotowego charakteru regulacji*, „Internetowy Kwartalnik Antymonopolowy i Regulacyjny UW”, 4/2018.

Borek D., 2020, *Turystyczny Fundusz Pomocowy uspokoi również rynek ubezpieczycieli*, „Dziennik Gazeta Prawna”, 09.10.2020.

Borek D., Świtaj K., Zawistowska H., 2020, *O zgodności z prawem UE regulacji art. 15k ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustaw*, [w:] I. Barwicka-Tylek, P. Dziewałtowski-Gintowt, K. Zyzik, Ł. Łyżwa (red.), *Prawo – narzędzie sprawiedliwości czy władzy?*, Wydawnictwo Naukowe Archae-Graph, Kraków.

Borek D., Zawistowska H. (red.), 2020, *Komentarz do ustawy o imprezach turystycznych i powiązanych usługach turystycznych*, ODDK, Gdańsk.

Borek D., Zawistowska H. (red.), 2021, *Prawo turystyki. Podręcznik*, ODDK, Gdańsk.

### Legal Acts:

*Act of 24 November 2017 on package travel and linked travel arrangements* (Dz. U. z 2022 r. poz. 511).

*Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them* (Dz. U. z 2021 r. poz. 2095, 2120, 2133, 2262, 2269, 2317, 2368, 2459, z 2022 r. poz. 202, 218, 655, 830).

*EC Decision of 21 September 2020 in case SA.58102 (2020/N)*, OJ C 326, 2.10.2020, p. 13.

*EC Decision of 2 June 2021 in case SA.62231 (2021/NN)*, OJ C 223, 11.6.2021, p. 16.

*EC Decision of 25 April 2022 in case SA.101979 (2022/N) – Poland COVID-19, [https://ec.europa.eu/competition/state\\_aid/cases1/202218/SA\\_101979\\_307F6B80-0000-CC6C-AEC1-ACFCE865C9C2\\_52\\_1.pdf](https://ec.europa.eu/competition/state_aid/cases1/202218/SA_101979_307F6B80-0000-CC6C-AEC1-ACFCE865C9C2_52_1.pdf).*

*Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC OJ L 326, 11.12.2015, p. 1–33.*

## **Decyzja Komisji Europejskiej w sprawie pomocy państwa SA.101979 (2022/N) – komentarz, opinia i wnioski**

**Zarys treści:** Niniejszy materiał został sporządzony na podstawie decyzji Komisji Europejskiej o pomocy państwa SA.101979 (2022/N) – Polska COVID-19: Zmiany programu pomocowego SA.58102, z późniejszymi zmianami SA.62231, oraz pomoc w formie ograniczonych kwot pomocy dla touroperatorów. Główna różnica w stosunku do poprzednich zmian polegała na przesunięciu terminu rozpoczęcia spłaty, który obowiązywał we wszystkich przypadkach. W decyzji wskazanej w tytule artykułu dotyczyło to grupy przedsiębiorstw znajdujących się w najtrudniejszej sytuacji rynkowej ze względu na znaczny spadek liczby klientów. W artykule opisałem, jak działał Turystyczny Fundusz Zwrotów i przedstawiłem moją osobistą opinię na temat tego programu. Uważam, że tego typu działania, które realnie pomagają najbardziej potrzebującym przedsiębiorstwom, mogą być wzorem dla ogólnych rozwiązań na poziomie europejskim.

**Słowa kluczowe:** Turystyczny Fundusz Pomocowy, Turystyczny Fundusz Zwrotów, Turystyczny Fundusz Gwarancyjny, Ubezpieczeniowy Fundusz Gwarancyjny, organizatorzy turystyki, Komisja Europejska.