Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 June 2023 *

(Reference for a preliminary ruling – Package travel and linked travel arrangements – Directive (EU) 2015/2302 – Article 12(2) to (4) – Termination of a package travel contract – Unavoidable and extraordinary circumstances – COVID-19 pandemic – Refund of payments made by the traveller concerned for a package – Refund in the form of a sum of money or equivalent refund in the form of a credit note ('voucher') – Obligation to provide that traveller with a refund not later than 14 days after the relevant contract is terminated – Temporary derogation from that obligation – Adjustment of the temporal effects of a decision which is taken in accordance with national law and which annuls national legislation that is contrary to that obligation)

In Case C-407/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 1 July 2021, received at the Court on 2 July 2021, in the proceedings

Union fédérale des consommateurs – Que choisir (UFC – Que choisir),

Consommation, logement et cadre de vie (CLCV)

v

Premier ministre,

Ministre de l'Économie, des Finances et de la Relance,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: L. Medina,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 1 June 2022,

* Language of the case: French.

after considering the observations submitted on behalf of:

– Union fédérale des consommateurs – Que choisir (UFC – Que choisir) and Consommation, logement et cadre de vie (CLCV), by R. Froger and A. Londoño López, avocats,

– the French Government, by A. Daniel and A. Ferrand, acting as Agents,

– the Belgian Government, by S. Baeyens, P. Cottin and T. Willaert, acting as Agents,

– the Czech Government, by S. Šindelková, M. Smolek and J. Vláčil, acting as Agents,

– the Danish Government, by V. Pasternak Jørgensen and M. Søndahl Wolff, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by F. Severi and M. Cherubini, avvocati dello Stato,

– the Slovak Government, by E.V. Drugda, S. Ondrášiková and B. Ricziová, acting as Agents,

– the European Commission, by B.-R. Killmann, I. Rubene and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 September 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12 of 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 2015 L 326, p. 1).

2 The request has been made in proceedings between, on the one hand, Union fédérale des consommateurs – Que choisir (UFC – Que choisir) and Consommation, logement et cadre de vie (CLCV) and, on the other hand, the Premier ministre (Prime Minister) and Ministre de l'Économie, des Finances et de la Relance (Minister for Economic Affairs, Finance and Recovery) concerning an application for the annulment of ordonnance No 2020-315 du 25 mars 2020, relative aux conditions financières de résolution de certains contrats de voyages touristiques et de séjours en cas de circonstances exceptionnelles et inévitables ou de force majeure (JORF du 26 mars 2020, texte No 35) (Order No 2020-315 of 25 March 2020 concerning the financial conditions for the rescission of certain tourist travel and holiday contracts in the event of unavoidable and extraordinary circumstances or *force majeure* (JORF of 26 March 2020, text No 35; 'Order No 2020-315'), on the ground that it was adopted *ultra vires*.

Legal context

European Union law

Directive 2015/2302

3 As set out in recitals 5, 31 and 46 of Directive 2015/2302:

‘(5) … The harmonisation of the rights and obligations arising from contracts relating to package travel and to linked travel arrangements is necessary for the creation of a real consumer internal market in that area, striking the right balance between a high level of consumer protection and the competitiveness of businesses.

…

(31) Travellers should also be able to terminate the package travel contract at any time before the start of the package in return for payment of an appropriate and justifiable termination fee, taking into account expected cost savings and income from alternative deployment of the travel services. They should also have the right to terminate the package travel contract without paying any termination fee where unavoidable and extraordinary circumstances will significantly affect the performance of the package. This may cover for example warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely to the destination as agreed in the package travel contract.

…

(46) It should be confirmed that travellers may not waive rights stemming from this Directive and that organisers or traders facilitating linked travel arrangements may not escape from their obligations by claiming that they are simply acting as a travel service provider, an intermediary, or in any other capacity.’

4 Article 1 of that directive states:

‘The purpose of this Directive is to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection by approximating certain aspects of the laws, regulations and administrative provisions of the Member States in respect of contracts between travellers and traders relating to package travel and linked travel arrangements.’

5 Article 3 of that directive provides:

‘For the purposes of this Directive:

…

(6) “traveller” means any person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of this Directive;

…

(8) “organiser” means a trader who combines and sells or offers for sale packages, either directly or through another trader or together with another trader …

…

(12) “unavoidable and extraordinary circumstances” means 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;

…’

6 Article 4 of that directive, headed ‘Level of harmonisation’, provides:

‘Unless otherwise provided for in this Directive, Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions which would ensure a different level of traveller protection.’

7 Article 12 of Directive 2015/2302, headed ‘Termination of the package travel contract and the right of withdrawal before the start of the package’, states:

‘1. Member States shall ensure that the traveller may terminate the package travel contract at any time before the start of the package. Where the traveller terminates the package travel contract under this paragraph, the traveller may be required to pay an appropriate and justifiable termination fee to the organiser. …

2. Notwithstanding paragraph 1, the traveller shall have the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination. In the event of termination of the package travel contract under this paragraph, the traveller shall be entitled to a full refund of any payments made for the package, but shall not be entitled to additional compensation.

3. The organiser may terminate the package travel contract and provide the traveller with a full refund of any payments made for the package, but shall not be liable for additional compensation, if:

…

(b) the organiser is prevented from performing the contract because of unavoidable and extraordinary circumstances and notifies the traveller of the termination of the contract without undue delay before the start of the package.

4. The organiser shall provide any refunds required under paragraphs 2 and 3 or, with respect to paragraph 1, reimburse any payments made by or on behalf of the traveller for the package minus the appropriate termination fee. Such refunds or reimbursements shall be made to the traveller without undue delay and in any event not later than 14 days after the package travel contract is terminated.

…’

8 Article 23 of that directive, headed ‘Imperative nature of the Directive’, provides:

‘…

2. Travellers may not waive the rights conferred on them by the national measures transposing this Directive.

3. Any contractual arrangement or any statement by the traveller which directly or indirectly waives or restricts the rights conferred on travellers pursuant to this Directive or aims to circumvent the application of this Directive shall not be binding on the traveller.’

Recommendation (EU) 2020/648

9 Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic (OJ 2020 L 151, p. 10) states, in recitals 9, 13 to 15, 21 and 22:

‘(9) Directive [2015/2302] provides that, if a package trip is cancelled due to “unavoidable and extraordinary circumstances”, travellers have the right to get a full refund of any payments made for the package, without undue delay and in any event within 14 days after termination of the contract. In this context, the organiser may offer the traveller reimbursement in the form of a voucher. However, this possibility does not deprive the travellers of their right to reimbursement in money.

…

(13) The numerous cancellations entailed by the COVID-19 pandemic have led to an unsustainable cash-flow and revenue situation for the transport and travel sectors. The liquidity problems of organisers are exacerbated by the fact that they have to reimburse the full price of the package to the traveller while they do not themselves always receive reimbursement of prepaid services that form part of the package in due time. This can de facto result in an unfair sharing of the burden among the operators in the travel eco-system.

(14) If organisers or carriers become insolvent, there is a risk that many travellers and passengers would not receive any refund at all, as their claims against organisers and carriers are not protected. The same problem may arise in a business-to-business context, where organisers receive a voucher as reimbursement for prepaid services from carriers, which later become insolvent.

(15) Making vouchers more attractive, as an alternative to reimbursement in money, would increase their acceptance by passengers and travellers. This would help to ease the liquidity problems of carriers and organisers and could ultimately lead to better protection of the interests of passengers and travellers.

…

(21) As regards possible additional liquidity needs of operators in the travel and transport sectors, on 19 March 2020 the [European] Commission adopted a Temporary Framework for State aid measures to support the economy in the current COVID-19 crisis based on Article 107(3)(b) [TFEU] to remedy a serious disturbance to the economy in the Member States …

(22) The Temporary Framework applies in principle to all sectors and undertakings including transport and travel undertakings and recognises transport and travel as being among the most affected sectors. It aims to remedy the liquidity shortages faced by companies by allowing for instance direct grants, tax advantages, State guarantees for loans and subsidised public loans. … In this context, Member States may decide upon support to operators in the travel and transport sectors to ensure that reimbursement claims caused by the COVID-19 outbreak are satisfied with a view to ensuring the protection of passenger and consumer rights, and equal treatment of passengers and travellers.'

10 As set out in point 1 of that recommendation:

'This Recommendation concerns vouchers that carriers or organisers may propose to passengers or travellers, as an alternative to reimbursement in money, and subject to the passenger's or traveller's voluntary acceptance, in the following circumstances:

(a) in the event of a cancellation by the carrier or organiser made as from 1 March 2020 for reasons linked to the COVID-19 pandemic, in the context of the following provisions:

…
(5) Article 12(3) and (4) of Directive (EU) 2015/2302;

…'

French law

11 Order No 2020-315 was adopted on the basis of the power conferred on the French Government by the loi No 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19 (JORF du 14 mars 2020, texte No 2) (Law No 2020-290 of 23 March 2020 on emergency measures in response to the COVID-19 outbreak, JORF of 14 March 2020, text No 2) with the stated aim of 'deal[ing] with the economic, financial and social consequences of the spread of the COVID-19 epidemic and the consequences of the measures taken to limit that spread, and in particular in order to prevent and limit the cessation of operations on the part of natural and legal persons engaged in an economic activity and of associations, as well as its impact on employment'.

12 Pursuant to Article 1, paragraph II, of Order No 2020-315, by way of derogation from the provisions of the French law implementing Article 12(2) and (3) of Directive 2015/2302, where a travel and holiday sales contract is 'rescinded' between 1 March and 15 September 2020, the organiser or retailer may offer, instead of a full refund of any payments made under the 'rescinded contract', a credit note which the customer may use under certain conditions. Article 1 sets out the conditions under which, if that credit note is not used, the traveller is entitled to a full refund of those payments.

13 It is apparent from the order for reference that such an offer had to be made not later than three months after notification of the 'rescission' of the contract concerned and that the offer was then valid for 18 months. It was only at the end of that 18-month period and in the absence of acceptance by the customer concerned of an identical or equivalent arrangement to that for which the 'rescinded contract' provided and which had been offered to the customer that the trader concerned was required to provide a full refund of any payments made under that contract.

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 The applicants in the main proceedings, two consumer protection associations, brought an application before the referring court for annulment of Order No 2020-315, claiming that the provisions of that order were contrary to Article 12 of Directive 2015/2302, which provides, inter alia, for the right of the traveller concerned, in the event of termination of a package travel contract following the occurrence of 'unavoidable and extraordinary circumstances', to a full refund of any payments made for the package not later than 14 days after the package contract is terminated, and undermined free competition within the single market and the harmonisation objective pursued by that directive.

15 The referring court states that the provisions of Order No 2020-315 had been adopted in order to safeguard the cash flow and solvency of the service providers covered by those provisions, in circumstances in which more than 7 000 travel and holiday operators registered in France – which, on account of the COVID-19 pandemic simultaneously affecting not only France and the majority of the countries in Europe but also almost all continents, were faced with cancellations of booked arrangements on an unprecedented scale and almost no new bookings – found themselves in serious difficulty, and in which an immediate refund of all payments made in respect of cancelled arrangements was liable, in the light of those circumstances, to jeopardise the existence of those operators and, consequently, the possibility for the customers concerned to be able to obtain a refund of those payments.

16 The referring court also explains that the total amount of the credit notes issued by French trading entities up until 15 September 2020, the date of the end of the period during which Order No 2020-315 was applicable, is in the region of EUR 990 million, which represents 10% of the turnover of the sector concerned in a normal year.

17 In those circumstances, the Conseil d'État (Council of State, France) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 12 of [Directive 2015/2302] be interpreted as obliging the organiser of package travel, in the event of termination of the contract, to refund in cash the full amount of any payments made for the package, or as authorising an equivalent refund, in particular in the form of a credit note for an amount equal to the amount of any payments made?

(2) If it is the case that those refunds refer to a cash refund, are the health crisis related to the COVID-19 epidemic and its effects on travel operators, which have suffered as a result of that crisis a fall in their turnover estimated at between 50 and 80% and represent more than 7% of France's gross domestic product and, in the case of package tour operators, have 30 000 employees in France and a turnover of nearly EUR 11 billion, capable of justifying and, if so, under what conditions and subject to what limitations, a temporary derogation

from the obligation for the organiser to refund to the traveller the full amount of any payments made for the package within a period of 14 days following the termination of the contract, laid down in Article 12(4) of [Directive 2015/2302]?

(3) If the answer to the previous question is in the negative, is it possible, in the circumstances mentioned above, to adjust the temporal effects of a decision annulling national legislation which is contrary to Article 12(4) of [Directive 2015/2302]?'

The first question

18 By its first question, the referring court seeks, in essence, to ascertain whether Article 12(2) and (3) of Directive 2015/2302 must be interpreted as meaning that, where, following the termination of a package travel contract, the travel organiser is required, under that provision, to provide the traveller concerned with a full refund of any payments made for that package, that refund refers solely to the reimbursement of those payments in the form of a sum of money or whether, on the contrary, that refund may also be made, at the organiser's discretion, in the form of a credit note equal to the amount of those payments (that is to say, a 'voucher').

19 It should be pointed out that Article 12(2) of Directive 2015/2302 confers on the traveller concerned the right to terminate the package travel contract before the start of the package without paying any termination fee in the event of 'unavoidable and extraordinary circumstances' occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination. In the event of termination of the package travel contract under paragraph 2, the traveller is entitled to a full refund of any payments made for the package.

20 Furthermore, in accordance with Article 12(3)(b) of that directive, if the travel organiser concerned is prevented from performing a package travel contract because of 'unavoidable and extraordinary circumstances' and notifies the traveller concerned of the termination of the contract without undue delay before the start of the package, the organiser may terminate that contract and provide the traveller with a full refund of any payments made for the package, but is not liable for additional compensation.

21 In addition, Article 12(4) of that directive states, inter alia, that any refunds or reimbursements to that traveller are to be made without undue delay and in any event not later than 14 days after the package travel contract is terminated.

22 In the present case, the referring court asks the first question in the context of the adoption by the French Government of Order No 2020-315, Article 1 of which authorised travel organisers, as regards any 'rescission' notified between 1 March and 15 September 2020, to fulfil their reimbursement obligation by offering the traveller concerned, not later than three months after notification of the 'rescission' of the relevant package travel contract, a voucher for an amount equal to the payments made for that package, with that offer being valid for a period of 18 months.

23 In order to answer whether that offer is capable of constituting a 'refund' within the meaning of Article 12(2) and (3) of Directive 2015/2302, it should be noted, first of all, that that directive contains no definition of the concept of 'refund'.

24 Next, it is settled case-law that the meaning and scope of terms for which EU law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (judgment of 18 March 2021, *Kuoni Travel*, C-578/19, EU:C:2021:213, paragraph 37).

25 According to its usual meaning in everyday language, the term 'refund' refers to the fact of returning to a person a sum of money which that person has paid out or advanced to another person and thus involves the latter returning that sum to the former. Such a meaning is also clear from the wording of Article 12(2) and (3) of Directive 2015/2302 as a whole, which specifies that the full refund covers the 'payments made' for a package, which thus dispels any doubt as to the purpose of the refund, which involves a sum of money.

26 It follows that the concept of 'refund', within the meaning of Article 12(2) and (3) of Directive 2015/2302, means the return of any payments made for a package in the form of a sum of money.

27 That interpretation is not invalidated by the Slovak Government's argument based on the terminological distinction allegedly made, as regards that concept, in particular in the German and English language versions of Article 12(4) of Directive 2015/2302, between, on the one hand, 'reimbursement' ('Rückzahlung' in German) of the payments referred to in Article 12(1) of that directive and, on the other hand, a 'refund' ('Erstattung' in German) of the payments referred to, inter alia, in Article 12(2) and (3) of that directive, with the latter also including, according to that government, compensation in a form other than a sum of money.

28 Not only is such a terminological distinction perfectly compatible with an interpretation of those provisions entailing reimbursement in the form of a sum of money, but also, even supposing that it were otherwise, it follows from the Court's settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions, since that provision must, where there is divergence between the various language versions of an EU legislative text, be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, to that effect, judgment of 9 July 2020, *Banca Transilvania*, C-81/19, EU:C:2020:532, paragraph 33 and the case-law cited).

29 The context of Article 12(2) and (3) of Directive 2015/2302 and the objective of that directive support the literal interpretation adopted in paragraph 26 above.

30 As regards, first, the context of that provision, the fact that, under Article 12(4) of that directive, the refund or reimbursement is to be made not later than 14 days after the relevant package travel contract is terminated indicates that that refund or reimbursement must be made in the form of a sum of money inasmuch as that period is intended to ensure that, shortly after the termination of that contract, the traveller concerned will once again be able to dispose freely of the sum spent on the package. On the other hand, there would be little point in imposing such a period if the traveller had to accept a voucher or other deferred arrangement of which he or she could make use, in any event, only after that period had expired.

31 Furthermore, as the Advocate General also noted, in essence, in point 26 of her Opinion, the broader context of Directive 2015/2302, namely that of the field of passenger rights and consumer protection, makes clear that, where the EU legislature envisages, in a given legislative act relating to that field, the possibility of replacing an obligation to pay a sum of money with a benefit in another form, such as, in particular, the offer of a voucher, that possibility is expressly provided

for in that legislative act. The absence of any reference in the wording of Article 12 of Directive 2015/2302 to such a possibility therefore confirms that that article refers only to refunds in the form of a sum of money.

32 Secondly, as regards the objective pursued by Directive 2015/2302, it is apparent from Article 1, read in the light of recital 5, of that directive, that the objective is to contribute to the proper functioning of the internal market and to the achievement of a high and as uniform as possible level of consumer protection (see, to that effect, judgment of 12 January 2023, *FTI Touristik (Package travel to the Canary Islands)*, C-396/21, EU:C:2023:10, paragraph 29).

33 The right to a refund conferred on travellers in Article 12(2) and (3) of that directive meets that consumer protection objective, with the result that an interpretation of the concept of 'refund', within the meaning of Article 12 of that directive, to the effect that the traveller concerned is entitled to be provided with a refund of the payments made for the package in question in the form of a sum of money, which he or she will be able to dispose of freely, is better able to contribute to the protection of the traveller's interests and, therefore, to the attainment of that objective than an interpretation to the effect that it suffices for the organiser concerned to offer the traveller a voucher or another form of deferred compensation.

34 This is without prejudice to the possibility for a traveller who is a party to a package travel contract to agree, on a voluntary basis, to accept a voucher instead of reimbursement in the form of a sum of money, in so far as such a possibility does not deprive that traveller of his or her right to that reimbursement in money, as stated in recital 9 of Recommendation 2020/648.

35 In the light of the foregoing considerations, the answer to the first question is that Article 12(2) and (3) of Directive 2015/2302 must be interpreted as meaning that where, following the termination of a package travel contract, the organiser of that package is required, under that provision, to provide the traveller concerned with a full refund of any payments made for the package, such a refund refers solely to the reimbursement of those payments in the form of a sum of money.

The second question

36 By its second question, the referring court asks, in essence, whether Article 12(2) to (4) of Directive 2015/2302 must be interpreted as precluding national legislation under which package travel organisers are temporarily released, in the context of the outbreak of a global health crisis preventing the performance of package travel contracts, from their obligation to provide the travellers concerned, not later than 14 days after a contract is terminated, with a full refund of any payments made under the terminated contract, including where such legislation is intended to prevent, due to the large number of anticipated reimbursement claims, the solvency of those travel organisers from being affected to the point of jeopardising their existence and thus to preserve the viability of the sector concerned.

37 As a preliminary point, it should be noted that, in the light of the answer to the first question, Article 12(2) and (3)(b) of Directive 2015/2302 requires package travel organisers to provide the travellers concerned with a full refund, in the form of a sum of money, of any payments made under the relevant package travel contract where that travel contract is terminated because of 'unavoidable and extraordinary circumstances' which significantly affect or prevent the performance of the travel contract.

38 As recalled in paragraph 22 above, Article 1 of Order No 2020-315 authorised travel organisers, as regards any 'rescission' notified between 1 March and 15 September 2020, that is to say, during a period which began shortly before the outbreak of the COVID-19 pandemic and ended several months after, to offer the traveller concerned, no later than three months after notification of the 'rescission' of the relevant package travel contract, a voucher, instead of providing the traveller with a refund, in the form of a sum of money, of the payments made under that travel contract, and that refund became mandatory only at the end of the voucher's 18-month validity period.

39 Since the second question is intended, in essence, to enable the referring court to assess the compatibility of such a national provision with the obligation on the relevant travel organiser to provide a full refund, laid down in Article 12(2) and (3)(b) of Directive 2015/2302, that question is therefore necessarily based on the premiss that the conditions for the application of that provision, in particular the condition relating to the occurrence of 'unavoidable and extraordinary circumstances', are satisfied in the present case.

40 The Czech, Italian and Slovak Governments submit that Article 12(2) and (3)(b) of Directive 2015/2302 does not apply in the context of a global health crisis such as that caused by the COVID-19 pandemic, since such an event does not fall within the concept of 'unavoidable and extraordinary circumstances', within the meaning of that provision. Terminations on account of that crisis cannot therefore give rise to a right to a full refund of any payments made for the terminated packages.

41 It is therefore necessary to examine, in the first place, whether a global health crisis such as the COVID-19 pandemic is capable of falling within the concept of 'unavoidable and extraordinary circumstances', within the meaning of Article 12(2) and (3)(b) of Directive 2015/2302, so that that provision may be applied to terminations covered by national legislation such as Article 1 of Order No 2020-315.

42 In that regard, it should be borne in mind that that concept is defined in Article 3(12) of Directive 2015/2302 as meaning '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'.

43 In addition, recital 31 of that directive clarifies the scope of that concept, stating that '[it] may cover for example warfare, other serious security problems such as terrorism, significant risks to human health such as the outbreak of a serious disease at the travel destination, or natural disasters such as floods, earthquakes or weather conditions which make it impossible to travel safely to the destination as agreed in the package travel contract'.

44 Furthermore, as recalled in paragraph 19 above, it is apparent from Article 12(2) of Directive 2015/2302 that 'unavoidable and extraordinary circumstances' may justify termination by the traveller concerned, giving him or her a right to a full refund of any payments made for the package, only where those circumstances occur 'at the place of destination or its immediate vicinity' and 'significantly [affect] the performance of the package, or … significantly affect the carriage of passengers to the destination'.

45 While, for the purposes of the termination of a package travel contract, the classification of a given event as a situation falling within the concept of 'unavoidable and extraordinary circumstances', within the meaning of that directive, necessarily depends on the specific circumstances of the particular case and, in particular, on the travel services specifically agreed upon and the

consequences of that event at the intended destination, the fact remains that a global health crisis such as the COVID-19 pandemic must, as such, be regarded as capable of falling within the scope of that concept.

46 Such an event is clearly beyond all control and its consequences could not have been avoided even if all reasonable measures had been taken. That event also entails the existence of 'serious risks to human health' referred to in recital 31 of that directive.

47 In that regard, it is irrelevant that, like Article 12(2) of the same directive, that recital illustrates those terms by using the example of 'the outbreak of a serious disease at the travel destination', since that clarification is intended not to restrict the scope of the concept of 'unavoidable and extraordinary circumstances' to local events, but to make it clear that those circumstances must, in any event, arise in particular at the intended travel destination and, as such, significantly affect the performance of the package concerned.

48 In that regard, as the Advocate General also observed, in essence, in point 58 of her Opinion, if the spread of a serious disease at the relevant travel destination is capable of falling within the scope of that concept, the same must a fortiori be true of the spread of a serious disease on a global scale, since the effects of the latter will also be felt at the relevant travel destination.

49 Furthermore, an interpretation of Article 12(2) and (3)(b) of Directive 2015/2302 according to which that provision applies only to events that are local in scope, to the exclusion of events of a larger scale, would run counter, first, to the application of the principle of legal certainty, since, in the absence of any distinguishing criterion laid down for that purpose by that directive, the line separating those two categories of events could be vague and variable, which would ultimately render uncertain the benefit of the protection conferred by that provision.

50 Secondly, that interpretation would be inconsistent with the consumer protection objective pursued by Directive 2015/2302. It would mean that travellers who terminate their package travel contract by invoking the outbreak of a locally contained disease would not be required to pay termination fees, whereas travellers who terminate that contract due to the outbreak of a disease on a global scale would have to pay such fees, with the result that the travellers concerned would receive a lower level of protection in the event of a global health crisis than in the event of the outbreak of a locally contained disease.

51 In the light of the foregoing, it must be held that the concept of 'unavoidable and extraordinary circumstances', within the meaning of Article 12(2) and (3)(b) of Directive 2015/2302, is capable of covering the outbreak of a global health crisis and that provision may therefore be applied to terminations of package travel contracts where those terminations are based on the consequences caused by such an event.

52 In the second place, the French Government nevertheless argues that a situation such as the health crisis linked to the COVID-19 pandemic is of such magnitude that it also constitutes a case of '*force majeure*', a concept capable of covering cases the characteristics of which go beyond the situations envisaged when Article 12(2) and (3)(b) of Directive 2015/2302 was adopted. That government infers that, on that basis, Member States are permitted to derogate from that provision in respect of such cases.

53 In that regard, first, it should be recalled, as is apparent from settled case-law, that, since the concept of '*force majeure*' does not have the same scope in the various spheres of application of EU law, its meaning must be determined by reference to the legal context in which it is to operate (judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 54).

54 As the French Government itself acknowledges, the concept of 'unavoidable and extraordinary circumstances', within the meaning of Article 12(2) and (3)(b) of Directive 2015/2302, is akin to the concept of '*force majeure*' as defined in well-established case-law, namely as referring to circumstances beyond the control of the party claiming '*force majeure*', which are abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence (judgment of 4 March 2010, *Commission* v *Italy*, C-297/08, EU:C:2010:115, paragraph 85). Thus, despite the absence of any reference to *force majeure* in that directive, the concept of 'unavoidable and extraordinary circumstances' gives concrete expression to the concept of '*force majeure*' in the context of that directive.

55 Secondly, as the Advocate General also observed in point 55 of her Opinion, the origins of Directive 2015/2302, and in particular the travaux préparatoires for that directive, confirm that the concept of 'unavoidable and extraordinary circumstances' replaced that of '*force majeure*' which appeared in Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59), which was repealed and replaced by Directive 2015/2302.

56 Accordingly, the concept of 'unavoidable and extraordinary circumstances' within the meaning of Article 12(2) and (3)(b) of that directive constitutes an exhaustive implementation of the concept of '*force majeure*' for the purposes of that directive.

57 Thus, it is not necessary for Member States to release, on the grounds of *force majeure*, even if only temporarily, package travel organisers from their reimbursement obligation laid down in Article 12(2) to (4) of Directive 2015/2302, since neither that provision nor any other provision of that directive provides for an exception to the imperative nature of that obligation on the grounds of *force majeure* (see, by analogy, judgment of 26 September 2013, *ÖBB-Personenverkehr*, C-509/11, EU:C:2013:613, paragraphs 49 and 50).

58 It follows from the foregoing that, in the event of termination of a package travel contract following the outbreak of a global health crisis, the travel organisers concerned are required to provide the travellers concerned with a full refund of any payments made for the package, under the conditions laid down in Article 12(4) of that directive.

59 As regards, in the third place, whether Directive 2015/2302 nevertheless allows Member States, in the circumstances of a global health crisis such as the COVID-19 pandemic, to release package travel organisers from such a reimbursement obligation, it is apparent from Article 4 of that directive that, unless otherwise provided for, that directive is aimed at full harmonisation of the area under consideration, with the result that Member States may not adopt provisions diverging from those laid down in the directive, including stricter provisions which would ensure a different level of protection for the travellers concerned.

60 In addition, Article 23(2) and (3) of Directive 2015/2302 makes clear that the rights granted to the relevant travellers under that directive are imperative.

61 Releasing travel organisers from their obligation to provide the travellers concerned with a refund or reimbursement of the payments made for a package entails, contrary to Article 4 of Directive 2015/2302, a reduction in the level of protection for those travellers flowing from Article 12(2) to (4) of that directive.

62 Consequently, national legislation which releases package travel organisers from their reimbursement obligation under Article 12(2) to (4) of Directive 2015/2302 is contrary to that provision.

63 The Slovak Government submits, however, that Member States may, in implementing Directive 2015/2302, rely on *force majeure* for the purpose of adopting such legislation, where the adverse situation linked to a global health crisis such as the COVID-19 pandemic, and, in particular, the resulting financial consequences for the tourism sector, prevent them from fulfilling their obligation to implement that directive.

64 In that regard, it should be noted at the outset that it follows from the finding in paragraph 62 above that such national legislation may constitute a failure to fulfil the obligation on each Member State to which Directive 2015/2302 is addressed to adopt, in its national legal system, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective that the directive pursues (see, to that effect, judgment of 12 July 2022, *Nord Stream 2* v *Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 69).

65 Furthermore, the Court has held that apprehension of internal difficulties cannot justify a failure by a Member State to apply EU law correctly (judgment of 17 February 2009, *Azelvandre*, C-552/07, EU:C:2009:96, paragraph 50 and the case-law cited).

66 Admittedly, it is clear from the Court's case-law in infringement proceedings under Article 258 TFEU that, where a Member State has not complied with its obligations under EU law, the possibility remains for that Member State to plead *force majeure* in respect of such non-compliance.

67 In that regard, in accordance with settled case-law, although the concept of '*force majeure*' is not predicated on absolute impossibility, it nevertheless requires the non-conformity in question to be attributable to circumstances beyond the control of the party claiming *force majeure*, which are abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence, and a situation of *force majeure* may be pleaded only for the period necessary in order to resolve those difficulties (see, to that effect, judgments of 13 December 2001, *Commission* v *France*, C-1/00, EU:C:2001:687, paragraph 131 and the case-law cited, and of 4 March 2020, *Commission* v *Italy*, C-297/08, EU:C:2020:115, paragraph 85 and the case-law cited).

68 However, even if that case-law could be interpreted as allowing Member States to argue effectively, before their national courts, that the non-conformity of national legislation with the provisions of a directive is justified on the grounds of *force majeure* so as to ensure that that legislation may continue to apply during the necessary period, it is clear that national legislation such as Article 1 of Order No 2020-315 would not satisfy the conditions governing reliance on *force majeure*, as resulting from that case-law.

69 In that regard, first, although a health crisis of a scale such as that of the COVID-19 pandemic is beyond the control of the Member State concerned and is abnormal and unforeseeable, national legislation which releases, in a generalised manner, all package travel organisers from their reimbursement obligation laid down in Article 12(2) to (4) of Directive 2015/2302, as regards terminations notified during a predetermined period of a number of months, cannot, by its very nature, be justified by the constraints resulting from such an event and thus satisfy the conditions governing reliance on *force majeure*.

70 By effectively resulting in a general temporary suspension of that reimbursement obligation, the application of such legislation is not confined solely to cases in which such constraints, in particular financial constraints, have actually occurred, but extends to all contracts terminated during the reference period, without taking into account the specific and individual financial situation of the travel organisers concerned.

71 Secondly, it is not apparent from the file before the Court that the financial consequences which Article 1 of Order No 2020-315 was intended to address could not have been avoided other than by infringing Article 12(2) to (4) of Directive 2015/2302, and in particular by adopting, for the benefit of the travel organisers concerned, certain State aid measures capable of being authorised under Article 107(2)(b) TFEU, a possibility to which other Member States had recourse, as the Advocate General stated in points 82 to 84 of her Opinion.

72 In that context, while a number of governments have insisted that the adoption of such State aid measures would have been surrounded by particular difficulties for many Member States, since the possibility of adopting those measures in the short term depends on, inter alia, existing structures in the organisation of the package travel sector and the time needed for such adoption in accordance with their internal procedures, it should be recalled in that regard that, in accordance with the Court's settled case-law, a Member State cannot plead difficulties in its domestic legal order to justify a failure to observe obligations arising under EU law (judgments of 25 June 2013, *Commission* v *Czech Republic*, C-241/11, EU:C:2013:423, paragraph 48 and the case-law cited, and of 6 November 2014, *Commission* v *Belgium*, C-395/13, EU:C:2014:2347, paragraph 51).

73 Nor, in that context, can the Court accept the argument put forward, inter alia, by the Czech Government that the solution consisting in the grant of State aid should be a 'last resort'. It is sufficient to note in that regard that EU law allows Member States, subject to compliance with the conditions laid down for that purpose, to provide for certain forms of State aid and, in particular, those which may be regarded as compatible with the internal market under Article 107(2)(b) TFEU, whereas it specifically does not allow them to fail to fulfil their obligation to take, in their national legal systems, all the measures necessary to ensure the full effectiveness of a directive, in this instance Directive 2015/2302.

74 It should also be pointed out that Member States also had the possibility of introducing schemes designed not to require but to encourage or facilitate the acceptance by the travellers concerned of vouchers instead of a refund in the form of a sum of money, and such solutions could also help to ease the liquidity problems of the travel organisers concerned, as indicated in Recommendation 2020/648, in particular in recital 15.

75 Thirdly, as the Advocate General also noted in point 80 of her Opinion, national legislation such as Article 1 of Order No 2020-315, in so far as it provides for the release of package travel organisers from their reimbursement obligation for a period of up to 21 months from

notification of the 'rescission' of the relevant package travel contract, is clearly not framed in such a way as to limit its effects to the period necessary to remedy the difficulties caused by the event capable of constituting *force majeure*.

76 In the light of all of the foregoing, the answer to the second question is that Article 12(2) to (4) of Directive 2015/2302, read in conjunction with Article 4 of that directive, must be interpreted as precluding national legislation under which package travel organisers are temporarily released, in the context of the outbreak of a global health crisis preventing the performance of package travel contracts, from their obligation to provide the travellers concerned, not later than 14 days after a contract is terminated, with a full refund of any payments made under the terminated contract, including where such legislation is intended to prevent, due to the large number of anticipated reimbursement claims, the solvency of those travel organisers from being affected to the point of jeopardising their existence and thus to preserve the viability of the sector concerned.

The third question

77 By its third question, the referring court seeks, in essence, to ascertain whether EU law must be interpreted as allowing a national court, before which an action for the annulment of national legislation that is contrary to Article 12(2) to (4) of Directive 2015/2302 has been brought, to adjust the temporal effects of its decision annulling that national legislation.

78 It should be borne in mind that it is for the authorities of the Member State concerned to take all appropriate measures, whether general or particular, to ensure that EU law is complied with in that state (see, to that effect, judgment of 21 June 2007, *Jonkman and Others*, C-231/06 to C-233/06, EU:C:2007:373, paragraph 38).

79 In that regard, it is apparent from settled case-law that, under the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of an infringement of EU law, and that obligation is owed, within the sphere of its competence, by every organ of the Member State concerned, including by national courts before which an action against a national measure which is in breach of EU law has been brought (see, to that effect, judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 170 and 171 and the case-law cited).

80 It follows that, where a national court is hearing an action for the annulment of national legislation which it considers to be contrary to EU law, it is required, in accordance with the procedural arrangements applicable to such actions laid down in its domestic legal system and in compliance with the principles of equivalence and effectiveness, to annul that legislation.

81 It is true that the Court has recognised that, in exceptional circumstances, national courts have the power to adjust the effects of their decisions to annul national legislation that is held to be incompatible with EU law.

82 Thus, it follows from the Court's case-law that a national court may, given the existence of overriding considerations relating to the protection of the environment or to the need to eliminate a genuine and serious threat of disruption to the electricity supply of the Member State concerned, exceptionally and on a case-by-case basis be authorised to apply a national provision empowering it to maintain certain effects of an annulled national measure, provided that the

conditions set out in that case-law are met (see, to that effect, judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 178 and 179).

83 However, in the present case, first, as the Advocate General also noted in point 101 of her Opinion, however serious the financial consequences of the COVID-19 pandemic for the package travel sector, to which the national court refers in its third question, it is clear that such a threat to the economic interests of operators active in that sector is not comparable to overriding considerations relating to the protection of the environment or the electricity supply in the Member State concerned which were at issue in the case which gave rise to the judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraph 57).

84 Secondly, it should be noted that, at the hearing, the French Government stated that the damage resulting from the annulment by the referring court of Order No 2020-315, if any, would be 'limited'. Thus, in any event, it is not apparent that the annulment of the national legislation at issue in the main proceedings would have adverse consequences for the package travel sector to such an extent that maintaining its effects would be necessary in order to protect the financial interests of the operators in that sector.

85 In those circumstances, the answer to the third question is that EU law, in particular the principle of sincere cooperation laid down in Article 4(3) TEU, must be interpreted as not allowing a national court, before which an action for the annulment of national legislation that is contrary to Article 12(2) to (4) of Directive 2015/2302 has been brought, to adjust the temporal effects of its decision annulling that national legislation.

Costs

86 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 12(2) and (3) of 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 Directive 90/314/EEC,**

   must be interpreted as meaning that where, following the termination of a package travel contract, the organiser of that package is required, under that provision, to provide the traveller concerned with a full refund of any payments made for the package, such a refund refers solely to the reimbursement of those payments in the form of a sum of money.

2. **Article 12(2) to (4) of Directive 2015/2302, read in conjunction with Article 4 of that directive,**

must be interpreted as precluding national legislation under which package travel organisers are temporarily released, in the context of the outbreak of a global health crisis preventing the performance of package travel contracts, from their obligation to provide the travellers concerned, not later than 14 days after a contract is terminated, with a full refund of any payments made under the terminated contract, including where such legislation is intended to prevent, due to the large number of anticipated reimbursement claims, the solvency of those travel organisers from being affected to the point of jeopardising their existence and thus to preserve the viability of the sector concerned.

3. EU law, in particular the principle of sincere cooperation laid down in Article 4(3) TEU,

must be interpreted as not allowing a national court, before which an action for the annulment of national legislation that is contrary to Article 12(2) to (4) of Directive 2015/2302 has been brought, to adjust the temporal effects of its decision annulling that national legislation.

[Signatures]