



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 June 2023*

(Failure of a Member State to fulfil obligations – 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 for the package – Refund in the form of a sum of money or in the form of a replacement package tour – Obligation to provide that traveller with a refund not later than 14 days after the relevant contract is terminated – Temporary derogation from that obligation)

In Case C-540/21,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 27 August 2021,

European Commission, represented by R. Lindenthal, I. Rubene and A. Tokár, acting as Agents,
applicant,

supported by:

Kingdom of Denmark, represented initially by V. Pasternak Jørgensen and M. Søndahl Wolff, and subsequently by M. Søndahl Wolff, acting as Agents,

intervener,

v

Slovak Republic, represented by B. Ricziová, acting as Agent,

defendant,

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: T. Čapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Slovak.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 By its action, the European Commission asks the Court to declare that, by introducing – by the adoption of zákon č. 136/2020 Z. z. (Law No 136/2020), of 20 May 2020 ('Law No 136/2020') – Paragraph 33a into zákon č. 170/2018 Z. z. o zájazdoch, spojených službách cestovného ruchu, niektorých podmienkach podnikania v cestovnom ruchu a o zmene a doplnení niektorých zákonov (Law No 170/2018 on package travel, linked tourist services and certain conditions applicable to tourist activity, amending and supplementing certain laws, of 15 May 2018 ('Law No 170/2018'), the Slovak Republic has failed to fulfil its obligation under Article 12(2), (3)(b) and (4) 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), read in conjunction with Article 4 of Directive 2015/2302.

Legal context

European Union law

Directive 2015/2302

- 2 Recitals 4, 5, 31, 40 and 46 of Directive 2015/2302 read as follows:

'(4) [Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (JO 1990, L 158, p. 59)] gives broad discretion to the Member States as regards transposition. Therefore, significant divergences between the laws of the Member States remain. Legal fragmentation leads to higher costs for businesses and obstacles for those wishing to operate cross-border, thus limiting consumers' choice.

(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.

...

- (40) For the insolvency protection to be effective, it should cover the foreseeable amounts of payments affected by the organiser's insolvency and, where applicable, the foreseeable cost for repatriations. ...’ That will generally mean that the security has to cover a sufficiently high percentage of the organiser’s turnover in respect of packages ... However, effective insolvency protection should not have to take into account highly remote risks, for instance the simultaneous insolvency of several of the largest organisers, where to do so would disproportionately affect the cost of the protection, thus hampering its effectiveness. In such cases the guarantee for refunds may be limited.

...

- (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. ...’

3 Article 1 of Directive 2015/2302 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.’

4 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;

...’

5 Article 4 of that directive, entitled ‘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.’

6 Article 12 of Directive 2015/2302, entitled ‘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.

...’

7 Article 23 of Directive 2015/2302, entitled ‘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

8 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.’

9 According to 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;

...’

Slovak law

10 Paragraph 33a of Law No 170/2018, which was inserted into that law by Law No 136/2020, is entitled ‘Interim provisions relating to the exceptional situation due to COVID-19’. It is worded as followed:

‘1. If, because of the exceptional situation due to COVID-19 in Slovakia or a similar situation at the place of destination or at any point on the route of the package tour, it is not possible to provide the traveller with the essential elements of the tourist services envisaged in a package travel contract, the travel organiser shall be allowed to:

(a) propose to the traveller an alteration of the package travel contract; or
(b) send the traveller a notification offering him an alternative package tour if he does not accept the alteration of the package travel contract proposed under point (a).

2. If the traveller accepts the alteration of the package travel contract referred to in point 1(a) and the price of the package tour resulting from that change differs from the sum of the payments already received under the package travel contract, the parties shall settle between themselves the difference between the price of the package tour which is the subject of the alteration of the package travel contract and the sum of the payments received under the original contract.

3. Notification of the replacement package tour shall be made in writing and communicated to the traveller on a durable medium in the same manner that the original package travel contract was communicated to the traveller, unless otherwise agreed between the parties. The notification of the replacement package tour shall specify inter alia:

(a) the sum of the payments received under the package travel contract;
(b) the fact that the essential elements of the tourist services provided for in the package travel contract may, in agreement with the traveller, be amended in the context of the replacement package tour;
(c) the right of the traveller to transfer the package travel contract in accordance with Paragraph 18.

4. A traveller who has concluded a package travel contract shall have the right to refuse the replacement package tour in writing within 14 days of receipt of the notification of the replacement package tour, if he or she is:

- (a) for as long as the exceptional situation resulting from COVID-19 in Slovakia persists, entered in the register of jobseekers, as demonstrated by a written notification of his or her entry in that register;
- (b) a self-employed person or a single-member private limited liability company who has received financial support in connection with a project to promote job retention after a declaration of exceptional circumstances, a state of emergency or a state of exception and the elimination of their consequences, as demonstrated by the confirmation of the grant of such support;
- (c) a single parent who has obtained the right to a pandemic care allowance, as demonstrated by the confirmation of the grant of that allowance and a solemn declaration concerning his or her status as a single parent;
- (d) a person who is pregnant on the date of receipt of notification of the replacement package tour, as demonstrated by a medical certificate; or
- (e) a person aged 65 years or over, as demonstrated by the indication of the date of birth on an identity card or any other similar identity document.

5. A traveller who has concluded a package travel contract shall have the right to refuse only part of the replacement package tour, in writing and within 14 days of the date of receipt of the notification of the replacement package tour, if at least one of the travellers mentioned in the package travel contract is in any of the situations described in point 4.

6. If a traveller who has concluded a package travel contract refuses, in accordance with point 4, the replacement package tour, the travel organiser shall be obliged to refund to him, without penalty of cancellation, all the payments received under the package travel contract without delay and no later than 14 days from the date of receipt of the refusal of the replacement package tour. Where a traveller who has concluded a package travel contract refuses, in accordance with point 5, part of the replacement package tour in connection with one or more travellers covered by the same package travel contract, the travel organiser shall – without imposing a cancellation fee in respect of persons not taking part in the replacement package tour – refund to him or her the payments it has received under the package travel contract, without delay and no later than 14 days from the date of receipt of the partial refusal of the replacement package tour.

7. The travel organiser is required to come to an agreement with the traveller that it will provide him or her with a replacement package tour by 31 August 2021.

8. If the price of the replacement tour differs from the sum of the payments received under the package travel contract, the parties shall settle between themselves the difference between the sum indicated in the notification of the replacement package tour and the price of that tour, within 14 days of the date on which the travel organiser has come to an agreement with the traveller on the provision of a replacement package tour.

9. If the travel organiser does not reach an agreement with the traveller on the provision of a replacement package tour by 31 August 2021, it shall be deemed to have terminated the package

travel contract and shall refund to the traveller all payments received under the package travel contract, without delay and by 14 September 2021 at the latest.

10. If, during the period from 12 March 2020 to the entry into force of this Law, a traveller or a travel organiser has terminated a package travel contract in accordance with Paragraph 21(2) or Paragraph 21(3)(b) and the travel organiser has not, on the basis of that termination, refunded to the traveller all payments received under the package travel contract, the procedure provided for in point 1 shall apply.

11. If, during the period from 12 March 2020 to the entry into force of this Law, the traveller has terminated the package travel contract in accordance with Paragraph 21(1) and the termination fee has not been settled, the procedure provided for in point 1 shall apply.

12. If, despite the exceptional situation due to COVID-19 in Slovakia or a similar situation at the place of destination or at any point on the route of the package tour, it is possible to provide a package tour in accordance with the package travel contract but the traveller refuses this tour, he shall inform the travel organiser in writing at least 30 days before the start of the package tour; in the first 30 days following the date of entry into force of this Law, this period shall be at least 15 days before the start of the package tour. Within 14 days of receipt of the information referred to in the first sentence, the travel organiser shall send the traveller the notification of the replacement package tour referred to in point 3 and proceed in accordance with points 7 to 9; the provisions of points 4, 5 and 6 shall not apply.

13. For as long as the exceptional situation due to COVID-19 persists in Slovakia or a similar situation exists at the place of destination or at any point on the route of the package tour, the travel organiser may not require the traveller to pay a deposit on the price of the package tour; this provision shall not apply if the traveller accepts the alteration of the package travel contract in accordance with point 1(a).

14. The insolvency protection enjoyed by the package travel contract shall apply *mutatis mutandis* to the package travel contract even after its alteration or after a notice of the replacement package tour has been sent.'

Pre-litigation procedure and the proceedings before the Court

- 11 By letter of 14 May 2020 addressed to the Slovak Republic, the Commission stated that it had received information indicating that, in the context of the global COVID-19 pandemic, that Member State was preparing national measures liable to run counter to Directive 2015/2302. The Commission invited the Slovak authorities to provide additional information on the state of preparation of those measures.
- 12 By letter of 28 May 2020, the Slovak Republic informed the Commission that the National Council of the Slovak Republic had adopted, on 20 May 2020, Law No 136/2020 amending Law No 170/2018. That Member State explained that, under Law No 136/2020, travel agencies could propose to their customers an alteration of the current package travel contract or, if customers refused that alteration, a replacement package tour, which presupposed that the travel agent and the customer concerned would agree to a new package before the end of August 2021.

- 13 On 3 July 2020, the Commission sent the Slovak Republic a letter of formal notice, in which it stated that, by introducing Paragraph 33a into Law No 170/2018 by adopting Law No 136/2020, that Member State had failed to fulfil its obligation under Article 12(2), (3)(b) and (4) of Directive 2015/2302, read in conjunction with Article 4 thereof.
- 14 The Slovak Republic replied to that letter of formal notice by letter dated 28 August 2020. In that letter, while acknowledging that the amendment to Law No 170/2018 resulting from Law No 136/2020 derogated from the provisions of Directive 2015/2302, that Member State claimed that the adoption of that amendment was justified on legitimate grounds, since undertakings active in the tourism sector needed an additional period to repay all their customers gradually, failing which they would become bankrupt.
- 15 On 30 October 2020, the Commission sent the Slovak Republic a reasoned opinion in which it, first, complained that, by adopting Law No 136/2020, that Member State had failed to fulfil the obligation referred to in paragraph 13 above and, secondly, requested the Slovak Republic to take the measures necessary to comply with that reasoned opinion within two months of its receipt, namely 30 December 2020.
- 16 The Slovak Republic replied to that reasoned opinion by letter of 18 December 2020. In that letter, that Member State stated that the legislative amendment at issue was justified in the light of the exceptional situation linked to the scale of the spread of COVID-19 and that the objective of that amendment was not to deprive travellers of their rights, but to grant travel organisers a period during which they could resolve all their contractual relationships with travellers.
- 17 Taking the view that, on the expiry of the period laid down in the reasoned opinion and, moreover, on the date on which the present action was brought, Slovak law remained contrary to Directive 2015/2302, the Commission decided to bring the present action.
- 18 By decision of the President of the Court of 21 January 2022, the Kingdom of Denmark was granted leave to intervene in support of the form of order sought by the Commission.

The action

Arguments of the parties

- 19 In support of its action, the Commission submits that Paragraph 33a of Law No 170/2018 deprives travellers of their right to terminate a package travel contract and to receive a refund in accordance with Article 12 of Directive 2015/2302, at a time when they are being severely affected by the consequences of the global COVID-19 pandemic. While the effects of the COVID-19 crisis certainly entailed a heightened risk of insolvency for numerous travel organisers, neither Directive 2015/2302 nor any other EU legal act allows Member States to derogate from Article 12.
- 20 In that regard, the Commission submits, in the first place, that Article 12 of Directive 2015/2302 was applicable to that pandemic and not only to situations of local or regional amplitude. The occurrence of such a pandemic is covered by the concept of ‘unavoidable and extraordinary circumstances’, referred to in Article 12 and defined in Article 3(12) of that directive. The fact that

recital 31 of that directive refers, in that context and by way of example, to the outbreak of a serious disease at the travel destination is not such as to demonstrate that Article 12 concerns only local events.

- 21 Moreover, since that concept is linked to that of *force majeure*, the latter cannot be applied outside the framework defined by Directive 2015/2302.
- 22 According to the Commission, although, when that directive was adopted, the possibility of a pandemic of a scale such as that of COVID-19 was not envisaged, that directive was nevertheless specifically designed to deal with such unavoidable and extraordinary circumstances. To accept that Directive 2015/2302 applies in the event of problems on a smaller territorial scale, but not in the event of problems on a larger or worldwide scale, would have absurd consequences.
- 23 In addition, it is apparent from Article 4 of Directive 2015/2302, read in the light of recitals 4 and 5 thereof, that that directive is intended to bring about full harmonisation of the matters to which it applies. Paragraph 33a of Law No 170/2018 reflects a desire to protect travel organisers to the detriment of consumers, even though the latter are also affected by the global COVID-19 pandemic. In that regard, although the Slovak Republic decided to protect package travel organisers, numerous other Member States did not do so. Thus, not all EU travellers were able to benefit from the same level of protection, which impeded the dual objective of harmonisation and consumer protection pursued by Directive 2015/2302.
- 24 Lastly, the Commission submits, with regard to the immediate risk, alleged by the Slovak Republic, that a large number of package travel organisers might be eliminated, that those organisers could have benefited from certain State aid measures.
- 25 In the second place, the Commission argues that the notification of a replacement package tour, as provided for in Paragraph 33a of Law No 170/2018, which can be compared to a voucher, does not correspond to the concept of a 'refund' within the meaning of Article 12 of Directive 2015/2302. A refund entails that a person who has made a payment recovers the amount paid in the form of a sum of money, which allows him to dispose freely of that sum. According to the Commission, if the EU legislature had intended to authorise such a particular and unfavourable to the traveller reimbursement arrangement, it would have expressly mentioned that possibility, as it did in other legislative acts relating to the rights of air passengers and of consumers.
- 26 In the third and last place, the Commission submits that the argument of a Member State that Directive 2015/2302 did not apply to the global COVID-19 pandemic, but that that pandemic at the same time constituted a case of *force majeure* preventing it from fulfilling its obligations under that directive, cannot be accepted.
- 27 The Kingdom of Denmark, which fully supports the form of order sought by the Commission, submits, inter alia, that, by adopting Directive 2015/2302, the EU legislature chose to provide for a particularly high level of consumer protection when unavoidable and extraordinary circumstances arise, such as the global COVID-19 pandemic. Accordingly, the health crisis linked to that pandemic cannot justify an extension of the reimbursement period laid down in Article 12(4) of that directive.

- 28 In that context, the credit system established in that Member State within the Rejsegarantifonden (Travel Guarantee Fund), which allowed travel agencies in need of additional liquidity to borrow on favourable terms in order to guarantee the reimbursement of customers within the period of 14 days provided for in that provision, shows that it was possible, despite that pandemic, to reimburse consumers in the form of a sum of money within that period.
- 29 The Slovak Republic contends that the Commission’s application should be dismissed. It submits, in the first place, that Article 12 of Directive 2015/2302 does not apply to a global health crisis situation such as the COVID-19 pandemic, since the balancing of the interests of travellers and travel organisers carried out at the time of the adoption of that directive was done in circumstances completely different from those which marked the beginning of that pandemic.
- 30 In that regard, it follows from the wording of Article 12(2) of Directive 2015/2302, read in the light of recital 31 thereof, that, when the directive was adopted, only the possibility of the outbreak of a serious disease ‘at the place of destination or its immediate vicinity’ was taken into account. Although Article 12(3)(b) of Directive 2015/2302 does not contain such an indication, it should, by means of a systematic interpretation, be interpreted in the same way. By contrast, the legal framework established by that directive is not appropriate to address an exceptional situation such as the global COVID-19 pandemic, as is also apparent from the limited scope, noted in recital 40 of that directive and recognised by the Commission itself, of the system of insolvency protection for travel organisers referred to in Article 17 of that directive.
- 31 It is therefore not true that Directive 2015/2302 was designed precisely to deal with circumstances such as those resulting from that pandemic. In that regard, the Slovak Republic states, referring in particular to the judgment of 18 March 2021, *Kuoni Travel* (C-578/19, EU:C:2021:213), that that directive does not regulate situations of *force majeure*, which were, by contrast, regulated by Directive 90/314 which preceded it. In that context, it is in no way apparent from Article 3(12) of Directive 2015/2302 that the ‘unavoidable and extraordinary circumstances’ defined in that provision must be unusual and unforeseeable, as the Court, in its settled case-law, requires in order for a particular circumstance to be capable of being characterised as a case of *force majeure*.
- 32 In addition, according to that Member State, if special legislation had not been adopted, harm may have occurred not only to the interests of travel organisers but also to those of travellers, that is to say those of consumers, since the survival of the undertakings concerned would be imperilled and any refund might be rendered impossible.
- 33 Accordingly, faced with the situation of the global pandemic and its consequences, the Slovak Republic was entitled to adopt measures falling outside the scope of Directive 2015/2302, such as Paragraph 33a of Law No 170/2018, in order to take account of a major shift in the balance between the interests of travellers and those of professionals.
- 34 In the second place, the Slovak Republic submits, in the alternative, that the notification of a replacement tour, provided for in Paragraph 33a of Law No 170/2018, may constitute a refund of the payments made, within the meaning of Article 12 of Directive 2015/2302. That Member State points out that that notification could be exchanged for the provision of other travel services, was covered by insolvency protection, was assignable to other persons and, if it was not used during the period indicated, gave rise to a right to reimbursement in the form of a sum of money of all payments already made.

- 35 In everyday language, the word ‘refund’ does not refer solely to the restitution of a sum of money, but also includes compensation for such payments in another form. That interpretation is also supported by the fact that the relevant provisions of Directive 2015/2302, in particular in the German and English versions, draw a distinction between the grant of a refund and the reimbursement of those payments. Moreover, in the light of the general scheme and purpose of that directive, it is possible to interpret the terms ‘refund’ or ‘provide a refund’ as also authorising the compensation of those payments in a form other than an amount of money.
- 36 In addition, the Slovak Republic observes that the fact that other EU legislation expressly provides for other forms of reimbursement is irrelevant, since those acts differ from Directive 2015/2302, either by their nature or by their fields and objectives. Since the legal relationships established by such measures are not the same, the adoption of any act would require a fresh assessment of the balance between the various rights and legitimate interests of all the addressees of the act in question.
- 37 Directive 2015/2302 is intended to protect travellers and the rights of professional package travel organisers. In that regard, when several rights protected by the EU legal order clash, it is essential to interpret the acts at issue in accordance with the need to reconcile the requirements of the protection of those various rights and striking a fair balance between them (judgment of 31 January 2013, *McDonagh*, C-12/11, EU:C:2013:43, paragraph 62).
- 38 In the third and last place, the Slovak Republic submits, in the further alternative, that the unfavourable situation linked to the global COVID-19 pandemic could be regarded as constituting a case of *force majeure* within the meaning of the Court’s case-law.
- 39 That Member State emphasises that, since that argument is put forward in the further alternative, it is in no way incompatible with the argument, put forward primarily, that Directive 2015/2302 is not applicable to that pandemic. Furthermore, the Commission’s claim that that directive no longer allows the concept of *force majeure* to be applied outside the framework defined by that directive is incorrect. It is necessary to distinguish between the application of that concept, on the one hand, in so far as it concerns the rights and obligations established in the context of the contractual relationship between the organiser and the traveller, provided for by that directive, and, on the other hand, as a ground justifying a State’s failure to fulfil obligations.
- 40 In the present case, the conditions governing reliance on *force majeure*, understood in the latter sense, derived from the case-law of the Court of Justice are satisfied. The global COVID-19 pandemic and the resulting significant limitation of tourism on a global scale constitute circumstances beyond the control of the Slovak Republic, which the latter could neither foresee nor prevent, even by making all possible efforts and exercising due care.
- 41 That Member State states that the lack of liquidity and the risk of insolvency of travel agencies and of negative repercussions for the entire economic sector at issue, resulting from the evolution of that pandemic and the measures relating thereto, constituted insurmountable difficulties which temporarily prevented it from discharging its obligations under Directive 2015/2302. That being said, the application of Paragraph 33a of Law No 170/2018 was limited to the necessary period and has now ceased, given the need to ensure a high level of consumer protection and to strike a fair balance between that level and the competitiveness of undertakings.

42 As regards the relevance of the example of a State aid measure, such as that adopted in Denmark by mobilising the Rejsegarantifonden (Travel Guarantee Fund), the Slovak Republic observes that the possibility of granting State aid through a guarantee fund could have been limited by the way in which the national insolvency protection system was organised, which would have required a complex change in Slovak law that would have been impossible to achieve at a time of acute crisis. Moreover, State aid should be viewed as a measure of last resort (*ultima ratio*), since it constitutes a substantial interference with competition and the functioning of the market.

Findings of the Court

43 By its action, the Commission complains that the Slovak Republic has failed to fulfil its obligations under Article 12(2), (3)(b) and (4) of Directive 2015/2302, read in conjunction with Article 4 thereof, by adopting Paragraph 33a of Law No 170/2018, in so far as the latter article provides, in essence, first, that where, as a result of the exceptional situation due to the global COVID-19 pandemic, it was not possible to perform a package travel contract, the organiser was allowed to offer the travellers concerned a replacement package tour instead of a refund of any payments made, within the meaning of Article 12 of Directive 2015/2302, and, secondly, that those travellers were then entitled to that refund only after 31 August 2021 and no later than 14 September 2021.

44 In the first place, it is necessary to examine whether that exceptional situation may fall within the scope of the concept of ‘unavoidable and extraordinary circumstances’, within the meaning of Article 12 of Directive 2015/2302, with the result that Article 12(2) and (3)(b) of Directive 2015/2302 may apply to the situations envisaged in Paragraph 33a of Law No 170/2018.

45 In order to answer that question, 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’.

46 Recital 31 of that directive clarifies the scope of that concept by 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’.

47 Furthermore, 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’.

48 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 Article 12 of Directive 2015/2302, 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, as the Commission has submitted, 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.

- 49 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.
- 50 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.
- 51 In that regard, 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.
- 52 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.
- 53 Secondly, such an interpretation would be inconsistent with the objective pursued by Directive 2015/2032, which consists, according to Article 1 of that directive, read in the light of recital 5 thereof, in contributing 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).
- 54 That interpretation 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 an outbreak of a locally contained disease.
- 55 As regards the objective of consumer protection, the Slovak Republic submits, however, that that protection cannot be dissociated from travel organisers’ insolvency protection, provided for in Article 17 of Directive 2015/2302, which does not refer to the coverage of extremely unlikely risks, such as the outbreak of a global pandemic. The Slovak Republic infers from this that the application of the right to a full refund provided for in Article 12(2) and (3)(b) of that directive also should not be extended to such situations.
- 56 In that regard, as is also pointed out in recitals 13 and 14 of Recommendation 2020/648, it is indisputable that a global health crisis such as the COVID-19 pandemic is likely to expose package travel organisers to an increased risk of insolvency not covered by the insurance taken out under Article 17 of Directive 2015/2302, and that that risk may affect the right of the travellers concerned to a refund of any payments made for a package.

- 57 Nevertheless, it must be pointed out that an interpretation of Article 12(2) and (3)(b) of Directive 2015/2302 which had the effect, in such circumstances, of denying travellers the benefit of that right from the outset would necessarily have a greater adverse effect on the protection of their interests.
- 58 As regards the distinction to be drawn, according to the Slovak Republic, between the concept of ‘unavoidable and extraordinary circumstances’ and that of *force majeure* – a pandemic such as the global COVID-19 pandemic falling, in its view, solely within the scope of the latter concept – it should be noted that, contrary to what the Slovak Republic claims, such an argument has no basis in the judgment of 18 March 2021, *Kuoni Travel* (C-578/19, EU:C:2021:213).
- 59 The situation at issue in the case which gave rise to that judgment concerned Directive 90/314, which was repealed and replaced by Directive 2015/2302. Irrespective of the distinction drawn by that first directive between the concept of *force majeure* and that of an event which could not be foreseen or forestalled, referred to in paragraph 58 of that judgment, it must be stated that Directive 2015/2302 did not retain either of those concepts, but refers, in that context, only to the concept of ‘unavoidable and extraordinary circumstances’. As noted in paragraphs 48 and 49 above, a global health crisis such as the COVID-19 pandemic is capable of falling within that concept.
- 60 In the light of the foregoing, it must be held that, contrary to what is claimed by the Slovak Republic, 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 that provision may therefore be applied to the situations envisaged in Paragraph 33a of Law No 170/2018, namely those in which it was not possible to provide the traveller with the essential elements of the tourist services envisaged in a package travel contract ‘because of the exceptional situation due to COVID-19 in Slovakia or to a similar situation at the place of destination or at any point on the route of the package tour’.
- 61 In the second place, it is necessary to examine whether, as the Slovak Republic submits, the notification of a replacement tour provided for in Paragraph 33a of Law No 170/2018 may constitute a refund of payments made within the meaning of Article 12(2) and (3)(b) of Directive 2015/2302.
- 62 In that regard, first of all, it should be noted that that directive does not contain any definition of the concept of a ‘refund’.
- 63 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).
- 64 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 relates to the ‘payments made’ for a package, which thus dispels any doubt as to the purpose of the refund, which relates to a sum of money.

- 65 It follows that the concept of a ‘refund’, within the meaning of Article 12(2) and (3) of Directive 2015/2302, means the reimbursement, in the form of a sum of money, of payments made for a package.
- 66 That interpretation is not invalidated by the Slovak Republic’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 payments, referred to in Article 12(1) of that directive, and, on the other hand, a ‘refund’ (*‘Erstattung’* in German) of those payments, referred to in Article 12(2) and (3) of that directive, with the latter also including, according to the Slovak Republic, compensation in a form other than a sum of money.
- 67 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, moreover, 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).
- 68 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 65 above.
- 69 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.
- 70 Furthermore, 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, inter alia, the offer of a voucher, that possibility is expressly provided for in that legislative act. That is the case, inter alia, of Article 7(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1), which provides that the compensation referred to in paragraph 1 of that Article 7 is to be paid ‘in cash’, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.
- 71 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.

- 72 Secondly, the right to a refund conferred on travellers by Article 12(2) and (3) of that directive meets the consumer protection objective pursued by that directive, noted in paragraph 53 above, with the result that an interpretation of the concept of a ‘refund’, within the meaning of Article 12 of that directive, to the effect that the traveller concerned is entitled to 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 his or her 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 replacement tour, a voucher or another form of deferred compensation.
- 73 As regards the Slovak Republic’s argument that, particularly in a situation of total disruption of the market at issue, it is necessary, in the light of recital 5 of Directive 2015/2302 and in accordance with the case-law resulting from the judgment of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43, paragraph 62), to arrive at an interpretation that allows a fair balance to be struck between consumer protection and the competitiveness of undertakings, it suffices to note that the interpretation adopted in paragraph 65 above reflects the balancing of interests which the EU legislature intended to establish in relation to the financial consequences arising from the termination of a package travel contract in the situations envisaged in Article 12(2) and (3) of that directive, a provision which, moreover, not only lays down an obligation to reimburse travellers, but also specifies that, in those circumstances, the organiser is not required to pay additional compensation.
- 74 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 that possibility does not deprive that traveller of his or her right to that reimbursement, as stated in recital 9 of Recommendation 2020/648.
- 75 It must therefore be held that a notification of a replacement tour, such as that provided for in Paragraph 33a of Law No 170/2018, does not constitute a refund of the payments made, within the meaning of Article 12(2) and (3)(b) of Directive 2015/2302, which must be understood as referring solely to the reimbursement of those payments in the form of a sum of money.
- 76 In the third place, it follows from the foregoing considerations that the Commission is right to assert that Paragraph 33a of Law No 170/2018 is contrary to Article 12(2), (3)(b) and (4) of Directive 2015/2302, read in conjunction with Article 4 of that directive, in so far as it granted, during a period from 12 March 2020 to 31 August 2021, passengers whose travel package could not be performed because of the unavoidable and extraordinary circumstances linked to the global COVID-19 pandemic only the right to be offered a replacement tour instead of a full refund, in the form of a sum of money, of payments made in respect of that package.
- 77 Consequently, by adopting Paragraph 33a of Law No 170/2018, the Slovak Republic did not respect its obligation to adopt, within the framework of its national legal system, all the measures necessary to ensure that Directive 2015/2302 is fully effective, in accordance with the objective that it 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).
- 78 That being said, the Slovak Republic submits that the unfavourable situation linked to the global COVID-19 pandemic constituted a case of *force majeure* which prevented it from fulfilling its obligations under Directive 2015/2302.

- 79 As regards that claim, it must be emphasised that the Court has already held that apprehension of internal difficulties cannot justify a failure by a Member State to fulfil its obligations under EU law (see, to that effect, judgments of 1 April 2004, *Commission v Italy*, C-99/02, EU:C:2004:207, paragraph 22 and the case-law cited, and of 13 September 2017, *Commission v Belgium*, C-591/14, EU:C:2017:670, paragraph 44).
- 80 Admittedly, it is clear from the Court’s case-law 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.
- 81 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 2010, *Commission v Italy*, C-297/08, EU:C:2010:115, paragraph 85 and the case-law cited).
- 82 It must be found that Paragraph 33a of Law No 170/2018 clearly does not satisfy the conditions governing reliance on *force majeure*.
- 83 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 Slovak Republic and is abnormal and unforeseeable, national legislation which – subject to certain exceptions in favour of more vulnerable categories of travellers – 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 contracts which could not be performed due to that pandemic, 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*.
- 84 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 which could not be performed as a result of unavoidable and extraordinary circumstances linked to the global COVID-19 pandemic, without taking into account the specific and individual financial situation of the travel organisers concerned.
- 85 Secondly, it is not apparent from the file before the Court that the financial consequences which Paragraph 33a of Law No 170/2018 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 referred to in recitals 21 and 22 of Recommendation 2020/648 and to which other Member States had recourse.
- 86 In that context, while the Slovak Republic has insisted that the adoption of such State aid measures would have been surrounded by particular difficulties, 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).

- 87 Nor, in that context, can the Court accept the argument put forward by the Slovak 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, as noted in paragraph 77 above, 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.
- 88 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 travellers 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 travel organisers, as indicated in Recommendation 2020/648, in particular in recital 15 thereof.
- 89 Thirdly, national legislation such as Paragraph 33a of Law No 170/2018, in so far as it provides for the release of package travel organisers from their reimbursement obligation for a period of up to 18 months from notification of the termination 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*.
- 90 The action brought by the Commission must therefore be upheld.
- 91 In the light of all the foregoing, it must be held that, by introducing – by the adoption of Law No 136/2020 – Paragraph 33a into Law No 170/2018, the Slovak Republic has failed to fulfil its obligation under Article 12(2), (3)(b) and (4) of Directive 2015/2302, read in conjunction with Article 4 thereof.

Costs

- 92 Under Article 138(1) of the Court's Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has applied for costs and the Slovak Republic has been unsuccessful, the latter must be ordered to pay the costs.

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

- 1. Declares that, by introducing – by the adoption of zákon č. 136/2020 Z. z. (Law No 136/2020), of 20 May 2020 – Paragraph 33a into zákon č. 170/2018 Z. z. o zájazdoch, spojených službách cestovného ruchu, niektorých podmienkach podnikania v cestovnom ruchu a o zmene a doplnení niektorých zákonov (Law No 170/2018 on package travel, linked tourist services and certain conditions applicable to tourist activity, amending and supplementing certain laws), of 15 May 2018, the Slovak Republic has failed to fulfil**

its obligation under Article 12(2), (3)(b) and (4) 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, read in conjunction with Article 4 of Directive 2015/2302;

2. Orders the Slovak Republic to pay the costs.

[Signatures]