



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

29 February 2024*

(Reference for a preliminary ruling – Package travel and linked services – Directive (EU) 2015/2302 – Article 12(2) – Right of a traveller to terminate a package travel contract without paying a termination fee – Unavoidable and extraordinary circumstances – Spread of COVID-19 – No official recommendation against travel – Consideration of personal circumstances relating to the individual situation of the traveller concerned – Consequences significantly affecting the performance of the package or the carriage of passengers to the destination – Circumstances existing or foreseeable on the date of conclusion of the package travel contract concerned – Possibility of taking into account consequences occurring at the place of departure or return as well as at other places)

In Case C-299/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decision of 4 May 2022, received at the Court on 4 May 2022, in the proceedings

M. D.

v

‘Tez Tour’ UAB,

intervening party:

‘Fridmis’ AB

THE COURT (Second Chamber),

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

Advocate General: L. Medina,

Registrar: K. Hötzel, Administrator,

having regard to the written procedure and further to the hearing on 7 June 2023,

* Language of the case: Lithuanian.

after considering the observations submitted on behalf of:

- M. D., by R. Mikulskas, advokatas,
- ‘Tez Tour’ UAB, by E. Rusinas, advokatas,
- the Lithuanian Government, by K. Dieninis and V. Vasiliauskienė, acting as Agents,
- the Czech Government, by S. Šindelková, M. Smolek and J. Vláčil, acting as Agents,
- the Greek Government, by K. Boskovits, A. Dimitrakopoulou, K. Georgiadis, C. Kokkosi and E. Tsaousi, acting as Agents,
- the European Commission, by J. Jokubauskaitė, B.-R. Killmann and I. Rubene, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 September 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 12(2) 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) 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 M. D. and ‘Tez Tour’ UAB concerning the right invoked by M. D. to terminate, without charge, the package travel contract he had entered into with the latter on the grounds of the health risk associated with the spread of COVID-19.

Legal context

European Union law

- 3 Recitals 5, 7, 25 and 29 to 31 of Directive 2015/2302 read as follows:

‘(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.

...

(7) The majority of travellers buying packages or linked travel arrangements are consumers within the meaning of Union consumer law. ...

...

(25) The traveller should receive all necessary information before purchasing a package, whether it is sold through means of distance communication, over the counter or through other types of distribution. In providing that information, the trader should take into account the specific needs of travellers who are particularly vulnerable because of their age or physical infirmity, which the trader could reasonably foresee.

...

(29) Taking into account the specificities of package travel contracts, the rights and obligations of the contracting parties should be laid down for the period before and after the start of the package, in particular if the package is not properly performed or if particular circumstances change.

(30) Since packages are often purchased a long time before their performance, unforeseen events may occur. Therefore the traveller should, under certain conditions, be entitled to transfer a package travel contract to another traveller. In such situations, the organiser should be able to recover his expenses, for instance if a sub-contractor requires a fee for changing the name of the traveller or for cancelling a transport ticket and issuing a new one.

(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.'

4 Article 1 of that directive, entitled 'Subject matter', provides:

'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, entitled 'Definitions', provides:

'For the purposes of this Directive, the following definitions apply:

...

'(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;

(13) "lack of conformity" means a failure to perform or improper performance of the travel services included in a package;

...'

6 Article 5 of that directive, headed 'Pre-contractual information', provides:

'1. Member States shall ensure that, before the traveller is bound by any package travel contract or any corresponding offer, the organiser ... shall provide the traveller ...[,] where applicable to the package, with the following information:

(a) the main characteristics of the travel services:

...

(ii) the means, characteristics and categories of transport, the points, dates and time of departure and return, the duration and places of intermediate stops and transport connections.

...

(viii) whether the trip or holiday is generally suitable for persons with reduced mobility and, upon the traveller's request, precise information on the suitability of the trip or holiday taking into account the traveller's needs;

...'

7 Entitled 'Termination of the package travel contract and the right of withdrawal before the start of the package', Article 12 of Directive 2015/2302 provides, in paragraphs 1 to 3:

'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. The package travel contract may specify reasonable standardised termination fees based on the time of the termination of the contract before the start of the package and the expected cost savings and income from alternative deployment of the travel services. In the absence of standardised termination fees, the amount of the termination fee shall correspond to the price of the package minus the cost savings and income from alternative deployment of the travel services. At the traveller's request the organiser shall provide a justification for the amount of the termination fees.

(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.’

8 Article 13 of that directive, entitled ‘Responsibility for the performance of the package’, states, in paragraphs 3 and 6:

‘3. If any of the travel services are not performed in accordance with the package travel contract, the organiser shall remedy the lack of conformity, unless that:

(a) is impossible; or

(b) entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the travel services affected.

If the organiser, in accordance with point (a) or point (b) of the first subparagraph of this paragraph, does not remedy the lack of conformity, Article 14 shall apply.

...

6. Where a lack of conformity substantially affects the performance of the package and the organiser has failed to remedy it within a reasonable period set by the traveller, the traveller may terminate the package travel contract without paying a termination fee and, where appropriate, request, in accordance with Article 14, price reduction and/or compensation for damages.

...’

9 Article 14 of that directive, entitled ‘Price reduction and compensation for damages’, states, in paragraphs 2 and 3:

‘2. The traveller shall be entitled to receive appropriate compensation from the organiser for any damage which the traveller sustains as a result of any lack of conformity. Compensation shall be made without undue delay.

3. The traveller shall not be entitled to compensation for damages if the organiser proves that the lack of conformity is:

...

(c) due to unavoidable and extraordinary circumstances.’

Lithuanian law

10 Entitled ‘Force majeure’, Article 6.212 of the Lietuvos Respublikos civilinis kodeksas (Civil Code of Lithuania), in the version applicable to the dispute in the main proceedings (‘the Civil Code’), states, in paragraph 1 thereof:

‘A party to a contract shall be exempted from liability for non-performance of that contract if he or she proves that the non-performance was due to circumstances which were beyond his or her control and which could not have been reasonably foreseen by him or her at the time of the conclusion of the

contract, and that the arising of such circumstances or consequences thereof could not have been prevented.’

- 11 Entitled ‘Right of tourists to terminate the package travel contract and to withdraw from a package travel contract’, Article 6.750 of the Civil Code provides, in paragraph 4 thereof:

‘Tourists have the right to terminate the package travel contract, without paying the termination fee referred to in paragraph 2 of this article, in the following cases:

...

(3) if circumstances of force majeure occur at the place of destination of the organised tourist trip or its immediate vicinity, which may make it impossible to carry out the organised tourist trip or the transportation of passengers to the destination of the trip. In this case, the traveller has the right to claim reimbursement of the payments made for the organised tourist trip, but shall not be entitled to additional compensation.’

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

- 12 On 10 February 2020, M. D. entered into a package travel contract with Tez Tour under which Tez Tour undertook to organise a holiday trip for M. D. and members of his family to the United Arab Emirates during the period from 1 to 8 March 2020, the package in question comprising, in particular, a return flight between Vilnius (Lithuania) and Dubai (United Arab Emirates) and a seven-night stay in a hotel. Under that package travel contract, M. D. paid Tez Tour a sum of EUR 4 834.
- 13 On 27 February 2020, M. D. informed Tez Tour that he wished to terminate the package travel contract and asked Tez Tour to allow him to use the sum paid to take another trip, at a later date, when the health risk associated with the spread of COVID-19 would have decreased.
- 14 Tez Tour refused to grant M. D.’s request.
- 15 Consequently, M. D. brought an action before the competent courts, arguing, in essence, that he was entitled to full reimbursement of the sum of money he had paid to Tez Tour, in so far as he had terminated the package travel contract at issue in the main proceedings on account of the occurrence, at the place of destination of the package tour or in the immediate vicinity thereof, of unavoidable and extraordinary circumstances which were likely to make it impossible to carry out the tour safely or to transport the passengers to the destination, in particular without exposing them to inconvenience or health risks.
- 16 M. D. stated that, in February 2020, information about the spread of COVID-19, published both by the competent authorities and in the press, legitimately raised doubts about the possibility of making the trip in complete safety, or even that it was possible at all. Thus, the increase in the number of cases of COVID-19 infection around the world, flight restrictions, the adoption of official recommendations advising travellers against going to crowded places and travelling abroad, and the adoption of other measures to contain the spread of COVID-19, would demonstrate the existence of a situation of danger on a global scale.

- 17 Tez Tour disputed the merits of M. D.'s claims, maintaining that the spread of COVID-19 could not, on the date of termination of the package travel contract at issue in the main proceedings, be regarded as a circumstance making it impossible to perform the package concerned.
- 18 Those claims were rejected both at first instance and on appeal, since, according to the Lithuanian courts concerned, there was nothing to enable the circumstances invoked by M. D. to be classified as 'force majeure' within the meaning of Article 6.750 of the Civil Code, a concept which, in Lithuanian law, implements that of 'unavoidable and extraordinary circumstances' referred to in Article 12(2) of Directive 2015/2302. First, M. D. booked his trip when there was already information indicating that security measures had been adopted and, secondly, on the date of termination of the package travel contract at issue in the main proceedings, which occurred only 17 days after M. D. had made such a booking, the level of risk associated with that trip had not changed.
- 19 In response to an appeal on a point of law brought by M. D. before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), which is the referring court, that court observes that it is necessary to specify, for the purposes of resolving the dispute in the main proceedings, the conditions under which a traveller may rely on the existence of 'unavoidable and extraordinary circumstances', within the meaning of Article 12(2) of Directive 2015/2302, in the context of the COVID-19 pandemic, and, where appropriate, the relationship between that concept and that of 'force majeure' within the meaning of Article 6.750 of the Civil Code.
- 20 In this context, the referring court wishes to know, first, whether the authorities of the State of departure or of the State of destination must have published an official warning advising travellers not to make any unnecessary journeys or whether the country of the place of destination of the journey in question must have been listed as a 'risk area'. The referring court points out that, in this case, on 12 March 2020, the Lithuanian Ministry of Foreign Affairs issued a recommendation to travellers, encouraging them to postpone all travel and not to travel abroad, including to the United Arab Emirates, in the coming months. That recommendation came after the World Health Organisation (WHO) had reclassified the COVID-19 epidemic as a 'pandemic' the previous day.
- 21 Secondly, the referring court proceeds from the premiss that, in order to be able to find the existence of 'unavoidable and extraordinary circumstances' which 'significantly [affect] the performance of the package', within the meaning of Article 12(2) of Directive 2015/2302, those consequences must be likely for an average traveller on the basis of an assessment made by way of a 'prediction', taking into account the dates of the planned journey, the factual data available to the traveller concerned and published information. In that context, that court asks whether those 'unavoidable and extraordinary circumstances' may be found only where they have consequences which make it objectively impossible to perform the package concerned, or, as it tends to consider, also where it becomes difficult to perform that package in safe and pleasant conditions, taking account, where appropriate, of subjective factors, such as the traveller's state of health.
- 22 Thirdly, the referring court asks whether the fact that 'unavoidable and extraordinary circumstances' already existed to a certain extent before the conclusion of the package travel contract in question or, at the very least, were foreseeable, is to be regarded as a ground for excluding the traveller's right to terminate that contract without paying a termination fee.

- 23 The referring court observes that, even though, before the date of conclusion of the package travel contract at issue in the main proceedings, the Lithuanian Ministry of Foreign Affairs had published, on 8 January 2020, a recommendation for travellers to the United Arab Emirates aimed at encouraging those travellers to take precautions and that the WHO had, on the following 30 January, declared that the COVID-19 epidemic constituted a ‘public health emergency of international concern’, the evolution and consequences of that epidemic were, however, difficult to predict and the acceleration in the dynamics of infections between the date on which the trip in question was booked and the date on which the contract was terminated was clear.
- 24 In that regard, the referring court mentions that M. D. submits that a state of national emergency was declared in Lithuania on 26 February 2020 because of the threat posed by COVID-19 and that, on the following day, information was published in the press to the effect that COVID-19 infections had been found among persons staying in a hotel in the United Arab Emirates.
- 25 Fourthly, the referring court notes that Article 12(2) of Directive 2015/2302 makes the right of the traveller concerned to terminate a package travel contract without paying a termination fee subject to the occurrence of unavoidable and extraordinary circumstances ‘at or in the immediate vicinity of the place of destination’. That court therefore wishes to know whether, given the nature of the event invoked in this case, the latter expression is also likely to encompass other places, such as in particular the place of departure, as well as the various points at the beginning and end of the trip in question.
- 26 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is it necessary for there to be an official warning of the authorities of the State of departure and/or arrival to refrain from unnecessary travel and/or classification of the country of destination (and possibly also the country of departure) as belonging to a risk area in order for it to be considered that unavoidable and extraordinary circumstances have occurred at the place of destination or its immediate vicinity within the meaning of the first sentence of Article 12(2) of Directive [2015/2302]?
- (2) When assessing whether unavoidable and extraordinary circumstances exist at the place of destination or its immediate vicinity at the time of termination of a package travel contract and whether they significantly affect the performance of the package: (i) should account be taken only of objective circumstances, that is to say, is a significant effect on the performance of the package related only to objective impossibility and must it be interpreted as only covering cases where the performance of the contract becomes both physically and legally impossible, or does it nevertheless also cover cases where performance of the contract is not impossible but (in this case, owing to the well-founded fear of becoming infected with COVID-19) becomes complicated and/or economically inefficient (in terms of the safety of the travellers, risk to their health and/or life, the possibility of achieving the objectives of the holiday travel); (ii) are subjective factors relevant, such as adults travelling together with children under 14 years of age, or belonging to a higher-risk group owing to the traveller’s age or state of health, and so forth? Does the traveller have the right to terminate the package travel contract if, as a result of the pandemic and related circumstances, in the opinion of the average traveller, travel to and from the destination becomes unsafe, gives rise to inconvenience to the traveller or causes him or her to have a well-founded fear of a risk to health or of infection with a dangerous virus?

- (3) Does the fact that the circumstances on which the traveller relies had already arisen or were at least already presupposed/likely when the trip was booked affect in some way the right to terminate the contract without paying a termination fee (for example by that right being denied, by stricter criteria being applied for assessing the negative effect on the performance of the package, and so forth)? When applying the criterion of reasonable foreseeability in the context of the pandemic, should account be taken of the fact that, although the WHO had already published information on the spread of the virus at the moment when the package travel contract [at issue in the main proceedings] was concluded, nevertheless the course and consequences of the pandemic were difficult to predict, there were no clear measures for managing and controlling the infection or sufficient data on the infection itself, and the increasing development of infections from the time of booking the trip until its termination was evident?
- (4) When assessing whether unavoidable and extraordinary circumstances exist at the place of destination or its immediate vicinity at the time of termination of a package travel contract and whether they significantly affect the performance of the package, does the concept of “the place of destination or its immediate vicinity” cover only the [country of the place of destination] or, taking into account the nature of the unavoidable and extraordinary circumstance, that is to say, a contagious viral infection, also the [country of the place of departure], as well as points related to going on and returning from the trip (transfer points, certain means of transport, and so forth)?

Consideration of the questions referred

The first question

- 27 By its first question, the referring court seeks to ascertain, in essence, whether Article 12(2) of Directive 2015/2302, read in the light of point 12 of Article 3 thereof, must be interpreted as meaning that the finding that ‘unavoidable and extraordinary circumstances’ have arisen at or in the immediate vicinity of the destination of a journey is subject to the condition that the competent authorities have issued an official recommendation advising travellers against travelling to the area concerned or an official decision classifying that area as a ‘risk area’.
- 28 In this regard, it should, in the first place, be recalled that Article 12(2) of Directive 2015/2302 provides that, ‘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’, a traveller is to be entitled to terminate a package travel contract before the start of that package without paying a termination fee and thus obtain a full refund of the payments made under that package.
- 29 The concept of ‘unavoidable and extraordinary circumstances’, within the meaning of Article 12(2) of Directive 2015/2302, is defined in point 12 of Article 3 of that directive as ‘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’.

- 30 Recital 31 of the 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'.
- 31 It is thus apparent from the wording of the combined provisions of Article 12(2) and point 12 of Article 3 of Directive 2015/2302, as clarified by recital 31 thereof, that the exercise by a traveller of his or her right to terminate a package travel contract without paying a termination fee depends solely on the occurrence, at the place of destination or in the immediate vicinity thereof, of objective circumstances of such a kind as to affect the performance of the package concerned.
- 32 On the other hand, it must be noted that it cannot be inferred from those provisions, from recital 31 of Directive 2015/2302 or from any other provision of that directive that, in order to be able to establish the occurrence of 'unavoidable and extraordinary circumstances', within the meaning of that provision, it is necessary for the competent authorities to have issued an official recommendation advising travellers against travelling to the area concerned or an official decision classifying that area as a 'risk area'.
- 33 Indeed, such a requirement would contradict the very nature and basis of the adoption of such recommendations or decisions, which, precisely, presuppose, in principle, the existence of objective circumstances giving rise to health or other risks, likely to fall within the concept of 'unavoidable and extraordinary circumstances', within the meaning of Article 12(2) of Directive 2015/2302, and report on them for the purposes of informing the general public.
- 34 It should also be recalled that, as stated in recital 5 of Directive 2015/2302, the directive aims to harmonise the rights and obligations arising from contracts relating to package travel in order to create a real consumer internal market in that area.
- 35 However, as the Advocate General also pointed out in point 35 of her Opinion, the conditions for the adoption of a recommendation or decision of the kind referred to in paragraph 27 of this judgment are not uniform in the various Member States, so that such adoption could be subject to variations between them. Thus, an interpretation of Article 12(2) of Directive 2015/2302 according to which the finding of the occurrence of an 'unavoidable and extraordinary circumstance', within the meaning of that provision, would be subject to the adoption of those recommendations or decisions is likely to compromise the objective of harmonisation pursued by that directive.
- 36 Consequently, the existence of such recommendations or decisions cannot constitute a requirement for a finding that the condition relating to the occurrence of 'unavoidable and extraordinary circumstances', within the meaning of Article 12(2) of Directive 2015/2302, is satisfied.
- 37 In the second place, it should be emphasised that, although, by their nature, those recommendations and decisions may have considerable evidential value as to the reality of the occurrence, in the countries to which they relate, of such circumstances and of the consequences thereof for the performance of the package concerned, such recommendations and decisions cannot, however, be given evidential value to the extent that their non-existence would be sufficient to prevent the occurrence of those circumstances from being established.

- 38 Admittedly, in the absence, in Directive 2015/2302, of provisions on the rules of evidence in relation to the occurrence of ‘unavoidable and extraordinary circumstances’, within the meaning of Article 12(2) of the directive, it is, under the principle of procedural autonomy and subject to the principles of equivalence and effectiveness, for the national legal order of each Member State to establish the ways in which evidence is to be elicited, what evidence is to be admissible before the appropriate national court, or the principles governing that court’s assessment of the probative value of the evidence adduced before it and also the level of proof required (see, to that effect, judgment of 21 June 2017, *W and Others*, C-621/15, EU:C:2017:484, paragraph 25).
- 39 However, regarding more specifically the principle of effectiveness, it requires, in terms of the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from EU law, that those rules do not render practically impossible or excessively difficult the exercise of rights conferred by EU law (judgment of 21 June 2017, *W and Others*, C-621/15, EU:C:2017:484, paragraph 26).
- 40 Requiring a traveller wishing to exercise the right provided for in Article 12(2) of Directive 2015/2302 to demonstrate, in order to establish the reality of the circumstances relied on for that purpose, the adoption of official recommendations or decisions in that regard would be likely to make it impossible to exercise that right, in so far as such circumstances may exist independently of the adoption of any official recommendation or decision.
- 41 In the present case, it is clear from the explanations provided by the referring court that the official communications in existence on the date of the termination, by M. D., of the package travel contract at issue in the main proceedings, namely that of the WHO on 30 January 2020, describing the spread of COVID-19 as a ‘public health emergency of international concern’, the declaration of a state of emergency in Lithuania on the following 26 February and the mention in the Lithuanian press, on the following day, of several cases of COVID-19 infection in the United Arab Emirates, while indicative of a higher health risk in general and in the United Arab Emirates in particular, did not go so far as to specifically advise travellers against travelling to the United Arab Emirates.
- 42 However, as is apparent from paragraphs 36 and 40 of this judgment, that circumstance cannot in itself be sufficient to rule out the hypothesis that the spread of COVID-19 could legitimately be relied on by M. D. as constituting an ‘unavoidable and extraordinary circumstance’ within the meaning of Article 12(2) of Directive 2015/2302.
- 43 Furthermore, the Court has held that the outbreak of a global health crisis such as the COVID-19 pandemic must, as such, be regarded as capable of falling within the scope of such a concept (judgment of 8 June 2023, *UFC – Que choisir and CLCV*, C-407/21, EU:C:2023:449, paragraph 45).
- 44 In the light of all the foregoing, the answer to the first question is that Article 12(2) of Directive 2015/2302, read in the light of point 12 of Article 3 thereof, must be interpreted as meaning that the finding that ‘unavoidable and extraordinary circumstances’, within the meaning of those provisions, have arisen at or in the immediate vicinity of the place of destination of a journey is not subject to the condition that the competent authorities have issued an official recommendation advising travellers against travelling to the area concerned or an official decision classifying that area as a ‘risk area’.

The second question

- 45 As a preliminary point, it should be observed that, in its second question, the referring court refers to the possibility of taking into account, in assessing whether a package can be performed following the occurrence of ‘unavoidable and extraordinary circumstances’, within the meaning of Article 12(2) of Directive 2015/2302, the ‘efficiency’ of that package ‘in terms of the safety of the travellers, risk to their health and/or life, the possibility of achieving the objectives of the holiday travel’. However, neither the wording of that question nor the grounds of the request for a preliminary ruling show that M. D. intended to rely on that aspect.
- 46 It must therefore be held that, by its second question, the referring court seeks to ascertain, in essence, first, whether Article 12(2) of Directive 2015/2302 must be interpreted as meaning that the concept of ‘unavoidable and extraordinary circumstances ... significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination’ of the trip in question covers only circumstances which make it impossible to perform that package or also circumstances which, without preventing such performance, mean that the package cannot be performed without exposing the travellers concerned to risks to their health and safety, taking into account, where appropriate, personal factors relating to the individual situation of those travellers.
- 47 Secondly, the national court questions whether the assessment of such effects must be made from the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect on the date of termination of the package travel contract in question.
- 48 As regards, in the first place, the question referred to in paragraph 46 of this judgment, it should be noted that it follows from the very terms ‘[significant effects on] the performance of the package, or [on] the carriage of passengers to the destination’ used in Article 12(2) of Directive 2015/2302 that that provision does not make the right to terminate a package travel contract without paying a termination fee subject to the condition that circumstances have arisen which make the performance of the package concerned or the transfer of passengers to the place of destination objectively impossible. On the contrary, in accordance with their usual meaning in everyday language, those terms clearly have a broader scope, covering not only the consequences that exclude the very possibility of executing the package, but also those that significantly affect the conditions under which the package is performed.
- 49 As the Commission rightly points out, recital 31 of Directive 2015/2302 supports such an interpretation, in so far as it lists, as examples of situations that may fall within the scope of Article 12(2) of that directive, events such as terrorism and significant health risks, which are objectively such as to pose a risk to the safety of travellers, without however making it absolutely impossible to perform the package concerned.
- 50 That interpretation is, moreover, consistent with the context of the latter provision. Article 13(6) of Directive 2015/2302 gives travellers the right to terminate a package travel contract in the course of performance without paying a termination fee where a lack of conformity ‘substantially affects’ the performance of that package and the organiser concerned fails to remedy it within a reasonable period. In accordance with point 13 of Article 3 of that directive, ‘lack of conformity’ means a failure to perform or improper performance of the travel services included in a package, and the finding of a lack of conformity is indeed objective in that it requires only a comparison

between the services included in the package of the traveller concerned and those in fact provided to that person (judgment of 12 January 2023, *FTI Touristik (Package travel to the Canary Islands)*, C-396/21, EU:C:2023:10, paragraph 22).

- 51 Therefore, while any lack of conformity affecting the performance of a package in progress cannot justify the termination of the corresponding travel contract without charge, the fact remains that a lack of conformity involving poor performance of that package may be sufficient to give rise to such termination, provided that that lack of conformity ‘substantially affects’ the performance of that package, in accordance with Article 13(6) of Directive 2015/2302.
- 52 Similarly, unavoidable and extraordinary circumstances which do not make the performance of the package concerned objectively impossible allow the package travel contract in question to be terminated under Article 12(2) of Directive 2015/2302, provided that those circumstances have ‘[significant effects on] the performance of the package, or [on] the carriage of passengers to the destination’, within the meaning of Article 12(2) of that directive.
- 53 Consequently, a health crisis, such as the spread of COVID-19, may, in view of the serious risk it poses to human health, be regarded as having ‘[significant effects on] the performance of the package, or [on] the carriage of passengers to the destination’, within the meaning of the first sentence of Article 12(2) of Directive 2015/2302, irrespective of the fact that it is not necessarily such as to make such performance objectively impossible.
- 54 As regards, more specifically, the possible relevance, for the purposes of assessing the condition relating to the existence of such effects, of personal factors relating to the individual situation of travellers, such as the fact of travelling with young children or of belonging to a higher-risk group, it should be emphasised that those consequences must be established objectively, in the same way as the circumstances which caused them, referred to in paragraph 31 of this judgment.
- 55 That being so, there is nothing in the wording of Article 12(2) of Directive 2015/2302 to suggest that personal factors, such as those referred to in the preceding paragraph of this judgment, should be disregarded in the context of that assessment, in so far as they are objective in nature.
- 56 Such factors are likely to have an impact on the seriousness of the consequences caused by the unavoidable and extraordinary circumstances invoked by a traveller and, by the same token, on the possibility of performing the package in question under good conditions, as agreed between the organiser of the package and the traveller. In this respect, particularly in the case of a health crisis, such as the spread of COVID-19, the consequences it is likely to have on the performance of that package may vary depending, for example, on the state of health of the travellers concerned.
- 57 This does not call into question the fact that personal factors are not sufficient, as such, to justify the traveller concerned exercising his right to terminate a package travel contract without paying a termination fee, in accordance with Article 12(2) of Directive 2015/2302, in so far as such factors are only relevant where they are such as to influence the assessment of the consequences objectively attributable to the occurrence of ‘unavoidable and extraordinary circumstances’, within the meaning of that provision.
- 58 The context of that provision and the objective of Directive 2015/2302 support the interpretation set out in paragraphs 54 to 57 of this judgment.

- 59 As regards, first, the context of Article 12(2) of Directive 2015/2302, it follows from Article 5(1)(a)(viii) thereof that that directive explicitly takes account of the need to inform travellers whether, in particular, the package concerned is suitable for persons with reduced mobility. However, an analysis of the effects of an ‘unavoidable and extraordinary circumstance’, within the meaning of Article 12(2) of Directive 2015/2302, on the performance of such a package cannot disregard the individual needs of those persons for whom the package was specifically adapted.
- 60 In that regard, recital 25 of Directive 2015/2302 states that, when providing a traveller with the necessary information, the trader concerned should take into account the specific needs of travellers who are particularly vulnerable because of their age or physical infirmity, which that trader could reasonably foresee.
- 61 With regard, secondly, to the objective of Directive 2015/2302, according to Article 1 thereof, that objective is, *inter alia*, to ensure a high level of consumer protection, since the majority of travellers buying packages or linked travel arrangements are, as stated in recital 7 of that directive, consumers within the meaning of European Union consumer law. In that regard, as the Advocate General in essence also pointed out in paragraphs 44 and 45 of her Opinion, the protective purpose of the same directive also encompasses travellers who are in a more vulnerable situation.
- 62 Accordingly, personal factors relating to the individual circumstances of the traveller concerned may be taken into account in determining whether the condition that the unavoidable and extraordinary circumstances invoked by that traveller must have significant effects on the performance of the package concerned or on the carriage of passengers to the destination is satisfied.
- 63 In the second place, as regards the question whether, in order to assess the significance of those consequences, it is necessary to take the perspective of an average traveller, who is reasonably well-informed and reasonably observant and circumspect, on the date of termination of the package travel contract concerned, it should be noted, first, that that question is based on the premiss that a traveller intending to exercise his or her right to terminate such a contract without paying a termination fee, under Article 12(2) of Directive 2015/2302, must make that assessment on the basis of a ‘prediction’, in the sense that significant effects on the performance of the package concerned must, on the date of termination of that contract, be likely in the eyes of that traveller.
- 64 With regard to that premiss, it follows from the wording of that provision that the right to terminate a package travel contract without paying a termination fee must be exercised ‘before the start of the package’.
- 65 In so far as the exercise of that right is subject to the condition that ‘unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity ... significantly [affect] the performance of the package, or ... significantly affect the carriage of passengers to the destination’, that condition must necessarily be satisfied on the date of such termination, that is to say ‘before the start of the package’.

- 66 Therefore, in order to assess whether that condition is satisfied, it is necessary, from a temporal point of view, to consider the date of termination of the package travel contract in question. However, as those effects are only definitively evident when the package is performed, their assessment is necessarily forward-looking.
- 67 It follows that, in accordance with the premiss relied on by the referring court, such an assessment must be based on a ‘prediction’ as to the likelihood that the unavoidable and extraordinary circumstances relied on by the traveller concerned will have significant effects on the performance of the package, circumstances which, moreover, must already have materialised by the date on which the package is terminated.
- 68 Secondly, it must be noted that the provisions of Directive 2015/2302 do not specify whether the likelihood and significance of those effects should be assessed from the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect, or from any other perspective.
- 69 That being so, in accordance with the objective nature of those effects, referred to in paragraph 54 of this judgment, it is not sufficient for the traveller concerned, when he or she wishes to exercise his or her right to terminate his or her package travel contract without paying a termination fee, to rely on purely subjective assessments or fears.
- 70 Moreover, as the Advocate General also observed, in essence, in point 52 of her Opinion, Article 12(2) of Directive 2015/2302 specifically pursues the objective of granting the traveller concerned, in the event of the occurrence of unavoidable and extraordinary circumstances, a right of termination of his or her own, independently of that available to the organiser concerned under Article 12(3) of that directive. Consequently, the traveller cannot be expected to rely solely on the organiser’s assessment of the feasibility of the performance of the trip in question.
- 71 By contrast, in order for that traveller to be able usefully to rely on his or her right of termination, provided for in Article 12(2) of Directive 2015/2302, and for that provision thus to be able to meet its specific objective, read in the light of the more general objective of consumer protection of that directive recalled in paragraph 61 of this judgment, it must be held that, in order to assess the likelihood and significance of the effects, within the meaning of that provision, it is necessary to take the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect, following the example of the criterion applied in other areas of EU law relating to consumer protection (see, to that effect, judgment of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraph 51).
- 72 In the light of all of the foregoing, the answer to the second question is that Article 12(2) of Directive 2015/2302 must be interpreted as meaning that the concept of ‘unavoidable and extraordinary circumstances ... significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination’ of the trip in question, covers not only circumstances which make it impossible to perform that package but also circumstances which, without preventing such performance, mean that the package cannot be performed without exposing the travellers concerned to risks to their health and safety, taking into account, where appropriate, personal factors relating to the individual situation of those travellers. The assessment of such effects must be made from the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect on the date of termination of the package travel contract in question.

The third question

- 73 By its third question, the referring court seeks to ascertain, in essence, whether Article 12(2) of Directive 2015/2302 must be interpreted as meaning that a situation which, on the date of conclusion of the package travel contract, was already known to the traveller concerned or was foreseeable for him or her, may be relied on by that traveller as ‘unavoidable and extraordinary circumstances’, within the meaning of that provision, taking into account, where appropriate, the evolving nature of that situation.
- 74 In that regard, it is admittedly true that neither Article 12(2) of Directive 2015/2302 nor point 12 of Article 3 thereof, defining the concept of ‘unavoidable and extraordinary circumstances’, explicitly refers to a requirement that the situation relied on in that regard must, on the date of conclusion of the package travel contract concerned, be unforeseeable and, a fortiori, non-existent. However, the terms ‘unavoidable and extraordinary’ themselves tend to indicate that that concept covers only situations which, on the one hand, did not exist on that date and, on the other hand, were unforeseeable.
- 75 An existing situation cannot by its very nature be classified as ‘unavoidable’, even if it may have been so before it materialised. Furthermore, a hypothetical situation, if foreseeable, cannot be classified as ‘extraordinary’.
- 76 Similarly, in so far as Article 12(2) of Directive 2015/2302 gives travellers the right to terminate their package travel contract without paying a termination fee if the circumstances referred to therein materialise, the fact remains that those circumstances must arise after the conclusion of that contract.
- 77 Moreover, recital 30 of Directive 2015/2302 states that ‘since packages are often purchased a long time before their performance, unforeseen events may occur’, while recital 31 of the directive specifies that ‘travellers should also be able to terminate the package travel contract at any time before the start of the package’. The traveller’s right to terminate the contract therefore seems to be based on an unforeseen change in circumstances.
- 78 Finally, such an interpretation is consistent with the consumer protection objective pursued by Directive 2015/2302. Indeed, that objective does not require protecting travellers against risks which, on the date of conclusion of the package travel contract, were already known to them or were foreseeable for them and which they therefore accepted for the purposes of their journey.
- 79 Thus, circumstances already known to the traveller concerned or foreseeable for him or her on the date of conclusion of the package travel contract cannot be the basis for exercising the right to terminate such a contract without paying a termination fee, provided for in Article 12(2) of Directive 2015/2302.
- 80 As regards the assessment, in that context, of a situation which existed or could be foreseen on the date on which the package travel contract in question was concluded, but which is evolving significantly, it should be pointed out that it cannot be ruled out that such a situation may have undergone significant changes after the conclusion of that contract, so that it is different from the situation of which the traveller concerned was aware or which he or she could reasonably have foreseen when he or she concluded that contract, as the Advocate General also pointed out in point 62 of her Opinion.

- 81 In such a scenario, those changes could, in fact, give rise to a new situation, capable of meeting as such the definition of the concept of ‘unavoidable and extraordinary circumstances’, within the meaning of Article 12(2) of Directive 2015/2302.
- 82 It will therefore be for the referring court to assess, from the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect, whether the level of health risk which led M. D. on 27 February 2020 to terminate his package travel contract had changed significantly in relation to the risk existing or foreseeable on the date on which that contract was concluded, the previous 10 February.
- 83 In the light of the foregoing, the answer to the third question is that Article 12(2) of Directive 2015/2302 must be interpreted as meaning that a situation which, on the date of conclusion of the package travel contract, was already known to the traveller concerned or was foreseeable for him or her, cannot be relied on by that traveller as ‘unavoidable and extraordinary circumstances’, within the meaning of that provision, without prejudice, however, to the possibility, given the evolving nature of the situation, that that situation may have undergone significant changes after the conclusion of the contract such as to give rise to a new situation, capable of meeting as such the definition of the concept of ‘unavoidable and extraordinary circumstances’, within the meaning of that provision.

The fourth question

- 84 By its fourth question, the referring court questions the scope of the expression of circumstances ‘occurring at the place of destination or its immediate vicinity’ in Article 12(2) of Directive 2015/2302, and in particular whether that expression may also cover the place of departure and/or other places, having regard to the nature of the event relied on, namely, in the present case, the spread of COVID-19 worldwide.
- 85 It follows from the explanations provided by the referring court, and in particular those set out in paragraph 41 of this judgment, that that court takes for granted the fact that the spread of COVID-19 had, by the date of termination of the package travel contract at issue in the main proceedings, reached, inter alia, the United Arab Emirates, that is to say, the place of destination of the trip in question. Therefore, assuming that the referring court, having regard to the elements of interpretation set out in the context of the first and third questions, considers such a spread to constitute an ‘unavoidable and extraordinary circumstance’ within the meaning of Article 12(2) of Directive 2015/2302, it is common ground, for the purposes of the dispute in the main proceedings, that it occurred, inter alia, ‘at the place of destination’.
- 86 Moreover, the Court has held that, if the spread of a serious disease at the relevant travel destination is capable of falling within the scope of the concept of ‘unavoidable and extraordinary circumstances’, within the meaning of that provision, 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 (judgment of 8 June 2023, *UFC – Que choisir and CLCV*, C-407/21, EU:C:2023:449, paragraph 48).
- 87 Thus, the resolution of the dispute in the main proceedings does not depend on whether the concept of circumstances ‘occurring at the place of destination or its immediate vicinity’, within the meaning of Article 12(2) of Directive 2015/2302, extends to circumstances occurring at a place other than that of the travel destination, such as, in particular, the place of departure.

- 88 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 46).
- 89 In those circumstances, it must be held that, by its fourth question, the referring court seeks to ascertain, in essence, whether Article 12(2) of Directive 2015/2302 must be interpreted as meaning that, in order to determine whether unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity ‘significantly [affect] the performance of the package, or ... significantly affect the carriage of passengers to the destination’, effects occurring at the place of departure and at the various places connected with the start and return of the trip in question may also be taken into account.
- 90 As is clear from the wording of Article 12(2) of Directive 2015/2302, read in the light of recital 31 thereof, that provision requires the unavoidable and extraordinary circumstances relied on to arise, in particular, at the intended travel destination or in the immediate vicinity thereof and, as such, to significantly affect the performance of the package concerned (see, to that effect, judgment of 8 June 2023, *UFC – Que choisir and CLCV*, C-407/21, EU:C:2023:449, paragraph 47).
- 91 On the other hand, even though those effects will, in principle, be evident in particular at the place of destination and its immediate surroundings, the fact remains that that provision contains no geographical limitation as regards the place where those effects, caused by such circumstances, must occur in order for them to be capable of being taken into consideration.
- 92 In addition, the travel services forming part of the package may include, in particular, the carriage of passengers, in which case the relevant package travel contract must, in accordance with Article 5(1)(a)(ii) of Directive 2015/2302, specify the means, characteristics and categories of transport, the points, dates and times of departure and return, and the duration and places of intermediate stops and transport connections.
- 93 It follows that, where the effects caused by unavoidable and extraordinary circumstances extend beyond the place of destination to reach, in particular, the place of departure or return or the places of intermediate stops and transport connections, they are likely to affect the performance of the package concerned and must as such be able to be taken into account for the purposes of applying Article 12(2) of Directive 2015/2302.
- 94 In that regard, as the Advocate General pointed out in point 71 of her Opinion, it is possible, in particular, for measures to be adopted at the place of departure as a consequence of the circumstances arising at the place of destination, such as measures consisting in subjecting travellers returning to the place of departure to restrictions, which could then form part of the assessment of the significant effects on the performance of the package travel contract concerned.
- 95 In the light of the foregoing, the answer to the fourth question is that Article 12(2) of Directive 2015/2302 must be interpreted as meaning that, in order to determine whether unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity ‘significantly [affect] the performance of the package, or ... significantly affect the carriage of

passengers to the destination’, effects occurring at the place of departure and at the various places connected with the start and return of the trip in question may also be taken into account where they affect the performance of that package.

Costs

- 96 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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) 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) 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, read in the light of point 12 of Article 3 thereof,**

must be interpreted as meaning that the finding that ‘unavoidable and extraordinary circumstances’, within the meaning of those provisions, have arisen at or in the immediate vicinity of the destination of a journey cannot be subject to the condition that the competent authorities have published an official recommendation advising travellers against travelling to the area concerned or an official decision classifying that area as a ‘risk area’.

2. **Article 12(2) of Directive 2015/2302**

must be interpreted as meaning that the concept of ‘unavoidable and extraordinary circumstances ... significantly affecting the performance of the package, or which significantly affect the carriage of passengers to the destination’ of the trip in question, covers not only circumstances which make it impossible to perform that package but also circumstances which, without preventing such performance, mean that the package cannot be performed without exposing the travellers concerned to risks to their health and safety, taking into account, where appropriate, personal factors relating to the individual situation of those travellers. The assessment of such effects must be made from the perspective of an average traveller who is reasonably well-informed and reasonably observant and circumspect at the date of termination of the package travel contract in question.

3. **Article 12(2) of Directive 2015/2302**

must be interpreted as meaning that a situation which, on the date of conclusion of the package travel contract, was already known to the traveller concerned or was foreseeable for him or her, cannot be relied on by that traveller as ‘unavoidable and extraordinary circumstances’, within the meaning of that provision, without prejudice, however, to the possibility, given the evolving nature of the situation, that that situation may have undergone significant changes after the conclusion of the contract such as to give rise to a new situation, capable of meeting as such the definition of the concept of ‘unavoidable and extraordinary circumstances’, within the meaning of that provision.

4. Article 12(2) of Directive 2015/2302

must be interpreted as meaning that, in order to determine whether unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity ‘significantly [affect] the performance of the package, or ... significantly affect the carriage of passengers to the destination’, effects occurring at the place of departure and at the various places connected with the start and return of the trip in question may also be taken into account where they affect the performance of that package.

[Signatures]