

Travel Agency Commissioner – Area 2

Andreas Körösi
P.o.Box 5245,
S-102 45 Stockholm, Sweden
Phone: + 46 70 767 67 30
E-mail: area2@tacommissioner.com
www.tacommissioner.com

TAC Response to Applicants' request for clarification of Decision 66/2017

6 Spanish Agents vs IATA in the matter of suspension of Conviasa from BSP

Dear Parties,

For ease of reference I have copied Ms Tejero's email dated 29 January 2018, and identified the relevant questions by numbering them. Answers are provided in the same numeric order directly following the copied email.

Dear Andreas,

From CEAV we respectfully understand that your Clarification is an extension of the Decision 66/2017 because we understand that the Decision speaks about "**Financial prejudice**", **which can be proven, as a result from not notifying the suspension of CONVIASA on June 13**, without specifying the requirements established in the Decision and that in some of its points are of impossible compliance, for example:

- **How can travel agents prove that a ticket is not part of a package tour?** (1)

I think that the Spanish Law should not be brought to this case, and that if you bring it, also establishes that the Travel Agency will be able to seek reimbursement or compensation from the Air Company; this is not the case because **CONVIASA only transported Ethnic Tourism**, (2) but we do not understand why it has to be expanded to this point. I also remember you that 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 says that: "Article 13:"... no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier **in accordance with applicable relevant laws**". (3)

- **How can travel agents prove that the passenger has not returned the amount to the Agencies? Do you really think that a passenger is going to give back the money to the travel agency without having his flight?** (4)

We understand it is **not fair for the agents to be required to proof things that actually did not exist, ...** (5) we wonder *which "imaginable" documents can prove these points*

- **And at last, but not least, Which is the difference between a refund authorized on 12th or on 13rd June?** (6) Travel agencies doesn't make its refund immediately, it may take up to two or even three weeks contacting and eventually arranging a meeting with the customer (please bear in mind it also depends on the customer agenda, not only the agency one).... For that reason, we

understand that specifying a limited time span for the refund to be authorized goes against the spirit of the Decision, which is actually demonstrating “Financial prejudice, on an individual basis by each Applicant, which can be proven as a result from not notifying on 13th of June, have to be reimbursed by IATA”. Thus that proof should be substantiated regardless of when the refund was authorized.

Therefore and for all the point stated above we believe the clarifications should reflect and preserve the spirit of the Decision which is that Travel Agents must prove that they had suffer a financial prejudice, on an individual basis, as you decided, in the Decision 66/2017.

Best Regards,

Mercedes Tejero
CEAV Manager

TAC response

Dear Ms Tejero and all,

I will try to answer all your questions as they appear in chronological order.
I have “numbered” them **in your text** and hopefully I have not missed any of them.

To start with the “spirit of the Decision”, rest assured that this has in no way changed with my clarification to IATA’s request for clarification.

IATA/BSP is still held accountable for financial losses, **which would not have occurred** should the suspension have been done on the 13th of June instead of the 19th of June.

As a rule when there is a request for compensation for financial loss the burden of proof is on the claimant – in this case the Agents.

Please note – I do not ask for “strict evidence”, but merely what can be demonstrated by “day to day documents” a Travel Agency produces during professional practice of the trade. Such as documents which are part of its book-keeping or “back office” documentation.

The following are examples illustrating the issue and in no way exhaustive, I am confident that there are more ways to substantiate than the examples below.

- (1) **“How can travel agents prove that a ticket is not part of a package tour?”** This can as example be “proven” by a copy of the booking order to a client which ticket has been reimbursed, or copy of the actual repayment done to the client, because it would demonstrate that the repayment was ticket only.
- (2) At the Hearing I learned that a majority of clients were “ticket only”, but in my mind this does not exclude sales with land arrangement. Despite (most likely) there was a special fare code assigned for “ethnic traffic only”, it is common knowledge, **with Carriers’ consent**, that a minor part of sales is also part of “packaged travel”.

- (3) Applicable local law comes into play because as I wrote in the decision and also stated above :*"IATA/BSP is held accountable for losses , **which would not have occurred should the suspension have been done on the 13th of June**"*. In other words, even if the suspension would have been done already on the 5th of May the client, when the ticket is part of "package travel", would have been entitled to get the whole amount (ticket plus land arrangement) reimbursed. Ergo no extra financial loss has occurred due to late suspension.
- (4) **"How can travel agents prove that the passenger has not returned the amount to the Agencies?"** I fully understand the "difficulty" Ms Tejero, and I am not asking for proof or even a written statement from each client. What can be demonstrated by the Agents is **e.g.** a letter to clients explaining the situation including a request to pay back what has been prematurely forwarded to the clients. This would be acceptable for me, as Agents "having substantiated" their **willingness to try and recover losses**. An effort to "mitigate losses when possible" is a basic requirement in all compensation claims.
- (5) I do not fully understand your question :*"...it is **not fair for the agents to be required to proof things that actually did not exist,**"*. As Decision-maker, I cannot foresee all and every possible financial prejudice attributable to an act committed, so my intention is simply to allow Agents to claim compensation for, **whatever pre mature action they have taken which has resulted in financial prejudice attributable to the late suspension**. So, Ms Tejero it is in no way a situation where Agents are: *required to proof things that actually did not exist*". It is a "possibility" for them, should they have suffered other financial prejudice than "premature refunds to clients" attributable to the late suspension.
- (6) **The: "difference between a refund authorized on 12th or on 13th June?" is clear. ALL** refunds authorized **before and on the 12th** form part of the billing. Refunds after suspension are by default excluded from the billing. And most important (reflecting the spirit of the decision) – **Timely suspension would have alerted Agents not to refund prematurely.**

Dear Ms Tejero, I hope the above has answered all your questions and please feel free to let me know if I have missed something.

Sincerely Yours



Andreas Körösi

Travel Agency Commissioner
Area 2