



Gatti Pavesi Bianchi

COVID-19 Update

COMMERCIAL PRACTICES | CODE OF TOURISM

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PACKAGE TRAVEL CONTRACTS: RIGHT OF WITHDRAWAL

1. Basic rules

According to Art. 41(1) of the Italian Code of Tourism (hereinafter “**the Code**”, see the D. Lgs. of May 23, 2011, No. 79, as last modified in July 2018), the traveller may terminate the package travel contract at any time before the departure. In this case, the traveller may be required to pay the tour operator a termination fee (which should appear as “*appropriate and justifiable*” in light of the circumstances of the single case, such as the costs already anticipated by the tour operator, etc.).

However, in line with the provisions of the Italian Civil Code regarding the “*supervening impossibility of performance*” (Art. 1463), in the event of unavoidable and extraordinary circumstances (i.e., a situation beyond the control of the parties and the consequences of which could not have in any way been avoided) occurring at the place of destination and having a substantial impact on the proper performance of the package, the traveller has the right to terminate the contract at any time before the departure without paying any termination fee, and is entitled to a full refund of any payments already made to the tour operator (“**Extraordinary Withdrawal**”, see Art. 41(4) of the Code).

In case of Extraordinary Withdrawal, the tour operator shall proceed to the refund within fourteen days from the exercise of the withdrawal by the traveller (see Art. 41(6) of the Code).

2. New emergency provisions

With the adoption of the Law-Decree of March 2, 2020, No. 9, titled “*Emergency measures for families, workers and businesses related to the coronavirus crisis*” (“**Law-Decree 9/2020**”), as well as of the Cura Italia Decree, a number of new provisions have entered into force, with the effect of integrating / amending the rules provided by the Code, so as to mitigate the negative impact of the Coronavirus crisis both for travellers and tour operators.

The essential content of the new provisions adopted by the Italian Government may be summarised as follows:

- (i) the current Coronavirus crisis represents in itself an extraordinary and unavoidable circumstance allowing the travellers to invoke the extraordinary right of withdrawal from package travel contracts

According to Art. 28(5) of the Law-Decree 9/2020, the right of Extraordinary Withdrawal shall be guaranteed to specific categories of people, such as those recovered or quarantined, resident or domiciled in the ‘red zone’, those who have planned a trip in the ‘red zone’,

and so on. In other words, with reference to these categories of people, directly affected by the Coronavirus crisis and by the related restrictive measures adopted by the Italian Government, the notion of “*unavoidable and extraordinary circumstances*” seems to be automatically fulfilled.

Moreover, further to the substantial extension of the ‘red zone’ measures to the entire Italian territory (implemented by Art. 1 of the Presidential Decree of March 9, 2020), it could be argued that - under the current legislative framework - the same right of extraordinary withdrawal is to be recognized to all people resident/domiciled in Italy, until the deadline of April 3, 2020 (unless further extended).

(ii) tour operators may offer to their clients alternative solutions to the full refund of the payments received

According to Art. 28(5) of the Law-Decree 9/2020, in case of exercise of the right of extraordinary withdrawal by the travellers, tour operators - as an alternative to the reimbursement of the travel package - may *either* offer a substitutive travel package of equal or higher quality *or* issue a travel voucher for an amount equal to the package’s value, with a one-year validity.

(iii) tour operators may claim restitution/compensation from the airline companies

According to Art. 28(7) of the Law-Decree 9/2020, in case of termination of the package travel due to unavoidable and extraordinary circumstances, airline companies shall, in turn, *either* return to the tour operators the sums possibly anticipated by the same for the purchase of the travel tickets, *or* issue a ticket voucher to be used (i.e., resold) by the tour operator within one year.

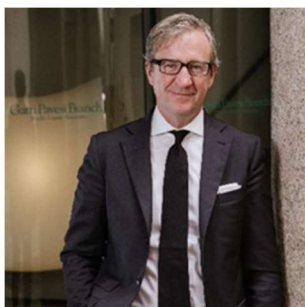
(iv) tour operators may claim restitution/compensation from the hotels

Law-Decree 9/2020 does not contain specific provisions regarding the relationship between tour operators and hotels. However, Art. 88 of the Cura Italia Decree states that “*the provisions of Art. 28 of the Law-Decree 9/2020 also apply to residence contracts, in case of supervening impossibility of the performance as a consequence of the restraints*” imposed by the Italian Government. Therefore, it could be argued that the same right of restitution/compensation exists for the tour operators *vis-à-vis* the hotels.

Hence, in case of termination of the travel package, hotels may *either* return to the tour operators the sums possibly anticipated by the same *or* issue a voucher to be used (i.e., resold) by the tour operator within one year.

	Basic Rules (Code of Tourism)	New Provisions (Coronavirus emergency framework)
Ordinary Withdrawal	<ul style="list-style-type: none"> • at any time before departure • termination fee requested from the traveller 	
Extraordinary Withdrawal	<ul style="list-style-type: none"> • possible at any time before departure • no termination fee applied • full refund of the payments received by the traveller 	<ul style="list-style-type: none"> • right of extraordinary withdrawal guaranteed to the categories indicated in the Decree until April 3, 2020 (and, further to the substantial extension of the 'red zone' to the whole national territory, to all people resident/domiciled in Italy); • substitute travel package/travel voucher may be offered to the traveller as an alternative to the full refund of the package; • right for the tour operator to ask for restitution/compensation of the sums anticipated to airline companies and hotels; • right for airlines companies and hotels to issue travel voucher as an alternative to the restitution

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The firm has developed a special know-how with regard to antitrust and competition laws and regulations, representing its clients before both Italian and EU courts and bodies. Our competition law specialists provide assistance to all antitrust matters including concentrations, abuse of dominant position, the establishment or defense of joint venture agreements, pre-merger notification and substantive defense of transactions, a wide range of civil antitrust litigation, state aid awards and general assistance, antitrust audits, and compliance programs. The team vast professional experience has greatly developed and strengthened the firm's reputation as a key player on the Italian market and Gatti Pavesi Bianchi has strongly increased its presence in major cases before the Italian and European antitrust authorities and courts. In addition, most of the members of the team have practiced abroad in important foreign jurisdictions (USA, Belgium, UK).

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