



TAKING A LOOK INTO THE TOLL-FREE TELEPHONE NUMBERS FOR CUSTOMER SERVICE: CAN THEM BE RESTRICTED SO THAT ONLY THE PASSENGERS CAN USE THEM?

The transposition of the modification of the European regulations regarding the assistance to passengers has raised doubts in our country. On this note we discuss how airlines should provide their telephone customer service.

On 25th November 2011 Directive 2011/83/EU of the European Parliament and of the Council (hereinafter referred to as the "Directive") was published in the Official Journal of the European Union, introducing important modifications in the area of consumers and users protection. Among these amendments, article 21 of the regulation stipulated that States shall ensure that consumers are not obliged to pay more than the basic tariff to communicate with traders¹.

The Directive did not define what had to be understood by "basic tariff", so the intervention of the Court of Justice of the European Union became necessary, which in Case C-568/2015 (Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main Comtech GmbH²) interpreted that "charges, for a call relating to a contract concluded with a trader, to a telephone helpline operated by the trader may not exceed call charges to a standard geographic landline or mobile telephone line".

Therefore, as far as Spain is concerned, the Directive intended traders to make available to their customers the so-called "geographical numbers", that is to say, those starting with 8 or 9, followed by a non-zero number and which low cost is usually included in the flat rate schemes of telephone operators³.

The transposition of the Directive in Spain was carried out through the publication of Royal Decree-Law 37/2020, of December 22, on urgent measures to address situations of social and economic vulnerability in the field of housing and transport (hereinafter, RDL 37/2020), which introduced the modification of the article 21.2. of the national consumers law⁴. As we shall see, the Spanish legislator decided to apply a more severe regime, requiring to certain areas of business to provide consumers and users with a toll-free number.

Indeed, although after its amendment, the article 21.2. of the TRLGDCU states that "In case that the trader makes available for consumers and users a telephone line for the purpose of communicating with it in relation to the contract concluded, the use of such line may not entail for the consumer and user a cost higher than the cost of a call to a standard geographical or mobile fixed telephone line". But a specific regime was designed for certain companies providing the so-called basic services of general interest (which includes air transport) in which the legislator stated that "these companies must have, in any case, a toll-free telephone number"⁵.

¹ Directive 2011/83/Eu Of The European Parliament And Of The Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

² <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:62015CJ0568&from=es>

³ National Numbering Plan published by the Ministry of Economic Affairs and Digital Transformation (Ed. February 2021).

⁴ Royal Legislative Decree 1/2007, of November 16, 2007, approving the revised text of the General Law for the Defense of Consumers and Users and other complementary laws, (hereinafter, "TRLGDCU").

⁵ The full text of the last paragraph of article 21.2 of the TRLGDCU indicates "in the case of basic services of general interest, the companies providing them must have, in any case, a toll-free consumer service number. For these purposes, services of a basic nature of general interest will be considered to be the supply of water, gas, electricity, financial and insurance, postal, air, rail and road transport, health protection, sanitation and waste, as well as those others that may be legally determined".

In other words, despite the fact that for traders in general the Directive was transposed literally, the fact is that for air carriers - among others - it was modified to force the latter to set up a free telephone number for consumers and users. These toll-free numbers are those that start with 800 and 900, according to the aforementioned National Numbering Plan.

Before continuing, we must point out that it is legitimate to ask why our legislator decided to transpose the directive beyond its provisions. The answer to this question is on RDL 37/2020, which indicated that the measure was based on "the urgency and necessity of the measures adopted in the field of transport, which are enacted based on the particular situation of the transport in the context of the pandemic and the state of alarm, and this requires an urgent response to address it." However, and despite the fact that today the pandemic is (apparently) gone, there is no record of any legislative movement aimed to modify this rule, so it seems that we are before an excess of the regulator, who imposed in perpetuity the obligation to bear this cost to the already very punished airlines' pockets.

In addition to the above, as anticipated earlier, the transposition has also generated doubts regarding what should be the scope of the telephone service provided on the toll-free line. In particular, the main question is whether such gratuity should operate vis-à-vis to any consumer or user or whether, on the contrary, only the airline's customers (passengers with a reserve) are entitled to use the telephone line at no cost.

The reality is that the article of the TRLGDCU mentions in the first place that the telephone line must be provided to consumers and users in general, but then clearly and unequivocally delimits the scope "for the purpose of communicating with it [trader] in relation to the contract concluded", therefore, the obligation to provide the telephone service - free of charge - must be limited, according to the law, to customers who have a contract. The inevitable consequence of this must be that it cannot be required to airlines to provide attention on their toll-free lines to those with whom there is no contractual relationship.



The above, on the one hand, is perfectly consistent with the provisions of the Directive which, let's remember, only mentioned the basic rate numbers. On the other hand, it is also fully compliant from the perspective of the freedom to market services in Europe, since traders must be able to use the means they best consider, being these a website, a premium number or a toll-free telephone number. This, of course, in contrast and with full respect to the obligation implemented by the Directive to provide telephone assistance at basic cost to those people who do have a contract, so they can seek assistance in relation to it, as reasoned in C-568/2015.

Consequently, we understand that the obligation to set up toll-free numbers should only reach those consumers and users who have a contracts with the airlines and , therefore, the latter should be able to restrict said service to passengers.

Finally, we must make reference to the inspections being carried out by different regional consumer administrations⁶ in our country, aimed at verifying the compliance of airlines with this new aspect of the regulation, and in cases where they are detecting non-compliances, severe sanctions are being imposed. We know that the interpretation set out in this newsletter is already shared by several administrations, and we hope that it will soon be shared by all of them and, consequently, airlines may limit the use of toll-free numbers to their passengers, providing for other users basic or premium numbers (at their choice). This would undoubtedly ease the pockets of airlines and contribute to their post-pandemic economic recovery.

PionAirLaw

November 2022

⁶ It should be recalled that under Article 148 of the Spanish Constitution, consumer affairs are transferred to the Autonomous Communities.