

Procedure Directive

for the extrajudicial resolution of disputes by the Agency for Passenger Rights¹

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¹ Pursuant to § 6 par. 4 Federal Act on the Agency for Passenger Rights [*Bundesgesetz über die Agentur für Passagier- und Fahrgastrechte*], Federal Law Gazette [BGBI.] I No. 61/2015

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Art. 1 Agency for Passenger Rights

- (1) The Agency for Passenger Rights (hereinafter: apf) is an established part of Schienen-Control GmbH. Its structure, financing, legal structure and decision-making processes are independent of the companies undergoing arbitration procedures.
- (2) The apf is a notified arbitration body qualified to handle arbitration procedures between consumers and companies pursuant to § 25 AStG².

Art. 2 Purpose of the Agency for Passenger Rights

The purpose of the apf is to clarify and resolve disputes and complaints relating to the transportation of passengers by railway, bus, ship and air out of court within the scope of its competences – cf. Art. 3, 6 and 7 in Appendices I (Railways), II (Bus services), III (Shipping) and IV (Aviation). The apf sees itself as an independent mediator between the companies and their passengers and clients.

Art. 3 Competence of the Agency for Passenger Rights

Please refer to Appendices I (Railways), II (Bus services), III (Shipping) and IV (Aviation) for the corresponding provisions.

Art. 4 Parties to the procedure

Please refer to Appendices I (Railways), II (Bus services), III (Shipping) and IV (Aviation) for the corresponding provisions.

Art. 5 Representation during the arbitration procedure

The parties to the procedure may request legal representation or counsel from a lawyer or any other person of trust at any stage during the procedure. Please refer to Art. 15 for

² Alternative Dispute Resolution Act (*Alternative-Streitbeilegung-Gesetz – AStG*), Federal Law Gazette I No. 105/2015.

information on the costs thus incurred. If any of the parties is not represented by a lawyer, a written power of attorney must be presented to the apf on request.

Art. 6 Subjects of arbitration requests

Please refer to Appendices I (Railways), II (Bus services), III (Shipping) and IV (Aviation) for the corresponding provisions.

Art. 7 Inadmissible arbitration requests

Please refer to Appendices I (Railways), II (Bus services), III (Shipping) and IV (Aviation) for the corresponding provisions.

Art. 8 Submission of arbitration requests

(1) Arbitration requests to the apf must in general be submitted using the online arbitration request form at www.passagier.at.

(2) Arbitration requests may also be submitted in other written forms (by mail or fax) if the applicant is unable to submit his/her arbitration request using the online form. In these cases, the arbitration request must contain the following minimum information:

- personal details, i.e. name, address, telephone number, fax number if applicable, e-mail address if applicable
- a complete written description of the facts of the case including all the documents required to evaluate the case
- the complaint already sent to the company
- the company's reply, including all correspondence
- the current claim asserted against the company
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(3) The arbitration request must be submitted together with the relevant facts of the case and all necessary documents (e.g. tickets, booking confirmations or boarding passes, pupil, apprentice or vocational school identification, free travel passes, discount cards, fines/additional fare payments, collection letters, taxi or hotel invoices, written

complaint to the company, company reply and all other correspondence). Copies of the documents are sufficient except in individual cases when expressly requested otherwise. Arbitration requests must generally be submitted in German. The arbitration procedure will also be conducted in German. The apf also offers applicants the opportunity to submit the arbitration request in English and have the arbitration procedure conducted in English; however, this is not binding.

- (4) Statements relevant to the procedure must be submitted in writing unless otherwise requested by the apf.
- (5) The procedure will be initiated when the apf receives the arbitration request, insofar as the case lies within the competence of the apf. When submitting the arbitration request, the applicant shall be deemed to have acknowledged the Procedure Directive and confirmed that all the information provided is true. The apf will also send the Procedure Directive by e-mail, fax or post on request.

Art. 9 Forms of delivery

- (1) The apf shall send its correspondence to the e-mail addresses provided by the parties to the procedure.
- (2) If either of the parties has no e-mail address, the correspondence will be sent to the fax number provided.
- (3) If either of the parties has no e-mail address or fax number, the correspondence will be sent by mail to the address provided.

Art. 10 Duty of cooperation

- (1) The companies are obliged to be cooperative during the arbitration procedure and to provide the apf with all the information and documents required to evaluate the case. Insufficient fulfilment of this duty of cooperation and disclosure may be punished with a fine imposed by the competent regional administrative authority.
- (2) If the applicant fails to reply despite being requested to do so with some urgency, it shall be assumed that the arbitration request has been withdrawn. Applicants are notified of this legal consequence in urgent situations.

- (3) The parties to the procedure must submit the statements, information or documents requested by the apf within the deadline set by the apf; this deadline may range from one to no more than eight weeks. The apf may grant a longer deadline in exceptional cases where valid grounds exist.
- (4) The parties to the procedure shall be given the opportunity to respond to the arguments and/or documents presented by the opposing party within a deadline set by the apf; this deadline may range from one to no more than eight weeks. The apf may grant a longer deadline in exceptional cases where valid grounds exist.
- (5) The provision of false and/or incomplete information by the applicant may be construed as malicious and cause the arbitration procedure to be suspended. The apf must be notified immediately of any change of name, address, fax number (where applicable) or e-mail address (where applicable). Should either party fail to notify the apf of any such change, it shall be assumed that all correspondence/e-mails sent to the addresses/numbers provided have been delivered.
- (6) During the arbitration procedure, the parties thereto shall direct all correspondence relating to the case at hand to the apf, except in cases where valid grounds exist. Except in justified cases, the parties shall refrain from involving other facilities and organisations while the procedure is under way.
- (7) The apf is responsible for making all procedural decisions such as setting deadlines, terminating procedures, etc. The pursuit of legal remedies or the resumption of concluded procedures are outside the scope of arbitration procedures.

Art. 11 Verbal negotiations

- (1) The apf may invite one or all parties to attend verbal negotiations at its business premises for practical reasons.
- (2) The apf may dispense with verbal negotiations if these are rejected by the applicant.
- (3) Verbal negotiations constitute an opportunity for the parties to the procedure to present their sides verbally. In such cases, a representative of the apf shall act as a mediator with the goal of facilitating a mutual agreement.

Art. 12 Proposed solution

- (1) The apf is free to consider all evidence.
- (2) The apf shall evaluate the case from both a legal (e.g. ABGB, EisbG, EisbBFG, EKHG, KfIG, LFG, KSchG, SchFG, UWG, Regulation (EC) No. 1371/2007, Regulation (EC) No. 261/2004, Regulation (EC) No. 1107/2006, Regulation (EU) No. 181/2011, Regulation (EU) No. 1177/2010) and factual (equity considerations) standpoint based on the evidence provided by each party and any appraisals obtained. Based on this evaluation, the apf shall then develop a proposal for a solution – preferably in cooperation with the parties to the procedure.
- (3) The apf shall send the proposed solution to the parties to the procedure along with any appraisals made. The parties to the procedure shall consent to or reject (providing justification if possible) the proposed solution within a deadline to be set by the apf; this deadline may range from one to no more than four weeks. The apf may grant a longer deadline in exceptional cases where valid grounds exist.
- (4) The proposed solution must always contain the following general information:
 - acceptance of the proposed solution is not obligatory
 - (unsuccessful) participation in the arbitration procedure does not exclude the assertion of rights through ordinary legal channels after the arbitration procedure has been concluded
 - the solution proposed might not be the same as the ruling that would be obtained in court
 - the consent of both parties to the proposed solution implies consent to an effective extrajudicial settlement. Should either of the parties to the procedure fail to comply with the terms of the settlement, the opposing party must initiate legal proceedings to have the settlement enforced in court.
- (5) Should the apf's evaluation indicate that the applicant's case cannot be pursued, the procedure shall be terminated pursuant to Art. 13 without a solution being proposed.

Art. 13 Conclusion of the arbitration procedure

- (1) Except in cases where valid grounds exist, the parties to the procedure shall be notified of the result in writing. Justified exceptions may for example comprise non-monetary arbitration requests of no major significance, or arbitration requests in which prompt notification is necessary due to the case-specific facts. Notification of the result is deemed to close the procedure.
- (2) Should the parties to the procedure reach an agreement on the subject of the arbitration request – regardless of the stage reached in the arbitration procedure – the apf must immediately be notified and furnished with information concerning the nature of the agreement. The applicant may also terminate the procedure at any time. The apf will then suspend the arbitration procedure and notify the parties thereof in writing (by mail, fax or e-mail).
- (3) If both parties accept the proposed solution, they are deemed to have agreed to an effective extrajudicial settlement.
- (4) If one of the parties to the procedure does not accept the apf's proposed solution, it shall have no binding effect. The arbitration procedure conducted by the apf shall then – insofar as the apf deems appropriate in individual cases – be terminated by a conclusive, non-binding and non-contestable recommendation aimed at settling the matter.
- (5) Applicants may assert their claims before the competent courts independently of the arbitration procedure.
- (6) In cases such as those described in Art. 6 par. 2 and 3 **Appendix I Railways**, the Schienen-Control Kommission must be notified if no mutually acceptable solution can be found. In the case of arbitration requests relating to ticket price compensation after delays or train cancellations, the Schienen-Control Kommission can issue a notice declaring the apf's recommendation as binding if it is alleged that applicable clauses in the EU Passenger Rights Regulation or the Austrian Railway Transport and Passenger Rights Act (EisbBFG) have been violated.
- (7) In cases such as those described in Art. 6 par. 1 **Appendix II Bus services**, the supervisory authority responsible for the company concerned must be informed if a procedure is

initiated to settle the arbitration request. The conclusion and outcome of the procedure must also be reported to the supervisory authority.

- (8) In cases such as those described in Art. 6 par. 1 **Appendix III Shipping**, the Austrian Ministry for Transport, Innovation and Technology (BMVIT) and the competent regional administrative authority must be notified if the company concerned (shipping company or port/terminal operator) fails to fulfil its duty of cooperation.

Art. 14 Duration of the procedure

- (1) The apf endeavours to maintain an annual average duration of no more than six weeks for all arbitration procedures.
- (2) In individual arbitration cases, the apf generally endeavours to provide a mutually acceptable solution within a period of 90 days. In complex cases, it generally endeavours to provide a mutually acceptable solution within six months.
- (3) These deadlines commence on receipt of all documents relating to the arbitration request by the apf as described in Art. 8.
- (4) In keeping with the principles of procedural economy, the apf shall choose which of the means at its disposal to employ based on the expediency thereof and on the importance of the arbitration request for the individual and for the general public.

Art. 15 Costs of the arbitration procedure

- (1) The arbitration procedure is free of charge for the applicants. The contributions payable by the companies involved in the arbitration procedure are set by order of the Austrian Ministry for Transport, Innovation and Technology and currently amount to EUR 78.
- (2) Each party to the procedure bears the costs it incurs during the arbitration procedure. These include its own postal and copying costs, any legal counselling expenses, the costs of appraisals requested by the parties themselves, and the time spent by personnel on the procedure.

Art. 16 Suspension of the statutory limitation period

The submission of the arbitration request and the handling thereof during the arbitration procedure shall suspend the commencement and progression of the statutory limitation period and other deadlines for asserting the applicant's rights and claims affected by the arbitration procedure for the duration of the arbitration procedure until the conclusion thereof.

Art. 17 Company fees and default interest

The companies participating in the arbitration procedure are obliged to refrain from charging default interest or other additional costs such as dunning or collection fees throughout the arbitration procedure until the conclusion thereof.

Art. 18 Data protection and confidentiality

- (1) The apf is bound to protect all data. Personally identifiable information is used in compliance with data protection regulations.
- (2) The apf only uses this data to process the case and conduct the arbitration procedure. The apf sends the documents submitted by the applicant to the respondent. This requirement may be waived in specific cases where there is good cause.
- (3) In the cases described in Art. 13 par. 6 to 8 (e.g. pursuant to § 78a par. 5 EisbG, § 32b par. 4 KfIG, §§ 71a par. 3 and 87a par. 3 SchFG), the data shall be sent to the authorities (e.g. Schienen-Control Kommission, BMVIT) specified therein; in the event of (administrative) criminal cases, the said data must be sent to the competent institutions (e.g. regional administrative authorities). The apf shall use non-personally identifiable information when compiling publications, e.g. the annual reports on the performance of its tasks that must be issued in compliance with § 8 par. 2 Federal Act on the Agency for Passenger Rights and § 9 AStG. The apf shall only use data for other purposes in individual cases where it is entitled to do so.
- (4) The applicant has the right, at any time,
 - to request information as to which of his/her data the apf is processing (Art. 15 GDPR);

- to have his/her data rectified (Art. 16 GDPR);
- to exercise his/her right to data portability (Art. 20 GDPR).

(5) Furthermore, insofar as the applicant's data is no longer required for the purpose or to fulfil the legal obligations for which it was collected, the applicant has the right

- to have his/her data erased (Art. 17 GDPR);
- to have the processing of his/her data restricted (Art. 18 GDPR).

Further information about data privacy is available at the website www.passagier.at.

(6) The parties to the procedure shall maintain strict confidentiality about the content of the arbitration procedure and refrain from disclosing information about the procedure to the media until the conclusion thereof.

Art. 19 apf arbitrator

- (1) The person appointed as the arbitrator in compliance with § 10 par. 2 AStG is mentioned by name on the website www.passagier.at.
- (2) The person appointed as the arbitrator shall immediately disclose all circumstances that may influence his/her independence or neutrality, or which could cause conflicts of interest with any of the parties involved in the procedure, or which could give the impression thereof. If the arbitrator is found to be biased, the arbitration request shall be transferred to the Austrian arbitration board for consumer affairs [*Schlichtung für Verbrauchergeschäfte*].

Art. 20 Information about the arbitration procedure

General information about the arbitration procedure can be retrieved from the apf website at www.passagier.at. The apf will also send this information by e-mail, fax or mail on request.

Art. 21 Entry into force

This Procedure Directive comes into force on 3 January 2020.

Appendix I Railways

Art. 3 apf competence for railway transport

(1) The apf's competence encompasses the following:

1. Pursuant to § 78a par. 1 Railways Act (*Eisenbahngesetz – EisbG*)³, all arbitration requests by regional authorities, interest groups and customers that have been lodged vis-à-vis railway companies, railway infrastructure companies (hereinafter referred to collectively as railway companies) and companies that are members of transport associations (hereinafter: transport associations), insofar as there is a problem with the railway services provided that could not be settled satisfactorily before the applicant lodged the arbitration request.
2. Pursuant to § 78a Par. 2 EisbG, all arbitration requests lodged with the apf by regional authorities, interest groups and passengers, in particular on the grounds of alleged violations of applicable clauses in Regulation (EC) No. 1371/2007⁴ or the Railway Transport and Passenger Rights Act (*EisbBFG*)⁵, or on the grounds of allegedly unlawful regulations in the company's terms of transport including its compensation terms pursuant to § 22a EisbG.

(2) The apf's competence only extends to companies domiciled or doing business in Austria. In individual cases – when the arrival or departure point is located in Austria or there is another connection with Austria – the apf may declare itself competent depending on the specific circumstances (e.g. if no other arbitration board or enforcement body takes action or declares its competence).

(3) The competence of the ordinary courts shall remain unaffected.

³ Railways Act 1957 (valid version)

⁴ Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations, Official Journal no. L 315 dated 23/10/2007.

⁵ Federal Act on Railway Transport and Passenger Rights (*Eisenbahn-Beförderungs- und Fahrgastrechtegesetz – EisbBFG*), Federal Law Gazette I No. 40/2013.

Art. 4 apf parties to the arbitration procedure for railway transport

- (1) Pursuant to § 78a par. 1 and 2 EisbG, applicants may be regional authorities, interest groups, passengers or clients, provided that the arbitration request relates to the transportation of passengers, luggage or cargo.
- (2) Pursuant to § 78a par. 1 and 2 EisbG, respondents may be railway companies or transport associations, insofar as there is a problem with the railway services provided.
- (3) A passenger or client is defined as a person who uses, is entitled to use or intends to use a railway company or transport association.
- (4) Regional authorities are public law entities encompassing all persons who have a local connection with a specific region. In Austria, the regional authorities are the federal government [*Bund*], the provinces [*Bundesländer*] and the municipalities [*Gemeinden*]. The possession of public or publicly derived jurisdiction must be demonstrated when submitting the arbitration request or at the apf's request.
- (5) Interest groups are defined as associations of natural persons or legal entities who have come together voluntarily or through various forms of compulsion. In Austria, chambers, the Federation of Austrian Industries [*Industriellenvereinigung*], the Austrian Trade Union Federation [*Österreichischer Gewerkschaftsbund*], works councils, citizens' initiatives, associations, etc. are all interest groups. The actual existence of the interest group and the powers of representation must be demonstrated when submitting the arbitration request or at the apf's request (e.g. printout from the register of associations, confirmation by the works council, etc.).

Art. 6 Subjects of arbitration requests lodged with the apf relating to railway transport

- (1) Pursuant to § 78a par. 1 EisbG, arbitration requests lodged with the apf must relate to the transport of passengers, luggage or cargo. They may include cases in which the passenger has no legal entitlement. Examples of these include arbitration requests relating to penalties imposed when travelling without a valid ticket or with no ticket at all, arbitration requests relating to ticket price reimbursements requested by the passenger on personal grounds, arbitration requests relating to insufficient information, or arbitration requests

relating to problems with railway staff. Passengers/clients must be averagely circumspect, informed and truthful if an arbitration procedure is to be handled.

- (2) Pursuant to § 78a par. 2 EisbG, arbitration requests may be lodged with the apf in particular on the grounds of alleged violations of applicable clauses in Regulation (EC) No. 1371/2007 or in the EisbBFG. These include all arbitration requests relating to rights arising from these laws and regulations, e.g. arbitration requests relating to compensation for delays, ticket price reimbursements, or the payment of hotel or taxi costs incurred due to delays or train cancellations.
- (3) Pursuant to § 78a par. 2 EisbG, arbitration requests may also be lodged with the apf on the grounds of allegedly unlawful terms in the company's transport conditions, for example terms that violate Regulation (EC) No. 1371/2007, EisbG, EisbBFG, the Consumer Protection Act (*Konsumentenschutzgesetz – KSchG*), the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB), the Railway and Motor Vehicle Liability Act (*Eisenbahn- und Kraftfahrzeughaftpflichtgesetz – EKHG*), the Federal Act Against Unfair Competition (*Bundesgesetz gegen den unlauteren Wettbewerb – UWG*) or other laws.
- (4) Decisions concerning the treatment of an arbitration request shall be made after the receipt thereof.
- (5) The applicant shall receive confirmation that the arbitration request has been received. If grounds for refusal exist, the applicant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of documents relating to the arbitration request. If the case becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Arbitration requests disallowed by the apf for railway transport

The following arbitration requests are disallowed and/or may be rejected by the apf:

- Arbitration requests that do not relate to the transport of passengers, luggage or cargo
- Arbitration requests pursuant to § 78a par. 1 EisbG relating to complaints that were not initially presented to the company concerned for resolution

- Arbitration requests in cases where the ticket was not purchased from a company registered or operating in Austria and/or there is no other connection with Austria
- Arbitration requests relating to the transport terms of companies not registered or operating in Austria
- Arbitration requests that are presented to the apf more than two years after the respective complaint was sent to the company concerned
- Arbitration requests relating to claims, alleged violations or allegedly unlawful regulations for which court or administrative proceedings are pending or which have been finally adjudicated or settled in court
- Arbitration requests that have already been the subject of an arbitration or enforcement procedure
- Arbitration requests for which another arbitration body/office for alternative dispute resolution or national enforcement body is responsible pursuant to Art. 30 par. 1 of Regulation (EC) No. 1371/2007
- Arbitration requests relating to disputes that are malicious or constitute harassment
- Arbitration requests pursuant to § 78a par. 1 EisbG with a value in dispute amounting to less than ten Euro, if the subject of the dispute has no fundamental importance that extends beyond the individual case
- Arbitration requests which, if handled, could seriously impair the efficient functioning of the apf, for example if extensive proof would have to be collected or excessively complex legal issues are involved

Appendix II Bus services

Art. 3 apf competence for bus transport

- (1) Pursuant to § 32b KflG⁶, the apf's competence extends to all arbitration requests lodged by passengers vis-à-vis bus or coach companies (hereinafter: bus companies) operating on regular routes or offering occasional services, insofar as it is claimed that the passenger's rights pursuant to Regulation (EU) No. 181/2011⁷ were violated and the complaint lodged by the applicant with the relevant bus company was not resolved, not resolved satisfactorily or not resolved in due time.
- (2) However, the apf is not competent to handle arbitration requests that are not described in the Regulation cited (cf. also Art. 6 and 7).
- (3) The competence of the ordinary courts shall remain unaffected.

Art. 4 apf parties to the arbitration procedure for bus transport

- (1) Pursuant to Art. 28 of Regulation (EU) No. 181/2011 in conjunction with § 32b KflG, applicants may be bus company passengers, provided that the arbitration request relates to a violation of their rights as specified in the Regulation cited.
- (2) Pursuant to Art. 2 and 28 Regulation (EU) No. 181/2011 in conjunction with §§ 32a and 32b KflG, respondents may be bus companies included in the scope of application of the Regulation cited which are headquartered in Austria and/or which offer regular or occasional services arriving in or departing from Austria.
- (3) A passenger is defined as a person who uses, is entitled to use or intends to use a bus company.

⁶ Bus Routes Act [Kraftfahrliniengesetz] 1999 (valid version)

⁷ Regulation (EU) No. 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No. 2006/2004, Official Journal No. L 55 dated 28/02/2011.

Art. 6 Subjects of arbitration requests lodged with the apf relating to bus transport

- (1) Pursuant to § 32b KfG, arbitration requests lodged with the apf may relate to passenger transportation, luggage that has been lost or damaged in accidents, and compensation for lost or damaged wheelchairs or other mobility devices, along with alleged violations of applicable clauses in Regulation (EU) No. 181/2011. These include all arbitration requests relating to rights arising from this Regulation, e.g. arbitration requests relating to compensation for delays, ticket price reimbursements, or the payment of hotel or taxi costs incurred due to delays or bus cancellations.
- (2) Passengers must be averagely circumspect, informed and truthful if an arbitration procedure is to be handled.
- (3) Decisions concerning the treatment of a arbitration request shall be made after the receipt thereof.
- (4) The applicant shall receive confirmation that the arbitration request has been received. If grounds for refusal exist, the applicant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of documents relating to the arbitration request. If the case becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Arbitration requests disallowed by the apf for bus transport

The following arbitration requests are disallowed and/or may be rejected by the apf:

- Arbitration requests that do not relate to passenger transportation, the loss or damage of luggage in accidents, or compensation for lost or damaged wheelchairs and other mobility devices
- Arbitration requests that are not based on any alleged violation of passenger rights as specified in Regulation (EU) No. 181/2011
- Arbitration requests relating to cases where no complaint was first lodged with the company concerned for resolution, or if the applicant has not waited to see if a mutual agreement can be reached or whether a final answer is received within three months of the complaint being submitted

- Arbitration requests in cases where neither the arrival or departure points nor the headquarters of the company concerned are located in Austria
- Arbitration requests that are presented to the apf more than two years after the respective complaint was sent to the company concerned
- Arbitration requests relating to claims or alleged violations for which court or administrative proceedings are pending or which have been finally adjudicated or settled in court
- Arbitration requests that have already been the subject of an arbitration or enforcement procedure
- Arbitration requests for which another arbitration body/office for alternative dispute resolution or national enforcement body is responsible pursuant to Art. 28 par. 1 of Regulation (EU) No. 181/2011
- Arbitration requests relating to disputes that are malicious or constitute harassment
- Arbitration requests which, if handled, could seriously impair the efficient functioning of the apf, for example if extensive proof would have to be collected or excessively complex legal issues are involved

Appendix III Shipping

Art. 3 apf competence for ship transport

- (1) Pursuant to §§ 71a und 87a SchFG⁸, the apf's competence extends to all arbitration requests lodged by users of ports and shipping terminals in Austria and by passengers of shipping companies, insofar as it is alleged that their rights pursuant to Regulation (EU) No. 1177/2010⁹ were violated and the complaint lodged by the applicant with the company concerned was not resolved, not resolved satisfactorily or not resolved in due time.
- (2) However, the apf is not competent to handle arbitration requests that are not described in the Regulation cited (cf. also Art. 6 and 7).
- (3) The competence of the ordinary courts shall remain unaffected.

Art. 4 apf parties to the arbitration procedure for ship transport

- (1) Pursuant to Art. 25 of Regulation (EU) No. 1177/2010 in conjunction with §§ 71a and 87a SchFG, applicants may be users of ports and shipping terminals or passengers of shipping companies, insofar as the arbitration request relates to a violation of their rights pursuant to the Regulation cited.
- (2) Pursuant to Art. 2 and 25 Regulation (EU) No. 1177/2010 in conjunction with §§ 71a and 87a SchFG, respondents may be operators of ports and shipping terminals in Austria and shipping companies which are headquartered in Austria and/or which operate regular passenger services or cruises departing from or arriving in Austria.
- (3) A passenger is defined as a person who uses, is entitled to use or intends to use a shipping company.

⁸ Shipping Act 1997 (valid version)

⁹ Regulation (EU) No. 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No. 2006/2004, Official Journal No. L 334 dated 17/12/2010.

Art. 6 Subjects of arbitration requests lodged with the apf relating to ship transport

- (1) Pursuant to §§ 71a and 87a SchFG, arbitration requests lodged with the apf may relate to passenger transportation or compensation for lost or damaged mobility devices or other special equipment, along with alleged violations of applicable clauses in Regulation (EU) No. 1177/2010. These include all arbitration requests relating to rights arising from this Regulation, e.g. arbitration requests relating to compensation for delays, ticket price reimbursements, or the payment of hotel or taxi costs incurred due to delays or ship cancellations.
- (2) Passengers must be averagely circumspect, informed and truthful if an arbitration procedure is to be handled.
- (3) Decisions concerning the treatment of an arbitration request shall be made after the receipt thereof.
- (4) The applicant shall receive confirmation that the arbitration request has been received. If grounds for refusal exist, the applicant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of documents relating to the arbitration request. If the case becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Arbitration requests disallowed by the apf for ship transport

The following arbitration requests are disallowed and/or may be rejected by the apf:

- Arbitration requests that do not refer to passenger transportation or to compensation for lost or damaged mobility devices or other special equipment
- Arbitration requests that are not based on any alleged violation of passenger rights as specified in Regulation (EU) No. 1177/2010
- Arbitration requests relating to complaints that were not initially presented to the company concerned for resolution, and arbitration requests where the applicant did not wait for an answer or await the expiry of the two-month reply deadline following receipt of the aforesaid complaint

- Arbitration requests in cases where neither the arrival or departure points nor the headquarters of the company concerned are located in Austria
- Arbitration requests that are presented to the apf more than two years after the respective complaint was sent to the company concerned
- Arbitration requests relating to claims, alleged violations or allegedly unlawful regulations for which court or administrative proceedings are pending or which have been finally adjudicated or settled in court
- Arbitration requests that have already been the subject of an arbitration or enforcement procedure
- Arbitration requests for which another arbitration body/office for alternative dispute resolution or national enforcement body is responsible pursuant to Art. 25 par. 1 of Regulation (EU) No. 1177/2010
- Arbitration requests relating to disputes that are malicious or constitute harassment
- Arbitration requests which, if handled, could seriously impair the efficient functioning of the apf, for example if extensive proof would have to be collected or excessively complex legal issues are involved

Appendix IV Aviation

Art. 3 apf competence for air transport

- (1) Pursuant to Art. 16 Regulation (EC) No. 261/2004¹⁰ and Art. 14 Regulation (EC) No. 1107/2006¹¹ in conjunction with § 139a LFG¹², the apf's competence extends to all arbitration requests lodged by passengers with airlines or civilian airfield owners (e.g. airport operators), insofar as it is alleged that the passengers' rights pursuant to Regulation (EC) No. 261/2004 or Regulation No. 1107/2006 were violated.
- (2) However, the apf is not competent to handle arbitration requests that are not described in the laws and regulations cited (cf. also Art. 6 and 7).
- (3) The competence of the ordinary courts shall remain unaffected.

Art. 4 apf parties to the arbitration procedure for air transport

- (1) Arbitration requests may be lodged by airline passengers pursuant to Art. 16 Regulation (EC) No. 261/2004 or, pursuant to Art. 14 Regulation (EC) No. 1107/2006, by airline passengers and users of civilian airfields (e.g. airports), insofar as the arbitration request refers to a violation of their rights pursuant to the Regulations cited.
- (2) Respondents may be airlines which are headquartered in Austria and/or which operate flights departing from or landing in Austria pursuant to Art. 16 Regulation (EC) No. 261/2004, or Austrian airfield owners (e.g. airport operators) and airlines which are headquartered in Austria and/or which operate flights departing from or landing in Austria pursuant to Art. 14 Regulation (EC) No. 1107/2006. In this context, a "flight" is defined as a single flight movement with one take-off and one landing. Although a journey with several legs may consist of more than one flight (e.g. with stopovers or connections), the

¹⁰ Regulation (EC) No. 261/2004 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, Official Journal no. L 46 dated 17/2/2004.

¹¹ Regulation (EC) No. 1107/2006 on the rights of disabled persons and persons with restricted mobility when travelling by air, Official Journal no. L 204 dated 26/07/2006.

¹² Aviation Act 1957 (valid version)

apf's competence depends on the individual flight movement. Straightforward refuelling stops with no passenger movements are not classified as stopovers.

- (3) An air passenger is defined as a person who uses, is entitled to use or intends to use an airline.

Art. 6 Subjects of arbitration requests lodged with the apf relating to air transport

- (1) Pursuant to § 139a LFG, arbitration requests lodged with the apf may relate to passenger transportation or compensation for lost or damaged wheelchairs, other mobility devices or other aids, along with alleged violations of applicable clauses in Regulation (EC) No. 261/2004 or Regulation (EC) No. 1107/2006. These include all arbitration requests relating to rights arising from these Regulations, e.g. arbitration requests relating to compensation for delays, ticket price reimbursements, or the payment of hotel or taxi costs incurred due to delays or flight cancellations.
- (2) Air passengers must be averagely circumspect, informed and truthful if an arbitration procedure is to be handled.
- (3) Decisions concerning the treatment of an arbitration request shall be made after the receipt thereof.
- (4) The applicant shall receive confirmation that the arbitration request has been received. If grounds for refusal exist, the applicant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of documents relating to the arbitration request. If the case becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Arbitration requests disallowed by the apf for air transport

The following arbitration requests are disallowed and/or may be rejected by the apf:

- Arbitration requests that do not relate to air passenger transport or to compensation for lost or damaged wheelchairs, other mobility devices or aids
- Arbitration requests that are not based on any alleged violation of air passenger rights as specified in Regulation (EC) No. 261/2004 or Regulation (EC) No. 1107/2006

- Arbitration requests relating to complaints that were not initially presented to the company concerned for resolution, and arbitration requests where the applicant did not wait for an answer or await the expiry of the six-week reply deadline following receipt of the aforesaid complaint
- Arbitration requests in cases where neither the arrival or departure points nor the headquarters of the company concerned are located in Austria
- Arbitration requests that are presented to the apf more than two years after the respective complaint was sent to the company concerned
- Arbitration requests relating to claims or alleged violations for which court or administrative proceedings are pending or which have been finally adjudicated or settled in court
- Arbitration requests that have already been the subject of an arbitration or enforcement procedure
- Arbitration requests for which another arbitration body/office for alternative dispute resolution or national enforcement body is responsible pursuant to Art. 16 par. 1 of Regulation (EC) No. 261/2004 or Art. 14 par. 1 of Regulation (EC) No. 1107/2006
- Arbitration requests relating to disputes that are malicious or constitute harassment
- Arbitration requests which, if handled, could seriously impair the efficient functioning of the apf, for example if extensive proof would have to be collected or excessively complex legal issues are involved