

Procedure Directive

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

Contents

Art. 1 Agency for Passenger Rights	3
Art. 2 Purpose of the Agency for Passenger Rights.....	3
Art. 3 Competence of the Agency for Passenger Rights	3
Art. 4 Parties to the procedure	3
Art. 5 Representation during the arbitration procedure	3
Art. 6 Subjects of complaints	4
Art. 7 Inadmissible complaints.....	4
Art. 8 Submission of complaints.....	4
Art. 9 Forms of delivery.....	5
Art. 10 Duty of cooperation	6
Art. 11 Verbal negotiations	7
Art. 12 Proposed solution	7
Art. 13 Conclusion of the arbitration procedure.....	8
Art. 14 Duration of the procedure	9
Art. 15 Costs of the arbitration procedure.....	9
Art. 16 Suspension of the statutory limitation period	10
Art. 17 Company fees and default interest.....	10
Art. 18 Data protection and confidentiality	10
Art. 19 apf arbitrator	11

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

Art. 20 Information about the arbitration procedure.....	11
Art. 21 Entry into force.....	11
Appendix I Railways.....	12
Art. 3 apf competence for railway transport	12
Art. 4 apf parties to the arbitration procedure for railway transport	13
Art. 6 Subjects of complaints to the apf relating to railway transport	13
Art. 7 Complaints disallowed by the apf for railway transport.....	14
Annex II Bus services	16
Art. 3 apf competence for bus transport	16
Art. 4 apf parties to the arbitration procedure for bus transport	16
Art. 6 Subjects of complaints to the apf relating to bus transport	17
Art. 7 Complaints disallowed by the apf for bus transport.....	17
Appendix III Shipping.....	19
Art. 3 apf competence for ship transport	19
Art. 4 apf parties to the arbitration procedure for ship transport	19
Art. 6 Subjects of complaints to the apf relating to ship transport	20
Art. 7 Complaints disallowed by the apf for ship transport.....	20
Appendix IV Aviation.....	22
Art. 3 apf competence for air transport.....	22
Art. 4 apf parties to the arbitration procedure for air transport.....	22
Art. 6 Subjects of complaints to the apf relating to air transport.....	23
Art. 7 Complaints disallowed by the apf for air transport	23

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 complaints

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

Art. 7 Inadmissible complaints

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

Art. 8 Submission of complaints

(1) Complaints to the apf must in general be submitted using the online complaints form at www.passagier.at.

(2) Complaints may also be submitted in other written forms (by mail or fax) if the complainant is unable to submit his/her complaint using the online complaints form. In these cases, the complaint 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
- a declaration of consent pursuant to § 8 Data Protection Act 2000 (DSG 2000)³ encompassing permission to request all the data necessary to evaluate the case from

³ Federal Act on the Protection of Personal Data (*Datenschutzgesetz 2000 – DSG 2000*), Federal Law Gazette I no. 165/1999 (valid version)

the respective companies and authorities, thus empowering these to send the relevant data to the apf.

- (3) The complaint 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. Complaints must generally be submitted in German. The arbitration procedure will also be conducted in German. The apf also offers complainants the opportunity to submit the complaint 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 complaint, insofar as the case lies within the competence of the apf. When submitting the complaint, the complainant 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.
- (6) The apf shall then send the documents submitted to the respondent. This step may be omitted in individual cases.

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, 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 complainant fails to reply despite being requested to do so with some urgency, it shall be assumed that the complaint has been withdrawn. Complainants 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 complainant 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 to its business premises for practical reasons.
- (2) The apf may dispense with verbal negotiations if these are rejected by the complainant.
- (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, EiszG, EiszBFG, 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 complainant'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 complaints of no major significance, or complaints 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 complaint – regardless of the stage reached in the arbitration procedure – the apf must immediately be notified along with information concerning the nature of the agreement. The complainant 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) Complainants 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 complaints 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 complaint. 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 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 complaint documents 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 complaint 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 complainants. 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 time spent by personnel on the procedure.

Art. 16 Suspension of the statutory limitation period

The submission of the complaint 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 complainant'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) In compliance with § 8 DSGVO 2000, the complaint must include the complainant's written consent authorising the apf to collect all data deemed essential to evaluate the case, e.g. from the companies and authorities, and authorising the said companies and authorities to send the aforementioned data to the apf.
- (2) The apf is bound to protect all data. Personally identifiable information is used in a proper manner and in compliance with data protection regulations.
- (3) The apf only uses this data to process the complaint and conduct the arbitration procedure. In the cases described in Art. 13 par. 6 to 8, the appropriate data shall be sent to the authorities listed 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 its own publications, e.g. the annual reports on the apf's activities 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 use data as described in § 8 DSGVO 2000.

- (4) 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 complaint 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 31 March 2017.

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*)⁴, all complaints by regional authorities, interest groups and customers that have been lodged with 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 complainant lodged the complaint.
2. Pursuant to § 78a Par. 2 EisbG, all complaints 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. 1371/2007⁵ or the Railway Transport and Passenger Rights Act (*EisbBFG*)⁶, 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.

⁴ Railways Act 1957 (valid version)

⁵ Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations, Official Journal no. L 315 dated 23/10/2007.

⁶ Federal Act on Railway Transport and Passenger Rights (*Eisenbahn-Beförderungs- und Fahrgastrechtgesetz – 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 EibG, complainants may be regional authorities, interest groups, passengers or clients, provided that the complaint relates to the transportation of passengers, luggage or cargo.
- (2) Pursuant to § 78a par. 1 and 2 EibG, 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 complaint 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 complaint or at the apf's request (e.g. printout from the register of associations, confirmation by the works council, etc.).

Art. 6 Subjects of complaints to the apf relating to railway transport

- (1) Pursuant to § 78a par. 1 EibG, complaints 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 complaints about penalties imposed when travelling without a valid ticket or with no ticket at all, complaints about ticket price reimbursements requested by the passenger on personal grounds, complaints about insufficient information, or complaints about 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, complaints 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 complaints relating to rights arising from these laws and regulations, e.g. complaints 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, complaints 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 a complaint shall be made after the receipt thereof.
- (5) The complainant shall receive confirmation that the complaint has been received. If grounds for refusal exist, the complainant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of complaint documents. If the complaint becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Complaints disallowed by the apf for railway transport

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

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

- Complaints 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
- Complaints relating to the transport terms of companies not registered or operating in Austria
- Complaints that are presented to the apf more than two years after being sent to the company concerned
- Complaints 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
- Complaints that have already been the subject of an arbitration or enforcement procedure
- Complaints 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
- Complaints relating to disputes that are malicious or constitute harassment
- Complaints pursuant to § 78a par. 1 EiszG 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
- Complaints 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

Annex II Bus services

Art. 3 apf competence for bus transport

- (1) Pursuant to § 32b KfIG⁷, the apf's competence extends to all complaints lodged by passengers with 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. 181/2011⁸ were violated and the complaint lodged by the complainant 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 complaints 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 KfIG, complainants may be bus company passengers, provided that the complaint 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 KfIG, 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.

⁷ Bus Routes Act [*Kraftfahrlineingesetz*] 1999 (valid version)

⁸ 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 complaints to the apf relating to bus transport

- (1) Pursuant to § 32b KfLG, complaints 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 complaints relating to rights arising from this Regulation, e.g. complaints 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 complaint shall be made after the receipt thereof.
- (4) The complainant shall receive confirmation that the complaint has been received. If grounds for refusal exist, the complainant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of complaint documents. If the complaint becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Complaints disallowed by the apf for bus transport

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

- Complaints 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
- Complaints that are not based on any alleged violation of passenger rights as specified in Regulation (EU) No. 181/2011
- Complaints that were not firstly lodged with the company concerned for resolution, or if the complainant 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 delivered

- Complaints in cases where neither the arrival or departure points nor the headquarters of the company concerned are located in Austria
- Complaints that are presented to the apf more than two years after being sent to the company concerned
- Complaints relating to claims or alleged violations for which court or administrative proceedings are pending or which have been finally adjudicated or settled in court
- Complaints that have already been the subject of an arbitration or enforcement procedure
- Complaints 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
- Complaints relating to disputes that are malicious or constitute harassment
- Complaints 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 SchFG⁹, the apf's competence extends to all complaints 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. 1177/2010¹⁰ were violated and the complaint lodged by the complainant 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 complaints 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, complainants may be users of ports and shipping terminals or passengers of shipping companies, insofar as the complaint 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.

⁹ Shipping Act 1997 (valid version)

¹⁰ 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 complaints to the apf relating to ship transport

- (1) Pursuant to §§ 71a and 87a SchFG, complaints 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 complaints relating to rights arising from this Regulation, e.g. complaints 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 a complaint shall be made after the receipt thereof.
- (4) The complainant shall receive confirmation that the complaint has been received. If grounds for refusal exist, the complainant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of complaint documents. If the complaint becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Complaints disallowed by the apf for ship transport

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

- Complaints that do not refer to passenger transportation or to compensation for lost or damaged mobility devices or other special equipment
- Complaints that are not based on any alleged violation of passenger rights as specified in Regulation (EU) No. 1177/2010
- Complaints that were not initially presented to the company concerned for resolution, and complaints where the complainant did not wait for an answer or await the expiry of the two-month reply deadline following receipt of the complaint
- Complaints in cases where neither the arrival or departure points nor the headquarters of the company concerned are located in Austria

- Complaints that are presented to the apf more than two years after being sent to the company concerned
- Complaints 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
- Complaints that have already been the subject of an arbitration or enforcement procedure
- Complaints 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
- Complaints relating to disputes that are malicious or constitute harassment
- Complaints 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. 261/2004¹¹ and Art. 14 Regulation (EC) No. 1107/2006¹² in conjunction with § 139a LFG¹³, the apf's competence extends to all complaints 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 complaints 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) Complaints 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 complaint 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 apf's competence depends on the individual flight movement.

¹¹ 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.

¹² 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.

¹³ Aviation Act 1957 (valid version)

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 complaints to the apf relating to air transport

- (1) Pursuant to § 139a LFG, complaints 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 complaints relating to rights arising from these Regulations, e.g. complaints 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 a complaint shall be made after the receipt thereof.
- (4) The complainant shall receive confirmation that the complaint has been received. If grounds for refusal exist, the complainant shall be notified of the refusal and the grounds for the refusal within three weeks of the apf receiving the entire set of complaint documents. If the complaint becomes inadmissible during the arbitration procedure, the same notification process shall be implemented at the time the grounds for refusal are established.

Art. 7 Complaints disallowed by the apf for air transport

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

- Complaints that do not relate to air passenger transport or to compensation for lost or damaged wheelchairs, other mobility devices or aids
- Complaints 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

- Complaints that were not initially presented to the company concerned for resolution, and complaints where the complainant did not wait for an answer or await the expiry of the six-week reply deadline following receipt of the complaint
- Complaints in cases where neither the arrival or departure points nor the headquarters of the company concerned are located in Austria
- Complaints that are presented to the apf more than two years after being sent to the company concerned
- Complaints relating to claims or alleged violations for which court or administrative proceedings are pending or which have been finally adjudicated or settled in court
- Complaints that have already been the subject of an arbitration or enforcement procedure
- Complaints 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
- Complaints relating to disputes that are malicious or constitute harassment
- Complaints 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