

Overview of the year 2023

The Agency for Passenger Rights (apf) is legally obliged to compile an annual report on its activities and results pursuant to section 8 par. 2 Federal Passenger Agency Act¹ and section 9 AStG². The content of the 2023 report is summarised below. The full report can be downloaded from the apf website.³

About the Agency for Passenger Rights

The apf is the statutory arbitration board and enforcement body for rail, bus, waterborne and air transport. As part of its arbitration activities, it is responsible for settling claims out of court and helping passengers obtain justice in disputes with companies.

In its function as an enforcement body, the apf informs rail, bus, waterborne and air passengers of their rights, monitors observance of the passenger rights embedded in the EU regulations and, if necessary, takes further steps to induce the companies concerned to fulfil their obligations.

apf organisation

The apf is a department of Schienen-Control and has no separate legal identity. In 2023, applicants' concerns (questions, arbitration requests, procedures) were handled directly by the director of the apf and a team of up to 15 full-time/part-time employees.

apf funding

The apf is funded pro rata by contributions from the companies involved in the arbitration procedures and by contributions from the budget of the Republic of Austria. Companies participating in arbitration procedures are liable for costs. At present, these are fixed at 78 Euro per procedure in accordance with the PFAG Cost Contribution Ordinance 2015⁴. These contributions are calculated to cover 40 percent of the apf's costs⁵. The remaining costs are covered by the BMK using funds from the federal budget.

apf tasks

The apf's task is to help passengers obtain justice without having to go to court. The apf views itself as an independent mediator between transport companies and their passengers. Passengers and clients of railway undertakings, railway station operators, integrated ticket organisations, airlines, waterborne transport companies and bus/coach companies (and to a lesser extent operators of bus stations, ports, terminals and civilian aerodromes, e.g. airport operators) can submit arbitration requests to the apf provided they have previously attempted to resolve the issue with the company concerned. The apf is not responsible for urban transport companies such as Subways, Tram-Services and City-Bus-Service.

¹ Federal Passenger Agency Act, Federal Law Gazette (BGBl) I 2015/61 (current version).

² Alternative Dispute Resolution Act – AStG, BGBl I 2015/105 (current version).

³ www.passagier.at

⁴ PFAG Cost Contribution Ordinance 2015, BGBl II 2015/150.

⁵ Pursuant to section 4 par. 3 Federal Passenger Agency Act.

apf competences

Rail transport

With regard to rail transport, the apf helps all passengers and clients of railway undertakings and integrated ticket organisations obtain justice when using the railway. The apf can help with almost any issue involving a contract of carriage.

The apf is obliged to notify the Schienen-Control Kommission of any unresolved disputes relating to rail transport (e.g. if it is alleged that the conditions for compensation contain unlawful provisions).

Bus, waterborne and air transport

With regard to bus, air and waterborne transport, the apf's activities are circumscribed by EU regulations, as a result of which its competences are more restricted than in the rail transport sector. The apf also upholds the rights of persons with disabilities or reduced mobility.

Body responsible for cooperating with consumer protection authorities

In an amendment to the Consumer Authorities Cooperation Act (VBKG)⁶, the apf was specified as the body responsible for cooperating with consumer protection authorities in the areas of bus, air, and waterborne transport. Under this law⁷, the national authorities responsible for consumer protection legislation may seek assistance from the corresponding authorities abroad. They can then take action against companies in the event of cross-border violations of consumer protection regulations.

This cooperation between authorities now also encompasses the Rail Passenger Rights Regulation and the PRM Air Passenger Rights Regulation governing air transport, and has done so since 17 January 2020⁸. The amendment to the Consumer Authorities Cooperation Act⁹ required for national implementation came into force on 26 March 2021. This expanded both the scope of the statute and the powers granted (e.g. tracing data and financial flows, test purchases, acceptance of commitments to cease violations).

Enforcing passenger rights

If no solution remedying the violation of the respective passenger rights regulation can be found during the arbitration procedure, the apf, in its capacity as the enforcement body, will notify the competent legal authority accordingly. The same applies if a company does not participate in the arbitration procedure.

The amendment to the Aviation Act (LFG)¹⁰ granted the apf the status of a party to administrative penalty proceedings in the air transport sector. The apf is thus authorised to view all case files, request all the relevant information, and appeal to the Federal Administrative Court and Supreme Administrative Court.

In the year 2023, the apf has opened 152 legal proceedings.

⁶ Consumer Authorities Cooperation Act – VBKG, BGBl I 2006/148, version published in BGBl I 2015/61.

⁷ Consumer Authorities Cooperation Act – VBKG, BGBl 2006/148 (current version).

⁸ Regulation (EC) 1107/2006 OJ L 2006/204, 1 and Regulation (EU) 2017/2394, OJ L 2017/345, 1.

⁹ Consumer Authorities Cooperation Act – VBKG, BGBl I 2006/148, version published in BGBl I 2021/57.

¹⁰ Aviation Act – LFG, BGBl 1957/253 (current version).

apf arbitration procedures

The apf does not replace the respective company's complaints management. Before the apf can take action, passengers must attempt to reach a mutual agreement with the respective company themselves.

Detailed information about the apf's competences for each mode of transport, i.e. who can submit an arbitration request to the apf, which issues can be addressed, which arbitration requests must be rejected, the exact course of the arbitration procedure, the costs of the procedure etc. is provided in German in the section on "Arbitration procedures" beginning on page 30 of the full report.

Validation of arbitration requests relating to rail transport

In the case of arbitration requests from rail passengers relating to non-existent or insufficient fare compensation for train delays and cancellations, the Schienen-Control Kommission can declare the apf's proposed solution binding and award the compensation to the passenger¹¹. This regulation is enforced in cases where no agreement can be reached with the railway undertaking. The Schienen-Control Kommission does not possess this competence in the other three transport sectors. Even in the rail transport sector, it extends only to fare compensation in the event of train delays and cancellations and not to any other claims.

Publication and review of conditions of carriage

Railway undertakings and integrated ticket organisations in the railway transport sector are obliged to present their conditions of carriage to Schienen-Control pursuant to section 22b Railway Act (EisbG).

These conditions of carriage must be presented both when they are first published and after subsequent amendments. Pursuant to section 78b EisbG, the Schienen-Control Kommission has the right to examine whether the conditions of carriage published by the railway undertakings and integrated ticket organisations comply with the law; in the event of any violations, Schienen-Control may declare them void. The review encompasses all Austrian and European legislation (e.g. KSchG¹², EisbBFG¹³ and the Rail Passenger Rights Regulation¹⁴).

apf annual assessment

The year 2023 was once again marked by a record in railway arbitration procedures at the apf. A total of 1,307 inquiries and arbitration requests were filed. The aviation sector saw 5,219 inquiries and proceedings, the second-highest number since the foundation of the apf.

The cases involving railway transport included difficulties in cancelling or obtaining online tickets, fines, reduced service-quality in overnight train travel and refunds for unused tickets. In the aviation sector, organizational deficiencies, weather disruptions, and strikes led to numerous flight cancellations or delays in passenger processing. Furthermore, experts from the apf in the aviation sector were increasingly confronted with procedures regarding flight time changes and the examination of exceptional circumstances. The apf approached the issues with a solution-oriented and efficient mindset for travellers. Only three percent of mediation cases failed to reach an agreement despite intensive efforts.

¹¹ Pursuant to section 78a par. 5 EisbG.

¹² Consumer Protection Act – KSchG, BGBl 1979/140 (current version).

¹³ Railway Carriage and Passenger Rights Act – EisbBFG BGBl I 2013/40 (current version)

¹⁴ Regulation (EC) 1371/2007 OJ L 2007/315, 14.

Arbitration requests and enquiries

In 2023, the apf received a total of 6,610 written arbitration requests and enquiries (2022: 5,896), 5,219 of which related to air transport (2022: 4,697), 1,307 to rail transport (2022: 1,120), 77 to long-distance bus transport (2022: 69) and seven to waterborne transport (2022: ten). These numbers show an increase of overall arbitration requests by twelve per cent compared to 2022.

Arbitration procedures initiated

Not every arbitration request will ultimately result in a procedure being opened. In all, 4,878 arbitration procedures were initiated in 2023 (2022: 4,264); this means an increase by 14 percent compared to 2022. Most of these (3,858) related to air transport (2022: 3,350), followed by rail transport with 991 (2022: 892) and long-distance bus transport with 31 (2022: 22) procedures. No procedures were initiated in the waterborne transport sector (2022: no procedure).

Compensation, reimbursements and penalty rebates

In 2023, the apf obtained a sum of 2.5 million Euro in monetary compensation, reimbursements and penalty rebates for applicants (2022: 1.6 million Euro). This is an increase of approx. 55 percent year on year. The increase was mainly caused by an increase in closed procedures in the aviation sector.

At 2.3 million Euro, the lion's share of the total amount fell to the air transport sector (2022: 1.5 million Euro), while 203,705 Euro were obtained in the rail transport sector (2022: 114,637 Euro) and 3,387 Euro in the bus transport sector (2022: 3,291 Euro).

Reaction time and duration of procedures

In 2023, the average time taken for an initial response to be sent to the applicant was around one day (2022: 1 day). The apf was thus able to maintain its reaction time despite the increased number of requests.

The average duration of the apf's arbitration procedures was around 52 days (2022: 31 days). The main reason for this decrease is the increase in arbitration procedures involving extraordinary circumstances in the aviation sector. These cases need to be assessed individually and the evidence provided by the airline needs to be reviewed by the apf-team.

Rail transport

Arbitration requests and enquiries

In 2023, the apf received 1,307 arbitration requests relating to rail transport (2022: 1,120), an increase of 17 percent and once again the highest number recorded since the apf was established.

70 percent of the applications rejected by the apf were repudiated on the grounds that the passenger had not yet lodged a claim with the company concerned (2022: 78 percent).

Arbitration procedures

In all, 978 arbitration procedures were concluded in 2023 (2022: 888).

In 2023, 96 percent of all procedures in the rail transport sector reached an outcome to the satisfaction of both parties (2022: 98 percent). Despite intensive effort, no mutual agreement could be reached in four percent of procedures (2022: two percent); two percent of procedures were substantively suspended (2022: 0.5 percent). These involved cases with no foundation, e.g. because the case had already been settled with the company concerned.

In 2023, the railway undertakings involved were obliged to pay costs in 706 of the procedures concluded in the rail transport sector (2022: 670).

Company obligation to cooperate and complaints filed with district administrative authorities

In 2023, none of the companies in the rail transport sector refused to participate in an arbitration procedure (2022: no companies).

Grounds for procedures and distribution among companies

At 39 percent, the most frequent grounds for the initiation of arbitration procedures in 2023 were ticket refunds (2022: 37 percent).

Procedures relating to passenger fines and fees took second place at 22 percent (2022: 30 percent).

Third place was procedures relating to compensation for other costs, such as accommodation (Hotel) or alternative transportation (Taxi, Bus, etc.).

95 percent of the procedures involved ÖBB-Personenverkehr (2022: 95 percent), two percent involved WESTbahn (2022: two percent) and one percent One Mobility (KlimaTicket). The remainder involved other transport companies, infrastructure operators and integrated ticket organisations.

Compensation, reimbursements and penalty rebates

The sum obtained by the apf from all the rail transport procedures concluded in 2023 amounted to 203,705 Euro (2022: 114,638 Euro). This marks a new record high in the railway sector. 48 percent of that sum was, however, achieved in a single case.

Duration of procedures

In 2023, the apf was able to resolve 77 percent of rail transport procedures in less than two weeks (2022: 83 percent). Another 18 percent of procedures were concluded in less than one month (2022: twelve percent) and one percent in less than two months (2022: four percent). Only one percent of arbitration procedures took longer than two months (as in 2022); these mostly involved cases that were legally highly complex.

In 2023, the average duration of all (simple to highly complex) arbitration procedures in the rail transport sector was around ten days (2022: nine days).

Bus transport

Arbitration requests and enquiries

In 2023, the apf received a total of 77 arbitration requests relating to bus transport (2022: 69).

96 percent of those rejected were repudiated on the grounds of non-competence (2022: 88 percent). This includes requests for arbitration for bus-lines that do not exceed a distance of 250 km.

Arbitration procedures

In all, 31 arbitration procedures were concluded in the bus transport sector in 2023 (2022: 22).

96 percent of the procedures in the bus transport sector reached an outcome to the satisfaction of both parties (2022: 100 percent).

Company obligation to cooperate and complaints filed with district administrative authorities

In 2023, none of the companies in the bus transport sector refused to participate in an arbitration procedure (2022: no companies).

Grounds for procedures and distribution among companies

At 67 percent, cancellations, delayed departures and overbooking were the main reasons why arbitration procedures were initiated in the bus transport sector in 2023 (2022: 82 percent cancellations).

17 percent of procedures related to forms of assistance such as meals and accommodation (2022: nine percent).

94 percent of all procedures concluded in 2023 involved Flixbus (2022: 100 percent). The rest of the proceedings were concluded with Dr. Richard Linien and Globtour.

Compensation and reimbursements

In 2023, the apf obtained 3,387 Euro in monetary compensation and reimbursements for bus passengers (2022: 3,291 Euro). This is the highest amount of compensation in the bus sector in the history of apf.

Duration of procedures

42 percent of the procedures initiated in 2023 were concluded within two weeks (2022: 28 percent). 46 percent of procedures were concluded in less than one month (2022: 56 percent) and twelve percent in less than two months (2022: eleven percent).

The average duration of the bus transport procedures concluded in 2022 was around 21 days (2022: 23 days).

Waterborne transport

Arbitration requests, enquiries and arbitration procedures

In 2023, the apf received a total of seven arbitration requests relating to waterborne transport (2022: ten). No procedures were initiated (2022: no procedure). In 2023, as in previous years, all the requests rejected were repudiated on the grounds of non-competence (cases without context to Austria)

Air transport

Arbitration requests and enquiries

In all, 5,219 arbitration requests and enquiries relating to air transport were processed in 2023 (2022: 4,697).

73 percent of those rejected in 2023 were repudiated on the grounds of non-competence (2022: 72 percent) and 17 percent because the passenger had not yet lodged a claim with the airline concerned (2022: 22 percent). Five percent of cases had to be repudiated on other grounds such as failure to formally submit (2022: five percent).

Arbitration procedures

A total of 4,258 procedures were concluded in the air transport sector in 2023 (2022: 2,673).

The companies and passengers concerned were able to reach a mutual agreement in 79 percent of cases. In twelve percent of cases, the Airline was able to prove extraordinary circumstances, thus exempting them from payments. Five percent were concluded because the passengers were late to check-in/boarding, or the delay was too short. Despite intensive effort, no mutual agreement could be reached in four percent of cases (2022: three percent).

The airlines were held liable for costs in 3,789 of the procedures concluded in 2023 (2022: 2,351).

Company obligation to cooperate and complaints filed with district administrative authorities

Since the apf is not only an arbitration board but also one of the bodies responsible for enforcing European passenger rights regulations, non-compliance with regulations has to be sanctioned with appropriate consequences.

When the apf's attention is drawn to violations of this kind, it brings administrative charges against the airline's authorised representatives (e.g. the managing director or board) through the competent district administrative authorities.

152 procedures of this kind were initiated during 2023.

Grounds for procedures and distribution among companies

In 2023, around 57 percent of the procedures were initiated due to cancellations (2022: 65 percent). 38 percent of the arbitration procedures related to delayed flights (2022: 29 percent) and almost four percent to denied boarding (2022: five percent).

35 percent of the procedures concluded in 2023 were initiated against Austrian Airlines, the biggest Austrian carrier (2022: 34 percent). Around 23 percent were initiated against WizzAir (2022: 21 percent) and eleven percent against Ryanair (2022: ten percent). Other airlines with shares of over one percent include Lufthansa (five percent), Eurowings (three percent), TAP (two percent), Air Dolomiti (two percent), Turkish Airlines (two percent) and Iberia (two percent).

Compensation and reimbursements

In 2023, the apf obtained a sum of 2.3 million Euro in monetary compensation and reimbursements for applicants in the air transport sector (2022: 1.4 million Euro). This is a new record high in the aviation sector.

Duration of procedures

In 2023, apf was again able to conclude 19 percent of arbitration procedures within two weeks (2022: 17 percent). Solutions that were mutually acceptable to both passenger and company were found within one month in 30 percent of cases (2022: 35 percent) and in less than two months in 19 percent of cases (2022: 16 percent). 31 percent of the procedures in 2023 took more than two months to resolve (2022: 20 percent).

In 2023, the average duration of arbitration procedures in the air transport sector was around 57 days.

Focal areas of arbitration activity

Based on the large number of arbitration requests received, the apf is able to determine on a year-by-year basis where systematic, significant problems exist and where there is room for improvement. These issues are dealt with in depth while mediating between the passengers and companies, and are also addressed afterwards if necessary. Moreover, personal meetings are held with certain companies several times a year, mainly to discuss topics that are particularly relevant for a larger group of people.

Significant issues have arisen particularly in the rail, bus and air transport sectors. These are described in detail in the section "Focal areas of arbitration activity", which is available in German only and begins on page 79 of the full report.

In the rail transport sector, the apf's activities largely focused on issues such as online ticket purchases, fines/fare recovery, reimbursements and downgrades.

Important topics addressed during arbitration procedures in the air transport sector included short-term cancellations, time-changes and extraordinary circumstances.

International cooperation

The passenger rights regulations applicable to all EU member states require regular intensive dialogue between the national enforcement bodies (NEBs) in order to guarantee a uniform cross-border approach. Along with regular meetings and participation in working groups, the measures adopted include ongoing discussions at informal meetings, events jointly organised with stakeholders, and written communications relating to general questions on dealing with current challenges.

More information about the European Commission's meetings with the NEBs, cooperation with other NEBs and other activities in this area in 2023 is provided in the section on "International cooperation", available in german, beginning on page 98.

Passenger rights

Rail transport

Violations of the Rail Passenger Rights Regulation and the Railway Carriage and Passenger Rights Act

When handling arbitration requests, the apf occasionally finds that applicable provisions in the Rail Passenger Rights Regulation and/or the Railway Carriage and Passenger Rights Act (EisbBFG) have been violated. These cases are generally resolved by arbitration; however, the Schienen-Control Kommission had to be notified in a few cases.

In 2023, key issues in this area included non-compliance with deadlines for the payment of compensation for delays, refusals to issue refunds and violations relating to the issue and reduction of passenger fines.

Review of conditions of carriage

As part of its mandate to scrutinise conditions of carriage and during the course of arbitration procedures initiated in response to arbitration requests, the apf addresses possible violations of the law on the companies' part. In several procedures initiated by the Schienen-Control Kommission, certain sections of conditions of carriage were ultimately declared invalid, while other procedures impelled the companies in question to amend their conditions of carriage.

Further information is provided in the section on "Court rulings and implementation of passenger rights in the rail transport sector" is available in german in the full report, beginning on page 106.

Passenger rights audits

During 2023, the apf performed an audit of Wiener Lokalbahn and Verkehrsverbund Ost Region (VOR).

Afterwards, the apf team discussed the results with the respective companies, recommended or stipulated measures for improvement, and monitored the implementation of these insofar as they were able.

First and foremost, the apf examined whether the fare conditions and conditions of carriage were lawful and whether information obligations were complied with, for example by displaying posters listing passenger rights and fares.

Schienen-Control Kommission procedures

In 2023, the Schienen-Control Kommission handled numerous passenger rights procedures relating to fare conditions of the KlimaTicket, information on the cheapest ticket when using cross-border trains, regulations regarding the refund of partly-cancelled tickets, procedures regarding compensation for delays, procedures

regarding the costs for Hotel and transfer in case of cancellation as well as a review of the general terms of business.

Air transport

Relevant rulings during 2023

The revision of the Air Passenger Rights Regulation is still outstanding. In 2023, the European Court of Justice (ECJ) again had to deal with multiple issues relating to the interpretation of passenger rights legislation. Rulings relevant to the apf's activities include those that address the following questions: can the absence of a crew-member due to illness or death constitute an extraordinary circumstance, can a re-patriation flight be regarded as an alternative transportation, is a compensation-payment still applicable if passengers do not arrive at the check-in due to an early notification that boarding will be denied.

Enforcement activities in the air transport sector

Notifications and party status in administrative procedures

As the designated National Enforcement Body for the Air Passenger Rights Regulation¹⁵ and the PRM Air Passenger Rights Regulation¹⁶, the apf has in recent years submitted a number of notifications to the competent authorities. In 2023, its enforcement activities largely focused on administrative penalty proceedings. The apf continued to file notifications due to violations of the regulations mentioned or breaches of the duty to participate in arbitration procedures set out in the LFG. Section 169 LFG specifies administrative penalties of up to 22,000 Euro for violations of these regulations and failure to participate in the apf's arbitration procedures.

Since the amendment to the LFG and the new regulations in section 139a LFG ("Alternative Dispute Resolution"), the apf now has the status of a party to administrative penalty proceedings. The apf is thus authorised to view all case files, request all the relevant information and appeal to the Federal Administrative Court and Supreme Administrative Court.

In 2023, the apf has initiated 152 procedures at the respective courts.

Enforcement in cases involving systematic violations

The apf's enforcement activities also included general requests to airlines in cases where systematic violations of the Air Passenger Rights Regulation were suspected or identified. In cases of established or suspected violations, the apf held discussions with the airlines concerned and sent them written requests to cease and desist. Examples of systematic violations in 2023 included the lack of information about alternative transportation in cases of cancellation, or not offering bookings with alternative airlines, lack of payments after clear violations of the respective EU Regulations, etc.

Audits

In 2023, the apf audited the PRM services of the Vienna International Airport.

¹⁵ Regulation (EC) 261/2004 OJ L 2004/46, 1.

¹⁶ Regulation (EC) 1107/2006 OJ L 2006/204, 1.

Cooperation between consumer authorities

With the amendment to the Consumer Authorities Cooperation Act (VBKG)¹⁷, which came into force on 26 March 2021, the apf, as a department of Schienen-Control GmbH, was again named as a competent authority as per the new Consumer Protection Cooperation Regulation.

In 2023, the apf again took part in a coordinated action for cooperation in consumer protection within the framework of the CPC network¹⁸. The coordinated action examined practices implemented by European airlines to ensure that air passenger rights are upheld if flights are cancelled on pandemic-related grounds.

¹⁷ Consumer Authorities Cooperation Act – VBKG, BGBl I 2006/148, version published in BGBl I 2021/57.

¹⁸ CPC – Consumer Protection Cooperation, European network of enforcement authorities.