

Übersetzung durch Ute Reusch.

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Aviation Act

(Luftverkehrsgesetz – LuftVG)

(Section 33 – 57d)

Aviation Act as published on 10 May 2007 (Federal Law Gazette I, p. 698), as last amended by Article 1 of the Act of 10 July 2020 (Federal Law Gazette I, p. 1655)

The Act serves to implement Directive 2004/36/CE of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (OJ L 143, 30.4.2004, p. 76), see also the Act of 24 May 2006 (Federal Law Gazette I, p. 1223)

Chapter 2

Liability and conciliation

Subchapter 1

Liability in respect of persons and property not carried on board an aircraft

Section 33

(1) In the event of an accident occurring during the operation of an aircraft causing the death, bodily injury or health damage of a person or damage to property, the operator of the aircraft is obliged to pay compensation for the damage. The special provisions of sections 44 to 54 apply in respect of liability to a passenger resulting from a contract of carriage and in respect of the liability of an operator of military aircraft. Whoever trains persons to become pilots is liable to these persons only in accordance with generally applicable statutory provisions.

(2) Whoever uses the aircraft without the knowledge and will of the operator is obliged to pay compensation for the damage instead of the operator. The operator is still also liable to pay compensation for the damage if the use of the aircraft was enabled through the fault of that operator. Where, however, the user is employed by the operator to operate the aircraft or the operator has entrusted the aircraft to that person, the operator is obliged to pay compensation for the damage; the liability of the user under generally applicable statutory provisions remains unaffected.

Section 34

Section 254 of the German Civil Code applies where the fault of the injured person contributed to the damage arising; where damage is caused to property, the fault of that person who exercised actual control over the property is equal to the fault of the injured person.

Section 35

(1) In the event that a person is killed, the compensation paid must cover the costs of any attempted treatment as well as the pecuniary disadvantage which the person killed suffered as a result of his or her earning capacity being eliminated or reduced during the illness, his or her advancement being impeded or his or her needs increasing. In addition, the costs of the funeral are to be reimbursed to that person who is obliged to bear them.

(2) Where at the time of the accident the person killed was in a relationship with a third party on the basis of which the person killed was or might be liable to pay maintenance to that third party by operation of law and the right of the third party to payment of maintenance is withdrawn in consequence of the killing, the party liable to pay compensation must pay that third party compensation for damage to the extent that the person killed would have been obliged to grant maintenance throughout his or her presumed lifespan. The obligation to pay compensation for damage also arises where the third party had been conceived but not yet born at the time of the accident.

(3) The party liable to pay compensation must pay a surviving dependant who, at the time of the injury, stood in an especially close relationship with the person killed reasonable pecuniary compensation for the emotional distress inflicted on the surviving dependant. An especially close relationship is presumed to exist where the surviving dependant is the spouse, civil partner, parent or child of the person killed.

Section 36

In the case of bodily injury or health damage, the compensation for damage must cover the costs of treatment and the pecuniary disadvantage which the person injured suffers as a result of his or her earning capacity being temporarily or permanently eliminated or reduced in consequence of the bodily injury or health damage or his or her advancement being impeded or his or her needs increasing. Payment of equitable compensation in money may also be demanded for non-pecuniary damage.

Section 37

(1) The party liable to pay compensation is liable for damage resulting from an accident

- a) involving aircraft of less than 500 kilograms maximum take-off mass only up to a principal amount of 750,000 units of account,
- b) involving aircraft of less than 1,000 kilograms maximum take-off mass only up to a principal amount of 1.5 million units of account,
- c) involving aircraft of less than 2,700 kilograms maximum take-off mass only up to a principal amount of 3 million units of account,
- d) involving aircraft of less than 6,000 kilograms maximum take-off mass only up to a principal amount of 7 million units of account,
- e) involving aircraft of less than 12,000 kilograms maximum take-off mass only up to a principal amount of 18 million units of account,
- f) involving aircraft of less than 25,000 kilograms maximum take-off mass only up to a principal amount of 80 million units of account,
- g) involving aircraft of less than 50,000 kilograms maximum take-off mass only up to a principal amount of 150 million units of account,
- h) involving aircraft of less than 200,000 kilograms maximum take-off mass only up to a principal amount of 300 million units of account,
- i) involving aircraft of less than 500,000 kilograms maximum take-off mass only up to a principal amount of 500 million units of account,

- j) involving aircraft of more than 500,000 kilograms maximum take-off mass only up to a principal amount of 700 million units of account.

Maximum take-off mass is the maximum weight at which the aircraft is certified to take off. Section 49b applies mutatis mutandis to the rate of conversion of the unit of account referred to in the first sentence.

(2) In the event of persons being killed or injured, the party liable to pay compensation is liable for each person up to a capital amount of 600,000 euros or up to a pension amount of 36,000 euros annually.

(3) Where the compensation to which several persons are entitled as a result of one and the same event exceeds the maximum amounts laid down in subsection (1), the individual amounts of compensation are reduced, subject to subsection (4), in the same proportion as between the total amount and the maximum amount.

(4) Where the claims for compensation are based both on damage to property and damage to persons, two thirds of the amount calculated pursuant to the first sentence of subsection (1) preferentially serves as the compensation to be paid for damage to persons. If this amount is not sufficient, it is to be allocated to the claims pro rata. The remaining share of the amount calculated pursuant to the first sentence of subsection (1) is to be used pro rata to compensate for damage to property and for that damage to persons which has not yet been covered.

Section 38

(1) The compensation for damage to be paid as a result of an injured person's earning capacity being eliminated or reduced, his or her advancement being impeded or his or her needs increasing and the compensation to be granted to a third party under section 35 (2) are to be paid for the future as an annuity in money.

(2) The provisions of section 843 (2) to (4) of the German Civil Code apply mutatis mutandis.

(3) Where the party liable is required to pay an annuity in money, the person entitled to compensation may subsequently still demand payment of a security or an increase of that security if the financial circumstances of the party obliged to pay compensation deteriorate substantially. This provision applies mutatis mutandis in respect of the debt securities referred to in section 794 (1) no. 1 and no. 5 of the Code of Civil Procedure.

Section 39

The provisions governing limitation periods for torts under the German Civil Code apply mutatis mutandis to limitation.

Section 40

Persons entitled to compensation lose the rights to which they are entitled under this Act if they do not report the accident within three months at the latest of learning of the damage and of the person liable to pay compensation. The loss of rights does not arise where the report was not made as a result of a circumstance for which the person entitled to compensation is not at fault or if the party liable learned of the accident from another source within that period.

Section 41

(1) In the event that damage is caused by several aircraft and the aircraft operators are obliged by operation of law to pay compensation for damage to a third party, then when it comes to the relationship between the operators the obligation to pay compensation and the extent of the compensation is dependent on the specific circumstances, in particular on the extent to which the damage was predominantly caused by one or the other operator. The same applies where the damage arose for one of the operators in respect of that liability insurance affecting one of the other operators.

(2) Subsection (1) applies mutatis mutandis where another person is responsible for the damage in addition to the aircraft operator.

Section 42

Federal statutory provisions according to which the operator or user (section 33 (2)) is liable to a greater extent or the pilot or another person is liable for the damage arising in the operation of an aircraft remain unaffected.

Section 43

(1) In so far as Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (OJ L 138, 30.4.2004, p. 1), as amended, does not apply or contains no provisions, the provisions of the following subsections apply in respect of insurance to cover an aircraft operator's liability under this Subchapter.

(2) The aircraft operator is obliged to maintain liability insurance to cover its liability for compensation under this Subchapter in an amount to be determined by statutory instrument. The first sentence does not apply where the aircraft operator is the Federal Government or a *Land*.

(3) The provisions on mandatory insurance under the Insurance Contract Act apply to the liability insurance. Section 114 of the Insurance Contract Act does not apply.

Subchapter 2

Liability in respect of persons and baggage carried on board an aircraft; liability for delayed carriage

Section 44

Scope of application

The provisions of this Subchapter apply to liability for compensation in the event of an accident causing the death, bodily injury or health damage of a passenger, in the event of delayed carriage of a passenger or the destruction, loss or delayed carriage of or damage to a passenger's baggage on the basis of carriage by air under contract, in so far as

1. the Convention of 12 October 1929 for the Unification of Certain Rules Relating to International Carriage by Air (First Convention for the Unification of Private Air Law) (Reich Legal Gazette 1933 II p. 1039) (Warsaw Convention) and the Act to Implement the First Convention for the Unification of Private Air Law as consolidated and published in the Federal Law Gazette III, Index No. 96-2,
2. the Protocol of 28 September 1955 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Federal Law Gazette 1958 II p. 292),
3. the Convention of 18 September 1961 Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier (Federal Law Gazette 1963 II p. 1160),
4. the Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage By Air (Federal Law Gazette 2004 II p. 458) (Montreal Convention) and the Act to Implement the Montreal Convention of 6 April 2004 (Federal Law Gazette I p. 550, 1027),
5. Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents (OJ L 285, 17.10.1997, p. 1), as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ L 140, 30.5.2002, p. 2), as amended, and
6. Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (OJ L 138, 30.4.2004, p. 1), as amended,

does not apply or contains no provision.

Section 45

Liability for personal injury

- (1) In the event of an accident on board an aircraft or in the course of the operations of embarking or disembarking causing the death, bodily injury or health damage of a passenger, the air carrier is obliged to pay compensation for the resulting damage.
- (2) In the cases referred to in subsection (1), the air carrier is liable to each passenger only up to an amount of 128,821 units of account if

1. the damage was not caused by an unlawful and culpable act or omission on the part of the air carrier or an unlawful and culpable act or omission on the part of that air carrier's servants and agents or
2. the damage was caused exclusively by an unlawful and culpable act or omission on the part of a third party.

The maximum amount referred to in the first sentence also applies to the capital value of a pension to be paid as compensation for damage.

- (3) Where, in the cases referred to in subsection (1), the compensation to be paid to several persons entitled to compensation as a result of the death, bodily injury or health damage of a passenger exceeds the amount of 128,821 units of account in total and where the air carrier's further liability under subsection (2) is ruled out, then the individual amounts of compensation is reduced in the same proportion as between their total amount and that amount.

Section 46

Liability in respect of the delayed carriage of persons

- (1) In the event of the delayed carriage of a passenger, the air carrier is obliged to compensate the resulting damage. Liability is ruled out if the air carrier and the air carrier's servants and agents took all reasonable measures to prevent the damage arising or were unable to take such measures.
- (2) In the case referred to in the first sentence of subsection (1), the air carrier is liable to each passenger only up to an amount of 5,346 units of account. This does not apply if the damage was caused intentionally or gross negligently by the air carrier or the air carrier's servants and agents in the performance of their tasks.

Section 47

Liability in respect of damage to baggage

- (1) In the event that checked baggage which is on board an aircraft or which is otherwise in the charge of the air carrier is destroyed, damaged or lost, the air carrier is obliged to pay compensation for the resulting damage. Liability is ruled out if the damage resulted from the quality of the baggage or an inherent defect of the baggage.
- (2) In the event that the carriage of checked baggage which is on board an aircraft or which is otherwise in the charge of the air carrier is delayed, the air carrier is obliged to pay compensation for the resulting damage. Liability is ruled out if the air carrier and the air carrier's servants and agents took all reasonable measures to prevent the damage or were unable to take such measures.
- (3) In the event that unchecked baggage or other property which passengers are carrying with them or on them is destroyed, damaged or lost, the air carrier is obliged to pay compensation for the resulting damage if the damage was culpably caused by the air carrier or the air carrier's servants and agents. In the event that carriage is delayed, subsection (2) applies *mutatis mutandis*.
- (4) In the cases referred to in subsections (1) to (3) the air carrier is liable to each passenger only up to an amount of 1,288 units of account. The first sentence does not apply to checked baggage if the passenger stated the amount of the interest in delivery to the destination when handing it over to the air carrier and paid the fee demanded in respect of liability for

that interest. In such a case, the air carrier is liable up to the amount stated, unless this is higher than the actual interest.

(5) Subsection (4) does not apply if the damage was caused intentionally or gross negligently by the air carrier or the air carrier's servants and agents in the performance of their tasks.

(6) If checked baggage is damaged or its carriage delayed, the rights under subsection (1) or (2) may only be asserted if the passenger reports the damage to the air carrier in writing without delay after its discovery, in the case of damage to baggage no later than seven days after taking delivery of the baggage, in the case of delayed carriage of baggage no later than twenty-one days after the baggage was delivered to the passenger. This does not apply if the air carrier acted fraudulently. The date on which the report was delivered or posted prevails as regards compliance with the time limit. Where the passenger accepts the checked baggage without reservation, this justifies the assumption that it was undamaged upon delivery.

(7) If checked baggage is lost, the rights under subsection (1) may only be asserted if the air carrier has acknowledged the loss or twenty-one days have elapsed since the day on which the baggage ought to have arrived.

Section 48

Liability based on other rights

(1) A claim to compensation, whatever its legal basis, may be asserted against the air carrier only under the conditions and restrictions set forth in this Subchapter.

(2) The statutory provisions under which other persons are liable for the damage remain unaffected. If the air carrier's servants and agents were acting in the performance of their tasks, they may, however, rely on the conditions and restrictions set forth in this Subchapter.

(3) Where the amounts laid down in this Subchapter limit the liability of the air carrier and of the air carrier's servants and agents, the total amount which they are to pay in compensation for damage may not exceed these amounts.

Section 48a

Carriage by air by various air carriers

(1) If the carriage by air is performed by various successive air carriers and in the event of the death, bodily injury or health damage of a passenger or the passenger's delayed carriage, only that air carrier is obliged to pay compensation for damage in the course of whose carriage by air the accident or delay occurred. This does not apply if the first air carrier assumed liability for the entire carriage by air.

(2) If baggage is destroyed, damaged or lost in the course of carriage by air pursuant to subsection (1) or carriage of the baggage is delayed, then the first, the last and that air carrier which performed the carriage by air in the course of which the destruction, damage, loss or delay occurred are obliged to pay compensation. These air carriers are jointly and severally liable.

Section 48b

Liability of the contracting and of the actual carrier

(1) Whoever performs carriage by air which another air carrier has undertaken to perform with the consent of said air carrier (actual carrier) is liable together with the other carrier (contracting carrier) under the provisions of this Subchapter. Consent is presumed to have been given. The contracting carrier and the actual carrier are jointly and severally liable.

(2) Where the actual carrier performs the carriage by air for only one leg of the carriage, the actual carrier is liable only for that damage which arises on that specific leg of the carriage.

(3) The acts and omissions of the actual carrier and of the actual carrier's servants and agents in the performance of their tasks are deemed to be those of the contracting carrier. The acts and omissions of the contracting carrier and of the contracting carrier's servants and agents in the performance of their tasks are deemed to be those of the actual carrier in so far as these refer to that part of the carriage by air which is to be performed by that

carrier. The contracting carrier is at any rate liable for these acts and omissions only up to the amounts laid down in sections 45 to 47. An agreement on the assumption of obligations which are not provided for under the provisions of this Subchapter, the waiver of rights established under these provisions as well as declarations of an interest in accordance with section 47 (4), second sentence, have no effect against the actual carrier, unless the actual carrier has consented thereto.

(4) The notice of damage referred to in section 47 (6) may be declared to both the contracting and to the actual carrier with effect against the other in each case.

(5) Where the actual carrier has performed the carriage by air, section 48 (2) applies mutatis mutandis in respect of the liability of the servants and agents of the contracting and of the actual air carrier; the conditions and restrictions applicable to that air carrier whose servants and agents they are prevail.

(6) Section 48 (3) applies mutatis mutandis to the amounts which the contracting carrier and the contracting carrier's servants and agents as well as the actual carrier and the actual carrier's servants and agents are to pay in compensation for damage. The total amount which they are to pay in compensation may not exceed the maximum amount which they are obliged to pay. However, each is liable only up to the maximum amount applicable to them.

Section 49

Applicable provisions

In all other respects, the provisions of sections 34 to 36 and 38 apply to liability under this Subchapter.

Section 49a

Time limit

An action for compensation for damage must be filed within two years. The period begins to run on that day on which the aircraft arrived at its destination, that day on which it ought to have arrived or on which the carriage by air was aborted.

Section 49b

Conversion of units of account

The unit of account referred to in sections 45 to 47 is the Special Drawing Right as defined by the International Monetary Fund. The amount is converted into euros according to the value of the euro against the Special Drawing Right at the time of the payment or, if the entitlement is the subject matter of court proceedings, on the day on which the trial court gives a ruling which concludes the court proceedings. The value of the euro against the Special Drawing Right is calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions in effect on the date in question.

Section 49c

Mandatory application

(1) In the case of carriage by air for reward or on a commercial basis, the liability of the air carrier under the provisions of this Subchapter may neither be ruled out nor limited by prior agreement.

(2) An agreement which infringes the provision of subsection (1) is null and void. Its invalidity does not lead to the invalidity of the entire contract.

Section 50

Mandatory liability insurance

(1) Air carriers are obliged to maintain liability insurance in an amount to be determined by statutory instrument to cover their liability for compensation as a result of the damage referred to in section 44 in the course of the carriage by air for which they are responsible or in the course of the carriage by air which they performed for the contracting carrier. The first sentence does not apply where the carrier is the Federal Republic of Germany. Where the

air carrier is a *Land*, the first sentence applies only to carriage by air to which the Montreal Convention is applicable.

(2) The provisions on mandatory insurance under the Insurance Contract Act apply to the liability insurance. Section 114 of the Insurance Contract Act does not apply.

Section 51

Subsidiarity of the contracting carrier's insurance

Where an actual carrier performs the carriage by air for a contracting carrier, the contracting carrier is obliged to maintain liability insurance only in so far as

1. the actual carrier maintains no liability insurance with an insurer licensed to operate in Germany which meets the requirements of the applicable provisions of section 50 or of Article 4 para. 1 read in conjunction with Article 6 para. 1 and para. 2 of Regulation (EC) No 785/2004 or
2. the liability of the contracting carrier exceeds the liability of the actual carrier.

Section 52

(repealed)

Subchapter 3

Liability in respect of military aircraft

Section 53

Liability in respect of damage caused outside of military aircraft

(1) The aircraft operator is liable under the provisions of Subchapter 1 of this Chapter for damage of the type referred to in section 33 caused by military aircraft; section 37 does not, however, apply.

(2) If the person who is killed or injured is obliged, by operation of law, to perform services vis-à-vis a third party in that third party's household or commercial enterprise, then the operator of the military aircraft must also pay the third party compensation for the lost services by paying an annuity in money.

(3) (repealed)

Section 54

Liability in respect of damage caused during carriage in a military aircraft

(1) In the event of an accident during carriage on board a military aircraft causing the death, bodily injury or health damage of a person, the operator of the aircraft is obliged to pay compensation for the resulting damage. The operator of the aircraft is liable to each person carried only up to an amount of 600,000 euros if

1. the damage was not caused by an unlawful and culpable act or omission on the part of that operator or an unlawful and culpable act or omission on the part of that operator's servants and agents or
2. the damage was caused exclusively by an unlawful and culpable act or omission on the part of a third party.

(2) In the event that baggage or other property which persons carried are carrying with them or on them is destroyed or damaged in the event of an accident during carriage on board a military aircraft, the operator of the aircraft is obliged to pay compensation for the resulting damage. Liability is limited up to a maximum of 1,700 euros for each person carried, unless the damage was caused intentionally or gross negligently by the operator or the operator's servants and agents in the performance of their tasks.

(3) Section 40, section 45 (3) and sections 48 and 49 apply mutatis mutandis.

(4) Liability may neither be ruled out nor limited by prior agreement.

Subchapter 4 Common provisions in respect of liability

Section 55 Relationship with social welfare and pension regulations

The provisions of Book Seven of the Social Code on accident insurance for persons employed in the aircraft operator's enterprise remain unaffected. The same applies to other provisions on accident damages under federal and *Land* civil service regulations and pension regulations applicable to the Federal Armed Forces.

Section 56 Place of jurisdiction

- (1) That court in whose district the accident occurred is also competent in respect of actions brought on the basis of this Chapter.
- (2) In addition, the court at the place of destination is competent in respect of actions brought on the basis of sections 45 to 47. In the case referred to in section 48b, the action may also be brought against the actual carrier at the place of jurisdiction of the contracting carrier and the action against the contracting carrier may also be brought at the place of jurisdiction of the actual carrier.
- (3) If one of the agreements referred to in nos 1 to 4 of section 44 is applicable to the carriage by air, the place of jurisdiction is determined in accordance with that agreement. If German courts are competent under Article 33 para. 2 of the Montreal Convention, that court in whose district the passenger had his or her place of residence at the time of the accident has local jurisdiction for actions for compensation arising as a result of the death or bodily injury of that passenger.

Subchapter 5 Conciliation

Section 57 Conciliation organised under private law

- (1) The Federal Ministry of Justice and Consumer Protection may, in consultation with the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry for Economic Affairs and Energy, officially recognise bodies governed by private law as conciliation bodies for out-of-court dispute resolution in respect of passengers' claims against air carriers pursuant to section 57b (1). Intermodal conciliation bodies may also be officially recognised. The official recognition and the revocation or withdrawal of official recognition are to be published in the Federal Gazette.
- (2) Bodies governed by private law may be officially recognised as conciliation bodies if the conciliation bodies and the conduct of the conciliation procedure meet the requirements of this Act, of the Consumer Dispute Resolution Act of 19 February 2016 (Federal Law Gazette I p. 254) and the statutory instruments issued under these Acts.
- (3) Passengers may apply to a conciliation body if the involved air carrier participates in conciliation through that conciliation body. Conciliation bodies are obliged to keep a list of participating air carriers and to provide interested parties with appropriate access to that list.
- (4) Conciliation bodies may require payment of an appropriate fee from the involved air carrier in respect of the conciliation procedure upon receipt of the conciliation request. Payment of a fee of no more than thirty euros may be required from passengers if the claim made in the conciliation procedure is abusive. If the fee does not meet the requirements of the first or second sentence, the body cannot be officially recognised as a conciliation body.
- (5) Where a conciliation body proves that in the course of the two years following official recognition and commencement of conciliation the majority of cases taken up did not have a claim, that conciliation body may require payment of a fee from passengers before commencing the conciliation procedure. Proof thereof is to be furnished to the Federal Office of Justice. The Federal Office of Justice shall notify the conciliation body and the Federal

Ministry of Justice and Consumer Protection whether proof has been furnished. The fee referred to in the first sentence may not exceed twenty euros. Payment of the fee may only be required if the contract on which the carriage by air is based was concluded after the fee was introduced. The involved air carrier shall reimburse the fee to passengers if a claim is deemed valid in the course of the conciliation procedure. It is to be set off against the fee referred to in the second sentence of subsection (4) if the claim asserted in the conciliation procedure was abusive. If payment of a fee is required pursuant to the first sentence although no proof has been furnished, the official recognition under subsection (1) is to be revoked. This also applies if payment of a fee of more than twenty euros is required. If a conciliation body requires payment of a fee in accordance with the first sentence, then section 57b (2), first sentence, no. 7 does not apply to that conciliation body.

(6) Conciliation bodies must provide interested parties with access to the regulation on fees referred to in subsections (4) and (5).

(7) An officially recognised body is a consumer conciliation board within the meaning of the Consumer Dispute Resolution Act. The Federal Ministry of Justice and Consumer Protection shall transmit the information referred to in section 32 (2) and (4) of the Consumer Dispute Resolution Act to the Central Point of Contact for Consumer Conciliation. Conciliation bodies must transmit the evaluation report referred to in section 34 (2) of the Consumer Dispute Resolution Act to the Federal Ministry of Justice and Consumer Protection. The latter shall forward the evaluation report to the Central Point of Contact for Consumer Conciliation; section 35 (2) of the Consumer Dispute Resolution Act does not apply.

Section 57a **Official conciliation**

(1) Passengers may apply to the conciliation body to be established at the Federal Office of Justice for out-of-court dispute resolution in respect of passenger claims pursuant to section 57b (1) against air carriers which do not participate in a conciliation procedure conducted by an officially recognised conciliation body governed by private law pursuant to section 57. This also applies if no body governed by private law has been officially recognised as a conciliation body.

(2) The conciliation body and the conduct of the conciliation procedure must meet the requirements of this Act, of the Consumer Dispute Resolution Act and of the statutory instruments issued under these Acts.

(3) The Federal Office of Justice may require passengers to pay fee no. 1224 as quoted in the Annex (Cost Schedule) to the Act on Costs Arising in the Administration of Justice if the claim asserted in the conciliation procedure is abusive.

(4) If, in the course of the two years following the commencement of conciliation, the majority of cases taken up did not have a claim, the Federal Ministry of Justice and Consumer Protection may, in consultation with the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry for Economic Affairs and Energy, determine by statutory instrument not requiring the consent of the Bundesrat that the conciliation body require payment of a fee from passengers before commencing the conciliation procedure. The fee may not exceed twenty euros. Payment of the fee may only be required if the contract on which the carriage by air is based was concluded after the fee was introduced. The involved air carrier must reimburse the fee to the passenger if the claim is deemed valid in the course of the conciliation procedure. It is to be set off against the fee referred to in the second sentence of subsection (3) if the claim asserted in the conciliation procedure was abusive. If payment of a fee in accordance with the first sentence is required, then section 57b (2), first sentence, no. 7 does not apply.

(5) The Federal Office of Justice may, in respect of recovery measures, order that the air carrier nominate, within an appropriate time limit, an authorised recipient who resides or has his or her business premises in Germany.

(6) The conciliation body referred to in subsection (1) is a consumer conciliation board within the meaning of the Consumer Dispute Resolution Act and is to be entered in the list referred

to in section 33 (1) of the Consumer Dispute Resolution Act by the Central Point of Contact for Consumer Conciliation; section 32 (3) and (4) and section 35 (2) of the Consumer Dispute Resolution Act do not apply.

Section 57b Common provisions

(1) Disputes pursuant to sections 57 and 57a concern claims for payment of no more than 5,000 euros resulting from carriage by air which is owed to a consumer (section 13 of the German Civil Code) and which are asserted on the basis of

1. denied boarding, delayed carriage, the placing of passengers in a lower class and the cancellation of flights,
2. the destruction, loss or delayed carriage of or damage to baggage,
3. the destruction or loss of or damage to property which passengers are carrying with them or on them or
4. breaches of duty in respect of the carriage of disabled passengers and passengers with reduced mobility.

Disputes in respect of claims for payment pursuant to the first sentence of more than 5,000 euros may be the subject of conciliation under section 57 if this is provided for in the rules of procedure.

(2) The conciliation bodies referred to in sections 57 and 57a may not be applied to if

1. the German courts are not competent,
2. the claim is or was already pending before a court,
3. the disputed claim or the air passenger's legal relationship which forms the subject matter of the conciliation procedure has been validly registered in the claims register of a model declaratory action in accordance with section 608 of the Code of Civil Procedure (*Zivilprozessordnung*),
4. the claim has already been brought before a conciliation body pursuant to section 57 or section 57a to which a passenger could apply to resolve the dispute in respect of the claim and the matter regarding which the court was seised was not yet concluded in accordance with no. 6,
5. the conciliation request is abusive, in particular if the dispute has already been resolved by means of an out-of-court settlement,
6. the claim was not asserted directly against the air carrier, the air carrier did not refuse the asserted claim or the air carrier neither recognised nor rejected the claim brought and no more than two months have elapsed since the claim was brought or
7. the amount of the claim does not exceed ten euros.

Conciliation pursuant to sections 57 and 57a becomes inadmissible if in the course of the conciliation procedure the claim is brought before a court or the disputed claim or the air passenger's legal relationship which forms the subject matter of the conciliation procedure has been validly registered in the claims register of a pending model declaratory action in accordance with section 608 of the Code of Civil Procedure.

(3) Conciliation bodies may refuse the conciliation if a fundamental legal issue which is of relevance when assessing the dispute has not yet been clarified.

(4) The right of recourse to the courts remains unaffected.

Section 57c Authorisation to issue statutory instruments

(1) The Federal Ministry of Justice and Consumer Protection, in consultation with the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry for Economic Affairs and Energy, shall regulate by statutory instrument not requiring the consent of the Bundesrat further requirements to be made of conciliation bodies pursuant to section 57 and of the conciliation procedure to be guaranteed by conciliation bodies pursuant to sections 57 and 57a.

(2) The statutory instrument referred to in subsection (1) may also regulate details of the procedure under section 57 (5).

(3) The Federal Ministry of Justice and Consumer Protection may, in consultation with the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry for Economic Affairs and Energy, by way of statutory instrument not requiring the consent of the Bundesrat adjust the amounts referred to in section 57b (1) and (2), first sentence, no. 7 in line with general price increases if these amount to more than ten per cent since 1 November 2013 or since the last adjustment.

Section 57d

Relationship with the Consumer Dispute Resolution Act

In so far as the provisions of this Subchapter and of the statutory instrument issued under section 57c contain no regulation, the Consumer Dispute Resolution Act and the statutory instruments issued under section 42 (1) of the Consumer Dispute Resolution Act apply to conciliation in respect of disputes regarding claims under section 57b (1). This also applies to conciliation in respect of disputes regarding claims under section 57b (1) brought by passengers who are not bound by contract to the air carrier.