

# Rules of Procedure 2023<sup>1</sup>

## Preamble

The Conciliation Body for Public Transport (Schlichtungsstelle für den öffentlichen Personenverkehr e.V. – söp) is an independent and impartial EU-notified consumer conciliation body recognised by the German Federal Government. The purpose of söp is the out-of-court settlement of disputes between companies organised in the söp association (in the respective case: "respondent") and passengers as their customers ("complainants").

## § 1 Scope

The following rules take account of the regulations laid down in the German Act on Alternative Dispute Resolution in Consumer Matters (VSBG) and apply if complainants pursue their subject of complaint directed against the respective respondent ("subject of complaint") within the scope of a conciliation procedure.

In addition, the regulations of §§ 57, 57 b LuftVG and §§ 2 - 16 paras. 1 and 3 LuftSchlichtV apply to conciliation in air transport.

In case of discrepancies or differences, the statutory regulations override these rules of procedure.

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## § 2 Admissibility

- (1) The söp can be invoked if
  - a) the passenger's own or, in case of valid representation, another person's matters are being pursued,
  - b) the matter is connected to a transport/travel and
  - c) the company, to which the matter is addressed, is organised in the söp association.
- (2) The söp only processes the subject of complaint if the complainant has already addressed his/her matter to the respondent and the respondent was given the opportunity to comment on the issue within a reasonable period of time or the legally specified period of time.
- (3) A conciliation procedure does not take place
  - a) if the subject of complaint exceeds the value of 30.000 Euro – at which the German civil procedure rules (Zivilprozeßordnung - ZPO) apply for the value assessment – or
  - b) as long as the subject of complaint is pending at or has been conclusively dealt with by a court or another recognised and responsible consumer conciliation body, unless the court orders the proceedings to be suspended pursuant to section 278a para. 2 of the Code of Civil Procedure with regard to the proceedings at söp.
- (4) The söp observes the admissibility of the matter at all stages of the conciliation procedure. In case of doubts about the admissibility, the parties will be given the possibility to comment.

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<sup>1</sup> This translation is intended solely as a convenience to the non-German-reading public. Any discrepancies or differences that may arise in translation of the official German version are not binding and have no legal effect for compliance or enforcement purposes.

### **§ 3 Conciliation request**

- (1) The conciliation procedure begins with the conciliation request to söp which is usually made online. However, the request can also be made in any other appropriate form.
- (2) The söp acknowledges the receipt of the conciliation request and informs the complainant about the further course of the procedure.
- (3) The complainant shall bring his/her matter forward in a clear and distinct manner. He/she shall disclose all facts that are relevant for the examination of the case and enclose all necessary documents. In case of incomplete documentation, additions may be requested.
- (4) The söp helps the complainant with specifying his/her conciliation request. It can also turn to the respondent for clarification of the relevant facts and circumstances.
- (5) The language of the procedure is German unless the conciliation body agrees with the parties involved in the proceedings on another language of the procedure.

### **§ 4 Representation**

The complainant as well as the respondent may be represented at any stage of the proceedings at their own expense to the extent permitted by law and compatible with the very nature of the consumer ADR.

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### **§ 5 Participation of the respondent**

- (1) The respondent is given the opportunity to deliver a statement on the matter within a set or appointed period of time. This period may be extended if the respondent makes sufficient excuses for failure to comply with the deadline.
- (2) The söp forwards the conciliation request to the address that was named by the respondent.
- (3) The söp can refrain from requesting a statement if
  - the conciliation request is inadmissible according to § 2 of these rules of procedure,
  - the conciliation request can be assessed on the basis of the documents already submitted by the complainant and/or the request for conciliation is obviously unfounded,
  - the request is improper.

### **§ 6 Basis of valuation**

- (1) All decisions and recommendations within the conciliation procedure are made independently and impartially within the boundaries of law and statute.
- (2) The contents of the procedure are the facts and circumstances presented by the parties. Obviously evident matters of fact can be included.
- (3) The söp clarifies the facts and circumstances during all stages of the conciliation procedure if necessary and appropriate for the decision-making process.
- (4) If one of the parties delivers a delayed statement before the procedure has been completed, it will be considered only if the delay is excused and it does not detain the progress of proceedings.
- (5) If a conciliation request is related to competition-relevant data, this data has to be displayed in a verifiable manner with all necessary information in a separate attachment which is intended for the söp exclusively.

## **§ 7 Rejection of the conciliation request**

- (1) The sÖP may refuse dealing with the conciliation request if it would seriously impair effective operations of the conciliation body or if other reasons for refusal pursuant to § 14 para. 1 VSBG apply. The decision for refusal will be made within three weeks of receiving the request.
- (2) If the respondent is able to plausibly demonstrate that the subject of complaint deals with a legal issue of fundamental importance and a court procedure shall be achieved (model case), the respondent may request that sÖP refrains from processing the conciliation procedure. In this case, the respondent has to assure the complainant to cover the first instance court costs and attorney's fees, regardless of the outcome of the court procedure.

## **§ 8 Duration of procedure**

- (1) The sÖP ensures rapid handling of the conciliation request in every possible way. Generally, the duration of the procedure amounts to a maximum of 90 days after all necessary documents have been submitted.
- (2) To speed up the procedure, with the request for a statement the sÖP may inform the respondent about first suggestions for a conciliation recommendation according to § 9 para. 5. The respondent has to comment on the suggestions within the time period in line with § 5. The complainant will be informed about substance and result.

## **§ 9 Conclusions of the procedure**

- (1) If the conciliation request is inadmissible according to § 2, the procedure is concluded with respective information to the parties within a time limit of three weeks after receiving the request.
- (2) If the conciliation request has to be refused according to § 7, the procedure is concluded with respective information to the parties within a time limit of three weeks after receiving the request.
- (3) If the respondent declares in its statement that it will fully comply with the claim asserted by the respective complainants in their conciliation request, the conciliation body shall inform the complainants accordingly and terminate the proceedings ("immediate acknowledgement").
- (4) If the respondent makes an offer in its statement and the complainant agrees to it after it has been forwarded by the conciliation body, the conciliation body shall inform the parties to the proceedings of this and end the proceedings (agreement by "moderation").
- (5) If the request for conciliation can already be assessed on the basis of the documents and/or is manifestly unfounded (cf. § 5 para. 3), the proceedings shall end with appropriate notification of the parties to the proceedings.
- (6) In all other cases, after having examined the facts and circumstances as well as the legal situation, the sÖP prepares a conciliation recommendation which is thought to be suitable for settling the dispute. The involved parties will be informed respectively. The conciliation procedure ends with notification by sÖP about the result (binding agreement between the parties, respectively failure of the conciliation procedure).
- (7) Otherwise the conciliation procedure ends if the complainant objects to the further pursuit of the procedure or withdraws the complaint. The sÖP also assumes the withdrawal of the conciliation request if the complainant does not attend his duty of contribution following § 3 para. 3. If the conciliation request is resolved for reasons outside of the sphere of the conciliation procedure, the parties to the procedure have to inform sÖP thereof immediately.

- (8) Ending the conciliation procedure according to (1) to (7) shall be done in written form and be provided with reasons.

## § 10 Binding effect

- (1) The conciliation recommendation by söp is not binding for the parties involved. However, after delivering an appropriate statement, it is at the discretion of the transport companies to accept a binding effect against themselves.
- (2) If both parties to the proceedings agree to settle the dispute on the basis of the conciliation recommendation, the declaration made by them in this regard shall have a contractual binding effect between them. A contractual binding effect shall also arise if the parties to the proceedings agree during the conciliation proceedings on the basis of the claim of the complainant(s) or on the basis of an offer of the respondent.
- (3) Upon transmission of the conciliation recommendation, the parties to the proceedings shall be informed of the legal consequences of accepting the proposal and of the fact that the proposal may differ from the outcome of legal proceedings. It shall also indicate the possibility of not accepting the proposal and of taking the matter to court.
- (4) The complainant may choose to pursue legal action at every stage of the procedure.

## § 11 Suspension of the statute of limitations

- (1) During the course of the whole procedure the statute of limitations is suspended regarding disputed claims of the complainant (§ 204 para. 1 4a, para. 2 German Civil Code BGB). The same is true for preclusive time limits.
- (2) As far as delinquency procedures or collection orders have already been initiated against the complainant, söp encourages the respondent to intermit such procedures for the course of the conciliation procedure. The complainant must not be charged any additional costs (dunning costs, collection costs or default charges) during the course of the suspension.

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## § 12 Costs

- (1) The conciliation procedure is free of charge for the complainants. The complainant merely bears his/her own costs (e.g. for communication and/or representation).
- (2) The costs of the conciliation procedure are borne by the participating companies following the contribution rules of the söp association.

## § 13 Reticence/confidentiality

- (1) Staff members of söp are obliged to maintain confidentiality about all circumstances affecting the parties of which they gain knowledge within the scope of the conciliation procedure.
- (2) Business secrets named as such by the respondent are not revealed to the other parties involved. However, the söp takes them into account when considering the legal situation and circumstances of the case.
- (3) Conciliation recommendations will only be published anonymised.

## **§ 14 Concern of partiality**

- (1) A conciliator must not take action in a dispute if there is good cause which may justify distrust in his/her impartiality. In this case, a representative will be acting on his/her behalf in the conciliation procedure.
- (2) If a conciliator is declined by one of the parties for reasons of suspected partiality, a representative decides about this rejection.
- (3) If the conciliator suspects a circumstance that could justify his/her rejection due to concern of partiality, he/she shall immediately report this to the söp director and the parties to the proceedings.