



General Conditions of Carriage in Austria

Besides the handling of Passenger Claims and the challenges related thereto, airlines are often confronted with complaints from consumer protection organizations regarding their General Conditions of Carriage (GCC). In Austria, especially the *Verein für Konsumenteninformation* ("VKI"), is very active in this regard and routinely examines General Terms and Conditions of several companies, including GCC used by airlines that are active in Austria.

If an airline's GCC contains clauses that the VKI deems to be unlawful, it will request the airline to sign a cease and desist declaration preventing it from using these specific clauses and to pay a contractual penalty to the VKI for every breach.

If the airline refuses to sign such declarations, the VKI files a lawsuit demanding the stop of the use of certain clauses and the publishing of the ruling against the airline in Austria's most read newspaper at the airline's expense.

During its proceedings, the competent court assesses every clause of the challenged GCC based on the following criteria:

Unusual clauses that are surprising and disadvantageous

§ 864a of the Austrian Civil Code states that in General Terms and Conditions (like GCC) clauses of an unusual content that are surprising and disadvantageous for the other party are not regarded to be part of contracts based on these GTC.

However, such clauses can be valid if the party using them in its General Terms and Conditions has specifically notified the other party of their use.

Grossly disadvantageous clauses

§ 879 (3) of the Austrian Civil Code states that clauses contained in General Terms and Conditions which do not specify one of the main services to be provided by either party shall be void if they are grossly disadvantageous for one party.

Austrian courts interpret the exception set forth regarding main services very narrowly, which leads to the provision being applicable to basically all clauses that do not concern the individual description of the type, scope and quality of the main services. The assessment whether a clause is grossly disadvantageous is, in general, being made by comparison with the codified provisions of Austrian civil law together with a balancing of the parties' interests.

Intransparent clauses

The Austrian Consumer Protection Act sets forth several types of clauses that are not binding for consumers. § 6 (3) of this Act additionally stipulates that clauses contained in General Terms and Conditions shall be invalid

if they are intransparent. This is, in particular, the case if the wording of such clauses is unclear, if their content is not easily comprehensible to the consumer or if they incorrectly present the average consumer's legal position.

Collection of clauses that were deemed to be violating Austrian law

Since there have already been numerous court proceedings regarding GCC in Austria, we have an extensive collection of clauses that Austrian courts deemed to be violating Austrian law. This includes especially the following clauses:

- ❖ No-Show Clauses¹ that are not limited to passengers intentionally circumventing the ticketing system^{2,3,4}
- ❖ Complaints from passengers are only accepted if they are made via e-mail, an online form or fax⁵
- ❖ Scheduled departure times may change after the booking (without precising under which circumstances)⁶
- ❖ Ticket refunds shall only be paid to the person or travel agency that booked the flight or only to the bank or credit card account that was used to pay the ticket fare⁷
- ❖ Transport is denied if the flight coupon is severely damaged or altered⁸
- ❖ Complaints must be made by the passenger himself and he must wait at least 28 days for a response before instructing third parties to assert his claims on his behalf⁹
- ❖ Passengers must pay an additional fee in cases of an offline check-in at the airport¹⁰
- ❖ Deadline of two years for compensation claims regarding damages of any kind¹¹
- ❖ Claims must only be assigned to other passengers of the same booking or travel group¹²
- ❖ Clauses that incompletely inform a passenger about his rights under the Montreal Convention or Regulation 261/2004^{13,14}

The consequences of a clause being deemed to be in violation of Austrian law are, on the one hand, that the airline loses the proceedings and is, therefore, obliged to stop using this clause, to reimburse the other party's legal fees and to pay for a publication of the ruling in an Austrian newspaper. On the other hand, the clause is regarded to be null and void, which means that passengers are not bound by it.

¹ [You can find our more detailed analysis of No-Show Clauses in Austria based on court proceedings our Aviation Team was involved in by clicking here.](#)

² Brussels Airlines, Higher Regional Court Vienna, 10.07.2019, 129 R 56/19g.

³ KLM, Higher regional Court Vienna, 11.06.2019, 1 R 73/19s.

⁴ Lufthansa, Austrian Supreme Court, 20.04.2021, 4 Ob 63/21z.

⁵ Laudamotion, Higher Regional Court Vienna, 23.2.2021, 2 R 48/20y.

⁶ Laudamotion, Austrian Supreme Court, 18.03.2022, 6 Ob 127/21a.

⁷ SWISS, Higher Regional Court Vienna, 04.11.2022, 2 R 106/22f.

⁸ Lufthansa, Austrian Supreme Court, 20.04.2021, 4 Ob 63/21z.

⁹ Laudamotion, Higher Regional Court Vienna, 23.2.2021, 2 R 48/20y.

¹⁰ Laudamotion, Austrian Supreme Court, 27.02.2020, 8 Ob 107/19x.

¹¹ Lufthansa, Austrian Supreme Court, 20.04.2021, 4 Ob 63/21z.

¹² Laudamotion, Higher Regional Court Vienna, 23.2.2021, 2 R 48/20y.

¹³ Lufthansa, Austrian Supreme Court, 20.04.2021, 4 Ob 63/21z.

¹⁴ Laudamotion, Austrian Supreme Court, 18.03.2022, 6 Ob 127/21a.

Airlines must stay vigilant

Due to the routinely reviews of General Conditions of Carriage by consumer protection agencies, airlines have to pay specific attention to the content of their GCC when they are active in Austria in order to avoid court proceedings, costs and negative publicity.

Our [Aviation Team](#) at Weisenheimer is experienced in handling such cases and happy to answer your questions related to the use of General Conditions of Carriage in Austria, to review your GCC to mitigate the risk of legal proceedings and to represent you in court proceedings.

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