

**Federal Law Regulating Basic Welfare Support
of Asylum-Seekers in Admission Procedures and of Certain Other Aliens
(Federal Government Basic Welfare Support Act 2005 – GVG-B 2005)**

- unofficial consolidated version -

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FLG No. 314/1994

FLG I No. 134/2000

FLG I No. 98/2001

FLG I No. 101/2003

FLG I No. 32/2004

FLG I No. 100/2005

FLG I No. 2/2008

FLG I No. 4/2008

FLG I No. 122/2009

FLG I No. 38/2011

FLG I No. 87/2012

FLG I No. 68/2013

FLG I No. 70/2015

[NOTE: This is an unofficial translation]

The National Council has decided:

Definitions

Article 1. For the purposes of the present federal law:

1. “Asylum seeker undergoing an admission procedure” shall mean an asylum seeker who has submitted an application for asylum whose admissibility has not yet been ruled on and the procedure relating to which has not been discontinued pursuant to article 24 of the 2005 Asylum Act, *Federal Law Gazette* (FLG) I No. 100;
2. “Basic Welfare Support Agreement” shall mean the agreement between the Federal Government and the provincial governments pursuant to article 15a of the Federal Constitution, as currently amended, concerning joint measures for the temporary granting of basic welfare support to aliens in need of assistance and protection in Austria (asylum seekers, persons having entitlement to asylum, displaced persons and other persons who may not be deported for legal or practical reasons);
3. “Welfare support” shall mean the benefits to be provided pursuant to articles 6 and 7 of the Basic Welfare Support Agreement;
4. “Care centre” shall mean any accommodation which is situated outside an initial reception centre and at which the provision of an asylum-seeker’s basic needs is in practice guaranteed;
5. “Care facility” shall mean:

- (a) any care centre (subparagraph 4 above) and
 - (b) any initial reception centre insofar as the provision of basic needs of asylum-seekers whose admission procedures have not yet been ruled on is in practice guaranteed there;
6. ‘Dublin Regulation’ shall mean Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), Official Journal of the European Union L 180 of 29 June 2013, p. 31.

Granting of welfare support

Article 2. (1) The Federal Government shall provide welfare support to asylum-seekers undergoing admission procedures at a care facility operated by the Federal Government (article 1, subparagraph 5), taking into consideration, to the extent possible, in the granting of basic welfare support, any particular requirements of persons in need of protection. The Federal Government shall also provide support to the same extent for aliens whose applications for asylum in admission procedures have been:

- 1. rejected or
- 2. dismissed if the suspensory effect of an appeal has been disallowed, unless and until such suspensory effect is again allowed,

for as long as they are accommodated at a care facility operated by the Federal Government, until they leave the federal territory.

(1a) There shall be no entitlement to the receipt of welfare support at a specific care facility operated by the Federal Government or in a specific federal province. The transfer of asylum seekers or other aliens, as referred to in paragraph (1) above, who are already in receipt of welfare support at a care facility operated by the Federal Government to another such care facility shall, if required, be admissible. The asylum seeker shall be notified, without formality, of the care facility operated by the Federal Government (article 1, subparagraph 5) at which he is in future to be granted basic welfare support and he shall be provided with free-of-charge travel to such facility. In such event, the asylum seeker shall no longer be entitled to reside at the care facility at which welfare support was previously provided to him.

(2) Asylum seekers and other aliens as referred to in paragraph (1) above shall at the earliest possible time be informed of the place at which their welfare support will be provided. In the allocation process, consideration shall be given to existing family relationships, to the particular requirements of persons in need of protection and to ethnic particularities.

(3) Basic welfare support as referred to in paragraph (1) above shall be suspended for the duration of any period in custody.

(4) Welfare support provided to asylum-seekers and other aliens as referred to in paragraph (1) above who:

- 1. continually or persistently jeopardize good order through serious infringement of the internal rules of care facilities (article 5) or
- 2. are evicted from a care facility pursuant to article 38a of the Security Policing Act – SPG, FLG No. 566/1991 or

3. have committed a harmful assault (article 16, paragraphs (2) and (3), of the Security Policing Act) on life, health or freedom at a care facility and it may be assumed, on the basis of certain facts, that they will commit a further similar act

may be limited, granted under certain conditions or withdrawn by the authority. Any such decision may not, however, restrict access to emergency medical attention.

(5) Basic welfare support provided to asylum seekers and other aliens as referred to in paragraph (1) above who have been convicted by reason of an act punishable by the courts which can constitute grounds for exclusion, in accordance with article 6 of the 2005 Asylum Act, may be limited, granted under certain conditions or withdrawn. The last sentence of paragraph (4) above shall apply.

(6) A decision to limit or withdraw welfare support pursuant to paragraph (4) or (5) above shall be preceded by an interview with the person concerned provided that this is possible without any deferment. In particular, an interview with the person concerned shall not be possible if he has been summoned to the interview but does not attend it or if his place of residence is not known.

(7) Aliens not possessing right of residence shall lose their entitlement to welfare support, as referred to in paragraph (1) above, in the event of disallowance of the suspensory effect of an appeal pursuant to article 18, paragraph (1), of the Federal Office Procedures Act unless suspensory effect is allowed by the Federal Administrative Court pursuant to article 18, paragraph (5), of the Federal Office Procedures Act. If an alien cooperates in his voluntary departure, entitlement to welfare support in accordance with paragraph (1) above shall be reinstated for the duration of the cooperation until the time of his voluntary departure. In the event of loss of entitlement to welfare support, the provision of welfare support as defined in the last sentence of paragraph 5 of article 20 of Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast), Official Journal of the European Union L 180 of 29 June 2013, p. 96, shall in all cases be ensured for aliens until their departure from the federal territory.

Exclusion from welfare support and reimbursement of costs

Article 3. (1) The following persons may be excluded from welfare support as referred to in article 2:

1. Nationals of Member States of the European Union and Switzerland, Norway, Iceland and Liechtenstein;
2. Asylum seekers and other aliens as referred to in paragraph (1) of article 2 who do not cooperate in the establishment of their identity or of their need for assistance, notwithstanding a request to that effect;
3. Asylum seekers who have submitted a further application for asylum within six months of the final conclusion of their earlier asylum procedure;
4. Asylum seekers who do not cooperate in the establishment of the facts necessary for the conduct of the asylum procedure;
5. Aliens not possessing right of residence, following the final conclusion of their asylum procedure, unless the required conditions as set out in article 2, paragraph (1), subparagraph 2, of the Basic Welfare Support Agreement exist and
6. Asylum seekers and other aliens as referred to in paragraph (1) of article 2 who are able to provide for their livelihood by their own means.

The last sentence of paragraph (4) of article 2 shall apply. Paragraph (6) of article 2 shall apply *mutatis mutandis*.

(2) Asylum seekers or other aliens as referred to in paragraph (1) of article 2 to whom basic welfare support as referred to in article 2 has been provided but who at the time of granting of welfare support would have been able to provide for their livelihood by their own means shall be ordered by the authority to reimburse the necessary costs of care.

(3) Persons having entitlement to asylum and persons eligible for subsidiary protection whose procedure has already been finally and favourably completed prior to their transfer to a care centre of a federal province and who receive welfare support at a care centre operated by the Federal Government, as referred to in article 6, paragraph (3), may be excluded from welfare support four months after the conclusion of their asylum procedure.

Provision of welfare support

Article 4. (1) For the provision of welfare support, The Federal Minister of the Interior may, unless precluded by reason of article 3, paragraph (5), of the Basic Welfare Support Agreement, make use of humanitarian, ecclesiastical or private establishments; such establishments shall act on behalf of the Federal Minister of the Interior and report to him upon request or if otherwise required and shall be obliged to comply with his instructions.

(2) Establishments so commissioned shall contractually require employees engaged in the execution of the present law to observe an obligation of secrecy.

(3) If, in accordance with article 43 (2) 2 of the Federal Office Procedure Act, the Federal Office for Asylum and Immigration Matters (Federal Office) rules that a transfer to an initial reception centre shall not take place, welfare support pursuant to the present federal law may be withheld if the provision of such support is otherwise guaranteed.

Conduct at and entry of care centres operated by the Federal Government

Article 5. (1) The Federal Minister of Interior shall be empowered, if it is necessary for the purpose of preserving order at a care facility (subparagraph 5 of article 1) operated by the Federal Government or with a view to preventing harmful assaults (article 16, paragraph (2), of the Security Policing Act) on the life, health or freedom of persons or property of care recipients or to safeguarding the furnishings and fittings of the care facility, to prohibit by ministerial order any unauthorized stay at or unauthorized entry of such care facility operated by the Federal Government or of certain areas of that facility.

(2) Agents of the public security service shall cooperate in the enforcement of such ministerial orders. They shall:

1. Assist officials of care facilities in monitoring compliance with the ministerial order and
2. Take steps required for the initiation or conduct of administrative penalty procedures.

(3) The authority shall, by ministerial order, issue internal rules for the preservation of order and safety in respect of every care facility operated by the Federal Government (subparagraph 5 of article 1). Such internal rules, which may, in particular, lay down the requirement that a lights-out period be observed, shall be displayed in a generally accessible place at the care facility concerned and each care recipient shall, upon the commencement of welfare support and in all cases as soon as possible, be informed, in a provable manner, of their main points in a language understandable to him. No further public announcement shall be required.

Welfare support following admission

Article 6. (1) The Federal Minister of the Interior shall decide on the first accommodation at a care centre of a federal province in agreement with the competent department of the federal province concerned. The asylum seeker shall be notified without formality of the care centre (subparagraph 4 of article 1) at which he is to be granted basic welfare support and shall be provided with free-of-charge travel to such centre.

(2) Until an agreement is reached with the competent department of the federal province concerned, the asylum-seeker may continue to receive welfare support, to the full extent required, at the care centre operated by the Federal Government (subparagraph 4 of article 1), but for a period not exceeding 14 days.

(3) If persons receive welfare support at a care facility operated by the Federal Government on the basis of other statutory regulations or on factual grounds, the Federal Office shall be the competent authority. Article 2, paragraphs (4) to (7), shall apply *mutatis mutandis*.

Employment of asylum seekers

Article 7. (1) The pursuit of an occupation by asylum seekers in a non-self-employed capacity shall be governed by the Aliens Employment Act, as currently amended. The granting of employment authorization shall be communicated to the authority by the competent office of the employment market service.

(2) The pursuit of an occupation in a self-employed capacity shall not be permissible during the first three months following submission of the application for asylum. The commencement and cessation of an occupation in a self-employed capacity shall be communicated to the authority.

(3) Asylum seekers and aliens as referred to in paragraph (1) of article 2 who are accommodated at a care facility (subparagraph 5 of article 1) operated by the Federal Government or provincial governments may, with their consent, be employed in:

1. Auxiliary activities which are directly connected with their accommodation (for example, cleaning, kitchen work, transport and maintenance) and
2. Auxiliary activities for the public benefit on behalf of the Federal Government or the provincial or municipal authorities (for example, landscape conservation and layout work, upkeep of parks or sports facilities and help in the administration).

(4) Asylum seekers whose procedure pursuant to article 28 of the 2005 Asylum Act has been admitted may, with their consent, be employed in activities as defined in paragraph (3) above even if they receive care from third parties.

(5) Where such auxiliary activities are provided, a nominal contribution shall be paid to the asylum-seeker. Such nominal contribution shall not be deemed to be remuneration as defined in article 49 , paragraphs (1) and (2), of the Federal law of 9 September 1955 concerning general social insurance, FLG No. 189/1955, and shall not be subject to income tax.

(6) The performance of activities as referred to in paragraphs (3) and (4) above shall not give rise to the establishment of any employment contract; no aliens employment permit shall be required.

Care information system and provisions relating to data protection

Article 8. (1) The authorities and the Federal Minister of Interior shall be empowered to make use of computerized data processing facilities for the purpose of ensuring the provision

of welfare support pursuant to the present federal law. For that purpose, they may utilize data on persons who are to receive welfare support in a distributed information system, such data relating to the facts relevant to the granting of welfare support, in particular name, date of birth, distinguishing features, country of origin, documentation details, vocational training, religion, ethnic group and state of health. The operator of this distributed information system shall be the Federal Minister of Interior; the instructing parties shall be the authority of first resort, the Federal Minister of Interior and the competent officials of the provincial governments.

(1a) The authorities shall be empowered to acquire from the Central Aliens Register (article 26 of the Federal Office Procedure Act) data processed in accordance with article 27 (1) 1 to 11 of the Federal Office Procedure Act and procedural data processed by the Federal Office and the Federal Administrative Court in accordance with article 28 (1) of the Federal Office Procedure Act, provided that such action represents an essential requirement for the discharge of their functions pursuant to the present federal law.

(2) Also, the authority and the Federal Minister of Interior shall, for accounting purposes pursuant to article 10 (f) of the Basic Welfare Support Agreement, be empowered to use computerized data on aliens as referred to in paragraph (1) of article 2 of the Basic Welfare Support Agreement.

(3) The instructing parties shall take the measures specified in paragraph (2) of article 14 of the Data Protection Act 2000 within their area of administration. Also, the operator may, by random checking conducted jointly with the instructing party concerned, verify whether the use of data as referred to in paragraphs (1) and (2) above is being carried out, within the corresponding area of administration, in accordance with the relevant provisions, for purposes of execution of the present law and articles 6, 7, 8, 10 and 11 of the Basic Welfare Support Agreement, or of execution of the provincial laws implementing that Agreement, and whether the necessary data security measures have been taken.

(4) The authorities may transmit data as referred to in paragraph (1) above to agencies and officers of the provincial governments entrusted with the provision of welfare support to aliens as referred to in paragraph (1) of article 2 of the Basic Welfare Support Agreement, to commissioned legal entities in accordance with article 4, to the employment market service, to social insurance institutions, to the inland revenue authorities, to the district administrative authorities as health authorities, to the security authorities, to the youth welfare authorities, to the Austrian Integration Fund, to the representative of the United Nations High Commissioner for Refugees and to foreign asylum authorities.

(5) The Federation of Austrian Social Insurance Institutions and the individual social insurance institution concerned shall furnish the authorities with information on the insurance status of asylum seekers receiving federal care.

(6) Data as referred to in paragraphs (1) and (2) above shall be deleted two years after the cessation of the provision of care unless required in pending procedures or for the purpose of a cost settlement in accordance with section 11 of the Basic Welfare Support Agreement.

(7) The federal, provincial and municipal government authorities and offices of the labour market service which are lawfully in possession of data shall be empowered and, upon enquiry, obliged to transmit such data to the authorities and agencies referred to in paragraph (1) above insofar as the data are required for the granting of welfare support. Transferred data shall be deleted without delay if no longer required to meet the specific purpose involved.

Authorities

Article 9. (1) The authority under the present federal law shall be the Federal Office.

(2) Rulings on appeals against decisions of the authority shall be rendered by the Federal Administrative Court.

(3) If the authority of first resort has pronounced a decision pursuant to article 13 (2) of the Administrative Court Proceedings Act (VwGVG), FLG I No. 33/2013, the Federal Administrative Court may, upon application, grant suspensory effect in respect of the appeal.

(3a) repealed by FLG I No. 87/2012

(3b) The Federal Minister of the Interior shall have the right to file petitions for judicial review with the Higher Administrative Court against rulings and orders of the Federal Administrative Court on appeals against administrative decisions of the authority following notification of the ruling or order to the Federal Office.

(4) The provincial police authority having territorial jurisdiction shall be competent to conduct administrative penalty procedures pursuant to article 10.

Control measures

Article 9a. For the purpose of preparing periodic analyses pursuant to section 5, paragraph (3), subparagraph 2, of the Basic Welfare Support Agreement, the Federal Minister of the Interior may, with the involvement of the provincial police authorities and the tax authorities, carry out in situ checks on the extent to which the welfare support actually provided meets the objectives of the Basic Welfare Support Agreement (section 1 in conjunction with section 6). Should the provincial government authorities carry out such checks within their area of responsibility, the Federal Minister of the Interior, the provincial police authorities and the tax authorities may participate in them if the provincial government authorities so request.

Administrative infractions

Article 10. (1) Any person who without authorization enters a care facility operated by the Federal Government or an area of that facility or stays in any such facility in contravention of a ministerial order as referred to in paragraph (1) of article 5 shall be punished by a fine of up to 700 euros or, if that sum is not recoverable, by a term of imprisonment of up to four weeks.

(2) Any person who, as an asylum seeker, pursues an occupation in a self-employed capacity when prohibited from doing so in accordance with paragraph (2) of article 7 shall be guilty of an administrative infraction and be punished by a fine of up to 300 euros or, if that sum is not recoverable, by a term of imprisonment of up to two weeks.

(3) If a person commits an administrative infraction, as referred to in paragraph (1) above, for which he has already been punished once, a prison sentence may, in place of a fine, be imposed for the duration of the term of imprisonment applicable in default of payment of the fine in relation to the offence concerned; if any such person has already been punished twice, the fine and prison sentence may be imposed jointly. However, a prison sentence shall be permissible only if required in order to prevent the person concerned from committing further administrative infractions of the same kind.

(4) Should an offence as referred to in paragraph (1) or (2) above fall within the jurisdiction of the courts, it shall not be deemed an administrative infraction.

Creation of contingency capacities

Article 11. (1) The Federal Minister of Interior shall create contingency capacities in order to meet unforeseeable and unavoidable accommodation shortages in the provinces.

(2) The Federal Minister of Interior, in agreement with the Federal Minister of National Defence, may, by ministerial order, declare barracks as care centres in accordance with subparagraph 4 of article 1.

(3) Ministerial orders as referred to in paragraph (2) above shall, in the case of events justifying a ministerial order in accordance with article 62 of the 2005 Asylum Act, be displayed at the barracks concerned; also, any such ministerial order does not need to be publicly announced.

Repatriation advice and repatriation assistance

Article 12. (1) Aliens whose application for asylum has been rejected or dismissed and asylum-seekers may, if they are persons in need and are willing to return to their home country or – if they are stateless – to their country of origin – be provided with repatriation assistance.

(2) Repatriation assistance shall in all cases include the necessary costs of the return journey.

(3) The Federal Minister of Interior may establish repatriation advisory centres which shall provide the persons referred to in paragraph (1) above with information on repatriation opportunities and advice on all related matters. The Federal Minister of Interior may also engage the services of appropriate organizations for such purpose.

Grammatical equivalence

Article 13. Where references made in the present federal law to natural persons appear only in the masculine form, they shall apply equally to females and to males. In cases where the reference applies to a particular natural person, the specific form of the gender shall be employed.

Article 13a. With the exception of proceedings which are pending on 14 October 2003 before the courts against the Republic of Austria, the temporal scope of application of the amendments to the first sentence of paragraph (1) and to paragraph (3) of article 1, to paragraphs (1) and (2) of article 2 and to article 2a of the Federal Care Provision Act, FLG No. 405/1991, shall be determined by the regulatory provisions of article 8 of the Civil Code.

References

Article 14. References made in the present federal law to other federal laws shall be understood as applying to their versions as currently amended.

Execution

Article 15. Execution of the present federal law shall be entrusted to the Federal Minister of Interior and, with regard to paragraph (2) of article 11, in agreement with the Federal Minister of National Defence.”

Article 16. (1) *[Repealed by FLG I No. 32/2004]*

(2) *[Repealed by FLG No. 100/2005]*

(3) Article 11, paragraph (1), as amended by FLG 314/1994, shall enter into force as of 1 July 1994.

(4) Article 13 ceases to be effective at the end of 31 December 2000.

(5) Article 10, subparagraph 3, as amended by FLG I No. 98/2001, shall enter into force as of 1 January 2002.

(6) Article 2, paragraph (2), subparagraph 2, as amended by federal law FLG I No. 32/2004, shall enter into force on 1 May 2004.

(7) Article 2, paragraph (2), as amended by Section I of federal law FLG I No. 32/2004, shall enter into force on 1 May 2004.

(8) Article 8 shall cease to be in force at midnight on 30 April 2004.

(10) Articles 1 to 15, as amended by Section II of federal law FLG I No. 32/2004, shall enter into force on 1 January 2005.

(11) The application of article 13a, as amended by federal law FLG I No. 101/2003, to facts that occurred prior to 22 November 2003 shall remain unaffected.

(12) Articles 1, 2, 4, paragraph (3), 5, paragraphs (1) and (3), 6, 7, paragraphs (3) to (5), 10, paragraph (3), and 11, paragraph (2), as amended by federal law FLG I No. 100/2005, shall enter into force on 1 January 2006. The full, short and abbreviated titles, article 9, paragraphs (3a) and (3b), and article 10, paragraph (1), as amended by federal law FLG I No. 100/2005, shall enter into force at midnight on the date of promulgation.

(13) Article 8, paragraph (1) as amended by the federal law FLG I No. 4/2008, shall enter into force on 1 July 2008.

(14) Article 5, paragraph (3), article 8, paragraph (7) and article 9a and its heading, as amended by federal law FLG I No. 122/2009, shall enter into force on 1 January 2010;

(15) Article 1, subparagraphs 5 and 6, article 2, paragraph (1), article 6, paragraph (3) and article 12, paragraph (1), as amended by federal law FLG I No. 38/2011, shall enter into force on 1 July 2011.

(16) Article 2 (7), article 4 (3), article 6 (3), article 8 (1a), article 9 (1), (2), (3), (3b) and (4), article 9a and article 11 (3), as amended by federal act FLG I No. 87/2012, shall enter into force on 1 January 2014. Article 9 (3a), prior to amendment by federal act FLG I No. 87/2012, shall cease to be in force at midnight on 31 December 2013.

(17) Subparagraph 2 of paragraph (1) of article 2 and paragraph (3) of article 9, as amended by federal act FLG I No. 68/2013, shall enter into force on 1 January 2014.

(18) Orders issued pursuant to federal act FLG I No. 68/2013 shall be understood to refer to that version of the provisions of the present federal act which would incorporate these provisions by virtue of the Immigration Authorities Restructuring Act (FNG), FLG I No. 87/2012.

(19) Article 1, subparagraph 6, article 2, paragraphs (1), (1a), (2), (4), subparagraphs 2 and 3, and (7), article 3, paragraphs (1) to (3), article 4, paragraphs (1) and (3), article 5, paragraph (1), article 6, paragraph (1), article 8, paragraphs (4) and (6), article 9, paragraphs (1) to (3b), and article 10, paragraph (1), as amended by federal law FLG I No. 70/2015, shall enter into force on 20 July 2015.