

Federal Act on the Establishment and Organization of the Federal Office for Immigration and Asylum (Federal Office Establishment Act)

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Amendements

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Establishment

Article 1. The Federal Office for Immigration and Asylum (hereinafter “Federal Office”) shall be established as an authority in direct subordination to the Federal Minister of the Interior with jurisdiction throughout the federal territory.

Organization

Article 2. (1) The Federal Office shall be headed by a director. In the event of the director’s impediment, his duties shall be discharged by one of his two deputies.

(2) The Federal Office shall have its principal seat in Vienna and a regional headquarters in each federal province. The director of the Federal Office may, in addition, establish branch offices of the regional headquarters in order to be able to conduct and conclude in an administratively efficient manner and without undue delay all the procedures to be undertaken.

(3) The number of organizational units at the Federal Office, regional headquarters and branch offices and the assignment of functions to them shall be established in a work allocation plan to be issued by the director with a view to the prompt and expedient handling of the work.

(4) The director shall ensure high standards of qualification of the personnel of the Federal Office through their instruction and in-service training.

(5) Employees may be authorized by the director of the Federal Office to exercise powers of command and constraint as set out in article 38 (1) 3 and 4, article 38 (2), article 39 (1) and article 42 (1) of the Federal Office Procedure Act, *Federal Law Gazette* (FLG) I No. 87/2012, provided that such persons are duly qualified and specially trained for that purpose. The Order of the Federal Minister of the Interior issuing Rules for the Intervention of Agents of the Public Security Service (Code of Conduct Regulations – RLV), FLG No. 266/1993, shall apply to such officials.

(6) The agents of the public security service shall assist the Federal Office in the performance of its duties, in particular through the exercise of the functions and powers conferred on them under articles 36 to 47 of the Federal Office Procedures Act.

Employment of provincial government personnel and personnel of the Vienna city administration

Article 2a. (1) Provincial government personnel and personnel of the Vienna city administration may be engaged for the purpose of discharging functions of the Federal Office, in accordance with paragraphs (2) to (4) below, through their assignment to the Federal Government to perform services within the Federal Office.

(2) The assignment of personnel as referred to in paragraph (1) above shall require a contractual agreement between the Federal Government and the provincial government concerned or the Vienna city administration, which shall, in particular, contain stipulations concerning the principles of staff secondment, cost allocation, liability conditions arising out of such assignment and also its termination.

(3) Personnel supervision shall be the responsibility of the senior federal government officials who are competent in accordance with the organizational regulations.

(4) Assigned provincial government personnel and personnel of the Vienna city administration shall, with respect to their service and pay status, remain employees of the assigning federal provincial government or Vienna city administration. The hierarchical authority of the provincial governments (article 21 (3) of the Federal Constitutional Law) or of the Vienna city administration over personnel assigned to the Federal Government shall be unaffected.

Sphere of competence

Article 3. (1) The Federal Office shall be responsible for:

1. the implementation of the Federal Office Procedure Act;
2. the implementation of the 2005 Asylum Act, FLG I No. 100;
3. the implementation of parts 7, 8 and 11 of the 2005 Aliens' Police Act, FLG I No. 100 and
4. the implementation of the Federal Government Basic Welfare Support Act 2005, FLG I No. 100.

(2) The Federal Office shall, with reference to individual cases, be the competent authority for the exchange of information with those countries to which the Dublin Regulation (article 2 (1) 8 of the 2005 Asylum Act) or a treaty concerning the determination of responsibility for the examination of applications for asylum or applications for international protection is applicable.

Initial reception centres

Article 4. Initial reception centres may be established by order of the Federal Minister of the Interior. Such centres shall form part of the Federal Office.

Country records

Article 5. (1) The Federal Office shall maintain country records in which facts relevant to procedures before the Federal Office and relating to the situation in the countries concerned shall be entered, together with their sources.

(2) In particular, the purpose of country records shall be to gather relevant facts for:

1. assessing whether facts exist which allow it to be concluded that in a certain country there is a danger of persecution as defined in the 2005 Asylum Act;
2. assessing the credibility of asylum seekers' and aliens' statements and
3. deciding whether a certain country is safe within the meaning of article 4 or article 4a of the 2005 Asylum Act or of article 19 of the Federal Office Procedure Act.

The facts gathered shall be collated by specific country, scientifically reviewed on the basis of objective criteria (general analysis) and recorded in a generic manner. Records shall be rectified with respect to facts which do not or no longer correspond with reality. Any analysis based on such facts shall be corrected.

(3) The Federal Administrative Court, the courts of justice dealing with matters of public law and the Federal Minister of Justice shall be entitled, within the framework of country records, to request the Federal Office to gather available information and evaluate information in existence or to be gathered on a particular question in connection with official assistance. The Federal Office shall be obliged to comply with such request.

(4) Within the Federal Ministry of the Interior there shall be established an advisory board (Advisory Board on the Maintenance of Country Records), which, in particular, shall issue recommendations on keeping country records, gathering relevant facts, evaluating sources used and conducting analyses. The Federal Minister of the Interior shall appoint the chairman and nine members of the advisory board, who shall possess relevant specialist knowledge in the field of asylum or immigration law and shall hold office

for five years; the composition of the advisory board shall in all cases include a member of the Federal Administrative Court, a representative of the United Nations High Commissioner for Refugees and a representative of the Federal Ministry of European and International Affairs. The director of the Federal Office shall also serve on the advisory board; he may be represented in that position by an employee of the Federal Office who is versed in the law. Participation in the advisory board shall be in an honorary capacity. Necessary travelling expenses shall be reimbursed to the members of the advisory board. The 1955 Travel Cost Regulations, FLG No. 133, shall apply to reimbursement of travelling expenses. Rules of procedure shall be issued by order of the Federal Minister of the Interior, stipulating that, in the event of an equal number of votes, the chairman shall have the casting vote; in all other respects, the rules of procedure shall govern, in particular, the convening, conducting and recording of meetings, the decision-making process in the formulation of recommendations and the criteria for establishing a qualified minority.

(5) Country records shall be public. Documents which are subject to the requirement of confidentiality or to which the right of inspection of records (article 17 of the 1991 General Administrative Procedures Act (AVG), FLG No. 51) does not otherwise apply shall not be accessible to the public. Also, the Federal Office and the Federal Administrative Court may deny public access to documents which are solely for internal official use.

(6) Country records shall be available on a free-of-charge basis to:

1. authorities engaged in federal enforcement operations;
2. the ordinary courts;
3. the federal and provincial administrative courts;
4. authorities and appointees of the provincial governments engaged in implementing the Basic Welfare Support Agreement;
5. legal advisers (articles 49 to 52 of the Federal Office Procedure Act);
6. the courts of justice dealing with matters of public law;
7. the United Nations High Commissioner for Refugees (UNHCR);
8. the European Court of Human Rights and the European Court of Justice and
9. foreign asylum and immigration authorities or foreign courts insofar as reciprocal arrangements exist.

For the furnishing of information, other authorities or persons shall be required to pay administrative fees, which shall be fixed by order of the Federal Minister of the Interior in agreement with the Federal Minister of Finance.

(7) If a user as referred to in subparagraph 1, 2, 3 or 5 of paragraph (6) above detects that any elements of information contained in country records do not or no longer correspond with reality, the Federal Office shall be notified thereof. Other persons shall be entitled to report such particulars to the Federal Office.

(8) The Federal Office may avail itself of the services of third parties in connection with the maintenance of country records.

Providing information to the media

Article 5a. (1) Information about procedures conducted by the Federal Office shall be provided to the media (article 1 of the Media Act (MedienG), FLG No. 314/1981) at the discretion of the Federal Office, subject to the following sections and taking into account public interest in factual information about procedures that have gained significance for the public.

(2) Provision of information to the media is only permitted if the timing and content of this information does not infringe on the personal rights of the individuals concerned and their right to a fair trial.

(3) Information shall not be shared if this is excluded by confidentiality interests that should be protected, particularly with regard to the interests of the individuals concerned or their family members, or by protection from revealing an individual's identity, subject to the stipulations of articles 7 to 7b of the Media Act. Additionally, information shall not be shared if the content of this is deemed to be prohibited publication in the sense of article 301 of the penal code (StGB), FLG No. 60/1974. This also applies if the administrative authority's preliminary proceedings would be impeded as a result of releasing this information."

References

Article 6. References in the present federal act to other federal acts shall be understood to be references to their current wording.

Grammatical equivalence

Article 7. Where references made in the present federal act 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.

Entry into force

Article 8. (1) The present federal act shall enter into force on 1 January 2014.

(2) Article 2a and its heading, article 9 and its heading and the list of contents, as amended by federal act FLG I No. 68/2013, shall enter into force on 1 January 2014.

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

(4) Article 2, paragraphs (5) and (6), and article 5, paragraph (2), subparagraph 3, as amended by federal act FLG I No. 70/2015, shall enter into force on 20 July 2015.

(5) Article 2 (5) and article 5a, along with their headings, and the entry in the list of contents for article 5a in the FLG I No. 56/2018 version of the present federal act shall enter into force on 1 September 2018.

Transitional provisions

Article 9. The Federal Office for Immigration and Asylum shall, as legal successor, take over the function of controller, as defined in article 4, subparagraph 4, of the 2000 Data Protection Act, for all data applications of the Federal Asylum Agency. All registered data applications shall be continued under the register number of the Federal Asylum Agency. It shall not be necessary to submit new notifications to the data protection authority concerning data applications of the legal predecessor which have already been registered. Any necessary amendments in the data-processing register resulting from the legal succession shall be made by the data protection authority.