

## **Basic Welfare Support Agreement – Art. 15a of the Federal Constitution**

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**[NOTE: This is an unofficial translation]**

The National Council has ruled as follows:

The conclusion of the following Agreement pursuant to article 15a of the Federal Constitution is constitutionally authorized.

**Agreement between the Federal Government and the provincial governments, pursuant to article 15a of the Federal Constitution, 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) (Basic Welfare Support Agreement – Article 15a of the Federal Constitution)**

The Federation, represented by the Federal Government, and the Provinces of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna, in each case represented by the Head of its Provincial Government – hereinafter referred to as the contracting parties – consent to conclude the following Agreement pursuant to article 15a of the Federal Constitution:

### **Article 1 Objective**

(1) The objective of the Agreement shall be to standardize throughout the country, within the framework of existing constitutionally established areas of jurisdiction, the guaranteeing of temporary basic welfare support for aliens in the federal territory who are in need of assistance and protection. The provision of basic welfare support should be uniform throughout the country, effected on a partnership basis, avoid any regional overburdening and create legal security for the aliens concerned.

(2) In the attainment of the objective set out in paragraph (1) above, due consideration shall be given to standards of European law, in particular Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

(3) The contracting parties shall establish a care information system. The persons acting as instructing parties for the care information system in conformity with data protection law shall be the competent officials of the individual contracting parties. The care information system shall be operated as a distributed information system (article 4, subparagraph 13, and article 50 of the Data Protection Act 2000 (DSG 2000)).

(4) The provision of care to aliens who are beneficiaries under the present Agreement shall be based on an annual overall approach taking into consideration the proportion of the resident population within the federal provinces. The term resident population as used in the

present Agreement shall mean the total population of Austria, as ascertained for fiscal equalization purposes, and the number of inhabitants in the federal province concerned (most recent source: the 2001 population census).

(5) The present Agreement shall not establish any legal entitlement for aliens as referred to in article 2.

## **Article 2**

### **Definitions and target group**

(1) The target group under the present Agreement shall, notwithstanding the provisions of the Federal Care Provision Act, *Federal Law Gazette* (FLG) I No. 101/2003, be aliens in need of assistance and protection who are deserving of support. A person shall be deemed in need of assistance if he is unable or insufficiently able by his own means and efforts to provide for the necessities of life for himself and his relatives living in the same household and entitled to maintenance and if such necessities are not received or are insufficiently received by him from other individuals or institutions. The following persons shall be deemed in need of protection:

1. Aliens who have filed an application for asylum (asylum seekers) which has not yet been finally ruled on,
2. Aliens not possessing right of residence whose application for asylum has been finally and negatively ruled on and who cannot be deported for legal or practical reasons,
3. Aliens possessing right of residence pursuant to article 8 in conjunction with article 15 of the Asylum Act, or article 10, paragraph (4), of the Aliens Act, or a ministerial order pursuant to article 29 of the Aliens Act,
4. Aliens not possessing right of residence who cannot be deported for legal or practical reasons,
5. Aliens who, by virtue of articles 4, 4a, 5, 5a and 6 of the 2003 Asylum Law Amendment Act, FLG I No. 101/2003, may be detained pending their deportation pursuant to a decision of the asylum authority, even if that decision is not final, or aliens to whom the provisions of article 66 of the Aliens Act are applicable, or aliens for whom the temporary granting of basic welfare support is guaranteed by the provincial governments until their removal from the country actually takes place pursuant to the decision of the asylum authority and
6. Aliens who are granted asylum in Austria on or after 1 May 2004 (persons having entitlement to asylum), during the first four months following the granting of asylum.

(2) Support for aliens who are placed in custody shall be suspended for the duration of the period of such custody.

(3) Support shall in all cases cease upon departure from the federal territory unless Austria is obliged by virtue of international norms to grant re-admittance.

(4) The alien's eligibility for support may, taking into account paragraph (2) of article 1, be restricted or forfeited if he has been convicted by reason of an act punishable by the courts which can constitute grounds for exclusion in accordance with article 13 of the Asylum Act.

## **Article 3**

### **Responsibilities of the Federal Government**

(1) The Federal Government shall operate care facilities (care centres, initial reception centres) for asylum seekers. The Federal Government shall reach agreement with the federal province concerned prior to the establishment or closure of federal care centres. The Federal Government shall provide for the initial reception of asylum seekers.

(2) The Federal Government shall set up a coordination centre. Its responsibilities shall be as follows:

1. Allocation of asylum seekers among the provinces, giving due consideration to the apportionment ratio (paragraph (4) of article 1),
2. Transport (to the initial reception centres and from the initial reception centres to the provinces),
3. Registration, deregistration and re-registration with the sickness insurance authorities if the aliens receiving care are provided with such care by the Federal Government or are in care facilities operated by the Federal Government,
4. Administrative processing, quarterly preparation of a statement of financial disbursements of all the contracting parties (subdivided by contracting party) and settlement with the provincial governments,
5. Provision of assistance, where required and upon request by the provincial governments, in the case of the redistribution, to individual federal provinces, of aliens as referred to in subparagraph 4 of paragraph (1) of article 2 and
6. Coordination and execution of measures relating to repatriation programmes.

(3) The Federal Government shall inform the provincial governments in a regular and timely fashion of any orders that relate to asylum procedures.

(4) Creation of contingency capacities with a view to meeting accommodation shortages in the provinces.

(5) For the discharge of its responsibilities as set out in paragraph (1) (with the exception of initial reception centres), in paragraph (2), subparagraphs 2, 3 and 6 regarding measures for the implementation of repatriation programmes, and in paragraph (4), the Federal Government may make use of humanitarian, ecclesiastical or private establishments or voluntary charitable institutions.

#### **Article 4** **Responsibilities of the provincial governments**

(1) The responsibilities of the provincial governments shall be as follows:

1. Provision of welfare support to asylum seekers assigned by the coordination centre,
2. Taking of decisions on the granting of care to aliens as referred to in subparagraphs 2 to 4 and 6 of paragraph (1) of article 2,
3. Taking of decisions on the discontinuation of the granting of care to aliens receiving care; in the case of asylum seekers, such decisions shall be taken in agreement with the Federal Asylum Agency,
4. Establishment and maintenance of the infrastructure required for the provision of welfare support to aliens,
5. Registration, re-registration and deregistration with the sickness insurance authorities if the aliens receiving care are provided with such care by the provincial governments or receive such care from facilities operated by the provincial government,
6. Entry of current data on capacity utilization in the distributed information system at the earliest possible time,
7. Provision of assistance to the Federal Asylum Agency in the conduct of asylum procedures, for example by delivering summons and decisions to the asylum seeker and sending notifications and reminders to the accommodation provider and asylum seeker concerning dates fixed in connection with asylum procedures,
8. Processing, upon request by the Federal Government, of personal data on asylum seekers required for the implementation of repatriation schemes and
9. Furnishing the coordination centre, at the earliest possible time, with current reports on asylum seekers allocated by it who have evaded the asylum procedure.

(2) For the provision of welfare support to aliens granted care and for the establishment and maintenance of the necessary infrastructure as referred to in subparagraph 4 of paragraph (1) above, the provincial governments may make use of humanitarian, ecclesiastical or private establishments or voluntary charitable institutions.

(3) In the event of a disproportionate additional burden on individual provinces, the provincial governments may, in agreement with the coordination centre, arrange for a number of aliens to be admitted by another province. If transport is required for that purpose, the transferring province shall take care of such transport.

### **Article 5 Federal and Provincial Government Coordination Board**

(1) The Coordination Board shall be composed of the representatives of the contracting parties, whose relationship shall be that of equal partners enjoying equal rights.

(2) The Coordination Board shall meet at the request of any member and shall devote itself on a partnership basis to resolving problems arising in connection with current cases, the interpretation of the present Agreement and the settlement of costs and their auditing, or as a result of extraordinary occurrences. Also, the partners shall, within the Coordination Board, exchange information and contribute to a joint process of forming opinions.

- (3) The Coordination Board shall prepare:
1. Necessary adjustments concerning maximum unit cost rates;
  2. Periodic analyses concerning the implementation of the present Agreement, for the first time as at the key date of 1 May 2005. The analysis shall in each case be submitted to the contracting parties at the latest within three months of the key date. The intervals at which analyses are to be conducted shall be fixed by the Coordination Board.
  3. Recommendations concerning amendments to the present Agreement.

### **Article 6 Basic welfare support**

- (1) Basic welfare support shall comprise:
1. Accommodation in suitable lodgings with the exercise of respect for human dignity and due regard to family unity,
  2. The provision of adequate food,
  3. The granting of monthly pocket money for persons in organized lodgings and for unaccompanied minor aliens, except in the case of individual accommodation as referred to in subparagraph 2 of article (9),
  4. The conduct of a medical examination, if required, at the time of the initial reception, in accordance with public health supervisory standards,
  5. The guaranteeing of health care within the meaning of the General Social Insurance Act (ASVG), through the payment of sickness insurance contributions,
  6. The granting of any necessary additional benefits not covered by the sickness insurance, subject to a review in each individual case,
  7. The adoption of measures for persons in need of nursing care,
  8. The provision of information, counselling and social support to aliens by qualified personnel, with the engagement of interpreters, for purposes of the aliens' guidance in Austria and voluntary return,
  9. The payment of costs of transport in the case of transfers and official summonses,
  10. The payment of travelling expenses required for school attendance and the supply of school requisites for pupils,
  11. The adoption of measures, where required, for structuring a daily routine,
  12. The granting of benefits in cash or in kind for the acquisition of necessary clothing,
  13. The payment of local funeral expenses or return transport costs to the same amount and
  14. The provision of repatriation advice, travel costs and a single payment by way of interim financial assistance in the event of voluntary return to the country of origin in special cases.

(2) Basic welfare support may also be provided in benefit instalments if the alien's requirements can thereby be adequately met.

(3) The provision of basic welfare support, as referred to in paragraph (1) above, to aliens who by their conduct continually and persistently offend against good order at any accommodation may, taking into account paragraph (2) of article 1, be limited or discontinued. The same shall apply in cases where article 38a of the Security Policing Act (SPG) is applicable.

(4) An alien's emergency medical attention may not be jeopardized by the limitation or discontinuation of benefits.

(5) Aliens as referred to in paragraph (1) of article 2 may, with their consent, be employed in auxiliary activities which are directly connected with their accommodation and care.

### **Article 7** **Special provisions relating to unaccompanied minor aliens**

(1) The contracting parties agree that unaccompanied minor aliens shall require more extensive basic welfare support than that provided for in article 6. Such persons shall be assisted by initial clarification and stabilization measures whose purpose should be to strengthen their emotional state and create a basis of trust. Social education and psychological support shall also be provided if required. They shall be accommodated in residential units, hostels, other suitable organized lodgings, supervised premises or individual accommodation.

(2) Residential units shall be established for unaccompanied minor aliens who have a particularly great need of care. Hostels shall be established for unaccompanied minor aliens who are not capable of self-support. Supervised premises shall be established for care recipients who are in a position to support themselves under guidance.

- (3) The care of unaccompanied minor aliens shall additionally include the following:
1. Structuring a daily routine (education, leisure time, sport, group and individual activities, household tasks) suited to their needs,
  2. Dealing with questions relating to the age, identity, origin and residence of family members,
  3. Clarifying future prospects in conjunction with the authorities,
  4. Arranging for family reunification, where appropriate, and
  5. Formulating, where applicable, an integration plan and measures for the organization of educational, training and vocational preparation activities, exploiting existing offers, with the aim of achieving self-sufficiency.

### **Article 8** **Special provisions relating to large-scale influx situations**

(1) Large-scale influx situations are occurrences which justify the issue of a ministerial order pursuant to article 29 of the Aliens Act (FrG).

(2) In the event of a large-scale influx situation, the coordination centre as referred to in article 3 shall be required to agree upon the measures to be taken. The coordination centre shall take decisions concerning:

1. The aliens' accommodation in care facilities operated by the contracting parties insofar as capacities are available,
2. The supply of additional lodgings and the aliens' accommodation in them.

(3) The coordination centre shall cooperate with the Coordination Board in the discharge of its responsibilities under this article.

(4) In the event of a large-scale influx situation, the basic welfare support granted to such aliens may be limited. The provision of basic needs may not be jeopardized; due consideration shall be given to article 8 of the European Convention on Human Rights.

**Article 9**  
**Maximum unit cost rates**

With regard to the discharge of the responsibilities referred to in articles 6, 7 and 8, the maximum unit cost rates, inclusive of all taxes and duties, shall be as follows:

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|---|---------|
| 1. For accommodation and board in organized lodgings, per person and per day:   | € 17-   |
| 2. For board in the case of individual accommodation, per person and per month:   |         |
| For adults:   | € 180   |
| For minors:   | € 80    |
| For unaccompanied minors:   | € 180   |
| 3. For rental in the case of individual accommodation, per month:   |         |
| For a single person:  | € 110   |
| For families (two or more persons), in total:   | € 220   |
| 4. For pocket money, per person and per month:  | € 40    |
| 5. For interim financial assistance in event of return, single payment per person:  | € 370   |
| 6. For special accommodation in the case of persons in need of nursing care, per person and per month:  | € 2,480 |
| 7. For accommodation, board and care of unaccompanied, minor aliens, per person and per day:  |         |
| In residential units (having a care ratio of 1:10):   | € 75    |
| In hostels (having a care ratio of 1:15):   | € 60    |
| In supervised premises (having a care ratio of 1:20) or in other suitable lodgings:   | € 37    |
| 8. For sickness insurance: subject to a limit equivalent to the contribution rate fixed in accordance with articles 9 and 51 of the ASVG (currently 7.3% inclusive of the additional sum).  |         |
| 9. For information, counselling and social support (excluding costs of interpreters): subject to a maximum carer ratio of:  | 1:170   |
| 10. For travelling expenses required for school attendance: the rates charged by the carriers concerned, up to a cost apportionment limit in accordance with the Family Burden Equalization Act (FLAG).   |         |
| 11. For school requisites, per child and per year:  | € 200   |
| 12. For leisure activities at organized premises, per person and per month  | € 10    |
| 13. For German language classes for unaccompanied minor aliens, subject to a limit of 200 tuition units, per unit and per person:   | € 3.63  |
| 14. For necessary clothing assistance, per person and per year:   | € 150   |
| 15. For return travel: in accordance with the maximum unit cost rates of the International Organization for Migration (IOM) and   |         |
| 16. For costs as referred to in subparagraph 5 of paragraph (1) of article 2, per person and per day: subject to a limit equivalent to the amount fixed in each case in accordance with paragraph (2) of article 10 of the Aliens Act Implementing Regulation (FrG-DV). |         |

**Article 10**  
**Costs**

(1) The total costs incurred in execution of the measures provided for in the present Agreement shall be apportioned between the Federal Government and the provincial governments in the ratio of six to four, with the exception of costs as referred to in the first sentence of paragraph (4) of article 11. Settlement shall be effected on the basis of the amounts actually expended but subject to the limit of the maximum unit cost rates as laid down in article 9.

(2) The costs falling to the individual provincial governments, as referred to in paragraph (1) above, shall be equalized among the provinces according to their resident population (paragraph (4) of article 1).

(3) The contracting parties shall disburse costs arising and effect settlement quarterly, prior to expiry of the following quarter, in accordance with paragraphs (1) and (2) above.

(4) The Federal Government may, at the request even of only one provincial government, effect an advance in respect of costs incurred. Settlement shall take place in accordance with paragraph (3) above.

(5) The contracting parties shall, upon request, make available to each other all relevant data for accounting purposes.

(6) The contracting parties shall establish more detailed implementing rules of accounting by agreement.

### **Article 11 Cost apportionment in the case of asylum seekers**

(1) The costs of basic welfare support for asylum seekers (subparagraph 1 of paragraph (1) of article 2) who submit their application for asylum to the Federal Asylum Agency (initial reception centre), as the authority of first resort, on or after 1 May 2004 shall be apportioned between the Federal Government and the provincial governments, in accordance with article 10, for the duration of the procedure before the authorities of first and second resort, but up to a maximum period of 12 months.

(2) The costs of basic welfare support for asylum seekers (subparagraph 1 of paragraph (1) of article 2) whose procedures are pending before the Federal Asylum Agency, as the authority of first resort, on 30 April 2004 shall be apportioned between the Federal Government and the provincial governments, in accordance with article 10, for the duration of the procedure before the authorities of first and second resort, but up to 30 April 2005 at the latest.

(3) The costs of basic welfare support for asylum seekers (subparagraph 1 of paragraph (1) of article 2) whose procedures are pending before the independent Federal Asylum Review Board, as the authority of second resort, on 30 April 2004 shall be apportioned between the Federal Government and the provincial governments, in accordance with article 10, for the duration of the procedure, but up to 31 October 2004 at the latest.

(4) The costs of basic welfare support for aliens, as referred to in paragraphs (1) to (3) above, whose asylum procedures up to the rendering of a final decision continue for longer than the aforementioned period shall be borne by the Federal Government alone. Upon the final conclusion of the asylum procedure, the cost apportionment as provided for in article 10 shall be applied.

### **Article 12 Financial cost alterations arising from statutory measures; processing of free-of-charge travel for schoolchildren**

(1) If, with specific reference to the regulatory sphere of article 15a of the Federal Constitution, notwithstanding the existing 60 : 40 funding ratio, financial cost alterations to the charge of the provincial governments are occasioned by reason of future laws or regulations of the Federal Government, the Federal Government shall reimburse the costs involved in full to the provincial governments. Any statutory provisions required for the implementation of European Union law shall be precluded from the obligation to reimburse costs.

(2) If, with specific reference to the regulatory sphere of article 15a of the Federal Constitution, notwithstanding the existing 60 : 40 funding ratio, financial cost alterations to the charge of the Federal Government are occasioned by reason of future laws or regulations of a

provincial government, the provincial government concerned shall reimburse the costs involved in full to the Federal Government. Any statutory provisions required for the implementation of European Union law shall be precluded from the obligation to reimburse costs.

(3) Should all the contracting parties reach a cost-sharing agreement, the obligation to apportion costs, as set out in paragraphs (1) and (2) above, shall cease to apply.

(4) The Federal Government shall provisionally undertake the central processing of free-of-charge travel for schoolchildren. The expenses involved in the provision of such free-of-charge travel for schoolchildren shall be subject to the cost-sharing ratio, as referred to in paragraph (1) of article 10, of the aforementioned agreement.

### **Article 13 Exchange of data**

The contracting parties and any organizations commissioned by them shall have access to the distributed information system to be established. Whenever access takes place, the specific employee who accessed information shall be indicated in a comprehensible manner. Access shall be permissible solely for the purposes of execution of articles 6, 7, 8, 10 and 11. The contracting parties shall provide appropriate training for persons having right of access.

### **Article 14 Grammatical equivalence**

Where references made in the present Agreement 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 15 Duration**

(1) The present Agreement shall be concluded for an indefinite period. The contracting parties undertake not to give notice of cancellation for a period of two years following the entry into force of the present Agreement.

(2) If after the expiry of that time-limit one contracting party gives notice to cancel the Agreement, cancellation shall become effective at the earliest 18 months after notice of cancellation has been given to all the other contracting parties.

(3) Notice of cancellation as referred to in paragraph (2) above shall be effected in writing.

### **Article 16 Transitional provisions and entry into force**

(1) The Federal Government shall adopt measures for the acceleration of asylum procedures and for termination of the right of residence of aliens not in possession of any residence authorization, provided that such action is possible in law and in fact.

(2) Upon the entry into force of the present Agreement, persons receiving care from the contracting parties and belonging to the target group shall be included by the contracting parties in this basic welfare support system.

(3) The present Agreement shall enter into force on 1 May 2004.