

**Federal act laying down general stipulations concerning procedures before the Federal Office for Immigration and Asylum in relation to the granting of international protection, residence permits on grounds deserving of consideration and temporary leave to remain, the imposition of deportation orders and measures to terminate residence and the issuance of Austrian documents to aliens  
(Federal Office Procedure Act)**

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## **PART 1: GENERAL PROVISIONS**

### **Section 1**

#### **Scope of application and definitions**

##### **Scope of application**

**Article 1.** The present federal act shall lay down the general stipulations applying to all aliens undergoing procedures before the Federal Office for Immigration and Asylum (hereinafter “Federal Office”) or before the diplomatic or consular authorities pursuant to part 11 of the 2005 Aliens’ Police Act (FPG), *Federal Law Gazette* (FLG) I No. 100, or proceedings before the Federal Administrative Court pursuant to article 3 (2) 1 to 6. Other procedural stipulations in the 2005 Asylum Act (AsylG 2005), FLG I No. 100, and in the 2005 Aliens’ Police Act shall be unaffected thereby.

##### **Definitions**

**Article 2.** (1) For the purposes of the present federal act, “lawful residence” shall mean an alien’s residence in the federal territory in accordance with article 31 (1) and (4) of the Aliens’ Police Act.

(2) In all other respects, article 2 (1) 1, 2, 8, 10, 11, 13 to 17, 18, 20 to 20b, 25 and 27, and article 2 (2) of the 2005 Asylum Act and also article 2 (3) and (4) 1, 2, 2a, 4, 5, 7, 11, 15 and 18, and article 2 (5) 3 of the Aliens’ Police Act shall apply.

### **Section 2**

#### **Sphere of competence**

##### **Federal Office for Immigration and Asylum**

**Article 3.** (1) Within Austria, the authority under the present federal act shall be the Federal Office with jurisdiction throughout the federal territory.

(2) The Federal Office shall be responsible for:

1. granting asylum status and subsidiary protection status to and withdrawing such status from aliens in Austria pursuant to the 2005 Asylum Act;
2. granting residence permits on grounds deserving of consideration pursuant to the 2005 Asylum Act;
3. ordering deportation, granting temporary leave to remain and executing return decisions of EEA States pursuant to part 7 of the Aliens’ Police Act;
4. imposing measures to terminate residence pursuant to part 8 of the Aliens’ Police Act;
5. issuing Austrian documents to aliens pursuant to part 11 of the Aliens’ Police Act;
6. ordering reimbursement of costs in accordance with article 53 and
7. conducting procedures under the Federal Government Basic Welfare Support Act 2005 (GVG-B 2005), FLG No. 405/1991, with the exception of administrative penalty procedures.

(3) The Federal Office shall be competent to execute administrative decisions rendered by it and also rulings and orders issued by the Federal Administrative Court in matters falling within its material sphere of operation. The 1991 Administrative Enforcement Act (VVG), FLG No. 53/1991, shall apply. The special powers of constraint conferred in the present act, the 2005 Asylum Act and the Aliens Police Act shall be unaffected.”

##### **Diplomatic and consular authorities**

**Article 4.** (1) Outside Austria, the Austrian diplomatic and consular authorities shall be responsible for:

1. issuing, refusing, withdrawing and limiting the scope of application of alien’s passports (article 88 of the Aliens’ Police Act) and Convention travel documents (article 94 of the Aliens’ Police Act), with the exception of their first issuance, and
2. issuing return travel passes to nationals of member States (article 96 of the Aliens’ Police Act).

(2) Territorial jurisdiction for the performance of official acts pursuant to paragraph (1) above shall, unless otherwise stipulated, be determined, outside Austria, by the alien’s place of domicile. Any

diplomatic or consular authority may take action on the instructions of the Federal Minister for European and International Affairs.

(3) If the alien has a domicile within the federal territory, territorial jurisdiction shall be determined, outside Austria, by the alien's place of residence.

#### **Provincial police authorities**

**Article 5.** The execution of an order for an alien's detention pursuant to article 76 of the Aliens' Police Act, article 5 of the Administrative Enforcement Act or article 40, the deportation of an alien pursuant to article 46 of the Aliens' Police Act and the provision and supervision of less stringent measures pursuant to article 77 (3) 1 and 2 of the Aliens' Police Act shall be the responsibility of the provincial police authority in whose area of administration the alien resides. Articles 78 and 79 of the Aliens Police Act shall apply mutatis mutandis to the execution of coercive measures of detention pursuant to article 5 of the Administrative Enforcement Act.

#### **Agents of the public security service**

**Article 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.

#### **Federal Administrative Court**

**Article 7.** (1) The Federal Administrative Court shall rule on:

1. appeals against administrative decisions of the Federal Office;
2. appeals against administrative decisions of diplomatic or consular authorities pursuant to part 11 of the Aliens' Police Act;
3. appeals against measures of direct command and constraint pursuant to part 2, section 1, of the Federal Office Procedure Act and to parts 7 and 8 of the Aliens' Police Act;
4. appeals arising by reason of a breach of the Federal Office's obligation to render decisions and
5. appeals against administrative decisions of the Federal Minister of the Interior in procedures pursuant to article 3 (2) 1 to 6 and article 4 (1) 1 and 2.

(2) The Federal Administrative Court shall itself rule on the merits if the Higher Administrative Court has upheld a petition for judicial review or the Constitutional Court has upheld an appeal against a ruling of the Federal Administrative Court pursuant to paragraph (1) above.

#### **Petitions for judicial review**

**Article 8.** The Federal Minister of the Interior shall have the right to file petitions for judicial review with the Higher Administrative Court against rulings or orders of the Federal Administrative Court on appeals against administrative decisions of the Federal Office following notification of the ruling to the Federal Office.

### **Section 3**

#### **General procedural stipulations**

##### **Protection of private and family life**

**Article 9.** (1) If a repatriation decision pursuant to article 52 of the Aliens' Police Act, an order for removal from the country pursuant to article 61 of the Aliens' Police Act, an expulsion order pursuant to article 66 of the Aliens' Police Act or a residence ban pursuant to article 67 of the Aliens' Police Act interferes with the alien's private or family life, the rendering of such ruling shall be admissible if it is urgently required in order to achieve the objectives specified in article 8 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

(2) In the assessment of private and family life within the meaning of article 8 (2) of the European Convention on Human Rights, account shall be taken, in particular, of:

1. the nature and duration of the residence to date and whether the alien's residence to date was illegal;
2. the actual existence of a family life;
3. the merits of protection of family life;
4. the degree of integration;
5. the ties with the alien's country of origin;
6. the absence of previous criminal convictions;

7. public order offences, in particular in the area of asylum, aliens policing and immigration law;
8. whether the alien's private and family life came into existence at a time when the parties concerned had become aware of their uncertain residence status;
9. whether the duration of the alien's residence to date is due to overly long delays attributable to the authorities.

(3) A ruling on the admissibility of a repatriation decision pursuant to article 52 of the Aliens' Police Act shall in all cases be rendered with a statement of reasons, in particular with respect to whether such decision is permanently inadmissible in accordance with paragraph (1) above. The inadmissibility of a repatriation decision pursuant to article 52 of the Aliens' Police Act shall be permanent only if the otherwise existing risk of violation of the right to private and family life is based on circumstances which by their nature are not merely temporary. The foregoing shall be the case in particular where a repatriation decision pursuant to article 52 of the Aliens' Police Act would already be inadmissible solely on grounds of private and family life with respect to Austrian nationals or persons who possess right of residence under European Union law or unlimited right of settlement (articles 45 or articles 51 et seq. of the Settlement and Residence Act (NAG), FLG I No. 100/2005).

(4) A third-country national who is lawfully resident in the federal territory by virtue of a residence permit may not have a repatriation decision imposed on him if he:

1. could have been granted nationality pursuant to article 10 (1) of the 1985 Nationality Act (StbG), FLG No. 311, prior to the occurrence of the determining facts, unless one of the required conditions for the imposition of an entry ban for more than five years, as set out in article 53 (3) 6, 7 or 8 of the Aliens Police Act, exists or
2. has grown up in Austria from childhood and been lawfully settled there on a long-term basis.

(5) A third-country national who prior to the occurrence of the determining facts had already been lawfully settled in the federal territory for an uninterrupted period of five years but not yet eight years may not have a repatriation decision imposed on him pursuant to article 52 (4) in conjunction with article 53 (1a) of the Aliens' Police Act by reason of the lack of means to support himself, the absence of sufficient sickness insurance cover, the lack of accommodation or the possibility of his representing a financial burden for a local administration. The foregoing shall, however, apply only if the third-country national demonstrates that he can through his own efforts ensure the means to support himself and obtain sickness insurance cover or provide other accommodation and such an outcome does not appear unlikely.

(6) A third-country national who prior to the occurrence of the determining facts had already been lawfully settled in the federal territory for an uninterrupted period of eight years may only have a repatriation decision imposed on him pursuant to article 52 (4) of the Aliens' Police Act if the required conditions as set out in article 53 (3) of the Aliens' Police Act exist. Article 73 of the Penal Code, FLG No. 60/1974, shall apply.

### **Capacity to act**

**Article 10.** (1) The age requirement for capacity to act in procedures before the Federal Office and the diplomatic or consular authorities pursuant to part 11 of the Aliens' Police Act and in proceedings before the Federal Administrative Court pursuant to article 3 (2) 1 to 6 shall be determined by Austrian law irrespective of the nationality of the alien.

(2) In procedures before the Federal Office and in proceedings before the Federal Administrative Court each parent shall be individually authorized to represent his or her child. If, in the case of children born in wedlock, the declarations by the two parents conflict, the earlier declaration shall be applicable; a waiver of the right to lodge an appeal may not be expressed against the declared will of one parent. In the case of a child born out of wedlock, representation shall, in the event of conflicting declarations by the parents, be accorded to the mother unless the father alone is entrusted with care and custody.

(3) A person under full age whose interests cannot be defended by his legal representative shall be entitled to file and submit an application for international protection and to engage in procedural acts pursuant to part 8 of the Aliens' Police Act for his benefit. Such aliens shall be brought to the initial reception centre (article 43 of the Federal Office Procedures Act). In procedures before the Federal Office and in proceedings before the Federal Administrative Court the legal representative shall be, the legal adviser (article 49) as from arrival at the initial reception centre and, following admission of the procedure and assignment to a care centre of a federal province, the territorially competent youth welfare agency of the federal province in which the under-age person was assigned to a care centre. If, prior to the initial interview in the admission procedure, the legal adviser (article 49) objects to an interrogation (article 19 (1) of the 2005 Asylum Act) conducted on a person under full age, such interrogation shall be repeated in the presence of the legal adviser.

(4) If a procedure for the termination of residence pursuant to part 8 of the Aliens' Police Act is initiated against an under-age person whose interests cannot be defended by his legal representative and who has not submitted an application for international protection, the legal representative for all further procedural acts before the Federal Office and the Federal Administrative Court shall from that time be the youth welfare agency in whose area of administration the under-age person resides.

(5) If a person under full age evades a procedure pursuant to article 24 (1) of the 2005 Asylum Act) or a legal representative cannot for other reasons be designated in accordance with paragraph (3) above, the youth welfare agency to which legal representation was last assigned shall be the legal representative until a legal representative has again been designated in accordance with paragraph (3) above. If, in the procedure to date, legal representation was discharged solely by the legal adviser (article 49), that person shall continue as the legal representative until legal representation first devolves upon a youth welfare agency in accordance with paragraph (3) above.

(6) An under-age person whose interests cannot be defended by his legal representative shall be entitled to file an application for international protection and to engage in procedural acts pursuant to part 8 of the Aliens' Police Act for his benefit. Notwithstanding article 17 (2) of the 2005 Asylum Act, applications by such aliens for international protection shall be deemed submitted if the filing of the application is corroborated in the presence of the legal adviser at the initial reception centre (article 4 of the Federal Office Establishment Act (BFA-G), FLG I No. 87/2012). In the case of an under-age person whose interests cannot be defended by his legal representative, the legal adviser shall be his legal representative as from arrival at the initial reception centre. Such aliens may be interrogated (article 19 (1) of the 2005 Asylum Act) solely in the presence of the legal adviser. In all other respects, paragraphs (3) and (5) above shall apply.

#### **Service of documents**

**Article 11.** (1) The initial reception centre at which an asylum seeker is present or the accommodation or care facility operated by the Federal Government at which an asylum seeker receives welfare support shall also be his address for delivery of notifications in person in accordance with the Federal act concerning the service of official documents (Process Service Act – ZustG, FLG No. 200/1982). In procedures before the Federal Office a contact location, as referred to in article 19a (2) of the 1991 Domicile Registration Act (MeldeG), FLG No. 9/1992, may not be an address for delivery of notifications within the meaning of the Process Service Act.

(2) Summonses in admission procedures shall be delivered solely to the asylum seeker in person and – if representation exists in accordance with article 10 or the matter concerns procedural acts at which a legal adviser (article 49) has to be present – to a legal adviser (article 49). If the asylum seeker also has a voluntary representative, that representative shall be notified as soon as possible by the legal adviser (article 49) concerning any summonses and the status of the procedure, should the asylum seeker so wish.

(3) With regard to the delivery of notifications of rejection or dismissal rulings issued in conjunction with an enforceable measure to terminate residence, the asylum seeker shall in all cases be designated as the addressee if, at the time of delivery, the asylum seeker has de facto protection against deportation (article 12 of the 2005 Asylum Act) or possesses right of residence in accordance with article 13 of the 2005 Asylum Act. If service in such event is effected to an address for delivery of notifications (article 2, subparagraph 4, of the Process Service Act), it shall be performed by agents of the public security service unless a time-limit for voluntary departure has been granted and service is carried out by the Federal Office's or the Federal Administrative Court's own officials. Any depositing of mail required in such event shall be effected at the nearest station of a provincial police authority. If the asylum seeker has a registered process agent, the service of documents shall also be effected to him. Any time-limits dependent on the service of documents shall be computed only as from delivery to the registered process agent.

(4) Paragraphs (2) and (3) above shall not apply in the case of applications by asylum seekers who, at the time of the intended delivery, possess right of residence not based on the provisions of sections 2 and 3 of the 2005 Asylum Act.

(5) If, on the basis of the alien's statements concerning his age, service is effected to a legal adviser (article 49) or a youth welfare agency (article 10) as legal representative, such service shall also be valid if, at the time of delivery, the alien is of full age.

(6) The service of documents to aliens may be performed by agents of the public security service if it:

1. involves the notification of decisions as referred to in article 12a (4) of the 2005 Asylum Act or

2. is effected in connection with the fulfilment of a duty to report as laid down in article 15a of the 2005 Asylum Act or article 13 (2).

In the case referred to in subparagraph 2 above, if, after service has been arranged, the addressee fails to comply with his duty to report, the document shall be deposited with the station of the provincial police authority. The first, second and third sentences of article 17 (3) of the Process Service Act shall apply *mutatis mutandis*. If a breach of the duty to report is communicated to the Federal Office before service has been arranged, article 23 of the Process Service Act shall apply *mutatis mutandis* for as long as the alien fails to comply with his duty to report.

(7) An alien whose *de facto* protection against deportation is terminated (article 12a (2) of the 2005 Asylum Act) or who is not accorded *de facto* protection against deportation (article 12a (1) or (3) of the 2005 Asylum Act) and against whom a valid measure to terminate residence is enforced shall be informed in a provable manner that, for the delivery of documents, he may avail himself of the services of a registered process agent and that he shall be obliged to inform the Federal Office of his place of residence and address, including outside Austria, and report any changes as quickly as possible (article 15 (1) 4 of the 2005 Asylum Act). He shall also be informed of the postal address of the Federal Office and of the Federal Administrative Court. Insofar as is possible, he shall be furnished with an information leaflet prepared in a language understandable to him. The service of documents in such cases shall, insofar as is possible, be effected to the last address for delivery of notifications which is known to the Federal Office or to the Federal Administrative Court; if such address is situated outside Austria, notification shall be deemed effected upon arrival of the ruling at that address. Article 24 of the 2005 Asylum Act shall apply.

(8) If the alien has a registered process agent, the notification of an administrative decision ordering his detention pending deportation shall also be deemed served at the time when a copy is actually received by the alien. In such cases, arrangements shall be made without delay for a further copy to be delivered to the registered process server.

(9) A third-country national who has filed an application with the Federal Office for the granting of a residence permit shall without delay inform the Federal Office of an address for delivery of notifications and, in the event of any change thereto during the procedure, inform the Federal Office of the new address. If the delivery of a summons or a procedural order in person is not possible a second time, the procedure shall be discontinued if the third-country national had been made aware of that fact at the time of filing the application.

#### **Administrative decisions**

**Article 12.** (1) Rulings of the Federal Office and of the Federal Administrative Court shall contain the verdict and instructions concerning rights of appeal in a language understandable to the alien or in a language which may reasonably be presumed to be understood by him. An inaccurate translation shall solely establish the right to reinstatement, subject to the requirements set out in article 71 of the General Administrative Procedures Act.

(2) If an application for international protection is rejected as inadmissible pursuant to article 4 of the 2005 Asylum Act, the administrative decision of the Federal Office shall be accompanied by a translation, in that language, of the relevant statutory provisions and by an appended certification, also issued in the official language of the safe third country, to the effect that the application for international protection has not undergone any substantive examination owing to the protection existing in the safe third country and that no suspensory effect of the appeal lodged against the administrative decision of the Federal Office was allowed.

#### **Cooperation by aliens**

**Article 13.** (1) Aliens shall cooperate in procedures before the Federal Office, in particular in identification procedures.

(2) If an alien possesses only a principal residence certification document, as referred to in article 19a of the Domicile Registration Act, he shall report on a fortnightly basis, commencing on the first working day following the issuance of the certification document, to the station of a provincial police authority nearest to the contact location as referred to in article 19a (1) 2 of the Domicile Registration Act; the foregoing shall not apply in the case of a procedural order as referred to in article 15a (2) of the 2005 Asylum Act. A breach of this duty to report shall not exist if its fulfilment was provably impossible for or could not reasonably be expected of the alien.

(3) If the alien is unable to furnish proof, by reliable documents or other appropriate and equivalent evidence, of a claimed under-age status on which he relies in a procedure before the Federal Office or in proceedings before the Federal Administrative Court and which, on the basis of the available results of

the preliminary investigation, is doubtful, the Federal Office or the Federal Administrative Court may give instructions for radiological examinations, in particular X-ray examinations, to be carried out under a multifactorial examination technique for the purpose of age determination (article 2 (1) 25 of the 2005 Asylum Act). Every examination procedure shall be conducted with the least possible interference. The alien's cooperation in a radiological examination shall not be enforceable by coercive means. If, following the age determination, justified doubts continue to exist, under-age status shall be presumed in the alien's favour.

(4) If an alien is unable to furnish proof, by reliable documents or other appropriate and equivalent evidence, of a claimed family relationship on which he relies in a procedure before the Federal Office or in proceedings before the Federal Administrative Court or in a procedure pursuant to article 35 of the 2005 Asylum Act, the Federal Office or the Federal Administrative Court shall, at his request, make it possible for him to have a DNA analysis undertaken at his own expense. The alien shall be informed of such possibility. The absence of a request for a DNA analysis by the alien shall not be construed as a refusal on his part to cooperate in the clarification of the facts. In the further course of the procedure, only the information on the family relationship may be processed; any additional data shall be deleted. The Federal Office or the Federal Administrative Court shall reimburse to the alien the costs of the DNA analysis, upon application, if the claimed family relationship was established by the expert findings based on the DNA analysis and the alien is resident in the federal territory.

(5) In the assessment of the credibility of an alien's allegations, due account shall be taken of his cooperation in the procedure.

(6) An unaccompanied person under full age shall, unless owing to circumstances not relating to his person he is unable to do so, cooperate in all steps to trace family members in the country of origin, a third country or a member State, irrespective of by whom such steps are carried out, and shall present the related findings to the Federal Office without delay. The obligation to present the findings shall exist to the extent that they are not already accessible to the authority. Such obligation to cooperate shall not exist if tracing family members is not in the child's best interests. Unaccompanied under-age persons shall, at their request, be assisted by the authority in tracing their family members.

#### **Enforcement principles**

**Article 14.** The Federal Office, provincial police authorities and agents of the public security service shall take particular account of articles 2, 3 and 8 of the European Convention on Human Rights in the fulfilment of their duties pursuant to the present federal act, to the 2005 Asylum Act and to parts 7, 8 and 11 of the Aliens' Police Act.

#### **Section 4**

##### **Procedures before diplomatic or consular authorities for the issuance of Austrian documents to aliens pursuant to part 11 of the Aliens' Police Act**

**Article 15.** (1) In procedures before diplomatic or consular authorities, applicants shall, under instructions of the authority, submit in person the documents and evidence required for the establishment of the material facts. Articles 13 (3), 37 and 45 (2) and (3) of the General Administrative Procedures Act shall apply. The applicant shall, at the request of the diplomatic or consular authority, appear in person before it, accompanied, if necessary, by an interpreter (article 39a of the General Administrative Procedures Act). The last sentence of article 10, paragraph (1), of the General Administrative Procedures Act shall apply only to persons authorized to represent parties professionally in Austria.

(2) The party in procedures before the diplomatic or consular authority shall be solely the applicant.

(3) Decisions issued pursuant to paragraph (1) above shall be given in writing in such a manner that their contents and effect are comprehensible to the person concerned. The person concerned shall be furnished with accurate and comprehensive information concerning the reasons of law and order, public safety or health which form the basis of the decision affecting him unless reasons of security of the Republic of Austria preclude the furnishing of such information. The appeals authority shall also be indicated in the written statement of reasons.

(4) The written ruling shall bear the name of the diplomatic or consular authority, the date of the decision and the signature of the authorizing official; the seal of the Republic of Austria may be affixed in place of the signature provided that the identity of the authorizing official is discernable from the document. The written ruling shall be handed over on the premises of the diplomatic or consular authority or, insofar as international practice so allows, be delivered by postal or electronic means; if the foregoing



is not possible, the written ruling shall be announced via the diplomatic or consular authority's official noticeboard.

(5) With regard to the computation of the commencement, operation and expiry of time-limits (article 33 of the General Administrative Procedures Act), the weekend and public holiday rules of the recipient country shall apply.

## **Section 5: Appeal proceedings**

### **Time-limit for appeals and effect of appeals**

**Article 16.** (1) The time-limit for lodging an appeal against an administrative decision of the Federal Office shall, in the cases referred to in article 3 (2) 2, 4 and 7, be two weeks, unless otherwise stipulated. The first sentence of article 7, paragraph (4), of the Federal act on proceedings of the administrative courts (Administrative Court Proceedings Act – VwGVG), FLG I No. 33/2013, shall in such event not be applicable unless, at the time of pronouncement of the administrative decision, the alien is an unaccompanied minor. [as amended by FLG 17/2016]

(2) An appeal against a ruling:

1. rejecting an application for international protection and issued in conjunction with a measure to terminate residence;
2. rejecting an application for international protection where an enforceable repatriation decision already exists or
3. imposing an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act

and a related submission application shall not have suspensory effect unless such suspensory effect is allowed by the Federal Administrative Court.

(3) If an appeal against a rejection or dismissal ruling in family procedures pursuant to section 4 of part 4 of the 2005 Asylum Act is lodged solely by one affected family member, it shall be deemed to be also an appeal against the rulings affecting the other family members (article 2, subparagraph 22, of the 2005 Asylum Act); none of those rulings may then be treated as final. All appeals against rulings in family procedures shall have suspensory effect as soon as at least one appeal in the same family procedure has suspensory effect.

(4) If an appeal against a ruling rejecting or dismissing an application for international protection or imposing an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act does not have suspensory effect, that ruling shall be enforceable. The execution of the measure to terminate residence imposed in conjunction with such ruling or the execution of the deportation in implementation of the already existing repatriation decision shall be deferred until expiry of the time-limit for lodging appeals or, if an appeal is lodged, until midnight on the seventh day from receipt of the appeal submission. The Federal Administrative Court shall notify the Federal Office without delay of the receipt of the appeal submission and of the granting of suspensory effect.

(5) An appeal against a ruling on an application for the granting of a residence permit pursuant to part 7 of the 2005 Asylum Act or a related submission application shall not establish any right of residence or right of continued abode. Article 58 (13) of the 2005 Asylum Act shall apply.

(6) Article 13 (2) to (5) and article 22 of the Administrative Court Proceedings Act shall not be applicable in the cases referred to in paragraphs (2) to (4) above.

### **Allowance of suspensory effect of appeals**

**Article 17.** (1) The suspensory effect of an appeal against a ruling rejecting an application for international protection where:

1. such rejection ruling is issued in conjunction with a measure to terminate residence or
2. an enforceable repatriation decision already exists

and also of an appeal against an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act shall in each case be allowed by order of the Federal Administrative Court within one week from submission of the appeal if it can be assumed that the alien's rejection at the border, forcible return or deportation to the country to which the measure to terminate residence applies would constitute a real risk of violation of article 2, article 3 or article 8 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would represent for the alien as a civilian a

serious threat to his life or person by reason of indiscriminate violence in situations of international or internal conflict.

(2) An appeal against a rejection ruling as referred to in paragraph (1) above or against an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act shall be ruled on by the Federal Administrative Court within eight weeks.

(3) In the decision whether an appeal against an order for removal from the country is to be allowed suspensory effect, due account shall be taken of the European Union law principles contained in article 26 (2) and article 27 (1) of the Dublin Regulation and the need for effective implementation of European Union law.

(4) Expiry of the time-limit as referred to in paragraph (1) above shall not preclude the allowance of suspensory effect.

#### **Disallowance of suspensory effect of appeals**

**Article 18.** (1) The suspensory effect of an appeal against a dismissal ruling on an application for international protection may be disallowed by the Federal Office if:

1. the asylum seeker comes from a safe country of origin (article 19);
2. there are serious reasons for considering that the asylum seeker constitutes a threat to law and order or public safety;
3. the asylum seeker has, despite being informed of the consequences thereof, attempted to deceive the Federal Office concerning his true identity or nationality or the authenticity of his documents;
4. the asylum seeker has not adduced any reasons for persecution;
5. the allegations made by the asylum seeker concerning his situation of danger clearly do not correspond with reality;
6. an enforceable repatriation decision, an enforceable expulsion order or an enforceable residence ban was issued against the asylum seeker prior to the filing of the application for international protection or
7. the asylum seeker refuses to have his fingerprints taken notwithstanding an obligation to do so.

If the Federal Office has not disallowed suspensory effect, paragraph (2) below shall not be applicable to these cases. If the Federal Office has disallowed suspensory effect, the foregoing shall be deemed to constitute disallowance of the suspensory effect of an appeal against a repatriation decision issued in conjunction with the dismissal ruling on an application for international protection.

(2) The suspensory effect of an appeal against a repatriation decision shall be disallowed by the Federal Office if:

1. the third-country national's immediate exit is necessary in the interests of law and order or public safety;
2. the third-country national has returned to the federal territory in contravention of an entry ban or
3. there is a risk of his absconding.

(3) In the case of EEA citizens, Swiss citizens and favoured third-country nationals, the suspensory effect of an appeal against a residence ban may be disallowed if their immediate exit or if immediate enforceability is necessary in the interests of law and order or public safety.

(4) The suspensory effect of an appeal against an expulsion order pursuant to article 66 of the Aliens' Police Act may not be disallowed.

(5) An appeal whose suspensory effect has been disallowed by the Federal Office shall be allowed suspensory effect by the Federal Administrative Court within one week from submission of the appeal if it can be assumed that the alien's rejection at the border, forcible return or deportation to his country of origin would constitute a real risk of violation of article 2, article 3 or article 8 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would represent for the alien as a civilian a serious threat to his life or person by reason of indiscriminate violence in situations of international or internal conflict.

(6) Expiry of the time-limit as referred to in paragraph (5) above shall not preclude the allowance of suspensory effect.

(7) Article 13 (2) to (5) and article 22 of the Administrative Court Proceedings Act shall not be applicable.

### **Safe countries of origin**

**Article 19.** (1) The member States (article 2 (1) 18 of the 2005 Asylum Act) shall be safe countries of origin.

(2) If, upon a reasoned proposal by one third of the member States, by the European Parliament or by the Commission, it is determined by the Council, acting by a majority of four fifths of its members, that there is a clear risk of a serious breach by a member State of principles stated in article 6 (1) of the TEU (article 7 (1) of the TEU), the suspensory effect of appeals against rulings on applications by asylum seekers from that country of origin shall not be disallowed.

(3) If, after a procedure has been initiated pursuant to article 7 (1) of the TEU, a determination as referred to in article 7 (2) of the TEU is not made or all the measures imposed in connection therewith (article 7 (3) of the TEU) are revoked (article 7 (4) of the TEU), the suspensory effect of appeals against rulings on applications by asylum seekers from that country of origin may again be disallowed.

(4) Additional safe countries of origin shall be:

1. Australia;
2. Iceland;
3. Canada;
4. Liechtenstein;
5. New Zealand;
6. Norway and
7. Switzerland.

(5) The Federal Government shall be empowered to stipulate by ministerial order that:

1. the suspensory effect of appeals by asylum seekers who come from a country of origin named in paragraph (4) above may no longer be disallowed and
2. countries other than those named in paragraph (4) above are to be deemed safe countries of origin.

In the making of any such ministerial order, account shall be taken primarily of the existence or absence of State persecution, protection from private persecution and legal protection against human rights violations.

### **Submissions in appeals**

**Article 20.** (1) In an appeal against a ruling by the Federal Office, new facts and evidence may only be submitted:

1. if the grounds on which the ruling was based have undergone any material change since the time of the ruling by the Federal Office;
2. if the procedure before by the Federal Office was irregular;
3. if such new facts and evidence were not accessible to the alien by the time of the ruling by the Federal Office or
4. if the alien had been unable to submit such new facts and evidence.

(2) A decision on the admissibility of the submission of new facts and evidence shall not be rendered unless such new facts and evidence are relevant to the ruling by the Federal Administrative Court.

(3) Paragraph (1) above shall not apply to appeals against rulings by the Federal Office on the basis of an application for the granting of a residence permit pursuant to part 7 of the 2005 Asylum Act.

### **“Proceedings before the Federal Administrative Court**

**Article 21.** (1) The Federal Office shall be invited to attend hearings before the Federal Administrative Court; it shall be entitled to submit requests and questions.

(2) Appeals against rulings rejecting applications in admission procedures shall be ruled on by the Federal Administrative Court within eight weeks unless the suspensory effect of the appeal has been allowed.

(2a) The Federal Administrative Court shall within three months rule on appeals against decisions:

1. withdrawing asylum status (article 7 of the 2005 Asylum Act) and not conferring subsidiary protection status;
2. withdrawing subsidiary protection status (article 9 of the 2005 Asylum Act) or

3. imposing a measure to terminate residence in the case of aliens who have been granted temporary leave to remain in the federal territory pursuant to article 46a (1) 2 of the Aliens Police Act.

Such time-limit may be exceeded if required for the purpose of a full and proper examination of the appeal. The time-limit for rendering a decision as referred to in article 34 (1) of the Administrative Court Proceedings Act shall in such event be applicable.

(3) If an appeal against the ruling of the Federal Office in an admission procedure is to be upheld, the procedure shall be admitted. An appeal against the ruling in an admission procedure shall also be upheld if the facts available are so inadequate that the conduct of an oral hearing or a further oral hearing appears unavoidable.

(4) In proceedings against a decision rendered in procedures at an airport (article 33 of the 2005 Asylum Act), the Federal Administrative Court shall rule on the merits if the facts have been sufficiently established or if the establishment of the material facts by the Federal Administrative Court itself would be appropriate in the interests of speed or would mean a considerable saving in costs.

(5) If an appeal is lodged with the Federal Administrative Court against a measure to terminate residence and the alien is no longer resident in the federal territory at the time when the ruling on the appeal is pronounced, the Federal Administrative Court shall establish whether the measure to terminate residence was lawful at the time of pronouncement. If the measure to terminate residence was unlawful, the alien's re-entry shall at the same time be permitted.

(6) Rulings on appeals against administrative decisions pursuant to article 51 of the Aliens' Police Act whereby the admissibility of deportation to a specific country has been established shall be pronounced within one week, unless the custody of the alien terminates beforehand.

(6a) Notwithstanding paragraph (7) below, the Federal Administrative Court may rule on the allowance of the suspensory effect of an appeal which is not accorded suspensory effect by operation of the law (article 17) or which was disallowed suspensory effect by the Federal Office (article 18) and also on appeals against rejection rulings in admission procedures without the conduct of an oral hearing.

(7) An oral hearing may be dispensed with if the facts appear from the case documents in relation to the appeal to be clarified or it unequivocally emerges from the investigations to date that the allegations do not correspond with reality. In all other respects, article 24 of the Administrative Court Proceedings Act shall apply.

#### **Review of withdrawal of de facto protection against deportation**

**Article 22.** (1) A decision by the Federal Office whereby an alien's de facto protection against deportation has been withdrawn (article 12a (2) of the 2005 Asylum Act) shall undergo a review by the Federal Administrative Court without delay. The procedure shall be ruled on without the holding of an oral hearing. Article 20 shall apply mutatis mutandis. The second sentence of article 28, paragraph (3), of the Administrative Court Proceedings Act shall not apply.

(2) The withdrawal of protection against deportation pursuant to article 12a (2) of the 2005 Asylum Act and a valid repatriation decision pursuant to article 52 of the Aliens' Police Act or an expulsion order pursuant to article 66 of the Aliens' Police Act shall be enforceable upon the rendering of the ruling pursuant to article 12a (2) of the 2005 Asylum Act. The execution of the deportation in implementation of the repatriation decision or expulsion order pursuant to article 46 of the Aliens' Police Act shall be deferred until the expiry of the third working day from the receipt, by the competent judicial division of the Federal Administrative Court, of the administrative records to be transmitted in accordance with article 22 (10) of the 2005 Asylum Act. The Federal Administrative Court shall without delay notify the Federal Office of the receipt of the administrative records by the competent judicial division and of the ruling on the lawfulness of the withdrawal of protection against deportation as rendered in the review conducted pursuant to paragraph (1) above.

(3) In the review conducted pursuant to paragraph (1) above, the Federal Administrative Court shall rule within eight weeks on the lawfulness of the withdrawal of protection against deportation.

#### **Legal protection in cases of arrest, custody and pre-deportation detention**

**Article 22a.** (1) An alien shall have the right to appeal to the Federal Administrative Court on the grounds of illegality of his arrest or custody or of an administrative decision ordering his detention pending deportation if:

1. he has been arrested pursuant to the present federal act;
2. he is being or has been held in custody by virtue of the present federal act or

3. an order for his detention pending deportation has been issued against him pursuant to part 8 of the Aliens Police Act.

(1a) The applicable provisions of the Administrative Court Proceedings Act relating to appeals pursuant to article 130 (1) 2 of the Federal Constitutional Act shall be valid for appeals as referred to in paragraph (1) above with the proviso that the authority against which the action is brought is the authority which rendered the contested administrative decision ordering pre-deportation detention or the authority responsible for the arrest or custody.

(2) The ruling by the Federal Administrative Court on the continuation of pre-deportation detention shall be pronounced within one week unless the custody of the alien terminates beforehand. If, pursuant to article 13 (3) of the General Administrative Procedures Act, the Federal Administrative Court has instructed the appellant to rectify an irregularity in the appeal within a specific period, the computation of the time-limit for rendering the ruling shall be suspended until the irregularity has been rectified or until the period allowed for that purpose has elapsed without the irregularity having been rectified. (3) If the custody is still in progress, the Federal Administrative Court shall establish whether, at the time of its ruling, the requirements determining the continuation of the detention are satisfied.

(4) If an alien is held for a continuous period of more than four months in detention pending deportation, the reasonableness of his custody shall be reviewed by the Federal Administrative Court after the day on which the fourth month elapses and thereafter every four weeks. The Federal Office shall present the administrative records in timely fashion so that there is one week remaining before the respective fixed dates in order that the Federal Administrative Court can render its ruling. The appeal shall be deemed lodged in respect of the detained alien upon presentation of the administrative records. The Federal Office shall demonstrate why it is necessary and reasonable to maintain the detention order in force. The Federal Administrative Court shall establish whether, at the time of its ruling, the requirements determining the continuation of the detention are satisfied and whether it is reasonable to maintain the detention order in force. Such review shall be dispensed with if an appeal as referred to in paragraph (1) above has already been lodged.

**Appeals against administrative decisions in procedures before diplomatic or consular authorities for the issuance of Austrian documents to aliens pursuant to part 11 of the Aliens' Police Act**

**Article 22b.** (1) The appellant shall attach to his appeal against an administrative decision of an Austrian diplomatic or consular authority all the documents presented by him in the procedure before the diplomatic or consular authority against which the action is brought, together with a translation in the German language.

(2) Appeal proceedings shall be conducted without an oral hearing. No new facts or evidence may be submitted in such proceedings.

(3) All expenses of the diplomatic or consular authority against which the action is brought and of the Federal Administrative Court for interpreters and translators and also for verification of interpretation work and translations shall be cash expenses as defined in article 76 of the General Administrative Procedures Act.

(4) The notification of the decision of the Federal Administrative Court shall be effected through the diplomatic or consular authority. Article 15 (4) shall apply."

**Section 6**

**Identification procedures and investigative operations**

**Use of personal data**

**Article 23.** (1) The Federal Office and the Federal Administrative Court may use personal data only insofar as is necessary for the discharge of the duties assigned to them.

(2) The Federal Office and the Federal Administrative Court may process personal data on third parties only if there is no provision for the selectability of such data from the total quantity of stored information. The foregoing shall not preclude communication of the total number of the data sets relating to such third parties together with a reference to the respective controller of such processing operations provided that this is carried out only in connection with the processing of data on an alien to whom an official act directly relates.

(3) Data compiled pursuant to the present federal act shall be physically deleted at the latest:

1. if Austrian nationality is conferred on the person concerned, as soon as the data are no longer required for the purpose of a procedure for the withdrawal of a document issued to him as an alien;
2. if the death of the person concerned becomes known to the Federal Office or to the Federal Administrative Court and five years have elapsed since that time or
3. ten years after a procedure before the Federal Office or after proceedings before the Federal Administrative Court has or have been finally ruled on or after an application has been withdrawn, discontinued or deemed no longer relevant. The foregoing shall not apply if an entry ban or a residence ban has been imposed on the person concerned for an unlimited period. If the validity of a measure to terminate residence which is subject to a time limitation ceases after the period specified in the first sentence, the data shall not be deleted until such validity has expired.

#### **Identification procedures**

**Article 24.** (1) The Federal Office shall be empowered to arrange for an alien who is over 14 years old to undergo identification procedures if:

1. he files an application for international protection;
2. he is to be granted asylum status pursuant to article 3 (4) of the 2005 Asylum Act;
3. a residence permit is to be granted to him in accordance with the provisions of section 7 of the 2005 Asylum Act;
4. he is in detention pending deportation;
5. he has been arrested pursuant to the present federal act;
6. a measure to terminate residence has been imposed on him;
7. it is suspected that an entry ban or a residence ban which is still in force has been imposed on him under another name;
8. an alien's passport or a Convention travel document is to be issued to him or
9. the establishment of his identity is not otherwise possible.

(2) The identification procedures and the establishment of personal identity may also be undertaken by agents of the public security service. In such cases they shall intervene on behalf of the Federal Office.

(3) The diplomatic and consular authorities shall be empowered to arrange for aliens to undergo identification procedures in the cases referred to in paragraph (1) 8 above.

(4) Article 64, article 65 (4), (5) first sentence and (6), and article 73 (7) of the Security Policing Act (SPG), FLG No. 566/1991, shall apply. Steps for the establishment of personal identity may be carried out in the cases referred to in paragraph (1) 1 to 5 and 8 above.

#### **Notice to undergo identification procedures**

**Article 25.** (1) An alien whom the Federal Office has to require to undergo identification procedures shall be issued by it with a notice to that effect and be informed by it of the reason for the identification procedures. He shall be furnished with an information leaflet concerning such procedures which shall be prepared in a language understandable to him or in a language which may reasonably be presumed to be understood by him. The person concerned shall cooperate in the identification procedures.

(2) If in the cases referred to in article 24 (1) 4 and 5 above the person concerned fails to comply with the notice, the agents of the public security service shall be empowered to transfer him to the Federal Office or to a station of a provincial police authority, to be determined by the Federal Office, for the purpose of undergoing the identification procedures; custody for such purpose shall be admissible only for as long as the conduct of such procedures appears to have some prospect of success, subject to observance of article 78 of the Security Policing Act.

(3) If, except in the cases referred to in article 24 (1) 8 above, the person concerned fails to comply with the notice, an obligation to cooperate shall be imposed on him by administrative decision unless he is in detention. The administrative decision may be issued in conjunction with a summons (article 19 of the General Administrative Procedures Act) to undergo identification procedures. Article 78 of the Security Policing Act shall apply.

(4) Identification data lawfully processed on aliens by a security authority under the Security Policing Act may in the cases referred to in article 24 (1) 1 to 8 be compiled by the Federal Office and be further processed in accordance with the provisions of the present federal act. The alien shall be informed of such compilation in a manner appropriate to the circumstances.

### **Central Register of Aliens; joint information system**

**Article 26.** (1) The Federal Minister of the Interior shall be empowered to operate a central register of aliens as a joint information system (article 4, subparagraph 13, of the 2000 Data Protection Act, FLG No. 165/1999). The Federal Minister of the Interior shall discharge the dual role of operator in accordance with article 50 of the 2000 Data Protection Act and processor as defined in article 4, subparagraph 5, of the 2000 Data Protection Act. Controllers in accordance with data protection law shall be Federal Minister of the Interior, Federal Office, diplomatic and consular authorities, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities.

(2) Access to personal data processed in accordance with paragraph (1) above shall be barred to the Federal Office, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities, as controllers, as soon as the conditions required for the storage of such data cease to exist or the data are otherwise no longer needed. Furthermore, the data shall be physically deleted upon the expiry of a period of two years thereafter. During that time, the bar on access may be lifted for purposes of verification of the accuracy of other data intended for storage in accordance with paragraph (1) above.

(3) The Federal Office, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities shall be obliged, as controllers, to review personal data processed in accordance with paragraph (1) above to which access is not barred and which have remained unaltered for six years and are not subject to a time limitation, in order to ascertain whether the required conditions as referred to in paragraph (2) above for the barring of access do not already exist. Access to such data sets shall, in accordance with paragraph (2) above, be barred upon the expiry of a period of three months thereafter, unless the controller confirms beforehand that the reason which determined the storage of such data continues to exist or other deletion obligations as set out in article 23 (3) do not exist.

(4) As soon as identification data have been processed in the Central Register of Aliens, they shall be deleted in local application mode.

(5) With regard to data processed in the Central Register of Aliens, article 23 (3) shall apply.

### **Use of data in connection with the Central Register of Aliens**

**Article 27.** (1) The Federal Minister of the Interior, the Federal Office, diplomatic and consular authorities, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities may jointly process the following particulars of an alien in the register of aliens (article 26):

1. name;
2. sex;
3. former name(s);
4. date and place of birth;
5. address;
6. nationality;
7. parents' names;
8. details of any aliases;
9. issuing authorities, dates of issue and numbers of accompanying documents;
10. any information concerning dangerousness in connection with intervention operations, including sensitive data, insofar as the use of such data is necessary for the safeguarding of vital interests of third parties;
11. data constituting determining factors with regard to the right of entry and residence and to the admissibility of detention pending deportation;
12. criminal investigation data for the purpose of carrying out arrests pursuant to the present federal act or to the Aliens' Police Act;
13. photographs;
14. impression of the papillary ridges on the fingers;
15. signature;
16. verbal description of external physical features;
17. results of a multifactorial examination for the purpose of age determination;
18. results of a DNA analysis for the purpose of establishing proof of a family relationship and
19. social security number.

(2) Retrieval of data from the register of aliens shall be admissible only if the alien is identified at least by the name, a number allocated to him or an impression of the papillary ridges. For the purposes of article 32 (2), data may also be used as the inquiry criterion with a view to establishing the validity of entry permits or residence permits. If an impression of the papillary ridges is not used as the selection criterion, impressions of the papillary ridges and the signature may be displayed only if this is a necessary requirement for the discharge of an official duty.

(3) Personal data on third parties may be processed only if there is no provision for the selectability of such data from the total quantity of stored information. The foregoing shall not preclude communication of the total number of the data sets relating to such third parties together with a reference to the respective controller of such processing operations provided that this is carried out only in connection with the processing of data on an alien to whom an official act directly relates.

(4) Alphanumeric data, photographs, impressions of papillary ridges and signatures shall be processed in a physically separate manner. Every instance of retrieval and transmission of personal data from the central information-gathering system shall be recorded in such a way that the admissibility of the processing steps carried out is verifiable. The record entries shall be retained for three years.

#### **Central procedural file; joint information system**

**Article 28.** (1) The Federal Office and the Federal Administrative Court shall be empowered to process jointly the procedural data compiled by them, namely procedural information on applications, rulings and appeals. In this respect, the Federal Minister of the Interior shall perform on behalf of the Federal Office and the Federal Administrative Court the dual role of operator in accordance with article 50 of the 2000 Data Protection Act and processor as defined in article 4, subparagraph 5, of the 2000 Data Protection Act.

(2) The Federal Office and the Federal Administrative Court shall be empowered to compile procedural data processed by authorities under the Settlement and Residence Act and by provincial police authorities if absolutely necessary for the discharge of their duties.

(3) Retrieval of data from the central procedural file shall be admissible only insofar as is necessary for the performance of a duty assigned pursuant to the present federal act, the 2005 Asylum Act or parts 7, 8 and 11 of the Aliens' Police Act or for the discharge of duties assigned under articles 148 ff. of the Federal Constitutional Act and the alien is identified at least by the name, a number allocated to him or an impression of the papillary ridges.

(4) With regard to data processed in the central procedural file, article 23 (3) shall apply.

#### **Transmission of personal data**

**Article 29.** (1) Data processed in accordance with article 27 (1) and article 28 may be transmitted to the following recipients insofar as they require such data for the discharge of the duties assigned to them:

1. security authorities (article 4 of the Security Policing Act);
2. public prosecution authorities;
3. civil and criminal courts and penal institutions;
4. provincial administrative courts;
5. the Office of the United Nations High Commissioner for Refugees in Austria;
6. the parties to a treaty concerning the determination of the State responsible for examining applications for asylum or applications for international protection or the authorities of States that are required to apply the Dublin Regulation;
7. foreign authorities responsible for the implementation of the Geneva Convention on Refugees if the establishment of identity or granting of asylum is not possible without the transmission of the data to those authorities and if it is guaranteed that such data will not be accessible to authorities of the country where the asylum seeker or refugee claims a fear of being persecuted;
8. Austrian diplomatic and consular authorities;
9. authorities under the Settlement and Residence Act;
10. authorities responsible for nationality matters;
11. authorities responsible for civil status matters;
12. authorities entrusted with implementation of the Aliens Employment Act;
13. fiscal offence prosecution authorities;
14. youth welfare agencies;
15. legal advisers (articles 49 to 52);



16. repatriation advisers;
17. tax authorities.

In all other respects, the transmission of data shall be admissible only if express statutory authorization exists to that effect.

(2) Data processed in accordance with article 27 (1) 1 to 11 and with article 28 may be transmitted to the following recipients insofar as they require such data for the discharge of the duties assigned to them:

1. officials of the Federal Government and provincial governments who perform duties in execution of the Basic Welfare Support Agreement;
2. the labour market service and local authority institutions entrusted with providing care and integration assistance;
3. local health insurance funds and the Federation of Austrian Social Insurance Institutions; and
4. the Federal Ministry of European and International Affairs.

(3) Data processed in accordance with article 27 (1) 1 to 9 and 11 may be transmitted to the domicile registration authorities insofar as they require such data for the discharge of the duties assigned to them.

#### **Reporting obligations of the authorities**

**Article 30.** (1) The security authorities shall transmit to the Federal Office the identification data processed by them in respect of any aliens on whom the Federal Office has compiled various data of the same kind in the course of identification procedures pursuant to article 24.

(2) The security authorities shall notify the Federal Office and – if appeal proceedings are pending – the Federal Administrative Court of any suspicion of the perpetration of punishable acts by any aliens, reporting the material facts.

(3) The diplomatic and consular authorities (article 35 (1) of the 2005 Asylum Act) shall notify the Federal Office of all official acts in regard to persons concerning whom they have knowledge of any procedure pending in the federal territory in relation to an application for international protection.

(4) The federal, provincial and municipal government authorities, offices of the labour market service and social insurance institutions which are lawfully in possession of data shall be empowered and, upon request, obliged to transmit such data to the Federal Office insofar as the data are required by it for the execution of measures or the conduct of procedures before the Federal Office. Any withholding of information shall be inadmissible. The data shall be deleted without delay if no longer required to meet the specific purpose involved.

(5) In the case of criminal proceedings in relation to intentionally committed punishable acts and also extradition and surrender proceedings against aliens, the public prosecution services shall at the earliest possible time notify the Federal Office of the imposition and lifting of pretrial detention orders, pre-extradition or pre-surrender detention orders, the preferment of charges, the withdrawal of prosecutions and the discontinuation of criminal proceedings; the criminal courts shall notify the Federal Office of final rulings in criminal, extradition or surrender proceedings (together with a copy of the verdict); and the penal institutions shall notify the Federal Office of the commencement and termination of sentences of imprisonment. Subject to the technical resources available, such notifications shall be effected by the electronic transmission of the aforementioned data to the Federal Office (article 15b (1) of the Prisons Act). The Federal Office shall be responsible for forwarding the information to any other competent authority.

(6) The authorities responsible for nationality matters shall notify the Federal Office of the conferment of nationality on any alien.

(7) The authorities responsible for civil status matters shall notify the Federal Office of applications for the celebration of marriage or for the establishment of a registered civil partnership by third-country nationals who are not favoured third-country nationals.

(8) The district administrative authorities shall notify the Federal Office of applications for changes of name and the civil courts shall notify the Federal Office of applications for the adoption of aliens.

(9) The driver licensing authorities shall notify the Federal Office of the issuance of a driving licence to any alien.

#### **Communication obligations**

**Article 31.** (1) A notification as referred to in article 30 (5) shall be transmitted by the Federal Office to the Federal Administrative Court if the proceedings are pending before it.

(2) The Federal Office and, in the cases referred to in subparagraph 2 below, the Federal Administrative Court if the proceedings are pending before it, shall notify the competent provincial police authority:

1. of the breach of an obligation to report as laid down in article 15a of the 2005 Asylum Act,
2. of the breach of an obligation to report as laid down in article 13 (2) if a procedure for the imposition of a measure to terminate residence has been initiated against an asylum seeker pursuant to article 27 of the 2005 Asylum Act and
3. of the perpetration of a punishable act in accordance with the Aliens' Police Act.

(3) The Federal Minister of the Interior shall be obliged to inform the authorities responsible for nationality matters of any repatriation decisions and residence bans that have ceased to be in force. He shall in such cases transmit to those authorities, by reason of the bar on access pursuant to article 26 (2), the basic data set on an alien and details of the decision which has ceased to be in force.

(4) Information in connection with measures to terminate residence shall be made available to the competent authority for the conduct of administrative penalty procedures under the Aliens Employment Act (AuslBG), FLG No. 218/1975 (article 28 of the Aliens Employment Act).

#### **Admissibility of the use of data in the Central Register of Residents**

**Article 32.** (1) In the retrieval of data from the Central Register of Residents which the Federal Office is allowed to carry out pursuant to the Domicile Registration Act, selectability from the total quantity of all data processed in the Central Register of Residents may also be provided for on the basis of the address in addition to the name, if this is necessary for the performance of the duties assigned to the Federal Office.

(2) The Federal Minister of the Interior shall be empowered to match data processed in the Central Register of Residents on registered persons with the personal data sets on aliens whose residence permits are no longer valid. If a valid registration exists notwithstanding the expiry of the residence permit, the Federal Minister of the Interior shall notify the Federal Office thereof.

(3) One year after initiating the measures provided for in paragraph (2) above the Federal Minister of the Interior shall review their suitability and submit a report thereon to the Data Protection Council.

#### **International data exchange**

**Article 33.** (1) Insofar as the Federal Government is empowered under article 66 (2) of the Federal Constitutional Law to conclude international treaties it may, provided that a reciprocal arrangement is granted and a level of data protection comparable with Austria exists, conclude intergovernmental agreements concerning the transmission of data, as referred to in article 27 or article 28, where such data are required for the purposes stated in article 29. In those cases, the transmission of such data shall be the prerogative of the Federal Minister of the Interior and it shall be stipulated that the deletion of transmitted data shall be subject to the same substantive requirements as apply in Austria and that nationals of the contracting States shall be excluded from the scope of application of such agreements.

(2) Personal data transmitted from outside Austria on aliens by virtue of an agreement concluded pursuant to paragraph (1) above may be processed in the central information-gathering system.

(3) The transmission of personal data on an alien to the country of origin shall not be admissible unless it involves data required with a view to the procurement of a replacement travel document.

(4) The transmission of personal data on an asylum seeker to the country of origin shall, without prejudice to paragraph (5) below, not be admissible. However, data required for the purpose of obtaining the necessary entry authorizations may be transmitted if the application has been dismissed or rejected – even if not finally – or the asylum seeker is not accorded de facto protection against deportation. The fact that an application for international protection has been filed may in no circumstances emerge in the course of any such transmission.

(5) The transmission of personal data to the country of origin for purposes of security policing and criminal justice administration shall, however, be admissible if:

1. that country is a safe country of origin;
2. a procedure for the imposition of a measure to terminate residence has been initiated in cases where the required conditions as set out in subparagraphs 2 to 4 of article 27 (3) of the 2005 Asylum Act exist or
3. an application for international protection has been rejected, or has been dismissed in regard to the granting of both asylum status and subsidiary protection status, by the authority of first resort,

even if not finally. The fact that an application for international protection has been filed may in no circumstances emerge in the course of any such transmission.

## **PART 2: SPECIFIC PROVISIONS**

### **Section 1**

#### **Orders of authorities and powers of agents**

##### **Subsection 1**

##### **Arrest and search warrants**

###### **Arrest warrants**

**Article 34.** (1) The Federal Office may issue an order for the arrest of an alien (arrest warrant) if he:

1. is in breach of conditions laid down in article 56 (2) or article 71 (2) of the Aliens' Police Act or
2. is unlawfully resident in the federal territory and does not fall within the sphere of application of part 6 of the Aliens' Police Act.

(2) The Federal Office may issue an order for the arrest of an alien, even without an administrative decision ordering his detention pending deportation having been rendered, if on the basis of certain facts it may be assumed that the conditions required for the imposition of a measure to terminate residence exist and

1. the alien has failed without good cause to answer a summons which was served on him personally and in which the use of such means of coercion was threatened or
2. the alien's residence could not be established.

(3) An arrest warrant may also be issued against an alien:

1. if the conditions required for the imposition of an order for detention pending deportation pursuant to article 76 of the Aliens' Police Act or for the ordering of less stringent measures pursuant to article 77 (1) of the Aliens' Police Act exist and the alien's transfer to the Federal Office does not take place for other reasons;
2. if the alien has not complied with his exit obligation (articles 52 (8) and 70 (1) of the Aliens' Police Act);
3. if a deportation order is to be issued against the alien (article 46 of the Aliens' Police Act) or
4. if the alien has failed without good cause to answer a summons which, pursuant to article 46 (2a) of the Aliens' Police Act, was served on him personally and in which the use of such means of coercion was threatened, for the purpose of the conduct of an interrogation to clarify his identity and place of origin, in particular with a view to the procurement of a replacement travel document by the authority from the competent foreign authority.

(4) The Federal Office may issue an order for the arrest of an asylum seeker if he has evaded the procedure (article 24 (1) of the 2005 Asylum Act).

(5) Arrest warrants shall be issued in exercise of the power of command devolving upon the administrative authority; a written record of such warrants shall be made. Custody pursuant to an arrest warrant may not exceed 72 hours and shall cease upon completion of the necessary procedural acts.

(6) In the cases referred to in paragraphs (1) to (4) above the person concerned shall, at his request, be furnished with a copy of the arrest warrant immediately or within the following 24 hours.

(7) The custody of an alien against whom an arrest warrant has been issued shall be reported without delay to the Federal Office. The latter shall indicate whether the alien is to be transferred to an initial reception centre or to a regional headquarters.

(8) An arrest warrant shall be revoked if:

1. the procedure for the granting of asylum status has been discontinued and the resumption of the procedure is no longer admissible (article 24 (2) of the 2005 Asylum Act) or
2. the asylum seeker voluntarily notifies the Federal Office or the Federal Administrative Court of his place of residence and it may not be assumed on the basis of certain facts that he will again evade the procedure.

3. (Note: has been repealed by FLG I No. 70/2015)

(9) The Federal Office shall notify the provincial police authorities of the issuance and revocation of any arrest warrant.

### **Search warrants**

**Article 35.** (1) If on the basis of certain facts it may be assumed that an alien against whom an arrest warrant has been issued or on whom an order for detention pending deportation is to be imposed is residing at certain premises, the Federal Office may issue an order to the agents of the public security service to enter and search the premises if such measure appears necessary for the enforcement of the arrest warrant or for the execution of the administrative decision ordering the alien's pre-deportation detention.

(2) The order referred to in paragraph (1) above shall be issued in exercise of the power of command devolving upon the administrative authority. Written certification of the search carried out shall be furnished by the intervening agent of the public security service to the person concerned, upon request, as soon as possible and in any event within 24 hours.

### **Subsection 2**

#### **Involvement and powers of agents of the public security service**

##### **Establishment of identity**

**Article 36.** (1) The agents of the public security service shall be empowered to take steps to establish the identity of a person:

1. if on the basis of certain facts it may be assumed that an arrest warrant has been issued against him (article 34) or
2. if on the basis of certain facts it may be assumed that he would as an alien reside outside the area to which his right of residence is restricted.

(2) Establishment of identity shall entail the recording of the name, date of birth, nationality and address of a person in his presence. It shall be carried out with the reliability warranted by the circumstances.

(3) Persons whose identity is to be established shall be informed thereof by the agents of the public security service. Every person concerned shall be obliged to cooperate in the procedure for the establishment of his identity and allow the direct enforcement of such procedure.

##### **Power of entry**

**Article 37.** (1) The agents of the public security service shall be empowered to enter property, premises, business establishments, places of employment and vehicles if a search warrant (article 35) has been issued and such action is necessary for the enforcement of the warrant.

(2) In the cases referred to in paragraph (1) above the person concerned shall, at his request, be furnished with written certification of the entry and the reasons therefor immediately or within the following 24 hours.

##### **Personal searches**

**Article 38.** (1) The agents of the public security service shall be empowered for the purpose of safe keeping of evidence (article 39) to search the clothing of an alien and the belongings carried with him if:

1. he has been arrested pursuant to the present federal act;
2. it is suspected that he is unlawfully resident in the federal territory and possesses evidence which is of importance for his deportation;
3. *(Note: has been repealed by FLG I No. 70/2015)*
4. he files an application pursuant to article 42 (1) or
5. he submits an application for international protection,

insofar as, in the cases referred to in subparagraphs 4 and 5 above, it cannot be ruled out that the alien may be carrying with him articles or documents which can provide information concerning his identity or nationality, the route followed by him or the reasons for his flight and which he does not present upon request. Prior to any search the alien shall be requested to hand over voluntarily all evidence carried with him.

(2) The agents of the public security service shall also be empowered to search the clothing of an asylum seeker and the belongings carried with him if it may be assumed on the basis of certain facts, in conjunction with an interview, that the asylum seeker is carrying with him documents or articles which, in

accordance with article 15 (1) 5 of the 2005 Asylum Act, he is obliged to hand over and which he does not voluntarily hand over upon request.

#### **Safe keeping of evidence**

**Article 39.** (1) The agents of the public security service shall be empowered to place temporarily in safe keeping any articles and documents required as evidence for purposes of a procedure before the Federal Office or a deportation pursuant to article 46 of the Aliens' Police Act.

(2) Articles or documents required in connection with the execution of a repatriation decision or the enforcement of an expulsion order or a residence ban, in particular with a view to the procurement of a replacement travel document for deportation purposes, shall also be deemed to be evidence.

(3) The person concerned shall be furnished with written certification of the placing of evidence in safe keeping; the evidence shall be handed over to the Federal Office and shall be returned to the person concerned by the Federal Office as soon as it is no longer required for purposes of procedures or a deportation unless it is to be placed in safe keeping in accordance with another federal act.

#### **Arrest**

**Article 40.** (1) The agents of the public security service shall be empowered to arrest an alien for the purpose of transferring him to the Federal Office if:

1. an arrest warrant (article 34) has been issued against him;
2. he is in breach of conditions laid down in article 56 (2) or article 71 (2) of the Aliens' Police Act or
3. he is unlawfully resident in the federal territory and does not fall within the sphere of application of part 6 of the Aliens' Police Act.

(2) The agents of the public security service shall be empowered to arrest asylum seekers or aliens who have filed an application for international protection, for the purpose of transferring them to the Federal Office, if:

1. such alien is not entitled to reside in the federal territory;
2. an enforceable measure to terminate residence – even if not final – has been imposed on him pursuant to part 8 of the Aliens' Police Act;
3. a procedure for the imposition of a measure to terminate residence has been initiated against him pursuant to article 27 of the 2005 Asylum Act;
4. an enforceable measure to terminate residence was imposed on him pursuant to part 8 of the Aliens' Police Act prior to the filing of the application for international protection or
5. it may be assumed, on the basis of the outcome of the interrogation, search and identification procedures, that the alien's application for international protection will be rejected owing to the absence of responsibility of Austria for the examination of the application.

(3) In the cases referred to in paragraphs (1) and (2) above the arrest may be dispensed with if it is guaranteed that the alien will leave the federal territory without delay via an external border.

(4) The Federal Office shall without undue delay give notification of arrests carried out. An alien's custody in the cases referred to in paragraph (1) 2 and 3 and paragraph (2) above shall be admissible for up to 48 hours and in the cases referred to in paragraph (1) 1 above for up to 72 hours; beyond those limits, deprivation of liberty shall be possible only in accordance with article 77 (5) of the Aliens' Police Act or by way of detention pending deportation in accordance with article 76 of the Aliens' Police Act. The arrested alien shall, at his request, be furnished with written certification of the making of the arrest.

*(5)(Note: has been repealed by FLG I No. 70/2015)*

(6) In procedures at an airport, the agents of the public security service shall, during the time that a measure to secure the enforcement of a border rejection order is admissible, be empowered to prevent a rejected asylum seeker from entering the federal territory unless he is permitted to do so.

#### **Rights of persons arrested**

**Article 41.** (1) Every person arrested pursuant to article 40 (1) or (2) shall be informed as soon as possible, in a language understandable to him, of the reasons for his arrest.

(2) At the request of any such person, the consular authority of his country of origin shall be informed without delay that he is being held in custody. Article 36 (4) of the Administrative Penalties Act (VStG) and article 47 of the Aliens' Police Act shall apply.

### **Filing of applications with security authorities or with agents of the public security service, interrogations and power to conduct identification procedures**

**Article 42.** (1) If an alien files an application for international protection with a security authority or with an agent of the public security service, the agents of the public security service shall conduct an initial interrogation in accordance with article 19 (1) of the 2005 Asylum Act and require the alien to undergo identification procedures unless such operations have already been carried out and provided that the alien is over 14 years old.

“(2) Following completion of the steps referred to in paragraph (1) above, the agents of the public security service shall hand over to the Federal Office the record of the interrogation and a report containing the time, place and circumstances of the filing of the application, particulars of any evidence as to the alien’s nationality and the route followed by him, in particular the place of the border crossing, and the results of the identification procedures (paragraph (1) above) and, if applicable, any personal search carried out (article 38 above) and shall obtain an order for further action from the Federal Office.

### **Orders for further action**

**Article 43.** (1) On the basis of the information communicated in accordance with article 42, the Federal Office shall without delay order that:

1. in the case of an alien possessing right of residence, such alien be required to present himself within fourteen days at an initial reception centre or at a regional headquarters or
2. in the case of an alien not possessing right of residence:
  - (a) that such alien be transferred to an initial reception centre or to a regional headquarters for the purpose of securing the execution of a measure to terminate residence or
  - (b) where such transfer is not required for the further conduct of the procedure, that the alien be provided with free-of-charge travel to a specific federal government care facility; the alien shall be informed thereof in an appropriate manner. Article 2 (1a) of the Federal Government Basic Welfare Support Act 2005 shall apply *mutatis mutandis*.

“(2) The Federal Office may dispense with an order as referred to in paragraph (1) 1 or 2 if:

1. the alien concerned is in custody pending deportation, in penal confinement, in pretrial detention or in another form of detention or
2. the provision of welfare support to the asylum seeker at a federal government care facility is not possible owing to specific unforeseeable circumstances.

### **Other transfer operations**

**Article 44.** If an alien is in custody for any reason whatsoever, he shall be brought before the Federal Office or the Federal Administrative Court at its request. His custody, in particular pre-deportation detention, shall not be interrupted by such transfer.

### **Powers of officials of the provincial police authorities**

**Article 45.** (1) The provincial police superintendent may authorize employees who are not agents of the public security service to exercise powers of command and constraint as set out in articles 38, 39 and 42, provided that such persons are duly qualified and specially trained for that purpose.

(2) Officials of the provincial police authorities who are so authorized (paragraph (1) above) shall also be granted the powers referred to in articles 38, 39 and 42. 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. Article 47 (2) shall apply to these officials *mutatis mutandis*.

### **Withdrawal of cards**

**Article 46.** The agents of the public security service and the security authorities (article 4 of the Aliens’ Police Act) shall be empowered to withdraw cards as referred to in articles 50 to 52 of the 2005 Asylum Act from anyone if:

1. the cards have been revoked (article 53 (1) of the 2005 Asylum Act);
2. the cards are to be returned (article 53 (2) of the 2005 Asylum Act) or
3. the cards are held by persons to whom they were not issued, except in the case of legal representatives of under-age persons.

Withdrawn cards shall be presented to the Federal Office.

### **Exercise of direct powers of constraint**

**Article 47.** (1) In discharging the authority conferred under the present section, the agents of the public security service shall be empowered to exercise direct powers of constraint; the agents of the public security service shall notify and warn the person concerned regarding the exercise of direct powers of constraint. They shall discontinue the exercise of such powers as soon as the outcome sought has been achieved or is seen to be unachievable by such means or to be out of proportion with the intervention necessary for enforcement purposes. Any threat to life or persistent threat to health shall in all cases be inadmissible

(2) If, in the discharge of any authority as referred to in article 38 (1) 4 and 5, article 38 (2), article 39 (1) and article 42 (1), it would be necessary to overcome resistance on the part of the person concerned, authorized officials of the Federal Office (article 2 (5) of the Federal Office Establishment Act) shall request an agent of the public security service to perform the official act.

### **Section 2**

#### **Legal advice**

##### **Professional requirements for legal advisers and corporate entities**

**Article 48.** (1) Legal advisers shall give proof of:

1. successful completion of degree law studies;
2. successful completion of studies of at least four years' duration, including a continuous three-year period of providing services in the field of immigration law, or
3. a continuous period of at least five years of providing services in the field of immigration law.

(2) Legal advisers shall act independently and shall not be bound by any mandatory instructions in the discharge of their duties. They shall furnish their advisory services objectively and conscientiously and shall, in discharging their duties, be subject to the obligation of confidentiality.

(3) A legal adviser shall throughout the duration of his contractual relationship offer guarantees of his reliability and refrain from any conduct which may:

1. conflict with the scrupulous performance of his duties;
2. give the impression that his obligations are being discharged in a manner inconsistent with any of his duties or
3. jeopardize confidentiality.

(4) The selection of legal advisers in accordance with articles 49 to 51 shall be the responsibility of the Federal Minister of the Interior and the selection of legal advisers in accordance with article 52 shall be the responsibility of the Federal Chancellor.

(5) The duration of the respective legal advice relationship shall be determined by the contract to be concluded with the Federal Minister of the Interior or with the Federal Chancellor. A reappointment as a legal adviser shall not constitute grounds for a contractual relationship of unlimited duration. If a legal adviser is repeatedly and persistently in breach of his obligations, his contract may be terminated with immediate effect.

(6) The Federal Minister of the Interior and the Federal Chancellor may from time to time also commission corporate entities to provide legal advice in accordance with articles 49 to 52.

(7) The commissioning of such services shall be admissible only if, in particular, the corporate entity:

1. employs a sufficient number of legal advisers to provide comprehensive legal advice across the federal territory;
2. can have access to a sufficient number of interpreters to assist in the provision of legal advice;
3. ensures that skills development measures are regularly carried out for the legal advisers employed by it;
4. has the necessary financial and material resources to guarantee comprehensive legal advice and interpretation services across the federal territory and
5. has the organizational resources necessary to administer a legal advisory system.

In the commissioning of services it shall be ensured that corporate entities to be selected offer guarantees of the due performance of their duties, in particular on the basis of their relevant fields of activity and their financial and commercial capacity.

(8) The corporate entity shall employ only those legal advisers who meet the requirements set out in paragraphs (1), (2) and (3) above and their engagement shall be reported without delay to the authority commissioning the corporate entity.

(9) The Federal Minister of the Interior and the Federal Chancellor may cancel the commissioning of individual corporate entities with immediate effect and revoke the powers thereby conferred if the corporate entity no longer meets any one of the requirements set out in paragraph (7) above or if a person engaged by it to furnish legal advice or advisory assistance is repeatedly and persistently in breach of his obligations. In such cases, the corporate entity shall not be entitled to any claims against the Federal Government for compensation in respect of advisory services commissioned.

#### **Legal advice in admission procedures before the Federal Office**

**Article 49.** (1) A legal adviser shall be placed ex officio, at no charge, at an asylum seeker's disposal in the admission procedure.

(2) Legal advisers in admission procedures shall, prior to every interview following a notification as referred to in subparagraphs 3 to 6 of article 29 (3) of the 2005 Asylum Act, advise asylum seekers on their asylum procedure and on their prospects of being granted asylum status or subsidiary protection status; interpreters shall, if required for such purpose, be assigned to them by the Federal Office and the investigative findings to date shall be made fully available to them. Legal advisers shall be required in admission procedures to take part in all interviews held for the purpose of affording the parties an opportunity to be heard.

(3) In the case of asylum seekers who are unaccompanied minors, the legal adviser shall take part, as legal representative in the admission procedure, at every interrogation and at every interview.

(4) The Federal Office shall, for each initial reception centre, determine the legal advisers' sphere of responsibility according to the specific application submitted. The transfer of duties to another legal adviser in individual cases may take place only with the consent of that legal adviser. If a corporate entity is commissioned to provide legal advice in admission procedures, the Federal Administrative Court in the cases referred to in article 10 (3), (5) and (6) and the Federal Office shall effect service of documents solely to the corporate entity even if service is to be effected to the legal adviser.

(5) The Federal Minister of the Interior shall regulate the amount of compensation due to legal advisers for time and labour expended. If a corporate entity is commissioned to provide legal advice in admission procedures, the Federal Minister of the Interior shall regulate the amount of compensation due for the time and labour expended in providing such advice, including costs of interpretation, in the form of lump sums per asylum seeker receiving advice. The compensation shall be based on the previously received offer from the commissioned corporate entity.

#### **Advisory assistance for asylum seekers in admitted procedures before the Federal Office**

**Article 50.** (1) Advisory assistance may be arranged in admitted procedures before the Federal Office. The legal advisers engaged there shall provide assistance and advice, at no charge, to asylum seekers in the admitted procedure, subject to the actual resources available, and also in the procurement of the services of an interpreter and, where appropriate, in the provision of repatriation advice. There shall be no legal entitlement to advisory assistance.

(2) The selection and appointment of legal advisers for the respective regional headquarters shall be the responsibility of the Federal Minister of the Interior; the number of hours of advice to be provided shall also be fixed in the appointment.

(3) The provision of legal advice shall be subject to the actual resources available and shall take place only during the official operating hours of the Federal Office.

(4) The Federal Minister of the Interior shall regulate the amount of compensation due to legal advisers for time and labour expended. If a corporate entity is commissioned to provide advisory assistance in admitted procedures before the Federal Office, the Federal Minister of the Interior shall regulate the amount of compensation due for the time and labour expended in providing such assistance, including costs of interpretation, in the form of lump sums per asylum seeker receiving advice. The compensation shall be based on the previously received offer from the commissioned corporate entity.

(5) Legal advisers shall submit monthly reports to the director of the Federal Office on the nature and duration of advisory services furnished.



### **Other legal advice**

**Article 51.** (1) If an alien is taken into custody by virtue of an arrest warrant pursuant to article 34 (3) 1, in conjunction with article 40 (1) 1, a legal adviser shall be placed ex officio, at no charge, at his disposal before the authority.

(2) Legal advisers shall provide arrested aliens with advice and also with assistance in the procurement of the services of an interpreter. Legal advisers shall be entitled and, at the alien's request, required to take part in all procedural acts whose purpose is to afford the parties an opportunity to be heard and shall participate in the conduct of the procedure in such a way as to avoid any undue delay. Article 7 of the General Administrative Procedures Act shall apply.

(3) If the alien is in penal confinement or in pretrial detention, the provision of legal advice shall take place at the alien's place of residence.

(4) The Federal Minister of the Interior shall regulate the amount of compensation due to legal advisers for time and labour expended. If a corporate entity is commissioned to provide legal advice, the Federal Minister of the Interior shall regulate the amount of compensation due for the time and labour expended in providing such advice, including costs of interpretation, in the form of lump sums per alien receiving advice. The compensation shall be based on the previously received offer from the commissioned corporate entity.

### **Legal advice before the Federal Administrative Court**

**Article 52.** (1) The Federal Office shall, upon the rendering of a repatriation decision or the imposition of a pre-deportation detention order and in the event of rejection or dismissal rulings on applications for international protection which are not subsequent applications, inform the alien or asylum seeker by procedural order that a legal adviser will be placed ex officio, at no charge, at his disposal. At the same time, the Federal Office shall notify the appointed legal adviser or the commissioned corporate entity thereof.

(2) Legal advisers shall provide assistance and advice to aliens or asylum seekers in the lodging of appeals and in appeal proceedings before the Federal Administrative Court, in accordance with paragraph (1) above, and also in the procurement of the services of an interpreter. Legal advisers shall also represent aliens, at their request, in appeal proceedings against a repatriation decision, a decision pursuant to article 2 (4) to (5) or article 3 of the Federal Government Basic Welfare Support Act 2005 or an order for removal from the country. Legal advisers shall in all cases explain to persons receiving advice the prospects of success of their appeal. Legal advisers shall, in procedures concerning international protection or concerning the imposition of pre-deportation detention orders, take part in the oral hearing at the alien's request.

(3) The Federal Chancellor shall regulate the amount of compensation due to legal advisers for time and labour expended. If a corporate entity is commissioned to provide legal advice before the Federal Administrative Court, the Federal Chancellor shall regulate the amount of compensation due for the time and labour expended in providing such advice, including costs of interpretation, in the form of lump sums per alien or asylum seeker receiving advice. The compensation shall be based on the previously received offer from the commissioned corporate entity.

### **Repatriation advice and repatriation assistance**

**Article 52a.** (1) An alien may be given repatriation advice at any stage of his procedure. Repatriation advice shall include an explanation of prospects during and after the conclusion of the procedure. Repatriation assistance shall in all cases include the necessary costs of the return journey (article 12 (2) of the Federal Government Basic Welfare Support Act 2005).

(2) If a repatriation decision is imposed on an alien or a communication is issued to an asylum seeker pursuant to article 29 (3) 4 to 6 of the 2005 Asylum Act, the alien or asylum seeker shall be obliged to engage in a repatriation consultation unless this has already taken place during the procedure. The provision of repatriation advice may, in a procedure pursuant to article 27a of the 2005 Asylum Act, be laid down by procedural order at an earlier stage of the procedure.

(3) The competent repatriation advisory centre shall furnish the Federal Office or the Federal Administrative Court, upon enquiry, with information as to whether a repatriation consultation has taken place and the outcome reached.

(4) Should an alien decide to accept the repatriation assistance offered to him and to leave Austria, he may be given financial support prior to his departure (article 12 of the Federal Government Basic Welfare Support Act 2005). The services of the legal adviser (article 49 of the Federal Office Procedures

Act) shall be engaged in the concluding discussion concerning the granting of repatriation assistance in the admission procedure.

### **Section 3**

#### **Costs**

##### **Reimbursement of costs**

**Article 53.** (1) The following costs incurred by the Federal Government shall be reimbursed by the alien unless article 30 of the Dublin Regulation conflicts herewith:

1. costs relating to the enforcement of a measure to terminate residence pursuant to part 8 of the Aliens' Police Act;
2. costs of interpretation arising in connection with procedural acts pursuant to parts 7 and 8 of the Aliens' Police Act.

(2) Anyone who employs an alien in contravention of article 3 (1) of the Aliens Employment Act shall reimburse the costs, as referred to in paragraph (1) above, in the event of the rendering of a repatriation decision against that alien pursuant to article 52 in conjunction with article 53 (1) and (2) 7 of the Aliens' Police Act. The main contractor and all subcontractors shall be jointly and severally liable if they have knowingly permitted the alien's employment by a subcontractor in contravention of article 3 (1) of the Aliens Employment Act or if the main contractor has not complied with its supervisory obligation pursuant to article 26 (6) of the Aliens Employment Act.

(3) Any carrier failing to comply with its obligations under article 111 (2) to (6) of the Aliens' Police Act shall reimburse the costs arising in connection with the deportation of an alien pursuant to article 46 of the Aliens' Police Act. Such costs shall include, in particular, expenses which from the time of the alien's arrival at the border crossing point until his departure:

1. arise in respect of accommodation, food and any medical care;
2. arise for the authority or the Federal Government in connection with any necessary execution of a repatriation decision pursuant to article 52 of the Aliens' Police Act or a residence ban pursuant to article 67 of the Aliens' Police Act, including costs relating to the enforcement of a pre-deportation detention order, costs of interpretation, ticket costs and costs in respect of accompanying agents.

(4) Article 79 of the General Administrative Procedures Act shall apply *mutatis mutandis*. Costs as referred to in paragraph (1) above which are not recoverable shall be borne by the Federal Government.

### **PART 3: FINAL PROVISIONS**

#### **Grammatical equivalence**

**Article 54.** Where references made in the present federal act to natural persons appear in the masculine form, they shall apply equally to males and to females. In cases where the reference applies to a particular natural person, the specific form of the gender shall be employed.

#### **References**

**Article 55.** If reference is made in the present federal act to provisions of other federal acts, those provisions shall be applicable in their current wording.

#### **Entry into force**

**Article 56.** (1) The present federal act shall enter into force on 1 January 2014.

(2) Ministerial orders and intergovernmental agreements pursuant to the present federal act may be issued or concluded as from the day following the date of its promulgation; however, they may enter into force at the earliest upon the entry into force of the present federal act.

(3) Die §§ 7, 8, 13 Abs. 6, 15, die Überschrift des 5. Hauptstückes und die §§ 16 bis 22b samt Überschriften, §§ 26 Abs. 1 letzter Satz, 27 Abs. 1 Z 12 und § 58 sowie das Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 68/2013 treten mit 1. Jänner 2014 in Kraft. Die Überschrift des 5. Hauptstückes in der Fassung vor dem BGBl. I Nr. 68/2013 tritt mit Ablauf des 31. Dezember 2013 außer Kraft.

(4) Die Anordnungen des Bundesgesetzes BGBl. I Nr. 68/2013 sind so zu verstehen, dass sie sich auf jene Fassung dieses Bundesgesetzes beziehen, die es durch das Fremdenbehördenneustrukturierungsgesetz – FNG, BGBl. I Nr. 87/2012, erhalten würde.

(5) Die §§ 9 Abs. 5 und 22a Abs. 5 in der Fassung des Bundesgesetzes BGBl. I Nr. 144/2013 treten mit 1. Jänner 2014 in Kraft. Die Anordnungen des Bundesgesetzes BGBl. I Nr. 144/2013 sind so zu verstehen, dass sie sich auf jene Fassung dieses Bundesgesetzes beziehen, die es durch das FNG-Anpassungsgesetz, BGBl. I Nr. 68/2013, erhalten würde. (6) § 18 Abs. 7 in der Fassung des Budgetbegleitgesetzes 2014, BGBl. I Nr. 40/2014, tritt mit Ablauf des Tages der Kundmachung in Kraft.

(6) § 18 Abs. 7 in der Fassung des Budgetbegleitgesetzes 2014, BGBl. I Nr. 40/2014, tritt mit Ablauf des Tages der Kundmachung in Kraft.

(7) Article 3, paragraph (2), subparagraphs 5 to 7, and paragraph (3), article 5, article 6, article 9, paragraphs (3) and (4), article 10, paragraphs (3) and (6), article 11, paragraphs (1) and (6), article 13, paragraphs (2) and (4), article 14, article 16, paragraph (2), subparagraphs 1 to 3, and paragraphs (4) and (6), article 17, paragraphs (1) to (3), article 18, paragraph (1), subparagraphs 2 and 5 to 7, article 21, paragraphs (2a) and (6a), article 23, paragraph (3), subparagraphs 1 and 3, article 28, paragraph (3), article 29, paragraph (1), subparagraphs 3 and 15 to 17, article 30, paragraph (5), article 34, paragraphs (4) and (8), subparagraphs 1 and 2, article 38, paragraph (1), articles 42 to 45 and their headings, article 47, paragraph (2), article 49, paragraph (3), article 52, paragraphs (1) and (2), article 52a and its heading, article 53, paragraphs (1) and (4), article 58, paragraph (4), and the entries for articles 42 to 45 and 52a in the list of contents, as amended by federal act FLG I No. 70/2015, shall enter into force on 20 July 2015. Article 34, paragraph (8), subparagraph 3, article 38, paragraph (1), subparagraph 3, and article 40, paragraph (5), shall cease to be in force at midnight on 19 July 2015.

(8) Die §§ 12a samt Überschrift, 29 Abs. 1 und Abs. 2 Z 3 bis 5, 30 Abs. 3 und 4 sowie der Eintrag im Inhaltsverzeichnis zu § 12a in der Fassung des Bundesgesetzes BGBl. I Nr. 25/2016 treten mit 1. Juni 2016 in Kraft. § 52 Abs. 1 und 2 in der Fassung des Bundesgesetzes BGBl. I Nr. 25/2016 treten mit 1. Oktober 2016 in Kraft.

(9) § 27 Abs. 2 in der Fassung des Bundesgesetzes BGBl. I Nr. 25/2016 tritt mit 1. Juni 2016 in Kraft.

### **Execution**

**Article 57.** Execution shall be entrusted:

1. with regard to articles 20, 21 and 33 (1), to the Federal Government;
2. with regard to articles 7 and 52, to the Federal Chancellor;
3. with regard to article 30 (3), to the Federal Minister for European and International Affairs; and
4. in all other respects, to the Federal Minister of the Interior.

### **Transitional provisions**

**Article 58.** (1) Immigration police authorities under the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012 shall, as from 1 January 2014, also remain the controllers, as defined in article 4, subparagraph 4, of the 2000 Data Protection Act, for data processed on their behalf in the Central Register of Aliens, in accordance with article 101 of the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012, subject to the proviso that the procedure on which the data concerned are based is finally concluded prior to 1 January 2014. If such data are to be amended, rectified or deleted on or after 1 January 2014 ex officio or upon request, this obligation shall apply to authorities under the present federal act and under the Aliens' Police Act, as amended by federal act FLG I No. 68/2013, as the new controllers, as defined in article 4, subparagraph 4, of the 2000 Data Protection Act. The time-limit referred to in article 27 (4) of the 2000 Data Protection Act shall be computed as from receipt of the request by the current competent authority.

(2) Immigration police authorities under the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012 may use data in other data applications up to, at the latest, expiry of the statutory retention period, as specified in the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012, even if their competence to conduct procedures on which such data are based ceases after midnight on 31 December 2013.

(3) The Federal Administrative Court 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 (both registered and not subject to notification) of the Asylum Court within the scope of the 2005 Asylum Act and the Aliens' Police Act. All registered data applications shall be continued under the register number of the Asylum Court. 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.

(4) Administrative decisions rendered by the Federal Office as from 20 July 2015 and rulings or orders issued by the Federal Administrative Court as from 20 July 2015 shall be executed by the Federal Office in accordance with article 3 (3), as amended by federal act FLG I No. 70/2015. The execution of administrative decisions rendered and rulings and orders issued prior to 20 July 2015 shall be in conformity with the legal situation prior to the entry into force of federal act FLG I No. 70/2015.